The Use, Scope and Effectiveness of Labour and Social Provisions and Sustainable Development Aspects in Bilateral and Regional Free Trade Agreements

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The opinions presented in this report do not reflect the views of the institutions to which the authors belong.
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EXECUTIVE SUMMARY 1-

Since the 1990s, we have seen a proliferation of bilateral trade agreements. Many of these have encompassed topics that are not directly linked to trade, such as political institutions, sustainable development, labour standards or competition policy. The European Union itself is caught up in this trend. It has thus undertaken to promote labour standards and decent work in multilateral and bilateral trade negotiations over and above basic compliance with core labour standards.

The aim of this study is to identify the clauses relative to labour, social practices and sustainable development in bilateral and regional free trade agreements: their scope, implementation and their consequences. We shall discuss the relative merits of the various options.

Labour and decent work in international declarations and trade agreements.

In spite of a lack of consensus among the GATT Contracting Parties on introducing explicit references to core labour standards in the Marrakech Agreements (1994), a certain number of organisations, public and private, have made a commitment to respect Human Rights, comply with core labour standards and promote decent work and sustainable development. The final version of the declaration of the WTO Ministerial Conference (Singapore, December 1996) states that the member countries "renew our commitment to the observance of internationally recognized core labour standards", which were subsequently set out in the ILO's "Declaration on Fundamental Principles and Rights" (1998) requiring Member States to observe and promote four core standards2 (eight conventions). At the same time, the ILO has been promoting the concept of "decent work" which, in addition to the core labour standards, views this from the perspective of social progress. The "Decent Work Agenda" (2000) has been recognised and taken up by the UN Economic and Social Council (ECOSOC) in particular, as well as by the European Union, which has committed to promoting decent work, notably in its trade agreements. The European Council at its meeting in December 2004 stressed the importance of the social aspects of globalisation and has since reasserted this commitment, specifying what it means in more detail.

Insofar as regards multinationals, ethics charters and codes of good practice are the principal reference texts relative to Corporate Social Responsibility (CSR). They generally include an undertaking to observe national laws and ILO agreements, the Universal Declaration of Human Rights or the OECD Guidelines for Multinational Enterprises. Some have negotiated international framework agreements with the unions, often within a specific industry.

Since the early 1990s, the debate over the relationship between trade and labour has undergone certain changes; the options have been specified in line with a more realistic approach. The WTO has now been forced to take a backseat, with the development of bilateral or regional trade agreements, as well as the action taken by other international organisations, regional unions and the undertakings of certain multinational firms.

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1 This Executive Summary sets out only to give a concise overview of the Final Report, which should be referred to for detailed information, examples, references, statistics and empirical results.

2 These are the freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the elimination of discrimination in the workplace and the abolition of child labour (age, worst forms).
Trade, labour and sustainable development.

While not denying the advantages of trade liberalisation in terms of global economic health, the inclusion of provisions relative to labour and sustainable development is aimed at preventing any potentially negative or "undesirable" impact and/or at promoting these objectives and thereby making trade more profitable and, as the case may be, making trade agreements more politically acceptable.

Improving global economic health may well encourage the "endogenous" development of labour standards, but does not exclude the unequal distribution of the profits, either within a country or between different countries. Some individuals (often workers in rural areas or with low qualifications) may even come out as "net losers" (loss of more or less long-term work, drop in real wages, etc.). Furthermore, the pressure of international competition, while it may be good for the consumer and the purchasing power of workers, may also incite firms or countries to violate national laws and slow down social progress, even if this puts even greater competitive pressure on other countries (race-to-the-bottom).

Both theoretical and empirical studies fail to clearly identify and explain these issues in their entirety. Although growing internal inequalities are often identified, in developed and developing countries alike, the systematic undermining of labour standards is not demonstrated, even though there are case studies that may reveal this sort of reaction, especially in export free zones. In spite of the fact that they are inadequately assessed in empirical studies, some of the undesirable effects could even, in certain cases, compromise "sustainable development": child labour instead of education, little incentive for investment and increased productivity.

These comments plead in favour of "well-supported endogenous development", which entails making the most of the implications of trade on growth and social development while also supporting tighter labour laws and corporate practices through policies designed to achieve more than merely dealing "socially" with those who lose out.

Labour provisions in bilateral and regional treaties.

Since the signing of the NAFTA Treaty (between the United States, Canada and Mexico) in 1994, numerous regional or bilateral trade treaties have included provisions relative to labour. Nonetheless, only a limited number of countries have been involved, principally the United States and Canada, together with certain regional unions, such as the Mercosur and the EU.

The US-Cambodia Agreement (1999), limited to the textile industry, thus linked access to U.S. markets to compliance with certain standards. The agreement with Jordan (2000) introduced a section on labour which was to become a benchmark for subsequent agreements (Singapore, Chile, Australia, Morocco, CAFTA, Bahrain, Oman and Peru, etc.). Canada signed a supplementary agreement to the free trade treaty with Chile (1997) and Costa Rica. The Treaty of Asunción, which established the Mercosur, was extended by a declaration on labour. The agreement between Japan and the Philippines introduces respect for workers rights and condemns social dumping. European agreements have to integrate a section on labour and sustainable development. Agreements related to the Generalised System of Preferences introduce clauses relative to labour and include the options of imposing sanctions or providing incentives (GSP +).
The introduction of such provisions takes various forms and covers different aspects of social practice and labour laws. In addition to simply being mentioned in the preamble, they may be covered in a separate section (United States and the European Union) or in an agreement annexed to the treaty (NAFTA and Canada). They are included in different ways in agreements not only between countries but also in the case of a single country (United States). No standard model can be identified when we review these agreements.

The most commonly included provisions are: an explicit reference to the 4 core labour standards (with or without referring to the ILO), their extension to other aspects of decent work (acceptable working conditions, minimum wage, working hours, health and safety in the workplace, etc.), the existence of a procedure for settling disputes and/or imposing sanctions, and cooperation procedures. GSP agreements are generally broader, more restrictive and tend to be unilateral rather than bilateral treaties. It is quite common for treaties to include a two-fold undertaking not to undermine the standards for the purpose of boosting competitiveness and not to use compliance with labour standards for protectionist ends.

Inclusion, mechanisms and impact of labour provisions in bilateral and regional trade agreements.

It is not easy to assess the impact of the provisions relative to labour and sustainable development. Indeed, the majority of agreements that include such provisions are too recent for us to be able to stand back and assess them adequately. Furthermore, it would be arbitrary to attribute any improvement (or deterioration) in social practices to such provisions alone. This study therefore focuses on the earliest agreements: the supplementary agreement to NAFTA (NAALC), the supplementary agreement to the Canada-Chile free trade agreement (CCALC), the US-Cambodia textile agreement and the US-Jordan agreement.

Examining these texts reveals that positive incentives are more effective than negative incentives. The success of the US-Cambodia agreement, although it is geared to a very specific industry, is due to the incentives included (export quotas in proportion to compliance with labour standards) and to ILO monitoring. Generally speaking, "positive" incentives foster closer links between the public and private sectors. The dissuasive power of sanctions still needs to be assessed, however, and their application to firms, rather than to nations, has not been tested (except within the framework of the US-Cambodia agreements). The agreements between Canada and Chile and between the US and Jordan demonstrated the extent to which system of penalties is dependent on political will, even in the presence of an independent arbitration body. This political impetus therefore presupposes the proactive involvement of non-governmental organisations (NGOs), labour and management, and national government bodies. To date, monitoring procedures are generally limited, even though many reports stress their importance. Labour and management and civil society all want a greater role in the procedures. The treaty between Cambodia and United States thus confers upon the ILO the task of monitoring application of labour standards in the textile industries, together with the proposed incentive measures. In the United States, Congress, in liaison with the Administration (especially with the Department of Labour), has authority in monitoring application by the players involved. In Europe, many SIAs mention the implementation of specific procedures.

The provisions thus prove to be a factor in improving conditions when they integrate several forms of pressure. In fact, the trade agreements establish the legal standards that serve as benchmarks for the unions. They lend legitimacy to civil society initiatives that generate media pressure and help change government and corporate behaviour.
The position of stakeholders.

A number of "structuring" divides may be identified.

The first is the divide that separates North from South. On the one hand, the unions, NGOs and members of parliament in the North (US and EU) uphold the observance of internationally recognised values and interpret certain violations of workers rights as a form of unfair competition. Insofar as the countries concerned by the agreements have subscribed to diverse agreements or declarations and are committed to promoting human rights, their inclusion in trade agreements seems to be legitimate. On the other hand, certain governments in the South and certain NGOs advocate the need for differential treatment. They are concerned about the existence of restrictive provisions that serve to mask "disguised protectionism" on the part of the North.

The second divide opposes a legal approach against an economic approach. The former is mainly concerned with the effectiveness of the measures adopted, without examining ex-ante their economic validity in any depth. The debate thus focuses on the legal scope of the agreements. Some unions and NGOs thus consider that the 1998 Declaration marked a regression in labour law, reducing it to eight conventions. The economic approach operates upstream and is concerned with the relevance of social provisions: possible counter-productive effects of sanctions, nature of the relation between trade and workers rights.

While the positions originally taken by the unions and certain policy-makers tended to be trade-centred and protective, they have since evolved to take a more specific, and notably industry-oriented, approach to the effects of international competition on labour, and toward a more comprehensive conception of the promotion of Human Rights and a new approach to globalisation which must be accompanied by national or international policies.

Dialogue between North and South cannot avoid the question of double asymmetry: on the one side, easier compliance with decent work standards as applied in the Northern nations, which perpetuates accusations of Northern protectionism and, on the other side, the South's demand to continue benefiting from differential treatment in the case of the most vulnerable industries and compliance with standards, which makes the South liable to the same accusation of protectionism.

Respecting national sovereignty insofar as regards labour laws as asserted by countries in the South, as well as by certain countries in the North (low rate of ratification of ILO conventions by the United States, for example) is thus a response to a country's legitimate desire for non-interference but also renders their undertakings not to abuse labour law for the purposes of competitiveness and to promote compliance with labour law barely credible.

As the debate has developed, a certain antagonism between the various stakeholders has become apparent in defining the standards, monitoring their implementation and being involved in assistance programmes. Thus, employers associations tend to focus on Corporate Social Responsibility (CSR) which, while satisfying one of civil society's demands, leaves them with a great deal of autonomy. The unions want to conserve the tripartism approach, which is not part of the traditional practice among NGOs, which in turn are competing against national organisations insofar as regards monitoring the agreements and assistance. Parliaments occasionally appear to act as a filtered relay for civil society, which is critical of the initiatives taken by the Executive.
Proposals and assessment of the different options.

Once the parties have committed to liberalising their reciprocal trading, it only remains for them to define the emphasis to be placed on provisions relative to decent work and sustainable development. This will depend upon the various objectives defined by the negotiating parties and, in certain cases, on the priority given to these objectives. The targeted provisions are an integral part of the overall trade negotiations. Thus, the demand of a developed country (United States or the European Union) to include provisions relative to sanctions is bound to be opposed by a developing country, which might, nonetheless, agree to such provisions in exchange for additional concessions in other areas (for example, in the textile or agricultural industries, access to developing countries' markets, or a financial commitment on the part of the developed country to promote workers' rights). Including provisions relative to decent work and sustainable development may therefore involve an opportunity cost requiring the Parties to prioritise their objectives and the instruments defined for achieving them.

The debate is often obscured by the different objectives that may be assigned to the provisions relative to labour and sustainable development and which call for instruments that may be contradictory at times, or complementary at other times. Four "optional" objectives may be identified, which may be incorporated in various ways in trade agreements: protect fair trade; prevent undesirable effects on employment and sustainable development; uphold universal values; promote decent work and sustainable development.

The objective of protecting trade, often accused of being "disguised protectionism", is aimed at protecting national firms from corporate practices considered to be "unfair". This type of clause is included in many bilateral agreements. In a context where public opinion is increasingly suspicious of market liberalisation, which is seen as the cause of pressure on jobs, purchasing power and widening inequality, the introduction of such clauses provides a certain guarantee and promotes political support for pursuing the liberalisation process. Subscribing to this objective suggests the need for a special section on labour law, including a phrase such as "dismantling labour law and practices for the purposes of competitive advantage", based on recognition of national law which must, therefore, be sufficiently developed to cover export free zones. For this clause to be credible, a sanction procedure is necessary, in the form of a fine or supplementary duties, such as "antidumping" duties, which may subsequently be paid out to companies that abide by the standards or paid into a fund set up to improve compliance. One alternative may entail one Party having access to the other Party's internal procedures.

The objective of compensation and adjustment is to minimise the effects of free trade that are considered as undesirable, mainly in order to prevent free trade arrangements being challenged by certain stakeholders (unions, NGOs and Parliament, etc.).

Apart from the special procedures for the most sensitive industries, the provisions aimed at mitigating the negative impact of free trade on certain categories of workers could be included in the special section related to labour law, extending the scope of SIAs and providing for (and effectively implementing) ex post studies, and setting out a trade adjustment programme that includes, where appropriate, financial commitments and assistance from the developed country. The procedures for settling disputes and sanctions do not apply in this case.

The universal values objective introduces an ethical approach: avoid trade with countries that fail to meet their international undertakings regarding human rights (labour-related and other rights). Some NGOs campaign for these values to be upheld regardless of a country's level
of development. Subscribing to this objective implies defining the nature of "universal" rights, the level to which they should be upheld and any applicable sanctions (in the preamble and/or a special section). Their legitimacy implies close reference to any international texts that the Parties have already agreed to abide by. The credibility of such undertakings implies a need to set out a "sanctions" procedure, defined here in the broadest sense of the term, and which may include incentives ("positive sanctions") and monitoring reports, liable to foster peer group pressure or mobilise support among civil society, especially labour and management. The procedure may make a distinction between violations of fundamental labour rights, which come under State responsibility, and violations for which employers are accountable. Income from any fines may be reallocated to fund programmes to improve working conditions. Monitoring will have more credibility if it is carried out by experts that are independent of the State in question (experts from third countries, private sector associations, unions, NGOs or the ILO).

The objective of **promoting decent work and sustainable development** is no longer to deal with the negative effects of opening up trade, but rather at supporting or boosting the endogenous development of labour standards resulting from the part played by trade in development. Subscribing to this objective implies a need to clearly define several points. The range of forms that cooperation and assistance may take is relatively vast and needs to be specified (forums, legal advice to tighten labour law, ratification of ILO conventions, training for labour inspectors, assistance for the unions, support for setting up social protection systems, etc.). The roles played by the various stakeholders also need to be defined: unions, NGOs, firms, international organisations, national civil servants on secondment, and various departments within national or EU administrations. Similarly, the issue of funding for planned actions and for social protection must be addressed and integrated. Aid for trade may be enlarged to finance promotion of the concept of decent work. Cooperation agreements may also be used to this end. Achieving this objective also includes monitoring the development, implementation and effectiveness of aid, promotion and assistance actions. This monitoring must involve government administrative departments, labour and management and civil society, assisted by experts in the field.

Looked at separately, these different objectives may nonetheless be included at different points in the trade agreements. While the general principles must be set out in the preamble, concentrating the provisions relative to labour in a single section affords the advantage of enhancing overall coherence. Integrating "cooperation" provisions in a free trade treaty that is limited to trade aspects is more questionable. Including common provisions relative to both labour and the environmental aspects of sustainable development in the same section and, occasionally, under the same article, needs to be discussed more fully.

An integrated monitoring and dispute settlement mechanism may carry the risk of placing greater emphasis on the objective of protecting trade than the Parties may intend and making their status as the "last resort" or the application of "incentives" or "positive" sanctions more complicated.

The monitoring and assistance system must specify the roles of the stakeholders and, in particular, of labour and management, civil society and international organisations in the form of forums, social dialogue committees (including industry-specific and inter-professional committees), as well as committees providing advice, partnership or assistance to local labour and management. The ILO may be called upon to play a greater role and use its authority and
experience at grassroots level for monitoring and assistance aimed at establishing tighter labour law.

**General conclusion**

Although the debate on the inter-connections between trade, labour and sustainable development is far from closed, it has evolved considerably. The experience of trade liberalisation and of certain regional and bilateral trade agreements demonstrates that, while a positive relation between opening up the markets, growth and social progress is not be denied, it is not systematic. The effects vary depending on the type of workers in question, their qualifications, the industry and the geographical location. These limitations have generated increasing loss of confidence felt among populations with regard to multilateral trade agreements (impasse in the Doha Development Round) or bilateral trade agreements (failure of the agreement with Colombia). In such a context, pursuing the process of liberalising trade implies taking account of its implications for social progress.

While introducing the issues of labour and sustainable development into trade agreements presents an opportunity cost in the negotiation process, it also creates "added value" for such agreements: greater support within civil society, support for political and social stability, thereby limiting the risks to trade, support for cooperation enabling stronger bilateral relations to develop, consolidation of a positive relationship between social progress and economic progress, as well as contributing to the promotion of international agreements.

Nonetheless, the introduction of the issues of labour and sustainable development also comes up against a contradiction that clouds debate: these issues aim to respond to people's dissatisfaction with globalisation, with its inadequate or too-slow-to-come-true promises of social progress and, at the same time, they are perceived as protectionist and asymmetrical instruments that work to the advantage of the developed countries.

The proposals put forward in this report are aimed at levelling out these contradictions and, as far as possible, taking account of different and often diverging opinions which are not clearly identified and explained either in theoretical studies or in empirical evidence, and which, therefore, remain inherent in trade negotiations.
The Use, Scope and Effectiveness of Labour and Social Provisions and Sustainable Development Aspects in Bilateral and Regional Free Trade Agreements
CHAPTER 1 - LABOUR AND DECENT WORK IN INTERNATIONAL DECLARATIONS AND TRADE AGREEMENTS

The incorporation of provisions relative to core labour standards and decent work in regional and bilateral trade agreements is part of a growing trend among international institutions.

As far back as 1919, the international dimension of labour was recognised, with the founding of the International Labour Organisation. Since then, many national organisations, treaties and declarations have set out a number of intentions and principles.

Some of the provisions relative to labour are related to universal principles and must be applied regardless of culture or of different levels of development. These have now been formalised in the ILO's "Declaration on Fundamental Principles and Rights at Work" (1998).

Other texts and declarations stipulate the need to ensure that globalisation goes hand in hand with the promotion of decent work, a factor in sustainable development. Fair globalisation implies support policies designed to prevent the unfair distribution of the profits of globalisation and the erosion of labour laws to boost competitive advantage.

In the first section, we shall examine the positions taken by certain major international organisations with regard to decent work. In the second section, we identify recent trends in regional or bilateral trade agreements, enabling us to get a clearer picture of the context underlying the issue of introducing provisions relative to decent work into this type of treaty.

Section 1 – Decent work and trade in international organisations

The impact of globalised trade on labour has raised a number of concerns that have led international organisations to promote their members' undertakings regarding compliance with core labour standards or to define programmes designed to promote decent work with a view to ensuring sustainable development. Multinationals, under criticism from civil society, are also taking a similar line.

1. Labour and the WTO.

In Article 7 on "Fair Labour Standards", the Havana Charter (1947) recognised that failure to comply with workers' rights is an international problem and explicitly mentions the risks involved in "social dumping", which would be detrimental to trade.

Since it was not ratified by nations, this Charter never entered into force and the International Trade Organisation was superseded by the GATT. Although the GATT did not integrate Article 7 of the Charter, its preamble nonetheless included the following statement by the Contracting

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4 1. The Members recognize that measures relating to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and, accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.

2. Members which are also members of the International Labour Organisation shall cooperate with that organization in giving effect to this undertaking.

3. In all matters relating to labour standards that may be referred to the Organization ... it shall consult and co-operate with the International Labour Organisation.
Parties (now WTO members): "Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand." Articles XX of the GATT and XIV of the GATS (General Agreement on Trade in Services) provided for several exceptions, notably when the agreement was liable to prevent "the adoption or application" of certain measures required to protect public morals or related to goods made in prisons. Article XXI (and its equivalent in Article XIVb of the GATS) states that, "Nothing in this Agreement shall be construed ... to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security." However, apart from work in prisons (Article XX(e)), these articles are too limited in scope and too vague to allow for exceptions whereby violating labour standards would be justified.

The lack of consensus among the GATT Contracting Parties made it impossible to introduce an explicit reference to core labour standards in the Marrakech Agreements (1994) that established the WTO. The final version of the declaration of the WTO Ministerial Conference in Singapore (December 1996) included a firm commitment on the part of the member countries. It nonetheless does not go as far as the Havana Charter, since it denies any possibility of a negative link between trade and labour standards: "We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration."

Even though the industrialised countries again raised the issue at the Seattle Conference (1999), thereby contributing to its failure and, much more timidly, at the Doha Conference (2001), the compromise reached in Singapore, reiterated at the Doha Conference (2001, Section 8), still upholds the principle of a multilateral system.

2. Labour standards and decent work at the ILO.

Following the Singapore Conference, the ILO's "Declaration on Fundamental Principles and Rights" (1998) defined four core standards, embodied in eight conventions. These rights are considered to be universal and must apply to all people and all States, regardless of the level of development. The preamble written by the ILO, the international organisation founded in 1919 by the Treaty of Versailles, was the first major international declaration setting out the objectives in terms of work, labour and social protection. It also sets out to justify the need for international commitments, stating that "Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle to the way of other nations which desire to improve the conditions in their own countries." The Declaration of Philadelphia (1944) sets out the principles on which the ILO is founded, stating, for example, that freedom of expression and of association are essential to sustained progress and also sets out its objectives regarding full employment, poverty, non-discrimination, extending the provision of social security and child welfare. It stipulates (Annex V) that "the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilized world." In spite of the fact that this test, the ILO's Constitution, to which the Declaration of Philadelphia is annexed, states that labour is not a commodity, it fails to make any reference to forced labour, and, similarly, "child welfare" and "the protection of children" do not explicitly refer to the issue of child labour. Nor is the relation to trade established, even though the expansion of international trade is seen as a factor in achieving these objectives.
economic development. This Declaration was inspired by the World Summit for Social Development in Copenhagen (1995), which included seven Agreements. Since little protection against child labour was included in the existing ILO conventions, a new convention was added to cover its worst forms (Convention 182).

The four core labour standards, embodied in eight conventions, are:

1. the freedom of association and the right to collective bargaining (Conventions 87 and 98);
2. the elimination of all forms of forced or compulsory labour (Conventions 29 and 105);
3. the elimination of discrimination in respect of employment and occupation (Conventions 100 and 111);
4. the recommended minimum age for child workers (Convention 138), to which Convention 182 was added regarding the worst forms of child labour.

These conventions set out principles without imposing universal "models". None of them introduce standards regarding wages nor, a fortiori, recommendations regarding minimum wages. They do not mention safety in the workplace nor social protection.

The Declaration requires Member States to observe and promote the fundamental principles and rights, whether or not they have ratified the relevant conventions. Those Member that have not ratified one or more of the fundamental conventions, must submit an annual report on progress made in the matter, specifying the obstacles to ratification.

The process of ratification is a long way from being completed (Annex 1). Paradoxically, some countries which initiate bilateral trade agreements including labour provisions have only ratified certain conventions: the United States has only ratified two, Canada and Singapore only five and Mexico only six. Europe and Chile have ratified all the conventions. Moreover, the heterogeneous number of conventions that have been ratified demonstrates that there is no obvious relation between the number of ratifications and effective compliance with core labour standards.

The 1998 Declaration has become a benchmark for responsible trading conduct. It led to the revision (in November 2000) of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office in November 1977. Of particular interest, this includes a list of 17 conventions and 21 recommendations. These go further than the core labour standards and, more specifically, encompass health, safety and training. In view of its tripartite nature, this declaration therefore extends the responsibility to comply with labour standards to employers and unions. The OECD Directives for multinational enterprises focus on the principles and rights put forward in the ILO Declaration. The latter is also the reference text used as the basis for the United Nations Global Compact, which promulgates these principles and rights as universal values that

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7 www.ilo.org/public/french/employment/multi/overview.htm
enterprises should observe in global trade. A growing number of codes of conduct in the private sector and similar initiatives also refer to the fundamental principles and rights at work.

At the same time, the ILO has been promoting the concept of "decent work" which, while including the core labour standards, is based on a different perspective. The core standards set out minimum standards. Decent work is based on a more dynamic approach to social progress. The "Decent Work Agenda" (2000) thus aims to achieve the objectives of full, productive employment and decent work for everyone, at global, regional, national, sectoral and local level. It is divided into four areas:

1. fundamental principles and rights at work and international labour standards;
2. the opportunity of work that is productive and delivers a fair income;
3. social protection and safety at work;
4. social dialogue and tripartism.

The Decent Work Agenda has been approved by the governments and social partners that are members of the ILO. It also focuses on compliance with different development models. Updates of the conventions factor in the decisions adopted by the ILO and, more particularly, the conventions relative to decent work.

In February 2004, the report, "A fair globalization: Creating opportunities for all" published by the Commission on the Social Dimension of Globalisation set up by the ILO, considers that access to decent work for all should become a global objective that all public and private sector players at international, regional, national and local level should work toward achieving by orientating their internal and external policies at regional, community, national and local level to this end.

The "Proposed ILO Declaration on Social Justice for a Fair Globalization", published in June 2008 is based on previous declarations regarding core labour standards and decent work, specifying the four areas in detail. In the preamble, it states that "the fundamental values of freedom, human dignity, social justice, security and non-discrimination are essential for sustainable economic and social development and efficiency". It considers "that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes".

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8 www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/labourStandards.html
9 www.ilo.org/dyn/declaris/DECLARATIONWEB.ABOUTDECLARATIONHOME?var_language=EN
10 According to Gravel (2007, p. 69-70), "what started out as a concept for modernising and reforming the ILO institutions, via the intermediary of its tripartite partners, has, within the space of a few years, become a programme that has undoubtedly found an echo all over the world among political leaders, workers, civil society and the business community."
11 www.ilo.org/public/english/decent.htm
12 The European Commission generally speaks of "productive and freely-chosen employment" (ec.europa.eu/social/main.jsp?catId=323&langId=en)
13 The eight conventions relative to core standards are included in the updated list of conventions, available at www.ilo.org/global/What_we_do/InternationalLabourStandards/lang--en/index.htm. Since the Decent Work Agenda does not explicitly refer to the conventions, it is difficult to establish the relations between the two.
14 www.ilo.org/public/french/
15 points 280, 492-493, 502-510 and Annex I
Proposing that it becomes more involved in implementing the Declaration, the ILO proposes, the provision on a bilateral, regional or multilateral basis, in so far as their resources permit, of appropriate support to other Members' efforts to give effect to the principles and objectives referred to in this Declaration." It considers that "As trade and financial market policy both affect employment, it is the ILO's role to evaluate those employment effects to achieve its aim of placing employment at the heart of economic policies". It also proposes that "upon request, providing assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their compatibility with ILO obligations; and; (e) developing new partnerships with non-state entities and economic actors, such as multinational enterprises and trade unions operating at the global sectoral level in order to enhance the effectiveness of ILO operational programmes and activities, enlist their support in any appropriate way, and otherwise promote the ILO strategic objectives."

This Declaration specifies the Organisation's monitoring, assistance and cooperation procedures. It is appended by a "Resolution on strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization." Of these two texts, only the latter has been adopted.


Some of the eight Millennium Development Goals (2000), which are broken down into 18 targets, regard decent work without, however, making explicit reference to the ILO:

1. eradicate extreme poverty and hunger (Goal 1);
2. achieve universal primary education (Goal 2);
3. promote gender equality and empower women (Goal 3);
4. ensure environmental sustainability (Goal 7).

Goal 8 is to "Develop a global partnership for development". Target 12 proposes to, "Develop further an open, rule-based, predictable, non-discriminatory trading and financial system (includes a commitment to good governance, development, and poverty reduction," and Target 13 to "Address the special needs of the Least Developed Countries (includes tariff- and quota-free access for Least Developed Countries' exports."

The Declaration of September 2005, relative to monitoring the Millennium Declaration, advocates the need for fair globalisation and the desire to promote productive employment and decent work as national and international policy objectives.

In July 2006, the UN Economic and Social Council (ECOSOC) adopted a Ministerial Declaration, "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all and its impact on sustainable development" 18 "Respecting, promoting and realizing the principles contained in the International Labour Organization Declaration on Fundamental Principles and Rights at Work..."

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18 "Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development" accessible at ec.europa.eu/employment_social/international_cooperation/docs/ecosoc_md_july_2006_en.pdf. See also Van der Hoeven, R. and Lübbek, M. (2006) 'Department of Economic and Social Affairs, ECOSOC Chamber, 8-9 May 2006.}
Making continued efforts towards ratifying — where Member States have not done so — and fully implementing the International Labour Organization conventions concerning respect for fundamental principles and rights at work... Considering the ratification and full implementation of other International Labour Organization conventions concerning the employment rights of women, youth, persons with disabilities, migrants and indigenous people.... We recognize that full and productive employment and decent work for all, which encompass social protection, fundamental principles and rights at work and social dialogue are key elements of sustainable development for all countries, and therefore a priority objective of international cooperation."

This declaration was reiterated in July 2007¹⁹. In Resolution 2006/18 of 26 July 2006, the Council decided that the theme for its 2007-2008 review and policy cycle would be "Promoting full employment and decent work for all", taking account of the interrelationships between employment, the eradication of poverty and social integration. Promoting full employment and decent work for all was the subject discussed at the 45ᵗʰ (2007) and 46ᵗʰ (2008) sessions of the ECOSOC Commission for Social Development.

The United Nations Global Compact²⁰ invites any company which so desires to undertake their operations and strategies in line with ten universally accepted principles related to human rights, labour standards and anti-corruption. Four of these principles are related to labour and are derived from the four core labour standards of the ILO’s 1998 Declaration.

4. Investment and labour at the OECD.

The OECD, in its "Guidelines for Multinational Enterprises"²¹, takes up the four core labour standards, without explicitly referring to the ILO. It includes a recommendation to "Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country." These guidelines are not binding and are included in the 1976 Declaration. They have been adopted by thirty OECD member countries and 10 signatory countries (Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia). Although the Declaration does not refer to the ILO, the Guidelines include observations recognising that (point 20): "The provisions of the Guidelines chapter echo relevant provisions of the 1998 Declaration, as well as the ILO’s 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. … The ILO Tripartite Declaration can therefore be of use in understanding the Guidelines to the extent that it is of a greater degree of elaboration. However, the responsibilities for the follow-up procedures under the Tripartite Declaration and the Guidelines are institutionally separate."

In addition, the OECD Working Party of the Trade Committee publishes a series of studies for non-member countries²².

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¹⁹ www.un.org/ecosoc/docs/pdfs/Revised_Ministerial_declaration.pdf
²⁰ In English: http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html
  In French: www.unglobalcompact.org/languages/french/index.html
5. **G8 and the social aspects of labour.**

At the Heiligendamm Summit in June 2007, the Declaration on "Growth and responsibility in the World Economy" was adopted. This includes a chapter headed, "Investment and responsibility – the social dimension of globalisation", which supports the ILO's Decent Work Agenda. It recalls that While stressing that labour standards should not be used for protectionist purposes, we invite the WTO members and interested international organizations, in close collaboration with the ILO, to promote the observance of internationally recognized core labour standards as reflected in the ILO declaration on Fundamental Principles and Rights and its follow-up. We also commit to promoting decent work and respect for the fundamental principles in the ILO Declaration in bilateral trade agreements and multilateral fora." It specifically mentions Corporate Social Responsibility (CSR): In this respect, we commit ourselves to promote actively internationally agreed corporate social responsibility and labour standards (such as the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration), high environmental standards and better governance through OECD Guidelines’ National Contact Points. We call on private corporations and business organizations to adhere to the principles in the OECD Guidelines for Multinational Enterprises. Countries to associate themselves with the values and standards contained in these guidelines." The G8 members support dissemination of the United Nations Global Compact. Furthermore, "In order to strengthen the voluntary approach of CSR, we encourage the improvement of the transparency of private companies’ performances with respect to CSR, and clarification of the numerous standards and principles issued in this area by many different public and private actors. We invite the companies listed on our Stock Markets to assess, in their annual reports, the way they comply with CSR standards and principles. We ask the OECD, in cooperation with the Global Compact and the ILO, to compile the most relevant CSR standards in order to give more visibility and more clarity to the various standards and principles".

