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Trade regulations and global production networks

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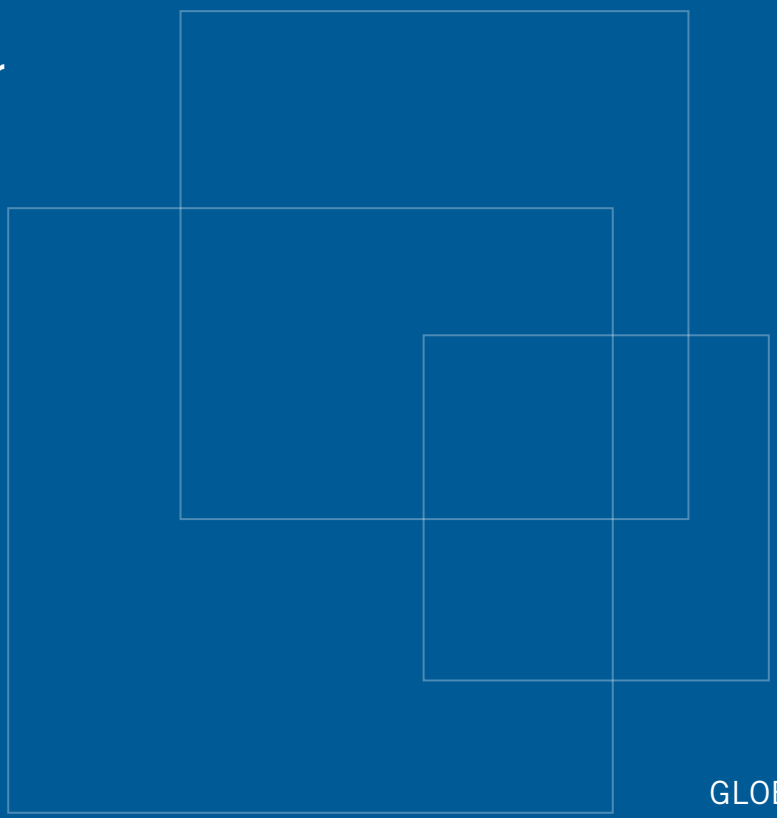

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TRADE REGULATIONS AND GLOBAL PRODUCTION NETWORKS - WHAT IS THE CURRENT IMPACT AND WHAT WOULD HELP TO IMPROVE WORKING CONDITIONS THROUGHOUT THE SUPPLY CHAINS?

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EXECUTIVE SUMMARY

The study provides an overview of some, not all initiatives to improve working conditions throughout global production networks. On the basis of secondary sources it assesses the contribution of the instruments favored by these initiatives. It starts with an economic justification of international workers' rights.

The debate about *international workers' rights* revolves primarily around enforcing standards in developing countries. Opponents of internationally enforced workers' rights see them as an obstacle to closing the industrial gap. They argue that better living and working conditions cannot be legislated but would be the natural outcome of industrialization. The study challenges this reasoning by, first, looking at the empirical evidence concerning growth in exports and respect for core labor rights. Second, it shows that even neo-classical economics lends itself to theoretical justifications of international labor rights. Third, it argues that the question of competitiveness is not a North-South issue, but a South-South issue. Countries in the South are in competition with each other because they operate on a similar level of industrial development. The short term costs associated with a strict adherence to core worker rights will put the respective country at a competitive disadvantage vis-à-vis its competitors. Therefore, developing countries are limited in their ability to raise labor standards on their own. This competitive situation, however, is the very reason why labor rights have to be negotiated internationally.

The World Trade Organization (WTO), however, has refused to lend its dispute settlement process to the enforcement of international labor rights. However, *labor chapters in bilateral trade agreements* are compatible with WTO rules under certain circumstances. In recent years, many of those agreements feature such a chapter. Some chapters are promotional, some even conditional. The effectiveness of the conditional labor chapters are somewhat higher but far from perfect because the process leading up to sanctions is highly political. Among the conditional labor chapters the ones with "pre-ratification conditionality" are somewhat more effective than those with "post-ratification conditionality". Some scholars have drafted context specific model labor chapters which, if implemented, promise better results. Most effective are subsidies for one-time investments to bring factories into compliance in order to overcome management's uncertainty about the benefits of better working conditions.

The use of *public procurement* to pursue social aims is permissible under certain conditions in Europe (and especially for those states not members of the Agreement on Government Procurement, GPA). However, there is little awareness of its potentials and even less among workers of such requirements for their employers supplying the public sector or publicly funded projects.

Global Framework Agreements between global union federations (GUFs) and transnational corporations (TNCs) were successfully used in some instances to redress violations of workers' rights at subsidiaries and first-tier suppliers.

However, in many cases local trade unions in dispute with local management are not aware of the existence of such agreements or were unable to link their strategies to the avenues made available by the agreements. Therefore, local actors have to be involved from the start in the negotiation and implementation of the framework agreements.

In response to negative publicity, many private companies voluntarily adopted *codes of conduct*. Over time these codes have increasingly included references to ILO conventions and guidelines from other international organizations. In practice, however, most monitoring and auditing processes fall short of the codes' promises. The departments for corporate social responsibility are clearly subordinated to the purchasing departments. Without legal enforcement, the codes are at best reminders for good behavior, at worst they amount to whitewash.

In comparison to these "business-driven" codes, "*consumer-driven*" codes demand significantly higher standards and also limit managerial discretion. They need therefore public attention and support to pressure management. Maintaining this pressure is very challenging.

The combination of labor-driven and consumer-driven mechanisms for the protection of workers holds some promise for enforcing labor rights. The best example is the *Accord for Fire and Building Safety* in Bangladesh. Over 180 retailers and brands and Global Union Federations signed a legally binding agreement which obliges the company to pay an annual fee of up to $500,000 per year for five years for safety training, inspections and for structural repairs on buildings. Until mid-2015, the working conditions in the second-tier factories have improved in the area of occupational safety and health. However, funds were not provided for the more expensive measures of making the buildings safer. The situation concerning pay, overtime and collective bargaining did not improve.

The United Nations *Guiding Principles on Business and Human Rights* cover also the corporate responsibility to respect human rights. Companies are asked to practice due diligence in handling human rights risks in their own responsibility, going beyond the respect of national laws. Since the Guiding Principles break new legal ground, many issues are yet to be clarified. However, governments can translate these principles into national law and thereby provide clear guidance for corporations to effectively respect human rights throughout their production systems.

In preparation for the G7 summit in 2015, the German Government put forward an agenda for a *stakeholder action* by representatives from governments, businesses, social partners, international organisations and civil society along global supply chains. The G7 declaration referred to it, but the agenda remains at a voluntary level. Asymmetric power and wage relations, different labor and ecological standards have been drivers for vertical disintegration and the creation of global value chains – they are an integral part of today's business models.

Multi-stakeholder initiatives were invented by trade unions and human rights organisations, but not by transnational corporations. Therefore, such a G7 initiative may only serve to provide legitimacy to the struggle for better working conditions but does not contribute to it in practical terms. The miniscule funding provided for the 'Vision Zero Fund' to prevent work-related accidents reflects the limited political will to confront the business community with stricter rules for its conduct.

In sum, so far none of the many initiatives seem to be particularly effective. Global Framework Agreements seem to be quite effective as long as local actors are involved right from the start. The United Nations Guiding Principles hold some promise, if governments are willing to support and pressure companies to implement them. The same holds true for the social conditionality of public procurement. Most promising remains trade conditionality. However, if only a rather weak social chapter in a trade agreement is politically achievable, it risks justifying trade liberalization measures and the strengthening of investors' rights which will undercut the bargaining strength of labor. It is therefore not sufficient to discuss specific instruments for the promotion of labor rights along value chains; one also needs to address the general governance of international trade and investments.

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1. INTRODUCTION

While international trade has resulted in great affluence in some advanced capitalist countries, the ongoing liberalization of trade has not been accompanied by increases in prosperity everywhere. In many emerging market economies, working conditions, wages, and environmental standards have even deteriorated, including the plants producing for export (Marx et al. 2015). Every year, the International Trade Union Confederation (ITUC) documents widespread abuses of workers' rights.

The debate about international trade and labor rights at least goes back to the beginning of the last century and led to the establishment of the *International Labour Organization* (ILO) in 1919. As of 2015, the ILO has 186 member states and has adopted 189 conventions, including 8 fundamental conventions, which are part of the *Declaration on Fundamental Principles and Rights at Work* adopted in 1998, at the 86th International Labour Conference. The fundamental conventions are: freedom of association (Convention No. 87); the right to organize and bargain collectively (Convention No. 98); and prohibitions of forced labor (Convention Nos. 29 and 105), discrimination in employment (Convention Nos. 100 and 111), and child labor (Convention Nos. 138 and 182). The workers' rights covered by these core conventions are an inseparable part of human rights because they were adopted by consensus of ILO members, because they were ratified by most member countries, because they are covered by UN covenants and several human rights declarations, and because they have been reaffirmed again and again at international summits (Salem/Rozental 2012).

While the ILO conventions have not prevented the erosion of workers' rights in many countries, it is most likely that without them the erosion would have been much more pronounced. In countries that have ratified conventions, they have become national law and are therefore in principle enforceable through the national legal systems. Furthermore, they have been frequently invoked in defense of workers' rights. The court of public opinion should not be underestimated ("boomerang"). Nevertheless, given the manifold violations of workers' rights, there is an urgent need to develop mechanisms that effectively protect labor rights throughout the world. One way would be to strengthen the enforcement mechanisms of the ILO (e.g. Hepple 2006). Another way is to look for instruments beyond the ILO. The international labor movement and labor friendly NGOs have reacted to the ILO's limited effectiveness in dealing with labor rights abuses in the context of a rapidly globalizing economy by pursuing many different strategies.

