



The WTO and Female Labor Rights in Developing Countries

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ABSTRACT

The impacts of WTO on women's labour rights in the developing countries have been raised to the international agenda by various nongovernmental organizations. On the one hand it is assumed that international trade policies are gender neutral. On the other hand a number of authors hold the view that the negative impacts of WTO policies are more pronounced on female than male workers. This paper takes a critical look at these claims. It argues that the impact of the WTO system, the driving force of trade liberalization, on women's labour rights in the developing countries is a complicated issue, because the effects have been both negative and positive. In support of this claim, this paper first briefly reviews the international framework for the protection of women's labour rights. Next, the WTO agreements and policies are analysed insofar as they are relevant for the protection of women's labour rights. The analysis covers, for example, the use of the trade policy review mechanism and restrictions of trade on grounds of violation of public morals.. Finally, a case study is conducted on the situation of female workers in Bangladesh and Pakistan, countries that have recently undergone a liberalization of trade in the textiles and clothing sectors. It is concluded that the increase of international trade in the developing countries has created many work opportunities for women, helped them to become more independent and allowed them to participate in the society more actively. However, it is at the same time posited that in order to comply with its own objectives of raising standards of living and full employment, the WTO should engage itself in active policies to overcome the negative aspects of trade on female workers in the developing countries.

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LIST OF ABBREVIATIONS

ATC	Agreement on Textiles and Clothing
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CLS	Core Labour Standards
EPZ	Export Processing Zone
EU	European Union
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IGO	Intergovernmental organization
ILO	International Labour Organization
IMF	International Monetary Fund
ITO	International Trade Organization
MFA	Multifibre Arrangement
MFN	Most favoured nation
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
RMG	Readymade garments
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
WB	World Bank
WIDE	Network Women in Development
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

1 INTRODUCTION

Gender equality is becoming a widely accepted societal objective. It has been pursued in numerous fronts and sectors, and through multiple international agreements. The principle also applies in the labour market. Yet, while in developed countries the principle of non-discrimination of genders has high visibility and is implemented rather effectively, the situation in the developing countries is often very different. Although women have recently been acknowledged as wage earners, in most cases they are still not recognized as skilled workers. The Core Labour Standards Handbook states that,

“[i]n spite of becoming fully committed members of the workforce, women, unlike men, have to balance child-care responsibilities with employment demands. Relative to men, women still face: unequal hiring standards, limited hiring opportunities, unequal (limited) opportunities and choices for training, retraining, and skill development, unequal (lower) pay for equal work or work of equal value, unequal (limited) access to productive resources, segregation and concentration in a relatively small number of female sectors and occupations, including in informal economy and homework, less participation in decision making, exposure to sexual harassment, poor and unprotected working conditions, fewer promotional prospects, greater employment insecurity and less social protection, more vulnerability to retrenchment, greater likelihood of being unemployed or poor and greater family and household responsibilities.”¹

The reasons for the inequality are numerous: societal patterns in developing countries lead to a segregation of genders in particular sectors; women have a traditional role as household keepers; there is a lack of enforcement of international obligations and national labour laws; and finally trade liberalization and intensification is claimed to negatively impact women's position. Indeed, one of the central factors that impacts the labour market in today's global, networked economy is trade liberalization. Trade liberalization is supposed to be gender neutral.² Or should the WTO be held responsible for violations of women's labour rights in the developing countries? This paper takes a critical look at these claims as it argues that the impact of the World Trade Organization (WTO) system, the driving force of trade liberalization, on women's labour rights in the developing countries is a complicated issue, because the effects have been both negative and positive.

In order to make this claim, this paper first in chapter 2 briefly reviews the international framework for the protection of women's labour rights. The aim of these chapters is to show how states are bound by various international conventions, in particular the ILO Conventions, and must implement them effectively.

However, as female workers in the developing countries are usually low-waged workers, and trade liberalization supports the sales of cheap products by cheap labour, free trade could in fact strengthen women's position in the labour market. Therefore, even though trade liberalization leads to economic growth and increase of employment possibilities it does not necessarily decrease gender wages gap.³

¹ ADB and ILO 2006, 30.

² Randriamaro 2006, 16.

³ Elson 2002, 93.

Chapter 3 will focus on the WTO agreements and policies insofar as they are relevant for the protection of women's labour rights. The relationship between WTO obligations and other binding gender related international law instruments will be analysed.

In chapter 4, the discussion is widened to two practical case studies: the effects of trade liberalization on female workers in Bangladesh and Pakistan in textile and clothing sectors will be provided.

In the concluding chapter 5, the policies analysed in chapter 3 will be summarised and several recommendations for a better protection for female workers in developing countries will be provided. Conclusions will be drawn on how the WTO may, in fact, be at the same time a main reason for labour rights violations in the developing countries as well as an impulse for a more active participation of women in the labour market.

2 THE ILO AND OTHER INTERNATIONAL FRAMEWORKS FOR THE PROTECTION OF ECONOMIC RIGHTS OF WOMEN

2.1 The International Framework

In order to understand the real impact of trade on women's labour rights it is important to analyse what kind of labour rights states have to guarantee to women specifically under international law. The whole analysis should be started from the general instruments that aim to guarantee the protection of human rights.

The *Universal Declaration of Human Rights*⁴ (*UDHR*) includes provisions on the right to social security, work and rest (Articles 22-24, respectively).⁵ These rights must be guaranteed equally to men and to women: the Declaration emphasises the general principle of non - discrimination by stating that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex" (emphasis added)⁶. In order to properly understand the articles, the whole text of the Declaration must be taken into consideration. It is acknowledged that the rights enshrined in Articles 22-24 are rarely qualified as customary rules.⁷ Yet the emphasis put by the countries on these rights is evident, for example, in other international instruments aiming to guarantee economic rights to all human beings equally.

The *International Covenant on Economic, Social and Cultural Rights*⁸ (*ICESCR*) puts a burden on states "to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant"⁹. The Covenant also provides the right to work, including the right to freely choose or accept work¹⁰. The Covenant emphasizes that the conditions at work that have to be just and favourable, meaning that remuneration must be equal for work of equal value. In particular women must be guaranteed "conditions of work not inferior to those enjoyed by men"¹¹. Moreover, there are provisions on working mothers, who should have special protection "during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits".¹²

⁴ The Universal Declaration of Human Rights, 1948.

⁵ The UDHR aims to assure everyone's right to social security "through national efforts and international cooperation and in accordance with the organization and resources of each State" (Art. 22). The article in other words envisages a progressive realization of the right to social security. Article 23 foresees various labour rights such as "the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" (Art. 23(1)), right to "equal pay for equal work" without any discrimination (Art. 23(2)), "just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection" must be guaranteed to everyone who works (Art. 23(3)), "right to form and to join trade unions for the protection of his interests" (Art. 23(4)). Article 24 aims to guarantee the "right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay".

⁶ Article 2.

⁷ The difference of the legal value of various norms of Universal Declaration of Human Rights are explained by various theories in Oraa (2006).

⁸ International Covenant on Economic, Social and Cultural Rights, 1966.

⁹ Article 3.

¹⁰ Article 6.

¹¹ Article 7, par. a(i).

¹² Article 10(2).

Rights enshrined in the covenant are to be realized progressively: “full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time”.¹³ Yet the states cannot abuse this clause, and even when the available resources are inadequate, states still have an obligation to “ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances”.¹⁴ It is also admitted that there are certain core rights that have to be executed immediately, including “equality in the enjoyment of the rights in the ICESCR between men and women”.¹⁵ The countries must also respect the principle of stand still, which means that once a certain level of development is achieved, it cannot be reduced.

A further general instrument that aims at guaranteeing human rights is the *Convention on the Elimination of all forms of Discrimination Against Women*¹⁶ (CEDAW). The reason for drafting such a convention was the persisting inequality among genders despite previous international instruments that prohibited discrimination.¹⁷ It also reaffirmed that discrimination “is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries”.¹⁸ The signatory states also undertake to eliminate those social and cultural patterns in the society that are “based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”.¹⁹ As we shall see later, cultural and societal behaviour are very important in reaching full enjoyment of trade liberalization for women in developing countries.

The same applies for equal access to all forms of education, which the states are obliged to ensure under Article 10 of CEDAW. Vocational training is particularly important for women in the developing countries in order to more easily adjust to economic conditions, where types of production change rapidly and there is a frequent threat of unemployment. Men tend to re-qualify much quicker because of their easier access to education and training. Women are often left behind and forced to take informal and unskilled work. Societal patterns also play a major role here. Women in their early age usually have to take care of other family members (babies, elderly), which restricts their abilities to enrol in education. This problem is tackled by the CEDAW, by a “reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely”.²⁰ States must undertake to prohibit dismissals on grounds of pregnancy, maternity leave and marital status. They shall assure that maternity leave will be paid for, and protect pregnant women from hazardous conditions at work. The situation of rural

¹³ United Nations High Commissioner for Human Rights 1990, par.9.

¹⁴ *Ibid.*, par. 11.

¹⁵ Article 3; Moreno 2006, 161. The right to just and favourable working conditions ensures, as minimum standards, equal remuneration for work of equal value, without any kind of discrimination (Article 7(a)(i)).

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women 1979.

¹⁷ Such an aim can be envisaged from the preamble of the convention, which states that “Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women”; “Concerned, however, that despite these various instruments extensive discrimination against women continues to exist”.

¹⁸ Preamble of the Convention.

¹⁹ Article 5.

²⁰ Article 10(f).

women in the developing countries is extremely sensitive. Therefore the Convention pays particular attention to women's work in the "non-monetized sectors of the economy".²¹

While the CEDAW is very widely ratified, there are many violations of its provisions. CEDAW is also held to be the international human rights instrument with the largest number of reservations, some of which are even contrary to the object and purpose of the convention. Therefore states are encouraged to withdraw reservations.²² The central question from the perspective of this paper is the impact of trade liberalization on the working conditions of women, including the provisions of the CEDAW. As we shall see in the example of Bangladesh, (Chapters 4 and 5), compliance with the Convention may even be worsened by trade liberalization. States, trying to attract more investment, could be tempted to liberalize labour laws, or leave their implementation insufficient, which could lead to more frequent abuses by private persons.

2.2 The ILO Framework

The International Labour Organization (ILO) aims to "create greater opportunities for women and men to secure decent employment and income".²³ Gender equality is a key element of that objective. It is also an element of the four strategic goals of ILO: "promote fundamental principles and rights at work; create greater employment and income opportunities for women and men; enhance the coverage and effectiveness of social protection; and strengthen social dialogue and tripartism".²⁴ The main instruments for the promotion of labour rights are the conventions that are binding upon those ILO Member States that have ratified them. Also important are the recommendations, which are non-binding, but cover the same subjects as do the conventions and draw guidelines for the implementation of the policies. Most of the conventions that deal with labour rights and conditions apply to both genders equally, but as ILO has a special mandate for gender equality it has also issued four key conventions on equality: "Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183)".²⁵ After the Fourth United Nations World Conference on Women (Beijing World Conference) in 1995, the principle of bringing gender issues into the mainstream of the society was established as a global strategy for promoting gender equality.²⁶

²¹ Article 14.

