

WTO rules: Compatibility with human and labour rights

SUMMARY

Supply chains are increasingly international, but many of EU's trade partners fail to meet both the labour standards of the International Labour Organization (ILO) and international human rights norms. EU trade policy is designed to ensure that economic development complies with World Trade Organization (WTO) rules, while upholding human rights and high labour standards.

WTO rules require members to comply with a set of basic free trading principles, in particular national treatment and most-favoured nation status. When a member wishes to take a trade-affecting measure that departs from WTO rules, they can justify the action on the basis of general exceptions. Whereas there is no specific provision in the WTO rules on human rights, according to case law and precedents, the general exception can sometimes allow trade-restricting measures based on human rights concerns. Yet, the open nature of WTO-rules means that members must devise trade-restrictive measures carefully, and that the dispute settlement process can involve complex legal interpretation if litigation arises. The uncertainty surrounding the compatibility between WTO rules and human and labour rights is attracting growing attention, generating calls for WTO reform.

Another WTO framework that has been the subject of a long-standing debate on whether its flexibility provisions are sufficient to protect human rights and in particular the right to health is the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS). In the context of the coronavirus pandemic, the debate has refocused on the need to waive some TRIPS provisions.

This briefing provides an overview of complex issues relating to human rights and WTO rules. It does not argue for a specific interpretation or position, and does not attempt to bring final clarification on aspects still disputed among legal experts.



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WTO: No responsibility for human and labour rights?

While trade liberalisation can foster growth and increase welfare – a WTO stated [goal](#), the WTO has been criticised by [academics](#), [civil society](#) and [trade unions](#) for ignoring the direct consequences of trade liberalisation on labour standards and human rights. Many WTO member countries' citizens work in shockingly poor conditions. Wages in export-driven industries in developing countries are [repeatedly reported](#) as being insufficient for healthcare, food and housing. The [collapse of the Rana Plaza](#) in Bangladesh killing over a thousand people is one of countless examples of life-threatening situations workers face in the garment and manufacturing industry. An international ['race to the bottom'](#) in the area of labour standards has ensued, whereby developing countries relax labour standards to attract foreign investment. Although many countries incorporate labour-friendly laws on paper, a lack of enforcement attracts companies seeking to minimise production costs.

The [World Trade Organization](#) (WTO) seeks to facilitate trade by maintaining a global system of trade rules, and by providing a forum for negotiating trade agreements and settling trade disputes between members. Its objective is to reduce customs duties and to eliminate barriers to trade. While the objectives of raising standards of living and sustainable development are included in the [Preamble](#) to the [Agreement establishing the WTO](#), human rights and labour rights do not feature explicitly in the WTO mandate. Its multilateral agreements, particularly the General Agreement on Tariffs and Trade (GATT), make no reference to them. In a [Ministerial Declaration](#) adopted in 1996 in Singapore, the WTO made clear it has no competence for enforcing labour rights. The WTO members then [rejected](#) the idea of a social clause related to labour standards. Most developing countries supported the rejection for fear of labour rights-based sanctions that would limit their export capacity. The Ministerial Declaration underlines that the International Labour Organization (ILO) is the competent body to set and deal with these standards, and that WTO members must support it. The WTO and ILO secretariats are supposed to collaborate on the issue.

[Tensions](#) between trade and human rights norms arise from the differing conceptions of development underlying the two. The WTO views production efficiency and openness to trade as the key to economic growth, which is considered essential for the development agenda. Therefore, member states are free to pursue human and labour rights objectives as long as trade is left unaffected. [Critics](#) argue that the effect of trade on developing countries' industries is too great for it to be treated separately from other development goals. Instead of trade policies focusing primarily on economic growth, broader trade policy objectives that acknowledge the importance of human and labour rights could accelerate the achievement of the United Nations [sustainable development goals](#) (SDGs). In a globalised world, trade, economic growth, labour rights and human rights are deeply intertwined.

