

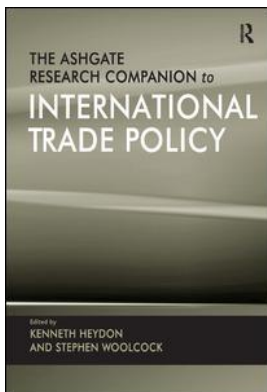
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## **The Ashgate Research Companion To International Trade Policy**

Kenneth Heydon, Stephen Woolcock

### **Trade and Labour Standards**

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Göte Hansson

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# Trade and Labour Standards<sup>1</sup>

Göte Hansson

## Introduction

Demands for international labour standards have been advanced in international economic relations for more than 200 years. The diplomatic efforts have taken various forms, from minor initiatives by individual philanthropists in the form of memoranda and petitions, to the actual formation of organizations and agreements (Hansson 1983, 2003: 1–5 and references therein). A frequent argument in these activities has been the assumed or witnessed relationship between working conditions and international competitiveness. As labour costs are essential for competitiveness, it is obvious that increased requirements for working conditions in an individual country can easily result, at least in the short term, in higher costs of production and therefore in reduced international competitiveness. As a result, trade unions and governments in some ‘old’ industrial countries have found great incentives to invest in various types of political activities for establishing internationally valid labour standards that are linked to the rules of international trade.

## The Diplomatic Struggle for International Labour Standards

As far back as at least 1788, the French banker and Minister of Finance, Jacques Necker, pointed to the fact that if one country changed its working conditions (in this case the abolition of the weekly day of rest), it would affect the country’s relative international competitiveness (Fyfe and Jankanish 1997: 84). However, he also argued that if the same change was to occur in all countries, there would be no effect on the relative competitiveness (Fyfe and Jankanish 1997). As a result, it

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<sup>1</sup> This chapter is a slightly revised version of a chapter, ‘Diplomacy, trade, aid, and global working conditions’, first published in Aggestam and Jerneck (2009), here published with permission from Liber.

soon became common to demand international labour standards and legislation, and to link them to the rules of international trade. According to these demands, once the legislation took effect it would be possible to improve working conditions, notwithstanding the existence of international competition.

Among the most active persons in the struggle for international labour legislation were the English manufacturer and philanthropist, Robert Owen, Charles Frederick Hindley who was the Member of Parliament for Ashton-under-Lyne, and the French liberal economist Jerome Blanqui (Follows 1951; Krawtschenko 1910; Mahaim 1934). While Owen is frequently mentioned as the founder of the idea of international labour legislation, Follows (1951: 10) argues that Hindley is the person who deserves to be given this recognition. Hindley argued for international labour legislation citing: 'There is only one way of accomplishing it [the reform of manufacturing working conditions] while avoiding its disastrous consequences: this would be to get it adopted simultaneously by all industrial nations which compete in the foreign market' (J.A. Blanqui, *Cours d'économie industrielle, 1838–1839* [Paris 1939], here quoted from Mahaim 1934: 4).

However, the first person who, in a publication from the International Labour Organization, is mentioned as 'the principal originator of the idea of international labour legislation, and precursor of the work of the International Labour Organization' is Daniel Legrand, who was an Alsatian manufacturer (ILO 1978: 3; Mahaim 1934: 4).

The work of Karl Marx in the 1860s, drawing up the Provisional Rules of the International Workingmen's Association should also be mentioned among the early efforts to internationally improve working conditions and achieve greater emancipation of the working class (Follows 1951: 60). After a not-so-successful period, labour leaders in Europe succeeded in 1889 in forming the 'Second International' that aimed at paving the way for social reforms through labour market legislation, nationally as well as internationally. They also agreed to proclaim 1 May as a worldwide labour holiday that is still recognized and respected in large parts of the world today (US Department of Labor 1920: 50f.).

