

Labour Rights in Global Trade: The Lost Consensus

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1. Introduction. 2. Laissez-faire approach to the regulation of trade and production. 3. ILO and the mirage of the International Trade Organization. 4. Conclusion.

Abstract

The article explores the relationship between trade practices and labour rights throughout the history of the 20th century and demonstrates that the lack of mention of labour standards in the GATT rules was neither natural nor inevitable. Beginning with the laissez-faire era, it illustrates how unregulated competition created harsh working conditions and prompted early demands for international labour rules. It then examines the role the ILO was expected to play within the planned International Trade Organization under the Havana Charter, where fair labour standards were recognized as essential to prevent social dumping. The Charter's failure left international trade without this social dimension. The paper argues that the later emergence of labour clauses in free trade agreements and GSP schemes simply reflects the intrinsic connection between labour standards and fair trade.

Keywords: International trade; ILO; Fundamental labour standards; Havana Charter; Fair trade; GATT.

1. Introduction.

Trade and labour are interconnected and interdependent, relying on each other for the better economic performance and the welfare of the states. The history of industrialization has demonstrated that relying on trade and neglecting the labour part of the puzzle may result in detrimental consequences for the society.

There is no invisible hand that will arrange the decent working standards and will ensure the protection of human rights in the market economy. The achievements of this kind have been always the result of the struggle and compromise. The scope of the struggle and the compromise varies from country to country and depends largely on its stage of economic and political development.¹ The issue has been always in the determination of the extent of the interference of the state into regulation of the market and the trade.

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¹ See: Chang H.J., *Bad Samaritans. The myth of free trade and the secret history of capitalism*, Bloomsbury, New York, 2008; Acemoglu D., Robinson J.A., *Why nations fail: The origins of power, prosperity, and poverty*, Crown Currency, New York, 2013.

The connection between international trade and labour rights has been established for centuries.² Since the rise of the industrialization in the western world, the need to ensure that competing countries respect the same minimum labour standards to remain competitive and avoid social dumping became evident. Also, some competing countries imposed bans on certain products made by convict labour to guarantee that no one has the competitive advantage through the exploitation of prisoners.

It is interesting to note that only the second point has been further explicitly recognized in the General Agreement on Tariffs and Trade (GATT) agreement concluded in 1947.³ The first link might be traced in the Versailles Peace Treaty, the International Labour Organization's Constitution⁴ and the Havana Charter of the International Trade Organization (ITO). The latter though has never come into force.

In this paper these historical links will be considered in detail to demonstrate that labour rights were and should be the intrinsic part of trade negotiation. The first part will analyse the historical laissez-faire approach to the regulation of trade and production, the second - will demonstrate that ILO was intended to solve the problem of social dumping in the international trade through the adoption of minimum labour standards. In the final part the attempt to legally bind trade and labour standards in the Havana Charter.

2. Laissez-faire approach to the regulation of trade and production.

It has been argued that absolutely free market existed only once in the middle of XIX century.⁵ In the Prison Notebooks Antonio Gramsci underlined that laissez-faire is a state "regulation", introduced and maintained by legislative and coercive means, and should be seen as a political program designed to change the distribution of the national income.⁶ Polanyi developed this argument two decades later:

There was nothing natural about laissez-faire; free markets could never have come into being merely by allowing things to take their course. Just as cotton manufactures – the leading free trade industry – were created by the help of protective tariffs, export bounties, and indirect wage subsidies, laissez-faire itself was enforced by the state.⁷

As far as labour was concerned *laissez-faire* meant the state's conscious restraint from imposing any conditions of employment. This period is the best illustration of the need to

² See also: de Wet E., *Labour Standards in the Globalized Economy: The Inclusion of a Social Clause in the General Agreement on Tariff and Trade/World Trade Organization*, in *Human Rights Quarterly*, 17, 3, August 1995, 443-462.

³ See the original text here: https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXX (accessed 08/04/2025).

⁴ See: https://www.ilo.org/dyn/normlex/en/?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO.

⁵ Polanyi K., *The great transformation: the political and economic origins of our time*, Beacon Press, Boston, 2001, 223.