The impact of trade liberalisation on development

By delivering and implementing trade reforms that are pro-growth and pro-development, the WTO is expected to contribute to a more [prosperous, peaceful and accountable economic](#) world and thus to [achieving](#) the SDGs, which interlink closely with human rights norms. The [2030 Agenda for Sustainable Development](#) recognises international trade as an engine for inclusive economic growth and poverty reduction. Goal 8, for example, includes inclusive growth and full employment and decent work for all.

The WTO [stresses](#) the importance of [comparative advantage](#), which is based on the idea that if countries invest in what they do best it maximises benefits for all parties. Access to foreign markets can provide greater possibilities to sell products, and increased competition can encourage producers to improve the quality and price of products continuously. Foreign trade therefore provides a way to supplement internal demand (which is particularly limited in low-income countries) with external demand. This drives the [development](#) of the manufacturing sector, which is characterised by fast productivity growth and can therefore raise developing countries' levels of gross domestic product more rapidly. This increased economic growth can reduce poverty through

more employment and better wages. However, it is also important to consider who benefits from economic growth, and how much. When the economic benefits associated with trade raise the living standards of certain socioeconomic groups and not others, it can foster highly unequal societies. Inequality within countries has been found to increase with trade openness in low- to middle-income countries. Trade liberalisation has a particularly differential impact on skilled and unskilled workers, concentrating wealth among the skilled and mobile.¹ This has engendered an [academic debate](#) regarding development policy and how structural transformation (which includes trade) and inclusive growth relate to each other.

Developing country status

The United Nations officially recognises the special group of [least developed countries](#) (LDCs), while the World Bank [classifies](#) countries as low, lower-middle, upper-middle or high-income economies. Both classifications have been used by the EU in combination with economic vulnerability criteria for granting unilateral trade preferences to developing countries since 2014. As a result China lost access to EU preferences in 2015. In 2019, the European Commission explicitly [stated](#) that 'China can no longer be regarded as a developing country'. China continues to claim [developing country status](#) even if it is the world's largest economy in terms of purchasing power parity. This status is based not on internationally recognised criteria, but on self-declaration. This uncertainty has led to a situation in which the United States can treat the same country as both developed for the purposes of trade remedies and developing for that of granting trade preferences in line with WTO rules (e.g. [South Africa](#)). According to the European Commission's 2021 trade policy review communication, it is not sustainable for two thirds of WTO members – including some of the world's most significant economies – to claim special and differential treatment.

WTO agreements contain [special and differential treatment provisions](#) that allow developed countries to treat developing countries more favourably than other WTO members. The 2001 [Doha Round](#) (which did not translate into new agreements) proposed to prioritise the needs and interests of developing countries to ensure they receive a share of the economic growth generated in part through enhanced market access and more balanced rules. The Bali WTO Ministerial Conference of December 2001 established a [monitoring mechanism](#) to assess the implementation of these provisions.

The use of special and differential treatment provisions has however been criticised by high-income members, as there is no official international definition of 'developing country' leading many WTO members to claim this status even upon reaching higher stages of economic development. Under WTO practice, self-declaration of status by developing countries has been sufficient to enjoy the benefits that accrue to such countries. The EU has limited its trade preferences to certain vulnerable developing countries and to this end it has used

the UN and World Bank classifications described in the box (left). The WTO has not opposed the EU's interpretation of developing country status.

WTO rules and international human rights norms under international public law

WTO agreements and international human rights norms are distinct bodies of international public law, without any explicit provisions connecting them. The open nature of WTO obligations, which allows members to take any measures as long as they comply with the WTO's fundamental principles (see next section), makes it difficult to identify any direct conflict between the two. Thus, the legal debate on ways to resolve possible conflicts is [complex](#) and, at this stage, theoretical, since the WTO's dispute settlement bodies have not yet dealt with international human rights issues. Experts try to extrapolate some conclusions from past dispute settlement cases involving conflicts² between WTO rules and international law not related to human rights.³

One point often raised relates to a principle enshrined in the law of treaties ([Vienna Convention](#) of 1969), which provides that 'any relevant rules of international law applicable in the relations between the parties' have to be taken into account when interpreting a treaty (Article 31(3)(c)).

