



WTO Trade & Labor Standards

By Brewster Grace, Quaker United Nations Office

Throughout the 1990s, both International Labor Organization (ILO) decisionmaking bodies and World Trade Organization (WTO) agenda-setting meetings extensively debated whether and how trade policy should address issues of labor standards. In the WTO, labor standards were debated in ministerial conferences in Punta del Este in 1986 and in Marrakesh in 1994. The debate became especially heated in the last two ministerial meetings in Singapore and Seattle in 1996 and 1999 respectively. Since 1994 a working party in the ILO Governing Body on the Social Dimensions of the Liberalization of International Trade has debated how the ILO, in an international economy increasingly subject to market forces that frequently denigrate labor rights, should protect and promote core labor standards—i.e. the rights to freedom of association and collective bargaining, the prevention of child and forced labor, and the outlawing of discrimination.

Key Points

- The trade and labor standards debate is a longstanding and important issue in both the GATT/WTO and the ILO.
- The United States has advocated the establishment of a working group in the WTO and the universality of core labor standards.
- Many developed countries support the U.S. position, while most developing countries oppose it.

The debate has sharply divided WTO member governments between developed and developing countries. The latter claim that any policy or institutional linkages between trade and labor standards would be a slippery slope to protectionism. The U.S. has been the most vocal developed country to argue that linkages exist and to propose that they need to be recognized and dealt with in the WTO.

Advocates for consideration of trade and labor linkages in the

WTO argue that at least two GATT articles justify trade restrictions based on violations of fundamental labor rights:

1. Article XX on general exceptions permitting trade restrictions is frequently cited, as it allows member governments to restrict trade to protect “public morals” and “human life and health.” (Amending Article XX to include core labor standards would provide for a more specific exception.)
2. Article XXIII on dumping is cited when contending that suppressed worker rights in export industries constitute “social” dumping.

The ILO governing body has also become a venue for debate on trade and labor standards. Although ILO worker members agreed in 1994 to suspend discussion of “sanctions,” their explicit objective in the working party has been to strengthen ILO capacities to promote

core labor standards and thereby raise their importance as a crucial issue in trade liberalization policymaking.

The ILO Declaration on Fundamental Principles and Rights at Work and its follow-up mechanism are important first steps. The declaration carefully balances the obligations of member states “to respect, to promote and to realize...the principles concerning the fundamental rights which are the subject of the core labor standards conventions with the obligations of the ILO to assist its members to attain these rights by making full use of its constitutional, operational and budgetary resources.”

The follow-up mechanism represents an important advance in ILO capability to respond to social problems resulting from global economic liberalization. “The purpose is to provide an opportunity to review each year ... the efforts made in accordance with the declaration by member states which have not yet ratified the core labor standards conventions.” The U.S. has strongly supported the declaration and has contributed \$20,000,000 for its follow-up mechanisms to assist ILO member governments to ratify the key core labor standards conventions.

The U.S. has not explicitly proposed interpretations or amendments of Articles XX or XXIII. Instead, since 1987 it has consistently proposed the establishment of a working party to examine how “internationally recognized labor standards” relate to international trade and to the objectives of the General Agreement on Tariffs and Trade (GATT). The U.S. position has evolved over the years to enumerate ILO core labor standards as key benchmarks for worker rights. At the Singapore ministerial conference in 1996, the U.S. urged WTO-ILO cooperation to find ways the two organizations could be mutually supportive. The proposal also specified the need to ensure the open and nondiscriminatory nature of the trading system.

In 1999, the U.S. proposal to the WTO ministerial meeting in Seattle recommended specific issues for consideration by a working party, including the relationship between trade, core labor standards, and social protection; positive trade incentives; trade and forced labor; and trade-induced derogation from national labor standards—including export processing zones. The EU proposal for ministers in Seattle was for a “Standing Working Forum on Trade, Globalization and Labor Issues,” representing a weak compromise between those wanting a working party and those who considered WTO consideration of trade and labor linkages too political for the ministerial agenda.

