

THE EVOLVING DEBATE ON

**TRADE & LABOUR
STANDARDS**

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PREFACE

The debate on linking trade and labour standards, particularly through multilateral trade agreements, has been an emotive one in recent years, raising strong views on all sides of the debate. While the 1998 ILO Declaration on Fundamental Principles and Rights at Work to some extent resolved some of the issues, others remain outstanding.

The debate is a moving dynamic and there are changing and new elements developing, such as the inclusion of labour provisions in bilateral and regional trade agreements. Additionally, there are other, more subtle, areas such as issues around supply chains and codes of conduct (some of which are led by business) that are changing the nature of this debate.

This paper is designed as an information resource for employers. It is limited in scope, with its main objective being to try and establish where the debate currently is and to highlight some of the directions it is taking. It does not attempt to address all of the questions, nor does it offer definitive solutions.

The paper draws on more comprehensive work in this area carried out by the Australian Chamber of Commerce and Industry (ACCI).

WHERE THE DEBATE IS NOW

INTRODUCTION

Attempts to use labour standards as a way to impact on international trade policies are not new. In one shape or another these policy debates have been around since the beginning of the last century. For instance, at the time of both the founding of the International Labour Organization (ILO) in 1919 and the revitalization of the multilateral system following the second world war, concerted efforts were made to integrate the two concepts. In more recent times the last major effort to link the two domains was at the World Trade Organization (WTO) Ministerial Meeting in Singapore in 1995. On all occasions these efforts have been resisted on both technical and political grounds¹.

Some of the voices calling for these linkages were quietened by the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which adopted a parameter of minimum labour principles². The selection of these core labour standards was based on basic human rights to be respected in the workplace and there is widespread consensus that the core labour standards can act as a basis of minimum standards in the workplace, regardless of the level of development of a given country. The narrowing of the issue to fundamental or core labour rights as contained in the ILO's core Conventions and the Declaration has made the entire labour/trade debate less divisive.

However, the broader issue of trade and labour linkages still evokes strong views, yet viewpoints will not necessarily divide along traditional lines. For instance, governments of developing countries are in the main against such linkages while governments of developed countries are somewhat divided. Trade unions from developed countries (and the international trade union movement as a

1. We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them.....We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards.....We reject the use of labour 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. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration." WTO Ministerial Conference, Singapore (December 1996).

2. These principles are: Freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. See IOE publication on the Declaration: www.ioe-emp.org (in the IOE Papers section)

whole)³ favour such a link, whereas trade unions in developing countries are to some extent divided. Employers have been consistently against linkages of any kind.

WHY LINKAGES HAVE PROVEN UNWORKABLE

The case against linkages could be summed up in two main arguments which have generated increased resonance since the early 1990s. First, that market-based economic policies, including openness to international trade and investment, offer superior policy settings for lifting the pace and breadth of economic development in developing countries and are the best means of enhancing labour practices in those countries. Second, that advocates of trade/labour linkages are merely pushing a thinly disguised protectionist agenda and are seeking to deny developing countries the opportunity to realise their competitive and comparative economic and trade advantages and that if restrictions were to be placed on developing countries ability to export their goods then, sadly, it would be the most vulnerable in society that would pay the heaviest price.

The fact that externally imposed labour standards, especially those beyond the level of economic development and productivity of individual developing countries, are likely to prove counterproductive to the interests of those countries, coming at the cost of diminished international competitiveness for trade and investment and higher unemployment, has gained increased acceptance. However, an important distinction in this respect needs to be made between internationally recognized human rights and respect for national law, on the one hand which have to be guaranteed in any business activity, and standards which are dependent on productivity and market performance, on the other (notably wage levels, working time, holidays with pay, etc). The latter have to be negotiated between employers and their workers. If standards above the legal requirements were to be imposed through trade agreements or commercial contracts (including buyer codes), they would amount to non-pecuniary externalities, impinging on market access (in short non-tariff barriers to trade).

Experience has shown that the real issue is application of existing law. In a number of cases developing countries have much higher levels of legal protections for workers - the issue is that they are not enforced. In many cases, excessively complex labour codes is a key reason forcing many workers into the

3. The contents of and rationale for the ICFTU position (calling for a social clause) are laid out in the 1999 report 'Building workers' human rights into the global trading system, 1999, available via the ICFTU homepage (www.icftu.org). The ICFTU has since 1999 on numerous occasions stressed the importance of incorporating workers' rights into the WTO system. See e.g. para. 10 of the ICFTU statement in 2003 at the 5th Ministerial Meeting in Cancún (also available via the ICFTU homepage).

informal economy. If the issue is lack of application of law, the approach to take is surely a practical one and not a narrow legislative route (i.e. developing more law). Clearly, given that so many of the ILO's instruments have not been ratified by Member States, or ratified but not adequately implemented by them, indicates the artificial imposition of labour standards on an economy unprepared for, or unable to support, such standards would have a negative impact on national economic and social development. There are more effective ways of achieving the goal of improving labour conditions. Working directly with interest groups in countries where this is a problem is far more effective than including it as part of multilateral trade agreement.

