

CORE LABOR STANDARDS IN TRADE AGREEMENTS. FROM MULTILATERALISM TO BILATERALISM

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ABSTRACT

Although discussion concerning the inclusion of core labor standards has been excluded from the Doha agenda, the question continues to be debated. In fact, on an international level, the International Labour Organization has become increasingly active since the WTO Singapore Ministerial Declaration. On a regional level, social clauses are now introduced inside preferential-trade agreements. These evolutions feed the debate regarding the link between labor 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 a few years ago.

Improving labor 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 in regards to labor standards. The issue also concerns the stability of international trade relations. We stress that, whereas they are excluded from multilateral arrangements, core labor standards provisions are omnipresent in bilateral or regional preferential-trade agreements. This paradox is likely to jeopardize the multilateral system. Independent of ethical or moral considerations, we show that economic arguments can possibly allow the inclusion of a non-protectionist, realistic and reasonable trade-labor 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 globalization. Are countries incited to lowering their labor standards in order to be more competitive? Can the violation of fundamental rights at work be regarded as an unfair comparative advantage? Does globalization 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 labor standards. ILO and other official reports² reveal the persistence or

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the aggravation of the worst forms of exploitation, like child and forced labor. According to ILO, more than 12% of the world's children aged between 5 and 9 are at work. The percentage rises to 23% for children aged from 10 to 14. 179 million children are subject to the "worst forms", such as hazardous work, forced and bonded labor, trafficking and prostitution.

Faced with these facts, a demand for the respect of minimal labor 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 labor linkage, in the form of a Social Clause at the WTO, would not do the job. By making market access conditional on the respect of a set of minimal labor standards, such clauses would create two problems: it would legitimate the use of trade sanctions as the way to improve standards; and it would promote the World Trade Organization (WTO) as the international institution in charge of the job³. This opinion calls however for some discussion. First, the "demand" for a trade labor linkage can be based solely on economic arguments without referring to altruism and, more generally, moral arguments⁴. Second, negative trade sanctions are not the only measures enhancing labor standards: pressures from government or civil society, «positive» incentives, and international aid are other means to improve labor standards. Thirdly, although the International Labour Organisation (ILO) is the qualified institution to deal with labor issues, the World Trade Organization is not excluded whenever labor standards are a matter of concern for trade. Today, labor 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 away might jeopardize the multilateral system.

The Havana Charter of 1947 laid down a link between international trade and labor 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*

² 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)

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

⁴ 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.”*⁵

However, the explicit trade-labor linkage has been abandoned with the failure of the Havana Charter ratification process. The International Trade Organization had not been created and the General Agreement on Tariffs and Trade (GATT) has been used as a substitute. This agreement tackles only one aspect of rights at work: the products of prison labor⁶.

During the 1980's, developed countries have been challenged by competition from low-wage countries. This has encouraged the resurgence of the debate about harmful low labor standards. The trade-labor linkage was explicitly put forward during the Uruguay Round (1986-1993)⁷.

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-labor linkage was denied; the ILO was recognized as the only relevant organization to tackle labor standards, which are not a matter of concern for the WTO, beyond a simple “collaboration” between both organizations: *“We renew our commitment to the observance of internationally recognized core labour standards. The International Labor 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 labor 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.”*⁸

Compared to the Havana Charter, the Singapore declaration reverses the nature of the link between labor standards and trade. In the Havana Charter, the violation of labor 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 labor 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*

⁵ Havana Charter, Article 7 (headed *Fair Labor Standards*).

⁶ GATT; article XX e).

⁷ 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.

⁸ See WTO Singapore Ministerial Declaration, 13 December 1996, § 4.

*internationally recognized core labor standards. We take note of work under way in the International Labor Organization (ILO) on the social dimension of globalization.”*⁹

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 labor 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 Labor Conventions. The ILO launched a campaign for their universal ratification so that they could enter in the field of each Member States' national law. In June 1998, a new step was passed. The International labor Conference adopted the "*ILO Declaration on fundamental principles and rights at work*", which requires member countries to respect, promote and realize 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 labor 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 force. Following the Singapore Declaration, the ILO also set up a *World Commission on the Social Dimension of Globalization* made up of experts and former political leaders¹⁰.