In preparation for the Hokkaido G8 Summit, the Labour and Employment Ministers who met in Niigata (Japan) on 11-13 May 2008, confirm our intent to promote Decent Work for all and the social dimension of globalisation. We recall the importance of social protection in combating poverty and promoting economic and social development. In this context we confirm the agreements in Dresden and Heiligendamm on broadening and strengthening social protection and we take note of the ILO initiatives to promote basic social security systems in developing countries and emerging economies. Nonetheless, while sustainable development is mentioned several times in the final version of the Declaration – on the environment, health, education, growth and the situation in Africa - the social aspects are not mentioned.

6. **The European Union's position: Commission and Council.**

At the Lisbon Summit (2000), the European Union agreed on an integrated reform strategy aiming for quantitative and qualitative improvements in employment and greater social cohesion. In Barcelona in 2002, the EU Council described the European social model as a model based on good economic performance, a high level of social protection, education and lifelong learning, as well as on social dialogue between management and workers' representatives.

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23 www.g8.de/Webs/G8/EN/G8Summit/SummitDocuments/summit-documents.html
24 The first joint initiative between the OECD and the ILO resulting from the Heiligendamm Summit was the ILO and OECD Conference on Employment and Industrial Relations: promoting responsible business conduct in a globalising economy, OECD, Paris, 23 and 24 June 2008.
25 www.g8.utoronto.ca/employment/labour2008.html
26 G8 Hokkaido Toyaiko Summit Leaders Declaration, Hokkaido Toyaiko, 8 July 2008; www.g8summit.go.jp/eng/doc080714_en.html
On 18 May, 2004, in response to the report released by the World Commission on the Social Dimension of Globalisation, the European Commission adopted a communication entitled "The Social Dimension of Globalisation - the EU’s policy contribution on extending the benefits to all." It thus states that, while the EU’s social and economic model cannot simply be transposed to other parts of the world, many aspects of its model may be of interest to the Union’s partners. For instance, this model places particular emphasis on achieving a balance between economic and social goals, as well as on solid institutional structures for managing economic, employment, social and environmental issues, and the interplay between all these aspects. It sees social and civil dialogue as of prime importance, together with investment in human capital and the quality of employment.

The EU Council meeting of December 2004 stressed the importance of the social dimension of globalisation. The Council Conclusions on the social dimension of globalisation (February 2005) "UNDERLINES that the EU must conduct its internal and external policies in a consistent way thus contributing to maximising the benefits and minimising the costs of globalisation for all groups and countries, both inside and outside of the EU". It also "HIGHLIGHTS the importance that the World Commission attaches to promoting regional integration across the world and to incorporating a social dimension in the process of regional integration". It "RECALLS its commitment to promoting core labour standards and to improving social governance in the context of globalisation, including within the framework of its existing trade policies and initiatives, as emphasized by the Council Conclusions of 21 July 2003" and "RECOGNISES the need for an integrated approach to trade policy and social development in particular the need to strengthen the sustainable development dimension of bilateral trade agreements and to continue to pursue the promotion of core labour standards in bilateral agreements, accompanied by Sustainability Impact Assessments (SIAs) and assisted by appropriate donor support; NOTES the importance of the revision of the Generalised System of Preferences (GSP) in this context". The Communication, "Promoting decent work for all. The EU contribution to the implementation of the decent work agenda in the world" (SEC (2006) 643) reiterates the European Union’s position. This serves as the basis for the EU Council’s Conclusions on "decent work for all" (30 November-1°December 2006) which, of particular note, declared the EU’s support for the United Nation’s resolutions and, more specifically, for the ECOSOC Declaration of July 2006, as well as its support for the ILO’s Agenda. It "HIGHLIGHTS the importance of promoting employment, social cohesion and decent work for all in EU external policies, bilateral and regional relations and dialogues, including EU neighbourhood policy and cooperation programmes with third countries and regions, the ASEM Labour and Employment Ministers cooperation initiated in Potsdam 2006 and the follow-up to the EU - Latin America and Caribbean Summit in Vienna 2006 in relation to social cohesion".

As far as the European Union is concerned, international trade is an instrument at the service of sustainable development, in view of its environmental and social aspects. The Communication, "Renewed Sustainable Development Strategy" (9 June 2006) thus states that, "Actions should include […] the Commission and Member States will increase efforts to make globalisation work for sustainable development by stepping up efforts to see that international trade and

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27 ec.europa.eu/employment_social/international_cooperation/docs/ilo_com_2004_0383_en.pdf
28 ec.europa.eu/employment_social/international_cooperation/docs/ilo_com_2004_0383_en.pdf
investment are used as a tool to achieve genuine global sustainable development. In this context, the EU should be working together with its trading partners to improve environmental and social standards and should use the full potential of trade or cooperation agreements at regional or bilateral level to this end.” (p.8).

The European Union's policy regarding trade is based on the Commission's Communication, "Global Europe: Competing in the World. A Contribution to the EU's Growth and Jobs Strategy" (4 October 2006), considered to be the "external" dimension of the Lisbon Strategy. In the definition of the Purpose of the Communication, it states that "Growth and jobs, and the opportunity they create, are at the heart of the European Commission’s agenda for Europe. They are essential for economic prosperity, social justice and sustainable development and to equip Europeans for globalisation. They are a core criterion by which citizens will judge whether Europe is delivering results in their daily lives...[...] The purpose of this Communication is to set out the contribution of trade policy to stimulating growth and creating jobs in Europe." (p.2). The Communication defines policy regarding regional trade agreements: "In considering new FTAs, we will need to work to strengthen sustainable development through our bilateral trade relations. This could include incorporating new co-operative provisions in areas relating to labour standards and environmental protection. We will also take into account the development needs of our partners and the potential impact of any agreement on other developing countries, in particular the potential effects on poor countries' preferential access to EU markets. The possible impact on development should be included as part of the overall impact assessment that will be conducted before deciding to launch FTA negotiations." (p.9).

The European Union’s Declaration on globalisation, annexed to the EU Council's Conclusions of 14 December 2007 recalls that the Union "will continue working with our partners to pursue vigorous and coherent development strategies. ... We will deliver on our commitments in the framework of the Millennium Development Goals and expect others to do likewise. Promoting decent work and addressing the problem of communicable diseases and other global health issues also remains crucial. We recall that respect for democracy and human rights, including gender equality are fundamental for sustainable development."

In the working document, "Report on the EU contribution to the promotion of decent work in the world" (2 July 2008), which deals with the external dimension of the renewed social agenda "the Commission reaffirms its commitment to promoting the internationally-agreed decent work agenda, including through cooperation with the International Labour Organisation (ILO) and other partners, and the mobilisation of all relevant policies." Insofar as trade agreements are concerned, "One objective is to strengthen sustainable development in our bilateral trade relations through new cooperative provisions on labour standards and environmental protection. In this context, decent work issues are taken up systematically in all ongoing bilateral..."
Free Trade Agreements (FTA) and Partnership Cooperation Agreements (PCA) negotiations with a view to including chapters on trade and sustainable development in all agreements.

7. The appropriation of labour standards by multinational enterprises and social dialogue.

Criticism of companies' conduct insofar as concerns labour, the environment and ethics has fostered the development of the concept of Corporate Social Responsibility (CSR) whereby companies voluntarily integrate social, environmental and economic concerns into their business activities and interactions with their stakeholders. This trend has given rise to the development of a private sector "soft law", supplanting, or supplementing, public sector "hard law".

Ethical charters and codes of good conduct, drawn up by companies, are the primary CSR texts. They generally include an undertaking to observe national laws and the ILO conventions, the Universal Declaration of Human Rights or the OECD Guidelines for Multinational Enterprises.37

<table>
<thead>
<tr>
<th>Criteria</th>
<th>International Framework Agreements</th>
<th>Codes of conduct, Ethics Charter, etc.</th>
<th>Certification labelling e.g. SA 8000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mode of drawing up social requirements</td>
<td>Discussed and negotiated between the company and national or international unions</td>
<td>Unilateral (company management)</td>
<td>Independent body (SAI) composed of various stakeholders</td>
</tr>
<tr>
<td>Sources (reference texts drawn on) of social requirements</td>
<td>Optional, but usually relatively comprehensive</td>
<td>Optional, but usually relatively comprehensive</td>
<td>Relatively comprehensive and (Internal rules plus ILO Conventions, UN Declaration of Human Rights, etc.)</td>
</tr>
<tr>
<td>Scope of application</td>
<td>Companies controlled by the signatories and contracting partners</td>
<td>Applicable for the company in question and required of suppliers and subcontractors, especially via referencing contracts (EMC Distribution)</td>
<td>Applicable to the company, which must check that its network of suppliers and subcontractors also complies</td>
</tr>
<tr>
<td>Inspection methods</td>
<td>Not usually provided for within the scope of contractual cooperation</td>
<td>Variable. May include checking application within the company only (e.g. Total's Ethics Committee), or having suppliers inspected by independent agencies (e.g. EMC Distribution)</td>
<td>Audits performed by accredited independent auditors Certification of companies that comply with social requirements</td>
</tr>
<tr>
<td>Sanctions</td>
<td>Potential suspension of cooperation</td>
<td>Variable. May go as far as terminating trade relations (EMC Distribution)</td>
<td>Yes, certificate not granted or rescinded</td>
</tr>
</tbody>
</table>

Source: Stephan Peze (2008)

A company may also ask an independent organisation for certification regarding compliance with the SA8000 standards system as defined by the SAI (Social Accountability International), a non-profit organisation that, notably, works with companies (including Toys "R" Us, Reebok, Body Shop and SGS, among others), NGOs (Amnesty International, etc.) and other

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37 For example, see the PSA charter ([www.developpement-durable.psa.fr/upload/files/charte_ethique_fr.pdf](http://www.developpement-durable.psa.fr/upload/files/charte_ethique_fr.pdf)), or Total's charter ([birmanie.total.com/fr/publications/charte_ethique.pdf](http://birmanie.total.com/fr/publications/charte_ethique.pdf))
stakeholders. The social requirements included in the standard are based on the following eight issues: (1) child labour, (2) forced labour, (3) health and safety, (4) freedom of association and the right to collective bargaining, (5) discrimination, (6) discipline, (7) working hours, (8) compensation. A company that wishes to apply for SA 8000 certification must also apply the legislation and regulations in force in the country where it is based, together with 13 ILO conventions (including the 8 fundamental conventions), the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child and the UN Convention on the Elimination of All Forms of Discrimination against Women. A management system must also be established by the company to ensure compliance with these requirements insofar as it and its subcontractors are concerned. The results of this system have nonetheless been limited: 968 certifications have been granted, 366 in Italy (141 in India, 127 in China, 73 in Brazil and 52 in Pakistan), certain major nations are not involved (not one case of certification, or only a derisory number): France, Germany, the United States, Japan, Australia and Canada, etc. Table 2 compares the various ways in which labour standards are incorporated by companies.

Table 2- Common characteristics across IFAS (60 agreements)

| - Business Ethics 11 |
| - Child Labour* 49 |
| - Community Relations 6 |
| - Corruption 5 |
| - Employment Contracts 10 |
| - Environment 16 |
| - Forced Labour* 47 |
| - Freedom of Association/bargaining* 52 |
| - HIV/AIDS 6 |
| - Human rights 4 |
| - Information and Consultation 17 |
| - Non discrimination* 49 |
| - Other employment conditions 2 |
| - Other International initiatives 15 |
| - Placement assistance 4 |
| - Requirements from union 4 |
| - Social Protection 1 |
| - Suppliers 31 |
| - Termination of Employment 6 |
| - Training/skills development 33 |
| - Wages 47 |
| - Working environment/Safety & Health 38 |
| - Working Time 33 |

* Core Labour Standard


There are some initiatives in which the unions are involved together. For instance, an International Framework Agreement (IFA) is a mutual commitment agreed between a multinational company and an international\(^\text{38}\) and/or national\(^\text{40}\) union. The company must

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\(^{38}\) www.sa-intl.org/

\(^{39}\) The unions involved in such agreements include the UNI, IFWWW, ILF, IMF and ICEM

\(^{40}\) The fifty or so companies that have signed an IFA include: Danone (1988), Accor (1995), Iba, Chiquita, Statoil, ENI, Lukoil, Volkswagen, Daimler-Chrysler, Renault, Peugeot-Citroën, Endesa, EDF, Telefonica, Carrefour and H&M. See www.union-network.org/UNIsite/int_Depth/Multinationals/GFAs-fr.html.
undertake to observe a certain number of standards, including the ILO’s eight fundamental conventions and the promotion of decent work for the company, and, on occasion, for its subcontractors and suppliers (Table 2). Some also contain a reference to the Universal Declaration of Human Rights or to OECD conventions and include protecting the environment. These agreements usually provide for a monitoring system, albeit for a limited amount of time.

In addition to international framework agreements that link a company and an international union, there are a few examples of international sectoral framework agreements. At global level, the major example is the collective agreement for the merchant shipping sector, signed in 2000 by the International Transport Workers’ Federation (ITF) and the International Maritime Employers’ Conference (IMEC). This collective bargaining agreement contains provisions on regulated minimum wages and pay rises, vacations, working hours and social benefits. It applies to all sailors, regardless of nationality or of the flag under which a ship is registered.41

Some business networks may also undertake initiatives to improve labour standards. These are often industry-based initiatives. Thus, in the food industry, the CIES – The Food Business Forum- which brings together players from the entire supply chain, from production through to retail distribution42, is developing the "Global Social Compliance Programme" which has the following goals: "To define a clear and consistent message to both suppliers and the authorities by building consensus on existing best practices ; To coordinate existing industry efforts to allow for: 1) Mutual recognition of audit results and reduction of duplication 2) Better allocation of resources to help suppliers implement fair labour conditions 3)The development of adapted collaborative training and capacity/capability building activities in partnership with suppliers 4) A constructive dialogue with civil society stakeholders, institutions and authorities"43. The International Federation for Human Rights (FIDH) and Union Network International (UNI) are involved in the programme.

Within the framework of "European Social Dialogue" (ESC; 2008) between European organisations representing employers and workers, a certain number of agreements have been signed and validated by the European Council.44 In particular, these cover parental leave (1996), part-time work (1997) and permanent contracts (1999). Labour and management have also signed a number of voluntary agreements dealing with work-related stress (2004), harassment and violence at work (2007), together with frameworks for action on lifelong learning (2002) and equality between men and women (2005).

41 See Bourque (2005).
42 Participants include Coca-Cola, Wal-Mart, Metro, Carrefour, Colgate Palmolive, Chiquita, Lindt and Nestlé, together with service providers such as DHL, IBM, KPMG and Microsoft (see list of members at www.ciesnet.com/1-wewere/1.2-member/index.asp.
43 www.ciesnet.com/2-wwedo/2.2-programmes/2.2.gscp.objectprincip.asp
44 At industry level, sector-based social dialogue committees have been established in 35 different industrial sectors since 1985. Labour and management have adopted over 40 joint inter-sectoral texts and almost 500 sectoral texts, including statements of principles and joint agreements, guidelines and codes of conduct. Sectoral social dialogue committees deal with issues relative to training, working hours and conditions, health and safety and freedom of movement for workers, for example.
Section 2 - Trends in bilateral and regional agreements

The introduction of labour provisions in bilateral and regional trade agreements has been subject to rapid and widespread changes.\textsuperscript{45}

1. The proliferation of preferential trade agreements: less and less regional

Since the 1990s, the number of regional agreements has consistently increased. In 1990, 46 such agreements had been notified and established. By 1995, there were 100, in Year 2000, 169 and, in February 2008, there were 199 (Figure 1). There is not a single WTO member country that is not currently party to at least one preferential agreement. Even those countries which have traditionally been most reticent in the matter, such as Japan and Singapore, are now party to preferential agreements.

\textbf{Figure 1 - Number of agreements notified to GATT/WTO (1948-2007)}

Since the USA-Israel Agreement (1985), and even more so since Year 2000, the number of agreements between geographically distant countries, or inter-continental agreements, has multiplied, along the lines, notably, of the European Union (Mediterranean countries, South Africa, Chile, Mexico, etc.), the United States (Morocco, Jordan, Singapore, etc.), and Chile (Canada, USA, EU, Korea, etc.). Three of the inter-continental agreements in force in February 2008 were notified between 1990 and 1999; 41 (out of 135) were notified between Year 2000 and February 2008.\textsuperscript{46}

However, only a limited number of developing and emerging countries are parties to these agreements, the exceptions being Mexico, Morocco, Israel, Chile, Egypt, Singapore, Jordan and South Africa. For most of these countries, the geopolitical aspects remain of great importance.

\textsuperscript{45} To borrow WTO terminology, regional agreements have been assimilated into all preferential agreements that override the most-favoured nation principle clause (Article XXIV of the GATT, Article V of the GATS), regardless of the geographical or historical proximity of the countries in question.

\textsuperscript{46} Source WTO.
2. Trade agreements are mainly North-South agreements

Up until the 1990s, agreements between countries at different stages of development were the exception. Such agreements have now become much more common. Since Year 2000, 70 (out of 135) agreements have been signed between developed countries and developing or emerging countries,\(^{47}\) and this has increasingly been the case in recent years.

The European Union, for instance, has launched a series of trade negotiations with the ACP countries, Mercosur, the Gulf Cooperation Council, the ASEAN (May 2007), South Korea (May 2007), India (June 2007) and the Ukraine (February 2008). The EU Member States have signed an agreement on behalf of the Commission to negotiate new trade and bilateral investment agreements, notably in Asia and Latin America. Future negotiations are also expected on cooperation agreements and new partnerships with, in particular, China and Russia.

In the US, several bilateral trade treaties are currently undergoing ratification; two are being established with Peru and Oman, and another four are currently being negotiated with Malaysia, Thailand, the SACU (Southern African Customs Union) and the UAE (United Arab Emirates).

3. Regional and bilateral trade agreements include new issues.

Although trade agreements signed since the 1990s still include all the conventional provisions, such as market access, industry-oriented arrangements regarding goods and services, rules of origin, safeguard clauses, arbitration or dispute settlement procedures, they now also tend to include provisions that refer in more detail and in greater depth to WTO agreements (sanitary and phytosanitary standards, technical barriers to trade and intellectual property), issues that have been debated within the framework of the Doha Round, such as the environment and, above all, issues excluded from the scope of the WTO at the Singapore Conference, such as labour standards, or, in 2004, competition, investment and public procurement.

In addition, the United States has signed 45 bilateral investment agreements. They consider a trade and investment framework agreement (TIFA) as a prerequisite for the creation of a free trade area.

Extending the scope of trade agreements in this way is all the more sensitive an issue in that the new agreements are frequently signed between partner countries where customs duties are already very low, implying that "preference" has little direct impact on bilateral trade. Moreover, "sensitive" industries, such as agriculture, textiles and clothing, as well as some services, are often the subject of separate arrangements. It may therefore be assumed that the proliferation of regional and bilateral trade agreements, at least where they tackle issues that are not dealt with or that are deemed insufficiently developed in the WTO texts, can partly be explained by the fact that it is impossible to introduce "new" issues at multilateral level.

Could the increasing number of bilateral agreements help promote the integration of new issues at multilateral level, thereby breaking free from policy decided in Singapore or Cancun? There is no definite answer: as demonstrated by the failure of the Multilateral Agreement on

\(^{47}\) Countries considered as ‘developed’ are OECD member countries, the European Union, the European Free Trade Association, Bahrain, Singapore and Israel
Investment (MAI), rationalising the "bowl of spaghetti" of bilateral agreements does not suffice to speed up the inclusion in multilateral treaties of issues that are dealt with in bilateral treaties.

**Conclusion**

Increasing economic openness and the growing number of emerging and developing countries has stirred up concern over the effects of globalisation. While the Uruguay Round trade agreements opened up the possibility of mentioning sustainable development in the WTO preamble, the debate over including provisions aimed at enforcing labour standards has failed to reach any definite conclusions and has been diverted to regional and bilateral trade agreements, as well as to agreements on good conduct within multinational companies.

The following conclusions may be drawn:

- The WTO and, therefore, the multilateral trade system, is now losing its influence due to 1) trade agreements (including GSP agreements) that contain clauses on labour, human rights, the environment and sustainable development and 2) the declarations made by international organisations (ILO, UN, etc.) stating that the promotion of labour standards and decent work is inseparable from the process of globalisation and the free trade agreements used to support it.

- Since the beginning of the 1990s, the options have been specified with a view to establishing a more realistic approach. The international community now has a system of indisputable standards at its disposal.

- The international community's support for these standards, by means of binding declarations (for example, the 1998 Declaration on core labour standards) or consensual programmes (for example, the Millennium Development Goals and the Decent Work Agenda) makes their inclusion in international texts more or less indispensable, which, moreover serves to further marginalize the WTO.
CHAPTER 2 – TRADE, LABOUR AND SUSTAINABLE DEVELOPMENT

Incorporating provisions relative to labour and sustainable development in trade agreements means that the advantages of opening up trade are, by definition, accepted, but that this may nonetheless create or aggravate certain risks. Whether or not such risks become reality, they are plausible enough to justify the implementation of measures designed to minimise them.

The aim of our study, and of this chapter in particular, is not to assess whether trade agreements are appropriate or not, weighing up their advantages and disadvantages. We assume that the advantages are real, in a bid to focus on the social risks associated with them and which are the subjects of the clauses in question, where they are included or likely to be included in trade agreements. In this chapter, therefore, we shall attempt to assess the probability of these risks, or, at least, to estimate how plausible they are. It is therefore inevitable that we will accord more space to discussing the potentially negative effects of opening up trade, above all as they impact on certain categories of workers, rather than the positive effects.

A study on the risks of road traffic accidents and the proposed regulations resulting from such a study, far from challenging the advantages of road traffic, leads, on the contrary, to enhancing them, by reducing the risk of accident. Similarly, a study on certain risks related to opening up trade, far from challenging the process of trade liberalisation, may serve to consolidate the advantages and, if appropriate, promote its social acceptability.

The debate over the inclusion of clauses relative to labour or sustainable development in trade treaties must examine the channels through which the direct and indirect effects of free trade are transmitted. Following a period of optimism with regard to the effects of opening up trade, a certain convergence toward a more qualified opinion has emerged among economists and political leaders, as well as among international organisations. To a certain extent, this involves a return to tradition: the great theorists of liberalisation, from Adam Smith to Paul Krugman (and including John Stuart Mill, Paul Samuelson and Jagdish Bhagwati) devoted much of their work to the potential risks of opening up trade, without this diminishing their advocacy of free trade.

This "realist" revision of the contribution of free trade to labour conditions, social progress and sustainable development deals primarily with the following three points:

1. While opening up trade is generally advantageous for the countries involved, its effects are inequitably distributed. Firstly, certain countries or regions may "win" less than others from free trade. Secondly, certain categories of the population may be net losers. Lastly, external and internal inequalities alike may grow.

2. The pressure of international competition may incite countries not to apply national law and slow down social progress even if this puts greater competitive pressure on other countries (race-to-the-bottom). The situation in some export free zones is often mentioned.

3. While the inclusion of developing countries in globalised trade creates an opportunity for growth that is a priori conducive to the "endogenous" development of labour standards, the effects are not automatic and the growth process must be supported by "exogenous" policies conducive to improving the situation of workers and social development.
Section 1- Winners and losers in trade openness

A large part of economists' works highlights the beneficial effects of opening up trade: the possibility of obtaining goods that would otherwise be unavailable (for example: oil and exotic goods), national specialisation allowing more efficient allocation of input, larger markets for exporting companies, encouraging economies of scale, improving the spread of innovative products and technology, broader choice for the consumer and for producers in purchasing consumer goods, equipment and intermediate products. In Section 3.1 we examine a number of empirical studies that focus on how opening up trade, growth and development are interrelated.

Debate has recently focused less on challenging the supremacy of free trade and more on the need to support it with tax or institutional reforms linked, for example, to compensating for the loss of tax revenue (drop in revenue from customs duties), tightening contract law and good governance.

While economic theory holds that free trade is, overall, beneficial for all parties in terms of well-being, it does not entail either the equitable distribution of the benefits, or even the absence of "losers", who would experience a net deterioration in their situation (loss of income). More specifically, it does not entail:

1. The equitable distribution of the benefits between the partner countries, since the changes to terms of trade may be more advantageous for certain countries than for others. Opening up trade does not, therefore, imply a levelling out of inequalities between countries. Thus, the liberalisation of agricultural trade, which encourages higher prices on the global markets (reduction or withdrawal of subsidies for production and exports), would tend to be more advantageous for the major exporting nations than for importing nations (particularly in the case of certain African nations);

2. The equitable distribution of the benefits within a country, with certain people likely to "lose out" thanks to opening up trade, in terms of a drop in real wages and thus a possible rise in poverty levels.

3. Opening up trade does not, therefore, imply a levelling out of inequalities within a country. In theory, the overall benefits for the country should be greater than its losses, and the "winners" could then compensate the losers. In practice, such a redistribution implies a need for competent and, necessarily, costly institutions (administrative cost and disincentive effects).

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48 In the case of bilateral agreements (free trade treaties and customs union agreements), economic theory is more qualified: net benefits are not guaranteed, the effects of generating trade (growth in trade between the Parties), liable to be offset by the effects of diverting trade (drop in trade with third parties); see Siroën (2004).

49 Even if absolute poverty has, globally, been reduced due mainly to the performance of Southeast Asia and certain Latin American countries (e.g. Brazil).

50 For example, the rise in farm produce prices following the dismantling of subventions has positive effects for rural producers, but penalises the urban consumer (e.g. rice prices in Vietnam). All things being equal, inequalities get wider in countries where landowners are the economic elite (some Latin American countries) and narrower in countries where the urban and skilled classes are relatively well-off (Africa). The opposite effects are seen if the eradication of customs duties leads to a reduction in domestic prices (e.g. the price of maize in Mexico following application of the NAFTA).

51 In its Employment Outlook 2007 report (introduction to Chapter 3), the OECD writes: ‘While the expansion of trade and FDI continues to be a powerful force for raising living standards, the evidence presented in this chapter shows that the expansion of trade is a potentially important source of vulnerability for workers. This is particularly true for the labour force groups most exposed to import competition or least prepared to navigate in labour markets characterised by intensive restructuring, rising skill requirements and employers who are increasingly sensitive to
In fact, in a world where workers in import industries threatened by foreign competition can retrain to find work in export industries (so-called "mobile factors"), the people expected to lose out are low-skilled workers in developed countries and skilled workers in developing countries. Nonetheless, the debate regarding the scale of this phenomenon is not closed. In apparent contradiction to the theory, inequalities have often widened in some emerging and developing countries (Insert 1).

**Insert 1—The effects of free trade on wages**

The Heckscher-Ohlin-Samuelson (HOS) and Stolper & Samuelson theorems stipulate that a drop (or rise) in the relative price of a good causes a drop (or rise) in the real income of the factor used intensively in producing that item and to a rise (drop) in the real income of the other factor. Free trade that encourages a rise in the relative price of exportable goods and a drop in the relative price of importable goods therefore leads to a drop in the real income of the "scarce" factor used to produce products faced with competition from imports: low-skilled labour in industrial countries, capital, skilled labour or land in developing countries. The Stolper & Samuelson theorem thus not only reveals a widening of inequalities within developed countries but also an absolute impoverishment of the relatively scarce factor which, in a more dynamic approach, could nonetheless be counterbalanced thanks to the positive effects of growth.

These effects come into play more in North-South trade than in North-North trade. In fact, the former usually concerns different goods (clothing traded against aircraft) where the comparative advantages are very distinctive; free trade thus causes a substantial drop in the relative price of imports. Contrary to this, North-North trade involves differentiated products with similar factorial contents, for instance, intra-industrial goods (automobiles for automobiles) with relatively little differences in price. Nonetheless, even with this model of trade, the pressures of globalisation may shift the power relationship in favour of the employers: tougher competition, the opportunity for consumers and producers to substitute foreign labour for domestic labour via imports, relocation of production or immigration. It lends credibility to the threat of redundancy, which puts pressure on pay rises. The demand for labour becomes more variable, affecting not only North-South trade but also North-North trade, since a low-skilled worker in the German automotive industry then has to compete more fiercely against his French or Italian counterpart. The political consequences of this overturning of the relationship of power may take various forms: pay cuts, job insecurity, downgraded labour standards (Rodrik, 1997). This weakening of workers' negotiating powers is in keeping with the observed drop in union membership in the United States and Europe.

Empirical studies also show that, contrary to the expected effects based on the theory, income gaps have also increased in some developing countries52. Thus, in Mexico, the income gap has increased since implementation of the NAFTA agreement. Liberalising trade in the country has apparently led to a rise in the wages of skilled workers, for whom demand has increased, and a drop in wages for the lowest skilled workers in industries that were previously protected and profitable, although workers located along the US border have seen their wages rise (Hanson 2003). Developing countries are apparently not exempt from the technological bias in favour of skilled workers observed in industrial countries and which may be amplified by demand for skilled labour by multinational firms. In some developing countries, and particularly in Latin America, the proportion of skilled workers is tending to increase, even in skilled labour-intensive industries. We find a positive correlation between the adoption of imported technology and increasing wage inequality (Bas, 2007).

Empirical studies tend to confirm this worsening of the situation for low skilled workers in industrial countries, although they fail to distinguish between two types of effect: growth in trade with countries where wages are low and/or technological progress with a bias in favour of skilled labour, which implies a drop in demand for unskilled labour (see, for example, Lee and Jansen's study, 2007). Nonetheless, technology itself, and its spread, are not independent of international trade. If the spread of technology is one advantage of trade liberalisation, it may also result in downgrading the situation of certain workers.

If the capacity for retraining is limited, the losers are workers in import industries but, in that case, workers in the export sector should be winners. Following trade opening, the situation regarding low-skilled work may improve in some industries but deteriorate in others. Given the impossibility of reallocating land to non-agricultural activities and the low level of mobility among the workers affected, the agriculture sector is frequently considered to be a "losing" sector: contraction of maize production in Mexico following the introduction of the NAFTA,

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concern among African nations in the EPA negotiations, or India's reticence to open up its markets without adequate safeguard clauses.

In practice, a country has to try and find a certain balance between the effects of free trade on overall revenue and its impact on inequality. From being a positive aspect of political economics, mobilising the "losers" is therefore liable to generate a certain degree of economic nationalism and thus compromise the pursuit of the trade liberalisation process. In addition, to the extent that, as we saw in the preceding chapter, international organisations (especially the ILO, the UN and the OECD) and the European Union are committed to an approach involving legally-binding standards aimed at promoting decent work and are committed to "fair globalisation", equal attention must be paid to the negative effects of free trade on labour conditions as to the positive effects, regardless of how these conflicting effects balance out. Even if there is but one loser amid a majority of winners, it must be dealt with in economic policy.