These could include human rights norms, but according to a more restrictive interpretation only those norms to which all WTO members have subscribed are relevant when interpreting WTO rules.⁴ Not all [countries](#) have signed and ratified the Vienna Convention (including EU Member States France and Romania). In addition, according to its Article 1, the convention 'applies to treaties between States'. A [1986 extension](#) of the convention to cover international organisations such as the EU has not yet reached the necessary minimum number of ratifications to enter into force and the EU has not signed it. On the other hand, the convention is widely [recognised](#) (in particular by the International Court of Justice) as customary international law.

Another aspect refers to a possible hierarchy between the two sets of norms. According to [Sarah Joseph \(2011\)](#), 'At least some, if not all, human rights norms are likely to be hierarchically superior within international law to WTO law', but this position is not universally accepted among experts. Only [peremptory norms](#) (*jus cogens*), such as those relating to the prohibition of very serious human rights violations, are considered to enjoy primacy over other international obligations. They include slavery, for instance. According to the same author, 'it seems likely that the dispute settlement bodies would hold that WTO obligations prevailed over human rights obligations in the case of conflicts that could not be resolved by interpretation, except in the rare instance that the human right at issue was found to be a *jus cogens* obligation'.

GATT and trade-restrictive measures to tackle human rights concerns

The General Agreement on Tariffs and Trade (GATT) entered into force in 1948 and still provides the basis for international trade in goods in the WTO, which was established in 1994. WTO agreements have a wholly [different rationale](#) from human rights law: they predominantly govern relations between states, while human rights are inherent to individuals, and states have a duty to respect, protect and fulfil them. WTO rules aim to promote trade and reduce non-tariff barriers. Members provide each other [most-favoured nation](#) (MFN) treatment, which means, for instance, that a tariff cut given to one member should apply to all. They also agree to treat foreign companies the same as local companies after they have entered the market under the national treatment principle (GATT [Article III](#)). In practice, imports should be given the same treatment as 'like' domestic products, and members should withhold from imposing internal taxes, charges, laws, regulations or requirements on foreign producers that are not in force for domestic companies. Products are [considered 'like'](#) when they are in a [competitive relationship](#) with each other by sharing physical characteristics, tariff classification and end uses, with consumers having the same perception of two products. Members may treat each other more favourably than this when they eliminate duties covering [substantially all the trade](#), for instance through trade agreements or customs unions.

One reading of WTO rules has suggested that the national treatment obligation prevents countries from imposing trade-restrictive measures on the basis of [production or processing methods](#) that could involve human rights or labour rights violations. Following this line of thinking, if for example the production process of leather handbags repeatedly exposed workers to hazardous chemicals it would not be a valid reason to treat these handbags differently from other handbags on the internal market since the chemicals only affect the workers and not the final product. Furthermore, if such a production method is prominent in specific countries, measures against it could be seen to violate the MFN principle (GATT [Article I](#)) that prohibits members from favouring products from one member over those of another. Another interpretation of WTO rules holds that products made with questionable production methods are in a weaker competitive relationship owing to current or possible future [consumer preferences](#). If products are not directly competitive or substitutable, then they cannot be considered 'like' for the purposes of GATT Article III.

If members wish to depart from the key principles, the trade-restrictive measures must be justified under one of ten 'general exceptions' (GATT [Article XX](#)). Members should demonstrate appropriate regulatory intent, and the measure should not be an 'arbitrary or unjustifiable discrimination

between countries where the same conditions prevail'. Article XX(e) contains the only explicit reference to conditions of labour under GATT 'relating to the products of **prison labour**'. Article XX(a), which sets out measures necessary to protect **public morals**, was invoked, for instance by the European Communities to justify a general ban on the marketing of [seal products](#) following the [moral outrage](#) caused by the inhumane killing of seals. The WTO Appellate Body endorsed the EU ban in its final [ruling](#), but emphasised that the measure had to be fully non-discriminatory. Article XX(b) includes a justification for measures necessary to protect **human, animal or plant life or health**. This could be used, for instance, to argue that measures seeking to enforce human and labour rights in supply chains are necessary to protect the health of workers.

