

## **Exploring the Externalities of the Global ‘race-to-the-bottom’ in Labour Standards: On Road from Free Trade to *Fair Trade***

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**Abstract:** Attempts to use labour standards as a way to impact international trade policies are not new. In one shape or another, these policy debates have been around since the beginning of the last century. However, the linkages between the two, otherwise diverse fields, particularly through multilateral trade agreements, have been more aggressively debated upon in recent years raising strong views on both sides. While the 1998 ILO Declaration on Fundamental Principles and Rights at Work has been able to resolve some issues, to some extent, others still remain outstanding. The debate is a moving dynamic and though labour standards do not figure as yet in the multilateral trade agreements, labour provisions have received due recognition in bilateral and regional trade agreements. However, if we wish to maintain and deepen trade liberalization, the fundamental rights of weaker parties should be duly guaranteed and protected, and the ILO’s “decent work” agenda applied in order to promote and deepen this agenda for “social resilience”. As labor standards provisions are increasingly given equal importance to commercial obligations in trade agreements, labor standards have become a major trade issue. This research indicates that in the absence of labour provisions in multilateral trade agreements, there is proliferation of “race-to-the-bottom” labour standards across the globe especially among developing countries in their objective to stay in competition with the developed countries. The world-wide organization that administers multilateral trade agreements and proliferates free trade policies i.e. the WTO is required to move from free trade to fair trade specifically in relation to labour matters so that trade liberalization may lead to enhancement of labor standards compliance. Focusing on the tension between trade liberalization and labour standards, this Article argues that the WTO, in alliance with other international institutions such as the ILO, must develop a synergistic linkage between trade and labour policies within the multilateral structure of the global trading system.

**Keywords:** race-to-the-bottom, fair trade, labour standards, ILO, trade liberalization

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### **I. INTRODUCTION**

Labour union lobbies and their political friends have decided that the ideal defence against competition from the poor countries is to raise their costs of production by forcing their standards up, claiming that competition with countries with lower standards is “unfair.” “Free but fair trade” becomes an exercise in insidious protectionism that few recognize as such.

Jagdish Bhagwati, “Obama and Trade: An Alarm Sounds,” Financial Times, January 9, 2009.

Economists have long recognized that trade would lead to a division of labour advantageous to everybody involved. Indeed, by reshuffling resources in accordance with the principles of comparative advantage, they can be used more appropriately and effectively for production, thus creating the so-called gains from trade.<sup>1</sup>

In other words, trade liberalization is expected to trigger a restructuring of economic activity that takes the form of company closures and job losses in some parts of the economy and startups of new firms, investment in increased production and vacancy announcements in other parts of the economy. Trade liberalization is, therefore, associated with both job destruction and job creation. In the short run, the resulting net employment effects may be positive or negative depending on country specific factors such as the functioning of the labour and product markets. In the long run, however, the efficiency gains caused by trade liberalization are expected to lead to positive overall employment effects, in terms of quantity of jobs, wages earned or a combination of both. Average wage increases may, however, hide distributional changes that affect some workers negatively.<sup>2</sup> Where trade liberalization affects parts of the labour force negatively, labour and social policies are required in order to redistribute some of the gains from trade from winners to losers. Globalization can be good for most

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<sup>1</sup> Eddy Lee, *Trade and Employment Challenges for Policy Research: A Joint Study of the International Labour Office and the Secretariat of the World Trade Organization*, available at [http://www.un.org/esa/desa/papers/2005/wp5\\_2005.pdf](http://www.un.org/esa/desa/papers/2005/wp5_2005.pdf) (Accessed on May 25, 2015).

<sup>2</sup> *Ibid.*

workers in both industrialized and developing countries, provided the appropriate economic policies are in place. But it may not be good for all workers, and its distributional implications should not be ignored.<sup>3</sup>

In essence, all political social and economic processes, whether national or international, must have as their primary and fundamental aim the goal of improving the general level of living standards of citizens. In particular, all public policies should centre on improving opportunities for those who confront the greatest difficulties or who are the most vulnerable, and in generating decent work for all, with the aim of promoting better integrated and more socially cohesive societies which are essential elements for achieving social peace and effective government.<sup>4</sup>

### ***The global 'race- to- the- bottom'***

For a long time critics and advocates have debated the merits of linking labor standards and trade. Critics of moves to include labor standards provisions in trade agreements argue that protectionist motives underlie what masquerades as a welfare-improving agenda. They argue that developing countries that raise standards for their workers risk losing their comparative advantage and suffering a decline in export performance, which may lead to dwindling per capita income. On the other hand, advocates of trade-linked labor standards aim to halt a "race to the bottom" in which national labor conditions are degraded in an attempt to lower production costs in the face of expanding international trade and competition. These advocates maintain that the labor standards provided in trade agreements level the playing field because they require countries to meet an acceptable level of labor conditions and eliminate a source of "unfair" economic advantage.<sup>5</sup> News exposés of poor labor conditions in the supply chains of multinational corporations bolster the advocates' case and fuel popular concern. However, empirical research adds another twist to the protectionism versus "race to the bottom" debate by suggesting that low labor standards actually erode competitiveness by reducing incentives to invest in human capital.<sup>6</sup> Furthermore, some advocates argue that adherence to labor standards can actually improve competitiveness, as higher labor standards motivate firms to invest in such things as productivity-enhancing training to justify the expense of adopting the standards.<sup>7</sup>

Nelson Mandela had once said, "A nation should not be judged by how it treats its highest citizens but its lowest ones." As long as poor labor standards exist in one country, workers everywhere will be hurt. Governments that neglect or oppress their laborers make the choice to strip their own citizens of their rights as human beings. Not only this, but they create unfair pressure in the global economy. If one country offers oppressively cheap labor, other countries become compelled to do the same to merely remain competitive. This global 'race to the bottom' creates poor conditions and loss of freedom in the global South, and causes workers in the global North to lose their jobs to cheap outsourced labor.<sup>8</sup> The growing role of trade in the global economy leads to the relocation of jobs from high to low-wage economies, and claims that increasing globalization has triggered a global "race to the bottom" in terms of labour standards.

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<sup>3</sup> *Ibid*

<sup>4</sup> Pablo Lazo Grandi, *Trade Agreements and their Relation to Labour Standards: the Current Situation*. Issue Paper No. 3, International Centre for Trade and Sustainable Development, Geneva, Switzerland, (2009), available at <http://www.ictsd.org/downloads/2011/12/trade-agreements-and-their-relation-to-labour-standards.pdf> (Accessed on May 25, 2015).

<sup>5</sup> Most developing countries reject the linking of labor standards to trade while industrialized countries tend to support this linkage.

