

# Towards work liberalization

## The WTO discourse on labour standards and policy

Natalia Delgado\*

*After the rejection of any inclusion of a social clause in the World Trade Organization agreements, the 1996 Singapore Declaration formally separated the organisational remits for labour and trade in international law. Since then the WTO has been reticent in addressing labour-related issues in multilateral fora, thereby distancing itself from social concerns intimately related to the international trade of goods and services. However, a close reading of the World Trade Reports between 2003 and 2017 shows that the WTO addresses labour standards and policy extensively. The WTO discourse advances specific views on how international trade interrelates with labour standards, labour market policy, migrant workers, unemployment benefits, workers' skills and social protection. This paper shows that the WTO Secretariat, through its reports, strongly links the success of its agenda to deregulatory reforms in labour market policy and labour standards. Against this background the paper argues that the crisis of the WTO today, rather than being caused externally by a protectionist turn, is rooted in the failure of the international trade system to sufficiently engage with social concerns.*

**Keywords:** WTO, ILO, Singapore Declaration, World Trade Report, labour rights, international labour standards.

### 1 INTRODUCTION

The project of trade liberalization pursued by the international economic institutions appears at first to be unrelated to labour and labour legislation. The World Trade Organization (WTO) formally established the separation of trade and labour in international law with the Singapore Declaration in 1996. The present paper provides a critique of such an artificial separation by showing empirically that the WTO discourse intervenes extensively in the domain and mandate of the International Labour Organization (ILO). Secondly, this paper discusses the WTO policy recommendations on labour-related issues and then proceeds to argue that the WTO seeks to impose an agenda that subjects labour standards to the requirements of trade liberalization. Further analysis demonstrates that the WTO's intervention in labour regimes is neither 'incidental', nor a 'semantic problem', but is fundamental to the success of its trade liberalization project.

The WTO Singapore Declaration was a cornerstone of the splitting of international jurisdiction into two broad spheres, trade and labour standards, which are in reality intimately connected.<sup>1</sup> In 1996,

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\* Lecturer in Employment Law, Law School, University of Southampton, email: [natalia.delgado@soton.ac.uk](mailto:natalia.delgado@soton.ac.uk). The author wishes to extend gratitude for the comments on the first draft of this paper to Fiona Macmillan, Simon Deakin, David Gurnham and the two anonymous reviewers. Any errors are the author's alone.

the first WTO Ministerial Conference was held in Singapore. During the Conference, the tensions between trade and labour standards were manifested in a confrontation between broadly industrialized countries which were in favour of linking labour standards and trade and developing countries that were opposed to this approach.<sup>2</sup> A compromise was achieved by the Ministerial Conference and Section 4 of the Singapore Declaration, which stated that

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 [...].<sup>3</sup>

This was a main foundational text of an international organisation dealing with international trade, which formally acknowledged core labour standards,<sup>4</sup> as well as the legitimacy of the ILO jurisdiction on those standards.<sup>5</sup> After the Singapore Declaration, the WTO has repeated *in extenso* that the WTO agreements do not include labour standards, and that the organisation is not the appropriate forum in which to ‘set and deal’ rules on labour more broadly.<sup>6</sup> The 2007 World Trade Report highlights that

In accordance with the position decided at the Singapore Ministerial Conference, there is currently no work on the subject of trade and labour in the WTO’s councils and committees.<sup>7</sup>

Later, in the 2013 World Trade Report, the WTO noted that

WTO members have acknowledged the importance of a set of internationally recognized “core” labour standards [...] but have significant disagreements on establishing linkages between trade and labour issues in the WTO. At the 1996 Singapore Ministerial Conference, WTO members defined the WTO’s role on this issue, identifying the ILO as the competent body to negotiate labour standards.<sup>8</sup>

However, after a detailed analysis of the World Trade Reports (WTRs), this paper concludes that the WTO discourse develops the nexus of trade and labour significantly and crystallizes to what extent

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<sup>1</sup> On the separation between trade and labour see Breen Creighton, ‘The Future of Labour Law: Is There a Role for International Labour Standards?’ (2004) 263; Paola Conconi and Carlo Perroni, ‘Conditionality, Separation, and Open Rules in Multilateral Institutions’ [2001] Handbook of International Trade Volume II 313, 324; Richard N Block and others, ‘Models of International Labor Standards’ (2001) 40 *Industrial Relations: A Journal of Economy and Society* 258, 264; Rorden Wilkinson, ‘Labour and Trade-Related Regulation: Beyond the Trade-Labour Standards Debate?’ (1999) 1 *The British Journal of Politics & International Relations* 165, 376; Ralf Rogowski, *Reflexive Labour Law in the World Society* (Edward Elgar Publishing 2013) 242.

<sup>2</sup> George Tsogas, ‘Labour Standards in International Trade Agreements: An Assessment of the Arguments’ (1999) 10 *International Journal of Human Resource Management* 351, 396.

<sup>3</sup> See the WTO Singapore Ministerial Declaration of 1996 online [https://www.wto.org/english/thewto\\_e/minist\\_e/min96\\_e/wtodec\\_e.htm#core\\_labour\\_standards](https://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm#core_labour_standards). See also BA Hepple, *Labour Laws and Global Trade* (Hart, 2005) 57. The antecedent of this section can be found in the 1948 Havana Charter Article 7 (3) establishing an International Trade Organization.

<sup>4</sup> See the ILO Declaration on Fundamental Principles and Rights at Work of 1998.

<sup>5</sup> See for example Tsogas (n 2) 370; Jean-Michel Servais, *International Labour Law* (Fifth edition, Kluwer Law International 2017) 42, 84; Philip Alston, ‘“Core Labour Standards” and the Transformation of the International Labour Rights Regime’ (2004) 15 *European Journal of International Law* 457, 470.

<sup>6</sup> See < [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm) >

<sup>7</sup> World Trade Report 2007 (World Trade Organization) 358.

<sup>8</sup> World Trade Report 2013 (World Trade Organization) 278.

labour policy is relevant for the WTO's trade liberalisation project. This paper shows the contradiction between the statement of the Singapore Declaration and the WTO discourse.

The separation of trade/labour standards has been interpreted differently by scholars of labour law, trade law and international law respectively. Trying to integrate the WTO and the ILO positions after the Singapore Declaration, labour law scholars have insisted on the need for 'coherence', 'coordination' and 'cooperation' between the two regimes,<sup>9</sup> meaning that both organisations should align their policy proposals directed to governments.<sup>10</sup> Initially, it was understood that an integration of those regimes could be achieved through a social clause in trade agreements to improve labour conditions.<sup>11</sup> But this project did not succeed in the case of WTO agreements,<sup>12</sup> a failure which contrasts with the proliferation of labour clauses in bilateral and regional trade agreements over the last two decades.<sup>13</sup> Then there was an effort to include human rights clauses into WTO's decision-making process.<sup>14</sup> In another line of argument, it has been suggested that labour rights could be integrated within the general exceptions to the General Agreement through a particular interpretation of Art. XX of the General Agreement on Tariffs and Trade (GATT).<sup>15</sup> Some of the exceptions include the protection of public morals, Art. XX (a), human, animal or plant life or health, Art. XX (b), and the restrictions regarding products of prison labour, Art. XX (e). Finally, an important strand of literature has emerged on transnational labour law as a project aiming to accompany the development of global production.<sup>16</sup> Bob Hepple has argued that a 'reconciliation of global trade and labour rights will not come from relocating labour law within the sphere of international trade law'.<sup>17</sup> Instead, he suggests that the benefits of international trade and investment should be spread to the poor through

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<sup>9</sup> On cooperation see Clotilde Granger and Jean-Marc Siroen, 'Core Labour Standards in Trade Agreements: From Multilateralism to Bilateralism' (2006) 40 J. World Trade 813.

<sup>10</sup> See <[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm)>

<sup>11</sup> Marc Bacchetta, Ekkehard Ernst and Juana P Bustamante, *Globalization and Informal Jobs in Developing Countries* (International Labour Organization and World Trade Organization, Geneva 2009) 19.

<sup>12</sup> Nicolas Valticos and Geraldo Von Potobsky, *International Labour Law* (2nd rev. ed, Kluwer Law and Taxation Publishers 1995) 15.

<sup>13</sup> David Cheong and Franz Christian Ebert, 'Labour Law and Trade Policy: What Implications for Economic and Human Development?' [2016] *Labour Regulation and Development* 82; See also on this issue Franz Christian Ebert and Anne Posthuma, *Labour Provisions in Trade Arrangements: Current Trends and Perspectives* (ILO 2011). According to an ILO report, in 2015 seventy-five trade agreements that were in place – covering one hundred and thirty-five states – included labour provisions, and seventy-two percent of trade-related labour provisions referred to ILO's instruments, in particular the ILO's Declaration of 1998. See ILO, 2016, 'Assessment of labour provisions in trade and investment arrangements'.