In this study we want to provide an overview of some of these initiatives and assess on the basis of secondary sources their contribution to improving working conditions throughout global production networks. We start out with the long-standing demand for a so-called social clause, i.e., a labor rights provision to be embodied in the World Trade Organization (WTO) and more recently in bilateral

trade agreements. The Trans Pacific Partnership, initialed by the heads of the participating countries in October 2015, contains such a clause. We move on to assess the following instruments for the improvement of working conditions: public procurement policies, Global Framework Agreements between global union federations and transnational corporations, codes of conduct of corporations, and civil society initiatives such as social labels. We also look at the recently pronounced United Nations Guiding Principles on Business and Human Rights which call on companies to adopt human rights due diligence processes. Finally we take a look at the very recent G7-supported German initiatives for "responsible supply chains" including a 'Vision Zero Fund' for occupational safety.

2. ECONOMIC ARGUMENT FOR INTERNATIONAL WORKERS' RIGHTS[1]

Predictably, employers' associations, many governments and the overwhelming majority of economists contend that trade agreements are not an appropriate means of enforcing minimum standards. However, critics do not stop at the question of how to enforce international social standards but also cast doubt on the usefulness of international standards in principle (e.g. Grossmann/Michaelis 2007; Stern, Robert/Terrell, Katherine 2003). It is, therefore, necessary to examine whether international labor standards serve a useful economic purpose.

The question of whether international workers' rights are economically justified touches upon the fundamental economic understanding of the nature of the market as a social regulatory mechanism. In highly simplified terms, the various concepts of the market can be reduced to two paradigmatic approaches: the neo-classical and the neo-institutional »schools«.

From the neo-classical standpoint, welfare-increasing efficiency gains can be achieved in foreign trade only if unhindered trade permits product specialization on the basis of comparative cost advantages. Even in the case of infant industries, protection is considered to be a suboptimal policy. Any domestic distortions should be addressed by subsidies, rather than protection. The neo-institutional approach, by contrast, points to the destructive potential that market mechanisms can have in trade between nations because of the absence of a central regulatory authority at an international level. According to that view, foreign trade should, therefore, be flanked by domestic social legislation and regulated externally by multilateral agreements.

If criticism on purely ideological grounds is to be avoided, it is necessary to challenge these approaches on their own »home domain«. Therefore, we will show that, despite the prevalent opposing view among neo-classical economists, even neo-classical economics lends itself to theoretical justifications of international labor rights. Practitioners of institutional economics, of course, provide many reasons for taking the »high road« on labor rights. However, even

[1] This section builds on Scherrer 2012.

an institutional viewpoint cannot rule out short-term costs for countries adhering to higher standards. In contrast to most economic treatises on international labor rights, we will argue that the question of competitiveness is not a North-South issue, but a South-South issue. Even small increases in costs due to higher standards will put the respective countries at a competitive disadvantage vis-à-vis their competitors at a similar level of industrial development. Therefore, developing countries are limited in their ability to raise labor standards on their own. This competitive situation, however, is the very reason why labor rights have to be negotiated internationally. Raising standards will have to be done in conjunction with other countries by multilateral agreement.

2.1 Neoclassical Defense of Workers' Rights

The criticism of social standards from a development perspective comes in two forms. The »hard« variant takes the position that industrial development requires a repressive employment regime. This has been promoted by Gary Fields but enjoys little support in the economic profession. The »soft« variant only demands that the employment regime contains no minimum standards that slow down development. It enjoys support among the majority of neoclassical economists.

The soft variant of the criticism takes issue with international standards mainly in the areas of pay, health, and safety at work (standards under consideration for some codes of conducts and social labeling programs), but also in the field of workers' rights. As a rule, it is argued that every officially imposed increase in production costs harms the prospects of sales in the world market, and hence the development prospects of the countries concerned. Every increase in labor costs supposedly jeopardizes the developing countries' main comparative advantage, namely abundant labor.

Core workers' rights can, however, also be justified within the neoclassical paradigm, mainly as responses to specific market failures. For example, freedom of association is a means to counterbalance the market power of employers. The bargaining power of an individual worker may be very limited faced with a powerful corporate employer or group of employers. The prohibition of forced labor and the exploitation of children belong to the core principles of the neoclassical market order: the market is defined as an exchange of goods among free persons. Furthermore, the adherence to these rights can enhance market efficiency. If discrimination is practiced, employment and earnings opportunities are allocated based on considerations not related to how well someone does a job. Anti-discrimination measures may facilitate the employment of individuals in jobs for which they are best suited. Collective bargaining institutions allow efficiency gains by encouraging workers to share their views with management about the running of the enterprise (Freeman/Medoff 1984).

Market failure is also to be found on the world market. Due to the leveling effect of competition, violations of core workers' rights in some countries can lead to their disrespect in one's own country (Leebron 1996: 54). In the extreme, a race to the bottom can ensue, pushing the standards of all trading partners to the lowest

level. Most neoclassical economists reject the argument of a »race to the bottom« (e.g. Klevorick 1996). The term »destructive competition«, however, has been used within the neoclassical paradigm (Bator 1958; for a discussion within the debate on international labor standards, see Krueger 1996). If, for whatever reason, market exit is difficult, supply might stay the same or even expand despite lower prices. Destructive competition takes place in the labor market when workers offer their labor power at wages that do not cover their reproduction costs. An industrial worker, who cannot afford to send his children to school or in case of illness to a hospital, has not given his labor power according to his reproduction needs.

While in the OECD countries modern technology is one of the main drivers of unemployment (Brynjolfsson / McAfee 2011), rapid population growth contributes to a structural oversupply of labor power in the non-OECD world. Insufficient social standards are among the causes of population growth, especially the discrimination of women in education and in employment. Without welfare measures for old age, having a large number of children may remain attractive especially in traditional agricultural settings. Even without population growth labor power can be in oversupply. This is the case when industrial agriculture or world-class manufacturing meets subsistence or traditional industry. The displacement of the low-productivity subsistence agriculture or of inefficient industry (which had been protected by high transport costs or high tariffs) can release workers faster than the more productive market-oriented agriculture or modern manufacturing industry can absorb. This oversupply of labor power is exacerbated by impediments to market exit. The »doubly free« wage laborer usually lacks an alternative to wage labor. Once the subsistence economy has been left, return is almost impossible. For one, the subsistence agriculture will be pushed from the more fertile soil by the more productive industrial agriculture. The remaining pockets of subsistence agriculture will increasingly be less able to support its population and even less any returnees from urban areas. In addition, those who have left frequently find the hard work in traditional agriculture even less attractive than a life on the margins of big cities.

The lack of a social safety net as well as falling wages increase the need to expand the supply of labor power. Without corrective intervention, the impoverishment of large segments of workers can turn into a self-supporting downward spiral: an increase in labor supply forces real wages down, lower wages in turn increase the labor supply in the next round. In extreme cases, children are forced to work in order to secure the survival of the household. The more children are employed, the more adults are made redundant, which in turn forces them to send their daughters and sons to work. If the budget for education were to be cut because of a debt crisis, the number of children working would increase. This causal connection has been well documented, for example for Peru (Pollmann/Strack 2005: 26-27).

In order to restore an economic equilibrium according to market logic, some suppliers have to exit the market. Some neoclassical welfare theorists have rejected this solution even in the case of industrial plants. They argue that if the momentarily underutilized capacities would find demand at a later point in time, but if at that time it would be very costly to rebuild these capacities, then the regulation of competition is justified (Kahn 1971: 175). Market exit is not a viable solution for most wage earners for the above-mentioned reasons. Therefore, the regulation of competition is to be preferred, i.e. limitations on working time. In a historic perspective, this has been the answer to the oversupply of labor power during industrialization: the struggle for the eight-hour day, the prohibition of child labor, and (from today's viewpoint more problematic) the displacement of women from gainful employment. If such collective solutions are not available, the destructive competition can cross borders via trade (see below).

2.2 Neo-institutional Arguments: Workers' Rights for Sustainable Development

From an institutional perspective in economics, workers' rights contribute to long-term sustainable development. Both demand-side and supply-side arguments are put forward to demonstrate the stimulatory growth effects of workers' rights. From a demand-oriented perspective, highly unequal income distribution is regarded as an obstacle to sustainable development (Herr/Ruoff 2015). First, it is argued that such inequality impedes the emergence of a mass market in durable consumer goods, so that developing countries cannot emulate the »Fordist« growth model of the United States and Western Europe. Second, the concentration of national income in the hands of a few people produces an excessively high savings ratio, so that growth-stimulating investment is too low. It also increases the likelihood of capital flight (Boyce/Ndikumana 2002). Freedom of association and the right to collective bargaining are necessary preconditions for a more equal distribution of income (Gross et al. 2015).

The supply-side institutionalists cite two reasons why minimum social standards and resulting higher wages have a positive effect on a country's economic development prospects. First, higher wages promote the development of »human capital«, without which no economic development is possible. Wages close to or below the minimum subsistence level make it impossible for workers to invest in their own education, or that of their children, and are often insufficient to pay for necessary health care. Higher wages, on the other hand, would not only enable workers to maintain and enhance their qualifications but would also increase the incentive to attend school and adopt performance-oriented behavior (Sengenberger 2005). There is evidence that the early involvement of children in work can have serious consequences for their health and development (UNICEF 2009).

Second, they argue that social standards are necessary for making the transition from an extensive to an intensive use of labor. Under the prevailing system of sweatshops, employers have no particular interest in using labor intensively

because workers are paid based on how many items are produced; hence, no fixed labor costs arise. Capital stock is usually small and consists of outdated machinery that cannot be used more efficiently. The resulting low labor productivity in turn limits raising wages. In such a situation, minimum social standards could increase interest in measures to raise productivity by changing the structure of incentives for firms and workers. For firms, they would make the extensive use of labor less attractive; for workers, they would make it more rewarding to strive for the success of the firm. If, for instance, a strategy of »flexible specialization« is to succeed, certain preconditions must be met to ensure that workers can earn better wages, show themselves to be cooperative, and acquire professional qualifications. Social standards could help create those preconditions (Piore 1994). As the minimum wage in Puerto Rico increased, for example, turnover and absenteeism declined, job applicants were more thoroughly screened, and »managerial effort« improved (Robertson et al. 2009: 9-14).