TECHNICAL REASONS AGAINST FORMAL LINKAGES

At the multilateral level it has been argued that any efforts to formally link trade and international labour standards (hereafter 'ILS') within international economic law would inevitably encounter a number of substantive legal problems. Prominent amongst these would be the coherence and content of the different legal streams, the different fora (labour standards are the domain of the ILO, while trade law is that of the WTO) and the appropriate forum to receive complaints (again, the ILO or the WTO). There is also a fundamental difference in approach between the two organizations. The WTO's dispute settlement mechanism was created solely to deal with trade disputes, primarily through the withdrawal of measures that are inconsistent with WTO agreements.

An argument of those calling for structured linkages between trade and labour standards is the potential recourse to the formal dispute settlement mechanism of the WTO, which contrasts with the absence of comparable enforcement procedures within the International Labour Organization⁴.

4. In specific terms proponents of formal linkages between ILS and trade agreements have argued that existing WTO structures enable such linkages (in particular GATT Article XX the General Exceptions provision). This argument rests on the claim that GATT Article XX is intended to accommodate non-trade matters such as the environment and human rights (the latter through Article XX(e), dealing with prison labour). These arguments are flawed on several bases: WTO jurisprudence in this area has not been fully resolved (reflecting a number of inconsistent Panel decisions); it relates to a specific provision on environmental matters (GATT Article XX(g)); and, the inferential extension to international labour standards is overreach, with no general labour element within Article XX. Additionally, it is argued that existing WTO rules (namely through GATT Article III) could be sufficient to authorise domestic legislation applying international labour rights by conditioning market access on compliance or respect with such labour standards. This approach would ostensibly rely on what is known as 'product process' rules of international economic law, which advocates of trade and labour standards linkages claim prohibits the imposition of regulatory and trade barriers upon imported goods because of the way in which they were produced. This argument has been rejected by WTO Panels in several adjudicated disputes, which held that Article III covers only those measures which are applied to the product itself (i.e. denying the product process argument) and the product processes approach was fundamentally inconsistent with the objects and purposes of GATT Article III. These arguments are taken from and developed in much greater detail in a paper by Dr Brent Davis of the Australian Chambers of Commerce & Industry (ACCI): This paper is available on the IOE website www.ioe.emp.org in the news section (members publications).

While it is true that the WTO has the capacity for formal enforcement procedures under its Dispute Settlement Mechanism and the ILO's processes are less strident and binding, a great deal of effort and resources are required by governments in terms of ILO supervisory processes (i.e. the Committee on Freedom of Association and the Applications Committee), which should not be underestimated.

The inclusion of labour standards within the WTO *per se*, or as a judicial matter within the WTO's dispute settlement mechanism, would be likely to place excessive strains on WTO members, potentially to the extent of jeopardizing their own commitment to, and membership of, the multilateral rules-based trading system.

DEVELOPMENTS AT NATIONAL AND REGIONAL LEVEL

While at the multilateral level chances of labour/trade linkages seem unlikely (in the short term anyway) there have been recent trends to include labour provisions in some bilateral and regional trade agreements. There have been instances where labour standards have been referenced in the main text of a bilateral trade agreement, subject to the same dispute settlement procedures as commercial disputes (but with fines rather than trade measures as the principal enforcement mechanisms). Other such agreements have included Ministerial consultations on labour issues *but* with no enforcement mechanisms. Thus far there has been no requirement that such labour provisions must comply with ILO ILS, but rather with national labour law.

One other development in recent years has been the emergence of the oblique concept of 'collective preferences'. This is a highly controversial issue that has been raised, in particular by the European Commission⁵ and refers to allowing the 'shared values' of a nation or trade bloc to be evoked in terms of trade agreements. The argument follows that this could even entail permitting a country to ban imports or restrict free trade if these 'shared values' came under threat. The implications for the introduction of such a concept would be enormous and would call into question adherence to the rules-based international trading system.

