

A stylized world map composed of a grid of dots in various shades of gray, with several dots highlighted in red. The map is centered behind the title and subtitle.

Stopping the Race to the Bottom

Challenges for Workers' Rights in Supply Chains in Asia

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- Two complementary economic processes have put downward pressure on wages and working conditions in the global economy: the liberalization of trade, and the growth and consolidation of global supply chains controlled by multinational corporations.
- Ensuring decent work in the context of trade liberalization and GSC consolidation not only requires better monitoring and enforcement of core labor standards (CLSs), but also involves developing better rules to regulate trade and global supply chains.
- Efforts to ensure workers' rights in the global economy must also go beyond the CLS approach. A core labor standards plus (CLS+) approach would expand the range of labor standards covered by trade agreements, including wages, working hours, health and safety, while also taking into consideration the ways in which trade and global supply chains bring about low wages and poor working conditions.
- Trade union and democratic worker participation must be a component of all programs at the company, national, and international level. Research indicates that empowered workers can be the best monitors of violations.



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Scholars and labor practitioners alike have long debated the potential benefits and risks associated with trade agreements and their social clauses (Scherrer 2007). Most observers agree that trade has the potential to make the world a more productive and prosperous place. At the same time, there is a legitimate concern that hypercompetition precipitated by trade agreements can put downward pressure on wages, working conditions, and labor rights. To rectify this situation, policymakers have included social clauses in trade agreements. These clauses have varied significantly over time and across regions.

The question is: Are the competitive forces of trade agreements increasing downward pressure on labor or are trade agreements' social clauses helping workers defend their rights and leverage for better working conditions? Simply put: Are we seeing a »race to the bottom« or a »climb to the top«? Often, social clauses are treated as a secondary concern in trade agreements, the latter of which tend to focus on tariffs and other barriers to trade and investors' rights. Past trade agreements, such as NAFTA, relegated social matters to side deals. The actual enforceability of such clauses has been another issue, as doing so involves long and cumbersome processes that may, at best, result in non-punitive consequences for the violators.

The current generation of free trade agreements promises to do better, by covering a broader range of issues and exercising strong enforcement mechanisms. But can they deliver on their promise? Can a race to the bottom be prevented through labor provisions in trade regimes, specifically in Asia? What is the role of global supply chains and local governance in shaping competitiveness and fostering respect for workers' rights? And what role can and should trade unions play in this process?

This paper argues for a CLS+ approach that would not only expand the range of rights and standards covered by trade agreements, but would also enforce these more effectively. Mechanisms must be established to ensure that the competitive dynamics brought about by trade agreements through global supply chains do not undermine workers' rights. A strategy guaranteeing decent work in global supply chains would provide a necessary complement to social clauses in trade agreements.

In the sections that follow, this paper will develop a framework for analysis that focuses on the factors that bring about a climb to the top versus a race to the bottom. Next, the paper explores trade agreements and their social clauses, including current agreements that are in the process of being negotiated and approved. The third section explores non-state approaches, such as global framework agreements and the Bangladesh Accord on Fire and Building Safety. Finally, the role of the state is examined.