<sup>14</sup> Adelle Blackett, 'Mapping the Equilibrium Line: Fundamental Principles and Rights at Work and the Interpretive Universe of the World Trade Organization' (2002) 65 *Sask. L. Rev.* 369.

<sup>15</sup> Daniel Damásio Borges, *L'État Social Face Au Commerce International* (Editions L'Harmattan 2013) 256–259.

<sup>16</sup> See Adelle Blackett and Anne Trebilcock, *Research Handbook on Transnational Labour Law* (Edward Elgar Pub Limited 2015) 3; Harry Arthurs, 'Reinventing Labor Law for the Global Economy: The Benjamin Aaron Lecture' (2001) 22 *Berkeley Journal of Employment and Labor Law* 271.

<sup>17</sup> Hepple (n 3) 3.

the strengthening of transnational labour regulation.<sup>18</sup> Francis Maupain has argued in favour of coherence, emphasising the capacity of the ILO to reconcile its objectives with the opening of markets through persuasion and institutional interaction.<sup>19</sup> Even a joint ILO and WTO publication<sup>20</sup> on trade and employment in 2007 concluded that ‘trade policies and labour policies interact, and more coherence in the two domains can have significantly positive effects on both growth and employment’.<sup>21</sup>

For trade law scholars such as Gabrielle Marceau, governments must comply with both trade and labour regimes.<sup>22</sup> She stresses that ‘the spaces left by the existing trade law framework to members of the WTO to promote social progress objectives are far from negligible’.<sup>23</sup> Marceau argues that the WTO system ‘appears to be receptive to good faith and non-protectionist labour considerations within several trade measures’.<sup>24</sup> Similarly, Christine Kaufmann suggests that there is room for the consideration of core labour rights by the WTO when they are not invoked for protectionist purposes.<sup>25</sup> However, it is often mentioned that a legal conflict between WTO agreements and rights and the obligations under another international organisation (such as the ILO) has not occurred so far in WTO dispute settlement cases,<sup>26</sup> which assumes that, when this happens, the WTO Dispute Settlement Body will resolve such a conflict.

Finally, international law scholarship has analysed the phenomenon of separation between trade and labour standards as part of a wider ‘fragmentation problem’ in international law. The proliferation of specialist international institutions with new spheres of practice and autonomous norms such as trade law, human rights law, humanitarian law, environmental law and investment law have created legal collisions and normative friction in international law.<sup>27</sup> International law scholars have responded to

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<sup>18</sup> *ibid* 273–275.

<sup>19</sup> Maupain 2012, 73–75; see also Maupain 2013; and Barnard, Deakin, and Morris 2004, 209–211.

<sup>20</sup> Bacchetta, Ernst and Bustamante (n 11); Marc Bacchetta and Marion Jansen, *Making Globalization Socially Sustainable* (International Labour Organization and World Trade Organization 2011); Marion Jansen and Eddy Lee, *Trade and Employment: Challenges for Policy Research: A Joint Study of the International Labour Office and the Secretariat of the World Trade Organization* (International Labour Organization 2007).

<sup>21</sup> Jansen and Lee (n 20) 10.

<sup>22</sup> Former WTO officer and academic.

<sup>23</sup> Gabrielle Zoe Marceau, ‘Trade and Labour’, *The Oxford handbook of international trade law* (Bethlehem, Daniel . et al, Oxford University Press 2009) 568.

<sup>24</sup> *ibid* 542.

<sup>25</sup> Christine Kaufmann, *Globalisation and Labour Rights: The Conflict between Core Labour Rights and International Economic Law* (Bloomsbury Publishing 2007) 298.

<sup>26</sup> Peter Van den Bossche and Denise Prévost, *Essentials of WTO Law* (Cambridge University Press 2016) 10.

<sup>27</sup> Martti Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law: Report of the Study of the International Law Commission* (The Erik Castrén Institute of International Law and Human Rights 2007) 11; See also Andreas Fischer-Lescano and Gunther Teubner, ‘Regime-

these multiple legal regimes through the lenses of constitutionalism or legal pluralism.<sup>28</sup> Martti Koskenniemi argues that ‘the problem is of a general nature and manifests itself above all in the daily operation of the regimes in blissful ignorance of each other and firmly committed to imposing their particular outlook on the world’.<sup>29</sup> In this context, the WTO has been observed as a self-contained regime, reticent about applying other rules of international law.<sup>30</sup> According to Fisher-Lescano and Teubner, the integration of different regimes is ‘illusory’, and it is not the role of law to solve the conflicts of dissimilar social rationalities.<sup>31</sup> Similarly, Koskenniemi suggests that behind this debate on the integration/separation of regimes there lies a political problem.<sup>32</sup> Following the same line of argumentation, Mario Prost contends that the unity/fragmentation of international law is a false problem, because by definition international law is plural and fragmented, and monist theories calling for coherence and unity remain a fiction, a utopia.<sup>33</sup>

The purpose of this paper is to critically engage with these different approaches and contemporary conflicts of the trade-labour nexus. The findings of the paper further show how the WTO has approached this nexus without real engagement with the existing international labour standards framework beyond sporadic references to *core* labour standards. As a consequence, any positive result from a call for coherence or integration of both regimes seems unlikely. The positions that negate the intimate relationship between labour and trade, as well as the insistence on the conciliation of the two legal systems, has already shown the limits of its feasibility. It is true that the WTO Appellate Body has declared that the WTO agreements should be interpreted following principles of customary and general international law.<sup>34</sup> But the WTO General Council has several times

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Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law’, *Critical theory and legal autopoiesis* (Manchester University Press 2019) 1001.

<sup>28</sup> Martti Koskenniemi, ‘Global Legal Pluralism: Multiple Regimes and Multiple Modes of Thought.’ [2005] Harvard 21, 11; Martti Koskenniemi, ‘The Fate of Public International Law: Between Technique and Politics’ (2007) 70 *The Modern Law Review* 1, 1.

<sup>29</sup> Martti Koskenniemi, ‘Hegemonic Regimes’, *Regime Interaction in International Law* (Margaret A Young, Cambridge University Press 2012) 317. For the development of coherence and pluralism in international law see Koskenniemi, ‘The Fate of Public International Law’ (n 28); Koskenniemi, ‘Global Legal Pluralism: Multiple Regimes and Multiple Modes of Thought.’ (n 28).

<sup>30</sup> Anja Lindroos and Michael Mehling, ‘Dispelling the Chimera of “Self-Contained Regimes” International Law and the WTO’ (2005) 16 *European Journal of International Law* 857, 877; Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law*, vol 29 (Cambridge University Press 2003) 87.

<sup>31</sup> Fischer-Lescano and Teubner (n 27) 1045.

<sup>32</sup> Koskenniemi, ‘Hegemonic Regimes’ (n 29) 324.

<sup>33</sup> Mario Prost, *The Concept of Unity in Public International Law* (Bloomsbury Publishing 2012); See also Mario Prost, ‘Discours Sur Le Fondement, l’unité et La Fragmentation Du Droit International: À Propos d’une Utopie Paresseuse’ (2006) 39 *Rev. BDI* 621, 667.

<sup>34</sup> *US – Gasoline*. Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, [WT/DS2/AB/R](#), adopted 20 May 1996, DSR 1996:I, 3-16.

characterized the status of the WTO as ‘a sui generis organization established outside the United Nations System’.<sup>35</sup>

This paper is organized in six parts. The first part above introduces the debates in the literature on trade and labour. The second part explains the methodology used to analyze the World Trade Reports (WTRs). Based on an extensive analysis of all World Trade Reports between 2003 and 2017, part three shows empirically that the WTO does ‘deal’ with labour standards. Part four reconstructs the WTO’s discourse on labour categories. Part five analyzes the implications of my findings for larger debates on labour law, trade law and international law. The paper concludes by linking the trade-labour nexus with the crisis of the WTO today.

Regarding the terminology, for the purpose of this paper I use the term ‘work’ and ‘labour’ broadly, as any human activity creating value in exchange for remuneration.<sup>36</sup> The term ‘labour standards’ refers to all legal norms and the regulation of the employment relationship.<sup>37</sup> The term ‘labour institution’ refers to the body or authority directly responsible for applying all or part of the labour legislation of a state.<sup>38</sup> By ‘discourse’ I mean a group of statements that produce knowledge and meaning, an institution’s way of speaking or writing about reality.<sup>39</sup> Finally, the term ‘labour categories’ is used to denote the WTO’s focus on particular labour-related topics (e.g. migration, labour skills, labour supply, unemployment).

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<sup>35</sup> Peter-Tobias Stoll and Frank Schorkopf, ‘World Economic Order, World Trade Law’ [2006] Leiden: Martinus Nijhoff 265. See Koskenniemi, *Fragmentation of International Law* (n 27) 87. On the interpretation of WTO rules see Fiona Smith, ‘Power, Rules, and the WTO’ (2013) 36 BC Int’l & Comp. L. Rev. 1063.