Extraterritoriality

Extraterritorial measures in international trade refer to actions that seek to influence the situation in another sovereign nation. The WTO has been cautious about allowing trade restrictions on the basis of process and production method that took place outside the national territory to avoid disruptions to the international trade flows and to avoid accusations of states unilaterally departing from internationally agreed norms. In contrast, the idea of [leveraging trade policy](#) to tackle environmental or climate concerns has gained some traction in the EU. The ECJ has accepted [production-based concerns](#), such as CO₂ emissions, as a justification to restrict imports or alter the basis for taxation.

However, to the extent that measures seek to protect the health of [another country's citizens](#), they would constitute [extraterritorial measures](#). Some commentators have argued that these are more difficult to justify and are more likely to [be dismissed](#). Others posit that since Article XX(e) on prison labour envisages [extraterritorial application](#), by extension the other exceptions could also be considered applicable even with an outward focus. Most importantly, members should demonstrate a [substantial relationship](#) between the justifiable policy goal and the measure. Nevertheless, the open wording of WTO rules leaves much leeway to the [dispute settlement](#) process to accept or reject a trade measure. Consequently, the acceptance of a measure could depend on how the arguments for the measure are phrased or on possible impact assessments prepared to support one party's arguments. This has prompted experts to put forward [recommendations and strategies](#) for states wishing to design GATT-compliant process and production methods that are in line with sustainable development considerations.

WTO compatibility of human rights and labour rights measures in EU trade policy

The European Union is obliged through its Treaties to promote and respect human rights in all areas of its external action, including trade. The [trade policy of the EU](#) does aim to ensure that economic development goes hand in hand with respect for human rights and high labour standards, in line with WTO rules. In February 2021, the Commission published a new EU trade strategy in the form of the trade policy review, in which the Commission highlights the EU's commitment to the promotion and protection of human rights and labour standards through its trade policy.

Particularly egregious human and labour rights violations relating to the trade of certain products have raised public concern and elicited the EU's attention. The presence of [child labour](#) or forced labour in parts of supply chains that result in final products sold on EU markets has worried consumers and human rights associations. For example, the involvement of children in cocoa farming in west Africa is a [well-known issue](#) that has not yet been adequately addressed despite numerous voluntary initiatives by chocolate producers, non-governmental organisations (e.g. those involved in developing [labelling schemes](#)) and local authorities. The issue of [forced labour](#) has become prominent once again as concerns have arisen about the treatment of the Uighurs by Chinese authorities and their use for forced labour, in particular in textile production (e.g. to produce [face masks](#) sold in Europe). Potential trade measures that the EU could envisage to fight these phenomena include import bans, increased customs duties for certain products or the blacklisting of companies involved, as long as they are devised in a WTO-compatible manner. For example, the European Parliament has asked the Commission to adopt binding legislation on [tracking forced](#)

[labour](#) in supply chains. Other measures to be adopted by the EU, such as the planned EU legislation on [human rights due diligence](#) in international supply chains, risk putting EU-based enterprises at a competitive disadvantage with competitors from outside the EU. The adoption of trade-related obligations at global level, as envisaged by an international [treaty on business and human rights](#) currently being negotiated in the framework of the UN Human Rights Council, or by possible WTO reform [measures](#), and as advocated by the [European Trade Union Confederation](#), for example, could help dissipate such competitive disadvantages.

At the start of the current Commission term, the EU set [ambitious goals](#) with regard to enforcing sustainability provisions in its trade arrangements, including labour rights. EU bilateral trade agreements contain a [human rights clause](#) and – the more recent ones – also provide for commitments relating to labour rights that are binding to varying degrees and not subject to the regular dispute settlement mechanism. The WTO legality of trade measures adopted under these provisions has not been tested in practice, but theoretically, they could be the [subject](#) of a dispute in the WTO.