<sup>6</sup> Amy Luinstra, "Labor Standards and Trade", Presented at the World Bank Work shop on Product and Process Standards, January 2004 available at [http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards\\_pubs\\_1uinstra\\_laborstandards.pdf](http://siteresources.worldbank.org/INTRANETTRADE/Resources/Topics/Standards/standards_pubs_1uinstra_laborstandards.pdf).

<sup>7</sup> *Ibid.*; Drusilla K. Brown, Alan V. Deardorff, and Robert M. Stern, "International Labor Standards and Trade: A Theoretical Analysis." in Jagdish Bhagwati and Robert E. Hudec(eds.), *Fair Trade and Harmonization: Prerequisites for Free Trade?* , Vol. 1, *Economic Analysis*. Cambridge, MA: MIT Press, 1996. Also see Samira Salem and Faina Rozental, "Labor Standards and Trade: A Review of Recent Empirical Evidence", *United States International Trade Commission Journal of International Commerce and Economics*, (2012) available at [http://www.usitc.gov/journals/LaborStandardsandTrade\\_final%209\\_12.pdf](http://www.usitc.gov/journals/LaborStandardsandTrade_final%209_12.pdf) (Accessed on June 1, 2015)

<sup>8</sup> International Labor Rights Foundation, *Changing Global Trade Rules*, available at <http://www.laborrights.org/creating-a-sweatfree-world/changing-global-trade-rules>. (Accessed on Aug 21, 2012).

## II. DEFINITION OF LABOUR STANDARDS

Before undertaking the study of the linkages between trade and labour standards, it is pertinent to define 'labour standards'. According to the Organisation for Economic Co-operation and Development (OECD) (1996), labor standards are "norms and rules that govern working conditions and industrial relations."<sup>9</sup> They cover a wide range of issues, from those considered fundamental human rights—such as freedom from forced labor, freedom of association, and the elimination of exploitative child labor—to other issues that, according to Portes (1994), fall into categories such as civic rights (e.g., collective bargaining) and security rights (i.e., rights that capture the characteristics of a labor contract, such as protection against arbitrary dismissal).<sup>10</sup>

The literature divides labor standards according to whether they cover (1) working conditions (e.g., minimum wage and hours, occupational health and safety, and social security); or (2) labor rights (e.g., nondiscrimination, freedom of association, and elimination of child labor).<sup>11</sup> Throughout this paper the term "labor standards" is defined as a set of norms and rules, following the OECD definition.

Formal labor standards are established at the national level through national labor laws and regulations and at the international level through global institutions such as the ILO and regional institutions.<sup>12</sup> National governments are responsible for statutory regulation and enforcement of national labor standards, which are typically mandatory and which include sanctions for noncompliance.<sup>13</sup> Many governments, especially those of low-income countries, have neither established nor enforced labor standards effectively.<sup>14</sup> By contrast, high-income countries tend to have an enabling environment (i.e., better institutions and a stronger rule of law) that makes it easier to establish and enforce labor standards. It is therefore not surprising that higher national income is correlated with compliance with core labor standards.<sup>15</sup> Indeed, Flanagan (2006) finds a positive relationship between a country's level of economic development and its labor conditions.<sup>16</sup>

A more nuanced understanding of the relationship between labor standards and trade requires the consideration of a broader yet still reliable set of indicators. Recently, there have been efforts to improve measurement of labor standards compliance.<sup>17</sup> However, in the absence of more robust data across a larger set of indicators, research will continue to focus on indicators such as child labor, freedom of association, and collective bargaining rights for which data is more readily available.

### *Evolution of the Debate*

There is a very copious body of writing on the relationship between international trade and labour standards which, as early as 1788 in material written in France, included observations on the advantage which could be gained by a country if it abolished the weekly day of rest, at least until its actions were imitated by others. Towards the end of the nineteenth century, the subject of labour was brought up when negotiating commercial treaties, especially with respect to the protection of migrant workers. The League of Nations Pact (1919), which came about after the First World War, by which Member States committed themselves to guaranteeing and maintaining fair and humane working conditions in their own territories "*as well as in all countries to which their trade and industrial relationships extend*", is of fundamental importance.<sup>18</sup>

<sup>9</sup> Organisation for Economic Co-operation and Development (OECD), *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade*, Paris: OECD, 1996.

<sup>10</sup> A. Portes, "When More Can Be Less: Labor Standards, Development and the Informal Economy." In C. A. Rakowski, *Contrapunto: The Informal Sector Debate in Latin America*, Albany, NY: State University of New York Press, 1994.

<sup>11</sup> The literature also refers to working conditions as "cash standards" because they directly impact labor costs and labor rights as "noncash standards."

<sup>12</sup> In addition, informal labor standards and a myriad of private voluntary standards exist. The former are established through norms embedded in institutions and communities (DFID, Labour Standards and Poverty Reduction, 2004). The latter have emerged as a response to market pressures. These are typically defined and enforced at the firm level by private sector actors. Private voluntary standards will be discussed further in the next subsection.

<sup>13</sup> *Supra* note 6.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Robert J. Flanagan, *Globalization and Labor Conditions: Worker Conditions and Worker Rights in a Global Economy*. New York: Oxford University Press, 2006.

<sup>17</sup> Mark Barenberg, "Formulating and Aggregating Indicators of Labor Rights Compliance." For the Research Project: Refining the NAS-ILAB Matrix Office of Trade and Labor Affairs, Bureau of International Labor Affairs, United States Department of Labor, Washington, DC, March 2011.

<sup>18</sup> *Supra* note 4.

In the context of the League of Nations Pact, the authors of the Constitution of the International Labour Organization (ILO) stated in 1919 in the Preamble that:

*“The failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.”*<sup>19</sup>

The International Labour Organization (ILO) was emerging at the end of the First World War as a single tripartite institution, made up of representatives of governments, trades unions and employers, with the mission of drawing up labour regulations applicable to all States and with the supplementary mission of checking implementation of each Member State. ILO has made interesting advances in discussions and in the manner of tackling labour challenges in the international trade liberalization agenda.<sup>20</sup>

The International Economic Conference held in London in 1933 and organized by the League of Nations in response to the serious economic depression, should also be noted, as well as many other events and declarations referring to the necessity of improving the living conditions of workers and of avoiding the introduction of elements of unfair competition, which could lead to difficulties in international trade.<sup>21</sup>

As the WTO itself has placed on record,<sup>22</sup> during the course of the 20<sup>th</sup> Century, there were other attempts to link trade and labour issues. The Havana Charter of the forties explicitly refers to labour issues.<sup>23</sup> Labor rights protection manifested itself as a trade issue in a brief Article of the Havana Charter in 1948. Arguing that unfair labor conditions in the export sector could distort international trade flows, the Article pressed governments to work closely with the ILO and to address labor rights in subsequent conventions and trade agreements.<sup>24</sup> The General Agreement on Tariffs and Trade (GATT) and the WTO succeeded the failed Havana Charter; however, the protection of labor rights was excluded from both.<sup>25</sup> At the time of both the founding of the International Labour Organization (ILO) in 1919 and the revitalization of the multilateral system following the second world war, concerted efforts were made to integrate the two concepts. In more recent times the last major effort to link the two domains was at the World Trade Organization (WTO) Ministerial Meeting in Singapore in 1996. On all occasions these efforts have been resisted on both technical and political grounds<sup>26</sup>.