Without denying the positive aspects of trade liberalisation on global well-being, there is now a broad consensus of opinion acknowledging the negative aspects, primarily in the reports published by the World Commission on the Social Dimension of Globalisation\(^53\), and in the joint WTO and ILO report (Jansen and Lee, 2007). This is also the opinion expressed by EU Trade Commissioner, Peter Mandelson, who writes: "No one denies that globalisation entails negative aspects. Opening up markets and increasing economic integration, the driving forces behind globalisation, are still, by far, the most effective tools we have for improving economic well-being worldwide, and this plays a crucial role in ensuring global stability. [...] Economic nationalism is a symptom of much deeper problem. Unless we tackle the underlying causes of protectionism, it will be impossible to exert any influence over the processes of globalisation. This implies that we must deal with economic insecurity and inequality at the heart of our societies.\(^54\)

Section 2 - The impact of labour standards on trade, social dumping and the "race-to-the-bottom"

Opening up trade results in greater competitive pressure, which leads companies to cut their margins and their costs. This pressure encourages innovation and lower prices to the advantage of the consumer and workers' purchasing power. But it may also lead companies to cut their costs by impinging on workers' rights (Insert 2).

Insert 2 - Labour standards and comparative advantages

| Factor endowment theory states that countries specialise in the production activities that make the most intensive use of the most abundant production factor(s) relative to the factor endowments of partner countries. These relative factor endowments therefore underlie a country's comparative advantages, since the relative abundance of one factor is reflected in a lower relative price. Thus, the greater a developing country's endowments of unskilled labour due to child or forced labour, the greater its potential trade with developed countries with more abundant capital or skilled labour factors will be (Rybczynski's theorem). This increase in exports in unskilled labour-intensive production activities is nonetheless likely to entail a deterioration of the trade terms for developing countries. See Brown, Deardorff and Stern (1996). |

Furthermore, multilateral, regional and bilateral trade treaties deprive the countries in question of certain conventional protectionist instruments, such as customs duties. Some governments may therefore be tempted to use less conventional protectionist instruments that

\(^{53}\) Report by the World Commission on the Social Dimension of Globalisation commissioned by the ILO, "A Fair Globalisation: Creating Opportunities for All"

\(^{54}\) Le Monde, 25 June 2008.
are not covered by the treaties. The dismantling of labour law, used as an "indirect" trade policy, is one potential instrument to this end.

1. Labour standards and trade.

"Regressive" social policies cannot seriously be considered as a substitute for trade policies except where working conditions and the way in which the labour market operates have an effective influence on trade performance. This connection is widely debated, at least in theoretical studies (Table 3).

Table 3 - Impact of labour standards on trade – theoretical arguments

<table>
<thead>
<tr>
<th>Expected effects</th>
<th>Main arguments</th>
<th>Limitations</th>
</tr>
</thead>
</table>
| Neutral          | - Noncompliance with decent work conditions and standards mainly in industries protected from competition (domestic activities, informal sectors). (Aggarwal, 1995).  
- Existence of automatic stabilizers (e.g. high standards lead to increased wage costs which have to be offset by currency devaluation) (Freeman, 1994). | - Different sectors are interdependent, especially formal and informal sectors, via outsourcing (Maskus, 1997; Brown et al, 2002)  
- Direct violations in exporting industries (Granger, 2003; OECD, 2000; US Department of Labor report series).  
- Child labour is mainly localised, in agriculture, and the production of tradable goods (over 70%; ILO).  
- Failure of automatic stabilizers: countries with poor social standards and undervalued currencies. | |
| Positive         | - Pressure on wage costs (low hourly rates, no health and safety standards, etc.) serving to boost competitiveness.  
- Increase in unskilled labour endowment (child labour, forced labour, etc.) → increase in exports for countries with abundant unskilled labour (Rybczynski's theorem)[Insert 2]  
- In the case of a major nations, the quantity effect of an increase in exports may be offset by the deterioration of the terms of trade (Deheija and Samy, 2004);  
- the effect on the endowment depends on the standard, negative effect in the case of discrimination (Brown, Deardorff and Stern, 1996; Busse, 2002);  
- Substitutions between labour supply and demand (e.g. women and child workers) → uncertainty over changes in relative labour endowment (Maskus, 1997; Basu, 1999; Hansson, 1981).  
- Endowment effect at risk if certain workers are specific to an industry (women in the textile industry) (Granger, 2003; Melchior, 1996; Maskus, 1997). | |
| Negative         | - Increasing imbalance in the absence of minimum social standards: market segmentation, employers' monopsonistic power, etc. → non-optimal allocation of resources → lower production and trade levels (Granger, 2003; Maskus, 1997).  
- Impact of work conditions on dynamic efficiency (accumulation of capital, productivity, etc.) and thus on long-term production and trade levels (cf. above, the link between decent work and growth) | |

In fact, manipulating social standards does not restrict the effects to factor endowments and wage costs. Many other effects, both direct and indirect, need to be taken into account: the effects of substituting one category of workers for another (employing children rather than women, for example), interdependence between different economic sectors, non-competitive

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55 The price of labour in the sector of tradable goods is not unrelated to the price of labour in informal sectors or sectors that are protected from foreign competition.
labour market and, therefore, less than optimal allocation of resources. Generally speaking, violating the most fundamental labour standards could unbalance the labour market to such an extent that economic theorists are be unable to draw any conclusions as to the significance and scale of its impact on trade (Table 3).

Existing empirical studies, together with the study by Elliott and Freeman (2003, Chapter 1), help to clarify this indeterminate situation (Table 4).

Table 4 - Impact of violating labour standards on trade – empirical methods and results

<table>
<thead>
<tr>
<th>Studies</th>
<th>Link tested</th>
<th>Method and indicators used</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggarwal, (1995); Raynauld and Vidal, 1998</td>
<td>Link between violating social standards and increasing competition, FDI and the share of global trade</td>
<td>- Descriptive statistics; - Case studies for 10 partners of the USA considered to be countries with poor social standards.</td>
<td>No correlation</td>
</tr>
<tr>
<td>Mah (1997)</td>
<td>Influence of complying with the ILO’s 4 core labour standards on share of exports as a percentage of GDP</td>
<td>- Simple correlation - Assesses compliance with labour standards via ratification of ILO conventions</td>
<td>Violating union rights and discrimination has a positive influence on exports.</td>
</tr>
<tr>
<td>Rodrik (1996); Kucera (2002); Busse (2004)</td>
<td>Impact of social standards on competitiveness, labour-intensive exports and level of FDI.</td>
<td>- Econometric model with control variables. - Specific indicators on effective compliance of labour standards (working hours, rate of union membership, etc.).</td>
<td>- Negative impact of violating social standards has a negative impact on wage costs. - Violating certain standards (working hours, child labour) has a positive impact on labour-intensive exports. - Positive correlation between compliance with social standards and FDI.</td>
</tr>
<tr>
<td>Van Beers (1998)</td>
<td>Impact of social standards on bilateral trade in 18 OECD countries, taking account of capital intensive factors in exports</td>
<td>Econometric estimates using a gravity model</td>
<td>Violating standards has a positive impact on skilled labour-intensive exports. - Violating standards has a negative impact on exports that are both capital intensive and unskilled labour-intensives.</td>
</tr>
<tr>
<td>Granger (2003 and 2005)</td>
<td>Impact of the 4 core labour standards on bilateral trade flow from South to North</td>
<td>Econometric estimates using a gravity model - Composite and specific indicator of compliance with core standards</td>
<td>Violating the core standards has a positive impact on exports from countries in the South.</td>
</tr>
</tbody>
</table>

The earliest studies concluded that there is no statistical link between compliance with labour standards and the volume of trade (Aggarwal, 1995; Mah, 1997; Raynauld and Vidal, 1998), which could just as well imply that core standards are neutral as that there is a practically perfect balance between opposing effects. However, these studies do not hold water due to a lack of reliable indicators regarding actual work conditions. More recent and more precise empirical studies, precise in terms of the econometric method and indicators used, reveal that

56 For example: employers’ monopoly over the labour supply (monopsony), or work contracts that prevent mobility.
57 The most widely used indicator is the number of ILO conventions ratified by a nation. Given the fact that the introduction of such measures does not necessarily imply their effective application, this indicator cannot be thought of as representative of effective compliance with labour standards.
58 These studies, unlike their predecessors, are based on estimates drawn from econometric models and thus can be used to monitor the influence of key determining factors on trade, before focusing separately on the specific impact of working conditions.
the impact of social standards on trade depends on the standards involved. In the particular yet crucial case of "labour-intensive" standards, such as child labour, forced labour and longer working hours, there is relative consensus as to the conclusion that violating these standards will boost trade, particularly in the case of unskilled labour-intensive exports by developing countries to developed countries. The temptation of "social dumping"

The empirical conclusions that violating labour standards has a positive impact on exports imply that developing countries which adopt a growth strategy based on foreign trade may be tempted to violate labour standards, especially in certain sectors or in certain places - namely, within free trade zones.

"Social dumping", a term subject to some controversy, may be defined as an impingement of workers' rights applied for the purposes of boosting competitiveness, in both the import and export markets alike. It is thus a means of putting pressure on wage costs and production costs. A strict definition would imply that such an impingement refers to "normal" practice in the producing country: violation of national laws, exemptions granted to certain export industries; it may also refer to a "normal" salary evaluated according to the level of labour productivity in the producing country or according to the wages paid in comparable sectors.

There is an even greater risk of "social dumping" when multilateral trade agreements provide a framework for trade policy but not for social policy. This trend encourages recourse to instruments that have the benefit of a certain degree of immunity, such as manipulating wage costs and undermining working conditions, even if the ILO's assessment and sanctioning powers are limited. Violating decent work conditions may in fact be a deliberate strategy to protect or promote exports or foreign direct investment, attracted above all by the exemptions accorded to export free zones (Granger, 2003; OECD, 2000; Rodrik, 1996). Chapter 5 of the OECD's Employment Outlook Report (2008) states that, "The evidence suggests that MNEs tend to provide better pay and working conditions than their domestic counterparts, especially when they operate in developing and emerging economies." However, it concludes that "FDI-friendly policies can help to promote investment by multinationals, but lowering core labour standards in order to attract foreign investors should not form part of them. Such action can in fact discourage FDI from responsible multinationals anxious to ensure that minimum labour standards are respected throughout their operations."

2. The risk of "race-to-the-bottom".

A country where the practice of "social dumping" is current risks triggering a race-to-the-bottom process. This does not so much involve North-South trade as South-South trade, given that countries in the South are rivals competing in the international market for similar sectors

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59 Many empirical and econometric studies focus on the specific case of freedom of association and collective bargaining, and its impact on trade and economic performance. They show that collective bargaining improves overall economic competitiveness (see, for example, Aidt and Tzannatos, 2002; Martin and Maskus, 2001). Nonetheless, the estimates made by Galli and Kucera (2004) fail to reveal any definite connection between uphol主导 union rights and exports of labour-intensive goods.

60 Note that the latter criteria may equally apply in developed and developing countries.

61 For example, the principle of tariff binding and restrictive measures prevents the discretionary manipulation of such instruments.

62 See the theoretical model developed by Bagwell and Staiger (1998), which highlights the strategic interactions between social policy and trade policy.

63 On free zones, see the OECD studies (1996; 2000) and Maskus 1997).

64 "Do multinationals promote better pay and working conditions?"
(Elliott, 2003): the repercussions of social dumping by an exporting country are, in fact, felt more intensely in the countries that have comparative advantages and, therefore, similar specialisations.

**Insert 3 – "Race-to-the-bottom" mechanisms**

The best way to understand the interaction between the various options open to nations insofar as regards social standards is Game Theory. As illustrated in the various examples given by Srinivasan (1996) and Noor (1997), several balancing situations may a priori be considered, depending on the overall benefits expected from complying with or, on the contrary, violating labour standards. In spite of this uncertainty, some authors highlight the risks involved in a prisoner’s dilemma situation (Granger and Siroen, 2003; Siroën, 1996). Faced with a partner that violates or impinges on labour standards, a country may be prompted to lower its own standards in order to cope with the pressure from its producers. Other countries are, in turn, prompted to lower their own social standards or, at least, hold back progress in this area. This is a "lose-lose" game, since the "deviant" country sees its initial advantage eaten away and, in the end, all the countries apply labour standards that are "suboptimal" in terms of social efficiency and economic efficiency (inadequate allocation of labour, and imbalance of competition in the labour market). Other authors (Aggarwal, 1995; OECD, 1996; Reich, 1994) prefer to insist on the opportunities for a "race-to-the-top" thanks to trade liberalisation. Their optimistic vision, however, only considers the positive effects of social standards on the terms of trade, productivity and innovation and assumes that international competition impacts less on prices than on productivity, product quality and, therefore, on the level of technological progress.

If manipulating social standards appears to be a substitute for traditional protectionist measures and measures designed to bolster exports, this strategy of circumventing the standards also has its limitations. Not every country has the means to respond to inadequate labour standards by lowering its own national standards. Industrialised countries thus have the least room for manoeuvre. For a developing country, the social damage caused by "social dumping" may be an obstacle to long-term growth (see below).

As for union rights, the OECD study (1996) covering 44 developing countries, reveals that the more open a country’s trade system is, the more likely that union rights are observed. Nonetheless, this observation does not tell us anything about the relation between cause and effect. For the same sample group, involving countries that all instigated a trade liberalisation process during the period 1980-1994, the sequential process of opening up trade and progress regarding union rights shows that trade liberalisation did not result in a deterioration of union rights in any of these countries.

**Section 3 – International trade, growth and the endogenous development of labour standards.**

There is a consensus of opinion as regards the positive correlation between the quality of labour standards and the level of development: income per inhabitant is one of the drivers of compliance with core labour standards (Casella, 1996; Busse 2004; Arestoff and Granger 2003). That said, the question of which is the cause and which the effect remains to be answered. It may be possible that broad agreement will emerge as to the fact that the "endogenous" development of labour standards is still only a potential outcome and should be backed up by tighter labour laws and incentives to improve standards. Improving labour standards as a prerequisite, far from holding back the start of an endogenous process, may, on the contrary, underpin and speed up its progress\(^65\).

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\(^65\) See Granger & Siroen (2005).
1. First causality: Opening up trade, growth and sustainable development.

Some authors (e.g. Griswold 2001, Committee for Economic Development, 2001) consider that the best way to improve labour standards is to encourage growth stimulated by open trade. In this case, we speak of the "endogenous" development of labour standards: opening up trade encourages growth which in turn helps to reduce poverty, raise real wages and improve work conditions. Any measure that would result in the decline of international trade would therefore be counter-productive. This approach is also that taken in the Singapore Declaration (see above, footnote 4).

However, these predictions do not help explain the persistence of differences in the levels of labour standards in countries with similar income levels. Neither has any immediate or significant improvement been observed in the level of standards in high-growth countries (India and China).

During the 1990s, many studies served to consolidate the first link in the chain of causality: that opening up trade encourages growth (Edwards, 1992; Dollar, 1992; Ben David, 1993; Sachs and Warner, 1995; Ades and Glaeser, 1999). This causality has nonetheless been challenged by methodological criticism, notably in the work of Rodriguez and Rodrik (2000), who highlight the difficulty of measuring openness. If trade has an influence on growth, the opposite may equally be true.

Nonetheless, subsequent studies tend to confirm a positive relation: Frankel & Romer (1999) thus believe that an increase in the ratio between trade and GDP of 1% would push up income per inhabitant by 0.5% to 2%. In any case, this relation is more likely to be due to the "exogenous" geographical characteristics of a country than to trade policy (see also Irwin & Tervio, 2000). Although there is a pretty strong assumption regarding the causal nature of foreign trade, the connection with trade liberalisation policies is therefore less certain (nonetheless, see Wacziarg & Welsh, 2008; Loayza, Fajnzylber and Calderón, 2005). These studies, which compare countries, can be interpreted as an average that does not exclude the existence of "outliers", in other words, countries that diverge from this trend. They do not therefore exclude different levels of sensibility between growth and trade in different countries depending upon a combination of criteria, such as geography or institutions (Rodrik ed., 2003).

While these studies analyse the impact of international trade on growth, they do not deal with the impact on sustainable development.

The key social aspects of sustainable development are education and healthcare in particular. Thus, child labour and hazardous work are a means of sustainably achieving a country's development capacity by reducing the accumulation of human capital over one or more generations. A certain social consensus is also a gauge of stability that encourages consistent and stable growth (Rodrik, 2003).

Moreover, independently of "social dumping", several authors emphasise the possible negative effects of globalisation on certain social standards, especially as regards child labour (Insert 4). According to Busse (2004), opening up trade significantly reduces discrimination against women and child labour. On the other hand, its impact on forced work and union rights is more ambiguous. However, Arestoff and Granger (2003) show that opening up trade has a

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66 But does not necessarily narrow inequality.
negligible effect on the composite indicator regarding compliance with the ILO's four core labour standards.

It thus appears that the effects of opening up trade differ, even if they are most often conducive to improving national aggregate income. The most detrimental effects tend to be concentrated in industries where competition from imports is strong, with repercussions that, unless support is provided, may turn out to be detrimental to workers. Inversely, free trade should have a positive effect for labour used in the exporting sector, provided that the pressure to be competitive does not lead to practices that undermine labour standards.

### Insert 4 – Opening up trade and child labour

Trade liberalisation, while it stimulates exports, can cause increased demand for child labour (Maskus, 1997; Brown et al., 2002). Nonetheless, these authors do not do not deal with the impact of trade liberalisation on the supply of child labour. Basu and Van (1998) and Basu (1999) thus believe that while opening up trade improves household income levels, this will enable them the approach the critical adult wage level above which child labour tends to decrease. Trade liberalisation may then work both to reduce the supply of child labour and increase demand for it. Raising the cost of child labour may therefore result in its decline, to be substituted by adult labour (men and women). The influence of free trade thus operates thanks to an income effect. The endogenous development of standards operates thanks firstly to export growth, and thereafter thanks to the real income of the poorest population groups. Such a rise in income enables households to invest in their children's education rather than making their priority the short-term need for them to work. Improved education in turn leads to the accumulation of human capital, a source of sustainable development.

This effect may play an important role, as demonstrated in the econometrics study by Edmonds and Pavcnik (2002) on the effects of trade liberalisation on child labour in Vietnam. In this case, liberalisation entailed the gradual relaxation of the rice export quota over the period 1993-1998. According to the authors, this measure increased the relative price of this product and therefore the income of the rural population. The results show that almost fifty percent of the reduction in child labour has been due to a 30% increase in the price of rice. This has been used to support the claim that the best way to eradicate child labour is to liberalise trade. Nonetheless, while the rise in the price of rice has helped to increase the income of rice producers in rural Vietnam, it also reduced the purchasing power of urban households, thus increasing the probability of continued child labour in the cities. In addition, this cases involves a very specific context: the liberalisation measure did not involve lifting a protection measure but the removal of a restriction on exports which served to keep the domestic price of rice lower than the global price. In Mexico, the opposite has been observed. Implementing NAFTA caused stiff competition from imports which lead to a sudden drop in the price of maize (48% in less than 3 years), affecting 3 million producers (Bacchetta and Jansen, 2003). Edmonds and Pavcnik's study (2004) shows that there is no significant connection between liberalising trade and child labour when income differences between countries in the sample are taken into consideration.

### 2. Second causality: labour standards, sustainable development and growth

The theoretical and empirical models described above assume that the level of labour standards is a result of a process of growth and development encouraged by greater trade opening. The opposite may equally be true: higher labour standards and social development may encourage growth. To the extent to which higher standards also boost trade, an exogenous process of improving labour standards may provide the impetus for an endogenous process. Such an effect would discourage countries from adopting "social dumping" policies. In this case, the requirement to include social provisions relative to labour and sustainable development may encourage growth.

Recent empirical studies by Bazillier (2008) thus confirm the positive impact of core labour standards on long-term growth. These results were obtained by monitoring the "endogenous" nature of core labour standards.

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67 Since growth is due to the level of labour standards, it is probable that labour standards are influenced by growth, which implies the need for a specific econometrics method.
In fact, noncompliance with certain core labour standards, such as child labour and forced labour, allows intensive use of the workforce (child labour, prison labour, etc.), which may, initially, increase the volume of production. However, the short-term effects on employment and growth may be attenuated by substituting one labour category for another. Assuming that child labour and adult labour are totally interchangeable, the use of child labour may entail a proportion of the adult labour force being excluded from the market (Basu and Van, 1998; Hansson, 1981; Granger, 2003). Similarly, forced labour is used instead of paid labour and, therefore, does not serve to increase production. By removing a percentage of workers from the labour market, it prevents the optimal allocation of labour and blocks development in dynamic sectors.

The violation of other labour standards tends to reduce the demand for labour and, consequently, production capacity. The negative impact of discrimination in the labour market is not contested (World Bank, 2001). By preventing certain categories of the population from having access to work, discrimination affects the quantity of labour used in production. It also creates rigidity and affects productivity (Insert 5) thus preventing a more effective allocation of resources (Brown, Deardorff and Stern 1996, Maskus 1997, OECD 1996).

Insert 5 – Improving labour standards and productivity

The various forms of violating labour standards are aimed at and result in lowering the cost of labour and paying for it below the equilibrium price (marginal productivity of labour), which maintains underproductivity and, consequently, underdevelopment. Production processes that are not very capitalistic provide little incentive to the employer to invest in order to increase labour productivity. According to Piore (1994), low investment is a way of avoiding geographical concentration, which leads to dispersed industry and makes monitoring work conditions more complicated. Aït and Tzannatos (2002) believe that upholding workers’ rights facilitates coordination and increases productivity by reducing the effects of labour-management conflict on production and helping small open economies to adjust more rapidly to economic shocks and this at the lowest possible cost. Martin and Maskus (2001) show that, if the markets are competitive, it is more likely that freedom of association will increase production and competitiveness by improving productivity. The freedom of association and collective bargaining are also often preferred to the introduction of a minimum wage, which may lead to higher adult unemployment and a higher level of child labour (Basu, 2000; Dinopoulos and Zhao, 2007).

The role played by freedom of association and collective bargaining rights is the most highly challenged aspect, mainly due to the effects of closed shop unions, widely thought of as negative, in some Latin American countries (Elliott, 2003). Similarly, economic growth in countries such as South Korea has occurred with union rights being accepted only at a later stage. Nonetheless, the unions’ legitimacy usually lies in the challenge they present to the excessive and abusive powers of employers, which are often inadequately regulated by the public authorities and advantaged by other core standard violations, such as forced labour and child labour. The monopsonic behaviour of firms leads to the labour being underpaid (Granger, 2003; Martin and Maskus, 1999; Morici and Shulz, 2001; Shelburne, 2004). The firms that have the advantage of a monopoly over recruitment can ration out their labour demand, and, therefore, production, to put pressure on the price of labour.

3. Labour standards, sustainable development and inequality

Violating decent work standards is therefore likely to produce a negative impact on long-term growth and on sustainable development. While the debate is not closed on the subject of which instruments to deploy to eradicate child labour, which sometimes goes hand in hand with forced labour, its negative impact is not disputed when labour is substituted for education. Endogenous growth models thus emphasize the positive role of accumulating production factors, especially human factors (Lucas, 1988; Romer, 1989). In these models, the long-term growth rate increases the greater the amount of time devoted to training and decreases the more
priority is given to profits in the present. Child labour and inadequate health and safety conditions also combine to push down the rate of accumulation of human capital and, consequently, future growth rates.

Insert 1 - Labour standards and inequality

Introducing stronger protective labour standards is likely to have a major impact on levelling out inequality (Emerson and Dramais, 1988; Rama 2003), thereby fostering greater national cohesion by reducing social tension. Saint-Paul (1999) explains that labour market institutions generally provide for a redistribution of wealth (taxing workers to provide for non-workers) which may, potentially, narrow income gaps. Palley (2005) suggests that recognising core labour standards makes it possible to create a space for discussion and negotiation between employees and employers, which is likely to increase the wage share in total income. The existence of influential unions helps to increase the wage share in the wealth created and reduce wage differences within a company, which indirectly generates a fairer distribution at national level (Bivens and C.Weller 2003). Checchi and Penalosa (2005) add that introducing a minimum wage and pay rises over time serve to reduce wage differences in OECD countries. As far as empirical studies are concerned, Palley (1999) shows that the adoption of core labour standards is related to a fairer distribution of income. Bazillier and Sirven (2008) empirically demonstrate the existence of a social Kuznets’ Curve, suggesting that ineffective application of the standards increases inequality, whereas more effective application helps to reduce inequality.

Conclusion – Toward endogenous development supported by decent work.

The aim of this chapter was to assess some of the risks involved in trade liberalisation, risks which exert pressure on the situation for certain workers and on sustainable development and which, as the case may be, would justify the integration of specific clauses in trade agreements.

Labour standards cannot be sustainably developed without increasing incomes. Trade liberalisation and "export-led growth" play a role in this, together with the accumulation of human and physical capital and a stronger institutional role. Nonetheless, this necessary condition is not sufficient and the "endogenous" development of labour standards may be blocked or slowed down, in certain industries, for certain workers or in certain regions: "losers" among rural or low-skilled workers, risk of social dumping, massive migration to coastal or border regions. In spite of the fact that they are inadequately assessed in empirical studies, some of the undesirable effects could even, in certain cases, compromise "sustainable development"; child labour instead of education, little incentive for investment and increased productivity.

The development of social standards is undoubtedly "endogenous" but it is not automatic. It may slow down or be compromised by the counter-effects of opening up trade without any regulation of social standards.

These comments plead in favour of "well-supported endogenous development", which entails making the most of the implications of free trade on growth and social development while also supporting tighter labour laws and corporate practices through pro-active policies. These must go further than merely providing for the "social" compensation of the people who lose out.

68 Although the empirical controversy over the impact of liberalisation on growth is not decisively settled (see above), there is not one serious study demonstrating a systematically negative link between trade liberalisation and income.
CHAPTER 3 - PROVISIONS RELATIVE TO LABOUR IN BILATERAL AND REGIONAL TREATIES

Since the NAFTA treaty (between the United States, Canada and Mexico) was signed in 1994, numerous regional or bilateral trade treaties have included provisions relative to labour. They do, nonetheless, concern a limited number of countries, notably the United States and Canada. Other treaties are content to reproduce the GATT preamble and/or the exceptions set out in Article XX (see above).

The introduction of such provisions takes various forms and covers different aspects of social practice and labour law. In addition to simply being mentioned in the preamble, they may be covered in a separate chapter or in an agreement annexed to the treaty.

The following criteria are distinguished in Table 8 (Annex 2):

1. Explicit reference to the four core labour standards, without specifically referring to the ILO.
2. An undertaking to uphold the ILO Declaration on fundamental principles and rights, and to monitor their application.
3. An extension to other aspects of decent work (acceptable working conditions, minimum wage, working hours and health and safety in the workplace, among others).
4. The existence of procedures for settling disputes, often related to sanctions.
5. The existence of cooperation procedures.

The first and second criteria must not be confused. Some agreements with the United States thus make no mention of non-discrimination as one of the fundamental rights but do refer to the ILO’s 1998 Declaration.

Section 1 - Labour in US bilateral treaties

Bilateral trade preference programs have been conditional upon compliance with workers’ rights, as inscribed in trade law since 1984. They were introduced into NAFTA by means of a side agreement to the treaty. After eight years of debate in Congress over the introduction of labour standards in agreements, the 2002 Trade Act makes it a requirement to introduce labour provisions in trade treaties: all agreements must, at the very least, contain a reference to labour standards in the preamble.69

1. NAFTA

The first US free trade agreement to contain a reference to labour standards was the supplementary agreement to the North American Free Trade Agreement (NAFTA; between the USA, Canada and Mexico) signed in 1992 and implemented in 1994.

69 These points are developed in greater depth in Elliott (2003; 2004), Elliott & Freeman (2003), Charnovitz (2005) and Speece (2007). See also Chapter 5, Section 4, paragraph 1.
In this supplementary agreement - the "North American Agreement on Labor Cooperation" (NAALC), each Party undertakes to protect, improve and strengthen the fundamental rights of workers, without however, defining common standards. The signatories undertook to apply their own national laws. This agreement, which precedes the 1998 Declaration on fundamental principles and rights, makes no explicit reference to the ILO's conventions. Mexico and Canada were in fact opposed to any reference to international standards.

That said, the labour law refers to eleven principles (Article 49) which go further than the eight fundamental conventions that the nations must strive to achieve, although they are not under any obligation to do so: (a) Freedom of association and protection of the right to organize; (b) The right to bargain collectively; (c) The right to strike; (d) Prohibition of forced labour; (e) Labour protections for children and young persons; (f) Minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party’s domestic laws; (h) Equal pay for men and women; (i) Prevention of occupational injuries and illnesses; (j) Compensation in cases of occupational injuries and illnesses; (k) Protection of migrant workers.

Article 45 provides for cooperation with the ILO to take full advantage of its expertise and experience. The agreement also provides for cooperation between the three nations, thanks to the setting up of a cooperation commission in charge of working on various issues relative to labour law (Part 3, Article 11) and covers social protection, social programs for workers and their families and technical assistance.

In Part 5, the agreement provides for dispute settlement procedures. As for issues relative to the freedom of association, the right to collective bargaining and the right to strike, the dispute settlement clauses are limited to diplomatic procedures. This procedure can only come into play in three specific cases: “occupational safety and health, child labour or minimum wage technical labour standards” (Article 27). The procedure can be initiated by any person who has a "legally-recognized interest."

The procedure in these three cases is as follows: consultation, special session of the "Ministerial Council" and an "Arbitral panel". This panel may award monetary damages (maximum 0.007% of the total value of trade in goods during the most recent year) up to a maximum sum of US$ 20 million (Annex 39 (1)). Failing payment, the country may withdraw any advantages granted (Annex 41b).

2. The US-Cambodia Textile Agreement

Signed in January 1999 for a three-year period, and then extended for a further three years, the textile agreement between the USA and Cambodia expired in January 2005. It thus came to an end at the same time as the Multi Fibre Arrangement (MFA) governing global trade in textiles and clothing, overriding the GATT regulations and based on a system of quotas that introduced limits on the textile sales destined for the major markets, such as the US and Europe. All the same, since Cambodia was the last country to enter this industry, it was not subject to

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70 "Each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light." (Article 2).
71 Notably, non-discrimination and the dismantling of quotas.
It was therefore free to sell on the US and European markets, but, in return, these countries were free to restrict or suspend access to Cambodian products. In spite of the risks involved, investors from Taiwan, China and South Korea bought textile factories in Cambodia and European and American buyers managed to circumvent the restrictions on imports by buying supplies from Cambodia. As of 1998, the USA initiated negotiations aimed at integrating Cambodia into the quota system.

At the same time, workers in Cambodia were becoming increasingly discontent with their work conditions. Many were joining unions, taking strike action or becoming affiliated with a political party.

Unlike NAFTA, labour issues were dealt with in a special chapter incorporated into the bilateral free trade agreement relative to the textile industry. The Agreement includes an innovative system of positive incentives, closely linked to the context since it covers a specific industry subject to quota protections. The Agreement thus provided for raising the quotas if Cambodia upheld its commitments to improve compliance with national labour legislation and international labour standards, which is exactly what happened (cf. below).

3. The agreement with Jordan

The second major agreement was that signed with Jordan in 2000 and applied in 2001. In this agreement, the issue of labour standards is dealt with in a chapter of the agreement devoted to labour. It was therefore the first US free trade agreement to directly integrate a clause on social issues in the body of the text, rather than in an annexed agreement (the agreement with Cambodia being limited to the textile industry). The two countries reaffirmed their support for the ILO, “and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up” (§1). Article 6:4(a) stipulates an obligation to strengthen domestic laws where trade is concerned: “A Party shall not fail to effectively enforce its domestic labour laws in a manner affecting trade between the Parties.”

