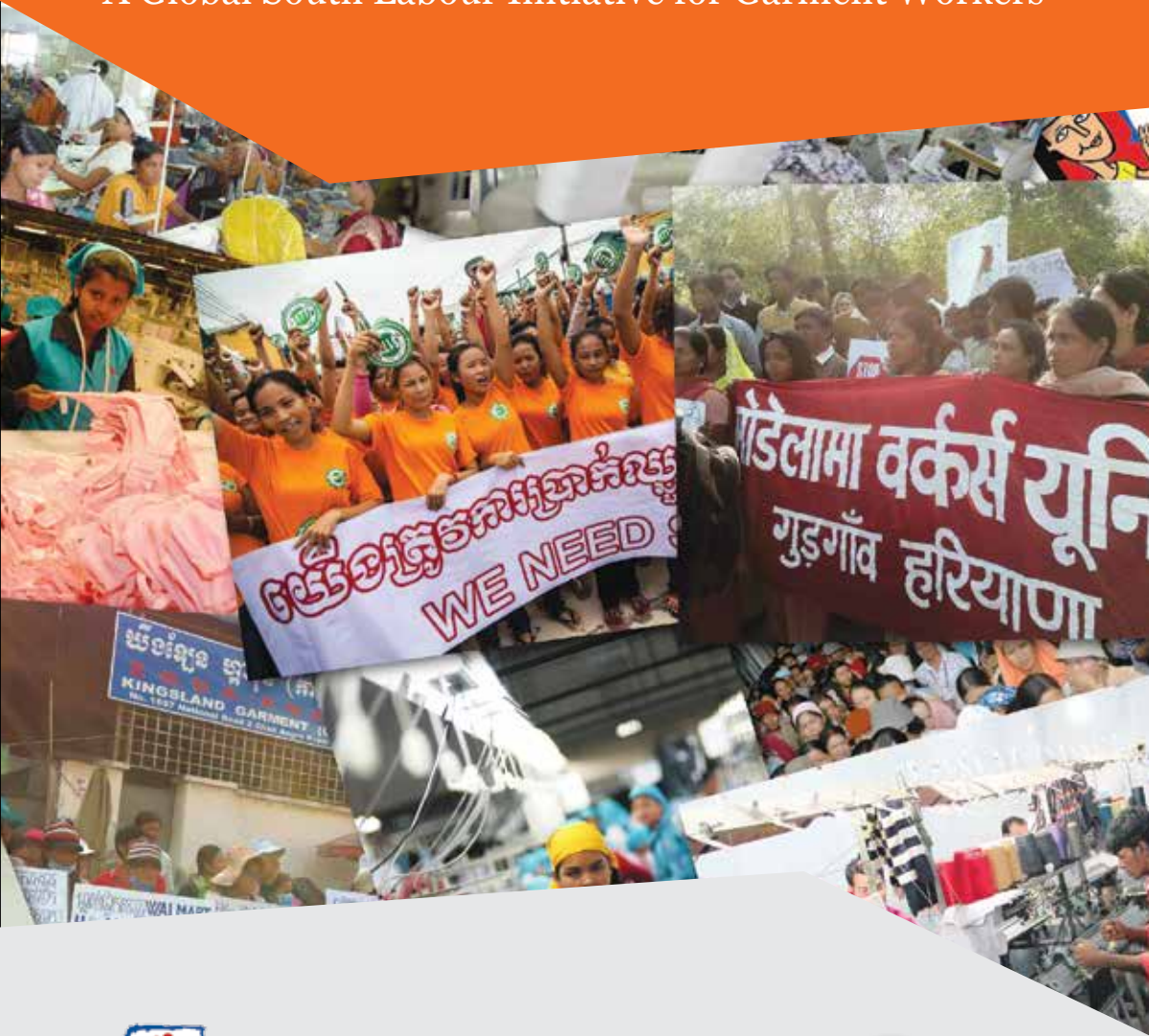


Towards An Asia Floor Wage

A Global South Labour Initiative for Garment Workers



Towards An Asia Floor Wage

A Global South Labour Initiative for
Garment Workers In Asia

Anannya Bhattacharjee

Ashim Roy

Kajal Bhardwaj

Sangeeta Ghosh

Advisory Committee

Dr. Navsharan Singh

International Development Research Centre

Professor Atul Sood

Professor Biswajit Dhar,

both of the *Jawaharlal Nehru University, New Delhi*



act:onaid



south
SOLIDARITY
INITIATIVE

Anannya Bhattacharjee is President of Garment and Allied Workers Union (GAWU) and Executive Council Member of the New Trade Union Initiative (NTUI).

Ashim Roy is Vice President at NTUI.

Kajal Bhardwaj is a legal researcher based in New Delhi, India.

Sangeeta Ghosh is researcher, currently with the Norwegian Institute of International Affairs.

First Published November 2015



This work is licensed under the Creative Commons Attribution-NonCommercial-Share Alike 4.0 International Licence. Provided they acknowledge the source, users of this content are allowed to remix, tweak, build upon and share for non-commercial purposes under the same original licence terms.

Editing, Design and Printing by



BOOKS *for* CHANGE

139, Richmond Road
Bangalore-560025, India

Tel: +91 80 25580346, 43650647
Telefax: +91 80 25586284

e-mail: bfc@booksforchange.info
www.booksforchange.info

Contents

Introduction	01
Chapter 1	
The Global Commodity Chain, Labour and the Global Garment Industry	07
<i>Anannya Bhattacharjee and Ashim Roy</i>	
Chapter 2	
Global Value Chains and the Garment Sector in Asia	17
<i>Sangeeta Ghosh</i>	
Chapter 3	
The Asia Floor Wage Strategy	42
<i>Anannya Bhattacharjee and Ashim Roy</i>	
Chapter 4	
Meeting the Challenges of Asia Floor Wage Implementation.....	52
<i>Sangeeta Ghosh</i>	
Chapter 5	
The International Trade and Investment Framework	62
and the Implementation of the Asia Floor Wage: Challenges and Opportunities	
<i>Kajal Bhardwaj</i>	
Bibliography	101

Introduction

In 2013 the UNDP published its flagship Human Development Report titled 'The Rise of the South: Human Progress in a Diverse World'. One of the key messages of the report was the rapid advances made in Asian countries such as China, India, Indonesia and Bangladesh towards higher levels of human development.

While the macro-data for emerging economies shows rising GDP and wealth, there is also the concomitant and consistent rise in inequality and stagnation of real wages. In India since the start of neo-liberal economic reforms in the 1990s, multinational companies have firmly established their presence and benefited greatly, but for a vast majority of workers producing for the global market, things have gotten worse in terms of wages and working conditions.

It is this context of globalised production existing with poverty wages that informs the establishment of the Asia Floor Wage (AFW) Alliance. The Alliance was founded to formulate and demand a living wage for Asian garment workers in keeping with the political economy of the global garment industry. It began within the Asian context because Asia produces most of the world's clothing. It sought a regional strategy to counter global capital's tendency to divide labour through the threat of relocation and pursuit of the cheapest labour. The Alliance's effort is historic because this would be the first time a wage consensus was being sought across national borders and posed as a demand within a global industry. The Alliance believes that setting concrete, achievable standards and building workers' negotiating power are two key pillars for decent work. It believes that strategies must include building workers' unity across divisive barriers such as national borders, formulating unifying demands for decent work standards, building unions and bargaining globally.

The AFW formula accounts for differing economic and political environments in each participating country. The AFW, based on a cross border comparative measure in Asia, has emerged as an important tool in the living wage movement. It has also opened up the opportunity for study and research on concrete operationalisation of the concept of living wage.

The Alliance has established a core Asia-based labour solidarity across garment producing countries that support the struggle for a living wage and gives support to national struggles for higher minimum wage. The Alliance also extends to consumer

countries in Europe and North America. The Alliance is a North-South coalition led by unions in the South, in this case Asia. The Alliance consists of unions and workers' organisations as well as research, campaign and labour-support organisations. The diversity of the Alliance has been critical. In an industry that is not densely unionised, that is global, and that does not yet lend itself to translational regulation, the alliance members have played diverse roles and helped to build the campaign from different perspectives. The Alliance is a Southern initiative that has tried to address the key issues that were identified as impediments to unionisation. It is a combination of a transnational union network and a social alliance network for labour rights. These two axes reflect the broad alliance that is required to address the components of the global supply chain.

The AFW emerged in the context of the failure of voluntary Codes of Conduct of brands and retailers to deliver labour rights, the massive retaliation by employers, and the relocation of sourcing orders by brands.

The AFW has achieved credibility and legitimacy among scholars and academics, global unions, and the International Labour Organisation (ILO). In the absence of a widespread living wage discourse and without concrete globally applicable benchmarks, the AFW has played a valuable role in holding out new possibilities. Global brands and retailers who have long excused themselves from living wage payment due to lack of benchmarks, have nowhere to hide.

This is an opportune time for exploring and promoting ideas for global supply chain process mechanisms. The horrific 2013 Rana Plaza tragedy in Bangladesh has made regulation of the global supply chain a moral imperative. The International Labour Organisation (ILO) will be organising a general discussion on global supply chain for the first time at the International Labour Conference (ILC) in 2016. It is also important to note that the ILO's own instruments on wage require innovations. While we should not forget the historic importance of the ILO in making "minimum living wage" a global imperative, we should recognize that the Convention on Minimum Wage of the ILO is inadequate as it does not define any criteria for quantifying an adequate minimum wage.

In order to build an effective bargaining strategy it is important to bring the buying practices of the brands into the ambit of negotiations to protect the employment security and wages of garment workers. This will create mechanisms to allow the enhanced resources coming from the brands to be passed on to the workers through a

mechanism agreed upon by local unions and suppliers in the supply chain. We need to work towards making living wage in the global garment industry a reality.

The present publication is the result of a collaborative effort between the Asia Floor Wage Alliance and the South Solidarity Initiative–ActionAid India towards exploring processes for make living wage a reality in the global supply chain. The publication reiterates our firm belief in the Asia Floor Wage Alliance.

Given the uneven density of unionization in garment sector in Asia and the weak power of unions in the context of the global value chains, broader unionization and strengthening of global bargaining is key. Any gains acquired through international mechanisms will only be made lasting and relevant at the firm level through unionization and global representation.

The publication is divided into five chapters. The first chapter, ‘The Global Commodity Chain, Labour and the Global Garment Industry’ presents the context within which the Asia Floor Wage strategy was designed as a response to the nodes of inequality created and sustained by the global garment business.

The second chapter, ‘Global Value Chains and the Garment Sector in Asia’ examines the working conditions of the garment sector in Asia, focusing in detail on India and Cambodia. The chapter shows the plight of the garment worker in Asia. The third chapter, ‘The Asia Floor Wage Strategy’ presents the narrative behind what is, in all events, a historic and inspiring movement of labor and trade unions of the Global South. The fourth chapter, ‘Meeting the Challenges of Asia Floor Wage Implementation’ speaks about the processes by which the minimum wage can be fixed for the Asia region, the need to identify and plug the gaps in the regulatory framework and how to create mechanisms for increasing wages. The chapter explains how adding a “living wage supplement” to the Freight-On-Board price that brands pay to the suppliers could lead to increasing wages. The need for strong and innovative organizations of workers to engage at the transnational, national and firm levels is underscored throughout.

The fifth chapter, ‘The International Trade and Investment Framework and the Implementation of the Asia Floor Wage: Challenges and Opportunities’ comprehensively examines the transnational context, both globally and for Asia in particular. It shows how contemporary global trade agreements have converged on the ILO Core Labour Standards and Decent Work. Therefore for living wage, and in particular AFW, to

be part of trade agreement discourse, it needs to become part of recognized ILO core labour standards and decent work. The chapter builds a case for introducing living wage as a fundamental right and a Core Labour Standard (CLS) under the ILO.

The chapter also speaks about building inter-governmental consensus especially in South and Southeast Asia through opportunities within the South Asian Association for Regional Cooperation (SAARC) and Association of South East Asian Nations (ASEAN) and. In particular it foregrounds the following:

- a) The ASEAN Labour Ministers Work Programme 2010-2015: has identified six broad priorities: employment generation, labour market monitoring, labour mobility, social protection, tripartite cooperation and occupational safety and health.
- b) Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN: focuses its efforts on priority areas including Human Resource, Social Security, Industrial Relations, Skills Development and Networking, Skills Recognition, Labour Law, Labour Statistics, and Decent Work.
- c) ASEAN Economic Community 2015: in preparation for the establishment of the ASEAN Economic Community, recommends that ASEAN invest in stronger wage setting institutions and the importance of improving labour standards in the garment sector in Cambodia and Vietnam.
- d) South Asia Regional Trade Union Council: While the SAARC has been a slow mover on regional integration, the 2014 Kathmandu declaration on labour migration and the revival of the South Asia Regional Trade Union Council (SARTUC) are important spaces that the Alliance should use for regional advocacy.

The fifth chapter also presents an analysis of the existing trade agreements, exploring opportunities for using them as an international mechanism for negotiation and transaction.¹ The chapter also examines the Generalised System of Preferences in the light of concerns over the manner in which they have been employed, as was in the case of Bangladesh. It also points out that the USA GSP expired in 2013 and has not been renewed, although the EU GSP and GSP+ programme continues. The chapter argues that trade agreements and trade pressures may not be the best way to implement AFW and that a development framework may be a more progressive and appropriate framework for the promotion and adoption of the AFW.

1. Taxation was not studied and could be a subject for future research. TNCs pay taxes in their home countries – in other words Northern countries gain from the displacement of revenue from the Southern countries through GVCs. There can be an argument for “reparations” due to the South from a portion of these taxes, which can be distributed to workers

The chapter introduces the Regional Industrial Development Compacts, a concept still under development that was proposed by UNCTAD in its 2013 World Investment Report, where GVCs need to respect United Nations Guiding Principles on Business and Human Rights, international core labour standards.... UNCTAD suggests setting up of “Regional Industrial Development Compacts” as opposed to traditional trade and investment agreements. According to this recommendation:

“Regional industrial development compacts could include in their scope all policy areas important for enabling GVC development, such as the harmonization, mutual recognition or approximation of regulatory standards and the consolidation of private standards on environmental, social and governance issues.”

This publication is brought out to strengthen the Asia Floor Wage Alliance’s work in securing the implementation of a living wage. Clearly, global mechanisms do not exist for the payment of living wage or for the regulation of labour conditions in the same way that they exist for trade, commercial transactions, finance, global capital investment, and so on. The Alliance’s work is a step towards this important undone work; the ILC in 2016 will be an important beginning.

We would like to place on record our thanks to Sangeeta Ghosh and Kajal Bhardwaj for their research and contributions to this publication. We also sincerely thank the Advisory Committee for this research and publication project composed of Dr. Navsharan Singh, of the International Development Research Centre (IDRC), Professors Atul Sood and Biswajit Dhar, both of the Jawaharlal Nehru University (JNU), New Delhi. Kajal Bhardwaj acknowledges the helpful comments and insights of R. V. Anuradha and K.M. Gopakumar on her paper.

Anannya Bhattacharjee

Ashim Roy

both of the **Asia Floor Wage Alliance**

and

New Trade Union Initiative

Benny Kuruvilla

South Solidarity Initiative-ActionAid India

November 2015

Chapter 1

The Global Commodity Chain, Labour and the Global Garment Industry

Anannya Bhattacharjee and Ashim Roy

1.1 Introduction

Within a framework of uneven regional and national development, an unequal and segmented labour market, and transnational companies (TNCs) enjoying the advantage of benefiting from both these factors, labour organizations in Asia have forged the Asia Floor Wage (AFW) Alliance to address the urgent need for developing new pathways of bargaining on a global scale. This chapter explores these issues in the garment industry, one of the most globalized of industries and seeks to draw out the context within which explains the strategies of the AFW Alliance was forged.

The global commodity chain has been enabled by varieties of continually evolving transnational corporate structures and capital functions. Capital from the Global North, aided by Northern governments and multilateral institutions, and with acquiescence from Southern governments, creates an environment favouring the operation of such global commodity chains. Gary Gereffi initially put forward the concept of the global commodity chain (GCC) to analyse the shift in global production patterns (Gereffi 1994; Gereffi and Korzeniewicz 1994). It viewed the shift in organizational terms and went beyond the limitations of neoclassical explanations of relative prices to incorporate the concept of market power. It also provided a framework for studying the spatial reorganization of global production. The concept of a 'buyer-driven commodity chain' further located the impetus of this shift in TNCs enjoying immense market power in the Global North. In this buyer-driven chain the TNCs retain their domination as the lead firms in the chain. As such, they have the capacity to foster organizational flexibility, to reduce and externalize production cost, and to secure the highest profit margin in the consumer markets they dominate.

To examine the power dimensions and the structures of the global garment business, we also found the concept of the Global Production Network (GPN) useful (Hess and Yeung 2006). GPN is a term used to describe the contemporary production system, which results from the shift in international trade from exchange based on distant market relationships to one based on closely connected firms. In the past, exchange through trade was limited to the TNCs and their subsidiaries. However, the contemporary process of exchange expands and transforms intra-firm trade to new dimensions. GPN helps us to understand that exchange takes place through a networked structure in which the TNCs do not formally own the overseas subsidiaries or franchisees but outsource production to them, without the burden of legal ownership.

In addition to understanding the power and structure of contemporary TNCs, another aspect, and one equally important to attend to, concerns the role of monopolistic practices. Stephen Hymer, one of the earlier economists examining monopolies, looked at the evolution of transnational corporations as monopolistic structures dominating modern industry (Hymer 1972). In light of the alarmist concern about monopoly in free market capitalism, it is important to understand that in reality the GPN provides the conditions for Global North TNC monopolism in the global economy. The evolution of GPN is the most evident form of global production in the contemporary epoch, and in our understanding, promotes a form of monopolistic structure.

1.2 The Balance of Power in the Global Production Network

Even in the initial phase of development of GCC as an analytical tool, we in the international trade union movement found it a useful concept as it provided a framework for intervening in the ‘social clause’ debates in which the issue of corporate labour rights in international trade was raised. We argued, as Global South trade unionists, that the changing nature of the trade and the emergence of global exchange through the buyer-driven commodity chain required new regulatory mechanisms for which the nation-state regulatory framework of the ILO was inadequate. In the absence of an adequate regulatory framework in a world of unequal regional and national development, social clauses would become just another mechanism of wielding power by the TNCs and their home states in the Global North over the Southern economy to force the entry of new investment regimes and restructuring of trade (Bhattacharjee and Roy 1996). Subsequently, the GCC provided a framework to examine the labour dynamics in garment commodity chains both at the industry level and at

the firm level, which then helped the AFW Alliance develop a collective bargaining strategy for the global garment industry.

The concepts of buyer-driven GCCs and the GPN together help in understanding the structure, the market powers and the leverage points in global production. The context and conditions for the emergence of GPN became more prominent and politically feasible in the period after the 1980s. The crisis in the Northern economy compelled the inherent tendency in developed capitalism to sustain a high rate of profit to take recourse to further internationalization of production, and hence to facilitate the great global job shift. It became necessary to ensure that the new industrial base that emerged in the post-colonial period in the developing countries, which were primarily domestic focused and state-centric, open up for export-oriented industrialization and allow Northern private capital to expand.

With the dominance of neoliberal thinking in the 1980s the export oriented industrialization (EOI) in post-colonial countries was established. This allowed for the scaling up of export-oriented production and enabled the formation of the GPN. This export became nothing more than a mechanism to capture low labour cost which was essentially poverty level wages. This is the essential ground within which the GPN needs to be understood. GPN structures built on the fertile ground of EOI became the dominant form of international trade, more particularly so in the sectors of automobiles, electronics and garments.

TNCs from the Global North increasingly transferred segments of value-added tasks of production to geographically dispersed locations. The World Investment Report 2013 by UNCTAD states that:

Today's global economy is characterized by global value chains (GVCs), in which intermediate goods and services are traded in fragmented and internationally dispersed production processes. GVCs are typically coordinated by TNCs, with cross-border trade of inputs and outputs taking place within their networks of affiliates, contractual partners and arm's-length suppliers. TNC-coordinated GVCs account for some 80 per cent of global trade.

This dispersal pattern of value-added tasks of production in many ways was dependent on the EOI policies of the state and on labour market conditions within the affected countries, in particular what can be called the surplus

labour within those economies. The suppliers in the Global South competed for orders from the big buyers in the Global North and this evolved into the key factor in keeping the labour cost down, since this cost was determined by the labour market situation prevalent in those countries.

The global production network (GPN) framework expresses the organizational linkages that the TNCs use to reorganize production through services and contractual agreements, as an alternative to arm's length transactions in the markets. In fact the GPN is an organizational form that expresses how TNCs from the Global North succeed in linking two distinct aspects of market control within their organizations: one, their dominance in consumer markets in the Global North, and the other, their access to cheap production sites in the Global South. It is our argument that the GPN shifts the market relationship between firms from a trade relationship to a quasi-production relationship without the risks of ownership. The global economy becomes more integrated and the GPN becomes the organizational form of a monopoly capitalism from which the risks have been removed.

The UNCTAD World Investment Report 2013 has called for a 'regulatory framework to ensure joint economic, social and environmental upgrading to achieve sustainable development gains'. In other words, it is asking for a rebalancing of the global production system, in which inequality has reached such overwhelming proportions. This balance can only be brought about by creating a framework in which the bargaining power of local firms in the Global South can be increased. The Asia Floor Wage is a corrective strategy developed to intervene in the GPN from a class perspective, to bring about a more equitable trade framework.

1.3 The Global Reserve Army of Labour and Global Arbitrage

The first step towards a corrective intervention is to examine the capital-labour relationship within the GPN. In order to do this, the concept of circuit of capital developed by Marxist political economists is particularly helpful. It provides the vantage point from which the GPN can be viewed as a single process consisting of complementary, intersecting but distinct functional capitals, namely, commercial, production, and financial capital. These functional circuits result in different types and modes of competition. At the Northern end of the chain competition takes place among commercial (retail) capitals in the consumer market; at stake is market share.

At the Southern end, the competition in the newly expanded export-oriented areas is among productive capitals, seeking to supply to global retailers. Finally, there is the vertical competition between the buyers in the Global North and suppliers in the Global South, hence between commercial and productive capital, over the distribution of profit. This vertical, North–South competition has been called ‘value capture’ in the business literature.

Though the GPN framework is useful to bring out the quasi-production relationships, it needs to be further studied from the perspective of labour-market dynamics. It is important to understand how GPN structures the conditions of work in the chain. The concept of a low-cost production location as a monopolistic tool has been best expressed by Michael Porter when he writes that: ‘Having a low-cost production yields the firm above average returns in the industry’ (Porter 1980: 35). Low-cost production came to be synonymous with a low-wage workforce. The buyers in the Global North compete in their home market on the basis of their share in accessing low-cost production areas, rather than through price competition. Their ability to indiscriminately gain access to low-cost production countries required a dismantling of the Multi-Fibre Agreement quota regime of the textiles industry, the free flow of capital, and a turn to export-oriented industrialization in production countries.

The dual dominance of TNCs from the Global North in their home countries’ consumer market and in terms of access to low-cost production countries is absolutely critical. Only thus can they avert the possible competitive threat from firms in the South which otherwise might penetrate the Northern markets on the basis of their exclusive low-cost position in the globalizing economy. This dual dominance has been the result of a coordinated effort between Global TNCs, Global North governments, and international multilateral institutions. This strategy for exploiting a low-wage labour force came to be termed in the business world by Stephen Roach of Morgan Stanley as ‘global labour arbitrage’: as a system of economic rewards derived from gaining monopoly control over the international wage hierarchy, resulting in huge returns (Delgado Wise and Martin 2015).

The TNCs’ monopolistic strategy is made possible by the growth of a global reserve army of labour in the Global South under a neoliberal globalization process, and realized by connecting the GPN into this reserve army. The neoclassical assumption that wages will inevitably adjust to productivity growth and will result in a new global equilibrium, has proved to be empirically wrong. While the global economy grew

at an average of 3.3 per cent per year between 1995 and 2007, annual wage growth was at 1.9 per cent every year. The wage share has been declining across the globe. As the ILO's Global Wage Report 2010/2011, sounding the alarm put it: 'The overall short-term impact of the crisis on wages should be looked at within the context of a long-term decline in the share of wages in total income, a growing disconnect between productivity growth and wages, and widespread and growing wage inequality.'

In a capitalist economy, wages are kept low by the existence of labour reserves in the country. Wage rises are possible when growth is significant enough to exhaust an economy's labour reserve, and to induce tightness in the labour market, in other words, when the growth rate of the economy exceeds the growth of supply in the labour market. However, if a specific sector grows rapidly in terms of output as a result of capital infusion, it raises the labour productivity in that sector relative to the rest of the economy, without triggering a wage rise.

The proportion of reserve labour to active labour, then, determines the nature of the labour market. In regions where there is a large section of latent labour in agriculture, the availability of reserve labour is proportionally large. The size of the reserve army of labour is what structures the labour market. Today it is in Asia that we find the largest reserve army of labour. According to Marx a major form of reserve labour is the one that involves extremely irregular employment, or in today's terms, the informal sector. The wages of the workers in this category could be said, according to Marx (1990: 792), to 'sink below the average normal level of the working class' that is, below the value of labour power, its reproduction cost, which in itself is historically determined. Rosa Luxemburg deepened our understanding of the process by the phrase, 'the surplus labour from non-capitalist mode of production' to characterize the reserve army of labour. It is the enormous weight of the relative surplus labour population that tends to pull down the wages below the average value.

Between 1980 and 2007, the global labour force according to the ILO grew from 1.9 billion to 3.1 billion, most of them from the developing countries and with India and China contributing 40 per cent of this rise (Selwyn 2015). Still according to the ILO, there are 555 million working poor, a significant percentage being female. 'Since the mid-1990s the proportion of people on low pay – defined as less than two-thirds of median wage – has increased in more than two-thirds of countries with available data.' The ILO's Global Employment Trends 2011 shows that 'the number of workers in vulnerable employment is estimated at 1.53 billion workers globally in 2009, more than half of all workers in the world'.

It is important to note that the global labour force to which these discussions refer is too often viewed as a homogeneous bloc. Of course in reality, this labour force is far from homogeneous. It is highly segmented geographically and its characteristics depend on the poverty level of the region and the country. Asia, the largest recipient of foreign investment, also holds the largest workforce and represents most of the global working poor, among which women comprise an increasingly significant proportion. This is no coincidence because foreign investment seeks out the most pliant, poor and under-valued working class. The garment industry is of course one such labour-intensive industry that absorbs both low and high-skilled workers.

The GPN draws on this new labour in organizing global production. To illustrate, Nike and Reebok rely on their global supply contractors for 100 per cent of their production. In other words, the production workers for Nike and Reebok are all in the developing countries but they are not recognized as workers of these firms. The struggle for an AFW focuses on this global arbitrage – the manifest form of the development of absolute law of capitalist accumulation in the new global phase. In economics, the term ‘arbitrage’ means the buying of an asset at a low price and then immediately selling it on a different market at a higher price. In other words, a single product, but access to two different markets, is what creates the conditions for profitability, unrelated to the production cost itself. This arbitrage is made possible by an augmentation of the imperialist rent extracted from the South through integration of low-wage, highly exploited workers into the capitalist production. According to Marx (1990: 792), ‘The relative surplus population is therefore the background against which the law of demand and supply of labour does its work. It confines the field of action of this law to the limits absolutely convenient to capital’s drive to exploit and dominate the workers.’

In the garment industry output has increased but real earnings have not grown at the same rate, though the productivity has increased due to capital infusion in the garment industry in Asia. An important question for the labour movement is the distribution of the enormous and consistent surplus that is generated from arbitrage and higher productivity.