<sup>19</sup> Constitution of the ILO and Regulations of the International Labour Conference, Geneva: ILO, 2002.

<sup>20</sup> *Supra* note 4.

<sup>21</sup> *Supra* note 4.

<sup>22</sup> WTO, Geneva: 2007, pages 380 onward.

<sup>23</sup> “1. The Members recognize that measures relating to employment must take fully into account the rights of workers under intergovernmental declarations, conventions and agreements. They recognise 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 conditions as productivity may permit.

The members recognise 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 in its territory.

2. Members which are also members of the International Labour Organisation shall cooperate with that organisation in giving effect to that understanding.”

<sup>24</sup> Interim Commission for the International Trade Organization, “Havana Charter,” 1948, in United Nations Conference on Trade and Employment, *Final Act and Related Documents*, Havana, Cuba, available at [http://www.wto.org/english/docs\\_e/legal\\_e/havana\\_e.pdf](http://www.wto.org/english/docs_e/legal_e/havana_e.pdf). (Accessed on May 25, 2015).

<sup>25</sup> Samira Salem and Faina Rozental, “Labor Standards and Trade: A Review of Recent Empirical Evidence”, *United States International Trade Commission Journal of International Commerce and Economics*, (2012) available at [http://www.usitc.gov/journals/LaborStandardsandTrade\\_final%209\\_12.pdf](http://www.usitc.gov/journals/LaborStandardsandTrade_final%209_12.pdf) (Accessed on June 1, 2015)

<sup>26</sup> 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

Following the establishment of the WTO, a number of developed countries again raised the issue of “unfair economic advantage” stemming from weak enforcement systems and low labor standards. They also voiced concern about the potential for a “race to the bottom”, as countries might feel pressure to degrade their labor standards to maintain their competitiveness.<sup>27</sup>

The WTO 1996 Singapore Ministerial Conference represents a consensus position in the tug-of-war between developed and developing countries on labor standards:

“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>28</sup>

At the conference, WTO members repeated their rejection of labor standards as a WTO issue, but affirmed their support for the ILO’s role as the body responsible for labor standards, and their commitment to respect internationally recognized fundamental labor standards as long as these standards are not used for protectionism.<sup>29</sup>

Some of the voices calling for these linkages were quietened by the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which adopted a parameter of minimum labour principles<sup>30</sup>. The selection of these core labour standards was based on basic human rights to be respected in the workplace and there is widespread consensus that the core labour standards can act as a basis of minimum standards in the workplace, regardless of the level of development of a given country. The narrowing of the issue to fundamental or core labour rights as contained in the ILO’s core Conventions and the Declaration has made the entire labour/trade debate less divisive.<sup>31</sup>

ILO labor standards can take the form of either conventions or recommendations. The former represent international treaties that are legally binding on states that ratify them, while the latter are nonbinding guidelines. The ILO, created in 1919 as part of the Treaty of Versailles that followed World War I, became the first specialized UN agency in 1946. According to its mandate, the ILO “seeks the promotion of social justice and internationally recognized human and labour rights.”<sup>32</sup> Among its four strategic objectives is to “promote and realize standards and fundamental principles and rights at work.” The ILO comprises representatives of governments, employers, and workers who work together to achieve the organization’s strategic objectives. ILO conventions and recommendations articulate international labor standards, which include freedom of association, the right to organize, collective bargaining, the abolition of forced labor, equality of opportunity and treatment, and other standards that address work-related conditions.<sup>33</sup>

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into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.” WTO Ministerial Conference, Singapore (December 1996).

<sup>27</sup> *Supra* note 25.

<sup>28</sup> [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm)

<sup>29</sup> World Trade Organization (WTO), “Labour Standards: Consensus, Coherence, and Controversy”, in *Understanding the WTO*, available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm). (Accessed on Jan 16, 2012).

<sup>30</sup> These principles are: Freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. See IOE publication on the Declaration: [www.ioe-emp.org](http://www.ioe-emp.org) (in the IOE Papers section)

<sup>31</sup> International Organisation of Employers, “*The Evolving Debate on Trade & Labour Standards*”, (2006), available at [https://www.wto.org/english/forums\\_e/ngo\\_e/posp63\\_ioe\\_e.pdf](https://www.wto.org/english/forums_e/ngo_e/posp63_ioe_e.pdf) (Accessed on June 1, 2015).

<sup>32</sup> International Labour Organization (ILO), “ILO Mandate,” January 11, 2000, available at <http://www.ilo.org/public/english/about/mandate.htm>.

<sup>33</sup> *Ibid.* In addition, the ILO provides technical assistance in a variety of labor-related fields, including occupational health and safety, workforce development, labor justice, and social safety nets. It also promotes the development of independent employers’ and workers’ organizations and provides training and advisory services to those organizations.

Member states that ratify an ILO convention must incorporate its principles into national labor law, and they are required to submit reports to the ILO on their compliance with the convention. However, compliance with reporting requirements is low. The ILO is empowered to investigate noncompliance complaints through Article 26, and it may, following an investigation and report, recommend that a country change its laws and practices. On the other hand, the ILO has no meaningful enforcement tools, such as sanctions for non-complying countries. Instead, it has “soft” enforcement mechanisms, which include a supervisory system that reinforces compliance through information distribution and transparency.<sup>34</sup>

In the ILO multilateral context, accusations of serious failure to comply with labour standards must be extremely serious for governments to decide on making formal complaints on labour questions.<sup>35</sup> By contrast, in the ILO there have been broad advances on degrees of consensus and supervision of core labour standards. A nucleus of core labour standards, together with priority standards and updated agreements and recommendations, have been drawn up. At the same time, there is no doubt over the ILO’s exclusive qualification for laying down regulations and verifying their observance. In addition, a strengthening of the role of the ILO can be noted, to the extent that the rulings of the organisation on whether a country is infringing the provisions of the ILO, and in particular its core conventions and those that refer to the “decent work” agenda, now command greater respect.<sup>36</sup> At the same time, it can be noted that in all the declarations made by heads of State throughout the world, there is an effective consensus on Fundamental Principles and Rights at Work and on the “decent work” agenda, including everything implied by that concept, as developed by the ILO. This progress has meant that many diverse actors stress on the requirement of compliance with core labour standards, as can be seen with private sector actors who buy products from developing countries and who demand proof of compliance with such standards (a development which coincides with the development of ISO Standard 26000).<sup>37</sup>

