The WTO versus the ILO and the case of child labour

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Summary

The article explores the impact of Trade Sanctions on the elimination of child labour in developing countries. It argues that imposing trade sanctions on developing countries without considering the causes of child labour and without back-up programmes cannot provide an effective solution. Further, it argues that the International Labour Organisation (ILO) can play an effective role in eliminating the worst forms of child labour whereas the World Trade Organisation (WTO) is not the right forum to enforce core labour standards (CLS).

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1. Introduction

In response to negative publicity, the United States Presidential task force composed of apparel industry representatives, unions, and human rights activists has agreed a code of conduct for labour practices by multinational corporations. The Federation of International Football Associations, similarly, announced it would not buy soccer balls made with child labour. These developments point to a growing concern in industrial countries about CLS in the developing world. The growing awareness of the economic exploitation of children around the world has catapulted the issue of child labour into the public eye (ILO a, 1996, p31). It has brought the child labour problem to the forefront of debate in governments and international organisations (ILOb, 1995). Arousing a diverse range of interests, the debate juxtaposes the multilateral trade regime with the international law governing labour standards and human rights within the business sector (New York Times, 1997).

Since the end of the Uruguay Round, the issue of the link between international trade and core labour standards has become central to the policy agenda and has exposed differences of opinion between developing and developed countries. At a WTO Ministerial Meeting in Singapore in 1996, a somewhat ambiguous compromise was reached. The WTO recognised CLS while rejecting protectionism, and it pointed to the ILO as the most appropriate organisation to deal with the issue of labour standards. Despite the WTO distancing itself from the labour issue, developed countries continued to push for the incorporation of labour standards in the WTO agenda. At the Doha Ministerial Meeting in November 2001, trade union representatives wanted the WTO to commit itself to close co-operation with the ILO. This proposal was widely condemned by a number of African and Asian NGOs who argued that the introduction of core labour standards in the WTO agenda would ‘once again sabotage the success of the Doha
ministerial as it happened at Seattle’ (African and Asian NGO’s statement, 2001). Their argument was that poverty is the main problem in their countries and that imposing such labour standards will have serious repercussion on the millions of families in Africa and Asia who depend on the income of their children. Accordingly, for developing countries, the issue is not a matter of choosing the best working conditions, but a matter of survival and of livelihood. For instance, in Nepal, India, or Pakistan where 40-50% people live below the poverty line, the main problem is finding a job (ibid). If the issue of CLS become enforceable under WTO rules, any sanctions imposed against countries with lower labour standards would perpetuate poverty.

Eventually, the Doha Ministerial Declaration re-affirmed the declaration made at Singapore, that the ILO is the appropriate body to deal with the CLS (Bridges, 2002). Consequently, CLS are not subject to WTO rules and disciplines. Nevertheless, some WTO members in Europe and North America continue to believe that the issue must be taken up by the WTO, if public confidence in the WTO and the global trading system is to be strengthened. Their argument is that bringing the matter to the WTO will provide incentives for its members to improve conditions for workers around the world. However, most of developing countries remain opposed to the inclusion (Bhagwati, 1995). They perceive such incorporation as a form of protectionism that will slow down their progress towards better living standards (Griswold).

In this article, the following issues are explored. Is an imposition of trade sanctions on developing countries without considering the causes of child labour focusing on the right aspect of the problem? What would be the impact of international trade restrictions on the elimination of child labour? Is the WTO the proper place to discuss child labour? Will it lead to more protectionism in this era of globalisation, even though trade barriers are supposed to be dismantled rather than erected? Can the ILO play an effective role in eliminating the worst forms of child labour? Have the developed countries eradicated child labour?

2. Child Labour within the Ambit of Core Labour Rights

Since the Singapore Ministerial Conference, the ILO has taken significant steps to address the issue of workers’ rights generally and especially for child workers. In June 1998, the General Conference of the ILO adopted the Declaration on Fundamental Principles and Rights at Work. The Declaration focuses the discussion on CLS. The ILO declares that some CLS reflect basic human rights, which should be observed in all countries, irrespective of the level of economic development and socio-cultural traditions. These CLS can stimulate economic development and support free trade (OECD, 1996). The CLS include eight ILO conventions that constitute a comprehensive set of international labour standards that are the minimum standard and the hope to defeat social injustice (Waer, 1996).
These CLS have been proposed by key WTO Members, such as the US and the EU, as an indispensable condition for access to their markets. They argue that the competitive advantage driving low labour standards is illegitimate when labour standards are violated in order to undercut the cost of the production (Bhagwati, 1995). However, most developing countries perceive that the developed countries are not worried about the state of workers in the developing countries but are interested in restricting trade through economic sanctions. They believe that CLS, including elimination of the child labour, are matters for consideration in the ILO. Their argument is that improved CLS arise through free trade and economic growth and not through sanctions (WTO, TLS Subject of Intense Debate). Consequently, they accept the importance of the CLS but reject the WTO as the right forum. The question thus arises what would be the best forum for the implementation of labour rights.