The results of empirical studies assessing the impact of trade liberalization on labor market outcomes are inconclusive. A recent review of several studies reveals positive as well as negative effects of trade liberalization on employment, wages, wage dispersion and informality depending on sector characteristics, the propensity to trade and skill differences. Concerning unionization and bargaining power, however, the majority of studies finds negative impacts (IILS 2015: 11-16). How can one align the institutionalist argument with these findings?

2.3 Head-to-Head: South-South Competition

While almost all countries have ratified some ILO conventions, the new export nations in South-East Asia have been slow to ratify even core conventions. Some of the motives for not signing on to the ILO conventions are political in character. Dictatorships have good reasons to believe that trade unions might become places of government opposition (e.g. Solidarnosc in Poland). There are also economic reasons. While the »high road« promises long-term benefits, it may incur short-term costs. The amount of these costs, their impact on competitiveness, and their long-term rewards are difficult to appraise (Dehejia/Samy 2004). ILO studies conducted in India suggest that as a portion of the final price of carpets to the consumer, labor-cost savings realized through the employment of children are between 5 and 10 per cent for carpets (Anker et al. 1998).

However, the likelihood of higher wages does not automatically translate into higher production costs. According to the institutional argument mentioned above, the observance of labor rights will lead to greater efficiency, which compensates for higher wages. In the short-term, higher costs are nevertheless likely before the efficiency gains are realized. Given that most export goods from developing countries are sold to wholesalers or transnational corporations, which command a strong market position vis-à-vis the producers, even small differences in production costs can be expected to be decisive for market success.

The competition among the countries in the South has not received nearly as much attention as the North-South trading relationship. However, theoretical arguments as well as empirical evidence suggest that competition is fiercer along the South-South than the North-South axis (Ghose 2000). The greater the similarity between the competing regions with regard to factor endowment and market position, the more acute this danger (Mosley/Uno 2007). The extent of competition among Southern countries is influenced by the following factors: (a) simple production techniques which allow for easy market entrance, (b) fast growing labor forces because of a crisis in subsistence agriculture, (c) foreign indebtedness which forces countries to maximize export earnings, and (d) the ability of transnational corporations to switch supply sources and to relocate production facilities. The latter is more likely in labor intensive, low skill industries such as the toy or garment industries.

In a number of product lines, fierce competition has led to an environment conducive to violating core workers' rights. The search for cheap labor is well documented for the garment industry. Pressure originates from brand-name manufacturers as well as large retail chains (Anner/Hossain 2015). Because of fair trade campaigns, brand-name buyers are trying to enforce certain labor and environmental standards on their suppliers. However, they seem not to be willing to pay for the extra compliance costs of their suppliers (Zhang 2011).

2.4 Will the South Suffer Under Global Rules?

The objective of global rules for workers' rights is to take them out of the competition among producers. If efforts succeed to make these rules binding for every country, the competitive situation among countries will change. Individual countries will no longer fear that they will suffer competitive disadvantages by adherence to these rights. Instead, they will be able to assume that their labor competes under similar conditions.

The need for international agreements is demonstrated particularly well in the case of child labor. Some authors see only two alternatives for children in economic problem areas: work or starvation. Since exploitation is better than starvation, they opt against prohibiting child labor (Bhagwati 1994: 59). However, such harsh alternatives exist only under ceteris paribus conditions; that is, when the rules for competition have not changed. If child labor were to be prohibited in just one region in, say, carpet weaving, there is of course the risk that the carpet companies in that region will lose their market share. By contrast, if child labor were to be prohibited in all regions, then a loss in market share is not likely. Then family living wages could be paid to adults. Indian carpet makers would no longer be in competition with Pakistani carpet makers on labor costs but with industrial manufacturers of carpets. In this hypothetical case, the risk is whether the higher prices for carpets, which all carpet makers could charge, would lead to a diminishing overall demand for hand-made carpets. To answer this question, the substitution or demand elasticity has to be known. Experts are not of one mind concerning the degree of demand elasticity for products from the South.

Even if a »correct« value for the price elasticity of demand could be established, it would probably not reflect the reality of many exporters in the South. The elasticity of substitution and demand would vary considerably from product to product. Hand-made carpets, handcrafts, and tropical agricultural products can be substituted for products from the North only to a limited degree. Thus, demand for these goods is rather insensitive to changes in prices. The income elasticity of demand for these products will be quite high, since they do not belong to the group of staple goods. The demand for these goods will depend on the business cycle. Furthermore, their production costs are rather low relative to the final sales prices. This is also true for garments and footwear items. For some brand-name products, production costs are unrelated to sales prices. For cotton jeans made in Honduras and sold in the USA under a brand name, apparel assembly workers take home only 4 per cent of the sale price (Anner/Hossain 2015). Increases in production costs can be easily absorbed by distributors or retailers. Most child labor occurs in labor-intensive industries. It can, therefore, be safely assumed that the prohibition of child labor would not infringe upon the export opportunities of the South in the North.

Demand elasticity would be much more pronounced for complex industrial supplies from the South. These products are in direct competition with those from the North. Since they usually would not yet have reached the same quality levels, they would compete mostly on price. These kinds of products are produced in emerging economies, some of which violate core workers' rights. Nevertheless, it can be assumed that higher wages would not necessarily translate into higher prices. Compared with the hand-made products mentioned above, the higher degree of capital intensity keeps the share of wages to total production costs lower. In addition, the efficiency wage argument is applicable at this higher level of industrial development. Workers' qualifications and their motivation are important for mastering complex production processes. The general increase in wages can also be beneficial for the development of domestic demand, which in turn accelerates the move up along the industrial learning curve and helps realize economies of scale. Nevertheless, the more effective enforcement of workers' rights may carry with it adjustment costs in the short term.

Higher costs in the short term, however, are not likely to influence the long-term growth of developing countries. Growth prospects are more dependent on the education level of the workforce and on technology transfer than on the level of labor costs (Wood 1994). Even where minimum standards are maintained, wage costs are significantly lower than in the OECD countries. In addition, higher labor costs do not necessarily lead to higher prices for consumers in the OECD countries. They could be either neutralized by currency devaluation or absorbed by export price profit margins (Erickson/Mitchell 1998: 179).

In sum, the more an economy is capital, research, and service intensive, the less it will be affected by violations of core labor rights. Workers in Greece or Portugal will enjoy greater material benefits from the worldwide enforcement of core

workers' rights than will workers in Germany or Japan. The main benefits would, therefore, accrue to the developing countries. Developing countries trying to respect these rights and improve working and living conditions are the most vulnerable to being undercut in world markets by countries seeking comparative advantage through the suppression of workers' rights. Often the victims are young and unorganized female workers in export processing zones that advertise the absence of trade union rights in order to attract investment. For these reasons, developing countries cannot raise their social standards in isolation but only in conjunction with other countries by multilateral agreement.

3. LABOR CHAPTERS IN TRADE AGREEMENTS

3.1 Multilateral Agreements

There have been several initiatives to bring labor standards into the World Trade Organization (WTO). At the 1996 Singapore Ministerial Conference the United States and some other developed countries advocated a "Social Clause", but after heated debates and the resistance of mostly developing countries, which saw it as protectionist measure, it was defeated. In the Ministerial Declaration the member states agreed that core labor standards are recognized, but should not be brought into the WTO. The assignment of the WTO would be the regulation of trade, whereas the ILO would be the appropriate body to address labor issues. Another attempt followed at the Seattle Ministerial Meeting in 1999, but the Meeting ended before any agreement was reached (Turnell 2001; Brown 2000). Until today the WTO itself does not deal with labor issues; it only cooperates with the ILO in a non-binding way.

The legal WTO framework contains no explicit references to labor standards, except GATT Article XX(e) which allows countries to deviate from GATT obligations in respect of products made by prison labor. An implicit link is GATT Article XX(d) that allows "measures necessary to secure compliance with laws or regulations not inconsistent with the GATT". However, its application to labor standards was rejected during the negotiations of the Havana Charter (Anuradha/Dutta 2012). There are a few other GATT articles that possibly could be used to link labor standards to several trade disciplines (Brown 2000), but these links have not been invoked so far:

- *Anti-Dumping (GATT Article VI)*:"Exports maybe subject to an anti-dumping duty if a product is exported at a price below its normal value and the sale of the product can be shown to be causing or threatening to cause material injury to domestic producers." This requires proof of either price discrimination or pricing below production cost. *Social dumping* as a consequence of lower labor standards and, therefore, lower production cost is not covered by this Article (Brown 2000: 105; cf. also Turnell 2001).

- *Countervailing Duties (GATT Article XVI)*: Government-enforced low wages and labor standards depressing the cost of production could be considered as an export subsidy subject to countervailing duties. But again, lower labor standards do not meet the criteria of a subsidy according Article XVI, because there is no income transfer from a public authority to the company (Brown 2000: 106).
- *Nullification and Impairment Provisions (GATT Article XXII)*: If by any measure a member impairs or nullifies the benefits that would otherwise be forthcoming under GATT rules, another member may submit the case for dispute resolution. But even if poor labor standards would fall under this Article, it does not provide for any remedy (ibid.).

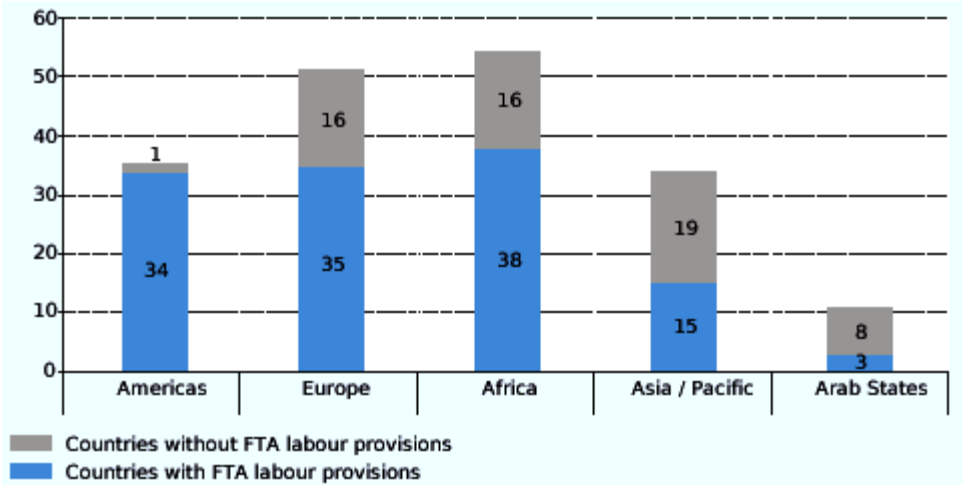
In other words, to establish a link between labor standards and trade that could be used to act against low labor standards the GATT would have to be changed – against the prevailing will of the majority of WTO member states.