Nodes Of Inequality in the Global Garment Industry

The global fashion apparel industry is one of the most important sectors of the economy in terms of investment, revenue, trade and employment generation all over

the world. The Asia-Pacific region is home to the largest amount of production and trade in the apparel industry worldwide. Globally there are an estimated 40 million garment workers, with a significant proportion female. The global garment industry's total revenue was estimated to reach a value of US\$1782 billion by the end of 2010. The level of garments' sales rarely drops; in fact, research shows that even when prices rise, sales continue. Apparel imports of the United States witnessed an increase of 13.5 per cent in January–April 2011 from the corresponding period of the previous year and amounted to US\$23.2 billion. For the same period, US imports of apparel from India increased by 12.7 per cent to US\$1313 million dollars against US\$1165 million in January–April 2010. US imports from China saw an increase of 8.3 per cent in January–April 2011 over the corresponding period of the previous year and all the other major suppliers, such as Vietnam, Indonesia, Bangladesh and Mexico also witnessed increase of 16.9 per cent, 18.2 per cent, 29.7 per cent and 8.4 per cent, respectively. Among the top six suppliers, Bangladesh registered maximum growth from the previous year of the same period.

Today the largest bulk of garment manufacturing, although spread across all the continents, is found in Asia. Asia manufactures 60 per cent of the world's clothing. In terms of scale of production, size of workforce, access to raw materials, technology, diversity of skills, and labour cost, Asia offers the greatest competitive advantage. Within Asia, garment production takes place in many countries such as China, India, Bangladesh, Sri Lanka, Pakistan, Indonesia, Cambodia, Vietnam and Thailand. In the Global North, multi-goods retail companies and big brands set the standard for the garment global supply chain.

An astonishing phenomenon is that even as prices of most commodities have shot upwards, the prices of garments have fallen in the Global North. Yet profits of garment brands have been impressive. This can be explained by the fact that the prices that brands pay to the manufacturers in Asia have decreased, reducing the profit margins of Asian manufacturers, which depresses the poverty wages production workers continue to get. American consumers, despite falling income, can be relied upon to continue buying by depressing prices and pressing down on wages at the production end. 'Much of the emphasis on competitiveness has focused on production costs and, in particular, labour costs. Consumers in affluent nations benefit from low-wage imports when retail prices fall for the goods they purchase.' (Heintz 2002).

It is our argument that the surplus produced, through dual and exclusive access of the TNCs to the consumer market in the Global North and low-cost production

areas in the Global South, is disproportionately distributed between local/Asian producers and the global buyers via the price mechanism. At one end of the chain, in the consumer market dominated by the large brands, there is a tendency for retail prices to move upwards. At the production end, on the other hand, the expansion of the supplier base in the developing countries, and because the market for garment manufacturing has become plain commodity production (rather than a skill-based labour market), have combined to create competitive pressure among the suppliers, leading to a race to the lowest level of production costs. The two components of the GPN thus operate in different competitive structures. The buyer–supplier price mechanism links the two and constitutes the node at which the disproportionate sharing of the surplus takes place. It also provides the possibility of a wage rise in the export sector in the garment sector in production countries, if only the workers could develop this node as a leverage point for a common demand, and build an effective strategy and an organization structure to support it.

Under monopoly capitalism in general, wage rises are always smaller than productivity rises unless there is a labour struggle that can force the wages upwards. As David Harvey says, ‘The geographical organization of capitalism internalizes the contradictions within the value form. That is what is meant by the concept of the inevitable uneven development of capitalism’ (Harvey 1982: 417).

As contemporary capitalism reorganizes itself by geographical dispersion, assuming the organizational form of a GPN, the question remains as to how both the dependency and the unequal exchange are intertwined within the value analysis of the GPN. It is at the level of the Freight-on-Board (FOB) price, meaning the price till the goods reach the ship’s board in others words the transfer price from production area to consumer area – that the unequal exchange in the GPN is hidden. The FOB price is the manifest market mechanism covering the inequality of the price of labour, given equal labour productivity. Such a value transfer can only operate within the GPN, EOI and ‘free’ capital flow that underpin the globalization of production and consumption.

The FOB price is also the nodal point at which the exchange rate operates. By basing their buying decision on the exchange rate of individual countries, the buyers render opaque this value transfer. To make this transparent one needs to see there is a twofold operation involved here. One concerns the purchasing power exchange that takes place between the Northern consumer market and the Southern production (production task market); the other is the comparative nature of productivity and wages in a regional labour market within the GPN. This becomes possible by

calculating both the prevailing wages and the potential living wage, in Purchasing Power Parity (PPP) dollar terms. The wages in national currencies or in exchange rate terms appear far apart. But they can be brought around into a narrow band if calculated in PPP\$ terms, a more appropriate measure for comparison. This makes visible the extent of labour exploitation and the undervaluation of the labour price with their regional productivity.

Two realities dominate labour at the global level. One, the GPN that is built on wage arbitrage or the system of imperialist rent; and second, the existence of a massive global reserve army of labour that makes this wage arbitrage possible. It is the super exploitation of labour that is behind the expansion of production in the Global South. The net result is a fall in purchasing power of the majority of people in Asia, over production of goods for which there are not enough consumers and unemployment in the Global North. The purchasing power of working class and poor people in Asia is falling and poverty levels are being pushed down so that few people can be listed below it. This has blocked the majority of today's consumers from the consumer market. As Gary Gereffi has written,

Unlike producer-driven chains, where profits come from scale, volume and technological advances, in buyer-driven chains profits come from combinations of high-value research, design, sales, marketing and financial services that allow the retailers, designers and marketers to act as strategic brokers in linking overseas factories and traders with product niches in their main consumer markets. (Gereffi and Memedovic 2003: 3).

He goes on to say,

The lavish advertising budgets and promotional campaigns needed to create and sustain global brands, and the sophisticated and costly information technology employed by mega-retailers to develop 'quick response' programmes that increase revenues and lower risks by getting suppliers to manage inventories, have allowed retailers and marketers to displace traditional manufacturers as the leaders in many consumer-goods industries (ibid.: 4).

Any intervention to benefit production workers in this global garment production structure has to simultaneously consider the interlinked factors of low retail prices, brands' huge profits, reduced prices for Asian manufacturers, and stagnant wages of Asian workers.

Chapter 2

Global Value Chains and the Garment Sector in Asia

Sangeeta Ghosh

2.1 Introduction

International trade, investment and movement of capital and goods has intensified at a faster pace than ever before. Aided by the diffusion of new technology, relaxation of regulatory frameworks and supply of low-wage labour in developing countries, transnational companies have been the key drivers of the process of coordinated sourcing of goods from different regions (Posthuma and Nathan, 2010). Global production networks are estimated to account for one-third of world trade (UNCTAD, 1999). The textiles and garment sector is an important industry in global value chains (GVCs) which are typically buyer-driven networks characterized by highly competitive and globally dispersed production systems. The growth of the global production network is an important source of employment in many developing countries, but has led to an increase in precarious jobs, with low wages and poor working conditions. The basis for production in the textiles and garments sector locating in Asia has been the availability of low-wage labour and non-compliance to labour standards. This has largely been described as the ‘race to the bottom’ in literature resulting from competitive pressure.

This race to the bottom however, has its own limits and pressure from workers, consumers and buyers for economic and social upgrading has increased across the supply chain. Firms in the developed world recognize the need for improving work and working conditions in their supply chains as essential to their own economic security. This ‘pressure from above’ is often seen as being detrimental to the economic viability of the suppliers in the developing countries. There is recognition that ‘profits in the chain are generally attributed to combinations of high value research, design, sales, marketing and financial services rather than volume and technological advance’

(Gereffi 1999, p.43). The suppliers in the developing world are often restricted to lower value added jobs (mainly the cut, make and trim process) with fewer possibilities of economic upgradation, even as the causality and relationship between economic and social upgradation is nuanced and complex. The globalization of production network thus, has distributional consequences which are not tied to the concepts of marginal productivities but is rather a matter of bargaining relations and strengths along that chain. This can lead to producers and workers competing for shares along the chain. But even in such a competition lies the base of a globally cooperative social existence (Nathan, 2010; p. 48).

This chapter and chapter 4 in this publication looks into the political economy of the global value chain with reference to the garment sector in Asia, the pricing structure of the garment production chain, and looks at bargaining and income delivery mechanisms for the workers in the first tier supplier chain in the garment sector. It outlines the challenges in the processes and calls for the need of greater synergies at the supranational, national and local levels for better distributional outcomes.

The first section of this chapter outlines the key issues in the political economy of textiles and garments global value chains in Asia. The second section takes up the case of two important Asian countries in the textiles and garments global value chain – that of India and Cambodia. These countries offer two different types of production structures in the textiles sector. India has historically been a leader in the production of textiles, and has in more recent times been an important country in the T&G global value chain. Cambodia offers a case study of a country that in the mid-1990s grew its textiles sector markedly, mainly because of its entry into global value chains. Both the countries however, in terms of labour and working conditions seem to share the same fate. The final section comments upon the distribution along the value chain.

2.2 Political Economy of Global Value Chains With Reference to the Garment Sector in Asia

The apparel value chain is organized around five main segments:

- (1) raw material supply, including natural and synthetic fibers;
- (2) provision of components, such as yarns and fabrics
- (3) production networks made up of garment factories, including their domestic and overseas subcontractors;

- (4) export channels established by trade intermediaries; and
- (5) marketing networks at the retail level.

Over time, there have been continual shifts in the location of both, the most significant apparel exporting countries and regions, as well as their main end markets.

The global production network framework comprises of the two concepts of ‘economic upgrading’ and ‘social upgrading’. Economic upgrading is the use of market linkages and new technologies to strength the existing production capacities of supplier firms to enable them to raise productivity and move to higher value added activity. It could be done through in isolation or combination of the following four processes: product, process, functional and chain upgrading (for details, see Gereffi and Guler, 2010). Social upgrading refers to processes which enhance the quality of employment of workers such as improved working conditions, skill acquisition or higher earnings. It also involves the enhancement of social protection and workers rights, particularly for more vulnerable sections of workers and can be classified as measurable (category of employment – regular or informal; wage level, contract type, availability of social protection and working hours) and enabling rights (freedom of association, right to collective bargaining, non-discrimination, voice and empowerment).

However, endemic to the production network is the nature of the outsourced job itself. In some forms of value chain governance, lead firms may prevent upgrading of suppliers leading to ‘lock-in’ at low-value added, low wage tiers (Schmitz, 2006). This is observed in a foreign ownership dominated country like Cambodia, where foreign owned companies have kept the production process limited to cut, make and trim (CMT) processes which are at the bottom most rung of the production process. This limits the possibility of better bargaining frontiers for the country. In some cases, economic upgrading is disjoint from social upgrading; the link between improved business performance and improved labour condition is real, but not inevitable or automatic even when firms see improved labour standards as a source of competitive advantage. Gains for companies do not automatically translate into gains for workers. This is further accentuated by the ‘adverse incorporation’ of small firms and lower skilled workers which has led to informal and precarious work within global value chains (Ponte, 2008).

Some authors (Bair 2005, Dolan and Tewari, 2001) argue that upgrading of some firms does not necessarily mean upgrading others. On the contrary, some studies suggest that upgrading of larger firms is related to the exclusion of weaker firms

in the same chain or territory. This phenomenon is well documented for the garment sector as well as the auto parts sector in North India (Awasthi et al, 2010). The diffusion of product standards and rising output deepened rather than bridged this divide. Domestic suppliers in the value chain complain of risk shifting via delayed payments and inventory holding typical of sub-contracting activities. The need for economic upgrading though is not delinked from the pursuit of social upgrading, as it might give teeth to the process of social upgradation.

In the framework of global production networks, the textiles and garments sector represent a buyer-driven value chain where notably, prominent marketers of well-known brands carry out no production at all but source from overseas. In the process, some lead firms that control design, branding and marketing have been able to exercise strong control over sourcing decisions, and hence over how, when and where specific parts of the production process will take place. In doing so, lead firms have been able to control where value is extracted and to whom profits accrue at each stage, essentially determining how basic value-adding activities are distributed along the value chain (Fernandez-Stark, et al, 2011). In this process actual assembly operations (primarily stitching and embellishment) and logistic costs have been squeezed, and the main actors have had little or no negotiating power vis-à-vis the lead firms (Fernandez-Stark, et al, 2011; Frederick and Gereffi, 2011). Returns to capital have increased while returns to wages have generally declined.

Meanwhile, the fragmentation and segmentation of the production process has prevented backward and forward linkages from emerging in many low income countries. As production is outsourced to 'stitch up' shops, work is deskilled and assembly firms are separated organizationally and geographically from other value generating parts of the value chain (design, yarns, fabrics, dyeing and marketing). Suppliers and their workers thus, become the weakest actors in GVCs, increasingly trapped in conditions of input and order dependency and subject to footloose sourcing practices. With increasing practices of subcontracting along the supply chain, the condition of workers deteriorates further, with limited scope for economic or social upgrading (Rossi, et al, 2014).

Low-income countries account for three quarters of the world's clothing exports. While global expansion of the apparel industry historically has been driven by trade policy, by 2005, the Agreement on Textiles and Clothing (ATC) by the World Trade Organization had phased out many of the quotas that previously regulated the

industry. This caused a tremendous flux in the global geography of apparel production and trade. One of the simplest reasons to outsource activity overseas to low income countries has been the shifting of the most-labour intensive segments of the T&G value chain to countries with lowest wages. To bid global manufacturers to their shores, capitalizing on low wages has been a strategy of many countries in Asia to out-compete each other. This 'race to the bottom' has been said to characterize a 'low load to development' (Nadvi and Schintz, 1994). Developing countries compete with each other for outsourced production and under the pressure to meet the cost, quality and delivery requirements of their clients, as well as handle fluctuating orders - they use different methods of hiring workers. Domestic producers complain of not being paid enough and low profit margins, uncertainty of orders, and pass the buck to the workers. These methods to 'stay afloat' have an adverse effect on the terms of employment of different category of workers, leading to low wages and poor working conditions without adequate social protection.

Cost cutting nature of international outsourcing and fluctuations in order schedules put pressures upon suppliers to compete by keeping costs low, which include low-wage labour practices. These negative externalities restrict profitability and inhibit scope for smaller firms to invest in equipments, new practices, and quality upgradation. The final brunt of these adverse conditions is in turn passed on to the workers.

It is evidenced, however, that considerations of low wages alone might not be the only driving factor for choice of location of global production network (Gereffi and Guler, 2010, pp.113). More recently, it is seen that government policies, facilitation of trade practices, transaction time and currency appreciation considerations as well as infrastructural availability has emerged as important parameters for location of global production networks. The global buyer sees how the garments FOB price translates into dollars and sees the movement of FOB price movements in dollar terms. It is not the absolute price, but price mediated by differences in productivity and variations in national price levels (inflation and exchange rates) make the difference for buyers and their sourcing strategy (Tiwari, 2010, pp. 157). Cost of transaction and infrastructural availability are of paramount consideration. For example, China has leveraged its economies of scale, developing supply-chain cities with major investments in infrastructure and logistics to lower transportation costs and shorten the time to market. Despite the labour costs being much lower in a country like India than in China, the Chinese firms have significantly higher competitiveness in non-labour components of their costs. Chinese firms have also diversified their product mix to remove

seasonality from their textiles production structure which has also given the country a competitive edge (Gereffi and Guler, 2010, pp. 114).

An important goal in advancing the cause of global production networks in developing countries is the creation of employment with an aim to eradicate poverty and raise the standard of living of its people. At the national level, the fear of capital flight restricts the motives of improving labour wages and conditions on one hand, and on the other, constraints on the fiscal purse restricts the national economies of developing countries to take substantial measures to improve the living conditions of people through social sector expenditures on food, health, education, unemployment bails, etc.

While a downward pressure on wages of workers restricts the aggregate global demand for goods, the increase in inequality within countries (even as inequality between countries has declined) has led to the false notion that suppressing wages does not have an effect on the aggregate demand trends. Vulnerable employment leading to immiseration of a vast section of population in turn leads to various forms of social and political unrest. Sustainability of capitalism accumulation itself needs the fabric of demand; the chief sources of demand are investments by capitalists, consumption of workers and expansion of capital into new areas (Luxemburg, 1968). The first two constitute the deepening of capital, the third is the expansion of capital. While changes in the international financial systems have facilitated the expansion of capital, the global crisis and collapse of world trade in late 2008 and early 2009 have sparked off a debate for global regulation and has seen the return of the Keynesian analysis of aggregate demand. The crisis also exposed the vulnerabilities of export-driven development and has led to a critical review of the policy frameworks required to extract greater gains from global trade and production.

The Status of Labour in the Garment Sector in Asia

The textiles and garments sector has been one of the leading manufacturing sectors in Asia in terms of its contribution to output, employment and trade. The sector employed over 55 million people directly and 90 million people indirectly in the region in 2005 (UNCTAD, 2010). Table 2.1 gives some select parameters for the textiles and wearing apparel sector in some countries in Asia. We see that the contribution of the sector to total exports from the country are particularly high for countries like Bangladesh, Cambodia and Pakistan and these countries are largely dependent on the global production networks as a high proportion of their manufacturing outcome also

comes from the textiles sector. The sector's contribution is particularly important in terms of employment, and for many of the select countries, the sector contributes to more than one-fifth of the total manufacturing employment.

For all the select countries, the wage levels of the textiles and wearing apparel sector are lower than the aggregate manufacturing sector with the notable exception of Vietnam. It is interesting to note that while in China, (as well as Hong Kong) the wage level of the workers (at current prices) have risen substantially from 2005 to 2010 (as well as for Cambodia); the wages of the sector's workers in most of the countries have been stagnant, especially when we consider the substantial inflationary pressures in recent times (Table 2.2). The wage share in value added over time has actually fallen for the textiles sector in India, and in the wearing apparel sector in Indonesia.

Without the actual mechanism of social upgrading, workers bear the brunt of global uncertainties with (a) flexible job contracts and unemployment due to fluctuations in production in GVCs (b) downward pressure on wages and lack of social security due to cost cutting measures (c) lack of collective bargaining. Women workers suffer more, often earning wages less than that of the contract workers. Even with high increases in labour productivity, wage share in value added are seen to decline.

Based on a survey of 122 supplier firms in select countries in 2010, Whitehead (2014) has asked how 'fair' the wage practices in the apparel global supply chains are. The compiled results from the survey are given in Table 2.2, which serves to briefly summarize the various problems that are faced by the workers in the apparel global supply chain. The enterprises often keep dual records: one to show the labour inspectors and one to keep original records. This problem was hugely present in Bangladesh, Sri Lanka, China, Pakistan and India where more than 45 per cent of the surveyed enterprises kept dual records. Payment problems are mostly in terms of underpayment and delay in payments. In Bangladesh, Pakistan, China and India a vast majority of firms were seen to underpay their workers, and the proportion was high in Vietnam, Sri Lanka and Thailand as well. This for some countries like Bangladesh and Pakistan was also coupled with delay in payments. Indonesia is the only exception to this rule, where it was seen that none of the enterprises were holding dual records or retorting to payment delays or cuts.

Most of the firms are seen to pay their workers at the set national minimum wage levels, in Bangladesh, Indonesia and Thailand, while 75-78 per cent of the firms

in China, Sri Lanka and Vietnam did so too. Many supplier firms in India, Pakistan, Vietnam and China are also seen to pay the workers below the already abysmal minimum wages. Sri Lanka is seen as the only country where workers are paid more than the minimum wages by 22 per cent of the supplier firms.

Social security is provided by all enterprises in Indonesia and Sri Lanka, and in high proportion of factories in Vietnam and Thailand (above 80 per cent). However, in Bangladesh, China and India the proportions are low. In Pakistan, none of the supplier firms pay the social security dues to their workers. Paid leave is provided by all enterprises in Indonesia, Sri Lanka and Thailand; but in many countries in Asia, paid leave is not provided by a majority of firms. The number of hours worked in a week also are very high – more than 64 hours for all the selected countries. It is also noted that from 2008 to 2010, the nominal wage increase was lesser than the price increase for all the countries with the exception of China. China is the only reported country that has seen a substantial rise in real wages.

Role of the State as Protector of Workers Rights

Various factors including poor capacity, limited resources, infrastructural needs and very often the adverse attitude of the state towards labour have led to weak labour market institutions and low compliance with labour standards. This is often coupled with the fear of capital flight in the context of the expansion of global production networks which predominates a policy framework prescribing the reduction of state regulation (Posthuma, 2010, pp.62).

The problem of growing global inequality has now translated into growing wage inequalities within countries. In most cases, the issue boils down to raising wage levels at the bottom (Nathan, 2010). But most nation-states feel that unless productivity is raised, the institutional changes in labour relations or taxation systems will have an impact on fiscal imbalances. In fact even with huge increases in labour productivities, the curtailing or distribution of returns to labour is a widespread phenomenon. The fear of capital flight is a popular sentiment among developing countries. Measures to reduce inequality are not normally popular to capital. But as Nathan (2010, pp. 552) points out, after the financial crisis in 2008, capitalists realize, or are forced to realize that too much inequality is not a good thing for the stability of growth. So, the time is ripe for bargaining initiatives for better wages to the workers in the global supply chains.

Table 2.1: Features of the Textiles and Garments Sector in Selected Asian Countries

Year	Share of Textiles and Wearing Apparel Sector			Wages Per Annum (at US \$ current prices)			Share of Wages in Value Added (%)		
	In Mfg Output (%)	In total exports	In Total Mfg employment (%/pptn)	Textiles	Wearing Apparel	Total Mfg Sector	Textiles	Wearing Apparel	Total Mfg Sector
Bangladesh	2006	17.37	83.14	34.21/3 million	584	NA	36.82	NA	22.53
Cambodia	2011	75.00**	59.99***	45.00/0.35 million		1161#	..	..	..
China	2005	9.09	15.12	17.61/30 million	1432	1575	21.58	29.57	16.29
	2010	8.50*	13.10	13.34/25 million	4402	4337	..	..	..
Hong Kong	2005	23.90	14.08	29.88	19090	15586	59.61	50.93	54.04
	2011	9.17	7.86	15.02	22004	21090	84.21	73.3	55.09
Taiwan	2006	3.93	NA	7.48	13942	12893	38.82	42	26.76
India	2005	8.30	17.14	21.32/35 million	1281	1136	31.46	45.6	19.33
	2010	8.15	10.63	19.07	2016	1928	27.77	49.74	21.76
Indonesia	2005	9.60	9.55	24.11/1 million	977	1012	20.49	37.59	14.66
	2011	7.81	6.39	22.45	2674	2361	23.6	36.27	13.86
Pakistan	2006	28.02	67.19	53.80/2.5 million	1862	1901	22	22.38	14.37
	2005	14.65	16.66	22.58	..	..	..	..	..
Vietnam	2011	10.15	17.46	22.49/2 million	2387	2008	21.82	65.09	25.83

Source: UNIDO, Industrial Statistical Brief, Export data from WTO, Statistics Database, own calculations

Notes: NA: Not available/* in 2007/ ** in 2004/*** down from 72.29 per cent in 2006/# wage increases in Cambodia from US\$ 705 in 2001, average manufacturing wage rate is not available. However, the Cambodian textiles and garments sector is reported to have higher wages than the national average though it retains its low-labour cost competitiveness in the South Asian textiles and garment sector.

Table 2.2: Enterprise Conditions for Workers

	Enterprises with dual records (%)	Problems in Payment of Wages (%)			Payment of Minimum Wages (MW) (%)			Enterprise providing social security (%)	Enterprises providing paid leave (%)	No. of working hours per week	Enterprises under-paying overtime (%)	Nominal Wage Increase Compared to Price Increase (2008-2010)	
		Non-payment	Delay in payment	Under-payment	below MW	MW	above MW					Wage	Price
Bangladesh	100	0	42.80	100	0	100	0	43	71	76	100	14.50	14.80
China	52.40	1.60	17.50	81.80	21	75	4	18	62	71	65	20.00	5.20
India	45.50	0	27.30	81.80	45	55	0	29	72	69	82	17.10	18.10
Indonesia	0.	0	0	0	0	100	0	100	100	64	0	12.00	15.10
Pakistan	50.00	0	50.00	100	49	51	0	0	50	76	100	..	35.30
Sri Lanka	75.00	0	0	50	0	78	22	100	100	78	50	18.90	26.80
Thailand	20.00	0	0	40	0	100	0	80	100	68	40	..	4.60
Vietnam	13.30	0	0	53.40	22	78	0	92	80	67	47	25.20	31.30

Source: Compiled from Whitehead (2014), pp. 73-82

Some authors (Piore and Schrank, 2008) claim that a ‘regulatory renaissance’ is underway in southern Europe, North Africa and Latin America. Labour laws to re-inforce public administration and a process of re-regulation are underway. However, in most cases policies to relax labour legislation to attract new industries that delink social upgrading from economic upgrading and treat social upgrading as a peripheral issue hold sway. The attitude of the state and its machineries towards labour has perpetuated and even accelerated adverse conditions for labour. In India, for example, the existed labour laws for the ‘protected’ organized sector are not enforced while most of the unorganized sector workers in the textiles and garments sector do not come under the preview of labour laws. The contract labour regulation act in India has not prevented the mass scale employment of contract labour. Labour laws in India are not applicable to Special Economic Zones and Export Promotion Zones. The competitive environment has made countries cut cost in various ways. In Philippines for example, the garment sector is excluded from the purview of Minimum Wages Act; the Dominican Republic and El Salvador have exempted the wages of the Textiles and Garment sector workers from the cost of living index; Mauritius has increased working days to seven days a week without additional remuneration, etc; Chinese workers reported work for 12-14 hours a day, seven days a week for low wages without any labour rights (Hirway, 2010).

In such an environment, there is an increasing need for the State to be a partner in the efforts to ensure the minimum needs of the workers. Without the active will of the State to promote better wages and working conditions, efforts for the protection of the workforce will fall short.

2.3 Garment Sector In India And Cambodia

The textiles and garments industry is an important industry for both India and Cambodia, in terms of its percentage in total manufacturing output, employment and share in exports (See Table 2.1). Many Asian countries including India, had used import substitution strategy and infant industry protection to develop their domestic textiles industry. Cambodia in contrast, did not have such a policy. Cambodian government strongly followed an outward oriented approach in tune with market freedom and was dependent on foreign-owned firms. This pattern of ownership is particularly important from the GVC perspective as it determines how those suppliers are linked to the international production and distribution networks. Units in

Cambodia are linked to the GVC through their foreign parent companies whose governance structures are hierarchial giving Cambodian companies much less leverage and autonomy in strategic decision making. Cambodia allowed for 100 per cent foreign owned firms in Cambodia in 1994 because the role of state owned enterprises is fairly limited. A number of companies from China, Hong King, Taiwan, Singapore located their production base in order to utilize the export quota and low tariff rate to the US market since the late 1990s. The textiles and garment sector in Cambodia accounts for the bulk of the country's total exports and contributes to around 16 per cent of the country's GDP in 2009. More than 90 per cent of the workers in the garment sector are women.

The Garment Sector in India

In terms of employment, textiles and garments stands second in India after agriculture. Following liberalization in 1991, accession to the WTO, phasing out of the Multi-fibre Agreement (MFA) and liberalization of capital and commodity flows characterize the environment facing India as well as many other countries in Asia. The expiry of the MFA and Agreements on Textile and Clothing (ATC) in Jan 2005 affected the region significantly.

While it is not possible to get empirical estimates of the labour conditions of the firms integrated into the global value chains in the garments sector in India from secondary data, the Annual Survey of Industries and the National Sample Survey offers a few pointers of the labour conditions in the garments sector as a whole. The textiles and wearing apparel sector contribute to more than 20 per cent of the organized manufacturing employment. The sector is divided by National Industrial Classification into the Spinning, weaving and finishing of textiles (NIC171), Manufacture of Other textiles (NIC172), Manufacture of knitted and crocheted fabrics and articles (NIC173) and Manufacture of wearing apparel, except fur apparel (NIC181).

The tables 2.3a to 2.3d show some features of the textiles and garments sector in India across the four different categories of national industrial classification. While the spinning, weaving and finishing of textiles sector is concentrated with the states of Tamil Nadu, Gujarat and Maharashtra, Manufacture of knitted and crocheted fabrics and articles is highly concentrated in Tamil Nadu and Punjab, wearing apparel in Karnataka, Tamil Nadu, Delhi and Haryana. Many regions in the states have been developed as export processing zone and are deeply integrated into the global values chains. As the tables show, the wage share of workers, as a percentage of cost of

production ranges from 4 per cent to 8.1 per cent at the all-India level. It is the highest for the wearing apparel sector and touches double digits for a very few states in exceptionally cases. Wages as percentage of gross value added (GVA) range between 20 and 30 per cent for the sectors. The tables also show the growth rate of real wages to workers. It has been negative for all the sectors in the textiles and garments in India, showing that the real wages to the workers in the industry have actually fallen from 2005-06 to 2009-10. There are significant state-wise variations in this, but on the aggregate, this phenomenon is noted for the whole of the manufacturing sector in India where the real wage rate of workers have seen negative growth rate, even as the managerial and supervisory staff has seen high growth rate of salaries further accentuating the gap between the classes. As Table 2.4 shows, managerial staff earn almost 5 times more than the workers in the textiles and garments industry.