5. See the attached link for a speech in Brussels September 2004 by the then EC Trade Commissioner Pascal Lamy : http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla242_en.htm

BILATERAL AND REGIONAL TRADE AGREEMENTS

The first major link in terms of regional trade agreements was the North American Agreement on Labour Cooperation (NAALC) which was negotiated as a side agreement to the North American Free Trade Agreement (NAFTA) and entered into force on 1 January 1994. The NAALC includes references to eleven basic labour principles. The NAALC calls on all three governments (Mexico, USA and Canada) to improve performance regarding all these rights and standards. This was heralded at the time as a historic agreement. However, the NAALC does not establish a set of international labour rights and standards but mainly commits the signatories to enforce their national labour law. “*Each party shall promote compliance with and effectively enforce its labour law through appropriate government action*”. There is, however, no enforceable obligation to do so and, in fact, the parties to the NAALC are not even explicitly prohibited from weakening their labour law⁶.

Since the NAFTA agreement, specific labour rights provisions have been included in several agreements negotiated by the US and more general provisions have also been included in agreements of the European Union (EU). Most US provisions are effectively limited to the commitment of parties to enforce domestic labour law. However, there are notable exceptions in the agreements, namely Cambodia⁷ and Jordan⁸, which could serve as examples for future labour rights provisions.

The European Union is particularly active in this field and explicitly states that the European Commission “...*tries to promote the link between trade and social development (outside the Doha Development Round) in a number of ways.*” In EU bilateral agreements, the focus is generally on human rights, development issues, technical cooperation and political dialogue, rather than on specific and enforceable labour rights provisions.

There are three concerns here. First, it remains to be seen whether such labour clauses agreed at bilateral or regional level could eventually feed back into multilateral negotiations. Second, that, in negotiating a bilateral agreement with a larger partner, a smaller country has limited negotiating room in respect of these

6. Article 3 of the NAALC recognizes “the right of each Party to establish its own domestic labour standards, and to adopt or modify accordingly its labour laws and regulations.”

7. Under this trade agreement Cambodia can win bonus quotas for textile and apparel exports to the US if garments factories are brought up to ‘substantial compliance’ with Cambodian and international labour standards.

8. Dispute resolution procedures and remedies are included in this trade agreement that are the same for commercial issues and labour rights violations. The agreement also includes a provision that binds parties to ‘strive to ensure’ the core rights embodied in the ILO declaration (1998) as well as a commitment to ‘strive to ensure’ that standards are not lowered.

provisions (thus far though this has not been a major issue). Third, even un-ratified ILS have the potential to be included in Generalized System of Preferences (GSP) and bilateral or regional trade agreements. However, that said developments to date in terms of labour provisions in bilateral or regional agreements have in the main referenced only core labour standards.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

Labour standards have been used in the Generalized System of Preferences - a preferential system to provide duty free access to exports of developing countries by (most notably) the European Union and the United States of America. Currently, there is a revision of the EU's GSP scheme, the potential implications of which may be considerable given that the new GSP plus scheme appears to target not only ratification of the fundamental Conventions, but also application of Conventions *in line with comments from the ILO supervisory bodies*. This has the potential to be very problematic for employers.

The EU GSP scheme came into in place in 1995 and applies to imports from developing countries that pay duty on entering the EU market. To date the GSPs, in some cases, have proven punitive rather than persuasive. To benefit from 'GSP Plus' countries need to have ratified and effectively implemented the 16 core Conventions on human and labour rights and seven (out of 11) of the Conventions related to good governance and the protection of the environment.⁹ At the same time beneficiary countries must commit themselves to ratifying and effectively implementing the international Conventions which they have not yet ratified. In any case, the 27 Conventions have to be ratified by the beneficiary countries by 31 December 2008. This is a major development, in particular with the ILO's enforcement mechanisms potentially playing a more overt role in trade access.

9. Conventions related to environment and governance principles (7 must be ratified and effectively implemented for GSP Plus to apply, all must be ratified and implemented by 2009: Montreal Protocol on Substances that deplete the Ozone Layer; Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and Their Disposal; Stockholm Convention on persistent Organic Pollutants; Convention on International Trade in Endangered Species; Convention on Biological Diversity; Cartagena Protocol on Biosafety; Kyoto Protocol to the UN Framework Convention on Climate Change; UN Single Convention on Narcotic Drugs (1961); UN Convention on Psychotropic Substances (1971); UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); Mexico UN Convention Against Corruption.

NEW ISSUES IN THE DEBATE

In many respects globalization has moved the goalposts in this debate. Markets have become global while political authorities remain national and this has created a tension between the economic and legal rules companies have to follow. Increased globalization has raised the visibility of global capital and commerce. Supply chains have become more elaborate and more visible. For the majority of multinational enterprises (MNEs) global supply chains stretching across the globe and across sectors are now a permanent reality of business operations. Technology has enabled new actors – namely NGOs – to play a monitoring role; technology too has meant that the speed of information diffusion is now lightening fast. Additionally, regulation is not being implemented by governments, due in many cases to lack of capacity. This last point is doubly important as it has led NGOs and politicians to put pressure on companies to make it *their* social responsibility to make up for governments' deficiencies.