A further observation on the recent history of these clauses or agreements is that there is no previous history of labour clauses or agreements being used for protectionist purposes. Instead, there were many experiences of cooperation between the parties. With regard to the ILO, the imposition of trade sanctions on a State for failure to comply with labour standards is absolutely exceptional. There are extreme cases but only when all other means of compliance and control, taken with the aim of leading the noncompliant State to compliance in good faith, have been exhausted.<sup>38</sup>

### III. LINKAGES BETWEEN TRADE AND LABOUR STANDARDS

The relationship between trade agreements and labour standards is closely linked to the spectacular global changes in the means of production and the world of labour. Indeed, economic globalization and technological revolution are developing at such speed, especially with respect to trade liberalization, that they have a continuous and daily impact on the worlds of labour and employment.

An argument often made by proponents of the trade and labour linkage is that in absence of coercive international labour standards, all the nations of the world would deliberately lower their labour standards, so as to benefit from the resultant comparative advantage in a ‘race-to-the-bottom’. Supporters of trade-labour linkage fear that competition from imports made in low-wage developing countries will lead to loss of jobs for workers in developed countries, and would drive the developed countries to lower their labour standards.<sup>39</sup>

Furthermore, one of the major points of contention by those against the linkage is that providing for appropriate labour standards is essentially a function of the state, and imposition of international labour standards is against the concept of state sovereignty. In this sense, trade-labour linkage has also been referred to as a form of

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<sup>34</sup> Robert J. Flanagan, “Labor Standards and International Competitive Advantage”, in Robert J. Flanagan and William B. Gould(eds.), *International Labor Standards: Globalization, Trade, and Public Policy*, 15–59. Stanford, CA.: Stanford University Press, 2003.

<sup>35</sup> *Supra* note 4.

<sup>36</sup> *Supra* note 4.

<sup>37</sup> *Supra* note 4.

<sup>38</sup> *Supra* note 4.

<sup>39</sup> See discussions in Raj Bhala, “Clarifying the Trade-Labour Link”, 37 *Colum. J. Transnat'l L.* 11, 17 (1998).

political imperialism.<sup>40</sup> It has been argued that there is no need for linkage since developing countries may improve their labour standards without endangering their comparative advantage.<sup>41</sup>

The advocates of trade-labour linkage, however, argue that an absolutist concept of national sovereignty is unsustainable in the modern context of integrated world economy.<sup>42</sup> It has also been argued that international labour standards, and international trade law could contribute to a modification or a shift in the concept of state sovereignty, and that this would enable better labour protection.<sup>43</sup>

However, today, in view of the 1998 ILO Declaration, the broader issue of trade and labour linkages does not necessarily divide along traditional lines. For instance, governments of developing countries are in the main against such linkages while governments of developed countries are somewhat divided. Trade unions from developed countries (and the international trade union movement as a whole)<sup>44</sup> favour such a link, whereas trade unions in developing countries are to some extent divided. Employers have been consistently against linkages of any kind.<sup>45</sup>

Although it is true that there has been a wide ranging conceptual debate on the link between international trade and labour standards, and on its effectiveness, negotiators have in practice approached negotiations from a pragmatic, economic, commercial and political point of view, rather than from an academic standpoint. From the point of view of developed countries, their negotiators are often under pressure both from the administration, which demands concrete results and whose approach is very rigid, and from parliamentarians, trade union organizations and public opinion. In spite of that, some interpretation of these mandates is possible, and positions can become more flexible, but with only a narrow margin for manoeuvre. In some cases, labour issues have been a serious obstacle to the initiation of trade negotiations, or to approval by the legislature of what has been agreed at the negotiating table.<sup>46</sup> In other cases, there have been prior requirements with respect to labour matters, often of a regulatory character, which have made it easier to reach agreement or to gain approval from the legislature. In the case of the main negotiating powers, the EU and the US, their mandates for negotiations can run into difficult internal negotiations, which is why they are often very rigid. Something similar can occur in the case of developing countries, especially the so-called emerging countries. Developed countries have been exhibiting a trend towards greater depth in their proposals with respect to labour clauses, (although the case is quite different with regard to the existence and character of sanctions in the event of failure to comply), in FTAs.<sup>47</sup>

### ***Incorporation of Labour Standards within the WTO and other Trade Agreements***

#### ***WTO***

Those in favour of inclusion of labour standards in trade agreements are of the view that the WTO should incorporate labour standards because labour is a factor of production, and failure by a government to regulate the means by which labour is utilized constitutes a trade distortion.<sup>48</sup> A slightly different view, though favouring

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<sup>40</sup> See, for example, discussions in Christian Barry and Sanjay G. Reddy, "International Trade And Labour Standards: A Proposal For Linkage", 39 *Cornell Int'l L.J.* 545, 564 (2006)

<sup>41</sup> Kimberly A. Elliott and Richard B. Freeman, *Can labour standards improve under globalization?*, Washington D.C., Institute for International Economics (2003).

<sup>42</sup> Christopher L. Erickson and Daniel J.B. Mitchell, "The American Experience with Labour Standards and Trade Agreements", 3 *J. Small & Emerging Bus. L.* 41, 43 (1999)

<sup>43</sup> Patrick Macklem, "Labour Law Beyond Borders", 5 *J. Int'l Econ. L.* 605, 627.

<sup>44</sup> The contents of and rationale for the ICFTU position (calling for a social clause) are laid out in the 1999 report *Building workers' human rights into the global trading system, 1999*, available via the ICFTU homepage ([www.icftu.org](http://www.icftu.org)). The ICFTU has since 1999 on numerous occasions stressed the importance of incorporating workers' rights into the WTO system. See e.g. para. 10 of the ICFTU statement in 2003 at the 5th Ministerial Meeting in Cancún (also available via the ICFTU homepage).

<sup>45</sup> International Organization of Employers, *The Evolving Debate on Trade & Labour Standards*, (2006), available at [https://www.wto.org/english/forums\\_e/ngo\\_e/posp63\\_ioe\\_e.pdf](https://www.wto.org/english/forums_e/ngo_e/posp63_ioe_e.pdf) (Accessed on June 1, 2015)

<sup>46</sup> *Supra* note 4.

<sup>47</sup> *Supra* note 4.

