

# **WTO and the Social Clause, or else: the Multilateral Approaches to the International Labor Standards<sup>#</sup>**

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The Uruguay Round commenced in September 1986 and continued until April 1994. As based on the GATT Ministerial Meeting in Geneva (1982), it began in Punta del Este in Uruguay (1986), followed by negotiations in Montreal, Geneva, Brussels, Washington, D.C., and Tokyo and was ended in Marrakech, Morocco. The Marrakesh Ministerial Meeting concluded on 15<sup>th</sup> of April 1994, when the agreement establishing the World Trade Organization (WTO) was signed by ministers from most of the 123 participating governments.

Since the adoption of the Marrakesh Declaration in 1994, there was a certain development towards bringing new areas under the WTO administration. Considerable progress has been made in the area of linking the environmental issues with trade through the negotiations under the WTO Committee on Trade and Environment. At the same time, some of the development countries tried to pressure the member states, basically the developing countries to link labor standards with trade. The United States played a leading role, but so far, there was no visible significant progress achieved.

The main aim of this paper is to outline the development of the linkage of the labor standards to the trade and its consequences for the World Trade Organization. We would like to describe the principle of the so called social clause and therefore stress some of the critical issues related to the idea of binding multilateral social standards. We also give account of some alternative solutions in regards of the Regional Trade Agreements (RTAs).

## **1. The development of the social standards – trade link**

At the end of the Uruguay Round, many governments of the developed countries represented basically by the official positions of the United States and France raised the issue of linking the multilateral trade rules to the labor standards as understood within the developed countries. The question of bringing the social rights to the level of trade negotiation

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was strongly supported by the International Labor Organization (ILO)<sup>1</sup> and some of the workers organizations as well. The topic of the social clause was officially mentioned at the Marrakesh Ministerial meeting among many other proposals that were meant to be included on the list of the future agenda of World Trade Organization. There was no conclusion achieved at the Marrakesh meeting and the issue of the social clause had been listed as the topic for the Preparatory Committee for the WTO.

The subject of the social rights is generally carried on within the framework of the ILO itself. The officials of this organization led by Michael Hansenne, the Director General then, pressed for the progress on the question of the social clause related to the international trade at the annual meeting of the ILO, which followed soon after the Marrakesh meeting. There was no success achieved as the proposal provoked a heated debate, when the workers groups, basically the trade unions of the developed countries pushed the bidding social standards ahead, but the representatives of the developing countries rejected any trade links of the social rights at all. Director Hansenne managed to come to the conclusion that the issue should be developed further more and there was a special working group established to focus on that question. Though, its outcomes were very limited and the hopes for any progress were not fulfilled.

As mentioned above, the social clause within the process leading to the WTO was supposed to be discussed at the Preparatory Committee. Due to the fact that the Committee had to deal with all the procedural problems related to the establishment of the WTO, the other subjects were not on the agenda and were therefore shifted to the General Council as well as all the so called trade related issues, including competition policy, foreign investments and environmental standards. Nevertheless, the social clause was not discussed properly and one of the reasons can be found at the strong opposition of the governments of the developing countries against any inclusion of the social standards to the WTO and its rules enforcing mechanism. Their arguments focused on the opposition to the idea of the minimum labor standards, as they stressed that it is just another way, how to call for the equal wages in their countries and therefore for the hidden mean of the protectionism of the developed countries. The developed countries argued that the issue would relate to all the members of the WTO at the same intensity as even within them there were countries trying to lower the labor standards as a part of their economic reforms in regards to attract the foreign investments and raise their competitiveness.

The debate provoked another round of so-called South-North polarization. Not only the governments and the trade unions were involved, but also a respective numbers of the non-governmental organizations (NGOs) and some of the moral issues were included as well, for instance the right to form the unions or the child labor in some of the developing countries. The moral tone made it even more difficult to come to any conclusion. The proposals that appeared to be the most constructive were based on the idea that the trade instruments could be used to enforce the minimum labor standards. ILO was supposed to be the body to decide if the labor standards of the exporting country were sufficient enough. If not, the trade instruments of the World Trade Organization would be used to force the country to implement them. The issue was meant to be discussed at the United Nation Social Sum-

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1 The International Labor Organization is a specialized agency of the United Nations (UN) that deals with labor issues. Its headquarters are in Geneva, Switzerland and it was founded in 1919. It became a member of the UN system after the demise of the League of nations and the formation of the UN at the end of World War II. Its Constitution, as amended up to date, includes the Declaration of Philadelphia (1944) on the aims and purposes of the Organization. Its secretariat is known as the International Labor Office.

mit in Copenhagen<sup>2</sup>, but there was no progress achieved and the arguments that were mentioned within the WTO and ILO repeated again.

