CUTS Centre for
International Trade,
Economics & Environment
Research Report

Trade-Labour Debate: The State of Affairs

CUTS Centre for International Trade, Economics & Environment

#0410

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Twenty Years of Social Change
1984 to 2003

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Published by:

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With the support of:

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The Ford Foundation, New York, USA
Under the Project on Capacity Building on Linkages between Trade and Non-trade Issues

Cover Photo:
Courtesy – The Hindu Business Line

Printed by:
Jaipur Printers P. Ltd.
Jaipur 302 001

ISBN 81-8257-025-5

0410, Suggested Contribution: Rs.100/US$25

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Preface

Trade and labour standards have always been a very hot issue. It was one of the major causes for the failure of the Seattle Ministerial Meeting of the WTO in 1999, when the developing world put their foot down. The then US president Bill Clinton suggested that it be a part of the agenda of the WTO's ministerial. His view was principally to support the American labour movement to ensure that they worked for the ensuing Presidential election campaign of his deputy, Al Gore. Unfortunately, Gore lost to George Bush, Jr due to a funny system of balloting in the USA. Now, Bush is fighting for being elected for the second term, and the issue of labour standards is once again on the radar screen with Democrats making that an electoral issue.

The issue is not only prevailing in the USA, but remains also on the live screens of the trade unions in Europe. Thus, the debate has been polarised quite strongly between the rich and the poor countries. Here, the North-South divide is perhaps the most visible.

A vast literature substantiating the arguments of both proponents and opponents, has grown since then but a mutually acceptable solution still eludes this vexed issue of linkages between trade and labour standards. First, at Singapore, followed by Seattle, and then a tangential reference to labour standards in the Doha Ministerial Declaration leaves little doubt if the issue is really dead at the WTO.

Labour standards *per se* are not controversial. It is the internationalisation through the use of trade sanctions to enforce core labour standards, which has resulted in North-South divide. The proponents of social clause in trade agreements build their case on the assumption that, without enforceable standards, developed nations with high social standards will find themselves at a competitive disadvantage vis-à-vis less developed nations with low labour standards. In other words, nations are engaged in a regulatory "race to the bottom" or social dumping.

The opponents counter this argument by citing empirical evidence, which fails to support this "race to the bottom" thesis. Looking at recent data, nations with lower standards have not actually struck any gold in terms of either FDI or exports. In fact, a large share of world's trade and foreign investment still flows between developed countries, which maintain high standards.

In WTO, the proponents, mainly USA, with the support from some other developed countries and trade unions, like International Confederation of Free Trade Unions (ICFTU) and American Federation of Labour-Congress of Industrial Organisation (AFL-CIO), made strong efforts to push the inclusion of core labour standards in the Minsiterial Declaration at Singapore in 1996. But strong resistance by the developing world foiled their attempts. The Ministerial Declaration affirmed that ILO is the competent body to set and deal with the internationally recognised core labour standards, but a little window was created by a reference to a collaboration between the WTO and ILO Secretariats.

Developing countries, led by India and Malaysia, thought that the Singapore Ministerial Declaration on labour standards would settle the issue once and for all. But they were proved wrong when the issue reemerged at the Seattle Ministerial Conference in 1999.

In the run-up to the Doha Ministerial Conference in 2001, labour, the most contentious issue at Seattle, was deliberately kept off the table. The US, having burnt its fingers at Seattle on the labour standards issue, did not want to antagonise developing countries for the second time and put the Ministerial at risk once again. The switchover from a Democratic to Republican administration also made it possible for the US to drop its insistence on placing labour standards on the WTO agenda. Nevertheless, the EU occupied the driver's seat this time and tried to push the labour agenda. The Declaration simply reaffirmed the statement of the Singapore Ministerial Text regarding core labour standards.

In the meanwhile, the ILO, which over the years faced much criticism for its soft law approach, has been seriously trying the option of "what an activist ILO could do?" Thanks to the trade-labour debate, which brought a sea change in ILO's approach towards getting members to comply with core labour standards. Starting from the IPEC (International Programme on the Elimination of Child Labour) in 1992, to the adoption of the 1998 Declaration and now the recent release of the report of the World Commission on the Social Dimension of Globalisation, the ILO has taken several other initiatives and made significant progress in rallying global support for core labour standards, and in promoting their compliance. Credit also goes to Juan Somavia, the present ILO supremo, who grasped the opportunity offered by the trade-labour debate to reinvigorate the ILO.

Given this background, the present paper gives an excellent account of the developments, which took place since the first WTO Ministerial Conference held at Singapore in 1996. Instead of simply looking into the pros and cons of trade sanctions approach to deal with core labour standards, the paper has gone deeper on this issue. The author has made efforts to document some of the empirical facts, which resulted from the imposition of trade sanctions by developed member nations on poor countries owing to their non-compliance of core labour

standards. These sanctions might have helped in cleaning the export sectors (making them child-labour free), but the situation of the children who lost their jobs has either remained the same or further worsened.

In other words, this paper focuses more on highlighting facts rather than analysing the ideology behind this debate. Thus, this research report can provide some very good ingredients to both parties to look at the issue dispassionately. Both the proponents and the opponents of social clause have so far accused each other of not being serious enough to this cause. Furthermore, the study also strongly highlights the positive and more aggressive role that the ILO has played in the recent past in its efforts to improve compliance of core labour standards worldwide.

Jaipur
July 2004

Pradeep S Mehta
Secretary General

Chapter 1

Introduction: Directions on Trade and Labour Standards

The idea of core international labour standards is relatively uncontroversial[1]. However, the enforcement of labour standards through the international trading system has met with strong resistance from many developing countries (Cleveland 2002). Today, the problem of a linkage between trade and labour standards in the World Trade Organisation (WTO) has become one of the most pressing and challenging policy puzzles for the international community.

The subject of labour standards under the auspices of GATT/WTO is not new. It has long bedevilled previous efforts to liberalise trade. In fact, the trade-labour linkage problem was one of the issues that led to the stalling of the 1999 WTO Ministerial Conference in Seattle, USA.

The subject of labour standards under the auspices of GATT/WTO is not new. It has long bedevilled previous efforts to liberalise trade[2]. In fact, the trade-labour linkage problem was one of the issues that led to the stalling of the 1999 WTO Ministerial Conference in Seattle, USA. The ill-fated Seattle Conference once more illustrated the divergent views between developed and developing countries on the labour standards' issue.

Developing countries continue to see demands for the linkage as disguised protectionism by the developed ones. To them, their low labour costs and relatively flexible labour standards are their principal comparative advantage in the world economy wherein they face a host of disadvantages.

At a theoretical level, the debate concerning the trade-labour relationship has developed into what Professor Freeman (1994) has described as a "running battle" between those who want to see the granting of trade preferences conditioned on a respect for certain minimum international labour standards: that is, some kind of harmonisation of labour standards between and amongst trading partners, and those opposed to them. A vast scholarly literature on this subject exists. Yet, a mutually acceptable solution still eludes this vexed issue of linkage between trade and labour standards.

Developing countries continue to see demands for the linkage as disguised protectionism by the developed ones. To them, their low labour costs and relatively flexible labour standards are their principal comparative advantage in the world economy.

The purpose of this study is not to rehearse the never-ending story on the pros and cons of the trade-labour linkage. That is, it is not concerned with the validity or otherwise of the normative arguments for or against trade and labour standards linkage. As already pointed out, a lot has been done on the normative and empirical case for and against the linkage. This study only seeks to assess the current and possible future direction of the debate from the developing countries' perspective. It is hoped that this approach will provide developing countries with concrete policy suggestions in terms of the way forward.

The approach adopted by this study is important given that past empirical studies on the trade and labour standards issue seem to have failed to bring the debate to an end. The findings of the OECD studies (1996 & 2000), which are two of the most comprehensive studies on the subject, triggered controversy and were subject to different interpretations[3]. While the OECD studies did not settle the issue, they nevertheless illuminated the critical issues. They were very exhaustive in their coverage of the issues related to the relationship between trade and observance of core labour standards. It also addressed one of the dominant features of modern economic relations among states – foreign direct investment. The studies concluded that core labour standards do not play a significant role in shaping a country's trade performance. The OECD Study, in particular, concluded:

The findings of the OECD studies, which are two of the most comprehensive studies on the subject, triggered controversy and were subject to different interpretations. While the OECD studies did not settle the issue, they nevertheless illuminated the critical issues.

> *...The view which argues that low-standards countries will enjoy gains and export-market shares to the detriment of high-standards countries appear to lack solid empirical support...*
>
> *These findings also imply that any fear on the part of developing countries that better core labour standards would negatively affect either their economic performance or their competitive position in world markets has no economic rationale. On the contrary, it is conceivable that the observance of core standards would strengthen long-term economic performance of all countries.*

Charnovitz (1997) has, for example, argued that the OECD study "provides comfort to both sides of trade-labour debate" since "observing core labour standards does not undermine competitiveness, then attaining those standards would not hurt developing countries," and that "if flouting core labour standards does not enhance competitiveness, then there is no connection to trade[4]."

Several authoritative studies suggest that whatever negative effect there is of regulatory competition for markets and FDI, and the fear by developed countries of losing FDI and market share to countries with lower standards, cannot be attributed to any "race to the bottom" caused by developing countries.

This study does not intend to join the controversy on the empirical evidence, if any, of the impact of labour standards on trade. However, several authoritative studies suggest that whatever negative effect there is of regulatory competition for markets and FDI, and the fear by developed countries of losing FDI and market share to countries with lower standards, cannot be attributed to any "race to the bottom" caused by developing countries (Oman, 2000). FDI, in any case, is overly concentrated in OECD countries where labour standards are commonly observed both in theory and practice (Hirst and Thompson, 1994, 1996).

Since the issue is still with us, analysing the current situation with a view to draw lessons for the future is of great importance from a policy perspective. Given the alleged inconclusiveness of the empirical evidence, it is better to go beyond the rhetoric and address the efficacy of the proposed enforcement mechanism (by both the protagonists and antagonists) for core labour standards. In particular, this study seeks to find out how the trade sanctions approach has fared in practice. Has it proved to be better than the mainly voluntary and non-coercive ILO approach? This

comparison is very important for providing a new direction and possible way-out from this vexed debate.

The study is divided into six sections. Following this introductory chapter, chapter 2 provides a brief historical summary of the debate under the auspices of GATT/WTO. The historical overview starts from the Tokyo Round (1973-1979) when issues concerning non-tariff barriers (NTBs) were raised for the first time (Das, 1998). These included labour standards as well as efforts by developed countries for the inclusion of labour standards in the Uruguay Round agenda (1986–1994). Chapter 3 reviews the developments on the trade-labour standards linkage debate since the inception of the WTO in 1995, especially after the first Ministerial Conference of Singapore in 1996, to Doha 2001. It is hoped that a historical discussion of the evolution of the debate will place the current situation in its proper historical perspective from which useful pointers for the future may be derived.

Chapter 4 presents a critical analysis of the efficacy of the trade sanctions approach in comparison to the performance of the ILO in the post-WTO period. An analysis of other possible channels, such as bilateral and regional trade agreements, and preferential trade arrangements like Generalised System of Preferences (GSP), through which labour standards are being enforced through trade, will be provided under Chapter 5. Chapter 6 offers conclusions and policy recommendations, which will suggest the possible way out from the current apparent impasse.

