

LABOUR ISSUES IN THE TRADE NEGOTIATIONS: The Treatment of Core Labour Standards

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Introduction

Much has been written about the implications of global trade liberalisation for developing countries, including small vulnerable economies, such as those of CARICOM. For example, the recently published report of the World Commission on the Social Dimension of Globalization states that *“the global market economy has demonstrated great productive capacity. Wisely managed, it can deliver unprecedented material progress, generate more productive and better jobs for all, and contribute significantly to reducing world poverty.”*¹ The Commission report observes, however, that *“the current process of globalization is generating unbalanced outcomes, both between and within countries”* and that *“wealth is being created, but too many countries and people are not sharing in its benefits”*. The Commission therefore recommends *“a process of globalization with a strong social dimension based on universally shared values, and respect for human rights and individual dignity; one that is fair, inclusive, democratically governed and provides opportunities and tangible benefits for all countries and people.”*

The issue of the impact of globalization and intensified competition on labour standards, in particular, the core labour standards, has been the subject of debate and indeed much controversy in the multilateral and global trade negotiations. While it appears that there is consensus that core labour standards provide a minimum set of global rules for labour in the global community, the debate focuses on what can be done to further strengthen respect for these core labour standards.

International labour standards are generally accepted by the global community as the means to improve the conditions of employment and labour worldwide. As such, the four core labour standards, defined in the ILO 1998 Declaration on Fundamental Principles and Rights at Work, represent the minimum set of rules for labour in the global community. These core labour standards 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.

In addition, there is general acceptance that the eight ILO Conventions define the fundamental rights of workers.

Labour Issues in the Trade Negotiations

Inarguably, integration processes both at the hemispheric level – the FTAA – and on a global scale – the WTO – have focused almost exclusively on issues of economic integration, encompassing mainly market liberalisation for goods, services, finance and capital with little or no emphasis on the social dimension of global integration. Several countries are of the firm view that social issues should be considered independently of the rules and disciplines which the economic integration processes seek to develop and should therefore not be linked. The main concern of these countries is that their performance, or non performance for that matter, on social and non-trade issues could be used as non-tariff barriers, by other countries, to restrict trade,

¹ A Fair Globalization: Creating Opportunities for All. Report of the World Commission on the Social Dimension of Globalization. 2004. Pg x.

through measures such as the withdrawal of trade concessions. Consequently, despite the efforts of several countries to introduce labour issues into the trade agenda, and the success of some of these countries in incorporating provisions on labour in many of the bilateral trade arrangements into which they enter, labour issues remain largely out of the hemispheric and multilateral trade negotiations.

Developing countries, for the most part, have long resisted attempts to include labour issues on the agenda of the trade talks and as part of the core agreements in the WTO and the FTAA. Their concerns have to do mainly with the fear that trade issues could be used as conditionalities and become disguised trade sanctions in the trade arrangements and used to undermine the competitiveness of their products, arising from generally lower wage levels. Many developing countries regard core labour standards as part of a broader development agenda, both as a goal and as a principal means of development² These countries demand that the rules of the global economy be set up to support their development goals and that new proposals to strengthen respect for core labour standards should contribute to meeting objectives such as growth and employment and to correcting the imbalances in the international policies which impede their development. These countries contend that the workplace conditions will improve through economic growth and development, which would be hindered if trade sanctions or restrictions are applied to their exports for reasons relating to labour standards. As such, although developing countries subscribe fully to the international labour standards they reject any notion of linking their implementation to the trade agenda. This position must be viewed against the background that *“most developing countries still have limited influence in global negotiations on rules and in determining the policies of key financial and economic institutions”* and that *“these rules and policies are the outcome of a system of global governance largely shaped by powerful countries and players”*.