²² Isa 2006, 226-27.

²³ ILOa.

²⁴ ILOb.

²⁵ Ibid.

²⁶ Gender Mainstreaming was defined by United Nations Economic and Social Council as "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated." ILOc

In 2001, Action Plan on Gender Equality and Gender Mainstreaming in the ILO was submitted to the Governing Body, which aims to ensure that gender analysis and planning are introduced into all ILO activities. (ILOc) The measuring of progress in gender mainstreaming is performed in three levels: ratification and application of 4 key Conventions, introduction of positive changes in domestic policies (legislation, programmes and institutional changes) and women's participation in ILO events and governing institutions. (ILOb)

2.2.1 ILO Implementation Mechanisms

Because the implementation methods are common to all of the ILO conventions, they will be briefly discussed before analysing the equality conventions themselves. The implementation methods for the ILO conventions are envisaged in the ILO Constitution.²⁷ Members of the Conventions commit themselves to submitting annual reports to the International Labour Office on the implementation of the Conventions.²⁸ The Constitution envisages also the possibility for associations of the employers to represent at the International Labour Office, if the Member country in question has failed to effectively observe the Convention.²⁹ The representation can be published by the Governing Body. Any other Member may also submit a complaint to the International Labour Office if it thinks that another Member failed to comply with a Convention that they both have ratified.³⁰ The report of a “Commission of Inquiry” may be published, and recommendations for proper compliance made.³¹ The Governing Body can ensure the implementation of decisions of the Commission of Inquiry (or the International Court of Justice in case the Member has referred the case to the ICJ), “recommend[ing] to the Conference such action as it may deem wise and expedient to secure compliance therewith”.³² The ILO in other words has powers to impose sanctions on Member States that persistently violate labour rights. According to Howse, Langille and Burda Article 33 “grants a very broad remedial power to the ILO when faced with a member who, at the end of the day, fails in a fundamental way to live up to its basic commitments”.³³

A great example of how ILO can be serious about the violations of the conventions is the Burma/Myanmar case concerning forced labour.³⁴ Among the proposed measures for compliance with recommendations of the Commission of Inquiry by the Governing Body were proposal to other Members to review their relationship with Myanmar so that it cannot benefit from such relationship. Moreover, the ILO could provide information to relevant international organizations of the situation in Myanmar, so that they can reconsider their cooperation with the state.³⁵ Some states took unilateral actions. An example of this is the United States, which imposed a one-year ban on imports from Myanmar.³⁶ This illustrates the fact that ILO in cooperation with Member States and other international organizations can take effective measures to fight non-compliance with labour standards. However, such extreme cases with strict sanctions are very rare. Therefore the question remains, whether the ILO implementation measures are effective enough and whether other organizations should step in, in order to ensure effective compliance with international labour standards.

²⁷ Constitution of the International Labour Organization, 1948.

²⁸ Article 22. “Reports are examined by the ILO Committee of Experts on the Application of Conventions and Recommendations, which may comment on the application of these conventions. The Committee of Experts makes two kinds of comments: observations, which are comments on the most important matters arising, and are published in an annual report to the International Labour Conference -- ; and direct requests, which are not published” (ADB and ILO 2006, 116).

²⁹ Article 24.

³⁰ Article 26.

³¹ Article 28.

³² Article 33.

³³ Howse, Langille and Burda 2006, 194.

³⁴ ILO 1998.

³⁵ ILO 2001a.

³⁶ Howse, Langille and Burda 2006, 197.

2.3 ILO Conventions for the Protection of Women's Labour Rights

As mentioned, there are a number of *gender specific* ILO conventions. They, as well as other relevant ILO conventions,³⁷ will be briefly analysed in this section.

The **Discrimination (Employment and Occupation) Convention (No. 111)**³⁸ is ratified by 165 countries. This Convention applies to all workers in all sectors and aims at eliminating discrimination, including discrimination based on sex, in employment relationships. The major tools for achieving equality are to issue relevant legislation, repeal discriminatory legislation, effectively apply and implement national policies. Women and girls tend to suffer from discrimination because of their lack of access to education and vocational training. In order to improve the situation, governments should take affirmative action in creating education opportunities for women. They should also increase day care facilities in order to allow girls, who quite frequently have to take up family responsibilities because of working mothers, to go to schools.³⁹

Equal Remuneration Convention (No. 100)⁴⁰ has been ratified by 163 countries. Term “remuneration” includes not only monetary payment, but also direct and indirect payments in kind,. Member states are bound to promote and ensure principle of equal remuneration in determining rates of remuneration.⁴¹ The Equal Remuneration Recommendation (No. 90)⁴² includes examples of good practices in determining rates of remuneration.⁴³ In order to implement the principle of equal remuneration for work of equal value, actions might have to be taken to raise the productive efficiency of female workers. This can be done by ensuring equal or equivalent facilities for vocational guidance and training, and by encouraging women to actually take such training. It also includes measures to provide and finance social and welfare services for women, especially those having family responsibilities. Finally, promotion of equality regarding access to occupations and posts may be noted.⁴⁴

The most frequent reason for different pays for men and women is job segregation.⁴⁵ Women tend to get employed in low skilled occupations, which have a low rate of remuneration and a lower status. In order to fight this problem, “women’s participation in non-traditional areas through skills training, support mechanisms, adaptation training”

³⁷ Including Recommendations, which detail the provisions of Conventions. For relationship between Conventions and Recommendations see chapter 3.

³⁸ C111 Convention concerning Discrimination 1958.

³⁹ ADB and ILO 2006, 136.

⁴⁰ C100 Convention concerning Equal Remuneration 1951.

⁴¹ Article 2.

⁴² R90 Recommendation concerning Equal Remuneration 1951.

⁴³ Ibid., 8th recital of the preamble.

⁴⁴ Ibid., Paragraph 6.

⁴⁵ Occupational segregation “refers to the fact that men and women tend to work in different sectors of the economy and hold different positions within the same occupational group”. The reasons of job segregation are “social norms and stereotypical perceptions regarding men and women, family life and working life; education and vocational training; taxation and social security regimes - - ; structure of the labour market, including the size of the informal economy; discrimination at entry to the labour market and at work.” “Sex-dominated occupations may be defined as those where workers of one sex constitute more than 80 per cent of the labour force”. ILO 2003a, 43-45.

should be encouraged.⁴⁶ In order to reduce the wage gaps between genders, a policy of setting minimum wages should be used.⁴⁷

In order to ensure equal opportunities for and treatment of women and men, the workers with family responsibilities must be protected. This is the aim of the **Workers with Family Responsibilities Convention (No. 156)**,⁴⁸ ratified by 37 countries. The Convention is relatively poorly ratified by the developing countries especially. Consequently, the international protection for workers with family responsibilities is weak. The Convention aims to ensure equality between men and women having family responsibilities, on the one hand, and between men and women having family responsibilities and those that do not have them, on the other.⁴⁹ One of the reasons for adopting a special Convention on workers with family responsibilities is that this group of workers faces problems that are aggravated and therefore special measures are needed.⁵⁰ Family responsibilities extend from raising children to taking care of immediate family members clearly in need of care and support. The inclusion of family members other than children is very important because women especially in the developing countries tend to bear the burden of care due to lack of public policies and expenditure in this sphere.⁵¹ Every Member State to the Convention takes up the obligation to make equal treatment of workers with family responsibilities a public policy objective. They try to help in resolving the conflict between family responsibilities and work.

The Recommendation on Workers with Family Responsibilities (No. 165)⁵² stipulates more elaborate policies on equality.⁵³ The Recommendation also envisages the regulation of part-time workers, temporary workers and home-workers (par. 21), who usually are workers with family responsibilities and often tend to be female workers.

Maternity Protection Convention (No. 183)⁵⁴ is ratified by only 13 countries,⁵⁵ of which only few are developing countries (e.g. Belize and Cuba). The reluctance to ratify this and the above described conventions can be blamed on the lack of economic capabilities of developing countries, as well as their different societal, cultural and religious patterns. Women are often under the obligation to carry all family responsibilities at the cost of sacrificing work opportunities. In such conditions, women face double obligations -

⁴⁶ ADB and ILO 2006, 134.

⁴⁷ According to the ILO studies “a minimum wage, with adequate determination and adjustment mechanisms, helps to reduce wage dispersion, and the gender income gap tends to be narrower where wage dispersion is lower.” ILO 2003a, 57.

⁴⁸ C156 Convention concerning Equal Opportunities 1981.

⁴⁹ Ibid., Preamble.

⁵⁰ Ibid., Preamble.

⁵¹ “In the developing countries, where the scale of HIV/AIDS pandemic is dramatic, the absence of adequate care structures has compelled many parents to rely on their children, usually girls, to provide this care with enormous costs to them in terms of lost schooling and lower future earnings.” (ILO 2003a, 75)

⁵² R165 Recommendation concerning Equal Opportunities 1981.

⁵³ Such as “progressive reduction of daily hours of work and the reduction of overtime” (par. 18(a)), “more flexible arrangements as regards working schedules, rest periods and holidays” (par. 18(b)), “the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work” (par. 19), “place of employment of the spouse and the possibilities of educating children should be taken into account when transferring workers from one locality to another” (par. 20).

⁵⁴ C183 Convention concerning the revision of Maternity Protection Convention 2002.

⁵⁵ The Convention replaced two previous conventions on Maternity Protection - Maternity Protection Convention (Revised), 1952 (No. 103) and Maternity Protection Convention, 1919 (No. 3). The former was ratified by 40 countries, and the latter by 33 countries. The previous conventions still apply for those countries that did not ratify Maternity Protection Convention No. 183. Therefore the actual number of ratifications is significantly higher.

reproductive and productive. Where relevant national legislation for maternity protection exists, there are problems of compliance. The problems are aggravated by ‘women workers’ ignorance of their maternity leave entitlements”.⁵⁶

Maternity Protection Convention aims to “promote equality of all women in the workforce and the health and safety of the mother and child”.⁵⁷ The State parties undertake to protect pregnant and breastfeeding women from work prejudicial to mother’s or child’s health.⁵⁸ Article 8 explicitly prohibits terminating employment contracts during pregnancy period, maternity or sick leave, and ensures the right to return to the same or equivalent position. It is prohibited to require a pregnancy test from those applying for employment.⁵⁹

The above mentioned four conventions are the central for the protection of the principle of equality of genders under the ILO framework. Yet it is worthwhile to mention a few others with important provisions on gender equality.

Home Work Convention (No. 177)⁶⁰ aims to ensure non-discrimination of home-workers as compared to other wage workers.⁶¹ Although not gender specific, it is very important for women. Women tend to constitute the majority of home-workers because of the family responsibilities they have to perform.⁶² Unfortunately, the Convention is only ratified by five countries. Countries where home-workers compose a large part of the labour force have not ratified the convention.