Chapter 2

A Historical Overview of the Trade and Labour Standards Debate in the GATT/WTO

As noted in the introductory chapter, demands for the inclusion of a "social clause"[5] or for a social dimension to international trade, with trade sanctions against countries or companies that violate certain minimum workers' rights is an issue with a long history. This chapter provides an overview of the history of this debate within the GATT/WTO starting from the Tokyo Round up to the Uruguay Round.

It was during the Tokyo Round that a number of non-tariff barriers to trade were raised for the first time for inclusion in the GATT agenda.

The Tokyo Round – The Beginning of the Never-ending Story

While the United States, supported at times by a number of European countries, unsuccessfully argued for the inclusion of labour standards in the GATT since 1953, it was only during the Tokyo Round (1973-1979) that the debate on the issue started in earnest (Charnovitz, 1997). It was during the Tokyo Round that a number of non-tariff barriers (NTBs) to trade were raised for the first time for inclusion in the GATT agenda. At that time, it was becoming apparent that traditional trade barriers such as tariffs were falling and as a result countries turned their attention to 'other barriers' such as domestic regulation. The Tokyo Round therefore represented the first efforts to regulate in detail the domestic policies affecting trade (Roessler, 1996).

Developed countries, in particular the Nordic Countries and the United States, took advantage of the discussion of NTBs to argue for the inclusion of labour standards alongside other NTBs.

In response to the general perception that the GATT regime was inadequate in dealing with the growing number of trade distortions from disparate national regulation, an Agreement on Technical Barriers to Trade (TBT) supplementary to the GATT was negotiated and adopted in 1979. Developed countries, in particular the Nordic Countries and the United States (US), took advantage on the discussion of NTBs to argue for the inclusion of labour standards alongside other NTBs.

The US' increased demand for the inclusion of labour standards in the GATT during the Tokyo Round was partly due to what Professor Bhagwati has called the 'diminished giant syndrome' (Bhagwati, 1993). The Tokyo Round took place during a period of relative decline of the US' GNP and trade as other countries, in particular Japan, became major players in the world economy (Bhagwati, 1988). The decline in the US share of world trade and the rise of Far East countries during the Tokyo Round served to legitimise demands for fair trade (including conditioning free trade

to labour standards) in the US. There was a great perception then that the emerging trade rivals were gaining unfair competitive advantage due to low labour standards in their markets.

The US drive for inclusion of labour standards in the GATT agenda during the Tokyo Round was thus, among other reasons, motivated by a desire to blunt competition that was coming from emerging Asian economies, rather than actual concern about the welfare of workers in developing countries. This, of course, had a historical precedent: During the formative stages of the ILO, the United Kingdom's Government, for example, wanted labour standards linked to trade because of Britain's diminished global economic power, which made the Government weary of cheaper imports coming from the US and some continental states (Raghavan, 1996).

The US drive for inclusion of labour standards was, among other reasons, motivated by a desire to blunt competition that was coming from emerging Asian economies rather than actual concern about the welfare of workers in developing countries.

The Uruguay Round – The Story Goes On...

The trade-labour issue arose again during and up to the closing stages of the Uruguay Round in Marrakesh. In 1986, the US tried unsuccessfully to include the labour issue in the GATT agenda at the beginning of the Uruguay Round. A year later, in 1987, the US again unsuccessfully tried to convince the GATT Council to establish a Working Group on the issue of international labour standards, their relationship to the trading system and their possible relationship to the objectives of the GATT system.

Notwithstanding the above failures, the US led a group of countries (including Switzerland and some European Union member states) that forcefully contended for an explicit recognition of labour standards in the Final Act of the Conference that gave birth to the WTO. Developing countries argued effectively against any explicit recognition of the link between trade and labour standards. In the end the issue did not attract much attention during the Uruguay Round.

Developing countries' victory to keep the labour issue off the multilateral trade agenda during the Uruguay Round was thus a temporary one. The US, in particular, put the world on notice that it intended to pursue the issue of labour standards in future multilateral trade negotiations.

The fact that the Uruguay Round had many 'new issues' to deal with, explains in part why the labour standards issue did not attract attention or support. The opponents of the linkage (mostly developing countries) were, nevertheless, unsuccessful in their bid to completely remove the issue from the trade liberalisation agenda. The Trade Negotiating Committee left the issue open for possible future discussion.

Developing countries' victory to keep the labour issue off the multilateral trade agenda during the Uruguay Round was thus a temporary one. The US, in particular, put the world on notice that it intended to pursue the issue of labour standards in future multilateral trade negotiations (Brown, *et al.* 1996).

Chapter 3

The WTO and the Labour Issue

We noted in chapter 2 that the US expressed its intention to pursue the trade labour issue in future multilateral trade negotiations at the end of the Uruguay Round. It raised the issue again at the first WTO Ministerial Conference in Singapore in 1996. Thus, when the WTO was born in 1995, it already had its job cut for it in respect of the trade and labour issue. The world's economic super power was not about to relax its push for the inclusion of the labour issue on the multilateral trade agenda.

Norway, and the US, in particular, advocated for the establishment of a working group in the WTO to study the relationship of trade and labour standards. The EU on its part suggested the formation of a joint ILO/WTO Standing Forum on trade.

The Singapore Ministerial Conference – The End That Never Was...

The US, supported mainly by several developed countries, especially Norway, brought the labour standards issue at the WTO's first Ministerial Conference in Singapore in 1996. Norway, and the US, in particular, advocated for the establishment of a working group in the WTO to study the relationship of trade and labour standards (Singh & Zammit, 2000). The EU, on its part, suggested the formation of a joint ILO/WTO Standing Forum on trade.

Sustained opposition came from many developing countries. Confronted with this fierce opposition from the South, several industrial countries tried to find a middle ground by seeking a stronger co-operation between the WTO and the ILO.

Sustained opposition came from many developing countries. While there is a general perception that opponents of the trade and labour linkage are mainly Asian countries (needless to say that this is unfounded, given, for example, Brazil and Egypt's historic opposition to the discussion of the labour issue in the GATT/ WTO), in Singapore. Opposition to the inclusion of labour standards was shared by almost all the developing countries group of 77 (G-77) (Africa Recovery, 1997). Confronted with this fierce opposition from the South, several industrial countries tried to find a middle ground by seeking a stronger co-operation between the WTO and the ILO.

In the end, the Singapore Ministerial Conference (para 4 of the Ministerial Text) decided that:

> *We renew our commitment to the observance of internationally recognised labour standards. We believe that economic growth and development fostered by increased trade and further trade liberalisation 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 not, in any way, be put into question. In this regard, we note that the WTO and the ILO Secretariats will continue their existing collaboration* (WTO, 1996).

In the discussion of the outcome of the Singapore Ministerial Conference on the labour issue, there is often an erroneous tendency to concentrate on the written text to the exclusion of events prior to it. The paragraph on labour standards was a result of bitter exchanges between supporters and opponents of the linkage. The issue was so emotional and divisive that even developing countries that were opposed to the linkage disagreed as to how to achieve their objectives.

Some developing countries took the view that the text in para 4 should not be in the Ministerial Declaration as it still gave the protagonists an opportunity for bringing up the labour standards issue in the WTO (Egypt and Tanzania among them). Others (led by Malaysia), however, took the view that putting it in the Declaration would settle the way the WTO viewed the labour standards issue once and for all.

Some developing countries took the view that the text in paragraph 4 should not be in the Ministerial Declaration as it still gave the protagonists an opportunity for bringing up the labour standards issue in the WTO (Egypt and Tanzania among them). Others (led by Malaysia), however, took the view that putting the principles contained in paragraph 4 in the Declaration would settle the way the WTO viewed the labour standards issue once and for all (Khor, 1997).

As fate would have it, the labour section of the Declaration was given different interpretations even before the ink was dry. The Singapore Trade Minister and Chairman of the Conference, Yeo Cheow Tong, interpreted the Declaration as not inscribing the relationship between trade and labour standards on the WTO agenda. It also did not, in his view, provide for authorisation for any new work on the issue (Leary, 1997). Instead, it identified the ILO as the competent body to set and deal with labour standards.

Developing countries, including India and Malaysia, supported the Chairman's view that paragraph 4 of the Declaration meant that there would be no more talk of labour standards in the WTO. How wrong they were!

The main proponents for the social clause in the WTO saw the outcome of the Conference differently. In their view, the Declaration did not foreclose future discussion of the labour standards issue in the WTO. Members of the WTO must recognise that "issues of workers' welfare and workers' rights are absolutely part of the trade debate, whether we like it or not ideologically."

The main proponents for the trade-labour standards linkage in the WTO saw the outcome of the Conference differently. The US Acting Trade Representative Charlene Barshefsky was, for example, reported as telling a press conference that this was the text of a Declaration, which expressed the agreement of the Conference and that the Chairman's remarks were his own interpretation and did not represent the collective views of the Ministers. In her view, the Declaration did not foreclose future discussion of the labour standards issue in the WTO. In particular, she argued that the Members of the WTO must recognise that "issues of workers' welfare and workers' rights are absolutely part of the trade debate, whether we like it or not ideologically." (Khor, 1996)

The US was not the only country that interpreted the Singapore Ministerial Declaration as mandating future work on labour standards within the WTO. The French Trade Minister was, for instance, quoted as saying "the major debate on labour standards is here to stay in the WTO. It will never go away" (Khor, *supra)*. Similarly, the European Commission Vice-President pointed out that the Commission had made it clear that internationally recognised core labour standards are essential human rights and that the dialogue on the issue must be taken further *(ibid)*. The

International Confederation of Free Trade Unions (ICFTU) welcomed the Declaration saying that for 'the first time trade ministers have committed the WTO to core labour standards' (Khor, *supra*)

The Singapore Ministerial Declaration was therefore interpreted by the supporters of the linkage as not foreclosing further consideration of the trade and labour standards link within the WTO. Fears of developing countries, which were opposed to the mentioning of labour standards in the Declaration on the ground that it would give the proponents an opportunity to keep the issue alive in the WTO were therefore confirmed.

The Geneva 1998 Ministerial Conference... Yet Another Temporary Victory for the Antagonists

Developed countries, led by the US, attempted once again to have the issue discussed at the 1998 Ministerial Conference in Geneva. It may be that developed countries did not push the issue too much in 1998 given, that the Ministerial Conference coincided with the 50th Anniversary of the GATT/WTO.

Developed countries, led by the US, attempted once again to have the issue discussed at the 1998 Ministerial Conference in Geneva. In the face of fundamental opposition from large developing countries like Brazil and India, the issue was put on the back burner. It may be that developed countries did not push the issue too much in 1998 given, that the Ministerial Conference coincided with the 50th Anniversary of the GATT/WTO.

The fact that the labour issue was quickly dismissed in view of the fundamental opposition from developing countries did not mark the end of the debate in the WTO. A year later, in Seattle, the issue resurfaced with the US more determined to push its position through.

The Seattle Ministerial Conference – A Fiasco, and Trade Liberalisation Suffers a Setback

The US President, Bill Clinton, called for the creation of a WTO working group to study the interaction of labour and trade issues with a view to eventually establishing a set of core labour standards, which would allow trade sanctions against countries seen as violating those core rights.

