

# CORE LABOR STANDARDS IN TRADE AGREEMENTS. FROM MULTILATERALISM TO BILATERALISM

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## ABSTRACT

Although discussion concerning the inclusion of core labour standards has been excluded from the Doha agenda, the question continues to be debated. In fact, on an international level, the International Labour Organization (ILO) has become increasingly active since the WTO Singapore Ministerial Declaration. On a regional level, social clauses are now being introduced inside preferential-trade agreements. These evolutions feed the debate regarding the link between labour standards and trade. This article takes a closer look at this debate and re-assesses the traditional economic analysis, which is today more sophisticated and balanced than was the case a few years ago.

Improving labour standards, in association with trade openness, might speed up development. However, governments do not necessarily choose the best way to promote social and economic development. This fact can be explained by political economic analysis. In this article, we weigh the pro- and anti-social clause arguments of interest groups both within developed and developing countries, to explain national choices concerning labour standards. The issue also concerns the stability of international trade relations. We stress that although they are excluded from multilateral arrangements, core labour standards provisions are omnipresent in bilateral or regional preferential-trade agreements. This paradox is likely to jeopardize the multilateral system. Putting aside ethical or moral considerations, we show that economic arguments can possibly allow the inclusion of a non-protectionist, realistic and reasonable trade-labour linkage. We conclude that the inclusion of such a clause in multilateral trade law is less dangerous than its non-inclusion.

## INTRODUCTION

Alter-globalist activists, trade unionists and many politicians have stressed the negative social consequences of globalisation. Are countries incited to lowering their labour standards in order to be more competitive? Can the violation of fundamental rights at work be regarded as an unfair comparative advantage? Does globalisation lead countries to an inefficient "race to the bottom"?

Indeed, the increasing openness of developing countries has not been accompanied by a rapid improvement in labour standards. Reports from the International Labour Organization

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(ILO) and other official reports<sup>2</sup> reveal the persistence or the deterioration of the worst forms of exploitation, like child and forced labour. According to the ILO, more than 12% of the world's children aged between 5 and 9 are at work. The percentage rises to 23% for children from 10 to 14. 179 million children are subject to the "worst forms", such as hazardous work, forced and bonded labour, trafficking and prostitution.

Faced with these facts, a demand for the respect of minimal labour standards in trade has arisen in international, regional or national caucuses. For the economist Jagdish Bhagwati, the problem with this "altruistic" demand is not that it reflects protectionist purposes but that a trade labour linkage, in the form of a Social Clause at the WTO, would not do the job. By making market access conditional to the respect of a set of minimal labour standards, such clauses would create two problems: first they would legitimate the use of trade sanctions as the way to improve standards and secondly they would promote the World Trade Organization (WTO) as the international institution in charge of the job<sup>3</sup>. This opinion calls however for some discussion. First, the "demand" for a trade labour linkage can be based solely on economic arguments without referring to altruism and, more generally, moral arguments<sup>4</sup>. Second, negative trade sanctions are not the only measures enhancing labour standards: pressures from government or civil society, «positive» incentives, and international aid are other means of improving labour standards. Thirdly, although the ILO is the qualified institution to deal with labour issues, the World Trade Organization (WTO) is not excluded whenever labour standards are a matter of concern for trade. Today, labour standards are excluded from multilateral negotiations, but they are frequently mentioned in bilateral (including in the Generalized System of Preference) and regional trade agreements, which confirms the importance of the issue. Thus, keeping the WTO out of the picture might jeopardize the multilateral system.

The Havana Charter of 1947 laid down a link between international trade and labour standards. It considered that workers' rights violations were an international issue: "(1) *The Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.* (2) *Members which are also members of the International*

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<sup>2</sup> See International Labour Office, *Every Child Counts. New Global Estimates on Child Labour*, Geneva, April 2002; International Labour Office, *Application of International Labour Standards 2004 (I). Report 92 III (Part 1A)*, Geneva, (2004). See also the series of the US Department of Labor, *By the Sweat and Toil of Children*, 6 volumes since 1994; US Department of Labor report series: *Foreign Labor Trends, The Department of Labor's 2004 Findings on the Worst Forms of Child Labor*, Washington D.C. (annual series)

<sup>3</sup> Jagdish Bhagwati, "Free Trade and Labor", *Nihon Keizai Shimbun*, September 10, (2001).

<sup>4</sup> The "Human Rights Approach" is questioned by Ernst-Ulrich Petersmann in "The "Human Rights Approach" advocated by the UN High Commissioner for Human Rights and by the International Labour Organization; Is it Relevant for WTO Law and Policy?", *Journal of International Economic Law*, September 2004, Vol. 7, No3, p. 605-27. See also Carlos Manuel Vasquez, "Trade Sanctions and Human Rights – Past, Present, and Future", *Journal of International Economic Law*, Vol. 6, No4, p. 797-839.

*Labour Organisation shall co-operate with that organization in giving effect to this undertaking.”*<sup>5</sup>

However, the explicit trade-labour linkage was abandoned with the failure of the Havana Charter ratification process. An International Trade Organization had not been created and the General Agreement on Tariffs and Trade (GATT) was used as a substitute. This agreement tackles only one aspect of rights at work: the products of prison labour<sup>6</sup>.

During the 1980s, developed countries were challenged by competition from low-wage countries. This encouraged the resurgence of the debate about harmful low labour standards. The trade-labour linkage was explicitly put forward during the Uruguay Round (1986-1993)<sup>7</sup>.

The Marrakech Agreement dropped this debate, however, because of a lack of consensus among countries. The Singapore Ministerial Declaration, adopted on December 13, 1996, confirmed the absence of consensus among the members of the two-year old World Trade Organization. As a consequence, the trade-labour linkage was denied; the ILO was recognized as the only relevant organization to tackle labour standards, which are not a matter of concern for the WTO, beyond a simple “collaboration” between the two organizations: “*We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.*”<sup>8</sup>

Compared to the Havana Charter, the Singapore Declaration reverses the nature of the link between labour standards and trade. In the Havana Charter, the violation of labour standards was the origin of potential trade disputes. According to the Singapore Declaration, the use of trade policies could force countries to apply trade-related core labour standards but it is likely to be counterproductive since it prevents trade and distorts the comparative advantages of developing countries.

The Doha Ministerial Declaration in 2001 confirmed the Singapore Declaration. : “*We reaffirm our declaration made at the Singapore Ministerial Conference regarding*

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<sup>5</sup> Havana Charter, Article 7 (headed *Fair Labor Standards*).

<sup>6</sup> GATT; article XX e).

<sup>7</sup> See, for example, Kofi Addo, "The Correlation Between Labour Standards and International Trade: Which Way Forward?", *Newspaper of World Trade*, vol. 36, No 2, 2002, p. 285-303; Kim Anderson, "Social Dimensions of Economic Integration: Environmental and Labour Standards ", *NBER Working Paper*, No 5702, (1996); Eddy Lee, "Globalization and labour standards: a review of issues ", *International Labour Review*. Geneva: International Labour Office. Vol. 136, No. 2 (Summer 1997), p. 173-189.

<sup>8</sup> See WTO Singapore Ministerial Declaration, 13 December 1996, § 4.

*internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalisation.”*<sup>9</sup>

However, the "social clause" debate is not over. Many free trade or other preferential agreements, such as the Generalized System of Preference (GSP), incorporate a "social clause", which is frequently anchored to the labour standards regarded as fundamental by the ILO.

In 1995, the Copenhagen World Summit for Social Development defined a set of "fundamental" workers' rights, based on International Labour Conventions. The ILO launched a campaign for their universal ratification so that they could enter in the scope of each Member State's national law. In June 1998, a new step was taken. The International Labour Conference adopted the "*ILO Declaration on fundamental principles and rights at work*", which requires member countries to respect, promote and put into practice the fundamental rights: "*[The International Labour Conference]...Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.*" It should be noted that minimum wages, safety requirements, work time, unemployment compensation, social security and pension plans are not included in the ILO core labour standards.