⁶ Gramsci A., *Selections from the Prison Notebooks* (Edited and translated by Hoare Q. and Nowell Smith G.), ElecBook, London, 1999, available at: <https://ia600506.us.archive.org/19/items/AntonioGramsciSelectionsFromThePrisonNotebooks/Antonio-Gramsci-Selections-from-the-Prison-Notebooks.pdf>.

⁷ Gramsci A., *ibidem*, 145.

ensure binding minimum labour standards and their connection with international trade. Marx and Engels wrote in the Manifesto in 1848 that the personal worth was “resolved into exchange value, and in place of the numberless indefeasible chartered freedoms, has set up that single, unconscionable freedom — Free Trade”, and the exploitation became “naked, shameless, direct, brutal”.⁸

There is an abundance of evidence of the deterioration of health and morals of workers in the era of *laissez-faire* and the lack of labour regulation.⁹ The words “miserable” and “hopeless” were often used in the books writing describing the working conditions in England, France, the US, Italy or Russia.¹⁰ The misery of a worker in an unregulated labour was well portrayed in the famous Italian book published in 1905: “It is his misery, constant, organic, so intense, so profound, that a hundred charities do not succeed in eradicating, ..not the misery of the idler, mind you, but the misery of one who works hard fourteen hours a day”.¹¹

It is generally recognized that the resistance to regulate labour in the key industrial states was motivated among other things by the fear to lose in the competitive struggle with the countries which did not provide such regulation.¹² The idea behind the international regulation of labour can be attributed to the recognition of the necessity to maintain a balance between the economic concerns of domestic manufacturers and the need to protect the health of workers (no mention about any decent conditions back then). Such a compromise was possible only if certain minimum conditions of labour would be determined at the international level and would equally bind producers in competing countries.¹³

It is amazing how clearly this argument was put in 1841 by famous Daniel Legrand, an owner of the ribbon factory in France, who knew better than others about the horrors of the unrestrained competitions and tried to convince the people in power to regulate labour pointing on the example of England:

England subordinates its political interests to its financial interests; it floods all countries that are not hermetically sealed off with its yarns and fabrics. As a result, it takes to heart, more than any other nation,

⁸ Marx K., Engels F., *Manifesto of the Communist Party*, 1848, available at:

<https://www.marxists.org/archive/marx/works/1848/communist-manifesto/ch01.htm>.

⁹ Engels F., *The Condition of the Working Class in England*, 1845, available at: <https://www.marxists.org/archive/marx/works/1845/condition-working-class/>; Mayhew H., *London labour and the London poor*, Penguin UK, London, 1985; Litvinov-Falinsky V.P., *Factory legislation and factory inspection – 2nd Edition*, Printing house of A.S. Suvorin, Moscow, 1904 (in Russian); Villermé L. R., *Tableaux de l'état physique et moral des salariés en France (1840)*, Les Éditions La Découverte, Paris, 1986.

¹⁰ See, for example: Harding Davis R., *Life in the Iron Mills*, 1861, available at: <https://www.theatlantic.com/magazine/archive/1861/04/life-in-the-iron-mills/304543/>; also Zola É., *Germinal* (Translated and Introduced By Havelock E.), available at: <https://www.gutenberg.org/files/56528/56528-h/56528-h.htm>.

¹¹ Serao M., *Il Ventre Di Napoli*, Bacheca Ebook, 2010, available at: <https://docs.google.com/file/d/0Bw6KniN4C-qNGRjZTgzM2MtNjg5Yy00NDA3LTg4NjAtMTY5MzE5MTM2OTcx/edit?resourcekey=0-Oh2ZrM0sXjrruFntrXljzA>

¹² See, for example: Hepple B., *Labour laws and global trade*, Bloomsbury Publishing, New York, 2005; Servais J.M., *International Labour Law*, Seventh Edition, Wolters Kluwer, 2022.

¹³ See also: Shotwell J.T., *The Origins of the International Labour Organization*, Columbia University Press, New York, 1934, 4.

the need to produce as economically as possible in order to beat foreign competition. Still, England has found that all its interests, without exception, imperatively require the intervention of legislation to fix the age, working hours and education of factory workers, in order to save them from ruin and perdition.