Part-Time Work Convention (no. 175)⁶³ is similar in that it also has been ratified by only few (eleven) countries. Convention intends to ensure equal treatment between part-time workers and full-time workers. It is important because more women than men take up part-time work due to their responsibilities elsewhere.⁶⁴

2.4 ILO Declaration of Fundamental Principles and Rights at Work

ILO Declaration on Fundamental Principles and Rights at Work⁶⁵ is an important instrument, because all members of the ILO are bound by this Declaration, whether or not they have ratified the relevant conventions. “Obligation to respect the CLS [Core Labour Standards] is an inherent part of membership in the ILO. The CLS form more specific international obligations when the conventions containing them are ratified”.⁶⁶ Drafters of the Declaration saw urgency in “growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application”.⁶⁷ Therefore all Members of the ILO have an obligation to “respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions” (namely freedom of association and collective

⁵⁶ ILO 2003a, 76.

⁵⁷ 2nd recital of the Preamble of the Convention.

⁵⁸ Article 3.

⁵⁹ Article 9.

⁶⁰ C177 Convention concerning Home Work 1996.

⁶¹ Article 4.

⁶² More on differences on employment status of men and women can be found in ILO (2003, 42).

⁶³ C175 Convention concerning Part-Time Work 1994.

⁶⁴ The data from OECD countries shows that women worked part-time far more often than men. *Time for Equality at Work* 2003, 42-43.

⁶⁵ ILO Declaration on Fundamental Principles and Rights at Work 1998.

⁶⁶ ADB and ILO 2006, 15.

⁶⁷ Last recital of the Preamble of the Declaration.

bargaining), “elimination of all forms of forced or compulsory labour”, “abolition of child labour”, and “elimination of discrimination in respect of employment and occupation”.⁶⁸

Under the Follow-up to the Declaration, which is attached to the Declaration, the states that have not ratified the conventions related to the principles and rights stated in the Declaration are nonetheless encouraged to do so. They have to present yearly reports indicating the progress in the protection of rights and the spheres where assistance and support might be needed. The Global Report prepared by the ILO gives an overall picture of the situation of rights and highlights the areas where more attention is needed.⁶⁹ Encouragement to ratify the relevant conventions is understandable, because the Declaration does not entail as detailed provisions as do the conventions. While States are bound to respect the rights, it is not clear how and by what means. The states that have not ratified the conventions “do not need to be in compliance with the specific provisions of the conventions in order to satisfy the requirements of the Declaration. Rather, the achievement of the latter is to switch the focus away from the carefully crafted content of the various conventions and on to the ‘policies underlying them’. But since those policies have not been formulated in any authoritative statement, it is for the well-intentioned governments --, to discern for themselves what those ‘underlying policies’ are”.⁷⁰ Therefore, even though the Declaration constitutes an important element of the protection of equality, it should not be overemphasised. The states should be encouraged to ratify conventions. The responsibility of states to ensure rights enshrined in the conventions is now shared with other international actors.

“The Declaration’s principles and rights are gaining wider recognition among organizations, communities, and enterprises. These fundamental principles and rights provide benchmarks for responsible business conduct, and are incorporated into the ILO’s own Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The OECD’s Guidelines for Multinational Enterprises emphasize the principles and rights found in the ILO Declaration and the UN Global Compact promotes them as universal values to be achieved in business dealings around the world. A growing number of private sector codes of conduct and similar initiatives also refer to the fundamental principles and rights at work”.⁷¹

Thus is a very important step because private bodies as large investors have an influential role in the developing countries. If they really implemented the principles to which they agree and ensured that their sub-contractors also applied them, the situation would change positively.

From the perspective of international trade, an important principle is included in paragraph 5 of the Declaration. It states that “labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.” Developing countries tend to oppose any inclusion of clauses on protection of labour rights in agreements on trade. They are afraid of protectionist actions by developed countries.⁷² In their view the latter could use labour standards as a means to protect their markets from cheap goods from developing countries by claiming that the goods are produced in violation

⁶⁸ Ibid., Paragraph 1.

⁶⁹ Part III of the Follow-up.

⁷⁰ Alston 2006, 51.

⁷¹ ILO Declaration on the Fundamental Principles and Rights at work 1998.

⁷² More on this can be read in Arnold (2005).

of core labour rights. Such a provision had to be included in order to ensure that developing countries would accept the Declaration.

3 WTO AND LABOUR RIGHTS

In order to understand the impact that the World Trade Organization (WTO) makes on women's labour rights, it is important to study the place labour rights in general have in the WTO. Many authors, who will be discussed in this chapter, hold different positions whether and how much WTO should care for labour rights or other human rights.

WTO is a negotiation framework for states aiming at trade liberalization.⁷³ Joost Pauwelyn argues that because "WTO treaty provides for an overall framework regulating trade relations between states, it must consequently take account of interests in favour of both trade liberalization and non-trade values necessitating trade restrictions".⁷⁴ The supporting view is that "the relative strength of the WTO has led to calls that it take upon itself to enforce rules outside the trade field, thus using its instruments to reinforce governance in other policy areas such as labour standards. In relation to such suggestions, the WTO is being criticised for not having sufficient regard to fundamental rights in its procedures and structure".⁷⁵

On the other hand, it can be argued that the WTO trade regime is very specific, and therefore what is used to regulate trade is not necessarily useful to regulate other spheres. The two-way relationship is summarized well in the response provided by the Sub-Commission of the United Nations Economic and Social Council on the Protection and Promotion of Human Rights regarding universal human rights:

"... while the multilateral trading system can help to create the 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. Unlike most human rights law, WTO Agreements generally specify rights and obligations between States and not between States and individuals. WTO Agreements do not create or articulate human rights as such, but do facilitate a climate necessary for economic prosperity [and] the rule of law and seeks to curb unilateral action and abuses of power in international trade. These are all-important elements necessary for the respect of human rights".⁷⁶

The fact that WTO Agreements can create the environment necessary for the protection of human rights implies that they can have negative influences as well. Economic prosperity does not necessarily guarantee higher protection of human rights. While states strive to reach economic development they may set aside the implementation of labour rights, or they may make their national labour laws more flexible. However, countries entering trade agreements usually already have human rights obligations, and they "should uphold these obligations in their trade negotiations - this is a universally recognized legal principle, known as good faith".⁷⁷

⁷³ "The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement" Article 2 of the Marrakesh Agreement Establishing the World Trade Organization 1994.

⁷⁴ Pauwelyn 2001, 552.

⁷⁵ European Commission 2001, 3.

⁷⁶ Sub-Commission of the United Nations Economic and Social Council 2001, par. 57

⁷⁷ Dommen 2005, 200.

3.1 The Background for the Inclusion of Labour Rules in the WTO

WTO rules constitute an international legal framework, which cannot be isolated from general public international law. As states are members to all kinds of different international agreements and organizations, their obligations in these organizations and agreements should be somehow harmonized. Sometimes it appears that the obligations contradict each other, and the question arises which ones of them should prevail.⁷⁸

“In the event of a conflict between a universally recognized human right and a commitment ensuing from international treaty law such as a trade agreement, the latter must be interpreted to be consistent with the former. When properly interpreted and applied, the trade regime recognizes that human rights are fundamental and prior to free trade itself”.⁷⁹

The question here is whether international labour regulations and trade laws contradict or complement each other. Can they be used together? Does the WTO include any provisions on respecting labour rights?

Arnold L. Luke states⁸⁰ that the relationship between the global system governing trade and global system governing labour is not new. “Charter of the International Trade Organization [ITO], the original institution designed nearly sixty years ago to regulate international trade, contained a “social clause” that would have required its members to prevent “unfair labour conditions”.⁸¹ In the Havana Charter there was a chapter on “Employment and Economic Activity”.⁸² The failure of the ITO to materialize led to the application of GATT (General Agreement on Tariffs and Trade) only, without any “institutional framework, and nothing, for example, about concerns such as fair labour practices”.⁸³ Labour rights should have been included under the WTO umbrella as well; unfortunately no social clause was incorporated due to developing countries’ resistance. They were afraid that a social clause could in the future be used by developed countries to countervail imports from the developing countries on the grounds of violations of human rights.⁸⁴

If states showed any interest in labour issues concerning the production of goods and provision of services, they would have an opportunity to include their views in the multilateral trade agreements. Article III.2 of the Marrakesh Agreement⁸⁵ states that

“the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation

⁷⁸ Pauwelyn 2001, 550-52.

⁷⁹ Howse and Mutua 2000, 4.

⁸⁰ Arnold 2005.

⁸¹ Ibid.

⁸² Every member government had to commit itself to “take action designed to achieve and maintain full and productive employment and large and steadily growing demand with its own territory through measures appropriate to its political, economic and social institutions.” (ITO Charter Article 3). Article 7 of the Charter provided for a dispute settlement regarding unfairly low standards in another country. (Charnovitz 2006, 138)

⁸³ Howse and Mutua 2000, 5.

⁸⁴ Zagel 2005, 23.

⁸⁵ Marrakesh Agreement 1994.

of the results of such negotiations, as may be decided by the Ministerial Conference”.

If states would consider that labour is strongly related to trade, and that the conditions of production is a sphere where multilateral rules are needed in particular, they would have an open floor for negotiations on such provisions under the WTO framework. The possible effects of the WTO on labour rights could also be discussed as the “framework for the implementation of the results of such [trade] negotiations”. Until now the support for including a social clause in trade negotiations has not been strong enough. During the Uruguay Round of the GATT negotiations, the French argued that competition in international trade should not permit violations of basic labour standards. A similar view was held by Canada, Italy, Greece and the European Commission. However, the views of the latter were more restricted, avoiding upsetting the developing countries and newly industrialised countries of South-East Asia.⁸⁶ As no agreement has been reached so far, the social clause discussions have not been included in the negotiations so far.

3.2 Protection of Labour Rights under the Public Morals Exception of GATT

Apart from the Preamble to the Marrakesh Agreement establishing WTO, which is a very important source for the interpretation of the Agreements,⁸⁷ there is currently no explicit rule in the WTO which would allow using trade defence measures on the basis of labour rights violations. Authors such as Howse and Mutua,⁸⁸ argue that for the purpose of bringing to an end gross violations of human rights Article XX (a) of the GATT⁸⁹ could be applied. Human rights clause could be easily used for ensuring equality between men and women at work, as non-discrimination has been recognized as one of the fundamental human rights.⁹⁰ Howse and Mutua also hold the view that “fundamental labour rights [including principle of non-discrimination], recognized by the WTO members in the 1996 Singapore Declaration, enter into the definition of public morals”.⁹¹

Article XX of the GATT provides general exceptions to the WTO’s basic principle of trade without qualitative and quantitative restrictions. States can legitimately justify the

⁸⁶ Barnard 1996, 158.

⁸⁷ The importance of the goals set in the Preamble is emphasised by Howse and Mutua, stating that “The Marrakesh Agreement is the framework agreement for the entire WTO system, and the preamble is the most comprehensive statement of the objectives or goals of that system. Thus it is probative not only with respect to context, but also purpose and object within the meaning of Article 31 of the Vienna Convention” in Howse and Mutua (2000, 12).

⁸⁸ Howse and Mutua 2000, 11.

⁸⁹ General Agreement on Tariffs and Trade, 1947 and amendments.