The retained policy to have these fundamental rights standards respected, consists of regular reporting on their enforcement, combined with technical cooperation programs to assist countries in putting them into practice. Following the Singapore Declaration, the ILO also set up a *World Commission on the Social Dimension of Globalisation* made up of experts and former political leaders<sup>10</sup>.

The legal term of "social clause" can thus be defined as any trade agreement provision that constrains the signatory states to respect core labour standards. The "contractual" nature of the social clause makes it more binding for contracting parties than a simple moral commitment in the Singapore Declaration. In particular, the clause allows the contracting parties to check the respect of standards in partner countries and to act to make the respect of the standards more effective. As an example, the European Union is favourable to the insertion of a social clause in trade agreements, but is increasingly reluctant to impose sanctions against unfair countries<sup>11</sup>. The existence of a social clause thus does not prejudge the nature of actions to take: negative trade sanctions (like additional duties, fines), but also positive trade sanctions, such as preferences granted to the country respecting core standards, are possible.

Section I discusses the existence of a trade-labour linkage and the expected effects of core labour standards on trade. Section II tackles the issue by a political economic analysis. We

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<sup>9</sup> See WTO Doha Ministerial Declaration, 20 November 2001, § 8

<sup>10</sup> See the final report: *A fair globalization - Creating opportunities for all*, Geneva, ILO, February 2004.

<sup>11</sup> See Commission of the European Communities, *Promoting core labour standards and improving governance in the context of globalisation*, Brussels, 18.7.2001, COM(2001) 416 final.

discuss national interest groups' actions, which are favourable or not to the insertion of a social clause in trade agreements and we consider the consequences on the stability of trade relations. Section III shows how the world institutional system prevents the adoption of labour standards at the multilateral level, but makes it possible at the bilateral or regional level.

## **I. DO LABOR STANDARDS MATTER FOR INTERNATIONAL TRADE?**

Many economists clearly agree that the improvement of core labour standards is a legitimate objective. However, they frequently consider that the introduction of these standards in trade agreements would be counter-productive. Indeed, such an institutional innovation would impede imports from countries having a comparative advantage in intensive-intensive goods and, consequently, would slow down their economic growth and social development.

The advocates of this point of view put forward the general principle of "targeting". To be efficient, a public intervention must aim as closely as possible at the distortion. This targeting reduces the perverse effects of the action<sup>12</sup>. In particular, if international trade does not cause the violation of core labour standards, a social clause would add distortions to distortions. Sanctions would prevent an export-led growth strategy, which is assumed to be favourable to the "endogenous" development of labour standards. Direct support to women's education or assistance to unions in developing countries would be more efficient actions, because they directly reach the origin of the aimed distortion. This approach, which avoids any interaction between trade and workers' rights, deserves to be discussed.

### **A. Is there a trade-labour linkage?**

For many economists, applying trade sanctions against countries with low labour standards would be inefficient because there is no clear trade-labour linkage.

Supposedly, the violation of core labour standards would mainly concern the non-export sector. Child and forced labour would first and foremost occur in domestic activities and small family firms. On the contrary, a broad trade-labour linkage would impose a social clause, limited to trade-impacted goods<sup>13</sup>.

However, the relevant criterion is not the exporting character of the sectors. Import sectors are concerned as well. The trade-labour linkage refers to the tradable sector as a whole and all firms and sectors exposed to international competition must be taken into consideration<sup>14</sup>.

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<sup>12</sup> See, for example, Jagdish Bhagwati, *The Wind of the Hundred Days*, The MIT Press, Cambridge (2000) and Jagdish Bhagwati & Robert Hudec, eds., *Fair Trade and Harmonization. Prerequisites for free trade?*, The MIT Press (2 vol.), Cambridge (1996).

<sup>13</sup> For example, see Peter Morici and Evan Shulz, *Labor Standards in the Global Trading System*, Washington D.C.: Economic Strategy Institute (2001). Section 301 of the US Law, which is devoted to promote US exports aims potential or effective import sectors.

<sup>14</sup> In a general equilibrium theoretical model, it is unjustified to isolate only one sector: export sector interacts with all other tradable and non-tradable sectors. Moreover, the value of exports is bound to the value of imports *via* external equilibrium constraints. As a result, we disagree with Robert Shelburne, who states that "*the only linkage that is politically likely is one that is restricted to trade-impacted goods, and this is likely to be applied mostly to the export sector*"; Robert C. Shelburne, "Wage Differentials, Monopsony Labor Markets, and the Trade-Labor Debate", *Journal of Economic Integration*, Vol. 19, No1, March 2004, p. 131-161.

The facts show that all tradable sectors witness violations of core labour standards. For example, child labour is relatively scarce in non-farm domestic labour (except in countries such as Ethiopia). Yet, major problems are located in the agricultural sector, which is highly exposed to international competition. Manufacturing and trade (including tourism) are also concerned, although to a lesser extent (see table 1).

### **INSERT Table 1 –Distribution of child labour (5-17 year olds) by sector**

The trade-labour linkage could also be indirect through subcontracting between small companies in the non-tradable sector and exporting firms<sup>15</sup>. The former group may produce non-tradable services (guarding, maintenance, professional services) and indirectly contribute to the competitiveness of the exposed firms.

### **B. Would a social clause endanger the comparative advantages of developing countries?**

Kimberly Elliott and Richard B. Freeman observe that globalisation by itself is not a universal remedy for underdevelopment and that developing countries can improve their labour standards without endangering their comparative advantage in intensive-intensive products<sup>16</sup>.

Theoretically, violations of core labour standards exert two effects on trade flows. First of all, they decrease wages, thereby improving competitiveness. Secondly, child or forced labour leads to an increase in the unskilled labour endowment. According to a Heckscher-Ohlin analysis, this latter effect improves a developing country's comparative advantage in intensive-intensive goods and fosters exports. Both effects have the same result: low labour standards are pro-trade. However, this argument is not valid for all core labour standards since opposite effects on labour endowments occur with discrimination and possibly with trade union rights.<sup>17</sup>

Moreover, sophisticated models question such evidence, emphasizing the existence of other effects<sup>18</sup>. The child labour endowment may be counter-balanced by the eviction of adult labour. Provided that child and adult labour are substitutable production factors, children might easily replace their relatives<sup>19</sup>. Basu and Van's theoretical model leads to multiple

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<sup>15</sup> US Department of Labor report series; Alejandro Doors, "When more edge Be Less: Labor Standards, Development and the Informal Economy" in Stephen Herzenberg and Jorge Perez-Lopez eds, *Labor Standards and Development in the Total Economy*, US Department of Labor, Washington D.C; 1990.

<sup>16</sup> Kimberly A. Elliott and Richard B. Freeman, *Can labor standards improve under globalization?*, Washington D.C., Institute for International Economics (2003).

<sup>17</sup> See Matthias Busse, "Do Labor Standards Affect Comparative Advantage in Developing Countries?", *World Development*, November 2002, Vol. 30, No 11, p. 1921-32; D. Brown, A. Deardorff and R. Stern, , « International Labor Standards and International Trade: A Theoretical Analysis, » in Bhagwati and Hudec, (1996), eds., op. cit.

<sup>18</sup> Keith Maskus, op. cit.; Gote Hansson, "Social Clauses and International Trade: An Economic Analysis of Labour standards and Trade Policy", Lund Economic Studies (1981); Wassen Noor, *Labor Standards and International Trade: Four Essays*, Ph. D. Dissertation, Columbia University, 1997.

<sup>19</sup> Christiaan Grottaert and Ravi Kanbur, "Child labour: an economic perspective", *International Labour Review* (Geneva), Vol. 134, No 2, p.187-203 (1995).

equilibria in the labour market, with one case where children do not work and adult wages are higher<sup>20</sup>. This multiple-equilibria outcome could be an argument for intervention in labour markets to reach the socially and economically preferred equilibrium. In another paper, Basu considers that minimum wages could plausibly cause some adults to be unemployed and send their children to work. However, he finds ambiguous results regarding the evolution of child labour when the adult minimum wage is raised<sup>21</sup>.