Proponents of the inclusion of labour issues in the negotiations argue that *‘enterprises based in countries with strict labour standards face potential trade disadvantages because their competitors in countries with less onerous labour standards are not required to face the same inflated labour and labour-related costs’*³ These countries call for stronger action with respect to the implementation of labour standards and consider the WTO and FTAA agreements to be appropriate fora to do so because of the possibility of applying trade sanctions to countries that do not respect these standards. The US is noted for its insistence on the inclusion of labour standards in the trade negotiations and has, in fact, included respect for core labour standards or enforcement of national labour legislation in the provisions of several of its bilateral trade agreements⁴. Some have argued, however, that *“what is really involved in the inclusion of worker standards in US free trade agreements is not an attempt to expand multilateral jurisprudence but an attempt to use unilateral arm-twisting to push other countries in a US- determined righteous direction”*.⁵

The data pertaining to the implementation of international labour standards point to widespread discrimination and blatant violations of labour and trade union rights. Discrimination based on sex, age, disability and HIV/AIDS status is still rampant and growing economic insecurity and inequality have compounded the problems of racial and religious discrimination. Moreover, the scourge of child and forced labour and violation of trade union rights are universally prevalent and exist even in countries such as those of CARICOM which often gloat about an enviable record with respect to the implementation of international labour standards.

² Ibid, Page 94

³ Robertson, D., R. Grynberg and J.Y. Remy. *Labour Standards and the WTO: By-passing an Absence of Consensus*. Unpublished paper.

⁴ See bilateral arrangements discussed below.

⁵ Moran, T. H., *Trade Agreements and Labour Standards*. The Brookings Institution. Policy Brief #3, May 2004

Labour Issues in the WTO

Decision-making in both the WTO and the FTAA is by consensus. Lack of consensus on the treatment of labour issues in the negotiations suggests that the possibility of including provisions on labour standards in the core trade agreements is at best, remote. In fact labour issues were one of the most divisive on the agenda of the failed Seattle Ministerial meeting of the WTO in December 2001. However, both the FTAA and WTO processes recognise the significance of the core labour standards developed and promoted by the ILO and commit to the observance of these standards. The first ministerial conference of the WTO held in Singapore in 1996 declared:

"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."

More recently, the Doha Ministerial Conference held in November 2001 asserted:

"We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards".

These statements clearly indicate that in the view of the WTO the development and promotion of internationally recognised core labour standards should remain in the remit of the ILO and not be treated with directly in the trade negotiations.

Labour Issues in the FTAA

The debate on trade and labour in the FTAA negotiations dates back to the official launch of the negotiations in San José, Costa Rica in 1998, prompted by a US proposal to include the observance and promotion of worker rights as one of the general objectives of the FTAA negotiations.

Resistance to the linkage between trade and labour in the FTAA was led by Mexico, which feared that labour issues could be utilised as conditionalities and become disguised trade sanctions in an eventual FTAA agreement. As a compromise, the San José Ministerial Declaration agreed to the following general objective:

"to further secure, in accordance with our respective laws and regulations the observance and promotion of worker rights, renewing our commitment to the observance of internationally recognised core labour standards and acknowledging that the International Labour organisation (ILO) is the competent body to set and deal with those core labour standards."

Subsequent attempts by the US to introduce labour provisions in the FTAA negotiations on Services and Investment were strongly opposed by the majority of FTAA countries. Trade Ministers again reiterated their position on the treatment of labour issues in the negotiations at their 6th Meeting in Buenos Aires in April 2001, noting further that:

Most Ministers recognise that the issues of labour and environment should not be utilised as conditionalities nor subject to disciplines, the non-compliance of which can be subject to trade restrictions or sanctions.

The debate in the FTAA has again re-surfaced, prompted by proposals tabled by the United States for a Chapter on Labor Provisions and Non-Implementation Procedures for [Environment] and Labor Provisions in the FTAA Agreement. Mexico and MERCOSUR have objected strongly to the discussion of labour issues and the development of provisions on labour at all levels of the negotiations, insisting that there is no mandate to discuss these issues in the FTAA. Other FTAA countries have signaled a willingness to discuss how the issue could be treated in the FTAA, on the understanding that labour issues should not be utilised as conditionalities nor subject to disciplines, the compliance of which can be subject to trade restrictions or sanctions.

The discussion on trade and labour in the FTAA is of political importance to the United States which is under pressure to include provisions on labour in its trade agreements in order to satisfy Trade Promotion Authority (TPA), or 'Fast Track' authority, which allows the US President to sign trade agreements without subsequent amendments by the US Congress. The TPA legislation requires the United States to seek commitments by trade partners to vigorously enforce their own laws prohibiting the worst forms of child labour; and an overall objective to promote universal compliance with ILO Declaration 182 concerning the worst forms of child labour.