The struggle continued and conferences were held at the start of the twentieth century and during the First World War. Eventually, in 1919, diplomatic and trade union efforts resulted in the inclusion of the issue of working conditions, and thus the protection of workers, in the Treaty of Versailles (Shotwell 1934: 424ff.). A further step was taken in the preamble to the Constitution of the International Labour Organization (ILO) which says:

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nationals which desire to improve the conditions in their own countries. (ILO 1980: Preamble)

However, even though this can be seen as an important step on the way towards international labour legislation, it is important to stress that the ILO does not include any explicit trade sanctions in the case of noncompliance. Therefore the struggle

for linking working conditions to international trade agreements continued. In the statutes of the ITO, drawn up after the Second World War in 1948, it is stated that:

The Members recognize that ... all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and in the improvement of wages and working conditions as productivity may permit. (UN 1948: Article 7(1))

Even though an agreement on international trade was greatly needed, the statutes of the ITO were never ratified. In 1947, however, as a part of the ITO discussions, the General Agreement on Tariffs and Trade (GATT) had been agreed upon in Geneva. In the GATT there is no other explicit link between trade and working conditions than Article XX on actions against products produced by prison labour. In some ways, however, the ideas of the ITO remain alive in the GATT under Article XXIX where it is stated that:

The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapters I to VI inclusive and of Chapter IX of the Havana Charter. (GATT 1986: Article XXIX)

In 1954, the work on linking working conditions to international trade continued, and in Europe the work on a Social Charter for the members of the Council of Europe began. In 1961 the final text, largely based on ILO conventions and instruments, was agreed upon (European Social Charter and International Labour Standards, 1961).

The issue of labour standards in trade policy was given increased attention in the 1970s, alongside globalization, the increased competitiveness of the Newly Industrialized Countries and the problems relating to the 'first' oil crisis at the beginning of the decade. Thus, a number of proposals demanding the inclusion of labour standards (a social clause), into the rules governing international trade were presented by trade unions in the 'old' industrial countries, for example, the International Metalworkers' Federation (1976), the Executive Council of The American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) in the United States (US Department of Labor 1978: 16), and the International Confederation of Free Trade Unions (ICFTU) (1979). The Department of Labour in Canada (1979) was also active and presented a document that emphasized solidarity with workers in developing countries, stating:

A fair labour standards system would help those of the developing countries which are seeking to improve their labour standards but may be deterred by the threat of competition from countries which are less scrupulous. (Department of Labour, Canada 1979: 4)

It is interesting to note the great similarities between this statement and the wording of the Preamble to the ILO Constitution back in 1919. The explicit link with

developing countries was also present in the European Economic Communities (EEC) proposal to include labour standards in the Lomé Convention by stating that the trade preferences offered by the EEC should be (are) conditioned by requirements on working conditions. It should be noted that this proposal was rejected by the developing countries. However, the EEC (1980: 4) continues to stress the relationship between working conditions and trade.

Among other sources in which the link between working conditions and trade is explicitly mentioned we note the Brandt Report from 1980 (The Independent Commission on International Development Issues 1980: 176) and the regional trade agreements in North America, NAFTA, or more precisely, the supplementary North American Agreement on Labour Cooperation (NAALC) in 1993 (Leary 1996: 206).

In Europe a 1985 white paper on the creation of the Single European Market also discussed the labour standard issue and in 1988 a charter on fundamental social rights for workers was adopted by all member states apart from the United Kingdom. The UK continued its resistance when the Social Charter was agreed upon by the other EEC members. It should, however, be noted that the Charter was to be implemented on a voluntary basis and was not included in the Maastricht Treaty (Brown et al. 1996: 233).

In the last decade of the twentieth century, the issue of working conditions was vigorously debated in Europe (Sapir 1996: 555f.). One such issue that has been much discussed during the second half of the twentieth century relates to the enlargement of the European Union and the increased focus on the four fundamental freedoms (free movement of goods, services, capital and labour). Working conditions for non-permanent short-term migrants in particular have created severe tensions within the trade union movement. It should, however, be noted that the underlying philosophy behind both temporary and permanent migration is the same as the philosophy behind international trade in goods and can thereby be seen as an important source of economic growth.