More generally, violation of workers' rights has to be analysed as a market imperfection, to the extent that the capacity of employees to conduct arbitrage between employers is denied by slavery practices or pressures exerted against children or their relatives. Violation of workers' rights impedes labour mobility and favours monopsonistic practices by employers<sup>22</sup>. In such a situation, employers tend to reduce the demand for labour. For example, child labour restrained in agriculture might impede the development of exporting manufacturing industries<sup>23</sup>. Moreover, higher exports might imply decreasing world prices and, as a result, affect the terms of trade negatively<sup>24</sup>.

Empirical research is rare and contradictory. Early studies showed the absence of correlation between labour standards and the volume of trade<sup>25</sup> but they did not use reliable

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<sup>20</sup> Kaushik Basu and Pham Hoang Van, "The Economics of Child Labor", *The American Economic Review*, Vol. 88, No 3, p. 412-427 (1998).

<sup>21</sup> Kaushik Basu, "The Intriguing Relation between Adult Minimum Wage and Child Labour", *The Economic Journal*, Vol. 110, March 2000, p. 50-61.

<sup>22</sup> A firm is in a monopsonistic situation in a local labor market, when it does not compete with other employers to attract workers. In technical terms, firms perceive an upward labor supply curve. Unlike the perfect competition case, monopsonistic employers can fix wages to increase their profits. Employers' labor demand is then restricted and wages are below their competitive level - i.e. labor marginal productivity - Such a monopsony is an economic distortion, which moves the economy away from the optimum. Unionization or other interventions might be distributionally attractive while also enhancing allocative efficiency. See Morici and Shulz, op. cit.; Clotilde Granger, « Normes de travail fondamentales et commerce international », Thèse de doctorat, Université Paris-Dauphine, décembre 2003. Robert Shelburne (op. cit.) restricts monopsonistic labor markets to export sectors, other sectors being assumed to pay a higher minimum wage. However, social clauses may also target the importing sector (see the Section 301 of the US Law). Monopsonistic behaviors can frequently be met in farms and the agricultural sector, which is exporter as well as importer or domestic-market oriented.

<sup>23</sup> A weak productivity in farms restricts labor-supply in the export sector and might explain why export firms frequently pay higher wages.

<sup>24</sup> See Vivek H. Dehejia and Yiagadeesen Samy, "Trade and Labour Standards: Theory and New Empirical Evidence", *Journal of International Trade and Economic Development*, June 2004, vol. 13, No 2, p. 179-98. The author's empirical results suggest that caution should be exercised before drawing broad conclusions on the magnitude and directions of different trade-labor linkage effects.

<sup>25</sup> See OECD, 1996 and 2000, op. cit. and John, Mah, "Core Labour Standards and Export Performance in developing Countries", *World economy*, Vol. 20, No 6, p.773-785 (1997).

indicators of the real respect of labour standards <sup>26</sup>. In more recent publications, lower labour standards are frequently associated with higher trade. Dani Rodrik <sup>27</sup> shows that timework and child labour contributes to a higher share of intensive-intensive exports in total exports. Cees Van Beers<sup>28</sup> finds that labour standards influence trade in 18 OECD countries. Clotilde Granger <sup>29</sup> has built her own synthetic indicator concerning the four core labour standards and concludes that their violation by Southern countries tends to raise the volume of North-South trade. These studies tend to confirm the existence of a trade-labour linkage, and run contrary to the no-linkage hypothesis supported by many economists.

These results are ambiguous in terms of political implications. On the one hand, they support the Havana Charter negotiators, who affirmed the trade-labour linkage. On the other hand, empirical evidence can reinforce the Singapore Declaration, which considers that a "level playing field" is a harmful constraint for trade and growth in developing countries. Would a sudden rise in labour standards definitively lead to a contraction of South exports and keep them out of the global world economy? <sup>30</sup>

This idea is bedded in theoretical confusion. An optimal specialization based on comparative advantage principles does not mean a maximal volume of trade, which is a typical mercantilist prescription. Comparative advantages are not exploited as long as labour markets are not efficient, meaning that the price of labour does not equalize its marginal productivity. This would be the case if a social clause imposed higher wages relative to labour productivity. But no longer does any organization persist in recommending a world minimum wage that could have such an effect. Conversely, core labour standards aim at the symmetrical situation, when labour marginal productivity is presumably above labour costs as the result of distortions in labour markets. Exports based on such distortions create "false" comparative advantages, which also distort the comparative advantage of trade partners and "*creates difficulties in international trade*", according to the Havana Charter.

To illustrate this point, let us imagine two identical closed economies, with pure and perfect competition in all markets, including the labour market. Because both economies bear exactly the same costs, the elimination of trade barriers does not create any trade. This optimal no-trade equilibrium is associated with the maximal income that both countries are able to earn. Now, let us assume that inside one country, some employers have a

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<sup>26</sup> The number of ILO conventions ratified by a country is the most frequently used indicator in empirical studies. See, for example, Rodrik (1996), op. cit.; Matthias Busse, "Do Transnational Corporations care about labor standards?", *The Journal of Developing Area*, Vol. 36, No 2, p. 39-56, Spring 2003; William Cooke and Deborah Noble, "Industrial Relation Systems and US Foreign Direct Investment Abroad", *British Journal of Industrial Relations*, Vol 36, No 4, p. 581-509 (1998). Because of a discrepancy between the content of conventions and their effective application (see infra, table 2), this indicator must be considered with caution. So, it is not surprising that Cooke and Noble find a positive relation between foreign direct investment and labor standards. The determining factors of ratification are explored by Nancy H. Chau and Ravi Kanbur, *The Adoption of Labour Standards Conventions: Who, When and Why?*, C.E.P.R. Discussion Papers, No 2904 (2001).

<sup>27</sup> Dani Rodrik, 1996, op. cit.

<sup>28</sup> Cees Van Beers, "Labour Standards and Trade Flows of OECD Countries", *The World Economy*, Vol. 21, No 1, January 1998.

<sup>29</sup> Clotilde Granger, Op. cit.

<sup>30</sup> See the T.N. Srinivasan's point of view, *Trade and Human Rights*, Center Discussion Paper No 765, Economic Growth Center, Yale University, December 1996.

monopsonistic power giving them the ability to reduce wages under the labour marginal productivity. In this country, a “false” comparative advantage appears in the monopsonistic sector, attracting factors from other sectors. A symmetric reallocation takes place in the other country. Thus, a “false” comparative advantage eventually creates distorted trade flows.

A social clause anchored to the ILO’s core labour standards, does not aim to create distortions but, on the contrary, support the creation of a legal environment making labour markets more efficient. Such is the case of the elimination of forced and child labour, which allows competition to be introduced between employers. It is also the case of the prevention of discrimination at work (which reduces labour markets segmentation) or union rights and collective negotiation, which help balance employers’ monopolistic power <sup>31</sup>.

### **C. Is a social clause counter-productive?**

Economists often proclaim the following chain of causality: low labour standards allow developing countries to exploit their comparative advantages in intensive-intensive goods; this policy supports an export-led growth strategy and ultimately, the “endogenous” improvement of labour standards.

If many empirical studies have confirmed a positive correlation between trade openness and growth rates, they also consider economic distortions, frequently proxied by black-market premiums on exchange markets, as exerting a negative effect on trade and foreign direct investment <sup>32</sup>. Moreover, Francisco Rodriguez and Dani Rodrik have questioned the linkage between openness and growth <sup>33</sup>, mainly through methodological arguments.

The fact that rich countries are more respectful of labour standards than poor countries does not provide any information about the direction of causality. From a static analysis, we have already seen that violations of core labour standards imply distortions, which lower national income. Moreover, income is not the only determinant playing a role with respect to labour standards. Thus, endogenous growth theories stress the role of human capital accumulation <sup>34</sup>. Various empirical studies <sup>35</sup> highlight the fact that the violation of labour standards might harm human capital accumulation and the growth process. This idea becomes

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<sup>31</sup> Symmetrically, on the supply-side, a trade-union monopolist would create distorted comparative disadvantages in labor-intensive productions. This might be the case in "populist" countries like Mexico or Argentina.

