

Blue Barriers in International Trade?

—A Perspective from SA8000 and Labour Standards in the TPP

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Abstract: It is said that blue barriers that hinge upon strict labour standards as well as social accountability are new trade barriers. They force exporters to achieve social accountability and strict labour standards as prerequisites for export orders by inspecting factories on the grounds of human rights. Although these measures do restrict exports, they are not national compulsory standards, and thus do not constitute trade barriers *per se*. Despite the uncertain future of the TPP, its established rules reflect the latest trends and developments of international trade policies and laws in the new era. Labour standards in the TPP agreement that represent the new generation of regional trade agreements will be national compulsory standards and will have a significant impact on exports of non-TPP members. Once these standards are abused *de jure* or *de facto* to restrict exports, they will constitute blue barriers *per se*. Trade industries and exporters from non-TPP member states, such as China, should pay adequate attention and take necessary measures to handle blue barriers. The international community should also make efforts to render labour standards fairer and more justifiable for all.

Key words: Blue barriers; SA8000; TPP; Trade barriers

1. Introduction

On 4 February 2016, trade ministers from the 12 Asia-Pacific countries, including the United State, Australia, Japan and Canada, formally signed a final agreement text of a proposed a free trade agreement so-called the Trans-Pacific Partnership (TPP). After its text released, it is generally considered to be a model text for the new generation of free trade agreements. In contrast with the previous free trade agreement, the TPP agreement covers new rules and principles in the region for trade and investment beyond what deadlocked in the World Trade Organization trade negotiations. For example, the TPP agreement has a specific chapter to regulate labour standards. By setting up high labour standards and thus connecting it to trade, the TPP agreement became the first regional trade agreement to successfully introduce strict labour standards into large free trade area. Despite the withdrawal of the Trump administration from the TPP, the future of the TPP agreement is pending.^[1] However, the value of the TPP agreement as a new model for the new generation of free trade agreements is apparent, in particular that its established high standard labour rules, to a certain extent, represent the latest trends and developments when the TPP member states dealt with this issue in the new era. Moreover, these rules may cause the implementation of blue barriers that hinge upon strict labour standards as well as social accountability in the area of

Asia-Pacific. Because the strict labour standards will have profound impacts on labour-intensive products and industries, international trade of developing countries whose existing exports are concentrated in these industries will be far more optimal in the near future if these standards are implemented.

In recent years, the issue of labour standards and social accountability of enterprises has drawn widespread attention in the area of international trade. This is because on the one hand the international community and international organizations increasingly attach importance to social accountability of enterprises due to global governance, and on the other hand, the international community hopes to strengthen personal rights in trade and thus further extend this advocacy to the protection of human rights in international trade. In practice, the new trend that trade, social accountability of enterprises as well as human rights are interconnected and intertwined has triggered a fierce debate among the international community in the negotiations of multilateral trade agreements and free trade agreements.^[2] Developed countries assert that provisions of strict labour standards and social accountability of enterprises shall be incorporated into multilateral and regional trade agreements. Governments shall undertake necessary measures to prevent imports which are identified as products that violate labour standards and social accountability in their processing from other markets. These measures are often considered to be reasonable and

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not trade barriers. Developing countries, however, argue that it is unjustifiable to include provisions on strict labour standards and social accountability into trade agreements because the majority of exports in most developing countries are labour-intensive and this is the most valuable comparative advantage for their development. Once such provisions are incorporated into multilateral or regional trade agreements, it will severely undermine the comparative advantage that developing countries currently possess and will provide an excuse for developed countries to protect their domestic industries and to restrict labour-intensive imports from developing countries. The essence of such provisions or measures is trade barrier. In China, they are called blue barriers.

This article will discuss the issue of blue barriers. It will be divided into four parts. Part II will analyze how the blue barriers form and the various types of blue barriers by discussing the Social Accountability 8000 International Standard (SA8000) as well as the latest labour standards in the TPP agreement. Part III then will move to discuss the legal issues and their impacts on international trade by analyzing the enforcement of blue barrier. Finally some detailed suggestions will be provided to deal with the issue of blue barriers.