He further wrote that “the competition acts on production with all the ascendancy of a force majeure. It imposes irresistible laws on it, and can only foresee ruin for anyone who would isolate himself from common greed and persist in rejecting economic means that are rejected by mankind”. He concludes that only the laws, the expression of moral law, can set limits to the “pernicious influence of competition”. Finally, he ascertains that such laws “will not even temporarily harm our exports; it will not consume and sell a pound of yarn, or an acre of cotton”.¹⁴

Indeed, the gradual recognition of labour rights in the industrialized countries did not have a significant impact on their international trade. By the early 20th century some advanced economies in Europe had made some efforts to achieve a level playing field based on the institutionalization of minimum conditions of work and labour rights across trading partners.¹⁵ The creation of the tripartite International Labour Organization (ILO) in 1919 is the most vivid example of the aspiration of the key industrial states who won the First World War to ensure a fairer competition through imposition of the common labour standards.

Another historical way to ensure a fairer international trade was to impose a ban on the import of products made with prison labour. Some scholars noted that in the late nineteenth century, the US, England, Australia and Canada banned trade in goods made by convict labour.¹⁶ There is evidence that international competitors had accused the Soviet Union of exploiting forced labour to lower the price of lumber, and by 1930, US, France, and other countries had imposed restrictions on or entirely banned Soviet imports.¹⁷ Such a ban was introduced in the US by the Tariff Act adopted in 1930 (section 307).¹⁸ Also, in 1951, US Congress prohibited the importation of seven kinds of furs and skins which the Soviet Union and China produced.¹⁹

In sum, the historical experience demonstrates that market by itself could not correct the “pernicious influence of competition” described by Legrand. The ILO, established in 1919 had a mandate to prevent social dumping by harmonizing labour standards internationally.

¹⁴ Legrand D., *Lettre d'un industriel des montagnes des Vosges à MM. Gros, Odier, Roman et Comp., à Wesserling; distribuée aux Membres des deux Chambres et du Ministère*, 1838, available at: https://numelyo.bm-lyon.fr/f_view/BML:BML_00GOO0100137001102579641/IMG00000006.

¹⁵ ILO, *Handbook on assessment of labour provisions in trade and investment arrangements*, International Labour Office, Geneva, 2017, available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_564702.pdf.

¹⁶ Aaronson S. A., Chauffour J.P., *WTO Publications. The Wedding of Trade and Human Rights: Marriage of Convenience or Permanent Match?*, 2025, available at: https://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_15feb11_e.htm.

¹⁷ David-Fox M., *Gorky's Gulag. Showcasing the Great Experiment: Cultural Diplomacy and Western Visitors to the Soviet Union, 1921–1941*, Oxford Academic, 2012, available at: <https://archive.org/details/showcasinggreate0000davi> (accessed 8 April 2025).

¹⁸ The initial edition of the sec. 307 is accessible here: <https://www.govinfo.gov/content/pkg/USCODE-2011-title19/html/USCODE-2011-title19-chap4-subtitleII-partI-sec1307.htm>.

¹⁹ Osofsky S., *US–Soviet Trade: Problems and Prospects*, in *Mercer Law Review*, 27, 1976, 713, available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol27/iss3/7.

This same aspiration was later reflected in the labour provisions of the Havana Charter, where the ILO was intended to play a central role in reconciling trade liberalization with social protection. Although the Charter never entered into force, it is worth considering this document and the planned role of the ILO in international trade in the next chapter, as it demonstrates the consensus of the states on the importance of labour standards for ensuring fair trade after the Second World War.

3. ILO and the mirage of the International Trade Organization.

There are several points of the ILO key documents that may be directly linked with trade: Article 427 of the Treaty of Versailles stated the key principles of the ILO. It also underlined that “labour should not be regarded merely as an article of commerce”. According to the preamble of the ILO Constitution, the creation of the ILO was needed because “the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries”. These words reflect the position of Daniel Legrand referred to earlier. Also, the ILO Declaration of Philadelphia adopted during the war in 1944 acknowledged that labour is not a commodity, reaffirming the statement made in the article 427. The Declaration encouraged the ILO to cooperate with relevant bodies with the objective, among other things, to promote a high and steady volume of international trade.²⁰

The ILO though had no power to interfere into trade relations but was supposed to have a voice in international trade framework under the Havana Charter of the International Trade Organization (ITO).