The country has witnessed the increasing use of contractual labour in all its manufacturing sectors and the same is true for the textiles and garment sector. The contractual workers earn much lower wages without any job or social security. However, the condition of the women workers in the sector is even worse in terms of wage gaps and often they get even lesser wages than the contract workers. The factories are often seen to decrease their wage bill either by the employment of contractual workers or by the employment of women workers. It is often seen that states that have more women workers use lesser contractual workers as they pay the women workers far lesser than the contract workers. And in states where women workers are lesser in proportion, the factories retort to use contract workers to deflate the wage bill.

The national statistics captured through the use of contract workers, do not however, fully bring out the actual degree of informality even within the organized segment of the manufacturing industry in general and the textiles and garments sector in particular. As Table 2.5 shows, more than 90 per cent of the workers in the textiles and garments sector have no written job contracts. Less than 20 per cent of the workers are eligible for paid leaves, and more than 80 per cent of the workers are not eligible for any social security benefits. The presence of a trade union or association is low in the industry. The spinning, weaving and finishing of textiles and the manufacturing of knitted and crocheted fabrics has the highest presence of trade unions are 35 and 42 per cent respectively. The other textiles and wearing apparel sector have low trade union presence at 16 and 12.7 per cent respectively in 2009-10. If a union is present however, around 70 per cent of the workers in the textiles sector are seen to have taken union memberships, while it is low in the wearing apparel sector at 42 per

cent. Thus the workers overwhelming lack social and job security and their bargaining power is weakened by low union strength.

The employment of women workers is high, especially for the southern states of Tamil Nadu, Karnataka, Andhra Pradesh and Kerala. The textiles and garments sector is a classic case to study gender inequality in work, not only in terms of wages but also in terms of organization of work and other institutional factors. The Sumangali scheme at Tirupur, Tamil Nadu brings out this case very clearly, where women workers are given a three to five year work contract on very low wages to save financial resources for dowry at the time of marriage. Despite being banned in India, dowry is garbed under expenses for marriage to be borne by the bride's family. This practice amounts to bonded labour as employers withhold a part of the worker's salary for the period of employment. The wages are paid at the end of the work contract. The women have to live through the period of employment in whatever conditions of work that are offered to them, while the decision to work are taken by the male patriarchs of the family (National Peoples Tribunal on Living Wages for Garment Workers in Asia, 2014).

While these are the conditions of the workforce in the organized manufacturing sector which is supposed to be protected by the law – the unorganized sector which comprises of the enterprises not registered under the Factories Act, 1948 form the bulk of manufacturing employment in India. These firms by definition employ less than 20 workers without the use of electricity and less than 10 workers if using electricity. They are often home-based workers, working at piece rate payments and lack of any social security net. The unorganized textiles and garments sector is deeply integrated into the global value chains through dense sub-contracting networks.

The Garment Sector in Cambodia

There has been considerable structural change in Cambodia, with the share of the textiles and garments industry rising from 14.3 percent in 1995 to 26.2 percent in 2006 (ADB, 2007). The garment industry has been the main driver of industrial growth of Cambodia since the late 1990s and its share in GDP has increased from 1.3 percent in 1995 to 15.9 percent in 2006 generating 80-90 percent of the country's export earnings (CDRI, 2008a, p41). The garment sector's growth also had spillover effects for the Cambodian economy with jobs created in the service sector. Cambodia gets a lot of outward FDI from Asian countries like China, Taiwan, Malaysia and Singapore and was granted the Most Favoured Nation status by the US and EU. Cambodia offers low tariff rates for the garment sector.

Table 2.3a: Features of the garment sector at the state-level in India in NIC04 171 -- Spinning, Weaving And Finishing of Textiles

	Share in GVA (%)		Share in Employment		Share of Wages in cost of production (%)		Wages to GVA (%)		Nominal Wage Rate of workers (annual)		Real Wage Rate of Workers (deflated by CPI-IW base year 2001)		Real Wage Rate Growth (CAGR)
	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	
	Punjab	6.4	8.0	5.1	6.9	3.4	2.6	16.8	18.6	48989	68060	41866		41754	-0.07
Haryana	1.1	1.2	1.8	1.4	4.4	4.3	28.7	22.0	43828	65035	37456	39899	1.59
Delhi	0.1	0.0	0.0	0.0	1.9	5.2	9.6	22.9	51816	73670	44282	45196	0.51
Rajasthan	6.9	6.4	7.1	7.6	3.3	4.6	20.3	24.9	45617	64899	38985	39815	0.53
Uttar Pradesh	1.3	3.3	2.3	1.9	3.6	2.7	36.0	11.1	48296	63189	41275	38766	-1.56
West Bengal	7.8	5.5	17.0	13.5	17.9	15.0	67.9	56.1	62895	64934	53751	39837	-7.22
Gujarat	18.2	13.8	14.0	15.3	4.0	4.5	17.7	24.4	53231	68153	45492	41812	-2.09
Maharashtra	10.5	13.5	11.0	10.4	5.0	3.7	26.2	16.5	58682	67617	50150	41483	-4.63
Andhra Pradesh	4.1	8.3	5.9	4.3	7.3	4.5	29.2	8.9	43785	50515	37420	30991	-4.60
Karnataka	3.3	2.4	2.4	1.6	5.4	6.4	16.2	17.6	52081	85181	44509	52258	4.09
Kerala	0.9	0.6	1.4	1.3	8.8	9.1	41.2	39.3	55852	59015	47732	36206	-6.68
Tamil Nadu	23.3	22.9	23.4	25.9	4.5	4.0	16.9	18.2	39262	47973	33553	29431	-3.22
INDIA	100	100	100	100.0	4.9	4.1	22.6	20.0	50801	60825	43415	37316	-3.71

GVA—Gross Value Added, CPI-IW—Consumer Price Index-Industrial Workers, CAGR—Compound Annual Growth Rate

Source: Annual Survey of Industries, 2005-06 and 2009-10

Table 2.3b Features of the garment sector at the state-level in India in NIC04 172 -- Manufacture of Other textiles

	Share in GVA (%)		Share in Employment		Share of Wages in cost of production (%)		Wages to GVA (%)		Nominal Wage Rate of workers (annual)		Real Wage Rate of Workers (deflated by CPI-IW base year 2001)		Real Wage Rate Growth (CAGR)
	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	
Punjab	3.8	6.2	3.6	5.3	2.6	3.5	15.5	17.5	39283	61090	33572	37478	2.79
Haryana	17.8	9.8	14.2	8.6	4.7	4.3	17.3	19.4	51765	62604	44239	38408	-3.47
Delhi	4.3	1.9	3.5	1.4	2.9	4.6	16.8	13.1	56522	67626	48304	41488	-3.73
Rajasthan	3.4	2.8	3.7	2.9	5.1	3.3	27.1	21.3	56580	58714	48354	36021	-7.10
Uttar Pradesh	13.6	6.2	14.2	6.4	3.5	2.7	19.9	17.2	44218	49440	37789	30331	-5.35
West Bengal	0.9	2.6	2.6	2.2	5.2	3.2	39.7	12.9	32418	43927	27705	26949	-0.69
Gujarat	10.5	20.6	10.3	16.3	4.0	4.3	20.2	21.3	45948	71886	39268	44102	2.95
Maharashtra	11.0	14.5	9.5	8.2	4.6	5.9	26.1	17.5	67710	86569	57866	53110	-2.12
Andhra Pradesh	2.5	3.2	8.1	7.9	8.6	12.8	42.4	50.6	26663	50552	22787	31013	8.01
Karnataka	4.9	1.5	4.9	1.8	13.5	6.0	24.0	29.2	49063	65326	41930	40077	-1.12
Kerala	5.9	1.9	4.7	2.6	2.9	3.0	13.0	24.1	42222	50959	36083	31263	-3.52
Tamil Nadu	9.7	19.2	15.7	31.3	2.5	6.7	20.6	27.9	29253	46316	25000	28415	3.25
INDIA	100.0	100.0	100.0	100.0	4.0	4.6	19.4	21.0	44241	57772	37809	35443	-1.60

GVA—Gross Value Added, CPI-IW—Consumer Price Index-Industrial Workers, CAGR—Compound Annual Growth Rate

Source: Annual Survey of Industries, 2005-06 and 2009-10

Table 2.3c: Features of the garment sector at the state-level in India in NIC04 173 – Manufacture of Knitted and Crocheted Fabrics and Articles

	Share in GVA (%)		Share in Employment		Share of Wages in cost of production (%)		Wages to GVA (%)		Nominal Wage Rate of workers (annual)		Real Wage Rate of Workers (deflated by CPI-IW base year 2001)		Real Wage Rate Growth (CAGR)
	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	
	Punjab	18.5	19.8	16.8	16.1	4.8	5.1	34.0	30.3	59189	70711	50583		43381	-3.77
Haryana	3.4	0.2	1.4	0.1	2.7	2.8	11.3	18.9	46429	58642	39678	35977	-2.42
Delhi	0.9	0.0	1.0	0.0	4.4	10.1	31.6	28.2	49423	42044	42237	25794	-11.60
Uttar Pradesh	0.2	0.3	0.4	0.2	6.1	4.8	78.0	18.0	55814	66723	47699	40934	-3.75
West Bengal	0.3	0.3	0.2	0.5	2.9	7.1	21.5	30.3	49075	36291	41940	22265	-14.64
Gujarat	1.0	1.6	1.2	1.4	6.1	7.8	32.2	21.7	46429	47437	39679	29102	-7.46
Maharashtra	9.5	5.3	4.3	0.8	4.6	0.5	18.7	4.9	65053	68468	55595	42005	-6.77
Andhra Pradesh	0.4	0.3	0.3	0.5	5.1	5.7	19.1	34.1	33068	43030	28260	26399	-1.69
Karnataka	2.3	1.8	2.0	1.7	5.3	15.3	18.9	39.2	34702	75527	29657	46336	11.80
Tamil Nadu	62.1	70.2	70.7	78.6	4.8	8.2	23.7	30.7	33869	50621	28945	31056	1.78
INDIA	100.0	100.0	100.0	100.0	4.8	6.5	24.9	29.2	40149	54221	34312	33264	-0.77

GVA—Gross Value Added, CPI-IW—Consumer Price Index-Industrial Workers, CAGR—Compound Annual Growth Rate

Source: Annual Survey of Industries, 2005-06 and 2009-10

Table 2.3d Features of the garment sector at the state-level in India in NIC181--- Manufacture of Wearing Apparel, Except Fur Apparel

	Share in GVA (%)		Share in Employment		Share of Wages in cost of production (%)		Wages to GVA (%)		Nominal Wage Rate of workers (annual)		Real Wage Rate of Workers (deflated by CPI-IW base year 2001)		Real Wage Rate Growth (CAGR)
	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	2005-06	2009-10	
Punjab	0.7	1.2	0.7	1.2	6.9	3.5	34.2	34.6	45247	63228	38669	38790	0.08
Haryana	16.9	19.4	13.4	15.5	5.6	7.9	25.6	27.9	42572	62254	36383	38192	1.22
Delhi	13.1	9.4	7.1	4.8	3.6	4.0	18.0	16.2	49816	65338	42573	40084	-1.49
Rajasthan	2.7	2.6	2.0	2.4	7.2	8.7	27.1	30.4	48675	62093	41598	38094	-2.18
Uttar Pradesh	8.9	10.0	7.3	10.4	5.7	8.2	28.3	33.1	46735	57198	39941	35091	-3.18
West Bengal	0.8	3.3	0.4	1.6	2.8	2.2	16.7	14.7	57534	56032	49169	34375	-8.56
Gujarat	2.1	2.1	1.8	2.1	8.9	8.1	28.4	31.7	45897	56477	39224	34648	-3.05
Maharashtra	7.0	16.2	4.2	5.2	5.1	5.0	23.5	11.4	62316	75504	53256	46321	-3.43
Andhra Pradesh	0.6	1.6	1.0	2.0	12.8	14.7	49.8	32.5	38352	45594	32776	27972	-3.89
Karnataka	22.5	23.3	35.7	34.0	15.0	15.6	48.1	41.8	39037	49707	33361	30495	-2.22
Kerala	0.9	1.1	0.8	1.1	11.9	11.3	36.1	31.9	53311	54578	45561	33483	-7.41
Tamil Nadu	19.3	6.7	24.0	17.6	8.0	9.0	31.8	70.2	33809	47398	28894	29079	0.16
INDIA	100.0	100.0	100.0	100.0	7.4	8.1	30.7	30.4	40902	54626	34955	33513	-1.05

GVA—Gross Value Added, CPI-IW—Consumer Price Index-Industrial Workers, CAGR—Compound Annual Growth Rate

Source: Annual Survey of Industries, 2005-06 and 2009-10

Table 2.4: Different Categories of Workers and Wage Ratios in the Organized Garment Sector in India Across NIC 171 to NIC 181

	Percentage Distribution of Total Persons Engaged										
	Workers					Managers	Other Employees	Ratio of Wages			Managerial Staff to workers
	Directly Employed		Contract	Total	Directly Employed Men to Women Workers			Directly Employed Workers to Contract Workers	Women Workers to Contract Workers		
	Men	Women				Total					
Punjab	72.52	6.22	78.74	3.87	82.61	5.26	12.13	1.18	1.06	0.92	4.47
Haryana	46.16	2.73	48.88	35.96	84.85	8.1	7.05	1.11	1.00	0.90	5.62
Delhi	56.17	7.25	63.41	9.61	73.02	10.01	16.97	1.07	0.85	0.80	5.99
Rajasthan	62.14	2.39	64.54	18.55	83.09	6.1	10.81	1.37	1.08	0.80	4.46
Uttar Pradesh	47.71	4.54	52.26	30.21	82.46	7.52	10.02	1.32	1.11	0.86	4.79
West Bengal	84.71	1.89	86.6	4.89	91.48	4.34	4.18	1.37	1.58	1.16	2.99
Gujarat	62.92	2.0	64.92	19.44	84.36	8.43	7.21	1.22	1.09	0.90	4.49
Maharashtra	42.88	5.59	48.46	31.53	80	9.57	10.43	1.39	1.22	0.90	5.03
Andhra Pradesh	58.17	25.55	83.72	6.02	89.75	4.95	5.3	1.30	1.09	0.90	4.41
Karnataka	26.96	60.29	87.25	1.08	88.33	5.21	6.46	1.37	0.58	0.52	4.96
Kerala	42.73	39.69	82.42	3.87	86.29	5.8	7.91	1.87	1.00	0.68	4.13
Tamil Nadu	39.18	43	82.17	4.38	86.55	5.67	7.78	1.24	1.16	1.04	4.04
INDIA	50.02	22.8	72.82	12.61	85.42	6.49	8.09	1.40	0.99	0.78	4.72

Source: Annual Survey of Industries, 2009-10

Note: The ASI does not report the gender employment of the contract workers. The men and women workers shown in the table are only directly employed workers of the factories. The contract workers are defined as those who are employed through a contractor. Together the directly employed workers and the contractual workers constitute the workers in the sector.

Table 2.5: Entitlements to Organized Labour, 2009-10

	NIC171 Spinning, Weaving and Finishing of Textiles	NIC172 Manufacture of Other Textiles	NIC173 Manufacture of Knitted and Crocheted Fabrics and Articles	NIC181 Manufacture of Wearing Apparel, Except Fur Apparel
No written job contract	90.66	94.62	96.17	95.44
Job Contract for more than 3 years	8.17	4.44	0.17	3.12
Eligible for Paid Leaves	15.21	10.26	19.60	13.19
Not Entitled for any social security benefits	80.69	86.03	68.42	89.06
Eligible for PF, Gratuity as well as healthcare	3.44	2.01	0.78	1.31
Workers getting regular monthly salaries	43.90	39.28	30.73	50.28
Workers paid at piece-rate	15.17	25.50	23.84	25.39
Presence of a Trade Union	35.41	16.31	42.24	12.77
Membership in Trade union if Trade Union is present	71.79	69.08	67.48	42.42

Source: NSS, 66th Round on Employment and Unemployment, 2009-10

Garment factories boomed in Cambodia, with employment expanding over 17 times from 1995 to 2008 and stands at more than 300, 000 in 2008 and makes for 27 percent of industrial employment. The lack of a domestic textile sector makes conditions more precarious for the garment sector workers in Cambodia as the garment industry is involved in the lowest value added activity – CMT (cut, make and trim) which has a core role in the industry. The producing firm is supplied with material by its customer and is paid a processing fee. The sector suffers from unavailability of raw material and has to import most of the fabric, yarns and accessories mainly from China. It becomes difficult for the sector to meet the rules of origin requirements. Another major constraint faced by the Cambodian garment industry (as well as South India) is frequent power cuts and low availability of electricity. Cambodia imports most of its electricity from and had high electricity costs. This has been a serious bottleneck in infrastructure for Cambodian labour productivity. As a result benefits from EU GSP schemes are relatively limited in comparison with the US market. (Hatsukano 2005, p.176). Cambodia's textiles imports were 24.5 percent of the country's merchandise imports in 2007.

In other countries like India, Mauritius and Vietnam, which have a significant domestic textiles and garment industry, economic upgrading is an important component of association with GVCs. In Cambodia by contrast, the foreign firms have the best practice technology with little to offer to the domestic industries for economic upgradation (Appelbaum, 2008). Cambodia's top managers are from China, Taiwan and Hong Kong with a very low percent of managers being from Cambodia (Yamagata, 2006, p.8).

The garment sector in Cambodia comprises of poorly educated workers mostly rural women. The workers suffer from serious lack of sufficient nutrition and long work hours and a startling instance of such living conditions due to insufficient calorie intake and harsh working conditions has been mass fainting of workers in 2011. It is estimated that 2000 workers in 2011 fainted while working in Cambodia (National Peoples Tribunal on Living Wages for Garment Workers in Asia, 2014).

Campaigns for compliance with labour standards by international NGOs have pushed the Cambodian government to adhere to certain labour standards; the rights and obligations of employers and employees are defined in the country's labour laws and cover vital areas such as minimum wages, freedom of association and collective bargaining. "Better factories" – a joint collaborative effort by ILO, Cambodian

government and Garment Manufacturer's Association in Cambodia (GMAC) in 2001 has contributed towards significant improvements in wages, working conditions and workers' rights. However, the increasing practice of short fixed term contracts on three months has meant widespread insecurity for the workforce. These fixed duration contracts effectively negate workers right to social security. Workers are forced to work double and triple shifts, face retaliation when they try to unionize. Women workers are forced to often retort to abortions, as there are no maternity leaves and the temporary contracts do not allow them any form of security. Such abuses continue despite guarantees in Cambodia's 1997 labor law and oversight by Better Factories Cambodia.

More recently, through mass workers strikes and protests, garment employees have won a series of increases in the minimum wage: from \$80 per month in May 2013 to \$128 as of January 2014. Pay still falls short, however, of the government's own living-wage calculation — between \$157 and \$177 per month in 2013 dollars. However, even these modest increases have come at a price - in 2013 and 2014, dozens of workers and activists were arrested, fired and killed. In addition to wage demands, workers and unions have called for greater job security, reasonable hours, the right to organize and freedom from discrimination (Kim, 2015).

2.4 Distributional Outcomes in Garment GVCs

Along the garment value chain, the highest value added activities, including design, advertising and marketing remain in the global buyers' hand. Of the total gross revenue from the sale of the garment at the retail end, typically out of every five dollars, three will accrue at the retail end, one to the producer and one for freight, import duties, insurance and transportation (Nasuda, Goto, Thoburn, 2009). Thus the scope for upgrading in production is necessarily limited in terms of gaining additional value added activity.

Gereffi et al (2001) suggest 3 ways to measure the 'value' in a global value chain. One would be to look at the distribution of profits (most appropriate measure is generally return on capital employed). However, profitability has limitations for global value chain analysis because capital (whose reward is profit) is only one factor of production. Profits do not tell us anything about the returns to labour or the general productivity of the economy at large. The distribution of value added along the chain is another conventional indicator of income shares that can be used in two different

ways. Value-added shares can be calculated for different links in the chain. For example, Gereffi et al (2001) elaborate, a dress selling at \$100 in the United States might break down into \$6 going to workers, \$9 to the contractor, \$22.50 for fabric, \$12.50 for the manufacturer, and \$50 to the retailer. A second way to calculate value added is to look at its distribution by countries or regions, using international import-export data to get approximations of national value-added shares. The third way is the use of price markups¹.

Banga (2013) in an estimation of gains from linking in GVCs by the second method (in terms of net value-added exports) using the OECD-WTO database on Trade in Value Added (TIVA database) has seen that 67% of total global value created under global value chains accrue to OECD countries while share of newly industries countries (Singapore, Chinese Taipei, Korea, Philippines, Malaysia, Vietnam, Thailand, Hong Kong, Indonesia) and BRICS countries (Brazil, India, China and Russia) is 25%. Only 8% of total value added is shared among all other developing countries and LDCs. Her analysis also shows that in case of US, Japan and UK, forward linkages² are much stronger than backward linkages³, indicating net value-added gains from linking into GVCs. China and Korea, on the other hand, have negative net value added gains. Other developing countries, like India, Vietnam, Thailand, Malaysia and Philippines also have less than one ratio of forward to backward linkages in GVCs. The paper argues that that it may not help to trade more without compensating gains linked to production activities and creation of domestic value added and therefore, it is important to 'gainfully link into GVCs' in identified industries where the country is able to derive net positive domestic value added gains.

In an estimate of the cost components in the garment global value chain, Bhat-tacharjee (2014) shows that for a shirt manufactured in the GVC framework and sold at 22.50\$, the freight on board cost to a brand is around 22 per cent (of the retail price) for sourcing from India and Bangladesh. The fabric costs are around 12-14 per cent (lower in India than in Bangladesh) and the labour costs are only 2.8 per cent.

-
1. This tends to be the most unreliable indicator of value accruing to different actors in a chain. Price markups are sometimes used to suggest that the higher the margin on sales, the higher the share of value chain rents. This measure is clearly flawed because price markups themselves mean very little unless they are related to the volume of transactions as well as to the activities that underlie the increments in price. Mass or discount retail chains typically have very low price markups per item, yet their high volume of sales may generate high rates of profitability. Similarly, if shoes retail at double their landed purchase price, this does not automatically mean high profits because retailing involves the cost of putting the product on the shelves, paying rent, working capital stocks until the product is sold, returns due to poor quality, etc
 2. Forward linkages: domestic value-added exports of a country which goes into exports of other countries
 3. Backward linkages: foreign value added in gross exports of a country

The supplier factories retain a profit of 1.2 percent of the total cost. After shipping duties are included, the total cost to the brand is around 25 percent of the total cost. This estimate shows that around 75 per cent of the total cost component of a product goes into design, sales, branding and marketing of the product (See Table 2.6) . Though prices of garments have fallen in the global North, and profits have been impressive. Prices that brands pay to manufacturers in Asia have decreased, squeezing their profits and depressing wages in Asia.

An estimate of two products lines which are mostly produced in the value chain process (t-shirts, singlets and vests, and men's or boys' shirt, knitted or crocheted) show that the average export prices of the Asian countries from 2007 to 2011 range between 2.22 US\$ per item to 6.64 US\$ for the first and 3.86 US\$ to 13.98 US\$ for the second (See Table 2.7). There is a similar price range in which the Asian countries in the global value chains are exporting their products, and the share of labour in this is minimal. Parallel to this is the decade long decline in apparel import prices in the United States and Europe (Francois et al, 2007; Global Macro Monitor, 2011 as quoted in Miller, 2014). More important, was the decline in the average FOB price. The average FOB of all garment imports into the United States fell 7.4% from 2001 to 2004, from US\$ 3.51 to US\$ 3.25.⁴

4. <http://www.tradeforum.org/Sourcing---A-Must-for-Clothing-Suppliers/#sthash.dvcuE1PR.dpuf>

Table 2.6: Cost component of a Shirt in the Global Value Chain, 2009

Component	Cost in India (USD)	Share in Retail Price in India (%)	Cost in Bangladesh (USD)	Share in Retail Price in Bangladesh (%)	Share in Supplier Cost in India (%)	Share in Supplier Cost in Bangladesh (%)
Fabric	2.79	12.40	3.20	14.20	56.88	64.55
Label/Pkg	0.45	2.00	0.72	3.20	9.17	14.55
Labour Cost	0.63	2.80	0.63	2.80	12.84	12.73
Overhead	0.59	2.60	0.20	0.90	11.93	4.09
Profit to tier1	0.27	1.20	0.20	0.90	5.50	4.09
Wash	0.16	0.70	0.00	0.00	3.21	0.00
FOB Cost to Brand	4.91	21.80	4.95	22.00	100.00	100.00
Shipping Duty	0.74	3.30	0.74	3.30		
Total cost to brand	5.65	25.10	5.69	25.30		
Retail price	22.50	100.00	22.50	100		

Source: Bhattacharjee (2014)

Table 2.7: Average Export Price of Selected Products in Asia

	HS 6109 T-shirts, Singlets and Other Vests		HS Code 6105 Men's or Boys' Shirts, Knitted or Crocheted	
	Average Export Price per Item (2007-2011)	Average Trade Share in the Region	Average Export Price per Item (2007-2011)	Average Trade Share in the Region
Bangladesh	6.64	23.2	11.38	18.4
Cambodia	5.89	1.6		
China	2.22	51.6	4.71	50.0
Hong Kong, China	6.32	0.3	9.91	2.8
India	3.77	12.4	8.47	13.3
Indonesia	4.62	3.3	9.04	7.5
Pakistan	2.60	2.1	3.86	0.7
Vietnam	5.22	5.5	13.98	7.3

Source: UN Comtrade, World Integrated Trade Solution (WITS)

Chapter 3

The Asia Floor Wage Strategy

Anannya Bhattacharjee and Ashim Roy

3.1 Introduction

In the previous chapters we have seen how global production networks (GPN) have evolved for the benefit of transnational companies. We have also examined how global value chains work in the garment sector in Asia. In this chapter we will examine the growth of the Asia Floor Wage movement as a response to the adverse conditions faced by garment workers by labour and trade unions of the Global South.

In a global scenario, where mobility of labour does not exist, it is the localized labour market and the ratio of the active labour force to the reserve labour force in the localized area that determines the character of these labour markets. In the phase of globalization, these labour markets tend to get interlinked. It is our argument that this interlinked labour market takes a regional form. Therefore, the extent of the reserve army of labour in these regions determines the character of the labour market.

From a Global Production Network (GPN) vantage point the regional character of the labour market, specific to a specific industry, determines the average cost structure of the product, with each country within the region providing the different margin to sustain the average. The threat of relocation of capital or sourcing that the workers face, when unionizing, is confined to the regional labour market and not uniformly spread at a global level. The space for relocation is regional.

The Asia Floor Wage strategy is built on the argument that Asia has the largest reserve labour in agriculture. It also has more than a third of the world's working poor. So the relocation of garment production, which is labour-intensive and requires masses of labour, from Asia to a different region of the globe is improbable, at least

until the reserve labour in Asia has been exhausted. In this context, the threat of relocation that the labour face can be addressed if unions take, as the unit of analysis and action, the region, in this case Asia.

Garment workers in Asia, the majority of whom are women, currently earn around half of what they require to meet their own and their families' basic needs, such as food, water, education and healthcare. A living wage has been a key demand among labour activists in the garment industry for a long time. This demand has been posed to the brands over a long period with very little progress other than rhetorical support. Three main reasons have often been adduced by reluctant brands. One, that there is no common definition of a living wage and no method of calculation; therefore, it is not possible to pay something that is not defined. Two, that any attempt to demand a living wage at a national level results in relocation across the border, and therefore is punitive to national economies. Three, that demand for a living wage is often driven by Northern activists without a collective demand from the Global South.