2. Blue Barriers in the Rules

According to the Chinese definition, generally speaking, blue barriers refer to trade protection measures that restrict imports and protect domestic markets by the establishment of strict labour standards or social accountability in international trade.^[3] However, the author holds that this definition is the broad definition of blue barriers. This is because it covers all trade measures that restrict imports on the grounds of strict labour standards or social accountability, regardless of whether the measures undertaken by enterprises or the compulsory ones undertaken by the importing country (the government). Apparently, such a definition conflicts with the general definition of trade barrier and is easier to garner theoretical challenge^[4] because the general definition of trade barriers refers to trade measures undertaken by the importing government to restrict the imports. They are not measures undertaken by enterprises or industry associations.^[5] Therefore, the author holds that the definition of blue barriers can be divided into broad definition and narrow definition. The broad definition is the foregoing definition, it covers all trade measures that restrict imports from other countries, regardless of whether they are compulsory undertaken by the importing government or undertaken by importers or industry associations. On the other hand, the narrow definition of blue barriers merely covers trade measures undertaken by the importing countries to restrict imports on the grounds of labour standards or social accountability. These measures are often provided in trade agreements. And the provisions in the TPP agreement

regarding labour standards are typical examples. Nevertheless, considering the existing definition of some developing, in particular the Chinese definition which is the origin of blue barriers, blue barriers defined in this article refer to the broad definition.

Blue barriers originated from the 1980s. The theoretical basis is the theory of social dumping^[6] for which developing countries consider that their labour-intensive exports are main targets.^[7] Moreover, developing countries also criticized that the SA8000 has been one of the main measures that certain enterprises and industries of some countries restrict imports and protect interests.^[8] In addition, some industries and enterprises in the importing countries require that exporters from other countries have to accept various social accountability assessments in order to obtain the qualification of exporters in the importing countries according to the diverse requirements of their respective domestic laws and industries in the importing countries. These assessments are often overly demanding and thus cause obstacles to the exporters. In recent years, some exporters in coastal cities of south-eastern China, such as some enterprises in Zhejiang Province of China have been required to take these assessments for the eligibility as exporters.

Generally speaking, two approaches are often adopted by international community to regulate measures regarding blue barriers. One approach is that individual enterprise or the industry association uses certain standards for certification, *i.e.*, the enterprise or the association implements labour standards and social accountability such as SA8000 and Electronic Industry Code of Conduct (EICC)^[9] in exporters from other countries. Once exporters meet these standards, then they will be assigned orders and will be eligible for exporting. Another approach is the importing countries' governments incorporate a special chapter on labour standards and social accountability into regional free trade agreements, such as the provisions in the TPP agreement, *i.e.* the free trade agreements force the member states to implement these standards among their domestic enterprises as well as industry associations and thus bring exporters from other countries to comply with these standards. Once enterprises or industry associations in the member state do not comply with the standards for the imports, other member states will have the right to impose punishments on that specific state according to the provisions of the agreement. The following part of this article will discuss and analyze the issue of blue barriers in international rules by taking SA8000 and the provisions of the TPP agreement as examples.

2.1 SA8000

In the early 1990s, the famous American garment manufacturer Levi's became the subject of criticism after the media exposed and claimed that the company was a "sweatshop". This directly promoted the company to introduce the world's first code for social

accountability. Since then, some multinational corporations have attempted to enact a uniform code for social accountability. In 2001, the United States' Council on Economic Priorities was renamed Social Accountability International (SAI) and started to develop uniform socially responsible standards.^[10] Some business organizations, non-governmental organizations and trade unions etc. from 11 countries constitute SAI. The uniform international standard for social accountability enacted by SAI was named SA8000. This international standard is a common standard for all types of businesses and industries. Since it was firstly issued by SAI, it has been revised several times and the latest version is the version SA8000:2014 launched in 2014.

SA8000 employs a third-party authentication, that is, authorizes an independent accredited certification body to evaluate whether the enterprise complies with the standard. The latest version SA8000:2014 covers nine various aspects, including child labor, forced and compulsory labor, health and safety, freedom of association and right to collective bargaining, discrimination, disciplinary practices, working hours, remuneration and management systems.^[11] The certification body will evaluate whether the enterprise has complied with the standard according to the detailed criteria provided by SA8000:2014. Once the enterprise passes the evaluation, it will get an SA8000 certificate. SAI will publish the list of certified enterprises on its website. Although SA8000 is a voluntary standard for workplaces, many transnational corporations recognize this standard and require their suppliers to ensure that they are SA8000 certified enterprises when they produce the supplied products. This is the precondition for foreign exporters to get orders from these transnational corporations. As a result, SA8000 certificates have been the essential qualification for enterprises to enter into the global industrial chain.