With the establishment of the WTO at Marrakesh in 1994 as the administrator of the General Agreements on Tariffs and Trade and other Uruguay Round agreements, the question of the social clause became naturally a vivid subject for its agenda, but as stated above, the Marrakesh meeting did not achieve any solution. The pressure from developed countries led to the establishment of the Committee on Trade and Environment, but no similar working group was created to focus on the social issues. The Preparatory Committee and its results were described above.

The unsolved question of the social standards got on its list of topics, as the first WTO Ministerial Conference was held in December 1996 in Singapore. The issue was considered with a significant attention and the negotiation could be described as problematic. The linking of the labor standards to the trade liberalization was opposed by the same countries as before, but due to the effort of all the members to come to the conclusion especially at the first Ministerial Conference, the discussion led to the adoption of a compromise paragraph on the labor standards in the final declaration (WTO, 1996b). It was the first reference to the labor standards in any official document of the World Trade Organization, but the conference did not establish any permanent group to be concerned on the social standard question. However, it can be evaluated as a big step further and it solved many problematic issues, as the agreement on trade in information technology (WTO, 1996a) was for instance achieved.

If we try to describe the implications of the Singapore Ministerial Declaration in the field of the social clause, some points have to be stressed out. The statement brought two main innovations. First, it officially mentioned the link between the labor standards and the international trade in the WTO documents. Second, the member states agreed on the clear support for the core labor standards as a part of the WTO membership. They would support the labor standards as the members of WTO due to its declarations and not only as the members of the ILO. However, it did not state that the social clause and its principles as described further are explicitly a part of the WTO agreements and therefore it did not allow to refuse to trade with the countries violating the core labor standards. The key point is that the declaration mentions ILO as the competent organization to adopt the labor standards and not the WTO, which would not take the lead in enforcing them either. On the other hand, it has not ended the attempts to include the labor and social standards within the WTO binding rules. It called indeed for a continuing cooperation between ILO and WTO on the subject of the social clause.

Nevertheless, the on-going debate led to no conclusions, although there was a strong call for inclusion of the social standards to the WTO agenda at almost any possible event as it would promote the fulfillment of the ideas that emerged from the Uruguay Round and the establishment of the WTO, the globalization of world economy and international operations of the transnational corporations. ILO was always understood as the global reference organization on employment and labor standards and a key institution to establish the core labor world wide recognized rules. It provided the platform for debates on harmonization of national labor laws and was also responsible for monitoring the labor rights.

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2 The World Summit for Social Development, held in March 1995, reached a new consensus on the need to put people at the centre of development. The Social Summit was the largest gathering ever of world leaders at that time. It pledged to make the conquest of poverty, the goal of full employment and the fostering of social integration overriding objectives of development.

In recent years, the ILO has introduced its own development agenda. The so called Decent Work initiative that was launched in 1998 (ILO, 1998a) represented the first step on the track to the adoption of Declaration on Fundamental Principles and Rights at Work (ILO, 1998b). The declaration reflected some of the arguments urging for the linkage of labor and trade rules. It stated the core and minimum labor principles that could be based on the human rights without any respect to the differences in the development of countries.

The idea of stronger international labor standards basically stood on the grounds that the globalized trade could lead to the closures of manufactures within the developed countries due to the cheaper production costs of the countries with lower labor standards. Another argument used by the trade unions was that the transnational corporations are able to avoid the labor standards of the developed world simply by the movement of its production to the countries with limited labor standards. The main question is, if there is any relevant evidence that this is happening and therefore if there is any way that the trade rules should be used as the tool, how the social standards issue should be solved. That question will be described further.

## **2. The absence of the need for multilateral social standards**

Any calls for the strict multilateral labor standards related to the trade rules are generally based on the arguments mentioned above. The free trade and free markets lead to the increasing imports to the countries with higher standard of labor laws from countries, mainly developing countries of the South and therefore with lower labor standards. Another danger of so-called labor dumping is that the transnational corporations can move their production freely to the countries with almost no labor standards and respectively lower costs of productions. On the other hand, there is a lack of the evidence that any of the things mentioned are happening. The effect of the outward foreign investments of the transnational corporations from the developed countries that create imports and lead to the closures of manufactures and loss of jobs are not clearly proved and the evidences are missing. The respective number of studies suggests that there are empirical evidences that outward foreign investments from the developed countries create more export than import, especially in the case of United States (Hufbauer, 1994).