The legal term of "social clause" can thus be defined as any trade agreement provision that constrains the signatory states to respect core labor 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 the partner countries and to act to make the respect of the standards more effective. As an example, the European Union is favorable to the insertion of a social clause in trade agreements but is increasingly reluctant to impose sanctions against unfair countries¹¹. 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-labor linkage and the expected effects of core labor standards on trade. Section II tackles the issue with a political economic analysis. We

⁹ See WTO Doha Ministerial Declaration, 20 November 2001, § 8

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

¹¹ 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.

expose the national interest groups' actions, which are favorable 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 labor 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 labor 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 labor-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 action¹². In particular, if international trade does not cause the violation of core labor standards, a social clause would add distortions to distortions. Sanctions would prevent an export-led growth strategy, which is assumed to be favorable to the "endogenous" development of labor 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 interactions between trade and workers' rights, deserves to be discussed.

A. Is there a trade-labor linkage?

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

Indeed, the violation of core labor standards would mainly concern the non-export sector. Child and forced labor would first and foremost occur in domestic activities and small family firms. On the contrary, a broad trade-labor linkage would impose a social clause, limited to trade-impacted goods¹³.

However, the relevant criterion is not the exporting character of the sectors. Import sectors are concerned as well. The trade-labor linkage refers to the tradable sector as a whole and we must focus on all firms and sectors exposed to international competition¹⁴. The facts show that all tradable sectors witness violations of core labor standards. For example, child labor is

¹² 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).

¹³ 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.

¹⁴ 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.

relatively scarce in non-farm domestic labor except in countries such as Ethiopia. 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 –Repartition of child labor (5-17 years old) by sector

The trade-labor linkage could also be indirect by the way of subcontracting between small companies in the non-tradable sector and the exporting firms¹⁵. The first 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 globalization by itself is not a universal remedy for underdevelopment and that developing countries can improve their labor standards without endangering their comparative advantage in labor-intensive products¹⁶.

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

Moreover, sophisticated models question such evidence, emphasizing the existence of other effects¹⁸. The child labor endowment may be balanced by the eviction of adult labor. Provided that child and adult labor are substitutable production factors, children might easily replace their relative¹⁹. Basu and Van's theoretical model leads to multiple equilibria in the

¹⁵ 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.

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

¹⁷ 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.

¹⁸ 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.

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

labor market, with one case where children do not work and adult wages are higher²⁰. This multiple-equilibria outcome could be an argument for intervention in labor 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 labor when the adult minimum wage is raised²¹.

More generally, violation of workers' rights has to be analyzed 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 the labor mobility and favors monopsonistic practices by employers²². In such a situation, employers tend to reduce the demand for labor. For example, child labor restrained in agriculture might impede the development of exporting manufacturing industries²³. Moreover, higher exports might imply decreasing world prices and, as a result, affect the terms of trade negatively²⁴.

Empirical research is rare and contradictory. The primary studies showed the statistical absence of correlation between labor standards and the volume of trade²⁵ but they did not use

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

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

²² 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. In comparison with 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.

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

²⁴ 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.

²⁵ 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).

reliable indicators of the real respect of labor standards ²⁶. In more recent publications lower labor standards are frequently positively associated with trade. Dani Rodrik ²⁷ shows that timework and child labor contributes to a higher share of labor-intensive exports in total exports. Cees Van Beers²⁸ finds that labor standards influence trade in 18 OECD countries. Clotilde Granger ²⁹ has built her own synthetic indicator concerning the four core labor standards and concludes that their violation by Southern countries tends to raise the volume of North-South trade. These last studies tend to confirm the existence of a trade-labor 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-labor 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 labor standards definitively lead to a contraction of South exports and keep them out from the global world economy? ³⁰

This last idea rests upon 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 labor markets are not efficient, meaning that the price of labor does not equalize its marginal productivity. This would be the case if a social clause imposed higher wages relative to labor productivity. But no longer does any organization persist in recommending a world minimum wage that could have such an effect. Conversely, core labor standards aim at the symmetrical situation, when labor marginal productivity is presumably above labor costs as the result of distortions on labor 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 labor 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 monopsonistic power giving them the ability to reduce wages under the labor marginal

²⁶ 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 cautiously. Then, it is not surprising that Cooke and Noble find a positive relation between foreign direct investment and labor standards. The determinants 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).