⁹⁰ This was supported by the statements in the Analytical Study of the High Commissioner for Human Rights on the Fundamental Principle of Non-discrimination in the Context of Globalization (United Nations High Commissioner 2004). Paragraph 7 states that “the principle of non-discrimination is perhaps the most powerful and dominant principle of international human rights law. Its inclusion in the Charter of the United Nations and the Universal Declaration of Human Rights (1948) was a reminder and a response to the genocide and carnage of the Second World War - a promise that it would not occur again. The principle has since been restated in all the major human rights instruments and provides the central theme of some of these instruments - the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as well as to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. At least certain aspects of the principle are now considered part of customary international law” (United Nations High Commissioner 2004).

⁹¹ Howse and Mutua 2000, 17.

adoption of national provisions, which are necessary to protect for example “public morals” or “human, animal or plant life or health”.⁹²

It is not clear what exactly is meant by the “public morals” exception in the GATT, because it has never been interpreted by the Dispute Settlement Body of the WTO.⁹³ However, even if it were accepted that gross violations of human rights could fall under the public morals exception, it must be noted that Article XX is by nature an exception to a basic rule, and therefore should be interpreted narrowly. According to established trade law, only those measures that are the least trade-restrictive ones while achieving the social objective, may be justified.⁹⁴ There is no case law with regard to Article XX (a) on the interpretation of what is “necessary” in terms of Article XX. Guidance can be sought in the case law interpreting Article XX (b) (on human, animal or plant life or health). In such cases, “a measure is necessary within the meaning of Article XX (b) only when there exists no alternative measure that is GATT –consistent or less inconsistent”.⁹⁵ It can be assumed that, especially in applying the public morals exception, the state would have to be careful in proving that a disputed measure has no less trade restrictive alternatives. Then again, the WTO is a part of the broad context of public international law. From this perspective the WTO should not ignore the Members’ international obligations to respect human rights, nor the evolution of such obligations.⁹⁶

Another issue relating to the public morals exception is that the term would probably only include *gross* human rights violations. Yet it may be very difficult to define and determine what a *gross* human rights violation is. Would low salaries and forcing people to informal labour lead to inability fulfil basic needs, and therefore be considered gross human rights violations so as to allow trade restrictions?

3.3 Fighting Violations of Labour Standards through Trade Sanctions

As was mentioned while discussing the possible use of Article XX (a) of the GATT, one of the ways to link labour standards and WTO is to include a social clause in the WTO agreement. The clause would allow imposing economic sanctions on the country, where the standards are not respected. There is a very hot debate on this topic, with many supporters and opponents. Those in favour of including labour standards as a ground for trade sanctions state that the economic disadvantages of the sanctions would motivate countries to implement labour laws. Inability to export products would motivate traders at all levels to support labour rights.⁹⁷ On the other hand trade embargos might lead to even greater harm for the employees, whose rights were to be protected. Working under poor conditions and earning a low wage is better than not working and not earning at all. “General economic embargos usually harm the population of the target country by reducing the supply of their economic needs, whereas the political elite, who is responsible for the violations, maintains the necessary monetary resources and ways to overcome such embargoes”.⁹⁸

⁹² Articles XX (a) and (b), respectively.

⁹³ And only in one case has the US raised the issue of public morals under the GATS with regard to gambling and betting services.

⁹⁴ This was interpreted in cases: Thailand-Restrictions on Importation of and Internal Taxes on Cigarettes, Report of the Panel, (1990) 37 BISD 200 and United States-Restrictions on Imports of Tuna (1991) 30 I.L.M. 1594; United States-Restrictions on Imports of Tuna, (143994) 33 I.L.M. 936.

⁹⁵ Van den Bossche 2005, 605.

⁹⁶ Pauwelyn 2001, 572.

⁹⁷ Arnold 2005; Zagel 2005.

⁹⁸ Zagel 2005, 24-25.

The danger in allowing the use of a social clause as the basis for trade embargos is the unilateral nature of the sanctions. States cannot be allowed to determine on their own what constitutes a human rights violation in another country. This can lead to purely politically motivated actions, where human rights objectives could be used for e.g. protectionist, economic purposes. Developing countries would have difficulties in judicially protecting themselves against false claims, because the Dispute Settlement Mechanism of the WTO is very costly.⁹⁹

The contents of a social clause in trade agreements would have to be the universally accepted labour standards. As we have seen while analysing the ILO framework for the protection of women's labour rights, most of the standards cannot be implemented immediately, but are rather realized progressively. If a social clause were allowed as a trade sanction, it could thus be very difficult to determine when exactly the sanctions could be imposed. The adequate protection of the labour rights should for example take into account the states' (lack of) economic resources.

The opposing view is that if the ILO has been successful in establishing international standards that are implemented gradually, the WTO should be able to do the same.¹⁰⁰ The main difference could be in the implementation mechanisms. While ILO's main implementation mechanism is the above-explained reporting system, WTO imposes trade sanctions. Report mechanism is a much softer mechanism, which is precisely one of the arguments why labour rights should be protected under the more robust WTO framework. It is true, though, that ILO also has "teeth" for combating grave labour right violations with stronger mechanisms. This is what we saw above¹⁰¹ in the Burma/Myanmar example: the ILO recommendations included provisions on trade restrictions. However, states were free to decide when and how they should react to such recommendations. In contrast, under the WTO system the defendant state is obliged to comply with the panel decisions. Some¹⁰² argue that the implementation mechanisms are the connecting factor where ILO and WTO should act together. Both of them can impose trade sanctions, and the WTO is the one that could in practice manage these sanctions.

There are nonetheless also opinions that trade sanctions for the protection of labour rights are absolutely inappropriate. Jagdish Bhagwati supports the view that ILO but not WTO should take primary responsibility for ensuring the compliance with labour standards. In his opinion "issues of trade and labour must be kept institutionally separate, with each being dealt with by the international agencies suited to the specific agendas for which they were set up".¹⁰³ His view is that trade sanctions are not suitable to combat non-compliance with labour standards. He does not "foresee any cooperation between the ILO and the WTO". While outlining different views on the relationship between WTO and labour Philip Alston quotes a Stern and Terrell opinion "that the only way to improve labour standards in poor countries is to continue the many existing economic and social development efforts, deployed by the international organizations (such as OECD, UN agencies and the World Bank), government aid agencies, NGOs, etc".¹⁰⁴

EU Generalized System of Preferences (GSP) programme can be mentioned as one of the economic development efforts. Under this programme the EU grants developing countries

⁹⁹ Ibid., 20.

¹⁰⁰ Arnold 2005.

¹⁰¹ See Section 2.2.1 above.

¹⁰² Bal 2001, 67; Zaheer 2003, 84.

¹⁰³ Bhagwati 2006, 22.

¹⁰⁴ Stern and Terrell 2006, 21.

tariff preferences that go beyond the WTO most-favoured-nation (MFN) rates. Bartels distinguishes negative and positive conditionalities in the EU GSP programme: “[o]n the negative side, trade preferences may be withdrawn if the beneficiary country fails to comply with various norms”, on the positive side “EU’s GSP scheme also provides for ‘special incentives arrangements’ in the form of duties even lower than the already reduced GSP rate for countries that can demonstrate compliance with labour standards”.¹⁰⁵ Bearing this in mind it can be stated that EU GSP programme’s negative conditionality can serve as a sanction, separate from WTO system, against non-compliance with labour laws. The programme’s positive conditionality to receive additional preferences, then again, can serve as an impulse for a better protection of labour rights. For the period 2006–2015 EU introduces a GSP+ category, which “will provide special incentives for countries which have signed up to the main international agreements on social rights, environmental protection, governance and combating the production of and trafficking in illegal drugs”.¹⁰⁶ This scheme also contains a negative conditionality, under which “credible suspension clause can be rapidly activated where a country fails to meet its commitments under the agreements”.¹⁰⁷ However, the GSP system’s compliance with WTO rules remains an open question.¹⁰⁸

All in all, it is possible to find arguments for using trade sanctions to combat violations of women’s labour rights in the developing countries. Nevertheless, such action is hardly feasible under the current WTO legal framework, because it is difficult to define what is a gross human right violation, to determine when economic reasons can justify the non-implementation of labour standards, and to distinguish when the importing countries are, in fact, just fighting a non-acceptable political regime.

3.4 The Use of Trade Policy Review Mechanism

The United Nations Fourth World Conference on Women in Beijing (1995) stressed the importance of women’s participation in economic activities and drew attention to the many obstacles women are facing in trying to do so. In order to improve the situation, the Platform for Action of the UN Fourth World Conference on Women foresees the obligation for governments and other actors to “promote an active and visible policy of mainstreaming a gender perspective in all policies and programmes so that before decisions are taken, an analysis is made of the effects on women and men, respectively”.¹⁰⁹

The WTO is a central factor in global economic development. Already for the WTO’s predominance, its trade policies should be reviewed for their gender impacts.¹¹⁰ If export growth is reached at the “expense of exploiting female workers, neglecting care work and increasing gender inequalities in opportunities and benefits”,¹¹¹ it does not lead to a balanced, comprehensive development of states.

¹⁰⁵ Bartels 2005, 68–69.

¹⁰⁶ Europa, SCADPlus.

¹⁰⁷ Ibid.

¹⁰⁸ See also Charnovitz (2004).

¹⁰⁹ United Nations 1995, paragraph 164.

¹¹⁰ The main task to ensure gender equality has to be fulfilled by governments, but “in developing countries the role of the State in social policy has been shrinking in recent decades, largely due to structural adjustment policies and the global macroeconomic reform agenda that has called for downsizing of State involvement and more support to markets and export-led growth”, therefore more action has to be done by various international actors. (Tran-Nguyen and Zampetti, 2004)

¹¹¹ Cagatay 2004, 377.

A Trade Policy Review Mechanism is included in Annex 3 of the WTO's Marrakesh Agreement.¹¹² The aim of the trade policy review is to make sure that the multilateral trading system is functioning smoothly and to analyse how individual trade implementation policies of the WTO members affect it.¹¹³ In order to carry out trade policy reviews, a Trade Policy Review Body (TPRB) has been established.¹¹⁴ All countries are reviewed periodically on the basis of their share of world trade.¹¹⁵ During the review, the WTO has the right to visit the country and interview the officials and academia. The reports presented by states mostly include information on policy measures and trade data at macro-economic level. Discussions follow the presentation of the reports.

Howse, Langille and Burda argue that even though the aim of the TPRM is to ensure smooth functioning of the multilateral trading system, "labour rights can in principle be discussed during TPRM, as the text does not prohibit such discussion".¹¹⁶

It is also argued that the situation in Export Processing Zones (EPZs)—special areas within countries, where normal tariffs, quotas, bureaucratic requirements and other barriers to trade are eliminated in order to attract (foreign) investments—would fall within the mandate of the TPRM, as these zones are the result of trade liberalization. If EPZs can be discussed in TPRM, it should also be possible to discuss labour issues concerning workers employed in EPZs.¹¹⁷ However, discussions during the TPRM cannot be used "as a basis for the enforcement of specific obligations under the agreements or for dispute settlement procedures, or to impose new policy commitments on members".¹¹⁸ Even though the TPRM is limited to an "evaluation of the full range of individual Members' trade policies and practices", it also aims to assess the trade policy impacts on "the functioning of the multilateral trading system".¹¹⁹ Howse and Mutua argue that

"as stated in the Preamble to the WTO Agreement, the objective of this system is not free trade as such but, *inter alia*, ensuring full employment and large and steadily growing volume of the real income and effective demand and allowing for the optimal use of the world's resources in accordance with the objective of sustainable development. International organisations concerned with human rights, including labour rights and development, should participate in the review process at the WTO. They should be prepared to respond when the reviews do not appropriately reflect the social and developmental goals of the multilateral trading system".¹²⁰

There are a number of non-governmental organizations (NGOs) interested in participating in the TPRM.¹²¹ If the states were willing to extend the scope of TPRM and as a result include

¹¹² Uruguay Round Agreement on Trade Policy Review Mechanism. http://www.wto.org/english/docs_e/legal_e/29-tprm_e.htm

¹¹³ Paragraph A.