With the development of society, consumers put forward higher social standards for enterprises. This requires enterprises to bear more corresponding social responsibilities. In this regard, SA8000 responds to the public social concern and provides a simple and easy identification, *i.e.*, the SA8000 certificate for consumers and investors. By using the SA8000 certificate, consumers and investors can easily identify whether an enterprise is concerned about labor issues, and enterprises can also show their commitments to social responsibilities, thereby enhancing their public credibility. Transferring the comparative empty theory of corporate social responsibility and human rights into a detailed specific and quantitative standard, SA8000 undoubtedly plays a positive role and has a far-reaching impact on the protection of workers' rights and interests. Nevertheless, the implementation of SA8000 may render the evaluated enterprise to be treated unfairly and thus prevent their products from exporting due to some shortcomings and loopholes

arising out of the text of SA8000 and its certification procedures.

On the one hand, the standard provided by SA8000 is extremely high for developing countries' exporters to achieve, in particular for those small and medium exporters. In its first part of the first chapter "Intent and Scope", SA8000:2014 claims that the standard is based on "national labour laws",^[12] however, many contents of this standard mainly referenced the labour standard of developed countries rather than the standard of developing countries or the standard of small and medium enterprises. For example, in Part III "Definition" Article 12 "Living wages", it provides that "The remuneration received for a standard work week by a worker in a particular place sufficient to afford a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transport, clothing, and other essential needs including provision for unexpected events."^[13] This standard of living wage may be achieved in developed countries, but more difficult to be implemented in developing countries. As a result, such excessively high standard essentially excluded the majority of small and medium exporters in developing countries from the SA8000 certification.

On the other hand, the certification process of SA8000:2014 is somewhat cumbersome and costly. It is labour, money and time intensive for enterprises to complete the process and get the certificate. It is a heavy burden for certified enterprises, in particular those small and medium exporters. Generally, the certification process of SA8000 goes as follows: first, the applicant enterprise undertakes an online management system self-assessment, and then it can apply for the certification within one year after the self-assessment. Once SAI accepts the application, the proposed enterprise can choose to undertake a pre-assessment forecast. If the forecast suggests the enterprise improve its management system, the enterprise will be given adequate time for improvement. This process can last up to two years. If the proposed enterprise passes the pre-assessment forecast, it can start the full evaluation process. At this point, it selects and works with one of the independent accredited bodies authorized by SAI. The selected body will undertake an on-site assessment by reviewing documents and interviewing with workers and then provide their comments and suggestions for improvement. In light of these comments and suggestions, the enterprise will improve its system in order to fully meet the SA8000 standards. Once the independent body determines that the enterprise has undertaken necessary measures and improvements to comply with the SA8000 standards, it will grant a SA8000 certificate. However, such a certificate is valid for three years subject to ongoing surveillance audit evaluations which generally every six months will be held. The certificate is also required to be renewed after it expires.^[14] As a result, this

certification process of SA8000 is extremely cumbersome and time intensive. Moreover, the ongoing surveillance audit evaluations and other procedures also render more difficulties, in particular the increased cost, to get the certificate. In addition, the enterprise is also required to provide various documents and hundred copies of data, involving all nine aspects of the SA8000 standard. For example, only in one aspect of "health and safety", it requires the enterprise to provide dozens of documents and data regarding business and operating permits, factory buildings, fire safety, electronic safety, machine guards and safety, noise, boiler / generators, chemical and hazardous waste handling and storage, labor insurance supplies, kitchen, cafeteria and canteens, restroom facilities, elevators, fuel and chemical storage tanks, medical care and child care facilities etc.^[15] Another example is in Article 9.2 of Chapter 4, it requires the enterprise to establish a social performance team for the implementation of all elements of SA8000.^[16] All these requirements will bring high cost to the certified enterprise, and in particular, render small and medium exporters in developing countries to be unaffordable and thus to be in a weaker position for getting orders from their business partners in developed countries.