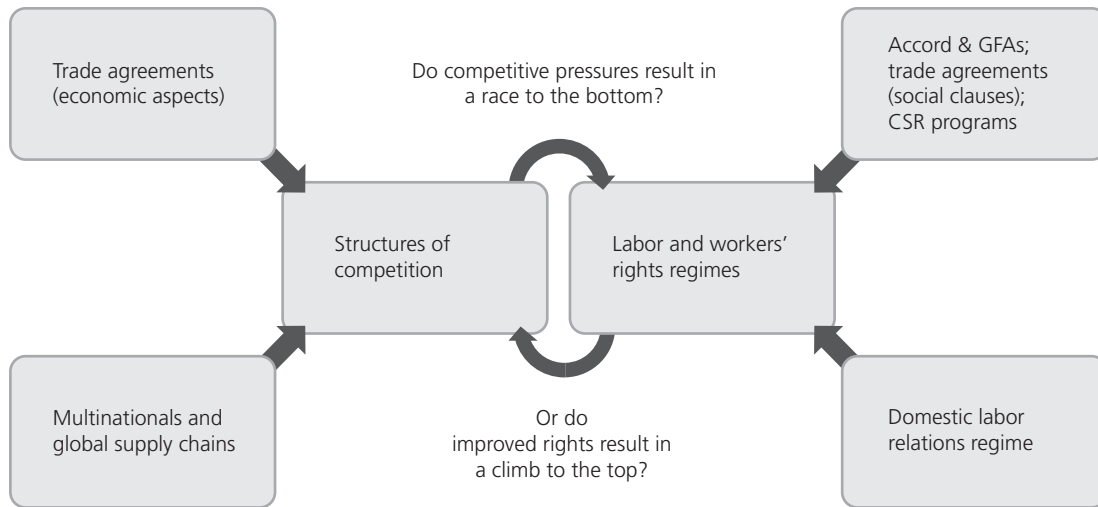
1. Competitiveness and Workers' Rights: A Framework for Analysis

Asia has long been a focal point on issues regarding development, trade, workers' rights, and the race-to-the-bottom/climb-to-the-top debate. The economic progress achieved by Japan and the Asian Tigers (Hong Kong, Singapore, South Korea, and Taiwan) suggested that it was possible for poor, underdeveloped countries to successfully develop and achieve a »pathway from the periphery« through export-oriented growth (Haggard 1990). But, as many smaller countries competed with each other to gain access to Western markets, few countries were able to fully reproduce the successes of the bigger countries. China's entry into the World Trade Organization in 2001 transformed the debate yet again, and some scholars argued that the race to the bottom did exist, and that China was the bottom (Chan 2003).

Today, the debate over which country defines the bottom in terms of wages and working conditions includes Bangladesh, Cambodia, Pakistan, Myanmar, Sri Lanka, Indonesia, and Vietnam. Bangladesh, for a period of time, seemed to occupy the new bottom. Wages of 39 US dollars per month were the lowest among major apparel exporters in the garment export sector. The 2013 Rana Plaza collapse indicated that its factories were also among the least safe in the world. Since that time, wages have risen to 68 US dollars per month and new programs, such as the Bangladesh Accord on Fire and Building Safety, are working to ensure safer factories.

Yet, soon after Bangladesh raised its monthly wages, some buyers said they were considering shifting production to Ethiopia, where wages were only 21 US dollars per month. And, in all major apparel-exporting countries, violations of workers' fundamental rights remain

Figure 1 Race to the bottom or climb to the top?



pervasive. Union activists have been killed in Bangladesh, imprisoned in Cambodia, and prevented from exercising their most basic rights of independent unionism in China and Vietnam. Indeed, trade liberalization and the pricing squeeze imposed by global supply chains have contributed to the declining respect for workers' rights in major apparelexporting countries.