<sup>36</sup> See Alain Supiot, *Critique Du Droit Du Travail* (Presses universitaires de France 2007); Alain Supiot and Pierre Musso, *Qu’est-Ce Qu’un Régime de Travail Réellement Humain*. (Hermann Editions 2018); See Hugo Sinzheimer, ‘La Lucha Por El Nuevo Derecho Del Trabajo’ [2017] Edeval.

<sup>37</sup> Simon F Deakin and Gillian S Morris, *Labour Law* (Hart publishing 2012) 5.

<sup>38</sup> See ILO Convention No. 157 Art. 1 d.

<sup>39</sup> See Michel Foucault, *Archaeology of Knowledge* (Routledge 2002).

## 2 METHODOLOGY

To assess the WTO's intervention in labour regimes, the present paper embraces empirical research.<sup>40</sup> A number of tools for quantitative<sup>41</sup> and qualitative textual analysis were used.<sup>42</sup> First, the critical points in the text under analysis were identified. This was followed by a close reading of the World Trade Reports. Similar work has been done by a number of French scholars. Damon Mayaffre focused on the discourses of the presidents of the French Republic during a certain period of time,<sup>43</sup> and Jean-Louis Siroux analysed the depoliticization of the discourse in the WTO Annual Reports.<sup>44</sup> However, this approach has never been used for analysing the WTRs. The advantage of using this method is that it allowed the identification of patterns in the discourse of the WTO about labour-related issues that would otherwise be difficult to achieve. The results can be replicated using the same tools. On the basis of this evidence I conclude that the WTO systematically intervenes in the domain of labour standards and policy by advancing labour policy proposals.

In this paper, the method was applied to a new body of text, the entirety of World Trade Reports (WTRs) between 2003 and 2017, in order to reveal the institutional positions on labour standards and labour policy.<sup>45</sup> The WTO launched the World Trade Report in 2003, defining it as 'an annual publication that aims to deepen understanding about trends in trade, trade policy issues and the multilateral trading system'.<sup>46</sup> The WTRs are prepared by the Economic Research and Statistics

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<sup>40</sup> For empirical labour law research see Simon Deakin, 'The Evidence-Based Case for Labour Regulation', *Regulating for Decent Work* (Springer 2011) 1. Simon Deakin, 'Labor and Employment Laws' [2010] *The Oxford Handbook of Empirical Legal Research* 21–22. Amy Ludlow and Alysia Blackham, *New Frontiers in Empirical Labour Law Research* (Bloomsbury Publishing 2015) 2. Z Adams and S Deakin, 'Quantitative Labour Law' [2015] *New Frontiers in Empirical Labour Law Research* 31, 32–33, 50. Simon Deakin, 'The Use of Quantitative Methods in Labour Law Research: An Assessment and Reformulation' 20. For a critique of the quantitative turn in social sciences see Alain Supiot, 'Governance by Numbers. The Making of a Legal Model of Allegiance', 2018 and Ota de Leonardis and Federico Neresini, 'Introduzione. Il Potere Dei Grandi Numeri' (2015) 56 *Rassegna Italiana di Sociologia* 371, Ota de Leonardis, Federico Neresini *Introduzione. Il potere dei grandi numeri*.

<sup>41</sup> Deakin, 'The Use of Quantitative Methods in Labour Law Research' (n 40) 5.

<sup>42</sup> I carried out the text analysis through the open-source software TXM, and MAXQDA, developed for interview analysis in the social sciences. Initially, I imported the reports in text format into the software. The software allowed me to analyse the reports in two steps: first, quantitatively, the software enabled me to retrieve all word combinations in the corpus formed by the reports. Based on the NATLEX ILO legal database, (see <[http://www.ilo.org/dyn/natlex/natlex4.bySubject?p\\_lang=en](http://www.ilo.org/dyn/natlex/natlex4.bySubject?p_lang=en)>), I then selected from the results a range of terms that I identified as linked to labour law. For example, I looked at the terms 'job', 'labour', 'employment', 'workers', 'labour legislation', 'training, skills', 'termination of employment', and 'migrant workers'. Second, I coded all the text segments that included those terms and analysed them qualitatively (coding in social sciences refers to the categorization of quantitative or qualitative data such as questionnaires and interviews to enable the analysis of that data).

<sup>43</sup> Damon Mayaffre, *Le discours présidentiel sous la Ve République. Chirac, Mitterrand, Giscard, Pompidou, de Gaulle*. (2012); Damon Mayaffre, 'Les corpus politiques : objet, méthode et contenu. Introduction' [2005] *Corpus*.

<sup>44</sup> Jean-Louis Siroux, 'La Dépolitisation Du Discours Au Sein Des Rapports Annuels de l'Organisation Mondiale Du Commerce' [2008] *Mots. Les langages du politique* 13.

<sup>45</sup> The reports have between 200 and 300 pages and I have analyzed the entirety of their content, including their bibliography. Table 1 in Annex 1 presents the subject matter of all the reports.

<sup>46</sup> See <[https://www.wto.org/english/res\\_e/reser\\_e/wtr\\_e.htm](https://www.wto.org/english/res_e/reser_e/wtr_e.htm)>

Division of the WTO Secretariat with the intention of presenting a theoretical consensus on different issues linked to international trade.<sup>47</sup> The responsibility of the WTO Secretariat is to provide trade-related technical and professional assistance to member governments.<sup>48</sup>

The World Trade Reports are mere policy reports, with no legal implications. The purpose of this work is therefore not to explain the extent to which these reports influence governmental policy-making. On the contrary, this paper aims to demonstrate how the WTRs build a discourse about labour-related issues that represents an official voice of the organisation. Via this medium, the WTO presents arguments about trade openness, export-oriented economy and the international exchange of commodities, as well as unemployment, skills, productivity and so on. Table 1 describes the subject matter of the WTR by year.

Table 1. World Trade Reports: subject matter by year

Year	Title	Pages
2003	Trade and trade policy development. Trade and development.	200
2004	Exploring the linkage between the domestic policy environment and international trade	276
2005	Exploring the links between trade, standards and the WTO	377
2006	Exploring the links between subsidies, trade and the WTO	266
2007	Six decades of multilateral trade cooperation: What have we learnt?	436
2008	Trade in a Globalizing World	204
2009	Trade Policy Commitments and Contingency Measures	196
2010	Trade in natural resources	256
2011	The WTO and preferential trade agreements: From co-existence to coherence	256
2012	Trade and public policies: A closer look at non-tariff measures in the 21st century	252
2013	Factors shaping the future of world trade	340
2014	Trade and development: recent trends and the role of the WTO	244
2015	Speeding up trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement	157
2016	Levelling the trading field for SMEs	182
2017	Trade, technology and jobs	190

### 3 LABOUR IS PART OF THE WTO AGENDA

The results of the quantitative inquiry show that, contrary to its official abnegation of responsibility for labour standards, the policies suggested by the WTO largely target the labour market and labour legislation. The present investigation has found patterns and commonalities in the use of particular words through which it is possible to grasp the WTO discourse connecting labour issues with trade and trade liberalisation. A systematic analysis of the labour topics addressed by the WTRs can be

<sup>47</sup> See <[https://www.wto.org/english/thewto\\_e/secre\\_e/div\\_e.htm](https://www.wto.org/english/thewto_e/secre_e/div_e.htm)>

<sup>48</sup> See WTO in brief, p 10. <[https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.pdf](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.pdf)>



obtained by breaking down the corpus of the text of the WTRs into categories of labour-related issues. Table 2 reveals that the WTRs frequently use labour-related vocabulary. The labour categories in the Table are organized by themes and according to the number of times the word appears in the WTRs. The criterion used to select the categories in Table 2 was quantitative. The focus was on the appearance of often-repeated terms and word combinations in the body of the text. All words, or groups of words, that were related to labour market policy, labour law and production which appeared at least five times in the body of the text were selected. The rubric of ‘labour categories’ also included terms which are also less labour related. Under the theme of ‘state’, for example, it was necessary to include ‘developing country, nation or economy’ in order to look at the connections between countries and their comparative advantages. Under the theme of ‘law’, words such as ‘reform’ or ‘[legal] resistance’ were selected and included for a close reading of the context in which they appear during the qualitative inquiry. If the WTRs were, for example, discussing ‘tax reforms’, or ‘trade reforms’, such a content was analysed but excluded from the presentation of the WTO discourse on labour standards and policy in section 4.

Table 2. Labour categories by theme in World Trade Reports.