The European Union Generalized System of Preferences (GSP) towards developing countries also includes requirements on working conditions. It is especially worth noting that the EU GSP-plus system deals with the core labour standards, that is, the freedom of association, the right to organize and to collective bargaining, non-discrimination in employment and occupation, prohibition of forced labour and of child labour.

At the GATT negotiations in Marrakesh 1994 and at the WTO Ministerial Conference in Singapore 1996 the issue of linking labour standards to the rules of international trade was on the agenda, but was left largely unresolved (see the press brief from the Singapore meeting, [www.wto.org/english/news\\_e/pres96\\_e/pob.htm](http://www.wto.org/english/news_e/pres96_e/pob.htm)).

One of the conclusions drawn by the then WTO Director-General was that there was a wide support for the opinion that 'All WTO member nations oppose abusive work place practices, through their approval of the United Nations Universal Declaration of Human Rights'. But he also found wide support for the opinion that: 'Trade sanctions should not be used to deal with disputes over labour standards'.

And in 1996, the OECD countries published *Trade, Employment and Labour Standards* (OECD 1996), updated by *International Trade and Core Labour Standards* (OECD 2000), without concluding that labour standards should be linked to international trade rules.

Towards the end of the twentieth century the United Nations Secretary-General Kofi Annan presented a challenge to the global business society in announcing the Global Compact, consisting of ten principles of business behaviour. Among the ten principles, four relate directly to the issue of labour standards:

- Principle 3: business should uphold the freedom of association and the effective recognition of the right to collective bargaining.
- Principle 4: the elimination of all forms of forced and compulsory labour.
- Principle 5: the effective abolition of child labour.
- Principle 6: eliminate discrimination in respect of employment and occupation.

Another interesting concept, which was launched by the ILO in the publication *A Fair Globalization: Creating Opportunities for All* (ILO 2004), is the concept of 'decent work'. The ILO defines 'decent work' in the following way:

Employment must be freely chosen and provide an income sufficient to satisfy basic economic and family needs. Rights and representation must be respected, basic security attained through one form or another of social protection, and adequate conditions at work assured. (ILO 2004: 64)

It is this concept of working conditions that has been at the very centre of the various demands for international labour standards to be linked to international trade and that has continued to be debated, in different forms, ever since the end of the eighteenth century.

From the above analysis, we can conclude that the everlasting struggle for international labour standards and their link to international trade, and thus globalization, has successfully survived as an important issue on the diplomatic agenda. One reason is that the trade unions have kept the issue alive and also received support from some governments in the 'old' industrial world that have feared the increased competition from 'new' exporters of manufactures that are said to have achieved parts of their competitiveness by means of less stringent working conditions. It is also clear that some industrial countries have complemented this view by arguing that international labour standards linked to trade rules can be seen as an act of solidarity with workers in foreign countries where the requirements of working conditions are less demanding.

In conclusion, diplomatic efforts to establish international labour standards have been quite successful in at least two respects: firstly, in succeeding to create an international labour organization, the ILO, that supervises global working conditions, and secondly, in keeping open the debate about linking such working conditions or labour standards to the international trade system. One important part of that long-lasting debate has been to relate the demands for improved

working conditions or decent working conditions to threats of trade sanctions. Let us therefore turn to this aspect and ask ourselves why such links have not been established to any significant degree.

## Trade Policy Threats – a Failed Strategy

Based on the brief history above of international labour standards, we have noted that the demands for such standards have frequently, but largely unsuccessfully, been linked to threats in the form of trade sanctions. One reason for the lack of success has been the fact that opponents of such a link have been quite successful in arguing that this link would constitute an act of protectionism (Brown 2000; Hansson 1983: 29ff., 2003: 6ff.; Maskus 1997; OECD 2000 and references therein for a discussion of the political economy and the appropriateness of labour standards in trade policy). Let us here present some of the arguments that have been advanced against labour standards in international trade agreements.