¹¹⁴ Paragraph C.

¹¹⁵ The reports must cover all Multilateral Trade Agreements included in Annex 1 and Plurilateral Trade Agreements where applicable (Paragraph D).

¹¹⁶ Howse, Langille and Burda 2006, 221.

¹¹⁷ The example of discussion on the situation of EPZs can be found in Bangladesh Trade Policy Review (see WTO 2006). The Report briefly mentions the bodies that are responsible for EPZs in the country, including their compliance with labour standards.

¹¹⁸ Paragraph A(i).

¹¹⁹ Paragraph A.

¹²⁰ Howse and Mutua 2000, 19.

¹²¹ International Confederation of Free Trade Unions (ICTFU) has constantly been an active participant in TPRM, is acknowledged by WTO and used by some delegates in the meetings. ICTFU Statement to the High-Level Symposia of the World Trade Organisation (1999) quoted in Howse, Langille and Burda (2006, 222).

in it an assessment of the impacts of trade on human rights, the possibility to do so already exists.¹²² An assessment had to be performed five years after coming into force of the Agreement, and/or later on when necessary. So far, no changes have been made.

However, in practice labour issues are already included in Trade Policy Reports, and they are discussed in the meetings. They are not given that much attention, but the effort to make an overall assessment is already a step forwards. Nevertheless, *gender* issues specifically do not receive any attention. This was the case, for example, in the Trade Impact Review on Bangladesh.¹²³

There were nevertheless few labour issues discussed in the Bangladesh Trade Policy Report presented by the Secretariat.¹²⁴ The first issue was informal labour force, which is a problem in many developing countries. According to the report, up to 90 percent of total labour force in Bangladesh is involved in informal employment.¹²⁵ The problem of labour productivity was also raised. Even though there is plenty of cheap and unskilled labour force, the country cannot become fully effective in the absence of highly skilled workers, efficient infrastructure, proper machinery and professional management.¹²⁶ The issue of the continuing emphasis on Ready Made Garments (RMG) in textiles sector was also mentioned. This sub-sector is particularly vulnerable to phase-out of the Multifibre Agreement (MFA) regime as international competition is very high. Therefore the country was advised to develop other sub-sectors more in order to avoid negative outcomes of potential loss of employment. Female workers are mostly employed in RMG sub-sector: therefore, it is important to pay more attention to female workers' development and possible transfer possibilities to other sectors.

However, the Review does not mention the gender aspect of the problem. Rather, it generally states that "although the elimination of quotas in accordance with the ATC [Agreement on Textiles and Clothing] did not seem to have immediate negative effects on RMG exports, risks remain"¹²⁷ and "a fall in RMG exports seems unavoidable in the immediate future".¹²⁸ The questions presented by WTO officials to the Bangladeshi Government also included aspects of labour issues, in particular compliance with labour standards, implementation of core labour rights in EPZs, etc.¹²⁹

The "Network Women in Development Europe" (WIDE) suggests¹³⁰ how TPRM could be improved so as to reflect not only trade, but also social policy issues. First of all, the reviews should include all objectives of WTO Preamble. More attention should thus be paid to goals such as raising standards of living and ensuring full employment. Review mechanism should not only assess how countries' policies affect international trade, but

Informal Working Group on Gender and Trade (IWGGT) participates in NGO forums around Ministerial Meetings of the WTO and has constantly "asked for government and WTO trade policy makers to undertake gender impact assessment of trade policy" - however, the invitation has never been taken into consideration. The Group stresses that WTO has no institutional commitment to Beijing Declaration and Platform for Action and does not take into consideration situation of women while performing Trade Policy Reviews. (Brew 1999, 6).

¹²² Paragraph F Appraisal of the Mechanism.

¹²³ Review of Bangladesh was chosen as it is also one of the countries on which the case study on gender impacts of trade is presented.

¹²⁴ WTO 2006a.

¹²⁵ Ibid., 9.

¹²⁶ Ibid., 6.

¹²⁷ Ibid., 13.

¹²⁸ Ibid., 2.

¹²⁹ Ibid.

¹³⁰ Vander Stichele 1999, 23-24.

also how international trade affects socio-economic situation in a particular country. More representatives of the civil society should be included in discussing the reports. WIDE stresses that the WTO should have the necessary expertise (staff and resources) to perform gender analysis in trade policy reviews. Gender analysis should include information concerning gender division of employment, existing and foreseen inequalities between sexes, the impact of trade on quality of employment, and identifying which measures particularly affect female situation in employment. All these elements would be integrated more easily if more power were given to NGOs and other intergovernmental organizations such as ILO, UNIFEM, UNCTAD, and UNDP. They should also be involved in the discussions on the reports. Consequently, the WTO would not be overloaded with implementing social policies, but it could help in better coordinating actions and improving the results.

If gender impacts were included in TPRM, it should be ensured that individual states would not be considered solely responsible for the negative impacts of trade on female workers. The WTO itself as a system should also be analyzed. This could prevent the developed countries abusing the developing ones. Information on the impacts of international trade on gender that is provided in Trade Policy Reviews could be used in further trade negotiations. If necessary research would be performed and a clear picture on the impacts of trade liberalization given, developing countries could more easily receive special and differential treatment in order to reach overall development. It is easier to make impact reviews during the negotiations rather than to change policies once the commitments have been made. In order to mitigate the negative impacts on female workers, the WTO should engage in a dialogue with governments, NGOs and other IGOs. Coordinated policies would help to attain increased liberalization and growth, as well as more efficient development of human capital.

3.5 Possible Avenues for WTO and ILO Cooperation

The call by various academics for closer cooperation between the WTO and ILO is obvious. There are citations like “the WTO’s credibility is undermined when it ensures that Mickey Mouse has more rights than the workers who make toys, because it covers trademarks but not labour standards”.¹³¹ Publications with titles such as “If Only We Were Elephants”¹³² solicit—if not the inclusion of a social clause in WTO provisions—then at least increased cooperation between the WTO and ILO. The European Commission has at the multilateral level also emphasised the role of the ILO, “which appears to be the most appropriate institution for examining issues relating to the promotion of labour standards”, and the WTO, “which is the natural forum for debating the links between trade and labour standards”.¹³³

There are several possibilities to improve the ILO–WTO cooperation and to grant it better visibility. Paragraph Article III(5) of the Marrakesh Agreement¹³⁴ foresees WTO cooperation with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies in order to achieve “greater coherence in global economic policy-making”. The provision has a narrow scope and “does not give consideration to employment policy making”.¹³⁵ Article V envisages the possibility for the General Council to “make appropriate arrangements for effective cooperation with other

¹³¹ International Confederation of Free Trade Unions quoted in Arnold (2005).

¹³² Reference by Gregory Shaffer is made to existing Committee on Trade and Environment in Charnovitz (2006, 127).

¹³³ Europa SCADPlus.

¹³⁴ Marrakesh Agreement Establishing the World Trade Organization 1994.

¹³⁵ Charnovitz 2006, 128.

intergovernmental organizations that have responsibilities related to those of the WTO". In order to implement this provision, Cooperation Agreements can be signed with various organizations.¹³⁶ Unfortunately, so far no agreement has been signed with the ILO.

The Marrakesh Agreement envisages also the establishment of Committees on, for example, Trade and Development, and on Balance-of-Payments Restrictions.¹³⁷ General Council can "establish additional Committees with such functions as it may deem appropriate". On the basis of this article, the Committee on Trade and Environment was established, but there was again no political will to create one on Trade and Employment. Since the affirmation in the Singapore and Doha Ministerial Declarations of ILO's (not WTO's) task to be responsible for labour standards, "there is no work on this subject in the WTO's Councils and Committees. However, the secretariats of the two organizations work together on technical issues under the banner of "coherence" in global economic policy-making".¹³⁸ One of the recent examples of such work is a joint study of the International Labour Office and the Secretariat of the World Trade Organization "Trade and Employment Challenges for Policy Research".¹³⁹ Various issues with regard to trade and employment are discussed, yet the gender issue is not specifically mentioned in the study. Nevertheless, such cooperation has proved to be plausible, and hopefully it will also be maintained in the future.

Steve Charnovitz notes that the lack of attention to labour issues in World Trade Report 2004 and the attitude expressed there leads to several problems:

"by discussing the labour market merely as a constraint on the trade liberalization, the Report seems to regard international trade as an end in itself rather than a means for humans to improve their happiness" [and] "the implication in the Report that countries would be better off with less protection for employment, lower minimum wages, and less unionization shows a callous disregard for some of the social values espoused by the international community".¹⁴⁰

The WTO should not give this message to states, and should not induce a "race to the bottom" in labour standards. In order to avoid this, cooperation with ILO should be both feasible and desirable. It should reduce the negative impacts of trade liberalization on labour rights. Charnovitz's reasons why cooperation is desirable are that trade increases the productivity of states, which should in turn also lead to a rise in labour standards. The reverse is also true: the promotion of labour standards increases labour productivity, which could allow for countries to export more and to better compete with others.¹⁴¹ All this means that care for labour standards can increase economic growth, which the developing countries are in a desperate need of.

Without a coherent approach towards the protection of labour rights, the WTO policies can lead to negative implications in the individual member states. In order to better understand the complexities of how exactly the WTO influences labour rights of female workers in the developing countries, the following chapter is devoted to two case studies.

¹³⁶ The examples of such agreements are WTO and World Bank Cooperation Agreement, WTO and IMF Cooperation Agreement, WTO and WIPO (World Intellectual Property Organization) Cooperation Agreement.

¹³⁷ Article IV(7).

¹³⁸ WTOc.

¹³⁹ Jansen and Lee 2007.

¹⁴⁰ Charnovitz 2006, 143.

¹⁴¹ Ibid., 150.

4 A CASE STUDY: THE IMPACTS OF GLOBAL TRADE ON FEMALE WORKERS IN BANGLADESH AND PAKISTAN

In Chapter 2, states' obligations with regard to female workers' rights under international agreements (including general human rights instruments and ILO conventions) were enumerated. In Chapter 3, the question of including the labour and gender dimensions in the WTO framework were assessed. The aim of this Chapter 4 is to analyse two practical examples of WTO's influence on women's labour rights. As we shall see from the following examples, the relationship between free global trade and women's labour rights is complicated. The effects of WTO can be both negative and positive.

The reason for choosing the textiles and clothing sectors is that, their legal framework has recently changed. Through their WTO membership, countries such as Bangladesh and Pakistan have had to adjust to a new trading system. Neither Bangladesh nor Pakistan specialised in the production of textiles originally. The expansion of the textiles sector created many work opportunities for women outside of their homes. However, the liberalization of the sector led to many disadvantages as well.