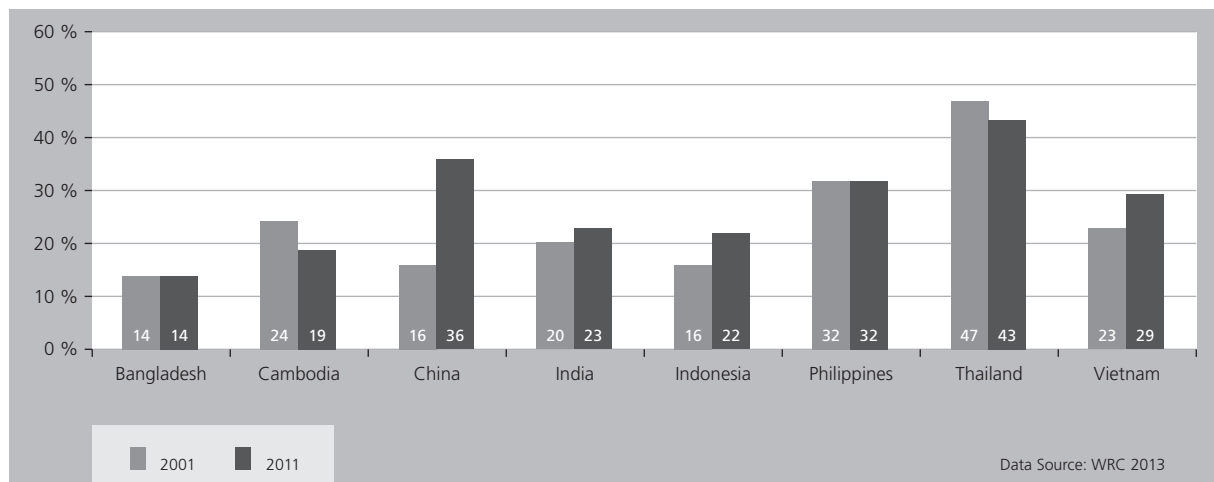
Social clauses of trade agreements have the potential to, at the very least, mitigate the adverse effects of trade liberalization (Hartmann and Scherrer 2003). And we have also seen a proliferation of corporate social responsibility (CSR) programs to do the same (Jenkins 2002). In addition, through global framework agreements (GFAs), companies and trade unions negotiate frameworks for addressing workers' rights in supply chains (Stavis and Fichter 2012). And in innovative approaches, such as the Bangladesh Building and Fire Safety Accord, companies commit to a binding agreement with workers to ensure safe factories (Anner, Bair, and Blasi 2013). Increased attention has also been placed on the ability of states to enforce their own laws, most notably by increasing the capacity of labor ministries and the sanctioning power of states (Seidman 2007).

In sum, there are two possible dynamics shaping competitiveness and the status of workers' rights. In the first scenario, trade agreements and global supply chains influence the structures of competition by causing downward pressure on wages and workers' rights. That is, the causal arrows go from the structures

of competitiveness to the nature of the workers' rights regime, resulting in a race to the bottom. In the second scenario, social clauses, non-state initiatives and domestic regulatory regimes improve the labor and workers' rights regimes. This, in turn, alters the structures of competition by taking wages and workers' rights violations out of competition. The result is a climb to the top. These dynamics are illustrated in Figure 1.

The questions we need to answer are: 1. What dynamic is currently dominating? 2. And, if we do find evidence of a race to the bottom, what we do to move toward a climb to the top? To answer the first question, we explore the current status of labor in apparel-exporting countries by examining both wages and workers' rights. Many wage studies examine minimum wage dynamics, as they provide the simplest means of documenting wage trends.

However, there are some limitations to this approach. Most notably, while many garment workers' do receive the minimum wage, some are paid more than, and others less than, the legal minimum. Hence, we need a study on prevailing wages. At the same time, since purchasing power varies considerably from country to country, prevailing wages do not tell us to what extent wages help families meet their basic living needs. Thus, prevailing wage studies need to be analyzed in terms of a living wage standard. Finally, we also need to find out whether prevailing wages are going up or down over time in relation to living wages.

Figure 2 Prevailing Wage as a Percent of Living Wages

In 2013, the Worker Rights Consortium (WRC) published a report that shed light on these issues (WRC 2013). It revealed that the prevailing wage did not cover more than 50 percent of workers' basic living needs in any country. In most cases, prevailing wages covered less than one-third of workers' living needs. In Bangladesh, the prevailing wage only covered 14 percent of workers' living needs. One striking observation here is that, from 2001 to 2010, in half the Asian countries included in the study, there was either no change in this ratio, or it went down (see Figure 2). This wage data indicates that there is pressure to keep wages low over time. Hence, we do not find evidence for a climb to the top.