Firstly, even though it would be possible to introduce labour standards into the rules that govern international trade, for example via GATT Article XXIX, referred to above, or Article XX dealing *inter alia* with exceptions to protect human life or health, the practical difficulties of implementing such standards efficiently would be great. The use of the WTO's teeth – the advocates' principal argument given their perception of the ILO as a toothless tiger – would prove problematic in practice. The use of the WTO's enforcement authority would require that, in invoking the WTO dispute settlement mechanism, a plaintiff would need to prove that injury had occurred and that it was directly the result of a country's noncompliance with core labour standards and not, for example, simply the result of lower labour costs. Drawing such a distinction and establishing the causal link between labour standards and injury would not be easy. We should add to this the difficulties in gaining acceptance of a global standard of implementation since countries differ with respect to the level of economic development, climate and culture (Hamilton 1978a, 1978b; Sanger 1920).

Secondly, and this is a significant part of the argument, at least among economists, there is no general economic justification for the sanction-driven incorporation of labour standards. There is abundant analysis indicating that compliance with core labour standards serves to stimulate rather than impede economic development and that, accordingly, compliance is seen to increase as countries grow (OECD 2000). Stiglitz (2000), for example, finds that the 'high road' to economic development, which he takes to include the right to collective bargaining, can enhance the overall efficiency of the economy by facilitating income redistribution that would not otherwise occur or which would be more costly to implement through the tax/welfare system. For its part, the ILO (1998) finds that collective bargaining and tripartite dialogue are necessary elements for creating an environment that encourages innovation and higher productivity, attracts foreign direct investment and enables society and the economy to adjust to

external shocks such as financial crises and natural disasters. Rodrik (1997) reaches a similar conclusion. And Palley (1999) finds that countries which improved rights of freedom of association experience an increase in GDP growth of between 1.2 and 1.4 percentage points in the ensuing five-year period.

Thirdly, and perhaps most importantly from the point of political economy, such an incorporation would mean an open deviation from the free trade principle that, at least in wording and in various agreements, is widely accepted in large parts of the world. Thus, deviating from this principle and thereby also breaking existing international agreements can be expected to have quite high political costs in the form of loss of political prestige and through the risks of protectionist capture, and consequential retaliation.

Fourthly, it is relatively easy for less developed countries to argue against the incorporation of labour standards in trade policy by claiming that it is a way for developed countries to try to place the burden of domestic problems on poorer countries, thereby hampering their possibilities of growth and development through trade. Sanctions would not address the underlying reasons for noncompliance and would run counter to the principle we owe to Nobel laureate Jan Tinbergen that there should be as many independent policy instruments – here trade policy and social policy – as there are distinguishable goals (Tinbergen 1956).

Finally, it is also quite easy to claim that their incorporation would be a severe interference in other countries' sovereignty, and especially for the less developed countries, an interference with their ability to form their own society and their own policies.

On the other hand, the advocates of linking labour standards to the rules of international trade sometimes state that such a link would constitute a force against increased protectionism in the form of traditional trade barriers. This argument is based on the presumed success in introducing traditional trade barriers based on poor working conditions. Such arguments receive support easily, but can be difficult to test and verify empirically (Hansson 1983).

To conclude, we can note that the issue of linking working condition requirements to the multilateral trade system by threatening noncompliant countries with trade sanctions has been on the international agenda for more than 200 years. However, such a link is more or less absent in multilateral trade relations (except the clause on prison labour). Thus we conclude that the strategy to introduce labour standards into the multilateral rules that govern global trade relations has largely failed when using the argument that labour standards help to combat protectionism.

