

**RESEARCH GROUP "GLOBAL TRADE AND WORK"  
-BASE DOCUMENT-**

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**SUMMARY:** I. Theoretical framework. 1. Premise. 2. Work and rights in global supply chains. 3. The construction of global formulas of governance of the world of work. 4. Global health crisis and its impact on the governance of global supply chains. II. Proposal of topics for discussion. 1. International rules and standards. 2. Free trade agreements. 3. ILO normative action. 4. European Union instruments and policies. 5. State standards. 6. Instruments of transnational labour management of multinational enterprises. 7. Impact of the global health crisis III. Forms of participation.

**I. Theoretical framework**

**1. Premise**

Viewed from a Labour Law perspective, the reflection on the relationship between international trade and labour cannot be introduced without taking into account the profound impact that the expansion process of trade in goods and transnationalization of production processes experienced in recent years is having on the framework of rights traditionally assigned to people working by international standards, national laws and collective agreements.

From this point of view, the legal reflection on the nexus between international trade and labour coincides with the reflection on the degree of effectiveness that can be attributed to such regulatory framework when it is applied to a different economic and productive context than the one for which it was conceived and the way in which the regulation of workers' rights must be articulated during this stage, in order to ensure all a level of protection consistent with their dignity as persons as well as basic rules of civilization in force, contained in international labour standards and human rights conventions.

This does not only require paying attention to the instruments developed in the past, but also to those others that are being built for this purpose at a global level in the last stage. We must not lose sight of the fact that never, as in last decades, has there been a greater concern for universal validity of labour rights, nor has there ever been a more intense process of construction of new tools aimed at guaranteeing such validity. The result has been the emergence of a wide range of regulatory instruments that were unknown or little used in the past, emanated from a diversity of institutions and subjects, both public and private, all of which seek to project the guarantee of a basic core of labour rights, which essentially coincides with those pro-

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\* This document includes comments on the role of free trade agreements sent by Professor Marley Weiss, in addition to synthesizing the author's point of view and proposals on the subject under investigation.

claimed as fundamental by the ILO, rather than to a particular State territory; to the universe of global supply chains led by multinational enterprises.

In fact, the number and variety of these instruments, as well as their regulatory potential, have been significant enough in recent years to consider that the driving force behind the respect for labour rights in the world has shifted from the almost total monopoly of ILO normative action to the construction of formulas for collaboration between the ILO and the new forms of governance that have emerged in the last stage.

Based on this finding, the work of our research group aims to carry out an analysis of the suitability of these new regulatory formulas to provide adequate responses to the challenges posed to the world of work by the new economic and productive scenario resulting from the globalization process. At the same time, it will seek to determine whether their interrelationship with the classic national and international sources of construction of Labour Law is capable of providing useful elements for the construction of an integrated regulation system of labour relations with a transnational reach, aimed at ensuring a basic core of equitable labour conditions in the global space.

Finally, it will be also part of this analysis, the impact that the global health crisis caused by the COVID-19 virus may have on the functioning of global supply chains and instruments aimed at regulating work within them. In this case, it will be crucial to determine whether this crisis will lead to a retraction of these chains and a reversal of these instruments, or if the dynamics set in motion in the last years is sufficiently consistent to resist these pressures.

## **2. Work and rights in global supply chains**

In a reality such as that the one that prevailed throughout the twentieth century, when economies protected from external competition predominated, the States were able to regulate with reasonable effectiveness the working conditions that should be respected in their territories.

This situation has changed as a result of the consolidation of the *multinational enterprise* as a privileged actor in the globalization process and the adoption by the latter of a new structure, characterized by the replacement of its traditional vertical architecture by modular formulas of articulation, based on the creation of relations of a corporate or contractual nature with a wide range of subjects located in a diversity of locations, chosen on the basis of their comparative advantages and not on the final destination of their products. This how, *global supply chains* emerge as a privileged formula for the organization of modern capitalism, which allows these enterprises to lead production processes of a planetary dimension, maximizing profit opportunities opened up by globalization and without assuming any type of responsibility for the conditions in which these processes take place or their social effects.

