

Labour standards and trade agreements: Never the twain shall meet?

PROTECTING CORE LABOUR STANDARDS IN TRADE AGREEMENTS?

The possibility of including provisions to protect core labour standards in free trade agreements, either those negotiated regionally (such as the Free Trade Area of the Americas) or multilaterally (such as the WTO) has facilitated many debates. Some labour organizations have called for core labour standards to be attached to trade agreements. They hope that such provisions would help to direct the competitive forces unleashed by free trade into more beneficial channels, such as genuine improvements in quality and productivity, rather than into efforts to restrict and roll-back wages and other compensation for workers in tradable industries.

While many have called for labour standards to be included in trade agreements, it is unlikely that efforts to “humanize” trade agreements by appending references to the protection of core labour rights and standards represents a promising or effective avenue to address global labour issues. Free trade agreements are not the appropriate place to define or attempt to protect labour standards. It is doubtful that meaningful labour standard provisions in trade agreements could ever be successfully negotiated. And even if they were, it is doubtful that such provisions could be meaningfully enforced by institutions whose entire *raison d’être* is the dismantling of barriers or restrictions on private market activity and competition.

THE ISSUE OF BARRIERS

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limiting the negative human and social consequences of their profit-maximizing activity. The whole idea of free trade agreements is to reduce or eliminate international barriers to the profit-maximizing activity of those same market participants. Why would we ever think that these two things should go together?

Empowering and entrusting free trade institutions to protect labour standards makes as much sense as asking brewers and distillers to police underage drinking, or counting on petroleum companies to lead energy conservation efforts, or asking cell phone companies to warn consumers about the need for drivers to pay attention when they are driving. If they are smart, these companies will make appropriate noises about the need for responsible drinking, energy conservation, and driver concentration. Yet their vested

economic interests ensure that those responsible-sounding efforts will be largely symbolic. Anyone seriously concerned about under-age drinking would hire someone other than brewers and distillers to police this problem. If we want to reduce driver distraction, we legislate and enforce meaningful rules and regulations to this effect; we don’t rely solely on the token warnings that cell phone companies publish about the need for drivers to pay attention. Ultimately, we can’t expect anything more than equally symbolic gestures to the importance of labour and social standards from free trade institutions and their business and political patrons, which are premised on minimizing the economic interference of state institutions and policies.

IMPACTS OF STANDARDS

Finally, even in the far-fetched event that labour standards could be negotiated and meaningfully enforced through free trade institutions, it is still not at all clear that such standards would have any impact on the trade and investment flows that spark the original concern of labour advocates and their allies. Labour advocates in countries with more generous and interventionist labour market structures fear that enhanced international competition under free trade will undermine the economic sustainability of those relatively progressive regimes. This is a valid concern. But even if the WTO included measures that allowed one country to impose penalties on imports from another which tolerated labour abuses, it is hardly likely that those penalties would curtail the flows of goods or investment that were influenced by those abuses, let alone stop the abuses themselves.

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For example, the centre of gravity of the North American auto industry is shifting southward. Since 1990, a substantial share of new auto-related investment has been located in Mexico, and in a handful of US states in the deep south, such as Alabama, Mississippi, and South Carolina, which entice automakers with harsh anti-union labour laws and huge government investment subsidies. The relatively repressive labour practices that are typical of both Mexico and the US deep south are an important factor in the southward migration of auto investment in North America. Wages are kept lower than they otherwise would be, given the productivity levels of auto facilities there, by the lack of independent union representation. This may be changing somewhat in Mexico, but not at all in the US south.

One potential remedy to this situation might be to make trade flows from these regions to Canada contingent on their willingness to respect generally accepted labour rights such as the right to organize unions without risk of intimidation and persecution, and the right of duly recognized unions to normal union security arrangements. But even if appropriate provisions linking trade rights to the enforcement of labour standards could ever be negotiated and enforced, which seems highly unlikely, it is doubtful that they would significantly alter the economic incentives that are driving the continental auto industry southward. Mexican auto wages, already relatively high by the standards of a developing country, could double, yet Mexican-based producers would still enjoy massive labour cost savings compared with US and Canadian plants, and still face a huge incentive to shift production. The more important factors driving auto investment south are not anti-union labour laws, but other factors: the great improvements in productivity and quality in Mexican plants, the flexibility that producers enjoy in new plants in

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Mexico and the US south, the rapidly evolving transportation and parts supply infrastructure in both regions.

ACCEPTING THE LOGIC OF FREE TRADE

Those who advocate attaching core labour standards to trade agreements seem to accept the logic of free trade. Their concern is limited to the risk that otherwise efficient and mutually beneficial trade flows might be distorted by the application of repressive labour practices. In reality, free trade poses much deeper risks to workers in many industries, given the reality that we all compete for scarce jobs and investment dollars. Even with genuinely free and fair labour laws, automakers would still be able to produce their vehicles a lot more cheaply in low-wage, less-developed parts of the world (like Alabama or Mexico). This will always pose a serious economic risk to autoworkers in more developed regions. The way to manage that risk is not to fine-tune the trade agreements with idealistic labour rights clauses, but to question the very logic that companies should be allowed unlimited leeway to produce their products in the lowest-cost locations, regardless of the economic dislocation this may cause elsewhere.