The narrow approval of TPA in August 2002 provided the long-awaited signal to other FTAA countries in the hemisphere that the US had the mandate to conduct negotiations, and provided renewed impetus to the FTAA negotiations. However, most countries consider the nature of the US text proposals on labour standards in the FTAA to be cause for concern, as they go beyond non-binding measures and seek to create a direct link between trade rules and the application and enforcement of labour laws.

A central aspect of Canadian external trade policy is the requirement to negotiate side or parallel agreements on labour and environment in all its trade agreements. Canada has adopted this approach in the context of its bilateral and regional trade agreements with the United States and Mexico (NAFTA), and with Chile, Costa Rica and Central America as well as in the current negotiations with CARICOM for an enhanced trade arrangement.

Labour Standards in the Bilateral Trade Agreements

In the absence of recourse to the WTO and the FTAA, several countries have resorted to including respect for core labour standards and enforcement of national labour legislation in bilateral trading arrangements which create conditionalities for receipt of special concessions. The US, in particular, has entered into several bilateral arrangements which include labour provisions. As indicated above, Trade Promotion Authority requires that trade arrangements which the US government enters into, include provisions on labour. Both the EU and Canada also require the inclusion of labour provisions in their new trade arrangements. This includes the Cotonou Agreement between the EU and African, Caribbean and Pacific (ACP) States and the arrangements to replace the trade and aid pact between Canada and Caribbean Countries, CARIBCAN.

US-Central America Free Trade Agreement

The most recent bilateral trade agreement entered into by the US was the US -Central American Free Trade Agreement (CAFTA) signed in January 2004. In keeping with the Trade Promotion Authority requirements, labour obligations are a core part of the agreement. The CAFTA contains a three-part strategy to improve worker rights in Central America: all countries are required to effectively enforce their domestic labour laws; Central American countries are required to work with the ILO to improve existing labour laws and enforcement; Central American countries are required to build local capacity to improve workers rights. These obligations serve as conditionalities for the grant of trade concessions by the US and are enforceable through the Dispute Settlement Procedures contained in the agreement.

US-Chile/US-Singapore Free Trade Agreement

In similar trade agreements between the US and Chile and the US and Singapore, both signed in September 2003, the core labour standards, as defined in the ILO 1998 Declaration on

Fundamental Rights and its Follow Up and the related labour conventions, are used as the benchmark for the provisions on labour. However, both agreements fail to include a reference to the elimination of discrimination in respect of employment and occupation, which is one of the core labour standards identified in the ILO 1998 Declaration on Fundamental Rights and its Follow-Up, but includes a reference to minimum wages which is not included among the ILO core labour standards. The US-Chile and US-Singapore bilateral arrangements also require the parties involved to ensure that the rights agreed to are recognized and protected in domestic law and prohibit failure to effectively enforce these laws in a manner which would affect trade. Both trade agreements demonstrate the autonomy which countries which enter into bilateral arrangements exercise in determining which rights would be considered as fundamental to their economic interests.

Cotonou Agreement

Unlike the Lome Conventions which it replaced, the Cotonou Agreement between the EU and ACP Countries, addresses labour standards in Article 50 which provides that (a) parties reaffirm their commitment to the internationally recognised core labour standards, and the ILO Conventions, and in particular, the freedom of association and the right to collective bargaining, the abolition of forced labour, the elimination of worst forms of child labour and non-discrimination in respect of employment; (b) they agree to enhance cooperation in particular areas⁶; and (c) the parties agree that labour standards should not be used for protectionist trade purposes.

Robertson *et al.* observe that these provisions contrast with the labour standard provisions incorporated into the US bilateral free trade arrangements. The labour provisions affirm countries' commitment to the rights contained in the ILO Declaration, including non-discrimination, which was left out of the US bilateral arrangements, and excludes the reference to "acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health"⁷ as an internationally recognised labour right.