At the Seattle WTO Ministerial Conference in 1999, the US was again at the forefront of countries calling on the WTO to address the labour issue. Needless to say that the United States reinterpreted the Singapore Declaration as not having removed the issue from the WTO agenda (Panagariya, 1999). The US President, Bill Clinton, called for the creation of a WTO working group to study the interaction of labour and trade issues with a view to eventually establish a set of core labour standards, which would allow trade sanctions against countries seen as violating those core rights (Molatlhegi, 2001). The US wanted the working group to prepare a report in two years on the relationship between international trade and employment, social protection and core labour standards. It also wanted the proposed working group to study the impact of derogations from national labour standards in export processing zones on trade (*ibid*).

While the United States called for the incorporation of labour issues into the GATT system during the Tokyo Round was partly due to increased competition for markets from Japan, as well as to the 'diminished giant syndrome' referred to earlier, the position it took at Seattle was, to a large extent, intended to gain political mileage at home. The Seattle Ministerial Conference was on the eve of US Presidential elections, therefore President Clinton, had

a political incentive to court the US labour movement's vote, which, like most developed trade unions, wanted to see the link between trade and labour standards in the WTO established.

The European Union (EU) also called for the inclusion of labour standards in the WTO at Seattle. Its proposal, however, was different in form from that of the United States. The EU's proposal advocated the setting up of a joint WTO and ILO forum with a remit to establish dialogue involving all interested parties on the issue of the relationship between trade and labour standards.

The EU also called for the inclusion of labour standards in the WTO at Seattle. Its proposal, however, was different in form from that of the US. The EU's proposal advocated the setting up of a joint WTO and ILO forum with a remit to establish dialogue involving all interested parties on this issue.

Canada also submitted proposals on labour standards at Seattle. It called for a WTO working group to examine the links between trade, development, and social and environmental polices and report to the WTO Ministerial Meeting (WTO, 1999).

No consensus could be reached during the Seattle talks on either the European Union's or the United States' position. Developing countries, supported by some non-governmental organisations from the developed and developing countries, successfully argued against any form of trade and labour linkage within the WTO. The failure to agree on the labour standards issue was one of the main reasons for the failure of the Seattle Ministerial Conference, which meant that a new round of negotiations could not be launched. The labour standards issue deployed in this way, intentionally or unintentionally by its proponents, served to delay further trade liberalisation. Failure at Seattle was thus a serious set back to the liberalisation of the global trading system.

The most instructive lesson to come out of Seattle was that attempts to include the labour issue on the WTO agenda could, and indeed did, distract attention and energies away from the market access negotiation priorities of developing countries.

Prior to the Doha Ministerial, there was little reference to labour standards in any of the preparatory negotiations at the WTO headquarters in Geneva. Following the change of administration in the US, the country seemed to be less interested while the EU for its part suggested that there was no question of the issue being raised again.

The Doha Ministerial Conference – The Battle of Interpretations Continues...

Prior to the Doha Ministerial Conference, there was little reference to labour standards in any of the preparatory negotiations at the WTO headquarters in Geneva. Following the change of administration in the US, the country seemed to be less interested, while the EU, for its part, suggested that there was no question of the issue being raised again (ICFTU, 2001). Developed countries' trade unions, led by the ICFTU, however, continued to lobby with their governments, as a result of which the issue was raised again at Doha. As usual, the US was at the forefront. Canada, Norway, Sweden and Germany supported it.

Developing countries continued with their opposition to the inclusion of labour standards into the WTO. The Asian countries, the G-77 and China reaffirmed that in their view the ILO was the competent body to deal with labour standards. Zimbabwe, India, Malaysia, Thailand, South Korea, Brazil, Pakistan and Indonesia were at the front of the opposition to bring labour standards issues into the WTO.

As noted earlier, developed countries were not as keen as in the GATT rounds and the past WTO ministerial conferences. It could, therefore, be said that the Seattle debacle was instructive to the extent that it showed for the first time that developing countries were no longer prepared to be passive bystanders in the shaping of the global trade agenda. Proponents of the introduction of labour standards into the WTO seemed to have learnt this lesson well. They were, accordingly, less vocal in their push to place labour issues on the WTO agenda in Doha for fear of a repeat of Seattle (Mehta, 2001).

While the supporters of the trade-labour linkage were less vocal in Doha, they were nevertheless tactical enough to ensure that the final declaration did not rule out a possible role for the WTO on the issue.

While the supporters of the trade-labour linkage were less vocal in Doha, they were nevertheless tactical enough to ensure that the final declaration did not rule out a possible role for the WTO on the issue. The Ministerial Declaration on the labour standards states:

We reaffirm our declaration made at Singapore Ministerial Conference regarding internationally recognised core labour standards. We take note of the work underway in the International Labour Organisation (ILO) on the social dimension of globalisation. (WTO, 1996)

The Doha Declaration fell short of completely ruling out any possible role for the WTO on labour standards. Firstly, reaffirming the Singapore Ministerial Declaration's position is a continuation of the legacy of that conference on the subject. It is a legacy of lack of consensus as to what the conference decided on labour standards.

As we have already seen, the proponent's view is that the Singapore Ministerial Declaration left an opening for future WTO work on the labour issue, while the opponents say it brought the matter to an end. If the US and other developed economies could attempt to rely on the interpretation of the Singapore Declaration to raise the issue at Seattle, there is no reason why they cannot do the same with the Doha Declaration. At Doha, it was decided to adopt the Singapore Declaration on the subject.

An analysis of the preparatory documents at Doha shows that a proposal for a clear and positive statement on the WTO position as regards labour standards was apparently not acceptable to all the parties. A significant line, recognising the ILO as a more suitable place to discuss labour standards, that appeared in the revised draft declaration of 27 October 2001, was removed from the final declaration at the behest of protagonists.

Secondly, an analysis of the preparatory documents at Doha shows that a proposal for a clear and positive statement on the WTO position as regards labour standards was apparently not acceptable to all the parties. A significant line, recognising the ILO as a more suitable place to discuss labour standards, that appeared in the revised draft declaration of 27 October 2001, was removed from the final declaration at the behest of protagonists (Mehta, 2001).

The deleted line read, "The ILO provides the appropriate forum for a substantive dialogue on various aspects of the [labour standards] issue." If this wording were retained, it would have drastically changed the nature of the trade-labour debate in so far as institutional roles are concerned. The role of the ILO would have been reinforced with completely different outcomes for the WTO's future role. In short, it would have brought the debate in the WTO to an end. Sadly, this was not what was done.

The trade-labour debate in the WTO is not over. To think otherwise would be a catastrophic mistake. It would be to ignore the fact that the same wording adopted at Doha has been used to raise the labour issue in the WTO in the near past. Developing countries, in particular, would be lured into a false sense of security. Not only is there a greater chance of the issue being brought back to the WTO, it is likely, as chapter 5 of this study illustrates below, that the issue will be moved to regional and bilateral trade arrangements involving developed and developing countries.

The trade-labour debate in the WTO is not over. To think otherwise would be a catastrophic mistake. It would be to ignore the fact that the same wording adopted at Doha has been used to raise the labour issue in the WTO in the near past.

Opponents of the linkage should continue with efforts to engage all stakeholders about the negative impact of the linkage and, above all, about the absence of theoretical and empirical evidence that supports the linkage. In so doing, we should be able to draw appropriate lessons from the history of the debate. The discussions in this chapter and chapter 2 revealed some lessons that should be kept in mind as the opponents prepare for the inevitable 'Second Coming' of the labour standards issue in the WTO.

Chapter 4

The Way Forward: Trade Sanctions or ILO Approach?

No one denies that labour standards need to be improved, respected and enforced. After all, the difference between protagonists and antagonists lies in the fact that the former see the international trading regime, particularly the imposition of trade sanctions, as holding the key to better global labour standards, while the latter ascribe a greater role to the ILO and other non-coercive approaches. This chapter compares the two approaches.

Proponents of the linkage seem unable to conceive of any way of promoting the respect for core labour standards without the application of trade sanctions or threat thereof, for failure to comply with such standards.

Trade Sanctions... The Most Controversial Element of the Trade-Labour Debate

One of the controversial issues, if not the most controversial, in the trade-labour debate is the proper role, if any, of trade sanctions in the enforcement of the agreed labour rights (Molatlhegi, 2001). Proponents of the linkage seem unable to conceive of any way of promoting the respect for core labour standards without the application of trade sanctions or threat thereof, for failure to comply with such standards. Reduced to its simplest form, the proponents' case is that market access should be conditional upon respect for core labour rights or that positive trade sanctions should be imposed upon non-compliant states.

The use or potential use of trade sanctions against countries which fail, refuse or are unable to comply with core labour standards is one of the factors that escalates the developed vis-à-vis developing countries divide, which has singularly come to define the trade and labour debate. Developing countries' opposition to the trade-labour linkage, alluded to in the earlier chapters of this study, is in fact a reaction to the potential threat of trade sanctions against those countries' small economies by large developed ones.

The use of trade sanctions to enforce core labour standards is neither advisable nor politically feasible. Sanctions are an imperfect enforcement tool. They typically reduce trade and lower economic welfare in all the involved countries.

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A Trade Sanction Approach is One-sided...

If the essence of the trade-labour link is seen as being able to invoke trade sanctions against non-compliant countries, there would be a huge asymmetry in the way in which sanctions operate. The US, the EU, and, to a lesser extent Japan can threaten enormous damage to small trading partners who are non-compliant with

agreed international labour rights, while the small economies would not be able to do likewise.

Trade sanctions can only be credibly applied by developed economies. There seems to be no doubt that to be credible, a threat or action to block imports from a trading partner must hurt the trading partner more than the country threatening to adopt the measure. Accordingly, developed economies' threat of sanctions carry more weight than ones made by developing countries, which, in most cases, depend on a few major exports to generate their foreign earnings. That is to say, only countries with large markets could threaten with credibility and actually cause damage, and in most cases, disproportionate damage by closing their markets. As Salazar-Xirinachs (2001) points out, accepting a link to market access is a way of institutionalising unilateralism in a multilateral context since no win-win outcome can be perceived.

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The Carnegie Endowment Working Paper Number 17 of 2001 entitled "Breaking the Labour-Trade Dead-Lock" eloquently captured the one sided nature of sanctions:

> *...in the hands of industrial giants, the sanctions stick becomes a huge club poised to wallop emerging economies and do significant damage. But when the stick is in the other hand [developing countries' hand], it shrinks to the size of a splinter that can annoy but do little harm to a large, developed, diversified economy.*

The Trade-Labour Issue is a Distraction from Market Access Concerns

The inclusion of labour standards with potential of trade sanctions in the agenda of the WTO would distract attention and efforts away from the main market access concerns of the developing countries. Developing countries' products (especially agricultural products) still face several barriers to developed countries' markets. Accordingly, developing countries would rather spend their limited energies and resources negotiating for improved market access (the main reason for the existence of the WTO). The Seattle fiasco bears witness to the fact that the labour issue can not only distract attention from market access concerns but also stall trade liberalisation in general.

The inclusion of labour standards with potential of trade sanctions in the agenda of the WTO would distract attention and efforts away from the main market access concerns of the developing countries.

