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INDIA AND THE TRADE-AND-LABOUR-STANDARDS CONTROVERSY*

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Introduction

This paper provides an overview of research currently in progress.[1] The purpose is to highlight selected aspects of an exceedingly complex set of issues – not to do so in a comprehensive way, but to explore a number of key issues that are likely to prove important over the next few years.

Of Labour Standards and Social Clauses

One of the most salient issues on the international economic agenda concerns the proposed linkage of labour standards to the institutional arrangements governing multilateral trade. Sometimes referred to as a 'Social Clause' for the World Trade Organization (WTO), echoing language familiar to students of European integration, this is a highly contentious issue. In brief, the idea is to permit WTO member-states to deviate from the normal principle of non-discrimination among trading partners by allowing them to prohibit (or prohibitively tax) the importation of goods from countries that do not observe 'core labour standards'. The most widely used definition of core labour standards is found in the various conventions of the International Labor Office (ILO), and includes four main protections for workers:

- Guarantee of the right to organise and to bargain collectively;
- Prohibition of forced labour;
- Prohibition of child labour;
- Prohibition of discrimination against different categories of workers on the basis of gender, ethnicity, etc.

* Paper presented at the Seminar, "India in the Beginning of the 21st Century", Instituto do Oriente, Lisbon, 20-23 March 2001.

[1] The research project, 'Linking the WTO to the Poverty Reduction Agenda', which addresses domestic and international political variables affecting the conduct of trade negotiations, is funded by the UK Department for International Development, and runs until March 2003. Directed by Rob Jenkins, it comprises a team of researchers from four UK institutions as well as researchers from India, South Africa and Kenya.

In general, the idea that these standards should be actively promoted by all governments is not contested. Proposals to incorporate them into multilateral trade agreements, however, have been a huge source of controversy, and one of the reasons why the December 1999 Seattle ministerial meeting of the World Trade Organization broke down in such acrimony. The Government of India was among the most vocal critics of efforts by some WTO member-states, most notably the United States, to include labour standards on the agenda of the proposed new 'Millenium Round' of trade negotiations. Arguments for and against the linkage of trade access to the observance and enforcement of core labour standards have been put forth in a growing literature on the subject.[2] Detailing the merits and shortcomings on both sides of the argument is beyond the scope of this brief overview.

A key question that arises, however, is whether the political impasse – which casts (somewhat simplistically) developed countries as pro-linkage and developing countries as intractably opposed – is likely to be overcome in the foreseeable future. The range of factors that will affect this issue is vast. And, of course, India is just one actor in a process that includes not only the many other member-states with an interest in the issue of multilateral trade governance, but also industrial associations, non-governmental organisations, and a range of UN and other international bodies.

But as India has assumed a key leadership position in this and other debates, it is worth examining the conditions under which the Government of India *might* be willing to accept some form of trade-linked labour standards within the WTO framework. An analysis of both the public and private statements of actors within the Indian government, as well as commentary from informed observers of the negotiating process, suggests that (at the very least) five main conditions would have to be met for India to adopt a more conciliatory approach to this issue.

1. The West Agrees to Put its Money Where its Mouth Is

The official aid agencies of developed countries have increasingly noted that issues such as child labour are as much manifestations of poverty as they are causes. This is reflected most clearly in the November 2000 White Paper on Globalisation and Poverty Reduction issued by the UK Department for International Development.[3] Children go to work in a range of industries mainly for two interconnected reasons:

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[2] A particularly thorough, if ultimately one-sided (anti-linkage), account is provided by Ajit Singh and Ann Zammit, *The Labour Standards Controversy*, (Geneva: the South Centre, November 2000), available at www.southcentre.org.

[3] Available at www.dfid.gov.uk.

- because their families require supplemental income, and
- because education is either unavailable or of such poor quality that its perceived value (in the eyes of both parents and children) is extremely low.

Simply stepping up enforcement of India's already strong laws against child labour will yield little unless funds are provided – on a very large scale, and on a regular and predictable basis – to further three objectives:

- to improve the availability and quality of education;
- to provide income support for low-income families with children; and
- to support job creation for school graduates who otherwise see little point in attending formal education, especially when they can see first-hand the desperate economic straits of older graduates who have failed to obtain employment.

Some of the political will required to meet these criteria are slowly emerging. When that commitment reaches maturity, and is backed with concrete allocations of funding, this first precondition for Indian negotiating flexibility on the issue of trade-linked labour standards will have been substantially met.

