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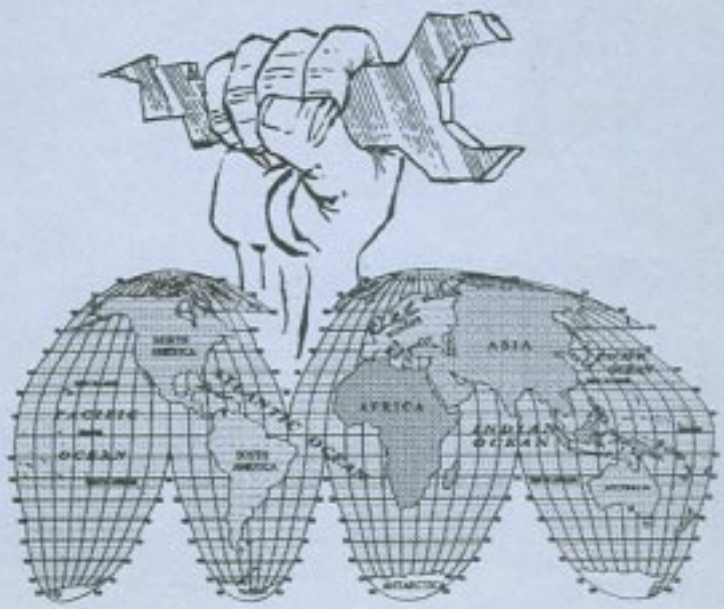
Trade, Labour, Global Competition and the Social Clause



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TRADE, LABOUR, GLOBAL COMPETITION AND THE SOCIAL CLAUSE

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Executive Summary

The social clause issue has remained one of the most heated areas of international debate for a number of years. The quality of that debate has not met its volume and the real issues underlying the issue have rarely been analysed as a whole. There is little doubt that the impact of imports on employment and wage inequality in the developed world is considerably less than is imagined in the popular mind. There are a number of other factors in the equation that have a far greater impact. However, these factors can generally be ascribed to the process of economic development of which globalisation is an important driving factor.

For the shorthand of globalisation we will define the opening up of markets to greater economic contestability that makes firms behave in a more competitive manner. This wider impact of globalisation is a far more important psychological factor in the debate about trade and labour that the social clause has sprung from.

The economics of the trade/labour linkage would tend to indicate that worrying about imports is the wrong way for workers and their organisations to deal with the international trade environment. However, this is only one part of the social clause debate, and a relatively small one at that. The question of "what sort of world we want to live in" is central to the social clause issue and one that impinges on the idea of the social clause as a human rights issue. Here, we appear to be on more solid footing.

There are certain basic workers rights that are recognised almost globally to be applicable to all workers. However, that is as far as the firm footing goes: the matter of enforcement causes that firmness to turn to mush. Some argue that no enforcement is necessary and that development will enable workers to enforce their own rights. It has to be said that this is the position taken by many developing world governments and by most of the international business lobby. It is most certainly not the position of the international trade union movement, or a large number of development non-governmental organisations in the North.

In conclusion, the following are the arguments of this paper:

- international trade is not a significant cause of unemployment in developed world economies. However, this impact is disproportionately felt in certain industries and in certain geographic regions;
- a social clause based on the desire to protect workers in developed countries from trade would be a bad thing;
- some basic labour rights are human rights and are worthy of promotion and protection;
- a simple WTO route for a social clause will not produce the desired results, as far as the promotion of workers' rights are concerned;
- a simple ILO route for a social clause is unworkable without the ILO being given far more teeth to enforce agreements. However, giving the ILO these teeth would be the optimal approach; and

- a hybrid approach, recognising all the complex elements of the debate would be preferable to placing it entirely in the WTO or in a toothless ILO.

Promotion of labour rights as human rights is something that the international community must grasp. Workers claiming these rights deserve the protection of the international community. This protection should be offered by the ILO. The ILO should be granted sufficient power to enforce agreements and conventions fully and fairly. If this is not forthcoming the approach, calling on the enforcement credibility of the WTO, will be continue to dominate the stage.

Introduction

On the one side have been the outright protectionists who have argued of 'social dumping'. On the other side lie the ideological neo-liberals who have argued that there is no link between trade and labour

The debate over the social clause has very often been a very peculiar one. On the one side have been the outright protectionists who have argued that employers paying wages below those being paid in the West are guilty of 'social dumping'. On the other side lie the ideological neo-liberals who have argued that there is no link between trade and labour, or at best a very small one, and that, anyway, workers' rights get in the way of the mobility of labour. Very often the debate has actually occurred on two separate planes, with very little interaction between the two approaches.

Too many studies of the trade/labour link have merely looked at imports and have failed to take account the multifarious effects of increased global competition on domestic employment. Such studies have also failed to take into account the knock-on effects of import competition and the bewildering sense of disquiet felt by many workers. While this may be dismissed as an unscientific charge, it is unlikely to go away as a problem.

The progress of the free trade agenda can only take place if there is sufficient public support for the programme. While this has tended to operate in the shadows of political debate in the past, it is increasingly moving centre stage. This lack of exposure has insulated many pro free traders from the need to engage in public debate and has given them a sense of arrogant superiority in the face of what is increasingly a populist backlash.

On the other side of the fence, the forces lined up in favour of the social clause have very often mixed up their economics and their politics. Despite their many failings, the economists studying the issue have fairly conclusively established that there is a relatively small link between import competition, and unemployment and wage increasing disparity. The breadth of these studies have formed a veritable canon of literature that refutes many of the more outlandish claims about "foreigners stealing our jobs". There has often been a blurring of the arguments to try and justify them one against the other.

The social clause debate is comprised of an economic argument and a moral argument. The aim of this paper is to attempt to tread the path between these "straw man" positions and to draw together the evidence, the theory, and the practical experience of social clauses

The social clause debate is comprised of an economic argument and a moral argument. In a sense it is about the sort of world we do live in and the sort of world we want to live in. Proponents of the social clause have very often mixed these approaches up and argued that because we have a vision of a world we want to live in, the world we do live in must logically conform to it. This is very rarely the case.

The aim of this paper is to attempt to tread the path between these "straw man" positions and to draw together the evidence, the theory, and the practical experience of social clauses. We will deal with the issue in two basic parts, mirroring the debate, and anchoring the evidence.

Part I will focus on the issue of social dumping: commonly thought of as the use by companies/countries of low labour standards to unfairly compete against other companies/countries who offer higher labour standards and thus have a higher cost base. This part will deal with the economics of the trade/labour link.

Part II will deal with the issue as part of the debate about workers' rights as human rights and will concentrate on the argument that certain labour standards can be viewed as basic human rights issues and their infringement is not a matter of employment practice but of basic human dignity.

Part III of the paper will outline the practical experience we have of social clauses as they exist in current legal measures and look at how the issue has evolved at the WTO and other international institutions. This part will also examine the Northern as well as the Southern perspectives of the debate.

Part IV of the paper will try to draw all of the previous sections together to form a possible middle way for the issue.

Part I

Social dumping?: The economics of the trade/labour link

The debate about the relationship between trade and employment, and wages is a very old one. This point is not an entirely academic one: many of the positions taken in the debate about the relationship often borrow from sources the proponents are often unaware of.

The traditional, neo-classical, conception of trade stems from a Ricardian analysis of a two country-two commodity model

Douglas Irwin in his comprehensive overview of the intellectual history of free trade charts the manner in which free trade has evolved as an idea in political philosophy.[1] His intellectual journey traverses the ancient Greek attitudes to the sea and the merchant class, the early Christian attitude to commerce and the power of Providence through to the mercantilists and modern trade theory.

The neo-classical approach

The traditional, neo-classical, conception of trade stems from a Ricardian analysis of a two country-two commodity model. Each country will export that good in which it has a comparative advantage.

For most modern observers of trade policy the development of neo-classical economics of most relevance to the trade/labour debate is the Heckscher-Ohlin-Samuelson (HOS) Model

Ricardo's famous example of the UK exporting cloth to Portugal and Portugal exporting wine to the UK assumed a given set of factor endowments. The Ricardian model was based on a single factor of production, i.e. the labour. However, it is undoubted that land and climatic factors have a significant effect on the ability of a country to produce certain goods.

Northern England, at the time of Ricardo, had damp climates ideal for weaving, Portugal having sunny, warm climes for grape growing. The position of factor endowments has continued to dominate trade policy theorising.

For most modern observers of trade policy the development of neo-classical economics of most relevance to the trade/labour debate is the Heckscher-Ohlin-Samuelson (HOS) Model. The HOS model addresses a two economy, two good, two factor endowment situation. Each country has perfect factor mobility between two factors (such as capital and labour or between land and labour) and that these two factors are used in different quantities in the two products produced.

The long and short of the model stipulates that, other things being equal, each country will produce that good in which it has a factor abundance

The long and short of the model stipulates that, other things being equal, each country will produce that good in which it has a factor abundance. This may mean that it has a factor abundance of capital or land over labour (i.e. a high capital-labour, land-labour ratio) or vice-versa (i.e. it has a high labour-capital and high labour-land ratio). Each country will thus export the good produced using the most

intensive utilisation of that factor of production of which it has an abundance.

The impact of protective tariffs

The approach brought to the traditional factor-abundance model of Heckscher and Ohlin by Stolper and Samuelson focused on the impact of protective tariffs on the relative earnings of each factor of production.

If the import-competing sector produced a labour-intensive good, an import tariff could without question raise the real income of labour and reduce the real income of capital...

This is immensely important for the utilisation of protective tariffs for protecting employment. Stolper and Samuelson argued that placing a high tariff on the imported good (with the reverse factor utilisation of the exported good) would increase the domestic price of the imported good. This would act to increase the real return to the scarcer factor of production in the importing country and thus reduce the real return to the abundant factor of production used intensively in the exported good.

As Irwin explains: "The implication is clear: if the import-competing sector produced a labour-intensive good, an import tariff could without question raise the real income of labour and reduce the real income of capital...Furthermore, if all land (as the factor in relative abundance) were owned by just a handful of individuals, free trade might reduce the real income of the mass of the population."[2]

The fact that free trade might undermine the position of abundant factors of production is important when one realises that the abundance of a factor of production can be measured in two manners. Firstly, a factor of production can be physically abundant and secondly, the factor can be abundant in price terms.

For labour, as a factor of production, it is obvious that many developing countries have abundance in both terms. Huge populations and large-scale unemployment and underemployment provide for abundance in physical terms; the low cost of such labour in developing countries indicates the abundance of the factor in price terms.

The focus of traditional trade theory on country-to-country trade, with their conceptions of factor endowment was undermined by a more firm-centric approach to trade developed in the 1980s.

Strategic trade policy approach

The approach, which came to be known as Strategic Trade Policy, sought to model a firm/industry trade model. The work of Brander and Spencer was the first consistent attempt to look at the ability of government policy to manipulate the position of trade-exposed industries. Their work showed that certain actions by a government could act to increase the barriers to entry for foreign firms, and increase the profits of domestic firms at the same time. The model that they developed was quickly seized upon by governments the world over to justify their own protectionist policies.

The work of Brander and Spencer showed that certain actions by a government could act to increase the barriers to entry for foreign firms, and increase the profits of domestic firms at the same time

The importance of the work of Brander and Spencer and the work that followed it was not so much in the usefulness of their model, but in the use to which it was put by policy makers. The model that they posited relied on a unilateral ability of a country to act against imports and in favour of domestic firms, without retaliation.