In Paragraphs 3 and 4, the two countries undertake to enforce application of their domestic labour laws and workers' rights, as described in Article 6. (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

While some of the principles go further than the core labour standards (e), there is no mention of non-discrimination.

Paragraph 5 recognises the importance of cooperation between the two countries, but no specific mechanism to this end is included (unlike subsequent agreements).

The Parties have the right to challenge the other country in the event one of them violates the agreement. The dispute settlement procedure relative to labour rights is the same as that set out for trade commitments. An independent international committee arbitrates in the event of a dispute. This committee proposes solutions to resolve the dispute and "If the Joint Committee does

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72 Cambodia became a member of the WTO on 13 October 2004. The agreement was never notified to the WTO.
not resolve the dispute within a period of 30 days after the presentation of the panel report, the affected Party shall be entitled to take any appropriate and commensurate measure” (article 17(2)).

4. The agreements signed under the Bush (Jr) administration

Six other agreements were signed between 2004 and 2006 - with Singapore, Chile, Australia, Morocco, Central America (CAFTA: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic), and Bahrain. These six free trade agreements have certain similar characteristics insofar as regards labour standards to that signed with Jordan. They emphasize compliance with domestic law and reaffirm their undertakings with regard to the fundamental principles and rights set out in the 1998 Declaration.

Nonetheless, there are a few differences.

- Although there is still no mention of non-discrimination, this right is asserted in the section on cooperation (appended to the agreement).
- These agreements establish a specific mechanism for settling disputes involving an independent tribunal.
- Unlike the agreement with Jordan (under which it was possible to initiate a claim with regard to the entire chapter), the parties can only refer a claim in the case of a violation of the following article: "(a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement”.
- According to the procedure defined, which is similar to that under previous agreements, a panel of experts submits a final report. In the case of noncompliance, specific sanctions can be applied in the case of labour and environmental issues (in the US-Jordan agreement, the same sanctions as for trade undertakings applied). The panel can impose fines up to a maximum of US$ 15 million a year. In the last resort, if the country at fault fails to pay, the country that lodged the claim can “take other appropriate steps to collect the assessment or otherwise secure compliance. These steps may include suspending tariff benefits under the Agreement as necessary to collect the assessment, while bearing in mind the Agreement’s objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.”

Cooperation mechanisms have been reinforced. They are institutionalised, and are described in precise detail in the annexes. The areas of cooperation are explicitly specified:

73 According to Trebilcock & Howse (2005, p578), the United States and Jordan agreed by letter that disputes would not, under any circumstances, result in sanctions.
74 Except in the case of Australia, with which cooperation is described in less detail.
75 (a) fundamental rights and their effective application: legislation, practice, and implementation related to the core elements of the ILO Declaration on Fundamental Rights at Work (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labor, abolition of child labor including the worst forms of child labor in compliance with ILO Convention No. 182, and elimination of employment discrimination); (b) labor-management relations: forms of cooperation and dispute resolution among workers, management and governments; (c) working conditions: occupational safety and health, prevention of and compensation for work-related injuries and illness; and employment conditions; (d) unemployment assistance programs and other social safety net programs; (e) human resource development and life long learning; (f) labor statistics; and (g) such other matters as the Parties may agree.
5. Pending agreements.

The United States have also signed a series of free trade agreements which have yet to enter into force. In March 2008, Congress approved agreements with Oman and Peru. The FTA with Columbia has not been ratified. Agreements with Panama and South Korea are pending.

The agreement with Oman is identical to the preceding six agreements. The treaties with Columbia, Panama, Peru and South Korea have more in common with the agreement with Jordan. The right of non-discrimination is now clearly mentioned.

Insofar as regards dispute settlement mechanisms, as in the case of Jordan, these are neither limited not specific. In the event of a failure to comply with the decisions of the panel of experts, the complaining countries can suspend the advantages granted or impose fines. The texts do, however, specify provisional measures. In the FTA with South Korea, an Exchange of Letters stipulates that the dispute settlement mechanism may only be applied in cases where the effects on trade or investment of violating the provisions set out under Chapter 19 (Labour) and Chapter 20 (Environment) can be established.

Section 2 - Labour in Canadian bilateral treaties

Apart from the NAFTA, Canada has signed two FTAs – with Chile and Costa Rica – which include supplementary agreements on labour standards. In fact, since labour laws come under the jurisdiction of the Canadian Provinces, labour issues are dealt with in a separate agreement. Canada's official policy is based on the following principles (Bouchard, 2008):

- A mutual obligation to enforce labour law
- Implementation of the agreement based on consultation and cooperation
- Transparency in settling disputes with the assistance of an independent third party
- Cooperation to be developed with technical assistance
- Greater stress on upholding the law (under pressure via the dispute settlement procedure) that on ratification of the ILO conventions.

1. The agreement with Chile

The Canada-Chile Agreement on Labour Cooperation was signed in Ottawa on 6 February 1997, in parallel to the Canada-Chile Agreement on Environmental Cooperation and the Canada-Chile Free Trade Agreement. These three agreements came into force on 5 July 1997. In the preamble, the two countries undertake to promote their legislation regarding workers rights.

Article 1 stipulates that the Parties undertake to: "(a) improve working conditions and living standards in each Party's territory; (b) promote, to the maximum extent possible, the labour principles set out in Annex 1.

77 The 2008 Agreement with the European Free Trade Association (EFTA) does not contain any provisions or annexes relative to labour and sustainable development; the preamble is limited to reaffirming certain key principles regarding human rights and sustainable development, together with upholding the 1998 Declaration. www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/efta-agr-acc.aspx?lang=en#5
Without explicitly referring to the ILO's Declaration, the four core labour standards are taken up and extended. The annex contains a list of eleven areas concerned by labour law:

1. Freedom of association and protection of the right to organise; 2) The right to collective bargaining; 3) The right to strike; 4) The prohibition of forced labour; 5) Labour protections for children and young persons; 6) Minimum employment standards; 7) Elimination of employment discrimination; 8) Equal pay for men and women; 9) Prevention of occupational injuries and illnesses; 10) Compensation in cases of occupational injuries or illnesses; 11) Protection of migrant workers. Article 2 sets out a general obligation: "Affirming full respect for each Party's Constitution, and recognizing the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations, each Party shall ensure that its labour laws and regulations provide for high labour standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light."

The Agreement stresses the importance of private action (access to tribunals in the case of a dispute) and of informing the public of its rights and the application of the agreement. It establishes a series of institutional mechanisms aimed at encouraging and facilitating cooperation, notably through the set up of the Canada-Chile Commission for Labour Cooperation, consisting of an interministerial Council and a Secretariat.

Article 11 specifies the areas of cooperation (child labour, health and safety, labour statistics, work benefits, human resources development, non-discrimination, etc.) and the activities that may be implemented (seminars, technical assistance, joint studies and projects, working groups, etc.). Procedure for consultation and evaluation before the Council is provided for (Part 4), including the establishment of an "Evaluation Committee of Experts" (ECE) which is required to present a draft report to the Council.

The dispute settlement mechanism is described in Part 5. Sanctions are restricted to "the enforcement of a Party's occupational safety and health, child labour or minimum wage" (Article 25). It is stipulated that the matter in question must be: "(a) trade-related; and (b) covered by mutually recognized labour laws" (Article 26).

Following a long series of proceedings, one of the parties may have a monetary enforcement assessment imposed on it (Article 35 § 5 (b) and Annex 35). The maximum sum payable is US$10 million, to be paid into a special fund and used to improve standards in the country complained against.

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79 Nonetheless, these are 11 guiding principles, "that the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the Parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces."

80 "In determining the amount of the assessment, the panel shall take into account: (a) the pervasiveness and duration of the Party's persistent pattern of failure to effectively enforce its occupational safety and health, child labour or minimum wage technical labour standards; (b) the level of enforcement that could reasonably be expected of a Party given its resource constraints; (c) the reasons, if any, provided by the Party for not fully implementing an action plan; (d) efforts made by the Party to begin remedying the pattern of non-enforcement after the final report of the panel; and (e) any other relevant factors." (Annex 35, Paragraph 2)
2. The agreement with Costa Rica

The Canada-Costa Rica Agreement on Labour Cooperation entered into force in 2002. It is less restrictive in institutional and administrative terms than the agreement with Chile\(^\text{81}\).

Even though 10 of the 11 guiding principles listed in the agreement with Chile are included (removal of the 11th principle on migrant workers), the importance given to them is not the same. Thus, the list of labour rights is set out in two Annexes (1 and 2).

Annex 1 introduces the concept of core labour standards and refers to the ILO's Declaration: "The Parties are committed to respecting and promoting the principles and rights recognized in the ILO Declaration on Fundamental Principles and Rights at Work. The Parties shall reflect these in their laws, regulations, procedures and practices: freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labour; labour protections for children and young persons; elimination of discrimination; and equal pay for women and men."

These rights define the areas in which legal action may be instigated within the framework of the dispute settlement mechanism.

This list signifies that the areas covered by the dispute settlement mechanism are specific. The Canada-Costa Rica Agreement excludes health and safety in the workplace and a minimum wage, upholds the provisions on child labour and extends them to the other core labour standards.

Annex 2 reproduces the intentional and non-legislative character of the entire list of guiding principles taken into consideration in the agreement with Chile "the Parties are committed to promote, subject to each Party's domestic law, but do not establish common minimum standards for their domestic law. They cover broad areas of concern where the Parties have developed, each in its own way, jurisprudence, laws, regulations, procedures and practices that protect the rights and interests of their respective workers: minimum employment standards; prevention of occupational injuries and illnesses; and compensation in cases of occupational injuries or illnesses."

Another difference with the Canada--Chile Agreement is the absence of monetary sanctions: "If the panel determines that the Party that was the object of the request has not remedied its persistent pattern of failure to effectively enforce its labour law directly related to principles and rights set out in Annex 1, the Party that made the request may take reasonable and appropriate measures, exclusive of fines or any measure affecting trade, but including the modification of cooperative activities pursuant to Article 12, to encourage the other Party to remedy that persistent pattern, in keeping with the panel’s determinations and recommendations." (Article 23, § 5).

Canada has initiated a series of negotiations with other countries. The agreement signed with in January 2008 is to be accompanied by an agreement on labour cooperation (text not made public). Labour and environmental provisions are also included in the negotiation programmes with Jordan, Columbia, South Korea the CARICOM, the Dominican Republic and Singapore.

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Section 3 – Labour provisions in EU agreements

The EU has negotiated many bilateral agreements. Most of these include labour provisions but, in general, these are not as extensive as those in the US and Canadian agreements\(^{82}\). The EU also engages in a whole series of political dialogue at regional level, such as the ASEM process (Asia-Europe meetings) and the EU-Latin America and the Caribbean Summits.

The "EU’s Neighbourhood Policy" (ENP) is aimed at strengthening relations with neighbouring countries in the East and South following enlargement. The EU thus encourages "partner government programmes aimed at… promoting core labour standards and social dialogue."

The preamble to the agreement between the EU and South Africa (1999) refers to the ILO's core labour standards\(^{83}\). Article 86 on "social issues" is limited to dialogue on social cooperation and recognises the parties’ responsibility for guaranteeing basic social rights. In the preamble to the Partnership Agreement with Mexico (2000)\(^{84}\), the 1995 Copenhagen Summit is mentioned, with a brief mention of the aim to develop cooperation on social affairs. The EU-Chile Association Agreement adopted in 2002 includes a chapter on social cooperation, although this is not exactly binding\(^{85}\): "The Parties recognise the importance of social development, which must go hand in hand with economic development. They will give priority to the creation of employment and respect for fundamental social rights, notably by promoting the relevant conventions of the International Labour Organisation" (article 44:1) and "The Parties will give priority to measures aimed at: (a) promoting human development, the reduction of poverty and the fight against social exclusion, by generating innovative and reproducible projects involving vulnerable and marginalised social sectors." (article 44:4)."

The preamble to the Cotonou Agreement\(^{86}\) contains several references to social aspects, to several international human rights texts and to the core labour standards. Article 25 deals with cooperation on social matters. The chapter on "trade-related matters" includes an article on "Trade and labour standards" (Article 50) whereby the parties reaffirm their undertaking to uphold the ILO's core labour standards and intensify cooperation. Moreover, "The Parties agree that labour standards should not be used for protectionist trade purposes."

Negotiations for Economic Partnership Agreements (EU-EPA) were instigated in September 2002. Social aspects, such as poverty, employment and South-South migration are considered to be key elements in development in discussions over Economic Partnership Agreements.

The Economic Partnership Agreement signed on 16 December 2007\(^{87}\) between the EU and the CARIFORUM countries\(^{88}\) confirms and extends the undertakings stipulated in the Cotonou

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\(^82\) The EU’s position was summed up by EU Trade Commissioner, Peter Mandelson, as follows: "The EU has always rejected a sanctions-based approach to labour standards - and that will continue. But equally, we can do more to encourage countries to enforce basic labour rights, such as the ILO core conventions, along with environmental standards - not simply in principle, but in practice. Cooperation and social dialogue are certainly important. Transparency, through an independent mechanism, will also help us highlight areas where governments should take action against violations of basic rights. We are also considering an incentives approach." EU Decent Work Conference, Brussels, 5 December 2006, (ec.europa.eu/commission/barroso/mandelson/speeches_articles/ppm134_en.htm).


\(^84\) eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:22000A1028(01):EN:HTML

\(^85\) ec.europa.eu/trade/issues/bilateral/countries/chile/euchlagr_en.htm

\(^86\) ec.europa.eu/development/icenter/repository/ggr01_en.pdf

\(^87\) ec.europa.eu/trade/issues/bilateral/regions/acp/pr220208_en.htm

49
Agreements (2000). In the preamble, the parties state, "CONSIDERING the need to promote economic and social progress for their people in a manner consistent with sustainable development by respecting basic labour rights in line with the commitments they have undertaken within the International Labour Organisation and by protecting the environment in line with the 2002 Johannesburg Declaration". Unlike previous agreements, a chapter is devoted to "social aspects" (Chapter 5). Article 191 extends Article 50 of the Cotonou Agreements to include decent work and fair trade. Article 192 recognises "the right of the Parties and the Signatory CARIFORUM States to regulate in order to establish their own social regulations and labour standards in line with their own social development priorities." Article 193 deals with "social dumping": "the Parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by: (a) lowering the level of protection provided by domestic social and labour legislation; (b) derogating from, or failing to apply such legislation and standards."

On these issues, Article 195 provides for a consultation and "monitoring" process that must not exceed 3 months (with an additional 3 months where one of the parties seeks advice from the ILO). Should this process fail, each party may request that a report be drawn up by a Committee of Experts chaired by a person who is not a national of any of the parties to the Agreement. This report will then be submitted to the CARIFORUM-EU consultative committee. Article 196 provides for cooperation on social and labour issues.

This agreement, which goes further than previous agreements, could be used as a basis for future trade agreements.

Section 4 – Labour provisions in other agreements

Unless specifically requested by the one of the partners, Asian countries (with a few exceptions), Australia and the EFTA do not include references to labour in their trade agreements. Labour provisions are more likely to be included in free trade agreements involving Latin American countries.

1. The Mercosur Social Declaration

The "Declaración sociolaboral del Mercosur" (10 December 1998) supplements the Treaty of Asunción (26 March 1991) signed between Brazil, Argentina, Paraguay and Uruguay. Explicitly drawn up at the instigation of the Labour Ministers of the member countries (rather than the department in charge of foreign trade relations), it recognises the ILO’s 1998 Declaration on fundamental rights as well as various declarations on human rights and civil and political liberties. The different articles cover:

- Non-discrimination defined in the broad sense of the term; in addition to the usual criteria (race, gender and religion, etc.), this also includes sexual orientation, age, political opinions, union membership and disability;
- Protection for migrant and cross-border workers;

88 Antigua & Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Lucia, Saint Vincent and the Grenadines, Saint Kitts and Nevis, the Republic of Surinam and Trinidad and Tobago
89 www.mercosur.int/nivelportal%20intermediario/es/index.htm
90 One brief article (Art. 7) recognises the employer’s right to "organise and ensure the financial and technical management of the company, in compliance with national legislation and practice."
- Elimination of forced labour;
- Child labour, with a minimum age and protection of minors;
- Freedom of association and union membership, the right to collective bargaining and the right to strike;
- Protection for the unemployed and vocational training;
- Health and safety in the workplace, labour inspection and social security rights.

The Member States, "undertake to uphold the fundamental rights set out in this Declaration and to promote their implementation in compliance with national legislation and practice and with collective agreements. To achieve these objectives, they recommend establishing… a "Socialaboral" Commission, a tripartite body… whose purpose will be to promote, not sanction, and which shall encompass national and regional bodies aimed at encouraging and supporting implementation of this instrument."

The declaration is therefore very comprehensive insofar as concerns the undertakings made by the member countries but, at the same time, does not have a great deal of binding force. It recognises the precedence of national law and does not provide for a dispute settlement procedure.

2. Chile's agreements

Although Chile has stated its determination to refer to labour standards, its policy tends to be highly variable and depends on who its trade partners are. Chile has signed demanding free trade agreements with the USA and Canada (cf. above) and others limited to cooperation with the European Union (see Table 5).

Table 5 – A Comparaison between Agreements of Canada, UE and USA with Chile.

<table>
<thead>
<tr>
<th>Require public notice of national law</th>
<th>Canada-Chile Labour Side Agreement</th>
<th>Association Agreement between EC and Chile</th>
<th>US-Chile Free Trade Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requires public notice of national law</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Requires access to justice in national court</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Creates international commission to promote cooperation</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Creates transnational public advisory committee to treaty parties</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Nature of central labor obligation</td>
<td>Effectively enforce narrow range of national labor law</td>
<td>Social dialogue and cooperation, public administration cooperation, and cooperation to prevent illegal immigration</td>
<td>Effectively enforce limited range of national labor law</td>
</tr>
<tr>
<td>How central labor obligation is adjudicated</td>
<td>State-to-State dispute settlement</td>
<td>None</td>
<td>State-to-State dispute settlement</td>
</tr>
<tr>
<td>Compliance procedure following adjudication</td>
<td>Monetary enforcement assessment and national court order</td>
<td>N/A</td>
<td>Monetary assessment that can be collected through sanction</td>
</tr>
<tr>
<td>Individual right to seek investigation from international body</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>


Of the three Latin American partners with which Chile signed an agreement in 2006 (which have neither been applied nor notified to the WTO) - Columbia, Panama and Peru -, only the
first incorporates labour provisions. The agreement between Chile and Columbia devotes a chapter to labour matters (*Capítulo 17*), which includes an obligation to uphold the ILO’s Declaration, recognition of national sovereignty and the inappropriateness of dismantling labour legislation for the purposes of trade. Cooperation encompasses an extremely broad area, and decent work is explicitly mentioned.91

Chile’s agreements with South Korea92 and with Japan93 take up the WTO preamble and the general exceptions set out under Article XX – including XX(e) on prison work. Labour standards in older agreements, with Mexico (1998), Central America (1999) and the EFTA (2003) do no more than include a reference to employment in the preamble.

The draft agreement between Chile and China (2006), in the Chilean version94, includes a section on labour cooperation. This explicitly refers to promoting decent work as defined by the ILO and to the *Memorandum of Understanding on Labor and Social Security Cooperation, and the Environmental Cooperation Agreement* (2005)95. In the final version of the agreement, Chile’s request has been replaced by a single reference to this Memorandum (Article 108)96. This Memorandum, which refers to the ILO’s objectives in its preamble, is strictly limited to cooperation and focused on various aspects of decent work: “The Parties shall carry out mutually agreed co-operation activities, more particularly in the following fields: a) employment and labour policies and social dialogue, including decent work, labour laws and labour inspection; b) improvement of working conditions and workers training; c) globalization and its impact on employment, the working environment, industrial relations and governance, and d) social security” (Article 1).

3. Asian trade agreements

The majority of free trade agreements in Asia do not include labour provisions. A few exceptions may nonetheless be identified.

The agreement between Korea and Singapore makes no reference to ILO labour standards, but Article 18.10, "Human Resources Management and Development" is focused on education, skills development and qualifications. The treaty also proposes a number of guidelines for promoting cooperation in these areas.

Although the agreement between Japan and Malaysia contains no reference to the ILO’s core labour standards either, the parties undertake to enhance cooperation in the following areas (Article 139): "(a) to enhance socio-economic development; (b) to strengthen economic competitiveness; (c) to advance human resource development; (d) to promote sustainable development; and (e) to improve overall well-being of the peoples of both countries."

The agreement between Japan and the Philippines incorporates a clause relative to labour, in Article 103, "investment and labor", which condemns social dumping with a view to attracting

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91 www.sice.oas.org/TPD/CHL_COL/DraftText_Dec06_s/index_s.asp
92 www.iadb.org/intal/detalle_instrumento.asp?aid=929&idioma=esp&cid=465
95 www.sice.oas.org/TPD/CHL_CHN/Negotiations/MOU_e.pdf
96 gjs.mofcom.gov.cn/table/China_Chile_FTA_EN.doc
foreign investment. If one of the parties should "dismantle" its laws to this end, the other can convene a consultation. Labour rights are specified and cover: "the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." A dispute settlement mechanism includes the possibility of sanctions being imposed by an arbitration tribunal: temporary restrictions or the suspension of obligations. While the agreement sets out cooperation procedures in certain areas, such as technical standards, competition, intellectual property and the business environment, Article 144 is limited to listing "human resources development" as one of the areas in which cooperation may be promoted. There is, however, a joint agreement specifically covering cooperation programmes in the area of education.

Section 5 - Labour in the Generalised System of Preferences

The Generalised System of Preferences (GSP) is a mechanism for granting preferential customs tariffs to developing countries on a non-reciprocal basis. It is an exemption from the Most Favoured Nation clause and Article XXIV of the GATT. Some industrial nations, particularly the European Union and the United States, use this exemption to promote compliance with certain labour standards and work conditions.

1. The EU’s GSP arrangements

In 1971, the European Union was the first to implement the GSP. Since 1 January 2006 and up to 31 December 2008, a new regulation has been applicable (EC Council Regulation No. 980/200597). This regulation is designed to simplify and rationalise the preferential system for imports of products originating in developing countries and to reconcile trade and development objectives. The system includes three arrangements:

- the general arrangement;
- the special incentive arrangement for sustainable development and good governance;
- the special arrangement for least developed countries.

The second arrangement, known as "GSP+" is aimed at speeding up economic and social development by requiring the country to commit to implementing environmental protection measures and upholding fundamental rights (labour and civil rights). This arrangement can be used to suspend ad valorem duties due on a detailed list of products. This also applies to special duties, except where there is already an ad valorem duty on the product. The main advantage of this compared with the general arrangement is that it extends the preferences system to "sensitive products".

The special GSP arrangement applies to any country that applies for it and that fulfills certain conditions: the beneficiary country must be on a list of countries considered to be "vulnerable" and is subject to a general obligation to ratify and effectively implement the international conventions listed in Annex III of Regulation 980/2005. The conventions are divided into two groups:

- Conventions relative to human rights and workers rights, including, of particular interest, the ILO's fundamental conventions and the key UN agreements on human rights. In principle, the country is under an obligation to ratify and effectively implement these conventions. The deadline set for ratification was 31 October 2005, or by 31 December 2006 if there was any incompatibility with a country's Constitution.

- The second group of conventions concern the environment and the principles of good governance. Ratification of 7 of these conventions was obligatory for a country to benefit from the special arrangement. All the conventions must have been ratified and implemented by 31 December 2008.

During the period covered by Regulation 980/2005 (1 January 2006 - 31 December 2008), fifteen countries have benefited from the GSP+ arrangement: Bolivia, Columbia, Costa Rica, Ecuador, Georgia, Guatemala, Honduras, Sri Lanka, Republic of Moldova, Mongolia, Nicaragua, Panama, Peru, El Salvador and Venezuela.

The system defines sanction mechanisms in the event of violating these undertakings, taking the form of a temporary withdrawal of the preferential arrangement for all or part of the country's exports. Such a withdrawal also applies to all the trade arrangements in force, not just to the GSP+. The mechanism is triggered mainly in the event of the serious and systematic violation of the international conventions listed in Annex III, Part A of Regulation 980/2005, based on the conclusions of the monitoring bodies with jurisdiction in the matter. This list includes the ILO's core labour standards, together with various conventions (minority rights, women's rights and children's rights, etc.). Other cases involve exports of products made in prisons, serious and systematic unfair trade practices, drugs trafficking and failure to comply with the regulations regarding money laundering, the serious and systematic violation of the rules governing fishery resources. In addition (Art. 16:2), the special incentive arrangement may be temporarily withdrawn, with respect to all or certain products covered under this arrangement and originating in a beneficiary country, in particular if the national legislation no longer incorporates the conventions listed in Annex III which have been ratified or if such legislation has not been effectively implemented.

The temporary withdrawal of the preferential arrangements may be decided following a specific procedure. Firstly, at the consultation stage, the committee has to decide whether there is sufficient evidence to justify withdrawing the preferential arrangements. Following the consultation, the Commission may decide to hold an investigation. In the event of serious and

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98 "A vulnerable is one: a) that is not classified by the World Bank as a high income country during three consecutive years, and whose five largest sections of its GSP-covered imports to the Community represent more than 75% in value of its total GSP-covered imports, and b) whose GSP-covered imports to the Community represent less than 1% in value of total GSP-covered imports to the Community (Council Regulation (EC) No. 980/2005, Art. 8.3).

99 Conventions 29 and 105 on forced labour, conventions 87 and 98 on freedom of association and collective bargaining, conventions 100 and 111 on non-discrimination and conventions 138 and 182 on child labour.
systematic violation of the standards listed in the agreement, the Commission may recommend suspending preferential tariffs. In practice, such withdrawal has applied in the case of Myanmar and Belarus.

2. American GSP

The US Generalised System of Preferences came into force on 1 January 1976, under Title V of the 1974 Trade Act. Originally authorised for a 10-year period, it was extended periodically up until 2000 and then renewed up to 31 December 2008. To benefit from the preferential tariffs regarding a list of products, a country must fulfil a certain number of conditions. In 1984, Congress introduced workers' rights into its GSP arrangements: "A beneficiaries must have taken or is taking steps to afford internationally recognized workers rights including 1) the right of association, 2) the right of organize and bargain collectively, 3) freedom from compulsory labour, 4) a minimum age for the employment of children, and 5) acceptable conditions of work with respect to minimum wage, hours of work and occupational safety and health; and a GSP beneficiaries must implement any commitments it makes to eliminate the worst forms of child labour."

Several other preferential programmes include similar conditions. The 1983 Caribbean Basin Economic Recovery Act (CBERA and CBTPA) excludes any country that "has not taken or is not taking steps to afford internationally recognized workers rights...to workers in the country." The "Andean Trade Preference Act" of 1990, designed to prevent drug production and trafficking, also refers to the criterion regarding upholding international workers' rights. The African Growth and Opportunities Act (AGOA), which opens up "duty free" access to 38 Sub-Saharan African countries, recognises the protection of international workers' rights as a criterion.

Although non-discrimination is not one of the conditions listed, minimum labour standards are extended under US law. Unlike Europe's arrangements, the American GSP does not specify the ILO's fundamental conventions, even though, in practice, the officials in charge of monitoring the system regularly use the assessments drawn up by the ILO.

Within the framework of these preferential agreements, a country that fails to fulfil its commitments can lose its preferential tariffs with respect to all or certain of its exports to the US. The Act authorises the President to completely or partially withdraw or suspend the advantages. The President must also present annual reports on the state of workers' rights in the countries in question and on the impact of the agreements on employment in the US.

It may be concluded that the US GSP provides more extensive and more effective guarantees than the free trade agreements signed in recent years (Polaski and Vyborny, 2006): the partners undertake to implement higher standards since they must comply with international labour standards, whereas most bilateral free trade agreements only commit the signatory countries to tightening domestic laws.

Section 6 - Investment agreements and labour standards

Another kind of bilateral agreement is likely to introduce labour provisions: namely, investment agreements, which are more numerous than free trade agreements that often include a section covering investment.

100 www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html
1. The failure of the Multilateral Agreement on Investment (MAI)

In May 1995, the OECD began negotiations aimed at drawing up a multilateral agreement on investment (MAI). In particular, the objective was to prevent the proliferation of bilateral agreements since they were making the system more complex and lacking in clarity. This agreement was intended to be an autonomous international treaty open to all OECD member countries and the European Community, as well as to non-member countries. Its stated objective was to establish a broad multilateral framework for international investment with high standards for the liberalisation of investment regimes and investment protection and with effective dispute settlement procedures. Following a protest campaign mobilising civil society and the withdrawal of France, the negotiations were discontinued in 1998.

The question of whether or not to include provisions relative to the environment and labour was raised but was opposed by some of the countries involved in the negotiations, representing business concerns.

In the final draft, presented in March 1998 (DAFFE/MAI(98)17) by the Chairman for Labour and the Environment, the preamble stipulated that, "RENEWING their commitment to the Copenhagen Declaration of the World Summit on Social Development and the observance of internationally recognised core labour standards, i.e., freedom of association, the right to organise and bargain collectively, prohibition of forced labour, the elimination of exploitative forms of child labour, and non-discrimination in employment, and noting that the International Labour Organisation is the competent body to set and deal with core labour standards worldwide." One draft article also stipulates that, "A Contracting Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its domestic health, safety, environmental, or labour measures, as an encouragement to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposition of an investment of an investor." In an interpretative note, it is explained that, "The Parties recognise that governments must have the flexibility to adjust their overall health, safety, environmental or labour standards over time for public policy reasons other than attracting foreign investment."

Following the failure of the MAI, some countries, including the United States, decided to speed up signature of a number of bilateral agreements on investment, independent of and, generally speaking, prior to free trade agreements.

2. US bilateral agreements

The US now has 45 bilateral investment agreements with developing countries (Annex 4). In all these agreements, the preamble clearly states that, while the primary objective is to encourage investment, other factors must be taken into consideration, notably, boosting economic development, improving living standards, promoting workers' rights, and upholding health, safety and environmental regulations. These objectives are not obligations, but they may be the subject of consultation between the parties.

Thus, the agreement on investment (which precedes the free trade agreement) signed in 1997 between the US and Jordan, mentions that both parties "Recognizing that agreement upon the
treatment to be accorded such investment will stimulate the flow of private capital and the economic development of the Contracting Parties; [...] Recognizing that the economic and business ties can promote respect for internationally recognized worker rights."

In the preamble, the US-Uruguay Agreement signed in 2004 stipulates that both parties "Desiring to achieve these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of consumer protection and internationally recognized labor rights." Moreover, Article 13 of this agreement is entirely devoted to labour: "1. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in paragraph 2 as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement. 2. For purposes of this Article, "labor laws" means each Party’s statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. 3. Nothing in this Treaty shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Treaty that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to labor concerns."

This agreement between the US and Uruguay, which includes labour provisions modelled on those included in free trade agreements, is the most comprehensive in terms of labour standards.

In fact, in spite of the large number of bilateral investment agreements linking Latin American countries with developed countries or with other American countries (Annex 4), only the agreements with the US contain explicit references to compliance with international labour standards.

Insofar as regards Europe, there does not appear to be any common strategy regarding bilateral investment agreements. While free trade agreements contain chapters on investment, bilateral investment agreements as such remain under the responsibility of the individual Member State. None of these agreements integrate labour standards.