Companies now find themselves much more open to public scrutiny on how they operate, where they operate and who their partners are. In such an environment enterprises are very aware of the need to project a positive image of their company, its values and ethics. A number of vehicles are being used to this end, such as Codes of Conduct. Many of these initiatives have been positive with consequent economic and social improvements in a number of cases - *working conditions and productivity have been raised amongst suppliers; opportunities to move out of poverty have been provided where none existed before; a greater awareness of core labour standards has been imparted; along with a host of other innovations.*¹⁰

However, an argument can be made that supply chain management (i.e. monitoring) and the ancillary services provided by a whole host of new organizations is big business. Consultancies have mushroomed as demand for such services from companies has increased. That demand varies from companies that have found themselves with a particular problem (perhaps as a result of negative publicity or the actions of an NGO) to those companies that are taking a proactive approach to supply chain issues (i.e. initiating discussions on codes of conduct and other initiatives and actively seeking partners in these endeavours).

10. One such example is the tobacco industry's Eliminate Child Labour in Tobacco Foundation programme in Kyrgyzstan that aims to provide credit to tobacco farmers so that they can buy fertilizer and irrigation equipment, hire adult workers at busy times and rent more land: www.eclt.org

There is a concern that if individual companies have come under pressure (e.g. from an NGO) and, in responding, agree to a particular set of demands, that this could then potentially lead to two developments. First, it could leave *that* company open to demands from other different ‘stakeholders’ perhaps in a different domain. Second, there would be the concern that such actions could then set the ‘benchmark’ for actions by *other* companies. In short, a danger of *business* imposing obligations on itself and competing in a ‘race to the top’ in ethical behaviour, cheered on by coterie of NGOs, trade unions and private consultancies.

Certainly some companies are getting more strategic in their responses. For instance, some industry specific companies have tried to focus on social and labour issues – often willing to go ‘above and beyond’ the demands of activist groups in order that they do not become the target of activist groups in *other* areas – such as on environmental issues. Some in the business community have argued that such approaches can make business vulnerable. For instance, precedents can be established that, if they were to become the ‘norm’, could prove very difficult and expensive to implement, particularly for smaller companies.

While business has largely and rightly focused on the threat of linkages through formal trade agreements (be they multilateral, regional or bilateral), to date there are a range of other factors that are emerging. Some of these issues are explored briefly in this section.

(a) Supply chain management

Companies are increasingly alive to the damage that labour rights problems (or even perceived problems) in their supply chains can have on the reputation of their brands and are reacting in a variety of ways. Consultancies have responded with an increasing array of tools designed to assist companies in ethical management of supply chains.¹¹

11. The Global Reporting Initiative has come up with a set of boundary protocols which set out how firms should decide whether to cover the social impacts of non core parts of their business (e.g. suppliers): www.globalreporting.org/guidelines/protocols/boundaries.asp

To date the focus on supply chain management and monitoring has been largely concentrated on the apparel and footwear¹²; food retail¹³; and toy sectors¹⁴ and all three of these sectors have seen high profile attempts to address supply chain malpractices. This trend no doubt will develop in other sectors¹⁵ in the coming years.

Developing a Code of Conduct (and developing company policy in the area) has been one of the more common reactions from companies to supply chain management. For many companies developing a Code of Conduct is a way of reflecting certain values that underpin the way the business is conducted. Generally codes include commitments by the enterprise to achieve or observe certain standards in the social field, many specifically reference the fundamental or other labour standards. However, codes are still perceived by critics as a 'PR exercise' because of their voluntary nature and, as a result, activists are looking at other mechanisms, such as International Framework Agreements (see next section).

Many groups (including some larger enterprises) advocate auditing and monitoring of company activities, particularly their supply chains, as a means of ensuring ethical practices. (There have been persistent calls for auditing, in particular independent auditing from trade unions and NGOs). Factory inspection systems¹⁶ have also been established and employers have been involved in some of these programmes in South and South East Asia (in Cambodia, the Garment Manufacturers Association of Cambodia (GMAC) is party to the agreement which

12. The apparel industry has responded in a number of ways such as the 1996 White House Apparel Industry Partnership a coalition of apparel companies, consumer groups, religious, labour and human rights organisations formed to improve practices in the manufacture of clothing and footwear around the world. In April 1997, a code of conduct and monitoring principles for the implementation of the code were agreed upon. In November 1998, the Fair Labour Association was created to monitor compliance with the code and represented the first industry-wide system that holds US-based apparel and footwear companies accountable for the labour standards of their contractors and suppliers around the world. In May 1999 a number of companies endorsed a set of fair labour principles for corporations doing business in China. By signing these principles, the companies agreed to forbid their facilities and suppliers in China from engaging in discriminatory practices against employees because of their participation in labour, political or religious activities.