Many of the most notable examples of strategic policy, centred on R&D funding and other such subsidies was done in the full knowledge that other governments were closely monitoring the activity and pressuring for change

The model assumed that governments acted behind the veil of ignorance that shielded their activities from foreign firms and governments. This fact was not taken into account when politicians sought to justify their own strategic behaviour. Indeed, many of the most notable examples of strategic policy, centred on R&D funding and other such subsidies was done in the full knowledge that other governments were closely monitoring the activity and pressuring for change. The pressure from the US government on European countries over the Airbus project being a case in point.

The central importance of the strategic trade policy argument for labour was the belief that the economy was structured with some industries different to others. The argument, not that different from the HOS model, argued simply that:

- certain industries pay more than others, and
- certain industries have positive externalities.

Positive externalities can include higher wages for the workers concerned, better training, better educational attainment and overall a better educated workforce

The argument that different industries pay more than others is not new to trade economics, although it tended to stay as an argument in labour and industrial economics. As the discussion below on empirical evidence on the trade/labour link indicates, the reasons for this can be numerous. The fact that the high technology industries, which the common target of strategic trade boosting, pay higher wages might have as much to do with returns to education and training and with concentration, as it has to do with any inherent benefits tied to the sector.

Potato-chips-or-silicon-chips argument

The popularity of strategic trade policy during the 1980s and early 1990s gradually weakened as countries started to realise that such policies were often more difficult to maintain than had initially been thought

Similarly, the positive externalities from specific industries can be overplayed. All industries produce different externalities in the course of their activity. The issue lies at the centre of the infamous potato-chips-or-silicon-chips argument. Positive externalities can include higher wages for the workers concerned, better training, better educational attainment and overall a better educated workforce. However, the observance of these positive externalities can often be more imagined than real and the ability to capture these externalities for other firms and for society as a whole can prove elusive.

The popularity of strategic trade policy during the 1980s and early 1990s gradually weakened as countries started to realise that such policies were often more difficult to maintain than had initially been thought. In game theoretical terms, the monitoring and informational costs were comparatively low for all participants: unilateral action was thus extremely difficult.

Given that unilateral action was difficult it made increasing sense to try to constrain the use of such strategic policies: if all countries instituted such policies then all countries would lose out in the end. This argument was at the centre of the Uruguay Round of the GATT multilateral trade negotiations.

However, the desirability of constraining the abilities of countries to engage in "beggar-thy-neighbour" strategic trade policies increased

During the 1980s and 1990s the desirability of constraining the abilities of countries to engage in "beggar-thy-neighbour" strategic trade policies increased. This increasing desire emanated as much from the decline in importance of traditional trade friction as from the actual importance of such strategic actions.

Trade/labour linkage quite complex

The approaches outlined above indicate that the trade/labour linkage is a complex one. The HOS model, when applied to multi-product markets, often leads economists to argue that factor price equalisation will occur. This occurs when, in this multi-product world, trade occurs on the basis of abundance, then the increased exposure of countries to trade will lead to a gradual harmonisation of price for each factor of production. In practical terms this will mean that labour which earns a high wage in one country will find its wages driven down, while labour in a low wage country, will find their wages increase.

The argument about factor price equalisation is often skirted round by proponents of free trade as it poses a knotty problem on the political stage

The argument about factor price equalisation is often skirted round by proponents of free trade as it poses a knotty problem on the political stage. The HOS model, adapted for multi-product markets, does tend to indicate such factor price equalisation. This factor price equalisation, in an overall welfare sense, will be positive for all economies. However, this argument, although theoretically sound, is politically difficult to say the least.

The real functioning of economies also poses the HOS model practical problems. The famous Leontief Paradox, questioning how the US can export labour intensive goods, is but one.[3] As pointed out by Bhagwati and Srinivasan: "There are many types of factor-market distortions. The three major varieties that have been analysed in international trade theory are that where wages rates are fully flexible but unequal, for identical factors, between sectors; that where wages rates for identical factors are equal between sectors but inflexible downward; and that where the wage rate is sticky in only a subset of the sectors in the economy."[4]

One of the main problems in stripping out the main factors in the debate is the fact that these multiple facets tend to get confused in the minds of protagonists and have a tendency to get enmeshed

It does not take too deep an analysis to note that the examples Bhagwati points to are all clearly applicable to labour.

The economic analysis

The debate about the relationship between trade and wages is a multi-faceted one. One of the main problems in stripping out the main factors in the debate is the fact that these multiple facets tend to get confused in the minds of protagonists and have a tendency to get enmeshed.

The specific problem for stripping out the effect of trade on labour is the need to separate the effect of trade from the effect of 'globalisation'. While this is considerably easier said than done, it is an important step to take. It is important because of the dynamic nature of the relationship between trade and labour. Looking solely at the goods being shipped across borders can have the effect of reducing this dynamic relationship to a static one. It also simplifies the relationship to a degree that is unhealthy. It falsely posits the relationship as being: 'if you want jobs to be safe you have to stop production crossing the border'.

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It is extremely difficult to pin-point the effect of trade on labour in an accurate manner, and the studies that have done so indicate this. As alluded above it is also the wrong question to ask. Trade in goods and services is a more complex and dynamic process than can be captured in the traditional concept of trade. The three questions we should seek to answer are:

- what is the relationship between a changing exposure to international competition and the conditions and quality of employment for all workers?;
- what part does cross-border trade play in this dynamic?; and
- what can be done at the international level to respond to this dynamic development?

Finding an answer to these questions will be extremely difficult; making meaningful policy responses will be even more so.

The rise in wage inequality has been a major element in the US electoral system and formed much of the populist backlash against both the NAFTA and the Uruguay Round agreements

International competition and wages

The division of the question into the three parts outlined above will, at least, afford us the space to attempt a closer analysis of the problem. There is little dispute that wage differentials between skilled and non-skilled workers have increased markedly since the 1970s. There is also very little dispute that the return to skills, that is the increased earning power related to the acquiring of skills, has also increased. The rise in wage inequality has been a major element in the US electoral system and formed much of the populist backlash against both the NAFTA and the Uruguay Round agreements.

However, there is considerable dispute about the cause of this rising inequality.

Borjas and Ramey argue that the literature on the subject, dealing with the US situation, breaks down into the following strands:[5]

- the decline in the baby boom forcing up wages to college graduates;
- the shift from manufacturing to service employment;
- the de-unionisation of employment and the removal of "safety nets";
- the increasing openness of economies to trade and immigration; and
- "skill-biased" economic change.

Of the above identified five strands, two are more crucial than the others: shift from manufacturing to service employment, and the increasing openness to trade and immigration.

Bluestone and Harrison argued that the increasing inequality sprang from a shift in the US economy from manufacturing to service sector jobs. This approach echoes a commonly held fear about the 'McDonaldisation' of western economies.[6] The argument holds that service employment is generally less paid than manufacturing employment and that the shift from a manufacturing to a service economy entails shifting workers from high-paid to low-paid jobs. It lies at the heart of the silicon chips or potato chips dichotomy placed at the heart of policy debates by the rise of the strategic trade policy school of thought (see above).

A shift in the US economy from manufacturing to service sector jobs echoes a commonly held fear about the 'McDonaldisation' of western economies

The second strand of thought posited the cause of increased wage inequality at the door of the increased openness of the US economy. This openness was categorised in two ways. The first involved looking at the openness of the US economy to trade; and the second, the openness of the US economy to immigration.

In both cases an increase in the trend of trade or immigration can be seen as a causal factor in the widening inequality in wages. In the case of the former, the argument holds that the increase in trade opens sectors of the economy to competition previously unfelt. This places pressure on earnings by firms and thus wages by workers.

Increase in trade opens sectors of the economy to competition previously unfelt. This places pressure on earnings by firms and thus wages by workers

The second argument, about immigration, describes a situation where increased immigration of unskilled workers in particular, has the effect of increasing the supply of such unskilled workers, forcing down the wages of competing non-immigrant workers. As immigration of skilled workers has not been as notable, the wages of skilled workers will be less directly affected by immigration. The gap between the wages of the two groups will thus widen.

The economics of the trade/labour linkage: Macro studies

The above section dealt with the relationship between income inequality and various factors that might help to explain it. The number of causal factors put forward by different authors helps to illuminate the complex nature of the dynamic relationship between international competition and the position of workers.

Richard N Cooper, while commenting on a paper on the subject of the causes and consequences of the growth in trade by Paul Krugman outlined the main studies on the relationship between trade and labour and their conclusions.[7]

Increased immigration of unskilled workers in particular, has the effect of increasing the supply of such unskilled workers, forcing down the wages of competing non-immigrant workers

Cooper points out that the work by Borjas, Freeman and Katz "impute a maximum of 15 percent of the growth in the college/non-college wage differential over the 1980s to imports." This would appear to undermine the argument that rising levels of imports have been responsible for the growing wage inequality in the USA. However, it does place 15 per cent of the responsibility on imports. Given the complexity of increased global competition this is not an insignificant amount.[8]

Another study found little impact of trade on employment levels in the US. The paper, by Sachs and Schatz, found that "6.2 percent of the decline in unskilled employment in manufacturing over the 1980s to imports."[9] Even this small figure is disputed, given their method of calculation. If some of their assumptions are relaxed the percentage figure might well be considerably lower.

The attribution of very small share of causality to trade by most trade and labour economists has been counteracted by a study by Adrian Wood. Wood's study, which has provoked a good deal of controversy, made two estimations of the impact of trade in goods and services on employment in the economically advanced nations. He calculated that the change in the amount of goods imported from developing countries during the 1980s was responsible for around 5 percent of the decline in manufacturing employment in the OECD area. He then attempts to quantify how much trade has affected employment in the service sector.[10]

This would appear to undermine the argument that rising levels of imports have been responsible for the growing wage inequality in the USA. Another study found little impact of trade on employment levels in the US

This area is considerably more difficult to measure and he makes a number of assumptions about the nature of the sector and its relationship to trade. Most notably, he argues that the services sector has a characteristic bias toward innovation being driven by trade. This, he argues, biases developments in the sector toward the skilled and

away from the unskilled. The result of these assumptions is to multiply the total amount of lost employment accounted for by trade in goods and services from developing countries to 20 per cent.

The economics of the trade/labour linkage: Micro studies

Most of the studies above have concentrated on the macro-economic study of the relationship between trade and employment

Most of the studies above have concentrated on the macro-economic study of the relationship between trade and employment. However, a number of studies have attempted to look at specific sectors of the economy to ascertain the linkage between the two. This approach has the advantage of being more targeted and of dealing with specific data sets that are less open to challenge.

The aforementioned Richard Cooper, has produced a study of the textile, apparel and leather industries. Part of his motivation to carry out this study came from a general unease with the approach that assumed that production workers were automatically unskilled and non-production workers skilled. This unease ties in with the work mentioned above that argues that the switch from production to service employment automatically involves a decline in unskilled employment and a rise in skilled employment.

Cooper's study sought to target the effect of imports on the lowest paid, least skilled production workers. Despite the increasing trade-exposure of the textile, apparel and leather sector he concluded that only around 10 percent of the relative decline of the industry could be attributed to imports.

The demands for protection in the post-Bretton Woods era in most developed countries sprang from those industries traditionally protected from imports

The demands for protection in the post-Bretton Woods era in most developed countries sprang from those industries traditionally protected from imports.[11] As a simple transaction cost analysis would suggest those industries with the most to lose from greater import competition would invest most time and effort in countering the threat.[12]

Destler points out two fundamental characteristics of the trade—labour issue:[13]

- firstly; "firms with expanding markets and ample profits tend to concentrate on business; their worry is that government may get in their way by placing constraints on their flexibility and their profits. It is the embattled losers in trade who go into politics to seek trade protection."