As argued above, the strict separation of international trade and labor standards leads in some instances to a lowering of labor standards. Liberalizing trade (GATT), services (GATS), and public procurement (GPA), without leverage to ensure labor rights, creates incentives to use labor standards and institutional deregulation as a means to gain a competitive advantage (cf. Turnell 2001).

3.2 Bilateral Trade Agreements: Justification for Labor Clauses

In contrast to the WTO treaties, many recently concluded bilateral trade and investment agreements include labor provisions. In particular, since the adoption of the North American Free Trade Agreement (NAFTA) and the attached North American Agreement on Labor Cooperation (NAALC) the number of trade agreements including labor provisions increased significantly. In June 2013, 58 of 248 trade agreements in force and notified to the WTO contained labor provisions (IILS 2015: 20).

Figure 1: ILO member countries with trade agreements including labor provisions by region, 2013



Source: IILS 2015: 20

In particular, in the Americas, in Europe, and in Africa the majority of ILO member countries is party to at least one free trade agreement that contains labor provisions. Overall, about 60 percent of all ILO member countries with trade agreements notified to the WTO are party to at least one agreement containing labor provisions (IILS 2015: 21).

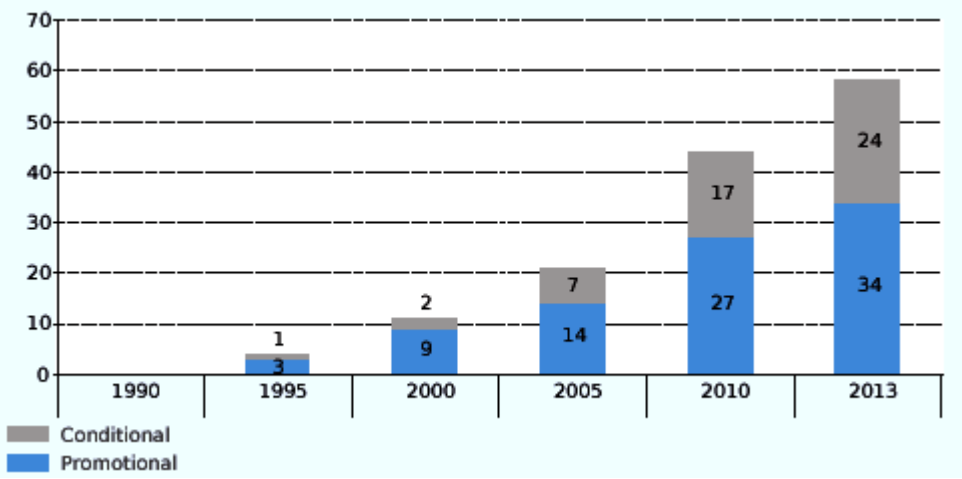
While the GATT compatibility of these labor provisions has not been tested in a dispute settlement procedure, a legal assessment by Claudia Hofman and Andreas Hänlein (2012) came to the conclusion that even within the GATT rules there is room for a labor rights clause in bi- or plurilateral Free Trade Agreements. However, as they point out, the avoidance of a violation of GATT principles depends on the concrete design of the particular labor rights clause. "Weak" social clauses, which lack binding quality and enforcement mechanisms, are less likely to collide with GATT principles. Depending again on the wording and content, labor rights clauses with stronger enforcement mechanisms could potentially violate the principle of most favored nation treatment (Art. I:1 GATT) or the prohibition of quantitative restriction (Art. XI:1 GATT). Hofman and Hänlein argue that as Core Labor Rights are part of a common international consensus of values, Article XX (a) GATT (measures necessary to protect public morals) can be invoked for sanctions in response to violations of these rights. Article XX (b) GATT (measures to protect human life or health) covers measures with regard to the prohibition of child or forced labor. Its coverage of collective bargaining or non-discrimination aspects may be disputed. The opening clause of article XX GATT (the so-called "chapeau") allows for the pursuit of legitimate national aims under certain conditions: The particular measure must not result in an unjustifiable or arbitrary discrimination and the measure must not lead to a disguised restriction of international trade (Hofman / Hänlein 2012: 132).

3.3 Bilateral Trade Agreements: Promotional or Conditional Labor Clauses

The current labor provisions in bilateral trade agreements vary widely in scope and content. The most basic difference is whether they are only promotional or also conditional (Anuradha / Dutta 2012: 32):

- *Promotional elements*: These focus mainly on supervision and/or capacity building provisions in relation to labor.
- *Conditional elements*: These are linked to economic consequences, in the form of legally enforceable provisions accompanied by incentives, sanction mechanisms as well as dialogue and monitoring.

Figure 2: Increase in number of labor provisions in bilateral and regional trade agreements, 1990 – 2013



Source: IILS 2015: 19

Figure 2 shows that the majority of free trade agreements including labor provisions still rely on promotional elements. In the last decade, however, the number of agreements that also include conditional elements increased progressively.

Table 1 below shows that, interestingly, despite labor provisions having been integrated for the first time in NAFTA already in 1993, even concluded later, 13 out of the selected 26 trade agreements do not have any labor provisions et all. And second, also after NAFTA already comprised conditional elements, i.e. enforcement procedures like a dispute settlement, with one exception (Canada – Chile), only the US-Agreements encompassed those elements regularly. Table 1 provides taxonomy of the different types of labor provisions:

Table 1: Labor Provisions in US PTAs

Name and date of entry into force of the trade agreements	Reference to ILO instruments	Scope and content of labor provisions	Enforcement mechanisms
NAFTA/NAALC (1994)	No	Strive for a high level of national labor laws in the area of CLS, as well as minimum working conditions and migrant rights Enforcement of labor laws in these areas	Fines up to US $20 million/0.07 of total trade volume (goods) (only in the case of non-application of national labor law in the field of child labor, occupational safety and health and minimum wage)
Trade Agreement with Jordan (2001)	ILO 1998 Declaration	"Strive to ensure" CLS (except non-discrimination and minimum working conditions) Enforcement of labor laws in these areas. No encouragement of trade or foreign direct investment through weakening labor laws.	Regular trade sanctions under the regular dispute settlement mechanism of the agreement
Trade Agreements with Chile (2004), Singapore (2004), Australia (2005), Morocco (2006), Bahrain (2006), Central America-Dominican Republic (CAFTA-DR) (2006), Oman (2009)	ILO 1998 Declaration, Convention No. 182	"Strive to ensure" CLS (except non-discrimination) and minimum working conditions Enforcement of labor laws in these areas. No encouragement of trade or investment through weakening of labor law in contravention of the labor principles contained in the agreement	Fines up to US $15 million in the case of non-application of national labor law in these areas (to be aid into a special labor rights fund)
Trade Agreements with Peru (2009), Panama, Colombia, and the Republic of Korea (not yet into force)	ILO 1998 Declaration, Convention No. 182	Ensure respect of CLS as contained in the ILO Declaration, and enforcement of related national laws No weakening of labor law in a manner affecting trade or investment if this contravenes CLS	Regular trade sanctions or monetary assessment under the regular dispute settlement mechanism of the agreement

Source: R.V. Anuradha/Singh Dutta, Nimisha 2012: 20

The NAFTA-NAALC agreement is by far the most extensively assessed agreement. While the NAALC is the most elaborate agreement, several studies rated it as ineffective (c.f. Bourgeois/Dawar/Evenett 2007: 45-51). In particular, the effects of NAALC decreased significantly after 2000. Not only had the number of cross-border cooperative activities decreased, but also the outcomes of submissions to the national administrative office (NAO) of the United States and Mexico. More and more cases have been declared inadmissible, withdrawn, or stalled in the review or consultations phase (IILS 2015: 47, 80). Furthermore, several studies assessing the impact of NAFTA on workers came to the conclusion that the US as well as Mexico registered job and wage losses and witnessed increased inequality after 1993 (cf. Weisbrot/Lefebvre/Sammut 2014; Raza et al. 2014).

In the pursuit of a labor rights clause in bilateral trade agreements, the United States suffers from a legitimacy deficit because it did not ratify most of the core conventions (Anuradha / Dutta 2012). But also the European Union does not display a coherent stance on labor rights (Velluti 2015). In addition, its current economic governance is in conflict with fundamental labor rights (Hendrickx / Pecinovsky 2015).

A study by R.V. Anuradha and Nimisha S. Dutta (2012) compares the trade agreements of the United States and the European Union. Both approaches differ in several ways. The US-Agreements contains stricter dispute settlement enforcement provisions, whereas the EU prefers consultations. Labor rights in U.S. agreements refer to ILO conventions only in the more recent agreements; most of them refer to rights mentioned in U.S. domestic labor law for the aforementioned reason of not having ratified a number of core ILO conventions (Anuradha / Dutta 2012; for a comparison of the various labor chapters, see also IILS 2015; Lukas/Steinkellner 2012; Zimmer 2012).

The U.S.-Cambodia Textile Agreement is frequently mentioned as a more effective instrument for the protection for workers. It came into force in 1999 after the GATT Multi Fibre Agreement expired and lasted until 2005. Its innovative features include "the alignment of government and business interests through the use of positive incentives: verified compliance with labor standards was rewarded with increased export quotas" (Anuradha / Dutta 2012). The ILO monitored compliance, the precondition for obtaining an export license. As a result labor conditions improved. Employment, wages and exports increased (Robertson, 2011; Wells 2006) and even after the global financial crisis compliance slipped only marginally (Brown et al. 2012).