Another problem is that it is very difficult to decide what the causes and what the effects are and what the result on the long term employment rate would be like. The evidences and data suggest that there is a very limited link between the trade liberalization and social standards in the developing world and the penetration of the imports in the developed countries. First, there was not visible any significant ratio of imported goods at the markets of the developed countries except of textile and clothing industry. The comparison of the wages level and labor standards can lead to the conclusion that the high differences in the wages between the developed and the developing countries are caused by the different levels of productivity. The productivity of workers in the developed countries is far higher basically due to their higher technological and capital level.

The other problem that is often mentioned lies in the process of structural adjustment of the economies of the developed countries to the new trends enhanced by the free global trade. It is suggested that there is certainly the unemployment within the low skilled segments of population in the industrialized countries caused by the imports of labor intensive goods, whose production was moved to the developing countries, but there were created more jobs in the hi-tech sectors that jobs lost due to the transformation of some developed countries to the service based structures of their economies (Wood, 1996).

The influential trade unions of the developed countries had argued that there are many important reasons, why to try to include the social clause, as well as the environmental rules into the framework of the WTO. They did not present any sophisticated economic explanation and insisted on the social clause as a first step on the way to change the entire trade regime (Bacon, 2000). They viewed the social clause as the most suitable attempt, how to create a close tie between the international trade and the labor standards.

Before we describe the essence and basic principles of the social clause itself, we would like to sum up the reasons, why there is probably no need for core labor and social standards as the arguments against the linkages proved to be stronger than the ones trying to promote the core labor international standards. Since early 1990s the two main reasons, why not to link trade and social standards were generated. First lies within the nature of the free market based economic policy. The openness of international trade and investments represents the crucial policy setting for enhancing the economic development of the developing countries and therefore lead to the increasing of the labor protection of their workers. Second argument is that the calls for core social standards are basically trying to promote the protectionist opinions and in fact to deny the opportunity of the developing countries to profit from their comparative and competitive advantages. The societies of the developing countries would also suffer the significant losses if the restriction on trade with them would be imposed. The externally imposed labor standards would lead to the counter-productive results as the competitive and comparative advantages of the developing countries could not be employed and their economic progress would be slowed down, resulting in higher unemployment and implicitly lower protection of workers.

Many subjects in the developing countries stressed the need to distinguish the imposed labor standards in the form of the social clause and the universal human rights in the form of the labor rights. We agree with that point of view. The national law in the developing countries has to respect the essential human rights and the norms agreed on within the framework of the United Nations and ILO. Although the legal base is certainly very important, we also have to mention the need for the law that guarantees the freedom of the business negotiations between employers and their workers and the real application of the existing law. In many cases, the level of the workers protection in the developing countries is similar to that one in the developed part of the world, but the problem is that the law is not enforced. The problem can be illustrated on the significant agreements that were negotiated under the ILO and although they were ratified, their norms are not enforced as well. It brings us to another argument against the core labor standards within the binding rules of the WTO. The adoption of such a labor clause would have resulted in the similar problem of its application. There are certainly many effective ways, how to promote the economic and social development and how to achieve the social standards within the developing countries. We do not share the opinions that the social clause belongs among them.

Besides the economic reasons against the social clause and the strict linkages between trade and labor standards, there are many technical arguments opposing its idea as well. The attempt to formally link the trade and international labor standards at the multilateral level within international trade law would certainly lead to many significant legal problems. First, there would be two different sources of legal binding rules. The labor law is the principal competence of the International Labor Organization that is serving as a forum for any negotiations related to the social issues. The international trade rules are set up by the WTO and the inclusion of the labor standards into its competences could cause the lack of coherence and raise the question of the relevant body to solve the disputes and complaints. More than this, the WTO dispute settlement mechanism is aimed at the solution of the trade disputes related to non-compliance of its measures. There is no similar



mechanism within the ILO and even if we can agree on the need for an existence of the body that would decide the labor law disputes, the WTO settlement mechanism is not the suitable forum to deal with it. However, even ILO has its own capacities, how to supervise the application of its rules, regardless that less binding. The involvement of the WTO dispute settlement mechanism into the labor standards enforcement would certainly mean lesser capacity to enforce the multilateral trade binding rules and therefore the commitments of the WTO members to respect them.