Themes	Labour Categories	Number of Words
STATE	developing country, nation, economy	3018
	developed country, nation, economy	1193
	comparative advantage	479
	emerging country, economy, market	331
	industrialized country, nation, economy	116
	advanced country, nation, economy	93
LABOUR MARKET	production	3892
	employment	2695
	labour	2248
	wage	1113
	productivity	1057
	job	1001
	labour market	578
	unemployment	427
	employer	105
	labour force participation	83
	labour intensive	79
	labour supply	67
	labour demand	64
	job loss	51
	labour productivity	46
	job creation	41
	employment growth	35
	labour market outcome	37
	labour market policies	30
	hiring	20
labour and capital	18	
job opportunities	16	
job market	15	
labour market effect	10	
job vacancy	10	

	jobseeker	10
	labour market institution	9
	labour union	9
	job security	7
	labour market exchange	7
	job training	6
	trade union	5
LAW	reform	767
	labour standards	52
	resistance	48
	social safety nets	34
	labour adjustment	22
	government regulation	19
	employment protection	12
	employment benefit	12
	international regulation	9
	labour rights	8
DEREGULATION	labour market adjustment	22
	labour adjustment	8
WORKERS	worker	1429
	employee	276
	informal employment	236
	labour force	235
	low skilled workers	158
	unemployed	79
	workforce	75
	unskilled worker/labour	74
	high-skilled worker	47
	foreign worker	46
	non-routine jobs	45
	job polarization	21
	workers employed	11
	medium-skilled	11
	individual worker	8
	migrant worker	5
MOBILITY	labour mobility	49
	workers displaced	41
	labour migration	9
	workers move	8
	reallocation of labour	7
	mobility of workers	5

In the following section the discourse of the WTRs is reconstructed.

#### 4 LIBERALIZATION, ADJUSTMENT, FRICTIONS AND LABOUR

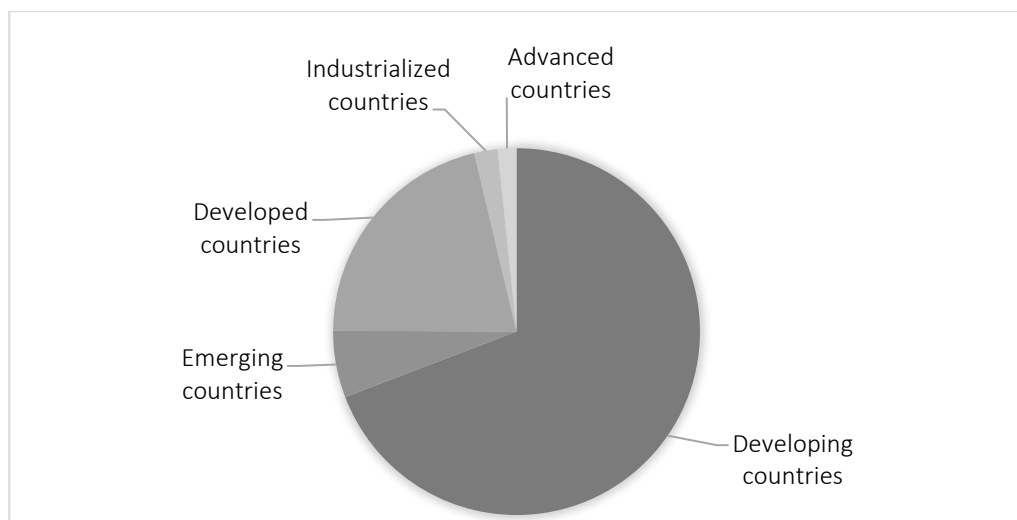
Quantitatively, we have seen that there are many terms and group of words within the World Trade Reports that are related to the degree of industrialization in a country, the labour markets, the labour law, the types of workers and the mobility of labour. In what follows we will analyze those labour categories qualitatively within the context in which they appear in the WTRs. Here the focus is on four key aspects of the WTO discourse: trade liberalization, adjustment, frictions and social safety nets. First, the labour discourse of the WTO for the initial stage of trade liberalization is discussed.

Second, the process of adjustment to global market fluctuation and the role of the state regarding labour policy to achieve trade liberalization is considered. The third part points out the friction – the interferences and the barriers – to the process of adjustment at domestic and international levels. It argues that the WTO gives particular significance to friction related to labour force availability, workers' mobility, unemployment and workers' skills. Finally, it analyzes how the discourse of the WTRs portrays social safety nets.

#### 4. 1. TRADE LIBERALIZATION AND LABOUR

It is common for the WTO to justify its position in favour of trade liberalization by reference to the comparative advantage theory.<sup>49</sup> The WTRs recurrently address labour standards as a matter of conflict between developing and industrialized countries. Low wages in developing countries must, for the WTO, in 'no way be put into question'.<sup>50</sup> The WTO often speaks in the name of developing states and their fears that any reference to labour standards by developed countries involves a turn towards protectionism. Figure 1 shows that the WTRs use terms related to developing countries much more frequently than those related to developed countries.

Figure 1. Developing and developed countries in the World Trade Reports 2003 to 2017.



Another persistent issue that has been argued in the WTRs is that trade and foreign direct investment bring technology from industrialized to developing countries.<sup>51</sup> Arguably, at the same time the WTRs

<sup>49</sup> World Trade Report 2008 (World Trade Organization) 106. *Comparative advantage* is mentioned 479 times in 15 reports.

<sup>50</sup> World Trade Report 2007 (n 7) 357–358.

<sup>51</sup> World Trade Report 2003 (World Trade Organization) XVIII. World Trade Report 2005, 2006, 2008, 2010, 2011, 2013, 2014, 2015, 2016, 2017.

suggest that comparative advantage theory is built on the existence of a difference between countries in terms of either technology or resource endowments.<sup>52</sup>

The WTO acknowledges that unemployment is an adverse effect of trade liberalization in the short term.<sup>53</sup> Some of its statements suggest that the WTO recognizes that the opening up of trade may lead to job losses in specific sectors.<sup>54</sup> For example, it is accepted that less efficient firms in domestic markets may be forced to reduce sales or to close.<sup>55</sup> Opening up trade will create more export jobs,<sup>56</sup> but jobs in other branches of the economy will be lost,<sup>57</sup> and workers will be relocated to a non-trade sector or an informal labour market. Following the liberal theory, the WTO understands trade liberalization as a 'coordinated reduction of protection',<sup>58</sup> which benefits domestic groups such as consumers and export industries. The groups that lose out from this process are low-skilled labourers and trade unions.<sup>59</sup> However, for the WTRs, trade openings provide the opportunity for workers to move on from low-paid jobs in the import sector to higher-paid jobs in the export sector.<sup>60</sup>

Labour market tensions, 'growing income inequality and adverse public attitudes towards globalization and trade'<sup>61</sup> are another concern for the WTO. The WTRs call for the effective mobilization of governmental apparatus towards trade liberalisation. In essence, the WTO insists on a 'strong political commitment'<sup>62</sup> to avoid the 'risk of changes in policy direction'<sup>63</sup> to support trade reforms. Interestingly, for the WTRs, 'if trade is perceived by a majority of voters as causing unemployment and/or increasing inequality, governments could refrain from pursuing further trade opening and may even be tempted by protectionism'.<sup>64</sup> A government must generate the 'social acceptance of trade liberalization' in periods of reform.<sup>65</sup> In other words, the WTO considers as dangerous those governments which create 'deteriorating perceptions'<sup>66</sup> of the benefits of liberal trade. A tension visible throughout all the WTRs is that on the one hand governments must have an active

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<sup>52</sup> World Trade Report 2008 (n 49) XV.

<sup>53</sup> World Trade Report 2013 (n 8) 229.

<sup>54</sup> *ibid* 13.

<sup>55</sup> World Trade Report 2017 (World Trade Organization) 117.

<sup>56</sup> *ibid* 48.

<sup>57</sup> *ibid* 128.

<sup>58</sup> World Trade Report 2007 (n 7) 128.

<sup>59</sup> *ibid* 77.

<sup>60</sup> World Trade Report 2017 (n 55) 122.

<sup>61</sup> World Trade Report 2013 (n 8) 277.

<sup>62</sup> World Trade Report 2015 (World Trade Organization) 129.

<sup>63</sup> *ibid*.

<sup>64</sup> World Trade Report 2013 (n 8) 277.

<sup>65</sup> World Trade Report 2004 (World Trade Organization) 181.

<sup>66</sup> World Trade Report 2013 (n 8) 237.

role in facilitating trade liberalisation, but on the other they must solve each problem created in society as a consequence of trade liberalization.