<sup>32</sup> For example, Rodrik (1996), *op. cit.*; Jeffrey Sachs. & Andrew Warner, *Economic reform and the process of global integration*, Brooking Papers on Economic Activity, 1, p 1-118 (1995); Sebastian Edwards, “Openness, Productivity and Growth: What Do We Really Know?”, *Economic Journal*, Vol.108, p. 383-398, March 1998.

<sup>33</sup> Francisco Rodriguez and Dani Rodrik, *Trade Policy and Economic Growth: A skeptic's guide to the Cross National Evidence*, NBER Working Paper, No 7081, April 1999.

<sup>34</sup> For example, see the pioneer work: Robert Lucas, 1988, "On the mechanics of economic development", *Journal of Monetary Economics*, N°22, p.3-42 (1988).

<sup>35</sup> Matthias Busse, "On the determinants of core labour standards: the case of developing countries", *Economics letters*, n°83 (2004); Florence Arestoff and Clotilde Granger, « Le respect des normes de travail fondamentales: une analyse économétrique de ses déterminants », Cahier EURISCO, Université Paris Dauphine, Paris (2003).

very plausible<sup>36</sup> in the case of child labour<sup>37</sup>. It is also plausible for gender, racial or other discriminations, which concern labour markets as well as access to education. Finally, it is also justified for other standards when their violation places physical integrity and health at risk<sup>38</sup>. Thanks to static and dynamic economic efficiencies, both developing and developed countries would raise the quality of growth in a “win-win” game<sup>39</sup>. Piore<sup>40</sup> stresses another dynamic effect: higher standards create an incentive to invest in capital accumulation, which can be substituted for child labour or unsafe activities. This process then triggers a growth process.

Many authors consider that higher labour standards in the formal sector will lead to a higher share of informal employment. Civic rights such as freedom of association and the right to organize and collective bargaining (ILO Conventions 87 and 98) lead to higher wages in the formal sector, discourage foreign and domestic investment, hinder economic development, reduce the demand for the formal sector and thus lead to increased informality<sup>41</sup>. However, a recent econometric study finds that higher labour standards in 14 Latin American countries are correlated with a higher share of formal employment<sup>42</sup>.

Are the alternatives to child labour in farms or sweatshops, even worse situations such as starvation, prostitution or street labour? This question underlines a real and significant risk. It implies that regulations require careful consideration and must avoid sudden measures that do not take local conditions into account.

However, several empirical studies on the disappearance of child labour in the United States and Great Britain at the end of the 19th century, show that application of prohibitive child labour and compulsory education laws had a significant positive impact<sup>43</sup>. Moreover,

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<sup>36</sup> OECD, 2000, op. cit. ; JM. Baland and J.A. Robinson, “Is child labor inefficient?”, *Journal of Political Economy*, 108(4), p. 663-79 (2000); P. Ranjan, “Credit constraint and the phenomenon of child labor”, *Journal of Development Economics*, 64(1), 81-102 (2001).

<sup>37</sup> We also have to consider that children’s study time is not the only input in their human capital accumulation. Indeed, children’s labor market participation raises the financial resources spent on their education. See Simon Fan, “Relative wage, child labor, and human capital”, *Oxford Economic Papers* 56, 2004, 687-700. However, elimination of children’s labor might also raise the household’s income; see *infra* and Kaushik Basu, “Child Labor: Cause, Consequence, and Cure, with Remarks on International Labor Standards”, *Journal of Economic Literature*, Vol. XXXVII, p. 1083-1119 (1999).

<sup>38</sup> See Sandra Polaski, *Trade and Labor Standards, A Strategy For Developing Countries*, Carnegie Endowment for International Peace (2003), [www.ceip.org/pubs](http://www.ceip.org/pubs).

<sup>39</sup> Thomas I Palley, “The Economic Case for International Labour Standards”, *Cambridge Journal of Economics*, Vol. 28, N°1, p. 21-36, January 2004.

<sup>40</sup> Michael J Piore, “International Labor Standards and Strategies Business” in Schoepfle G and K Swinnerton (eds.), *International Labor Standards and Total Integration: Proceeding of a Symposium*, US Department of Labor, Washington D.C. (1994).

<sup>41</sup> For example: “To the extent that formal sector unions succeed in getting higher wages and employment guarantees, for their members, this is likely it reduces...the demand for labour in that sector, forcing the unemployed to seek work in the informal sector.... where labour standards hardly apply” in A. Singh and A. Zammit, *The global labour standards controversy: Critical issues for developing countries*. Geneva: South Center.

<sup>42</sup> Rossana Galli and David Kucera, Labor Standards and Informal Employment in Latin America, *World Development*, Vol. 32, No5, p. 809-828 (2004).

<sup>43</sup> For a review on these historical studies, see Kaushik Basu (1999), op. cit.

the abolition of child labour does not necessarily imply a clear household income loss, insofar as it opens job opportunities for adults and may cause higher wages, to the extent that children and adults compete in labour markets. Kaushik Basu considers that “*a large scale withdrawal of child labour can cause adult wages to rise so much that the working class household is better off*” even if such a positive effect “*is unlikely to be true for very poor economies but may be valid for relatively better-off countries*”<sup>44</sup>. The abolition of child labour thus does not have clear and mechanical effects on household income, even in the short run.

Kimberly Elliott and Richard B. Freeman<sup>45</sup> describe how trade pressures have contributed to improved labour standards in Bangladeshi garment firms, Pakistani soccer ball manufacturing, West African cocoa production, and the Cambodian apparel industry. Concerning Indonesia, Harrison and Scorse’s econometric studies confirm that political pressure may be efficient and pro-trade. They conclude that: “*The evidence for Indonesia in the 1990s suggests that firms touched by the global market place were more, not less, likely to comply with labour standards. In part, this increase in compliance is likely to have resulted from pressure imposed by the United States, which used the GSP as a mechanism to enforce labour standards in Indonesia, combined with increasing human rights activism. ...What is truly remarkable is that compliance increased despite a doubling of the real value of the minimum wage in Indonesia during this period, enormous increases in foreign investment and export sales, and a painful currency crisis which erupted in late 1997*”<sup>46</sup>.

## II THE POLITICAL ECONOMY OF THE SOCIAL CLAUSE

In the former section, we have discussed the economic and social ineffectiveness of core labour standards violations. Thus, it is, a priori, illogical and irrational for developed countries to defend the inclusion of social clauses, since violations of core labour standards lower the price of imported goods, raise the terms of trade and enhance consumers’ welfare, to the extent that criteria regarding ethics are not taken into account. On the other hand, it is paradoxical that developing countries stand up against international social clauses which would prevent a “*race to the bottom*” process and “*social dumping*” strategies, which are likely to damage their population’s well-being.

### A. Collective action and determination of labour standards

The political economy of protectionism considers “rent-seeking” interest groups, which are mobilized to obtain income-raising protection. Governments of North countries respond to lobbying from producers and workers. The introduction of a social clause into trade agreements would be a protectionist reaction against low wage countries<sup>47</sup>. Economic theory, such as the Stolper-Samuelson theorem, confirms that opening trade to South countries, even favourable to the national real income, should harm the real income of unqualified labour,

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<sup>44</sup> Kaushik Basu, *ibid*, p.. 1115.

<sup>45</sup> Kimberly Elliott and Richard B. Freeman (2003), *op. cit*.

<sup>46</sup> Ann Harrison and Jason Scorse (2003) *op. cit*. p. 44-45. See also: Ann Harrison and Jason Scorse, *Moving Up or Moving Out? Anti-Sweatshop Activists and Labor Market Outcomes*, NBER Working Paper No. 10492, May 2004.

<sup>47</sup> Many economists express this opinion. For example Amit Dasgupta, “Labour Standards and WTO: A New Form of Protectionism”, *South Asia Economic Journal*, September 2000, Vol. 1, No 2, p. 113-29.

which is a relatively scarce factor in developed countries. The evolution is similar for the owners of specific factors located in the import sector (like land or textile machinery). Thus, North-South trade might propagate low wages from South to North. These negative effects would be worsened by violations of labour standards in exporting developing countries. Workers and specific factors' owners concerned by imports, may logically advocate protectionist measures and denounce the unfair competition from low labour standards countries. In fact, the AFL-CIO was one of the most activist organizations in defending the inclusion of social standards in international agreements, successfully in regional or bilateral agreements such as NAFTA (see *infra*).