Compared to the U.S. agreements, the EU labor chapters refer to ILO conventions, prefer consultation to enforcement and sanctions, and emphasize social development objectives such as gender equality and health within a cooperative framework (see table 2). A "soft" form of dispute settlement was the first time implemented in the EU Agreement with Caribbean countries (CARIFORUM), but "compensation or trade remedies [may not] be invoked against a Party's wishes." (Anuradha / Dutta 2012: 23). Consultations and Monitoring – eventually with participation of stakeholders and the ILO – still have priority. In the recent EU-

Korea Agreement, again, there is no resort to dispute settlement; disputes shall be resolved by a Panel of Experts.

Table 2: Different types of labor provisions in EU trade agreements

Name and date of entry into force of the trade agreements	Reference to ILO instruments	Scope of provisions	Enforcement action
Trade Agreements with the Palestinian Authority(1997), Morocco(2000), Israel (2000), Algeria (2005), Cameroon (2009)	No	Cooperation and/or dialogue on selected issues related to labor standards	
Trade Agreement with Chile (2003)	ILO Declaration on Fundamental Principles and Rights at Work, 1998	Commitment to give priority to the respect for basic social rights, including through the promotion of ILO Fundamental Conventions and social dialogue Cooperation on various labor and social issues	
Trade Agreements with South Africa (2000), ACP Countries (2003)*	ILO Declaration on Fundamental Principles and Rights at Work, 1998	Reaffirms the parties☐ commitment to the ILO CLS Cooperation on various labor and/or social issues	
Trade Agreement with the EU-CARIFORUM (2008)	ILO Declaration on Fundamental Principles and Rights at Work, 1998; ILO Core Labor Standards, Internationally recognized labor standards	Commitment to (i) ensuring compliance with ILO CLS, (ii) not weakening or failing to apply national labor legislation to encourage trade or investment	Consultation and Monitoring framework with stakeholder participation, optional ILO consultation Framework for amicable solution of differences If the dispute cannot be solved through consultation, appropriate measures other than trade sanctions may be considered.
EU-Korea (2011)	High levels of labor protection consistent with international standards☐ Reference to ILO☐s Decent Work Standards.	Commitments to consult and cooperate on trade-related labor and employment issues of mutual interest.	Government to Government consultations; Reference to the Committee on Trade and Sustainable Development; Panel of Experts for making recommendations. No resort to dispute resolution provisions of the FTA

Source: Anuradha / Dutta 2012: 24

The recently negotiated Comprehensive Economic and Trade Agreement (CETA) between the European Union and Canada also lacks an effective enforcement mechanism. In its labor chapter CETA refers to the fundamental conventions, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the 2008 ILO Declaration on Social Justice for a Fair Globalisation, and in addition (chapter on Sustainable Development) to the 2006 Ministerial declaration of the UN Economic and Social Council on Full Employment and Decent Work as well as the OECD Guidelines for Multilateral Enterprises. The parties of the Agreement "shall not fail to effectively enforce its labor law", and shall not lower "the levels of protection embodied in domestic labor law and standards", as an encouragement for trade or investment. Points of contact shall serve the exchange and provision of information, cooperative programs and be the recipients of submissions. Furthermore, domestic advisory groups, comprising representative civil society groups, shall be consulted or established, and for matters that have not been sufficiently addressed through government consultations a Panel of Experts may be convened to examine the matter, issue reports and make recommendations. In cases of non-conformity the parties shall identify appropriate measures, or decide upon a mutually satisfactory action plan. In case of disagreement a party may request further government consultations. Government consultations can include the expertise of the ILO or other experts or stakeholders. Effective enforcement mechanisms, however, are not available. Seen as a kind of template for the Transatlantic Trade and Investment Partnership (TTIP), the CETA labor provisions could already set standards for a large part of total world trade.

The differences between the EU and the US have also come to the fore in the most recently concluded trade agreements with Vietnam (August and October of 2015). While the labor chapter in the agreed upon text EU-Vietnam Trade Agreement emphasizes promotion of workers' rights, the binding side-letter to the Trans-Pacific Partnership Agreement is much more stringent. The U.S. won form the one-party state of Vietnam the assurance to ratify ILO conventions on freedom of association and the right to collective bargaining. Within seven years Vietnam has to create the legal framework for independent trade unions. If Vietnam's government does not comply with this obligation, the U.S. could suspend trade privileges (Schweisshelm 2015).

These new trade agreements revive the debate about the effectiveness sanctions versus cooperation: Are labor provisions with conditional elements and enforcement mechanisms more effective than provisions with promotional and cooperative elements? Empirical evidence suggests that both approaches can have some merits as well as shortcomings and their effectiveness is context dependent. There are two types of conditional labor provisions: a so-called "pre-ratification conditionality" and a so-called "post-ratification conditionality". *Pre-ratification conditionality* usually requires an improvement of labor law and standards prior to ratification, whereas post-ratification conditionality aims at the enforcement of existing law. In particular since 2006 pre-ratification conditionality became part of US trade agreements and contributed in several cases to labor law reforms. In response to concerns raised by members the United

States Congress, Morocco, Bahrain and Oman reformed their labor laws ahead of concluding the trade agreements with the USA. The reforms concerned, e.g., the right to organize and to bargain collectively, anti-union discrimination, and child labor. In Peru, Panama and Columbia more specific reforms were undertaken in similar areas of domestic labor law. However, reform plans have not always been fully or sufficiently implemented. In some cases they were weakened by accompanying deregulations in other areas of labor law (IILS 2015: 29-42).

In spite of the higher number of trade agreements with post-ratification conditionality, not enough time has passed for a definite assessment of their impact. Most cases have been filed under the complaint mechanism of NAALC. Dominant issues of submissions against Mexico have been freedom of association, occupational health and safety, and minimum working conditions. Submissions against the United States particularly focused on the situation of migrant workers. While between 1994 and 1997 more than half of the cases reached the level of ministerial consultations, the corresponding share dwindled to less than one fifth after 2002 and more cases have been declared inadmissible. Until 2013 no case had reached stage 3, the creation of an evaluation committee of experts, not to mention stage 4, the appointment of an arbitral panel, and stage 5, the imposition of sanctions. In several cases the complaint mechanism was useful in addressing the problem. However, as mentioned above, a couple of studies rated NAALC as rather ineffective. The success of a complaint depends on several factors, like political attention, the monitoring by the NAO concerned, the presence of advocacy campaigns, supporting transnational organizations and coalitions, and the quality of the legal arguments put forward (IILS 2015: 43-57).

Complaints under trade agreements other than NAFTA most often deal with trade union rights. They were on the whole not successful. Improvements were more likely in the area of labor inspections. Sometimes domestic authorities became more aware of labor standards and more willing to engage with the ILO. Overall, the complaint mechanisms' effectiveness was rather limited so far. Pre-ratification conditionality (foremost concerning freedom of association) appears to trigger more fundamental changes, but also does not guarantee a sufficient implementation or compliance with labor law. Both approaches, pre- as well as post-ratification conditionality crucially depend on the political will of the country concerned and on accompanying advocacy coalitions (IILS 2015: 43-57).

Promotional provisions are more common than conditional provisions, in particular in North-South and in South-South trade agreements. Usually promotional conditions take the form of diverse cooperative activities like technical assistance, institutional capacity building, or forms of dialogue and policy development, sometimes including the involvement of social partners or the assistance of the ILO. Labor provisions, however, vary significantly across these agreements, ranging from simply reaffirming existing international obligations to substantial commitments on labor standards. Recent EU agreements, e.g. combine commitments to fundamental ILO conventions with an institutional framework encompassing cooperative activities, monitoring and

dialogue mechanisms. Furthermore, some regional integration agreements like MERCOSUR involve tripartite elements to monitor and foster labor issues or carry out promotional activities. The Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) agreement with the U.S. established an external verification body led by the ILO Sub-regional Office to monitor progress on labor standards. In the case of a dispute recent EU agreements provide State-to-State consultations or the option to submit the issue to an expert body, which issues findings and recommendations.

Cooperative activities include several projects, e.g. improving the capacities of labor ministries and labor judiciaries, campaigns against child labor, or centers providing legal assistance to workers. So far there is not enough research to provide reliable assessments concerning the efficiency of promotional labor provisions and several cooperative activities. Even in the case of CAFTA-DR Agreement, which contains rather extensive cooperative activities, studies conclude that "it appears that these activities have not substantially changed working conditions in the countries concerned" (IILS 2015: 81).

3.4 Bilateral Trade Agreements: Model Chapters

So far, experience indicates that there is no optimal design of labor provisions that fits all cases. Against this backdrop, Karin Lukas and Astrid Steinkellner drafted two sample texts for social standards of a sustainability chapter, one for bilateral free trade agreements with developing countries and one for such an agreement among industrialized countries (2010, 2012; a recent somewhat similar model for a Human Rights Clause was developed by Bartels 2015). In addition, they differentiate between minimum, average and maximum requirements (see table 3).

Table 3: Comparison of Basic Elements for a Labor Chapter

	With developing country		Among industrialized countries
Standards Minimum	Core Labor Standards		Core Labor Standards + Priority Conventions
Average	Priority Conventions		Minimum wage, working hours, health & safety in the workplace, non- discrimination of migrants
Maximum	Decent Work Agenda		Decent Work Agenda
Implementation Mechanisms Minimum	Social standards part of dispute resolution		Social standards part of dispute resolution
Average	Program for improving working conditions		

Source: Lukas / Steinkellner 2010: 13

For a labor rights chapter Lukas and Steinkellner (2010: 9-12) list the following basic elements:

Normative framework: The social orientation should already be part of the preamble of a bilateral free trade agreement. This preamble should refer to more than the core ILO conventions. It should include references to the main international human rights documents.

"Non-lowering of standards" clause: In line with the ILO Declaration 2008 on Social Justice for Fair Globalization, the labor chapter should contain the obligation to maintain all existing labor and social legal standards comprehensively and under all circumstances.