Both substantive standards and procedural requirements of SA8000 indicate that this standard was designed for developed countries and large enterprises. In contrast, it is difficult to be achieved for exporters in developing countries, in particular small and medium enterprises as well as labour-intensive industries, and thus render them in a worse position in international trade. This is because failure in obtaining a SA8000 certificate means the unavailability of orders from importers. For those enterprises who eventually get the certificate, they will also have to increase the cost of the product. In the past decades, small and medium exporters in developing countries mainly rely on comparative lower labour cost in order to get the cost advantage of product price. Therefore, the increased cost of the product will also eventually render this advantage unavailability and thus in a worse position in the global market competition. As a result, although SA8000 is not a compulsory certification implemented by states or governments and cannot be defined as trade barriers *per se*, it constitutes a hidden barrier in practice because the certification of SA8000 has, *de facto*, driven small and medium enterprises in developing countries out of the exporting market. In addition, this standard that originated from and used in the inner network of large international companies or certain industries has been gradually accepted by more states and has even been expanded to be a universal standard. The provision regarding labour standards in the TPP agreement is a typical example of this development.

2.2 Labour Standards in the TPP Agreement

Labor standards in the TPP Agreement are mainly governed by

Chapter 19 of the Agreement, which contains 15 articles, including definitions, statement of shared commitment, labour rights, non derogation, enforcement of labour laws, forced or compulsory labour, corporate social responsibility, public awareness and procedural guarantees, public submissions, cooperation, cooperative labour dialogue, labour councils, contact points, public engagement and labour consultations.^[17] In addition, Chapter 19 has three attachments, namely, Brunei – United States Labour Consistency Plan, Malaysia - United States Labour Consistency Plan and United States Vietnam Plan for the Enforcement of Trade and Labour Relations.^[18]

In addition to confirming certain obligations of labour standards that contacting parties shall comply with in the past international labour agreements, Chapter 19 of the TPP agreement provides some striking and interesting provisions regarding labour standards. In Article 19.7 "Corporate social responsibility", it requires the Contracting Parties "shall endeavour to *encourage* enterprises to *voluntarily* adopt corporate social responsibility initiatives on labour issues that have been endorsed."^[19] The wording of this Article indicates that the labour –related requirement of the TPP agreement regarding social accountability is not a mandatory or compulsory obligation for the Contracting Parties. On the contrary, it merely requires that the Parties encourage enterprises to voluntarily adopt. However, in Article 19.6 "Forced or Compulsory Labour", it requires "each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour."^[20] According to this provision, the Parties have *de facto* been authorized to impose restrictions on imports or to prohibit imports in order to punish foreign producers who violate forced or compulsory labor. Apparently, it is the marriage of trade and human rights, attempting to expand the application of restrictive measures in trade. As a result, once the TPP Agreement is implemented, the Contracting Parties, by applying Article 19.6, will be able to restrict imports from countries concerned. Moreover, the wording of Article 19.6 also suggests that unlike Article 19.7 which is voluntarily adopted, Article 19.6 is a mandatory or compulsory obligation for the Contracting Parties.

On the other hand, there are also some loopholes and flaws in Article 19.6. First, Article 19.6 does not specify the measures undertaken by the Parties. That is, what are "initiatives it [the Parties] considers appropriate"? Article 19.6 does not provide a clear answer to this question. The wording of the text merely indicates that the Parties shall undertake some measures. However, the question as to what is and whether it is "appropriate" is contingent upon the interpretation made by the discretion of Contracting Parties. This unrestricted discretion may bring inconsistent standards of

implementation and the lack of predictability for legal consequences, and thus further generate trade barriers.

Secondly, the wording of Article 19.6 implies that it is a mandatory or compulsory obligation for Contracting Parties to undertake appropriate measures and impede the relevant imports. However, it does not provide the legal responsibility and legal consequences that Contracting Parties should bear when they fully or partially fail to comply with the obligation in Article 19.6 or even abuse Article 19.6 to arbitrarily restrict imports and thus brings trade barriers.