However, to consider that social clauses only respond to protectionist-organized groups is a very simplistic view. Consumers themselves are frequently favourable to the inclusion of a social clause, even though they theoretically gain from lower import prices. Many consumer activists, such as Ralph Nader, adopt very anti-globalist positions. Moreover, pressure from protectionist-organized groups is counterbalanced by counter-lobbying from exporting and multinational firms, who want to export to South opened markets or investing in low-wage and demand-expanding countries, even if they do not strictly respect all labour standards (for example, China, India or the Philippines).

Taking into account these contradictory pressures, the political economy of protectionism is not a satisfactory theory to understand why developed countries defend the inclusion of a social clause. Ethical motivations and moral consciousness may override economic gains which are poorly evaluated by civil society. This kind of non-economic consideration has been more virulent in North countries. Thus, North NGOs are frequently more in favour of a social clause than NGOs from the South. Moreover, anti-WTO activism has contributed to discredit this organization and, consequently, makes the inclusion of social clauses in the multilateral system more difficult.

If academics stress the action of North lobbies, they frequently neglect South interest groups. In developing countries, influent lobbies – landowners, large exporters, corrupted civil servants and authoritarian political leaders - are frequently reluctant to accept social progress. When world markets determine the price of goods, lowering wage costs increases the producer's rent. At the same time, rent-seeking lobbies may be mobilized to prevent the adoption or the application of social laws and defend trade liberalization, which opens new markets and new rent opportunities.

Governments may be influenced by lobbies, but remain the principal actors. They negotiate, sign and ratify trade agreements. They must balance contradictory interests. Multilateral organizations, such as the WTO, offer governments the opportunity to be sheltered from national lobbies. Indeed, governments can share the political cost of unpopular measures with such organizations.

## **B. Core labour standards and international economic relations stability**

International economic relations are structured around multilateral “member-driven” institutions. Nation-States, represented by their governments, freely choose to adhere to institutions, declarations, conventions, protocols, and agreements. This "Westphalian" system thus lays down common rules restricted to inter-state relations. It does not assert any transfer of sovereignty as regards domestic policy. It does not impose only one type of political, economic or social regime, even if governments are more or less incited to respect market

rules, democracy and human rights. Despite its authoritarian regime, China was authorized to join the WTO. The universalistic ambition of the post-war system was only to institute cooperation between the largest possible number of countries, to consolidate international economic stability. Because too much interference in the members' domestic policy would deter the great majority of countries from joining the system, few institutional standards were imposed. Thus, ILO members are not constrained to ratify Conventions and political or social prerequisites to join the WTO are very slight<sup>48</sup>.

Consequently, the only receivable argument for action against foreign national legislations or practices is to prove that they harm the national interest of other countries, the mutual development of trade or the stability of world economy. For example, this point of view is expressed by a Brookings economist who opposes social clauses to intellectual property rights: « *If Burma denies its workers the right to organize independent unions, its actions are deplorable but do not directly injure me. If Burma allows publishers and recording companies to reproduce my copyrighted books and songs without compensating me, the theft of my creative efforts injures me directly.*»<sup>49</sup>

Does the violation of core labour standards in Burma (one of the 23 GATT founder countries!) harm other countries' citizens? Does it jeopardize the stability of economic international relations?

Countering the Brookings economist, the Havana Charter answered these questions positively<sup>50</sup>. Indeed, for developing (and also developed) countries, WTO membership is justified by the access to foreign markets, which is exchanged against concessions concerning domestic trade policies. The manipulation of standards in the fields of labour, environment, safety, competition, taxation and the such, may replace traditional instruments of trade policy such as customs tariffs<sup>51</sup>. These circumventing instruments are inefficient because they reach targets that are far from the real goal, which is to contain imports.

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<sup>48</sup> However, a member country may theoretically impose the conditions it wants, to accept the membership of another country, because of the WTO consensus rule. In fact, conditions are closely related to trade issues even if Parliaments, such as the US Congress, or NGOs, can put pressure on governments to impose political reforms, as was the case for the recent joining of China.

<sup>49</sup> Gary Burtless "Workers' Rights, Labor standards and global trade", *The Brookings Review* Vol.19 No.4, pp. 10-13, Fall 2001. See also the comparison between the WTO Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS) and the labor standards or other regulatory issues in Keith E. Maskus, "Regulatory Standards in the WTO: Comparing Intellectual Property Rights with Competition Policy, Environmental Protection, and Core Labor Standards", *World Trade Review*, Vol. 1, No2, p. 135-52, July 2002. The author sees the protection of intellectual property rights in the WTO as an argument for including competition rules. The case would be weaker for environmental regulation and core labor standards. See another opinion in Chantal Thomas, "Trade-Related Labor and Environment Agreements?", *Journal of International Economic Law*, Vol. 5, No 4, p. 791-819, December 2002.

<sup>50</sup> See also: G. Schoepfle & K. Swinnerton, «Labor Standards in the Context of a Global Economy», *Monthly Labor Review*, 117, n°9, September 1994; W. Sengenberger & D. Campbell (ed.), *International Labour Standards and Economic Interdependence*, ILO, Geneva, 1994.

<sup>51</sup> In July 2004, three of the four Singapore issues were withdrawn from the Doha agenda: public procurement, foreign investment, and competition policies.

Thus, violation of labour standards can be seen as a substitute for trade policies. One does not necessarily have to appeal to empathy for the Burmese people, to raise concern about violations of labour standards, when such violations are used as “trade warfare” instruments.

Another matter of concern is the “race-to-the-bottom” risk, which can be expressed as a classical “prisoner’s dilemma”. If a country does not respect core labour standards or undercuts them, other countries might be incited to lower their own standards to safeguard their competitiveness. This non-cooperative game is thus “lose-lose” since the “deviating” country ends up losing its initial advantage, obtained by cheating. At the final equilibrium, all countries tend to apply labour standards, which are sub-optimal because of inefficient inter-industrial allocations of factors and labour market distortions.

The OECD also considers that core labour standards violations can be used to encourage foreign direct investments (FDI), particularly inside free trade zones, where the government grants fiscal and legal exemptions <sup>52</sup>

However, empirical observations are not conclusive about the reality of a “race-to-the-bottom” process. Studies frequently find that domestic or foreign exporting firms pay higher wages and usually respect labour standards better than local firms. Multinational firms would implement policies closer to the home country’s regulations than the practices in force in the host country. They would thereby contribute to raising standards <sup>53</sup>. Other empirical studies show that countries with low labour standards are not attractive to FDI <sup>54</sup>.

But is this relatively good social performance unrelated to government and private action? Do political pressures and anti-sweatshop activism play a role? For Indonesia, Harrison and Scorse find a significant upward trend of compliance with minimum wage legislation for exporting firms during the 1990s. They hypothesize that this outcome is related to pressure from the US and European governments, human rights activists and news coverage <sup>55</sup>.

The “race-to-the-bottom” process is usually considered and investigated for North-South trade, even if South-South relations are clearly the most concerned, because developing

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<sup>52</sup> See: *Inter-national Trade and Core Labour Standards*, Paris, OECD (2000) and *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*, Paris, OECD (1996); See also: Keith Maskus, “Should Core Labor Standards Be Imposed Through International Trade Policy?”, *Policy Research Working Paper*, WPS 1817, The World Bank, Washington DC., 1997. Empirical studies diverge on the attractive effect of low labor standards. Using a 40-country sample, Dani Rodrik highlights a negative correlation between direct investments and violation of the labor standards in host countries; Dani Rodrik, « Labor Standards in International Trade: Do they Matter and What We Do About Them? » in Lawrence R., Rodrik D. and Whalley J., « Emerging Agenda for Global Trade: High Stakes for Developing Countries », *Policy Essay N°20*, Overseas Development Council, Washington D.C. (1996), Chap. 2.