The formation of global supply chains has been greatly facilitated by *free trade agreements* (FTAs) signed in the last decades. Rather than simple agreements to liberalize trade in goods, they have in fact operated as agreements aimed at facilitating the operation of these chains by making cross-border mobility possible for the production of the same good or service and by introducing limits on state regulatory pressure.

According to conventional economic theory, the formation of global supply chains favors an increasing productive and commercial integration, which is capable of generating benefits for all its members. A careful examination of the way in which these chains operate; however,

shows that they contain markedly asymmetrical power relations, whose consequences for the economies and workers of both the less developed and the more relatively developed countries have been characterized, given their ambivalence, as generators of *impoverishing growth*.

At the basis of this contradictory result is the particular logic that characterizes the geographical distribution of the activities of these chains. A logic that leads to placing the activities with the highest added value, which coincide with the initial and final phases of the production processes, in countries of advanced capitalism. And to displace others, more easily replaceable and with greater possibility of adjusting their labour costs, to the less developed countries. The effect of the deployment over the ground of this sort of inverted parable, which has earned the sarcastic name of "smile curve", is the following: on one hand, the creation of new opportunities for economic growth and employment in emerging countries; but, on the other, intense pressure on the collaborating companies located in these countries to engage their activities at increasingly lower costs and more demanding conditions, the balance of which, in labour terms, is usually as follows: low wages associated to high quality standards, precarious forms of recruitment, long working hours, unsafe workplaces and hostility to the trade union phenomenon. These negative consequences are reinforced in the successive links of these chains and can even lead to forced labour or child exploitation, as denounced by the ILO in its *Resolution concerning decent work in global supply chains* (2016).

The consequences are also not positive for workers located in developed countries, since the way these chains operate not only favors the relocation of numerous jobs, but also exerts a strong downward pressure on the working conditions of the jobs that remain in their initial location, aimed at preventing their shift to remote destinations.

The balance of the globalization of production processes and trade liberalization promoted by FTAs has thus been a relative and limited improvement in the level of workers in some developing countries, at the expense of stagnating or reduction in the level of workers in developed countries.

### **3. The construction of global formulas of governance of the world of work**

The aforementioned are negative effects that could not be avoided because of the few labor content clauses included in the FTAs. Also, they cannot be effectively dealt by national systems, as the growing irrelevance of the territorial dimension within production processes brings with it a correlative irrelevance of state legislation, both the headquarters and destination states of the activities of multinationals. The international labour standards emanating from the ILO cannot remedy this, since their application also depends on the power of States. The result is a notorious *governance deficit* in the global production processes.

The response to this governance deficit, which prevents an equitable distribution of the benefits of globalization, does not involve a return to the previous state of affairs, which is at this point doubtfully possible. Nor does it involve the introduction of custom barriers capable of promoting the disintegration of global supply chains, with very negative consequences, especially for workers. Faced with this kind of response, it is more reasonable to consider the need of taking steps towards a more balanced, comprehensive and effective regulation of trade and the activities of multinational enterprises.

This requires the construction of innovative regulatory formulas, both in the field of FTAs and as well as in the field of global production processes. The objective in both cases would be the same: to put limits on the market drive that encourages multinationals to obtain the greatest possible benefit from the free location of their activities, by introducing two kinds of measures: a) the inclusion of guarantees that seek to balance the processes of trade liberalization from a labor point of view, and b) the establishment of a protection base that, as a *universal labor guarantee* based on the decent work standards promoted by the ILO, should be applied to all activities developed within the supply chains of these enterprises.

The enhancement of FTAs should include improvements in the protection of migrant workers and the reinforcement of guarantees for the respect of fundamental labour rights by the legislation of participating countries. Another basic element that could be added is the possibility of including rules on wages aimed at discouraging the interest of the States in maintaining low wages in order to receive investment and increase employment, as has been done in *NAFTA 2.0*. Likewise, it would be convenient to review the requirement to prove that the violation of the labor obligations included in these treaties involves "a sustained or recurrent course of action or inaction" capable of affecting trade. The complete inclusion of these measures in the FTAs would imply, however, a rethinking of their role in facilitating the functioning of global supply chains, which is capable of generating not few political resistances and difficulties.

This leaves the regulation of labour within the production chains of multinational enterprises as the main option for the future.