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Problems With Current U.S. Policy

Developed country support for the U.S. position on a working party in the WTO has varied. Belgium, France, and Norway have consistently proposed similar WTO agendas. Germany under the Christian Democrats has been unhelpful, and the United Kingdom was not enthusiastic about any EU proposal at the Seattle ministerial conference regarding WTO involvement in labor standards.

Developing country opposition to U.S. proposals is more unified and is reinforced by strong legal arguments to the effect that the WTO does not have the competence to deal with labor standards. Developing countries contend that:

1. The WTO is a commercial contract based on rules and disciplines governing commercial activity and free and fair trade; it is not based on judgments about other aspects of member states' domestic policies, including worker rights and other non-trade issues. Its rules aim to discipline the use of trade measures and reduce barriers to trade. Member states are free to conduct their domestic policies in whatever way they see fit.
2. To introduce judgments about member countries' domestic policy choices into the WTO would fundamentally change the legal nature of the agreements. In this regard, Article XX refers to the protection of conditions in the importing country. Introducing labor standards would undermine existing rights, most notably negotiated rights to market access, without introducing reciprocal obligations.

Developing countries have also thus far succeeded in stanching the establishment of a working group on labor standards by claiming that it is motivated by protectionist demands in the United States. Developing countries, especially the least developed, who see their low labor costs as essential to their export competitiveness, give considerable credibility to this charge. Beyond their legal arguments, they contend that U.S. and EU use of antidumping measures—permitted in the WTO when intended to prevent the sale of imports at prices lower than the costs of production—are abused and become essentially protectionist measures. These charges were aggravated by President Clinton's statement to demonstrators in Seattle that ultimately sanctions could be used, in dire circumstances, to enforce core labor standards.

Both the WTO Singapore declaration and the ILO Declaration on Fundamental Principles and Rights at Work clearly reflect these apprehensions of protectionist

motivations. In the former, governments "...reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question." The latter "[S]tresses that labor standards should not be used for protectionist trade purposes" Persuading developing country governments that U.S. and other like-minded governments' motivations are not protectionist is a major challenge.

U.S. procrastination in implementing the Uruguay Round Clothing and Textiles Agreement (CTA) only reinforces developing country resistance. The agreement is admittedly "end loaded," allowing the U.S. to postpone liberalizing its most sensitive industries, often the most value-added and of most interest to developing countries, until the final years of the 10-year phase-in period. However, the U.S. has also tried to invoke temporary safeguards in those industries that it is scheduled to liberalize sooner. This procrastination in implementing a vital market access commitment has riled many developing countries and only deepened their apprehension of protectionism.

President Clinton's invoking of sanctions in his meeting with labor unions in Seattle was especially provocative because of the opposition on the part of U.S. labor to any proposal in the ministerial to moderate the WTO Antidumping Agreement—an important demand by developing countries. U.S. steelworkers were at the heart of this opposition, given the surge in U.S. steel imports over the past two years as a result of the economic

downturn in Asia. While developing countries view abuse of antidumping as protectionist, U.S. unions see antidumping as a legitimate means to protect jobs, so long as U.S. policy in the WTO is not effective in linking trade liberalization with improving labor standards. Thus U.S. policymakers are caught between resistance within the WTO toward making trade liberalization and improving core labor standards mutually supportive versus resistance in the U.S. to any additional trade liberalization without greater recognition of worker rights by WTO member states.

Key Problems

- U.S. working party proposals have sustained widespread rejection by developing countries citing legal arguments and allegations of protectionist motivations on the part of developed countries.
- While the U.S. proposes a working group, it inadequately implements market access agreements important to developing countries and offers insufficient reciprocal obligations.
- The U.S. position is a precarious balance between the suggestion of a working group to examine trade and labor linkages and demands from U.S. unions to support a sanctions-based social clause.

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Toward a New Foreign Policy

The U.S. proposal to the ministerial conference in Seattle added some refinement to its predecessors. Earlier proposals had focused on the fact that linkages exist and that a working party should address those labor rights now referred to as core. The latest proposal included specific issues that could be considered by the working party: e.g., forced or exploitative child labor and export processing zones. More interestingly, the proposal called for consideration of "positive trade policy incentives and core labor standards."

