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Labour Standards in the US and EU Preferential Trading Arrangements (Presentation)

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Labor Standards in the US and EU Preferential Trading Arrangements

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Why this paper?

- Stalemate at WTO bypassed through gradually escalating obligation on trade related labor standards in bilateral and non-reciprocal trade agreement.

A. Introduction

- 1970s (Tokyo Round) and 1980s (Uruguay Round) - US push for inclusion of GATT Article on labor standards
- 1996 (Singapore Ministerial) - with support from France, southern EU members, Canada and Japan, US continued pursuance on inclusion of trade-labor issue in WTO.
- Singapore Declaration however mandated referral of trade-labor discussions to ILO

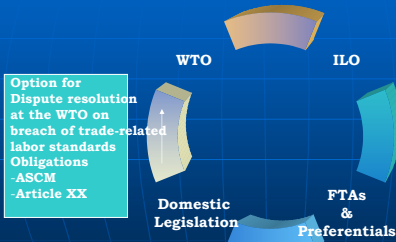
'Predictably hardest to resolve was the issue of labour standards, where the US threatened to veto the entire declaration if no mention was made. Ministers eventually agreed to uphold internationally recognised core labor standards..but trade sanctions to enforce them were rejected and there is no provision for follow up work with the WTO, which is asked simply to maintain its (minimal) collaboration with ILO.'

[FT, Dec 16, 1996]

Effects of Labor Standards

- *Proponents:* enforcement of labor standards through trade agreements improves working conditions and wages of workers in poor countries, thereby reducing wage differentials between rich and poor countries.
- *Opposition:* Efforts to bring labor standards into multilateral trade negotiations were seen as smokescreen for protectionism or bid by developed industrial nations to undermine comparative advantage of lower wage trading partners

Diagrammatic Representation



B. Labor Standards

Labor Standards in WTO Law

(i) GATT Article XX

- 'adoption of measures necessary for enforcement of public morals' (XX.a)
- 'protection of human life or health' (XX.b)
- 'products of prison labor' (XX.e).
- **Shrimp-Turtle Case:** Article XX can be used as a basis for WTO sanctions in cases involving gross violation of labor rights.

Labor Standards

(ii) Agreement on Subsidies and Countervailing Measures (ASCM)

- Export Incentives to firms in Export Processing Zones i.e. derogation from national social security and taxation provisions - Prohibited Subsidies (ASCM, Annex I (e));

Core Labor Standards and 'Others'

- | | |
|---|---|
| <ul style="list-style-type: none"> ▪ ILO Convention (i) guarantee of right to organise and bargain collectively; (ii) prohibition of forced labour; (iii) prohibition of child labour; and (iv) elimination of discrimination against different categories of workers on the basis of gender, ethnicity etc. | <ul style="list-style-type: none"> ▪ US FTAs (i) Right to organise and bargain collectively; (ii) Prohibition on the use of any form of forced or compulsory labor (iii) Minimum age for employment of children; (iv) Right of Association; and (v) Acceptable conditions of work with respect to <u>minimum wages, hours of work,</u> and occupational safety and health |
|---|---|

C. US FTAs

- North American Free Trade Agreement (NAFTA)
- US-Jordan FTA
- US-Singapore FTA
- US-Chile FTA
- US-Australia FTA
- Central American FTA (CAFTA)
- US-Morocco FTA

North American Free Trade Agreement (NAFTA)

- 11 labor principles in NAFTA side-agreement (NAALC) i.e. ILO principles + 'minimum standards such as minimum wages and overtime pay..'
- Must be incorporated in domestic labor laws, harmonized and continually improved.
- Only breach of trade-related labor standards can be brought to dispute settlement mechanism under NAFTA
- Remedies: imposition of fines, enforcement action, suspension of NAFTA benefits based on amount of fine.