- secondly, "producers and workers threatened by imports tend to be concentrated, organised, and ready and able to press their interests in the political arena. Those who benefit from trade are diffuse, and their stake in any particular trade matter is usually small."

The industries that tended to seek protection in the advanced developed economies bears this out; steel, automobiles, textiles and agriculture

This imbalance in pressure for and against protection works in the favour of those industries with most to lose from trade. The industries that tended to seek protection in the advanced developed economies bears this out; steel, automobiles, textiles and agriculture. All of these industries consistently sought protection in the post-Bretton Woods era, often successfully.

Furthermore, a study by Borjas and Ramey found that the impact of trade on employment was significant in concentrated industries that were previously not exposed to imports. However, they found that the

change in employment caused by such increased imports only accounted for around 10 percent of the increase in wage inequality observed in the US economy.[14]

What does the empirical analysis tell us?

A particularly interesting phenomenon is that, on the links between trade and employment there is in fact a fair degree of consensus among the theorists

A particularly interesting phenomenon is that, on the links between trade and employment there is in fact a fair degree of consensus among the theorists. However, the lack of consensus on certain areas and on the extent of the relationship is less easy to explain. The studies of the issue have generally shown that:

- overall trade only explains a small share of any decline in employment;
- in concentrated sectors this impact is considerably larger; and
- trade explains only a small amount of the growth in wage inequality in developed economies.

The source of much of the dispute about the relationship between employment, wages and trade often springs from the perspectives of the researchers

The source of much of the dispute about the relationship between employment, wages and trade often springs from the perspectives of the researchers. The argument is not meant to infer a bias, but rather a difference of perspective. The Borjas and Ramey study mentioned above has the major advantage of looking at an industry level effect of trade. This ties in much more closely both with the political effects of trade and employment, but also on the changing industrial landscape caused by globalisation.

The impact of globalisation on employment is a much wider question than the impact of trade on employment. The trade element is an important one, but not the only deciding factor. Many opponents of finding a link between trade and employment point to the fact that technology helps to explain more of the decline in employment than trade. However, this argument fails to explain this link unless it looks to the interplay of the many factors that help to explain industrial market structure.

The impact of globalisation on employment is a much wider question than the impact of trade on employment

As any analysis of the basic Structure-Conduct-Performance model of industrial market structure would indicate, the impact of competition at the firm level can have a number of sources. Increased trade penetration, investment penetration and consumer expectation and demand is an important element of this. This change in the structure and conduct of business cannot be simply captured in a normal trade model.

Similarly, the effect of globalisation on the attitudes of employers cannot be underestimated. The spread of globalisation and its popularism in the media has lead to a climate of fear among most workers in developed economies about the effect of trade and foreign competition. This has been utilised in wage negotiations and working practice negotiations by employers as a lever with which to extract concessions.

The spread of globalisation and its popularism in the media has lead to a climate of fear among most workers in developed economies about the effect of trade and foreign competition

The base threat that firms will transfer production to another corner of the world is often more a threat than a reality. However, it has gripped the popular imagination of workers and citizens across the world. This has helped to create a dampening effect on labour organisation. Measuring this fear and expectation is extremely difficult, but must be factored into the discussion.

Part II

Workers as humans: Workers rights as human rights

The analysis of the social clause debate as a debate about basic human rights has echoes in the development of the issue at the ILO and in the UN system. Indeed, the continual mention of minimum wages and wage levels as being part of a developed country master plan to destroy the competitiveness of developing countries is a little hard to accept in the international labour debate.

If the developed countries were to include a provision on minimum wages as part of a social clause they would have to craft an entirely new labour standard

If the developed countries were to include a provision on minimum wages as part of a social clause they would have to craft an entirely new labour standard. There are no provisions for world-wide minimum wages under any labour convention (save for one covering international shipping).

What do exist on basic wage levels are those that cover the adoption of minimum wage legislation by individual countries. It must also be noted that there are no countries, or organisations that support a social clause that aims at a global equalisation of wages. Indeed most such organisations have dropped almost all mention of wage legislation, even that related to the national enforcement of minimum wages. Of course, some comparison with the NAFTA accord needs to be made.

There are no countries, or organisations that support a social clause that aims at a global equalisation of wages

However, the NAFTA accord, which targets primarily the national enforcement of national minimum wage legislation, is a regional trade agreement. There are different forces at work in the negotiation of a regional trade agreement than there are in a global trade agreement. It is unlikely that there would be negotiated an international trade agreement that made reference to nationally calculated and enforced minimum wage provisions. Even if it did, it would be unlikely to have any positive effect on minimum wages as the manner in which they are set and enforced is very much a matter for national governments.

The centrality of the human rights issue to the social clause debate has not always been recognised by participants

The centrality of the human rights issue to the social clause debate has not always been recognised by participants. The argument around social clauses has generated far more heat than it has light and participants have tended not to analyse too closely the proposals that have been made. In a 1989 study of eight social clause proposals, Gijsbert van Liemt found that there were a number of labour standards that were mentioned either by all eight studies, or by all but two.[15] These standards were:

- the freedom of association;
- the right to organise and bargain collectively;
- a minimum age for the employment of children;
- freedom from discrimination in employment and occupation;

- freedom from forced labour; and
- occupational health and safety.

The importance of the six commonly agreed upon standards is that they tend to focus on the rights-based side of the social clause issue rather than the economic issue

There was a second group of labour standards that was mentioned in at least two of the studies. These were:

- labour inspection;
- minimum wage;
- weekly rest period;
- special protection for female workers; and
- employment promotion.

The importance of the six commonly agreed upon standards is that they tend to focus on the rights-based side of the social clause issue rather than the economic issue. The core issues appear to be a right for workers to organise themselves collectively and to be free from servitude and unsafe working conditions while in employment.

This concentration on human rights, perhaps better termed civil rights, is important, for it is very often the more contentious economic rights element of the debate that gets the primary focus. However, even here, we can see from the commonly agreed principles and those which have been promoted internationally, that the promotion of workers' economic rights cannot be laid primarily at the door of protection.

The debate around the social clause has very often failed to recognise the centrality of the human rights issue and the human/economic rights linkage

The debate around the social clause has very often failed to recognise the centrality of the human rights issue and the human/economic rights linkage. The most important of these rights is the right to freedom of association. For trade unionists this right is central to the conception of a free trade union movement.

The right to freedom of association has been recognised at the international level since the founding of the ILO in 1919. It was reaffirmed in the ILO's Declaration of Philadelphia and enshrined in the Universal Declaration of Human Rights. The right to freedom of association is thus one of the cornerstone elements of the international system of human rights that has emerged since the end of the second world war.

The relationship between labour rights and human rights and development was tackled most directly in a 1984 report produced in The Netherlands for the Department of Development Co-operation.[16]

The report produced yet another list of core labour standards. However, this list was seen as being an absolute one, that was applicable irrespective of the level of development of the country concerned. The list of standards was based on eight ILO conventions and included provisions on:

The relationship between labour rights and human rights and development was tackled most directly in a 1984 report produced in The Netherlands

- freedom of association;
- freedom from forced labour;
- freedom from discrimination in employment;
- the right to equal remuneration;
- the development of employment policy; and
- a minimum age for employment.

The package of measures identified by the report was also important for the manner in which the conventions were picked. The report

argued that the conventions were important core standards if they could pass a threefold test:

- ***the social test***: were the conventions targeted at human rights and basic human needs?

- ***the political/legal test***: was there widespread international acceptance of the convention?

- ***the economic test***: would the standard impose undue economic hardship or impede economic development?

The identification of the core labour standards actually goes beyond many of the proposals discussed above. Where it differs is the more nuanced manner in which the standards were developed and targeted. The more nuanced approach and clear targeting makes this set of standards a more durable and supportable list than many of the others.

Another important fact in favour of the Dutch approach was the manner in which the report saw the standards being adopted into a trade agreement. The report argued that certain conditions had to be met before any of the list of standards could be incorporated into any trade agreement. These conditions were that the agreement:

- must be capable of creating conditions in which the observance of basic labour standards could be promoted;

- had to evolve a mechanism by which disputes about the observance of these standards, had to be established; and

- that the enforcement of these standards had to be based on reciprocity, namely no country could enter into a dispute if it did not recognise the standards.

The threefold approach of the Dutch Advisory Group Report; identify core human rights standards, test them against broad criteria and then apply them in a specific manner, has taken the debate about the human rights basis of the social clause forward. However, the report itself was never accepted by the Dutch government and was not widely publicised.

Part III

The proof of the pudding is in the eating: The social clause as law

The likely effect of the social clause at an international level can best be measured by looking at the effect of the social clause as it has evolved at the national and regional level. However, it is important to note that the lessons from the recent past are only pointers to the likely direction of the clause at the international level. The actual effect of the social clause will differ quite radically for important reasons:

- the dynamics of influence are different;
- the nature of the legislation is different; and
- the scope for action is altered.

These factors will be discussed in more detail later.

The social clause: The experience of the USA

The position of the USA at the international level has been one of the strongest in favour of the social clause. This position is not a newly minted piece of Democrat-lead policy, but has been a feature of US trade politics for many decades.

The position of the USA at the international level has been one of the strongest in favour of the social clause and has been a feature of US trade politics for many decades

The US labour movement in the immediate post-war environment was supportive of free trade. It is important to note that the experience of the great slump of the 1930s was uppermost in the minds of US legislators and negotiators in the 1950s and 1960s. The consensus among opinion formers was that the slump was either caused by or exacerbated by the Smoot-Hawley Act of 1930.

The Act ratcheted up import tariffs steeply, which had a devastating effect on trade flows in the USA. The actual impact of the Act has been questioned since, but the overwhelming view in the USA opinion community was that protectionism caused the 1930s slump, which lead to World War II. The clarity of this line of reasoning could only hold up for as long as the community of interest that had formed around greater trade openness could maintain its cohesiveness.

The erosion of consensus on trade policy

This cohesiveness was dependent on the USA maintaining the forward momentum of the post-war era. Such momentum has been characterised in the minds of many as the "golden era" of American power. During the decades immediately following the Second World War, the US economy grew rapidly and benefited from the gradual removal of tariffs negotiated away under the newly minted multilateral process at the GATT.

However, there were a number of tectonic shifts underway in US politics and economics that were to undermine this consensus and transform the position of labour on the issue. One of the most important changes underway was the shift on economic wealth across the country. In the post-war era, and particularly in the 1970s and 1980s, the economic locus of the country shifted away from the Atlantic North East and toward the South West and Pacific coast.

During the latter half of the 1980s and early 1990s, the Republicans were seen as the standard bearers of free trade with the Democrats taking a more protectionist stance. However, historically this is a switch in positions

This shift has had a profound effect on the attitude taken by political leaders to trade policy. During the latter half of the 1980s and early 1990s, the Republicans were seen as the standard bearers of free trade with the Democrats taking a more protectionist stance. However, historically this is a switch in positions.

In political terms, up until the late 1970s and early 1980s, there was a considerable consensus on the efficacy of a free trade policy abroad, with considerable protection for certain domestic industries. This consensus was broken apart during the Reagan years of the 1980s and now appears as only a shadow of its former self.

The debate surrounding the ratification of NAFTA set the stage for the difficulties the Uruguay Round legislation would face. The NAFTA debate served to emphasise divisions on trade within both major parties and managed to solidify a wider disquiet in the US electorate over globalisation and free trade in the form of the Ross Perot candidacy.