Key Recommendations

- The U.S. needs to relate labor standards to increasing market access for developing countries.
- The U.S. should support even greater collaboration between the ILO and WTO, drawing on the commitment that ILO members have made to respect core labor standards.
- Article XX of GATT should either be reviewed in order to consider broader interpretations or amended to incorporate evolving universal norms regarding labor standards.

In the hard bargaining that characterizes WTO negotiations, it is difficult to recommend amendments to agreements that are not undertaken within the context of official negotiations. If the U.S. wants to expand its right to examine the relationship between trade and labor standards in developing countries, it should expect to offer quid pro quos for its proposals and to take on reciprocal obligations.

U.S. policy should recognize that market access is a major

issue for developing countries, especially in textiles, a crucial industry in the context of employment and development. The U.S. could accelerate its implementation of the CTA, at least as an implicit quid pro quo, in return for developing country support for a working party. Since the U.S. is already committed to liberalization in the CTA, however, this concession would not represent a fundamental balancing of rights and obligations.

An even more attractive offer would be U.S. willingness to consider a "multilateral agreement for movement of labor," perhaps by amending the existing provision in the General Agreement on Trade in Services for movement of "natural persons" (noncitizens). Such an agreement would have to be compatible with ILO and UN conventions on migration and migrant worker rights.

A more suitable balance could be established between developed countries' social concern for labor standards and developing countries' social and cultural concerns for traditional knowledge and farmers' rights—e.g. protection of indigenous communities' rights to biological resources, and recognition of farming communities' rights to cultivated plant varieties. This could be done within the WTO Trade-Related Intellectual Property Agreement.

More balance could be established within a working group by including in its mandate an examination of developed country legislation and trade measures involving unilateral action based on labor standards. For example, section 301 of the U.S. Omnibus Trade and Competitiveness Act allows the U.S. president to impose or restore restrictions on imports of any countries that practice a persistent pattern of denial of

recognized international worker rights. The prospects for protectionist action based on Section 301 could be evaluated in a working group. Antidumping action by the U.S. could also be scrutinized, if such action involved labor standards.

The 1996 Singapore ministerial declaration on trade and labor renewed member governments' trade ministers' "commitment to the observance of internationally recognized core labor standards." However, it merely noted that the WTO and ILO secretariats "still continue their existing collaboration." U.S. policy should vigorously press for ILO observer status in all relevant WTO councils and committees. In this connection, the ILO could contribute to the WTO Trade Policy Review Mechanism assessments of labor standards with a view toward the contribution their improvement could make to increased productivity and export performance.

The U.S. should press for more than the Singapore commitment to "existing collaboration." Stronger and more cooperative relations would allow for examination—perhaps in a working group—of how the declaration could be used for improving core labor standards as opposed to undermining comparative advantages. This would be in keeping with the declaration's commitment that "...labor standards should not be used for protectionist purposes...." Furthermore, while the Singapore declaration commits WTO member governments to "the observance of internationally recognized core labor standards," the ILO declaration provides objective standards for labor rights. In this case, the U.S. should pose the question as to whether WTO trade liberalization is compatible with member states' ILO commitments—in much the same way as the WTO Committee on Trade and Environment looks at the relationship between trade measures and multilateral environmental agreements.

A hint of movement in increased collaboration could be seen in the March meeting of the ILO Governing Body Working Party on the Social Dimensions of the Liberalization of International Trade. An important step beyond the Singapore declaration and toward formal involvement of the WTO with the labor standards issue could be a joint WTO-ILO forum to address issues of labor standards based on the WTO Trade Policy Review Mechanism and the ILO Country Employment Policy Review.

Finally, the U.S. should urge a review of GATT Article XX. It is crucial that the international trading system not be subjected to disguised protectionism in order to support environmental and social concerns. However, since GATT was written in 1947, there has been considerable progress in defining and refining international labor (as well as environmental) norms and institutions. U.S. policy should address the need to update Article XX to allow for exemptions that take into account this progress in labor and environmental norms. Such a move would also help the WTO judge whether trade measures taken on grounds of violations of labor standards are indeed currently and universally accepted as such, thus alleviating fears of hidden agendas and narrow economic interests.

Sources for More Information

Organizations

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<http://www.icftu.org/>

International Labor Organization

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World Trade Organization

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