

WTO, LABOUR STANDARDS AND INDIA'S NEGOTIATING STRATEGY

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THE World Trade Organisation (WTO) Seattle talks have collapsed. The reason – US insistence to put the issue of labour standards with in the WTO arena¹. Technically the US stance has been rejected. However, the WTO Secretary General Mike Moore has been directed to consult with delegations and discuss creative ways in which contentious issues may be resolved, as well as to develop an improved process which is both efficient and fully inclusive, and prepare the way for successful conclusion of the collapsed deliberations of November-December 1999. In a press statement issued on 7 December, 1999 at Geneva, he maintained “I am determined to fulfil my duties expeditiously to ensure the greatest possible participation by all Members in the forthcoming process, and to be in a position as soon as possible to advise Ministers that we are ready to reconvene the Ministerial Conference and to conclude it successfully.”

The interaction of labour standards and international trade policy is by no means a new issue. Nonetheless it has assumed new importance due to vocal arguments of labour interests and social activists with the tacit support of US administration at the Seattle Ministerial of WTO. The purpose of this paper is to understand the US position, its ramifications and the options available to developing countries for addressing the issues involved.

This paper is divided as follows:

- Part-2 explores the history of U.S. insistence on inclusion of labour standards as an element of international trade policy.
- Part-3 presents a view point to understand the U.S. position.
- Part-4 deals with the question of appropriateness of including labour standards in the WTO Agenda, and
- Part-5 discusses initiatives that need to be taken to protect and promote the interest of developing countries at the WTO forum.

Labour Standards and the U.S.

The American insistence to include labour standards in the WTO agenda has a long history. A review of WTO/GATT negotiating history shows that labour standards has been a favorite theme of US Government since the early days. It is important to note that issues of alleged unfair competition involving labour standards were addressed in Article 7 of Chapter II of the 1948 Havana Charter of the International Trade Organization (ITO). Since the GATT was conceived with a narrow mandate as compared to the ITO, it did not address labour standards, except in Article XX(e), which specifically provides for prohibition of goods made with prison labour. In 1953 the U.S. proposed (unsuccessfully) to add a labour standards article to the GATT. This proposal would have empowered GATT members to take measures against other countries under

the provisions of GATT Article XXIII (Nullification and Impairment)². The United States continued, in the 1970s and 1980s again unsuccessfully, to push for negotiation of a GATT article on labour standards in both the Tokyo and Uruguay Rounds of Multilateral Trade Negotiations.

The U.S. with some support from France, southern European Union members, Canada, and Japan continued to pursue the issue of trade and labour standards in the WTO framework and there was a concerted effort to add the issue to the agenda for the WTO Ministerial Meeting held in Singapore in December 1996. However, the ministerial meeting rejected the US argument in clear terms. *The Financial Times of London* noted in a report of December 16, 1996:

“Predictably hardest to resolve was the issue of labour standards, where the U.S. threatened to veto the entire declaration if no mention was made. Ministers eventually agreed to uphold internationally recognised core labour standards,... But trade sanctions to enforce them were rejected and there is no provision for follow-up work in the WTO, which is asked simply to maintain its (minimal) collaboration with the International Labour Organisation.”

Why US Insistence

The US campaign for inclusion of the labour standards in the WTO mandate is protectionist beyond doubt. The insistence by the US and some other countries to subject export of goods from developing countries (to their own markets) to social, labour and environmental conditions imposed by them is blatantly protectionist non-tariff barrier directed at exports from developing countries, particularly in relation to goods in which their exports are competitive. The US has been on its own taking actions against what it perceives as a violation of labour standards. It imposed a ban recently on the import of 'Mangalore Ganesh Beedies' from India because they are said to be based on child labour. Interestingly the ban is based on a TV channel report in US.