#### 4. 2. STATE ADJUSTMENT AND LABOUR

According to the WTRs, government policy and institutions need to adjust constantly and intervene against market distortion.<sup>67</sup> Adjustment can be more or less smooth depending on rigidities and frictions.<sup>68</sup> For the WTO, the best premises for adjustment to globalisation are minimum social and tax regulation. In cases of competitive pressure from rapidly developing emerging economies towards industrialized countries, the WTRs suggest that the latter should apply labour market adjustments.<sup>69</sup> Besides, the state may intervene, for example, when a major employer goes bankrupt or when a considerable number of workers are 'being released from their jobs',<sup>70</sup> meaning massive redundancy. The WTRs observe that certain regional trade agreements recognize labour adjustment as an area of cooperation for facilitation, support and training.<sup>71</sup> Examples are the trade agreements between Chile and China, Art. 108, or between Canada and Colombia, Annex 1.<sup>72</sup>

Labour markets must be reactive to economic constraints or suffer high levels of unemployment. And again, for the WTO it is a state's responsibility to build the capacity of the labour market to adjust. However, 'labour market adjustment cost is smaller than the total benefits of trade and technology'.<sup>73</sup> Specific adjustment programmes must design labour market, education and social policies so that they help workers to adjust to economic change.<sup>74</sup> In an inflexible labour market, job losses may not be compensated for by the expanding export sector.<sup>75</sup> In addition, local labour adjustment can have international consequences.<sup>76</sup> Also, the WTRs stress the idea that transferring 'best practice' on labour standards from developed to developing countries may be unsuitable for the current stage of progress in the developing country.<sup>77</sup>

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<sup>67</sup> *ibid*; World Trade Report 2017 (n 55) 3.

<sup>68</sup> World Trade Report 2017 (n 55) 55.

<sup>69</sup> World Trade Report 2013 (n 8) 237.

<sup>70</sup> World Trade Report 2006 (World Trade Organization) 98.

<sup>71</sup> World Trade Report 2017 (n 55) 141.

<sup>72</sup> *ibid*.

<sup>73</sup> World Trade Report 2016 (World Trade Organization) 5.

<sup>74</sup> World Trade Report 2017 (n 55) 10,136.

<sup>75</sup> World Trade Report 2003 (n 51) 99.

<sup>76</sup> World Trade Report 2017 (n 55) 4,11.

<sup>77</sup> World Trade Report 2011 (World Trade Organization) 114.

The WTRs repeatedly highlight the relationship between labour supply and demand as a determinant for labour market outcomes.<sup>78</sup> Additionally, the report stresses the relevance of the exchange costs in the labour market.<sup>79</sup> The term ‘exchange costs’ used by the WTO refers to the price of transactions between buyers and sellers in the labour market, such as those arising from matching jobs with workers,<sup>80</sup> the negotiation of the terms and conditions of the labour services and the enforcement of those terms and conditions.<sup>81</sup> The labour market exchange has an impact on wages, depending on the ‘volume of the exchange’ and on the distribution of gains from that exchange.<sup>82</sup> The WTO believes that labour supply should be elastic and able to react to fluctuations in wages.<sup>83</sup> This idea presupposes a certain level of unemployment and the existence of a section of the labour force that is capable of entering the labour market and exiting it when conditions change.<sup>84</sup> The WTO uses Germany as an example of the expansion of an export-oriented sector that did not translate into the integration of dislocated workers from the import sector but on the contrary introduced unemployed workers or new workers into the labour market.<sup>85</sup> In fact, labour market institutions should, according to the WTO, be in charge of managing any economic change that may arise. Indeed, labour institutions fixing a minimum wage and trade union laws are considered by the WTRs to be responsible for the level of unemployment and the duration of unemployment.<sup>86</sup>

Labour legislation is a problem for the WTRs, insofar as it diminishes labour supply and establishes ‘rigidities’ such as the right to strike, long maternity leave or state control of licences for professions such as law, medicine and plumbing.<sup>87</sup> Labour protection reduces job opportunities, according to the WTRs. It also hinders the development of new businesses, because of the extra cost that it generates. Regulatory friction in the labour market can also obstruct the process of adjustment to trade liberalization.<sup>88</sup> Finally, any social, labour and redistributive policies ‘fall in the domain of domestic policy making’.<sup>89</sup> By contrast, trade policy should follow common universal principles of trade liberalization, no matter what the political affiliation of the government in power.

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<sup>78</sup> World Trade Report 2017 (n 55) 47.

<sup>79</sup> *ibid* 58.

<sup>80</sup> *ibid*.

<sup>81</sup> *ibid* 59.

<sup>82</sup> *ibid* 58.

<sup>83</sup> *ibid* 102.

<sup>84</sup> *ibid* 6,57.

<sup>85</sup> *ibid* 115.

<sup>86</sup> *ibid* 58.

<sup>87</sup> World Trade Report 2009 (World Trade Organization) 45; World Trade Report 2017 (n 55) 52.

<sup>88</sup> World Trade Report 2017 (n 55) 52.

<sup>89</sup> World Trade Report 2008 (n 49) 152.

#### 4. 3. FRICTIONS

In the discourse of the WTRs frictions are interferences or barriers to the process of adjustment to trade liberalization. The factors that create friction in trade openness are the unavailability of labour supply, impediments to workers' mobility, unemployment and the poor skills of workers. For the WTO, the government is the agent mainly responsible for creating measures to eliminate these frictions.<sup>90</sup>

##### 4.3.1. Trade, labour supply and mobility

Labour supply must be available. Cities, for the WTO, provide a better labour supply because agglomerations allow information about new jobs to flow and because there are higher levels of education and worker specialisation.<sup>91</sup> Governments should promote programmes for the integration of workers in urban centres, such as the provision of job opportunities and housing. According to the WTO, some obstacles to international trade originate from the physical and cultural qualities of specific countries.<sup>92</sup> Distances from rural to urban areas restrict the mobility of workers.<sup>93</sup> WTR 2013, quoting the World Bank, states that 'any moves towards more diversification and better integration in world markets are therefore likely to go hand in hand with migration from rural to urban areas'.<sup>94</sup> Interestingly, another constraint on trade for the WTO is social networks, such as family, language and cultural barriers that hinder the reallocation of workers between regions.<sup>95</sup>

Closely related to the availability of labour supply is the capacity of labour to move for new job opportunities. There is a friction, in the views of the WTRs, when workers face obstacles to moving between regions or sectors to benefit from job opportunities.<sup>96</sup> Hence, the WTRs suggest that labour law should not thwart the mobility of workers as a consequence of wage setting or fixed minimum wages.<sup>97</sup> Mobility barriers generate adjustment costs and delay or block the movement between regions.<sup>98</sup> For the WTO, restraints on the mobility of employees may result in wage disparities between firms for similar jobs. In this context, the WTO highlights how insufficient infrastructure,

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<sup>90</sup> World Trade Report 2017 (n 55) 50.

<sup>91</sup> World Trade Report 2013 (n 8) 211.

<sup>92</sup> World Trade Report 2017 (n 55) 52.

<sup>93</sup> *ibid.*

<sup>94</sup> World Trade Report 2013 (n 8) 234.

<sup>95</sup> World Trade Report 2017 (n 55) 52.

<sup>96</sup> *ibid* 49.

<sup>97</sup> *ibid* 52.

<sup>98</sup> *ibid* 51.

such as transport and housing, can obstruct workers from taking up employment opportunities.<sup>99</sup> It is the task of government to intervene and to 'correct market failures'.<sup>100</sup>

Migration is 'complementary to trade' for the WTO.<sup>101</sup> For this reason, competent foreign workers should be able to occupy the place of domestic workers with poorer skills or a lower level of education.<sup>102</sup> Domestic workers should acquire specialisation in sectors with comparative advantage and be capable of competing internationally.<sup>103</sup> The WTR 2013 observes that immigration as a labour supply affects the productivity of the country, and therefore international trade.<sup>104</sup> The demographic problems of a nation could be solved through the temporary movement of workers.<sup>105</sup>

In the case of difficulty in employing domestic workers, the WTO proposes that the state should admit migrant workers.<sup>106</sup> However, tedious and expensive practices for employers such as visa requirements, the economic needs test and the restriction on the assimilation of a professional diploma make it unattractive to hire foreign workers.<sup>107</sup> The WTRs highlight how some countries provide temporary visas when there is a cyclical or structural scarcity of workers for a particular branch of production in the domestic labour market. Also, the WTRs stress that the state should provide for the transmissibility of pensions and other contributions and avoid the double taxation of foreign workers.<sup>108</sup> As an example, the WTR 2004 mentions the United Kingdom. In 2003, that country set in motion short-term work permits for hiring foreign workers for up to one year in low-skilled positions in the hospitality sector and food manufacturing industry.<sup>109</sup> The WTRs insist on the significance for developed countries of measuring statistically the number of temporary work permits/visas conceded to foreign workers, because this can help to assess the magnitude of these transactions.<sup>110</sup> Moreover, the WTO considers that free trade will bring uniformity in the price of goods, but if, on the contrary, there are differences in wages, workers will have an incentive to migrate to a foreign labour market. Some of the WTO's statements regarding migration in the case of an

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<sup>99</sup> *ibid* 135.

<sup>100</sup> *ibid*; World Trade Report 2012 (World Trade Organization) 49.