The first option is to leave the issue with the ILO, as a tripartite body with representations from workers, governments and employers. No doubt there is an integral reciprocity in the ILO conventions as it can act against members who, after ratification, do not comply with the conventions. However, the greatest drawback of the ILO is its lack of enforcement capacity.

The other option is the incorporation of labour rights into the WTO. No doubt; the overall objective of the WTO is economic development. Additionally, it has an enforcement mechanism. Further, the reciprocity clause in the GATT 1947 treaty was further strengthened by the single undertaking clause of the GATT 1994. However, it is also true that the WTO can only entertain disputes, which arise out of the agreements already signed by the Members and, to date, there is no agreement on the social clause.

Advocates of both options are advocating extreme stands. A simple WTO route for a social clause will not produce the desired results, as far as the promotion of labour rights is concerned; and a simple ILO route for a social clause is unworkable. Giving the ILO teeth to enforce its conventions would be the optimal approach. For that, a dialogue to address the issues in a balanced manner and try to find solutions through consensus rather than creating barriers is required.

3. Relationship between Free Trade and Labour Rights

The rise in unemployment in many OECD countries led most of the developed countries to look for an external explanation, such as unfair trade practices. The industrialised countries argue that the rapid economic development of certain developing countries has come through the exploitation of labour, low wages (for example by using child labourers) and want of strong internal markets, enabling those countries to run export surpluses (Trade and Worker’s Rights, 1988). If a country allows its workers to be
employed under deplorable conditions, it can export its products at lower prices and thus acquire an unfair advantage over its competitors (Servais, 1989). Hence, the solution is inclusion of social clauses to compel the developing countries to guarantee minimum rights to their workers and to pay them according to their productivity.

Two major arguments are advanced for the inclusion of the social clause, one economic, one moral. The economic argument suggests that low wages and labour standards in developing countries threaten the living standards of workers in developed countries. The moral argument asserts that low wages and labour standards violate the human rights of workers in developing countries. Hence, developed countries claim an association between free trade and labour rights and recommend using that association for eliminating child labour and controlling labour conditions. The developing countries deny that link and consider internal structural rigidities in labour and product markets the main factor behind unemployment (Howlim, 2001). Moreover, the OECD empirical findings confirm that CLS do not play a significant role in shaping trade performance (Stern, 1996). Therefore, any fear on the part of developing countries that better core standards would negatively affect either their economic performance or their competitive position in world markets has no economic rationale and the case for linking trade with observance of CLS is far from persuasive.

The fear that the developing countries with their cheap labour are swamping industrialised-country markets is a fallacy. The developing countries import more from the industrialised countries than they export to them. For example, in 1995 Korea's exports to the industrialised nations constituted 12.3 percent of its gross domestic product (GDP), while its imports from the industrialized nations were 13.9 percent of its GDP. In brief, relative to industrialised nations, Korea ran a trade deficit of 1.6 percent. Indonesia in the same year also ran a deficit, of 2.2 percent; Malaysia ran a deficit of 11.8 percent; Brazil a deficit of 1.4 percent, with a trade surplus of 1 percent (Basu, Labour Standards). This means that, if the exports of these countries are cut off, in all probability their imports from industrialised nations will shrink as well, making the net effect on the industrialised nations negative instead of positive, though of course some specific sectors may gain.

The products manufactured in the worst conditions, often using child labour, are not the sectors in which there is any serious competition between the industrialised and the developing countries. For example, in 1996 the United States imported $34.2 million worth of soccer balls. The main suppliers were Pakistan, China, Indonesia, India, and Thailand, which together supplied 96.9 percent of soccer balls (ibid). Thus, the bulk of soccer balls are produced in developing countries: the United States does not produce any soccer balls. If any of the above-mentioned countries is banned from exporting to the United States, it is highly improbable that the demand will shift to another industrialised country. It will be some other developing country that picks up the slack. It is, therefore, a completely erroneous view that there is competition between the child labourers of the third world and the adult workers of the industrialised nations. Accordingly, the developing countries see the idea of social clauses as a threat to their economic welfare.
that could deprive them of one of their key comparative advantages: the ability to use low-cost labour productively (Liemt, 1989).