Finally, despite the text of Article 19.6, there is a footnote accompanied by the Article, providing that “For greater certainty, nothing in this Article authorizes a Party to take initiatives that would be inconsistent with its obligations under other provisions of this Agreement, the WTO Agreement or other international trade agreements”.^[21] According to the wording of this footnote, the legal validity and status of this Article is not higher than other articles of the TPP Agreement or the obligations under the WTO Agreement and other international trade agreements. Put another way, Article 19.6 does not give priority to the application. Moreover, it should be noted that the footnote itself does not clarify the specific scope of the obligations under the WTO Agreement and other international trade agreements. As a result, it may merely refer to the relevant obligations under those agreements regarding labour standards, and/or it may also refer to all obligations under those agreements. Strikingly, if it merely refers to the former scope, the application of this footnote will be restricted. This is up to date the WTO has not reached an agreement on labor standards, and thereby impossibility of conflicts in the application between Article 19.6 of the TPP and the relevant articles under the WTO agreement. However, if it refers to the latter scope, the footnote would be interpreted as that the legal validity and status for the mandatory obligation of labour standards in the TPP Agreement is less than all other international obligations of Contracting Parties. Apparently, this interpretation runs counter to the original intention of the TPP Agreement to incorporate labor standards for protecting labour rights.

The foregoing analysis indicates that there are some normative loopholes and deficiencies in Article 19.6 of the TPP agreement and its footnote, which needs to be further clarified and interpreted in practice. Otherwise, it will be readily abused and thus generate blue barriers in the rules.

3. Blue Barriers in Practice

As indicated earlier, both provisions of international treaties and standards of international customary laws are likely to generate blue barriers in the rules. On the other hand, these provisions and

standards are also more likely to be abused in practice, thereby creating blue barrier *de facto*.

3.1 The Implementation of SA8000

First of all, in practice SA8000 may be abused, which will render strict labor standards unimplemented. For example, in order to pass the certification of SA8000, some enterprises hire consultants to take use of loopholes in SA8000 so that the enterprises will be re-shaped and thereby avoiding the implementation of strict labour standards. In the case of SA8000 certification, in addition to checking materials provided by the enterprise, the certification body may also interview with the employees of the enterprise to find out whether the enterprise has complied with SA8000. As a result, some consultants help the enterprise to prepare for a pre-defined list in which the attendants of interview have been pre-decided and then instructed or trained by the consultants to answer the questions that the certification body may propose in the certification interview. Such a way will prevent the employees from telling the truth of the enterprise as to whether the enterprise has complied with SA8000. Moreover, with the help of consultants, large enterprises with sufficient funds will be easier to pass the certification than small and medium enterprises even if they have not complied with the standard. This is because the lack of sufficient funds will render small and medium enterprises to unable to hire consultants. Therefore, on the one hand, the existing SA8000 certification *de facto* deprives of the right of small and medium enterprises as exporters, and on the other hand, it does not achieve the original intention of SA8000 certification, *i.e.*, to effectively protect labour rights.

Secondly, some standards of SA8000 are completely divorced from reality. For example, one Article of SA8000 provides that “[t]he normal work week, not including overtime, shall be defined by law but shall not exceed 48 hours.”^[22] Frankly, the original intention of this standard is to protect the workers’ right to rest. However, in some labor-intensive industries, such as clothing and textiles industry, it is almost impossible for many enterprises to achieve it during certain period of time, in particular with the busy season that strict criteria are required for orders and shipping. Consequently, in order to pass the SA8000 certification, enterprises would have to find consultant to help and cheat.

Thirdly, the current majority of enterprises that apply for the SA8000 certification are from developing countries, such as India and China.^[23] It seems that such a certification is mainly required for enterprises from developing countries. And enterprises from developed countries are rarely required to pass such a certification in order to get orders. However, according to SA8000, it should be applicable to all industries and various enterprises around the world. If this is the case, it is doubted that whether SA8000 is a universal standard to all industries and all enterprises. This is because it is