Preeg (2000) has also observed that disputes over core labour standards and environmental issues at the WTO Seattle Ministerial Conference had very little to do with trade liberalisation. Rather since labour and environmental standards are generally lower in developing countries "the strong pressure brought by the United States, and to a lesser extent by the EU, to bring such standards within the WTO meant the threat of sanctions for non-compliance with the standards, that is, trade restrictions against exports of developing countries" was compelling. That is, developing countries are popular targets for trade conditionality and threat of trade sanctions because of their relative economic vulnerability.

Developing countries objections in Seattle (and indeed at other Ministerial Conferences and within the GATT) were not directed at the universality of core labour rights or free trade *per se, but* against the US' suggestion that trade sanctions should be imposed against countries that fail to observe core labour rights (Gantz, 2000). Trade sanctions could destroy a developing economy and have serious detrimental consequences for the economic development of poor nations and their citizens.

A Trade Sanctions Approach – A Callous Disregard of the Nature of Developing Countries Labour Markets or Plain Ignorance?

Developing countries objections were not directed at the universality of core labour rights or free trade* per se, but *against the US' suggestion that trade sanctions should be imposed against countries that fail to observe core labour rights.

Trade sanctions often miss their targets. In the vast majority of developing countries most workers are employed in agriculture, services and informal sectors of their domestic economies. In the case of child labour, for example, it has been found that the vast majority of children work in sectors far removed from the global economy (Maskus, 1997) and thus sanctions directed at imports would serve no useful purpose.

Only a very small percentage of child workers, probably less than five percent, are employed in the export industries in manufacturing and mining. The ILO estimations indicate that in developing countries child labour force participation rates are higher in rural than in urban areas and that 75 percent of children work in family enterprises. Fewer than five percent of child labourers are said to be employed in export manufacturing or mining and only one percent in export oriented agriculture (Panagariya, 2000).

Aggarwal (1995) found that over 77 percent of child labourers are in non-trade work such as agriculture, fishing, hunting, forestry, shoe shining, newspaper selling, restaurants and domestic work. As Salazar-Xirinachs (2001) has noted, even if morally well intentioned, a sanctions approach to compliance with labour standards fails to have any effect on the non-tradable sectors and the general conditions of underdevelopment that are actually at the root of the child labour problem.

The ILO estimations indicate that in developing countries child labour force participation rates are higher in rural than in urban areas and that 75 percent of children work in family enterprises. Fewer than 5 percent of child labourers are said to be employed in export manufacturing or mining and only 1 percent in export oriented agriculture.

The antagonists are not suggesting that the insignificantly low percentage of child workers in tradable sectors implies that the world community should not be concerned about the problem. Their argument, which is borne out by empirical evidence, is that trade sanctions are an inappropriate instrument to address the problem. That is, since a trade sanctions approach targets exporters who are responsible for fewer jobs, it is ill suited to provide a comprehensive progressive solution, which is needed.

The Trade Sanctions Approach Leaves its Intended Beneficiaries Worse Off and Compromises WTO Fundamental Objectives

Past evidence on the use or threat of use of trade sanctions to enforce labour standards indicates that this is a classic case of throwing the baby with the bath water. This happens at two levels. First, the threat or use of sanctions has in the past, in the case

of child labour for example, served to hurt the very children it supposedly set out to help, and left them worse off.

The case of child labour in Bangladesh is illustrative of the above point. In 1993, following a campaign against child labour and subsequent threat of trade sanctions by the US, terrified Bangladesh garment factory owners in Dhaka dismissed tens of thousands of children under the age of 16. At the time of the threat of sanctions, 30 percent of Bangladesh's garment export to the US were covered by the GSP and were subject to zero or less than Most Favoured Nation (MFN) duty (Panagariya, 2000). This explains the panic that gripped the exporters. Anecdotal evidence suggests that many of the children met a fate worse than in the garment factories (Addo, 2002). They ended up in more dangerous and less lucrative jobs such as working in poor and dangerous conditions in factories not producing for export, as street vendors and in prostitution (Panagariya, 2000). The same was true for child labour employment in soccer ball manufacturing units in Pakistan and carpet industry in Nepal.

In 1993, following a campaign against child labour and subsequent threat of trade sanctions by the US, terrified Bangladesh garment factory owners in Dhaka dismissed tens of thousands of children under the age of 16. Anecdotal evidence suggests that many of the children met a fate worse than in the garment factories.

The trade sanctions approach in the Bangladesh case ignored the fact that the existence of child labour reflects poverty (Maskus, 1997). Thus, abolishing child labour without providing alternative sources of income for the children and their families aggravated the children's poverty.

Second, the push for the linkage of trade and labour serves to slow down trade liberalisation efforts as it happened in Seattle due to the collapse of trade talks. This not only hurt the very developing countries' workers that the proponents claim to be concerned about, but it also compromises the fundamental objective of the WTO, which is further trade liberalisation.

A Trade Sanctions Approach Targets 'the Good Boys'

Trade sanctions can inflict pain and thus elicit compliance only from industries and governments engaged in international trade. As already pointed out, these industries employ few workers in developing countries. The critical point though is that evidence suggests that on average export industries offer better working conditions than domestic firms in the emerging economies. Aggarwal (supra), for example, found that multinationals in India, Philippines and Indonesia generally apply internationally accepted labour standards.

Trade sanctions can inflict pain and thus elicit compliance only from industries and governments engaged in international trade. The critical point though is that evidence suggests that on average export industries offer better working conditions than domestic firms.

It has also been found that pressure to compete internationally in most middle income developing countries in Latin America and East Asia has forced exporting firms to set working conditions at or close to those in developed economies. The OECD (2000) suggests that foreign companies are increasingly looking for more skilled and productive labour than is available in the 'low cost' areas, sometimes prompting the development of 'smart zones'.

It is instructive to note that even in export processing zones (EPZs), labour standards are generally higher in export firms than domestic firms. An ILO study (1998), has for example, found that "the vast majority of EPZs are covered by national labour laws of their countries, and ... physical conditions of work inside the zones are frequently better than those outside the zones" and that with regards to wages, workers' take home pay is often higher in the zones than outside the EPZs.

A Trade Sanctions Approach has not Worked Before and there is no Evidence that it will Work in Future...

The US unilateral imposition of trade sanctions for alleged non-compliance with labour standards through its GSP has failed in most cases to induce change of domestic polices of targeted countries.

In addition to the economic disaster that sanctions may bring to bear on developing countries, there is also great doubt as to the usefulness of trade sanctions in inducing domestic policy reforms. In practice, it is difficult to secure international co-operation needed to make trade sanctions work (Strydom, 1999).

The US unilateral imposition of trade sanctions for alleged non-compliance with labour standards through its GSP has failed in most cases to induce change of domestic polices of targeted countries. A study of countries petitioned under the US, GSP noted that "the 30 cases ended up being evenly divided between success and failure and, even in these cases it was difficult to know if it was the threat of sanctions or the focus of public attention that was the real motivation for change" (Bates, 2000).

Another survey of trade sanctions used by the US for a variety of objectives showed that such sanctions resulted in positive outcomes in less than one in five cases (Addo, 2002). In particular the US economic sanctions failed to bring democracy and respect for labour standards in Sudan, Iraq, North Korea, Burma, Liberia, Central African Republic, Chile, Nicaragua, Paraguay and Romania.

One critical shortcoming of trade sanctions is that they are prone to be invoked for political reasons. There is some evidence that suggests that the suspension of benefits have been concentrated against 'adversary' nations such as Nicaragua, Liberia and Syria and have been avoided in "friendly" nations with questionable labour rights' records such as Egypt, Indonesia and El Salvador.

One critical shortcoming of trade sanctions is that they are prone to be invoked for political reasons. The use of sanctions by the US under its GSP is yet another classic example of this potential abuse. There is some evidence that suggests that the suspension of benefits have been concentrated against 'adversary' nations such as Nicaragua, Liberia and Syria and have been avoided in "friendly" nations with questionable labour rights' records such as Egypt, Indonesia and El Salvador (Maskus, 1997).

The glaring failure of sanctions to induce change is highlighted by the failure of sanctions in then Rhodesia (now Zimbabwe) and US' embargo against Cuba.

The Trade Sanctions Approach is Guilty of Selective Interpretation of the WTO Dispute System

The trade sanctions approach is also based on a selective and narrow analysis of the practical use of the WTO dispute settlement system. Proponents argue that while the ILO has the expertise to formulate international labour standards, it lacks the 'teeth' to enforce those standards. Hence, there is a need to link the enforcement of international labour rights to the WTO enforcement

mechanism, which has the potential to authorise the imposition of trade sanctions to ensure compliance (Cappuyns, 1998). Proponents' envy of the WTO's dispute settlement mechanism, which on theory has the power to authorise trade sanctions, has served to disguise reality, which is that such an authority is more a matter of theory than of practice. In practice, most trade disputes within the WTO regime are settled before an injured party seeks permission to retaliate by way of trade measures.

In the event of a dispute between a developed and developing country, there would be greater incentives for a developed economy to invoke trade sanctions against the weaker party. Developing countries should for this reason continue to resist the inclusion of labour standards into trade agreements backed by potential use of sanctions.

The above observation should however not lead developing countries to accept the inclusion of labour issues into the trade agenda. The observation is mainly based on the outcomes of disputes between developed economies such as the EU against the United States. In the event of a dispute between a developed and developing country, there would be greater incentives for a developed economy to invoke trade sanctions against the weaker party (Jackson, 2000). Developing countries should for this reason continue to resist the inclusion of labour standards into trade agreements backed by potential use of sanctions. Notwithstanding the fact that the experience to date suggests that even within the WTO matters are generally settled before trade sanctions' authorisation.

Proponents of the trade sanctions approach are guilty of an arrogant and contradictory claim to moral high ground, which Deepak Lal calls "moral imperialism"[7]. First, implicit in the proponents claim is a view that sees developing countries leaders' as wicked and kind of deviants who deliberately subject their people to unsatisfactory working conditions. As has been rightly noted by the South Centre (Singh and Zammit, 2000), developing countries are committed to improving core labour standards. This is demonstrated by their commitment to raising their labour standards as manifested by various national and multilateral actions such as the acceptance of the 1998 ILO Declaration of Fundamental Principles and Rights at Work and its Follow Up mechanism, voluntary commitment to the ILO-IPEC Programme (discussed in section 2 of this chapter) and the high rate of ratification of ILO Conventions in general.

Developing countries are committed to improving core labour standards as manifested by their various national and multilateral actions such as the acceptance of the 1998 ILO Declaration and its follow up mechanism, voluntary commitment to the ILO-IPEC Programme and the high rate of ratification of ILO Conventions in general.

As regard child labour, for example, empirical evidence has revealed that parents and governments in developing countries would like their children to be in school rather than at work if it were affordable (Maskus, 1997). That is, the reason why, in general, developing countries are unable to implement many labour standards forthwith and much more widely is not because of their wickedness or the perversity of their governments, but essentially because of their economic circumstances and the structure of their economies.

Second, proponents argue for standards which they themselves do not live up to. Apart from the fact that workers' rights are also limited in some of the major sponsors of the linkage such as the US, they also have a poor record of ratification of core ILO conventions[8].

Third, proponents ignore the fact that most developing countries have a legislation that seeks to protect core labour standards. If the proponents were sincere about labour standards per se, they would have long recognised that what is needed is to help developing countries develop the necessary capacity and resources to be able to enforce their already existing high standards.