<sup>48</sup> Daniel A. Zaheer, "Breaking The Deadlock: Why And How Developing Countries Should Accept Labour Standards in the WTO", 9 *Stan. J.L. Bus. & Fin.* 69, 73 (2004)

inclusion, is that though trade sanctions should be viewed as a last resort, labour issues should be considered by the WTO with focus on incentives and preferences to developing nations to promote higher labour standards.<sup>49</sup>

On the other hand, several scholars have written about the dangers of incorporation of labour standards in the WTO.<sup>50</sup> This is largely premised on the fear of the coercive nature of the dealings at the WTO, and also the relative inability of the developing nations, on account of limited resources, to adequately defend their position.<sup>51</sup> The use of trade sanctions for imposition of labour standards are not regarded as the best approach to ensure better domestic labour standards.<sup>52</sup>

The developed countries pressed the WTO to incorporate labor standards into its mandate, but developing countries opposed these efforts.<sup>53</sup>

Opponents of a trade and labour linkage at the WTO also emphasize that the empirical literature suggests that mandating unsustainably high labour standards will not improve average wages and working conditions in poor countries or even improve trade of developing countries.<sup>54</sup> Such mandates can create further inequality, by reducing the number of workers with better pay and working conditions and increasing the number in poorer conditions.<sup>55</sup>

In about 1987, the US government had suggested to the GATT Council that a working group should be set up to consider the relationship between international trade and internationally-recognised workers' rights. On that occasion the suggestion was rejected. The US attempted to renew the suggestion in 1990, with the same result. From 1993 until the Marrakech meeting, the US continued to insist that the connection between trade and labour rights should be recognised, but the proposal has never been accepted.<sup>56</sup> The proposal to include labour matters on the agenda for trade negotiations has received the staunch support of trade union organisations but has been opposed by employers. Equally, a large majority of developed countries have been in favour of the inclusion of these clauses, whereas the majority of developing countries, led by the largest of the emerging countries were against.<sup>57</sup>

Amongst the questions to be resolved, there has been much discussion on the possible inclusion of a social clause in the WTO agenda, which would lead to a group or space created specifically for such discussion. However, there has never been sufficient agreement, and in consequence at the present time there is no space reserved for this debate.<sup>58</sup>

The 'trade and labour' linkage is a sensitive and controversial issue for many countries. As with the case of linkage of other non-trade issues with trade (such as trade and environment, or trade and intellectual property), the trade and labour debate is characterized by two conflicting strands of thought: one favouring the inclusion of such a linkage in trade negotiations, and the other discrediting and denouncing any kind of linkage. This

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<sup>49</sup> Robert Howse and Makua Mutua, "Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization", International Centre for Human Rights and Democratic Development, Canada, available at

<http://www.ichrdd.ca/english/commdoc/publications/globalization/wtoRightsGlob.html#r59>

<sup>50</sup> Jagdish Bhagwati, "Trade Liberalisation and 'Fair Trade' Demands: Addressing the Environmental and Labour Standards Issues", 18 *World Econ.* 745 (1995); Also see T. N. Srinivasan, "International Trade and Labour Standards from an Economic Perspective", in Pitou van Dijck and Gerrit Faber (eds.), *Challenges to the New World Trade Organization* (1996).

<sup>51</sup> Kaushik Basu, "Compacts, Conventions, and Codes: Initiatives for Higher International Labour Standards", 34 *Cornell Int'l L.J.* 487, 492 (2001)

<sup>52</sup> Keith E. Maskus, "Should Core Labour Standards Be Imposed Through International Trade Policy?" 14 *World Bank Policy Research Working Paper No. 1817*, available at <http://www.worldbank.org/html/dec/Publications/Workpapers/WPS1800series/wps1817/wps1817.pdf>

<sup>53</sup> Samira Salem and Faina Rozenal, "Labor Standards and Trade: A Review of Recent Empirical Evidence", *United States International Trade Commission Journal of International Commerce and Economics*, (2012) available at

[http://www.usitc.gov/journals/LaborStandardsandTrade\\_final%209\\_12.pdf](http://www.usitc.gov/journals/LaborStandardsandTrade_final%209_12.pdf) (Accessed on June 1, 2015)

<sup>54</sup> Robert Stern and Katherine Turrell, *Labour Standards and the World Trade Organization*, (2003), available at [www.wto.org/english/forums\\_e/ngo\\_e/labour\\_standards\\_e.doc](http://www.wto.org/english/forums_e/ngo_e/labour_standards_e.doc)

<sup>55</sup> *Ibid*; Also see Anuradha R.V. and Nimisha Singh Dutta, *Trade and Labour under the WTO and FTAs*, available at <http://wtocentre.iift.ac.in/Papers/Trade%20Labour%20Study.pdf> (Accessed on May 30, 2015)

<sup>56</sup> *Supra* note 4.

<sup>57</sup> *Supra* note 4.

<sup>58</sup> WORLD BANK., *Development, Trade, and the WTO: A Handbook*, Washington DC: World Bank, 463 (2002).

divergence of views was most visible during the WTO Ministerial Conference at Singapore in 1996, and again at Seattle in 1999, when developing nations such as Brazil, Egypt, India, and Malaysia vehemently opposed the pressure from the U.S. to include labour standards within the ambit of the WTO.<sup>59</sup> While this resistance has been responsible for lack of any labour standards being incorporated under the WTO, labour provisions are increasingly being incorporated in bilateral and regional preferential trade agreements (referred to in this article as 'Preferential Trading Agreements' or PTAs) entered into by the U.S., the EU, New Zealand, and more recently, by developing countries such as Chile as well.<sup>60</sup>

### ***Bilateral and Regional Agreements***

As discussed above, labor standards are not part of the World Trade Organization (WTO) agenda due to opposition from many developing countries. Therefore, faced with the slow pace of negotiations at the multilateral level, the inclusion of such standards in bilateral and regional trade agreements is becoming more common.<sup>61</sup> Some of them, in particular the European Union (EU) and the United States of America (US), have launched a new generation of regional or bilateral agreements which also cover labour issues. Such negotiations allow the Parties to reach agreements more quickly than under the umbrella of the World Trade Organization (WTO) and can proceed without prejudice to the multilateral process.<sup>62</sup> The US and the EU have used bilateral and regional free trade agreements (FTAs) in addition to unilateral trade preference programs to link labor standards to market access, imposing trade sanctions on countries that do not enforce international standards. Indeed, since 1993, all FTAs with the United States have included labor standards provisions, with varying degrees of enforceability.<sup>63</sup>

Labour issues have been treated in very different ways in bilateral agreements and at the subregional level. For example, those which form part of integration agreements, such as the EU process or the processes developed by the Southern Common Market (MERCOSUR),<sup>64</sup> emphasise economic deregulation. Although this agenda was originally promoted by the most developed countries, a number of developing countries have agreed to various types of commitments on labour issues, to degrees which are compatible with their own national policies.<sup>65</sup>