Shield function: According to this human rights principle, universally accepted human rights should be given priority over commercial law obligations.

Sustainability impact assessment: The participants of the impact assessment should include employee and employer representatives as well as NGOs. Its recommendations should be made available prior to the start of the negotiations. Once the agreement is ratified, impact assessments should be carried out in regular intervals. In case of a severe negative impact, the agreements should be modified.

Monitoring: Independent committees of experts and consultative fora for the exchange of information between governments, social partners and other important stakeholders should monitor the effective implementation of the agreement and the compliance with the obligations following from it.

"Non-execution" clause: The same standard mechanisms should be used for resolving conflicts on labor and social matters as for all other chapters of the agreement.

Sanctions: Sanctions incentivize compliance with labor standards. The extent of the sanctions, however, should follow the principle of proportionality. They should not disadvantage employees who have already suffered from labor rights violations. Therefore, the primary form of sanctions should be payments in a fund for promoting standards and capacity building. Only in case the government refuses to make payments, trade benefits should be withdrawn (or in case of progress, trade benefits should be increased).

To this list of basic elements for a labor rights chapter one can add that in the case of developing countries pre-ratification conditionality and promotional provisions appear to be more effective than post-ratification conditionality.

Finally, trade unions, NGO's and other civil society actors should be involved in the negotiation process in a more formalized and institutionalized way. The same actors can also play an important role in cooperation activities and support the implementation and monitoring process of labor standards. In recent years, several civil society actors – e.g., human and labor rights organizations, technical inspection organizations, private initiatives – gathered experience in particular concerning monitoring, verification, and certification activities.

Based on the experiences of the Better Factories Cambodia program, Drusilla Brown and her co-authors would add to the above list subsidizing one-time investments to bring factories into compliance in order to overcome management's uncertainty about the benefits of better working conditions (Brown et al. 2012: 26).

4. PUBLIC PROCUREMENT

In recent years an old instrument for promoting good labor standards, public procurement, has been rediscovered (McCrudden 2007). Public authorities at all levels of the European Union spend about 1/5 of total EU Gross Domestic Product. This represents significant market power which can be strategically employed for social purposes. Already in 1949 the ILO adopted a specific convention on "Labor Clauses in Public Contracts" (Convention number 94). It stipulates that workers hired in contracting companies do not receive less favorable conditions than those laid down in appropriate collective agreements or other forms of pay regulation. However, only a limited number of countries have ratified this convention (in 2015: 63 countries, ILO Normlex).

The use of public procurement to pursue social aims is not limited by the disciplines of the World Trade Organization. While the GATS mandates negotiations on government procurement and services, these negotiations have not yet reached any results. Only countries that are party to the plurilateral Agreement on Government Procurement (GPA) may be subject to the disciplines

of that agreement for those sectors they have listed in the annexes of their GPA. Public authorities in the European Union, however, are bound to the rules on competition. These rules as interpreted by the European Court of Justice limit public procurement conditionality on pay (Schulten 2012). Nevertheless, a whole range of other social conditions are permissible according to Article 26 of the EU Directive of 2004. In 2010, the European commission even published a long list of possible requirements for socially responsible public procurement. This list covers the ILO core conventions and some additional conventions and includes explicitly ethical trade issues in tender specifications (Schulten 2012: 6). In Germany, many Länder have adopted ecological and social criteria for their procurement policies. The pattern of adoption reveals the political contestations around social conditionality. Wherever the explicitly pro-business friendly party, the Free Democrats, was part of the ruling coalition requests for conditionality were rejected (Sack / Sarter 2015).

In the case of the procurement of goods, the social or ecological criteria in the tendering process have to be strictly product- and not supplier-related. It is not sufficient to show that the supplying company violates labor rights or standards. It has to be demonstrated that the offered product was produced under conditions that violated ecological or social criteria. Provider-related codes of conduct or certifications are not enough; the certifications have to be product-specific (cf. Beck 2013; CorA 2010).

These hurdles and the political contestations raise the question of how effective the social conditionality of public procurement has been so far. To our knowledge, little research has been done on the impact of such conditionality. A research team at the University of Lausanne has recently carried out a large scale study on the effects of the International Finance Corporation's Performance Standards which include workers' rights. Their findings show that the impact of these standards on the IFC inclined businesses behavior towards labor was "marginal at best" (Cradden et al. 2015: 2). The more striking finding was that almost all workers interviewed had been unaware of their employer's commitment to uphold the IFC performance standards (ibid.).

5. GLOBAL FRAMEWORK AGREEMENTS BETWEEN TNCS AND GUFS

Given the obstacles for including effective social chapters in international trade agreements, the global union federations (GUFs) have pursued agreements with transnational corporations (TNCs), the so-called Global Framework Agreements (Müller et al. 2008). The rationale for these agreements is twofold: on the one hand the transnational corporations control much of world trade and occupy a powerful position within global production networks. Thus, they are a potentially powerful actor for enforcing labor rights throughout the production networks. On the other hand, who is best positioned to monitor a company's behavior and to the present the interests of those whose rights are violated but trade unions?

These framework agreements usually include (a) mutual recognition of actors on both sides, (b) reference to all or to some of the ILO core conventions and some additional ILO conventions (i.e. working time), (c) processes of conflict resolution, and (d) specify the organizational domain to which they apply. In 2014, 103 global framework agreements were considered to be active (Fichter 2014).

A research team headed by Mike Fichter from the Free University of Berlin has conducted extensive case studies on the effectiveness of global framework agreements. They identified a number of cases in countries such as Brazil, India, Turkey and the USA where local trade unionists were able to make effective use of such a framework agreement to redress the violations of their rights (Fichter / Helfen 2011; Fichter et al. 2013). This involved agreements signed by global union federations such as BWI, IndustriALL, and UNI. However, in many cases local trade unions in dispute with local management were not aware of the existence of such agreements or were unable to link their strategies to the avenues made available by the agreements. On the basis of their findings, Fichter and Stevis recommend (a) to involve local actors from the initiation to the information implementation of the framework agreement, (b) to develop proactive approaches especially for countries not familiar with the European social dialogue, (c) to communicate and practice their framework agreements as a joint management and labor instrument accompanied by training practices for local management and workers representatives, and (d) to integrate the agreements' principles into the procedures of the contracting TNC (Fichter / Stevis 2013: 41-42).

6. CORPORATE AND NGO INITIATIVES FOR LABOR STANDARDS

In the last decades, a variety of civil society initiatives concerning environmental or social standards emerged. Those initiatives are not necessarily linked to trade agreements and related enforcement mechanisms (if there are any), but rather try to monitor and improve standards along global value chains.

The most common approaches are the formulation of *codes of conduct* by individual companies or business associations, *corporate social responsibility* programs, the provision of *certificates* or *labels* by commercial or non-profit organizations, and *campaigns* organized by networks, organizations – including e.g. trade unions, research organizations, human rights organizations – or consumers.

Comparing the "business-driven" codes of conduct and certificates and the initiatives of NGOs or networks, it is not difficult to see, that the motives differ. Companies use those instruments to save or restore consumer confidence, i.e. their market share, whereas NGOs try to improve working conditions and development opportunities. Social labels and codes demand significantly higher standards but also limit the managerial power of control. They need therefore public attention and support to convince or pressure the management, and they

have to pursue cooperative approaches (unions, workers, management, networks). As seen in some cases of the Clean Clothes Campaign, this can feed different interpretations, interests and reduce the efficacy of the initiative.

6.1 Business-driven Codes of Conduct

The development and formulation of codes of conduct can be seen as a reaction of companies to the discovery and publication of labor rights violations. The codes of conduct are supposed to signal that the company intends to adhere to certain environmental, social or human rights standards. In most cases subcontractors and suppliers are asked to adopt the code of conduct of the lead company. In some cases several companies of the same branch teamed up to develop a common code of conduct. One example is the *Electronic Industry Citizenship Coalition* (EICC), initiated in 2004 by eight companies. Today, the EICC comprises more than 100 electronics companies and in 2015 version 5.0 of its code of conduct went into effect (cf. www.eiccoalition.org). The EICC code of conduct refers to the UN Guiding Principles on Business and Human Rights, the UN Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the ILO Guidelines on Safety and Health, the OECD Guidelines for Multinational Enterprises, ISO and SA standards. Implementation and Monitoring of the code shall be ensured by a management system, including self-assessments and the Validated Audit Process (VAP).

However, several incidents in the last few years, e.g. related to Apple and Foxconn (cf. China Labor Watch 2012, SOMO 2012, SACOM/MakeITfair 2012), both members of the EICC, have shown that codes of conduct like the EICC code cannot guarantee compliance with high labor standards. The standards of the EICC code of conduct itself as well as of the monitoring and auditing process are still not sufficient. The code only refers to the ILO Declaration on Fundamental Principles and Rights at Work and national law, but not to the ILO core conventions. Particularly, in countries with an insufficient or restrictive labor law and controlled or weak unions, Freedom of Association and Collective Bargaining are not sufficiently ensured (cf. SOMO 2012). The code also refers to local minimum wages but not to living wages. Furthermore, the code only mentions the next tier suppliers and does not cover the whole supply chain.

As investigations and interviews with workers have shown, in practice the monitoring and auditing processes often do not hold what they look like on paper. As a part of the management system, monitoring is largely based on self-evaluation and controlled by the company. In the past, the participation of suppliers in the monitoring process was rather low and controls took place randomly and were often superficial. Likewise, the review of audits revealed several shortcomings, in particular concerning freedom of association and collective bargaining. Companies often treated union rights as less important or they were neglected in the audit. In other cases different understandings and interpretations of standards, the issue at hand or of several indicators reduced the efficacy of the auditing process and the consequences in cases of non-

compliance – if non-compliance is recognized at all. Audits are costly and often there is a time constraint. Not always the best qualified audit-teams are hired, only a few interviews are conducted, or the auditing focuses on less complicated issues. In particular, lacking knowledge about local conditions, insufficient participation of stakeholders or lacking independence of workers' organizations can be a cause for misinterpretations. Finally, sometimes companies know about an upcoming audit and can cover deficiencies (SOMO 2012; China Labour Watch 2012; Barrientos / Smith 2007).