<sup>53</sup> See, for example, Theodore H. Moran, *Beyond Sweatshops. Direct Foreign Investment and Globalization in Developing Countries*, Brookings Press Institution, Washington (2002).

<sup>54</sup> For example, Cooke and Noble (1998) op. cit.; David Kucera, “Core Labour Standards and Foreign Direct Investment”, *International Labour Review*, Vol. 141, No 1-2, p. 31-69 (2002); André Raynauld and Jean-Pierre Vidal, *Labour Standards and International Competitiveness: A Comparative Analysis of Developing and Industrialized Countries*, Cheltenham: Edward Elgar (1998); Matthias Busse (2003) op. cit.; Matthias Busse and Sebastian Braun, “Trade and investment effects of forced labour; An empirical assessment”, *International Labour Review*, Vol. 142, No1, p. 49-71 (2003). Recall that Dani Rodrik (1996) op. cit finds a negative correlation between US FDI and child labor.

<sup>55</sup> Ann Harrison and Jason Scorse (2003; 2004) op. cit.

countries compete in world markets for similar goods, with close competitive advantages. Low labour standards producers may threaten the garment industry in developed countries. But it is in India or in China that temptation to lower labour standards might be the strongest. Indeed, circumventing instruments are more readily available in authoritarian countries than in "ancient" developed democratic countries, where it is politically very costly to manipulate social rules. On the other hand, the difficulty in driving a "tit-for-tat" strategy keeps protectionist lobbies in industrialized countries from complaining about unfair competition from developing countries. The WTO thus allows a relatively tolerant use of antidumping and countervailing duties (GATT; article VI) or safeguard clauses (article XIX).

Moreover, FDI is seldom oriented to agricultural sectors, where violations are most frequent. Comparisons between sectors might be biased by huge labour productivity differences. Considering this issue for Indonesia at the beginning of the 1990s, Harrison and Scorse show that exporters were significantly less likely to adhere to minimum wage laws than in other similar plants in the non-exporting sector. It appears that the aspect of exporters that is associated with greater minimum wage compliance is their greater capital intensity and higher investment in technical change <sup>56</sup>.

If the non-observance of labour standards in some industries or areas means keeping wage costs under their market price –i.e. marginal productivity- the distortion is equivalent to an export or production subsidy. The only notable difference resides in the social "internal" effects. Instead of being paid by domestic (rich) taxpayers, the subsidy is borne by (poor) workers, which increases inequalities in the country. We can recall that subsidies are considered as actionable unfair and perturbing practices in the WTO<sup>57</sup>.

Violations of core labour standards are simultaneously perceived as unfair by firms and immoral by civil society, thus jeopardizing the legitimacy of multilateral free trade agreements and supporting the adoption of unilateral protectionist instruments. Daniel Mitchell <sup>58</sup> shows how much the US public support of free trade was, and remains, disputed. A social clause can be considered as an insurance against undesirable effects of trade openness and, specifically, the risk of external pressure to lower labour standards. The argument of protectionist social clauses might be weakened if it encourages countries to open their domestic market more. Authors, such as Steve Charnovitz (1994), do not hesitate to qualify the social clause as free trader <sup>59</sup>.

For Bagwell and Staiger (1998), low labour standards could be the consequence of GATT rules, which are mainly concerned with tariff trade barriers. Negotiating countries must achieve balance between the level of standards and the level of tariffs. High customs duties

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<sup>56</sup> Ann Harrison and Jason Scorse, *The Impact of Globalization on Compliance with Labor Standards: A Plant-Level Study*, July 2003, unpublished paper available on <http://are.berkeley.edu/~harrison/>

<sup>57</sup> Neither GATT article XVI, nor the Subsidies and Countervailing Measures Agreement limit subsidies to financial contributions from public administrations. They take into account "any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product" (GATT: article XVI A1); see also article 1.1. of the Subsidies and Countervailing Measures Agreement. Its article 2.2 targets free zones when it defines as specific "A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority".

<sup>58</sup> See Daniel Mitchell, "Labor Standards and Trade Agreement: U.S. Experiment", 1998.

<sup>59</sup> For example: Steve Charnovitz, « The World trade Organization and Social Issues », *Journal of World Trade*, p. 17-33, October 1994.

might reflect higher cost associated with high labour standards. Moreover, if the countries could simultaneously negotiate labour standards and trade policy, the author's model makes it possible to achieve zero customs duties equilibrium paired with a certain level of labour standards. However, negotiations on labour standards are excluded from WTO rounds, which lead to an inefficient theoretical outcome where positive customs duties are mixed with regressed labour standards.

### III THE SOCIAL CLAUSE IN INTERNATIONAL AGREEMENTS

What are the respective roles of the WTO and the ILO? Can the WTO be disqualified? What is the credibility of the ILO? Are bilateral or regional trade agreements able to deal with core labour standards?

Trade agreements ensure the coherence of rival interests of countries. Each one negotiates the openness of foreign markets to national exports against the openness of the domestic market to imports from foreign countries. This process transforms a non-cooperative "lose-lose" game into a cooperative "win-win" one.

The core labour standards issue is paradoxical. Even though the post-war trade system is formally multilateral, social clauses are mainly included in regional or bilateral trade agreements. The arguments, which are denied inside multilateral conferences, become relevant inside regional organizations. Indeed, regional or bilateral agreements introduce constraints on internal institutional choices in terms of human rights, democracy, social laws and market economy.

#### A. A WTO without a social clause.

GATT and the WTO apply the "Westphalian" principles quite strictly. The WTO legal framework largely enables its members to choose the political and economic systems they want. National sovereignty is respected thanks to the consensus rule. This has prevented the inclusion of any explicit reference to core labour standards in the Marrakech Agreements<sup>60</sup>.

In the aforementioned case, developing countries did not adopt a strategy consisting in exchanging a social clause against other provisions, such as the opening of North markets to South agricultural exports. On the other hand, developed countries preferred to exchange the gradual extinction of the multi-fibre agreement for the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and gave up the idea of introducing a trade-labour linkage in the final agreement.

The GATT dropped article 7 of the Havana Charter. However, GATT article XX and GATS article XIV lay down general exceptions when the General Agreements prevent "*the adoption or the application*" of measures necessary to the protection of public morality or referring to goods manufactured in prisons. GATT article XXI (c) and its equivalent GATS article XIV bis (c) extend the exceptions to measures adopted for « ... *taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of*

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<sup>60</sup> Regarding the sovereignty debate, see Kal Raustiala, "Rethinking the Sovereignty Debate in International Economic Law", *Journal of International Economic Law*, Vol. 6, No4, p. 841-878 (2003).

*international peace and security*». However, those articles are too broad to consider that core labour standards violations are well-defined legal exceptions.

The GATT also considers certain forms of unfairness, like *dumping*. But they relate to final goods without considering the production process. Methods used to produce goods are never taken into account. The WTO Dispute Settlement Body jurisprudence has confirmed this traditional position by considering that, for example, fishing methods could not justify import prohibitions, even if certain species such as sea turtles or dolphins are threatened in the process. By extrapolation, the import of carpets or cotton produced with forced child labour could not be prohibited. It seems difficult to argue that such imports prevent the implementation of ILO conventions or other UN international agreements, because it would be necessary to demonstrate that imports from an offending foreign country impede the respect of such conventions within the importing country. Article XX authorizes a country to prohibit the imports of pedophile DVDs, not to protect children in the exporting country, but to safeguard morality in the importing country!

Public procurements are only within the WTO's scope through a plurilateral trade agreement, which means it is only binding for signatory countries. In the United States, Executive Order 13126 on the "*Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labour*", signed in 1999, is designed to prevent federal agencies from buying goods that have been made with forced or indentured child labour. Federal contractors who supply goods on a list published by the Department of Labour must certify that they have made a good-faith effort to determine whether forced or indentured child labour was used to produce the items listed.

