

Global Trade and Labour

The Working Group on Global Trade and Social Rights should address the following points:

1. Globalization, Free Trade and the Social Consequences.

The globalization-trade liberalization process raises a series of social concerns linked to the possible (de)regulative competition on fundamental labour norms, that such a liberalization may be able to enact. The global processes of liberalization of exchanges and investments have produced phenomena of social dumping. They are closely linked to an increase of social inequalities, as a vast empirical literature shows, estimating the incidence of commercial exchanging, of capital transfer and migratory pressure on the increase of inequalities on salaries and on the emersion of new poverty areas in the advanced countries.

Further, theoretical analysis and empirical surveys have identified several mechanisms through which international capital flows, most of all in the form of Direct Foreign Investment, may condition the structure of salaries, employment and the rate of uncertainty/insecurity on labour. In most of OECD countries, social and economic inequalities have increased in the last decades, not only within the systems that shifted towards neo-liberalism, but also in Northern Europe Countries, where political changes have resulted as less drastic, like Germany and Scandinavia.

Within the lack of a regulatory system that may avoid the typically neoliberal social dumping phenomena, globalization thus produces a general corrosion of social standards, that are considered to act as a restraint to the dynamic of the free market. The indifference to social issues shown by international economic institutions casts an alarming shadow also the ongoing transatlantic negotiations between USA and EU.

In this problematic frame the working group should re-think the controversial issue of reconciliation between economic development, international trade and fundamental social rights. If yesterday the analysis of social clause was placed within a perspective of “resistance” to the negative effects of market liberalization, with all possible reserves on systems accused by developing countries of disguised protectionism, the evolution of globalization places the subject in a new perspective, as aspect of the dynamic relationship between the sphere of the Regulation (in its various forms, levels and intensity) and the development of global economic policies, and within the theoretical paradigm of “Sustainable Development”.

2. The Social Clause: a New Paradigm for the linkage Trade and Social Rights

The working group should discuss the new model of “social clause” to insert within the *corpus of international trade*, developing a confrontation among the experiences of commercial integration already present in the global market: not only processes of exchanges liberalization (NAFTA, *Free Trade Agreement*), but also in the field of unilateral

Trade policies linked to the promotion of social rights, like the Generalized System of Preferences (GSP) adopted by the USA's and the EU's. Imagining a linkage between trade liberalization and "Sustainable Development" also represents bringing up to date in the context of economic globalization a fundamental issue, namely the renovated impulse to economic regionalism, namely to the realization of Free Trade Areas, which imply forms of economic integration beyond trade, regarding issues such as services and investments.

The working group should also analyze the question concerning the link between trade and social rights: it is based on two sets of explanations, which, one due to an "instrumental rationality" to the objective, the other to a "value rationality". In the first order of justification, social standards, with their component of value, penetrate the regulatory sphere of the market and competition law as a means of application of the principle of equity in international trade.

This conception of equity in international trade is spreading to areas hitherto considered immune to this logic: as in the case of China, which has albeit timidly started insert clauses work-related in some FTAs.

The axiological dimension of Fundamental Social Rights provides the second linkage between global trade and social rights, by connecting to the broader theme of a Global Ethics in support of human rights and democracy, linked to the paradigm of sustainable development.

3. The Contents of the Social Clause: Fundamental Social Rights

The working group should analyse the sources of international law in order to draw a picture of evolution in the content of social clauses. The point of departure (or arrival, if involved in a longer time frame) is the identification of a core of social rights unconditioned. In the ongoing *TTIP negotiation* the EU has explicitly declared the interest for the protection of social rights referring to both 1998 ILO's Declaration on *Core Labour Standards*, and 2008 Declaration on social Justice for a *Fair Globalization*. The group will discuss how to integrate this normative frame of international labour law in all trade relationships.

4. The Monitoring System

The assessment of the free trade social consequences represent a permanent mechanism able to supply *ex ante* and *ex post* indications on the effects of the social clause, providing *follow up* sessions able to indicate the measures to be adopted in order to guarantee the expected results. In this perspective, monitoring the impact should involve the social parties, the interested NGO and (for the EU) the *Social and Economic European Committee* (SEEC), which has expressed several points of view related to trade and sustainability, contemplating an assessment mechanism that involves the society, so as to regularly reassess the risks and the opportunities, pointed out in the initial impact assessment.

Besides, this monitoring activity should combine with additional *review* and *follow up* mechanisms. They should include mutual learning and circulation of good procedures,

to be adopted on the basis of shared guide lines, in the field of an open coordination mechanism.

5. Sanctions

FTAs have been criticized for not including strong mechanisms to enforce labour provisions (e. g. NAFTA). The working group should address the consequences if the violations of labour provisions in a new perspective, that is that such violations are handled through the same enforcement procedure that governs commercial provision. This improvement is problematic. If investors can utilize Investor-State Dispute Resolution arbitration (see infra n. 8), workers should also have the same right. To date, however, no alleged violation of an US FTA has ever gone to arbitration even in case of egregious violations (such as the Guatemala case).

6. Corporate Social Responsibility and Transnational Collective Bargaining

The social clause may supply a new impulse to CSR, in order to enable an *extraterritoriality principle*, thus allowing countries to demand the compliance with their social legislation, also to multinational companies operating outside their territorial limit. A further area of interest is to be found linking CSR to transnational collective bargaining. We are referring to the *international (global) framework agreements*, which are negotiated between a multinational company and international trade unions (like *Global Union Federation*), in order to establish policies in line with CSR's principles and, in particular, forcing the company to respect the same social standards in all the Countries it is operating in.

7. Foreign Direct Investments.

Foreign direct investments matters (FDI) represent one of the most significant element of global economy. The empirical literature on the link existing between FDI and social rights is focused on the alternative between a logic of “*climb to the top*” and a “*trade related race to the bottom*”; and, as a matter of fact. Direct investors can be encouraged and motivated to the compliance with *core labour standards* in their “*overseas production facilities*”, through a variety of instruments and mechanisms. Basically, the protection of social rights is an *outcome* which depends to a large extent on the capability of policies to guide the behaviour of direct investors.

8. ISDS Clause

Further, the working group should address the meaning and impact of *Investor-To-State Dispute Settlement (ISDS)*, be considered (and invoked) in order to protect investments and to contrast Social Policies, since they are against financial and economic interests. For instance, within TTIP, an *Investor-To-State Dispute Settlement (ISDS)* might be used by European companies to challenge the USA's regulations, or by American companies to

fight against European social standards, or of the labour law normative patrimony of each member state.

General methodology: the research should be based on a theoretical framework, using quantitative and qualitative analysis, and in particular referring to case law, reliable data set, firm level schemes, etc. But it should also be aimed at identifying best practices, through the involvement of national or international subjects like public authorities, unions, employers association, International organization.