As was mentioned in the introductory Chapter, trade liberalization can have positive effects on women's labour rights, because it in the aggregate creates work opportunities beyond homes. Women that only used to take care of homes and families may be employed and paid for.¹⁴² However, they also increasingly have to take up responsibilities for health and education services, duties which previously belonged to states. This opposing trend leads to more unpaid work tasks for women.¹⁴³

On the other hand, the employment opportunities do not always satisfy fair minimum conditions, such as protection against unemployment, right to equal pay, or right to form and join trade unions.¹⁴⁴ In order to attract foreign investors in textiles, services or non-traditional agriculture, as well as to be competitive in exports, states "might consciously maintain women's wages and conditions at lower levels than men's". Investing companies might also take up this policy in order to keep their production costs low.¹⁴⁵

Trade liberalization has also caused a rapid expansion of informal employment, in which women's share is larger than in formal employment (50 - 75 % of informal work force, excluding non-agricultural employment).¹⁴⁶ Informal employment is known to provide only little or no social security. It lacks protection against unfair dismissal, health insurance, and maternity benefits.¹⁴⁷ In many countries there is no or a very weak legal basis for the protection of informal workers. The only ILO convention dealing with informal work is Home Work Convention (No. 177). Regrettably, none of the developing countries have ratified this convention. Informal work is usually performed at home, which on the one hand is beneficial for women as they can take care of their children and household at the same time. On the other hand, the work at home might put their children at risk.¹⁴⁸ Lastly

¹⁴² Rai 2002, 99.

¹⁴³ Chen, Vanek, Lund and others 2005, 26.

¹⁴⁴ Elson 2002, 93.

¹⁴⁵ Tran-Nguyen and Zampetti 2004, 330-31.

¹⁴⁶ Chen and others 2005, 17.

¹⁴⁷ Elson 2002, 94.

¹⁴⁸ Work with toxic substances, lack of storage space, etc.

it is more difficult to upgrade skills, develop social ties and organize without moving away from home.¹⁴⁹

According to the theory of comparative advantage, most of the countries specialise in certain areas of exports. The production for exports in developing countries may often take place in Export Processing Zones (EPZs). The increase of these zones has been enormous, and has led to the employment of large numbers of workers, most of whom are women.¹⁵⁰ The EPZs are in principle subject to (certain) national labour laws, the implementation of which should be ensured by the territorial states, and often also to codes of conduct applied by the investing MNCs. The problematic aspect of EPZs is, however, that the control for compliance with labour laws is lagging behind. Some EPZs lack representation for workers, women are forced to take pregnancy tests before being employed and receive no maternity benefits, and workers are not paid for working overtime.¹⁵¹ This means that the control exercised by states and by MNCs is insufficient. However, the situation might improve through the potentially gender sensitive TPRM, discussed earlier in section 3.4.

4.1 Phase Out of the Multifibre Agreement

Textiles and clothing is a major export sector for some developing countries, such as Bangladesh and Pakistan.¹⁵² The share of female workers in the textiles and clothing sector is above the manufacturing average. The work force tends to be young and non-qualified.¹⁵³

Textiles and clothing sectors under the WTO underwent a transformation in 2005, when transitional periods foreseen in the Agreement on Textiles and Clothing¹⁵⁴ (ATC) expired. Until then, all quotas were negotiated bilaterally in accordance with Multifibre Arrangement (MFA). Countries could apply selective restrictions when large increases in imports caused or threatened to cause serious damage. After the Uruguay Round negotiations these quotas had to be gradually phased out by 2005.¹⁵⁵

Since the expiry of the ATC, textiles and clothing have been governed by the general rules of WTO/GATT.¹⁵⁶ The main applicable rules include the Most Favoured Nation (MFN) clause (Article I), which requires that the treatment accorded to one country be accorded to others without any discrimination. Other key provision is Article XI, according to which all quantitative restrictions have to be abolished. If they are still applied (under certain conditions), the application should be non-discriminatory. Importation must be similarly prohibited or restricted from all third countries (Article XIII).

¹⁴⁹ Chen and others 2005, 60.

¹⁵⁰ Rai 2002, 134.

¹⁵¹ ILO 2003, 7-9.

¹⁵² Exports in textiles and clothing constitute 85,2 % and 74 % respectively of total exports in 2003, employing 2 million and 2,3 million people. (Tripartite Meeting Promoting Fair Globalization 2005, 5)

¹⁵³ Ibid., 5-7.

¹⁵⁴ Uruguay Round Agreement on Textiles and Clothing (ATC), 1995.

¹⁵⁵ Article 2 of ATC set three stage integration processes which had to be finished in 2005. "The three-phased abolition of quotas up to the end of 2004 did not lead to significant liberalization of trade in textiles and clothing because the quotas abolished were largely concerned with products in which developing countries had no comparative advantage." (Siegmann 2004, 405)

¹⁵⁶ WTOb.

4.2 Bangladesh Experience during the Phasing Out of Quota Regime

In some countries, the textile and clothing industries were created just because of the MFA regime. The Bangladeshi Government, for example, noticed that the favourable quotas attracted (foreign) investors in the textiles sector. They introduced reforms and policy changes in order to create better conditions for export-orientated production. The government stimulated investments in the ready-made garment (RMG) sector in particular by allowing access to raw materials duty free, zero duties on capital machinery, duty drawback arrangements, etc. This has led to an enormous growth in the sector - from 50 factories in 1983 to 2600 in 1997 raising employment by 1,3 million. About 90 percent of the persons employed in this sector are women.¹⁵⁷ In other words, 70 % of all employed women work in the clothing sector.¹⁵⁸ Even though many jobs were created, this did not lead to better working conditions: the level of unionization is low, “wages remain significantly lower than in other manufacturing sectors where the majority of workers are men”.¹⁵⁹ With the increase of competition in textiles and clothing sector among all developing countries female workers, constituting the majority of employees in this sector face several threats, including loss of jobs and the deterioration of working conditions, that already are very poor - excessively long working hours, toxic substances in the jobs, no respect for freedom of association, lack of rest breaks.¹⁶⁰

Bhattacharya¹⁶¹ and Korinek emphasise that as most of female employees in the manufacturing sector are concentrated in export production, they are also more affected by a decrease in exports. “[T]hey possess different employment skills, experience, assets, information, and social connections [than men], and so do not benefit from new opportunities in the same way.”¹⁶² “Apart from the constraints that women face in terms of access to formal economy employment and remunerative work, they also face disadvantages and discrimination in the labour market, which makes them more vulnerable to crises than men”.¹⁶³ The Ministry of Commerce in Bangladesh performed a research on the prospects of textiles in post-MFA period. The projections made in the study¹⁶⁴ showed that once quantitative restrictions are withdrawn during the liberalization period under ATC, about 180.000 female workers will have to be retrenched immediately. In the year 2000, employment creation will be 250.000 less and in the year 2005, once ATC expires, it would be 360.000 less.¹⁶⁵

The government should put more resources in the manufacturing sector in order to create jobs for women. Activities should include transfer of technology as well as education of workers, so that they reach a higher literacy rate and can perform mechanical operations and quality control. The Bangladeshi society is still very conservative. Even if women are trained, once competition increases and the number of jobs reduces, their chances of being

¹⁵⁷ Bhattacharya 1999, 204-5.

¹⁵⁸ Ibid. The reasons why women are over-represented in labour-intensive industries, in particular in precarious jobs are gender-stereotyped ideas in the society that women are “secondary” wage earners and they are more suitable for hand-work, more flexible in repetitive and unskilled tasks and more passive to bargain better conditions. (Kidder and Raworth 2004, 13)

¹⁵⁹ Daily wages for women are about 40 % less than for men (Korinek 2005, 15).

¹⁶⁰ Tran-Nguyen and Zampetti 2004, 160.

¹⁶¹ Bhattacharya 1999, 197-232.

¹⁶² Korinek 2005, 11.

¹⁶³ ADB and ILO 2006, 33.

¹⁶⁴ Bhattacharya 1999, 197-232.

¹⁶⁵ Ibid., 224-25.

hired are inferior to those of men. This means that Bangladesh should undergo, not only technological development, but also societal, human resource development. More investments are needed for the education of girls and women. Entrepreneurs should be encouraged to hire female workers by for example the government sharing the costs of women's on-the-job training. In order to change the negative and "segregated" societal attitudes towards women, the Government should start and support public information campaigns on women's positive role in the society, in particular concerning their productive roles. It is predicted that if Bangladesh is able to make the necessary investments,

"opportunities of absorption of additional female workers in the textiles/apparels sector can be expected to improve. [If the investments are not made] given that expansion of female employment in other sectors of the economy has not materialized in the recent past, a possible collapse of RMG exports would have a disastrous impact on the female employment situation in the country".¹⁶⁶

It seems problematic for the Government to try to sustain female employment by making the labour market more flexible, still, by further extending overtime and night work, and by allowing more temporary contracts.¹⁶⁷ It is generally held that female employees cost more than male employees.¹⁶⁸ Yet if the Government chose to make the labour market more flexible, the abuses of female employees would probably increase. Therefore, in order to avoid increasing violations, it would be wiser to share the costs of the extra benefits to be paid to women and in such a way to encourage employers to employ more female workers. The problem with developing countries such as Bangladesh is their limited budgets, which have to be strictly balanced. Unfortunately, the Bangladeshi Government subsequently announced that "it will increase authorized overtime and relax restrictions on night work by women in order to prepare the country for the post-quota regime".¹⁶⁹

According to an assessment shortly after the phase out of ATC, exports from Bangladesh slightly increased, if one compares the first half of 2004 with the first half of 2005.¹⁷⁰ It is difficult to infer clear trends from the statistics, however, because the exports have risen and fallen throughout the period 2001-2005. Therefore more time is needed to make concrete conclusions on what the impacts of phasing out the quota regime have been for Bangladesh. Even if women retained their positions at work it is not clear how their working conditions may have been affected. If the Bangladesh Government followed its plan to relax labour conditions in order to keep investors and competitive prices, the conditions of women workers would most probably deteriorate.

These factors would add to the usual "hidden costs" of female employment, which include short-term contracts, lack of social security and employment benefits, long and unpredictable working hours, as well as the risk of a sudden loss of jobs. These hidden costs are usually caused by poor practices in management, sourcing and purchasing, as well as deficient government policies.¹⁷¹ Female garment workers completed in average 80 hours of monthly overtime in 2003. They were not even aware of the extent of their underpayment, because they never received their written pay slips. Researchers at the Human Development Research Centre calculated that the actual payment women garment workers

¹⁶⁶ Ibid., 212.

¹⁶⁷ Ibid., 223-28.

¹⁶⁸ Paying maternity benefits, restrictions of night work, giving breast-feeding breaks, etc.

¹⁶⁹ Tripartite Meeting Promoting Fair Globalization 2005, 35.

¹⁷⁰ Ibid., 11.