Continuing with the example of the North American auto industry, labour advocates would do better to argue for measures to limit or manage trade and investment patterns in this, or in any other strategic industry. Motor vehicles represent the largest component of global trade, in value terms, and constitute the largest single item in consumer spending, after housing. We can imagine ways in which auto producers could capture efficiency benefits from producing for an international market, but in which participating nations were provided with some guarantees that they will continue to benefit from a reasonable share of total investment, production, and employment. But this would represent a much more far-reaching break from the logic of free trade and competition.

So while some will find it strange, concerns over international violations of labour standards should be channeled through avenues other than the free trade institutions. Our actions against those who violate human rights, including labour rights, should not be limited to the imposition of trade penalties against the specific products and companies that may have benefited economically from those abuses.

GLOBAL POWER DYNAMICS

In one sense, it is understandable why some labour advocates have been entranced with the idea of using the free trade institutions as an enforcement mechanism for labour standards. These institutions wield a quick and effective authority that is unique in international relations. When an offending practice is identified, trade bodies act relatively quickly to condemn the offence and impose punishment. More often than not, the offending practice ceases immediately. Labour advocates who have been waiting in vain for decades for a similarly forceful response from international institutions on labour, environmental, and human rights issues, are left drooling. They

wonder why their concerns about unacceptable international practices aren't dealt with equally effectively. And they start to dream of using the demonstrated power of the dispute-settlement mechanisms at the WTO and NAFTA, to pursue laudable labour and environmental goals.

But it is not coincidental that the WTO and NAFTA panels wield this uniquely effective and timely enforcement power. The power of the free trade institutions reflects the underlying power and interests of the global forces that brought them into being; in particular, the influence of private business, financial investors, and the market-oriented governments that reflect those constituencies most energetically and loyally. The WTO is not, as some claim, a neutral effort to extend the rule of law to the global economy. Its apparent power depends on the voluntary adherence of member market-oriented governments. Those governments are willing to create and accept a disciplining force that helps to make their respective economies all the more business-friendly and "efficient," in the private sense of that word. But these same governments are hardly interested in a global police force to supervise social, labour, and environmental standards. If they were, they would have long ago established powerful bodies to do just this. It is no accident that the WTO seems to wield quick and effective power, nor is it an accident that the ILO remains a symbolic and largely powerless institution, whose core labour principles the world's largest economy has not even bothered to ratify, let alone enforce. The dream of using the efficient authority of these same institutions to promote and protect interests that run counter to those of the powerful forces that brought us free trade in the first place, seems so far-fetched as to be counterproductive.

EXPANDING SOCIAL REGULATION

And so a growing contingent of the labour movement is coming to a very dif-

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ferent conclusion. Rather than promoting the wishful and in many cases the misleading belief that trade agreements can be "humanized" through the attachment of core labour standards, they are adopting a more explicit and forceful opposition to the expansion of those agreements—as evidenced, for example, by the ICFTU's (International Confederation of Free Trade Unions) unprecedented opposition to the current WTO round.

None of this is intended to imply that free trade is not relevant to international labour and environmental concerns, and to the future evolution of labour and environmental standards. There's an obvious link between the broader process of globalization, and the evolution of the whole spectrum of economic and social regulation. The trend toward increased reliance on and dominance of private investors, corporations, and markets is part of a larger phenomenon that opponents term "neoliberalism." Globalization represents the enhanced integration of those dominant private markets in the international sphere. And the free trade agreements are just one aspect of globalization, which also reflects broader political and technological forces.

To the extent that the trade agreements enhance the intensity of competition between private producers, then the prospects for efforts to limit and regulate the actions of those private producers will be obviously undermined. More worrisome are the provisions of some free trade agreements, which explicitly promote a pro-active deregulatory agenda, quite separate from initiatives aimed at integrating national economies. These will make it particularly difficult to enact progressive regulatory changes in labour rights, the environment, and other spheres. For example, the WTO's proposed "necessity test," under which national governments would have to justify any regulatory interventions before international panels, whether or not these interventions had any impact on trade and investment flows, is one bizarre manifestation of this tendency.

ROLLING BACK FREE TRADE AGREEMENTS

This is why limiting and ultimately rolling back the trade agreements will be an important part of restoring the political and economic basis for future efforts to regulate and protect labour and environmental standards. Among labour advocates, environmentalists, development agencies, and other NGOs, there's a new sense of exactly how seriously the prospects for progressive national policy making are undermined by free trade commitments. There is a new sense of determination that the future expansion of these commitments needs to be opposed energetically. And there is a new willingness on the part of these forces to work together to stop that expansion, as demonstrated first in Seattle and by continuing cooperation among global labour, NGOs, and some southern governments. For this reason, it is expected that the debate over whether free trade agreements should recognize labour standards has largely become moot. We're on to a bigger issue, now: whether we should continue negotiating those agreements. 