The Perot candidacy, amongst other things, acted as a populist backlash against NAFTA and the bipartisanship of trade policy making in Washington. This approach was certainly not new in US politics and echoed many of the concerns of the early 20th Century politician William Jennings Bryant. What was new was the fact that an unashamedly populist approach was now gaining ground in the US electorate.

The strength of the Republicans in Congress, despite the success of Bill Clinton in gaining two terms in the White House, has shown in the most stark terms that a populist agenda can be a winning agenda. The effects on trade policy formation of this development are major. The make up of the new Congressional Republicans is notable for two reasons.

Firstly the elections have created an influx of new, populist Republicans into Congress who are less likely to be predisposed toward trade liberalisation.

Secondly, the Congressional leadership of the Republican party has noticeably shifted into the hands of what were previously fringe operators.

The new Republican leadership is thus also much less likely to be automatically free traders

The new Republican leadership is thus also much less likely to be automatically free traders. Added to this leadership change is the basic fact that the Republicans now represent constituencies that, for four decades, they have not. Many of the new intake will thus represent constituencies previously represented by more protectionist Democrats. The same constituents will be now knocking on Republican doors seeking a more protectionist trade position. The shift in trade policy making is thus likely to be significant.

The NAFTA and GATT debates of the early 1990s and the Congressional elections of 1994 have ushered in a new era of Congressional involvement in trade policy making. The future for a populist, isolationist US trade policy have not been stronger for many years, while the prospects for an open, free trading USA are at their lowest ebb since the 1930s.

Labour's position has also changed

Firstly, the support of the US labour movement for free trade was conditioned on the success of those industries that were both heavily unionised and successful in home markets and export markets. Secondly, support for free trade was conditioned on free trade being a beneficial process for US workers and not a threat to their jobs

As the shift in political positions has occurred between the major political parties, so has the position of organised labour changed. As noted above, the position of the American Federation of Labour-Council of Industrial Organisations (AFL-CIO), was one supportive of the free trade stance during much of the 1950s and 1960s.

Two factors are important to note in this stance: firstly, the support of the US labour movement for free trade was conditioned on the success of those industries that were both heavily unionised and successful in home markets and export markets. Secondly, support for free trade was conditioned on free trade being a beneficial process for US workers and not a threat to their jobs.

Both of these conditions were centred squarely on the USA maintaining its position as the global economic superpower it was immediately after World War II. This was not to be the case in the decades following the 1970s. Indeed, the situation at the start of the 1970s encapsulated much of the shift on US trade politics.

The US labour movement, which had supported the results of the Kennedy Round of multilateral trade negotiations, were starting to shift position toward a more structured approach to managing trade expansion. Part of this position was a response to what many saw as an overvaluation of the US dollar causing imports to surge into the country. The industries most open to such a surge of competition were also those that were most heavily unionised, the textiles and steel industries.

The pressure from the labour movement and from the industries most under pressure lead to a restrictive textiles bill being passed in 1970. The perceived overvaluation of the dollar caused the post-war consensus on trade issues to receive another blow. The devaluation of the dollar was seen as politically impossible by most administrations in the USA. However, the pain that the rise of the dollar was causing the USA in the early 1970s prompted the Nixon administration to negotiate a gradual devaluation of the dollar. The immediate effect of this process was to see the dollar lose its value by around 10 percent, however, it fell further against the other main currencies.

The collapse of the Bretton Woods exchange rate system and the fluctuating and worsening trade balance of the USA during the 1970s and 1980s, caused much hardship to a number of key industries

By this point the system of fixed exchange rates that had been ushered in at the Bretton Woods meetings of 1944 was effectively at an end. Politically this development helped the Nixon administration fend off protectionist calls at the start of the Tokyo Round negotiations, as the US trade balance had improved substantially by the mid 1970s.

The collapse of the Bretton Woods exchange rate system and the fluctuating and worsening trade balance of the USA during the 1970s and 1980s, caused much hardship to a number of key industries. However, as Destler notes "in its direct impact on trade legislation, new protectionism was limited. After two decades, it had virtually

nothing in statute to show for its major trade stands, for the Burke-Hartke quota bill of 1971, against the Nixon-Ford trade bill in 1973-74, for domestic content legislation for autos in 1981-84, and against extension of trade preferences to advanced developing countries in 1974 and 1984. An older labour priority, trade adjustment assistance for workers, was inaugurated in 1962 and expanded in 1974, but was gutted in 1981."[17]

The shift in the position of the labour movement was instrumental in both creating a coalition against freer trade and in neutralising elements of the coalition previously in favour of freer trade

However, the effect of the shift in the position of labour was not as inconsequential as Destler argues. While he notes that the real effect of the shift was minimal, the indirect effects of this shift were major. On the one hand, the shift in the position of the labour movement was instrumental in both creating a coalition against freer trade and in neutralising elements of the coalition previously in favour of freer trade. This was most notable in the run up to the ratification of the GATT and the NAFTA bills in the early 1990s and in its aftermath.

The mobilisation of the US labour movement to make inroads into the NAFTA agreement was noticeable for its relatively late effect. The US labour and environment movements had opposed the granting of fast-track to the US government to negotiate the NAFTA agreement. This was largely due to the fear that Mexico would form a pollution and low wage haven for US industry, enabling US workers to be put out of work as industries flooded South of the border. While the NAFTA did reach an accord on labour rights, it was a fairly hollow one (see below).

The size of the groundswell against the NAFTA among ordinary voters in the USA lead to the creation of a new, split, consensus on trade policy

The size of the groundswell against the NAFTA among ordinary voters in the USA lead to the creation of a new, split, consensus on trade policy. The labour movement (and environmental groups) started to cede a good deal of the legitimacy accorded to the free-trade coalition that had lead US trade policy for so long. This shift, which almost scuppered the passing of the Uruguay Round legislation, has had a profound effect on the balance of power in US trade politics. It is this shift which will have the greatest effect on the possibility of social clauses in trade agreements.

The shift in consensus has left both parties split on trade matters in a manner previously unseen in US politics. Both parties are under the influence of either populist, anti-internationalist sentiments, in the Republican party, or labour supported anti-free tradism, in the Democratic party.

The fracturing of the coalition in favour of free trade has also had an effect on the manner in which trade and labour linkages are being dealt with at the international level. We will deal with this issue below.

Labour rights in the US legislation

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The relationship between trade and abour rights objectives has been a multifaceted one and contains a number of strands. These strands are not entirely time specific and indeed overlap to a very large extent. In fact, it can be argued that all of these approaches can be seen to a greater or lesser extent in current labour movement thinking on the relationship between trade and labour. The strands of approach are:

- strand I: protection and adjustment assistance;
- strand II: protection and promotion; and
- strand III: promotion as protection.

The classical post-war stance of the labour movement was characterised by two main strands; the desire for protection for declining industries and the desire to help workers affected by trade. In both policies they could shape out clear coalitions. In the case of the former they could easily ally themselves with the very industries that were employing their members.

As with the wider labour rights debate, the desire to seek foreign workers given greater labour rights was at the same time a desire to see better human rights for workers. Inherently, it included a desire to protect US workers from social dumping

This strand of thinking was encapsulated in the 1962 measures to help workers to adjust to trade-induced unemployment, and the various measures to restrict trade.

The second strand of thinking did not really emerge until the late 1970s and early 1980s. As with the wider labour rights debate, the desire to seek foreign workers given greater labour rights was at the same time a desire to see better human rights for workers. Inherently, it included a desire to protect US workers from social dumping; the sale of products made cheap as a result of the low wages and poor conditions under which foreign workers were making those products.

The clarity of this approach was not at the forefront of the labour movement's agenda, leading to the panoply of measures during the 1980s designed to punish regimes with poor human rights records. It was this strand of thinking that eventually lead to the current stance of the labour movement: the position of protecting workers at home by promoting workers rights abroad.

This final strand also has a far clearer ideological stance than the other two strands of thought. This is not particularly surprising given the fact that the first two approaches were very much defensive stances developed out of the response to recession and the onset of globalisation. The third stance of thinking is much more clearly a sober assessment of the whole post-war free trade project. It may not always appear thus, but the rationale behind the approach is more clearly critical of the perceived wisdom of free trade than the more clearly protectionist approaches of the past.

The gradual shift of the labour movement to this more nuanced position, has left in its wake a number of pieces of legislation that contain specific labour rights elements. The table below gives a list of the most important ones that affect the debate over the social clause in trade. The legislative acts that encapsulate this growing raft of laws aimed at promoting labour rights abroad generally follow the pattern of thinking outlined above. A number of the laws contain specific provisions to act as a barrier over which countries must cross in order for them to gain access to the US market.

The gradual shift of the labour movement to this more nuanced position, has left in its wake a number of pieces of legislation that contain specific labour rights elements. To act as a barrier over which countries must cross in order for them to gain access to the US market

Such laws include the labour provisions of the Caribbean Basin Recovery Act, and the Super 301 laws. Other acts make the granting of basic labour rights a precondition for gaining access to moneys lent from international institutions, or granted under trade development programmes. This approach, used in the GSP, MIGA, OPIC and Foreign Appropriations Act, is much more of a conditional approach favoured by the European Union governments and is much more clearly a positive one as opposed to negative approach.

The final element is much more clearly stated in the NAFTA approach, which aims to lock countries into certain standards of labour practices and the granting of certain rights, as a precondition for the granting of access rights. This latter approach is also the first very clear statement

that freer trade must be conditioned by improved human rights conditions for workers. This is an important point that should not be overlooked. In many ways, it is an internal, and explicit, critique of the manner and result of previous trade negotiations.

US Trade Laws With Labour Rights Link

- Caribbean Basin Recovery Act (1983);
- GSP renewal (1984);
- Overseas Private Investment Corporation (1985) added promotion of basic labour rights as a precondition for lending policy;
- Multilateral Investment Guarantee Agency (1987);
- Omnibus Trade and Competitiveness Act (1988) Super 301 can be used against countries denying basic human rights;
- Andean Trade Preference Act (1991);
- Foreign Appropriations Act (1992) Section 599—mandates US to deny loans, through the international lending institutions, to governments denying basic labour rights; and
- North American Free Trade Agreement (1992)—labour side clause.

Encapsulating the desire of the labour movement to see a more proactive stance taken on the threefold linkage between labour rights as human rights, and as a precondition for trade, has not been without its problems. In some cases such laws have been used in a politically targeted manner aimed more at ideological enemies of the then US administration than real abusers of labour rights. Under its 1984 incarnation, the Generalised System of Preferences programme included a requirement that countries were "taking steps" toward improving basic labour standards. Such standards were interpreted until recently (see below) by the USA to mean:

- freedom of association;
- right to organise and bargain collectively;
- the prohibition of forced or compulsory labour;
- a minimum age for the employment of children; and
- a guarantee of acceptable working conditions including:
    - maximum hours limits,
    - a weekly rest period,
    - a minimum wage, and
    - minimum standards of health and safety.

From 1985 to 1995 over 34 countries were named in petitions citing labour rights abuses under the US GSP law. Three countries: Romania (1987), Nicaragua (1987) and Liberia (1990) were permanently removed from the programme because of the violation of the labour rights provisions.

The expulsion of Nicaragua from the GSP for labour rights abuses show the degree to which such legislation can be misused for political purposes. The protection of Nicaraguan labour rights under the Sandinistas, although not perfect was considerably better than the treatment meted out in neighbouring countries such as El Salvador and Guatemala where labour activists were regularly murdered.