The European Commission has raised the idea that investment agreements common to all the EU Member States would make it possible to render such investment agreements more ambitious. However, the Member States are not all of the same opinion concerning a common negotiation process, firstly, because the Commission does not seem to have authority in this field, and secondly, because some Member States think that bilateral negotiation affords greater protection for investors. Others feel that the example of NAFTA investment agreements, which liberalise investment while continuing to protect foreign investors, could serve as the basis for a common investment agreement. The question remains open to debate and the large majority of European investment agreements are still bilateral agreements that come under the jurisdiction of the individual Member State.
Conclusion

The majority of trade agreements and treaties linking a developed Party with a Developing Party include provisions relative to labour standards and certain aspects of sustainable development. Nonetheless, they are included in different ways not only by different countries but also in the case of a single country (United States). No standard model can be identified when we review these agreements (Annexes 2 and 5).

We can, however, identify certain common features:

1. More or less faithful alignment with core labour standards, often extended to other areas: minimum wage, working hours, safety in the workplace, etc.

2. GSP agreements are generally more comprehensive, more legally binding and tend to be unilateral rather than bilateral treaties.

3. The option of consultation or dispute settlement mechanisms, sometimes including the possibility of imposing sanctions.

4. A two-fold undertaking, often included, not to dismantle standards for the purpose of increasing competitiveness and not to use compliance with labour standards for protectionist ends.
CHAPTER 4 – INCLUSION, MECHANISMS AND IMPACT OF LABOUR PROVISIONS IN BILATERAL AND REGIONAL TRADE AGREEMENTS

It is especially difficult to assess the impact that the provisions relative to labour and sustainable development in free trade treaties have on compliance with core labour standards and the promotion of decent work. Indeed, the majority of agreements that include such provisions are too recent to be able to stand back and assess them adequately. Furthermore, it would be arbitrary to attribute any improvement (or deterioration) in social practices to such provisions alone.

Our analysis will therefore focus on the earliest agreements: the supplementary agreement to NAFTA (NAALC), the supplementary agreement to the-Canada-Chile free trade agreement (CCALC), the US-Cambodia textile agreement and the US-Jordan agreement. In the last section, we shall look at impact studies and monitoring procedures in the European Union and the United States.

Section 1 – The North American Agreement on Labour Cooperation (NAALC)

The NAFTA and its supplementary agreement - the North American Agreement on Labour Cooperation (NAALC) -, signed in 1992 and implemented in 1994, was the first free trade agreement to refer to labour standards (see Chapter 3). The NAALC recognises each State’s legislative jurisdiction in labour matters (Madueno and Binsse-Masse, 2003).

The number of communication requests has in fact proved to be limited, and sanctions have so far been avoided, which may equally be seen as the success of the agreement’s dissuasive nature or as the relative failure of inefficient procedures.

1. Cooperation under the NAALC

Cooperation activities, which are central to the NAALC, come under the responsibility of a Commission for Labour Cooperation, composed of a secretariat and supervised by a Ministerial Council. Such activities are relatively well developed. Reports and studies have been published on various labour issues. The Commission for Labour Cooperation also organises conferences. Its role is to provide information and perform comparative analysis of the different labour legislation and working conditions in each of the three countries that signed the agreement. Special arbitral panels can be convened in the event of disputes regarding obligations under the NAALC. These obligations involve the level of protection ("Each Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light." (Article 2)). Other obligations involve informing workers of their rights, ensuring transparency of labour-related procedures, the effective application of labour legislation, and cooperation with the other countries on these issues. The countries also agree to allow their labour policies to be examined and, depending on the findings, any one of the parties may request the establishment of a committee of experts. If this committee finds that one of the countries has systematically failed to ensure "the enforcement of a Party’s occupational safety and health, child labor or minimum wage technical labor standards" (Article 27), the other countries may request further consultations which

103 www.hrsdc.gc.ca/en/lp/spila/ialc/02NAALC.shtml
may lead to a special independent arbitral panel being convened. The parties may then agree on an "action plan" to resolve the situation. If the country in question does nothing to improve the situation, the other countries may demand monetary compensation (fines or trade sanctions). The agreement thus puts the emphasis on cooperation and technical assistance prior to considering imposing sanctions if the country in question fails to implement the required action.

Between 1994 and 2006, thirty-five communication requests were made, around 60% of which were issued by the USA (Figure 2). Mexico was implicated in the majority of cases (65%), but the USA was also the subject of a significant number of communication requests (29%) (Figure 3).

Figure 2 – Communication requests (1994-2006)  Figure 3 – Country targeted by communication requests (1994-2006)

These communication requests mainly involved possible violations of the freedom of association and the right to organise, as well as collective bargaining rights. Requests have also involved occupational injuries and illnesses, together with minimum employment standards. In 62% of cases, communications have resulted in a review. In 37% of cases, they have led to ministerial consultations, and, in 32% of cases, to agreement on implementation or a joint declaration. To date, no monetary enforcement assessments have been applied.

According to Verge (1999), the reviews carried out by the Commission for Labour Cooperation could be used in assessing the improvements made to labour standards, by encouraging more effective circulation of information, notably on behalf of Mexican workers. They have enabled discussions between governments, for example, with regard to Mexican law relative to the recognition of unions or American rules concerning the permanent closure of companies due to anti-union practices.

These communications have also enabled greater media coverage of unacceptable practices within certain multinational firms (Compa, 2001; Paquerot, 2002). The US NAO (National Administrative Office to which public communications are submitted) thus involves organising public hearings. Similarly, the Mexican NAO has received complaints about American companies. The case of Sprint, the company that closed down its site in San Francisco to avoid a union being established, was widely covered in the media (Madueno and Binsse-Masse, 2003). Compa (2001) cites the example of the provincial government of Alberta (Canada), which, in 1996, threatened by a complaint filed under the provisions of the NAALC, was forced to drop its plans to privatise its workplace health and safety inspectors. Adams (1999) cites the example of the Maquiladora workers and the companies that, threatened by boycotts, announced they would stop performing pregnancy tests. According to Trudeau (1998), the NAALC has helped
to significantly improve the freedom of the unions in Mexico. Polaski (2004a) also believes that information sharing, technical assistance and cooperation have significantly improved working conditions in Mexico.

Figure 4 – Standards implicated in communication requests

![Standards implicated in communication requests](image)

Source: NAALC Secretariat, US Department of Labor (Bureau of International Labor Affairs)

The NAALC nonetheless fails to clearly define the role of the National Administrative Offices (NAOs). Procedure may vary depending on "the nation’s specific political, administrative and legal traditions" (Madueno and Binse-Masse, 2003) and their impartiality may be called into question, especially when the communication implicates companies based in the home country.

2. Dispute settlement and sanctions under the NAALC

The last stage in the mechanism is the dispute settlement procedure. Any one of the three countries may initiate this procedure and the injured State may suspend the advantages granted under the NAFTA. Monetary compensation or trade sanctions are only applicable in four cases: the labour protection afforded for children and young people, minimum employment standards, such as minimum wage and overtime pay, preventing work-related accidents and illnesses, and compensation in the event of work-related injury and illnesses (Table 6). Violations
of the freedom of association are not included in the cases for which convening a special arbitral panel and monetary compensation are justified, a fact that several authors strongly criticise (Madueno and Binsse-Masse, 2003; LaSala, 2001). The dispute settlement procedure assumes that the violation of a standard is systematic and therefore excludes any isolated case. The procedure provides for further consultations to find a diplomatic solution before imposing any sanction, which is subject to a 2/3 majority vote.

The procedure is frequently criticised for its ineffectiveness. For example, Greven (2005) finds that “without exception, all the tangible results of the reviews are negative results.” Nonetheless, the literature on the subject focuses less on the very principle of a dispute settlement mechanism with the option of sanctions being included, than on its effectiveness. The process is often criticised for being overly complex and longwinded. Four years may pass between initiating it and the application of a monetary enforcement assessment (Diamond, 1996). Alston (2004) points to the absence of consultation with workers’ representatives as explaining the current problems. Also, even if the procedure has never resulted in sanctions, the threat of sanctions may have provided an incentive that explains improvements in working conditions.

### Table 6 – NAFTA - Principles of labour law and possible actions.

<table>
<thead>
<tr>
<th>Labour principles</th>
<th>Possible ways in which each principle may be dealt with by the bodies set up under the NAALC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Freedom of association and protection of the right to organise</td>
<td>- Communication submitted to a BAN</td>
</tr>
<tr>
<td>2. Right to collective bargaining</td>
<td>- Cooperative consultations between NAOs</td>
</tr>
<tr>
<td>3. Right to strike</td>
<td>- Ministerial consultations</td>
</tr>
<tr>
<td>4. Prohibition of forced labour</td>
<td>- As above, presentation to an Evaluation Committee of Experts for analysis and report</td>
</tr>
<tr>
<td>5. Elimination of employment discrimination on the grounds of race, religion, age,</td>
<td></td>
</tr>
<tr>
<td>6. Equal wage for men and women for equal work</td>
<td></td>
</tr>
<tr>
<td>7. Protection of migrant workers</td>
<td></td>
</tr>
<tr>
<td>8. Labour protections for children and young persons</td>
<td>- As above, plus presentation to a Special Arbitral Panel for recommendations and an action plan</td>
</tr>
<tr>
<td>9. Minimum employment standards, such as minimum wage and overtime compensations</td>
<td>- Monetary compensation for non-application of the action plan, followed, if necessary, by:</td>
</tr>
<tr>
<td>10. Prevention of work-related accidents and illnesses</td>
<td>- Trade sanctions in the event of non-payment of the monetary compensation</td>
</tr>
<tr>
<td>11. Compensation in the event of work-related injury and illnesses</td>
<td></td>
</tr>
</tbody>
</table>

Source: from Madueno and Binsse-Masse (2003)

### 3. The impact of the NAALC on application of labour laws.

Some authors focus on the positive impact of the NAALC on cooperation within the North American trade union movement and on forming alliances between Mexican, American and Canadian unions to take advantage of the opportunities afforded by the NAALC (Madueno and Binsse-Masse, 2003; Compa, 1999).

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Canada makes no provision for the possibility that trade sanctions can be imposed against it, judging them to be too “antagonistic” and “involves too much needless red tape” and “undermines sovereignty”. In the event that the special arbitral panel rules against Canada, the decision must be applied by a Canadian court and the penalty must be a fine, to the exclusion of trade sanctions (Singh 2002). Applicability depends on the provincial governments, just to further complicate the situation.
There are two cases where communications have had an indirect effect: while they may not have served to directly improve workers' rights, they have maintained, or even strengthened, the influence of workers' unions:

- Communication 9601 (SUTSP/Fishing Ministry): the union that was initially dissolved was registered and allowed to pursue its activities;

- Communication 9702 (Han Young): the independent union won the right to bargain as well as international support.

Insofar as regards labour law, the workers concerned by these communications are not entitled to any monetary compensation, nor have their rights been consolidated by this process. Requests to file a communication have to be supplemented by domestic petitions. There is nothing to stop a country from dismantling its labour legislation, since national sovereignty is recognised under the agreement.

As highlighted by LaSala (2001), the NAALC "does an adequate job of gathering information and discovering labor violations, [but] it is incapable of instituting appropriate corrective measures," and "the Ministers are not provided with the proper authority to successfully resolve such disputes." Summers (1999) believes that the NAALC has failed to provide commitments that are binding on the States and that this explains why the agreement "has failed to develop and enforce application of labor standards." Blecker (2003) considers that the NAALC is not responsible for the integration of the various national labour markets, but nonetheless observes "increasing de facto integration, even if the NAALC has not led to de jure integration." Blackett (2007) cites the failure of the process with regard to pregnancy tests imposed by firms, which are considered to be discriminatory, thus demonstrating the limits of the agreement and the relative loss of interest on the part of the unions and civil society: "There are many legitimately severe critiques of the NAALC. The procedures are seen to be excessively lengthy and cumbersome. Some would argue that they have been constructed so as never to really be applied in full. Unions and civil society groups have largely abandoned using the NAALC mechanisms." (p. 12).

While it seems that improved working conditions have been observed in specific areas, it does not appear that the NAALC has gone hand in hand with a process of upward convergence relative to wages and working conditions. Polaski (2006) observes that real wages in Mexico tended to fall between 1993 and 2003, whereas productivity increases by nearly 60% over the same period. The explanations put forward by Polaski are the government's policy on lowering the minimum wage, pulling all wages down, together with the repression of the unions, especially in the Maquiladoras, entailing a decrease in collective bargaining (see also Chapter 2). Mexican law stipulates that only one union organisation is allowed in each company. Many companies have been behind setting up corrupt or passive unions in a bid to prevent serious wage bargaining. Robertson (2005) finds no convergence between wages in Mexico and the US since adopting the NAFTA. Grimm (1999) goes so far as to say that the NAALC has not promoted equal opportunities for men and women, especially in the Maquiladoras: failure to recognise certain basic rights for women in Mexico (parental leave, childcare system, and problems involving harassment at work). Furthermore, the two principles contained in the NAALC that were liable to impact on Mexican women - non-discrimination and equal pay - cannot be used as the reason to convene a special arbitral panel and impose sanctions.
All the same, although the positive effects of the NAALC need to be seen as extremely relative, especially with regard to promoting worker's rights, there is no evidence to prove that the situation would not have been worse without the agreement.

Section 2 - The Canada-Chile Agreement on Labour Cooperation (CCALC)

The Canada-Chile Agreement, set up in 1997, is, together with the NAFTA, the oldest free trade agreement. It covers employment and labour issues.

1. Institutional procedures covering employment and labour provisions.

As for the NAFTA, labour issues are dealt with in a side agreement. The Canada-Chile Agreement on Labour Cooperation (CCALC) provides for the setting up of a ministerial council composed of the Labour Ministers of the two governments, or their representatives. The Council's mandate is to monitor implementation of the agreement and make recommendations.

According to the Agreement, the two signatory countries undertake to apply their respective legislation, to cooperate on labour issues to promote innovation and improve productivity and quality standards, as well as to settle disputes relative to the application of labour legislation. Each Party must therefore take steps to ensure that its laws and regulations guarantee high labour standards, at workplaces with high productivity and quality ratios.

The Canada-Chile Agreement is sometimes considered to be a "two-tier system" \(^{105}\), since violating the Agreement is not subject to sanctions except in three cases (child labour, minimum wage and health and safety in the workplace), whereas the purpose of the Agreement is only advisory insofar as the other labour principles are concerned.

The dispute settlement mechanism is brought into play only after ministerial consultations have taken place. In the event of violating a labour standard, and where a link between this standard and trade aspects can be established, the situation may be examined by a Committee of Experts which refers the matter to an international dispute settlement organisation, which is then responsible for proving the fault and, as appropriate, imposing sanctions on the country that has failed to protect its workers' rights. According to Tokman (2006), the three stages involved in the sanctions procedure take around 32 months to complete.

In the cases examined (see above), the agreement provides, as a last resort, a fine up to a maximum of US$ 10 million to be paid into a special fund and used to improve standards in the country at fault. This maximum amount is the same for both countries. Such a reciprocal arrangement has been contested on occasion, notably by those who support establishing different rules for developing countries, since it fails to take account either of the difference in size of the two economies, or of power differences (see Polaski 2004a in particular). \(^{106}\) Fines have to be paid in quarterly instalments and invested in institutional improvements in the country found to be at fault. If the latter refuses to pay the fine, the country that filed the complaint may decide to increase its customs duties with a view to making up the amount of the unpaid fine.

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\(^{105}\) See, for example, Polaski (2004a).

\(^{106}\) Note that the same could apply if the penalty involved trade sanctions. The impact on a small country or a country with a very open international trade policy would be worse than that on a large country that is generally less open and has a more diverse base of trade partners.
Although, unlike the NAFTA, the Canada-Chile Agreement eliminates the option of trade sanctions, they may nonetheless be reintroduced at this last resort stage.

Table 7 - How labour principles and rights are dealt with under the Canada-Chile Agreement

<table>
<thead>
<tr>
<th>Labour Principles and Rights</th>
<th>Consultation</th>
<th>Committee of Experts</th>
<th>Dispute Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of association</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Right to collective bargaining</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Right to strike</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Prohibition of forced labour</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Child labour</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Minimum employment standards</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>including: Minimum wage</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Discrimination at work</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Equal pay for men and women</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Prevention of workplace injuries and occupational illnesses</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Compensation in the event of workplace injuries and occupational illnesses</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Protection of migrant workers</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Source: Tokman (2006)

Insofar as their human and financial resources allow, it is up to the national authorities to monitor compliance with the laws and regulations and to investigate any presumed violation, and this to include on-site inspections.

Three years after it entered into force, the Ministerial Council reported that "a number of steps remain to be taken in order to fully implement the Agreement."107 From 1997 to 2002108, the mechanism for settling disputes was never followed through to the end.

2. Labour cooperation mechanisms

Canada and Chile have organised conferences and workshops for government representatives, as well as public conferences on these issues. There are also plans to arrange cooperation with the ILO in order to take advantage of its expertise on labour-related issues.

The primary objective of such cooperation activities is to encourage information sharing, and to gain a fuller understanding of labour legislation, strategic issues and exemplary practices for both countries to effectively administer and apply labour laws. In practice, however, it seems that the development of such cooperation still has a long way to go (Polaski, 2004a).

108 It has not been possible to gather any information since this date.
3. Labour standards in Chile

The CCALC provided for a three-yearly review of the agreement to be drawn up, although this has only been published once, in December 2002, pointing to a certain lack of interest on the part of the Parties. In Chile, as in most Latin American countries, the informal sector predominates. Workers deemed vulnerable by the ILO make up 42.7% of the workforce. 81% of them do not have work contracts; they are not covered by labour regulations and, therefore, are not protected by labour standards (Garcia Hurtado, 2006). According to Garcia Hurtado (2006), more effective enforcement of the existing legislation is not enough to improve the situation for workers. It must be backed by increased productivity in small enterprises, which depends on investment in human and physical capital.

According to Garcia Hurtado (2006), 80,600 complaints were filed and 60,586 violations were recorded in 2003. Bearing in mind that over two million workers in Chile have labor contracts, the incidence of complaints and violations is, in the author's eyes, more or less insignificant. Of the complaints, the most common (29% of all complaints) involved social security-related payments, an area not explicitly covered by the Agreement. Other complaints involved working hours, wages and work contracts. In fact, 31.5% of formal sector workers and 39.6% of informal sector workers work longer hours than is authorised under labour law (García Hurtado, 2006). Furthermore, the percentage of workers who are union members has dropped significantly. In the early 1990s, 20.8% of Chile's workforce belonged to a union, compared with 13.1% in the second half of the decade. Nonetheless, the opinions of the existing unions are taken into account in the collective bargaining process (García Hurtado, 2006).

Insofar as regards child labour, 4.16% of children work in Chile, compared with an average of 15% in Latin America; most of these are aged between 12 and 14 and 66% are casual workers. Child labour thus no longer seems to be a major problem in Chile. The same goes for the minimum wage, which appears to be complied with: less than 6% of workers are paid less than 75% of the legal minimum wage (García Hurtado, 2006).

In the formal sector and, in particular, in large companies, noncompliance with labour standards is thus relatively low. That said, it varies according to the standard and sector in question. According to statistics published by Chile's Labour Ministry, signing the agreement with Canada has served to significantly increase the efficiency of civil servants responsible for inspecting companies. In 2003, the number of companies that were inspected rose by 99% and the number of these that demonstrated compliance with labour standards rose by 66% (Garcia Hutardo, 2006). The agreement seems, therefore, to have had a positive impact on the behaviour of company owners and their willingness to comply with standards. As a result, the Labour Ministry's monitoring activities have been less complicated, thus improving the effectiveness of the Agreement.

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109 The number of civil servants did not change significantly.
Section 3 - The US-Cambodia textile agreement

This agreement, which expired in 2005, is often held up as a positive model for including labour provisions in free trade agreements. It is nonetheless limited to a specific highly protected industry and the possibility of applying it to any kind of trade agreement is often challenged.

1. An original mechanism: "positive sanctions"

The principle underlying the agreement was that US import quotas would be increased in relation to progress on improving labour practices. The success of such an initiative can be seen in the fact that quotas have effectively been increased: 9% per year during the first three years, then, under the 2nd three-year agreement, 12% in 2002 and 2003 and 18% in 2004 (Polaski, 2006). Positive incentives have three original characteristics:

1. The potential quota increase is determined on an annual basis; so companies that have fulfilled their undertakings reap the rewards very quickly.

2. This provides incentive to both the private sector and the Cambodian authorities to make an effort. Companies are encouraged by the individual benefits of increased quotas, this provides the incentive for them to comply with labour legislation and extend and improve their employees' rights. In addition, since the quotas depend on performance in the textile industry as a whole, any company that fails to comply with the social provision will be pressurised by its peers and also by the government and the workers.

3. Lastly, the availability of information on company practice has played a crucial role. It has led to a factory monitoring project being set up, supervised by the ILO.

2. Monitoring compliance with the Agreement and the ILO’s involvement

The Cambodian government's financial and institutional ability to monitor companies and tighten national legislation was very poor. Civil servants, including labour inspectors, were underpaid. Under such conditions, it was difficult to attract competent inspectors. Furthermore, the American authorities thought the Cambodian civil service lacked credibility to the point where they refused to refer to it. It was possible to contract private agents to inspect sites, but none had the international credibility required. The two countries therefore turned to the ILO to inspect workplaces and provide information. The ILO had a well-developed supervision system, but, up till that time, it had only dealt with governments, and it had never previously undertaken the systematic monitoring of production plants within the framework of a trade agreement.

An agreement between the ILO, the Cambodian government and the textile producers was signed on 4 May 2000. Initially, the monitoring programme was based on the voluntary involvement of companies. In addition, the quotas rewarded overall performance in the sector and the voluntary basis for involvement thus worked to create a counterproductive "free-rider"

110 Nonetheless, it should be noted that the process for dismantling the Multi Fibre Arrangements set out under the Marrakech Agreements provided for a gradual reduction in these quotas leading up to their total elimination on 1 January 2005.
incentive: companies that remained outside the system could reap the shared benefits of increased quotas without the additional outlay incurred for improving compliance with labour laws. The Cambodian government soon became aware of such distortions, and re-allocated the increased quotas to those companies that were involved in the inspection process set up by the ILO. As a result, many companies began to sign up for the programme.

To begin with, the ILO's reports listed infringements of labour law in aggregate form, for all the companies inspected. This was accompanied by recommendations for improvements, but did not name the companies. A second inspection was then carried out, following which a new report was drawn up and made public, this time identifying the companies inspected. The measures implemented to improve working conditions were then specified, together with any unresolved violations of national labour legislation or fundamental rights.

During their initial inspections, the ILO inspectors checked for compliance with two fundamental rights within the Cambodian companies: child labour and sex discrimination. However, recurrent problems were found with regard to wage payment and excessive working hours (Blackett, 2007). The principle of "health and safety in the workplace" was apparently violated quite widely.

The procedure developed by the ILO acted as a strong incentive for the textile producers to comply with labour rights and improve working conditions for their employees. Information transparency enabled buyers of Cambodian textiles, often multinational groups concerned to maintain a good reputation, to see whether or not their suppliers complied with labour standards. Companies that complied with social provisions were thus often given preference over those that committed violations.

In a developing country such as Cambodia, where labour regulations are poorly defined and often ineffectively enforced, the combination of positive incentives and transparent information regarding working conditions proved to be productive. In spite of persistent problems relative to union rights, workers saw their wages increase appreciably, and their working conditions improved (Maupain, 2004). The agreement did not slow down growth in the sector: in 1998, before becoming effective, companies in the industry employed 80,000 people; at the end of 2004, this figure had risen to 220,000. These jobs have allowed the formal sector to develop and offer better wages to low-skilled workers (Polaski, 2006). Clothing sector exports account for 36% of Cambodia's total gross domestic product (Polaski, 2004b).

3. Technical cooperation, cost of the programme and its development

The convergence of public and private interests has encouraged the authorities and businesses to contribute to funding the programme, which has proved to be relatively inexpensive. The average annual cost per Cambodian worker is not more than 2.33 dollars a year (Polaski, 2004a). The initial three-year project cost 1.4 million dollars. The American and Cambodian governments contributed 1.2 million dollars between them, with the remainder funded by textile companies.

In light of the agreement's success, the American and Cambodian authorities decided to continue along the same lines, even after the quota system for the textile industry had expired. During a transition period from 2006 to 2008, the ILO was again asked to oversee management of the project. This involved setting up, during this period, a Cambodian monitoring agency to take over the organisation as of 2009. The project is funded by the Cambodian government and the textile industry, the World Bank and the French Development Agency (AFD). The largest
buyer of Cambodian clothing, Gap, has since announced that, given these conditions, it will continue to buy from local factories.

Section 4 – The US-Jordan free trade agreement

The free trade agreement between the United States and Jordan was signed in Year 2000 and entered into force in 2001. It is often used as a reference for "second"-generation agreements in the field of labour standards that propose the effective integration of social provisions in a trade agreement\(^{111}\). It is still too early, however, to be able to assess the real effects. Many authors focus on the obstacles preventing full application of the agreement.

1. The dispute settlement procedure.

The issue of compliance with labour standards is directly integrated in the text of the agreement, in a specific article to that effect (Article 6). Each Party must ensure that its national laws comply with internationally-recognised labour standards. The Agreement explicitly mentions the ILO conventions and, more particularly, the 1998 Declaration.

If one Party believes that the other Party has failed to abide by its undertakings, it may request a consultation. If the two Parties fail to find a solution within 60 days, the case is brought before a joint committee (see Chapter 2). A panel of three members is convened: one is appointed by each Party, and the third, who acts as Chairperson, is appointed by both together. The panel then has 90 days to present a report showing whether or not one of the Parties has failed to carry out its obligations and recommending a solution to the dispute. After presenting the report, the joint committee has 30 days to find a solution. If no resolution can be found, the affected Party is entitled to take any appropriate and commensurate measures.

The dispute settlement mechanism applies to all the provisions in the agreement, including Article 6 relative to the Parties' undertakings on labour issues.

2. Obstacles to full application of the agreement

According to Elliott (2003), Article 6 on Labour is useful in that it sets a precedent in highlighting the importance of labour standards, but its extremely general nature means that it is unlikely to lead to sanctions ever being enforced. Most of the paragraphs under Article 6 specify no more than that each Party shall "strive" to ensure that national laws are consistent with "internationally-recognised labour standards." The agreement also recognises the sovereignty of each nation insofar as regards social regulation.

The difficulty in imposing sanctions is also confirmed by Howse & Trebilcock (2005, p. 578) who state that the United States and Jordan agreed by letter that no dispute would lead to sanctions. AFL-CIO, the US trade union which was one of the main organisations that called for the inclusion of social provisions, has stated, via its President, John J. Sweeney, that it regrets that, even though "Despite hundreds of clearly documented worker rights violations, neither country has ever tested the enforcement mechanisms included in the labor provisions; in fact, through an exchange of letters, both governments have virtually promised not to do so." (Solidarity Center, 2005, p.3).

\(^{111}\) Bhagwati (2001) denounces such provisions, believing that they may be used as a "model" for other agreements and, in fine, in raising objections to the inclusion of such provisions in WTO rules.
Nonetheless, in spite of the fact that the two Parties made a commitment not to impose sanctions, the agreement does allow for this option (Bolle 2001), and future US administrations are not bound by the exchange of letters (Solidarity Center 2005).

3. The example of working conditions in Qualified Industrial Zones

In recent years, Jordan has seen significant growth in industrial activity, mainly thanks to the creation of Israeli-Jordanian Qualified Industrial Zones (QIZs). As part of the implementation of the free trade agreement, workers’ conditions in these zones attracted the interest of NGOs and the US union movement. In May 2006, the National Labor Committee (NLC), an American NGO, published a report denouncing forced labour and appalling work conditions within this zone (NLC 2006). In September, the AFL-CIO and the National Textile Association called upon the US government to instigate a dispute settlement procedure within the framework of the free trade agreement. The complaint denounced the violation of international standards and the State’s failure to enforce national social legislation.

It is impossible to say whether growth in industrial activity, boosted by the adoption of the free trade agreement, led to deterioration in working conditions, especially in the QIZs. On the one hand, five years after being adopted, the social provisions failed to prevent the violations of fundamental rights. On the other hand, the agreement has raised awareness among the NGOs and unions, which has provoked a response on the part of the authorities. Following the NLC report, the Trade Department (DOL) observed a drop in Jordan’s equipment imports (Elis 2008). In September 2006, the Jordanian government, together with USAID, signed a training programme on labour law that includes a specific module on working conditions within QIZs. The government undertook inspections and closed down plants. It launched an action plan covering legal reforms: raising the minimum wage on 1 January 2007, and labour code reform (Jordanian Ministry of Labour, 2007).

The NLC thus recognises that progress has been made, while remaining vigilant as to the application of the new provisions (NLC 2007). For its part, the US government has refused to launch the dispute settlement procedure in this case, but instead decided to finance the Jordanian government to enable it to ensure that working conditions improve (NLC 2007b). Although the dispute settlement mechanism was not brought into play, it may nonetheless be supposed that the Jordan and US would not have reacted in such a manner had the clause not existed.
Section 5 - Impact and follow-up studies in the European Union and the United States

The European Union and the United States carry out impact studies on the social and environmental effects of free trade agreements. These vary in nature and in scale.\textsuperscript{112}

1. EU impact studies

Since 1999, the EU has assessed the impact of trade on sustainable development (\textit{Sustainability Impact Assessment} – SIA) for ongoing multilateral and bilateral negotiations.\textsuperscript{113} The purpose of these studies, which are performed by independent experts and discussed with civil society, is to identify the economic, social and environmental impact of a free trade agreement and to make recommendations with a view to maximising the positive effects and attenuating the negative impacts of free trade agreements. These studies, which cover the social aspect of sustainable development, take account of the potential consequences in the EU and in its partner countries and regions. In April 2008, eleven studies were in progress or had been completed.\textsuperscript{114} The impact of any agreement is nonetheless assessed \textit{ex-ante}. The analysis deals with the expected effects on employment and wages and the costs of adjustment related to reallocating labour to alternative industries. The studies include recommendations on whether labour standards should be included.

Given that these are extremely broad studies concerned to provide a balanced analysis of the three aspects of sustainable development, the analysis devoted to social standards and decent work remains very general. The reports do not assess labour law in the countries in question. The report on South Korea is limited to looking ahead to an agreement on core labour standards and decent work ("it should be possible to agree on a Sustainable Development Chapter that incorporates the following elements: _Agreement on core labour standards and the decent work agenda._"). The report on the ACP countries concludes thus: "Environmental and social chapters negotiated in the context of the EPAs should correspond to regional sustainable development objectives, including those identified in the SIA and a call for the improved observance and enforcement of environmental and social standards." In the recent report on the Ukraine, we find more in-depth developments, together with a conclusion in favour of including a chapter covering the observance of international standards and on monitoring mechanisms. Some reports also propose drawing up \textit{ex-post} impact assessment studies\textsuperscript{115} (Ukraine\textsuperscript{116}). The same proposal can be found in the SIA on the

\textsuperscript{112} The ILO publishes an annual report by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). According to Doumba-Henry and Gravel (2006, p. 225), these reports serve to demonstrate that the majority of countries that have signed free trade agreements including labour provisions have achieved some progress in the matter of labour laws. Furthermore, the monitoring mechanisms set up under these agreements serve to back up the ILO’s inspections. Nonetheless, according to Gravel (2007, p. 56), "the procedure for examining the reports submitted by States regarding the application of labour standards is … a victim of the multiplication of such reports and the relatively formal manner in which they are examined, which makes it difficult to give priority to any resulting observations."

\textsuperscript{113} The methodology developed in the Handbook for Trade Sustainability Impact Assessment is accessible at trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127974.pdf.