ITO was intended to manage the world trade. Its Charter was drafted promptly after the adoption of the Declaration of Philadelphia at the United Nations Conference on Trade and Employment in Havana in the period from November 21, 1947, to March 24, 1948. The ITO was the third institution that should have been set up along with the International Monetary Fund and the World Bank in the postwar era to implement the articulation between international security and economic and social welfare laid down in the United Nations Charter.²¹

It is necessary to underline that these links were an inherent part of the system of the new United Nations system. Already in the Atlantic Charter,²² Roosevelt and Churchill set their goals “to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement and social security”. I think that the sequence in this list is important: labour standards are mentioned first. The allies that have signed the Declaration by the United Nations in 1942 have agreed with these principles. They were further expressed in the UN Charter, though not mentioning labour directly. According to the Preamble, “the peoples of the United

²⁰ Osofsky S., *ibidem*.

²¹ Graz J. C., *The Havana Charter: when state and market shake hands*, in Reinert E.S., Ghosh J. (eds.), *Handbook of Alternative Theories of Economic Development*, Edward Elgar Publishing, London, 2016, 281-290.

²² *Atlantic Charter*, 14 August 1941, available at: <https://avalon.law.yale.edu/wwii/atlantic.asp>.

Nations determinedto promote social progress and better standards of life in larger freedom”, and for these ends “to employ international machinery for the promotion of the economic and social advancement of all peoples” have resolved to combine the efforts to accomplish these aims.²³

I always have a very bitter feeling considering the provisions of the Havana Charter of the ITO during lectures, the feeling of helplessness in opposition to the forces of capitalism which preach a free market and free trade. The Charter was supposed to ensure the shift from pre-World War II liberal arrangements to “a conception of a trading order which should strike a balance between free-trade objectives and substantial state interventions in socio-economic policy and several sectoral aspects of international trade”.²⁴ This document seems to reflect the aspirations of the Declaration of Philadelphia not to treat labour as a simple commodity, which means inter alia not to spread on it the laws of free market where the demand determines the price of the commodity.²⁵ It was supposed to allow ITO members to prioritize social policies.²⁶

This reflection stems from the role given to the ILO in the consideration of the possible trade disputes between the countries in the envisaged world trade system of the Havana Charter (para. 3 article 7) and from the attention which is paid to employment in its text. Starting with the latter we will consider the content of the charter, which is already very illustrative: employment is mentioned 72 times²⁷ in the text, it is referred numerously in the Article 1 which outlines the purpose and objectives of the ITO:

RECOGNIZING the determination of the United Nations to create conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, THE PARTIES to this Charter undertake in the fields of trade and employment to cooperate with one another and with the United Nations For the Purpose of REALIZING the aims set forth in the Charter of the United Nations, particularly the attainment of the higher standards of living, full employment and conditions of economic and social progress and development, envisaged in Article 55 of that Charter.

These words are the convincing evidence of the fact that international trade was conceived as being dependent on regulation of employment, that labour standards were supposed to play an important role in this process.

It is interesting to compare these principles with the ones which were proposed by the United States in Preparation for an International Conference on Trade and Employment in 1945. This proposal, in particular, seem to draw a line between legitimate interests of developed countries and developing ones. As one of the governing principles it recognized that:

²³ *United Nations Charter: Preamble*, available at: <https://www.un.org/en/about-us/un-charter/preamble>

²⁴ Graz J.C., nt. (21), 281-290.

²⁵ See the reflection about the place of the wage in the GATT negotiation in: Alben E., *GATT and the Fair Wage: A Historical Perspective on the Labour-Trade Link*, in *Columbia Law Review*, 101, 2001, 1410.

²⁶ Mavroidis P.C., Sapir A., *State Capitalism in the GATT/WTO Legal Order*, in *Journal of International Economic Law*, 26, 1, 2023, 154–165.

²⁷ Automatic text search in PDF file of the official text.

*a. In all countries high and stable employment is a main condition for the attainment of satisfactory levels of living. b. The attainment of approximately full employment by the major industrial and trading nations, and its maintenance on a reasonably assured basis, are essential to the expansion of international trade on which the full prosperity of these and other nations depends...”*²⁸

This draft mentioned employment 45 times.