13. A number of the world's largest coffee companies have signed an agreement to improve the industry social and environmental standards: www.sustainable-coffee.net ; PwC on behalf of the Ethical Tea Partnership (such as Gold Crown Foods, Sara Lee/Douwe Egberts, Tetley Group, Twining and Unilever) monitor tea estates in China: www.ethicalteapartnership.org

14. The toy industry has an 'ethical manufacturing programme' which started in 2002 and is certifying (now over 250) factories in China (where 75% of the worlds toys are made). This has been done under the umbrella of the International Council of Toy Industries (ICTI) a confederation of 18 national trade associations accounting for 95% of global toys sales www.toy-icti.org

15. For example : an international advisory group has been formed to expand the scope of the Extractive Industries Transparency Initiative : www.eitransparency.org ; the international jewellery industry is to establish a set of global reasonability guidelines for its products, which is being overseen by a newly formed Council for responsible jewellery practices: www.responsiblejewellery.com ; the Roundtable on Sustainable Palm Oil (RSPO) which represents oil palm growers and processors, consumer, goods manufacturers, retailers, investors, non-governmental organizations and government agencies has drawn up globally applicable principles for sustainable palm oil production: www.sustainable-palmoil.org

16. The ILO has conducted extensive work with factories in the garment sector in Cambodia, which while of value is questionable in terms of its expense and sustainability Report on Working Conditions in Cambodia's Garment Sector : <http://www.ilo.org/public/english/dialogue/ifpdial/publ/cambodia11.pdf>

set up a factory inspection project; however the inspection is done by an independent group run by the ILO).

Some companies are responding to these demands and are putting in place a system of monitoring along their supply chains and placing requirements on suppliers to adhere to certain requirements. If a supplier is not capable of adhering to certain stipulations then it can lose the contract.

The danger with such initiatives is that, while for some larger companies certain commitments in terms of audits and control of supply chains are not problematic, for other smaller companies it could in fact become a de facto protectionist bar.

There is also the issue of what is satisfactory and where does it end. Once a company has satisfied one set of stakeholders' demands, there is nothing to stop another coming along and asking for further requirements or demands. There can also be quite different interpretations - for example of what are '*good working conditions*'. This could potentially then lead to a disconnect in national policy making. If MNEs, driven on by NGOs and trade unions, are putting in place conditions which are not affordable in practice in most indigenous operations then that is going to create unsustainable national imbalances.

Some of the groups that have been active in pushing for the 'social clause' in the past (in terms of inclusion on multilateral trade agreements) have switched emphasis to these other initiatives (i.e. codes and monitoring)¹⁷ seeing them as superior ways of raising labour standards as compared to social clauses in trade agreements (as the prolonged wrangling and negotiation between countries, inevitable in the drafting of a social clause, would be avoided). Also, since these linkages are not controlled by governments, there would be less likelihood of their being misused as protectionist devices.

(b) New international strategies

Increased global economic activity has raised the profile of MNEs and their activities. This has led, like never before, to raised expectations of the role of these actors in society. Increasingly, there are efforts to place obligations on companies that are either unrealistic or simply not appropriate. For example, in the domain of human rights a set of "*Draft Norms on the responsibilities of*

17. The actual effectiveness and reliability of such monitoring and auditing is increasingly being questioned (a number of companies are now moving away from it). The Ethical Trading Initiative for instance has ended its reliance on 'supply chain audits' and now places more emphasis on working in collaboration with suppliers and workers rather than simply auditing behaviour: www.ethicaltrade.org

transnational corporations and other business enterprises with regard to human rights” was proposed to the United Nations Office of the High Commissioner on Human Rights (UNHCHR) for adoption.¹⁸

In this connection, there are increased efforts to find ways to impose ILS directly on companies and this concept is now more in the public domain. There are many who advocate that enterprises should be responsible for *enforcing* labour standards across the full gamut of their supply chain. What is more, this approach (company imposed ILS) is garnering some interest from companies, which feel under pressure from stakeholders. The main danger of such a course of action would be the blurring of the roles between state and enterprise. States are charged with legislative enforcement and effecting national social improvement, not companies.

In technical terms approaches at the international level to impose ILS directly on companies would be unlikely to succeed as it would be difficult to find appropriate mechanisms in accordance with international law. However, this could happen in other more indirect ways.