In sum, the trade sanctions approach should be resisted. First, it is misdirected in that it only targets firms that trade internationally while the majority of workers in developing countries are in informal non-trading sectors. Second, trade sanctions target the exporting firms, which in general, and comparatively, offer better working conditions.

If the proponents were sincere about labour standards per se, they would have long recognised that what is needed is to help developing countries develop the necessary capacity and resources to be able to enforce high standards.

Third, the approach is one sided in that it can only credibly be applied by developed countries against developing countries and not *vice versa*. Fourth, the sanctions approach has the potential to slow down the global movement to further trade liberalisation as it happened in Seattle. Fifth, the approach diverts international attention away from fundamental issues of imbalances in the world trade structure, including the issue of greater market access through accelerated restructuring of developed country economies and that of raw material prices, many of which are very low and continue to fluctuate wildly (Van Liemt, 1989).

Sixth, and perhaps most important, trade sanctions are a very blunt instrument to address the complex range of factors contributing to poor labour standards in most developing countries, such as poverty as well as economic and regulatory weaknesses.

The ILO Approach: An Appraisal

The ILO has, since its inception in 1919, been engaged in the setting of minimum international labour standards. These are established in the form of Conventions and Recommendations adopted by the International Labour Conference. A two-thirds majority adopts conventions during International Labour Conferences.

The ILO has, since its inception in 1919, been engaged in the setting of minimum international labour standards. These are established in the form of Conventions and Recommendations adopted by the International Labour Conference.

Once adopted, Conventions become binding upon those member states which have ratified them. However, member states are bound to report periodically on their law and practice in the areas covered by Conventions they have not ratified. The Governing Body decides on the frequency of such reports. Reports submitted on non-ratified Conventions help the organisation in the preparation of general surveys on how obstacles to ratification may be overcome.

All ILO members are, however, bound to respect the principle of freedom of association by virtue of their constitutional commitment to this ideal, regardless of whether they have ratified conventions dealing with it or not. The legal basis for this practice is the 1919 ILO constitution as subsequently modified by the Declaration of Philadelphia of 1944 (Servais, 1984). These two documents recognise freedom of expression and of association as the fundamental principles on which the ILO is based and as being central to sustained progress.

The ILO, however, in general "does not impose sanctions, financial, commercial or other" for the non-compliance with its standards (OECD, 1996). It relies on moral persuasion and sometimes embarrassing publicity to persuade violators of its standards to change their conduct (Adams and Singh, 1997).

The decision of the Singapore Ministerial conference that recognised ILO as the competent body to set and deal with international standards, the establishment of the link between free trade and labour policy in differing forms within regional trade arrangements, and the conditioning of trade preferences and concessions to respect of labour standards, by some individual and groups of developed countries forced the ILO to do a soul searching exercise in terms of how it could achieve its objectives. This resulted in the adoption of the Declaration of Fundamental Principles and Rights at Work in 1998, as well as devoting of greater attention to the ILO-IPEC Programme, to Article 33 of its constitution, and to the social impact of globalisation on employment, working conditions and labour standards. This section of the study discusses these initiatives as a way of comparing the ILO approach to the trade sanctions approach.

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The Declaration on Fundamental Principles and Rights to Work

As pointed out in the preceding paragraph, the increased interest in the relationship between trade and labour standards, especially since the formation of the WTO in 1995, prompted the ILO to engage in wide reaching discussions regarding the reform of its standards setting and enforcement procedures[9]. The latest of these initiatives, following the Singapore Ministerial Conference, was the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work[10].

The Declaration states that all members of the ILO have an obligation to respect, promote and realise the principles concerning the fundamental rights which are the subject of conventions dealing with: (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. The Declaration in particular rejects the use of trade measures in the enforcement of the principles contained therein.

The increased interest in the relationship between trade and labour standards, especially since the formation of the WTO in 1995, prompted the ILO to engage in wide reaching discussions regarding the reform of its standards setting and enforcement procedures.

The Declaration applies to all ILO members, whether they have ratified the relevant conventions or not. In order to achieve the objectives of the Declaration the ILO set up an extensive follow-up mechanism. The follow-up mechanism is promotional and not supervisory (Charnovitz, 2000). It provides for yearly reports on the efforts and achievements with respect to practical implementation of core labour standards. The mechanism also provides for the possibility of technical assistance and mobilisation of finance to enable progress in practical implementation.

In 2002 the follow–up procedure on the Declaration became operational. We can thereof, to a limited extent, assess the usefulness of the Declaration and its follow-up mechanism as a result of the reports that have been prepared in pursuance.

Following the coming into effect of the follow-up procedure in 2002, the compilation of annual reports on countries, which had not ratified one or more of the core standards, was prepared. In the same year, the organisation discussed and adopted the first global report on the core labour standard of freedom of association and the right to bargain collectively.

The Declaration was an indication of the renewal of the ILO's enforcement machinery aimed at focusing on core labour standards, stepping up promotional work, technical assistance and peer pressure.

The global report on freedom of association and the right to bargain collectively gave a general overview of the issue in all countries, independent of ratification of the relevant conventions. It also reviewed global trends. Following the report, the first plan of action under the technical co-operation on freedom of association and the right to bargain collectively was approved. The plan of action contains practical ways and means of helping ILO member countries to deal with shortcomings in the respect of concerned standards identified in the first global report.

Two other global reports have since followed. One on forced labour (2001) and the other on child labour (2003). A fourth global report on discrimination is under preparation for the June 2003 conference and as has been the case with other reports, it will be followed by proposals for technical assistance.

In sum, the adoption of the Declaration was an indication of the renewal of the ILO's enforcement machinery aimed at focusing on core labour standards, stepping up promotional work, technical assistance and peer pressure. While it is too early to conclusively measure the effect of the Declaration and its follow-up mechanism on the global respect for core labour standards, there are clear indications that a lot of progress has been made since the adoption of the Declaration five years ago. The Declaration has improved the ILO capacity to identify constraints to compliance with core standards in different countries and provided means and ways through which technical assistance may be well targeted to obtain the best possible outcomes.

The global reports pursuant to the Declaration have, for example, confirmed that most countries that fail to comply with core labour standards are overwhelmingly those with resource constraints, those involved in internal conflicts, or those lacking a functioning government

The global reports pursuant to the Declaration have, for example, confirmed that most countries that fail to comply with core labour standards are overwhelmingly those with resource constraints, those involved in internal conflicts, or those lacking a functioning government (Elliot, 2000). The new programme on freedom of association established after the adoption of the first global report has led to activities in more than 40 countries. The action on forced labour is underway. With the imminent adoption of the action on discrimination, the ILO is poised to have technical programmes for each of the core labour standards.

The International Programme for the Elimination of Child Labour...

The ILO's International Programme for the Elimination of Child Labour was launched in 1992 in order to assist member countries to find solutions to the problem of child labour. The Programme is now operational in more than 30 countries. It is funded by donor Governments and works in close co-operation with civil society, governments of beneficiary countries and other UN agencies. IPEC's objective is to work towards the progressive elimination of child labour by strengthening national capacities to address the child labour problem, and by creating a worldwide movement to combat it (ILO, 2003).

At the international level, ILO-IPEC has helped put child labour high in the world development agenda. Within the short space of ten years, the ILO has become the key United Nations agency to which member states turn to for advice and assistance on child labour.

What has been Achieved by ILO-IPEC?[11]

At the international level, ILO-IPEC has helped put child labour high in the world development agenda. Within the short space of ten years, the ILO has become the key United Nations agency to which member states turn to for advice and assistance on child labour. There is renewed interest in the promotion of international labour standards on the issue of child labour, i.e., ratification of ILO Convention No. 138 and Convention No. 182 on the Worst Forms of Child Labour.

At the country level, political commitment and a broad social alliance mobilised in most ILO-IPEC participating countries have resulted in enhanced interest and action. Many countries have defined their priorities and are implementing national programmes of action. Some countries have started investing financial and human resources to address the root causes of child labour and implement direct action and advocacy programmes in order to achieve the goal. New participating countries are moving from awareness–raising and sensitisation into comprehensive programmes in order to create change in the lives of working children (ILO, Synthesis Report, 1997).

At the country level, political commitment and a broad social alliance mobilised in most ILO-IPEC participating countries have resulted in enhanced interest and action. Some countries have started investing financial and human resources to address the root causes of child labour.

The next section provides a summary of five case studies, which highlight the effectiveness of the ILO approach as evidenced by the IPEC programmes.

The Five Case Studies on the Effectiveness of ILO-IPEC

The first example is of the case involving allegations of child labour in Bangladesh. It has already been noted that following the threat of sanctions against Bangladesh for use of child labour in it's garment factories, a lot of children were dismissed from their jobs without any alternatives. Fearing for the future of the Children, the ILO-IPEC and UNICEF negotiated a memorandum of agreement (MoU) with the Bangladesh Garment Manufacturers' Association, providing that all child workers would be removed but not until schools were made available to them.

Since the signing of the MoU in 1995, 353 schools have been built and 10,546 children under the age of 14 have been removed from work in the garment industries and put into special education programmes. As a result, the incidence of child labour in garment

factories in Bangladesh has dropped drastically. A system for compensation was also successfully implemented. It provides for partial financial support to the children and their families for the loss of income, in order to prevent the family from hardship and enable the children to participate in the education programmes.

In the first 18 months of the agreement, manufacturers accounting for nearly 70 percent had half of their soccer production transferred from homes (where children were engaged) to stitching centres. About 5,400 children enrolled in schools and other centres established by the programme.

The second case involved the use of child labour in the "soccer" industry in Pakistan, which came under pressure following calls to Nike and Adidas to ensure that their balls were not manufactured using child labour. The MoU signed in 1997 was modelled along the Bangladeshi one and was signed by soccer ball manufacturers, the US importers, the Pakistani Chamber of Commerce, various non-governmental organisations, as well as the ILO and UNICEF. Elliot (supra) reports that in the first 18 months of the agreement, manufacturers accounting for nearly 70 percent had half of their soccer production transferred from homes (where children were engaged) to stitching centres. About 5,400 children enrolled in schools and other centres established by the programme.

The third case is that of child labour in Peru. In the Programme to Eliminate Child Labour in the Brick Sector in Huachipa, near Lima, Peru, IPEC is working with Association of Innovation and Compatible Development of the Footwear and of Albacete (AIDECA). This NGO is experienced in the development field, focusing on social and technological issues and forging strong public-sector alliances, to provide a new economic model for families making bricks. AIDECA has developed a plan for a new kind of kiln and production system that combines efficiency with straightforward operation, low maintenance costs and low energy consumption. A new community NGO has been established, managed by the beneficiaries, for community governance and management of a "Social Development Brick Factory" for families whose children are not allowed to work. 50 percent of the profits are reinvested and the other half goes to social and educational projects.

In Retalhuleu, about 120 miles from Guatemala City, poor families are involved in crushing rock in quarries on the banks of the Samala River. The aim of the IPEC-backed project is to progressively withdraw children from work by offering improved technology for rock crushing.