<sup>101</sup> World Trade Report 2013 (n 8) 129.

<sup>102</sup> World Trade Report 2004 (n 65) 49.

<sup>103</sup> *ibid*.

<sup>104</sup> World Trade Report 2013 (n 8) 129.

<sup>105</sup> World Trade Report 2004 (n 65) 49.

<sup>106</sup> *ibid* 545.

<sup>107</sup> *ibid* 46.

<sup>108</sup> *ibid* 54.

<sup>109</sup> *ibid* 68.

<sup>110</sup> *ibid* 59.



ageing population seem overly optimistic, e.g. the claim that permitting workers to move beyond national borders would help to quickly relieve an absence of skills in the host country.<sup>111</sup>

#### 4.3.2. Trade and unemployment

For the WTO, unemployment and underemployment represent a 'plague',<sup>112</sup> a 'huge waste of human resources' that the state needs to confront with active policies.<sup>113</sup> For the WTRs, this problem '[leaves] a large fraction of their labour force not productively utilized'.<sup>114</sup> The ability to include the unemployed in a 'tradable' sector can sometimes be limited, and workers will thus lose out and move to non-trade sectors. Some statements by the WTO are overly naïve in their romanticization of entrepreneurship: quoting economic literature, the WTO remarks that 'entrepreneurship can surge when the individual has not better choices for work'.<sup>115</sup>

The WTRs frequently propose that labour market policy should be oriented to job searching, matching jobs and the availability of job information.<sup>116</sup> Job-searching friction appears as one of the leading concerns for the WTO. The WTRs state that it is a worker's 'choice' when the worker stops searching for a job.<sup>117</sup> Therefore, governments have a role to play by supporting a system of job matching to achieve an efficient degree of harmonization between employers and job-seekers.<sup>118</sup> Good labour policy should include measures to motivate workers to find a job, along with unemployment benefits, training and sanctions.<sup>119</sup> Transitional or structural unemployment will arise either when job seekers and job vacancies are in different regions, and mobility friction and wage rigidity impede adjustment, or when there are imbalances between the skills of job-seekers and the skills required for available job vacancies.<sup>120</sup>

Inadequate information about job opportunities produces a labour force that continues to exist as unemployed because there is a lack of access to job vacancies available in the labour market, according to the WTRs. That information should be improved through state policies to provide rapid

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<sup>111</sup> World Trade Report 2008 (n 49) 21.

<sup>112</sup> World Trade Report 2016 (n 73) 114.

<sup>113</sup> *ibid.*

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid* 60.

<sup>116</sup> World Trade Report 2004 (n 65) 184; World Trade Report 2006 (n 70) 98; World Trade Report 2017 (n 55) 18; World Trade Report 2013 (n 8) 163; World Trade Report 2009 (n 87) 47.

<sup>117</sup> World Trade Report 2017 (n 55) 47.

<sup>118</sup> *ibid* 137.

<sup>119</sup> *ibid.*

<sup>120</sup> *ibid* 51.

access to information on jobs for candidates and information about candidates to employers. For the report, qualities such as the rapidity, competence and usefulness of the information during the job-search process are conducive to reducing unemployment. Finally, the WTR 2017 insists that there is a necessity to avoid 'natural asymmetry of information between firms that post job vacancies (potential employers) and workers who are looking for a job (potential workers)'.<sup>121</sup> Effective coordination to match job-seekers with vacancies includes transport subsidies and training subsidies for unskilled, low-skilled and young workers.<sup>122</sup>

Unemployment benefits are treated as essential in the WTRs as a general policy, together with policies that 'target individuals, sectors or regions affected by trade'.<sup>123</sup> The WTR 2008 insists that 'in the absence of any social protection, unemployment, even for a short period, may cause considerable hardship'.<sup>124</sup> Nevertheless, the report observed that unemployment benefits would influence the rapidity with which the unemployed search and enter the labour market again. It also contended that the absence of proper social safety nets will generate suffering for the poor population during the period of adjustment in developing countries.<sup>125</sup> Temporary benefits should prevent the unemployed from slipping into poverty.<sup>126</sup> The WTRs acknowledge that benefit schemes vary between industrialized and developing countries.<sup>127</sup> Finally, the WTO claims that unemployment should be attacked at its 'source'; i.e. via labour market policy rather than trade policy.<sup>128</sup>

#### 4.3.3. Trade and workers' skills

Workers' skills play a critical role in terms of the comparative advantage of countries.<sup>129</sup> In addition, workers' skills are important in the eyes of the WTO for ensuring an up-to-date labour supply.<sup>130</sup> The skills help to adapt the labour force to technological change. A lack of skills in a particular labour market can be considered a friction, hindering adjustment to trade liberalization.<sup>131</sup>

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<sup>121</sup> *ibid* 50.

<sup>122</sup> *ibid* 135.

<sup>123</sup> World Trade Report 2008 (n 49) xxv.

<sup>124</sup> *ibid* xxvi.

<sup>125</sup> World Trade Report 2003 (n 51) 112.

<sup>126</sup> World Trade Report 2008 (n 49) xxvi.

<sup>127</sup> *ibid*.

<sup>128</sup> World Trade Report 2009 (n 87) 47.

<sup>129</sup> World Trade Report 2008 (n 49) 110; World Trade Report 2017 (n 55) 117.

<sup>130</sup> World Trade Report 2017 (n 55) 99.

<sup>131</sup> *ibid* 155.

On skills and unemployment, the WTRs insist that 'when the demand for skills changes and skill development systems are not sufficiently responsive, structural unemployment may also arise'.<sup>132</sup> When trade liberalization policies apply in a country, under the conditions of a labour market that generates mismatches between job-seekers and vacancies, the share in the productivity gains will be reduced, and unemployment will rise.<sup>133</sup> Friction can arise when 'wage rigidities' provoke a lack of congruence between skill supply and demand,<sup>134</sup> or an excess of demand in one sector of production and an excess of supply in another area of production, and when the mobility of workers is reduced.<sup>135</sup>

Regarding skills, training and education, the WTO repeatedly asserts that trade benefits highly skilled workers. Therefore, the government should provide support for unskilled and low-skilled workers to help them to 'upgrade' and follow the demands of the market.<sup>136</sup> Governments should include education and skills policies, such as 'the right to access to vocational programmes', as well as an educational curriculum which accompanies rapid changes in technology.<sup>137</sup> As a result, these policies would reduce inequality and create jobs. The WTR 2013 gives the examples of China and India, which were the first countries to integrate low-skilled rural workers into the labour market; they then proposed training in manufacturing and service sectors, moving to higher value-added production.<sup>138</sup> These two countries exported low-skill products, and at the same time expanded to higher value-added production.<sup>139</sup>

Regarding the relationship between skills and technology, the WTO argued in 2003 that the competitive advantage of developing countries is located in low-skilled intensive sectors, and those sectors will be inclined to expand.<sup>140</sup> In developing countries, the demand for low-skilled workers will increase together with their wages compared to skilled workers.<sup>141</sup> In contrast, if there is a reduction in the need for low-skilled workers, their pay will decrease unless the labour market has the flexibility to reduce wages to avoid unemployment.<sup>142</sup> For example, when large low-income countries from Asia joined the WTO in the 1980s, the comparative advantage of middle-income countries in Latin

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<sup>132</sup> *ibid* 51.

<sup>133</sup> *ibid* 18.

<sup>134</sup> *ibid* 6.

<sup>135</sup> *ibid* 55.

<sup>136</sup> *ibid* 147.

<sup>137</sup> *ibid*.

<sup>138</sup> World Trade Report 2013 (n 8) 234.

<sup>139</sup> *ibid*.

<sup>140</sup> World Trade Report 2003 (n 51) 109.

<sup>141</sup> *ibid*.

<sup>142</sup> *ibid* 110.

America changed towards the production of goods of moderate-level skill intensity.<sup>143</sup> As a result, the countries in that region became importers of labour-intensive products.<sup>144</sup> However, in 2017 the WTRs suggested that trade leads to demand for highly skilled workers, since new technologies are introduced as a consequence of imports.<sup>145</sup> Automation will lead to a decline in routine work and a predominance of non-routine tasks and work.<sup>146</sup> The WTR suggests that with automation, there will be a tendency for middle-skilled workers to perform more routine jobs that were previously occupied by low-skilled workers.<sup>147</sup> For the WTRs, technology will remove low-skilled workers from the labour force.<sup>148</sup>

#### 4.4. SOCIAL SAFETY NETS

Social protection appears in the WTO discourse as ‘social safety nets’ with the role of reducing the conflict of adjustment and to ‘increase social acceptance of trade reforms’.<sup>149</sup> The WTRs assert that the social acceptance of trade reforms should be secured by introducing social safety nets, such as mandatory social benefits or unemployment indemnities, and through the creation of ‘winners’ in the export sector.<sup>150</sup> For the WTO, social safety nets are mainly of two types: indemnities for the unemployed and redistribution of the gains of trade to avoid inequality. Governments that do not intervene with social safety nets are considered ‘passive’ by the WTRs. After a period of trade liberalization, provisional social safety measures, such as public investment in physical and human capital infrastructure, are considered relevant to the structure of international trade.<sup>151</sup> Trade openness creates risks, in response to which public institutions need to intervene with the redistribution of wealth and protection of the unemployed.<sup>152</sup> The idea behind the social safety nets is to generate indemnities and benefits during the period in which workers will necessarily be excluded from jobs following trade opening in a country, and to enable the labour force to find jobs in the short term.