The promotion of such regulation, however, also poses great difficulties, as today there is no power different than the power of the enterprises that create and manage these chains, nor State neither international, capable of replicating their transnational structure and submit them in a unified manner to their jurisdiction.

This is, in fact, a road that has been travelled for quite some time. Emerged as a response to the presence of aberrant conditions in some supply chains, since the end of the last century we have been witnessing a *process of spontaneous assumption of regulatory functions on a transnational scale* by the management bodies of these enterprises, aimed at creating, on the basis of the corporate or contractual power that they exercise over their subsidiaries and collaborating companies, a series of rules of labour conduct applicable to their global production processes. To the extent that it can be said that today there is no multinational with no commitment to respect social standards applicable to all of its activities, whether it refers to its adherence to the United Nations Global Compact, a declaration or code of conduct for its suppliers and contractors, or an international framework agreement signed with a world union federation.

The balance of the application of these instruments is not as satisfactory as might be expected. Available studies show that, while they have served to curb the most notorious abuses, such as child exploitation, and have led to improvements in some areas, such as health and safety, other working conditions and respect for other fundamental rights, particularly freedom of association, have not improved significantly in the last years. This is partly due to deficiencies in their control systems. The underlying reason is, however, the business model based on the outsourcing of production through subcontracting networks highly sensitive to the cost differ-

ences that prevail in many sectors, which induces multinationals to impose prices and conditions on their employees that make decent work economically unviable.

These limitations should not lead us to dispense of these instruments, given their undeniable capacity for transnational impact, but rather to see them as part of a broader approach, capable of resolving its shortcomings and moving towards a model of greater commitment by multinationals, with the higher costs that inevitably arise from guaranteeing decent work in their global production processes. This requires the adoption of a dual strategy of *combination* or *hybridization*, both in *spheres of intervention* (between labour and economic spheres) and *regulatory instruments* (public and private), of which important manifestations are also beginning to appear.

An example of the progress of the first of these strategies is the presence of a series of private instruments which either include control formulas based on the participation of the workers and their representatives, as occurs with the *Global Framework Agreement of Inditex*, or regulate the purchasing practices of multinationals in order to ensure a more sustainable relationship with their contractors, as occurred with the *Agreement on Fire Prevention and Safety in Construction in Bangladesh*.

An expression of the second strategy is the emergence of an important network of international instruments, all aligned around the notions of *due diligence* and *sphere of influence*, through which the power of multinationals is sought to be channeled, in order to make it the fundamental instrument for guaranteeing respect for human rights -including labour rights- in the global economic space. The starting point is the approval in 2011 of the *United Nations Guiding Principles on Business and Human Rights*, whose purpose is to encourage the prevention and remedying of violations of those rights that may occur during the activities of such companies through the provision of a series of obligations, both at the head of the States and the companies themselves, which are specified, in the case of the latter, in the fourfold duty to "*identify, prevent, mitigate and respond*" the adverse effects caused by their activities, through the development of "due diligence processes".

The notion of due diligence, which appeals to the power of economic actors themselves, has thus become the international standard for measuring compliance of multinational companies on their human rights obligations. Proof of this is the alignment of other international instruments around it, aimed at guiding the actions of these companies. In particular, the *OECD Guidelines for Multinational Enterprises*, which include them since 2011, and the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, which does so as from 2017.

The consensus reached around this notion, as well as its application to the entire space of these companies' supply chains, identified in these instruments through the notion of sphere of influence, has served as the basis for the subsequent approval of a series of regulations, both from the European Community and State sources, aimed at promoting the implementation of due diligence processes by large companies or even to impose them.

Examples of the former are the *Directive 2104/95/EU*, which obliges EU Member States to establish a duty of information on these issues at the head of large companies, and three state regulations, the Californian *Supply Chain Transparency Act* (2010), the UK's *Modern Slavery Act* (2015) and its Australian counterpart (2018), which do the same for the prevention of forced labour. The step towards the creation of a genuine *duty of diligence* will finally be taken by the *French Corporate Duty of Vigilance Law*, adopted in 2017.