The lessons learnt from the growing inclusion of labour agreements in integration and economic liberalization processes and the trends which derive from it, allow us to draw some interesting conclusions. Developed countries, in spite of their hesitations with regard to labour clauses in free trade agreements, have finally accepted them on the basis of the overall balance in the subjects negotiated.<sup>66</sup>

Bilateral and regional free trade agreements (FTAs) have made more progress than multilateral accords in linking labor standards provisions to trade. Since 1993, the United States has negotiated 13 FTAs that include

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<sup>59</sup> It has been noted that at the Singapore Ministerial in 1996, certain developed countries, notably Australia and Great Britain, Germany and Switzerland, supported the stand of developing countries: See, Arvind Panagariya, "Trade and Labour: A Post-Seattle Analysis", in Zdenek Drabik (ed.), *Globalization Under Threat*, (2001). EU and EFTA countries, however, are now proponents of the trade and labour linkage.

<sup>60</sup> *Supra* note 55.

<sup>61</sup> Andrew G. Brown, and Robert M. Stern, "What Are the Issues in Using Trade Agreements to Improve International Labor Standards?" *World Trade Review* 7, no. 2, 331–57(2008). The heated debate about the linking of trade and labor standards continues. Indeed, the Washington Trade Daily (2011) reports that as recently as the 2011 ILO Ministerial Conference, industrialized countries pushed for the establishment of a "social protection floor," which they argued is "essential for addressing the rights of the workers in a post-crisis economic world" See Washington Trade Daily (WTD), "Labor and Trade—Again." *Washington Trade Daily* 20, no. 118 (June 15, 2011). Luinstra (2004) points out that most stakeholders from industrialized and developing countries agree on the importance of having minimum standards, see *Supra* note 6. However, when it comes to labor conditions, many developing countries reject the proposal to link trade and labor standards. One trade minister commented that, "Since the Seattle trade ministerial conference in 1999, we have consistently maintained that there cannot be any linkage between trade and labor standards. We fear that these standards would be used as a protectionist tool." WTD, "Labor and Trade—Again," June 2011.

<sup>62</sup> *Supra* note 4.

<sup>63</sup> Mary Jane Bolle, *Overview of Labor Enforcement Issues in Free Trade Agreements*. Congressional Research Service Report RS22823. Washington, DC: CRS, February 29, 2008.

<sup>64</sup> A group currently formed by Argentina, Brazil, Paraguay and Uruguay, can be clearly distinguished from.

<sup>65</sup> *Supra* note 4.

<sup>66</sup> *Supra* note 4.

varying levels of labor commitments and enforceability.<sup>67</sup> Increasingly, FTAs include labor provisions in the main body of the agreement rather than in a side agreement. For example, although the North American Free Trade Agreement (NAFTA) included a side agreement on labor (the North American Agreement on Labor Cooperation), U.S. FTAs signed with Jordan; Chile; Singapore; Australia; Morocco; Bahrain; Oman; the Dominican Republic and the Central American countries of Guatemala, El Salvador, Honduras, and Nicaragua (CAFTA-DR); Peru; Colombia; Panama; and Korea all include labor provisions in the bodies of the agreements.<sup>68</sup> Infact, in some cases, those countries which have adopted FTAs accompanied by labour agreements have had access to co-operation programmes for improving their capacity for inspection and control. In other cases, horizontal co-operation has made it possible to have access to exchange of good practices or *benchmarking* in the search for best practices. In this way, some countries have been able to incorporate innovative practices in human resource management and in labour or social security policies and regulations. The above points notwithstanding, developing countries should be able to assess whether a multilateral discussion on this matter would not be better, for the purpose of avoiding the pernicious effects of distortions that multiple agreements of varying kinds between varying actors can cause.<sup>69</sup>

*Soft Law*

In many countries there is also pressure to strengthen social responsibility including labour matters. With respect to labour, the following are worthy of mention: the Global Compact, promoted by the United Nations, the Tripartite Declaration of Principles on Multinational Companies and Social Policy (dated November 1977, amended in November 2000 and revised in 2006), the OECD Guidelines for Multinational Enterprises and the Social Accountability Standard (SA) 8000. We have recently seen the development of a process for creating an ISO Standard 26000 on social responsibility, which covers labour matters amongst others. We shall deal in particular with the Global Compact and then with ISO Standard 26000.<sup>70</sup>

In response to a call formulated by the then Secretary General of the United Nations, Kofi Annan, work began in 1999 on a so-called Global Compact ("the Compact"). The Compact consists in an appeal to subscribing enterprises to adopt ten universal principles covering, amongst other matters, labour standards. In the words of Kofi Annan, the initiative aspired to contribute to the emergence of "*shared values and principles, which will give a human face to the global market*".<sup>71</sup> As part of that goal, the ideal was to construct a global market which should include the observance of fundamental labour standards, thus leading to a more inclusive and fair global society. In this initiative, there are many actors entitled to take action, beginning of course with the companies which volunteer to join the scheme and which now number more than 6,000 throughout the world. It also includes workers and civil society organizations that may benefit from or monitor observance of the provisions by means of arrangements for transparency and responsibility. The Compact is an initiative whose aim is to work towards progress, convincing the main actors in the market of the importance of adhering to its principles. Since the initiative stems directly from the Secretary General of the UN, the office of the Compact in New York plays an important role, together with four other UN Agencies: the Office of the High Commissioner for Human Rights, the International Labour Organization, the United Nations Development Programme and the United

<sup>67</sup> *Supra* note 63. In addition to FTAs, the United States has established unilateral trade preference programs such as the Generalized System of Preferences (GSP), the Caribbean Basin Initiative (CBI), the African Growth and Opportunity Act (AGOA) and the Andean Trade Preferences Act (ATPA) with developing countries, which link eligibility to respect for labor rights (Sandra Polaski, "Protecting Labor Rights through Trade Agreements: An Analytical Guide," *University of California Davis Journal of International Law and Policy* 10, no. 13 (2003): 13–25). With respect to GSP, the office of the U.S. Trade Representative (USTR) adopted regulations and procedural guidelines for filing petitions to challenge GSP status based on noncompliance with labor commitments (Lance A. Compa, and Jeffrey S. Vogt, "Labor Rights in the Generalized System of Preferences: A 20-Year Review," Cornell University, International Labor Rights Collection. *Articles and Chapters* no. 171 (2001): 199–238. <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1172&context=articles>). Further, the U.S. recently released the 2012 model Bilateral Investment Treaty (BIT), which includes expanded labor obligations such as an obligation not to "waive or derogate" from domestic laws; an obligation to "effectively enforce" domestic laws; a provision whereby parties reaffirm their commitments under the ILO Declaration; and stronger consultation procedures than those found in the 2004 BIT. See United States Trade Representative (USTR), Model Bilateral Investment Treaty (BIT), 2012, available at <http://www.ustr.gov/about-us/press-office/fact-sheets/2012/april/model-bilateral-investment-treaty>.