Nafta Supplemental Agreement

In 1992-1993 Clinton administration has also negotiated a separate side agreement to NAFTA (North American Free Trade Association) covering labour and environmental issues.³ The NAFTA supplemental agreement commits each party to the promotion of eleven broad labour conditions, ranging from freedom of association to migration policies. The agreement, unlike the current US demand, does not attempt to apply U.S. standards or common uniform criteria in its evaluation of labour conditions in other countries. Instead, the agreement contains different enforcement mechanisms for different standards. The complaint process consists of three stages - filing a petition with the domestic National Administrative Office, Ministerial consultations, and lastly consultation with the Evaluation Committee of Experts. Complaints pertaining to freedom of association, the right of collective bargaining, and/or the right to strike can only be taken to the second stage of the complaint process. More importantly, sanctions cannot be utilized to encourage enforcement of laws pertaining to these rights. Of the eleven labour principles, only the implementation of those pertaining to child labour, minimum employment standards, and occupational health and safety can be supported by sanctions.

It is interesting to ask whether the NAFTA labour side agreement might serve as a model for a global agreement that might in the future, be incorporated into the WTO. From a global point of view the NAFTA side agreement goes beyond what are considered to be core labour standards and emphasizes the observance of existing national laws governing labour standards in the NAFTA member countries rather than the inter country harmonization of these laws that proponents of labour standards favor. Further more, not all standards are subject to sanctions and those that are (i.e. child labour, minimum employment standards, and occupational safety and health) are precisely ones that have engendered much of the ongoing controversy in the global context.

The US record on labour standards

While, there is concern in the United States that many of its developing country trading partners appear to be disregarding certain essential worker rights, it has been mentioned by Bhagwati⁴ that the United States is itself open to criticism when it comes to the realization of several labour standards. He puts forth a view that it is “morally obtuse” for the United States to thrust on developing countries particular stipulations relating to worker rights, while not extending these efforts to its own problems in the proposed international standards.

Is WTO an appropriate forum for enforcing labour standards

There are some trade experts who hold the view that labour standards should be included in the WTO agenda. Freeman for example points out that “unlike trade economists who view any interference with free trade as the work of the devil, I would be pragmatic in this area. If trade negotiations are the only way to raise forcefully the standards flag in an international setting, why not? If trade sanctions can improve labour standards, that benefit must be weighed against the cost of lost trade. If trade sanctions can overturn an evil dictatorial regime and save human lives, go for it. Perhaps the standards issue will induce international trading groups to consider innovative ways that international trade might be used to finance improvements in standards.”⁵

In considering whether or not the WTO is a right place to handle trade and alleged breaches of core labour standards, it is appropriate to note the conclusion reached in the OECD report on Trade, Employment and Labour Standards:

“Existing WTO provisions have not been designed for promoting core standards. Some of the suggestions under discussion would imply a reinterpretation of WTO practices and procedures while others would require to a greater or lesser extent re-negotiation and amendment of WTO articles. Extending the WTO’s Trade Policy Review Mechanism procedure to include labour standards would fall into the former category while other proposals would fall into the latter.”⁶

Further, the welfare gains from trade liberalisation have long been a hallmark of non-discrimination in the GATT/WTO system. It would be a significant digression from this precedent if countries with allegedly low labour standards were to be disallowed better market access on these grounds. For example, the US boycott of garments made by child labour from Bangladesh caused 50,000 children to lose their jobs and forced them to take up even lower paid jobs in other industries. Some were even pushed into prostitution. It is also important to note that if the labour standards are being violated it will be naïve to expect the market forces on their own bringing improvement in them. It may be conceded that there is need for intervention, but this should be indigenous in nature.

Historically, the issues of labour standards have been in the domain of the International Labour Organisation (ILO), which is often excoriated for the want of a system for enforcement of discipline to elevate labour standards. While the criticism may be true, it is oblivious of the evidence provided especially by the economies in East and Southeast Asia, that labour standards and social conditions are improved as countries achieve higher levels of economic development and per capita incomes. This makes out a strong case for policies to provide technical and economic help to promote economic progress and the concomitant effectuation of improved labour standards in low-income countries.