apparent that enterprises from developing countries are more anxious to get a SA8000 certificate than suppliers from developed countries even if certain industry chain suppliers remain in developed countries. In addition, the existing standards of SA8000 have not been global uniform standards for labour rights. Simultaneously, there are other labour standards adopted by different countries and regions as well as various industries around the world. This is the case even occurred in the United States which is generally recognized as the country that standards of SA8000 are originated from. Some enterprises in the United States use other labour standards rather than SA8000.^[24] This may increase enterprises the heavy burden, in particular small and medium enterprises, because they have to pass various certifications in order to be eligible and qualified as exporters or suppliers for different countries and regions. Finally, as indicated earlier, SA8000 employs a third-party authentication. That is, certification bodies authorized by SAI will undertake SA8000 audits. As of May 2017, although SAI has merely authorized twenty-three independent accredited certification bodies^[25] for the SA8000 certification and SAI itself is a nonprofit organization, some of these certification bodies are profitable business organizations. These business organizations, combined with consultants as well as large multinational corporations who require their suppliers to get SA8000 certificates as prerequisites for orders, have rendered the certification of SA8000 a lucrative industry. As a result, this authentication system of SA8000 may bring potential risks to the implementation of SA8000.

3.2 The Implementation of Labour Standards in the TPP Agreement

Currently, as the future of the TPP agreement is unknown, this article merely discusses the potential impacts on labour standards of the TPP agreement in practice, in particular the possible impact on exporters from non-TPP member states.

Firstly, it is the first time that the implementation of labor standards has been brought to the national level. During the past decades, labour standards were implemented merely in large multinational corporations, business alliances or industry associations. They have never been enforced as national mandatory or compulsory standards. Theoretically, if labour standards are not national mandatory or compulsory standards, and in the case that exporters are not given orders because they fail to pass the certification, these standards even abused cannot yet be defined as trade barriers. The reason is that trade barriers should generally be implemented by a state or by a government who acts on behalf of the state. Therefore, either SA8000 or the ICTI standard which is generally recognized in the toy industry^[26] etc. is essentially not a trade barrier from the perspective of narrow definition as indicated earlier in this article. However, once labour standards of the TPP

agreement are implemented, member states of the TPP agreement will have the obligation to implement. As a result, labour standards of the TPP agreement will be transformed into a mandatory obligation to all member states, and thus further render the potential trade barriers to come into being. On the one hand, these standards should be implemented among enterprises of the TPP member states. If they do not or are unwilling to implement, they will be subject to the punishment of their governments in order to ensure that the national obligation is not breached as the TPP member. On the other hand, if the member state of the TPP agreement does not or unwilling to implement these standards, they will also be subject to the punishment imposed by other TPP member states, such as measures on exports restriction etc. As indicated earlier, provisions regarding labour standards of the TPP agreement are ambiguous and leave greater discretion to member states. Therefore, once they are implemented, it will most likely abuse those provisions and further become trade barriers.

Secondly, although labour standards of the TPP agreement are merely valid for TPP member states, it does not mean that they have not any impact on non-members and exporters concerned. For example, China has not yet joined the TPP agreement, but once labour standards of the TPP agreement are implemented, it will have a significant impact on Chinese exporters. This is because some TPP member states, such as Japan, Canada, Australia etc., are China's major partners in international trade. And others, such as Singapore, Vietnam, Malaysia etc., are China's neighboring countries in the Asia-Pacific region with close economy partnerships. Consequently, if these countries have to implement labor standards of the TPP agreement at the national level, these standards shall be incorporated into their domestic laws which will not only target at exporters from TPP member states but also target at all exports from all countries. Therefore, once these strict labour standards of the TPP agreement are introduced to the domestic laws of TPP member states, they will apply to all exports from all countries, both members and non-members, to the importing country.

Finally, the implementation of the TPP agreement will bring closer economic relationship among member states. Compared with labour standards provided by most of bilateral trade agreements, labour standards of the TPP agreement are less arbitrary and thus many exporters from non-member states of the TPP have difficulties in complying with these standards currently. As a result, if these standards are implemented, more orders of exports from TPP member states will be given to exporters among TPP members rather than exporters among non-members. This will, to a certain extent, contribute to the trade diversion effects, triggering non-TPP members' less investment, less orders, increased labour cost and eventually more barriers to enter into the TPP members' markets.

Therefore, the above discussion implies that the implementation of TPP labor standards will not only have an impact on TPP member states and their exporters, but will severely affect exporters from non-members as well, and eventually it will turn out to be potential trade barriers that specifically affect exporters from non-members.