The final text of the Havana Charter was a result of the compromise between developed and developing countries. It reflected the genuine belief in creation of a fairer and more equal society through trade and the role of the ILO in this process.²⁹ People who signed the Havana Charter in Cuba in 1948 have seen with their own eyes the price which the world has paid for the failure to ensure permanent peace based on social justice as it was promised in the ILO Constitution adopted at the end of the First World War.

According to article 2 of Havana Charter (Importance of Employment, Production and Demand in relation to the Purpose of this Charter), maintaining a high level of employment, production, and demand is not the issue of domestic policy only, while the avoidance of unemployment or underemployment must depend primarily on internal measures taken by individual countries. Such measures should be supplemented by concerted action under the sponsorship of the Economic and Social Council of the United Nations. It also underlined the importance of the regular exchange of information and views among Members, this point is further developed in article 5. Article 3 focused on the obligation of each member to strive for full and productive employment within its territory through measures suited to its unique context, ensuring these efforts are in line with the Charter's provisions and objectives. It stated that Members shall seek to avoid measures which would have the effect of creating balance-of-payments difficulties for other countries.

Article 7 of the Charter is the key to understanding the “Havana” vision of the role of employment standards in the new international trade order:

Article 7. Fair Labour Standards

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

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

²⁸ *Proposals for Expansion of World Trade and Employment Developed by a Technical Staff within the Government of the United States in Preparation for an International Conference on Trade and Employment and Presented for Consideration by the Peoples of the World*, 1945, available at: https://fraser.stlouisfed.org/files/docs/historical/eccles/036_04_0003.pdf.

²⁹ See, for example: Jensen J. M., *Negotiating a World Trade and Employment Charter: The United States, the ILO and the Collapse of the ITO Ideal*, in Jensen J. M., Lichtenstein N. (eds.), *The ILO from Geneva to the Pacific Rim: West Meets East*, Palgrave Macmillan UK, London, 2016, 83-109.

3. *In all matters relating to labour standards that may be referred to the Organization in accordance with the provisions of Articles 94 or 95, it shall consult and co-operate with the ILO.*

The first paragraph seems to condition the fair labour conditions by the provision of the rights under inter-governmental declarations, conventions and agreements, however it also points the links of these standards with productivity. Back in 1948 and now, the ILO Conventions were the most comprehensive set of labour standards. The key words are, in my opinion, that unfair labour conditions create difficulties in international trade, therefore it is a trade-related issue and might be considered by relevant bodies of the ITO in a trade dispute. Here, another important rule of the article 7 should be underlined: in case of trade disputes involving labour issue ITO “shall consult and co-operate with the ILO”.

Finally, it should be acknowledged that the teleological interpretation of the trade provisions of the Charter (if it had been exercised by the bodies of the ITO) should have taken into account that employment goes together with trade in this document. Free trade if ITO was established would not have a value per se but would have been contingent upon adherence to fair labour standards.

However, the human history knows no “if”. The failure of the ITO left the international trade to be regulated only by the General Agreement on Tariffs and Trade (GATT). It was signed on 30 October 1947 by its 23 Contracting Parties.³⁰ Interestingly, Havana Charter was signed by 56 countries in March 1948, but was not ratified by the US Congress and not endorsed by other countries. GATT served to implement the agreed tariff cuts, establish a not discriminatory principle of trade between countries and was supposed to be an interim codification of the rules governing commercial relations among its signatories until the International Trade Organization (ITO) was created.³¹ The Working Party that prepared GATT “omitted certain provisions which are not usually found in trade agreements” and made it be a supplementary document to the Draft Charter.³² Describing the importance of signing the Final Act of the GATT, Mr. Max Suetens, a Belgian diplomat, stated in his speech that it “remained to create the basic foundation for collaboration in the field of employment and commerce” where “no mere symbolical act, no mere expression of a desire, would be sufficient” but it is “necessary to achieve a really constructive framework which would allow for the revival of international trade”.³³

These words are yet another proof of the fact that ITO, where labour standards were acknowledged to have a role in international trade relations, was supposed to be the heart of the world trade system. Therefore, it is important to understand that the mosaic picture of the world economic order was deprived of its main part with the disappearance, or better “non-appearance” of the ITO.³⁴

³⁰ Santana R., *70th anniversary of the GATT: Stalin, the Marshall Plan, and the provisional application of the GATT 1947*, in *Journal of Trade Law and Development*, 9, 2017, 18.