International organizations created over the years have, as Srinivasan⁷ points out, specialized according to function. For example, he notes the particular rules and mandates that apply to such organizations as the: ILO, GATT/WTO, UNCTAD, World Bank; International Monetary Fund. The issue then is whether it is desirable and efficient to require that individual organizations assume responsibilities for rules for which the organizations were not designed. More specifically, he argues that issues of labour standards are best left to the ILO and should not be mandated to the GATT/WTO, which has been designed to articulate, monitor, and enforce the rules governing the international trading system.

Some observers might take issue with the above characterization of the GATT/WTO, arguing that it constitutes a forum for discussion and negotiation on trade related matters, and, in this light, should include issues of labour standards. But even if this were the case, there is a genuine possibility that the WTO could become overloaded if it were to take on labour standards and other new issues like the environment and competition policy. It is not without reason that developing countries were keen on focussing at Seattle on the implementation issue and mandated agenda of the WTO.

Strategic issues for India

The US insistence on labour standards only means that the collapse of the Seattle talks is not the end of the issue and the question will have to be continuously dealt in future. This implies that India and developing countries will have to face the issue afresh at Geneva. The 'greenroom' negotiating process and the disarray in which countries on the receiving end of the subject are, makes it imminent that the issue will be hoisted on the WTO forum if serious thinking on the subject is not undertaken. Merely rhetoric is not going help in keeping the issue out of WTO mandate in the new millenium. India as a significant developing country will have to take the lead in crafting a new negotiating strategy based on sound theoretical framework and a strong backing and support of countries of South.

Independent Research Agenda

It is not sufficient, as generally has been the practice so far, for developing countries researchers and policy experts to go abroad to attend conferences in developed countries to understand the latter's position. It is imperative for developing countries to conduct their own research meetings and conventions and spread their conclusions and findings among developed country researchers and policy experts. But to embark upon extensive and independent research programmes and to propagate the findings in international fora is an expensive affair. In view of the financial compulsions the researchers and the studies in the developing countries have to depend on the funds from the developed countries.

Though foreign funds sometimes, play an important and a positive role in many research activities, yet it is more sensible to bank upon domestic funds on studies relating to the issues concerning WTO negotiations. The agencies funding the research may, sometime, exact a price for the funds they dole out, by influencing the outcome of the research. Pangariya⁸ points out that this influence is exerted by offering funds to researchers who are favourably disposed to the view espoused by the funding agency in the first place. Alternatively, given their dependence on the funding agency, the researchers themselves are vulnerable to endorsing the agency's view. Yet another instrument the funding agency has at its disposal is the selection of research topics that are funded. For instance, funding on research on capital mobility has been plentiful, but no multilateral agency has funded research on the benefits of promoting labour mobility from developing to developed countries even though, *prima facie*, such mobility is enormously beneficial to them and the world. There is a serious view that international harmonisation of labour standard is not possible until the world has free mobility of business from North to the South and labour from South to the North. The Indian government should mobilize opinion in the third world for international labour mobility and press hard to include the question of labour mobility in the coming WTO negotiations. Similarly, it has to be realised that in a large number of traditional occupations children inherit the skills from their forefathers while working in closely knit families. It cannot be argued that child labour should be promoted, but there is need for carrying out serious research on the cultural impact of eliminating child labour practices on the society and families involved.

In the long run, it is incumbent upon large developing countries such as India to invest sizable human and financial capital to advance research of their own in the area of WTO issues. At a time when WTO agenda is speeding into areas where there is a clash between the interests and concerns of the North and the South, developing countries should strive hard to bring

pressure to bear upon the ideas that govern negotiations. There is also need for active use of information technology to post the American and European public with the situation that prevails in the third world. Such efforts should also be directed towards Indian public and local N.G.O.'s so that they do not become victim of the opinion generated in the western world.

End the green room consultation process

Third world countries cannot afford to fight their battles on the ground chosen by the developed world or according to rules formulated by the latter. The WTO process of consultations and decision-making is characterised by the so-called 'green-room consultations'. The process is aimed at isolating and bullying third world negotiators, with the invitees to this process chosen in a non-transparent manner by WTO officials and the major developed countries. At Seattle, out of 135 members, only 23 members including India were, reportedly, called for green-room consultations, thus marginalising most of the third world countries.

