

The trade policy–labour standards linkage

A LONG HISTORY

The trade–labour linkage has a long history. The idea of using international labour standards to protect workers from economic exploitation was first promoted by individual social reformers in Europe in the first half of the 19th century at the early stages of the industrial revolution and the free trade movement. The work of these reformers was later taken over by various non-governmental organizations, including international associations for trade unions. Many of these early efforts were motivated by the concern that, in the absence of international labour standards, international competition in an environment of increasingly freer trade would precipitate a race to the bottom, a concern that continues to motivate contemporary debates over the trade policy–labour standards linkage.

The constitution of The International Labour Organization (ILO) notes that “the failure of any nation to adopt human conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries.” The 1948 Havana Charter, intended to embody the framework for a new world trading system, similarly declared that “members recognize that unfair labour conditions, particularly in production for export, create difficulties for international trade and accordingly each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.” President Clinton’s statement at the Seattle Ministerial Conference of the WTO in December 1999, that trade sanctions should be available under the WTO multilateral system against countries violating international labour standards provoked an intensely hostile reaction from developing countries, which in many cases saw the proposed linkage as a barely disguised protectionist attack on their comparative advantage in low cost labour and was a significant factor in the failure of members of

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the WTO to agree at that time on the launch of a new multilateral round.

The recent Doha Ministerial Declaration launching a new multilateral round confirms the earlier 1996 Singapore Ministerial Decision to remit all international labour standards issues to the ILO. However, the issue of a trade–labour linkage seems unlikely to go away. Regionally, the potential expansion of NAFTA into a Free Trade Area of the Americas (FTAA) will raise the scope and status of the NAFTA Labour Side Accord in this broader context. Multilaterally, fast-track negotiating au-

thority from the US Congress to the US administration in the Doha Round may well be conditioned on the inclusion of a trade–labour linkage. And unilateral trade actions by states on account of labour practices prevailing in other states may well provoke trade disputes that will require adjudication by international trade dispute settlement bodies.

WHICH LABOUR PRACTICES SHOULD BE TARGETED?

Here there is a wide menu of options:

- all practices covered by ILO convention;
- only those practices covered by conventions that the targeting or targeted country has ratified;
- only core labour standards (freedom from child labour; freedom from forced labour; freedom from discrimination; freedom of association) as set out in the 1998 ILO Declaration of Fundamental Principles and Rights at Work and as recognized in the UN Covenants on Civil and Political Rights and Economic, Social and Cultural Rights; and
- all universal human rights (civil, political, economic, social, and cultural) including the core labour standards.

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Suppose, by way of hypothetical example, that India exports textiles and clothing to the United States and child labour is employed in both sectors. Assume that the United States has only a clothing industry but no textile industry, and proposes to impose trade sanctions against only clothing imports from India. Suppose further that Pakistan also exports textiles and clothing to the United States and child labour is em-

ployed in both sectors, but the United States, for geopolitical reasons, proposes to impose no trade sanctions against Pakistan. Suppose further that Burma (Myanmar) employs child or forced labour in some sectors, or engages in other abuses of civil and political rights, but in no case do these abuses occur in sectors where Burma exports goods to the United States, but that US multinational enterprises have investments in Burma.

These examples are intended to underscore the importance of being clear as to the normative rationales for a trade policy–labour standards linkage. Despite its long historical genesis, the unfair competition and race to the bottom rationales for trade policy–labour standard linkage are unconvincing, indeed inconsistent with the whole notion of comparative advantage, but that viewing a certain subset of labour standards (such as the core labour standards recognized by the ILO) as universal or international human rights is not only normatively defensible, but arguably unanswerable, and that the possibility of invoking economic sanctions including trade sanctions against countries that persistently and systematically violate at least some fundamental subset of international human rights, as part of the wider menu of possible responses, seems equally unanswerable. However, even if this conclusion is accepted, concerns will remain that trade or other economic sanctions will only be invoked for protectionist reasons, and will typically not be invoked where there are no protectionist advantages from doing so.

WHAT INSTRUMENT SHOULD BE EMPLOYED?

Here basic choices must be made between incentives and sanctions, or carrots and sticks. Carrots might include special GSPs (generalized system of preferences), foreign aid, rights to participate in labelling, certification, or codes of conduct regimes. Sticks would obviously include trade sanctions, but could include other eco-

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conomic sanctions such as bans on foreign investment, and might also include fines of the kind contemplated by the NAFTA Labour Side Accord. Carrots have the virtue of targeting countries putting their money where their mouth is, and providing assistance to impoverished developing countries to improve their labour standards, but are unlikely to be effective with authoritarian or repressive governments, and to the extent that they operate on a voluntary basis (as in the case of labelling or certification

programs), may be relatively ineffective because of information, monitoring and collective actions programs, thus suggesting that sole reliance on carrots and rejection of any role for sticks is difficult to justify.

WHAT INSTITUTIONAL VEHICLES SHOULD BE USED?

Here again there is a menu of options, including bilateral–state-to-state; bilateral–state-to-NGOs; regional–NAFTA/FTAA; and multilateral–the ILO or the WTO, or some combination of the two. For example, a country being targeted by trade sanctions ostensibly on account of violations of core labour standards might file a complaint with the WTO dispute settlement body, but this complaint might be remitted to the ILO for a determination as to whether the targeted country has been guilty of persistent and systemic abuses of core labour standards, while the WTO might retain responsibility for overseeing the proportionality and appropriateness of the sanctions imposed.

THE NORMATIVE RATIONALE

Hence, the unfair competition and race to the bottom rationales for a trade–policy linkage provide a thinly disguised cover for protectionism, particularly on the part of developed countries vis-à-vis imports from developing countries and rightly arouse the antagonism and cynicism of developing countries. On the other hand, the human rights rationale for a trade–labour standards linkage is much more compelling and has important implications for the scope of a trade policy–labour standards linkage, as well as the choice of instrument and the choice of institutional forum. While the issues that remain to be resolved even if this rationale is accepted are far from straightforward or uncontentious, resolving them is rendered vastly more difficult if we are not clear (as many historical and contemporary debates on the trade–labour linkage have not been) on the foundational or normative rationale for a linkage in the first place. 