The fourth case is that of child labour in Guatemala. In Retalhuleu, about 120 miles from Guatemala City, poor families are involved in crushing rock in quarries on the banks of the Samala River. The aim of the IPEC-backed project is to progressively withdraw children from work by offering improved technology for rock crushing. The implementing agency is Habitat, an NGO specialising in sustainable development and the environment, supported by IPEC. Children are withdrawn from the quarries to attend school. Families have formed a co-operative and brought their own equipment to crush the rocks, which will significantly improve their economic situation as well as release children from work.

The fifth case, also of child labour, comes from India. The M. Venkatarangaia Foundation (MVF), in India, began a project in the early 1990s, the goal of which was the total elimination of child and bonded child labour in targeted villages and areas in the Ranga Reddy district of Andhra Pradesh in Southern India. MVF's strategy relies on motivating parents, easing problems of enrolment and bridging the gap between the home and formal school. MVF does not view non-formal education as viable either

for universalising education or for eliminating child labour. To date, with IPEC's financial assistance, 85 villages have been made child-labour free, while in more than 400 villages all children below the age of 11 are in formal schools. A total of 15,000 working children have been sent to mainstream school. The MVF model is being replicated elsewhere in India.

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IPEC also provides funding to one of the standard-bearers in the fight against child labour: Global March. The organisation is now the leading advocate for the ratification and implementation of the ILO Convention No. 182 on the Worst Forms of Child Labour and has demonstrated that children can be significant agents for change.

IPEC-backed projects in beneficiary countries are aimed at creating awareness about the exploitative nature of child labour, preventing child labour, withdrawing children from hazardous work and providing them with alternatives. IPEC's multi-sectoral approach involving governments of beneficiary countries, employers and workers' organisations and civil society in the elimination of child labour has achieved a lot both in terms of raising awareness and in the practical elimination of child labour. Through its interventions, the ILO-IPEC Programme has been able to protect children in beneficiary countries from exploitative child labour and at the same time contributed to an open global trade regime.

One of the major achievements of IPEC, at least at a normative level, is that it led to a better understanding of the realities of child labour. This in turn facilitated the unanimous adoption of the Worst Forms of Child Labour Convention No. 182 in 1999. The convention has become the most rapidly ratified convention in ILO history with over 120 ratifications in less than three years. Closely related to this, is the fact that the ratification of the Minimum Age Convention No. 138 has more than doubled since IPEC came into being, notwithstanding the fact that before IPEC became operational, it was considered too rigid and unenforceable.

One of the major achievements of IPEC, at least at a normative level, is that it led to a better understanding of the realities of child labour. This in turn facilitated the unanimous adoption of the Worst Forms of Child Labour Convention No. 182 in 1999. The convention has become the most rapidly ratified convention in ILO history.

IPEC is a clear example of the effectiveness of the non-coercive approach to the promotion of labour standards with the ILO in the lead. The philosophy behind the programme is that countries that have problems with compliance with the requirements of core labour standards, in this case, child labour, should not be punished but rather supported though technical and financial assistance. IPEC has also proved that the vast majority of problems relating to core labour standards can be solved through the promotion of labour standards on a voluntary basis, backed up by technical and financial assistance for both the monitoring and implementation of the standards by the countries themselves.

World Commission on the Social Dimensions of Globalisation: The Continuation of the ILO Tradition

The ILO has never actively promoted the inclusion of a "social clause" in the multilateral trade agreements. At its inception, and even today, the ILO considered the provision of technical assistance to its members as one way of encouraging its members to improve their labour standards.

However, the ILO formally entered into the trade-labour debate in 1994. In his report to the 1994 Annual Labour Conference, the then ILO Director General, Michel Hansenne, raised the issue for discussion within the ILO. He proposed that the ILO should neither support the use of trade restrictions in promoting international labour standards nor the compulsory equalisation of social costs (ILO, 1994). Both measures were considered to be contrary to the ILO principle that trade should be a means to economic development, improved working conditions and the creation of jobs.

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The use of trade restrictions to promote labour standards, according to the Director General, would also have been contrary to the long-standing ILO procedure of promoting labour standards through co-operation and not coercion.

Subsequent to the Director-General's Report, the ILO set up a Working Party on the "Social Dimension of the Liberalisation of International Trade" (ILO, 1994) to consider the issue. The Working Party carried out detailed studies of the subject and presented a Working Paper to the Governing Body entitled the "Liberalisation of World Trade", which rejected the concept of equalisation of social costs, arguing that the extent of social protection should correspond to the particularities of each country and that it should as far as possible reflect the free choice of social partners rather than dictation by the international community.

In 1995, the ILO's Governing Body concluded that the Working Party "would not pursue the question of trade sanctions and that any further discussion of the link between international trade and social standards through a sanction based - social clause mechanism would be suspended" (Leary, 1996). Instead, the Working Party was directed to concentrate efforts on finding ways to improve the effectiveness and strength of the ILO's standard-setting and supervisory systems. Since then, the ILO has been engaged in wide reaching discussions regarding the reform of its standards setting and enforcement procedures. The latest of these initiatives has been the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work, which has already been discussed.

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Nevertheless, the adoption of the Declaration of Fundamental Principles and Rights at work did not mark the end of the ILO's search for better ways of enhancing its supervisory and enforcement mechanisms. The 2001 ILO Conference decided to form an inter-institutional World Commission on the social dimension of globalisation. An interesting point about the World Commission is that its formation was supported by a wide range of developing countries including Brazil (a traditional opponent of the labour trade link), South Africa, Chile and Burkina Faso.

The Commission was formally launched on 1 March 2002 and comprises presidents, politicians, academics, social experts, and labour and employer representatives who will act in their personal capacities in the effort to formulate concrete actions to guide and shape the process of globalisation.

The commission is required to:

- Establish the facts and outline the main contours and dynamics of the globalisation process;
- Examine the perceptions of workers, enterprises, investors and consumers as well as different expressions of civil society and public opinion from all parts of the world;
- Analyse the impact of globalisation on employment, decent work, poverty reduction, economic growth and development;
- Forge a broad consensus on the issues, including the involvement of interested international organisations, as well as the government and organisations representing workers and employers; and
- Launch a process for addressing the key issues posed by the global economy to make globalisation sustainable and promote the fair sharing of its benefits.

The formation of the Commission has served to provide better interaction between the ILO and other multilateral organisations such as the World Bank, the IMF and the WTO and businesses generally. In fact, the Commission has already indicated its willingness to ensure that the WTO contributes constructively to the ILO's work in the area. The requirement that members of the Commission serve in their personal capacities is critical in ensuring an objective assessment of the social aspects of globalisation in that members are freed from national and other group interests.

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The formation of the World Commission on the Social Dimensions of Globalisation is a clear indication of the ILO's recognition that the process of globalisation raises new and unique regulatory problems that may not necessarily be effectively tackled through its traditional tripartite structure. It is a recognition of the changed nature of the world economy and the ILO's preparedness to continuously review its work methods to meet new challenges.

A New Attitude to Article 33 of the ILO Constitution

As already pointed out, the ILO in general tends to use promotion, supervisory and peer pressure to induce compliance with labour standards contained in ratified conventions and in the 1998 Declaration on Fundamental Principles and Rights at Work. That is, ILO practice points to an organisation that is inclined to the use of publicity and technical assistance to ensure compliance with its standards.

The Governing Body may, however, in terms of Article 33 of the Constitution, recommend to the Conference to take such actions "as it may deem wise and expedient to secure compliance therewith". The current article arose out of a 1946 constitutional amendment.

The first ILO Constitution partially provided for the possibility of trade sanctions for failure to comply or take corrective action following the organisation's recommendations. It directed the

Commission of Inquiry to indicate "measures, if any, of an economic character against the defaulting government which it considered to be appropriate, and which other governments would be justified in adopting" (Charnovitz, 1987). Despite the presence of this provision, no such economic measures were taken and the clause was deleted from the ILO Constitution in 1946 and replaced with the current Article 33 (ibid.).

It is now settled that the amendment introduced to Article 33 of the ILO Constitution did not exclude the possibility of sanctions. The ILO's Governing Body has recently taken the position that the 1946 constitutional amendment was intended to broaden the range of measures that might be recommended instead of limiting those measures to economic sanctions as was the case before the amendment.

It is now settled that the amendment introduced to Article 33 of the ILO Constitution did not exclude the possibility of sanctions. The ILO's Governing Body has recently taken the position that the 1946 constitutional amendment was intended to broaden the range of measures that might be recommended instead of limiting those measures to economic sanctions as was the case before the amendment . This liberal attitude towards the meaning of Article 33, which is that the 1946 amendment did not seek to abolish the power to enforce sanctions was further confirmed in the way in which the ILO handled Myanmar's long standing problem of forced labour.

The 1999 ILO Conference approved a resolution that condemned Myanmar's non-compliance with the ILO's recommendations, prohibited technical assistance, except as might be necessary to implement the recommendations, and banned the country from most ILO meetings. This was the first such action in the history of the ILO. The Conference authorised the Governing Body to also consider whether further action under Article 33 was necessary.

In March 2000, the Governing Body invoked Article 33 for the first time in the ILO history against Myanmar for its failure to comply with the organisation's recommendations that the country should bring its laws in line with Convention No. 29, which bans forced labour. It recommended that the June conference of that year should take action against the country for its refusal to comply. Suggested measures included a call on member states to review their relationship with the Government of Myanmar and take appropriate action to ensure that Myanmar could not take advantage of such relationships to extend the system of forced or compulsory labour.

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Subsequent ILO reports indicate that major economic blocs such as the EU and the US had indicated a willingness to implement measures against Myanmar if it failed to comply with the recommendations of the ILO's Commission of Inquiry. It is however still unclear to what extent countries are in fact prepared to impose sanctions as requested by the ILO, as till today no country has done so.

Critics of the ILO have argued that the resolution imposing sanctions on Myanmar underscores the weakness of the ILO, in particular its lack of teeth, in that the ILO did not directly impose sanctions against Myanmar but only called upon member governments and other UN agencies to take appropriate action (Elliot, supra). This criticism is misplaced, especially if it is advanced within the context of comparing the ILO's enforcement system to that of the WTO.

The ILO's response in the Myanmar case is not radically different from the WTO approach in that it also leaves it to relevant governments to decide, within prescribed limits, the cost of enforcement they are willing to bear. The fundamental difference between the two organisations is the fact that the ILO would only invoke Article 33 once it is clear that persuasion, technical assistance and peer pressure have failed to induce compliance, taking into account the economic situation of each concerned country.

The ILO's response in the Myanmar case is not radically different from the WTO approach in that it also leaves it to relevant governments to decide, within prescribed limits, the cost of enforcement they are willing to bear.

The Myanmar case shows that the ILO is right to focus on positive efforts to work with countries to improve the enforcement of labour standards. It also indicates the willingness of the ILO, where non-compliant states are shown to be bent on violating labour standards, notwithstanding the provision of technical assistance, to crack the whip.

The ILO Approach is the Best Way to Promote Labour Standards

The protagonists would want us to believe that the perceived limited enforcement capacity of the ILO is the organisation' major undoing. The reality is that the ILO has many positive sides such as its unique tripartite structure. It is the only international organisation that grants co-decision making powers to the social partners and their international associations and thus, the only agency with the potential to mobilise social actors directly in implementing change as it has done through IPEC. In fact, much of the ILO's success can be attributed to its mainly non-coercive powers of promoting labour standards.