²⁷ Dani Rodrik, 1996, op. cit.

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

²⁹ Clotilde Granger,. Op. cit.

³⁰ 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.

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 creates eventually distorted trade flows.

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

C. Is a social clause counter-productive?

Economists often advance the following chain of causality: low labor standards permit developing countries to exploit their comparative advantages in labor-intensive goods; this policy supports an export-led growth strategy and ultimately, the “endogenous” improvement of labor 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 premium on exchange market, as exerting a negative effect on trade and foreign direct investment ³². Moreover, Francisco Rodriguez and Dani Rodrik have questioned the linkage between openness and growth ³³, mainly from methodological arguments.

The fact that rich countries respect more labor standards than poor countries does not provide any information about the sense of causality. From a static analysis, we have already seen that violations of core labor standards imply distortions, which pull down national income. Moreover, income is not the only determinant playing a role with respect to labor standards. Thus, endogenous growth theories stress the role of human capital accumulation ³⁴. Various empirical studies ³⁵ highlight the fact that the violation of labor standards might harm the human capital accumulation and the growth process. This idea is very plausible ³⁶ for

³¹ Symmetrically, on the supply-side, a trade-union monopolist would create distorted comparative disadvantages in the labor-intensive productions. It might be the case in “populist” countries like Mexico or Argentina.

³² 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.

³³ 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.

³⁴ 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).

³⁵ 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).

³⁶ 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).

child labor³⁷. It is also plausible for gender, racial or other discriminations, which concern labor markets as well as access to education. Finally, it is also justified for other standards when their violation places physical integrity and health at risk³⁸. Thanks to static and dynamic economic efficiencies, both developing and developed countries would raise the quality of growth in a “win-win” game³⁹. Piore⁴⁰ stresses another dynamic effect: higher standards create an incentive to invest in capital accumulation, which can be substituted for child labor or unsafe activities. This process then generates a growth process.

Many authors consider that higher labor 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 informality⁴¹. However, a recent econometric study finds that higher labor standards in 14 Latin American countries are correlated with a higher share of formal employment⁴².

Is the alternative to child labor in farms or sweatshops, worse situations such as starvation, prostitution or street labor? 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 labor in the United States and Great Britain at the end of the 19th century, show that application of prohibitive child labor and compulsory education laws had a significant positive impact⁴³. Moreover, the abolition of child labor does not necessarily imply a clear household income loss, insofar as it opens job opportunities to adults and may cause higher wages to the extent that children and adults compete on labor markets. Kaushik Basu considers that “*a large scale withdrawal of child labor can cause adult wages to rise so much that the working class household is better*

³⁷ 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).

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

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

⁴⁰ 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).

⁴¹ 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.

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

⁴³ For a review on these historical studies, see Kaushik Basu (1999), *op. cit.*

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*”⁴⁴. The abolition of child labor thus does not have clear and mechanical effects on the household income, even in the short run.

Kimberly Elliott and Richard B. Freeman⁴⁵ describe how trade pressures have contributed to improved labor 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 labor 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 labor 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*”⁴⁶.

II - POLITICAL ECONOMY OF THE SOCIAL CLAUSE

In the former section, we discussed the economic and social ineffectiveness of core labor standards violations. Thus, it is, a priori, illogical and irrational that developed countries defend the inclusion of social clauses since violations of core labor standards lower the price of imported goods, raise the terms of trade and enhance the consumers’ welfare, to the extent that criteria regarding ethics are not taken into account. Symmetrically, 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 likely damage their population’s well-being.

A. Collective action and determination of labor 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 the producers and workers. The introduction of a social clause into trade agreements would be a protectionist reaction against low wage countries⁴⁷. The economic theory, such as the Stolper-Samuelson theorem, confirms that opening trade to South countries, even favorable to the national real income, should harm the real income of unqualified labor, 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 aggravated by violations of labor standards in exporting developing

⁴⁴ Kaushik Basu, *ibid*, p.. 1115.