Conclusion

Blue barriers that hinge upon strict labour standards as well as social accountability are new trade barriers. Exporters are forced to achieve social accountability and strict labour standards as prerequisites for export orders based upon their human rights records. As analyzed in this article, although these standards restrict exports, they are not real trade barrier *per se*. This is because they are not compulsorily implemented by the state, but by the large corporation and the industry association voluntarily. However, once labour standards provided by the new generation of free trade agreements have upgraded to mandatory or compulsory standards for member states, they will have a significant impact on exporters from non-members of free trade agreements. Simultaneously, these standards will be blue barriers *per se* if they are abused *de facto* or *de jure* in practice to restrict imports.

As the future of the TPP is unknown, questions as to who will fill the leadership of the TPP after the withdrawal of the United States and who will be invited to join the TPP negotiations have not been discussed and resolved. However, labour standards of the TPP agreement will have a severe impact on exporters from non-TPP members. Therefore, it is suggested that non-TPP member states, such as China, should pay adequate attention and undertake necessary measures to handle blue barriers. The potential measures may include the participation in the TPP negotiation and renegotiation on the existing labour standards of the TPP, the promotion of the establishment of a new regional comprehensive economic partnership agreement (RCEP) and introduction of new labour standards which will be consistent with the interests of labour-intensive industries in the region. In the long run, blue barriers will be one of the new challenges in international trade for exporters from labour-intensive industries and countries. The justifiable standards of labour rights protection and controlling blue barriers are not easy tasks in international trading regime. The international community should make efforts to render labour standards fairer and more justifiable for all.

References

- [1] After the withdrawal of the US from the TPP, Australia and New Zealand which are two important members in the TPP discussed about the possibility of proceeding with the TPP without the US by encouraging China and other Asia countries to join. For more details, see Reuters, 'Australia, New Zealand look to China to salvage TPP deal after Donald Trump withdraws US', 24 January 2017, available at < <http://www.newsweek.com/australia-new-zealand-tpp-china-japan-donald-trump-547309>> (30 April 2017 last accessed) In March 2017, invited by Chile, China and South Korea which are not members of the TPP attended the TPP meeting held in Chile after the withdrawal of the US. See Chen Weihua, 'China to attend TPP negotiations in Chile this week.' 3 March 2017, available at < http://usa.chinadaily.com.cn/world/2017-03/13/content_28526712.htm> (30 April 2017 last accessed).
- [2] For the debate about labour standards in the negotiation of international trade agreements, several journal articles in China discussed. For example, FengshengWu, 'International Labour Standards and the 'Blue Provision' of the WTO'(Guo Ji Lao Gong Biao Zhun Yu WTO "Lan Se Tiao Kuan"), Journal of Tianjin Administrative Institute of Political Science & Law, 2006:2, pp.48-52.
- [3] For example, the definition that Chinese Scholar Yuxia Ma provides: "Compared with green trade barriers that target the environmental protection, people always consider that blue barriers target the protection of 'blue collars' workers' rights and cover the content of international labour standards. These barriers are also called as labour standards trade barriers or social accountability trade barriers". See Yuxia Ma, 'A Rational Examination of Blue Barriers in the Shadow of Economic' (Jing Ji Shuai Tui Yin Ying Xia De Lan Se Bi Lei Li Xing Shen Shi), Journal of International Trade, 2009:7, p. 79; Another Chinese scholar Xingyu Wang defined blue barriers as "Blue Barriers are trade protection measures adopted under the name of labour environment and the right to life." See Xingyu Wang, 'The Influence of Blue Barriers on China and their Countermeasures' (Lan Se Bi Lei Dui Wo Guo De Ying Xiang He Dui Ce Yan Jiu), Journal of Foreign Trade and Management, August 2006: 16, p.92.
- [4] The supervisor in Asia of SAI said that SA8000 is not a trade barrier. For more details, see 'Is SA8000 A Trade Barrier? Interview with The Supervisor of Asian Projects of SAI ' (SA8000 Bu Shi Mao Yi Bi Lei? SAI Ya Zhou Xiang Mu Zhu Guan Jie Shou Cai Fang), Nan Fang Daily, 6 April 2004, available at <http://news.sohu.com/2004/04/06/92/news_219759221.shtml> (11 August 2017 last accessed) ; Some Chinese scholars also questioned that SA8000 are trade barriers. For example, see Jianxia Zhang, 'The Nature of Non-Trade Barriers of SA8000'(SA8000 De Fei Mao Yi Bi Lei Xing Zhi), Research of Finance and Education, March 2006, pp. 37-9.
- [5] Trade barriers are various restrict measures that one country imposed on products or service of another country. They can be divided into tariff barriers and non-tariff barriers.