Also in connection with EU unilateral trade measures, the current case-by-case approach is leading to uncertainty regarding which measures would be considered valid in the eyes of the WTO. Rare and precious minerals fuelling conflict in the areas where they are extracted have been subjected to [trade restrictions](#) by the EU, but the question of such measures' compatibility with WTO rules still remains open. In order to avoid any risk of litigation, the participating countries in the Kimberley Process (a scheme to track and ban diamonds from conflict areas), including [the EU](#), asked for a [WTO waiver](#), although there was no reason to believe that the scheme would not qualify under the GATT general exceptions. For similar considerations, US conflict minerals legislation and OECD due diligence guidance, targeting imports of minerals likely to finance armed conflicts in certain areas, have been [construed](#) in such a way as to fall under the Article XXI exception for security measures rather than under the Article XX exceptions. The [EU regulation on conflict minerals](#), which became applicable from 1 January 2021, obliges importers of certain minerals to comply with [due diligence](#) obligations as defined by the OECD guidance. Unlike the US legislation, which is geographically limited to central Africa, the EU's regulation has a global scope. This makes it [more difficult to justify](#) under the same GATT Article XXI security considerations, by reference to specific UN Security Council resolutions on central Africa.

The EU has implemented unilateral development-based trade policies that have been approved by the WTO, promoting respect for human and labour rights. The EU's [general scheme of preferences \(GSP\)](#) removes tariffs on products from vulnerable developing countries to help alleviate poverty and create jobs, and establishes both negative and positive [conditionality](#) for human and labour rights. The negative conditionality enables the removal by the EU of preferences to GSP beneficiaries in cases of serious and systematic violations of human or labour rights. The positive conditionality offers additional benefits to eligible countries in order 'to help them assume the special burdens and responsibilities resulting from the ratification of core international conventions on human and labour rights'. This type of trade policy is enabled by GATT through the [special and differential treatment provision \(Enabling Clause\)](#), which allows developed countries to treat developing countries more favourably than other WTO members to strengthen industries in developing countries. The EU's GSP has been the subject of dispute settlement in the WTO and its current structure reflects the findings of the WTO bodies. Responding to a complaint brought by India against the EU, the [WTO Appellate Body report on the European Communities – Conditions for the granting of tariff preferences to developing countries](#) stated that the EU's drugs arrangement failed to provide non-discriminatory treatment 'to all similarly-situated GSP beneficiaries, that is, to all GSP beneficiaries that have the same 'development, financial and trade needs'.

When it comes to [social](#) or [eco-labelling](#) initiatives, [concerns](#) have been raised with regard to their compatibility under WTO rules, as they can lead to a differential treatment between foreign and domestic products. [Commentators](#) have argued that the GATT Agreement on Sanitary and Phytosanitary (SPS) Measures, and the Technical Barriers to Trade (TBT) Agreement can be

considered to allow process and production method concerns to act as a legitimate basis for trade measures such as truthful labelling. Nevertheless, clarifications have been called for and a set of tests for a TBT-compliant label has been put forward by [animal welfare advocates](#).

TRIPS implications for the human right to health

Another WTO framework that has raised [questions](#) about its compatibility with human rights is the Agreement on Trade-related Aspects of Intellectual Property Rights ([TRIPS](#)). It was negotiated in parallel with amendments to the General Agreement on Tariffs and Trade (GATT), in the 1989-1990 Uruguay Round of multilateral trade negotiations and it binds all WTO members. It sets minimum standards for the protection of intellectual property rights (patents, copyright, industrial designs, trademarks, geographical indications) and establishes a duty not to discriminate between internal and external holders of such rights, similarly to the GATT. As under the GATT, WTO members can start dispute settlement procedures if they consider their rights under TRIPS to be infringed upon by another Member.