These precedents - especially the last one - show that the path from voluntariness to the demand for diligent action on human rights by companies that are at the forefront of global production processes has begun, in which institutions such as the European Parliament and the Council of Europe, who advocate its extension, are relevant. This option is also foreseen in the second draft of a legally binding international instrument aimed at regulating the obligations and responsibilities of companies in the field of human rights, promoted by the United Nations.

In the light of the above, it is possible to state that the regulation of labour in the supply chains of multinational companies is today, rather than a utopia, a reality in process of construction, an expression of a new way of conceiving the protection of social rights in the global space, which places the power of these companies to act at the centre, but at the same time seeks to give coherence to their exercise and make it enforceable through their interaction with public formulas of regulation. The result is a *new mixed type of global governance of the world of work*, based on the interaction of sources of different nature, whose strength lies not so much in the regulatory capacity of each one, but in the result that can be achieved through the interaction of all of them.

#### ***hybrid-based and multilevel-regulation-type Transnational Labour Law***

Moving forward in the construction of this sort of *hybrid-based and multilevel-regulation-type Transnational Labour Law* requires defining whether the most widely used promotional formulas to date are sufficient or whether it is necessary to go deeper into the use of mandatory due diligence systems and even introducing regulation that holds multinational companies as responsible for non-compliance of their duty to act with diligence.

#### **4. The global health crisis and its impact on the governance of global supply chains**

The global health crisis generated by the spread of the COVID-19 virus is having a profound impact on global supply chains in numerous sectors, expressed in cancellations of orders, sometimes without paying what has already been produced, factory closures and layoffs or suspensions of large groups of workers. The situation is even more serious if we take into account that the business model based on reducing production costs in many cases places workers and contractors in a highly vulnerable position.

Considering, based on this observation, that the future will be marked by the dislocation of these chains or by a return to voluntary formulas of social responsibility, seems risky. Although state pressure to maintain greater production capacity in certain activities will certainly increase, it is unlikely that this will lead to a renationalization of production processes. Similarly, the progress made in setting formulas for guaranteeing social rights at the global level is at this point sufficiently consistent to make their abandonment very uncertain. On the contrary, it is likely that the current state of affairs will serve to alert about the need to build less fragile and more economically and socially sustainable supply chains, opening up greater space for the introduction of commitments in this direction. The recent signing of the *Global Agreement COVID-19: Action in the Global Garment Industry* is a first manifestation of this possible trend.

Even so, there is no doubt that the health crisis may lead, at least in the near future, to a slow-down in the rate of progress in ensuring decent work in supply chains and perhaps also to a halt in initiatives aimed at imposing due diligence systems at the legislative level. Despite that, it is also likely that the latter will be able to move forward along with social conditionality policies associated with the receipt of state support measures. The scenario is, in equal parts, worrying and hopeful.

## **II. Proposed topics for discussion**

The work of the research group will begin at a crucial time for the future of labour governance in the global economy. After a long process of gestation, we now have an important number of instruments aimed at making it possible to guarantee a core of fair labour conditions in supply chains led by multinational companies. The relationship between international trade and work is thus beginning to evolve, slowly but already noticeable, towards a new scenario, marked by a more balanced game between the rules of free competition and the demands of sociability.

Under these conditions, although the discussion within the group will be open to the raising of all kinds of questions of general scope, including those related to the causes of the current global deficit of decent work, the proposal of topics for discussion that follows focuses on the analysis of each of the types of instruments that are being built and the synergies that can be established between them, in order to balance their strengths and weaknesses and to develop proposals that contribute to promoting their effectiveness. In addition, a final section is aimed at assessing the impact of the current health crisis on the whole.

Based on the above, the following axes and topics of discussion are proposed:

### **1. International standards and rules**

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- Do you consider that the notion of due diligence promoted by various international instruments is a suitable tool to promote the implementation of effective processes to guarantee labour rights at a transnational level by multinational enterprises?
- What role do you assign within the global governance of the world of work to the process of elaborating an international instrument on the obligations and responsibilities of enterprises on human rights? What content should it include in order to play an effective role in this field? Do you think its adoption is feasible?
- Where can the above-mentioned international instruments be located in the construction of a transnational discipline of labour relations? What will be their impact on the traditional system of sources of Labour Law?