The debate between the two sides is ambiguous for several reasons. Firstly, they fail to assess labour conditions in the light of the protection or violation of human rights as a whole in the country or on the part of the government targeted for accountability. For the sake of comparison, a government, which is democratic and generally respects human rights, but has a child labour problem, is obviously different from a government, which violates a whole range of human rights including those of child labourers. To put the two countries or governments on the same footing for the purpose of subjecting to sanctions or other pressures is obviously unjust.

Secondly, it is unfair and discriminatory to aim labour standards at the export trade sector where the working conditions are frequently better than in the rest of the economy (Muntarbhorn, 1998). It would mean that industries and sectors that are producing goods and services for purely domestic consumption would not come under the WTO’s regulations. The WTO will not be able to ensure universal protection of labour, and labour standards would provide selective protection at best. United Nations Children’s Fund (UNICEF) study concluded that only 5% of the children in developing countries are engaged in export-oriented industries (Toor, 2001) while 95% of child labour is not in the traded sector. Hence, the standards would be of no benefit to the sectors where the most blatant cases of child labour exploitation and worst offences are found, in plantations, mines, construction industries and small service firms working entirely for the domestic market (Liemt, 1989). Removing children from employment in export sectors may actually expose them to greater harm by causing them to move from a relatively safe employment to a more hazardous one (Cullen, 1999), since labour standards are lower in sectors that do not export. Hence the policy-makers constantly keep in mind the ambition of reducing poverty when they are making recommendations so that policies do not backfire. Child labour is a socio-economic problem that requires a solution other than trade sanctions.

In 1995, the Harkin Bill was proposed in the United States to prohibit the import of goods produced with child labour (Child Labour Deterrence Act, s706). The drafters of the Act intended that the ban would be largely automatic. If a country was identified by the US as allowing child labour, then all its manufactured goods would be prohibited, unless an importer could establish that the products, which he or she imported, were not made with child labour (Tonya, 1992). However, within the export sector, the threat of external sanctions often drives child labourers into other worse activities than before; there is no guarantee that they will go to school and end up in improved occupations. In Bangladesh, for example when 50,000 child workers were laid off, following the threat of the Harkin Bill, most of them did not go back to school, but ended up in stone crushing, street work and prostitution (WTO and South Asia, Multilateral Liberalisation). As children lose jobs in developing export sectors, their families will fall further into poverty. The children will be shifted back in the production chain in the non-tradable sectors, where conditions are harder and pay lower. Therefore, trade sanctions are more likely to hide the problem
rather than solve it (Rollo and Winters, 2000). In fact, there might be repercussions on other industries as well. For instance, a developing country that exports goods made with adult labour may rely on an input made in an unregulated industry using child workers. If countries impose a tariff on the developing countries in order to discourage the use of child labour, demand for the exports falls reducing the demand for the adult workers in the industry and cutting their wages as well. There is a knock-on decline in demand for its inputs and therefore the labour of the children making them. Thus, both adult and child employees are worse off. Hence, we can visualise the difficulty in using moral arguments to justify the inclusion of the CLS within the WTO framework when trade sanctions are imposed. Bans on child labour may actually undermine the objective of increased welfare for children, unless there are backup programmes with adequate planning and resource. Moreover, it is meaningless to limit the programme of inspection on the issue of child labour, as Federation Internationale de Football Association (FIFA) is doing, while other important obligations - e.g adult wages, health provisions, safety regulation and trade union rights - are not monitored (World Cup Campaign, 2002). These other obligations can be of great help in eradicating child labour and giving children a better chance in life: if adults are fairly paid, their children will not need to work.

The question arising is why should a ban only be imposed on the exporting country which uses child labour? Why should there not be a ban on the importing country that uses child labour as well? These are questions of double standards. If a developed country wishes to apply sanctions against a developing country, in regard to child labour, the act of doing so may be seen as deceptive and opportunistic if the developed country itself has not eliminated child labour completely and hence, the plea of protectionism by the developing countries seems strong. For instance, Human Rights Watch found a failure of the US government to protect children working in agriculture (HRW report, 2000). Child farm workers often work ten hours a day at age twelve, and others work twelve or more hours a day at age fourteen. Further, they are exposed to dangerous pesticides, suffering headaches, nausea and vomiting. Long-term consequences of pesticide poisoning include cancer and brain damage. Many farm workers earn far less than the minimum wage. Long hours of work interfere with their education. Only 55 percent of farm worker children in the United States finish high school (Ibid). Clearly, even the developed countries like the United States have not fully eradicated child labour, even though the United States ratified the ILO Convention 182 on the Elimination of the Worst Forms of Child Labour. Under the convention, "the worst forms of child labour" include, among others, "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children." (Article 3(d). Child farm workers in the United States face the risks outlined in subparagraphs (c) (d) and (e) (Recommendation, 190 Para 3) - i.e., work with dangerous machinery, equipment, and tools; work in an unhealthy environment, including exposure to hazardous substances, notably pesticides; and work for long hours, during the night, or without the possibility of returning home each day - and meet the definitional requirements of the worst forms of child labour. Consequently, as a ratifying member state, the United States is under an obligation to take immediate steps to ascertain what forms and conditions of child labour in agriculture violate the convention and then eliminate them.
In any case, were the developed countries not also dependent on child labour on the home front in the not-so-distant past? In New York City, for example, the State Labour Department has found unregistered shops, unsafe working conditions, minimum wage violations, and child labour violations. (Lantos, 1992) Industrialisation was associated with a boom in child labour in all the industrialised countries. The fact is that child labour has not been totally eliminated even in the developed countries. Rather it has declined, but that decline was through evolutionary development and not through revolutionary means like trade sanctions.