The reality is that the ILO has many positive sides such as its unique tripartite structure. It is the only international organisation that grants co-decision making powers to the social partners and their international associations and thus, the only agency with the potential to mobilise social actors directly in implementing change as it has done through IPEC.

The ILO approach to the promotion of international labour standards is superior to the sanctions approach, both on institutional and normative grounds. Institutionally, the ILO has varied experience both in setting and promotion of labour standards, which are applicable to countries at different levels of economic development.

The adoption of the 1998 Declaration on Fundamental Principles and Rights at Work, the IPEC programmes, the launching of the World Commission on Social Dimensions of Globalisation and its willingness to invoke Article 33 of the Constitution, show that the ILO is a flexible organisation capable of adapting to new challenges. All it needs is greater political and material support by its constituents. Needless to say that developed countries' support is crucial for the further evolution of the ILO into an organisation that is capable of addressing social effects of trade liberalisation (including labour standards), given that no one, including developing countries, doubts the importance of social justice, which is inherent in core labour standards.

The greatest challenge facing genuine supporters of labour standards in general and core labour standards in particular, seems to be how to increase co-ordination between different programmes of the United Nations agencies, the ILO, the WTO

and civil society, to help countries improve enforcement of standards, through technical assistance, training programmes, capacity building, and awareness building activities (Dessing, 2001).

IPEC, in particular, is a clear indicator of the ILO's appreciation of the fact that the promotion of labour standards can only be achieved by a multi-institutional approach that involves other actors and institutions with complementary instruments and greater powers in the field of development policies. IPEC has also shown the effectiveness of incentives over trade sanctions.

IPEC, in particular, is a clear indicator of the ILO's appreciation of the fact that the promotion of labour standards can only be achieved by a multi-institutional approach that involves other actors and institutions with complementary instruments and greater powers in the field of development policies.

Normatively, the ILO approach's superiority lies in its recognition of the fact that poor labour standards are often a result of poverty, and that to address the problem we have first to tackle the root causes of poverty. The problem in most developing countries is neither the absence of labour standards nor lack of political and moral will to protect workers from exploitation, but weak institutions and enforcement. It has emerged from the discussion of the ILO approach that the most effective and sustainable way of improving the implementation of core labour standards is to provide technical and financial assistance to countries that want to improve enforcement but lack the resources to do so, as is the case with most developing countries.

Chapter 5

Forum Shifting: The GSP, Bilateral And Regional Approaches To The Trade–Labour Issue

Although developing countries have to date succeeded in blocking proposals to integrate labour standards in the WTO, the two policy domains are already being linked by powerful economies through unilateral action and bilateral and regional agreements. The fundamental question to be answered in this regard is whether such developments indicate mutually beneficial agreements between developing and developed countries, which could not be hammered out in the WTO, or is it a case of powerful economies implementing that which they could not achieve at the multilateral level. This chapter reviews such arrangements with a view to help us understand the dynamics.

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Labour Standards and the Generalised System of Preferences

Part IV of the GATT, dealing with "Trade and Development", set the scene for the granting of trade preferences to developing countries by developed countries on a non-reciprocal basis through mechanisms outside the GATT (Trebilcock and Howse, 2000). This is mainly done through the Generalised System of Preferences (GSP), initiated under the auspices of the United Nations Conference on Trade and Development (UNCTAD), in 1968.

The GSP has three essential features. First, it entitles developed countries to grant trade preferences to developing countries on a non-reciprocal basis. Second, where such preferences are given, a derogation from the Most Favoured Nation (MFN) principle is allowed. Third, as opposed to the special relationship between former colonies and their colonial masters, the GSP is general in that it can be given to any developing country regardless of whether there had been a colonial relationship or not.

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The US GSP Scheme – Aggressive Unilateralism?[12]

Under the US GSP scheme, a country may not be designated a beneficiary developing country if it has not taken or is not taking steps to "afford internationally recognised workers' rights to workers in the country (including any designated zone in the country)". The workers' rights provisions in the US' GSP legislation defines

internationally recognised workers' rights to include: the right of association, the right to organise and bargain collectively, a prohibition on any form of forced or compulsory labour, minimum age for the employment of children, and the acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The US GSP scheme includes, among others, under 'internationally recognised worker rights', acceptable minimum conditions of work with respect to minimum wages, hours of work, and occupational safety, which do not fall within the universally recognised core labour rights.

The US GSP legislation entitles the US to unilaterally withdraw tariff preferences. In addition to its unilateral nature, the US GSP scheme includes, among others, under 'internationally recognised worker rights', acceptable minimum conditions of work with respect to minimum wages, hours of work, and occupational safety, which do not fall within the universally recognised core labour rights. In addition, the US itself has not ratified some of the Conventions to which it wants beneficiaries of its GSP to comply[13].

The European Union's GSP Legislation

In 1994, the EU established a direct link between trade and labour standards in the context of its relationship with developing countries through its GSP System. The EU GSP legislation recognises as minimum international labour standards: (i) Prohibition of forced and prison labour; (ii) the substance of ILO conventions 87 and 98 dealing with freedom of association and the right to bargain collectively; and (iii) the substance of ILO convention 138 dealing with the minimum age of employment. Developing countries, which fail to observe the substance of these standards, may lose their preferential access to the EU market.

In addition, with effect from January 1998, the EU Council Regulation, establishing the GSP, provides for special incentives in the form of additional preferences, which would be given upon request to countries which have adopted and applied the substance of ILO standards concerning freedom of association and collective bargaining.

The EU GSP Regulation for 2002-04 includes new incentives and provides for the GSP to be withdrawn in cases of "serious and systematic" violations of any of the core labour standards.

The EU GSP Regulation for 2002-04 includes new incentives and provides for the GSP to be withdrawn in cases of "serious and systematic" violations of any of the core labour standards (CEC, 2001). In terms of this Regulation, the EU can withdraw GSP benefits where there is substantive ILO criticism of the situation in the countries concerned, including the non-implementation of the recommendations of the ILO Committee on Freedom of Association. It is not clear what the use of ILO findings for coercive purposes such as the withdrawal of trade preference is intended to achieve other than negatively affecting the ILO process. First, the ILO conventions are intended to be binding only on those countries that have ratified them. To hold countries liable to standards to which they have not submitted to, in terms of the internationally agreed process, is clearly questionable.

Second, the use of the ILO standards to define the content of a social clause also raises a fundamental problem of principle. The adoption and subsequent ratification of ILO conventions is generally done on the understanding that no coercion, in the sense of trade measures or any other form, would be used to enforce such standards. To do so would be contrary to the spirit under which such conventions were adopted and ratified, and, more critically, to the ILO's basic principles (Molatlhegi, 2001). The ILO has already expressed its discomfort to this approach by doubting the usefulness of such practices to the Organisation[14]. There is a greater danger to the credibility of the ILO system in that the openness and frankness that member governments have shown may disappear once they are aware that the findings may not necessarily be used for the provision of technical assistance, but for the imposition of trade sanctions by a third party, such as the EU.

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The EU's new Cotonou Agreement with African, Pacific and Caribbean countries (ACP) also includes specific provisions on core labour standards. The provisions on core labour standards are said to be a basis for future co-operation agreements.

Free Trade and Transnational Labour Regulation in NAFTA

The North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico became effective in 1994. Prior to that, the sponsors of NAFTA had to contend with strong opposition from the labour movement in Canada and the US. Labour in these two countries feared that low wages and inadequate enforcement of protective labour legislation in Mexico would induce businesses to move to that country which would result in downward pressure on wages and plant closures in Canada and the US (Adams and Singh, 1997).

In order to appease the US labour movement, the US Government insisted on the inclusion of labour standards through what came to be known as the Labour Accord. The supplementary agreement known as the North American Agreement on Labour Co-operation (NAALC, Supplement of Labour Accord) was signed in 1993.[14]

In order to appease the US labour movement, the US Government insisted on the inclusion of labour standards through what came to be known as the Labour Accord. The supplementary agreement known as the North American Agreement on Labour Co-operation was signed in 1993.

NAALC does not set common labour standards or rights to which member countries must conform by harmonising their laws or standards. It does not create obligations to have the same institutions or procedures for enforcement of members' respective labour laws. It has preserved national sovereignty in the formulation of labour laws and setting of standards making "effective enforcement of domestic labour law" its focus.

The core obligation assumed by each of the NAALC parties is to "effectively enforce its labour law." (NAALC, Article 1). The notion of "effective enforcement of domestic law" is accordingly at the heart of NAALC (Compa, 1997).

NAALC, however, lists eleven labour principles to which member states commit themselves. These principles are freedom of association and the right to organise, the right to bargain

collectively, prohibition of forced labour, non-discrimination, equal pay for men and women, workers' compensation, prohibition of child labour, minimum wage, hours of work and other labour standards, migrant labour protection, occupational safety and health.

One of the controversies on the trade-labour linkage is the appropriate sanction to be imposed against those trading partners that fall below the agreed labour standards. NAALC has provisions for sanctions against defaulting parties. A fine of up to 0.007 percent of the volume of trade between the two countries can be levied against a government that fails to adopt an action plan recommended by an Arbitral Panel upon the finding of a persistent pattern of failure to effectively enforce its laws, relating to one of the labour principles subject to dispute resolution. In the case of successful action against Canada, the monetary judgement can be enforced through an order of the Canadian domestic courts. In the case of Mexico and the US it would be enforced through the withdrawal of trade concessions.

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An interesting feature of NAALC is that the fine so imposed must be used to improve enforcement in the subject area of arbitration. If the country complained against fails to pay the fine, the other countries may suspend NAFTA tariff benefits (raise the tariffs) to an amount and time necessary to collect the fine. NAALC thus stresses co-operation and consultation while providing for a quasi-judicial feature that can lead to fines or suspension of NAFTA trade benefits for persistent violation of certain labour rights and standards. That is, there is co-existence of co-operation and contention in NAALC.

Bilateral Trade Agreements

Developed economies are increasingly insisting on the inclusion of labour standards requirements in bilateral trade agreements involving developing countries. Such bilateral agreements go well beyond demanding improvements in core labour standards and include provisions concerning minimum wages, hours of work and measures relating to occupational health and safety.

The trend towards the inclusion of labour standards provisions in bilateral agreements is clearly exemplified by the US Trade and Development Act 2000, which embraces the African Growth and Opportunity Act and the US–Caribbean Trade Partnership Act.

The trend towards the inclusion of labour standards provisions in bilateral agreements is clearly exemplified by the US Trade and Development Act 2000, which embraces the African Growth and Opportunity Act (AGOA) and the US–Caribbean Trade Partnership Act (CBTPA). The AGOA conditions eligibility for US trade preferences on respect for core labour standards and the implementation of ILO Convention No. 182 concerning the banning of the worst forms of child labour.

The CBTPA for its part requires Caribbean countries applying for trade preferences to comply with core labour standards concerning the right to organise and bargain collectively. In addition, it requires countries to establish minimum wage and maximum-hour standards for workers and ban the use of child labour.

The US-Jordan and US–Cambodia trade agreements all have provisions on labour standards. The US Trade Representative has described the US-Jordan Agreement as the model of how bilateral agreements could be used to protect the environment and labour standards. As for Canada, it has extended the NAFTA model to its bilateral trade agreement with Chile (Elliot, 2001).