The decree to which codes of conduct are implemented depends on local circumstances. Companies spent more efforts on implementation where it is comparatively easy, i.e., where a strong compliance culture, an educated workforce and few vulnerable groups of workers exist. In other words, countries with the highest decent work deficit receive the least attention from corporate standard setters (Klink 2015).

Some companies developed in addition to the EICC code of conduct a more far reaching program of *Corporate Social Responsibility* (CSR), including, e.g., the approval of the ILO core conventions, human rights instruments, or diverse certifications (Lukatsch 2010; Chahout 2011). Besides ISO-certifications, another one is the TCO certification by the Swedish non-profit-organization TCO Development. After ecological criteria, in 2009 social criteria also became part of the TCO certification. The requirements of the TCO certification require (cf. http://tcodevelopment.com):

- compliance with the eight ILO core conventions,
- compliance with Article 32 of the UN Convention on the Rights of the Child,
- compliance with national laws with regard to health and safety, labor law, minimum wages, and social security,
- the membership or a proof of compliance with the EICC code of conduct and SA 8000.

Compliance shall be verified by annual independent inspections and at least one annual and independent report about manufacturing facilities, where the certified products are produced. By its explicit reference to the ILO core conventions, more attention paid to union rights and eventually existing restrictions, and more explicit monitoring rules, the TCO certification can be seen as an improvement compared to the EICC code. But also the TCO certification has some shortcomings. For example, only the final production and the delivery of certified products are covered. The certification of specific products, however, makes the TCO certification interesting for public procurement relating to social criteria.

Overall, the governance gap left by governments and intergovernmental agencies has not been closed by private codes. The confusing amount of various standards "offers businesses the opportunity to choose the stringency level of

standards and audits." (Pekdemir et al. 2015) As Richard Locke has persuasively argued, private codes of conduct, to be effective, need support from public authorities is crucial (2013).

6.2 Consumer-driven Codes of Conduct

Besides these rather "business-driven" codes of conduct and labelling programs, there are also "consumer-driven" codes of conduct and labelling programs provided by NGOs or civil society networks. The main goals of those initiatives are the promotion of "Fair Trade", worker's rights and to improve working and social conditions.

One of the best known initiatives, the *Clean Clothes Campaign* (CCC), is an alliance of European organisations, including NGOs and unions, cooperating with similar organisations and campaigns worldwide (http://www.cleanclothes.org). The campaign promotes labor standards based on the ILO conventions, the ILO Declaration of Fundamental Principles and Rights at Work, and on the Article 23 of the Universal Declaration on Human Rights. Furthermore it seeks to empower workers by taking seriously their right to be informed and eventually educated about their rights, and by their entitlement to organise themselves and being involved in cases of rights violations.

The brand name companies should adopt a code of conduct that follows the CCC model and should promote it throughout the production chain. Implementation and verification of the code of conduct should be done with the participation of multi-stakeholder initiatives. Companies should sign international framework agreements to facilitate the social dialogue with trade unions. Trade unions are especially important at the local level for these campaigns (Merk 2009: 608). Besides the implementation and verification activities, CCC launches public campaigns and appeals, which are documented in annual reports.

The Clean Clothes Campaign is an ambitious initiative with far reaching goals regarding the improvement of labor standards, the empowerment of workers, and the participation of civil society organisations or multi-stakeholder initiatives in the implementation and verification process. This decentralized and participative approach, however, has its own difficulties. The local projects are very heterogeneous. Working conditions, the readiness of companies to implement and to comply with the code of conduct, the composition and participation of multi-stakeholder initiatives and other actors, and the labor law can differ. As a consequence, implementation and verification processes, as well as the success also vary. CCC has therefore started to target also state actors (Kryst 2012).

Another known initiative is *Rugmark*, a label for carpets without child labor (http://www.goodweave.net). Rugmark gives licenses to carpet manufactures and exporters who stop employing children under 14 years old and pay the minimum wage to the adults who work for them. The carpet exporters receive a limited number of labels to tag the carpets, so every carpet can be identified and traced

back even to the machine that was used. Rugmark inspectors check the factories regularly and unannounced. If producers were found to employ children and do not end this immediately, they will lose their license. Exporters pay 0.25% of their export revenues to finance the inspections, whereas the carpet importers pay 1% of the merchandise value to support the children who have lost their jobs.

Rugmark is a strongly specialized initiative with the sole goal to stop child (wage) labor in the production of carpets in India. This approach makes monitoring easier. The problem, however, is that it does not stop exporters from using child labor and unfair working conditions elsewhere and pursuing a strategy of price differentiation, i.e., higher prices for the morally conscious, upscale customer, and lower prices for carpets made by child labor for price-conscious customers independent of actual production costs.

A third approach is the use of Fair Trade labels to improve working and social conditions. Under the umbrella of *Fairtrade International* a couple of National Fairtrade Organisations merchandise the Fair Trade products and provide the seal in their countries. The basic principles and Fairtrade standards, however, are developed by Fairtrade International. Seen as an alternative to conventional trade, the concept of Fair Trade is designed to improve the terms of trade, address power imbalances, and offer better trading conditions to marginalized producers and workers. Fair trade is meant to provide minimum prices, decent wages, and a premium to use to improve social, economic and environmental conditions (http://www.fairtrade.net).

The basic wage labor standards are spelled out concretely in the current version of the *Fairtrade Standard for Hired Labour*. Based on the ILO Declaration on Fundamental Principles and Rights at Work and several ILO (including all core) conventions as reference for decent working conditions, the standards are:

- Freedom from Discrimination (ILO Conventions 97 and 143),
- Freedom of Labor (ILO Conventions 29 and 105),
- Child Labor and Child Protection (ILO Conventions 182 and 138),
- Freedom of Association and Collective Bargaining (ILO Conventions 87, 98, 135, 141 and Recommendation 143),
- Conditions of Employment (ILO Conventions 95, 100, 110, 102, 121, 130, 183 and Recommendation 115),
- Occupational Health and Safety (ILO Conventions 155, 184, 77, 78 and Recommendations 164, 102).

The several standards are specified by their respective intent and scope, the requirements to which companies have to adhere, guidance on how to interpret them, and the number of years the company has until it is audited against the requirement. Audits and certification will be conducted by the independent certifier FLOCERT. Before a product will be certified the producer must go

through an initial on-site audit. After the certification the producer will be audited at least twice in a three-year certification cycle (http://www.fairtrade.net).

An overall assessment of the Fair Trade initiative on labor standards is still difficult, in particular since the recent revision of the Fairtrade Standards for Hired Labour. Fair Trade is overwhelmingly seen as an alternative trade and development initiative, its impact on labor standards is rather treated as secondary. However, there is no proof that the higher Fair Trade labor standards endanger the success of the initiative because of higher entry barriers, and second, there is no proof that the programs to empower workers are a threat to organized labor (cf. Davenport/Low 2012; Raynolds 2012). The initiative not only sets higher and more elaborated standards, but also provides detailed guidance how to apply and interpret them. And, in contrast to the Clean Clothes Campaign, the Fair Trade initiative also provides a coherent set of standards and application rules.

Finally, there are a couple of civil society organizations, networks, and research institutes, which can provide critical assessments, monitoring assistance, and help to develop or improve codes of conduct. Some examples are the Fair Labor Association (FLA), the non-government organization SACON in China, CEREAL in Mexico, the SOMO-Center for Research on Multinational Corporations, or the GoodElectronics network, which formulated common demands on the electronics sector. However, this heterogeneity complicates the development of coherent standards and guidelines (cf. Inkota-Netzwerk e.V. 2012; Ascoly/Oldenziel/Zeldenrust 2001).

6.3 Multi-stakeholder Initiatives: Bangladesh Accord

The combination of labor-driven (see section 5) and consumer-driven (see section 6.2) initiatives holds some promise for enforcing labor rights. The case in point is the Accord for Fire and Building Safety in Bangladesh (the Accord). This Accord was signed in the aftermath of the Rana Plaza disaster of 24th of April 2013 when a building complex for garment factories collapsed, leaving more than thousand workers dead and more than two thousand injured. Signatories to this Accord are over 180 retailers and brands from 20 countries from around the world and the Global Union Federations IndustriAll and UNI Global. It is a legally binding agreement which obliges the company to pay an annual fee of up to $500,000 per year for five years. The money is supposed to be spent on safety training, inspections and for structural repairs on buildings. The steering committee consists of representatives chosen by the trade unions and companies in equal representation plus a representative of the International Labor Organization as a neutral chair. Representatives of the government of Bangladesh and of labor-oriented NGOs are among the members of the advisory board (Accord 2013).

The Rana Plaza disaster demonstrated the ineffectiveness of social auditing programs. The Business Social Compliance Initiative had audited and certified some of the factories in the Rana Plaza complex. While the shock of the disaster certainly facilitated the signing of the Accord by the retailers and brand

companies, the driving forces were the Global Union Federations and the protagonists of consumer-driven codes of conduct, i.e., the Clean Clothes Campaign and the Workers' Rights Consortium. The trade unions were able to make use of their previously established contacts to the giant brand companies through Global Framework Agreements and of their negotiating skills. The NGOs contributed their campaigning skills targeted at the reputation of the brand companies. As Reinecke and Donaghey have shown in their study, the synergies and complementarities between these actors brought about the Accord. Of course, the co-operation was not always without tension: "At … times, aggressive campaigning against the brands with whom unions were in negotiations was perceived as hindering the dialogue." (Reinecke / Donaghey 2015).

It is a bit too early to make the final judgment upon the impact of the Accord. An in depth evaluation of the impact of the Accord in the first half of 2015 comes to mix conclusions. Working conditions in the second-tier factories, the factories that supply to the signatory companies of the Accord, have somewhat improved, especially in the area of occupational safety and health. However, despite a clear commitment in the Accord, the signatory companies did not offer funds to these second-tier suppliers to implement expensive measures to make the buildings and workplaces safer. In addition, the focus on health and safety left others aspects of the labor conditions untouched such as low pay, long working hours and especially issues of workers' collective action, i.e., freedom of association and collective bargaining (Khan / Wichterich 2015).

7. THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

In 2011 that United Nations Human Rights Council adopted unanimously The Guiding Principles on Business and Human Rights which have been prepared under the leadership of John Ruggie as the special representative of the UN Secretary-General on Business and Human Rights. The Guiding Principles consist of three pillars. The first one highlights the prime responsibility of states to protect human rights. The second pillar covers the corporate responsibility to respect human rights (with an explicit reference to ILO core labor rights) and the third pillar calls for access to remedies if governments do not observe their duty to protect human rights. These Guiding Principles are international soft law and, therefore, lack sanctioning power. However, given the broad consensus behind them, they provide legitimacy to more comprehensive action by governments and businesses in the protection of human rights. The United Nations member states have committed themselves to develop so-called National Action Plans for the implementation of the guidelines (Grabosch / Scheper 2015). The Leaders' Declaration of the G7 summit held in Germany in 2015 highlighted the support of G7 nations for the UN Guiding Principles and welcomed the efforts to set up substantive National Action Plans (G7 declaration 2015).

The specific novelty of the guidelines pertains to extending the responsibility to respect human rights to corporations. Companies are asked to practice due diligence in handling human rights risks in their own responsibility, going beyond the respect of national laws. The companies are called upon to take proactive steps to clarify and understand how their activities may impact the human rights of stakeholders. Thereby, the Guiding Principles break new legal and political ground. It is therefore not surprising that many issues are yet to be clarified: the distinction between duty and responsibility, the instruments available for the integration of human rights into business procedures, and the degree of involvement of people affected by corporate activities. Companies are prepared to take responsibility but try to avoid any duties for the protection of human rights throughout their production networks. Many companies consider it impossible to monitor their subcontractors' subcontractors.

A number of software solutions are available for businesses to integrate human rights issues in their decision-making processes. However, as Brigitte Hamm and Christian Scheper point out, standardized procedures for human rights impact assessments focus too much on compliance with statutory standards (such as minimum wage laws which in some countries might be below the poverty line), neglect possibilities for social upgrading, and avoid engagement with those whose human rights might be violated. Hamm and Scheper, therefore, recommend that companies invite civil society actors in devising context specific, stakeholder inclusive human rights impact assessments (Hamm / Scheper 2012).

In a recent policy paper, Robert Grabosch and Christian Scheper (2015), argue that governments can in many ways support corporations to effectively respect human rights throughout their production systems. Their list of government action includes:

Policy statement: the government's policy statement on how to implement the Guiding Principles can on the one hand signal the business sector that the respect for human rights is important and on the other hand can give the business sector orientation of what is actually expected from it in terms of human rights due diligence.

Risk and impact assessments: the government can invite stakeholders to formulate guidelines for risk and impact assessments differentiated for human rights issues, business sectors, and company size.

Grievance mechanisms: a government should provide for the victims of human rights violations accessible mechanisms for redress. The National Contact Points for the OECD guidelines have proven to be insufficient. They are in need of reform.

Training: a government could provide help desks for business consultations on human rights issues and offer training sessions especially for SME.

Networks: a government can initiate or support networks for the stakeholders of global production systems. These networks can exchange information and foster solidarity across borders.

Support for any international treaty on the human rights obligations of businesses: a government can also go beyond the Guiding Principles by supporting the efforts of the UN Human Rights Council to develop a binding international agreement for business enterprises.

Public procurement: the 2014 EU guidelines for public procurement allow for sustainability criteria. Therefore, human rights issues should become part of the set of criteria for public procurement.

Export promotion: government support for exporters in the form of loans or investment guarantees should be made conditional on human rights due diligence processes.

Development cooperation: the expertise of actors in development cooperation can be employed for improving human rights impact assessments and for the support of business enterprises engaged in development cooperation. That support should be conditioned on the enterprises' commitment to human rights.

The list should be expanded to include a most vital element of improving working conditions: Government support for the right of workers to organize and to bargain collectively. A group of legal experts has studied the feasibility of making corporations responsible for the adherence to human rights in their supply chains by German law. Their study includes the draft for such a law (Klinger et al. 2016).

Even more desirable than individual national initiatives would be the development of an international legal framework on the basis of the Guiding Principles for combating workers' rights violations (for such a proposal, see Lukas 2012).

8. GERMAN GOVERNMENT INITIATIVE FOR SUSTAINABILITY IN GLOBAL SUPPLY CHAINS

In the wake of the collapse of the Rana Plaza building in Bangladesh, the German Minister for Economic Cooperation and the Minister of Labor and Social Affairs put forward an agenda for joint action by representatives from governments, businesses, social partners, international organisations and civil society along global supply chains (BMZ 2015). To ensure compliance with internationally agreed and binding labor, social and environmental standards in supply chains, the agenda includes the following measures:

- "Establishing a 'Vision Zero Fund' for global prevention, with the aim of reducing the number of people who are harmed by accidents at work as far as possible worldwide (e.g. by investing in fire safety measures, requisite training and accident insurance schemes);

- Promoting stakeholder alliances involving the private sector, civil society and trade unions for the implementation of agreed labor, social and environmental standards in all G7 countries;
- Giving small and medium-sized enterprises (SMEs) in G7 countries better support so that they can take on social responsibilities along global supply chains;
- Improving complaints mechanisms and arbitration processes to help workers in production countries in situations where standards are not upheld; and
- More transparency for consumers in order to foster sustainable consumption." (BMAS / BMZ 2015)

This agenda was intended for the G7 summit held in Germany in June of 2015. It was picked up by the leaders declaration at the G7 summit under the heading "responsible supply chains" (G7 Declaration 2015). The German government has started to implement some items of this agenda. It has set up an Internet platform where consumers can obtain information about the content of the various labels (www.siegelklarheit.de/). It has also initiated a stakeholder forum for the textile and garment industry, the so-called alliance for sustainable textiles (Bündnis für Nachhaltige Textilien). It aims at a common definition of environmental, labor and health standards as well as continuous implementation goals for reaching the standards. It will also work out policy recommendations for favorable conditions to pursue sustainability strategies in the countries of production as well as for German and European policymakers (Bündnis für Nachhaltige Textilien 2015).

After the government had committed itself to support only voluntary measures, thus ruling out legal obligations, about half of the companies engaged in production and distribution of textiles and garments in Germany joined this alliance together with NGOs and trade unions by October 2015. While the alliance cannot decide on any measures against the will of its business members (principle of unanimity), the progress made by business members will be regularly reviewed by a third party and, in case of noncompliance, can lead even to the expulsion from the alliance (Dohmen 2015).

Perhaps the most interesting part of this agenda is the "Vision Zero Fund". It will be established in cooperation with the International Labor Organization and will support its efforts in preventing and reducing workplace related death and serious injuries. Recipients will have to commit themselves to prevention measures. The sums so far pledged are, however, paltry: €7 million, of which €3 million come from the German government.2

The German-initiated G7 agenda remains at a voluntary level. As shown above, the 'business-driven' codes of conduct and Corporate Social Responsibility programs are rather weak (concerning labor standards) and remain management-controlled. Asymmetric power and wage relations, different labor and ecological

[2] https://www.g7germany.de/Content/EN/Artikel/2015/10_en/2015-10-13-g7-arbeitsminister_en.html

standards have been drivers for vertical disintegration and the creation of global value chains – they are an integral part of today's business models. Multi-stakeholder initiatives were invented by unions, human rights organisations, other NGOs, but not by transnational corporations.

9. DECENT WORK PROGRESS ENDANGERED BY INVESTMENT TREATIES

The recent G7 declaration on sustainability in global value chains is an encouraging signal for all advocates of better working conditions around the world. However, the same G7 heads of state are committed to the further liberalization of world trade and are currently negotiating a number of new trade and investment agreements such as the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP) or the Trade in Services Agreement (TiSA). While these agreements may feature a labor chapter (see chapter 3 above), they are very likely to increase competition and to strengthen the rights of investors. Both trends will undercut any gains in the enforcement of core labor rights.

Because most tariffs are already quite low, the new trade agreements mainly aim at reducing "non-tariff barriers". While tariffs on goods crossing borders have been imposed with an eye to foreign competition, most of the non-tariff barriers are the laws and regulations "constructed over decades of struggle by labor and social movements to protect the collective political, economic and social rights of working people" (IUF 2014). The negotiators especially target public ownership and public provision of services as barriers to the free flow of goods, services and investments. Public-sector unions and their members are most directly in the focus of the new trade agreements. Opening up the public sector for private competition and lowering the threshold for open competitive bidding in the public procurement market (Fritz 2014) will lead to further privatizations which on average have undermined collective bargaining in fields previously covered by the public sector. Employees with few qualifications will particularly suffer income losses and harsher working conditions (Schmelzer-Roldán 2014: 21-36).

The new agreements are very much investment agreements which facilitate cross-border investment and thereby also increase the discretionary powers of management to allocate work across borders. The negotiators also want to grant corporations the right to sue states for compensation in case new laws or regulations might lower future profits. This so-called investor-to-state dispute settlement process will sidetrack the normal legal procedures as it will establish arbitration courts run by the business community. The investor-to-state dispute settlement process in particular will limit policy space since municipalities or higher levels of the state will face costly lawsuits and high claims for compensation in ad hoc arbitration courts outside the normal legal processes in case they decide on new regulations protecting workers, consumers, and the environment (Eberhardt 2014). The introduction of a minimum wage or raising

the minimum wage may trigger such lawsuits by foreign investors (or the foreign subsidiaries of domestic investors) claiming that the resulting higher wage bill will lower their profit expectations. The same may hold true for providing workers with more rights or better protection at the workplace (Compa 2014).

In sum, the new trade initiatives are a threat for the decent work agenda. It is therefore not sufficient to discuss specific instruments for the promotion of labor rights along value chains; one also needs to address the general governance of international trade and investments.

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