¹⁷¹ Kidder and Raworth 2004, 12.

in Bangladesh received constituted just 60-80% of their due earnings, which meant that each of them worked unpaid for 24 hours every month. Female workers also had supplementary costs due to the non-predictable and late working hours.¹⁷² It is also noted “that about 40 percent of women’s illnesses and diseases do not receive any medical treatment, compared to 33 percent of men’s, and that only 35 percent of female workers who asked for leave were granted paid leave, compared to 60 percent of male workers”.¹⁷³

Bangladesh is famous for being a country with very low wages. In order to stay competitive, the low level of wages will have to be maintained, possibly even decreased. Low wages will need to be kept for low-skilled employees in particular, the majority of whom are women. This means that the gender wage gap will persist and even increase. The government invests in technologies, which is a positive step, but women will not benefit from the investments. They are less trained, and the employers as well as government authorities are less interested in educating female workers so as to enable them to work with higher technologies.¹⁷⁴ Lack of education is also the main reason for women’s slow carrier advancement. They will keep on working in low-skilled, low-wage sectors with persisting job segregation and very little carrier opportunities.

Finally, it may be asked whether a job in hazardous conditions is better than no job at all. Most probably for women in developing countries, who increasingly have to take care of family income and to support their children, it is the better option. Yet favourable working conditions are the factor that would help women combine their family responsibilities and productive work. Moreover, no matter what work women take, participating in productive activities facilitates their personal empowerment. They become more independent from their parents and their husbands, and they can better take care of their children.

“In Bangladesh with the rise of the export-orientated clothing industry and the resulting increase in wage opportunities for young women, families have overcome social resistance to women’s work outside the home. -- Their increased employment had changed the view of women’s economic sphere and has reportedly increased women’s social status, their control of income, and their decision-making power in the family”.¹⁷⁵

It is noted that female workers can control at least a minimum income for the family, which is usually used for medications, clothing and food.

4.3 Pakistan Experience during the Phasing Out of Quota Regime

Similar to Bangladesh, Pakistan did not originally have a highly developed textile sector, but since the country’s independence the industry started to grow considerably.¹⁷⁶ Pakistan faced quantitative restrictions on textiles and clothing both in the U.S and the EU markets. For this reason, the phasing out of MFA affects Pakistan in two different ways. On the one hand, the lifting of quotas on textile exports will create new market opportunities; on the

¹⁷² Instead of walking home they had to pay for transportation, the costs of which corresponded to 17 hours unpaid work per month. (Kidder and Raworth 2004, 18)

¹⁷³ Tran-Nguye and Zampetti 2004, 150.

¹⁷⁴ Bhattacharya 1999, 227-28.

¹⁷⁵ Korinek 2005, 10.

¹⁷⁶ Data taken from Board of Investment (2004) and Ministry of Finance (2004), quoted in Siegmann (2005, 407).

other hand, Pakistani textiles will face increased competition with countries that previously had even higher quantitative restrictions.¹⁷⁷

Female workers have traditionally constituted the majority of employees in textile and clothing sectors. They can be paid lower wages, and are therefore more attractive to investors who strive to increase exports.¹⁷⁸ If exports of textiles and clothing from Pakistan would decrease because of increased global competition, women would be the vulnerable group feeling it the most.

The Pakistani society is based on female seclusion, which means that women's social movements are very restricted by the prevailing socio-cultural perceptions. Therefore, women are concentrated in a few occupations only.¹⁷⁹ According to a study by Siegmann,¹⁸⁰ female workers in Pakistan are usually employed for sewing, which is usually performed on a sub-contracting basis.¹⁸¹ Sub-contracting in textiles sector is a common phenomenon. Major retailers and brand companies now only design and market goods whereas all the work is done by sub-contractors. On the one hand it seems a positive trend, because goods are produced in developing countries, where jobs are created. However, producers sub-contract to home workers, who often are informal workers. Retailers ask for fast and flexible production, high technical and quality standards, better labour conditions without long-term commitment and all at a lower price. In order to fulfil these requirements producers hire cheaper labour force, which is often women, and use short term contracts. Employees are put under excessive pressure and they try to hide the labour rights violations.¹⁸² This is confirmed by a study conducted in Pakistan, where it was found that even though hazardous working conditions existed in big establishments, smaller units and home workers had even worse working conditions.¹⁸³

In order to overcome the negative impacts of increased competition in textiles and clothing sectors, Pakistan upgraded the necessary technologies. However, development of the human capital has been forgotten. The technology upgrade was also partial, and most investments were done in weaving and processing, rather than in stitching, where most of the female workers are employed. Pakistan will face strong competition in made-ups and garments, the production of which includes stitching, yet the necessary technological upgrades are not done. If Pakistan will fail to be competitive in this market, many jobs will be lost. The losses will affect the female labour force in particular.

It is difficult to make definitive conclusions on the long term effects of the phase out of the quota regime: so far statistical data on exports is limited.¹⁸⁴ In the meanwhile it can be

¹⁷⁷ Tripartite Meeting Promoting Fair Globalization 2005, 9.

¹⁷⁸ More on gender wage differentials and trade can be found in Busse and Spielmann (2006, 362-79); Berik and van der Meulen Rodgers (2004, 237-54); Hazarika and Otero (2002); Seguno and Grown (2006, 1081-104).

¹⁷⁹ Siegmann 2005, 415.

¹⁸⁰ *Ibid.*, 401-21.

¹⁸¹ The disadvantage of stitching position is that the workers are usually employed via sub-contractors and are paid piece rates. Negative aspect of piece rate is that the time needed to prepare a good is set by contractors, which is usually inadequate to the real time needed to perform a task and employees are therefore underpaid.

¹⁸² Kidder and Raworth 2004, 14-5; Tran-Nguyen and Zampetti 2004, 21.

¹⁸³ Typical problems are cotton and yarn dust, which when inhaled may lead to various dangerous diseases, high noise level that can lead to hearing problems. Only in a few investigated establishments workers had ear plugs, and masks. (Siegmann 2005, 410)

¹⁸⁴ According to statistics, exports of textile made-ups decreased by 8 percent from August 2005 to August 2006, even though the whole exports of the manufacturing sector increased (The available

forecasted that if exports in made-ups decreased, many female workers who are mostly employed in that sector, would have to be dismissed. Due to societal attitudes, family responsibilities and lack of education, women would likely find it difficult to be employed in different sectors. If the decrease of exports would not lead to massive redundancies, the cost of production might have to be cut in order to compete in the world markets. Supply chain pressures may influence government policies, which means that even existing labour laws may not be implemented.¹⁸⁵ Pakistan may follow or perhaps is already following this pattern in order to sustain its exports, rather than making positive changes to improve the situation of its female workers.

4.4 The Situation of Female Employees in Bangladesh and Pakistan in the view of international human/labour rights obligations

What we learned from these examples is that trade liberalization can have controversial and multifaceted effects. On the one hand, free trade creates many employment opportunities in developing countries, especially for female workers. On the other hand, increased competition sometimes leads to redundancies or deteriorating working conditions. In this part we shall try to analyze the international obligations on women's working conditions which the states (are likely to) violate for the sake of competitiveness in liberalized markets. We shall also assess which ILO conventions the states would be recommended to ratify in order to improve the situation.¹⁸⁶

During the process of trade liberalization in Bangladesh and Pakistan, many vacancies were created for female workers. In the early phases, Bangladesh and Pakistan attracted many investors that expanded their textile and clothing operations. Women have benefited from the creation of jobs, because their personal features were believed to be suitable for such kind of work: the jobs to be performed were similar to the ones that women had usually performed in their households. In this sense trade liberalization helped the countries ensure the right to work, envisaged in UDHR, the ICESCR, and CEDAW¹⁸⁷. Women, who only used to have a reproductive role in the family, and had to take care of the household, got involved in productive, paid work. This is a big step in changing the societal attitudes. Therefore, even though female segregation is still common in these countries, women have been acknowledged as productive workers. Article 5 of the CEDAW aims to modify social and cultural patterns in the conduct of men and women, with a view of eliminating the customs and prejudices that are based on the inferiority or superiority of either sex. Trade liberalization has helped the countries in moving towards that objective. However, there are still many societal prejudices left in the developing countries, which hinder female workers from participating in other occupations, in case their sector would not sustain the increased international competition. So far women have been mostly employed in the

data is export statistics of August 2006, July 2006 in comparison to August 2005. Data is taken from Federal Bureau of Statistics (Government of Pakistan).

The budget revenues from made-up exports reduced by 15 percent. This was the only decrease in textile manufacturing. Bearing in mind that majority of women are employed in the production of made-ups, they suffered most from the decrease. During the following period (December 2006 – December 2007) Pakistan faced a general decrease in exports, including a fall of 14-40 % in textiles (depending upon sub sector).

¹⁸⁵ The example of Morocco garment industry shows that more flexible labour practices can be applied without changing laws. Some governments even weakened labour laws “to make the labour market more flexible through easier hiring and firing, extended limits of overtime, and increasing the use of temporary contracts”. (Kidder and Raworth 2004, 14-5).

¹⁸⁶ Please note that all the conventions mentioned in this chapter have already been referred to in chapter 2. The source references are provided there and in more detail in the list of references.

¹⁸⁷ Articles 23, 6 and 11, respectively.

sectors that are thought to be most appropriate for them, not where employment would be most easily available.

One of the ways to decrease female segregation in certain sectors is to improve women's access to education and vocational training. Due to early care obligations in the family, girls tend to drop out of schools, which usually leads to low skilled employment later on. The right to education is the human right obligation that must be fulfilled by each individual state. What interests us is how trading rules could affect this right. It is suggested by the authors, who performed studies on Bangladesh and Pakistan, that women and girls should be better educated, and their participation in vocational training programmes increased. This would improve productivity, which helps in better participating in the international competition for textiles and clothing. The problem is that it is often assumed that female employees cost more than their male counterparts. Therefore the employers are more interested in male employees' vocational training.

Saving in production costs in order to have a competitive advantage in the international markets of textiles and clothing after the phase out of the quantitative regime influences women's right to receive vocational training and retraining in a negative way. Consequently governments are forced to violate Article 11(1)(c) of the CEDAW,¹⁸⁸ Article 6(2) of the ICESCR,¹⁸⁹ as well as Article 2 of the ILO Discrimination (Employment and Occupation) convention No. 111.¹⁹⁰

Under the ILO Discrimination Convention¹⁹¹ members undertake to "ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority". Therefore, before undertaking the obligations of the WTO, the states should make sure that they will not hamper labour rights. In addition, that the states should make the necessary adjustments and strengthen labour law implementation mechanisms. Governments should also protect employees from discriminatory policies applied by private companies.

Developing countries analysed in this chapter faced the threat of increased international competition. Failure to gain competitive advantage puts employees in danger. In Bangladesh the threat did not materialize as far as the most recent available statistical data depicts the trend accurately. The data did not show a fall of exports in textiles and clothing after the phase out of quota regime. Yet in Pakistan female workers were especially affected as the exports of ready made garments, the sector where female workers are mainly employed, significantly decreased. In order to ensure the right to protection from unemployment, envisaged in UDHR Article 23 countries have to apply relevant policies. While Bangladesh included a Displaced Workers Rehabilitation Programme in its Post-MFA Action Plan, Pakistan did not take such actions.