What is happening by default, however, is that in the absence of multilateral provisions via the WTO, bilateral and regional preferential trade agreements (PTAs) are coming increasingly to incorporate provisions dealing with core labour standards – particularly agreements involving the United States and, to a lesser extent, the EU (Heydon and Woolcock 2009: 138). The problem here of course is that each of the pitfalls identified above is equally applicable to social provisions incorporated into PTAs. Hence the need for continued vigilance and caution.



## **Aid Policy – a Promising Strategy?**

In the previous section we found that the strategy based on trade policy threats has been largely unsuccessful. We have found various reasons behind the successful opposition to the incorporation of labour standards into the rules of international trade. Besides being a politically costly strategy, the higher costs of production have strengthened political opposition in countries with poor working conditions.

One alternative to press for improved working conditions using trade threats can be by introducing external pressure as a positive incentive. This can be done by offering foreign assistance, conditional on the acceptance of standards and the process of successive improvements in working conditions. This policy can, in principle, be designed in two alternative ways, which will lead to differing effects. The differences will arise as a consequence of whether the foreign assistance takes the form of direct support to the specific sectors that are required to improve their working conditions, or whether the aid is introduced as direct budget support.

In the first case, with sector-specific support, the cost increases that arise as a consequence of the improvements in working conditions will be partly or completely offset by the aid to the sector. This means that the net costs of the changes will be reduced or even eliminated. Thus, in this case we can expect political opposition in the recipient country to be diminished or removed entirely.

In the second case of labour conditioned foreign assistance, aid takes the form of national budget support – the whole economy, in addition to the public sector, will be stimulated through the increased budget of the country. Thus, in addition to the improved working conditions, the price of (and thereby the allocation of resources to) the public sector tends to increase.

Taken together, the introduction of aid-conditioned international labour improvements can be expected to meet less opposition in countries subject to external pressure to improve working conditions than has been the case when various trade policy measures, such as social clauses, have been suggested.

## **Conclusion**

The issue of including labour standards in trade policy has a long history, and it is interesting to note the change in focus of the debate during the course of history. Early on, the demands focused on hours of work and working time for women. By the time of the formation of the ILO, the focus was on what can be called human rights-based labour standards, such as the rights of association and collective bargaining, child labour, forced labour and non-discrimination in the labour market. Then, in the 1960s and 1970s, the increased competitive strength of the Newly Industrialized Countries (NICs) brought wages to the fore of the ‘fair competition’ debate. The 1980s saw the debate focus on the circumstances in which some countries see their export sectors and geographically separated zones (export

processing or free zones) favoured as regards the liberal and low requirements on various labour standards. Finally, during the last couple of decades, the fair labour standards debate has once again come to focus on the core, or human rights-based, labour standards. This is the case particularly with the highly emotional and sensitive issue of child labour, an issue that has been part of the debate more or less continuously ever since the beginning.

During the post-war period the advocates of linking labour standards to the international trade system have emphasized international solidarity and human rights arguments rather than protectionist arguments for such standards. However, the argumentation has gained limited success. The changeover to human rights-based labour standards during the past decades can be seen as an attempt to make the insertion of labour standards or a social clause into the rules that govern international trade more morally acceptable and efficient in the international debate. It can also be seen as a way of reducing the opposition of economists to labour standards in trade policy by emphasizing human rights motives.

This chapter has shown that the traditional way of looking at trade-related labour standards has been far from successful, even though diplomatic efforts have been significant for many decades, as most clearly shown in the establishment of the International Labour Organization in 1919. By shifting the focus from trade policy measures to aid policy, a better chance of success can be expected, provided that donor countries really are willing to pay the price, not only in terms of potentially increased commodity prices but also in the form of tax-based aid financing. Thus, the suggested change can be seen as a test of the seriousness of the solidarity argument that has been advanced frequently in the international labour standards debate. To some extent consumer support for and engagement in the fair trade movement and fair trade labelling can be seen as a sign of such a willingness to pay for global improvements in working conditions. Such willingness is also apparent in the form of government policies to finance improvements abroad.

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