US-Jordan FTA (2001)

- Labor standards shifted to main provisions of agreement.
- Defines 'internationally recognised labor rights' as ILO standards + 'acceptable conditions of work with respect to minimum wages, hours of work,' but excludes 'elimination of discrimination on the basis of gender, ethnicity etc'.
- Parties required to prescribe minimum wage limit in domestic legislation.
- Derogation in order to encourage trade results in breach and possible recourse to dispute settlement mechanism under FTA.

US-Singapore & US-Chile FTA (2003)

- Trade related labor provisions of agreements substantially similar to US-Jordan FTA
- Sanctions are authorized only for sustained or recurring failure to enforce one's labor laws in a manner affecting trade between the Parties.
- If Party fails to implement agreed solution, imposition of fine of up to US\$15mil and suspension of benefits imposed for failure to pay.

US-Morocco FTA (2004)

- ILO + 'internationally recognised labor rights' protected in domestic laws
- Parties aren't allowed to derogate from these in order to encourage trade or investment
- Sanctions are authorized only for sustained or recurring failure to enforce one's labor laws in a manner affecting trade between the Parties
- Only trade-related labor rights can be brought under the dispute resolution process.
- Parties have option of referring trade-related labor disputes arising under the agreement to the WTO – a process not similarly articulated in US-Singapore, US-Chile nor US-Jordan FTA.

US-Australia FTA (2005)

- ILO standards + 'internationally recognised labor rights'
- Must be implemented in domestic labor laws
- Parties aren't allowed to derogate from these in order to encourage trade or investment
- Sanctions are authorized only for sustained or recurring failure to enforce one's labor laws in a manner affecting trade between the Parties
- Only trade-related labor issues can be brought to dispute settlement
- Parties have option of referring trade-related labor disputes arising under the agreement to the WTO

US-CAFTA

- ILO + 'internationally recognised labor rights' to be incorporated in domestic labor laws.
- Parties aren't allowed to derogate from these in order to encourage trade or investment
- Sanctions are authorized only for sustained or recurring failure to enforce one's labor laws in a manner affecting trade between the Parties
- Parties have option of referring trade-related labor disputes arising under the agreement to the WTO DSB.

Emerging Trend

- US FTAs mandatory requirement for inclusion of trade-related labor rights in Parties' domestic legislation, including establishment of minimum wage limit for workers;
- Requirement for non-derogation from such principles in domestic legislation in order to encourage trade or investment from other non-Parties.
- Direct referral of trade related labor disputes to the WTO DSB from US-Morocco, US-Australia FTAs and US-CAFTA.
- Creates a perception that the US is aiming to achieve on labor standards, through WTO panel ruling, what is not achievable by political consensus at the WTO.

Rationale for US stance

- Private Sector Advisory Committee system introduced by US Congress in 1974 – influential in US trade policy formulation including advice on position re. trade agreements.
- Labor Advisory Committee (LAC) – appointed and managed by USTR
- Powerful & Highly organized labor, import-competing firms and public interest groups proponents of stricter labor standards applied to low-income countries.

D. EU Association Agreements & FTAs

- Euro-Med Agreements
- Europe Agreements
- EC-Chile FTA
- EC Trade, Development and Cooperation Agreement with South Africa (TDCA)

Trend

- Despite EU's internal commitment to labor standards, there is no attempt to negotiate such standards into FTAs, even with countries which have already negotiated these standards with the US i.e. Chile, Mexico.
- *Assumption:* Labor standards in NAALC and US-Chile must be applicable on MFN basis to EU as well so no need for EU to introduce such standards in its bilateral FTAs.

E. Non-Reciprocal Preferential Trading Arrangements

- US GSP Schemes
- EU GSP Schemes
- Cotonou Agreement

F. CONCLUSIONS

- It is possible to view these kinds of bilateral and non-reciprocal preferential agreements as a TROJAN HORSE, a precedent setting means of introducing new issues into the WTO negotiating process.
- The ability to do anything about this might grow progressively weaker as key negotiating allies in developing countries agree to bilateral engagement with US and EU.

- Reconsideration of position taken at Singapore required and development of rules limiting proliferation and escalation of ad hoc labor standards through FTAs and preferentials.