Under the current practice Third World countries are forced to involve themselves in hard bargaining in a daunting atmosphere. They also individually face the responsibility of breakdown and trade retaliation, apart from concerted and deceptive campaigns in their capitals to remove the negotiators and replace them by those more acquiescent to the North.

It is important to put an end to this process, and ensure transparency and more open participation. Any country that has an interest on any issue and whatever its 'trade weight', should be able to participate. Otherwise Third World countries will continue to face the 'power' approach to negotiations favored by the major trading blocks and the WTO secretariat. It is undoubtedly difficult to negotiate with large number of participants. But there is no reason why consultations and negotiations, as in other UN fora, cannot be open-ended, and participatory, open to any country that has an interest on a subject.

Solidarity of the South

For the Governments of the south the most important priority should be to forge a common front and this should be done without any further delay. Achieving such a unity needs an approach with wider vision that transgresses the compulsions of immediate expansion of exports or curbing of imports. Only such an approach among the countries of the South would help in creation of mechanisms for concentration and coordination at regular intervals to meet the incremental protectionist agenda of developed countries at the WTO forum. If such an effort is not mounted at this stage, and unity and solidarity are not achieved, the South will receive a major setback.

This effort for solidarity is not an attempt to form a block and cut the South off from the North, but rather an attempt to deal with the North in a way where the South and its interests are heeded. The developed countries concert among themselves, while discouraging any such moves on the part of the Third World countries. Only periodic and political level consultations within the South could help in maximising their commonality of interests and present a credible countervailing force. Any effort by any of the countries, big or small, to deal singly or in small sub-regional groups would fail to safeguard legitimate interests of these countries.

The Indian experience of Uruguay Round Negotiation and post WTO operations/functioning over the last five years clearly demonstrate that the alternative strategy of forming alliances on an issue to issue basis or at the level of G-15 countries has not yielded meaningful results. The phaseout of Multi Fibre Arrangement which restricts the global textile and clothing trade is heavily back loaded while India like other developing countries is being pressurised to throw open their yarn and fabric sector at the earliest. *(Recent research shows that in US markets quotas for clothing of Indian export interests will go only on 1 January 2005)*. Similarly European Union and Japan are raising new hurdles in the path of removing subsidies from agriculture where also the developing countries have a competitive edge.

This becomes all the more important in the light of constant efforts by US towards winning over a part of developing world in supporting its viewpoint at the WTO forum. It is with this view only that the US had suggested at the Seattle meeting to allow duty free entry to goods of least developed countries.

In the economic sphere, the Third World is facing the same dilemma that the States of Europe faced in the inter-war years over their security and demands from Hitler, and where each tried to buy peace at the expense of the other. The precepts of that period have been drubbed into the postwar political relationships in the community of Nations, but its implications have not been understood in the area of international economic relations. Surrender in the economic and trade domains is as dysfunctional as in the political and security regions. It only enhances hankering. The more countries capitulate now, the more they will be asked to succumb in the future.

The efforts at unity of the South on these issues will never succeed if they are directed towards total unanimity in the South. As many of those as are concerned about the independent growth processes of their countries should come closer and act jointly, remaining alive to the possibility of others from the south joining as and when they deem it fit.

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As of now no clear definition exists of what is included in the term 'core labour standards'. However, OECD has been stressing seven fundamental ILO conventions which should form the basis of consensus on the subject. These include prohibition of forced labour (No. 29); freedom of association and protection of the right to organize (No. 87); right to organize and collective bargaining (No. 98); equal remuneration for men and women for work of equal value (No. 100); abolition of forced labour (No. 105); non-discrimination in employment and occupation (No. 111); and minimum age of employment of children (No. 138). Organization of Economic Cooperation and Development. 1996. Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade. Paris.

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