Moreover, developing countries, whose economies are beginning to industrialise, are experiencing the same problems that developed countries experienced in their early stages of industrialisation. Hence, it is not right on the part of the developed countries to push for linking child labour issues with international trade. The developing countries need to be given sufficient time to overcome the social evils of child labour rather than imposing trade sanctions. Further, if the developed countries are sincere in improving the labour conditions then their main concern should be to eliminate poverty, not by loans but by better terms of trade and debt relief, since poverty and ignorance threaten human society as surely as any weapon of mass destruction (UNICEF, 2003). So for the elimination of child labour the measures used should be those which save the vulnerable child labourers in all the sectors, traded or none traded, through poverty alleviation.

The double standards are even more evident when a developed country applies sanctions against one country, but refuses to apply them against another in a similar situation. An example is the imposition of sanctions against Pakistan for using child labour - i.e. for violation of core labour rights - in the soccer ball industry, although evidence shows that several companies have been producing FIFA-licensed goods - for example in Indonesia and China - under conditions that violate this contract as well (Trade Union and Human Rights). Nevertheless, no sanctions are imposed. Clearly, these are double standard policies, which might be profitable for market excess, but make trade sanctions more dubious.


4.1. The Social Clause.

The linkage between trade and labour standards is long-standing. In 1906, an international treaty was adopted to prohibit the trade and manufacture of matches made from white phosphorus due to the danger posed to workers in this industry (International Metal Workers’ Federation, 1988). What is new is the call to institutionalise such a notion within the GATT/WTO framework to provide explicitly for a social clause based upon a linkage
between trade and labour rights, with the possibility of sanctions against those countries which fail to respect these rights. According to Bhagwati, the linkage implies ‘that a country’s access to external markets is to be made conditional in some fashion on the acceptability of that country’s internal ‘labour standards’ (Muntarbhorn, 1998, p270). A typical social clause of this kind makes it possible to restrict or halt the importation or preferential importation of products originating in countries, industries, or firms, where labour conditions do not meet certain minimum standards. Hence, the mandatory dimension of this idea can be broken down into two propositions. First, that all countries engaged in international trade should have a legal obligation, not based upon ratification of particular conventions, to observe certain workers’ rights. Second, that this obligation should be enforceable through trade sanctions (Muntarbhorn, 1998). However, trade sanctions are by nature blunt weapons.

### 4.2 International Trade and WTO: Protecting Children.

The WTO framework establishes a dispute settlement mechanism for disputes arising under a covered agreement, which is more formal than previous GATT practice. (Article 3(2) and Art. 3 (8) of the WTO Dispute Resolution) It is claimed that various existing provisions of the GATT/WTO agreements could be interpreted broadly to include the concerns of child labour (Diller and Levy, 1997). First of all article XX (a) has been suggested as a ground for justifying unilateral trade measures to promote the elimination of child labour (GATT 1994). This allows exceptions necessary for the protection of public morality (Cullen 1999). It would be difficult to establish that products made by child labour are in themselves a threat to morality. This is because for the WTO the process of production is irrelevant; only the product is taken into account and the product itself is not contrary to public morals. Further, the WTO has never had to adjudicate any dispute on “public morals” (Article XX.a) which could be said to be one of the most directly human rights related exceptions, nor any dispute based on a “human rights” interpretation of Article XX exceptions (HoeLim, 2001).

What of interpreting the other exceptions to cover labour rights and child labour rights, especially Article XX (b) in regard to measures, “necessary to protect human, animal or plant life or health”? In fact the WTO has a number of cases, which have involved article XX (b). Nevertheless, in virtually all cases, the decisions reached were not on the basis of Article XX but on the violation of other WTO rules, most notably non–discrimination (Hoe Lim 2001). From the experience of past attempts to use this clause to allow trade restrictions for environmental reasons – attempts which were, in effect, rebutted by the GATT dispute settlement machinery - it would be difficult to interpret this clause to cover labour rights (Cullen, 1999). Moreover, no such attempt would be convincing without a consensus from the state parties.