Trade unions and labour rights organizations in Asia, after years of experience in the garment industry, came together to frame a demand that is bargainable and deliverable, and that is appropriately targeted given the structure and economics of the industry as a whole. The Asia Floor Wage Alliance began as an Asia-focused alliance and grew into a global alliance with Global South and Global North partners. It has been building towards a global movement for an Asia Floor Wage in the global garment industry. The process of building an Asia-centred, union-led, industry-wide initiative has been inspiring and historic.

The Asia Floor Wage movement can be seen to have three phases. The first phase was a bottom-up consensus-building process in Asia to develop the demand concept. The second phase was the presentation of the demand. The third phase, the present one, is struggle and bargaining.

3.2 Phase 1: Consensus-based Bottom-up Demand Development

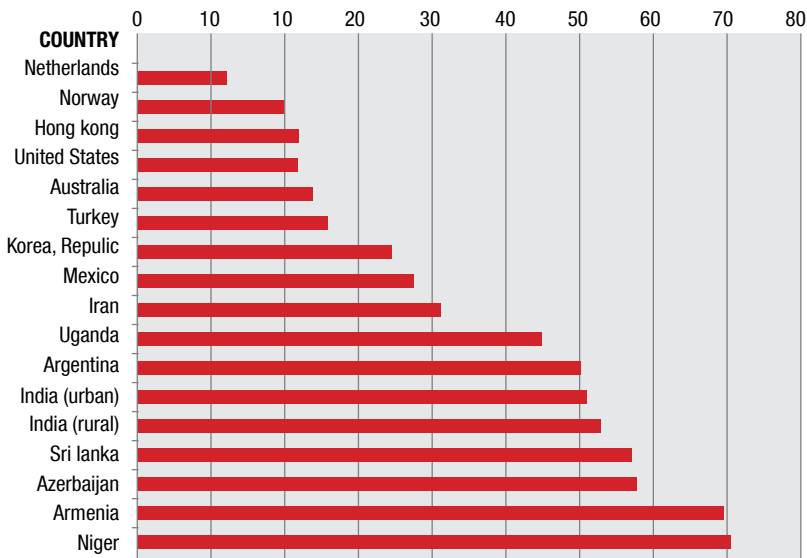
This phase consisted of union meetings in key garment-producing Asian countries on the issue of wages. Workers and worker representatives were frustrated with the statutory poverty level minimum wage as a ceiling in an industry that produces a

vast amount of global wealth for global employers; they resented the continual threat of relocation that brands and suppliers imposed on workers, exploiting intra-Asia competition. Dialogue and secondary research confirmed the reality that it is Asia's large labour force, which manufactures most of the world's clothing, that creates the conditions for a recognition of Asian garment workers as a single bargaining bloc or unit. The analysis of the global commodity chain reveals a global subcontracting production chain in which the brand is the principal employer and the Asian supplier factory is a subcontractor. Asian unions held the view that like any other subcontractual relationship, the principal employer must be held accountable for the growing poverty and desperation among garment workers.

The demand for an Asia Floor Wage first began developing in 2006 through a collective consensus-building process among Asian labour organizations. In a segmented global labour market, Asian organizations came to the conclusion that the combination of the scale and the wage level of the workforce made Asian workers the largest workforce producing garments. Moreover, the wage levels of the garment workers in the major garment-producing Asian countries were not too dispersed when compared in terms of purchasing power, and were nearer to the poverty level wage. The prevalence of a legal minimum wage in these countries did not affect these poverty level wages. In fact, in some countries the minimum wage was below the universally accepted poverty level norms! This understanding provided the basis for evolving and establishing the idea of a homogeneous bloc that would act as the 'bargaining unit' in the global garment industrial framework. The AFW Alliance has developed a concrete formulation for a regional living wage. The goal was to have a common regional wage that would raise workers' wages without disturbing the competitive ranking of the Asian countries, thus allowing wages to be taken out as a factor in intra-Asia competition.

The AFW Alliance decided to first conduct a need-based survey in garment-producing countries to determine workers' needs so as to calculate a living wage at the country level. The results of the survey were in local country currencies. The AFW Alliance used data from need-based surveys in India, China, Bangladesh, Sri Lanka and Indonesia as a basis for the AFW formula. The Asia Floor Wage is based on widely accepted norms that are institutionalized in existing policies, laws and practices in Asian countries and on Asian government figures and international research. The Asia Floor Wage is composed of two categories: Food and Non-food. Both categories are estimated at a broad level, the goal being to provide a robust regional formula that

Figure 3.1 Poorest households' expenditure on food (latest years when data were available, percentage of total expenditure) Source: ILO Laborsta.



can be further tailored by trade unions in different countries, based on their needs and context. In Figure 3.1 the share of expenditure on food in total household expenditure is given for the poorest 10 per cent of households.

The poorer the economy, the more the workers spend on food. In Asia, food cost takes up the most substantial part of a worker's income. The food component of the AFW is expressed in calories rather than food items, in order to provide a common basis. The AFW calorie figure is based on studying calorie intake in the Asia region by governmental and intergovernmental bodies, and the physical nature of work. The AFW Alliance has decided that the Floor Wage should not result in lowering standards in any country. In Indonesia, the standard is set at 3000 calories, and so the Alliance agreed to adopt this as its standard.

The AFW study of the working class population in various countries in Asia shows an average of 50 per cent of household income being spent on food. Therefore non-food costs are taken to be the other half of the income, leaving the details of what comprises non-food to be left to the trade unions in local contexts. The 1:1 ratio of food costs to non-food costs was thus calculated based on the ratio that currently exists for the working class of different Asian garment-producing countries. Since the

AFW unions decided to base an AFW on a family, the Alliance studied family sizes in key Asian countries and the ratio of earner to dependents. In order to account for childcare costs, the AFW assumes a single income family, and uses a formula based on three adult consumption units.

The AFW, then, is a basic wage figure prior to benefits. It defines the regular working week as a maximum of 48 hours prior to overtime. AFW's definition of a working week and the assumption that there are no further benefits sends a clear message that workers need to earn a minimum living wage without having to sacrifice humane working conditions. The currency through which the Asia Floor Wage is expressed is the imaginary currency of the World Bank, Purchasing Power Parity (PPP). The reasoning for choosing the PPP as opposed to exchange rates is that exchange rates are determined by supply and demand for each currency globally, in other words, by the currency market. Exchange rates are highly volatile and fluctuate on a daily basis and are not reflective of national conditions. PPP, on the other hand, is based upon the consumption of goods and services by people within a country; it reflects the standard of living and hence is a more appropriate tool for comparing wages.

The AFW Alliance conducted country-based surveys of monthly food costs for a family in which an adult consumes 3000 calories per day. This cost was doubled to include non-food costs. This AFW in local currency was converted to PPP\$ and the result was a comparable spectrum of values in PPP\$. The AFW Alliance unions

Table 3.1 Asia Floor Wage in local currency on the basis of PPP, 2012–13

	PPP conversion factor, 2011	Local currency figure for 540 PPP\$, 2012	Local currency figure for 725 PPP\$, 2013
Bangladesh	35.43	19,132.00	25,687
Cambodia	2,182.99	1,178,815.00	1,582,668
China	4.32	2,333.00	3,132
India	22.40	12,096.00	16,240
Indonesia	5,583.76	3,015,230.00	4,048,226
Malaysia	2.16	1,166.00	1,566
Nepal	39.11	21,119.00	28,355
Pakistan	36.38	19,645.00	26,376
Sri Lanka	63.68	34,387.20	46,168

Source: Asia Floor Wage Alliance

then discussed the spectrum of values and came to a consensus on AFW in PPP\$ for the region as a whole. This figure has been adjusted annually to account for inflation and the AFW Alliance conducts fresh food cost surveys every three years to re-establish the base food cost component. Table 3.1 gives the key indicators for the different countries.

3.3 Phase 2: Presentation of Demand

The AFW movement entered the second phase of presentation of demand through an International Public Launch on 7 October 2009. The AFW Alliance wrote letters to almost 60 brands demanding meetings for the delivery of AFW. From 2009 onwards, the AFW Alliance has engaged in numerous debates and dialogues with brands and multi-stakeholder initiatives (MSIs); and several meetings with the ILO and Global Union Federations (GUFs). Over two years, the AFW achieved international credibility and legitimacy and began to be used as a benchmark by some brands/MSIs and semi-government agencies, just as it gained currency in ongoing discussions on labour issues worldwide.

The Asia Floor Wage bargaining process targets the brands, the principal employers of the buyer-driven global subcontracting commodity chain, in order to ensure decent wages for workers in the industry. In the global garment industry, global buyers (or brands and retailers) exercise maximum influence over the way that production is organized. They set prices and determine how production takes place. These practices immediately impact the capacity for suppliers to pay a living wage. Scholars have found that brands force supplier companies to operate below production costs, causing wages to be adversely affected. Brands and retailers' sharing a negligible fraction of their profit can dramatically raise millions of workers and families out of poverty.

Central to the demands of the AFW is, therefore, the need for a concerted effort by brands and retailers to address the issue of unfair pricing (the FOB or Freight-on-Board cost), as an important first step towards the implementation of a living wage in the garment industry. The AFW is formulated based on the paying capacity of the global industry whereas national wage definitions arise from an analysis of prevailing wages within the country. Global sourcing companies pay approximately the same prices to their supplier factories in Asia: around 25 per cent of the retail price.

Garment workers' wages make up a very small proportion of the final retail price for clothes (around 1 to 2 per cent) so substantial wage rises could be achieved without increasing retail prices. The proposed demand is an Asia Floor Wage for Asian garment workers in conjunction with fair pricing that would make Asia Floor Wage possible.

A key finding is that fashion retailers are not engaged in any systematic costing of the labour input into garment manufacture (Miller 2013). The imprecise clarification of 'labour minute values' and factory efficiency is a significant factor in the chronic persistence of factory non-compliance on wages and overtime. It is possible to calculate labour minute values for any garment, which also incorporates a living wage element. It is possible to determine and ring-fence the agreed labour cost and to make this an explicit part of the contractual obligation between the buyer and the supplier, in the same way that fabric is itemized in negotiations. Ring-fencing the labour cost would force brands and suppliers to address the issue of how the factory is operating since the basic minimum wage would be the same regardless of factory efficiency. Labour cost is one of the most suppressed costs of production. Other factors of production include quality of infrastructure, access to raw materials, technology, energy, transportation, quality of management, legal systems and so on. Yet another factor in production costs is the purchasing practices of buyers that include lead time, quantity of order, advanced planning and so on.

The AFW fixes the labour cost and would reduce the tendency of industry and government to compete solely on this human factor and turn their attention to other factors which will bring about efficiency, higher productivity, better production and sourcing systems and so on. An initiative involving labour costing will require a high degree of transparency and openness between sourcing companies and their suppliers. Some buyers insist unilaterally that their suppliers 'open their books' during price negotiations, a practice which some observers see as naked power play in an attempt to drive prices down. In such circumstances, it is argued, suppliers have no other option but to hedge by distorting their figures. A more cooperative 'open book costing' will require integrity measures on the part of buyers such as price increases, long-term supply agreements and the offer of productivity expertise where available. Buyers will also require an assurance that the additional amount of money identified as the living or sustainable wage element in excess of the current prevailing unit labour costs is reaching the workers. The AFW Alliance has shown a willingness to participate in helping brands to develop such mechanisms.

The Asia Floor Wage is a practical implementation of the concept of a ‘Minimum Living Wage’, the original ILO concept. Although minimum living wage is an important qualitative concept, there exists no concrete quantitative definition. The Asia Floor Wage is a quantitative definition of Minimum Living Wage for garment workers in the global garment industry. The Asia Floor Wage has several other social benefits as well. AFW will help decrease the gender pay gap by raising the floor. Worldwide, women form the vast majority of garment workers. Women are over-represented among low-paid workers and their ability to move into higher wage work is also lower. In fact, some believe that the garment industry, a modern manufacturing industry, has such low wages because its workers are predominantly women (unlike, say the more male automobile industry).

Workers work back-breaking overtime hours to earn a minimum living wage. Workers’ family lives, health and basic humanity are lost in the race to earn a minimum living wage. A new generation of children without parental care or education will lead to more child labour. Raising workers out of poverty leads to sustainable communities where new generations can lead a better future. The AFW affirms the principle that the only way to enforce AFW is through unions. The AFW implementation requires the existence of a union, and is not a substitution for unionization. In so far as the AFW is a collective bargaining strategy, the right to ‘effective recognition of collective bargaining’ is essential, and efforts must be made to secure the necessary legal and institutional framework for this. The ILO makes explicit the link between collective bargaining and wage setting in its Global Report on Wages 2008/09. It notes that ‘higher coverage of collective bargaining ensures that wages are more responsive to economic growth, and also contributes to lower wage inequality’.

Since the Asia Floor Wage was made public on 7 October 2009, it has gained recognition as a credible benchmark for a living wage in the industry, in the garment labour movement, and in scholarly discussions. The AFW has become a point of reference for scholarly living wage debates such as by Richard Anker and Daniel Vaughan-Whitehead. It has been adopted as a living wage benchmark by the multi-stakeholder forum, the Fair Wear Foundation, and serves as a point of reference for brand-level associations such as the Fair Labor Association. The German development organization GIZ has acclaimed the value of AFW. The AFW has been adopted by a few brands as a comparative benchmark for wage analysis; its credibility and feasibility continue to act as a pressure point. The Workers’ Rights Consortium has used the AFW in a variety of ways in its analysis and benchmarking.

3.4 Phase 3: Struggle and Bargaining

The present phase of the Asia Floor Wage Alliance is struggle and bargaining. The AFWA actively supports all minimum wage struggles in garment-producing countries; minimum wage rises are critical steps towards an AFW. The AFW Alliance condemns and resists all employer attacks and resistance to unionization, because unions are central to the implementation of an AFW; the AFW is a demand of unions and cannot be reduced to a Corporate Social Responsibility policy or a discursive tool. The AFW Alliance sees the growth of contract labour or short-term contract workers as an attack on freedom of association; therefore the Alliance calls for the abolition of such contractual labour.

The AFW Alliance has developed the Asia Brand Bargaining Group (ABBG) consisting of Asian unions to enable greater coordination and regional bargaining that complements national priorities and struggles. The ABBG has four common demands for the welfare of garment workers in Asia: Living Wage, Freedom of Association, Abolition/Regulation of Contract Labour, and an End to Gender-based Discrimination. The AFW Alliance has also conducted three National People's Tribunals in India, Sri Lanka and Cambodia on the issue of Living Wage and Working Conditions in the garment global supply chain. Dozens of women workers have testified. Brands have been asked to testify as well to demonstrate what they have done to deliver a living wage. The jury verdicts that have emerged point to shocking deficits in decent labour standards and dangerously low wages. For example, in Cambodia, the mass fainting of women workers in the workplace was clearly attributed to malnutrition and poverty wages. The juries in all three tribunals have unanimously recommended that a living wage needs to be paid immediately and that any other activity of the TNCs (most popular being further research to learn what is already well known) are only delaying tactics.

The Asia Floor Wage Alliance believes that the Asia Floor Wage must be implemented by brands that possess the political and economic power in the global supply chain. They are the principal employers in the global subcontracting chain. A generalized pricing mechanism can be developed taking into account the unit AFW labour cost of a garment in terms of both FOB and retail costs. AFW would fix the floor for the labour cost so that the FOB costs can be adjusted accordingly through other factors and the price agreed.

The premise of Asia Floor Wage implementation requires freedom of association to be respected and for unionization to occur, since enforcement can only be done

effectively with unions and worker representatives as part of the process. Therefore, the right to organize is central to the ultimate success of the Asia Floor Wage campaign. An AFW is possible only in the presence of dynamic workers' struggles. In fact, the AFW campaign unites national struggles into an Asian framework and so complements and adds to the power of bargaining at national levels.

Chapter 4

Meeting the Challenges of Asia Floor Wage Implementation

Sangeeta Ghosh

4.1 Introduction

The reality of the outsourced garments industry remains one in which many aspects of the concept of decent employment remain unfulfilled and far from ideal. The workers in the garment sector earn around 2-3 per cent of the retail price of the garments. Even a substantial increase in the wages of workers can be achieved without much discomfort to the industry. For global buyers the freight on board (FOB) or ex-factory price is of importance. Most buyers do not separately itemize the labour cost in the CMT process (Miller, 2014: pp. 108). As seen in Table 2.2 (see page 26) most enterprises only pay the minimum wage, and many times below the minimum wage levels, resulting in deplorable livelihood standards. This has necessitated the demand for a living wage in many countries in Asia.

At the same time, countries in a bid to attract capital, continue on a 'low road to development' in the 'race to the bottom' framework. Wages are often the only production cost that the supplier firm has a control over, and to reduce under uncertain conditions of global value chain integration, the nation-states turn a blind eye to the conditions of the workforce and wage entitlements of the workers in a competitive bid across developing countries in Asia. Thus, without reaching a supra-national consensus, the demand for a living wage for workers in one of the most employment affecting sectors seems far from reality. Alongside, there is a lack of a common definition of a living wage and no method of calculating it. Nation-states fear that any attempt to demand a living wage at the national level might result in relocation across the border. When the demand for a living wage is driven by global North activists without a collective demand from the global South, it falls flat at the level of implementation and bargaining.

In an illuminating study, Miller (2014) has developed a model to show that incorporating 'labour minute values' and 'factory efficiency' can help arrive at the difference between the minimum wages offered and the living wage demanded. In an example for the demand of the living wage of US \$93 in Cambodia in 2010 from the minimum wage of US \$ 61, the author shows that through an estimate of labour minute values and factory efficiency rate, the difference can be met through a 'living wage supplement'. This 'living wage supplement' in turn can be shouldered in five (not mutually exclusive) ways: the additional cost could be borne out from the profits (example, Knights Apparel for their Alta Gracia factory in Dominican Republic¹); the costs could be passed on to the consumers through a marginal increase in the retail price (through a special labeling initiative not unlike the Fairtrade model²); the increase in wages could be sought to be paid by supply chain efficiencies (Ethical Trade Initiatives Purchasing Practices, 2007); the supplier chain could absorb the increase in wages (in which case the factory management would have to absorb the increase through a squeeze in their profits – a difficult endeavor given the already low rates of profits for supplier firms); the buyer firms could work with the supplier factories to increase productivity and efficiency (example, New Look which had marginally increased its unit price by 4 US cents to assist strategic suppliers to achieve this) (Miller, 2014, pp.117).

The Asia Floor Wage (AFW) supports the demand of the garment sector workers for a 'living wage' through the first method outlined by Miller, i.e., by demanding the brands and retailers to shoulder the cost of an increase of the wages of the workers from a minimum wage to a living wage. The AFW process has developed into a global industrial collective bargaining framework for a wage increase for production workers within the garment global supply chain.

1. The Alta Gracia factory, which is operating from 2010 pays its employees a living wage which is about three and a half times the average income of apparel workers in the Dominican Republic. The factory employs about 130 unionized people who in 2013 make about \$3 per hour, or \$500 per month. This compares to the average wage in Bangladesh of \$40 to \$64 per month. "The direct result of worker and student organizing for over a decade with USAS and FEDOTRAZONAS, the free trade zone union federation in the Dominican Republic, Alta Gracia is a groundbreaking factory that is monitored by the Worker Rights Consortium. The Alta Gracia factory, which produces university apparel, employs union workers that are paid a living wage. This wage enables the workers to support their families with dignity, nutritious food, housing, healthcare and education for their children. The ripple effect in the community is impressive. New businesses once shut down with the closure of BJ&B have re-opened across from the factory, construction has picked up, and Alta Gracia workers are going back to school on the weekend to pick up studies where poverty had forced them to abandon school. Finally an avenue through which to promote a "race to the top," this business model defies the age-old myth that unions and living wages are impossible in the global apparel industry." (<http://usas.org/campaigns-0ld/sweat-free-campus/alta-gracia/>).
2. The Fair Trade model works through a certification process that requires producers and suppliers to adhere to a set of requirements that aim to achieve the Fair Trade's objectives. The label informs consumers that the product was produced in a socially and environmentally responsible manner. In 1997 that various national labeling initiatives formed an umbrella association called the Fair Trade Labelling Organizations International (FLO). A common Fair Trade Certification mark was launched in 2002.

“The AFW bargaining process targets the brands in order to ensure decent wages for workers in the industry. Brands and retailers’ financial power is built through the garment global supply chain and their sharing a negligible fraction of their profit could dramatically lift millions of workers and families out of poverty... Scholars have also studied whether business expands or contracts during wage increases and have found the cost to be minimal. They have found that –most firms would not make any kind of adjustments in their business operations due to such a small cost increase and have shown the effect to be less than 1 per cent on sales revenue. There is no evidence to show that wage increase has had negative employment effects (Pollin et al., 2008)”. (Asia Floor Wage and Global Industrial Collective Bargaining, 2012)

The AFW campaign seeks to define and assert the right to a minimum living wage for garment workers and set a precedent for assertion of the right to a minimum living wage. It addressed the gender pay gap (as a majority of the garment sector workers are women, who earn much lesser than the contractual workers as seen in India) and calls for the need for a tripartite arrangement through labour unions as a necessarily means for collective bargaining and representation of workers.

Impact of the Asia Floor Wage Campaign

The Asia Floor Wage has gained recognition as a credible benchmark for living wage in the industry, in the garment labour movement, and in scholarly discussions since October 2009. The AFW has become a point of reference for scholarly living wage debates such as by Richard Anker (2011) and Daniel Vaughan-Whitehead (2010) and has been adopted as a living wage benchmark by the multi-stake holder forum, Fair Wear Foundation, and is a point of reference for brand level associations such as the Fair Labor Association. The AFW has been adopted by a few brands as a comparative benchmark for wage analysis; its credibility and feasibility continue to act as a pressure point. The Workers Rights Consortium has used the AFW in a variety of ways in its analysis and benchmarking. The AFW has become a factor in national wage struggles and serves as a measure of the gap between living wage and national minimum wage, as seen in recent wage debates and struggles in the garment industry in Bangladesh and in India. The AFW process has opened up the possibility of a collective bargaining process for higher wages, not restricted to minimum wages, along the global supply chain. This was apparent in the recent wage struggles in Cambodia. In China and Viet Nam, the AFW has been vindicated by recent struggles that have raised wages and demonstrated the feasibility of doing so. The AFW process has opened up forums for dialogue in the producing countries that can be further

strengthened for regional collective bargaining. However, much remains to be done as garment workers continue to work and live in poverty, and brands amass fortunes.

4.2 Arriving at the Asia Floor Wage³

The Asia Floor Wage was formulated after a combination of top-down and bottom-up processes. The AFW Alliance used data from need-based surveys in India, China, Bangladesh, Sri Lanka, and Indonesia as a basis for the AFW formula. The Asia Floor Wage is composed of two categories: food and non-food.

The food component of the AFW is expressed through calories rather than food items to provide a common basis. The calorie figure is based on studying calorie intake in the Asia region by governmental and intergovernmental bodies while defining poverty line, living wage and minimum wage. The per capita food intake for survival assumed for deriving the food poverty line varied across countries as well as within countries from 2100 calories to 2750 calories per capita per day (Economic and Social Commission for Asia and the Pacific (ESCAP). Official Chinese statistics plus a study produced by the Food and Agriculture Organization in 2000 show that the calorie requirement of the national poverty line for China was 2,400 kcal/day (now revised to 2,100 kcal), while that used by the FAO is 1,920 kcal/day. The Indian Labour Conference in 1957 made 2,700 calories the norm for minimum wage for an adult worker (performing moderate to heavy physical work). The Indonesian government most recently defined 3,000 calories as the intake figure for a living wage for a manufacturing worker (performing moderate to heavy physical work). The AFW Alliance has decided that the floor wage should not result in lowering standards in any country and therefore adopted the Indonesian norm of 3,000 calories as its standard.

The AFW study of various countries, for working-class population, shows an average of 50 per cent of the income being spent on food. Therefore non-food costs are taken to be the other half of the income, leaving the details of what comprises non-food to be left to the trade unions in local contexts. The 1:1 ratio of food costs to nonfood costs was thus calculated based on the ratio that currently exists for the working class of different garment-producing countries in Asia.

3. This section draws from Asia Floor Wage and Global Industrial Collective Bargaining, 2012 http://www.ihdindia.org/igdirdata/Mid-Tec-%20Sectors/Flexible%20Labour%20Fource_IGIDR_By%20Ashim%20Roy.pdf

Living wage definitions normally include the notion that wages should support more people than just the individual worker. Minimum wage regulations, by contrast, may (as in India) or may not (as in Indonesia). The AFW unions decided to base the AFW on a family. The AFW Alliance studied the family sizes in key Asian countries and came up with an approximate average figure. The ratio of earner to dependants was calculated based on the family sizes in different countries. For example, the Ministry of Labour in India calculated the average size of a working-class family to be 4.46 in 2008, and the Ministry of Commerce in China calculated the average family size in China to be 3.38 in 2003. In order to account for childcare costs, the AFW makes it a single-income family. The AFW defines the formula to be based on three adult consumption units. As a child consumes less than an adult, a child is calculated as half of one consumption unit.

The AFW is a basic wage figure prior to benefits such as health care, pension and so on. Delivery of other benefits by employers to workers is not the norm in the industry, and they have not been made the basis for AFW. Therefore, if an employee provides dormitory housing or canteen lunch, the AFW figure is not lowered. This is because not only are the benefits not the norm but also that workers should have the option to obtain these basic necessities from the wage. The AFW provides a minimum living wage with which a worker can support him/herself and dependents.

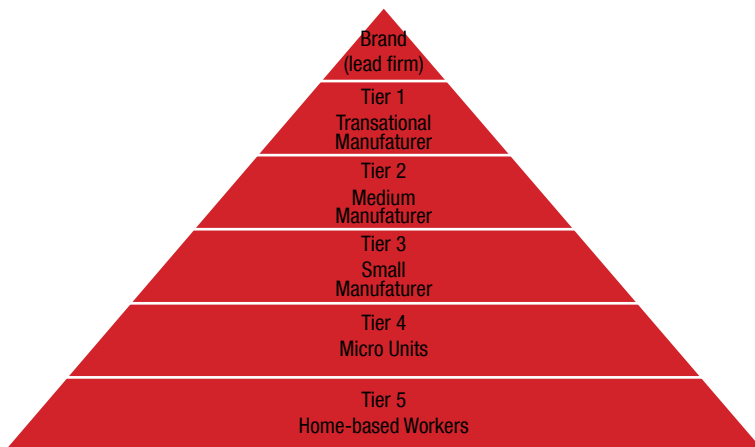
The AFW Campaign defines the regular work week as a maximum of 48 hours prior to overtime. AFW definition of a work week and its independence from benefits sends a clear message that workers need to earn a minimum living wage without sacrificing other humane working conditions.

The currency through which the AFW is expressed is the imaginary currency of the World Bank, Purchasing Power Parity (PPP). The reasoning for choosing PPP as opposed to a specific national currency is that for comparative purposes and for conversion to actual wage, the exchange rate is not a good and appropriate measure. Exchange rates are determined by supply and demand for each currency globally, in other words by the currency market. They are highly volatile and fluctuate on a daily basis and are not reflective of national conditions. PPP, on the other hand, is based upon the consumption of goods and services by people within a country, reflects the standard of living and hence a more appropriate tool for comparing wages. It also allows one to compare the standard of living between countries by comparing the price of a basket of identical goods and services in terms of the currencies of the two

countries. The PPP system does have some weaknesses⁴. If the weaknesses and biases explained above are corrected, it will only push the value of AFW upward. The current formulation of the AFW continues to be a conservative estimate for a minimum living wage.