2. Rich Countries Make Progress in Fulfilling their Existing Obligations under the Uruguay Round Agreements (URAs)

Developed countries have in many cases failed to live up to the commitments they made under the agreements that came into force as a result of the Marrakesh declaration that simultaneously created the WTO. In WTO-speak, these are the so-called 'Implementation Issues' about which developing country governments voiced grave concerns in the run up to the Seattle ministerial. Before entering into any new commitments, or agreeing to a widening of the negotiating agenda (including issues even less controversial than discussion of trade-linked labour standards), developing countries rightly expect to see signals of progress by developed country governments on their earlier promises. A non-exhaustive list would include at least three main areas:

i. Better observance of 'Special and Differential Treatment' (SDT) provisions in the URAs that were designed to recognise the difficulties facing developing countries in meeting their treaty obligations. These include provisions for extra time to implement necessary legislation and exemptions from WTO disciplines under certain conditions. But since many of these

SDT provisions were expressed as 'best efforts' clauses in the relevant agreements (that is, rich countries were required only to try their best to accommodate their developing country trading partners), it has been possible for rich country governments to in many instances deliver virtually nothing in terms of concrete forms of relief. Even where the legal terminology was stronger – for instance, allowing developing countries to avoid phasing out Quantitative Restrictions (QRs) in some sectors when they faced Balance of Payments problems – rich countries have taken them to the WTO's Dispute Settlement Mechanism (DSM) in order to force them to do so. In one case, the United States argued that India's invocation of the Balance-of-Payments exemption to avoid withdrawing QRs was inadmissible, and the Dispute Settlement Panel, acting on advice from the International Monetary Fund (IMF), supported the U.S. India thus had to withdraw its QRs. The reliance of the WTO on an organisation like the IMF – which unlike the WTO is not a one-member-one-vote organisation, but rather an organisation in which the US has superior voting rights – rankles with developing countries. This is especially true in the light of what has widely been regarded as the IMF's poor handling of the East Asian financial crisis that began in mid-1997.

ii. Sticking to the spirit, and not just the letter, of the Agreement on Textiles and Clothing (ATC). Not only did developed countries insist on 'backloading' the phase-out of protection for their textiles sectors as part of the ATC (which is to replace the longstanding Multi Fibre Agreement's system of import quotas for individual countries), they have implemented the ATC in a way that has provided very little substantive benefit to developing country producers, including India's. Rather than spread the duty reductions evenly across the relevant sub-sectors, the vast majority of increased market access to European and American markets has been concentrated in low-value-added product categories, leaving the area of ready-made garments virtually untouched. In addition, the proliferation of Regional Trade Arrangements (RTAs), such as NAFTA, and the way in which they have addressed the textiles sector, has reduced further the possibility that developing country producers such as India will benefit once market-access quotas are finally and fully eliminated in 2005.

iii. Developed countries must stop abusing the provisions of the anti-dumping agreement. While developing countries, including India, have also made use of the Anti-Dumping Agreement to counter what they consider the anti-competitive practices of foreign firms in some sectors, they have been far less aggressive in this area. Their restraint may have as much to do with capacity constraints as anything else, since adversely affected industries and

firms must provide detailed evidence of the extent of damage, and demonstrate the linkage between this negative impact and the actions of foreign entities – a very costly endeavour. But in several cases, it has appeared that American, Japanese and European anti-dumping investigations have been punitive rather than substantive. Moreover, the initiation of new complaints by these countries immediately following official determinations that Indian (and other) firms had not in fact engaged in predatory pricing raised suspicions that the anti-dumping provisions were being abused to thwart legitimate competition.

3. A New Approach to Linkage in the Area of Trade-Related Environmental Protection Must Emerge

The WTO recognises, in principle, the need for trade liberalisation to promote the objective of sustainable development, and Article XX of the founding treaty specifically states that member-states are permitted to enact regulations designed to protect their environmental welfare. This includes measures intended to help member-states comply with their commitments under various Multilateral Environmental Agreements (MEAs). To date, however, the dominant fear among developing countries has been that developed countries seek to use trade-related environmental regulations as a pretext for shielding domestic producers from foreign competition, or as a means of coercing developing country governments to adopt similar regulatory frameworks. The dispute launched by India (and a number of other developing countries) against the United States in the 'Shrimp-Turtle' case was motivated by both of these concerns. US regulations banning the importation of shrimp from countries that do not require their fishing vessels to use Turtle Excluder Devices were challenged in the WTO's DSM on the grounds that they were coercive and in violation of WTO commitments. In general, the appellate countries, including India, were concerned that US regulations violated the legal principle that only products, and not the processes used to create or harvest them, could be the legitimate targets of environment-related trade measures. The litigation involved complicated arguments, and ultimately led to a mixed outcome, but reinforced the impression that rich countries were seeking to impose their will on poor countries, using environmental concerns to thwart competitive pressures.