## **B. An ILO without trade leverage.**

The Singapore Compromise always gives the multilateral position. Core labour standards concern only ILO conventions. They have the legal statute of international agreements only when individual members ratify them. Even if the "*ILO Declaration on fundamental principles and rights at work*" (1998) creates an obligation for member countries to respect fundamental rights, the ILO's ability to sanction countries is largely symbolical<sup>61</sup>.

The eight fundamental conventions tackle four fields: freedom of association and right to collective bargaining (conventions 87 and 98), prohibition of forced labour (conventions 29 and 105), prohibition of discrimination at work (conventions 100 and 111) and minimum age for child labour (convention 138). Convention 182 has been added to fight against the worst forms of child labour. However, there is no obvious link between the number of ratifications and their effective respect. While the United States has ratified only two conventions (105 and 182), standards are better applied in that country than inside Niger or Egypt, which have ratified all of the conventions.

It is noteworthy that none of these "fundamental" conventions introduces wage standards. They codify principles presumably driving to more efficient labour markets.

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<sup>61</sup> Even if article 33 of the ILO Constitution authorizes the ILO to take action against country members that do not comply with the recommendations of a *Commission of Inquiry* established to examine violations of ILO Conventions.

**INSERT Table 2 - List of Ratifications of core labour standards conventions (December, 2004)**

**C. The social clause in regional and bilateral agreements**

It is easier to obtain a consensus among a small number of countries than among the 148 WTO members. However, "clubs" are also built around common values. They can keep a distance from the Westphalian multilateral doctrine. They introduce a political conditionality and sometimes organize significant transfers of sovereignty, such as in the European Union.

Negotiations on the aborted Multilateral Agreement on Investment (MAI) at the OECD envisaged different alternative provisions to deter contracting parties from relaxing core labour standards in order to attract foreign investment. The draft of the preamble stipulated that contracting parties were “*renewing their commitment to the Copenhagen Declaration of the World Summit on Social Development and to observance of internationally recognised core labour standards, i.e. freedom of association, the right to organise and bargain collectively, prohibition of forced labour, the elimination of exploitative forms of child labour, and non-discrimination in employment, and noting that the International Labour Organisation is the competent body to set and deal with core labour standards worldwide.*”

Some international commodity agreements contain labour considerations, even though they tend to be bashful. For example, article 40 of the International Coffee Agreement (2001) stipulates that “*Members shall give consideration to improving the standard of living and working conditions of populations engaged in the coffee sector, consistent with their stage of development, bearing in mind internationally recognized principles on these matters. Furthermore, Members agree that labour standards shall not be used for protectionist trade purposes.*”.

In the 1990s, the number of regional preferential agreements increased dramatically (graph 1). A significant number of them are not “regional”, as the WTO terminology calls them, but concern distant partners such as Korea-Chile (2004), USA-Morocco (2004), USA-Singapore (2004), EU-Chile (2003) and Mexico-Israel (2000). These agreements frequently include subjects not covered by WTO agreements, such as government procurement, competition policies, foreign investment, and labour standards.

**INSERT Graph 1 - Regional Trade Agreements by date of coming into force**

Today, many countries bind their bilateral trade agreements to the respect of core labour standards.

The US Trade Act of 2002 gives trade-negotiating objectives to the executive, the 6<sup>th</sup> objective being “*to promote respect for worker rights and the rights of children consistent with core labour standards of the ILO*”. The 9<sup>th</sup> is “*to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*”. The Trade Act creates special procedures for Congressional approval of trade agreements. The President is required to prepare several reports to the Congress setting out new free trade agreements. Among these

reports are a *United States Employment Impact Review*, *Labour Rights Report*, and *Laws Governing Exploitative Child Labour Report*. The Department of Labour, in consultation with other federal agencies, has been given responsibility for preparing these reports.

Previously, NAFTA, which was ratified before the Singapore Conference, had introduced an additional agreement on labour cooperation which is not anchored to ILO core labour standards but to national laws, specifically in article 2: “*Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations, each Party shall ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.*” Specific institutions are in charge of arbitrating disputes between countries and have the power to impose sanctions in case of serious and repeated violations of domestic law.<sup>62</sup>

Today, US bilateral free trade agreements are anchored to the ILO core labour standards that restrict sovereignty in matters of labour laws<sup>63</sup>. For example, the US-Morocco Free trade agreement (2004) stipulates that: “*The Parties reaffirm their obligations as members of the International Labour Organization and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. ...The Parties recognize the right of each Party to adopt or modify its labour laws and standards. Each Party shall strive to ensure that it provides for labour standards consistent with the internationally recognized labour rights ... and shall strive to improve those standards in that light.*”

What is feasible in bilateral agreements is not when a large number of parties is involved. Concerning the Free Trade Area of the Americas, the November 2002 Quito Ministerial Declaration reaffirmed the will to institute internationally recognized core labour standards as did the Singapore Declaration. However, the Quito Ministerial Declaration confirms a disagreement between countries and the similar rift that existed amongst WTO members: “*We reject the use of labour or environmental standards for protectionist purposes. Most Ministers recognized that environmental and labour issues should not be utilized as conditionalities nor subject to disciplines, the non-compliance of which can be subject to trade restrictions*”. However, the optional Chapter VII of the November 2003 Draft Agreement is very close to the latest bilateral free trade agreements signed by US, with the same reference to the 1998 ILO declaration. From article 2.1: “*A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement*”. This provision is subject to the dispute settlement procedure (article XXIII). The alternative option is no labour provision at all.

In December 1998, Mercosur countries (Brazil, Argentina, Paraguay, Uruguay) adopted a social declaration about promotion and respect of ILO core labour standards. Similar provisions can be found in most of the new regional trade agreements.

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<sup>62</sup> See the cases presented in OECD, 2000, op. cit. and Kimberly Ann Elliott, “Fin(d)ing Our Way on Trade Labor Standards?”, *International Economics Policy Briefs*, Washington D.C.; Institute of International Economics, No PB-5, April 2001.

<sup>63</sup> See Kimberly Ann Elliott, “Labor Standards, Development, and CAFTA”, *International Economics Policy Briefs*, Washington D.C.; Institute for International Economics, No PB04-2, March 2004.

In all the most recent EU trade agreements, such as the one signed with Chile, the Cotonou Partnership agreement with the ACP (Africa, Caribbean and Pacific) countries or the co-operation agreement with South Africa, the recognition and promotion of social rights are integral parts of the agreements. EU bilateral free trade agreements make ILO's standards a reference, not a matter of dispute. For example, the EU-South Africa agreement (1999) considers (article 86) that "*The Parties consider that economic development must be accompanied by social progress. They recognise the responsibility to guarantee basic social rights.... The pertinent standards of the ILO shall be the point of reference for the development of these rights.*"

Democratic principles and social rights are a prerequisite to joining the European Union. Social rights are an explicit objective (title XI of the Treaty). EU legislation ensures minimum standards for occupational health and safety as well as for working conditions. Core labour standards are enshrined in the European Charter of Fundamental Rights (Nice Summit, December 2000). This charter is included in the draft of the European Constitution (article II) and concerns prohibition of slavery and forced labour (II-65), non-discrimination and equality between women and men (II-81 and II-83), right of collective bargaining and action (II-88), fair and just working conditions (II-91), prohibition of child labour and protection of young people at work (II-92),

Developed countries also impose labour standards criteria within the Generalized System of Preference (GSP) and the WTO Enabling Clause, which allows non-reciprocal preferences in favour of developing countries. In the American trade law, the product and country eligibility to GSP are restricted to the usual four core labour standards but also to "acceptable" working conditions with respect to minimum wages, hours of work, and occupational safety and health standards. This last criterion is a mandatory US trade law provision regarding unilateral actions such as Section 301<sup>64</sup>. The EU provisions are anchored to ILO core labour standards and GATT (article XX e) on prison labour. In case of violation, tariff preferences may be temporarily withdrawn for all or certain goods originating in a beneficiary country, as was the case against Burma. The EU also proposes "special incentive arrangements" for the protection of labour rights, which may be granted to countries whose national legislation incorporates the rules adopted in the ILO conventions. These "positive" sanctions aim at supporting the establishment of more advanced practices, especially in the social and environmental fields, in the form of supplementary duty reductions, over and above those deductions granted under the general GSP<sup>65</sup>. Even if North countries rarely use such negative or positive sanctions, they might have high incentive effects to incite South countries to improve their labour standards<sup>66</sup>.