The AFW, based on food costs for a family where an adult consumes 3,000 calories per day, was calculated in local currency for several Asian countries. This AFW in local currency was converted to PPP\$ and the result was a comparable spectrum of values in PPP\$. The AFW Alliance unions then discussed the spectrum of values and came to a consensus on AFW in PPP\$ for the region. It was determined to be 475 PPP\$ as of 1 January 2009, based on 2008 data. The report *Stitching a decent wage across borders* explains how the AFW was defined and calculated as a minimum living wage benchmark for several Asian countries (AWF, 2009). Naturally, this benchmark figure needs to be regularly adjusted to account for the price rises in the cost of living (that is, inflation). The AFW was revised to be 540 PPP\$ for 2011. The local currency conversions then make for wages of Rs. 12096 for India in 2011 for example, as

Figure 4.1: The Iceberg Model (Source: Hurley and Miller (2005), pp. 25)



4. One is that in the PPP definition of a basket of goods and services based on habits of consumption in developed countries (buying countries) tend to dominate. Also, the PPP reflects overall consumption habits in a country and is not adjusted for working-class population. In short, the PPP-defined basket of goods has a bias towards developed country and middle-class habits. The second weakness is that the basket used in the PPP calculation is not the same as that of the AFW. The AFW basket is a variable basket divided only into food and nonfood (as a factor of food cost) based on actual averages of working-class food and non-food expenses. The third weakness in the PPP definition is that its calculation is done at longer intervals and is not a current reflection. Despite its weaknesses, the PPP is the only relevant and stable measure reflecting consumption.

against the wage rate of around Rs 5000 (ASI data estimate). Wages as a percentage of the cost of production stand at around per cent at the going employment level; the cost of production for the supplier firm would be double at the AFW rate. Thus it would be necessarily be the responsibility of the lead firms to bear this cost.

4.3 Challenges to the Implementation of the Asia Floor Wage

Hurley and Miller (2005) develop the Iceberg Model which is illustrated in Figure 4.1. It shows a picture of how the supply chain operates. Above 'sea level,' the global retailers/merchandisers are creating long-standing alliances with a limited number of large multinational manufacturers. These alliances are tightly structured, relatively stable, long-term relationships characterised by a simple structure and clear communication channels. The manufacturers in Tier 1 are multinationals in their own right and have the capacity to provide the extended services required by the retailers and brand marketers. They supply many international clients, have production bases in a number of different locations, and some have a vertically integrated supply chain, where the water line is at the Tier 1 transnational manufacturer level. If the workers above the water line do not get a living wage, it would not be possible for workers down the supply chain to get even a subsistence level minimum wage. The Asia Wage Floor tries to address this.

Whilst receiving orders from buyers, the large multinational manufacturers in Tier 1 frequently subcontract out these orders to smaller subsidiaries as well as to other factories that are harder to trace. In numerous cases, the subcontracting is illegal in that the buying firms are unaware that their contractor has subcontracted out part of their order. Below Tier 1 the relationship between different levels of the supply chain alters radically, with a sharp increase in downward pressure in relation to price and turnaround times. This pressure pushes down through the different tiers in the chain to medium and small units, and to home-based workers. One of the biggest challenges to the implementation of the Asia Floor Wage is the complexity of the network and the lack of transparency in the length of the supply chain itself.

A related problem to the implementation of the AFW is the gaps in regulations. Three regulatory gaps are identified between public and private regulation, protection of formal versus informal workers and between regulation for export promoting units and firms selling in the domestic market. These gaps arise due to the complexity of

the chain itself. Adequate enforcement of labour laws will require changes in legislation, structure of labour inspection as well as staff preparation to fulfill the goals of ensuring labour standards. Lessons from Latin America and Southern Europe are useful in this context (Piore and Schrank, 2008; Vega-Ruiz, 2008). In Asia, unfortunately, the move is towards a different direction, from getting rid of the '(labour) inspection raj' and voluntary codes of law conduct in India to other methods to weaken labour action.

One key challenge is the addressing the reliable transfer of a living wage premium into the wage structure within a supplier factory. As Miller (2014) elucidates, 'it is difficult to envisage how sustainable labour costing can work without the issue of pay, effort and efficiency being addressed by collective bargaining...However in many supplier countries trade union density and collective bargaining penetration are extremely low or non-existent'. Building collective bargaining solidarities and union penetration will be a key challenge to the implementation contours of the AFW.

4.4 Possible Income Delivery Mechanisms

A few key features would be mandatory for the implementation of the Asia Wage Floor. First, and most importantly would be to reach a consensus among the nation states participating in GVCs for AFW. Without an active effort and will on the part of the countries, the process cannot begin. The consensus of countries and local bodies functioning is necessary to translate the gains of global production networks for the workers in the supply chain.

Despite the growing attention to the issue of social upgrading, the governance mechanisms aimed at sustaining these processes are still understudied. Mayer and Posthuma (2012) identify three different approaches to of governance relevant to GPNs: 'public governance, comprising of national government policies such as trade policies and international labour standards; private governance led by private sector actors; and social governance related to worker organizations and civil society. Research often focused on the role of lead firms in GVCs as actors not only responsible for decision making in production, but also for the working conditions in the factories manufacturing their products in the developing world. Corporate social responsibility, buyers codes of conduct, their content and impact on working conditions and labour rights became central to GVC analysis (Mamic, 2003; O'Rourke, 2002;

Barrientos and Smith, 2007). Considerably less attention has been devoted to the role of public governance and the need of effective public enforcement of labour law.

There is now a consensus that private governance alone cannot address the complexities of industrial relations in global value chains and the responsibilities and costs of social upgrading must be shared, with the state assuming a greater role in the provision of essential common pool resources (such as energy and logistics and labour dispute mediation). It is increasingly believed that combination of public and private intervention is critical to achieve sustainable change in working conditions in GVCs (Ross, et al, 2014)'. A consensus and willingness on part of the nation-states participating in the global value chains is mandatory for this.

The second challenge as discussed would be mapping the garment sector workers. As elaborated in the iceberg model, a large number of garment sector workers in Asia are in sub-contracted and informal modes of production and are excluded from census surveys or employer lists. This poses a serious challenge in identifying the tiers in the GVCs of the sector and for income delivery to reach the most vulnerable workers, this has to be a first step. Migrant, casual and contract labour are many forms of labour which need to be brought into the ambit of protection by a floor wage. Role of Information and Communication can be important to address this lack of transparency along the supplier chain.

As outlined before, the increase of wages from the prevailing wage rate to the living wage rate would increase the cost of production to around 10 per cent from the present 5 percent. This while might be a non-feasible operating cost for the supplier firm, for the buyer firm, a living wage supplement would bring the fob price up from the present 25 per cent to around 27-28 percent. Given the high profit margins along the supplier chain, it is not a very difficult goal to reach. However, the liability of the buyer firm would end with the individual apparel order with the supplier firm. Thus in a longer term plan, it would be necessary to think about the sustainability of the production process itself. As mentioned in Miller (2014), many buyer companies have taken an alternative route to increase productivity and efficiency of the supplier firms. Where additional money is passed down to a supplier via the FOB price could result in a degree of cost escalation. Thus identifying and separately holding a living wage premium on an account opened by the buyer could avoid extra cost liability of the supplier firm.

To ensure reliable transfer of living wage premium into the wage structure, one possible mechanism could be ‘the establishment of a dedicated account held by the buyer and the accrual of a premium based on subsequent orders during a financial year’ (Miller, 2014, pp.120). Companies could be held accountable to disclose the dispensation of the premium at a fixed time in the financial year to the management and the workforce. The participation of a consolidated workers union could greatly facilitate this process.

Alternatively, a consolidated social security number for textiles and garment sector workers in the supply chain would help transfer the livable wages. Further deliberations could help us understand the method/s to achieve this and bypass the pitfalls often associated with identification through social security number (corruption, harassment, lack of identification papers, lack of a permanent address, adverse targeting of migrant labour, etc)

South Asia urgently needs the organization of workers in the global value chain at three levels: trans-national, national and between different categories of workers and firms, organized and unorganized (often home-based). Innovative trade union movements can help achieve such an organization to fruitfully provide a platform for collective bargaining for living wages.

Chapter 5

The International Trade and Investment Framework and the Implementation of the Asia Floor Wage: Challenges and Opportunities

Kajal Bhardwaj

5.1 Introduction

The demand for an Asia Floor Wage (AFW) in garment producing countries in the region emerged in 2006 through consensus building among Asian Labour organisations to respond to “an environment where capital strategises regionally but keeps countries within that region divided through threats and promises.”¹ The regional strategy of the AFW involves the formulation of a living wage that does not impact competitiveness among garment producing Asian countries while accounting for the differing economic and political environments in these countries. The Asia Floor Wage Alliance (AFWA) comprises a range of labour organisations from India, Bangladesh, Cambodia, Indonesia, Sri Lanka, Thailand, China and Hong Kong as well as trade unions, labour NGOs, anti-sweatshop movements, solidarity groups and scholars from Northern countries.

By adopting a specific quantitative demand for a decent wage, the AFW is considered to present a practical implementation of the ILO concept of a minimum living wage. The methodology for calculating the AFW is aimed at meeting a worker’s family’s basic food and non-food costs. The calculation is based on the income of a single earner to support a family of 2 adults and 2 children, working a legal maximum

1. See Anannya Bhattacharjee and Ashim Roy, *Asia Floor Wage and Global Collective Bargaining*, *International Journal of Labour Research*, Vol 4, Issue 1, 2012.

working week that does not exceed 48 hours. This does not include any payment for overtime or bonuses or allowances. Included in the wage is the cost of a fair amount of daily food and essential costs of healthcare, housing, clothing, childcare, transportation, fuel, education, etc. The AFW uses purchasing power parity in US dollars (PPP\$) to calculate a wage demand that is applicable to all countries in the region.

The AFW identifies “brands” as having the financial responsibility for the payment of the living wage to garment workers.² This financial responsibility may be adopted voluntarily by the brands or may have to be imposed through government action. Even as the AFW negotiates with brands to voluntarily apply living wages as part of the cost of garment production and put in place mechanisms to ensure that garment manufacturers at the national level pay these living wages, it is also working with governments and international institutions including the International Labour Organisation (ILO).

Government actions as potential implementation mechanisms for the AFW may arise nationally or be influenced by international obligations. For instance, international human rights treaties and the ILO conventions recognise the right to a decent, living wage and provide a firm legal basis for the campaign for the AFW. Thus, the Universal Declaration of Human Rights states, “everyone who works has the right to 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.”³ Based on these international obligations, most national governments have enacted legislation protecting the rights of workers including the right to a minimum wage. The enforcement and extent of these rights however, particularly in garment producing countries in Asia remains woefully inadequate⁴ and the quantification of minimum wages falls far short of the cost of living in most countries. (See Figure 5.1)

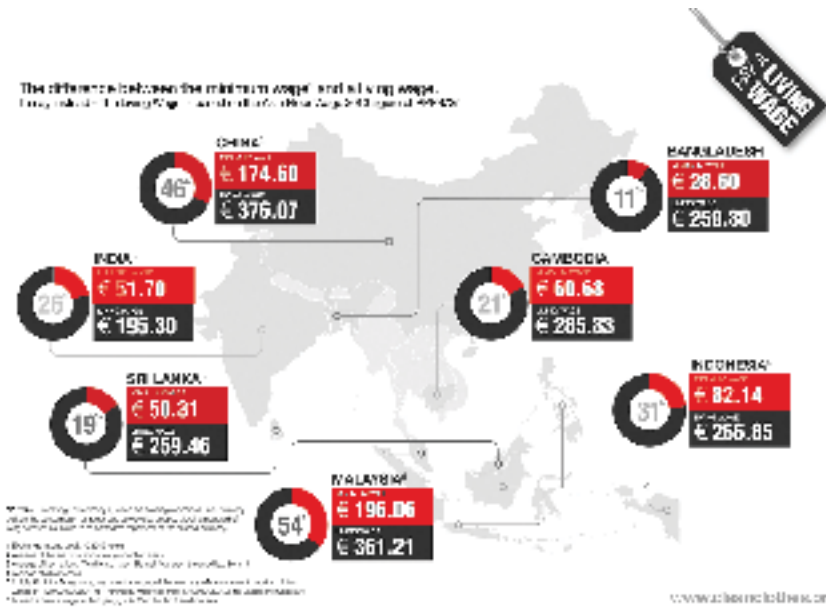
However national legal frameworks and indeed systems of production and the state of labour rights in a country are not only impacted by international human rights obligations but also by trade and investment agreements. There is emerging evidence,

2. Ibid.

3. Article 23, Universal Declaration of Human Rights. See also Articles 7 and 11, International Covenant on Economic, Social and Cultural Rights.

4. Liz Gooch, Asia-Pacific Governments play Catch-Up on Minimum Wages, New York Times, 13 April 2011.

Figure 5. 1 Minimum Wage vs Living Wage



Source: Reproduced from Living wage versus minimum wage map, Clean Clothes Campaign, 2014

for instance, that free trade agreements in particular have contributed considerably to the creation and entrenchment of Global Value Chains (GVCs)⁵ that cover most garment manufacturing in Asia. Thus, “while countries such as China, India, Bangladesh, Cambodia, Sri Lanka, Malaysia and Indonesia account for over 60% of the world’s garment production, 60% of the consumption takes place in Europe and North America.”⁶ As trade agreements expand past traditional tariff reduction rules and increasingly set standards in different sectors, there has also been considerable interest and debate on the role that these agreements could play in the promotion or negation of labour rights.

With labour standards increasingly featuring in trade agreements, this chapter explores the challenges and opportunities presented by the international trade and investment framework for the implementation of the Asia Floor Wage. Specifically this chapter examines the interplay between labour provisions and the World Trade

5. Juan Blyde, Alejandro Graziano, Christian Volpe Martincus, Economic integration agreements and the location of vertical FDI, VOX, 13 May 2014 available at <http://www.voxeu.org/article/trade-agreements-foster-global-value-chains-new-evidence>

6. Living Wage in Asia, Clean Clothes Campaign, 2014, available at <http://www.cleanclothes.org/resources/publications/asia-wage-report>

Organisation, free trade agreements and investment treaties highlighting the scope of labour rights and their enforcement mechanisms where they are enshrined in these agreements as well as the challenges posed by them in the adoption and enforcement of a living wage. This chapter does not seek to determine the impact of the trade and investment regime on specific AFW implementation proposals as these are still evolving. Instead it seeks to offer an insight into developments in this area as they impact labour standards while arguing for a holistic examination of this regime as it impacts labour rights by the AFW as it determines its strategy and campaign in this arena. While the AFW is a demand for a living wage that may be replicated across sectors outside the garment industry and across the globe, its predominant focus remains on the Asian region. Accordingly, ongoing trade agreement negotiations and developments within regional trade groupings in the region are also identified.

5.2 World Trade Organisation (WTO)

Established on 1 January 1995, the WTO provides a multilateral framework for trade rules between 160 member countries. The WTO is based on a set of legal texts or negotiated agreements relating to goods, services and intellectual property. The agreements detail the obligations of WTO members in terms of compliance of domestic laws and policies. In total there are 60 agreements, annexes, decisions and understandings. Some countries that joined the WTO after it was established, such as China, may have additional obligations that the founding members of the WTO may not have, as a result of their accession agreements. (See Box 5.1)

The most striking feature of the WTO is its enforcement mechanism i.e. the WTO Dispute Settlement Body. Violation of any of the agreements does not lead to automatic sanctions or action by the WTO secretariat. The WTO dispute settlement mechanism requires WTO members to bring complaints against each other. Notices of disputes often lead to settlements and where they lead to full proceedings may result in trade sanctions being imposed on a country that is found to have violated any of the agreements.

5.2.1 The WTO and Labour Standards

The issue of labour standards at the WTO has been fraught from the early years of the WTO. In 1996, the inclusion of labour standards within the WTO framework, was firmly stalled by developing countries and the Singapore Ministerial Declaration

Box 5.1

WTO in a Nutshell			
The basic structure of the WTO agreements involves six main areas –the umbrella WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.			
Umbrella	Agreement Establishing WTO		
	Goods	Services	Intellectual property
Basic principles	General Agreement on Tariff and Trade (GATT)	General Agreement on Trade in services (GATS)	Trade Related Aspects of Intellectual Property Rights (TRIPS)
Additional details	Other goods agreements and annexes	Services annexes	
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments (and most favoured nation exemptions)	
Dispute Settlement	DISPUTE SETTLEMENT		
Transparency	TRADE POLICY REVIEWS		

Source: Reproduced from WTO, "Understanding the WTO: The Agreements", Undated available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm

identified the International Labour Organisation (ILO) in no uncertain terms as the competent international body on the issue of labour standards. An attempt in 1999 to revive the discussion on labour standards in Seattle also did not bear fruit.⁷ The 2001 Doha Ministerial Declaration launching the Doha Round of negotiations re-affirmed the position of the 1996 Declaration.⁸

Specifically, the 1996 Singapore Ministerial Declaration states:

“We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour

7. Trade And Labour Standards, A difficult issue for many WTO member governments, Doha WTO Ministerial 2001: Briefing Notes, http://www.wto.org/english/thewto_e/minist_e/mino1_e/brief_e/brief16_e.htm

8. Doha WTO Ministerial 2001: Ministerial Declaration, WT/MIN(01)/DEC/1, 20 November 2001, http://www.wto.org/english/thewto_e/minist_e/mino1_e/mindecl_e.htm

standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.”⁹

The debate surrounding labour standards within the WTO has fairly well articulated positions. Within WTO members, the push for labour standards comes largely from some developed countries while most developing countries oppose this. According to the WTO secretariat, the issues related to the inclusion of labour standards in the WTO may be categorised as four questions:¹⁰

- The analytical question: if a country has lower standards for labour rights, do its exports gain an unfair advantage? Would this force all countries to lower their standards (the “race to the bottom”)?
- The response question: if there is a “race to the bottom”, should countries only trade with those that have similar labour standards?
- The question of rules: Should WTO rules explicitly allow governments to take trade action as a means of putting pressure on other countries to comply?
- The institutional question: is the WTO the proper place to discuss and set rules on labour – or to enforce them, including those of the ILO?

The most direct proposal for the inclusion of labour standards within the WTO has been for a “social clause” to be introduced into the WTO Agreements.¹¹ While conceptually the purpose of such a clause is clear i.e. to allow the use of a trade mechanism to ensure compliance with labour standards, particularly in developing countries, the contours of the social clause differed with the multiple proposals put forward by different stakeholders.¹² While most literature appears to link the standards to

9. Singapore Ministerial Declaration, Adopted on 13 December 1996, WT/MIN(96)/DEC, 18 December 1996 at http://www.wto.org/english/news_e/pres96_e/wtodec.htm

10. WTO, Labour standards: consensus, coherence and controversy, http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm

11. See generally, Rafeil Peels and Marialaura Fino, Pushed out the Door, Back in through the Window: The Role of the ILO in EU and US Trade Agreements in Facilitating the Decent Work Agenda, *Global Labour Journal*, 2015, 6(2), p. 189, available at <https://escarpmentpress.org/globallabour/article/view/2401>

12. Recommendations for a social clause include the introduction of a social clause in the WTO Agreements, the negotiation of a full agreement akin to the TRIPS Agreement or the expansion of the exceptions under Article XX of the GATT. Article XX of the GATT is also the only provision currently within the WTO that refers to labour. See generally, Arnie Daniel Albert Vandaele, *International Labour Rights and the Social Clause: Friends or Foes*, Cameron May Ltd, 2004.

the Core Labour Standards (CLS)¹³ which are also referred to as the ILO fundamental conventions, some Northern organisations suggested this as a starting point that could lead to the inclusion of provisions related to the conditions of employment and wages.¹⁴

While proposals to link trade and labour standards predate the WTO negotiations,¹⁵ attempts to bring this within the WTO framework resulted in sharp divisions and hardened positions between governments and to some extent even trade unions of the North and the South and NGOs working in the development sector.¹⁶ Still others argued not from ideological positions but highlighted the inappropriateness of using trade sanctions to enforce labour standards that would end up causing the most damage to the very workers the sanctions would aim to protect.¹⁷ This paper does not propose to review these discussions and debates. Suffice to say, that in terms of the WTO, the strong and continued opposition from developing countries make it highly unlikely for any such social clause to be introduced within the WTO framework.

-
13. Core Labour Standards refer to the eight fundamental ILO Conventions: 87) Freedom of Association and Protection of the Right to Organize (1948); 98) Right to Organize and Collective Bargaining (1949); 29) Forced Labor (1930); 105) Abolition of Forced Labor (1959); 138) Minimum Age (1973); 182) Worst Forms of Child Labor (1999); 100) Equal Remuneration (1951); 111) Discrimination (1958). See ILO, The International Labour Organization's Fundamental Conventions, International Labour Office, 2002, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095895.pdf
 14. Terry Collingsworth, An Enforceable Social Clause, Foreign Policy in Focus, 1 October 1998, available at http://fpif.org/an_enforceable_social_clause/
 15. ChakravathiRaghavan, Barking up the wrong tree: Trade and Social clause links, Third World Network, 1996, available at <http://www.twm.my/title/tree-ch.htm>
 16. See generally, Gerard Griffin, Chris Nyland and Anne O'Rourke, Trade Unions and the Social Clause: A North-South Union Divide?, Working paper/National Key Centre in Industrial Relations, Monash University, 2002, available at http://www.ilo.int/public/english/iira/documents/congresses/world_13/track_3_griffin.pdf
 17. Keith E. Maskus, Should Core Labor Standards Be Imposed Through International Trade Policy, Policy Research Working Papers, World Bank, November 1999. Maskus argues: "Finally, the overriding conclusion of this report is that using trade sanctions to penalize nations for inadequate provision and enforcement of CLS is inadvisable. The analysis indicates that, in most relevant cases, tariffs are counterproductive in that they harm those individuals they are supposed to help. Indeed, to the extent that limited CLS are a problem in informal or nontraded sectors, sanctions against exports can worsen their severity. Tariffs can also backfire by pushing the most vulnerable workers (children, women) into less-desirable alternative activities and could reduce compliance with available labor standards by shifting resources into the informal sector. Further, they are indirect instruments that may not achieve the goal for which they are imposed. They might also be ineffective in that there could be ample opportunities to circumvent the penalties if they are not imposed and monitored multilaterally. Tariffs are also blunt instruments in that it would be difficult to use trade sanctions to penalize some offenders without also taxing firms with stronger labor practices. Calculating meaningful "social dumping tariffs" would be virtually impossible and heavily subject to political capture. In any event, such tariffs are misguided because they would be aimed at policies that generally diminish competitiveness and exports, rather than raise exports."

5.2.2 Generalised System of Preferences, labour standards and importing countries

Without a social clause within the WTO framework, the options for importing countries to resort to trade sanctions or retaliatory measures against countries with low labour standards are practically non-existent.

However, the WTO framework does provide some room for labour standards to be relevant in trade, indirectly through the Generalised System of Preferences (GSP) that some developed countries have used for linking access to preferential trade benefits to higher labour standards. The GSP programmes of developed countries are exempt from WTO requirements of ‘Most Favoured Nation’ treatment under a specific exemption known as the “enabling clause.”¹⁸ This exemption allows developed countries to impose zero or lower tariffs on some goods from certain developing countries without having to extend the same benefits to other countries.

The exemption under the WTO agreements that allows for labour and human rights conditionalities in GSP programmes is not a blanket exemption and is subject to certain requirements. These requirements were highlighted by the WTO’s Dispute Settlement Appellate Body in a challenge by India of the EU’s GSP programme in 2004 which held that such conditions, including those that grant additional preferences to some developing countries, may be included as long as they “respond positively” to the “needs of developing countries” and are applied in a non-discriminatory manner.¹⁹

Under the US GSP programme, mandatory requirements for a country to be designated a beneficiary include:²⁰

- “7) A GSP beneficiary must have taken or is taking steps to afford internationally recognized worker rights, including:
- the right of association,

18. Main Legal Provisions, World Trade Organisation, available at http://www.wto.org/english/tratop_e/devel_e/d2legl_e.htm

19. See generally, Biswajit Dhar and Abhik Majumdar, The India-EC GSP Dispute: The Issues and the Process, Working draft, ICTSD Asia Dialogue on WTO Dispute Settlement and Sustainable Development, Jakarta, 25 and 26 January 2006, available at <http://www.ictsd.org/downloads/2008/06/dhar.pdf>

20. U.S. Generalized System of Preferences, GUIDEBOOK, Office of the United States Trade Representative Executive Office of the President Washington, D.C., July 2013, http://www.ustr.gov/sites/default/files/GSP%20Guidebook_Final_06262013.pdf

- the right to organize and bargain collectively,
- a prohibition on the use of any form of forced or compulsory labor,
- a minimum age for the employment of children, and a prohibition on the worst forms of child labor, and
- acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.

8) A GSP beneficiary must implement any commitments it makes to eliminate the worst forms of child labor.”

Complaints regarding the breach of labour standards can be made to the United States Trade Representative (USTR) and between 1985 and 2007, 57 complaints were filed and preferences were withdrawn in 13 cases of which 5 were later re-instated.²¹ Although the US GSP does not extend to most apparel and textiles, conditions in these sectors in the exporting country may impact a country’s trade benefits under the programme (See Box 5.2: Rana Plaza Tragedy). US Congress authorization for the US GSP programme expired in July 2013 and legislation to extend the programme is yet to be passed by the US Congress.²²

Unlike the US programme, that has remained more or less the same since its inception in the 1980s, the EU GSP programme has evolved considerably since it began in 1995. The EU programme contains provisions for sanctions akin to the US programme but also provides incentives for countries that meet certain human rights and labour standards or what is commonly referred to as GSP+. Under the EU’s programme, all preferences can be withdrawn from a country for serious and systematic violation of principles laid down in specified Conventions.²³ This list includes the 8 fundamental ILO Conventions i.e.²⁴

-
21. Franz Christian Ebert Anne Posthuma, Labour provisions in trade arrangements: Current Trends and Perspectives, International Institute of Labour Studies, International Labour Organisation, 2011, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_192807.pdf
 22. United States Trade Representative, GSP Expiration: Frequently Asked Question, 2014, available at <http://www.ustr.gov/sites/default/files/03112014-FAQs-on-GSP-Expiration.pdf>
 23. Article 19, Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, available at http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf
 24. The relevant GSP+ conventions (Annex VIII of Regulation (EU) No 978/2012 of 31 October 2012), available at http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_152024.pdf

- “8. Convention concerning Forced or Compulsory Labour, No 29 (1930)
9. Convention concerning Freedom of Association and Protection of the Right to Organise, No 87 (1948)
10. Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, No 98 (1949)
11. Convention concerning Equal Remuneration of Men and Women Workers for Work of Equal Value, No 100 (1951)
12. Convention concerning the Abolition of Forced Labour, No 105 (1957)
13. Convention concerning Discrimination in Respect of Employment and Occupation, No 111 (1958)
14. Convention concerning Minimum Age for Admission to Employment, No 138 (1973)
15. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No 182 (1999).”

To be eligible for GSP+ which provides greater preferences, a country must be signatory to all these conventions, must undertake to implement and enforce them. The European Commission is required by the EU Parliament to closely monitor this compliance including thorough reviews of reports of treaty monitoring bodies and other sources.²⁵

Since the introduction of the GSP programme, the EU has withdrawn preferences from two countries on labour standards related grounds i.e. from Myanmar in 1997 for the systematic use of forced labour and from Belarus in 2006 for systematic violations of workers' freedom of association and collective bargaining rights. In both cases, the countries were criticised in ILO reports. However, there have been questions raised about the manner in which the EU exercises this power with some critics noting that several other countries enjoying GSP privileges have been consistently cited for grave labour standards violations by the ILO but have not faced similar actions.²⁶

25. Regulation (EU) No. 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008, available at http://trade.ec.europa.eu/doclib/docs/2012/october/tradoc_150025.pdf

26. See: Jan Orbie and Lisa Tortell, The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?, *European Foreign Affairs Review* 14: 663–681, 2009 http://www.euce.org/eusa2009/papers/orbie_071.pdf. Citing examples of Colombia, Guatemala and Venezuela as countries facing serious and consistent allegations in ILO reports but continuing to enjoy EU GSP privileges.