Another area where an importing country might seek to interpret GATT provisions to counter labour rights and child rights violations is in relation to emergency measures to
protect its market. (Article XIX). However, to interpret the provision to cover labour and child related issues would be to strain the substance of the provision with the potential of hidden protectionism and an incorporation of labour standards in a revised Article XIX would have a clear protectionist bias since import restrictions would only be applicable if domestic producers in the importing country were seriously injured or threatened by injury (Hansson, 1983).

Article XX (e) is the only place where the GATT Agreement, via its exception, expressly raises labour-related concerns. It allows states to exclude the products of prison labour. It has been proposed to interpret the expression of 'Prison Labour' extensively as including all forms of forced labour, bonded or exploitative labour (Diller and levy, 1997). Moreover, amendment of Article XX(e) 1947 to cover all of the core labour rights was suggested (ibid). A member state considering the violation of any of those rights was able to enforce measures to prevent this violation. As Article XX (e) GATT 1947 states a general exception from the most-favourite-nation clause, the invoking party would have to prove the alleged violation (Howse and Trebilcock, 1995). That would diminish the danger of protectionist tendencies. However, the significant argument regarding the disadvantage of this idea is that from the historical point of view, Article XX (e) of GATT represents - as it was transferred without any amendment from GATT 1947 to GATT 1994 - the consensus of the contracting parties of 1947- although the only Human Rights Convention in 1947 was on suppression of slave trade and on forced labour, this was obviously not mentioned in the provision (Burianski, et al). Moreover, Article XX (e) explicitly refers to the products of prison labour rather then the labour conditions under which they are produced and thus confirms its indifference towards the methods of production (Diller and levy, 1997). In other words, the text approves trade restrictions where such products distort free trade rather than where those products are the consequence of labour rights violations (Muntarbhorn, 1998). Article XX (e) was conceived as protection against unfair competition deriving from the low costs of prison labour, which no private company would be able to compete with. Therefore, its aim is to protect competition, not workers. On the whole, Article XX (e) in its present form should not be invoked for protection against forced, bonded or exploitative child labour.

De Wet expresses the possibility of using Article XXIII to create the nexus between trade and labour standards within the WTO framework. He points out two stages of implementation of the Agreement. (De Wet, 1995). The first stage is moral persuasion, which is the first step to redress any violation of the labour standards by the ILO with the formation of a tripartite committee to deal with the complaints. Once it has been established that a violation has taken place the committee could make recommendations to the government and stipulate a time during which they have to take steps to meet their obligations. The second stage would be implemented when moral persuasion proves to have no effect. This is where the WTO would step in to put economic pressures on the recalcitrant countries. The implementation of such a system would keep the role of the ILO within its tripartite and moral persuasive boundaries. However, there is the possibility that workers might lose interest in the voluntary approach of the ILO and rely
on the WTO to enforce their demands – thus the ILO would become obsolete (De Wet, 1995).

Hence, it is arguable that such moves would weaken the ILO and strengthen the WTO. To strengthen one international organisation at the expense of another has no sense. Hence, it is better that international discussion should turn to ways and means of strengthening the ILO, which is a specialised agency to deal with violations of international agreed standards including the elimination of the worst forms of child labour - for example, by the establishment of standing ILO bodies in forced labour and child labour and the development of binding codes of conduct.

In this regard it is important to be clear that while the multilateral trading system can help to create economic conditions which contribute towards the fulfilment of human rights, it is not within the mandate of the WTO to be a standard setter or enforcer of human rights (Qureshi, 1998). As is well known, for reasons of optimality the international system was created on the basis of clear division of labour between organisations. While there may be complementarities between mandates and a need for legal and institutional coherence, this does not suggest that one organisation should be used to pursue the mandate of the other. In this regard, it should be noted that the dispute settlement system of the WTO is not a court of general jurisdiction (Hoelim, 2001). Article 7(2), of the Dispute Settlement Understanding (DSU) limits a panel’s terms of reference to the “Covered Agreements” which are defined in Annex I of the DSU to include only the WTO Agreements. Therefore, attempts to use the multilateral trading system to solve problems in other areas would place it under great strain, and would be much less effective (United Nations 1998).

The annual ILO monitoring of compliance with ILO conventions is an impartial and multilateral process and it is the appropriate forum for the review of compliance by nation states. Such monitoring, the opposition of public exposure and the effective strengthening of the NGOs in the offending countries will, often, be enough to push these countries into corrective action, and this could be done through the modification of paragraph 5 of Article III to include a reference to the ILO in its stated desire to achieve a “greater coherence in global economic policy making…with the International Monetary Fund and with the International Bank for Reconstruction and Development [the World Bank] and its affiliated agencies” (Wilkinson, 1999). This would keep labour issues within the jurisdiction of the ILO while respecting the mandates of each organisation. The development of such an institutional acknowledgement of the work done by the ILO would draw it into the emerging system of global economic control together with the WTO, IMF and the World Bank.