³¹ US Office of the Historian, *Milestones: 1937–1945 - Office of the Historian*, 2025, available at: <https://history.state.gov/milestones/1937-1945/bretton-woods>.

³² WTO, *Report Of The Tariff Negotiations Working Party General Agreement On Tariffs And Trade*. E/PC/T/135, 24 July 1947, available at: https://www.wto.org/gatt_docs/English/SULPDF/92290162.pdf.

³³ Cited from Santana R., nt. (30), 18.

³⁴ See, for example: Graz, J.C., nt. (21), 281-290.

It is interesting that the founding documents of both IMF and the World Bank have a trail of the idea of connecting trade and employment. Article I of the Articles of Agreement establishing the IMF states that the facilitation of the expansion and balanced growth of international trade, and the contribution to the promotion and maintenance of high levels of employment and real income is one of the purposes of the Organization. As Joseph Stiglitz once noted: “Over the years since its inception, the IMF has changed markedly. Founded on the belief that markets often worked badly, it now champions market supremacy with ideological fervor”.³⁵

In the International Bank For Reconstruction And Development Articles of Agreement also one of the purposes of the Bank is promoting “the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories”.³⁶ Also, under section 6 of this agreement, the Advisory Council of the Bank should have been formed and had to include, among others, the representatives of labour interests.

There is no available information about the existence of such an Advisory Council, other than it was described in a paper published in 1995 as “defunct”.³⁷ Professor Janice Bellace, who is currently a judge and vice president of the World Bank Administrative Tribunal, told me in the interview that she never heard about this council. Presumably, these norms were the “remnants” of the initial idea at the level of the UN to give more weight to employment question in the new international trade and financial order. As well as the motto exposed in the hall of the World Bank Office on 19th Street in Washington: “Our dream is a world without poverty.”³⁸

GATT was viewed as an interim agreement pending the implementation of the ITO Charter.³⁹ There were no norms on labour other than the mentioning of the products made with the prison labour in the article XX dedicated to the possible exceptions from the general most-favored nation principle of trade. GATT was amplified and enlarged during later negotiations, it significantly increased the level of foreign investment, creating levels of capital mobility that would begin to erode the bargaining power of organized labour.⁴⁰

Since the failure of ITO, the scholars and economists discuss the pros and cons of “marrying” international trade and labour or human rights.⁴¹ In 1953, the United States

³⁵ Stiglitz J.E., *Globalization and its Discontents*, WW Norton and Co, New York, 2002, 12, available at: <https://archive.org/details/globalizationits0002stig/page/n7/mode/2up?q=supremacy&view=theater>.

³⁶ Available at: <https://pubdocs.worldbank.org/en/722361541184234501/IBRDArticlesOfAgreement-English.pdf>.

³⁷ Bradlow D.D., Grossman C., *Limited Mandates and Intertwined Problems: A New Challenge for the World Bank and the IMF*, in *Human Rights Quarterly*, 17, 3, 1995, 411-442.

³⁸ Stiglitz J.E., nt. (35), 23.

³⁹ Charnovitz S., *The moral exception in trade policy*, in *Virginia Journal of International Law*, 38, 1997, 689, available at: www.worldtradelaw.net/document.php?id=articles/charnovitzmoral.pdf&mode=download.

⁴⁰ Ishay M., *The History of Human Rights: From Ancient Times to the Globalization Era*, University of California Press, Berkeley, 2008, 257.

⁴¹ To name just some: Edgren G., *Fair labour standards and trade liberalisation*, in *International Labour Review*, 118, 1979, 523; Fields G., *Trade and Labour Standards. A Review Of The Issues Organisation For Economic Cooperation*,

proposed the insertion of a fundamental labour standards (FLS) clause into the GATT, but it failed because of the inability to agree on a definition of “unfair standards.”⁴² In 1979, during the Tokyo Round, the United States again proposed the addition of a short minimum labour standards code, but received the support of only a few Scandinavian countries.⁴³

The prevailing official idea was that the progress of labour rights will be the natural result of the economic growth.⁴⁴ Trade is aimed at economic growth therefore it will also contribute to the evolution of working conditions in the trading countries... one day. Some scholars discouraged from raising labour standards as “if premature, it can preclude competitiveness in trade, which in turn affects labour in those countries adversely.”⁴⁵ In the absence of any norms in the GATT, these discussions were speculations focused on different aspects of the trade-labour issue depending on the level of authors’ liberalism.