A different approach to ensuring consistency between trade and environmental objectives might convince India, and other developing countries, that linkage in the area of labour standards would not necessarily be a one-sided affair. If multilateral environmental agreements were viewed in terms of the costs imposed by compliance, then the scope for linking them to

trade commitments, in a manner not biased against developing countries, would be enhanced. For instance, the UN Framework Convention on Climate Change contains provisions requiring member states to reduce their emissions of greenhouse gases according to a set timetable. These are under continuous review in light of new scientific evidence. But the main burden of compliance rests, naturally, with the industrialised countries whose emissions are chiefly responsible for global warming. WTO rules could be amended to recognise that a failure to meet scheduled emission reductions is, in effect, a form of subsidy to the industries of countries that failed to meet their targets. These could thus fall within the domain of the Agreement on Subsidies and Countervailing Measures, which prohibits such subsidies. This would provide a mechanism for holding rich country governments to their commitments under MEAs by making them liable to trade retaliation from their trading partners, and not just those in the developing world. In other words, just as the failure of some governments effectively to enforce labour standards is seen to provide an unfair competitive edge to their firms (since they 'benefit' from unregulated labour), so would the failure of governments to comply with their environmental commitments be considered an illegitimate source of advantage for their industrial producers. Such an approach would help to reduce the suspicion that the effort to link labour standards to trade was designed to single out developing countries in an area where they are traditionally weak.

4. The Trend Towards Regional and Bilateral Trade Agreements Incorporating Labour Standards Continues

This 'condition' (and no. 5, below) differs from those above in that it is not something that the government of India would necessarily like to see happen. It is not a 'condition' in the sense of being a demand. Rather, it is a development that could conceivably alter sufficiently the negotiating conditions such that continued opposition by India to the introduction of a social clause might prove too costly in diplomatic terms.

Since the breakdown of the Seattle ministerial meeting, there has been steady progress by the United States towards the conclusion of bilateral trade agreements that include provisions for adherence to labour standards. The pact between the United States and Jordan was the first of these. And the format of that agreement was used by the US in negotiating similar deals with Singapore and Chile. An earlier agreement between Canada and Chile also included labour standards (though the imposition of retaliatory sanctions in the event of non-enforcement of standards was not part of that agreement). The European Union's recently concluded agreement with the Asian-

Caribbean-Pacific (ACP) group of countries also included (non-reciprocal) provisions relating to the observance of core labour standards, and its negotiations with other trading partners for preferential trade agreements are based on a similar model.

The Government of India has taken note of these developments, as have groups with an interest in the issue. It is worth quoting at length the November 2000 issue of the Confederation of Indian Industry's *WTO Watch* newsletter on this question:

> 'These agreements have two broad implications. The US is keen on having trade and labour standards linked, and it is getting that through the bilateral route. In other words the US has decided to get all the market access it needs and on its own terms. So there really is little incentive for the US to revive the WTO process. The other implication is that this is setting a trend of having trade agreements with environment and labour clauses built-in. So, when the WTO Ministerial does take place, these would be just examples to be quoted, as being regular practice. ... For countries like the US it is a win-win situation. If the WTO is sidelined, it gains because it can then freely exercise its arbitrary unilateral measures. If the WTO process is revived after this, then it would probably be on the desired US terms, otherwise the US would have no incentive to take it forward. In other words the US has worked out its long-term strategy. The question remains – how would India like to play the game?' (p. 1).

While one could take issue with some of the reasoning of this passage – particularly the notion (stated twice) that the US would have little incentive to revive the WTO process in the absence of an agreement on labour standards – it seems reasonable to conclude that these kinds of bilateral and plurilateral agreements represent a sort of Trojan Horse, a precedent-setting means of smuggling new issues into the WTO negotiating process. And while India might recognise this for the negotiating tactic that it surely is, its ability to do anything about it might grow progressively weaker as key negotiating allies in the developing country 'bloc', if such a thing exists, are bought off with special favours through bilateral engagement with the United States, the European Union, Japan, Australia and other major players in the field of global trade.