<sup>68</sup> *Supra* note 25.

<sup>69</sup> *Supra* note 4.

<sup>70</sup> *Supra* note 4.

<sup>71</sup> See [www.pactoglobal.cl](http://www.pactoglobal.cl)

Nations Environment Programme. Those taking part enter the Compact on a voluntary basis. The initiative provides a general framework for encouraging sustainable growth and civic responsibility on the part of creative and committed enterprises.<sup>72</sup>

In labour matters, the Compact states that the enterprises must respect<sup>73</sup>:

- liberty of association and recognition of the right to collective bargaining;
- the elimination of all forms of forced and obligatory labour;
- the abolition of child labour, and
- the elimination of discrimination in employment and occupation.

Pressure exerted by public opinion, the media, NGOs, trade union organisations, consumer organisations, academia, and research centres for multinational companies to commit themselves to ethical behaviour, sustainable development and so-called “socially-responsible behaviour” has been growing in recent years. Certain countries have passed laws (in the case of the UK for example, a 2006 law known as *The Companies Act* introduced a requirement on public companies to make information available on social and environmental matters and nominated a minister responsible for social responsibility. Sweden, in 2008, announced that its 55 State enterprises would have to draw up Corporate Social Responsibility (CSR) reports based on the *Global Reporting Initiative*, a highly respected synopsis in the field.<sup>74</sup> A majority of the 500 largest companies in the US and the UK have adopted some code of conduct, many making reference to ILO Standards. In addition, there have been many voluntary initiatives, such as codes of socially-responsible conduct, which are aimed at improving the quality of life at work. This phenomenon is linked to the increasing importance of image and also to the emphasis on human resources, the environment and other aspects relating to other “stakeholders”. Therefore, we can see a growing demand for ethical conduct in the world of business. An example is the German Commercial Fruit Association, which has developed a code of conduct requiring its suppliers throughout the world to observe standards mentioned in the Compact. Suppliers can be certified by various mechanisms, such as Standard SA 8000.<sup>75</sup>

In principle, voluntary certification goes beyond the requirements of the law. Obligatory certification fundamentally refers to technical standards or aspects which can affect the safety and/or health of people (for example, health certificates which allow the circulation of certain food products or medicines). Perhaps the most important certifications of this type are the various families of ISO standards. The ISO is a world federation of standards organization. It is a nongovernmental organisation, founded in 1947, with the aim of promoting standards of universal value, whose ultimate purpose is to facilitate the exchange of goods and services.<sup>76</sup> The most important groups of ISO standards (at least for the purposes of this paper) are: 9000 for quality and 14000 for the environment.<sup>77</sup>

In recent times, the most important development in the field has been the progress made with ISO Standard 26000, which is presently in its final approval phase and is being discussed, with a high degree of consensus, by the members of the working group. The standard covers a number of areas such as human rights, labour rights, the environment, organizational government, trade practices (market rules), participation by the community, proper relationships with consumers and final product responsibility.<sup>78</sup>

The content of this standard coincides fully with the 1998 ILO Declaration, with the ILO Decent Work provisions, and with its core conventions. Its promotion will lead to generating incentives in the world of business and in the private sector, and to multiple social actors working for its application with arrangements for ensuring transparency and demands for compliance from citizens.<sup>79</sup>

## FREE TRADE vs. FAIR TRADE

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<sup>72</sup> *Supra* note 4.

<sup>73</sup> *Supra* note 4.

<sup>74</sup> *Supra* note 4.

<sup>75</sup> German Fruit Trade Association, [http://p57160.typo3server.info/fileadmin/pdf-dateien/jahresberichte/DFHV\\_GB\\_07-08.pdf](http://p57160.typo3server.info/fileadmin/pdf-dateien/jahresberichte/DFHV_GB_07-08.pdf). Also see Lazo Grandi Pablo, *Trade Agreements and their Relation to Labour Standards: the Current Situation*. Issue Paper No. 3, International Centre for Trade and Sustainable Development, Geneva, Switzerland, (2009), available at <http://www.ictsd.org/downloads/2011/12/trade-agreements-and-their-relation-to-labour-standards.pdf> (Accessed on May 25, 2015).

<sup>76</sup> *Supra* note 4.

<sup>77</sup> *Supra* note 4.

<sup>78</sup> *Supra* note 4.

<sup>79</sup> *Supra* note 4.

While many economists are in favour of free trade, many anti-globalization groups oppose it for a variety of reasons. Free trade is usually opposed by domestic industries that are directly at risk of being hurt by it. Those that oppose free trade – labeled the “fair trade” or “trade justice” movement – seek to promote equitable international labour, environment and social standards for the production of goods and services that are exported from developing countries to developed countries.<sup>80</sup> Fair trade has been defined as “a trading partnership, based on dialogue, transparency and respect that seeks greater equity in international trade. It contributes to sustainable development by offering better trading conditions to, and securing the rights of, marginalized producers and workers – especially in the South.”<sup>81</sup>

Fair trade focuses on promoting, amongst other things, poverty alleviation and sustainable development, gender equity, safe and healthy working conditions for producers, transparency and accountability in the global trading system and sound environment practices.<sup>82</sup> It is thus concerned with exchanges upon terms which meet the demands of justice.<sup>83</sup> Advocates of “fair” or “just” trade contend that trade between developed countries and developing countries takes place along “coercive” and “uneven lines” and should be made more equitable.<sup>84</sup> They argue further that trade relations between rich and poor countries are based on the latter’s dependency on the former and entail terms of trade which are injurious and unfair to poor countries.<sup>85</sup> In their estimation, free trade does little to protect poor (peripheral) countries which become increasingly dependent on the wealthy (core) countries.<sup>86</sup>

According to the proponents of fair trade, the current terms of trade between developed and lesser developed countries are unjust because the prevailing market prices for the goods produced in the least developed countries are too low for the labourers to get wages that are compatible with human dignity.<sup>87</sup> Conversely, fair trade practices help alleviate poverty, enhance gender equity, and improve working conditions, the environment and distributive justice.<sup>88</sup> Free trade poses a threat to these goals. In the view of Harriet Lamb, Director of the Fairtrade Foundation, “world trade rules are currently topsy-turvy, protecting the rich and leaving the poor vulnerable”.<sup>89</sup>

A key concern of fair trade advocates is the lack of free trade caused by dumping practices and protectionism (including agricultural subsidies) by the developed (rich) countries.<sup>90</sup> Developed countries are criticised for their hypocrisy in using protectionism against poorer countries, particularly in agricultural products, while requiring them to leave their own producers without protection. Large agricultural subsidies in the developed countries impede the ability of agricultural producers in poor countries to exercise much of their comparative advantage in agricultural production. For example, when developing countries export to rich country markets, they face tariff barriers that can be as much as four times higher than those which rich countries are subjected to.<sup>91</sup> Without

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<sup>80</sup> Fair trade proponents include a diversity of international religious, development aid, social and environmental organisations such as Caritas International, Oxfam, and Amnesty International.