Although the issue seems to be similar to the multilateral environmental protection and the rules leading to the solution of the global problems related to the climate change, its essences are different. The effective solution of the environmental problems cannot be achieved at the regional or even national level. The multilateral action is the only way, how to minimize the negative effects of human activities. The separate actions will not guarantee any significant success. Therefore, the multilateral cooperation is strongly supported. The risks of the situation, when the multilateral agreement on the environmental protection is not achieved, are tremendous and cannot be compared to the social clause issues. It is the reason, why the authors agree on the formal linkage of the Multilateral Environmental Agreements to the WTO and its dispute settlement mechanism. Nevertheless, in the case of the social and labor standards, the need for the binding multilateral rules is of much lesser importance. It is time to describe the principles of the social clause and suggest the alternative approaches at the regional and local level that would lead more effectively to the improvement of the social situation within the developing countries without threatening the free trade established within the framework of WTO.

### **3. The principles of the social clause and its alternatives**

The core idea of the social clause was to make it possible for any country to put the restrictions on imports from a different country, which is not respecting the commonly agreed international labor standards. The linkage between trade and labor rights would be therefore established, if the WTO included the social clause within the binding international rules and used its tools to the enforcement of the agreed standards.

Generally, the specific position of the social clause lies in the enforcement of the labor standards by linking them to international trade, through the instruments of the World Trade Organization, or any other multilateral organization that would be suitable for the management of the rules of trade. It is also supposed that in the case of a dispute, it would be the WTO and its procedures of dispute settlements and arbitration that would lead to the enforcement of the common labor standards. The social clause cannot be understood as equal term to the social rights or social policy. The social rights and their protection enforcement are not tied with the international trade rules and tools and lies within the competences of the national states. There ought to be a strict distinction in the usage of the terms and the social rights cannot be confused with the trade restrictive nature of the social clause.

As stated above, the discussion about the social clause led to an impasse, but on the other hand, it revealed two interesting facts. First, the International Labor Organization and its rules appeared to be inadequate to the current state of the world economy and its development. The positions of the member states from different parts of world varied rapidly and made it impossible to contribute to the debate on the labor standards within the WTO. Second, the so far opposing positions of the NGOs, trade unions and governments

within the developed and developing world were almost similar and the official rejection of the social clause proposals from the governments of developing countries was strongly supported by their trade unions. Another important point is that the trade unions within the developing countries have opposed the social clause very passionately, but in the meanwhile, they call for a stronger protection of labor rights at the level of their national laws. They are therefore facing an unpleasant dilemma and their arguments for the negation of the social clause are certainly weakened.

The question of the adoption of the social clause is related to the general problem of the universality of the labor rights as mentioned above. On one hand, there can be an assumption that the negation of the social standards linked to the WTO rules means the negation of the need for the universal labor rights. On the other hand, there were many arguments against that perception (Chenoy, 2005). They are concerned on the distinction between the labor standards as externally determined and forced to be followed and the labor rights as the responsibility and respect of the employers to the workers and its genuine rights. As the multilateral approaches to the labor-trade linkages are not very probable at least at the medium term perspective, there have been trends leading to the inclusion of the labor standards to the bilateral and even regional trade agreements. There could be found the references on the labor standards that are subject to the same dispute settlement procedure as the trade provisions of such an agreement. The recent development of the bilateral and regional trade agreements is also influenced by the concept of so-called collective preferences, issue that appeared in many materials of the European Commission and its representatives (Lamy, 2004).

The idea of the collective preferences is closely linked to the concept of the shared values, which can be understood as the set of values that is promoted by the nations or its trade block. In regard of the trade agreements, it implies the possibility of the trade block to ban the trade with another country, if the shared values are not respected. The implications of such a concept are significant and threaten the essence of the international binding trade rules. On the other hand, there are no evidences that the principle of shared values becomes the leading idea of the bilateral and regional trade agreements. We will now focus on the linkage between the labor standards and regional trade agreements.

There had been certain number of relevant regional trade agreements that established quite a strong linkage to the labor standards. First of all, the North American Free Trade Agreement (NAFTA) and its link to the North American Agreement on Labor Cooperation (NAALC) that was agreed on as the side agreement and entered into the force in 1994 (NAFTA, 1994). There are more than ten labor standard references forcing the governments of NAFTA countries to enhance the labor standards, but only at the level of national law. It did not establish any international labor standards. It included no obligatory statement either. Since then, United States had negotiated couple of trade agreements that included the international labor standards as well, for instance with Cambodia<sup>3</sup> (USA, 1996).

A very active player in the field of the promotion of the link between the trade and social issues is certainly the European Union. The bilateral agreements of the EU are basically focused on the human rights, technical and economic cooperation and political dialogue. The labor issues are not at their centre, but the influence of such an agreement on them is significant. The typical example is represented by the Partnership Agreement with the ACP countries (EU, 2000).