While the EU GSP scheme indicates that there are ways of creating a positive, incentive-based approach to the linking of trade, aid and labour standards if actors with sufficiently broad policy instruments are involved, the NAFTA labour side agreement represents a low profile approach that may be adopted at a regional level.

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An analysis of GSPs, bilateral and regional agreements whose parties are developed and developing countries shows two distinct features which should be of great concern to trade-labour antagonists in general and developing countries in particular. First, the definition of labour standards to be included in the GSP is unilaterally exercised by the grantor of preferences (developed countries). The recipient country has no recourse to challenge the inclusion of labour rights, which may not be universally recognised as core. Second, in the case of bilateral and regional agreements, the inclusion of labour standards has been at the instance of the developed and economically more powerful partners.

A new and dangerous front is being opened up in the battle against the trade-labour linkage. Regional and bilateral agreements with developing countries have been used and continue to be used by the developed countries to introduce issues they have difficulty in or those they have failed to introduce into the WTO such as labour standards.

Developing countries are more likely to be subjected to further external pressures to submit to bilateral agreements requiring them to achieve particular forms and levels of labour standards since these pressures are more difficult to resist than those exerted in multilateral fora. The fact that bilateral and regional agreements take place outside the multilateral system robs developing countries of collective strength, which they have been able to use effectively to keep off labour issues from WTO so far.

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There is a fundamental problem in terms of how developing countries can respond to the bringing up of labour standards in bilateral and regional arrangements. From an international trade law perspective, there seems to be very little developing countries can do in this regard. Take Chile's experience for example. Chile, having been denied the GSP benefits by the US because of its labour policies, requested consultations under the GATT, claiming that the US action was inconsistent with the principle that GSP benefits must be accorded to developing countries on a non-discriminatory basis.

Chile did not pursue the matter under the GATT dispute settlement procedures. It is doubtful whether it (Chile) could have succeeded.

While it is doubtful whether GSP benefits can be granted on domestic policy conditions, it is clear that there is no obligation to grant GSP benefits at all. Accordingly, any alleged inconsistency arising from the conditional denial of GSP benefits can be cured by denying GSP benefits altogether (Roessler, 1996). However, it is clear that winning the battle against labour standards conditionality in the WTO would not be the end of the matter as new fronts open up.

It is clear that winning the battle against labour standards conditionality in the WTO would not be the end of the matter as new fronts open up.

Developing countries should therefore develop new ways of dealing with the emerging threat to free trade through bilateral and regional agreements that include labour standards. There is an urgent need to go beyond the institutional arguments (e.g. ILO is the proper organisation to deal with labour standards). Such institutional arguments, while useful, seem not to have had an impact on the proliferation of bilateral and regional agreements that link trade and labour standards. Greater advocacy directed at all stakeholders in developed and developing countries is necessary to convince them that the linkage is unsustainable in principle, regardless of institutional arguments.

Chapter 6

Conclusion and Policy Recommendations

The analysis in this study focused on three interrelated areas. First, it gave a historic evolution of the debate on trade and labour standards under the GATT/WTO with a view to draw lessons for developing countries in their efforts to keep the labour issue off the multilateral trade agenda in the context of the WTO. Second, it gave a comparative analysis of the coercive trade sanction approach and the technical assistance incentive inspired approach as evidenced by the work of the ILO and other organisations since the formation of the WTO. The objective was to establish which of the two methods is a superior policy instrument for the promotion of respect and enforcement of core labour standards. Third and last, the study gave an analysis of emerging trends in the debate.

There are effective ways that can measurably expand the respect and enforcement of core labour standards in developing countries without including trade sanctions in multilateral, regional and bilateral trade agreements.

The most important lesson that comes from this study is that there are effective ways that can measurably expand the respect for and enforcement of core labour standards in developing countries without including trade sanctions in multilateral, regional and bilateral trade agreements. The study has provided a detailed case for the position that the manner in which the ILO promotes respect for labour rights (supervisory mechanism, persuasion, and provision of incentives, peer pressure and provision of technical assistance) is one such approach.

Most importantly, the ILO has shown flexibility in responding to regulatory challenges brought by globalisation by, among others, refocusing on core labour standards, involving other multilateral organisations in the promotion of labour standards, the formation of the World Commission on the Social Dimensions of Globalisation and by its willingness to invoke the provision of Article 33 of its Constitution where there has been wilful non-compliance.

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As regards the direction that the debate is taking, the sad conclusion, at least from the point of view of most developing countries, is that the debate is not dead. It is likely to come back to haunt the trade liberalisation efforts within the WTO.

There are also two emerging trends outside the WTO: one is positive, the other negative. The positive trend is an emerging recognition of the fact that the principal goal of any initiative should be aimed at encouraging national governments to adopt, implement and enforce core labour standards, since a lot of developing countries already have a legislation intended to protect core labour standards. That is, save for a few 'rogue states', non-observance of labour standards is more a factor of lack of effective

institutions, poor or weak regulatory frameworks, and resource constraints. In other words, there is a great acceptance of the fact that poverty, poor governance and extensive informal sectors are often the main cause of the weak implementation of core labour standards in developing countries.

A lot of countries, both developed and developing, non-governmental organisations and United Nations agencies have accepted the ILO's central role in the sphere of labour standards, hence the increased collaboration between the ILO and other development agencies. The multi-institutional, multisectoral approach, with the substantial involvement of the ILO, comprising instruments from a different policy domain, is gaining currency. The negative trend is the marked increase in the inclusion of labour standards in bilateral and regional agreements involving developed and developing countries. What is even more disturbing is the fact that such arrangements include labour standards such as minimum wages in respect of which there is no consensus. Bringing issues that have been rejected in the WTO to bilateral and regional levels clearly undermines the credibility of the WTO and robs developing countries of the collective strength which hitherto they have used to keep the labour issue off the WTO agenda.

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Recommendations

The major policy recommendations that follow from the analysis in the study, and its conclusions, are:

1. Demands coming from developed countries to bring labour issues in the WTO are motivated by economic (fear of competition from developing countries) as well as by domestic political reasons that have nothing to do with global welfare.
2. The role of the labour movement in the developed economies has been critical in defining developed countries' position on the issue. Ways must be found to engage the labour movement both in developed and developing countries in the debate on trade and labour relationships.
3. Research and dissemination of findings to different stakeholders in both developed and developing countries are critical since the perceptions of the stakeholders shape government positions.
4. Rhetoric is important: Positioning the issue as a human rights issue and concerns about workers' welfare has been an effective weapon in the hands of the proponents.
5. There is a great and urgent need to expose the limitations of the sanctions approach as a way of promoting the adoption and enforcement of labour standards. In particular, a lot of advocacy should be directed at showing that the really cause of non-enforcement of core labour standards in developing countries is poverty, which can be reduced by greater access to markets in developed economies.
6. There is a need to showcase success stories of the non-coercive approach to the widest possible audience in both developed and developing countries.
7. Developing countries should strive for unity on substance as well as form in so far as the labour issue is concerned. The wording of the Singapore Declaration that resulted in the 'battle of interpretations' was a result of the developing countries' lack of unity on form.
8. Developing countries should develop new ways of dealing with the emerging threat to free trade through bilateral and regional agreements that include labour standards. There is an urgent need to go beyond the institutional arguments. Greater advocacy directed at all stakeholders in developed and developing countries is necessary to convince them that the linkage is unsustainable in principle regardless of institutional arguments.

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Endnotes

1 There is now an emerging consensus that the following are core labour standards: freedom of association and effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective elimination of child labour and the elimination of discrimination in respect of employment and occupation. These rights are embodied in the International Labour Organisation (ILO) Declaration on Fundamental Principles and Rights at Work of 1998.

2 A detailed history of the trade-labour debate can be found in Hansson *Social Clauses and International Trade: An Economic Analysis of Labour Standards in Trade Policy* (1991) and Charnovitz "The World Trade Organization and Social Issues" (1994) and "The Influence of International Labour Standards on the World Trading System: A Historical Overview" (1987).

3 For a detailed discussion of the OECD Study see Baatlhodi Molatlhegi, *Trade and Labour Interface in the Context of Economic Integration: The Case of the Southern African Development Community* (SJD Thesis, University of Toronto, 2001).

4 Both supporters and opponents of the trade-labour linkage have in the past attempted to rely on the OECD study for their positions. In addition to Charnovitz (1997) see C. Taylor, "Linkage and Rule-Making: Observations on Trade and Investment, and Trade and Labour" (1998) 19 U. PA. J. INT'L ECON. L 639

5 Gijsbert van Liemt has usefully defined a social clause as a clause that '...aims at improving labour conditions in exporting countries by allowing sanctions to be taken against exporters who fail to observe minimum standards. A typical social clause in an international trade arrangement makes it possible to restrict or halt the importation or preferential importation of products originating in countries, industries or firms where labour conditions are inferior to certain minimum standards' in Gijsbert van Liemt, "Minimum Labour Standards and International Trade: Would a Social Clause Work?" (1989) 128 INT'L LABOUR REVIEW 433.

6 The ordering of this section borrows heavily from "Breaking the Labour-Trade Dead Lock", Working Paper 17 of 2001, Carnegie Endowment.

7 http://seattlepi.nwsource.com/printer/index.asp?ploc=b

8 See South Center (2000), *The Global Labour Standards Controversy: Critical Issues for Developing Countries* for detailed discussion.

9 See ILO Director - General's Report to the International Labour Conference, 85th Session entitled "The ILO, Standard Setting and Globalisation" which discusses various proposals for reform. The Report is available at the ILO website (www.ilo.org)

10 ILO Declaration on Fundamental Principles and Rights at Work, June 18, 1998. The history of the Declaration is discussed in Brian Langille, "The ILO and the New Economy: Recent Developments" (1999) 15 INT.J.COMP. L.L.R. 229 and Kari Tapiola, "The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up" (2000) 37 BULLETIN. COMP. LAB. RELS. 9.

11 This section is mainly on information obtained from the ILO-IPEC website, which can be accessed through the ILO page, www.ilo.org.

12 The phrase 'aggressive unilateralism' was first used by Professor Bhagwati and Professor Alston in their critique of the US unilateral conditionalities for granting trade preferences.

13 For a detailed criticism of the US GSP scheme for its violation of public international law and inconsistencies see Phillip Alston, "Labour Rights Provisions in US Trade Law: 'Aggressive Unilateralism" (1993) HUM. RTS. Q 1.

14 Former Director-General of the ILO, Hansenne is quoted as having said, "While there is nothing in the Constitution which forbids it [conditioning trade concessions to the respect of ILO standards], its utility to our organisation is by no means clear and our supervisory machinery could suffer if the conclusions that result from it are used in the context of coercion." See ILO, *Defending Values, Promoting Change: Social Justice in a Global Economy: An ILO Agenda* (Report of the Director-General, International Labour Conference, 81st Sessions, 1994) at 69.

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It has explored the impact of these trade sanctions and finds that these sanctions resulted in the contradiction of the basic objective, i.e., elimination of child labour. By banning the import of those goods in the production process of which child labour was used wholly or partly, the developed countries have aggravated the sufferings of child labour and their families.

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Create a questioning society through empowerment of civil society representatives thus ensuring transparency and accountability in the system.

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