4. Conclusions.

The consideration of the history of the GATT and the WTO makes me conclude that if labour standards were avoided in GATT 1947 because they were supposed to be a part of the broader ITO framework under Havana Charter, the parties of GATT in 1994 deliberately excluded any mention of labour standards.

This refusal to acknowledge the link between trade and labour standards at the WTO level pushed developed countries to advance labour protections through alternative instruments – free trade agreements (FTAs) and Generalized System of Preferences (GSP) schemes.

In 1979, at the conclusion of the Tokyo Round of Multilateral Trade Negotiations, developing countries achieved the adoption of the Enabling Clause by the GATT Contracting Parties. This clause allows for an exception to the GATT Most Favored Nation (MFN) principle, permitting developed countries to offer preferential tariff treatment to products from developing countries under the GSPs, without extending this treatment to other contracting parties.⁴⁶ Labour clauses gradually have become the part of the EU and US GSP programs. Thus, as it was vividly described in one paper, the WTO's unrecognized link with ILO standards “went back through the window” into trade relations.⁴⁷ The rise of ‘mega-regional’, ‘new generation’ trade agreements have helped move the issue of trade away

OECD, 1994, available at: <https://ecommons.cornell.edu/server/api/core/bitstreams/6d380525-bf08-4c75-9003-405e895ef83c/content>; Aaronson S. A., Chauffour J.P., nt. (16).

⁴² Gadbow R.M., Medwig M., *Multinational enterprises and international labour standards*, in Compa L.A., Diamond S.F. (eds), *Human Rights, Labour Rights, and International Trade*, University of Pennsylvania Press, Philadelphia, 1996, 144.

⁴³ Gadbow R. M., Medwig M., *ibidem*.

⁴⁴ The same idea was shared by the creators of the European Communities and the further EU and, as it was convincingly demonstrated, failed. See: Deakin S., Wilkinson F., *Rights vs Efficiency-The Economic Case for Transnational Labour Standards*, in *Industrial Law Journal*, 23, 1994, 289; Hepple B., nt. (12); Barnard C., *EU employment law*, OUP Oxford, Oxford, 2012.

⁴⁵ Fields G., nt. (41).

⁴⁶ WTO, *Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, 28 November 1979, Available at: https://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm.

⁴⁷ Pantano F., Salomone R., *Tra free trade e protezionismo: l'importanza del sistema OIL nel nuovo ordine giuridico globale*, in *Lavoro e diritto*, 33, 3, 2019, 535-552.

from a focus on purely economic and material interests.⁴⁸ Although this trend is considered by some scholars as “detrimental to the broader multilateral approach to international relations,”⁴⁹ the “unilateral turn”⁵⁰ in the trade policy is already a fact.

Labour clauses in FTAs and GSP schemes thus function as substitutes for the absent multilateral discipline in the WTO. The FTAs, even though considered questionable from the point of view of the non-discriminatory provisions of GATT by some scholars⁵¹, and the GSPs have become the normal part of trade in developed-developing states relations.⁵² Recent research even states that regional trade agreements have much more trade-enhancing effect than GATT/WTO.⁵³ Labour clauses have become a common feature of all free trade agreements concluded by the G7 countries.⁵⁴ The problem of enforcing international labour standards however remains pressing.⁵⁵

The world has significantly changed since 1947, now many developing countries are competing also through the “race to bottom”, as the dawn of industrialization did the western countries.⁵⁶ It means that the rules binding international trade and labour standards are badly needed in the world where the Global South becomes more and more distanced from the

⁴⁸ De Ville F., Siles-Brügge G., *Why TTIP is a game-changer and its critics have a point*, in *Journal of European Public Policy*, 24, 10, 2017, 1496.

⁴⁹ Howard J.J., *The Jurisprudence of GATT and the WTO: Insights on Treaty Law and Economic Relations*, Cambridge University Press, Cambridge, 2024, cited from Alben E., nt. (25).