⁴⁵ Kimberly Elliott and Richard B. Freeman (2003), *op. cit*.

⁴⁶ 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.

⁴⁷ 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.

countries. Workers and specific factors owners concerned by imports, may logically advocate protectionist measures and denounce the unfair competition from low labor standards countries. In fact, the AFL-CIO was one of the most activist organizations to defend the inclusion of social standards in international agreements, successfully in regional or bilateral agreement such as NAFTA (see *infra*).

However, considering that social clauses only respond to protectionist-organized groups is a very simplistic view. Consumers are frequently favorable to the inclusion of a social clause, whereas they theoretically gain from lower import prices. Many consumerist activists, such as Ralph Nader, adopt very anti-globalist positions. Moreover, pressure from protectionist organized groups is balanced by counter-lobbying from exporting and multinational firms, desirous of exporting to South opened markets or investing in low-wage and demand-expanding countries, even if they do not strictly respect all labor standards (China, India, Philippines).

Taking into account these contradictory pressures, the political economy of protectionism is not a satisfactory theory for understanding why developed countries defend the inclusion of a social clause. The ethic 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 GNOs are frequently more in favor of a social clause than South ones. Moreover, anti-WTO activism contributed to discredit that organization and consequently make the inclusion of social clauses in the multilateral system more difficult.

If academics stress the action of North lobbies, they frequently neglect the South interest groups. In developing countries, influent lobbies are frequently reluctant to social progress: landowners, large exporters, corrupted civil servants and authoritarian political leaders. 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 are influenced by lobbies, but remain the principal actors. They negotiate, sign and ratify trade agreements. They must balance contradictory interests. Multilateral organizations, such as WTO, offer governments the opportunity to be sheltered from national lobbies. Indeed, governments share the political cost of unpopular measures with these organizations.

B. Core labor 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-States 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 régime even if governments are more or less incited to respect market rules, democracy and human rights. China was authorized to join WTO despite its authoritarian regime. The universalistic ambition of the post-war system was only to institute cooperation between the largest possible number of countries, to consolidate the international economic stability. Because too much interference in the members' domestic policy would

deter the great majority of countries to join the system, few institutional standards were imposed. Thus, ILO's members are not constrained to ratify Conventions and political or social prerequisites to join WTO are very weak ⁴⁸.

Consequently, the only admissible 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 the 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.*» ⁴⁹

Does violation of core labor 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 the questions positively⁵⁰. 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 labor, environment, safety, competition, taxation and others, may replace traditional instruments of trade policy such as custom tariffs ⁵¹. We can see that these circumventing instruments are inefficient because they reach targets that are far from the real goal, which is to contain imports.

Thus, violation of labor 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 labor standards, when such violations are used as "trade warfare" instruments.

⁴⁸ However, a member country may theoretically impose conditions it wants, to accept the adhesion 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 NGO, can put pressure on governments to impose political reforms, as was the case for the recent adhesion of China.

⁴⁹ 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.

⁵⁰ 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.

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

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 labor standards or undercuts them, other countries might be incited to lower their own standards to safeguard their competitiveness. Then, this non-cooperative game is “lose-lose” since the “deviating” country ends up losing its initial advantage, obtained from cheating. At the final equilibrium, all countries tend to apply labor standards, which are sub-optimal because of inefficient inter-industrial allocations of factors and labor market distortions.

OECD also considers that core labor standards violations can be used to encourage foreign direct investments (FDI), particularly inside the free trade zones where fiscal and legal exemptions are granted by the government ⁵²

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 labor standards better than local firms. Multinational firms would implement policies closer to the home country’s regulation than the practices in force in the host country. They would thereby contribute to raising the standards ⁵³. Other empirical studies show that low labor standards countries are not attractive to FDI ⁵⁴.

But are these relatively good social performances independent of government and private actions? Do political pressures and anti-sweatshop activism play a role? For Indonesia, Harrison and Scorse find a significant upward trend in 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 ⁵⁵.