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3 Another case is the agreement with Jordan of 1998.

There is still one crucial question remaining, how the bilateral or regional trade agreement's link to the social standards and labor law should be reflected at the multilateral level, if ever. The answer is not easy, but the conclusion that we came to is that the regional trade agreements does not represent the example that ought to be followed by the WTO at the multilateral level. The bilateral and regional agreements consist of the rules that are the most suitable ones for both sides and would not be promoted if there were not bringing any relevant advantages. On the other hand, the agreed international labor standards can be included in the Generalized System of Preferences, which is the preferential system that provides the developing countries with the duty free access to the markets of mainly European Union countries and the United States.

## **Conclusion**

We tried to present a brief examination of the complex issue of the labor standards linkage to the international trade. The key problem lies within the principle of the social clause and the legal characteristic of the rules of the dispute settlement mechanism under the World Trade Organization. The social clause bears several unique features. Specific position of the social clause lies in the enforcement of the labor standards by linking them to international trade, through the instruments of the WTO, or any other multilateral organization that would be suitable for the management of the rules of trade. It is also supposed that in the case of a dispute, it would be the WTO and its procedures of dispute settlements and arbitration that would lead to the enforcement of the common labor standards. The social clause cannot be understood as equal term to the social rights or social policy. The strength of such a statement could be understood as a way of hidden protectionism from the side of the developed countries.

The linkage of trade and social standards in a way of legal binding rules under the WTO is not workable and could lead to certain discrepancies in the international trade. The openness of international trade and investments represents the crucial policy setting for enhancing the economic development of the developing countries and therefore lead to the increasing of the labor protection of their workers. The ongoing debate should lead to the recognition of fact that the differences of the labor standards do not represent any kind of a social dumping, but reflect the different productivity of labor levels. However, all the members of the WTO ought to respect the ILO basic labor rights stemming from the human rights themselves. The negative position to the multilateral linkage of the labor standards to the trade rules do not mean are opposition to the specific agreements on the regional level.

There had been certain number of relevant regional trade agreements that established quite a strong linkage to the labor standards, but only at the level of national law. It did not establish any international labor standards. It included no obligatory statement either. A very active player in the field of the promotion of the link between the trade and social issues is certainly the European Union. The bilateral agreements of the EU are basically focused on the human rights, technical and economic cooperation and political dialogue. The labor issues are not at their centre, but the influence of such an agreement on them is significant. The bilateral and regional agreements consist of the rules that are the most suitable ones for both sides and would not be promoted if there were not bringing any relevant advantages.



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## **WTO a sociální doložka, aneb: mnohostranné přístupy k mezinárodním pracovním standardům**

*Jakub Krč – Eva Cihelková – Josef Bič*

### **Abstrakt**

Jedním z velmi důležitých prvků mechanismu urovnávání sporů v rámci WTO je tzv. princip odvetných opatření. Mechanismus urovnávání sporů je možné využít pro každou oblast, která je v rámci WTO ošetřena. Z toho vychází zásadní otázka, které oblasti jsou zahrnuty pod správu WTO? Některé vyspělé země se snaží přimět členské státy, obzvláště ty rozvojové, ke svázání pracovních standardů s pravidly světového obchodu a zahrnout je tak pod jurisdikci WTO. Tato stať se pokouší o nástin vývoje vztahu mezi pracovními standardy a pravidly světového obchodu a jeho důsledky pro WTO. Předkládáme charakteristiku principů tzv. sociální doložky a některých kritických bodů, které souvisejí se závaznými mnohostrannými sociálními standardy.

**Klíčová slova:** sociální doložka; standardy; pracovní standardy; ILO; WTO.

## **WTO and the Social Clause, or else: the Multilateral Approaches to the International Labor Standards**

### **Abstract**

One of the very important features of the dispute settlement mechanism under the WTO is the principle of the cross retaliation. The dispute settlement mechanism is going to be used for any of the areas within the agenda of WTO. Therefore, there is a crucial question of the issues included in the scope of subjects administrated under the World Trade Organization. Several development countries tried to pressure the member states, basically the developing countries to link labor standards with trade and include them under the jurisdiction competences of the WTO. The main aim of this paper is to outline the development of the linkage of the labor standards to the trade and its consequences for the World Trade Organization. We would like to describe the principle of the so called social clause and therefore stress some of the critical issues related to the idea of binding multilateral social standards.

**Key words:** social clause; standards; labor standards; ILO; WTO.

**JEL classification:** J80, F13