Other than the flagrantly political suspension of Nicaragua, Romania and Liberia, a further nine countries were suspended access to GSP privileges; the Central African Republic (reinstated 1990), Chile (reinstated 1991), Mauritania, Myanmar (Burma), Paraguay, Sudan and Syria. This rather peculiar list of countries acted against under the GSP programme indicates the relative weakness of including labour clauses in trade laws.

There is of course, an added weakness of using the GSP to target countries. The GSP programme is no longer of much relevance to many developing countries

Though it should be noted that of the 101 petitions, only in 12 cases were preferences withdrawn or suspended. There is, however, a bright side too. In the Dominican Republic, the threat of loss of GSP access to the US sugar market was enough to make the government crack down on the practice of enslaving Haitian workers in the country's sugar plantation, and reform its labour laws accordingly. As a result, the country never lost its GSP status.[18]

There is of course, an added weakness of using the GSP to target countries. The GSP programme is no longer of much relevance to many developing countries. It is only the smaller developing countries that gain any benefit from the programme. The larger developing countries gain little and can thus be threatened little by the actions under the programme.

The US social clause stance at the international level

The larger developing countries gain little and can thus be threatened little by the actions under the programme

The piecemeal and politically damaged social clause development at the domestic level, has been reflected in the stance that the USA took at the international level. The US, which has consistently pushed for a social clause element in trade negotiations since 1986, has toned down its demands at successive Rounds of talks and at successive ministerial meetings. The relatively broad list of topics to be considered under the rubric of the social clause has been whittled down to focus on the core labour standards:

- freedom of association;
- freedom to organise and bargain collectively;
- abolition of forced labour; and
- minimum age for child labour.

Importantly there is no longer an explicit mention of wage rates and conditions of work for employees. Instead, the USA is focusing much more explicitly on the human rights side of the labour standards issue.

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The negotiations during the NAFTA process also give us a fairly clear indication of the way that the US administration is thinking. The original aim of the Clinton Administration had been to have an agreement of the parties to enforce common labour standards, a position common to the early positions in the negotiations at the Uruguay Round. However, Mexico refused to accept this position and forced the talks to shift back onto a less binding and internationally regulated footing. Indeed, Mexico refused any binding procedures in all but three areas, child labour, health and safety and minimum wage enforcement. This refusal led to two situations:

- the basis of the agreement became national enforcement of national law;

- a two tier system of labour principles were established (see box). Tier I contains rights the violation of which are subject to punitive

action under the NAFTA side accord. Tier II covers non-enforceable 'principles'. Violations of these principles are only subject to advisory rulings by a panel of experts.

The Two-tier System of Labour Rights in NAFTA

Tier 1: enforceable national rights

- child labour;
- health and safety; and
- minimum wage enforcement.

Tier 2: non-enforceable national rights

- Industrial relations:
  - freedom of association;
  - collective bargaining; and
  - right to strike.
- Technical labour standards:
  - prohibition of forced labour;
  - minimum employment standards;
  - prohibition of employment discrimination;
  - equal pay for men and women; and
  - protection of migrant workers.

The result of the NAFTA agreement, as with other areas, most notably investment and IPRs, gives us pointers for any future agreement at the international level

The negotiations did achieve the establishment of a National Administrative Office in each NAFTA country to oversee the North American Agreement on Labour Co-operation (NAALC). The NAALC was passed into US law by executive order and thus does not have the same power as the rest of the NAFTA Treaty.

The result of the NAFTA agreement, as with other areas, most notably investment and IPRs, gives us pointers for any future agreement at the international level. The NAFTA accord laid out the basic principles of national enforcement and international oversight, that offer most hope at the international level. It was recognised that Mexico, the USA and Canada had to deal with labour issues on a different basis and to different standards. However, while this flexibility was recognised, it was also quite explicitly stated that there had to be a common bedrock in terms of the fundamental building blocks of a common labour position, that would be acceptable.

The EU approach to labour rights

The approach of the EU to labour rights at the regional and international level has been much more low key than that adopted by the USA. The clearest reason for this is the mechanisms by which trade policy is established and set at the EU level.

The approach of the EU to labour rights at the regional and international level has been much more low key than that adopted by the USA

Trade policy is classed as part of the common commercial policy of the EU and, as such, is within the competence of the European Union Council of Ministers. While this does not entirely pre-empt individual countries from developing their own positions on matters of trade policy, it does restrict their room for manoeuvre. Importantly, it also makes the EU policy a complex process of negotiation.

In recent years such a process of negotiation has pitted traditionally free trading nations, such as the UK and the Netherlands against traditionally more protectionist nations, such as France and Belgium. This divide has had a significant effect on the positions taken at the international level in the area of the social clause.

In the case of the position of the EU on the social clause, and related labour rights issues, the split has not just been between the traditional pro/ anti free trade countries. It has also been a cause of division between different departments within the Commission and between the Commission and the European Parliament

Because trade policy has been developed at the regional level, it has done so in a much more independent manner. Independent that is from the influence of individual constituencies and pressure groups. It is notable that, at the EU level, the process for pressure groups to make their influence felt, is considerably more Byzantine than it is at the national level. This has the effect of insulating much of the making of trade policy from the organised forces of civil society. While this insulation is fairly effective at keeping trade policy travelling in a single direction, it is less effective when nations within the EU disagree on the direction of that policy. Here, the complexity of the negotiation process sets in.

In the case of the position of the EU on the social clause, and related labour rights issues, the split has not just been between the traditional pro/anti free trade countries. It has also been a cause of division between different departments within the Commission and between the Commission and the European Parliament. It is important to note that competence for trade policy lies almost entirely with the European Commission. However, the Parliament and other departments within the Commission can play a role in either supporting or undermining elements of agreed positions.

For the labour rights issue, it has been fairly clear that the European Parliament has taken a much more pro-social clause line than the Commission and is considerably more sceptical of the Commission's line at trade negotiations. Similarly the position of the Departments responsible for the development of the EU's own social chapter, have a stake in promoting such an approach abroad. Both of these pressures place a strain on the policy established at the EU level and add weight to the arguments of protagonists setting trade policy.

The division on the social clause within the EU has been fairly stark, although it may prove less so in the future. The UK, under Conservative governments, has been at the forefront of opposing a social clause in trade agreements, and has been opposed to the EU's own social chapter. France and Belgium, most notably, have been the most vociferous parties arguing in favour of a social clause at the international level. The department with most direct responsibility for trade policy, DG1, has tended to take a sceptical view, although recently it has started to shift toward favouring such a clause. However, this shift may be as much due to internal Commission politics as it has to do with ideological positions.

The division on the social clause within the EU has been fairly stark, although it may prove less so in the future

The scope of the EU's own social chapter is considerably wider than anything that has been proposed, or is likely to be proposed, at the international level. It must be noted that the list below, of components of the social chapter, gives the full shopping list, from which member states are allowed to pick. All member states are not expected to institute everything all at once.

The rights are also so broad, that more detailed negotiations are needed to place such rights into context. The applicability of such rules at the international level is also seriously under question. The social chapter

was developed out of a twin desire to complete the internal market of the EU, through making labour more mobile, but also maintaining the social fabric of the EU in response to increasing concerns that the EU was being driven entirely by business interests.

Components of the EU Social Chapter

- the freedom of movement;
- the right to employment and remuneration;
- the improvement of living and working conditions;
- the right to social protection;
- the right to freedom of association and collective bargaining;
- the right to vocational training;
- the right of men and women to equal treatment;
- the workers' right to information, consultation and participation;
- the workers' right to health and safety in the workplace;
- the protection of children and adolescents in employment;
- the protection of elderly persons; and
- the protection of persons with disabilities.

The issue of the social chapter within, as opposed to outside, the EU is a long running one. It must be noted that the idea of a social element to the EU is an old one and one that dates back to the very origins of the European Community. Denis MacShane has outlined the main elements of that history:[19]

- "the social provisions of the 1950 European Convention for he Protection of Human Rights and Fundamental Freedoms, and a series of protocols that followed, which have given rise to many cases involving labour rights and labour standards brought before the European Court of Human Rights;

- the social provisions of the 1957 Treaty that created what was then called the EEC, now applicable to the 15-member states of the EU;

- the 1961 European Social Charter adopted by the Council of Europe, applicable to all countries of Europe;

- the 1987 protocol to the 1961 European Social Charter, which added to the formulation of social rights affecting workplace equality between men and women, rights to information and consultation in the workplace, and worker participation in setting working conditions;

- the 1989 Social Charter approved in the formation of the European Free Trade Area (EFTA), which includes the members of the EU plus other Scandinavian states and the historically neutral states, along with Eastern European countries that have gradually been joining the EFTA;

- the 1989 EC Social Charter, distinct from the 1989 EFTA Charter and the 1961 European Social Charter, yet drawing on them as foundations for elaborating the EC Charter; it is this 1989 EC

Charter, for example, that created the right of free movement by workers who are citizens of the EU states;

- an Action Programme initiated under the 1989 EC Charter, which has produced some fifty proposals for community legislation, about twenty of which have been adopted under existing EU procedures (most in non-controversial areas such as safety and health);

The clearest example of the social clause emerging in a trade agreement established by the EU is the system for granting privileges under the GSP programme

- the 1992 Maastricht Social Chapter, as it is actually called—the social provisions of the Maastricht Treaty that move the EC toward a greater degree of political and financial union (reflected in the Community's new name, the European Union)—which the UK vetoed as an integral feature of the Treaty. The UK rejection forced the other (then eleven) EU members to adopt the Maastricht Social Chapter as a free-standing charter among themselves...".

The clearest example of the social clause emerging in a trade agreement established by the EU is the system for granting privileges under the Generalised System of Preferences. The EU's GSP programme, which has recently been amended, will come into force in 1998. This delay was negotiated partly to delay the introduction of the two-fold strand of the agreement targeted at the social clause issue.

Under the new EU scheme, the relationship between trade and labour standards is expressed in a two-fold manner. On the one hand there are minimum standards that must be recognised to allow countries to benefit from the programme. On the other hand there are inducements for countries to go beyond these minima of standards. The minima targeted by the EU are minimal indeed; the use of prison or forced labour. However, the EU approach does offer a more nuanced approach than that used by the USA, which rests almost entirely on the use of punitive measures, rather than inducements. Under typically abstruse EU-ese, the two elements of the programme are termed:

- **Additionality**—incentive arrangement: countries will be given an additional preferential margin if they introduce worker rights legislation targeted at:
    - the right to organise;
    - the right to bargain collectively; and
    - the prohibition of child labour.
- **Conditionality**—conditional arrangement: the EU will have authority to temporarily withdraw part of GSP if the country is using forced or prison labour.

The major weakness of the EU's approach, the same problem faced by the USA, is that it centres on the GSP programme

The major weakness of the EU's approach, the same problem faced by the USA, is that it centres on the GSP programme. As trade liberalisation covers a wider range of products, and bites more into the tariffs set on many imports from developing countries, so the benefits of the GSP programmes will be undermined. Rather perversely, just as the largest developed countries are starting to tie conditions to their GSP programmes, these programmes are becoming less important to the larger developing countries.