\textsuperscript{114} DDA (Doha Development Agenda), the ACP countries, the Gulf Cooperation Council, Mercosur, Mercosur-Chile, Euro-Med, Ukraine, China, South Korea, India and the ASEAN. These studies are available online at ec.europa.eu/trade/issues/global/sia/studies geo.htm#scp.

\textsuperscript{115} The Handbook for Trade Sustainability Impact Assessment thus states that the monitoring procedure could include " Undertaking a study to compare the predictions in a Trade SIA with the actual outcomes, and explaining any significant differences." In addition, Ex-post monitoring, evaluation and follow-up can involve a range of actors including the European Commission, think-tanks or academics who might regularly monitor indicators to shed light on possible adverse economic, social and environmental impacts. Similarly, an independent body of specialists and stakeholders might be given the task of reporting on the impacts of trade policies using studies and ex-post analysis." (p. 23).

\textsuperscript{116} trade.ec.europa.eu/doclib/html/137597.htm
Doha Round\textsuperscript{117} and that on the Mercosur\textsuperscript{118}. A follow-up procedure is envisaged in the report on the ACP countries.\textsuperscript{119}

The limitations of these studies lie in the quantitative methodology used (especially the Computable General Equilibrium methods\textsuperscript{120}) which undoubtedly make it possible to simulate a number of different scenarios, assess the effects on total income and distinguish industry-specific impacts, but which are based on hypotheses that are often extremely restrictive, leaving little space for the role of institutions and the reactions of stakeholders and, in particular, their attitude toward decent work and sustainable development. These limitations could be overcome if the qualitative aspects of SIAs were to be developed and follow-up studies are carried out, as recommended in certain reports as well as in the Handbook for Trade SIA.

2. Impact and follow-up studies in the United States

The 2002 Trade Act requires the President to draw up reports on free trade agreements to be presented to Congress. As in the case of the EU’s impact studies, they have an ex-ante aspect. These reports are drawn up by the Department of Labor in liaison with other federal agencies. The three types of report required are\textsuperscript{121}:

- United States Employment Impact Review (with the USTR) impact studies prior to ratification of an agreement and focused on employment and labour matters. Of particular note, they include the stakeholders’ reactions.
- Labor Rights Report (with the USTR and the State Department), review the situation as regards observance of workers' rights in the partner country.
- Laws Governing Exploitative Child Labor Report (drawn up in conjunction with the USTR and the State Department), a brief report on the protection of children and minors under the partner country’s legal system.

The 2002 Trade Act also provides for the setting up of advisory committees under the responsibility of the USTR. These would include representatives from the private sector and civil society. Draft agreements are thus submitted to the Labor Advisory Committee whose preliminary opinion is included in the United States Employment Impact Review and may lead to a modification in the text of the agreement. This was the case for the United States-Colombia Trade Promotion Agreement (CTPA): "The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) argued that the CTPA would not protect the fundamental human rights of workers in either country. The LAC noted that provisions in the CTPA represent a step backwards from the unilateral trade preference programs (Generalized System of Preferences (GSP) and ATPA/ATPDEA) that currently apply to Colombia, and found this particularly troubling due to the “well-documented violations of trade

\textsuperscript{117} trade.ec.europa.eu/doclib/docs/2006/september/tradoc_127300.pdf
\textsuperscript{118} trade.ec.europa.eu/doclib/docs/2008/february/tradoc_137833.pdf
\textsuperscript{119} trade.ec.europa.eu/doclib/docs/2007/june/tradoc_134879.pdf
\textsuperscript{120} According to the Handbook for Trade Sustainability Impact Assessment "Economic modelling is used in Trade SIA to assess quantitative impacts of trade liberalisation. Various models such as Computable General Equilibrium (CGE), econometric, input-output models or gravity models can be used depending on the purpose (general overview, sector analysis or regional analysis). All try to assess the likely consequences of policy changes on variables such as prices, income or welfare via resource allocation. The most refined CGE models can provide a fully-fledged analysis of possible direct effects of trade agreements over time including various feedback effects across several sectors and countries." (p. 36).
\textsuperscript{121} These reports are available online at www.dol.gov/ilab/media/reports/usfta/main.htm
union rights in Colombia.” Reiterating concerns raised regarding other free trade agreements with Chile, Singapore, Australia, Morocco, the Central American countries and the Dominican Republic, Bahrain, and Oman, the LAC expressed concerns that the CTPA’s labor provisions only commit the Parties to enforce their own labor laws. The LAC argued that the CTPA’s dispute resolution procedures provide for capped penalties lower than those for other violations of the CTPA, with little punitive or deterrent effect for violations of the Labor Chapter. The LAC also opined that the CTPA’s rules of origin and safeguard provisions would invite circumvention by producers and fail to protect workers from import surges that may result, and that the CTPA provisions on procurement and services would constrain the ability of the U.S. Government to regulate in the public interest and provide public services.” Congress then refused to ratify the agreement.

**Conclusion**

The majority of trade agreements that include labour provisions date from Year 2000 onward. It is nevertheless possible to draw some conclusions as to their "legal" effectiveness, in other words, their ability to achieve the intended goals by implementing the procedures established under the agreements.

The comparative study of the Canada-Chile Agreement and the US-Jordan Agreement on the one hand and, on the other hand, the US-Cambodia Agreement, reveals that positive incentives are relatively more effective than negative incentives, which lack credibility and are not actively enforced. The dissuasive power of such sanctions still needs to be assessed, however, and their application to companies, rather than to nations, has yet to be tested. Positive incentives, when they apply to companies as a group, engender closer ties between the public and private sectors. The agreements between Canada and Chile and between the US and Jordan demonstrate the extent to which system of penalties is dependent on political will, even in the presence of an independent arbitration body. According to Doumbia-Henry and Gravel (2006), in many developing countries, poverty, weak institutional development and the lack of resources are not the only causes of noncompliance with labour standards. A patent lack of political willpower is also largely to blame.

Such political impetus depends either on the activism of non-governmental organisations (NGOs) or on the strength of the Labour Ministry's motivation to improve the situation of workers in the country (Polaski and Vyborny, 2006). Moreover, the success of the US-Cambodia Agreement, albeit in a specific industry, depended on the role played by the ILO, the independent monitoring body that has the resources to develop a transparent process for making information regarding companies that violate social provisions public. In the Canada-Chile Agreement, on the other hand, the dispute settlement process never reached the stage of enforcing penalties, hence the Agreement's loss of credibility.

Lastly, the provisions prove to be a factor in improving conditions when they integrate several forms of pressure. Free trade agreements should then serve to exert greater legal pressure, which underlies and supports civil society and activates media pressure, thereby helping to change government and corporate behaviour.

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122 United States Employment Impact Review of the United States-Colombia Trade Promotion Agreement, March 2008, p.6-7. Some of these criticisms were taken into account in the final text.
CHAPTER 5 – THE POSITION OF STAKEHOLDERS

A number of "structuring" divides may be identified.

The first is the divide that separates North from South. The trade unions, NGOs and members of parliament in the North uphold the observance of internationally recognised values and interpret certain violations of workers' rights as a form of unfair competition. Insofar as the countries concerned by the agreements have subscribed to various conventions or declarations of the UN, UNICEF, the ILO or others, and are committed to promoting human rights, their inclusion in trade agreements seems to be legitimate. Certain governments in the South and some NGOs advocate the need for individual cases to be dealt with separately. They are very concerned about the existence of enforceable provisions that might mask "disguised protectionism" on the part of the North.

The second divide is found between the legal and economic viewpoints. The former is primarily concerned with the effectiveness of the measures adopted, without examining ex-ante their economic validity in any depth. The debate is less to do with whether labour-related provisions should be included than with their limited legal impact if they are. Philip Alston (2004) laments the fact that detailed standards are being marginalized in favour of vague general principles. Some trade unions and NGOs consider that the 1998 Declaration, included in bilateral agreements, or the Decent Work Agenda, would be a step backwards in labour law as it reduces the standards concerned to the detriment of agreements and labour rights as a whole. The economic viewpoint focuses further upstream: it is less concerned with the actual impact of social measures than with their relevance: possible counter-productive effects of sanctions, the nature of the relation between trade and workers' rights (see Chapter 2) – which can be non-significant, negative (in particular because of the "race to the bottom") or positive (notion of "endogenous" development of labour standards), and the relevance of separating labour law and trade agreements. The viewpoint according to which the inclusion of labour and sustainable development provisions is not necessary, is shared by most employers' federations and by certain developed (Australia) or developing countries. It can also be found in the Singapore Declaration.

Section 1 - The Trade Unions' point of view

Since trade unions exist to defend workers' rights, many specific standpoints can be expected concerning the impact of free trade on the level and quality of employment. Nevertheless, conflicting interests may arise between trade unions in the North and those in the South insofar as liberalising trade can lead to rivalry among workers. According to economic theory, the most poorly skilled workers in the North could "lose out" to competition from countries where wages are low, while workers in the South could see an improvement in their situation (Insert 1). Empirical studies, such as the one carried out on the NAFTA, however, have shown that the tremendous growth in trade between the United States and Mexico has tended to exacerbate inequalities to the detriment of rural workers in particular (see above, Chapter 2 and Hanson & Harrison, 1999; Hanson, 2003).

\[^{123}\] "In practice, voluntarism is not being reinforced or harnessed, detailed standards are being marginalized, and the very concept of labour rights is being jettisoned in favour of a nebulous concept of principles." (p. 518). The article quoted gave rise to a debate described in The European Journal of International Law, 16(3), 2005.
Furthermore, some emerging countries (e.g. Mexico and Brazil in Latin America and Indonesia, Thailand and Malaysia in Asia) fear competition from countries where wages are lower (such as China, India, Vietnam and Sri Lanka) and are worried that the "race to the bottom", in terms of social issues, will mainly take place among emerging countries. Fear of the effects of globalisation on labour – observed both in the North and South – has thus helped union positions to converge to some extent.

1. The link between trade and employment

All unions, whether they are large European and international confederations – European Trade Union Confederation (ETUC), International Trade Union Confederation (ITUC) – or trade union groups in the South - ATUC (ASEAN Trade Union Council) for ASEAN trade unions and ASEM TU and CCLA (Consejo Consultivo Laboral Andino) for countries in the Andes – are clear that trade and employment are inextricably linked.

They all denounce the negative effects of free trade both on the level and stability of employment and on working conditions and social standards. For this reason, the vast majority of trade unions wish for all trade negotiations to be accompanied by a systematic assessment of the impact of liberalisation on employment, decent working conditions and, more broadly, sustainable development. This is particularly the case in the industries directly concerned by the liberalisation and for the most vulnerable workers (CUT, 2007; CCLA, 2007a).

A great majority of trade unions both in the North and South also draw attention to the risks of any competition in working conditions leading to a "race to the bottom". Some countries, especially developing countries specialised in labour-intensive products, could lower their wages and standards to win market shares. In this event, countries with the most stringent social standards would be penalised and respond by also neglecting working and employment conditions (ASEM TU, 2006). In other words, a country cannot adopt high social standards on its own (ICFTU, 2007). For this reason, there is a pressing need for cooperation in this area and for procedures to be set up to ensure that the erosion of working conditions is not used "by either party in the pursuit of trade or investment advantage" (ATUC, ASEAN Trade Union Council, 2007).

Some trade unions, sometimes acting in association with NGOs, focus exclusively on the negative effects of free trade on working conditions and their attitude seems more concerned with denouncing agreements than amending them by incorporating labour-related provisions. They argue in favour of a limited, asymmetric liberalisation of trade: the Southern countries should only be asked to lower their customs barriers to a certain extent, while the Northern countries should be made to lower them further or even do away with them completely.

The unions see this as a way of preventing the erosion of workers' rights, while existing trade agreements, especially between developed and developing countries, do not, in their opinion, guarantee decent working conditions (CCLA, 2007b; CUT, 2007).

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124 The European Commission has already carried out studies to assess the impact of trade on sustainable development. These studies are known as sustainability impact assessments (see above and ec.europa.eu/trade/issues/global/sia/index_en.htm).

125 Within the context of WTO negotiations, the South American trade unions support the NAMA-11 group, which calls for customs duties to be cut by 25% more in developed countries than in developing countries (CUT, 2007).
2. Terms of the social provisions

As far as including labour-related issues in bilateral treaties is concerned, all the trade unions express a keen desire to "make themselves heard" more systematically, more formally and in a more institutionalised manner. To this end, they would like a "social dialogue" forum or committee to be set up to supervise provisions relating to social matters and allow bipartite or tripartite negotiations to be held on their implementation. For want of more official recognition, major international trade union confederations and those in the countries directly concerned by the agreement frequently join forces to have more clout in negotiations and to defend common objectives and projects. For example, during the negotiations between the EU and Mercosur, the ETUC (European Trade Union Confederation) and its regional counterparts argued in favour of integrating a social pillar (CES, 2006a). The fourth EU-LAC Trade Union Summit (April 2008) declaration requests that "On the current negotiations with a view to the establishment of Association Agreements with Mercosur, the Andean Community and Central America, the trade union organisations call for transparency and real participation by trade unions and civil society organisations. The trade chapter of the negotiations must be based on the principles of fair trade and the social and labour dimensions have to be strengthened to guarantee workers' rights as laid down in The International Labour Organization (ILO) conventions and the decent work agenda."126

However, such joint requests are often very general and more akin to a Statement of Principle.127 Closer examination of demands reveals various nuances in the expression of requirements and constraints concerning procedures to be followed to ensure that decent working conditions are actually enforced. Most trade unions, both in the North and South, ask for an explicit reference to compliance with basic labour standards to be included both in the preamble to the agreement and in its objectives (see, for example, the demands of Asian and Indian trade unions in the ongoing negotiations of these countries with the EU; ATUC, 2007; HMS, 2007).128

A key priority is the ratification of and effective compliance with the ILO's four core labour standards. Most trade unions would also like to see mention made of other basic agreements or recommendations defining decent working conditions (for example, the Tripartite Consultation Convention (C144), the Social Security (Minimum Standards) Convention (C102) or Recommendation 195 on human resources development, etc.) or protecting the most vulnerable categories of workers, such as the indigenous populations of Latin America or migrant workers. As an illustration of this, trade unions involved in ASEM talks have requested the inclusion of four pillars defining decent work, namely, "full and productive employment, respect for workers' rights, access to universal social protection and facilitation of social dialogue as a way to promote consensus building and democratic involvement among the main stakeholders in the world of work" (ASEM TU, 2006).

Nevertheless, some Southern trade unions ask that labour standards be brought into line more gradually to make allowance for the specific difficulties encountered in developing

126 www.etuc.org/a/4900
127 Mention is made of integrating a social "dimension" and guaranteeing the observance of human and workers' rights.
128 All the trade unions also refer to other areas of sustainable development, including the environment, concerns for which should be written into clauses whereby the partners undertake to abide by the Kyoto protocol and human rights, mainly through the observance of political and civil liberties that bilateral agreements should clearly mention.
countries: "Es probable que, dado el nivel de desarrollo de nuestro país y sus características institutionales, hay problema para el cabal cumplimiento de los acuerdos en estos temas" (CCLAb, 2007, p. 231).

They also stress that the social provisions must be extended to cover foreign direct investments, paying particular attention to export free zones. This being the case, trading partners must undertake to promote existing international instruments in this area (OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinational Enterprises and Social Policy) (see ASEM TU 2006 for example).

3. Implementing the provisions

Some international trade union networks, like Union Network International (UNI), favour direct action in multinational enterprises. In particular, they take part in "international framework agreements" (IFA, see Chapter 1, Section 7), thereby promoting a "soft law" and a bipartite (unions-employers) approach that is often criticised by other unions or NGOs, which favour the "hard law" and the tripartite (unions-employers-governments) approach. The European Trade Union Confederation has been strongly involved in social dialogue in Europe and taken part in 500 industry-based agreements. At the international level, a number of industry-based trade union federations are negotiating international, industry-based collective agreements, following the example of the seafarer’s agreement signed by the International Transport Workers’ Federation (ITF) and the International Maritime Employers’ Committee (IMEC) in 2000.

For the unions consulted, commitments on social issues and matters relating more broadly to sustainable development should be put on a par with trade commitments. Any violation could trigger a dispute settlement procedure, possibly leading to sanctions.

Yet only the chief European and international trade union confederations put forward precise, enforceable proposals (ETUC and ICFTU; ETUC, 2007). First of all, they recognise the value of incentive measures, such as those included in the GSP+, and stress that these have met with some success. The ETUC (2006) mentions the example of El Salvador, which recently ratified the main ILO conventions because it risked losing its GSP+ status (under pressure from the trade union movement). These measures are nevertheless considered inadequate.

The main international confederations therefore argue in favour of including a dispute settlement procedure, defining it in the following broad terms.

- it could be triggered by a formal request from labour and management representatives,
- it would be implemented by an independent, qualified expert committee,
- it would result not only in concrete action directly related to the complaint but also in a more general follow-up procedure.

The sanctions provided for in the procedure must have a sufficiently strong deterrent effect. They could include the payment of fines, the proceeds of which would be used to improve working conditions. The unions also talk about setting up incentive measures, such as commercial advantages and technical assistance in cooperation with the relevant international institutions (ILO). Some trade union groups in the Southern countries, however, ask for a flexible approach to be adopted regarding penalties imposed on Southern countries, to make allowance for the differences between the various partners (CCLA, 2007b).
More generally speaking, unions in the Southern countries particularly emphasise the need for free trade agreements to be accompanied by North-South cooperation in an attempt to improve social standards. This is illustrated by union demands expressed in the ASEM negotiations: "ASEM countries should deepen their cooperation on effective labour market and human resources development policies based on strong industrial relations" (ASEM TU, 2006).

4. The position of the American trade unions

American unions and, in particular, the AFL-CIO, argue for extended labour standards to be included in trade agreements. The AFL-CIO has especially insisted that these extended labour standards should be included in WTO texts or in the negotiating agenda for the Millennium Round (Seattle, 1999). In 2004, it filed a Section 301 petition (under US law) against China, claiming that violations of workers' rights there should be considered as unfair trade practices (Alston, 2004). The agreement signed with Peru seems to be a step forward compared with other agreements. Experience of agreements with Central America and Bahrain has also led the AFL-CIO to demand improvements in labour laws before the agreement is ratified, rather than making do with commitments that are not necessarily enforceable to the same degree. Arguments are not based solely on the desire to defend workers in the USA but also come to the defence of Peruvian farmers, for example, who are liable to suffer from the liberalisation of agricultural imports from the United States.

5. The position of the European trade unions (ETUC)

Compared with the AFL-CIO position, that of the ETUC has more to do with general principles and a desire for cooperation with Southern unions. The Confederation expresses "The need for observance of core Conventions of the International Labour Organisation to be explicit in all negotiations" while the Commission "will insist that each trade agreement should include a social

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129 “The Peru TPA labor chapter requires that signatories to the agreement “adopt, maintain, and enforce in their own law and in practice” the International Labor Organization (ILO) core labor standards, subject to the same dispute settlement, enforcement mechanisms, and selection criteria as the commercial provisions in the agreement. This represents major progress over the jordan FTA, which required only that countries “strive to ensure” that their laws recognize and protect the core labor standards. It is also an enormous improvement over the agreements previously negotiated by the Bush administration (Chile, Singapore, Morocco, Australia, Bahrain, DR-CAFTA, and Oman), which required only that countries enforce their own domestic labor laws. These previous trade agreements also contained significantly weaker enforcement mechanisms for labor and environment than other commercial provisions.

The Peru labor chapter makes several other improvements over previous FTAs negotiated by the Bush Administration:

- It closes an important loophole that allowed governments to avoid complying with their labor obligations by claiming that they were exercising prosecutorial discretion. The new proposal clarifies that any decisions with respect to allocation of enforcement resources must not undermine the commitment to enforce the core labor standards.
- It replaces the commitment to “strive to ensure” not to derogate from labor laws in order to increase trade with a stronger, straightforward prohibition against derogating from labor obligations in a manner affecting trade or investment. It expands the definition of domestic labor laws that a country must “effectively enforce” to include discrimination in employment and hiring, along with the other core ILO standards, and “acceptable conditions of work.

Despite these improvements, there are still areas where the labor provisions need to be improved:

- The agreement states that “the obligations of this agreement, as they relate to the ILO, refer only to the 1998 ILO Declaration on Fundamental Principles and Rights at Work” (emphasis added). This sentence is subject to competing interpretations and should be eliminated.
- The definition of labor laws should be modified to explicitly include all labor laws, both state and federal.
- Concerns have also been raised with respect to ambiguity and implementation of standards concerning recurring violations and the impact of violations on trade and investment. Certainly, with respect to the commitment to “adopt and maintain” the core labor rights in statutes and regulations, requiring that complainants demonstrate a connection to trade or investment between the parties could constitute a problematic hurdle.” (Testimony of Tha Mei Lee, AFL-CIO, Before the Senate Finance Committee On the U.S. – Peru Trade Promotion Agreement, September 11, 2007; www.aflcio.org/issues/jobeconomy/globaleconomy/upload/Lee_Peru_FTA.pdf).

130 Same reference as for previous footnote.
This demand comes with various calls upon the Commission to ensure that bilateral agreements include a social aspect. The ETUC has also expressed its concern about trade becoming divorced from social and environment issues despite the resolutions of the Social Affairs Council “to promote employment, social cohesion and decent work for all in all EU external policies, bilateral and regional relations and dialogues. There is willingness. But the real weight of the EU relies on trade, and we do not discern the same willingness to use that asset to promote the agenda. Our trade agreements must all be made vehicles to promote our values, be they bilateral or in the WTO context. The Economic Partnership Agreements currently being negotiated with ACP countries are of particular significance.”

Section 2 - The employers’ point of view

The international employers’ confederations are clearly against the inclusion of labour provisions in multilateral or bilateral trade agreements. This opposition is general: the employers’ associations, which approved the Multilateral Agreement on Investment negotiated at the OECD (see above), disapproved the idea of including enforceable provisions relating to labour or environmental standards. According to them, such issues should be addressed by specialised international institutions, the ILO in particular. This official position does not preclude the existence of various nuances in the positions of trade or national federations.

1. The position of the International Organisation of Employers (IOE)

The International Organisation of Employers (IOE) is recognised as the only organisation at the international level that represents the interests of business in the labour and social policy fields. Today, it consists of 146 national employer organisations from 138 countries all over the world. It acts as the Secretariat to the Employers’ Group at the ILO International Labour Conference and on the Board of the ILO Governing Body.

Since 1995, the IOE has expressed its opposition to the inclusion of labour standards in multilateral agreements and, more especially, to the possible application of trade sanctions (IOE, 1995). This position can be clearly seen in the declaration of 3 June 1996 (IOE, 1996), which defends a clear-cut separation between labour issues and trade issues, going so far as to dispute joint WTO/ILO work. These documents take up the traditional attacks against the inclusion of labour standards in trade treaties, which is seen as a form of disguised protectionism, interfering

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131 Speech by John Monks, ETUC General Secretary, 13/11/06, www.etuc.org/a/3048
132 Speech by John Monks, ETUC General Secretary, 19/01/07, www.etuc.org/a/3110
133
134 The General Council of the IOE reiterates that:

- an open trading and investment system contributes to economic growth and, consequently, to employment growth and improved working conditions;
- economic development requires access to world markets for both capital investment and imports and exports;
- labour standards in most countries improve progressively with the rising standard of living which results from development.

However, the IOE firmly opposes the introduction of a social clause in the rules of the trading system to permit the application of coercive measures to enforce labour standards. Linking labour standards to the multilateral trading system implies the use of trade sanctions to enforce compliance, introducing new barriers to trade, negating the objective of economic growth through open world trade.

The IOE, therefore, does not see any merit in either WTO or joint WTO/ILO work in this area. The WTO is a “rule-making body” in the field of trade and could not contribute to the examination of the ways to improve labour standards.
with the endogenous development mechanism (trade-growth-social progress) and falling outside the scope of the WTO's activities.

The 2006 document (IOE, 2006) takes up the same arguments but notes that the debate is evolving and, in particular, acknowledges the inclusion of provisions in bilateral agreements, American and European GSPs and business initiatives. It is concerned to see these initiatives taken up at the multilateral level. It concludes by reiterating its reservations: "To date, the employer position has been steadfastly against linkages, seeing them as a protectionist Trojan horse. That position is unlikely to change in the short term."

Guides for employers on the elimination of child labour, prepared jointly by the IOE and ILO, are available on the IOE website. These recommend adopting and complying with codes of conduct (Guide 2, p. 39), referring explicitly to the IOE position paper on codes of conduct adopted by the IOE General Council (1999). The IOE has also drafted an interpretation of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (updated in October 2007) and which is part of the debate on corporate social responsibility that the IOE claims to support and promote.135 Although multinational enterprises must abide by national laws and are encouraged to take into consideration WTO conventions and recommendations, the declaration emphasises that "International labour standards are, and remain, the responsibility of governments" (p. 3) and specifies that multinational enterprises "should contribute to the realization of the ILO Declaration on Fundamental Principles and Rights at Work" (p. 5). Guides have also been published for the application of the UN "Global Compact".

The IOE has also published a guide (updated in 2007) on International Framework Agreements (IFAs). While the text highlights some positive aspects, in particular, the promotion of dialogue between employers and unions, the organisation remains very cautious, not to say reserved, expressing fears that existing agreements will be regarded as standards and, as such, binding upon all enterprises.136

2. The position of BusinessEurope

BusinessEurope (formerly known as UNICE – the Union of Industrial and Employers' Confederations of Europe) is an organisation with 39 members from 33 European countries. It has not adopted any official position recently concerning the inclusion of labour-related provisions in bilateral trade treaties. The position adopted by UNICE at the Seattle Conference (1999) was modelled on the Singapore Declaration (UNICE, 1999)137. The document setting out

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135 www.ije-emp.org/en/policy-areas/csr/index.html. The text after underlining "the ILO's role in strengthening the capacity of member States to implement and enforce their national labour laws" underlines that "The employers' position is also clear in what it does not want the ILO to be doing: namely becoming a monitoring or verification organization with respect to voluntary company CSR initiatives; judging or ranking company performance or behaviour; creating any form of conditionality for or against companies on the basis of their CSR action or non-action; and perhaps most fundamentally, shifting responsibility for international labour standards onto companies."


137 UNICE is convinced that an open, multilateral trade system is the best way to maximize the growth needed to secure a world-wide improvement of living, working and educational conditions. UNICE therefore does not accept the rationale behind the calls for introduction of such a social clause or moves to use trade policy to achieve social policy objectives by the possible use of trade sanctions. In UNICE's view, such action would not be an appropriate or effective means to achieve the objectives pursued. It would have serious negative implications for the multilateral trade system, and consequently damage the situation of the very people it is trying to help. Nevertheless, UNICE supports further discussion on how to promote universal implementation of basic labour standards more efficiently. UNICE believes that this discussion should focus on identifying abusive working conditions such as the worst forms of child labour and forced labour.
the recommendations for negotiating European bilateral treaties (UNICE 2006) makes no mention of including provisions relating to labour or sustainable development issues.

The majority position among employers is thus to support the ILO in its work relating to governments and the promotion of codes of conduct. Although this is clearly placed within a tripartite context, employers and their organisations are granted a considerable degree of freedom.

Section 3 – The Non Governmental Organisations' (NGO) point of view

NGOs are increasingly involved in trade relations. Some of them campaign for political, social and environmental rights to be given due consideration or for trade rules to be more in line with the requirements of developing countries.

1. Diversity and convergence

While trade unions, thanks to their integration in regional or global structures, generally manage to converge towards joint declarations in spite of their differences, NGOs have very wide ranging and often ambiguous points of view. The following differences can be mentioned:

- There is still a quite clear-cut North-South divide, with NGOs from the South (or defending Southern interests) remaining wary of the risk of "disguised protectionism" or trade sanctions.

- The selective nature of labour standards included in agreements. Some NGOs consider that promoting certain principles, whether they are associated (1998 Declaration) or not (Decent Work Agenda) with certain ILO conventions, represents a step backwards.

- More widespread distrust of trade treaties. Certain "alter-globalist" NGOs are openly hostile to trade liberalisation, be it bilateral or multilateral. Within this context, provisions relating to labour and sustainable development seem, at best, ineffective and, at worst, regressive\(^\text{138}\). Other organisations, like Oxfam, consider that bilateral treaties, which are tending to replace multilateral agreements, increase disparities between North and South.

Alongside international NGOs like Oxfam or the FIDH, which take a stand on the link between trade and decent work, many other NGOs or regional and local associations also try to make their governments or the European Union aware of their position.

Despite the profusion and very wide variety of NGOs, not to mention the fact that they are more loosely structured internationally than trade unions, some predominant positions can be discerned.

Like the trade unions, NGOs assert that trade and social standards are closely linked. They denounce the negative effects of trade liberalisation and increased direct foreign investments, which they believe lead to poorer working conditions and increased exploitation of female and child labour, as in the frequently mentioned case of Mexico (Oxfam, 2002; FIDH, 2001a; FIDH, 2001b).

\(^{138}\) A number of examples are frequently given: lessening discrimination, allowing countries to lower the standard of their labour laws, less stringent requirements compared with earlier trade agreements, like the GSP, etc.
2007c). The erosion of working conditions and the frequent violation of fundamental rights may be further aggravated when trade liberalisation occurs between partners that are not on an equal footing.

In line with the trade unions, all the NGOs complain about the lack of formal consultation both during the negotiation process and follow-up procedures (ASEAN joint document, 2007; ALOP, 2006; FIDH, 2003 and 2007 a, b and c). Like most trade unions, the NGOs ask for systematic assessments of the impact of opening up trade on employment and working conditions and for a report on the observance of economic and social rights. There are frequent requests for these assessments to be carried out by independent and participating bodies (i.e. including the competent NGOs) and prior to negotiations. Conclusions must be taken into account in discussions (ALOP, 2006; Oxfam, 2002; FIDH, 2003, 2006 and 2007a and b; ASEAN joint document, 2007).

Each NGO adds its own comments as to the terms of the agreement, the standards to be incorporated in it, the conditions and the steps to be taken to ensure that commitments are met. From the multitude of stakeholder NGOs, we have focused on those which made proposals or expressed opinions concerning concrete provisions relating to bilateral trade agreements. This section describes the point of view of international NGOs concerned with human rights, which also include individual economic and social rights (FIDH), international NGOs promoting economic development (Oxfam, Solidar) and local NGOs representing civil society in the Southern countries.

2. International human rights NGOs: the case of the FIDH

The International Federation of Human Rights (FIDH) defends a "universalist" approach to human rights, which include economic and social rights139. While the development divide may serve as a justification for the gradual and flexible application of measures to open up trade and the adoption of safeguard clauses or exceptions to intellectual property law, it cannot be used as an excuse for waiving human rights (FIDH, 2007 a, b and c).

The FIDH asks for "respect for and the promotion of all human rights" to be written into the objectives of trade agreements. Regarding economic and social rights, the FIDH explicitly refers to the ILO core labour standards (for example FIDH, 2001b) and all the Conventions. It also refers to the UN Conventions on Race Discrimination, on the Elimination of All Forms of Discrimination against Women, on the Rights of the Child and, more generally, the Covenant on Economic, Social and Cultural Rights (FIDH, 2007 and 2001a). The FIDH regrets that the European Union places the emphasis on civil and political rights in its partnership agreements but neglects economic and social rights "EU echoes considerations related to civil and political rights, rather than economic, social and cultural rights, which are nevertheless at the center of the development problematic of a large number of the concerned States" (FIDH, 2006).