⁵⁰ See, for example: De Ville F., Happersberger S., Kalimo H., *The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU's New Trade Instruments*, in *European Foreign Affairs Review*, 28, 2023, 15-34; Verellen T., Hofer A., *The Unilateral Turn in EU Trade and Investment Policy*, in *European Foreign Affairs Review*, 28, 2023, 1-14.

⁵¹ Haight F.A., *Customs Unions and Free-Trade Areas under GATT: A Reappraisal*, in *Journal of World Trade*, 6, 1972, 391; Bhagwati J., *Preferential Trade Agreements: The Wrong Road*, in *Law and Policy in International Business*, 27, 4, 1996, 865-872; Rizwanul Islam M., Shawkat A., *Preferential Trade Agreements and The Scope Of GATT Article XXIV, GATS Article V And The Enabling Clause: An Appraisal Of GATT/WTO Jurisprudence*, in *Netherlands International Law Review*, 56, 1, 2009, 1-34.

⁵² ILO, nt. (15); Zamfir I., *Labour rights in EU trade agreements. Towards stronger enforcement*, European Parliamentary Research Service – Briefing, 2022, available at: [www.europarl.europa.eu/RegData/etudes/BRIE/2022/698800/EPRS_BRI\(2022\)698800_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698800/EPRS_BRI(2022)698800_EN.pdf).

⁵³ Esteve-Pérez S., Gil-Pareja S., Llorca-Vivero R., *Does the GATT/WTO promote trade? After all, Rose was right*, in *Review of World Economics*, 156, 2, 2020, 377-405.

⁵⁴ ILO, *Labour provisions in G7 trade agreements: A comparative perspective*, International Labour Office, Geneva, 2016, 1.

⁵⁵ European Parliamentary Research Service, *New EU scheme of generalised preferences*, 2022, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698857/EPRS_BRI%282022%29698857_EN.pdf; ILO, *Social dimensions of free trade agreements* International Institute for Labour Studies, Geneva, 2013 - revised edition 2015, available at:

https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40dgreports/%40inst/documents/publication/wcms_228965.pdf; Harrison J., *The Labour Rights Agenda in Free Trade Agreements*, in *The Journal of World Investment & Trade*, 20, 5, 2019, 705-725, available at: <https://doi.org/10.1163/22119000-12340153>; Nghia Trong P., *Labour provisions in the US and EU FTAs: A two-level games perspective*, in *GEG Working Paper*, 133, 2017, available at: www.bsg.ox.ac.uk/sites/default/files/2018-06/GEG%20WP%20133%20-%20Labour%20provision%20in%20the%20US%20and%20EU%20FTAs%20-%20Nghia%20Trong%20Pham.pdf.

⁵⁶ Caraballo Cueto J., *Reducing the race to the bottom: A primer on a global floor for minimum wages*, in *Investigación económica*, 76, 300, 2017, 33-51; Konings J., Murphy A.P., *Do multinational enterprises relocate employment to low-wage regions? Evidence from European multinationals*, in *Review of World Economics*, 142, 2, 2006, 267-286.

Global North and where the change of trade partners might solve the problem of trade sanctions imposed by previous partners.⁵⁷

The paper has demonstrated through historical analysis that international trade and labour standards are intrinsically connected, and that explicit recognition of this link would contribute to fairer international trade and the advancement of social justice.

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⁵⁷ See the changes in trade in Russia, Belarus or Myanmar after the imposition of sanctions. Darvas Z., Léry Moffat L., McCaffrey C., *Emerging countries have replaced most of Russia's lost trade with advanced economies*, 2024, available at: www.bruegel.org/system/files/2024-03/emerging-countries-have-replaced-most-of-russia's-lost-trade-with-advanced-economies-9829_2.pdf; Kłysiński K., *Towards a dependence with no alternative: Russia's increased role in the Belarusian economy*, 2023, available at: <https://www.cceol.com/search/gray-literature-detailPid=1165811>; Jinhwan O.H., Kyi Cin T., *Impact of Myanmar's trade liberalization on the country's international trade environment: A gravity approach*, in *Applied Econometrics and International Development*, 16, 2, 2016, 141-156.

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