- [6] "Social dumping" refers to the low export price and a large quantity of exports dumped at the importing country due to low labour costs and the failure to provide workers with reasonable wages or environment. Developed countries hold that exports of developing countries constitute social dumping and cause their less capacity of the competitiveness of their domestic enterprises and less employment opportunities. See Haiyan Li, 'The Development of SA8000 in The WTO Negotiation and China 's Countermeasures' (*SA8000 Biao Zhun Zai WTO Tan Pan Zhong De Fa Zhan Yi Ji Zhong Guo De Ying Dui Ce Lue*), *Current Economics*, 2008:5 (II), pp.12-3.
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- [8] Haiyan Li, 'The Development of SA8000 in The WTO Negotiation and China 's Countermeasures' (*SA8000 Biao Zhun Zai WTO Tan Pan Zhong De Fa Zhan Yi Ji Zhong Guo De Ying Dui Ce Lue*), *Current Economics*, 2008:5 (II), p.12.
- [9] Electronic Industry Code of Conduct (EICC) are corporate social responsibility norms initiated and developed by IBM, Microsoft, Hewlett-Packard, Dell, Sony and other global electronics industry giants in the electronics industry supply chain to establish.
- [10] Hanbing Zhang, 'SA8000 and China's Construction enterprises' (*SA8000 Yu Wo Guo Jian Zhu Qi Ye*), *Construction Economy*, 2006:8, p. 52.
- [11] Social Accountability 8000 International Standard, by Social Accountability International, June 2014, IV: Social Accountability Requirements.
- [12] *Id.*, at I:1 Intent and Scope.
- [13] *Id.*, at III : 12 Living Wage.
- [14] For details about the certification process of SA8000, see the official website of SAI, available at < <http://www.saasaccreditation.org/certification.htm> > (8 May 2017 last accessed).
- [15] SA8000:2014, Performance Indicator Annex, 3 Health and Safety.
- [16] *Supra.* note 11, at IV: 9.2 Social Performance Team.
- [17] Text of The Trans-Pacific Partnership, Chapter 19:Labour, 26 January 2016.
- [18] Brunei – United States Labour Consistency Plan, November 2015; Malaysia – United States Labour Consistency Plan, November 2015; United States – Vietnam Plan for the Enhancement of Trade and Labour Relations, 4 February 2016.
- [19] *Supra.* note 17, at Article 19:7 Corporate Social Responsibility.
- [20] *Id.*, at Article 19:6 Forced or Compulsory Labour.
- [21] *Supra.* note 19.
- [22] *Supra.* note 11, at June 2014, IV:7.1
- [23] According to statistics provided by SAI, as of 29 March 2017, there are 3857 enterprises from 72 countries that pass the SA8000 certification. For nationalities of 3857 enterprises, Italian enterprises rank 1 st. However, among 72 countries, most of them are developing countries, among which 953 Indian enterprises and 654 Chinese enterprises get the SA8000 certificates. India ranks 2 nd and China ranks 3 rd. For more details, see SAI website, available at <<http://www.saasaccreditation.org/certifacilitieslist>> (18 May 2017 last accessed)
- [24] According to statistics provided by SAI, as of 18 May 2017, there are only 2 enterprises from the US that get the SA8000 certificates. This implies that even in the US, the SA8000 certification is not a general one.
- [25] For the list of independent accredited certification bodies recognized by SAI, see SAAS official website, available at <<http://www.saasaccreditation.org/accredcertbodies.htm>>, (18 May 2017 last accessed).
- [26] The ICTI certification is the standard that the International Council of Toy Industry (International Council of Toy Industries) implements in order to ensure that the toys are safe and the environment in the production purports to human rights. Currently, Chinese exporters usually need to get ICTI certificates to obtain orders if the exported toys are produced in China.