The FIDH therefore asks that each trade agreement should clearly specify a list of conventions relating to fundamental international rights and draw up "a body of reference" listing the rights mentioned in GSP+ schemes, together with some other conventions concerning specific categories of the population (migrant workers, the disabled, indigenous and tribal

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139 Other NGOs focusing particularly on human rights include Human Rights Watch and Amnesty International.
populations, etc.). The European Union should not tolerate exceptions or adjustments to suit individual cases, for example, to make allowance for factors such as the economic weight of partners or their historical ties (FIDH, 2006).

The FIDH favours two complementary approaches to ensure that provisions lead to the effective enforcement of social standards and human rights (FIDH, 2001a and 2007).

1. The "positive" approach is based on incentives and dialogue, with the creation of groups of experts responsible for defining specific measures to be implemented by a certain deadline in a follow-up procedure.

2. The "negative" approach is based on repressive measures, such as the right to suspend the application of the agreement, in whole or in part, in the event of "serious violation" or "serious degradation" of human rights.

Although the "positive" approach should always take precedence, the FIDH does recognise the need for sanctions when the dialogue recommended in the positive approach fails to bring about any improvement: "the sanction system has to be used when this political dialogue is not sufficient to put an end to human rights violations" (FIDH, 2007c and 2005). The FIDH raises the possibility of totally or partially suspending the trade agreement.

It considers (FIDH (2001) that while the social chapter of the NAFTA has definitely raised some interesting questions concerning labour law, it has limited impact in concrete terms. The Mercosur Social Declaration has the advantage of being a procedure for inter-government cooperation and tripartite consultation, but includes no mechanism for sanctions or compensation. The Additional Protocol to the European Social Charter was not intended for trade purposes, but does propose a complaints mechanism that is open to NGOs. Its recommendations, however, are not binding.

3. International NGOs promoting development: the case of Oxfam International

Oxfam is an international NGO that works to promote development. In discussions on trade-related issues, it argues in favour of better balanced trading conditions, which would be to the advantage of developing countries, and opening up trade to help combat poverty. Unlike the FIDH, Oxfam favours a more flexible approach. Although it asks for compliance with ILO core standards, it argues that social provisions should be applied gradually, taking the degree of development into consideration.

Oxfam stresses that existing international procedures are ineffective, especially multinational enterprise (MNE) codes of practice which, in fact, are never applied. While Oxfam admits that trade and employment are linked, it is distrustful of trade instruments that might conceal "protectionist tendencies". It proposes direct action, taken on the initiative of national governments and targeting the employment and education market.

It is generally distrustful and critical of bilateral agreements, which it believes are motivated more by foreign policy strategy than economic and development issues (as an example, see the

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140 Similar provisions are included in the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, an instrument of the Organization of American States.

141 Chiefly because local producers act as subcontractors for the MNEs.
campaign launched by Oxfam and the positions on Economic Partnership Agreements between the EU and the ACP States. Similarly, Oxfam (2002) notes that Pakistan benefited from the USA's GSP+ even though it is debatable whether workers' rights are observed there.

While Oxfam recognises the need for social provisions based on the four ILO core labour standards to be included, it has some reservations and recommendations:

- Including these standards only makes sense if doing so represents an "enforceable commitment" on the part of governments.
- Social provisions may be accompanied by enforceable measures. To this end, the agreement may provide for the creation of a special body responsible for deciding a) whether social standards are actually violated and b) what sanctions to take if they are.
- This body – which could be the ILO – should be impartial, in other words, independent of the parties concerned. In particular, it must ensure that complaints and sanctions are not divorced from social considerations or motivated by protectionist intentions.
- Sanctions must be credible. As a counter-example, Oxfam denounces the weakness of the social chapter of the NAFTA. Although its provisions set out a clear and codified procedure to be followed in the event of dispute, the fines it provides for are far too small to be effective.

More generally speaking, Oxfam's position regarding the inclusion of social provisions is ambiguous and varies from one case to another. While it criticises the NAFTA for its lack of effectiveness, it stresses the value of the social provisions included in the textile agreement between the United States and Cambodia. Although Oxfam (2002) admits that trade sanctions can be justified in cases of blatant violations of human rights, sanctions are generally considered ill-suited to solving problems that are deeply rooted in a country's social, economic and political structures. Such measures might exacerbate the very problems they are supposed to solve.

Regarding the inclusion of social provisions in bilateral trade agreements, Oxfam echoes some of the fears expressed by the Southern countries, such as the North's protectionist intentions and counter-productive sanctions, and repeats their request for these provisions to be incorporated gradually. As part of its efforts to help combat poverty and defend the rights of the most vulnerable workers, the solutions it puts forward are both more global and more focused on the labour market and include greater support for development and more ILO and UNICEF action in the field.

4. The point of view of civil society in developing countries

In the Southern countries, civil society also wishes to have a say in how bilateral trade agreements are negotiated. It has set up a networked structure to carry more weight, bringing together various associations, NGOs and Southern trade unions, as well as international associations concerned with promoting workers' rights and development.

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143 For example, within the context of EU-ASEAN negotiations, a great variety of associations including the Asian Farmers Association, the Asia Pacific Network on Food Sovereignty, the Alliance for Progressive Labor, Freedom for Debt Coalition and Via Campesina, grouped together
The positions described in their joint declarations on bilateral agreements are often very broad and not limited to the question of including provisions referring to decent working conditions. In fact, this topic is not even mentioned in some cases. It is true that "equitable and sustainable" development is always declared as the ultimate goal, with most NGOs, in fact, demanding that it should be explicitly written into trade agreements. This declaration aside, however, most demands amount to no more than criticism of the negative impact of opening up trade, requests for exceptions for several industries or products (e.g. services and raw materials), support for "gradual application" strategies, temporary protective measures, safeguard clauses, non-reciprocity and greater cooperation between partner countries through increased financial and technical resources to make Southern countries more competitive (ALOP, 2006; ASEAN Joint Document, 2007; CC-SICA, 2007).

While civil society is primarily concerned with the lack of competitiveness of economic structures in Southern countries, low wages and poor working conditions are never seen as a solution to the problem. In addition to the trade-related demands described above, some NGOs stress how important it is for the agreement to guarantee explicitly the ILO core labour standards and, more generally, the right to decent working conditions, democracy, observance of human rights and international environmental standards (ALOP, 2006; CC-SICA, 2007). For example, the Peruvian NGO PLADES (Programme Laboral de Desarrollo) was set up in 1991 to "promote and encourage the inclusion of social and labour standards in the negotiation process in the Andes region."

Mention has been made of several ways that could be explored to make sure that these declarations are actually followed through and that they lead to a genuine improvement in workers' rights. These include:

- strengthening national structures: the agreement must first ensure that governments have the means to reinforce the constitutional state so that the law can be properly implemented (ALOP, 2006; CC-SICA, 2007),

- the settlement of disputes: if any controversy occurs regarding compliance with social standards in partner countries, some NGOs argue for a dispute settlement mechanism to be included in agreements (CC-SICA, 2007). Civil society in the Southern countries defends several principles regarding this issue: the dispute settlement procedure must not be contrary to state sovereignty and must always be based on international and multilateral rules and mechanisms. Thus civil society in the Southern countries is rather distrustful of bilateral procedures,

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144 In this respect, the document on the EU-ASEAN negotiations, signed jointly by several ASEAN associations and international NGOs is typical and contains many attacks on Europe's "anti-development" trade policy. The matter of decent work, however, is given no mention, apart from the following vague statement found in the conclusion of the manifesto: "there should be political accountability on all economic decision-making processes (....), in order to arrive at equitable and sustainable development and trade systems."

145 As an example, the Central American Advisory Committee for the association agreement between this region and the European Union asks for the agreement to guarantee "el fortalecimiento de la economia centroamericana y el acceso al mercado europeo" (CC-SICA, 2007).

146 Similarly, ALOP, a group of Latin American associations, played a role in negotiations between the EU and the Andean Community: "The agreement must ensure the effective application of conventions on fundamental rights of the ILO, the protection of dignified conditions of work in areas of health and environment (etc.)."
- incentive procedures: some NGOs are in favour of setting up an incentive procedure based on a "fair trade" principle. For example, the Central American Advisory Committee asks for preferential treatment to be granted to agricultural producers who undertake to comply with certain environmental and social standards (CC–SICA, 2007).

Civil society in the Southern countries thus appears to have no clear, uniform position as far as the inclusion of social provisions in bilateral trade agreements is concerned. When any reference is made to this topic, it is often in very general terms, with a request that minimum social standards and decent working conditions be included in the agreement. These declarations rarely lead to any concrete proposals to enforce genuine compliance with social standards.

Section 4 – The position of European Assemblies and the US Congress

Parliamentary assemblies are the voice of public opinion. Whether they are advisory or legislative bodies, they are called upon to rule on trade treaties. There is, however, a big difference between the European Union and the United States, where Congress has considerable influence over trade policy.

1. European Parliament and European Economic and Social Committee

The European Parliament and the national parliament have limited powers. Article 207 (formerly Article 133) 147 of the Consolidated Lisbon Treaty, however, reinforces the power of the Parliament, as it stipulates that the measures defining the framework for implementing the common commercial policy must be adopted jointly by the Parliament and the Council (Section 4). Only the Council, however, can authorise the Commission to start negotiations, after consulting a special committee. The Council ratifies the agreement by a qualified majority (or unanimously if the agreement includes provisions where a unanimous vote is required to adopt internal rules or for certain services, Section 4). The Parliament is kept up to date with the progress of negotiations (Section 3). It must approve association agreements and agreements establishing a specific institutional framework by organising cooperation procedures (Art. 218, Section 6, a)ii) and iii)). In other cases, the European Parliament is consulted and gives an opinion (Art. 218, Section §6, b).

The position of the European Parliament is expressed in its "Opinions" and "Reports", which are issued chiefly via the Committee on International Trade. 148 A number of points emerge from the examination of recent positions adopted with regard to a number of specific agreements. The points below are summarised in Table 8:

- A desire to reach beyond the scope of traditional trade provisions and to incorporate clauses relating to human rights, labour and the environment.
- A desire to make the agreement part of a broader project to promote development and combat poverty and inequalities. A trade agreement cannot achieve all the objectives alone. It can even have a negative impact, especially on the agricultural sector.
- A desire to involve civil society.

148 The texts mentioned can be consulted at: www.europarl.europa.eu/activities/committees/homeCom.do?language=FR&body=INTA
- Criticism of the dispute settlement procedure which is seen as having no real impact. Sanctions, however, are never explicitly mentioned.

The most exhaustive approach is set out in the opinion "Promoting decent work for all" of 8 January 2007, which addresses all trade agreements, whether bilateral, GSP or WTO. It asks for steps to be taken against social dumping and proposes that the EU should systematically include social provisions relating to decent working conditions in all instruments concerning bilateral or regional cooperation. With regard to the GSP+, the opinion insists that "Requests that, in the forthcoming revision of the GSP Regulation, the Commission makes express provision for suspension and withdrawal of GSP+ benefits to be based on a proportionality criterion, so as not to rule out incentives for companies which, in their business operations and their relations with their workers, comply with the obligations deriving from the international commitments entered into by beneficiary countries". Furthermore, it attributes certain responsibilities to transnational enterprises set up locally and importers.

Table 8 – European Parliament Labour Requirements

<table>
<thead>
<tr>
<th>Country</th>
<th>Cooperation</th>
<th>Association</th>
<th>Assistance</th>
<th>Ratification of ILO conventions</th>
<th>Social and environmental provisions</th>
<th>Human rights</th>
<th>Specific dispute settlement</th>
<th>Submittal of observations or complaints by civil society</th>
<th>Trade and sustainable development forum</th>
<th>Impact studies</th>
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The European Economic and Social Committee (ECOSOC) is an advisory body representing in particular consumers' associations, trade unions, employers and farmers. ECOSOC's opinion

is not binding. The "New trade agreements negotiations - The EESC position" opinion (28 April 2008) adheres to the EU's negotiation strategy and takes the decent work concept on board. One of the advantages of the bilateral approach is that it goes further than its multilateral counterpart, particularly on the subject of Singapore and the social agenda. It explicitly recognises the risk of social dumping and puts national legislation and core standards on the same level. It considers that the 27 international conventions referred to in the GSP+ should be taken up in bilateral agreements and that fundamental conventions should be ratified. Moreover, it recommends that agreements should be accompanied by national labour programmes aimed at promoting decent working conditions.

According to the report, agreements should be adjusted to the level of development and accompanied by cooperating agreements that provide for financial assistance to be granted to catch up with international standards, based particularly on impact studies submitted to civil society.

2. The role of the US Congress

In the US Constitution, Congress is responsible for trade policy, as it ratifies trade treaties, sets negotiators a number of objectives and monitors activities in this area closely. The Trade Act sets out the procedures to be applied.

If labour-related provisions are included in US free-trade agreements, it is due to pressure from Congress. The Trade Promotion Authority (TPA) defined in Title XXI of the Trade Act of 2002 requires that the President should define negotiating objectives before negotiations even begin. These must include the "principal negotiating objectives". Provision is made for specific notification of the Committees concerned for agriculture, labour and the environment. The TPA of 2002 gives the Executive the right to submit a trade treaty for ratification with no possibility of amendment (fast-track negotiating authority), as amendments would automatically open up a renegotiation process. The Trade Act of 2002 included this possibility until 30 June 2007. In April 2008, President Bush asked Congress to approve the free-trade agreement with Colombia under the terms of the Trade Act of 2002, but the Democrat majority refused his request

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150 ces773-2008_pc_en.doc

152 The text includes the following statements in particular: "The Committee believes that decent work, as defined by the ILO, must become a priority benchmark in trade at European and global level. "In this bilateral approach the Committee considers that a basis of fundamental, universal rights enshrined in ILO standards are essential. The Committee also believes such standards must be used to intensify mutually acceptable and practicable definitions of Decent Work" ; "We welcome the inclusion of the important guideline in the negotiating mandate for the new agreements which specifies that these must seek to promote respect for sustainable development (especially social and-environmental standards)." ; "The Committee believes that decent work, as defined by the ILO, must become a priority benchmark in trade at European and global level."  

153 The EESC in particular takes the view that free zones, which exist in the countries with which bilateral negotiations are under way, must in no case operate outside the limits set by national legislation (on social and environmental issues). They represent real cases of social and environmental dumping. The negotiated agreements must ensure that no business, by means of sub-contracting, can set objectives at a lower level than national legislation or fundamental ILO convention."

154 "The ratification, implementation and monitoring of these 27 international conventions should represent the minimum threshold for discussing the sustainable development chapter in the negotiations opened with the Asian countries."

155 At the current stage in the negotiations, the Committee judges it essential that the eight basic conventions be ratified and properly implemented (subject to verification by a joint WTO/ILO working group), calls for the other four priority conventions on health and safety and labour inspections to be taken into account, and urges that the largest possible number of conventions relevant to the countries concerned be ratified, subject to the principle of differentiation.
Table 9). Labour-related objectives set by the negotiators are described in several articles or sections.

Section 2102 defines the "Trade Negotiating Objectives". 3 amongst 9 concern labour: 6) to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO; 7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade; (9) to promote universal ratification and full compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. These general objectives are then specified in a section on labour and the environment. Furthermore, "The principal negotiating objective of the United States with respect to the trade-related aspects of the worst forms of child labor are to seek commitments by parties to trade agreements to vigorously enforce their own laws prohibiting the worst forms of child labor."

Another point concerns the promotion of a number of priorities "In order to address and maintain United States competitiveness in the global economy". These include: "seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of United States trading partners to promote respect for core labor standards and to promote compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, and report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the content and operation of such mechanisms; review the impact of future trade agreements on United States employment, including labor markets to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public; direct the Secretary of Labor to consult with any country seeking a trade agreement with the United States concerning that country’s labor laws and provide technical assistance to that country if needed."

Section 2113 specifies certain terms. The definition of "core labor standards" differs from that given in the 1998 Declaration. It rules out discrimination but includes "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

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155 "The principal negotiating objectives of the United States with respect to labor and the environment are — (A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries; (B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources, and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection; (C) to strengthen the capacity of United States trading partners to promote respect for core labor standards; (D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development; (E) to reduce or eliminate government practices or policies that unduly threaten sustainable development; (F) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and (G) to ensure that labor, environmental, health, or safety policies and practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade."
In general, Democrats view trade liberalisation and free-trade treaties with greater distrust than their Republican colleagues do. They are more prone to make their vote dependent on the inclusion of labour and environmental provisions. Thus, most Democrats voted, in at least one of the Houses (Representatives or Senate), against agreements with Peru, Oman, CAFTA, Singapore and Chile. Several agreements – CAFTA and Oman – were only ratified with a very small majority. The 110th Congress, with its Democrat majority, refused to use the provisions of the TPA to ratify the agreement with Colombia. The arguments put forward included violence against trade unions in Colombia and the inadequacy of the American Trade Adjustment Assistance Program. The AFL-CIO also strongly opposed the agreement.

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156 Some Republicans, like Senator Helms, have defended amendments whereby agreements are only acceptable if they observe certain values.
Table 9 sums up the votes on laws concerning free-trade agreements and the promotion of labour standards and human rights. Although the Trade Act of 2002 sets great store by labour standards and the environment, the Senate rejected amendments that would have made the observance of labour standards a prerequisite. It should also be noted that trade sanctions against Burma (2003) were adopted almost unanimously.

Conclusion

Since the negotiations with Uruguay and the Singapore Declaration, the various stakeholders have to some extent clarified their positions, though some ambiguities remain concerning:

- The actual objective of labour and sustainable development provisions. While the positions originally taken by trade unions and certain policy-makers tended to be trade-oriented and protective, they have since evolved toward a more specific, and notably industry-oriented, approach to the effects of international competition on labour, and toward a more universalist conception of the promotion of human rights and a new approach to globalisation which must be accompanied by national or international policy.

- North-South relations are unbalanced in two respects: a) the fact that it is easier for Northern countries to comply with decent working standards fuels accusations of Northern protectionism and b) the Southern countries’ demands to continue to benefit from preferential treatment for the most vulnerable industries and for the enforcement of standards fuel accusations of Southern protectionism.

- Respecting national sovereignty with regard to labour law as asserted by countries in the South, as well as by certain countries in the North (low rate of ratification of ILO Agreements by the United States, for example) is thus a response to a country’s legitimate desire for non-interference but also renders their undertakings not to violate labour laws for the purposes of competitiveness and to promote compliance with such laws barely credible.

- Rivalry between the different stakeholders in defining standards, helping to implement them, monitoring their implementation and taking part in assistance programmes. Employers’ associations, for example, thus tend to favour CSR, as it not only meets the demands of civil society, but also allows them greater freedom to define and implement standards and ensure that they are observed. The unions wish to maintain the tripartite system that protects them from competition from NGOs, which, in turn, may have to compete with national or international organisations in monitoring agreements. Parliaments occasionally appear to act as a filtered relay for civil society, which is critical of the initiatives taken by the Executive.
CHAPTER 6 – PROPOSALS AND ASSESSMENT OF THE DIFFERENT OPTIONS AVAILABLE FOR INTEGRATING LABOUR STANDARDS, SOCIAL ASPECTS AND SUSTAINABLE DEVELOPMENT IN FUTURE REGIONAL AND BILATERAL TRADE AGREEMENTS.

In Chapter 3, we looked at the major free trade agreements that include labour provisions, social aspects and sustainable development. These are summarised in the table given in Annex 5. This table shows the diversity of options and instruments that may be adopted.

Once the parties have committed to liberalising their reciprocal trading, it only remains for them to define the emphasis to be placed on provisions relative to decent work and sustainable development. This will depend upon the various objectives defined by the negotiating parties and, in certain cases, on the priority given to these objectives. Since the parties usually want to find a balance between the different options, the provisions aimed at are discussed within the overall framework of trade negotiations. Thus, the demand of a developed country (United States or the European Union) to include a sanction mechanism is bound to be opposed by a developing country, which might, nonetheless, agree to such provision in exchange for additional concessions in other areas (for example, in the textile or agricultural industries, access to developing countries markets, or a financial commitment on the part of the developed country to promote workers' rights). Including provisions relative to decent work and sustainable development may therefore involve an opportunity cost requiring the Parties to prioritise their objectives and the instruments defined for achieving them. Options deemed to be "unfeasible" solely on the basis of one of the partners objecting to them, are often just options that entail a prohibitive opportunity cost. Conversely, including such clauses gives the agreement "added value" insofar as regards the country that insists on its inclusion and for the country that does not. Such provisions are likely to meet wider social and political acceptance, which, in democratic countries, is necessary for a trade treaty to be agreed and ratified. They help to create political and social stability and, therefore, stable trade relations – including direct investment - to the advantage of both parties. They help governments by transforming the consolidation of social rights from the status of a "choice" to that of a "requirement", essential for the country to reap the benefits of the economic advantages afforded under the treaty. They confer certain legitimacy upon civil society claims and encourage more effective application of national laws. They underlie and speed up "endogenous development", addressing imbalances in the labour market that put pressure on the accumulation of physical and human capital and slow down growth in labour productivity.

In practice, there are no standard model clauses (see Chapter 3), which suggests that their nature and the greater or lesser extent to which they are enforceable depends on the countries in question and their negotiating powers.

The European Commission's communication, "Global Europe: Competing in the World. A Contribution to the EU's Growth and Jobs Strategy" (4 October 2006)\textsuperscript{157} states that: "Future FTAs will need to cover sustainable development concerns by addressing environmental and social issues in addition to economic considerations. They should contribute to the promotion of decent work for all. Building on the Commission's work on trade-related Sustainability Impact Assessments, the Commission intends

\textsuperscript{157} trade.ec.europa.eu/doclib/html/130370.htm
incorporating environmental and social chapters and clauses covering in particular the necessity not to relax existing standards to attract foreign investment, the importance of enforcement, exception clauses related to the protection of human health and the environment, capacity building and technical assistance, the role of civil society and the public at large in the design, implementation and enforcement of relevant measures. We should also seek to include provisions on good governance in the financial, tax and judicial areas where appropriate.

The debate is often obscured by the different objectives that may be assigned to the provisions relative to labour and sustainable development and which call for instruments that may be contradictory at times, or complementary at other times. Firstly then, it would be useful to clarify the objectives, with a view to verifying, at a second stage, their consistency and dealing with their contradictions.

Section 1 - Optional objectives

Four "optional" objectives may be identified, which may be incorporated in various ways in trade agreements:

1. Defend fair trade;
2. Avoid the undesirable effects on employment and sustainable development;
3. Ensure universal values are upheld;
4. Promote decent work and sustainable development.

1. Defend fair trade and prevent "social dumping"

This involves protecting national firms in the face of practices that are considered as "unfair." Trade defence instruments used to achieve this objective are not therefore designed to defend workers who are victims of violations of workers' rights in the export country, but rather to protect "losing" workers who are victims of competition from imports. This is the reason why this objective is often criticised as "disguised protectionism" by its detractors. Even if a trade agreement is consistent with national law, the inclusion of these trade provisions is met with hostility in a significant number of developing countries, which are concerned that their comparative advantage in terms of labour-intensive production will be contested. This "asymmetry" argument does not hold in the case of agreements between developed countries (e.g.: USA-Australia or EU-Korea).

The WTO texts authorise a certain number of measures to prevent practices considered unfair, such as anti-dumping and countervailing duties (Article VI of the GATT). Such conditional protective measures are subject to certain rules (the existence of dumping or of subsidies, the ability to demonstrate injury to national industry, or the limitation of any penalties imposed). Today, it is emerging countries, such as India, that are most likely to apply anti-dumping duties. Even if WTO jurisprudence does not settle the question definitively, it still seems to be legally difficult to cover "social dumping" using these conditional protection instruments.158

158 The safeguard clauses (Article XIX of the GATT) do not require the demonstration of "unfair practices" and may be implemented when imports cause material injury to national production. In this case, the safeguard clause may implicitly sanction "social dumping" if this is the cause of the injury.
The risk of "social dumping" is one of the reasons most widely employed by the unions, and by certain industries threatened by imports, to justify the need for counter-measures. In a context where public opinion is increasingly suspicious of market liberalisation, which is seen as the cause of pressure on jobs, purchasing power and widening inequality, the introduction of such clauses provides a guarantee and serves to promote political support for pursuing the liberalisation process. On the other hand, this complicates negotiations with countries that do not recognise this objective.

The option to introducing provisions designed to prevent or sanction social dumping practices requires, or suggests, that:

1. a specific chapter on labour be integrated in the free trade agreement, covering the targeted degradation of regulations or practices;
2. any mention of the risk of "social dumping" – reworded in a phrase such as, "the degradation of the law and practices for the purposes of competitive advantage" - is generally based on the recognition of national law, thus making it possible to circumvent criticism for interference. Social dumping is thus defined as the violation of this law for the purposes of competitive advantage for a company, an industry or a geographical area. Nonetheless, this clause may be counter-productive: the dispensations that become inaccessible could lead to the dismantling of social protection in all areas and not only in trade-related industries. Changes in the law and national practices must therefore be monitored. This risk is very commonly found in the texts, which then come up against the following contradiction: on the one hand, the parties' right to adopt and reform their laws is recognised and, on the other hand, their undertakings to tighten or not downgrade labour standards for the purposes of trade. This contradiction in the treaties leaves the door wide open for conflicting interpretations;
3. mutual recognition nonetheless requires national law to be developed to a certain level. Where this is not the case, trade negotiations may invite the countries involved to tighten up their legislation, possibly in line, moreover, with the designated ILO conventions;
4. chapters on the law in question must be defined, bearing in mind that labour law may take several different forms (Constitution, statute law or labour code, etc.). A narrow field covering a limited number of fundamental rights (child labour and forced labour) risks introducing confusion with other functions of the provision (see below) and also being seen as asymmetric by developing countries. In fact, the objective of "fair trade" implies targeting any form of regression aimed at reducing the cost of labour in the exporting industry by waiving national rules, whether or not this affects wages paid to the workers (for example, exemption from paying employer social security contributions). Extending the field covered reduces the asymmetric character of the provisions, since developed countries also face the same risk. Some agreements provide for undertakings regarding the establishment of a minimum wage, intended to protect against possible abuse. This may serve as a benchmark in examining complaints. Nonetheless, setting a minimum wage is a difficult matter: if it is too low compared with labour productivity, it becomes worthless; if it is too high, it is leads to higher unemployment and increasingly
informal work. It seems preferable to insist on the right to collective bargaining and respecting union rights, especially trade union rights.

5. A unified dispute settlement procedure that encompasses all trade issues, violations of labour laws for the purpose of competitive advantage, as well as subsidies and intellectual property law. Any sanctions imposed must require that a relationship of cause and effect can be demonstrated between the violation of national law and the existence of injury for companies in the destination country.

6. A sanctions mechanism that applies not only to States that grant official exceptions but also to companies, in the form of fines or additional duties, such as "anti-dumping duties". Such sanctions boast the advantage of targeting companies' behaviour and thus providing an incentive for them to abide by national labour law. They may be based on compliance with the ILO's tripartite declaration, the United Nations' Global Compact or the OECD's guidelines for multinational enterprises. Targeting sanctions in this way is one of the reasons why the US-Cambodia Agreement was so successful. Nevertheless, the legal certainty of this kind of measure is not guaranteed; the penalised country may seek recourse from the WTO to give judgement against the country that has imposed sanctions for noncompliance with labour standards, which are not recognised by the World Trade Organisation.

7. Particularly in the case of agreements with developing countries, the agreement may provide for any fines or taxes to be paid to companies that comply with labour law with a view to being used, for example, to improve the health environment, set up union representation and promote employee training. Penalties may also be paid into a fund set up to finance education and healthcare infrastructures, consolidate labour law administration or finance trade promotion programmes.

8. Industry-specific mechanisms may also be considered. This could take the form of mechanisms that link signing international framework agreements (IFAs) and sectoral liberalisation. In addition, it should be possible to target sanctions at an industry when the practice of social dumping is specific to a clearly defined industry.

9. The precise identification of individuals or bodies that are likely to refer matters to the authorities in charge of examining complaints. Complaints must be notified by government administrations, employers or unions affected by the imports in question.

10. One alternative to the dispute settlement procedure would involve allowing the stakeholders access to part of the other parties internal procedures. In fact, contrary to classic cases of social dumping or subsidies, which generally comply with national legislation\(^\text{159}\), unfair trading is directly related to national labour law. The agreement could specify the conditions for access by companies, unions and other parties involved in national procedures. The NAFTA, however, amply demonstrates the difficulty of implementing such procedures.

\(^{159}\) National competition laws generally exempt exports from certain provisions. Insofar as regards subsidies, however, appeals may be filed under European law. WTO jurisprudence recalls that the texts of Article VI relate to trade law and not to competition law (complaint filed by the EU and Japan against the United States’ 1916 anti-dumping Act).
To conclude, the way in which "unfair" trading practices are dealt with and sanctioned may be justified as a safety valve for minimising the risks of a policy of growth "at any cost" that some countries might be tempted to implement. Nonetheless, as shown in our analysis of trade agreements (Chapter 3), the effectiveness of such provisions in relation to their opportunity "cost" is questionable:

1. In bilateral negotiations, reservations on some issues imply concessions on other ones;
2. other instruments, which could be clearly defined in the agreements, may prove more effective, such as submission to national judicial authorities;
3. from a legalist point of view, it seems difficult to circumvent the rules of the WTO, which has the jurisdiction to deal with fair trade issues, even though the issue has never been included on the agenda for multilateral negotiations. The European Union could therefore take a stand with regard to certain options: the interpretation of certain conditional protection measures (Article VI of the GATT), expansion and interpretation of the preamble or of Article XX, possible introduction of undertakings relative to labour law (especially within export zones) in the schedules of offers, request to negotiate a plurilateral agreement relative to the protection of workers' rights and sustainable development.

2. Avoid the undesirable effects of free trade agreements on jobs and sustainable development.

The previous approach focused on the impact on trade in importing countries of lowering standards in the exporting country for the purpose of increased competitive advantage. This new approach focuses on the consequences of trade liberalisation in the country that opens up its trade barriers, independently of "unfair" trade practices implemented by exporters.\textsuperscript{161}

In democratic nations, trade liberalisation cannot be pursued without the backing of the population and civil society. The criterion of overall well-being is inadequate. If one individual wins more than everyone else loses, trade liberalisation will fail and the overall gains of trade will remain no more than potential gains. An approach limited to welfare does not factor in the reservations of the population - nor even those of the "winners" in terms of income - in view of the perceived risk that anyone may become a "loser" or out of an altruistic feeling of solidarity.

In addition, aside from the debate over the general overall gains relative to free trade, there is now widespread acknowledgement of the fact that, while some categories of workers may be winners thanks to opening up trade barriers, others may lose (Chapter 2, Section 1). Free trade may also be associated with widening inequalities. The scale and nature of these effects mainly depends upon the industries or job categories that were the most protected before opening trade barriers, on how the comparative advantages are structured, and on the effects of relocating activities. While these effects are not due to social dumping, they may nonetheless be blamed on

\textsuperscript{160} In addition to multilateral agreements, such as the GATT or the GATS, which link together all the member countries on the basis of non-discrimination, the WTO could act as administrator for plurilateral agreements that only link together the member countries that sign it. The "voluntary" nature of their undertakings might make it possible to get around the barrier of consensus, required for any modification to the texts.

\textsuperscript{161} This point of view is that expressed by Peter Mandelson, EU Trade Commissioner: 2007, ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm185_en.htm.
the pressure to be more competitive felt in the most vulnerable industries and job categories. When countries differ in size and when there is no balance between the diversification of their markets, the effects are asymmetric: the positive impacts, as well as the negative impacts, are necessarily more intense for Mexico than for the United States. Any "undesirable" effects (in relation to the objectives set by the stakeholders, and not restricted to overall gain) attract criticism from within civil society, especially among unions and some NGOs.