5. The Effectiveness of International Trade Mechanisms in Eliminating Child Labour.
Trade mechanisms will only be feasible, if all states involved agree that they are fair, but this is currently not the case (Langille, 1997). The statement from the Singapore Ministerial Meeting demonstrates the seriousness with which this argument is regarded (Singapore Ministerial Statement, Dec. 13, 1996, para.4). This re-affirms the right of low-wage countries to maintain that competitive advantage obtained from low wages and conditions is legitimate as long as it is intended to encourage development and is not maintained artificially. Moreover, the problem with core labour standards as defined by the United States is that its concept of internationally recognised worker rights includes conditions of work and fair wages (Alston, 1996). Once the issue of wages is raised, then the hidden protectionism argument begins to look more credible. Further, politicisation of trade sanctions undermines their effectiveness and leads to accusations of protectionism. Even the Generalised System of Preferences (GSP) provisions, requiring conformity with core labour standards, can be politicised through discretionary elements in those systems. As the GSP is available only to developing countries, it provides a less than universal monitoring mechanism for core labour standards (Ward, 1996). Child labour is, however, a problem not found solely in developing countries.

Trade sanctions can only be effective, if they inflict a serious economic harm on the target, and all alternative sources and markets are cut-off from the target of those sanctions, as illustrated by the situation of Iraq. Cutting off virtually all of Iraq’s markets through international co-operation has brought the country’s economy to its knees (Stirling, 1996). Unilateral sanctions are unlikely to be effective because they simply cause the state in question to seek alternate markets or sources of supply. So what effect will multilateral sanctions have if used for the elimination of the worst forms of child labour in a developing country? No doubt, it is deeply disturbing that young children in developing countries toil under harsh conditions for low pay. Nevertheless, the earnings of these children may be important to their families and their own survival. If concern about child welfare is genuine, then the mechanism should be International solidarity not punishment of the weak e.g. by instituting international taxation.

It can be argued that trade sanctions are potentially effective means of securing compliance with human rights standards because access to profitable consumer markets such as the United States is attractive to every country, and could provide a powerful incentive for compliance with CLS. (Tonya, 1992). But, the trade-related social clauses give leverage only to governments in advanced industrial countries which have large and strong markets. For example if the U.S. were to insist that Pakistan change some aspect of its labour regulation, Pakistan would risk losing access to its most important market, while if Pakistan were to block U.S. imports over some issue, it would not be very important for the US. Therefore, the question arises how would developing countries, with insignificant economic influence, enforce labour standards on rich developed countries? Or, is this to be a one-way process, where rich countries, whose workers are also global consumers, use their market influence to enforce standards upon the rest of the world? The danger is that the industrialised countries might manipulate social clauses to undermine a trading partner’s sovereignty rather than to protect core labour rights or for
the elimination of the child labour. The uneven power of different countries to impose sanctions would increase the already-overwhelming power of developed countries.

Is There a Role for International Trade Mechanisms in Combating Child Labour?

There are a number of reasons for concluding that trade mechanisms can never be the primary method of resolving human rights issues including child labour. Advocates of trade sanctions argue that the traditional methods of enforcing international human rights law are inadequate to ensure that standards such as the prohibition on child labour are respected (Grootaert and Kanbur, 1995). Therefore, they want to push the incorporation of labour standards within the WTO framework because the WTO has an enforcement mechanism.

Opponents argue that trade sanctions cannot address the causes of child labour. Accordingly, technical assistance programmes such as the ILO’s International Programme for the Elimination of Child Labour are regarded as a better solution to improve the welfare of child workers, than simply taking goods produced with child labour out of circulation (Servais, 1989). Further, more effective implementation of ILO’s agreements is needed. The ILO is a UN body with representatives of trade unions, government and business from every country, so it is a very suitable body, bringing together all the appropriate interests. It has many different conventions and different numbers of countries have signed up numbers of conventions. They have instruments, like the IPEC Programme, to work on reducing child labour (Select Committee on International Development).

The issue of child labour is of special importance to the ILO. This emphasis is reflected in the adoption in 1999 of the Convention and Recommendation banning the worst forms of child labour. One example of a successful ILO project that addresses child labour issues is outlined below.