Of course, the race to the bottom is about more than just wages: it is about the status of workers' rights over time. The impact of trade liberalization and global supply chains on workers in the apparel industry must be examined. To do this, we will look at two factors: first, we examine the price paid per square meter of apparel by the world's top 20 apparel exporters to the US.¹ Second, we examine the status of workers' rights of these top 20 apparel exporters over time. The findings are presented in Figure 3.

The data shows that respect for workers' rights in the global apparel sector has been decreasing. Indeed, there was a 73 percent drop in the workers' rights score in these 20 countries between 1989 and 2010. Rights violations include the curtailment of the right to strike in

China, prohibitions on independent unionism in Vietnam, prohibitions of the rights of workers to establish unions in free trade zones in Bangladesh, death threats received by apparel workers in Honduras, and police repression of strikes in Cambodia.

The data also suggests a relationship between the diminishing respect for workers' rights and a drop in the price paid for apparel by multinational corporations. Indeed, in real dollar terms, multinationals paid 42 percent less for the apparel they imported between 1989 and 2010. Most of the decline in the price took place between 1998 and 2010. And, as Figure 3 illustrates, it is precisely during this period of price declines that the workers' rights score nosedives.²

But why did prices stay steady for much of the 1990s and then begin to decline? The answer can be found in changing trade regimes and the consolidation of global supply chains. The WTO agreed to liberalize trade in apparel over a ten-year period, starting in 1995, by phasing out the Multi-Fiber Arrangement. This decision was combined with China's acceptance into the WTO in 2001. These trade-related agreements helped consolidate global supply chains in apparel, as the largest buyers were able to move more easily from one country to the next. In the process, they became strong price setters, requiring suppliers to produce their products at lower prices or run the risk of losing their production orders. In sum, these figures suggest that the predominant dynamic in the

1. We use the US in this example because we only had access to the US price per square meter trade data.

2. For a more detailed analysis of the data, the data sources, and the methodology, see (Anner, Bair, and Blasi 2013).

Figure 3 Price Paid per Square Meter (real USD) versus Workers' Rights in Top 20 Apparel Exporters to the United States



global apparel sector has been a race to the bottom, i.e., the economic push for competitiveness has won out over the pull for stronger workers' rights regimes.

We will now turn our attention to the mechanisms that are being pursued to change that dynamic. What can trade agreements' social clauses, private initiatives, and national labor relations regimes do to ensure greater respect for workers' rights and, thus, a fairer system of global economic relations?

2. Social Clauses in Trade Agreements

The debate over workers' rights and trade agreements goes back to at least as far as the 1890s (Scherrer 2007). The formation of the ILO in 1919 was largely motivated by the need to take worker rights violations out of global economic competition. In recent years, the General System of Preferences (GSPs) of the US and the EU have added labor rights clauses that had a positive effect when combined with trade union petitions and worker mobilization, often resulting in worker-friendly labor law reforms (Frundt 1998).

Following the failure to achieve a social clause in the WTO, much of the recent attention turned to bilateral and regional trade agreements. NAFTA set a trend in 1994 by placing workers' rights in a side agreement and not in the main text of the agreement. The enforcement mechanism proved to be weak, and violations in fundamental areas such as freedom of association

and discrimination were not subject to hard sanctions. And the NAFTA social clause did not require upward harmonization to ILO standards, instead stipulating each country to enforce its own laws, regardless of whether those laws met international standards.

Yet, one important element of the NAFTA social clause is that it made reference to what are now considered the core labor standards, as well as to wages, health and safety, and conditions of migrant workers. In part, this is because NAFTA was negotiated before the 1998 ILO Declaration was established. After the Declaration, it became standard not only for trade agreements, but also for corporate social responsibility (CSR) programs, global framework agreements, and other such initiatives to refer to the core labor standards when defining workers' rights. Of the 40 trade agreement social clauses that reference ILO Conventions, only 31 made reference to the ILO Declaration from 1998 (IILS 2013).