Robertson *et al.* also note that whilst reaffirming the parties' ILO commitments the Cotonou Agreement does not impose the further separate obligation to legislate to protect these rights nor does it prohibits derogation from such legislation once it exists. Further, the Cotonou Agreement expressly provides that labour standards should not be used for protectionist purposes, something both the ILO Declaration and the WTO have previously stated, but which was not reiterated in the US bilateral agreements.

Robertson *et al.* conclude that, the labour standards provisions included in the Cotonou Agreement do not create any obligations above and beyond those in the ILO Declaration and the associated Conventions. However, their inclusion is still significant insofar as it adds to the recent proliferation of state practice, outside the WTO, linking trade with labour standards.

CARICOM's Position on Labour Issues In the Negotiations

All CARICOM Member States are members of the ILO and subscribe to core labour standards developed in that forum. Generally, CARICOM countries are considered have an appreciably good reputation as regards workers rights - a situation which is not quite the same in some other sub-regional groupings or countries in the hemisphere.

The performance of CARICOM countries with respect to labour standards may actually give the Region a competitive advantage over other sub-regional groupings and countries in the

⁶ These include: exchange of information on the respective legislation and work regulation; the formulation of national labour legislation and strengthening of existing legislation; educational and awareness-raising programmes; enforcement of adherence to national legislation and work regulation.

⁷ Article 17.7(e) Draft US-Singapore FTA.

hemisphere if these standards were to be taken into account in the trade agreement. However, CARICOM is conscious of the potential use of labour standards as non-tariff barriers to trade and therefore shares the view of other FTAA delegations that labour issues should not be utilised as conditionalities for trade or subject to disciplines or dispute settlement in the FTAA.

CARICOM has further proposed that any consideration of labour issues in the FTAA should be best dealt within the Summit of the Americas process, rather than in the core FTAA Agreement. CARICOM is mindful, however, that this is a politically sensitive issue for two of the major FTAA negotiating parties – the US and Canada – both of which are required to incorporate labour provisions in their Trade Agreements.

At present, no formal process exists within the FTAA to discuss labour issues. Given the political sensitivity of the issue, however, CARICOM and other FTAA countries, will eventually have to decide, conclusively, how labour issues would be treated in the Agreement. The labour community is therefore invited to discuss the issues related to the inclusion of labour standards in the WTO and FTAA negotiations and to express views which will ultimately inform the position which CARICOM takes on this matter.

Options for the treatment of Labour issues in the FTAA

The CRNM proposed several options for the treatment of labour issues in the FTAA: The preferred option, which has been supported by CARICOM governments is for the establishment of an **Ad Hoc Working Group** on Labour comprising Labour officials to explore how labour issues should be treated in the FTAA. CARICOM considers that this option allows for proper consultation among the relevant and competent officials on possible modalities and terms of reference, without prejudice to the actual outcome of those consultations. Such an approach would also send a political signal that the issue is being discussed in the FTAA.

Other options include:

- (i) Establishment of a **Consultative Committee** on labour [and environment] in the FTAA to negotiate parallel agreements on labour and environment, the focus of which would be the development of non-binding provisions, which emphasise co-operation and consultation and which acknowledge the diversity among the negotiating parties. The main objective of the parallel agreement would be national compliance with core labour standards. Importantly, the provisions would not be subject to FTAA Dispute Settlement procedures. The negotiations would be conducted by Labour officials in consultation with FTAA Trade Officials and would run parallel to, rather than as part of the core FTAA negotiations.

This is an adaptation of a proposal tabled by Canada on the treatment of labour issues in the FTAA. The advantage of this approach is that it de-links the labour issues from the core trade negotiations, while at the same time making it a part of the overall FTAA Architecture. CARICOM should be careful however, not to agree to the launch of negotiations on the issue without the development of clear terms of reference on how labour should be treated in the FTAA.

- (ii) Continued discussion and treatment of labour issues in the Summit of the Americas Process.
- (iii) Reiteration of status quo; i.e. that the ILO is the appropriate body for the conduct of these negotiations on core labour standards.

The last two options would not be acceptable to the United States and Canada as they locate the discussion on labour issues too far from the FTAA process to satisfy their respective constituencies.