The “race-to-the-bottom” process is usually considered and investigated for North-South trade even if South-South relations are the most evidently concerned, because developing countries compete in world markets for similar goods with close competitive advantages. In developed countries, low labor standards producers may threaten the garment industry. But it is in India or in China that temptation to lower labor standards might be the strongest. Indeed,

⁵² 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 countries 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.

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

⁵⁴ 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.

⁵⁵ Ann Harrison and Jason Scorse (2003; 2004) op. cit.

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 labor 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 ⁵⁶.

If the non-observance of labor 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 relates to 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 WTO⁵⁷.

Violations of core labor standards are simultaneously perceived as unfair by firms and immoral by civil society and thus jeopardize the legitimacy of multilateral free trade agreements and support the adoption of unilateral protectionist instruments. Daniel Mitchell ⁵⁸ shows how much the US public’s 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 labor standards. The argument of protectionist social clauses might be attenuated 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 ⁵⁹.

For Bagwell and Staiger (1998), low labor 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 might reflect higher cost associated with high labor standards. Moreover, if the countries could simultaneously negotiate labor standards and trade policy, the author’s model makes it possible to have zero customs duties equilibrium paired with a certain level of labor standards.

⁵⁶ 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/>

⁵⁷ 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 aims 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 ”.

⁵⁸ See Daniel Mitchell, “Labor Standards and Trade Agreement: U.S. Experiment ”, 1998.

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

However, negotiations on labor standards are excluded from WTO rounds, which leads to an inefficient theoretical outcome where positive custom duties are mixed with regressed labor 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 labor 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 labor 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 social clause.

GATT and the WTO apply the "Westphalian" principles quite strictly. The WTO legal framework largely lets its members choose the political and economic systems they want. National sovereignty is respected thanks to the consensus rule, which has prevented the inclusion of an explicit reference to core labor standards in the Marrakech Agreements⁶⁰.

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

GATT gave up 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 the 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 international peace and security*». However, those articles are too general to consider that core labor standards violations are well-specified legal exceptions.

⁶⁰ 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).

GATT also considers certain forms of unfairness, like *dumping*. But they relate to traded goods without considering the process of production. Methods used to produce a good are never taken into account. The WTO Dispute Settlement Body jurisprudence has confirmed this traditional position by considering that, for example, the fishing methods could not justify import prohibitions, even if threatening certain species such as sea turtles or dolphins. By extrapolation, the import of carpets or cotton produced with forced child labor 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 a foreign offending country impede their respect inside the import country. Article XX authorizes a country to prohibit the imports of pedophile DVDs, not to protect children in the export country but to safeguard morality in the importing country.

Public procurements are only inside the WTO's scope through a plurilateral trade agreement, which means it is only binding on signatory countries. It is possible for a country to have restrictions, based on labor standards criteria, apply to countries, which are not part of the agreements. In the United States, Executive Order 13126 on the "*Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*" signed in 1999, is designed to prevent federal agencies from buying goods that have been made with forced or indentured child labor. Federal contractors who supply goods on a list published by the Department of Labor must certify that they have made a good-faith effort to determine whether forced or indentured child labor was used to produce the items listed.

B. An ILO without trade leverage.

The Singapore compromise always gives the multilateral position. Core labor standards concern only ILO conventions. They have the legal statute of international agreements only when the Member ratifies them. Even if the "*ILO Declaration on fundamental principles and rights at work*" (1998) makes an obligation to member countries respect the fundamental rights, the ILO ability to sanction countries is greatly symbolic ⁶¹.

The eight fundamental conventions tackles four fields: freedom of association and right to collective bargaining (conventions 87 and 98), prohibition of the forced labor (conventions 29 and 105), prohibition of discrimination at work (conventions 100 and 111) and minimum age for child labor (convention 138). Convention 182 has been added to fight against the worst forms of child labor. However, there does not exist an obvious link between the number of ratifications and their effective respect. While the United States ratified only two conventions (105 and 182), the standards are better applied in that country than inside Niger or Egypt, which ratified all of them.

We can observe that none of these "fundamental" conventions introduces wage standards. They codify principles presumably driving to more efficient labor markets.

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

⁶¹ 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.

C. Social clause in regional and bilateral agreements

Social clause is diffused inside "clubs", i.e. in non-multilateral organizations such as OECD, regional or bilateral agreements.