Box 5.2

The Rana Plaza tragedy and Bangladesh's GSP privileges

In April 2013, an eight storey commercial building that was the workplace of thousands of garment workers collapsed killing 1,129 people and injuring 2515. The tragedy reverberated around the world creating pressure on developed country governments as well as brand name companies with manufacturing orders in Bangladesh to act. The response of the US and the EU was to invoke Bangladesh's GSP privileges. On 30 April 2013, a joint statement by Catherine Ashton, EU High Representative Foreign Affairs and Security Policy and the Commissioner for Trade, Karel De Gucht called on Bangladeshi authorities to ensure compliance with the ILO CLS and Conventions immediately. According to the statement, the "EU is presently considering appropriate action, including through the Generalised System of Preferences (GSP) – through which Bangladesh currently receives duty-free and quota-free access to the EU market under the 'Everything But Arms' scheme – in order to incentivise responsible management of supply chains involving developing countries." In July 2013, the ILO, EU and Bangladesh adopted a joint compact on garment factory safety. It committed all the parties to a number of time-bound actions, including reforming the Bangladesh Labour Law to strengthening workers' rights; improving building and fire safety by June 2014 and recruiting 200 additional inspectors by the end of 2013. Attempts by the Bangladesh government to term the compact with the EU and ILO a political initiative rather than a legal document were rebuffed by the EU Trade Commissioner who is reported to have stated, "the compact is a rulebook for Brussels to judge whether Bangladesh has implemented its commitments." In June 2013, the US suspended Bangladesh's GSP benefits and formulated an action plan for Bangladesh to have its preferences restored.

The mixed results of such pressures is noted both by the US and EU in their reviews of Bangladesh's progress. Thus, the US review noted progress in some areas including that "...the Government of Bangladesh has registered approximately 120 new unions in the garment sector, has dropped pending criminal charges against labor activists, is cooperating with the private sector initiatives, the "Alliance" and the "Accord", on plans to inspect the thousands of factories in the ready-made garment (RMG) sector, and has reportedly suspended operations in approximately 20 factories found to be in imminent danger of structural failure or other catastrophic accident. However...the government is behind schedule in carry-

ing out many hundreds of critical safety inspections in garment factories, as well as meeting its commitments to hire additional inspectors. The government has also been slow to respond to continuing reports of harassment and violence against labor activists.” A labour law reform required by both the EU and the US was found to be inadequate by the ILO as, “falling short of several important steps called for by the ILO supervisory system to bring the law into conformity with ratified international labour standards.”

The use of the GSP to pressure Bangladesh drew sharp reactions including from UNCTAD. Dr. Supachai Panitchpakdi, Secretary-General of UNCTAD stated, “labour rights and standards are something very sensitive to all developing and least developed countries at the World Trade Organization and when countries try to impose labour standards they are just distracting from the WTO’s authority...If trade majors want to impose labour rights, they should bring the issue to the WTO...they have been doing this with Cambodia and now Bangladesh and...must look at the business practices of their retail and wholesale industry because the problem with global value chains is the way they are exploiting the sweat shops in poor countries which are providing cheap labour.”

Indeed the brands were only encouraged by the European Commission to voluntarily adhere to internationally recognized Corporate Social Responsibility guidelines. While some brands contributed funds for improving safety of garment factories in Bangladesh, few appear to have stepped forward to pick up their share of the 77% wage increase announced in Bangladesh. Local garment manufacturers are therefore not paying the increase, are demoting workers to avoid the wage increase and where they have attempted to include this in the cost of production, have reported some brands telling them the wage increase was their problem.

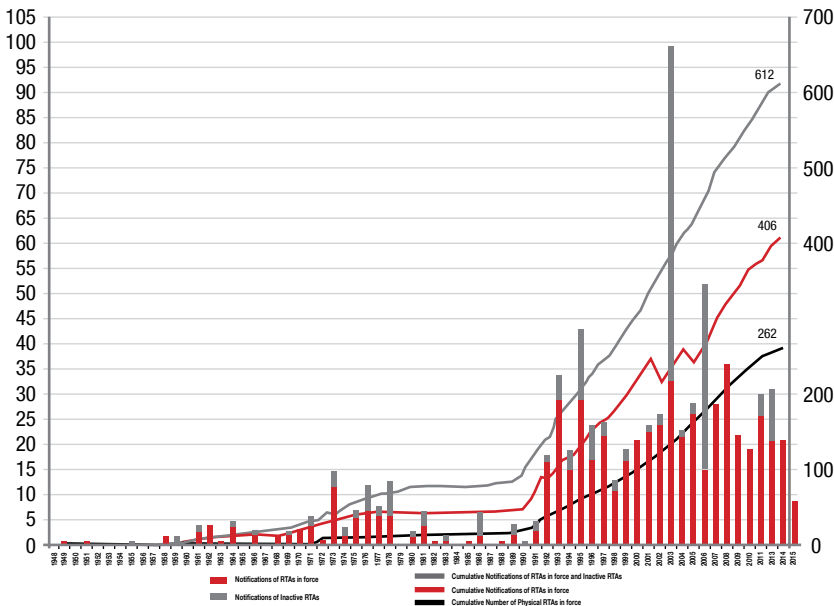
References: (1) Joint Statement by HR/VP Catherine Ashton and EU Trade Commissioner Karel De Gucht following the recent building collapse in Bangladesh, European Commission, Brussels, 30 April 2013; (2) GSP Action Plan Review Finds More Needs to be Done to Improve Worker Rights and Worker Safety in Bangladesh, USTR, 7 February 2014; (3) Ravi Kant Devarakonda, New Labour Norms could hurt Bangladesh, Interpress Service, 13 July 2013; (4) EU Trade Commissioner De Gucht launches Global Sustainability Compact in response to Bangladesh tragedy, European Commission, Brussels, 8 July 2013. (5) European Commission, Bangladesh Sustainability Compact Technical Status Report 24 April 2015; (6) Rising wages squeeze Bangladesh garment makers as factories await upgrades, 13 April 2014; (7) Revised Bangladesh labour law ‘falls short’ of international standards – UN agency, UN News Agency, 22 July 2013

5.3 Free Trade Agreements

There are nearly 400 trade arrangements and agreements outside of the WTO framework in force and many more being negotiated (see Figure 5.2). Often referred to as free trade agreements (FTAs), most agreements in force tend to be bilateral or between two countries. However, recent trends have shown a shift towards plurilateral or “mega” FTAs being negotiated among several developed and developing countries.

Where developed countries failed in their attempts to link trade and labour standards at the WTO, FTAs have served as their main platform to in establishing this link. As of June 2013, labour provisions were included in 58 trade agreements, a significant increase from 21 in 2005 and 4 in 1995.²⁷ In particular, FTA negotiations led by the US and EU feature the incorporation of labour standards. A 2011 ILO study of trends in labour provisions in FTAs found considerable variance in these standards

Figure 5. 2 Evolution of Regional Trade Agreements in the World 1948-2015



Note: Notifications of RTAs: goods, services & accessions to an RTA are counted separately. Physical RTAs: goods, services & accessions to an RTA are counted together.

Source : Reproduced from “Regional Trade Agreements: Facts and Figures”, World Trade Organisation.

27. Social dimensions of free trade agreements / International Labour Organization; International Institute for Labour Studies. - Geneva: ILO, 2013. Revised edition 2015, p. 19

likely based on the amount of resistance of the developing country partner in the negotiations. Thus, labour standards ranged from specific commitments to implement certain Core Labour Standards, general commitments to abide by ILO conventions or “internationally recognized workers rights” or enforce labour standards under national laws.²⁸

5.3.1 US Free Trade Agreements

The United States of America (US) has free trade agreements in existence with 20 countries (See map). The US has also led negotiations of two mega-FTAs. Of these, the conclusion of the Trans-Pacific Partnership Agreement (TPPA) involving 11 countries was announced on 5 October 2015 (See Box 5.3). The ongoing Transatlantic Trade and Investment Partnership (TTIP) involves the US and the European Union which comprises 27 European countries.

Figure 5.3 Countries That Have Free-trade Agreement (FTAs) with the United States



Source : Reproduced from United States Trade Representative, Status of U.S. Free Trade Agreements as of July 2013

28. Franz Christian Ebert Anne Posthuma, Labour provisions in trade arrangements: Current Trends and Perspectives, International Institute of Labour Studies, International Labour Organisation, 2011, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_192807.pdf

The US was the most vocal proponent for the inclusion of labour standards in the WTO Agreements. Labour standards clauses feature in all US FTAs since 1994 onwards starting with the North American Agreement on Labour Cooperation (NAALC), a side agreement to the North American Free Trade Agreement (NAFTA). The provisions in US FTAs relating to labour are fairly detailed and establish institutional mechanisms for cooperation. However these clauses have been varied both in terms of the content of the labour standards included and the enforcement mechanisms prescribed to address violations. (See Table 5.1)

Variations in the labour clauses in US FTAs include their scope, the level of obligation and the enforcement mechanisms which range from standard dispute resolution accompanied by trade sanctions to payments of fines into a labour welfare fund. For instance the scope of the obligations in the US-Chile and the US-Colombia FTAs are strikingly different with the former containing aspirational provisions while the obligations in the case of the latter are mandatory. (See Table 5.2)

The institutional mechanisms established under the US FTAs have received several complaints of labour standards violations. However, these cases have yet to result in any concrete action from any of the governments involved. In the case of the NAALC, for instance, a review of cases found that “between 1994 and 2006, there were 38 complaints filed under NAALC: 2 against Canada, 11 against the U.S., and 24 against Mexico. Thirty-two of the 38 complaints completed all the levels of evaluation for which they were eligible, 22 of which were accepted for review. From 2006 to 2009, no complaints were filed. In January of 2010, there was one complaint levied against Mexico. Of the 22 cases that reached Ministerial Consultations, nine resulted in no further action, 3 in outreach, 6 in policy change, and 4 in firm level redress. No case has ever passed beyond Ministerial Consultations.”²⁹

A more recent case to consider is that of the US-Colombia FTA, cited above for having stricter provisions related to labour standards than some other US FTAs. Concerns over labour standards and violence against trade unions saw significant protest and opposition to the US-Colombia FTA. As a result, the US government put in place a specific plan of action to which Colombia committed to address labour violations.

29. NAFTA, Labor, and Immigration: A Package Deal, International Labour Rights Forum, April 19, 2011, available at <http://www.laborrights.org/blog/201104/nafta-labor-and-immigration-package-deal>

Table 5. 1 Evolution of Labour Provisions in US Trade Agreements from 1994-2009

Name and date of entry into force of the trade agreements	Reference to ILO instruments	Scope and content of labour provisions	Enforcement mechanism
NAFTA/NAALC (1994)	No	Strive for a high level of national labour law in the area of CLS, as well as minimum working conditions** and migrant rights Enforcement of labour laws in these areas***	Fines up to US\$ 20 million/0.07 of total trade volume (goods) (only in the case of non-application of national labour law in the field of child labour, occupational safety and health and minimum wage)
Trade Agreement with Jordan (2001)	ILO 1988 Declaration	“Strive to ensure” CLS (except non-discrimination) and minimum working conditions Enforcement of labour laws in these areas** No encouragement of trade or foreign direct investment through weakening labour laws	Regular trade sanctions under the regular dispute settlement mechanism of the agreement
Trade Agreements with Chile (2004), Singapore (2004), Australia (2005), Morocco (2006), Bahrain (2006), Central America-Dominican Republic (CAFTA-DR) 2006, Oman (2009)	ILO 1988 Declaration, Convention No. 182**	“Strive to ensure” CLS (except non-discrimination) and minimum working conditions Enforcement of labour laws in these areas** No encouragement of trade or investment through weakening of labour law in contravention of the labour principles contained in the agreement	Fines up to US\$15 million in the in the case of non-application of national labour law in these areas (to be paid in to a special labour rights fund)
Trade Agreements with Peru (2009), Panama, Colombia and the Republic of Korea (not yet into force)		Ensure respect of CLS as contained in the ILO Declaration, and enforcement of related national laws*** No weakening of labour law in a manner affecting trade or investment if this contravenes CLS	Regular trade sanctions monetary assessment under the regular dispute settlement mechanism of the agreement

Notes:

* Promoting compliance with Convention No.182 mentioned as a possible priority for labour cooperation. The United states - Australia Trade Agreement does not refer to this convention.

** For the purpose of this table, the term “Minimum working conditions” is used to describe minimum standards regarding hours of work, minimum wages and occupational safety and health.

*** This applies to the extent that it “affects trade” or is (in the case of NAALC) “trade-related”.

Source: Reproduced from Franz Christian Ebert Anne Posthuma, “Labour Provisions in Trade Arrangements: Current Trends and Perspectives”, *International Institute of Labour Studies, International Labour Organisation, 2011*

Table 5. 2 Comparison of Labour Clauses in US-Chile and US-Colombia Free Trade Agreements

US-Chile FTA 2004	US-Colombia FTA 2011
<p>Article 18.1: Statement of Shared Commitment</p> <p>1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 18.8 are recognized and protected by its domestic law.</p> <p>2. Recognizing the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws, each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights set forth in Article 18.8 and shall strive to improve those standards in that light.</p>	<p>Article 17.2: Fundamental Labor Rights</p> <p>1. Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration):^{1 2}</p> <ul style="list-style-type: none"> (a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of compulsory or forced labor; (d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and (e) the elimination of discrimination in respect of employment and occupation.
<p>2. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in Article 18.8 as an encouragement for trade with the other Party, or as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.</p>	<p>2. Neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing paragraph 1 in a manner affecting trade or investment between the Parties, where the waiver or derogation would be inconsistent with a fundamental right set out in that paragraph.</p>

The effectiveness of this plan has been questioned with one public interest group reporting that, “One year after implementation of the FTA and two years after the Obama administration announced a Labor Action Plan with Colombia to improve its labor rights protections, Colombia remains the world’s deadliest place to be a union member. The number of unionists violently forced to flee their homes jumped 76 percent in 2012 compared to 2011, before the FTA took effect. Death threats against

unionists have remained rampant, with 471 unionists receiving death threats in the year after the U.S.-Colombia FTA Labor Action Plan was launched – exactly the same yearly number as in the two years before the Plan, according to ENS. At least 20 Colombian unionists were assassinated in 2012 according to ENS data, while the International Trade Union Confederation (ITUC) reported 35 assassinations last year.”³⁰ The US-Colombia FTA was strongly opposed by both US and Colombian trade unions.³¹

A departure from the US FTA template relating to labour standards was reflected in the US-Cambodia Textiles Agreement of 1999 which adopted an incentive based approach to the improvement of workers conditions in factories in Cambodia. While the 2011 ILO study observes that most literature reviewing the working of the Agreement found positive impacts,³² the recent mass actions by garment workers in Cambodia and the resultant shooting and death of a female garment worker belies the extent of the lasting impact of the provisions of the Agreement even though the mechanism established by it survived the expiry of the agreement.³³ A recent ILO-ADB report notes that Cambodia’s, “...minimum wage applies only to the garment and footwear sector, which is currently the largest private sector employer. Weaknesses of the minimum wage setting institutions have led to large-scale strikes and violence in the recent past. However, in Cambodia’s large unionized hotels and airports, wages are fixed entirely through collective bargaining. The process has been largely peaceful and productive; strikes have only occurred in instances of alleged anti-union discrimination.”³⁴

-
30. On One Year Anniversary of U.S. Free Trade Agreement, Colombia Remains Deadliest Country for Union Members, Public Citizen, 15 May 2013 <http://www.citizen.org/documents/press-release-colombia-fta-one-year-anniversary.pdf>
 31. Colombia, AFL-CIO America’s Trade Unions, Undated, available at <http://www.aflcio.org/Issues/Trade/Colombia>
 32. Franz Christian Ebert Anne Posthuma, Labour provisions in trade arrangements: Current Trends and Perspectives, International Institute of Labour Studies, International Labour Organisation, 2011, available at http://www.ilo.org/wemsp5/groups/public/---dgreports/---inst/documents/publication/wcms_192807.pdf
 33. “Workers Rights are Human Rights: The Garment Industry in Cambodia,” Policy Brief, Cambodian Centre for Human Rights, January 2014, available at http://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR_Policy%20Brief%2000n%20Garment%20Industry_%28January%202014%29_eng.pdf
 34. ADB and ILO, ASEAN Community 2015: Managing integration for better jobs and shared prosperity, 2014

Labour Standards in the Trans-Pacific Partnership Agreement

In October 2015, the conclusion of the US-led Trans-Pacific Partnership Agreement (TPPA) was announced. The TPPA involves 11 other countries: Chile, New Zealand, Singapore, Brunei Darussalam, Australia, Malaysia, Peru, Viet Nam, Canada, Japan and Mexico. The TPPA is a comprehensive FTA covering goods, services, intellectual property, agriculture and investment.

Despite the announcement of its conclusion, the text of the TPPA remains secret. The United States Trade Representative (USTR) has however stated that the following provisions feature in the labour chapter in the TPPA:

- “TPP Parties agree to adopt and maintain in their laws and practices the fundamental labour rights as recognized in the ILO 1998 Declaration, namely freedom of association and the right to collective bargaining; elimination of forced labour; abolition of child labour and a prohibition on the worst forms of child labour; and elimination of discrimination in employment.
- TPP Parties have agreed to have laws governing minimum wages, hours of work, and occupational safety and health including in export processing zones.
- The Parties agree not to waive or derogate from laws implementing fundamental labour rights in order to attract trade or investment, and not to fail to effectively enforce their labour laws in a sustained or recurring pattern that would affect trade or investment between the TPP Parties.
- Each of the 12 TPP Parties commits to ensure access to fair, equitable and transparent administrative and judicial proceedings and to provide effective remedies for violations of its labour laws. They also agree to public participation in implementation of the Labour chapter, including establishing mechanisms to obtain public input.
- The commitments on labour are subject to the dispute settlement procedures laid out in the Dispute Settlement chapter.
- The Labour chapter also establishes a labour dialogue that Parties may choose to use to try to resolve any labour issue between them that arises under the chapter.
- The Labour chapter establishes a mechanism for cooperation on labour issues, including opportunities for stakeholder input in identifying areas of cooperation and participation, as appropriate and jointly agreed, in cooperative activities.”

Trade Unions in the US have been vocal in their opposition to the TPPA during the negotiations and after the announcement of their conclusion. They point out that comprehensive proposals related to labour were not taken on board and that investment protection provisions allow corporations to sue governments under the TPPA while workers would have to wait for their governments to intervene to take up grievances through the dispute resolution mechanism. This model resulted in only one complaint filed under CAFTA against Guatemala with no final decision after 7 years.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) has called the TPPA in its current form “unacceptable” and pointed out that labour’s “so-called seat” at the negotiating table and their advice to the USTR in the negotiations was largely side-lined. Outlining their opposition to the TPPA, the AFL-CIO has stated, “Global enterprises seeking to suppress wages, pollute the air and water and violate fundamental labor rights must no longer be the architects of U.S. trade policy. Instead, trade policies must empower workers to organize and act collectively to ensure their work is safe, secure and fairly paid; that they have adequate access to training, education, healthcare and housing; and that their elected representatives work to advance the common good rather than substituting corporate interests in its place and hoping for some trickle-down benefits.”

According to the International Trade Union Confederation (ITUC):

“Although it seems that a labour chapter with a certain degree of enforceability will be part of the TPP, if TPP is ever agreed, we felt that this would not be enough to endorse the TPP. Indeed, the TPP establishes an ISDS, stricter IP protection, (de)regulatory coherence and other concerns explained below in our release and the letter. Besides, the labour chapter (as it stands now on the negotiation table) does not cover all core labour standards and sub-national labour law is not within the scope of the agreement. More to this, practical experience has shown that governments have been reluctant to use labour chapters. This is not to say that we do not support the labour chapter, but that TPP’s and any other future trade agreement’s impact on workers need to be considered as a whole”.

To understand the TPP’s impact on workers as a whole, the example of Vietnam’s position in the TPP may be considered. Vietnam is a key garment producing country that generates serious concerns about labour welfare. In the TPP negotiations, apart from what is likely to be a strict labour standards enforcement chapter, the US is also proposing the Yarn Forward Rule as part of the rules of origin. This rule requires that all aspects of garment production including yarn and fabric production as well as cutting and sewing come from the originating country. In Vietnam, the overwhelming majority of textiles come from Taiwan and China. A US concession that rules of origin can cumulate across all TPP members does not help the situation for Vietnam as its two major textile suppliers are not in the TPP negotiations. Stepping away from the potential specific sectoral problems, the TPP also requires Vietnam to impose intellectual property standards far in excess of what the WTO requires which is likely to have a considerable detrimental impact on access to medicines and public health in the country. A recently released study estimates that the proportion of HIV-positive patients on ARV treatment in Vietnam would be halved from the current 68% to 30% if the US TPP proposals on intellectual property come into effect.

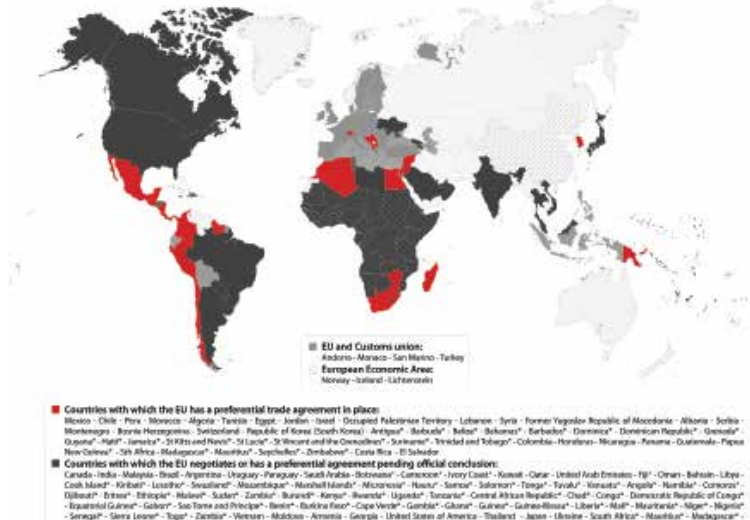
References: (1) United States Trade Representative, Summary of the Trans-Pacific Partnership Agreement, 5 October 2015; (2) The fight for better trade policy isn’t over, AFL-CIO, 29 July 2015; (3) Labor’s So-Called “Seat at the Table” at TPP Negotiations, AFL-CIO, undated; (4) Pacific Trade Agreement a recipe for corporate greed, ITUC, Press Release, 6 October 2015; (5) TPP Trade Talks Must Stop, ITUC, Press Release, 11 November 2014; (6) David Vanzetti and Pham LanHuong: ‘Rules of origin, labour standards and the TPP’. 17th Annual Conference on Global Economic Analysis June 18-20, 2014; (7) Moir et al, Assessing the Impact of Alternative Patent Systems on the Cost of Health Care: The TPPA and HIV Treatment in Vietnam, 2014

5.3.2 EU Free Trade Agreements

The EU has trade agreements with nearly 50 countries. (See Figure 5.4). Unlike the US, the EU’s approach to labour clauses in its FTAs relies primarily on co-operation. (See Table 5.3). The EU FTA with the CARIFORUM countries is considered to have the most extensive labour standards provisions of any of the EU FTAs in force. While the commitments under the FTA are largely affirmational, the dispute resolution mechanism proposed has some notable elements including consultation with the ILO in case of differences in interpretation. The FTA also refers to the ILO programme on “decent work.”

As explained by the European Commission, “The decent work agenda is based on an integrated approach covering productive and freely chosen work, rights at work, social protection, the social dialogue and the inclusion of the gender dimension. It therefore encompasses the “core labour standards” which form the minimum basis of social rights established by the international community and whose implementation the Union already supports. But the decent work agenda implies more than that: it

Figure 5. 4 EU Free Trade Agreements



Source: Reproduced from: “The EU’s bilateral trade and investment agreements: where are we?” Memo, European Commission, Brussels, 3 December 2013)

35. “The EU’s bilateral trade and investment agreements: where are we?” Memo, European Commission, Brussels, 3 December 2013, available at http://trade.ec.europa.eu/doclib/docs/2012/november/tradoc_150129.pdf

seeks not only to guarantee a minimum basis of rights but also to tailor development to values and principles of action and governance which combine economic competitiveness with social justice.”³⁶ The introduction of the agenda for decent work thus potentially expands the scope of labour standards beyond the CLS.

In addition the EU-CARIFORUM FTA contains a provision directly addressing the “behaviour of investors” in connection with labour standards. Thus Article 72 of this Agreement states:

The EC Party and the Signatory CARIFORUM States shall cooperate and take, within their own respective territories, such measures as may be necessary, inter alia, through domestic legislation, to ensure that:

[...]

(b) Investors act in accordance with core labour standards as required by the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, 1998, to which the EC Party and the Signatory CARIFORUM States are parties.

(c) Investors do not manage or operate their investments in a manner that circumvents international environmental or labour obligations arising from agreements to which the EC Party and the Signatory CARIFORUM States are parties...

In May 2015, the text of the EU-Singapore FTA was released to the public.³⁷ The Trade and Sustainable Development chapter of the FTA contains detailed provisions related to labour. Unlike the EU-CARIFORUM FTA, this FTA only makes reference to the effective implementation of the principles concerning freedom of association; collective bargaining, abolition of forced labour; elimination of discrimination and the effective abolition of child labour. This is likely because Singapore is not signatory to all the ILO fundamental conventions. A specific note provides that any reference to labour includes a reference to “the decent work agenda.” As with other EU FTAs, the emphasis remains on co-operation and consultation and dispute resolution is not applicable to the provisions on labour. The chapter sets up a government con-

36. Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - Promoting decent work for all - The EU contribution to the implementation of the decent work agenda in the world {SEC(2006) 643} /* COM/2006/0249 final */, <http://eur-lex.europa.eu/legal-content/EN/TEXT/HTML/?uri=CELEX:52006DC0249&from=EN>

37. European Commission, EU-Singapore Free Trade Agreement. Authentic text as of May 2015, Brussels, 29 June 2015, available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=961>

Table 5. 3 Different Types of Labour Provisions in EU Trade Agreements

Name and date of entry into force of the trade agreements	Reference to ILO instruments	Scope of provisions
Trade Agreements with the Palestinian Authority (1997), Morocco (2000), Israel (2000) Algeria (2005), Cameroon (2009)	No	Cooperation and/or dialogue on selected issues related to labour standards
Trade Agreement with Chile (2003)	Fundamental Conventions	Commitment to give priority to the respect for basic social rights, including through the promotion of ILO Fundamental Conventions and social dialogue Cooperation on various labour and social issues
Trade Agreements with South Africa (2000), ACP Countries (2003)*	Fundamental Conventions	Reaffirms the parties' commitment to the ILO's CLS Cooperation on various labour and/or social issues
Trade Agreements with the CARIFORUM Countries (2008)	1998 Declaration, Fundamental Conventions	Commitment to (i) ensuring compliance with ILO CLS, (ii) not weakening or failing to apply national labour legislation to encourage trade or investment Cooperation and monitoring framework with stakeholder participation, optional ILO consultation Framework for amicable solution of difference-if the dispute cannot be solved through consultation, appropriate measures other than on trade sanctions may be taken (e.g. readjustment of cooperation activities)
<p>Notes: * Thi agreement has not been notified to the WTO and is therefore not taken into account in the above statistics Source: ILS based on information collected on EU trade agreements.</p>		

Source: Reproduced from Franz Christian Ebert Anne Posthuma, Labour provisions in trade arrangements: Current Trends and Perspectives, International Institute of Labour Studies, International Labour Organisation, 2011

sultation mechanism as well as a Panel of Experts to resolve any issues relating to the labour provisions. It also provides for stakeholder consultations. The EU FTAs with CARIFORUM and Singapore indicate the diversity of provisions these agreements contain with regard to labour standards.

5.3.3. Labour clauses in FTAs in South and South-East Asia

As countries in South and South East Asia expand their trade negotiations with the EU and the US, labour clauses are gradually making their way into the trade framework in the region. The EU-Singapore FTA and now the TPP that includes Malaysia, Vietnam, Singapore, Japan and Brunei are examples. The ILO study also finds that FTAs concluded by some countries in the region include references to ILO Conventions or to some labour standards. (See Table 5.4) Aside from these FTAs, language referring more broadly to standards of living is found in the preambular language of the China-Pakistan FTA which states that the Agreement:

“should be implemented with a view toward raising the standard of living, creating new job opportunities, and promoting sustainable development in a manner consistent with environmental protection and conservation”.