The development of the issue at the international level

A brief history of the debate on social clause has been outlined by Stephen Woolcocks. He says, the first concerted effort to draw a link between trade and labour standards was made in 1880s. In order to diffuse social tension and to face the growing popularity of the socialists, Kaiser Wilhelm of Germany invited other European governments to the 'Berlin Congress' to negotiate on international labour laws. The Congress failed to draw a concrete proposal because of its focus on a number of issues rather than on attainable objectives.[20]

The first success on the debate was achieved in 1901 in the form of establishment of an international office at Basel

The first success on the debate was achieved in 1901 in the form of establishment of an international office at Basel. The first agreement was on the ban on use of the toxic white phosphorous in match production. However, such an effort to ban the use of white phosphorous was actually aimed at Japan and British India. Thus, from the very beginning there was a North-South dimension on the debate.

In 1920s, the European governments faced social and political unrest at home and also the influence of the Bolshevik revolution in their society. The result was a political motivation to call for international labour standards under the Treaty of Versailles. Part XIII of the Treaty dealt with international labour standards and envisaged common provisions for:

- right of association;
- wages for a reasonable standard of life;
- an 8 hour day, 48 hour week and rest of 24 hours each week;
- abolition of child labour; and
- equal remuneration for men and women and equal rights for migrant workers.

Thus, the idea of a social clause linked to international trading systems is far from a new issue and has been around a good deal longer than the GATT system itself. The issue of, so-called, social dumping was raised by the first British delegation to the International Labour Organisation meeting soon after World War I. Indeed, the establishment of the ILO in 1919 to oversee the area of labour standards, predates the establishment of all other major international economic institutions by many decades.

Of course the establishment of the ILO was, in major part, a response to the threat of bolshevism. The fear of a politicised working class, emboldened by the Russian Revolution, prompted action at the international level. For diplomats, it made more sense to incorporate workers' demands for rights and to try to spread them across the globe, than to try and snuff them out and push them to a more violent response. The ILO had been established as part of the ill-fated League of Nations system and was the only body of that institution that survived to make it into the UN system established in San Francisco in 1945.

The idea of a social clause linked to international trading systems is far from a new issue and has been around a good deal longer than the GATT system itself

The issue of internationally recognised labour standards and their relationship with trade was also recognised by the holding of a special conference on the issue at the League of Nations in 1927. The locus of much of the debate about the relationship centred on countries gaining unfair economic advantage through the exploitation of their workers. Such a concern with unfair working conditions also made it into the talks on the original GATT treaty.

The UN Conference on Trade and Employment noted in Article 7 of the International Trade Organisation Charter that the existence of unfair working conditions was a problem for international trade. The fact that the GATT never effectively dealt with the issue at this stage was to find echoes in debates about the issue during the resurgence of the idea in the 1980s.

What is important to note from these early forays into the social clause debate is the fact that there was never a clear consensus on the meaning of labour rights

However, the issue did not die with the International Trade Organisation, and indeed, in the 1950s both the USA and Europe took steps against what they saw as unfair trade. In 1954 the US Committee on Foreign Policy recommended the use of sanctions against countries for the payment of unfair wages. Importantly for the modern debate on the issue, the definition of 'unfair' was never made clear and the ability of the Committee to enforce such a wish was thus considerably blunted. Similarly, the original treaty establishing the European Iron and Steel Community contained Article 8 which constituted a social clause.

What is important to note from these early forays into the social clause debate is the fact that there was never a clear consensus on the meaning of labour rights. More notably, their enforcement through trade mechanisms has also been an issue that was never properly addressed nor spelt out. What these early efforts did indicate was the sense of moral outrage felt in the advanced developed economies and the fact that there was a feeling that something needed to be done.

The debate at the WTO

The main demandeur of the social clause has undoubtedly been the US government. The issue was raised in 1979 at the end of the Tokyo Round negotiations, and was raised again in 1986, 1987 and in all the last three years. The USA in June 1986 tried unsuccessfully to get the issue onto the original agenda of the Uruguay Round at Punta del Este.

This effort was as much a broadside warning to other countries that the USA saw this as an issue, as it was a serious attempt to get the issue debated. Because of the peculiar, in the true sense of the word, nature of US trade negotiation authority, the US Congress, which has the constitutional authority for trade policy, mandated the raising of the issue in 1986. The US negotiators were thus left with no choice but to raise the issue at Punta del Este.

In 1987, the USA attempted to persuade 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

This use of the proposal as a broadside was borne out when, in 1987, the USA attempted to persuade 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. Despite failing to get the group established, it is important to note the scope of the proposal put forward. The following labour standards were targeted for inclusion:

- freedom of association;
- freedom to collective organisation and bargaining;
- freedom from forced or compulsory labour;
- a minimum age of employment for children; and
- measures setting minimum standards in respect of conditions of work.

The latter two issues were the most contentious and was evidence of the two fold split on the issue, between basic human rights and secondary economic rights. Again the USA was left without a consensus supporting the issue. The problem of getting consensus on any social clause proposal fed through into the US position, seeing them drop the more contentious elements of their 1987 proposal. By 1990 the USA had scaled down its request for a working party, which again was rejected. The new remit of the US was also considerably slimmer, focusing on the more human rights based principles:

By 1990 the USA had scaled down its request for a working party, which again was rejected

- freedom of association;
- freedom to collective organisation and bargaining; and
- freedom from forced or compulsory labour.

During the closing months of the Uruguay Round and again at the Marrakech Summit of April 1994 the USA continued to make unsuccessful attempts to get the idea of a labour standards standing committee off the ground. This time they did appear to have the partial support of a number of EU governments, most notably the French. At that time, the USA unveiled their latest proposal to get progress on the issue at the WTO.

The proposal does not mention the use of negative sanctions (i.e. blocking of trade), but instead concentrates on positive sanctions. The latter are defined as bearing those sanctions that entail the denial of a benefit otherwise available. The proposal bears a striking resemblance to the existing US and future EU, regimes for the granting of GSP benefits. Importantly, the USA has announced that the definition of basic labour rights that is used to deny GSP benefits has been stripped of any mention of minimum wages or minimum conditions of work.

The failure of the US government to get any progress at the Marrakech Ministerial meting was reflected in the official speech made by Vice President Al Gore. As Ernest Preeg notes:

"The potentially most newsworthy speech came from Vice President Al Gore, sent by President Clinton to highlight US interest in environmental and labour standards, but the vice president modulated his remarks in keeping with the ministerial outcome.

A quick eleven lines denied US protectionist interests in pressing for international labour standards. Fifty-three lines followed elaborating the environmental challenge and extolling the creation of the WTO Trade and Environment Committee."[21]

From Marrakech to Singapore and beyond

During the closing months of the Uruguay Round and again at the Marrakech Summit of April 1994 the USA continued to make unsuccessful attempts to get the idea of a labour standards standing committee off the ground

The position on the social clause at the Singapore Summit was also a re-run of the Marrakech situation. The USA pushed the issue hardest, while support for them came from, most notably, Belgium and France. The final result at Singapore (quoted below), a passing mention in the closing speech, was far from a success, but managed to at least allow mention of the issue, keeping it alive at the WTO for a while longer.

Singapore Ministerial Declaration

"We renew our commitment to the observance of internationally recognised core labour standards. The ILO is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them.

"We believe that economic growth and development fostered by increased trade and further trade liberalisation contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question."

The debate over the social clause in the USA has taken a dual track. On the one hand, the Clinton Administration, has had to show its gratitude to the US organised labour movement for their efforts to re-elect him and the Congressional Democrat slate. This desire to pay-back the labour movement for their support, may help to explain the rather strange approach that the USA took at Singapore. On the one hand they appeared to be taking a very aggressive line with other countries opposing the social clause and made a number of high profile statements on the issue throughout the course of the conference.

It might be cynically argued, that the position taken by the US delegation was deliberately aggressive to ensure that progress was not made while, at the same time, signalling to organised labour in the US that they were getting good value for money from the administration

However, they did not list the social clause as a negotiating priority for the administration in the opening session, nor did they appear to see the issue as being central to a perceived success of the conference. Indeed, it might be cynically argued, that the position taken by the US delegation was deliberately aggressive to ensure that progress was not made while, at the same time, signalling to organised labour in the US that they were getting good value for money from the administration.

While the US government has had to push the issue at the international level, it has also had to deal with a Republican Congress at home on the issue of fast-track negotiating authority. Fast-track negotiating authority enables the executive of the USA to negotiate a trade agreement and present it to Congress on a take-it-or-leave-it basis, rather than allowing the Congress to take the agreement apart bit by bit. The Clinton Administration needs to have such authority to negotiate agreements both at the multilateral level and for talks to widen NAFTA and to negotiate a Free Trade Agreement of the Americas.

The Clinton Administration has consistently argued that it needs to have the authority to negotiate labour and environment agreements within the fast-track negotiating authority. It wants to be able to incorporate such things as the NAFTA side accords on labour and the environment, into future trade talks. Congress has opposed this stance and has consistently refused to grant the sufficient authority.

The Clinton Administration is thus stuck in a bind, having to placate Congressional Republicans that they will not negotiate trade and labour/environment agreements, while placating potential Democrat challengers for his post and the labour movement, with demands for such an authority. Until this is resolved it is unlikely real progress can be made on the issue at any level.

The EU position has strengthened marginally on the issue. The famous, or perhaps infamous, speech by Sir Leon Brittan outlining the need to respond to protectionist concerns within the EU to protect the international trading system, has placed a new emphasis on the issue within the EU. Until the election of the labour government in the UK, the UK government was the most steadfast opponent of any progress on the issue. Despite its name, and historical roots, it is, at present unclear, as to how the UK government will deal with the issue.

The pressure for the social clause within the EU has not abated. For instance, EU Social Affairs Ministers on March 27, 1995 called upon the EU to push for the linking of trade and labour standards at international bodies including the WTO. The memorandum also included incentives related to building schools in developing countries as a means of attacking child labour with the carrot rather than the stick. The EU Social Affairs Ministers also appear to be softening their stance and pushing for core standards and limited punitive measures.

The social clause debate: The southern perspective

As mentioned above, from the very beginning the debate on the issue of social clause had a North-South dimension. According to Peter Madden (1996), there are four reasons for a 'renewed' interest on the debate in the developed countries (and as a reaction to it, in the developing countries)[22]. They are as follows:

- **Liberalisation**: the Uruguay Round multilateral trade negotiations had brought down the rate of tariffs to a great extent. As traditional trade barriers (imposition of import tariffs) has lost import, countries are looking for more and more 'new' complications that a number of domestic policies have for trade.

- **Globalisation**: the technologically facilitated globalisation of markets and production have led to national economies becoming more integrated and the gradual relaxation of border controls on the movements of capital, goods and services. This led to the fear that there may be a race to the bottom by the Northern companies to take advantages of low wages in the Southern countries. A social clause, it is argued, would promote fair competition between exporters by ensuring that those who respect minimum labour standards are not penalised.

- **Unemployment**: this argument stems from the above argument on globalisation. It is true that there is a coincidence between increased unemployment in the OECD countries and increased imports from the South but, the question still remains—is there a causal relationship?

- **Communications**: increased and improved global communication network has raised the concern about labour conditions in the South.

The Southern proponents of the debate argue that increased exports from the South is not as a result of low labour costs but due to competitive advantage of the South in the production of certain goods

However, the Southern proponents of the debate argue that increased exports from the South is not as a result of low labour costs but due to competitive advantage of the South in the production of certain goods.

Porter (1990) has defined competitive advantage from the viewpoint of firm or industry. It states that the success of a firm or an industry is

based on the cost advantages in the production of relatively standarised products or product-based advantages related to the development of differentiated products. Firms with a competitive advantage are often concentrated geographically, which in turn assists the development of a workforce with the relevant skills.[23]

The moot question is whether trade retaliation would secure the human rights of workers or not

This theory of competitive advantage explains the remarkable export performance of the newly industrialised countries of East Asia. Again, even taking the South as a whole, low labour costs would not make much of a difference in the comparative advantage in the production of a product as increasingly the share of the labour costs in total costs of production is diminishing.