One recent trend in this area has been the emergence of International Framework Agreements (IFAs).¹⁹ IFAs are a relatively new concept that seek to establish a relationship between a multinational company and a trade union at the global level. Principally (but not universally) they concern core ILO labour standards and generally apply throughout the relevant company. The key sectors where IFAs have been signed are services, utilities, energy, mining and manufacturing. IFAs are a continuation of a process that started in the 1980s with pressure at that time for developments towards international collective bargaining. Developments accelerated in the 1990s with the appearance of numerous other initiatives, in particular Codes of Conduct. The key difference between IFAs and Codes of Conduct is that the latter are unilaterally constructed (although increasingly there is an NGO/trade union element to some of them).

Could IFAs become protectionist in nature? Could they be a vehicle to get companies to impose ILS across supply chains? *Possibly* - for example, increasingly companies are incorporating the ‘principles of ILO standards’ (not just the core ILS) directly into codes of conduct, corporate strategies and International Framework Agreements. In some instances these agreements

18. To date employers have been successful in alerting governments to the dangers of a normative approach in this area. However, while the immediate threat of the “Draft Norms” is for the time passed, clearly it is still on the agenda. See the following for more information: The Sub-commission on Human Rights Draft Norms: Joint views of the IOE and ICC : See the ‘IOE Papers’ section of the IOE website: www.ioe-emp.org

19. The IOE information paper on IFAs provides further information: See the ‘IOE Papers’ section of the IOE website: www.ioe-emp.org

explicitly reference suppliers and place obligations on them. The key concern here would be the knock-on effect for suppliers and smaller entities. Again, like all things in business, while certain roads are suitable for MNEs the same is not true of SMEs and onerous restrictions on their operations could severely damage their ability to operate. With IFAs much will depend on the goodwill and good faith of the parties involved and in that respect there are potential dangers of generating protectionist components.

Some have argued that the potential value in brokered agreements with trade unions or NGOs is that they also 'own' the agreement - so that, if a company comes under attack unfairly, it is up to the other 'owner' of the agreement to defend the company and the integrity of the agreement.²⁰

(c) Company strategies: individual and collective

Competitive advantage cannot be divorced from this debate. Enterprises add value to their business by responding to consumer expectations and societal needs, and enhancing their brand and reputation in the eyes of their customers and other stakeholders. Companies will react in those terms and many major brands now seek out opportunities to highlight their 'ethical credentials'.²¹

One such strategy is through product labelling, which involves affixing a label to a product certifying that the product was produced under acceptable labour conditions (which vary from one scheme to another). Social labelling schemes are usually accompanied by consumer awareness and sensitization campaigns which encourage consumers to buy labelled products and (sometimes) boycott unlabelled ones.²²

These labelling initiatives are now in place in a number of countries and are designed to signal to consumers that particular goods have been produced under conditions which respect certain standards (e.g. no child labour). Often, in order to attain the label, a company would have to prove that it (and in cases sub-contractors) adheres to certain standards (for example these could be respecting the eight ILO fundamental Conventions). Checks by appropriate bodies (such as

20. For instance the General Secretary of the trade union who signed the international framework agreement with Chiquita (International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations) said that "his union was asked to work out a code of conduct for Chiquita but preferred to negotiate an agreement which the union could defend as one of the agreement's owners"

21. Nestlé has recently launched its first fair-trade certified coffee: www.fairtrade.org.uk. This follows a similar initiative from Kraft Food last year; Banana company Chiquita will now use the logo from its partner NGO the Rainforest Alliance on its products: <http://www.chiquita.com/>

22. One of the better known examples of a social labelling scheme is the Rugmark programme: <http://www.ucepnepal.org/rugmark.html>

bodies accredited by the authorities or State bodies themselves) are often then put in place to ensure compliance.

Perhaps the key issue here is around the "guarantees" that are given in terms of product labelling. It is very difficult for these to be monitored and, at the end of the day, consumers do not really know how well these standards are being enforced and to what level. Even those consumers who are prepared to pay a premium may be paying for something that is impossible to deliver. There is also a concern with these initiatives that they too may be manipulated by protectionist interests in consumer countries. They also tend to be targeted against abuses with the most emotive appeal, for example child labour (despite the fact that the majority of child labour takes place in non-tradable sectors). Many companies have argued that, by marking certain products with a 'fair-trade' logo, there can be an implication that other products without such a logo are somehow not.

How effective in terms of consumer behaviour such 'labelling' schemes are remains open to question. Some recent studies have found that there can be a big difference between responses to surveys on ethical consumer behaviour and the actual 'contents' of shopping trolleys.²³ There is nothing definitive to suggest that other factors outside of price and product quality are key drivers in purchasing decisions.