Table 5. 4 Labour Provisions in Trade Agreements Concluded By Asian Countries and Areas

Name and entry into force of the trade agreement	Reference to ILO instruments	Commitment to certain minimum labour standards	Not encourage trade or investment through weakening labour laws	Cooperation on labour issues	Specific institutions	Consultation mechanism in case of differences
New Zealand-Thailand trade agreement* (2005)	1998 Declaration	Yes	Yes	Yes	Labour Committee	Yes
Chile-China trade agreement* (2003)	No**	No	No	Yes	No	No
Trans-Pacific Partnership agreement* (2006)***	1998 Declaration	Yes	Yes	Yes	National contact points	Yes
New Zealand-China trade agreement* (2008)	1998 Declaration	No	Yes	Yes	No (but senior official meetings)	No (but discussions of labour issues of mutual concern possible)
Japan-Philippines trade agreement (2008)	No	No	Yes	No	No	Yes***
Taiwan, China-Nicaragua trade agreement (2008)	No	Yes	Yes	Yes	Labours Affairs Committee	Yes***
Japan-Switzerland trade agreement* (2009)	No	No	Yes	No	No	Yes***
New Zealand-China trade agreement* (to enter into force in 2011)	1998 Declaration	No	Yes	Yes	National contact points	Yes
<p>The labour provisions are contained in a labour side arrangement or memorandum of understanding.</p> <p>** However, the preamble of this agreement refers to objectives of the ILO. *** The labour provisions of this agreement are subject to the regular dispute settlement mechanism, which may as a last resort entail the suspension of trade benefits.42 **** Parties to this Agreement are: Brunei Darussalam, Chile, New Zealand, and Singapore. Source: ILS, based on information collected on Asian trade agreements.</p>						

Source: Reproduced from Franz Christian Ebert Anne Posthuma, Labour provisions in trade arrangements: Current Trends and Perspectives, International Institute of Labour Studies, International Labour Organisation, 2011

5.3.4 Human Rights clauses in FTAs and labour standards

As noted above, labour clauses in current FTAs are extremely diverse both in coverage and in enforcement. Some countries (predominantly developed countries) now also include human rights related language in their FTAs. Often this language is preambular and it remains to be seen how it would be enforced. A key example is that of the EU-Colombia FTA whose preamble states,

“Respect for democratic principles and fundamental human rights, as laid down in the Universal Declaration of Human Rights, and for the principle of the rule of law, underpins the internal and international policies of the Parties. Respect for these principles constitutes an essential element of this Agreement.”

Although this has yet to be invoked, it is worth noting that the European Commission is in agreement with the view that human rights subsume the ILO Conventions. Discussion within the EU on the effect of such clauses led to a 2012 European Parliament Resolution requiring the establishment of a transparent, time-bound, results-based and binding road map on human, environmental and labour rights, linked to the entry into force of the draft EU-Colombia/Peru FTA, the swift setting-up of an independent civil society group to monitor the implementation and impact of the FTA on human rights and democratic principles and the development of responsible business practices in the application of the FTA.³⁸

5.4 Bilateral Investment Treaties

Nearly all developing countries have signed bilateral investment treaties (BITs) with developed countries. Globally almost 3000 BITs and other investment agreements are currently in force.³⁹ These BITs were originally aimed at protecting foreign investors from expropriation or nationalisation of their investments. The protection of investment is achieved primarily through disputes brought by investors directly against governments claiming compensation in specialised tribunals like the World

38. European Parliament, Resolution on the EU trade agreement with Colombia and Peru, 2012/2628(RSP), 13 June 2012

39. UNCTAD, World Investment Report, 2014, p. 115 available at http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf. See also generally, UNCTAD, International Investment Agreements Navigator, Investment Policy Hub at <http://investmentpolicyhub.unctad.org/IIA>

Bank's International Centre for the Settlement of Investment Disputes (ICSID), the UN Commission on International Trade Law (UNCITRAL), the Permanent Court of Arbitration at the Hague or in chambers of commerce. These are known as Investor-State Dispute Settlement (ISDS) cases. These provisions relating to investor protection also feature in FTAs in investment chapters.

Over time, both the investment protection provisions in BITs and FTAs and their interpretation have greatly expanded the meaning and scope of expropriation and other protections for investors to the extent that social and environmental policies are regularly, successfully, challenged by foreign investors either as indirect expropriation or as a violation of the "fair and equitable treatment" standard in these BITs.⁴⁰ As in the case of the WTO, BITs also feature national treatment and most favoured nation clauses. In terms of enforcement, BITs pose a greater challenge to governments as they allow investors to directly sue governments and awards are often to the tune of millions and even billions of dollars⁴¹ while legal fees can be in hundreds of thousands of dollars.⁴² A notice of an ISDS dispute, therefore, often has a sufficiently chilling effect on governments.⁴³ WTO disputes are between governments and often may not be pursued or may be settled out of diplomatic considerations. Private businesses face no such constraints and ISDS cases have increased dramatically in the past decade. (See Figure 5.5)⁴⁴

In the context of the AFW, a recent case of a French company suing the government of Egypt for, among other things, raising the minimum wage may be relevant to consider. A key feature of ISDS disputes is that they tend to be secret and in the case of this particular dispute there is very little public information. The Veolia group, a French conglomerate has reportedly challenged the increase in monthly minimum wages in Egypt from \$56 to \$99. The concession was won by workers in the 2011

40. See UNCTAD, Recent Developments In Investor State Dispute Settlement (ISDS), IIA Issues Note, No. 1, April 2014, available at http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3_en.pdf

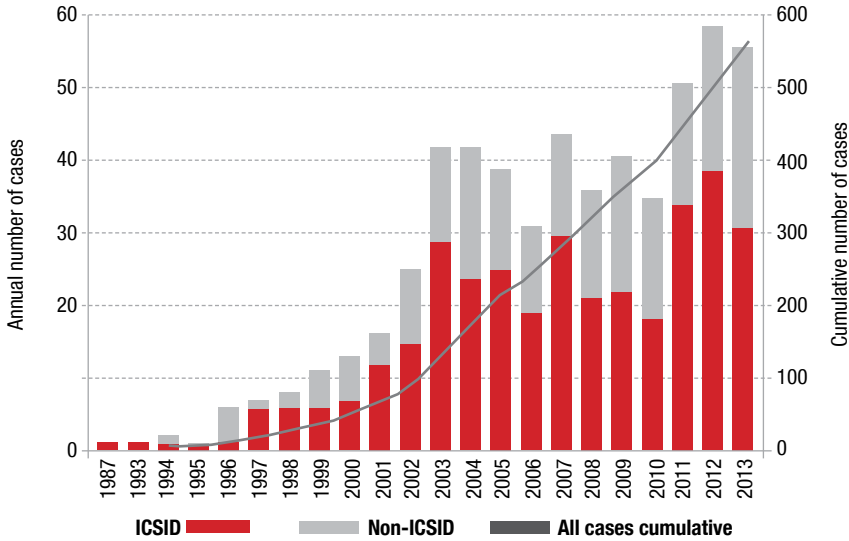
41. Martin Dietrich Brauch, Yukos v. Russia: Issues and legal reasoning behind US\$50 billion awards, Investment Treaty News, International Institute for Sustainable Development, 4 September 2014 available at <https://www.iisd.org/itm/2014/09/04/yukos-v-russia-issues-and-legal-reasoning-behind-us50-billion-awards/>

42. For instance, in March 2015, Bill Gates and Michael Bloomberg launched an anti-tobacco litigation fund to raise money to help developing countries with legal fees in ISDS cases filed by multinational tobacco companies against tobacco control measures. See BETSY MCKAY, Bloomberg, Gates Launch Antitobacco Fund, Wall Street Journal, 18 March 2015, available at <http://www.wsj.com/articles/bloomberg-gates-launch-antitobacco-fund-1426703947>

43. Public Citizen, Case Studies: Investor-State Attacks on Public Interest Policies, undated, available at <http://www.citizen.org/documents/egregious-investor-state-attacks-case-studies.pdf>

44. UNCTAD, World Investment Report, 2014, p. 124 available at http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf

Figure 5. 5 Known Investor-State Dispute Settlement (ISDS) Cases



Source: Reproduced from UNCTAD, “World Investment Report”, 2014, p. 124)
 Note: Due to new information becoming available for 2012 and earlier years the number of known ISDS cases has been revised.

Arab spring. The company however claims that Egypt’s new labour legislation violates undertakings made by the city of Alexandria under their public-private partnership agreement on waste management⁴⁵ that Veolia argues required the government to compensate it for the increase in the minimum wage.⁴⁶

This example apart, the protection given to investors in BITs is premised on an actual investment. In the context of GVCs, brands may have no investments at all in the producing country and no stakes in their affiliates or local partners; in such cases BITs may not present a challenge to the AFW. However it may be noted that the definition of investment in some BITs can be broad and most include intellectual property and technical processes in this definition. Where there is a possibility that some form of investment exists, other provisions in the BITs may preclude a dispute

45. Breville and Boulard, The Injustice Industry, Le Monde Diplomatique, English Edition, June 2014.
 46. Jonathan Bonnitcha, Political Change vs. Legal Stability: Problems Arising from the Application of Investment Treaties in Transitions from Authoritarian Rule, Investment Treaty News, International Institute for Sustainable Development, Issue 1, Vol. 6, February 2015, p. 6 available at <https://www.iisd.org/sites/default/files/publications/iisd-itn-february-2015-en.pdf>

such as exemptions from challenges to taxes or those preserving the right to regulate of governments. However, one of the complications arising from the complex web of BITs relates to the MFN clause as a result of which an investor can argue that it should benefit from more favourable provisions in other BITs signed by the same country. This can complicate the situation with exemptions and the right to regulate, if these do not appear in all the BITs signed by a particular country.⁴⁷

Increasing concerns over the expansion of investor-state disputes and adverse rulings against governments have led to some countries like South Africa and Indonesia initiating steps to terminate their existing BITs⁴⁸ while others like Venezuela, Bolivia and Ecuador have exited from ISDS forums like ICSID.⁴⁹ Other countries have proposed changes through model BITs. Labour standards related clauses are now appearing either as preambular language or as substantive provisions in these model BITs.⁵⁰ For instance the Austrian Model BIT⁵¹ drafted in 2008 was the first to include language on labour standards in the main treaty and not just the preamble:

“RECOGNISING that agreement upon the treatment to be accorded to investors and their investments will contribute to the efficient utilisation of economic resources, the creation of employment opportunities and the improvement of living standards;

REAFFIRMING the commitments under the 2006 Ministerial declaration of the UN Economic and Social Council of Full Employment and Decent Work,

COMMITTED to achieving these objectives in a manner consistent with the protection of health, safety, and the environment, and the promotion of internationally recognised labour standards;

47. See generally United Nations Conference On Trade And Development, Most-Favoured Nation Treatment, UNCTAD Series On Issues In International Investment Agreements II, United Nations, New York and Geneva, 2010 available at http://unctad.org/en/Docs/diaeia20101_en.pdf

48. Ben Bland and Shawn Donnan, Indonesia to terminate more than 60 bilateral investment treaties, Financial times, 26 March 2014

49. Sergey Ripinsky, Venezuela's Withdrawal From ICSID: What it Does and Does Not Achieve, Investment Treaty News, International Institute for Sustainable development, 13 April 2012

50. See generally Bertram Boie, Labour related provisions in international investment agreements, International Labour Organization 2012

51. Chester Brown (Ed.), Commentaries on Selected Model Investment Treaties, Oxford Commentaries on International Law, Oxford, 2013, p. 29. See also Vid Prislán and Ruben Zandvliet, Labor provisions in bilateral investment treaties: Does the new US Model BIT provide a template for the future?, Columbia FDI Perspectives, No. 92 April 1, 2013

ACKNOWLEDGING that investment agreements and multilateral agreements on the protection of environment, human rights or labour rights are meant to foster global sustainable development and that any possible inconsistencies there out should be resolved without relaxation of standards of protection.”

ARTICLE 5

Investment and Labour

(1) The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labour laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labour rights referred to in paragraph 2 as an encouragement for the establishment, acquisition, expansion, or retention of an investment in its territory.

(2) For the purposes of this Article, labour laws“ means each Party’s statutes or regulations, that are directly related to the following internationally recognized labour rights:

- (a) the right of association;
- (b) the right to organize and to bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labour;
- (d) labour protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labour, and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”

The extent to which such language would protect a government from an investor dispute in relation to its labour laws remains to be seen. In particular it may be noted that this language is specific to not weakening or reducing labour law protections. The provision is silent about situations where a government increases labour law protections such as an increase in the minimum wage.⁵²

52. For a detailed critique of the Austrian Model BIT’s labour provisions, see Nathalie Bernasconi-Osterwalder and Lise Johnson, Commentary to the Austrian Model Investment Treaty, International Institute for Sustainable Development, September 2011, available at http://www.iisd.org/pdf/2012/austrian_model_treaty.pdf

5.5. Developments in South and South East Asia

Several countries in the South and South East Asian region are negotiating trade agreements that are either likely to feature labour standards (as they are being negotiated with developed countries) or involve key garment producing countries from the region. Also of note are developments within regional trade and other groupings that may provide a platform for the AFW.

5.5.1 Ongoing FTA Negotiations

• The Regional Comprehensive Economic Partnership Agreement

The Regional Comprehensive Economic Partnership (RCEP) negotiations were formally launched in 2012. The RCEP negotiations comprise the 10 ASEAN nations and the 6 other countries: China, India, Japan, South Korea, Australia, and New Zealand. So far 9 rounds of negotiations⁵³ have been held and substantial negotiations are slated for completion by the end of 2015 with outstanding technical issues to be resolved as soon as possible in 2016. Although these negotiations feature several garment producing countries in the region, the RCEP negotiations do not include discussions on labour standards given the strong opposition to any links between labour and trade among several of the negotiating countries.

• EU FTA negotiations with South and South-East Asian countries

The EU has multiple active FTA negotiations in the region. In South-East Asia, the EU initially attempted to negotiate with ASEAN as a block but this was paused in 2009 and the EU decided to pursue bilateral FTAs instead. Among the ongoing negotiations, the EU-India FTA negotiations have attracted considerable controversy over the intellectual property chapter proposed by the EU. However, India has also taken a strong position against the labour provisions that the EU has proposed in the FTA.⁵⁴ This is likely to be the approach of several developing countries in the region as well. A list of the ongoing EU FTA negotiations and their status is in Table 5.5.

53. The Third Regional Comprehensive Economic Partnership (RCEP) Ministerial Meeting 24 August 2015, Kuala Lumpur, Malaysia, Joint Media Statement available at [http://www.miti.gov.my/miti/resources/Media%20Release/Media_Release_-_The_Third_Regional_Comprehensive_Economic_Partnership_\(RCEP\).pdf](http://www.miti.gov.my/miti/resources/Media%20Release/Media_Release_-_The_Third_Regional_Comprehensive_Economic_Partnership_(RCEP).pdf)

54. Labour pangs likely to hold up India-EU free-trade agreement, *Economic Times*, 7 November 2009, available at http://Articles.EconomicTimes.Indiatimes.Com/2009-11-07/News/28434950_1_India-Eu-Trade-India-And-Eu-India-Eu-Free-Trade-Agreement

Table 5.5 Status of Ongoing EU Free Trade Agreement Negotiations

	Status
with ASEAN:	Paused in 2009; decision to pursue bilateral FTAs
with Malaysia	7 th round, April 2012
with Vietnam	In-principle agreement announced in August 2015
with Thailand	3 rd round, December 2013; stalled due to military coup
with Japan	12 th round, September 2015
with India	Paused in 2015 by India; 11 rounds of negotiation completed

5.3.2 Regional Trade Groupings

• ASEAN

The Association of Southeast Asian Nations (ASEAN) comprises 10 countries in South-East Asia i.e. Indonesia, Malaysia, the Philippines, Singapore and Thailand, Brunei, Cambodia, Laos, Myanmar and Vietnam. ASEAN member countries have agreed to three plans of action related to labour: (a) ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers; (b) ASEAN Declaration on Strengthening Social Protection and (c) ASEAN Plan of Action on National Occupational Safety and Health Frameworks. In addition the ASEAN Labour Ministers Work Programme 2010-2015 has identified six broad priorities in the Work Programme: employment generation, labour market monitoring, labour mobility, social protection, tripartite cooperation and occupational safety and health. The ASEAN Labour Ministers Meeting is held every two years. Among the other structures within the ASEAN looking at labour issues that may be of interest to the AFW, the Working Group on Progressive Labour Practices to Enhance the Competitiveness of ASEAN (SLOM-WG) focuses its efforts on priority areas including Human Resource, Social Security, Industrial Relations, Skills Development and Networking, Skills Recognition, Labour Law, Labour Statistics, and Decent Work.

In 2014, a joint ILO-ADB report titled “ASEAN Community 2015: Managing integration for better jobs and shared prosperity,” highlights among other things issues related to wages among ASEAN countries and includes recommendations for the ASEAN governments to consider in relation to labour in preparation for the establishment of the ASEAN Economic Community. It notes that wages are the primary source of income for 117 million workers in ASEAN, that there are huge wage differences of \$119 per month in Lao to \$3547 in Singapore and recommends that ASEAN invest in stronger wage setting institutions as part of ASEAN Community of 2015. Highlighting

the importance of improving labour standards in the garment sector in Cambodia and Vietnam, the report states:

“In Cambodia and Viet Nam, upgrading skills in the garment and textile industry would help ensure the sector remains vital for exports and jobs. Many multinational clothing brands are making sourcing decisions based on improved product quality, labour productivity and compliance with labour standards. Enterprises that wish to remain competitive will therefore need specialized skills to allow them to supply more sophisticated apparel products and offer higher value-added services such as research, product design and marketing.”⁵⁵

As the governments of ASEAN move towards the launching of the ASEAN Economic Community towards the end of 2015, this may present an important opportunity for advocacy for the AFWA for a living wage for garment workers across the ASEAN region.

• **ASEAN + 3**

ASEAN plus Three (APT) cooperation between the 10 ASEAN countries and Japan, China and South Korea was launched in 1997 and aims to cover a broad set of issues including “cooperation in the areas of political and security; transnational crime; economic; finance; tourism; agriculture and forestry; energy; minerals; small and medium-sized enterprises; environment; rural development and poverty eradication; social welfare; youth; women; civil service; labour; culture and arts; information and media; education; science, technology, and innovation; and public health.” In the area of labour, the 8th ASEAN Plus Three Labour Ministers Meeting was held in 2014 in Myanmar where the Ministers exchanged views on issues related to social protection, industrial relations, etc. The next meeting is slated for 2016 in Lao PDR.

• **SAARC**

The South Asian Association for Regional Cooperation (SAARC) comprises India, Pakistan, Nepal, Bangladesh, Sri Lanka, Afghanistan, Maldives and Bhutan. In 2004, the SAARC countries signed the South Asian Free Trade Area (SAFTA) Agreement which came into effect in 2006. SAARC’s labour related initiatives are

55. ADB and ILO, ASEAN Community 2015: Managing integration for better jobs and shared prosperity, 2014

few with the most significant being the recent adoption of the Kathmandu Declaration in 2014 to improve the management of labour migration practices.⁵⁶ In 1989 trade unions from the SAARC region established the South Asia Regional Trade Union Council (SARTUC) but it has been considered to be largely defunct till recently. In 2013, SARTUC convened its statutory meeting in a sign of renewed activity.⁵⁷ In 2013, SARTUC and ILO jointly convened a meeting on labour migration bringing together trade unions from middle-eastern countries as well as from Bangladesh, Nepal, India, Pakistan and Sri Lanka.⁵⁸ At present trade union representation in SARTUC from Afghanistan, Maldives and Bhutan is absent. SARTUC may also offer the AFWA a platform for regional advocacy for a living wage for garment workers.

• APEC

Asia-Pacific Economic Co-operation is an economic forum whose primary goal is “to support sustainable economic growth and prosperity in the Asia-Pacific region.”⁵⁹ APEC comprises 21 member countries.⁶⁰ The objectives of the Labour and Social Protection Network (LSPN) which is part of the APEC Human Resources Development Working Group (HRDWG) are “to foster strong and flexible labour markets and strengthen social protection including social safety nets through evidence-based interventions, collaboration, technical co-operation and the provision of labour market and social protection information and analysis to address sustainable human resource development across APEC member economies.”⁶¹ Among the priority areas identified in the 2015-2018 work plan⁶² of the HRDWG (whose core mission is

56. Para 21, Kathmandu Declaration, Eighteenth SAARC Summit Kathmandu, Nepal 26-27 November 2014, available at http://mea.gov.in/Uploads/PublicationDocs/24375_EIGHTEENTH_SUMMIT_DECLARATION.pdf

57. SARTUC convenes its statutory Conference, New body forms, GEFONT News, 3 April 2013, available at http://www.gefont.org/activity_detail.php?id=1160. See also SARTUC's social media page for details of ongoing activities: <https://www.facebook.com/sartuc.org>

58. See also ILO, Implementation of SARTUC Migrant Labour Charter discussed, undated, available at http://www.ilo.org/dhaka/Whatwedo/Eventsandmeetings/WCMS_342119/lang--en/index.htm. In 2013, SATUC also organised with ITUC-AP, a South Asian Regional Meet on Sustainable Labour Market through Decent Work in South Asia. See NEPAL - SARTUC/ITUC-AP - Conference in South Asian Regional, Jathika, Sevaka, Sangamaya, undated available at http://www.jsstu.org/index.php?option=com_content&view=article&id=235:jss-womens-organization-recent-intaffairs&catid=46:jss-womens-organization-&Itemid=153

59. APEC, Mission Statement, Undated. Available at <http://www.apec.org/About-Us/About-APEC/Mission-Statement.aspx>

60. Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, The Philippines, Russia, Singapore, Chinese Taipei, Thailand, The United States and Viet Nam

61. APEC, Labour and Social Protection Network (LSPN), Undated, available at [http://hrd.apec.org/index.php/Labour_and_Social_Protection_Network_\(LSPN\)](http://hrd.apec.org/index.php/Labour_and_Social_Protection_Network_(LSPN))

62. Action Plan, APEC Human Resources Development Ministerial Meeting September 5-6, 2014, Ha Noi, Viet Nam, available at [http://www.dol.gov/ilab/media/pdf/APEC%20HRD%20Ministerial%20Action%20Plan%20\(2015-2018\)_clean.pdf](http://www.dol.gov/ilab/media/pdf/APEC%20HRD%20Ministerial%20Action%20Plan%20(2015-2018)_clean.pdf)

to share knowledge, experience, and skills to strengthen HRD) is “supporting inclusive and sustainable growth to address the social dimensions of globalization, including equality and needs of vulnerable groups.” The work plan and the Ministers Statement⁶³ for the 2014 APEC HRD Ministerial Meeting further calls on all economies to enhance the participation of women in the economy. AFWA may consider advocating with APEC and its working groups to recognize and address living wage requirements and other concerns in the garment industry in the region as part of their work plans.

• BIMSTEC

The Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) comprises Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand and was established on 6 June 1997. “The objective of building such an alliance was to harness shared and accelerated growth through mutual cooperation in different areas of common interests by mitigating the onslaught of globalization and by utilizing regional resources and geographical advantages.”⁶⁴ Among the specific objectives of BIMSTEC is cooperation in joint efforts to support and complement “... national development plans of Member States which result in tangible benefits to the people in raising their living standards, including generating employment...”⁶⁵ BIMSTEC’s secretariat was established in Dhaka in 2014. This regional grouping is sector driven and 14 sectors⁶⁶ have been identified for cooperation. The trade and investment sector appears to be a critical sector and in September 2015, BIMSTEC countries met to discuss potential FTA negotiations.⁶⁷ Labour is not specifically recognised in among the sectors for cooperation. With renewed interest in BIMSTEC, the AFWA could consider advocating with BIMSTEC countries on including discussions on living wages in the garment sector given that several of the countries in this grouping are garment producers and studies on trade potentialities in BIMSTEC have highlighted potential benefits to the textile and garment industries in these countries.⁶⁸

63. Joint Ministerial Statement, 2014 - 6th APEC Human Resources Development Ministerial Meeting - Asia-Pacific Economic Cooperation, Ha Noi, Viet Nam, 6 Sep 2014 - 17 Sep 2010, available at http://www.dol.gov/ilab/media/pdf/6th_APEC_Human_Resources_Development_Ministerial_Meeting_Hanoi%20Declaration.pdf

64. BIMSTEC, Background, Undated available at <http://www.bimstec.org/index.php?page=overview>

65. Ibid.

66. Trade, technology, energy, transport, tourism, fisheries, agriculture, public health, poverty alleviation, counter-terrorism, environment, culture, people to people contact and climate change.

67. Md. Rizwanul Islam, Wither BIMSTEC FTA, Daily Star, Bangladesh, 5 September 2015 available at <http://www.bilaterals.org/?wither-bimstec-fta>

68. See for instance, Sharif M. Hossain, Impacts of BIMSTEC Free Trade Area: A CGE Analysis, *Journal of Economics and Sustainable Development*, Vol.4, No.13, 2013; and Nilanjan Banik and Aparna Sharma, Trade Potentiality in BIMSTEC, Briefing Paper No. 1/2015, CUTS International, 2015. See also India with large trade surplus can be more liberal to Bangladesh; can further build on economic ties: ASSOCHAM Paper, 4 June 2015

5.6 Observations and Conclusions

The link between trade and labour standards has always been contentious. The fact that FTAs and now BITs are increasingly featuring provisions on labour standards has not addressed the primary debates on this issue that predate even the WTO. According to the ILO's description of the evolution of labour provisions in FTAs: "since the beginning of the 1990's, the need to create a minimum social foundation for the development of trade - one that guarantees certain safeguards against social dumping - has resulted in the signing of an increasing number of Free Trade Agreements (FTAs) which include a labour dimension, either in the agreement itself or in a parallel agreement."⁶⁹ This characterisation is unlikely to resonate in developing countries that continue to maintain their position that social issues should not be linked to trade.⁷⁰ FTAs featuring these provisions continue to be primarily negotiated by developed countries and critiques of these provisions as protectionist and of enforcement that is politically motivated persist. As the AFWA determines its strategy towards trade and investment agreements, a few issues areas of concern may be considered.

Wide variation in scope and enforcement of labour standards in FTAs: The provisions incorporating labour standards in FTAs are by no means standard. While in some FTAs, labour rights appear only as preambular language, where they appear in the text, the coverage can range from a few of the ILO CLS to the decent work agenda. The obligation on countries also ranges from mere affirmation or intent to uphold these standards to clear obligations for their implementation. Finally, enforcement mechanisms can include consultative bodies, expert panels, commissions that can receive complaints from stakeholders other than the government or dispute resolution. The range of obligations and commitments is likely to make it difficult for AFW advocates to clearly situate their demands for a living wage within these FTAs. With the US and EU introducing labour standards in FTAs since the 1990s, there is also now considerable experience with the enforcement mechanisms provided in these trade agreements. The inclusion of labour standards in trade agreements where enforcement is through dispute resolution has also raised concerns over their interpretation in arbitration settings that may lead to differing findings and may

69. ILO, Free Trade Agreements and Labour Rights, Undated, available at <http://www.ilo.org/global/standards/information-resources-and-publications/free-trade-agreements-and-labour-rights/lang-en/index.htm>

70. See for instance, India says no to labour, environment in FTA with New Zealand, The Hindu BusinessLine, 19 August 2013

diverge from international standards.⁷¹ While some of the experience with enforcement has been referred to above, a more comprehensive literature review of the impacts of these provisions may be necessary to arrive at an informed strategy for the AFWA in terms of trade agreements.

The Importance of the Core Labour Standards: A key feature of the labour standards discussed above, whether they relate to GSP programmes or chapters in free trade agreements is their close association with ILO standards and more narrowly, the CLS. A key concern for the AFWA in advocating for the inclusion of a living wage in the understanding of obligations between FTA partners may relate to the overwhelming reference to CLS (of which living wages do not form a part) as opposed to the ILO Conventions more broadly which includes the convention and resolutions on minimum wages. The AFWA may accordingly consider including in their advocacy with the ILO, discussions on the inclusion of the minimum wage convention as a fundamental convention i.e. part of the CLS.