Indeed, it is easier to obtain a consensus between a small number of countries than between the 148 WTO members. But this is not the only explanation. 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 OECD envisaged different alternative provisions deterring contracting parties to relax core labor standards with the aim to attract foreign investment. The project of 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 labor consideration, 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 1990’s, the number of regional preferential agreements increased dramatically (graph 1). A significant part of them are not “regional”, as the WTO’s terminology calls them, but concerns 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 labor standards.

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

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

The US Trade Act of 2002 gives trade-negotiating objectives to the executive and the 6th is “*to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO*”. The 9th 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 Labor*”. The Trade act creates special procedures for Congressional approval of trade agreements. The President is required to prepare several

reports to the Congress related to new free trade agreements. Among these reports are a *United States Employment Impact Review*, *Labor Rights Report*, and *Laws Governing Exploitative Child Labor Report*. The Department of Labor, in consultation with other federal agencies, is delegated responsibility for preparing these reports.

Previously, NAFTA, which has been ratified before the Singapore Conference, had introduced an additional agreement on labor cooperation which is not anchored in ILO's core labor standards but in national laws, as regards article 2: "*Affirming full respect for each Party's constitution, and recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws and regulations, each Party shall ensure that its labor laws and regulations provide for high labor 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.⁶²

Today, US bilateral free trade agreements are anchored in the ILO's core labor standards that restrict sovereignty in matters of labor laws⁶³. For example, the US-Morocco Free trade agreement (2004) stipulates that: "*The Parties reaffirm their obligations as members of the International Labor 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 labor laws and standards. Each Party shall strive to ensure that it provides for labor standards consistent with the internationally recognized labor rights ... and shall strive to improve those standards in that light.*"

What is feasible in bilateral agreements is not so with a larger number of parties. Concerning the Free Trade Area of the Americas, the November 2002 Quito Ministerial Declaration reaffirmed the will to institute internationally recognized core labor standards in the same way as the Singapore Declaration. However, the Quito Ministerial Declaration confirms a disagreement between countries and the same rift that existed amongst WTO members: "*We reject the use of labor or environmental standards for protectionist purposes. Most Ministers recognized that environmental and labor 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 last 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 labor 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 labor provision at all.

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

⁶² 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.

⁶³ 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, like 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 but 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 barrier to adhesion to the European Union. Social rights are an explicit objective (title XI of the Treaty). EU legislation ensures minimum standards for occupational health and safety and for working conditions. Core labor standards are enshrined in the European Charter of Fundamental Rights (Nice Summit, December 2000). This charter is included in the draft of European Constitution (article II) and concerns Prohibition of slavery and forced labor (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 labor and protection of young people at work (II-92),

Developed countries also impose labor standards criteria inside the Generalized System of Preference (GSP) and the WTO Enabling Clause, which allows non-reciprocal preferences in favor of developing countries. In the American trade law, the product and country eligibility to GSP are restricted to the four usual core labor standards but also to "acceptable" conditions of work 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 301⁶⁴. The EU's provisions are anchored in ILO core labor standards and GATT article XX e) on prison labor. In case of violation, tariff preferences may be temporarily withdrawn for all or certain goods originating in a beneficiary country, as it was the case against Burma. EU also proposes "special incentive arrangements" for the protection of labor rights, which may be granted to countries whose national legislation incorporates the rules adopted in the ILO conventions. These "positive" sanctions aim to support the establishment of more advanced practices, especially in the social and environmental fields, and take the form of supplementary duty reductions over and above the reductions granted under the general GSP⁶⁵. Even if North Countries scarcely use such negative or positive sanctions, they might have high incentive effects to incite South countries to improve their labor standards⁶⁶.

⁶⁴ Since 1988, the 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.

⁶⁵ 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.

⁶⁶ For Indonesia, see Harrison and Scorse (2003), op. cit.

CONCLUSION

Independent of ethic or moral considerations, we have re-assessed traditional economic analysis, and considered the inclusion of a trade-labor linkage in international trade agreements.