Coronavirus vaccines under TRIPS

In the context of the Covid-19 pandemic, the debate has reignited on whether these flexibility provisions are sufficient to enable developing countries to have sufficient access to coronavirus vaccines and other medicines. According to [Médecins Sans Frontières](#), South Africa has faced difficulties in accessing chemical reagents for Covid-19 testing, while in Italy producers of 3D-printed ventilator valves were threatened with lawsuits on grounds of intellectual property protection.

On 2 October 2020, India and South Africa introduced a [proposal](#) at the WTO to temporarily waive intellectual property protections for all Covid-19 vaccines and other technologies. The proposal considers that developing countries may face institutional and legal difficulties when using flexibilities made available by TRIPS, such as compulsory licensing, particularly those with insufficient or no manufacturing capacity. The proposal has not enjoyed support from pharmaceutical companies (with the exception of Moderna, which has [declared](#) that it would not enforce patent rights during the pandemic) and developed countries, such as US, Canada and Switzerland, as well as the [European Union](#). South Africa and India, however, have [argued](#) in favour of a WTO waiver. The opponents of such a waiver claim that it would discourage future research and innovation, but proponents [respond](#) that vaccine development efforts have been generously funded by public money (including by the EU) and their market has been secured through advance purchases, which minimises commercial risks. The WTO has not yet taken any decision on the matter.

Article 7 includes social and economic welfare among the objectives to be pursued in its implementation. In a 2001 [report](#) on the impact of TRIPS on human rights, the UN High Commissioner for Human Rights found that TRIPS could affect the enjoyment of several rights – in particular the right to health, the right to food, the right to development, and the human rights of indigenous peoples. It concluded that states should monitor the implementation of the TRIPS Agreement to ensure the right balance is struck between the right of authors to benefit from the protection of their interests resulting from scientific, literary or artistic production on one hand, and the general public interests in accessing new knowledge as easily as possible, on the other, in line with Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 27 of the Universal Declaration on Human Rights on cultural rights. The report found that the approach taken by TRIPS to intellectual property rights versus the responsibilities of intellectual property holders is unequal, insofar as it sets minimum standards only for the former.

Several provisions in the agreement grant states a certain degree of flexibility to protect the public interest, including public health. Under Article 8, members may 'adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological

development', provided they are consistent with the provisions of the agreement. Article 27 provides for the possibility of patent exemptions for certain cases: to protect public order or

morality, including human, animal or plant life or health or to avoid serious prejudice to the environment', as well as for 'diagnostic, therapeutic and surgical methods for the treatment of humans or animals'. Article 31 provides for an exception on the use of patents in emergencies: the subject matter of the patent can be used by the government or third parties authorised by the government without authorisation of the right holder (this is usually known as compulsory licensing), in situations of national emergency or other circumstances of extreme urgency. Such use should be directed mainly to domestic market supply.

The impact of TRIPS on the right to health has been much debated.⁵ Initially, TRIPS was perceived as creating hurdles for access to life-saving medicines in developing countries, to treat HIV in particular, but also tuberculosis and malaria. The vast majority of people affected by these diseases live in poor countries, while the treatments have been developed by large pharmaceutical companies based in rich countries. In response to these concerns, at the initiative of developing countries, WTO members adopted a declaration in Doha in 2001 that affirms that 'the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health'. The declaration reaffirms the possibility to use the flexibility clauses in TRIPS, including the right to grant compulsory licences and the freedom to determine the grounds upon which licences are granted, the right to determine what constitutes a national emergency and circumstances of extreme urgency. Health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency. The WTO Council adopted [several decisions](#) to implement the declaration.