In 2004, the US, the Dominican Republic, and the five Central American nations signed CAFTA-DR, which emphasized capacity building, mostly through expanding the work of the respective countries' ministries of labor and their labor inspectorates. The US committed millions of dollars to help fund the costs of this expansion. But the dispute settlement process has proven to be slow and cumbersome. In 2014, the US government announced it would move forward to arbitration under the CAFTA-DR in the case of Guatemala, the first time it exercised its power to do so. This was followed in 2015 by an action plan to improve labor law enforcement in Honduras. In

2012, US free trade agreements with Panama, Colombia, and South Korea entered into force, requiring parties to »adopt and maintain« labor laws that comply with ILO core standards. And they subject labor obligations to the same dispute settlement procedures and enforcement mechanisms as commercial obligations.

The EU often uses formulations such as »seek to ensure« and »strive to continue to improve« in the labor sections of its trade agreements (Compa 2014). Compa argues, »In contrast to trade disputes that can yield hard enforcement measures, labor-related disputes that go to an arbitral panel can only result in non-binding recommendations.« Yet, the EU has been stronger in requiring countries to ratify core ILO Conventions, an area in which the US – at home and abroad – has been less successful. For example, when El Salvador faced the withdrawal of EU GSP+ benefits, it ratified ILO Convention 87 and, in the process, reformed its constitution to grant public sector workers the unionization rights they had lacked.

As the US and the EU seek to continue expanding trade with Asia, one of the greatest challenges has been Vietnam, because it is a one-party state where the labor law indicates that the unions are subordinate to the Communist Party of Vietnam. Indeed, high-ranking officials in the Vietnamese government refer to the national labor center, the Vietnam General Confederation of Labor (VGCL), and its associated units as »socio-political organizations of the Party« and not trade unions in the Western sense. Nonetheless, in November 2015, the US and Vietnam reached an agreement as part of the Trans-Pacific Partnership (TPP)³ known as the Plan for the Enhancement of Trade and Labor Relations. In it, Vietnam committed to allowing enterprise unions independent of the official VGCL union structure. Within a five-year period, Vietnam also committed to allowing independent national trade union centers. The EU and Vietnam are currently in the process of finalizing and ratifying their free trade agreement, which includes commitments to core labor standards and the ratification of relevant ILO Conventions.

US negotiators consider the labor agreement with Vietnam a major breakthrough. Indeed, if fully implemented, it could mean a huge transformation of Vietnamese industrial relations by allowing union

pluralism. But a couple of cautionary notes are in order. First, the most significant issue for plant-level unions is not VGCL control, but employer intervention. Most plant-level union leaders are human resource managers. This issue is included in the agreement and needs to be closely monitored. Second, enforcement mechanisms depend on some pre-existing degree of worker empowerment. If workers are concerned about state retaliation for using an international sanctioning mechanism against the state, the petitioning mechanism will be less efficient.

3. Non-State Initiatives: CSR, GFAs, and the Bangladesh Accord

In addition to efforts made by state and interstate mechanisms to address workers' rights in global supply chains, there has been a proliferation of non-state initiatives. This grew popular in the 1990s after a series of sweatshop scandals involving anti-union activity in Central America, low wages for Nike workers in Indonesia, and child labor in Bangladesh. The multinationals' response was to promote corporate codes of conduct and monitoring programs. Space does not allow for a full examination of those initiatives here, but research indicates that these programs are particularly weak regarding the right to the freedom of association, as the corporations that control or influence these programs are not enthusiastic about having strong unions in their supply chains (Anner 2012).