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

Surprisingly, the Singapore Declaration has reinforced the ILO legitimacy. The organization gave a new luster 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 ILO and WTO is desirable, although, legally, the WTO dispute settlement body cannot base its decisions on ILO rules or expertise.

We criticized the no trade-labor linkage assertion. Consequently, we consider that labor standards are a matter of concern for WTO not only in the export sectors but also in the tradable sector as a whole. We also criticized the idea that enforcement of labor laws is not a relevant instrument to stimulate development, when core labor standards contribute to reduce distortions and make the human capital accumulation easier. The fact that child labor is mainly located in the agricultural sector is broadly ignored; studies are mainly concerned with labor standards inside free zones, exporting manufactured companies and multinational firms. An important issue to investigate further is the linkage between the trade openness in agricultural sectors and the evolution of labor 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 labor-standard-improving, whatever the means used to foster it. Secondly, the accusation of protectionism prejudices the discussion about the best labor-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 labor standards, must also be considered. 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 countries and, especially, their level of development. It seems difficult to control compulsory schooling in areas without nearby schools. In that case, primary education plans have a great priority!

Beside the social aspect of the issue, we also have to consider the stability of international trade relations. 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 labor laws, which was the way followed by developed countries a century ago.

The most important issue may be that absence of a social clause or an explicit recognition of labor rights in WTO contributes to weaken and jeopardize the free trade multilateral system. Ignoring the trade-labor linkage in 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-favored nation principle.

In a recent work, Kimberly Ann Elliott⁶⁷ defends possible complementarities between development, globalization and core labor standards. She assesses that: “*Globalization is not leading to a worldwide race to the bottom for workers, but greater respect for the core labor standards could help spread its benefits more broadly*”. It is a good way to pursue thoughts about the core labor issue.

⁶⁷ Kimberly Ann Elliott (2004), op. cit.

Table 1 –Repartition of child labor (5-17 years old) by sector

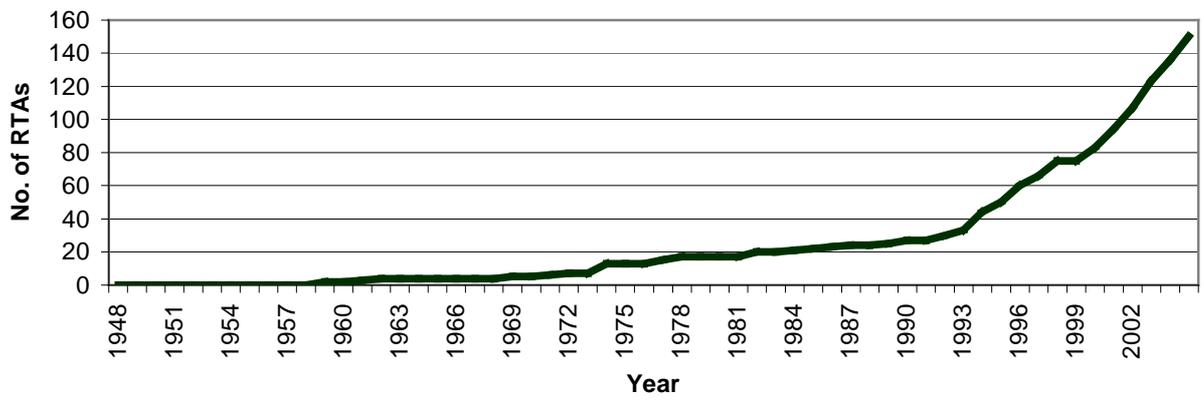
		Agriculture, forestry, hunting and fishing	Manufac- turing industry	Trade, hotels and restaurants	Community social and personal services	others
2001	Belize	47,6	6,0	20,5	17,9	8,1
1996	Cambodia*	89,5	3,4			7,1
2001	Colombia	36,4	12,5	32,7	11,7	6,7
2002	Costa-Rica	43,4	9,0	26,5	5,9	15,2
2001	El Salvador	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.*

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

Convention number	Core labor standard Convention and date	Number of ratifications
29	Forced Labour Convention, 1930	163
87	Freedom of Association and Protection of the Right to Organise Convention, 1948	142
98	Right to Organise 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 entry into force

Source: WTO