However, the proliferation of these initiatives is raising increased consumer awareness of ethical issues in product purchase; governments²⁴ are also reacting to this increased awareness, as are some regional bodies.²⁵ It is also becoming more and more important to companies - witness the number of major brands that are looking to be seen as 'fair trade' brands. The danger, however, is that other non-business actors could exploit the situation. If one company or a set of companies goes down a particular road then that can have repercussions across an entire sector (and its ancillary parts).

Activists are increasingly focusing on key enterprise leaders in efforts to get them to force the pace across the entire sector (including at the retail end where this is relevant). For example, a number of industry leaders in the apparel sector together with NGOs are seeking to devise a singular industry-wide approach that would replace the existing situation where there are numerous initiatives. To this end an agreement was signed in late April 2005 to run a pilot

23. Mori poll conducted in 2000 in the UK

24. Although the UK Government which had intimated that it would establish regulations that would have required large companies to produce Operating and Financial Reviews (OFRs) covering their social and environmental impacts recently announced (November 2005) that it wouldn't go down this road: <http://business.scotsman.com/economy.cfm?id=2319442005>

25. The European Commission is to launch a campaign to make the public more aware of socially responsible business practices: http://europa.eu.int/comm/employment_social/calls/tender_2005_en.cfm

project in several dozen Turkish factories that produce garments and other products for the participant companies. The aim is that if it works on a pilot basis then a more global approach could be explored.²⁶

Such collective efforts to address social and labour (or for that matter any other) issues can raise anti-trust issues. This is particularly the case when the major companies with the most market share in a sector come together. While these initiatives are focused on a social outcome with nothing malign in their intentions, the law could be interpreted otherwise. For example, some programmes encourage the purchase of sustainably produced commodities (care needs to be put in place that there are no agreements on the *amount* of a commodity that is bought from sustainable sources). The issue also arises in terms of relationships with suppliers. If a company has a code of conduct that has certain stipulations on suppliers and if these are consistently broken by a supplier, it is important that action (e.g. discontinue a contract) is done by an *individual* company and not as a *group*.

(d) Public procurement

In many cases tendering processes are linked to labour standards. The principle of using procurement policy to advance a range of social or economic objectives is not new. Trade unions see procurement policies as an active instrument of socio-economic policy and as a means to transform existing business practice and to promote good practice in enterprises.

Provisions can be quite specific and restrictive. For example, provisions have been proposed to make it illegal to give public contracts to companies that have not signed collective agreements. In the European Union, this is a possibility provided for in the European Public Procurement Directives regarding collective agreements that have been declared universally applicable. In a Scandinavian country, for example, a Baltic construction company that was building a school but refused to sign a local collective agreement, arguing it already had a collective agreement in place that had been agreed at national level, was subject to industrial action and could not fulfil its obligations according to the contract and went into bankruptcy.²⁷ This goes to the heart of the ‘social dumping argument’ and takes its cue from the simplistic view of the outsourcing of jobs as a ‘a zero sum game’ where jobs are transferred from one location (with high labour standards and

26. For further information : http://www.businessweek.com/magazine/content/05_21/b3934103.htm?chan=db

27. For further information: <http://www.eiro.eurofound.eu.int/2005/01/feature/1v0501101f.html>

working conditions) to another (with perceived lower labour standards and working conditions).²⁸

(e) Lending Policies

The International Finance Corporation has adopted (March 2006) new environmental and social standards which contain new requirements for community health, safety and security; labour conditions; pollution prevention and abatement; integrated social and environmental assessments; and management systems.²⁹ The standards adopt an ‘outcomes-based approach’ which requires client companies to have in place effective management systems that allow them to handle social and environmental risks as an integral part of their basic operations and business model.

The environmental and social guidelines, the *Equator Principles* (that are now applied by 40 leading commercial financial institutions which collectively represent some 80 percent of global project finance), are also expected to be updated in accordance with the new IFC standards. The International Confederation of Free Trade Unions (ICFTU) has broadly welcomed the initiative and sees it as a precedent for international lending in both the private and public sectors and already there are signs of that. The Investment Bank Goldman Sachs, for example, has agreed to report publicly on the greenhouse emissions of power plants that it finances.

There are a number of questions with this development. What impact will this have on private lending institutions as well as regional and national development banks? How will the application of these standards be interpreted, particularly those related to labour provisions? The ILO was engaged in the process of developing the standards and is seeking an active follow-up role with IFC. It will be interesting to see how this relationship develops.

(f) Other issues

The focus of this document is on labour and social policies but it is useful to flag developments in other policy domains, notably environmental policy. For instance the Trade Union Movement is looking to increase its work on

28. OECD Research on outsourcing ‘International sourcing of it and business process services: Experiences from the United States, The European Union And India’ dispels many of these arguments: : See IOE website (www.ioe-emp.org) (Regional Section/Europe/IOE Regional Meetings - for all these papers).