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<sup>64</sup> Since 1988, section 301 of US trade law allows the administration to retaliate against foreign countries which restrict US exports due to violations of workers' rights. However, no cases have ever been instituted based on these "unreasonable" practices.

<sup>65</sup> See Lorand Bartels, "The WTO Enabling Clause and Positive Conditionality in the European Community's GSP Program", *Journal of International Economic Law*, June 2003, Vol. 6, No2, p. 507-32.

<sup>66</sup> For Indonesia, see Harrison and Scorse (2003), op. cit.

## CONCLUSION

We have re-assessed traditional economic analysis, and considered the inclusion of a trade-labour linkage in international trade agreements, and we have done so free of moral and ethical considerations.

The absence of reference to core labour standards in WTO official texts - except in the Singapore Declaration which denies the existence of a trade-labour linkage - is explained by economic diplomacy reasons, not by convincing economic or institutional arguments, because social clauses contribute to make labour markets more efficient as well as respect developing countries' comparative advantages.

Surprisingly, the Singapore Declaration has reinforced the ILO legitimacy. The organization gave a new lustre to fundamental conventions, which are now largely ratified by members and used as reference in many regional or trade agreements. It gave a mandatory statute to the 1998 Declaration. More cooperation between the ILO and the WTO is desirable, although, legally, the WTO dispute settlement body cannot base its decisions on ILO rules or expertise.

We have criticized the no trade-labour linkage assertion. Consequently, we consider that labour standards are a matter of concern for the WTO not only in export sectors but also in the tradable sector as a whole. We have also criticized the idea that the enforcement of labour laws is not a relevant instrument to stimulate development, when core labour standards contribute to reduce distortions and make human capital accumulation easier. The fact that child labour is mainly located in the agricultural sector is broadly ignored, as studies are mainly concerned with labour standards inside free trade zones, exporting manufacturing companies and multinational firms. An important issue, which needs to be investigated further, is the linkage between trade openness in agricultural sectors and the evolution of labour standards.

We have argued against assertions reducing the issue to a "new form of protectionism". Firstly, it seems very questionable to postulate that trade is always improving-standard-improving, whatever the means used to foster it. Secondly, the accusation of protectionism prejudices the discussion about the best improving-standards-improving instruments to implement. Negative sanctions, such as duties or import prohibition, are not the only measures to consider. Positive sanctions, such as preferential concessions or incremental aid to countries improving their labour standards, must also be taken into account. Both types of sanctions may be used simultaneously, for example when fines or duties paid by offending firms are paid back to a country, in order to sustain social programs. Moreover, it is useful to define core standards reference instruments. Delays must be scheduled based on the specific situation of individual countries and, especially, their level of development. It seems difficult to control compulsory schooling in areas without neighbouring schools. In that case, primary education plans should come first!

Besides the social aspect of the issue, the stability of international trade relations should also be considered. A multilateral non-protectionist social clause could also prevent the risk of "social dumping" and "race-to-the-bottom", which are plausible phenomena when countries do not frame their development by the enforcement of labour laws, as developed countries did a century ago.

The most important issue may be that the absence of a social clause or an explicit recognition of labour rights in the WTO contributes to weakening and jeopardizing the free trade multilateral system. Ignoring the trade-labour linkage in the WTO provides an incentive to deal with the issue outside the organization, contributes to the proliferation of regional and bilateral trade agreements, and stresses the decay of the most-favoured nation principle as well.

In a recent work, Kimberly Ann Elliott<sup>67</sup> defends possible complementarities between development, globalisation and core labour standards. She assesses that: “*Globalisation is not leading to a worldwide race to the bottom for workers, but greater respect for the core labour standards could help spread its benefits more broadly*” This seems a positive way to think about the core labour issue.

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<sup>67</sup> Kimberly Ann Elliott (2004), op. cit.

Table 1 –Repartition of child labour (5-17 year olds) by sector *(in percentages)*

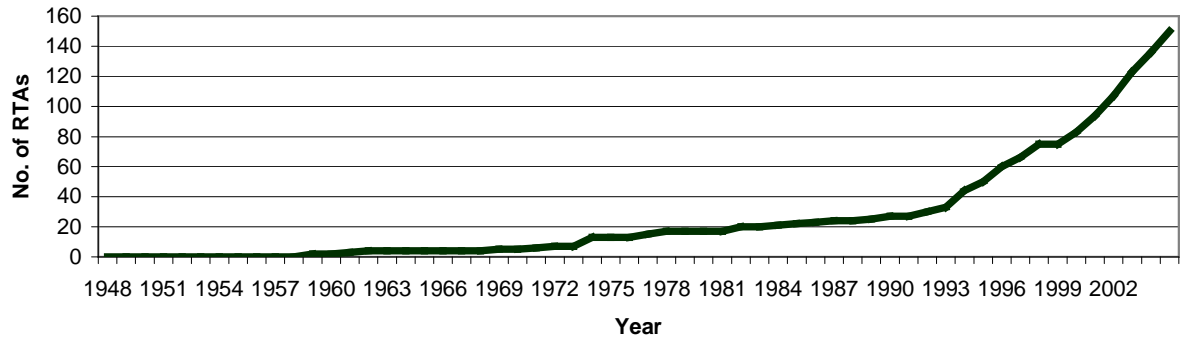
		Agriculture, forestry, hunting and fishing	Manufac- turing industry	Trade, hotels and restaurants	Community social and personal services	others
2001	Belize	47,6	6,0	20,5	17,9	8,1
1996	Cambodia*	89,5	3,4			7,1
2001	Colombia	36,4	12,5	32,7	11,7	6,7
2002	Costa-Rica	43,4	9,0	26,5	5,9	15,2
2001	El Salvador	49,1	16,0	23,0	4,8	7,1
2001	Ethiopia	4,2		7,7	87,6	0,5
2000	Ghana	57,0	9,5	20,7	1,7	11,1
2000	Guatemala	55,7	12,1	17,9	7,8	6,5
2002	Honduras	56,2	8,2	24,4	0,6	10,6
2000	Nicaragua	55,5	11,1	20,3	8,6	4,5
1995/6	Nepal	94,7	0,7	0,4	1,6	2,6
2000	Panama	49,3	6,9	18,9	24,9	
2001	Philippines	58,5	6,6	21,0	10,7	3,2
1998	Portugal**	55,7	12,0	20,4	11,9	
1994/99	Sri Lanka	59,5	15,1	8,9	2,1	14,4
2000/1	Tanzania	79,9	0,3	2,2	17,4	0,2
1999	Turkey***	57,6	21,8	10,2	10,4	
1999	Ukraine	46,0	5,0	26,0	19,0	4,0
1999	Zambia	87,0	1,5	6,7	4,3	0,5
1999	Zimbabwe	82,4	1,9	2,1	1,1	12,5

*\* 5-14 years old; \*\* 6-15; \*\*\* 6-17. Data are not comparable because classification and definitions are quite different. See national reports on [www.ilo.org](http://www.ilo.org).*

Table 2 - List of Ratifications of core labour standards conventions (December, 2004)

<b>Convention number</b>	<b>Core labour standards Convention and date</b>	<b>Number of ratifications</b>
29	Forced Labour Convention, 1930	163
87	Freedom of Association and Protection of the Right to Organize Convention, 1948	142
98	Right to Organize and Collective Bargaining Convention, 1949	154
100	Equal Remuneration Convention, 1951	161
105	Abolition of Forced Labour Convention, 1957	161
111	Discrimination (Employment and Occupation) Convention, 1958	160
138	Minimum Age Convention, 1973	135
182	Worst Forms of Child Labour Convention, 1999	150

SOURCE: ILO

**Graph 1 - Regional Trade Agreements by date of coming into force**

Source: WTO