The WTRs propose that governments should provide public subsidies to improve workers’ access to education.<sup>153</sup> Governments should improve education and, if necessary, modify labour legislation and

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<sup>143</sup> *ibid.*

<sup>144</sup> *ibid.*

<sup>145</sup> World Trade Report 2017 (n 55) 7.

<sup>146</sup> *ibid* 78.

<sup>147</sup> *ibid* 87.

<sup>148</sup> *ibid* 86.

<sup>149</sup> World Trade Report 2004 (n 65) 185.

<sup>150</sup> *ibid* 182.

<sup>151</sup> World Trade Report 2013 (n 8) 135.

<sup>152</sup> World Trade Report 2004 (n 65) xxv.

<sup>153</sup> World Trade Report 2006 (n 70) 98.

wage-setting.<sup>154</sup> According to the WTO, the state should give direct credits to workers, such as loans for the section of the labour force that could not otherwise afford education. Indeed, introducing state subsidies that encourage firms to hire, such as 'tax credit to firms for every worker they hire', supports the expansion of labour demand.<sup>155</sup> Policies such as early retirement programmes for older workers are welcome.<sup>156</sup> The WTRs give as an example the US programme of 'trade adjustment assistance' for displaced workers.<sup>157</sup> However, in opposition to this, measures that are 'trade specific', such as indemnity for 'trade-displaced workers', are discouraged.<sup>158</sup> It is acknowledged again that there is a difference in safety nets between developed and developing countries. For example, the report mentions the existence of 'informal safety nets', based on family and community support, such as in Uganda's middle classes.<sup>159</sup>

Finally, wages are not considered by the WTO as part of the social safety net or the redistribution of trade gains. The WTRs insist on the necessity of fluctuating salaries in the marketplace. Trade liberalization will reduce wage inequality in developing countries.<sup>160</sup> Firms need an option to reduce wages when it is necessary, otherwise unemployment may rise. It follows that any fixed wage or minimum wage will be considered as an attack on the freedom of firms to pay, for example, lower wages to foreign workers. For the 2013 WTR, a minimum wage transforms inequality into unemployment.<sup>161</sup> The WTO relies here on some assumptions: for example, that workers will supply additional work only in the case of an increase in wages.<sup>162</sup> A basic premise in the WTRs is that in any competitive market the demand for labour intensifies, and employment and wages will rise. On the contrary, wage rigidity shrinks the labour demand, causing unemployment or displacement to the informal labour market.<sup>163</sup> In footnotes of the WTR 2017 there appeared similar arguments regarding the effects of an eventual increase in wages which would 'lead workers to work less, as they might want to consume more hours of leisure once they are richer'.<sup>164</sup>

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<sup>154</sup> World Trade Report 2017 (n 55) 52.

<sup>155</sup> *ibid* 48.

<sup>156</sup> *ibid* 137.

<sup>157</sup> *ibid* 147.

<sup>158</sup> *ibid* 149.

<sup>159</sup> World Trade Report 2004 (n 65) 184.

<sup>160</sup> World Trade Report 2003 (n 51) 109.

<sup>161</sup> World Trade Report 2013 (n 8) 227.

<sup>162</sup> World Trade Report 2017 (n 55) 48.

<sup>163</sup> *ibid* 56.

<sup>164</sup> World Trade Report 2013 (n 8) 210; World Trade Report 2017 (n 55) 71.

## 5 IMPLICATIONS

The World Trade Reports are mainly policy documents presenting best practice, legal reforms, governmental programmes and public policy, as well as a selected economic literature, which are addressed to the WTO member states. In that context, the WTO discourse repeatedly addresses certain aspects and levels of labour policy and legislation. In particular, the WTRs endorse a mandate for the state to create a malleable and reactive labour market, as well as to eliminate any kind of frictions: geographical ones, the mobility of workers, the limitation of the period in which the labour force finds itself in unemployment, and so on. In addition, the WTRs encourage the reduction of labour law protection such as minimum wages, or costly workers' rights, in order to adjust to trade. The WTRs advocate for an elastic and available labour force, subservient to the dictates of technological advances through constant skills updating. Lastly, against all the adversities generated by international trade, the WTRs propose vague social safety nets, an intangible program of benefits. In this way, the WTO 'deals' with labour issues, intervening in what the ILO 'sets and deals' with.

There are three important implications that can be drawn from the above analysis. First, for the WTO labour is a commodity. Embracing neo-classical economics, human labour appears in the WTR's discourse as labour 'supply', a commodity, with no consideration for conditions of decency, dignity or respect in the working processes of production. Labour supply must be elastic and harmonized with the labour demand for production. The WTRs repeatedly highlight concerns regarding the self-adjustment of the labour supply, dedicating numerous pages to the unemployed, the low-skilled and unskilled worker or the informal employment sector. Labour supply must be available, and governments are responsible for creating that availability through infrastructure – transport and housing – reducing distances from rural to urban centres and eliminating cultural barriers to relocate workers. Historically, human labour has found itself locked in the binomial object of the law, as a commodity and as a subject of rights as workers.<sup>165</sup> Yet, the 1944 ILO Declaration of Philadelphia stated that *labour is not a commodity*.<sup>166</sup> A long time ago, Karl Polanyi explained the limitations of treating human labour as a fictive commodity relegated to the market, which 'would result in the demolition of society'.<sup>167</sup> Judy Fudge further contends that labour power cannot be divorced from the worker who is 'born, cared for, and tended' in a system of social relations external to market forces.<sup>168</sup>

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<sup>165</sup> Alain Supiot, *Critique Du Droit Du Travail* (Presses universitaires de France 2007) 45–110.

<sup>166</sup>

See

<[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO#declaration](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration)>

<sup>167</sup> Karl Polanyi, *The Great Transformation* (Beacon press Boston 1944) 75–76.

<sup>168</sup> Judy Fudge, 'Labour as a "Fictive Commodity": Radically Reconceptualizing Labour Law', *The Idea of Labour Law* (G Davidov & B Languille, 2011) 130.

Adelle Blackett argues that the main role of labour law is to resist such a commodification of labour as a factor of production.<sup>169</sup> For Alain Supiot, human beings are not at the centre of the economic objectives of the WTO agreements, and because of this their liberty, dignity and economic security has disappeared.<sup>170</sup> Indeed, the WTRs depict the workforce as having neither a human face nor a voice, just like energy, water or land.

Second, the WTO promotes the liberalization of work. Labour law protection appears as a non-tariff barrier to trade, which should be enforced only if it involves no cost for firms. Wage rigidity, as well as standards on minimum wages, should be eliminated. This implies that wages should fluctuate according to the flow of the market, opening the possibility for firms to reduce wages when necessary. The WTRs advocate for labour migration without constraints. Domestic workers should compete with foreign workers for jobs. In order to do this, governments are advised to introduce temporary visas and eliminate heavy visa requirements for foreign workers. This is because workers must follow jobs, from rural to urban regions, from countryside to cities, from import to export sectors – and not the other way round. In addition, it seems to be particularly relevant for the WTRs to eliminate barriers to the movement of workers as well as to deregulate working time.<sup>171</sup> The WTRs emphasize the significance of the relocation of workers to urban regions and cities because they provide more job opportunities. Also, there is an insistence on categories of movement: the free movement of migrant workers, the fluctuation of the workforce between sectors, the unemployed entering and exiting the labour market, the transferability of the unemployed to ‘tradable’ sectors, the calibration of workers’ skills with technology, the key role of information for the matching of workers with jobs and the transferability of pensions across borders. The persistence of these categories may underline a transient nature of jobs in the view of the WTO. In addition, the WTRs’ discourse ties labour-related issues to a number of words associated with time, such as fast, slow, rapid, delay, quick, accelerate, prompt, speed; or a combination of words such as time constraints, time-consuming, time delay, time delivery, time cost, time inconsistency.<sup>172</sup> The WTO urges state intervention (the adjustment and eradication of friction) in order to eliminate the dead time in production.<sup>173</sup> It demands that

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<sup>169</sup> Adelle Blackett, ‘Emancipation in the Idea of Labour Law’, *The Idea of Labour Law* (G Davidov & B Languille, 2011) 435.