### **2. Free trade agreements**

- Do you consider that the inclusion of labour clauses in FTAs is a useful mechanism for the promotion of decent work in global supply chains?
- What effects have the labour clauses included in the FTAs signed by your country had? Have they contributed to improving the protection of workers?
- What changes do you consider should be made to the current design of labour clauses and their control procedures to enhance their effectiveness?

- Do you support the inclusion of clauses in FTAs that impose a duty on signatory countries to require enterprises to act diligently on labour rights?
- Do you think it is convenient to include provisions on wages in FTAs?

### **3. ILO normative action**

- In your opinion, what should be the orientation of the ILO's action at this stage? Do you understand that it should limit itself to fulfill a knowledge, training and promotion diffusion role or it would be advisable for the ILO to develop a normative activity?
- Do you think the adoption of an international convention aimed at regulating decent work in global supply chains is necessary or the existing conventions are sufficient? What content should that agreement have, if deemed necessary?
- What is the relationship between ILO declarations and conventions and international instruments that seek to promote due diligence in the conduct of business activities?
- And between these declarations and conventions and the private instruments of transnational labour management created by multinational enterprises?

### **4. European Union instruments and policies**

- How effective has the Non-Financial Information Directive been in your country? Do you think that this instrument is sufficient to promote diligent action by large European enterprises?
- Do you consider it necessary to adopt an EU directive regulating corporate due diligence on human rights? With what content?
- What other measures or initiatives could the European Union take for that purpose?

### **5. State regulations**

- Do you consider that the States of the headquarters of multinational enterprises should adopt legislative measures aimed at promoting or imposing the adoption by the latter of measures to control their global supply chains?
- What should be the content of these rules? Should they be promotional rules, create reporting obligations or impose a duty of vigilance on such chains? What advantages do you see in each of these systems?
- Are there any standards or initiatives in place in your country that pursue any of these objectives?
- Do you think it is legally feasible for the law of the headquarters countries to regulate cases of parent company liability for lack of diligence in monitoring the activities of partner companies? What could be the content of such a regulation?
- What role should standards of the country to which the activities of multinational enterprises destinate play? What relationship should they have with headquarters' countries standards and initiatives launched by multinational enterprises?

### **6. Instruments for transnational labour management in multinational enterprises**

- What in your view are the main strengths and weaknesses of these instruments? What measures could be taken to overcome the latter?

- Do you know examples of good practice in the control of global supply chains? What are their most relevant characteristics?
- What space should be assigned to workers and their representatives at international, national and local levels in the design and application of these initiatives?
- What mechanisms do you consider can contribute most effectively to improving control regarding the application of these instruments?
- Do you think it is possible and advisable to include in these instruments clauses regulating companies' acquisition practices?
- Do you consider it feasible to launch multilateral private initiatives aimed at promoting decent work in specific sectors and countries? What conditions should these meet? Should the ILO play a relevant role in their promotion?
- What is in your opinion, the relationship between these instruments and international labour standards? Are these capable of making a contribution regarding its application?
- What is the link between these instruments and the domestic legislation of destination countries of the activities of multinational enterprises? Do you think they contribute to their effectiveness?

### **7. Impact of the global health crisis**

- Do you think that the health crisis questions the basis on which the protection of rights associated with work in the global economic space has been faced?
- Do you understand that the crisis will slow down the pace of progress of decent work in global supply chains or do you consider that it will rather serve to move towards a business model that takes more into account the needs of contractors and workers?
- What measures should be taken to achieve a more sustainable design of these chains from an economic and social point of view? Do you think it is convenient adopting agreements to regulate acquisition practices of multinationals?
- What role can headquarter States of big enterprises play in this transformation?

### **III. Forms of participation**

It is planned that this document will be sent in its Spanish and English versions to the national associations by the International Society of Labour and Social Security Law, for it to be diffused among its members, inviting them to participate in the activities of the research group.

Such participation may be done on an individual basis or on behalf of the association to which one belongs.

The contribution of the person acting as representative of an association shall adopt, as far as possible, the form of a national report on the subject matter of the investigation.

Individual contributions from group participants may be related to all proposed topics, to one in particular, or even to one of the specific issues on which opinion is sought.

Salamanca, 29th April 2020