The trade response, recommended by certain sections of civil society, would be to "exclude" the sensitive industries from the agreement or extend the deadlines for liberalising them. However, this proposal goes against the very principles of a free trade agreement, which is supposed to encompass all trade (Article XXIV of GATT). This would diminish the exporting country's interest in signing such an agreement.

Even though the possibility remains for handful of exceptions concerning the most sensitive industries, it is essential to design instruments aimed at minimising the "undesirable effects" of free trade agreements. That said, this is primarily a matter for national jurisdiction.

While the United States\textsuperscript{163} and the European Union\textsuperscript{164} have developed Trade Adjustment Assistance programmes targeting their own workers, this option cannot be taken up by every country, given the high cost in terms of available financial resources. Multilateral "aid for development" programmes bring together the WTO (Hong Kong Ministerial Declaration of 2005, paragraph 57) and, mainly multilateral, donor organisations (the World Bank and the IMF). Their future is mainly dependent on the outcome of the Doha Development Round\textsuperscript{165}. These programmes cover six aspects: 1) trade policy and regulations; 2) trade development; 3) trade-related infrastructure; 4) productive capacity building de production; 5) trade-related adjustment; 6) other trade-related needs\textsuperscript{166}. The WTO is also working with the OECD to develop a Trade Capacity Building Database (TCBDB).\textsuperscript{167} These programmes, which therefore are aimed at encouraging exports by developing countries, are based on the premise that the potential "losers" due to opening up trade can directly or indirectly benefit from them by facilitating their integration in the process of globalisation.

\begin{itemize}
\item For a level of trade openness at 63%, 85\% of Mexican exports were to the USA in 2006 and 51\% of imports came from the USA. In the opposite direction, the figures were 13 and 10\% respectively for a level of trade openness of 26\% (source: WTO).
\item "The Trade Act programs, Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), assist individuals who have become unemployed as a result of increased... The goal of the Trade Act programs is to help trade-affected workers return to suitable employment as quickly as possible. To facilitate this goal, TAA certified workers may access a menu of services that include income support, relocation allowances, job search allowances, and a health coverage tax credit. TAA participants that require retraining in order to obtain suitable employment may receive occupational training. In addition, the ATAA program for older workers provides an alternative to the benefits offered under the regular TAA program. Participation in ATAA allows older workers, for whom retraining may not be suitable, to accept reemployment at a lower wage and receive a wage subsidy" (www.doleta.gov/tradeact/taa/WhoWeServe.cfm).
\item The European Globalisation Adjustment Fund (EGF), launched by the EU in 2007, provides aid, within the budget of 500 million euros a year, to workers that lose their jobs due to changes in the structure of global trade to help them find new jobs as quickly as possible. In particular, the Fund can be used for job-search assistance, occupational guidance, tailor-made training and re-training including ICT skills and certification of acquired experience, outplacement assistance and entrepreneurship promotion or aid for self-employment (for further details, see ec.europa.eu/employment_social/egf/index_fr.html).
\item See OECD (2007) and the Agency for international trade in information and cooperation (AITIC) website on aid for trade: www.aict.org/AidForTrade/index.htm.
\item 3 to 6 billion dollars are donated each year to this end (according to the WTO).
\end{itemize}
Apart from the special system for the most vulnerable industries, the provisions aimed at mitigating the negative impacts of trade opening on certain categories of workers could:

1. be included in a specific chapter on labour;
2. be excluded from dispute settlement and sanctions procedures, which would not apply in this case;
3. as recommended in some SIAs and in the Handbook for Trade SIA (Chap. 4, 5:1), improve SIAs by including more in-depth qualitative findings and supplementing them with follow-up mechanisms and ex-post impact studies based, at this stage, on surveys and case records, rather than on simulation models. A commission could propose corrective measures when negative effects are manifested;
4. mention a trade adjustment programme aimed specifically at affected population groups which, as appropriate, would include financial commitments and assistance on the part of the developed partner.  

3. Ensure universal values are upheld.

In a certain number of international declarations conventions and agreements, the countries undertake to uphold universal principles relative to human rights, notably in the realms of liberty, labour and discrimination. The Singapore Declaration thus stipulates that the WTO member countries undertake to observe "internationally recognized core labour standards."

The issue of including a more or less enforceable reference to fundamental and universal right is not a trade issue even if upholding them may facilitate trade: better governance, greater stability in economic relations, more positive acceptance by public opinion and civil society. Nor is it a question of directly promoting development, even if upholding fundamental rights plays a role in this. Some NGOs campaign for trade agreements to provide an opportunity to reassert or extend the undertakings regarding the observance of these universal values, regardless of the level of development. So, it is an ethical and/or political choice that extends the purpose of free trade agreements: to what extent do the countries that uphold universally-recognised fundamental rights accept strengthening their trade relations with countries that do not do so?

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168 The European Union has committed to provide aid for trade to the tune of two billion euros a year by 2010. Nonetheless, this sum covers the first two aspects of the “Aid for Trade” programme, namely trade policy and regulations and trade development. Infrastructures, building productive capacities and trade-related adjustments are not covered by any specific financial commitment. The countries targeted are the least developed ACP countries (register.consilium.europa.eu/pdf/fr/07/st13/st13070.fr07.pdf). The text cited also says that the EU will seek to establish a common understanding of the concept of trade-related adjustment at EU level, in conjunction with promoting an international understanding of this concept. To promote the environmental, social and economic viability of aid for trade, “the EU will continue to support governments’ capacity and stakeholders’ engagement to incorporate sustainability concerns into national trade strategies, trade regimes and AfT programmes, including effective management of impact assessment processes and to follow-up on their recommendations; it will support essential cross sector dimensions, including gender issues and the promotion of positive interactions between AfT and the decent work agenda; it will explore possibilities for developing shared EU approaches to sustainability claims systems, including fair trade, in consultation with stakeholders, in particular local ones and small producers.”

169 ILO core conventions are not about labour costs - they are about basic standards. Developing countries need to be reassured that Core Labour Standards are not a protectionist tool, but a guarantee of fundamental rights,” Peter Mandelson, EU Decent Work Conference, Brussels, 5 Dec. 2006, ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm134_en.htm.

170 Thus, for example, in the ILO’s 1998 Declaration, member countries undertake to uphold the core labour standards (See Chapter 1 for more details).
The answer to this question might result in no agreements being signed except with countries that uphold these rights or that are able to do so within a limited period of time. The type of agreement that goes the furthest in this direction is the GSP, which involve certain countries where fundamental rights are not upheld. Insofar as this concerns all developing countries, it would be difficult, in this case, to make the effective enforcement of these universal values a prerequisite for such trade preferences. This is no longer the case within the framework of bilateral agreements where upholding fundamental rights could be considered as a prerequisite.

Setting this as an objective would imply:

1. Including provisions on upholding these values in the texts of the agreement. If this involves recalling certain undertakings without sanctions, fundamental rights could simply be recalled in the agreement preamble. If the political choice is to make this more binding and a prerequisite for implementation of the agreement, it should be included in a chapter or one of the chapters of the agreement setting out the procedure for implementation and any sanctions;

2. the rights deemed to be fundamental must be stipulated and references to international texts included. Insofar as regards labour, these might be the eight conventions set out in the 1998 Declaration. The agreement could be conditional upon prior ratification of the texts or upon a simple undertaking, that should be more or less binding, thus reducing the scope and the establishment of a follow-up procedure to check compliant implementation. The scope of the principles aimed for must, necessarily, be limited in view of a country's real capability to uphold them; a lack of realism would risk rendering the legitimacy of such provisions null;

3. The credibility of such undertakings implies a need to set out a "sanctions" procedure, defined here in the broadest sense of the term, and which may include incentives ("positive sanctions") and monitoring reports, liable to foster peer group pressure or mobilise support among civil society. The procedure may make a distinction between violations of fundamental labour rights, which come under State responsibility, and violations for which employers are accountable. In the latter case, an incentive mechanism may by envisaged: widespread violations would be sanctioned by a partial withdrawal of advantages for all exporters in the industry, thus generating peer group pressure on deviant producers. At the same time, preferences could be modulated depending on the behaviour of each individual company. Similarly, income from any fines may be reallocated to programmes to improve working conditions.

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171 We should, however, remember that the United States has only ratified two of these conventions.
172 In the case of the ILO’s conventions, ratification is barely enforceable, but it does allow for inspection by the organisation, which also draws up an annual report on compliance with core standards, whether or not the eight conventions in question have been ratified.
173 The system could draw inspiration from the incentive mechanism set up under the US-Cambodia Agreement. Let us look at the following example of a country where ten companies each have a 10% share of the export market. The tariff applied in the free trade zone is 0%. Five of the companies are guilty of violating fundamental rights, for example, they employ children. The importing country then "sanctions" the exporting country by imposing an average tariff of 5%, whereby the firms that violate human rights pay 7.5% and those that are compliant pay 2.5%. This mechanism prompts the companies that observe fundamental rights to put pressure on their peers and their governments (which would not be the case if the tariff was maintained at 0% for them), creates a competitive advantage for the compliant companies (which would not be the case if the sanction applied to all exports regardless of compliance) and compensates them for the competitive advantage that may have been enjoyed by the companies that violate fundamental rights. It prompts the government to take action.
4. Inspections will be more credible if they are performed by independent experts. The text must define the authorities in charge of inspection: experts from third countries, private associations, unions, NGOs or the ILO.

4. **Promote decent work and sustainable development.**

This objective comes as a complement to the objectives above, but is not a substitute for them. Unlike the first two objectives, this is not aimed at dealing with the negative effects of opening up trade, but rather at supporting or boosting the endogenous development of labour standards resulting from the part played by trade in development. Unlike the third objective, it does not involve setting observance of universal fundamental rights, in reference to minimum standards, as a condition for implementing the treaty, but rather adopting a dynamic approach aimed at ensuring sustainable development, notably insofar as regards social matters. These standards are therefore no longer linked to an approach in terms of fundamental rights, but to the concept of "decent work" developed by the ILO, taken up by the United Nations and appropriated by civil society and some countries and regional unions such as the European Union.

Subscribing to this objective implies a need to clearly define several points.

1. The range of possible cooperation and assistance initiatives is relatively vast and needs to be defined precisely. It may, for example, involve *fora*, legal advice to tighten up labour laws and, if necessary, enable ratification of the ILO's conventions, training programmes for labour inspectors and assistance to the unions. It may also involve support programmes for implementing social protection systems.

2. The roles played by the various stakeholders also need to be defined: unions, NGOs, companies, international organisations, and national civil servants on secondment.

3. Similarly, the issue of funding for the actions planned and for social protection must be integrated. The Aid for Trade programme could be extended to encompass the promotion of decent work. Cooperation agreements may also be used to this end.

**Section 2 - Aligning objectives and instruments**

The objectives defined for a free trade agreement may require the inclusion of contradictory provisions. Thus, we frequently find that the objectives relative to fair trade entailing the enforcement of trade sanctions may contradict the objectives of the "endogenous" development of decent work standards.

1. **Incorporating labour provisions in the texts**

Looked at separately, these different objectives may be included at different points in the trade agreements.

In addition to setting out the general principles in a preamble, concentrating the labour provisions in a single section affords the advantage of enhancing overall coherence in relation to alternative agreements negotiated separately by different administrations. This option would also make it easier to rationalise follow-up and avoid the involvement of too many different

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174 "Of course we are right to look for ways to use our trade policy to help strengthen labour and environmental protection," Peter Mandelson; December 2007; <http://ec.europa.eu/commission_barroso/mandelson/speeches_articles/sppm185_en.htm>.
bodies. It may also make an agreement more readily acceptable in the eyes of civil society, especially the unions. Integrating "cooperation" provisions in a free trade treaty that is limited to trade aspects is more questionable.

Including common provisions relative to both labour and the environmental aspects of sustainable development in the same section and, occasionally, under the same article, is also debatable. Such aspects are undoubtedly part and parcel of a sustainable development strategy and there are analogies between the two issues: references to international undertakings, the risk of circumventing the regulations for the purposes of competitive advantage and the commitment of civil society. However, while the overall intentions are similar, the specific objectives are usually different and, *a priori*, there is no reason why the same measures should apply: reducing greenhouse gas emissions and enforcing the right to collective bargaining do not involve the pursuit of the same objectives, nor do they require the same measures, which will not have the same consequences. There is no equivalent in the area of labour to the debate over carbon tax. Trade and labour, on the one hand, and trade and the environment on the other hand, are not interrelated in the same ways. National laws are also separate and come under the jurisdiction of different bodies. Among the stakeholders, the unions play a primordial role in labour matters, while environmental issues are more the concern of NGOs. Dealing jointly with the issues at stake within a single "committee" involving civil society as a whole may weaken its influence. In labour matters, this would pose a threat to the tripartism approach to which the unions are so attached and which is applied at the ILO. While trade is likely to affect certain identifiable categories of workers, its impact on the environment is much harder to assess and is not restricted to the national framework. The nature of "international public good" is also much more obvious in the case of the environment (e.g. the greenhouse effect and climate change) than in labour matters. There is also an international labour standards organisation, the ILO, while environmental agreements are not structured with reference to a single organisation.

For the purposes of clarity and effectiveness, labour and the environment should be dealt with in separate sections, although this does not exclude, if necessary, referring matters to a single joint authority for consultation or the settlement of disputes.

2. Incorporating labour provisions in the procedures

Should labour issues be dealt with in the same way as other trade matters, incorporated into the general consultation and dispute settlement procedures, or should their highly specific nature imply that they must be dealt with individually? The unions and NGOs are generally in favour of the former option.

This has the advantage of emphasising the importance of labour-related issues by preventing them from being marginalized in procedures, the effective development of which often seems dubious. There is nonetheless a risk that the legal aspects will take priority over aspects relative to incentives and promotion. This mode of integration entails forms of sanctions that are not necessarily appropriate to labour issues (see below). It highlights the objective of fair trade and is more open to accusations of disguised protectionism. It makes it more difficult to employ suitable instruments, especially in terms of positive sanctions and incentives.

An intermediate approach would be to specify a detailed list of cases that will be dealt with by means of the general procedure, linked to the objectives of fair trade or of upholding universal values. This would mainly involve two cases: any violation of human rights (including
core labour standards) and, if necessary, proven cases of "social dumping", to tackle which specific measures may nonetheless be required.

3. Sanctions

One of the most controversial questions is whether or not to include sanctions. Their counterproductive nature is often mentioned: sanctions are protectionist. In blocking the process of the endogenous development of labour standards, sanctions run counter to their very objectives and, in particular, to the aim of improving workers' lives.

That said, social regression is also a barrier to this process (see Chapter 2). In addition, one of the lessons we have learned from Game Theory, backed up by experimental economics (Axelrod, 1984), is that the stability of cooperation implies that deviant behaviour should be subject to commensurate reprisals. Once the Parties undertake to abide by certain rules, a sanctions process, which may take several forms, appears to be necessary to ensure the agreement's credibility and stability.

The issue of sanctions is also closely related to the objectives set for any agreement. Thus, the objectives of compensating for the undesirable social effects of liberalisation or of promoting decent work do not require sanctions mechanisms. Insofar as regards upholding universal values, including the option of sanctions may consolidate countries that are still weakened by raising the cost of regression: for example, the former socialist states, some Mediterranean and Asian countries and Latin America.

The sanctions applicable to undertakings that affect trade, such as the failure to enforce national law in export free zones, appear to be as legitimate in the area of labour as they are in other areas that are often covered in an agreement, such as counterfeiting, subsidies and dumping. Once again, they are aimed at providing an incentive to the countries to abide by their undertakings and, more particularly, not to undermine regulations or practices for the purposes of competitive advantage.

Some guidelines may be defined with regard to potential sanctions designed to have an incentive or deterrent effect rather than a coercive one:

1. Submission to national authorities should be given precedence. Agreements could thus provide for foreign stakeholders that consider they have been wronged due to practices that infringe national law to submit matters to national tribunals;

2. Sanctions are included as the last resort for exerting pressure on the parties in question to ease the way to reaching an amicable arrangement within the framework of a tripartite consultation procedure (the two countries involved plus a third party);

3. In the case where the undertakings have been violated by a company (or companies), it should be this firm that is targeted rather than the country or the industry as a whole. The counterpart to sanctions for companies that violate certain standards may be to grant additional advantages to companies that comply with them or make improvements to this end. Incentive mechanisms should encourage improvements in practice and prevent certain pernicious consequences, such as companies or workers switching to the informal sector.

4. In a similar vein, it should be possible to target sanctions to an industry when violations of fundamental workers' rights are localised, not the country as a whole.
5. Inspections and transparent audits are one form of sanction, because they damage the reputation of the companies and countries in question\textsuperscript{175}. Targeting companies must also include multinational companies. Governments must undertake to inspect the implementation of the OECD’s guidelines for multinational enterprises. The free trade agreement may encourage private initiatives, such as international framework agreements (Chapter 1; Section 7).

6. When the government’s responsibility is challenged (for example, with regard to derogations or tolerance in duty free zones), sanctions in the form of a fine may be preferable to imposing trade sanctions, which may always be suspected of being "disguised protectionism." This financial assessment may be used to fund social, assistance or training projects. Another option is to pay it into an "Aid for Trade" programme designed to promote exports and thus transform sanctions into an instrument that boosts trade. To underpin their legitimacy, dispute settlement procedures should involve independent experts that have no ties to the governments or companies complained against. The ILO may play a key role in examining complaints.

7. In a bid to avoid any protectionist bias, sanctions could be called into play within the framework of a specific procedure that would be longer than that pertaining to other provisions in the agreement. Sanctions must take into consideration the amount of time required to effectively improve standards in the country or industry in question.

8. "Positive" sanctions, in the form of an extended preference system linked to the development of "good" practices, must also, wherever possible, be targeted at companies. This will help make any incentive mechanisms more effective. Nonetheless, the room for manoeuvre for positive trade sanctions in the form of extended preferences (such as GSP+), is limited by the fact that MFN tariffs are low and the free trade agreement must apply to an extended range of products\textsuperscript{176}. In the case of developing countries, the extra advantages could thus be extended to include financial aid or assistance targeted to support implementation in accordance with the party’s undertakings.

4. Monitoring, inspections and the involvement of civil society.

In addition to ex ante impact studies, ex post impact studies must be carried out, together with reports on effective implementation of undertakings relative to labour matters. In particular, these should monitor changes to key indicators as defined by the ILO (such as the number of labour inspectors). The results must be discussed via consultations and forums at which the stakeholders can each argue and defend their case.

Even if consultations may be managed by administrations with jurisdiction in trade matters, monitoring must come under the responsibility of administrations or organisations with

\textsuperscript{175} The monitoring mechanism could be aligned with the objectives: thus, the "unfair" nature of practices would depend on demonstrating that national law has been violated for the purposes of competitive advantage, while the objective of upholding universal values should refer to the countries’ international undertakings in the matter, regardless of the ends to which such violation of national law was committed. Thus, in the case of core labour standards, ILO member countries have undertaken to uphold them (1998 Declaration), even if they have not ratified the conventions concerned and that these are not therefore enforceable under national law.

\textsuperscript{176} "Positive" sanctions, such as GSP+ or the US-Cambodia Agreement, which consist in extending the preference system, thus provide even greater incentive when accompanied by relatively high MFN tariffs. The GSP+ arrangement thus only provides trade incentives in that the "normal" GSP arrangement excludes sensitive products.
jurisdiction in labour matters: workers' and employers' unions, Ministries (or Directorates-General) for Labour or Employment and the ILO. Independent monitoring must be ensured, notably via a system of third-party assessment.

This system could be linked to the private monitoring and inspections systems in which the various stakeholders are involved together. The movement that associates companies and business networks together with unions and NGOs, for example, "international framework agreements" or sectoral dialogue committees (at European level) could be explicitly encouraged in agreements, although the latter cannot impose consultations within such private-sector arrangements. Such cooperation should go further than merely referring to international standards, and encompass monitoring and follow-up as well.

While the possibility of sanctions and consultation or dispute settlement procedures related to this cooperation may be a means of putting pressure on companies and governments to drive forward improvements, spreading information on the possibilities afforded to civil society for it to take action may also exert considerable pressure. Media coverage of cases of violation is a key factor in ensuring progress and encouraging companies to commit to decent work and sustainable development.

5. The role of countries, regional unions and international organisations

International organisations have been successful with regard to a crucial point: their various resolutions are used as references not only in regional or bilateral trade agreements, but also in the "soft law" of corporate charters. This is true of the ILO (core standards, conventions and declarations), the OECD (conduct of multinational enterprises), the UN (human rights), UNICEF (children's rights) and the WTO (Singapore Declaration).

The credibility and legitimacy of these institutions lies in their multilateral nature. The reports and the transparency of the information that they make public, whether this concerns companies, industries or countries, also makes it possible to act as a more effective liaison between the media and civil society.

Such tasks may be associated with or supplemented by countries or regional unions – the EU, Mercosur or ASEAN, etc. - and incorporated in trade agreements, particularly insofar as concerns the circulation of information and assistance programmes.

In extending SIAs and "Trade-Related Technical Assistance and Capacity Building" programmes, more attention needs to be paid to how the social consequences of free trade agreements are dealt with in the industries most at risk. This is especially true of the agriculture sector, which has taken on greater strategic importance in maintaining global balance, is highly sensitive to trade liberalisation, and in which a large proportion of violations of workers' rights is concentrated due to the fact that farming is located in isolated and widely scattered areas, which

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177 At multilateral level, the WTO's Singapore Declaration is based on the concept of core labour standards without referring to the ILO's conventions.

178 The ministerial negotiations held in Geneva in July 2008, which aimed at finalising the Doha Round negotiations, came up against the determination of certain developing countries, led by India, to minimise the impact of liberalising the agricultural markets by means of safeguard provisions that were deemed excessively restrictive by other member countries, mainly the USA.
makes media pressure difficult, together with the poverty of the sector\textsuperscript{179} and the lack of alternatives (distance from schools, thereby making child labour more widespread).

Given that there is consensus over the ILO playing a predominant role in labour law matters, some task forces, which already exist on a one-off basis, could be developed at the same time as free trade agreements come into effect, in close liaison with the countries in question. Along similar lines to the 2008 Declaration, the ILO could therefore see its role extended in the following areas:

- Inspection and monitoring, if necessary in association with NGOs or trade union networks [the International Federation for Human Rights (FIDH) and Union Network International (UNI), etc.].
- Providing assistance in consolidating the law, competent administrative bodies and training for union officials and labour inspectors.

\textsuperscript{179} Which, nonetheless, is not widespread in countries where there are large farms (e.g. Brazil and Argentina).
GENERAL CONCLUSION

The introduction of the issues of labour and sustainable development comes up against a contradiction that clouds debate: these issues aim to respond to people's dissatisfaction with globalisation, which is viewed as inadequate for driving forward social progress, but, at the same time, they are perceived as protectionist and asymmetrical instruments that work to the advantage of developed countries. Although the debate on the relationships between trade, labour and sustainable development is far from closed, it has evolved considerably in recent years. The experience of trade liberalisation and of certain regional and bilateral free trade agreements shows that:

- While the positive relation between opening up the markets, growth and social progress is not denied, it must not be over-estimated or thought of as systematic. The extent to which it is manifested depends on the institutional, historical and geographical features of a country. The effects vary according to the type of worker, their level of qualification, on the sector, and on the extent to which they are trapped in poverty. For some people, trade liberalisation may, therefore, result in a lowering of their social position;

- these limitations have generated increasing loss of confidence felt among populations with regard to multilateral trade agreements (impasse in the Doha Development Round) and to bilateral trade agreements (failure of the agreement with Colombia and reticence over EU integration and enlargement);

- in such a context, pursuing the trade liberalisation process implies giving more consideration to the implications for social progress in general, and on the potential "losers" in particular, such as farm workers in certain developing countries. Free trade agreements will not be seen as legitimate unless they underlie support policies aimed at reinforcing the connection between trade development and social development;

- up until now, including provisions on labour and sustainable development in free trade agreements has not been used to protectionist ends, even when the goal of "fair trade" is strongly emphasised and when sanctions – which have never been enforced in practice (except in a few rare cases under GSP arrangements) - are provided for.

Incorporating the issues of labour and sustainable development in bilateral trade agreements entails costs but also creates added value for the agreement.

The major costs are:

- opportunity cost in negotiations with partners that have reservations or are hostile to such provisions, which implies the need to offer greater concessions and/or demand less in return;

- the cost of monitoring and assistance for the developed country (or countries) plus that of implementation and inspection, which will be relatively higher for the developing country (or countries);

- the cost of committing to multilateralism, since incorporating such clauses amounts to substituting bilateral regulation for multilateral regulation (WTO), nonetheless ineffective in this area.
Nonetheless, incorporating such provisions creates substantial added value for a trade agreement:

- it guarantees the agreement against the risk of free trade being open to abuse by means of regressive social measures, which makes offering more concessions acceptable, especially in critical industries (cf. the case of the US-Cambodia textile agreement);

- it helps to foster political and social stability within the countries in question, and also makes the economy and trade relations more stable. Thanks to this, it intensifies the positive effect of trade liberalisation on trade in the long run;

- the absence or inadequacy of such provisions can result in the agreement being rejected. They facilitate support throughout civil society, which is concerned by the social aspects of trade liberalisation. In the United States, they are required in order to give free trade treaties a chance of being ratified. They help to create closer ties with the stakeholders, thereby improving their mutual understanding;

- they lend consistency to any undertakings previously made by countries insofar as concerns human rights, core labour standards, the promotion of decent work and sustainable development. In this, they do not generally impose any new undertakings. If they are left out, there is a risk that foreign policy would run counter to trade policy, thereby weakening mutual understanding;

- when they are well targeted, such provisions may also help speed up economic and social progress by encouraging greater efficiency in the labour market, providing incentives to make productivity gains thanks to investment in physical and human capital and improvements in the social climate. They support and boost the endogenous development of decent work standards.

The proposals put forward in this report are designed to clarify the issue by levelling out these contradictions and, as far as possible, to take account of different and often diverging opinions which are not clearly identified and explained either in theoretical studies or in empirical evidence.
Table 10 - Ratifications of the Fundamental Human Rights Conventions by country


Nota: "Human rights" is used in the ILOLEX database, although only fundamental conventions on labour are considered here.

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## ANNEX 2 – LABOUR PROVISIONS IN MAJOR BILATERAL AND REGIONAL TRADE TREATIES

### Table 11 – Labour provisions in major bilateral and regional trade treaties

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<th>Agreements in force</th>
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<th>Explicit reference to core standards</th>
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<th>Extensions</th>
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**Latin America**

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Sources: WTO (www.wto.org/english/tratop_e/region_e/a_e.xls), SICE (http://www.sice.oas.org/agreements_e.asp); USTR (http://www.ustr.gov/Trade_Agreements/Bilateral/Section_Index.html), Asia Regional Integration Center (http://aric.adb.org/comparisonftacontent.php), Instituto para la Integración de América Latina y el Caribe, BID, (www.iadb.org/intal/buscar_instrumento.asp?idioma=es&cid=800&aid=1512); European Commission, DG Trade (http://ec.europa.eu/trade/issues/bilateral/index_en.htm)
### ANNEX 3 - US BILATERAL INVESTMENT TREATIES (BITS)

#### Table 12 - US Bilateral Investment Treaties (BITs)

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Sources: SICE, Foreign Trade Information System
# ANNEX 4 - MAIN TOPICS RELATED TO LABOUR AND SUSTAINABLE DEVELOPMENT IN REGIONAL AND BILATERAL TRADE AGREEMENTS.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Options</th>
<th>Sub-options</th>
<th>Agreements (examples)</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location of provisions</td>
<td>- Preamble</td>
<td>Many FTAs</td>
<td>- Effectiveness</td>
<td></td>
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<td></td>
<td>- Text devoted to labour</td>
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<tr>
<td></td>
<td>- Chapter inside the trade agreement</td>
<td>US FTA since US-Jordan</td>
<td>- Relation with other trade provisions</td>
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<tr>
<td></td>
<td>- Separate agreement on labour</td>
<td>ALENA, Mercosur, Canada-Chile, Canada-Costa Rica</td>
<td>- Ambiguity with the linkage Trade-Labour - Central State's competence in labour laws (Federal States, UE)</td>
<td></td>
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<tr>
<td>Reference of rules</td>
<td>- National Laws</td>
<td>- List of concerned labour laws</td>
<td>ALENA, other US FTAs, Mercosur, Canadian FTAs, etc.</td>
<td>- Mutual recognition of partner's law. - Might a country to lower its own labour laws after the ratification of the agreement?</td>
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<tr>
<td></td>
<td></td>
<td>Improvement of Labour laws</td>
<td>GSP</td>
<td>Precondition or commitment?</td>
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<tr>
<td></td>
<td>- International Laws</td>
<td>- Declarations on human rights and/or sustainable development</td>
<td>Merco; GSP</td>
<td>Binding?</td>
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<tr>
<td></td>
<td></td>
<td>- Core Labour Standards (ILO)</td>
<td>US FTAs (since 1998), Mercosur, Japan-Philippines, etc.</td>
<td>Respect or improvement? Ratification of concerned conventions? What about discrimination? What about regressivity? Are FTAs regressive relatively to SGP?</td>
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<td></td>
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<td>Other Standards (minimum wages, safety, …)</td>
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<tr>
<td>Dispute settlement (DS)</td>
<td>- No</td>
<td>ALENA; Japan-Philippines</td>
<td>Weak credibility of labour provisions</td>
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<tr>
<td></td>
<td>- specific DS</td>
<td></td>
<td>Is the demonstration of a trade–labour linkage a condition?</td>
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<td></td>
<td>- common to trade DS</td>
<td>US FTAs (since Jordan); Canada-Chile</td>
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<td></td>
<td>- Independent arbitration</td>
<td>Independent experts US FTAs; Canadian FTAs</td>
<td>Participation of civil society? Who can initiate a complaint?</td>
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<td></td>
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<td>International committee (ILO ?)</td>
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<tr>
<td>&quot;Negative&quot; sanctions</td>
<td>- No sanction</td>
<td>Mercosur; Chile-Costa-Rica</td>
<td></td>
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<td></td>
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<td>- Fines with ceiling ALENA, Canada-Chile, US-CAFTA</td>
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<td>- fines without ceiling US-Jordan</td>
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<td>- Fines reversed to improve labour rights Canada-Chile</td>
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<tr>
<td>&quot;Positive&quot; sanctions&quot;</td>
<td>More preferences</td>
<td>US-Cambodia; SGP+</td>
<td>Which additional preferences to give in a FTA? Erosion of preferences</td>
<td></td>
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<tr>
<td>Cooperation to improve rights of labour and assistance to enforce labour laws</td>
<td>All FTAs including labour provisions</td>
<td>Role of ILO, NGOs, Trade Unions?</td>
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<td>ILO Participation</td>
<td>Improvement</td>
<td>US- Cambodia ; US- CAFTA,…</td>
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<td></td>
<td>Control the respect of labour rights</td>
<td>US- Cambodia</td>
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<tr>
<td>Follow-up, monitoring</td>
<td>Report ex post</td>
<td>Trade administration</td>
<td>US FTAs</td>
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<td></td>
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<td>Labour administration</td>
<td>US FTAs</td>
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<td>Ministerial level</td>
<td>Canada-Chile; Mercosur</td>
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<td>Report ex ante</td>
<td>Impact Studies</td>
<td>USA, EU</td>
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<td>What about impact on labour laws?</td>
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