<sup>170</sup> Alain Supiot, *L’esprit de Philadelphie: la justice sociale face au marché total* (Editions du Seuil 2010) 63.

<sup>171</sup> For a multidimensional definition of working time see Mike Noon, Paul Blyton and Kevin Morrell, *The Realities of Work: Experiencing Work and Employment in Contemporary Society* (Macmillan International Higher Education 2013); cited in Cristina Inversi, Lucy Ann Buckley and Tony Dundon, ‘An Analytical Framework for Employment Regulation: Investigating the Regulatory Space’ (2017) 39 *Employee Relations* 291, 181.

<sup>172</sup> The World Trade Reports often use the terms ‘time’ (1910 times), ‘fast’ (537 times), ‘slow’ (396 times), ‘rapid’ (365 times), ‘delay’ (159 times), ‘quick’ (124 times), ‘accelerate’ (97 times), ‘prompt’ (108 times) and ‘speed’ (104 times).

<sup>173</sup> Concerning dead time see Jacques Le Goff, *Du Silence à La Parole: Une Histoire Du Droit Du Travail: Des Années 1830 à Nos Jours* (Presses universitaires de Rennes 2004) 502.

governments facilitate the availability of labour supply to avoid delays and interruptions between production, logistics and international trade. In addition, the WTRs insist that the skills of the workforce need to be coordinated with rapid technological change. To this end, the state should provide timely access to education and subsidies for training to update the skills of the labour force.

Third, the state has an active role in the liberalization of labour. The WTO rationale is based on the improvement of living conditions through trade liberalization. But to liberalize trade, the WTO suggests reforms in production and labour policy. Therefore, the WTRs portray the state according to the neoliberal definition.<sup>174</sup> The state must intervene. For the WTO, the government should actively 'do more' – for instance, in agriculture, in industrial development, in natural resources markets, in services markets – in two different ways: on the one hand, the WTO requests member states to 'decide, aid, commit, adjust, control, take action, regulate, introduce policies' to facilitate trade liberalization, e.g. to eliminate 'rigidities' such as wage-setting. On the other hand, it is the role of the state to set up social safety nets to face the adverse effects created by trade liberalization, e.g. vague minimum income guarantees and individual savings plans. In this way, the WTO takes responsibility away from employers, firms and businesses in this process, positioning the state as *the* agent in charge of solving those problems.<sup>175</sup> This approach differs from the characteristic tripartism of the ILO, which includes the representatives of workers and employers as the main actors in the social dialogue, with the same status as that of governments.<sup>176</sup> The WTRs assert that labour policy is considered to be a domestic policy, but trade policy should follow the principles established by the WTO. Indeed, the WTO's process of legalization and judicialization of international trade has been an attempt to depoliticize it and 'to delimit the manoeuvring space for states when regulating international trade'.<sup>177</sup> The legal technical expertise of the WTO has been used to provide international acceptability and legitimacy for the institutional process defining regulatory measures.<sup>178</sup> The development of the WTO's legal apparatus includes the capacity to monitor national policies more effectively than other international organizations.<sup>179</sup>

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<sup>174</sup> For a critical analysis of the neoliberal state see Michel Foucault, 'The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979 (G. Burchell, Trans.)' [2008] Basingstoke, United Kingdom: Palgrave; For a mayor proponent of the neoliberal state see Friedrich A Hayek, *The Constitution of Liberty* (Chicago: University of Chicago Press 1960); Friedrich A von 1899-1992 Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* / (Routledge & Kegan Paul, 1982).

<sup>175</sup> In relation to the distribution of responsibility see Alain Supiot and Mireille Delmas Marty, *Prendre La Responsabilité Au Sérieux* (Presses universitaires de France 2015).

<sup>176</sup> See the ILO Declaration of Philadelphia.

<sup>177</sup> Ntina Tzouvala, 'Neoliberalism as Legalism: International Economic Law and the Rise of the Judiciary', *The Politics of Legality in a Neoliberal Age* (Routledge 2017) 4.

<sup>178</sup> Andrew TF Lang, 'World Trade Law After Neo-Liberalism' (2014) 23 Soc. & Legal Stud. 408.

<sup>179</sup> Jens L Mortensen, 'Seeing like the WTO: Numbers, Frames and Trade Law' (2012) 17 New political economy 77.



Summing up, this section has presented the implications of the WTO discourse on the trade-labour nexus. First, the WTRs picture labour as a commodity, a labour supply always available for production. Second, the reports advocate the liberalization of work through policy proposals oriented to eliminate all rigid ‘barriers’ or ‘frictions’ to trade that are present in the labour market. Third, governments should ensure with active policies the availability of labour supply and the liberalization of work. This discourse disregards the fundamental principles and practices of the ILO. Considering the hypothesis that a state country might actively pursue the WTO reforms and policy proposals, this will certainly entail a breach of its international obligations agreed with the ILO. There is, therefore, a strong case for scepticism about the success of any mutual conciliatory stance between the WTO and the ILO. A *bona fide* interpretation of the GATT exceptions or the integration and coordination of the trade and labour regimes seem highly improbable. Moreover, the WTO discourse continues to diminish the social responsibility of employers, firms and investors in the process of trade liberalization. This enquiry has shown that the rationale of the WTO assumes that it is trade which brings social progress rather than the social and labour conditions under which goods and services are produced.

## 6 CONCLUSIONS

By focusing on the World Trade Reports, the present paper has shown that, despite the Singapore Declaration, the WTO discourse ‘deals’ significantly with labour standards and policy. The quantitative analysis demonstrates that labour categories hold a central space within the discourse of the WTO. Furthermore, the qualitative analysis confirms that the WTO discourse intervenes in policy advice and legal reform proposals in the domain under the mandate of the ILO. This, therefore, results in relevant implications for the trade-labour nexus. In the WTO project of trade liberalization labour is conceptualized as a commodity that must be liberalized through the active role of the state. The WTO discourse on labour standards and policy is problematic because neither coherence with international labour standards, nor space for governments to act freely in those areas, appear to be present in this narrative.

Today the WTO is in crisis, and this exposes its own limitations. The introduction of trade tariffs by the United States (U.S.) on Chinese goods and the retaliatory tariffs by China are destabilizing the multilateral trade system established by the WTO agreements. The underlying conflict is related to an economic, high-tech and intellectual property battle between these two powerful countries. In

addition, the Appellate Body of the WTO will soon be reduced in size to one judge of the three necessary, and the U.S. refuses to appoint new judges to the tribunal.<sup>180</sup> The U.S. is therefore paralyzing the dispute settlement mechanism at a moment when many governments have initiated WTO proceedings against that country.<sup>181</sup> The rise of protectionist trade policies in various countries at first appears to originate in the rise of nationalist and far-right movements after the financial crisis of 2008 and the austerity policies that followed. But an earlier, longstanding process of delocalization and the outsourcing of production to low-cost countries has generated high rates of unemployment, exclusion and poverty in industrialized countries. Developing countries, on the other hand, forced to convert to an export-oriented economy, have been exposed to greater vulnerability and dependence on external economic forces.<sup>182</sup> As a result, rather than understanding the WTO crisis as rooted in the protectionist approach of the current Trump administration,<sup>183</sup> we can better comprehend it through the disengagement of the international trade law regime with international labour standards, and with social and economic rights which are intimately related.<sup>184</sup> Misguided attempts to reform the regime supporting such an isolated trade legal system, rather than offering a deep structural transformation, will continue to erode the foundations of the multilateral trade system from within.

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<sup>180</sup> See Qingjiang Kong and Shuai Guo, 'Towards a Mega-Plurilateral Dispute Settlement Mechanism for the WTO?' (2019) 53 *Journal of World Trade* 273.

<sup>181</sup> Ricardo Arredondo and Leopoldo Godio, 'La Crisis Del Órgano de Apelación de La Organización Mundial de Comercio.' (2019) 7 *Revista de la Secretaría del Tribunal Permanente de Revisión* 163, 169.

<sup>182</sup> For an example of recent experiences in Latin America see Pedro Mendes Loureiro, 'Reformism, Class Conciliation and the Pink Tide: Material Gains and Their Limits' in Margit Ystanes and Iselin Åsedotter Strønen (eds), *The Social Life of Economic Inequalities in Contemporary Latin America: Decades of Change* (Springer International Publishing 2018).

<sup>183</sup> Rubens Ricupero, 'WTO in Crisis: Déjà Vu All Over Again or Terminal Agony?', *The WTO Dispute Settlement Mechanism* (Springer 2019) 20; Weihuan Zhou, 'In Defense of the WTO: Why Do We Need a Multilateral Trading System?' [2019] *UNSW Law Research Paper* 23.

<sup>184</sup> In relation to the necessity of new global consensus see Harlan Grant Cohen, 'What Is International Trade Law For?' (2019) 113 *American Journal of International Law* 326.