Initiatives to build human rights into WTO rules

Given the uncertainties described above, the relationship between the WTO and human and labour rights norms has attracted increasing attention. Under the current system, human rights measures that affect trade are necessarily subject to [costly litigation in the WTO](#), which carefully weighs the effect of a human rights-enforcing policy against the adverse effect it would have on trade. There is also a clear difference in how human rights and WTO rules are enforced. Whereas enforcement of human rights at international level has been mainly encouraged through '[naming and shaming](#)', the dispute settlement mechanism of the WTO allows for countermeasures to be imposed towards member states that fail to comply with their obligations under GATT, making them more prone to comply with WTO rules. Building a stronger connection between WTO and human rights law could, according to [experts](#), strengthen human rights enforcement through trade measures in cooperation with competent international organisations.

One way to mainstream human rights in trade rules would be to legally enshrine the [primacy](#) of human rights norms in an international treaty such as the treaty on business and human rights currently being negotiated. According to the current [second draft](#), state parties will have an obligation to ensure that existing bilateral or multilateral trade and investment agreements (at the level of interpretation and implementation) as well as new such agreements are compatible with their 'human rights obligations under relevant human rights conventions and instruments'.

The current wording of the WTO rules leaves room for interpretation with regard to whether measures to protect human and labour rights can be allowed or not. The way future disputes will be adjudicated will likely set important standards in this respect. However, this may not be sufficient:⁶ 'solutions ... that focus on interpretative techniques and an expansive understanding of WTO applicable law appear to have limited prospects'. This implies that a review or reform of WTO rules could be needed, but the [WTO reforms](#) currently under discussion do not include human rights. In its 2021 communication on the trade policy review, the European Commission proposes that the [WTO reforms](#) should focus on enhancing the WTO's contribution to sustainable development. While the Commission has set as its own ambition to promote responsible and sustainable value chains that are respectful of human rights and labour standards, its proposal for the WTO is of a more practical and modest nature. The Commission considers that the WTO could play a greater role in promoting the decent work objective through enhanced analysis and exchanges of experience,

including better cooperation with the ILO on the impact of trade on social development and on the general economic benefits of workers' rights.

Any new WTO agreement or amendment to the GATT would need the consensus of all WTO members, which is very unlikely to be achieved in practice, as the [Doha Round of negotiations](#), which started in 2001 and has yet to yield tangible results, has proved. Plurilateral agreements (binding only on WTO members that choose to join them) have been [proposed](#) as a possible avenue for tackling labour issues, among other things.

Proposals by academics⁷ regarding how to reform WTO law include a labour rights or social clause, as discussed but rejected in Singapore in 1996; a human rights clause, 'such as a new Article XX exception allowing for trade measures which protect human rights, to be incorporated into WTO agreements'; or, alternatively, a treaty 'mandating the positive protection of human rights to be passed as a part of the WTO package'.⁸ As a non-binding alternative, a declaration on human rights similar to the Doha 2001 declaration on TRIPS could reaffirm human rights obligations in the context of global trade rules and bring some clarity to the WTO stance, but would have merely guiding force. There have been calls for the WTO Ministerial Conference to reaffirm its support for human rights, following the example of the [UN Special Rapporteurs](#) in 2015 before the WTO's Nairobi Conference.

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Joseph S., [Blame it on the WTO?: A Human Rights Critique](#), Oxford Scholarship Online, 2011.

ENDNOTES

¹ See J. Titievsakaia, [EU Trade Policy. Frequently Asked Questions](#), EPRS, European Parliament, 2019.

² For an explanation of conflicts between international treaties, see for instance the [Max Planck Encyclopaedias of International Law](#).

³ See Harris and Moon, [GATT Article XX and Human Rights: What Do We Know from the First 20 Years?](#), 2015.

⁴ See L. Bartels, [Article XX of GATT and the Problem of Extraterritorial Jurisdiction](#), 2002.

⁵ See e.g. Joseph E. Stiglitz's criticism in his book 'Making Globalization Work', 2006.

⁶ See *Ibidem*.

⁷ See S. Joseph, [Blame it on the WTO?: A Human Rights Critique](#), Chapter 5 for an overview.

⁸ See *Ibidem*: 'Such a treaty would be a human rights version of TRIPS. This reform might sound very attractive ..., the sharp "teeth" of the WTO would become available to enforce human rights obligations'.

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