Furthermore, according to some Northern proponents of the debate, trade sanctions (by the North against the South) would result in secure enforcement of minimum labour standards, and this is the argument for the imposition of external conditionalities. However, the moot question is whether trade retaliation would secure the human rights of workers or not.

Muchkund Dubey (1996) has argued for at least three reasons why trade sanctions would not secure universal human rights of workers.[24] They are as follows:

- international labour standards do not cover the unorganised and informal sectors where the majority of the Southern work force is concentrated. What about the human rights of this vast majority of workers?;

- workers engaged in the international trade-related production constitute only a small percentage of workers in the entire production activity. Trade-linked upgradation of labour standards would, therefore, exclude a large part of the workforce which is not engaged in export production; and

- trade-restrictive effects will adversely affect the interests of workers in both the developed and the developing countries. In the developed countries, higher import costs would result in low real wages (through increase in inflation) of workers. In the developing countries, it would result in restrictions on employment opportunities.

Even within the social movements in the South, there is no conclusive stand on the issue

On the other, Egger and Schumperli (1995) have shown that a large number of Southern NGOs and trade unions were, in fact, in favour of inclusion of social clause into the multilateral trade agreements.[25]

Therefore, even within the social movements in the South, there is no conclusive stand on the issue. However, from the viewpoint of positive economics, the so-called ‘low’ standards in the South has not resulted in either unemployment or trade contraction in the North.

Part IV

Bringing it all together

As the above text will hopefully indicate, that social clause issue is neither a straightforward, nor a limited issue. The approach that protagonists take in the debate tend to be polar opposites, often with little regard for the progression of the debate.

On the one side sits the USA, espousing a strictly binding social clause, with the power to punish countries for violating workers' rights. On the other hand sit many developing country governments who argue that the issue must be left at the ILO

On the one side sits the USA, espousing a strictly binding social clause, with the power to punish countries for violating workers' rights. On the other hand sit many developing country governments who argue that the issue must be left at the ILO. For both sides the arguments are tinged with protectionism. For some in the developed world, the desire to appease often powerful trade union lobbies. For some in the developing world a desire to maintain the status quo.

The polarisation of the debate has also served to obscure the more fundamental questions about the social clause issue. The preceding analysis has attempted to tease some of these out. Here we must address them directly.

Issue I: Are core labour standards important?

The aforementioned discussion and the analysis of existing thinking would help to answer this question in the positive. Moreover, it is important to place this question in isolation from Issue III below.

The almost universal acceptance of the ILO and its work and the widespread acceptance of many of its core conventions would suggest that the international community has accepted this argument as well. The fact that the international trade union movement has members all over the globe and in countries at all levels of development would also indicate that the workers of the world demand the respect and recognition that core labour rights enshrine. To look at it another way: there are a very few, isolated, countries left that refuse to recognise core labour standards for their own workers at the national level.

Core labour rights are largely an accepted part of the make up of a modern, or modernising society. The important question is then to define:

Issue II: What are the core labour standards?

There are a very few, isolated, countries left that refuse to recognise core labour standards for their own workers at the national level

Once the international community has accepted that core labour standards, as human rights, are important, then the question to ask is: what are these core labour standards? The acceptance of the validity of labour rights is a bit like the acceptance of "mom and apple pie" for the US citizens. Everyone, well almost everyone, likes them, but no one really knows what they mean.

The advice of the Dutch Advisory Group to the Ministry of Development Co-operation argued that there was a threefold test for labour standards to pass before they could be accepted as universally accepted and applicable.

That the core labour rights must be widely accepted, can best be tested by looking at the list of rights identified as core and testing their universality in ILO votes

For all three elements of the test to be met, a labour right would have to be of considerable importance. The social test, demanding that rights be targeted at promoting human rights is the most difficult to meet. However, the gradual development of the canon of human rights law and convention over the years makes this task easier. For note, the Dutch picked eight ILO conventions centred on:

- freedom of association;
- freedom from forced labour;
- freedom from discrimination in employment;
- the right to equal remuneration;
- the development of employment policy; and
- a minimum age for employment.

There is little doubt that, without reference to enforcement measures, these rights are very much based on the rights of workers as human beings.

The second test, that the core labour rights must be widely accepted, can best be tested by looking at the list of rights identified as core and testing their universality in ILO votes. The list below makes very interesting reading in this regard. If we take the number of highly developed economies as being somewhere around 25-30 (depending on definition), we would expect to see universality somewhere around the 100 mark or over.

According to our table below, it is argued that only the rights to freedom of association, the freedom from discrimination and the freedom from forced labour qualify outright under the Dutch test. The ILO conventions against child labour and for tripartism in employment policy, do not qualify.

Ratification of "Basic" ILO Conventions

(As of October 31, 1994)

Conventions	Number of Ratification
Freedom of Association	
• No. 87—Right to Organise	94
• No. 98—Right to Collective Bargaining	105
Forced Labour	
• No. 29—Forced Labour	114
• No. 105—Abolition of Forced Labour	94
Discrimination	
• No. 111—Employment and Occupation	106
• No. 100—Equal Remuneration	106
Employment Policy (No. 122)	78
Minimum Age for Employment (No. 138)	41
Tripartite Consultation (No. 144)	60

Source: World Labour Report, International Labour Organisation, Geneva, Switzerland, 1995

The final test for the core labour standards is that they should not cause undue hardship. Here, the test is much harder to analyse, as there are relatively few examples to go by. However, it is clear from the US experience of applying a social clause, that undue hardship is very often the explicit aim of applying the law in practice. The arbitrariness of the US application, often targeted at regimes the US dislikes for other reasons, makes this test difficult to pass for any law. However, it does give pointers to the design of any social clause legislation, in a manner not properly addressed before.

The final test for the core labour standards is that they should not cause undue hardship

Issue III: What is the best way to enforce labour rights?

If most countries accept that core labour standards are important for their workers and they tend to accept that forced labour is wrong and that freedom of association and freedom from discrimination are pretty much universally applicable human rights, then we must ask, how do we promote these rights. This is by far the most complex question in the debate. Essentially it boils down to: if we accept certain rights as basic and we accept that they are important, how should we deal with countries that do not accept them or their validity?

The three approaches open to the international community are as follows:

- leave it at the ILO;
- incorporate it into the WTO (possibly through Article XX of the GATT); and
- opt for a hybrid solution.

The arbitrariness of the US application, often targeted at regimes the US dislikes for other reasons, makes this test difficult to pass for any law

Again, the Dutch Advisory Group report gives some useful pointers to evaluating the options:

- **economic advancement**: the agreement must be capable of creating conditions in which the observance of basic labour standards could be promoted;
- **dispute settlement**: the agreement has to establish a mechanism by which disputes about the observance of these standards, can be resolved;
- **reciprocity**: the enforcement of these standards has to be based on reciprocity, namely no country could enter into a dispute if it did not recognise the standards.

Option A: Leave it to the ILO

The opponents of the social clause argue that the International Labour Organisation is the body best suited to deal with the social clause issue. This argument is partly based on the fact that the tripartite body (government, workers and employers are represented) has the longest history of, and greatest expertise in, the issue. It is also largely due to the fact that the ILO has no real teeth with which to enforce labour standards and rights.

How do we promote these rights is by far the most complex question in the debate

The ILO today oversees a complex set of standards and rights. There are currently over 170 labour Conventions, covering everything from the right to strike to the collection and analysis of labour statistics. However, the actual observance of those Conventions varies considerably. The technical Conventions, covering labour statistics for instance, are a vital element of most countries' labour administrations, while the more human rights based work, such as

the right to strike, form the backbone of most of the worlds' labour rights regimes.

As of October 31, 1994 the ratification of Conventions ranges from a total of 2 by Botswana to 124 by Spain. In the developed world, the total ranges from just 11 by the USA to the Spanish total. It is rather ironic that the most aggressive promoter of labour rights in other countries has ratified the least number of Conventions of any developed country

In its Annual Reports, the ILO gives an indication of both the total number of Conventions ratified by each country and their individual ratification. As of October 31, 1994 the ratification of Conventions ranges from a total of 2 by Botswana (a number of countries have ratified none) to 124 by Spain. In the developed world, the total ranges from just 11 by the USA to the Spanish total. It is rather ironic that the most aggressive promoter of labour rights in other countries has ratified the least number of Conventions of any developed country.

The acceptance of the ILO as the core organisation for core labour standards is accepted by almost all protagonists in the social clause debate. Most accept that the basic work on labour standards must be carried out here. However, going beyond that causes differences.

The acceptance of the ILO as the core organisation for core labour standards is accepted by almost all protagonists in the social clause debate

The core problem for the ILO is one of maintaining legitimacy in the face of the social clause debate. To do this it must tread the narrow path between demanding greater powers to enforce labour standards and the desire of developing countries to limit the role of the ILO to advice only. The central problem here is that the ILO currently has no enforcement capacity and its members have resisted attempts to give it enforcement capacity at every turn.

The lack of enforcement capacity at the ILO is important for both sides of the debate, and not necessarily for the obvious reasons. For those countries opposed to taking the social clause to the WTO it is a salutary lesson for them to look a little further down the road in Geneva to the offices of the World Intellectual Property Organisation (WIPO).

The central problem here is that the ILO currently has no enforcement capacity and its members have resisted attempts to give it enforcement capacity at every turn

WIPO has been the pre-eminent organisation developing accords on intellectual property rights across all countries. However, it did not have sufficient enforcement procedures to mandate countries to apply the agreements that they negotiated. In response to this the USA, in particular, transferred its IPR energies to the negotiation of an agreement at the GATT on intellectual property issues. The signing of the TRIPs (Trade Related Aspects of Intellectual Property Rights) in the Uruguay Round effectively supplanted the WIPO as the pre-eminent IPR enforcing instrument.

The opposition among developing countries to the TRIPs agreement was almost uniform, although they allowed it through as part of a wider package. The lesson for the ILO from the TRIPs case must be that, if progress at the ideal body for an issue is seen to be too slow, or does not take account of the demands of the most powerful countries, the focus of negotiations will shift elsewhere.

WIPO did not have sufficient enforcement procedures to mandate countries to apply the agreements that they negotiated. In response to this the USA, in particular, transferred its IPR energies to the negotiation of an agreement at the GATT on intellectual property issues

Countries must also recognise this dilemma: if they demand that the ILO remain in charge of labour standards and then fail to either properly support its work or develop its role, then the issue will go elsewhere. The current position of the US government in this area would suggest that this process is starting to happen.

For the ILO to regain the high ground in the social clause debate it must be given more power to help countries enforce and develop labour standards and it must be given some power of sanction. The exact

nature of this sanction power can be anything from the current withdrawal of ILO assistance, to far more punitive measures. However, some progress must be made to keep the institution up with the debate. Without such progress the proponents of *Option b* will gain the upper hand.

The ILO does not have a proper dispute settlement procedure To this extent it fails the Dutch test

The question remains: does the ILO option allow for the passing of the Dutch test, i.e. does the ILO route allow for:

- economic advancement;
- dispute settlement; and
- reciprocity.