The Bangladesh garment industry has employed children below the legal working age. An appeal directly to the ILO from underage workers in Bangladesh, coupled with extensive publicity in the United States, focused international attention on the situation. The Bangladesh Garment Manufacturers and Exporters Association joined with the Bangladesh government and the ILO in 1995 to create a workable programme (Child Labour in the Apparel Sector)To implement the project, the ILO trained and deployed twenty-eight child labour monitors. These monitors regularly inspect factories and monitor children’s school attendance. They also monitor the economic condition of children's families, to ensure that no family suffers economically because it is now sending its children to school instead of to work. By 1997, monitors reported that the number of factories employing underage children dropped from 43% to 12%. More than 8,000 children under the age of 14 had been taken out of 800 garment factories and
enrolled in special education programmes. This appears a better option than trade sanctions as the social protection programme, not only targets the elimination of child labour but also attempts to protect children by providing them and their families with non-formal education, skills training, and income-generating activities, among others.

Although the only sanction ILO has at its disposal is publication of its findings (Leary, 1996), this has not been noticeably less effective than unilateral trade sanctions. Moreover, co-operation with countries where child labour is widespread is more effective than confrontation. The ILO has the experience, the people, and the incentive to promote and enforce labour standards. It is also increasing technical assistance to member countries, particularly to combat child labour, and is shining a spotlight on compliance with all the CLS under the 'Declaration on Fundamental Principles and Rights at Work'. What the ILO needs is more resources and political support, a process that has begun but needs to be sustained and expanded.

The debate over the social clause has not been active in seeking other means of addressing the problem of child labour and other core labour standards. Child labour represents one type of human rights issue where trade sanctions are proposed. The ILO itself has been reluctant to advocate trade sanctions with respect to child labour. In fact, the consensus that emerged at an important session of the ILO working party was that it 'should not pursue the question of trade sanctions and that any discussion of the link between international trade and social standards, through a sanction-based social clause, should be suspended'. (GB.264/ WP/SDL/1, para.13) Instead, the working party will look at ways to promote core labour standards through encouragement, support and assistance and at the means to strengthen ILO’s effectiveness in achieving this task (OECD, 1996).

Involving the ILO in enforcing labour standards through the WTO, as has been suggested by some, risks basically changing the structure and functioning of the ILO. Nonetheless, there is ample evidence that the observance of core labour standards has been conferred upon the ILO exclusively. This includes the adoption of a new convention on child labour in June 1999. Some argue that the relegation of the supervision of core labour standards to the ILO does not exonerate the WTO of all responsibility. International trade organisations are still leaders in setting the terms of international business (Langille, 1997).

Without WTO Agreements, which uphold the principles of non-discrimination and the rule of international law, citizens in all WTO member countries, especially those in smaller countries, would be legally less protected against abuses from unilateral trade measures (Balassa, 1985). It is also important not to forget that the WTO provides the means for countries to resolve their disputes peacefully. Without such recourse, the risk of armed conflict, which is the cause of the most gross violations of human rights, is heightened. However, it cannot, in itself, address the causes of child labour. Some trade mechanisms, however, operate on a co-operative basis, such as the EC’s new GSP additional preferences (Cullen 1999). These may, as part of a larger strategy have some
effect, particularly on states where the legal principle of abolition of child labour is accepted, but are not fully enforced.

7. Child Labour as a Human Rights Issue

The child labour issue is closely related to the understanding of childhood itself. The 1989 Convention on the Rights of the Child (CRC) contains a concept of childhood. This concept is a complex one, involving both the child as a self-determining being and the child as in need of protection. The tension between these concepts can clearly be seen in the area of child labour. The CRC declares that children have the right to be free from economic exploitation (Art. 32 CRC). This means that children are subjects of law as well as objects, and have the right to participate in decisions affecting them and right to be free from economic exploitation. A widely accepted idea is that child labour is a violation of human rights. The child labour issue has come to be discussed in several international human rights fora. First, the UN Charter establishes general human rights obligations that have been defined through subsequent instruments and practices. Member states of the UN, which include virtually all WTO contracting states, have undertaken to promote “higher standards of living, as well as universal observance of human rights and fundamental freedoms for all. These obligations are realised in cooperation with the organisation (UN Charter, Art 55 (a), (c), Art 56). In a more specific articulation, the Universal Declaration of Human Rights (UDHR) is a body of principles and standards of behaviour for all people. It recognises the rights of every person to be free from slavery and the slave trade in all forms (Art. 4, 5, and Art. 25 (1), (2) UDHR). This means that UDHR recognises the right of every person - including children - to be free from slavery and slavery like practices such as bonded and the worst forms of child labour.