<sup>81</sup> Definition offered by FINE, an informal Association of the four main Fair Trade networks (Fairtrade Labelling Organizations International, International Fair Trade Association, Network of European Worldshops and European Fair Trade Association) available at [http://en.wikipedia.org/wiki/Fair\\_trade](http://en.wikipedia.org/wiki/Fair_trade) (access confirmed: 12 July 2006).

<sup>82</sup> International Fair Trade Association, *Key Principles of Fair Trade* available at <http://www.ifat.org/downloads/monitoring/copandstds/stds4ftos.doc> (Accessed on Mar 30, 2007).

<sup>83</sup> J Eisenberg, *Free Trade versus Fair Trade* available at <http://www.aworldconnected.org/article.php?id=560&print=1> (Accessed on Aug 15, 2006)

<sup>84</sup> See <http://www.globalenvision.org/library/15/834/> (access confirmed: 27 February 2008).

<sup>85</sup> FH Cardoso and E Faletto, *Dependency and Development in Latin America* Translated by Marjory M Urquidi (1979).

<sup>86</sup> This is referred to as “the dependency thesis”. See *Ibid.*

<sup>88</sup> *Ibid.*

<sup>89</sup> A Singleton, *Trade Justice or Free Trade?* 6 (2005) available at <http://www.globalisationinstitute.org/publications/tradejustice.pdf> (Accessed on Dec 20, 2007)

<sup>90</sup> It has been asserted that, in 2000, every cow in the European Union (EU) received the equivalent of US\$913 in subsidy while every person in Sub-Saharan Africa received US \$8 in EU aid and that two-fifths of the entire EU budget is spent on subsidising European farmers to the detriment of farmers in the developing world. See Vander Weyer “Can Free Trade Be Fair?” *New Statesman* available at <http://www.newstatesman.com/200502280013> (access confirmed: 28 February 2008).

<sup>91</sup> Cephas Lumina, “Free trade or just trade?” *The World Trade Organisation, Human Rights and*

such protectionism by the wealthier countries, poor countries' prospects of alleviating poverty would be improved. It is interesting to note that even the proponents of free trade acknowledge that most African and other developing and least developed countries would benefit immensely (heavily dependent as they are on agricultural exports) if the developed countries ended "egregious policies like the Common Agricultural Policy".<sup>92</sup>

By contrast, free trade proponents argue that free trade is consistent with the demands of justice and in the long term, benefits all countries – rich or poor – when the markets are allowed to come to equilibrium. Thus, they argue, *free* trade is *fair* trade. For example, Brink Lindsey and Milton Friedman have suggested that free trade is fair because it involves voluntary exchanges which, in turn, imply an absence of coercion.<sup>93</sup>

It is noteworthy that the proponents of free trade as well as of fair trade claim that they are concerned with global justice; that is, they are concerned with poverty alleviation and global prosperity.<sup>94</sup> However, while free trade proponents regard voluntariness as the key component of justice, fair trade advocates consider the expression of human dignity as the core issue in global justice.<sup>95</sup> Thus, free trade advocates argue that the best way to alleviate poverty is to allow countries to trade freely while advocates of fair trade contend that further trade liberalisation would essentially intensify the existing unevenness of trade.<sup>96</sup>

### III. CONCLUSION

Trade policies have a significant impact on the labour market institutions and policies. At the same time, labour and social policies influence the outcomes of trade policies in terms of the growth of output and employment and the distribution of income. There appears to be a need to disentangle the range of quite complex relationships that exist between trade and labour policies. This could serve as a useful input to the policy-making process in both domains. It may also act as a stimulus towards greater policy coherence that may ultimately contribute to increasing the economic and social benefits of trade liberalization and expansion.<sup>97</sup> Therefore, we may conclude that trade policies and labour and social policies do interact and that greater policy coherence in the two domains can help to ensure that trade reforms have significantly positive effects on both growth and employment. From this perspective, research directed at supporting the formulation of more effective and coherent policies would clearly have a high pay-off to the international community.<sup>98</sup>

Further, there is a need for developing a cohesive relationship between the ILO and the WTO so that greater consistency emerges in national public policies between economic authorities and labour authorities.

In these circumstances, there is an ardent need for the developing countries to assess the importance of compliance with labour standards and of responsible social behaviour as an important element in guaranteeing their competitiveness rather than blindly following the global 'race-to-the-bottom'. Fair trade focuses on promoting safe and healthy working conditions and sound labour practices. In order to derive maximum benefit from the gains of free trade, when countries lower their labour standards triggering a 'race-to-the-bottom', fair trade is best alternative. It is *fair*, not free, trade that assists nations in developing socially responsible standards while remaining competitive at the same time.

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*Development (Part 1)*, available at <http://www.saflii.org/za/journals/LDD/2008/11.pdf> (Accessed on May 30, 2015).

<sup>92</sup> *Supra* note 89.

<sup>93</sup> See Lindsey, *Against the Dead Hand: The Uncertain Struggle for Global Capitalism* (2001); Friedman(ed.), *Capitalism and Freedom 2* (1982). See also Norberg, *In Defense of Global Capitalism* (2003).

<sup>94</sup> See <http://www.globalenvision.org/library/15/834/> (Accessed on 27 February 2008).

<sup>95</sup> *Ibid.*

<sup>96</sup> Cephas Lumina, "Free trade or just trade?", *The World Trade Organisation, Human Rights and Development (Part 1)*, available at <http://www.saflii.org/za/journals/LDD/2008/11.pdf> (Accessed on May 30, 2015).

<sup>97</sup> Eddy Lee, *Trade and Employment Challenges for Policy Research: A Joint Study of the International Labour Office and the Secretariat of the World Trade Organization*, available at [http://www.un.org/esa/desa/papers/2005/wp5\\_2005.pdf](http://www.un.org/esa/desa/papers/2005/wp5_2005.pdf) (Accessed on May 25,2015)

<sup>98</sup> *Ibid.*

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