In order to compete with China and India when the general GATT rules are applied in textile and clothing sectors, Bangladesh and Pakistan have to reduce their production costs. This may include a reduction of wages and social security benefits, allowing for short-term contracts, and extending over-time and night-time work. The Bangladeshi Government

¹⁸⁸ Right to ensure equal opportunity for women to receive "vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training".

¹⁸⁹ Obligation for states to "include technical and vocational guidance and training programmes" as the means to full realization of the right to employment.

¹⁹⁰ An obligation for states to promote "equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof".

¹⁹¹ Article 3(e).

announced that it will make labour laws more flexible in order to prepare for the phase out of the MFA-regime. In Pakistan there is a greater danger that labour laws violations are simply hidden from the authorities, or the authorities do not pay attention to the violations.

Further reducing wages in countries that are famous for having the lowest wages in Asia—indeed minimum wages that do not reach any international standards—would be a violation of the Universal Declaration on Human Rights. Article 23(3) of the Declaration states that everyone has the right to just and favourable remuneration ensuring for the worker and his family a life in dignity. The International Covenant on Economic, Social and Cultural Rights (ICESCR) mentions this right in a similar way.¹⁹² The implementation of ICESCR creates an obligation to meet its objectives, including the obligation not to reduce the protection of the envisaged rights. Reduction of wages that are too low to satisfy basic human needs is a violation of the Covenant. Not ensuring minimum wage obligations in the private sector would infringe the obligation to protect citizens from the violating acts of other private persons. According to studies, female garment workers are often underpaid because of non-remunerated over-time work and additional costs when their working time is unexpectedly extended to late hours at night. Such policies would indeed violate the obligation to ensure fair and just working conditions.

There are still other means through which the developing countries try to reduce production costs: social security may for example be lacking because workers are forced to take non-paid leaves. The maternity and child-care benefits may be poor, and mothers' protection during pregnancy may also be insufficient. In export processing zones (EPZs) such violations are quite common.¹⁹³ Who is to be blamed that these rights, enshrined in International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), or the ILO Convention on Discrimination (Employment and Occupation, No. 100)¹⁹⁴ are not respected?

On the one hand, states are obliged to issue and implement legislation, aiming to guarantee these rights. On the other hand, investors that employ people in EPZs have to comply with the regulations. It seems that direct responsibility should be carried by them. However, if state officials close their eyes from the violations of labour rights during the inspections, the states themselves are to be blamed for the non-implementation of legislation. In order to provide a legal framework for the proper protection of female workers with family responsibilities or in need of maternity protection, all states are advised to ratify ILO Convention No. 156 on Workers with Family Responsibilities and ILO Convention No. 183 on Maternity Protection. It is equally crucial that the obligations of the conventions are also implemented in practice.

Subcontracting is a common phenomenon in export oriented industries. When subcontracting takes place at several levels, it is very difficult to control compliance with labour standards. What is more, subcontracting usually leads to home working or even informal working. Home workers have worse labour guarantees than ordinary workers. In order to protect the home workers' rights states are encouraged to ratify and fully implement ILO Home Workers Convention No. C177, which requires that home workers be accorded the same rights and benefits as other wage earners (Article 4). States are also encouraged to formally recognize informal workers, and to accord them the same benefits

¹⁹² Article 7(a)(i).

¹⁹³ Employment and Social Policy in Respect of Export Processing Zones 2003, 7-9.

¹⁹⁴ Articles 9, 11 and 1(3), respectively.

as formal workers. Once again states should be encouraged to put their national legislation in conformity with international standards before or at the same time as trade is liberalized. Pure economic growth without the development of human capital does not lead to a balanced, comprehensive development of a country. It would leave large parts of the society marginalized and excluded from the economic benefits of trade.

5 CONCLUSIONS

The aim of this paper was to analyse the relationship between the developing countries' WTO membership and their international law obligations to protect the labour rights of the female work force.

In chapter 2 we saw that states have international obligations to ensure women and men equal rights to employment, to proper conditions of employment, and to ensure women special rights on, for example, maternity protection. Some of the mentioned instruments are widely ratified by most or some of the developing countries, while others not. The fact that a state may have ratified a convention does not yet guarantee, of course, that the contained obligations are also properly implemented. For example, both Bangladesh and Pakistan, the case studies of this paper, have ratified the ILO Conventions on Equal Remuneration (No. 100) and Discrimination regarding Employment and Occupation (No. 111). Yet inequality between women and men remains widely spread in labour relations in both countries.

Almost all international treaties that aim at protecting human rights contain implementation mechanisms. However, the question arises whether they are effective and, if not, whether there are other organizations that could improve their effectiveness. It was therefore analysed in Chapter 3 whether the WTO could be used as a legal framework for the protection of women's labour rights, or whether, in fact, the WTO's policies affect such rights in a *negative* way.

A few ways of engaging the WTO in the protection of women's labour rights may be envisaged. Originally, the international trading regime was to include a separate social clause for the protection of workers. The draft Charter of the International Trade Organization (ITO) foresaw, for example, the possibility of referring to unfair labour practices in the dispute settlement cases. The Charter was never ratified, however, and the social clause went missing with it: it has never been reinserted into the current WTO agreements. The idea of having an independent social clause was opposed by the developing countries, in particular. They were afraid that such a clause would be (ab)used in order to block imports to the developed countries. As there is no consensus between the WTO member states on this issue, it is clear that so far the idea of including the protection of labour standards as a separate WTO policy has not been feasible.

Another way to engage the WTO legal framework in the protection of women's labour rights is to interpret Article XX of the GATT, which allows states to restrict trade on grounds of justifiable social objectives, so as to include the protection of women's labour rights. The authors mentioned in this paper support the idea that fundamental labour rights, including a right to non-discrimination, should be contained in the definition of "public morals" in Article XX(a). Allowing the use of Article XX(a) in the fight against labour law violations would allow countries to reduce or ban imports from states where such violations are committed. In other words, countries would be allowed to use trade sanctions in fighting gross violations of labour rights. Article XX (a) has, however, never been interpreted in the Dispute Settlement System of the WTO. It seems unclear, for example, whether labour law violations would be considered gross violations of human rights.

The use of trade sanctions for this type of social objectives is admittedly a very controversial issue. On the one hand, countries could be encouraged to comply with labour standards in defence of their place in the international market place. On the other hand, the loss of exports means a loss of jobs: the question is whether the situation of the workers in the developing countries would then in fact also deteriorate. Other difficult issues in this respect would include the difficulty of defining what exactly are universally accepted labour standards – many would agree that non-discrimination is a part of them. One could also wonder when exactly labour rights are violated to such an extent as to allow trade sanctions. And how to control that the use of trade sanctions against labour rights violations does not lead to an abuse of such sanctions for political purposes, such as destabilizing an unfriendly regime.

All in all, because there are so many difficulties and drawbacks in using trade sanctions for fighting non-compliant labour standards, the conclusion must be that trade sanctions are an inappropriate way to react to labour law violations in the developing countries.

The WTO's Trade Policy Review Mechanism has also been discussed as a way how social standards could be taken into consideration in trade policy. So far the TPRM has only included reviews of how an individual member state's policies and practices influence the multilateral trading system. The mechanism does allow a discussion on labour rights, but it does not lead to any concrete conclusions. NGOs dealing with the protection of women's labour rights have emphasised the importance of mechanisms, which also allow for a "reverse review": the impact of WTO policies on individual member states can also be assessed. The system nevertheless does not currently include a reverse review mechanism. The information collected during trade policy reviews may be used for making more coherent policies that would benefit not only economic growth, but also the development of human capital. If a reverse trade policy review regarding the gender issue were performed, and a more coherent and effective participation of various international (non-governmental) organizations were facilitated, international labour standards would be achieved more effectively without having to choose *between* trade and labour standards.

The last discussed way is to create stronger cooperation between the WTO and ILO. Even though the WTO has cooperation agreements with for example the International Monetary Fund (IMF) and the World Bank (WB), and even though there is a specific Committee on Trade and Development, the ILO and WTO so far cooperate only on a technical level. Working together, the WTO and ILO could effectively create and implement policies to address social adjustments. For example, the WTO could allow transitional periods for countries that are preparing to liberalize certain sectors. The periods should be devoted to adjustments in the labour market. Member states together with the ILO should be responsible for the implementation of such labour market adjustment policies. Only once the ILO had prepared a report stating that a particular country is ready to face international competition, should the transitional period end.

In order to analyse the impacts of WTO on women's labour rights in more concrete terms, the situation of two developing countries—Bangladesh and Pakistan—was scrutinized in chapter 4. The countries underwent a drastic change in shifting from the phased-out Multi-Fibre Arrangement (MFA) regime to the normal GATT regime. Textiles and clothing were subjected to the same treatment as all other goods, and the high quantitative restrictions that the developed countries had applied against many developing country exports had to be abolished. This change had the prospect of improving imports from those developing countries that had been subjected to the restrictions. Yet at the same time certain very

poor nations, which under the MFA had benefited from preferential treatment, stood out to lose due to increased competition. Bangladesh and Pakistan were amongst the prospective losers.

There had been a large increase of female employment during the development of the textiles and clothing sectors in both Bangladesh and Pakistan. The phase-out of the MFA regime threatened to change the situation. Female workers were highly segregated to specific sectors and work tasks. This rendered them vulnerable, as there would be fewer opportunities to flexibly adjust to the changing circumstances. According to certain rough preliminary indicators, at least the exports in areas dominated by women did not decrease by the amount that was expected, however. This gives hope that massive redundancies might not be expected.

Nevertheless, the Bangladeshi Government had to make its labour laws more flexible in order to sustain the investments and the jobs. This worsened the already poor situation of the female workers. Pakistan, on the other hand, faced reductions in the exports of ready-made garments. Because it is mostly women who are employed in this sector, the closing down of factories would have a direct impact on female workers in particular. Thus, even though trade liberalization in the first instance empowered women, the adjustment of the countries to the new trade rules subsequently deteriorated the protection of labour rights. The implementation of ILO conventions and other human rights instruments were not strong in either of the countries to begin with—now they had to step even further backwards in labour standards so as not to lose in international competition.

It would be difficult to conclude that the WTO is primarily to be blamed for violations of women's labour rights. States are the principal actors to ensure compliance with international human rights standards and obligations. However, the policies of the WTO indirectly contribute to countries' negligence of their other international instruments. Countries that prioritize economic growth are not willing to lose their positions in international trade. Yet economic growth should be a means to achieve "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand".¹⁹⁵ Even though the development of international trade in the developing countries created many work opportunities for women, helped them to become more independent and allowed them to participate in the society more actively, the WTO should not lead its members to violate their non-economic international obligations. In order to also comply with its own objectives of raising standards of living and full employment, the WTO should engage itself in active policies to overcome the negative aspects of trade on female workers in the developing countries. Therefore the WTO should engage itself in a dialogue with governments, and with intergovernmental and nongovernmental organizations. The WTO's trade policy review mechanism or its closer cooperation with the ILO could ensure that the global trading system would in fact work for, rather than against, a more effective implementation of women's labour rights in the developing countries.

¹⁹⁵ Preamble of the Marrakesh Agreement Establishing World Trade Organization.

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