Global framework agreements provide a more promising non-state approach because they are negotiated between global union federations (GUFs) and multinational corporations. Many major European companies have signed CLS-compliant global framework agreements with unions that often cover operations throughout supply chains (Stavis and Fichter 2012). Taking it a step further is the Bangladesh Accord on Fire and Building Safety, which was put together after the Rana Plaza collapse. The Accord was negotiated between major apparel firms (mostly in Europe) and two global trade unions (UNI Global and IndustriALL), with eight Bangladeshi and four international NGO witnesses.

What sets the Accord apart from prior agreements is that it is legally binding and companies at the top of supply chains commit to covering the costs for safe buildings. That is, for the first time, lead firms implicitly acknowledged

3. The TPP includes Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam.

that they must address the cost of safe buildings. This is a step toward companies' acknowledgment that the cost structure of global supply chains contributes to violations of workers' rights. Another important element of the Accord is that it calls for democratically elected worker participation in health and safety committees. Research has shown that the active, democratic participation of workers and their unions is one of the best ways to ensure safe workplaces (Weil 1999).

Parallel to this process is the renewed attention to the role of the state in addressing workers' rights violations. Without the development of local state capacity, international pressure is unlikely to produce sustainable results. The ILO, the EU and the US have supported the governmental efforts to reform labor laws and improve the state's enforcement capacity in Bangladesh. The state has since reinforced the Department of Inspection for Factories and Establishments under the Ministry of Labor, hired 199 new inspectors, and carried out 1,475 factory inspections. Yet, there remain severe shortcomings. For example, the state still prohibits union formation in export-processing zones, and maximum fines for serious labor violations can be as little as 13 US dollars.

Finally, adverse supply chain practices by multinational corporations must be more closely monitored and addressed. Much of the cost pressures workers and factory owners in low-income countries face are the result of pricing and sourcing dynamics established by multinational corporations at the top of the supply chains. And so, just as state reform is necessary, so too is the reform of the conduct of multinational corporations that cause suppliers to violate workers' rights and push states toward lax enforcement. This is why the upcoming discussion at the 2016 Conference on Decent Work in Global Supply Chains is so important. Ensuring decent work at the bottom of supply chains means establishing practices that promote decent work throughout supply chains, starting at the top.

4. Conclusion

Stopping the race to the bottom and encouraging a climb to the top involves rethinking economic relations and the mechanisms used to address workers' rights violations. In far too many countries and sectors, trade liberalization and the growth of global supply chains have not resulted

in the growth of decent work. Rather, in many cases, we are seeing stagnating or even declining real wages and an increase in workers' rights violations. This is because trade liberalization, in its current form, has increased the competitive pressures facing workers and suppliers, while consolidating the power of multinational corporations at the top of global supply chains.

Addressing this dynamic involves multiple and interrelated processes. First, trade agreements must not only include core labor standards but also go beyond them. Wages, hours of work, health and safety, and migrant workers' rights are four areas that deserve particular attention. Second, enforcement clauses involving sanctioning mechanisms in the case of violations have the potential to be more effective than strictly promotional clauses. And enforcement mechanism processes need to be quicker. Third, state capacity building is essential for sustainable solutions. In far too many countries, labor inspectorates are understaffed and underfunded. At the same time, domestic state actors need to exhibit a political will to improve enforcement. Finally, active, democratic workers and union participation must be a part of any mechanism for workers' rights and building safety.

Private initiatives, particularly those that involve the active participation of trade union organizations alongside employers can complement state initiatives. Global framework agreements illustrate the importance of agreements between multinational companies and global union federations. The Bangladesh Accord shows the need for agreements to be legally binding and for multinationals to take on the costs of decent work in their supply chains. The Accord model of binding, negotiated agreements should be complemented by a strong ILO declaration on decent work in global supply chains. In far too many cases, low wages, long hours, intense work routines, and systematic violations to labor rights are the result of practices that begin at the top of the supply chain. Specifically, lead firms' demand for lower production costs and short lead times to ship to northern markets results in low wages, forced overtime, and an array of union avoidance strategies at the bottom of supply chains. Lead firms need to be held accountable for their practices.



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