It can certainly be argued that the ILO negotiation of core labour agreements promotes the economic advancement of all of its members. However, as discussed above, the ILO does not have a proper dispute settlement procedure. It certainly has a disputes procedure, but it rarely works in a speedy and efficient manner and rarely results in any concrete advancement. To this extent it fails the Dutch test. However, it does pass the reciprocity test in that it can only really act against countries based on their signing up to agreements. The ILO option gains two marks out of three.

Option b: The incorporation of labour rights into the WTO

The efforts of the UN Conference on Trade and Employment to include social elements into the functioning of the International Trade Organisation only bore fruit in one Article of the GATT 1948. Article XX covers General Exceptions to the obligations of members to uphold the GATT treaty in its entirety. It acts much like a *force majeure* contract in insurance, and allows a country to deny its obligations in defined circumstances. Among those circumstances are the usual opt-outs such as the protection of public morals and the protection of human, animal and plant health.

Article XX (e) allows for the blocking of trade if it is found to be relating to the products of prison labour. The original GATT treaty therefore allows for the prohibition of trade on the basis of forced labour, in extremis.

How this opt out came about has a peculiar history. But that is another story. Since it exists, it exits.

A number of commentators have argued that this particular opt-out needs to be amended to allow countries to block trade on the basis of other core labour rights. However, the primary problem here would be one of unilateralism. The opt-out is a power of the country signatory to an agreement, it is not a power of the multilateral body. It is thus open to abuse, both in terms of unilateral decisions of labour rights violations (and the political bias this often entails) and the ability of the more powerful countries to bully opponents into backing down.

The sole WTO approach fares well in the Dutch threefold test. It might equally strongly be argued that the incorporation of a social clause into the agreement would undermine the work of the WTO

The sole WTO approach fares well in the Dutch threefold test. The entire object of the WTO is economic advancement, so any agreement negotiated at it would probably pass that test. However, it might equally strongly be argued that the incorporation of a social clause into the agreement would undermine the work of the WTO and cause considerable economic harm. The WTO certainly passes on the dispute settlement procedure.

It also passes on the reciprocity test, although in a manner not intended in the Dutch report. As all countries that are members of the WTO are bound by all but the plurilateral agreements, reciprocity is almost complete. All countries are signatories and thus are bound by the rules. If however, the agreement was to refer to the ILO conventions, it would be possible to argue that the WTO would only be able to rule on disputes involving agreements to which countries were signatories. No clear marks for the WTO, although three out of three is a debatable score.

Option C: A hybrid scheme

The hybrid approach to the social clause issue has tended to come to the fore in the last few years

The hybrid approach to the social clause issue has tended to come to the fore in the last few years. Most countries, and participants in the debate, appear to realise that the ILO, on its own, is unlikely to make progress on the issue. It is also increasingly clear that the WTO is not the best institution to deal alone with the issue. This is for a number of reasons.

Most notably they include the fact that the WTO deals primarily with international trade and so could only deal with labour rights insofar as they have an impact on internationally traded goods or services. The WTO is also a body dealing with contractual relationships between states and as such is not in the business of interpreting matters of human rights law. There is also the very considerable argument that the WTO is already overburdened with its own agenda.

Under the hybrid proposal, which has been emanating both from ILO meetings and from the international trade union movement, the ILO would play a court of first instance role in labour disputes. Any problem with labour rights violations would first be taken to the ILO for consultation and negotiation. The ILO would compile a report on the dispute. If no compromise agreement could be reached between the two parties to the dispute, it could proceed to the WTO. The amount of time that it would take for a dispute to move from the ILO to the WTO is open for debate. However, recent proposals, have tended to concentrate on the ILO taking a number of years with an issue before moving to the WTO.

The hybrid approach passes the first test for the Dutch Advisory Group, although not with flying colours. As the ILO remains the first port of call, the hybrid scheme passes the test in so far as the ILO passes the test. The dispute settlement test is passed to the extent that the ILO is given the legitimacy of the WTO dispute settlement procedure as a court of final resort. Such a relationship poses a major problem in and of itself.

If no compromise agreement could be reached between the two parties to the dispute at the ILO, it could proceed to the WTO

It would appear that the hybrid approach rests on the belief that the threat of the WTO dispute settlement procedure would focus the attention of those involved in the ILO dispute process marvellously. However, if the threat of using the WTO is not going to be used for a considerable time, it at all, then the power of this threat may be undermined.

The hybrid also passes the final Dutch test, in that it tests countries on the enforcement of basic rights through the tripartite structure of the ILO.

Apart from the options mentioned above, there are two others. The first is to leave it to the consumer. There are initiatives mainly by the civil society in the North, to promote labour rights through social labels (e.g. Max Havellar, STEP, Veillon in Switzerland; Rugmark, Kaleen in India) or Codes of Conduct signed by the TNCs. Even the ILO has suggested a social label.

The social clause issue has remained one of the most heated areas of international debate for a number of years

The second option is to promote labour rights through positive measures. Some 'positive' measures are better market access, increased Official Development Assistance, educational programmes, debt reduction etc. This option stems from the strong correlation between poverty and labour standards, especially regarding child labour.[26]

Conclusions

The social clause issue has remained one of the most heated areas of international debate for a number of years. The quality of that debate has not met its volume and the real issues underlying the issue have rarely been analysed as a whole. There is little doubt that the impact of imports on employment and wage inequality in the developed world is considerably less than is imagined in the popular mind. There are a number of other factors in the equation that have a far greater impact. However, these factors can generally be ascribed to the process of economic development of which globalisation is an important driving factor.

For the shorthand of globalisation we will define the opening up of markets to greater economic contestability that makes firms behave in a more competitive manner. This wider impact of globalisation is a far more important psychological factor in the debate about trade and labour that the social clause has sprung from.

The economics of the trade/labour linkage would tend to indicate that worrying about imports is the wrong way for workers and their organisations to deal with the international trade environment. However, this is only one part of the social clause debate, and a relatively small one at that. The question of "what sort of world we want to live in" is central to the social clause issue and one that impinges on the idea of the social clause as a human rights issue. Here, we appear to be on more solid footing.

There are certain basic workers rights that are recognised almost globally to be applicable to all workers. However, that is as far as the firm footing goes: the matter of enforcement causes that firmness to turn to mush. Some argue that no enforcement is necessary and that development will enable workers to enforce their own rights. It has to be said that this is the position taken by many developing world governments and by most of the international business lobby. It is most certainly not the position of the international trade union movement, or a large number of development non-governmental organisations in the North.

The question of "what sort of world we want to live in" is central to the social clause issue and one that impinges on the idea of the social clause as a human rights issue

In conclusion, the following are the arguments of this paper:

- international trade is not a significant cause of unemployment in developed world economies. However, this impact is disproportionately felt in certain industries and in certain geographic regions;

- a social clause based on the desire to protect workers in developed countries from trade would be a bad thing;

- some basic labour rights are human rights and are worthy of promotion and protection;

- a simple WTO route for a social clause will not produce the desired results, as far as the promotion of workers' rights are concerned;

- a simple ILO route for a social clause is unworkable without the ILO being given far more teeth to enforce agreements. However, giving the ILO these teeth would be the optimal approach; and

- a hybrid approach, recognising all the complex elements of the debate would be preferable to placing it entirely in the WTO or in a toothless ILO.

Promotion of labour rights as human rights is something that the international community must grasp. Workers claiming these rights deserve the protection of the international community. This protection should be offered by the ILO. The ILO should be granted sufficient power to enforce agreements and conventions fully and fairly. If this is not forthcoming the approach, calling on the enforcement credibility of the WTO, will be continue to dominate the stage.

ENDNOTES

1 Irwin, Douglas A, *Against the Tide: An Intellectual History of Free Trade*, Princeton University Press, Princeton, New Jersey, USA, 1996.

2 *op. cit.* pages 177-178.

3 In 1953, the American economist W. Leontief found (by using input-output data) that a capital-abundant country like the US had relatively more exports of labour -intensive products than the capital-intensive products: a contradiction of the HOS model. To explain this contradictory phenomenon led to the formation of 'new' trade theory. Apart from the conventional factors like labour and capital, the 'new' trade theory took into account factors such as technology and R & D (knowledge) to explain the comparative advantage of a country. The earlier version of the 'new' trade theory was the product cycle theory. The ultimate version was the strategic trade theory. For details on consideration of knowledge as a defining factor of relative factor endowments of a country (and, hence comparative advantage), see Leamer, E. E. (1987), *Paths of Development in the Three Factor, n-Good General Equilibrium Model*, Journal of Political Economy, 95(5), October, 1995.

4 Bhagwati, Jagdish and T N Srinivasan, *Lectures on International Trade*, MIT Press, Cambridge Massachussetts, Massachussetts, USA, 1983.

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8 Borjas, George J., Richard B. Freeman and Lawrence F. Katz, *On the Labour Market Effects of Immigration and Trade*, in George J. Borjas and Richard B. Freeman eds. *Immigration and the Work Force: Economic Consequences for the United States and Source Areas,* University of Chicago Press, Chicago, USA, 1992.

9 Sachs, Jeffrey D. and Howard J. Schatz, *Trade and Jobs in US Manufacturing,* in *Brookings Papers on Economic Activity*, Brookings Institution, Washington D.C. USA, 1994.

10 Wood, Adrian, *North-South Trade, Employment and Inequality: Changing Fortunes in a Skill-driven World,* Clamerdon Press, New York, USA, 1994.

11 The origin of the post-Bretton Woods era can be seen to have emerged in the early 1970s with the withdrawal of the dollar from the post-war fixed exchange rate system.

12 For more detail on transaction cost politics, see Dixit, Avinash, *The Making of Economic Policy: A Transaction Cost Politics Perspective*, Munich Lectures in Economics, CES/MIT Press, Cambridge Massachussets, Massachussets, USA, 1996.

13 Destler, I. M., *American Trade Politics*, 2nd ed., Institute for International Economics and the 20th Century Fund, Washington D.C., USA, 1992. See pages 4 and 5.

14 Borjas George J. and Vallerie A. Ramey, *op. cit.,* page 1095.

15 Van Liemt, Gijsbert, *Minimum Labour Standards and International Trade: Would A Social Clause Work?*, International Labour Review, Vol. 128, No. 4, 1989.

16 *Recommendation on Minimum International Labour Standards*, National Advisory Council for Development Co-operation, Ministry of Foreign Affairs, The Hague, The Netherlands, 1984.

17 Destler, I.M., *op. cit.,* 1992.

18 LeQuesne, Caroline, *Refoming World Trade: The Social and Environmental Priorities,* Oxfam Publication, Oxfam, UK & Ireland, Oxford, UK, 1996.

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23 Porter, Michael E., *The Competitive Advantage of Nations*, Free Press, New York, USA, 1990.

24 Dubey, Muchkund, *Social Clause: The Motive Behind the Method,* in Chenoy, Anuradha M. and J. John eds. *Labour, Environment and Globalisation, Social Clause in Multilateral Trade Agreements: A Southern Response,* New Age International (P) Ltd., New Delhi, India, 1996. Though the article is written under an Indian perspective, the arguments are generally true for the South.

25 For details, see Egger, Michel and Catherine Schumperli, *Social Clause: Survey Amonmg NGOs and Trade Unions of the South*, Pain Pour Le Prochain, Berne, Switzerland, 1995. However, their study did not deliberate on the methodology of sample selection.

26 For discussion on social clause and child labour, see Bhattacharya, Debapriya, *International Trade, Social Labelling and Developing Countries: The Case of Bangladesh's Garments Exports and Use of Child Labour,* in Annuaire Suisse—Tiers Monde, Graduate Institute of Development Studies, IUED, No. 15, Geneva, Switzerland, 1996.

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