29. See the following link for more information : <http://www.ifc.org/policyreview>

environmental issues and has been collaborating closely with the United Nations Environmental Programme (UNEP).³⁰ The UNEP view is that “*Trade Unions have an important role to play ... helping to push employers to raise the environmental standards of goods and services and environmental health standards in the work place*”.

The Unions see this increased engagement on environmental issues in terms of identifying common links between the environment, climate change, occupational health and safety, as well as chemicals and additionally identifying synergies with existing campaigns - i.e. Ban Asbestos, HIV/AIDS - as well as others dealing with trade, poverty and investment issues.

There are two additional elements to this broad agenda. First, it looks like concrete steps in trade union out-reach strategies to other actors – in this case to environmental NGOs. Second, there may be protectionist elements also – increased lobbying to raise environmental standards in developing countries (i.e. act as disincentive for existing industries in developed countries to relocate).

THE EVOLVING ROLE OF THE ILO

Experience in a variety of areas suggests the ILO is right to focus on positive efforts to work with countries to improve enforcement of labour standards relevant to their national situation. In many respects technical assistance and capacity building have proven to be the best tools to achieve results. The ILO can be a valuable partner in helping employers’ organizations work with their members (technical programmes such as the *Factory Improvement Programme*³¹ are potentially valuable tools for employers’ organizations).

The ILO has also demonstrated that it has the constitutional authority to respond to serious violations when necessary. The ILO’s strength is precisely its pragmatic reliance on principles of voluntary participation, transparency, tripartite social dialogue and cooperation for capacity building rather than on an inflexible and legalistic approach allowing little room for national specificities.

The issues surrounding the impact of trade and the need for the benefits of trade agreements to be protected by flanking measures on the social and labour side is currently an area that is getting a lot of attention and the ILO appears to be

30. In January 2006 UNEP hosted the first trade union assembly on labour and the environment – the IOE participated at this event

31. See IOE-ILO SME Toolkit (Tools/Services): www.ioe-emp.org

signalling a willingness to develop its work in this area.³² This, if grounded in practical assistance within areas of ILO competency could potentially be a positive move. However, there are some causes for concern in terms of an ILO role as the ‘Office’ is increasingly looking to place itself in broader debates in policy areas outside of its traditional mandate and competency. This will require continued vigilance from employers.³³

CONCLUDING REMARKS

From this brief examination of what is a highly complex issue some limited conclusions can be drawn. First, it is clear that the debate has moved on and is no longer simply one of support or opposition to the inclusion of ‘social clauses’ in multilateral agreements. Additionally, the debate has dissipated from being one that is primarily ‘government to government’ to one where enterprises are the direct actors.

The second main observation is that there are already in existence linkages of labour standards in trade agreements at bilateral and regional levels. A key question is: *will this feed back into multilateral trade negotiations?*

The final observation is that it is evident that legalistic measures to link trade and labour at the international level are unworkable and this is increasingly being recognized. This last point is particularly relevant to the future direction of the debate. Some activists are now arguing that, through voluntary codes of conduct and social labelling initiatives, enterprises are unilaterally beginning to link trade and labour standards because of a perception, in their view, that such a linkage already exists in the minds of consumers. This argument runs that, irrespective of whether governments decide to link trade and labour standards, companies in some respects are doing so in response to a perceived demand from consumers (although to what extent this activity is actually impacting on consumer purchasing behaviour patterns is debatable). In such a scenario, the

32. The conclusions of an ILO meeting on the post-multi-fibre agreement environment for the textiles & clothing sectors (October 2005) called on the ILO to: support ways to improve skill development for both workers and managers in the sector, and employability for workers; develop a new global information and analysis service including better and more up-to-date employment information and details of compliance with core international labour standards; assist in compliance and remediation with those requesting exporting countries which are ready to ratify and implement ILO core labour standards; establish a global social responsibility forum for dialogue between governments, employers’ and workers’ organizations in the producing and buying links in the TC chain, relevant international agencies and other relevant bodies.

33. The ILO has sought (and is seeking) to develop research initiatives with the WTO. This could be of value, so long as particular areas of common interest between these two organizations are identified where both organisations have a particular competence in line with their respective mandates.

debate over the social clause at an inter-governmental level to some extent becomes redundant.

The role of employers' organizations in this debate, particularly as it changes and moves focus, will continue to be crucial. To date the employer position has been steadfastly against linkages, seeing them as a protectionist Trojan horse. That position is unlikely to change in the short-term.

Employers' organizations represent the collective business voice and the totality of its interests, rather than individual components. In such a fast moving dynamic, where companies are being placed under often severe pressure from stakeholders and parameters are continually being extended, this leadership role will be more important than ever.

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