Need to Study Specific Implementation Proposals: This paper focuses primarily on examining the scope of labour standards appearing in trade and investment agreements and the challenges and opportunities they present for the AFWA. As proposals for possible implementation mechanisms for the AFW emerge further research will be required on how specific proposals work within international trade rules. For instance, one potential mechanism being discussed is an agreement between producing countries to implement the AFW. One possible scenario could be for the AFW to be imposed or considered as an export tax on garments manufactured in these producing countries and then exported. The primary purpose of such an agreement would be to deal with the relocation risk which appears to be holding some governments back in considering higher wages. As national and international rules related to taxation were beyond the scope of this chapter, this particular issue was not examined in detail. FTAs between a group of WTO member countries are not prohibited by WTO rules so long as they do not violate the WTO agreements. While the regulation of export restrictions by the WTO is considered an area of “regulatory

71. See generally, Jordi Agustí-Panareda, Franz Christian Ebert and Desirée LeClercq, Labour Provisions in Free Trade Agreements: Fostering their Consistency with the ILO Standards System, International Labour Office, March 2014, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_237940.pdf

deficiency,”⁷² it should be noted that developed countries are increasingly covering restrictions related to exports in their FTAs including export taxes. While such export restrictions are usually discussed in the context of sensitive areas such as natural resources or food security, social policy and income distribution have also featured among the reasons that countries impose export restrictions.⁷³ Given the diversity of trade rules now in place because of multiple and diverse FTAs, whether an export tax specific to the garment industry would run afoul of a country’s existing FTA or BITs obligations would require further research.

Need to assess appropriateness of trade pressures: Expanded labour standards appear primarily in FTAs negotiated with developed countries with experience indicating limited or ineffective enforcement. The use of GSP preferences to pressure Bangladesh on labour rights by the EU and US has been seen as a case in point where trade pressures on developing countries to improve labour conditions are out of sync in a global value chain system. The US and EU pressure on Bangladesh came with no attendant pressure or legislative action in these developed countries on the brands within their jurisdictions that prioritise extremely low costs of production that has a cascading effect on poor working conditions and extremely low wages in domestic garment manufacturing units.

Need for Holistic View of Trade Agreements: While trade and investment agreements may increasingly include labour clauses, there are concerns not only regarding the reach and effectiveness of these clauses and the manner in which they have been enforced but also on the overall impact of the current free trade framework that is considered detrimental on a larger scale to workers’ rights. The example of the impact of the TPPA in Vietnam highlights concerns related to other chapters in these FTAs that would impact the garment sector or that will dramatically increase the prices of medicines and healthcare. As also seen in the case of the TPPA, even trade unions in the US are increasingly finding labour provisions in these agreements difficult to support given the overall impact of the FTA. The chorus of criticism of this new architecture of global economic governance being established through FTAs has grown louder in recent years. Nobel Laureate and noted economist Joseph

72. Dr. BarisKarapinar, Export Restrictions and the WTO Law: “Regulatory Deficiency” or “Unintended Policy Space”, 21 May 2010, available at https://www.wto.org/english/res_e/publications_e/wtr10_21may10_e.htm

73. Stormy-Annika Mildner&GittaLauster, Settling Trade Disputes over Natural Resources: Limitations of International Trade Law to Tackle Export Restrictions, Goettingen Journal of International Law 3 (2011) 1, 251-281, available at http://www.gojil.eu/issues/31/31_article_mildner_lauster.pdf

Stiglitz has characterised trade agreements as “secret corporate takeovers” noting that “these agreements go well beyond trade, governing investment and intellectual property as well, imposing fundamental changes to countries’ legal, judicial, and regulatory frameworks, without input or accountability through democratic institutions.”⁷⁴ It is of note that in June 2015, ten UN human rights experts⁷⁵ issued a joint statement highlighting human rights concerns including labour standards, with the trade and investment regime stating:

“While trade and investment agreements can create new economic opportunities, we draw attention to the potential detrimental impact these treaties and agreements may have on the enjoyment of human rights as enshrined in legally binding instruments, whether civil, cultural, economic, political or social. Our concerns relate to the rights to life, food, water and sanitation, health, housing, education, science and culture, improved labour standards, an independent judiciary, a clean environment and the right not to be subjected to forced resettlement.”⁷⁶

Need to Build New Development Paradigm: The need for governments to effect policy changes in relation to global value chains, particularly as they relate to labour has been underscored repeatedly. In its 2013, World Investment Report, UNCTAD calls for greater international coordination in the adoption of such policy changes noting the hesitation for developing countries in improving labour conditions for fear of losing their competitive edge:

“At a minimum – and in line with the United Nations Guiding Principles on Business and Human Rights – host countries have an obligation to protect the human rights. They also need to ensure that GVC partners respect international core labour standards as embodied in ILO Conventions... When

74. Joseph E. Stiglitz, How Trade Agreements Amount to a Secret Corporate Takeover, The Huffington Post, 18 May 2015.

75. Mr Alfred de Zayas, Independent Expert on the promotion of a democratic and equitable international order, Ms Catalina Devandas Aguilar, Special Rapporteur on the rights of person with disabilities, Mr Dainus Puras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Ms Farida Shaheed, Special Rapporteur in the field of cultural rights, Ms Gabriella Knaul, Special Rapporteur on the independence of judges and lawyers, Ms Hilal Helver, Special Rapporteur on the right to food, Mr Juan Bohoslavsky, Independent Expert on the effects of foreign debts and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Mr Léo Heller, Special Rapporteur on the human right to safe drink water and sanitation, Ms Victoria Lucia Tauli-Corpuz, Special Rapporteur on the rights of indigenous peoples, Ms Virginia Dandan, Independent Expert on human rights and international solidarity.

76. OCHCR, UN experts voice concern over adverse impact of free trade and investment agreements on human rights, 2 June 2015, available at <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>

designing and enhancing their domestic policy framework related to socially and environmentally sustainable GVC activities, host countries can derive guidance from various international principles and standards. They cover social, human rights, health, economic and environmental risks associated with GVCs...More international coordination in the promotion and implementation of these standards would help to alleviate the “first mover” problem, as countries may hesitate to move forward unilaterally out of fear of losing a perceived GVC-related competitive advantage.”

Later in the report, UNCTAD makes a recommendation for the setting up of Regional Industrial Development Compacts as opposed to traditional trade and investment agreements. According to this recommendation, “regional industrial development compacts could include in their scope all policy areas important for enabling GVC development, such as the harmonization, mutual recognition or approximation of regulatory standards and the consolidation of private standards on environmental, social and governance issues.”

A broader development framework such as the Sustainable Development Goals (SDG) may possibly provide a better alternative for the campaign for living wages and for the AFW specifically. In September 2015, the SDGs were unanimously adopted by the UN General Assembly with 17 Goals aimed to be achieved by 2030. Goal 8 requires governments to “promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.” According to the ILO, “decent work and the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work, and social dialogue”⁷⁷ are now embedded in the SDGs. For the AFWA, Goal 10 which aims to reduce inequality within and among countries is also relevant as it calls on governments to “adopt policies especially fiscal, wage, and social protection policies and progressively achieve greater equality.”⁷⁸

Now that the SDGs are agreed, setting ambitious national level goals in line with them requires concerted efforts including in complying with the goals on decent work and the setting of wages. The development framework may provide a better alternative and grounding for the AFW campaign to demand a decent living wage with links to other aspects of development and working conditions as opposed to the trade and investment regime.

77. ILO, Decent work, Undated, available at <http://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

78. Goal 10.4, Sustainable Development Goals

Bibliography

- ___ “India with large trade surplus can be more liberal to Bangladesh; can further build on economic ties” ASSOCHAM Paper, 4 June 2015 available at <<http://www.assochem.org/newsdetail.php?id=4991>>
- ___ “Labour pangs likely to hold up India-EU free-trade agreement”, *Economic Times*, 7 November 2009, available at <http://Articles.EconomicTimeIndiatimes.Com/2009-11-07/News/28434950_1_India-Eu-Trade-India-And-Eu-India-Eu-Free-Trade-Agreement>
- ___ “NAFTA, Labor and Immigration: A Package Deal”, International Labour Rights Forum, April 19, 2011, available at <<http://www.laborrights.org/blog/201104/nafta-labor-and-immigration-package-deal>>
- ___ “On One Year Anniversary of U.S. Free Trade Agreement, Colombia Remains Deadliest Country for Union Members”, *Public Citizen*, 15 May 2013 available at <<http://www.citizen.org/documents/press-release-colombia-fta-one-year-anniversary.pdf>>
- ___ “Revised Bangladesh labour law ‘falls short’ of international standards” – UN agency, UN News Agency, 22 July 2013.
- ___ “Rising wages squeeze Bangladesh garment makers as factories await upgrades”, Reuters, 13 April 2014 available at <<http://www.reuters.com/article/2014/04/13/us-bangladesh-garmentsidUSBREA3CoN520140413>>
- ___ “Trade And Labour Standards, A difficult issue for many WTO member governments”, Doha WTO Ministerial 2001: Briefing Notes, available at <http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief16_e.htm>
- ___ “Workers Rights are Human Rights: The Garment Industry in Cambodia”, Policy Brief, Cambodian Centre for Human Rights, January 2014, available at <http://cchrcambodia.org/admin/media/analysis/analysis/english/CCHR_Policy%20Brief%20on%20Garment%20Industry_%28January%202014%29_eng.pdf>
- ___ *Living Wage in Asia*, Clean Clothes Campaign, 2014 available at <<http://www.cleanclothes.org/resources/publications/asia-wage-report>>

- ___ *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/70/L.1, available at <<https://sustainabledevelopment.un.org/post2015/transformingourworld>>
- ___ *U.S. Generalized System of Preferences*, Guidebook, Office of the United States Trade Representative Executive Office of the President Washington, D.C., July 2013, available at <http://www.ustr.gov/sites/default/files/GSP%20Guidebook_Final_06262013.pdf>
- ADB and ILO, *ASEAN, Community 2015: Managing integration for better jobs and shared prosperity*, 2014 available at <<http://www.adb.org/sites/default/files/publication/42818/asean-community-2015-managing-integration.pdf>>
- Agustí-Panareda, Jordi, Franz Christian Ebert and Desirée LeClercq, *Labour Provisions in Free Trade Agreements: Fostering their Consistency with the ILO Standards System*, International Labour Office, March 2014, available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/genericdocument/wcms_237940.pdf>
- Anker R. (2011), 'Estimating a living wage: A methodological review', Working Paper, Geneva: ILO.
- Appelbaum, R. (2008). 'Giant transnational contractors in East Asia: emergent trends in global supply chains. *Competition & Change* 12:1 (69-87).
- Asia Floor Wage Alliance (2014) *National People's Tribunal on Living Wages for Garment Workers in Asia*. Available at <<http://www.livingwagedefect.org/uploads/images/12.10%20Human%20Right/National%20Peoples%20Tribunal-Synthesis%20report.pdf>>
- Awasthi, D. et al, (2010), 'Small Producers and Labour Conditions in Auto Parts and Components Industry in North India', in Posthuma, A. and Nathan, D. (ed.), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.
- Bair, J. (2005), 'Global Capitalism and Commodity Chains: Looking Back, Going Forward', *Competition and Change*, 9(2): 153-80.
- Banga, R. (2013), *Measuring Value in Global Value Chains*, UNCTAD, Geneva.
- Banik, Nilanjan and Aparna Sharma, (2015) "Trade Potentiality in BIMSTEC", Briefing Paper No. 1/2015, CUTS International.

- Barrientos, S. and S. Smith, (2007), 'Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems', *Third World Quarterly*, 28:713-29.
- Bhattacharjee (2014), 'Asia Floor Wage and Global Industrial Collective Bargaining', South Asia Garment Meeting, Kathmandu, 26th February.
- Bhattacharjee, Anannya & Ashim Roy (2012), "Asia Floor Wage and Global Industrial Collective Bargaining" *India International Journal of Labour Research*, Vol. 4, Issue 1 <http://www.ihdindia.org/igdirdata/Mid-Tec-%20Sectors/Flexible%20Labour%20Fource_IGIDR_By%20Ashim%20Roy.pdf>
- Bland, Ben and Shawn Donnan, "Indonesia to terminate more than 60 bilateral investment treaties", *Financial Times*, 26 March 2014.
- Blyde, Juan, Alejandro Graziano, Christian Volpe Martincus, "Economic integration agreements and the location of vertical FDI", VOX, 13 May 2014 available at <<http://www.voxeu.org/article/trade-agreements-foster-global-value-chains-new-evidence>>
- Boie, Bertram, "Labour related provisions in international investment agreements", International Labour Organization 2012.
- Bonnitcha, Jonathan, "Political Change vs. Legal Stability: Problems Arising from the Application of Investment Treaties in Transitions from Authoritarian Rule", *Investment Treaty News*, International Institute for Sustainable Development, Issue 1, Vol. 6, February 2015, p. 6 available at <<https://www.iisd.org/sites/default/files/publications/iisd-itn-february-2015-en.pdf>>
- Brauch, Martin Dietrich, "Yukos v. Russia: Issues and legal reasoning behind US\$50 billion awards", *Investment Treaty News*, International Institute for Sustainable Development, 4 September 2014 available at <<https://www.iisd.org/itn/2014/09/04/yukos-v-russia-issues-and-legal-reasoning-behind-us50-billion-awards/>>
- Breville and Boulard, *The Injustice Industry*, Le Monde Diplomatique, English Edition, June 2014.
- Brown, Chester (Ed.), *Commentaries on Selected Model Investment Treaties*, Oxford Commentaries on International Law, Oxford, 2013.

- Delgado Wise, Raúl and David T. Martin (2015), 'The Political Economy of Global Labour Arbitrage' in *Handbook of the International Political Economy of Production* Edited by Kees van der Pijl, Edward Elgar Publishing, 2015.
- Devarakonda, Ravi Kant, "New Labour Norms could hurt Bangladesh", *Interpress Service*, 13 July 2013.
- Dhar, Biswajit and Abhik Majumdar, "The India-EC GSP Dispute: The Issues and the Process", Working draft, *ICTSD Asia Dialogue on WTO Dispute Settlement and Sustainable Development*, Jakarta, 25 and 26 January 2006, available at <<http://www.ictsd.org/downloads/2008/06/dhar.pdf>>
- Dolan, C. and M. Tewari, (2001), 'From What We Wear to What We Eat: Upgrading in Global Value Chains', *IDS Bulletin*, 32 (3): 94-104.
- Fernandez-Stark, Karina, Stacey Frederick and Gary Gereff (2011), 'The Apparel Global Value Chain: Economic Upgrading And Workforce Development', Duke University Center on Globalization, Governance and Competitiveness (Duke CGGC).
- Gereffi G. and Olga Memedovic (2003) "The Global Apparel Value Chain: What Prospects for Upgrading by Developing Countries" UNIDO, Vienna, 2003.
- Gereffi, G. (1994) 'The Organisation of Buyer-driven Global Commodity Chains: How U.S. Retailers Shape Overseas Production Networks', in G. Gereffi and M. Korzeniewicz (eds), *Commodity Chains and Global Capitalism*, Westport, CT: Praeger: 95-122.
- Gereffi, G. (1999), 'International Trade And Industrial Upgrading In The Apparel Commodity Chain', *Journal of International Economics*, 48(37-70).
- Gereffi, G. & Karina Fernandez-Stark (2011), *Global Value Chain Analysis: A Primer*, Center on Globalization, Governance & Competitiveness (CGGC), Duke University, Durham, North Carolina, USA, <http://www.cggc.duke.edu/pdfs/2011-05-31_GVC_analysis_a_primer.pdf>
- Gereffi, G. and E. Guler, (2010), 'Global Production Networks and Decent Work in India and China: Evidence from the Apparel, Automotive, and Information Technology Industries', in Posthuma, A. and Nathan, D. (ed.) (2010), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.

- Gereffi, G. and Korzeniewicz, M. (1994) *Commodity Chains and Global Capitalism*, Westport, CT: Praeger.
- Gooch, Liz, “Asia-Pacific Governments play Catch-Up on Minimum Wages”, *New York Times*, 13 April 2011.
- Griffin, Gerard, Chris Nyland and Anne O’Rourke, “Trade Unions and the Social Clause: A North-South Union Divide?”, Working paper/National Key Centre in Industrial Relations, Monash University, 2002, available at <http://www.ilo.int/public/english/iira/documents/congresses/world_13/track_3_griffin.pdf>
- Harvey, David (2006) (1982) *The Limits to Capital*, Verso, London, 2006.
- Hatsukano, N. (2005), “The Current Situation of Cambodian Industry”, in Ishida, M. (ed.), *Regional Development in Mekong*, Chiba, the Institute of Developing Economies, JETRO.
- Heintz, James. 2002. ‘Low wage manufacturing exports, job creation and global income inequalities’, Political Economy Research Institute, *Working Paper Series* (Revised Edition).
- Hess, Martin and Henry Wai-Chung Yeung (2006) “Guest Editorial: Whither global production networks in economic geography?”, *Environment and Planning A 2006*, volume 38, pages 1193-1204.
- Hirway, I. (2010), ‘Labour Market Adjustment and Female Workers: Global Production and Expiry of Quotas in India’s Textiles and Garments Industry’, in Posthuma, A. and Nathan, D. (ed.) (2010), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.
- Hossain, Sharif M., “Impacts of BIMSTEC Free Trade Area: A CGE Analysis”, *Journal of Economics and Sustainable Development*, Vol.4, No.13, 2013.
- Hurley, J. and Miller, D. (2005), ‘The Changing Face of Global Garment Industry’ in A. Hale and J. Wills (eds). *Threads of Labour: Garment Industry Supply Chains from the Workers’ Perspective*, Blackwell Publishing Ltd, Oxford: U.K.
- Hymer, S.H. (1972), ‘The internationalization of capital’, *The Journal of Economic Issues*, 6, 1: 91-111.
- Islam, Md. Rizwanul, “Wither BIMSTEC FTA”, *Daily Star*, Bangladesh, 5 September 2015 available at <<http://www.bilaterals.org/?wither-bimstec-fta>>

- Karapinar, Dr. Baris, “Export Restrictions and the WTO Law: “Regulatory Deficiency” or “Unintended Policy Space””, 21 May 2010, available at <https://www.wto.org/english/res_e/publications_e/wtr10_21may10_e.htm>
- Kim, E. T. (2015), ‘Cambodian garments workers rise up and face a crack down’, *Aljazeera America*, 11th March, 2015, available at <<http://america.aljazeera.com/articles/2015/3/11/cambodian-garment-workers-rise-up-and-face-a-crackdown.html>>
- Kim, E. T. (2015), ‘Cambodian garments workers rise up and face a crack down’, *Aljazeera America*, 11th March, 2015, <<http://america.aljazeera.com/articles/2015/3/11/cambodian-garment-workers-rise-up-and-face-a-crackdown.html>>
- Luxemburg, R. (1968), *The Accumulation of Capital*, New York: Monthly Review Press.
- Mamic, I. (2003), *Business and Code of Conduct Implementation: How Firms Use Management Systems for Social Protection*. Geneva: ILO.
- Marx, Karl (1990) (1867) *Capital: A Critique Of Political Economy Volume One* (Translated By Ben Fowkes) Penguin Books, London, 1990.
- Maskus, Keith E., “Should Core Labor Standards Be Imposed Through International Trade Policy”, 1997.
- Mayer, F. and A. Posthuma (2012), ‘Governance in a value chain world’, *Capturing the Gains*, December.
- Mayer, F. and A. Posthuma (2012), ‘Governance in a value chain world’, *Capturing the Gains*, December.
- McKay, Betsy, “Bloomberg, Gates Launch Anti-Tobacco Fund”, *Wall Street Journal*, 18 March 2015, available at <<http://www.wsj.com/articles/bloomberg-gates-launch-antitobacco-fund-1426703947>>
- Mildner, Stormy-Annika & Gitta Lauster, “Settling Trade Disputes over Natural Resources: Limitations of International Trade Law to Tackle Export Restrictions”, *Goettingen Journal of International Law* 3 (2011) 1, 251-281, available at <http://www.gojil.eu/issues/31/31_article_mildner_lauster.pdf>

- Miller, D. (2014), 'What Does 'Fast Fashion' Mean for Workers? Apparel Production in Morocco and Romania', in Rossi, A. et al. (ed.) (2014), *Towards Better Work: Understanding Labour in Apparel Global Value Chains*, ILO: Geneva.
- Moir, Hazel V. J. et al "Assessing the Impact of Alternative Patent Systems on the Cost of Health Care: The TPPA and HIV Treatment in Vietnam" (November 27, 2014). Asia-Pacific Innovation Conference, University of Technology Sydney, 27-29 November 2014. Available at <<http://ssrn.com/abstract=2536254>>
- Nadvi, K., & H. Schmitz. (1994), "Industrial clusters in less developed countries: Review of experiences and research agenda", IDS Discussion Paper 339, Institute of Development Studies, Brighton.
- Nathalie Bernasconi-Osterwalder and Lise Johnson, Commentary to the Austrian Model Investment Treaty, International Institute for Sustainable Development, September 2011, available at <http://www.iisd.org/pdf/2012/austrian_model_treaty.pdf>
- Nathan, D. (2010), 'Global Aggregate Demand, Inequality, and the Prospects for Decent Work, in Posthuma, A. and Nathan, D. (ed.) (2010), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.
- National Peoples Tribunal on Living Wages for Garment Workers in Asia, (2014).
- Natsuda, Kaoru, Kenta Goto & John Thoburn (2009), "Challenges to the Cambodian Garment Industry in the Global Garment Value Chain" *UK RCAPS Working Paper* No. 09-3 July 2009 available at <http://www.apu.ac.jp/rcaps/uploads/fckeditor/publications/workingPapers/RCAPS_WP09-3.pdf>
- O'Rourke, D. (2002), 'Outsourcing Regulation: Analyzing Nongovernmental Systems of Labour Standards and Monitoring', *Policy Studies Journal* 31(1): 1-29.
- OCHCR, "UN experts voice concern over adverse impact of free trade and investment agreements on human rights", 2 June 2015, available at <<http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>>
- Orbie, Jan and Lisa Tortell, "The New GSP+ Beneficiaries: Ticking the Box or Truly Consistent with ILO Findings?", *European Foreign Affairs Review* 14: 663-681, 2009.

- Peels, Rafaeil and Marialaura Fino, “Pushed out the Door, Back in through the Window: The Role of the ILO in EU and US Trade Agreements in Facilitating the Decent Work Agenda”, *Global Labour Journal*, 2015, 6(2), p. 189, available at <<https://escarpmentpress.org/globallabour/article/view/2401>>
- Piore, M. and A. Schrank (2008), ‘Toward Managed Flexibility: The Revival of Labour Inspection in the Latin World’, *International Labour Review*, 147 (1): 1-23.
- Ponte, S. (2008), ‘Developing a “Vertical” Dimension to Chronic Poverty Research’ Some Lessons from Global Value Chain Analysis’, Working Paper No. 111, Manchester: Chronic Poverty Research Centre, University of Manchester.
- Porter, M. E. (1980) *Competitive Strategy: Techniques for Analyzing Industries and Competitors*. New York: Free Press, 1980.
- Posthuma, A. (2010), ‘Beyond ‘Regulatory Enclaves’: Challenges and Opportunities to Promote Decent Work in Global Production Networks’, in Posthuma, A. and Nathan, D. (ed.) (2010), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.
- Posthuma, A. and D. Nathan, (ed.) (2010), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.
- Prislan, Vid and Ruben Zandvliet, “Labor provisions in bilateral investment treaties: Does the new US Model BIT provide a template for the future?”, *Columbia FDI Perspectives*, No. 92 April 1, 2013.
- Public Citizen, “Case Studies: Investor-State Attacks on Public Interest Policies”, undated, available at <<http://www.citizen.org/documents/egregious-investor-state-attacks-case-studies.pdf>>
- Raghavan, Chakravathi, *Barking up the wrong tree: Trade and Social Clause Links*, Third World Network, 1996.
- Ripinsky, Sergey, “Venezuela’s Withdrawal From ICSID: What it Does and Does Not Achieve”, *Investment Treaty News*, International Institute for Sustainable development, 13 April 2012.
- Rossi, A. et al. (ed.) (2014), *Towards Better Work: Understanding Labour in Apparel Global Value Chains*, ILO: Geneva and Palgrave Macmillan (co-publishers).

- Schmitz, H. (2006), 'Learning and earning in global garment and footwear chains', *The European Journal of Development Research*, 18 (4), 546–571.
- Selwyn, Benjamin (2015) 'The Grapes of Wrath. Social Upgrading and Class Struggles in Global Value Chains' in *Handbook of the International Political Economy of Production* Edited by Kees van der Pijl, Edward Elgar Publishing, 2015.
- Stark, F. K. and G. Gereffi (2011), 'Global Value Chain Analysis: A Primer', Durham, North Carolina, USA: Center on Globalization, Governance & Competitiveness.
- Stark, F. K. et al. (2011), 'Skills for Upgrading: Workforce Development and Global Value Chains in Developing Countries.' Durham, N.C.: Duke Center on Globalization, Governance and Competitiveness and the Research Triangle Institute.
- Stiglitz, Joseph E., "How Trade Agreements Amount to a Secret Corporate Takeover", *The Huffington Post*, 18 May 2015.
- Terry Collingsworth, "An Enforceable Social Clause", *Foreign Policy in Focus*, 1 October 1998.
- Tiwari, M. (2010), 'Footloose Capital, Intermediation, and the Search for the 'High Road' in Low-Wage Industries', in Posthuma, A. and Nathan, D. (ed.) (2010), *Labour in Global Production Networks in India*, Oxford University Press, New Delhi.
- UNCTAD (1999), *Trade and Development Report*, Geneva.
- UNCTAD, "Most-Favoured Nation Treatment", *UNCTAD Series On Issues In International Investment Agreements II*, United Nations, New York and Geneva, 2010 available at <http://unctad.org/en/Docs/diaeia20101_en.pdf>
- UNCTAD, "Recent Developments In Investor State Dispute Settlement" (ISDS), IIA Issues Note, No. 1, April 2014, available at <http://unctad.org/en/PublicationsLibrary/webdiaepcb2014d3_en.pdf>
- UNCTAD, *World Investment Report*, 2014, available at <http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf>
- Vandaele, Arnie Daniel Albert, *International Labour Rights and the Social Clause: Friends or Foes*, Cameron May Ltd, 2004.

Vanzetti, David and Pham LanHuong 'Rules of origin, labour standards and the TPP.' 17th Annual Conference on Global Economic Analysis
June 18-20, 2014.

Whitehead, D. V. (2010), *Fair Wages: Strengthening Corporate Social Responsibility*. Cheltenham and Northampton, MA: Edward Elgar.

Whitehead, D. V. (2014), 'Regulating the 'Wage Effort Bargain' in Outsourced Apparel Production: Towards a Model' in Rossi, A. et al. (ed.) (2014), *Towards Better Work: Understanding Labour in Apparel Global Value Chains*, ILO: Geneva.

Yamagata, T. (2006), *The Garment Industry in Cambodia: Its Role in Poverty Reduction through Export-Oriented Development*, Tokyo: Institute of Developing Economies, Discussion Paper No. 62.

Towards An Asia Floor Wage: A Global South Labour Initiative for Garment

Workers is a collaborative effort towards exploring processes for making a living wage a reality in the global supply chain. Given the uneven density of unionization in the garment sector in Asia and the weak power of unions in the context of the global value chains, broader unionization and strengthening of global bargaining is the key.

Asia Floor Wage Alliance (AFWA) is an international alliance of trade unions and labour rights activists launched in 2009 and working together to demand a living wage for garment workers.

South-South Dispatches are short briefing papers from the South Solidarity Initiative that provide analysis on regional and global developments from a southern perspective. The views expressed in the dispatches are not necessarily of the SSI.

South Solidarity Initiative (SSI) is a knowledge hub hosted by ActionAid India with the remit to conduct research and analysis on issues related to south-south solidarity and cooperation.

- 🌐 southsolidarity.org
- 📍 [southsolidarity](#)
- 📍 [southsolidarity.initiative](#)
- ✉️ southsolidarity@actionaid.org

ActionAid India (AAI) is part of a global federation and is a full affiliate of ActionAid International that is present in over 40 countries. AAI works to address the root causes of poverty in partnership with grassroots organizations, civil society groups and platforms.

R-7 Hauz Khas Enclave
New Delhi-110 016. India

- ☎️ 011-40640500
- 🌐 actionaid.org/india
- 📍 [actionaidindia](#)

*Cover Visual: A collage of photographs of garment workers across South Asia
www.clec.org, www.cleanclothes.org, www.theguardian.com
asia.floorwage.org, www.flickr.com*



act:ionaid