That India's Commerce Ministry itself realises the importance of this dynamic is indicated by the emphasis it gave to standards issues (including both labour and environmental standards) in its communication to the non-governmental consultative group established for the purpose of dialogue with civil society on trade and trade-related issues. An official note on the Ministry's 3 February 2000 meeting with the Advisory Committee on International Trade, held both 'to apprise the Committee of the important developments at

and immediately after Seattle and [to] seek the Committee's advice on the way forward', summarised the Committee's advice to the government as follows: the Committee recommended that the government 'evolve a suitable response to a situation where even some of the developing countries are willing to accept some watered down version of a group on trade and labour in association with the WTO; evolve our stand on environment so that we don't appear to be against protection of environment; [and] to give adequate publicity to our positive record of adherence to ILO conventions and ongoing efforts for implementation of core labour standards.'[4] India, in short, appeared to be in danger of winning the battle of Seattle, but losing the longer-term diplomatic war, including the conflict waged for primacy in the theatre of public opinion.

5. A Domestic Political Constituency Emerges to Support Trade-Linked Labour Standards

A striking feature of India's domestic debate over whether the enforcement of labour standards should be incorporated into multilateral trade rules is the conspicuous lack of political support for the pro-linkage position. Unlike many other issues which have divided constituent parties within the ruling National Democratic Alliance (NDA) coalition government – such as the dismantling of the Public Distribution System (PDS), which supplies subsidized foodgrains and other essential commodities through a nation-wide network of fair-price shops – the disparate political tendencies contained within the NDA have spoken with one voice on the issue of trade-linked labour standards: they all oppose them. Beyond the governing coalition, even India's many communist and socialist parties are united in their opposition to what they regard as a crude American plot to deny developing countries their right to development.

Ironically, even the left couches this position in the ubiquitous neo-liberal logic of comparative advantage, arguing that India's source of competitive strength – its plentiful supplies of cheap labour – would be neutralised by trade rules that permitted sanctions on the basis of non-enforcement of even multilaterally agreed core labour standards. Representatives of the political left, right and centre stood in the Indian parliament to voice their appreciation for the government's unflagging resistance to the inclusion of 'non-trade issues'

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[4] "Current state of play: Status Note on issues under discussion at WTO", *WTO News* Publication of the Commerce Ministry, Government of India, April 2000, available at http://commin.nic.in/doc/wtoapr2k2.htm#h2.

at the Seattle ministerial, furnishing a heartening political homecoming for Commerce Minister Murasoli Maran upon his triumphant return to Delhi.

Naturally, India's main business associations were similarly filled with praise. But so were the trade unionists, and not just those affiliated with the ruling parties. The national secretary of the Centre for Indian Trade Unions (CITU), affiliated with the Communist Party of India-Marxist (CPI-M), was keen to press the government to remain firm in the face of diplomatic pressure from the west.[5] Only a few scattered activist-intellectuals, such as Rohini Hensman, could be heard voicing concern that the entire political establishment, as well as the 'movement' community, were buying into a position whose main beneficiary, Hensman argued, would be multinational capital.[6]

Again, the merits of the arguments for and against trade-linked labour standards are not the issue here – nor, frankly, is this brief paper concerned to explain why such a diverse array of forces should have come together on this one matter of policy, as interesting an intellectual exercise as this may be. Rather, the question is whether one can envisage circumstances under which this almost unheard of unanimity might begin to break down. Some of the earlier four preconditions might, in theory, have an impact not just on the strategic calculus of government policymakers, but also on the opinions of key civil society actors – especially if they were to foster a belief that the WTO were more than just a façade for the advancement of the interests of rich countries.

But more important would be the effects of trade competition itself – especially as these are felt by influential business lobbies. One of the recurrent motifs in recent discussions of trade policy in India has been fear of Chinese imports. This is seen dramatically in the case of raw silk producers in Karnataka, who have already identified 'unfair' Chinese competition 'flooding' the Indian market as the source of their woes. The same prophesies of doom have emerged in the scenarios painted by industry associations in their representations to the Government of India. In a series of seminars held as part of the government's pre-Seattle consultation process, a steady stream of business lobbies presented their positions. Textile manufacturers warned of the need for 'safeguard actions' to combat 'Chinese dumping'. Representatives of the chemical industries, as well as those advocating agricultural interests, raised similar fears. As Narendar Pani of the Economic Times has argued[7], the

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[5] *Economic Times*, 12 December 1999.

[6] Rohini Hensman, 'World Trade and Workers' Rights: To Link or Not to Link?', *Economic and Political Weekly*, 8 April 2000, pp. 1247-53.

[7] Personal Communication, 15 December 2000.

one thing that will push Indian industry and the Indian government to support multilateral labour standards, backed by the threat of trade sanctions, will be a belief on their part that Chinese competitors receive unfair advantages from their ability to suppress workers' rights.

Again, it will not be the merits of the case, but a combination of public perception and political expediency, that will prove decisive.