The core labour standards, particularly the freedom of association and the prohibition on forced labour, the latter of which covers at least some aspects of exploitative child labour, have become customary international law (Diller and Levy, 1997). Exploitative child labour is considered a human rights issue, for the elimination of which the ILO passed Convention 182 on Elimination of the Worst Forms of Child Labour (ILO, Official Bulletin Vol. LXXXII Ser. A No.2 1999). Moreover, child labour is included not only in a wide range of international human rights treaties, but also in different ILO conventions, which are closely linked (Diller and Levy, 1997). ILO Convention No 29 concerning Forced or Compulsory Labour (39 UNTS 55) and 105 concerning Abolition of Forced Labour are linked to Article 8 of the International Covenant on Civil and Political Rights (ICCPR). (Art.8 (1), (2) ICCPR, 999UNTS 171) about forced and compulsory labour (320 UNTS 291) . ILO Convention 138 is linked to Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) about protection and assistance of children and young persons (Valticos, 2000). Consequently there exists a similarity between the UN conventions on human rights and international core labour standards According to the human rights approach, core labour rights are not contingent on a country’s level of development. No doubt, discussion of core labour rights interferes
with and influences economy and trade issues, but they are founded elsewhere (Castro 1995). Core labour rights cannot be rejected simply because a nation would be economically better off by doing so (Lingille, 1997). It is not a matter of balancing economic interests, but rather of addressing basic values, which are universally held. The issue of free trade and core labour rights is, therefore, a matter of human rights and not a matter of economics (Howse and Trebilcock, 1996). No doubt, core labour rights are those human rights, which are most directly affected by free trade, so we cannot reject the link between labour rights and free trade.

8. Conclusion

The interaction of poverty and social organisation in developing countries perpetuates a situation of child labour. Children are induced into employment in the informal sector to supplement family incomes by parents themselves, sanctioned by society, and are unprotected by the law and the state. Child labour in this form denies the child’s right to education, health, protection and leisure, and thus completely sidesteps the concerns of the majority of the provisions of the CRC and ILO core conventions including, Convention 182. No improvement is possible in the absence of fundamental social change. The elimination of child labour should be an important part of the government’s economic and social development strategy, and governments, employers, trade unions, and non-governmental organisations should work together. As a matter of priority, less developed countries should prohibit child labour in hazardous and unsafe activities, protect children from exploitative bonded labour, and prohibit the employment of those who have not completed primary education or are below the age of twelve.

Action is needed now. The legal provisions prohibiting child labour must not be regarded as an ideal or objective for the future, but should be enforced immediately to illustrate the political will behind the protection of children, and direct social aspirations to shape tomorrow’s action. Moreover, by signing and ratifying relevant instruments the states incur legal obligations to improve the lot of children in their state. It is, therefore, incumbent upon the ratifying states to bring legislation into conformity with those instruments and show the political, social, and legal goodwill required for its effective implementation.

Measures, such as dismissal of child labourers from factories without adequate support systems for them to reintegrate into the community should be avoided. As International labour standards do not cover the unorganised and informal sectors where the majority of the children are working, trade-linked up gradation of labour standards would be of no benefit to the other sectors, where the most blatant cases of exploitation and worst offences are found. The child-sensitive approach should be comprehensive, aiming at prevention of the problem as well as remedies for the child and the family, irrespective of whether one is in favour or against social clauses. Further, it has been shown that the current GATT/WTO framework does not provide for social clauses leading to sanctions for breach of child labour rights in ordinary trade relations under the MFN system.
Finally, the operation of social clauses within the GATT/WTO framework seem to ignore or sideline the fact that the exploitation of child labour is a violation of international human rights law.

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Endnotes

1 Linkage between trade and core labour standards was debated at the Singapore Ministerial Conference of the WTO, with strongest support from the United States, firm


4 Toys sold with McDonald's meals are being made with the help of child labourers who work 16 hours a day and earn 1.5 Yuan an hour in sweatshop conditions (but no sanctions are imposed). Trade Union and Human Rights: at http://www.ei-ie.org/action/english/Childlabour/etrchildlabor.htm

5 Child Labour In The Football Industry, Highlighted fact is that 810 separate cases of violations in relation to the 2002 FIFA World Cup were discovered in no fewer than 56 countries around the world. FIFA and Child labour, Media Information at http://www.fifa.com/Service/MR_M/43947_E.html

6 'If, as a result of unforeseen developments and of the effect of the obligations incurred by a contracting party under this Agreement, including tariff concession, any product is being imported into the territory of that contracting party in such increased quantities and under such conditions as to cause or threaten serious injury to domestic producers in that territory of like or directly competitive products, the contracting party shall be free, in respect of such product, and to the extent and for such time as may be necessary to prevent or remedy such injury, to suspend the obligations in whole or in part or withdraw or modify the concession.' The General Agreement on Tariffs and Trade GATT, The Legal Text, op. cit.p.518