

6. TRADE RULES FOR DECENT WORK AND A FAIR GLOBALIZATION ⁴³

One of the most difficult dimensions (conceptually and politically) of the decent work and fair globalization agenda is the relationship between trade and labour. This chapter examines the proposal of a “**social clause**” in the WTO that would integrate core labour standards in multilateral trade rules and enforcement mechanisms. It then argues that the debate between trade and labour standards has to an extent diverted attention from another key dimension of the trade and labour nexus: the differential impact of trade on employment. Recent research shows that the impact of trade liberalization on labour markets is much more important than previously assumed. Does this mean primarily that policies should better support labour market adjustments to trade, or also that trade rules themselves should be made more consistent with the full and productive employment goals of developing countries?

THE TRADE AND LABOUR STANDARDS DEBATE

In the contemporary history of multilateral trade governance (namely, since the establishment of the WTO in 1995), the relationship between trade and aspects of the decent work agenda has until recently primarily focused on whether labour standards should be incorporated in trade rules. This approach has remained in an impasse since the 1996 WTO Conference in Singapore. The reason for the deadlock is two-fold. On the one hand, there is concern especially in the industrialized countries that differential labour standards (and levels of application) between trading partners can create competitive disadvantages for those economies with higher standards, insofar as they are well enforced. On the other hand, there is concern, principally among developing countries, that introduction of a labour standards-related social clause in the WTO could be misused for protectionist purposes.

Some have suggested that an important step towards a common understanding of the issue was achieved in the 2008 ILO Declaration on Social Justice for a Fair Globalization. In this tripartite consensus document, it is stated that: “*the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes*” (Article I.A.(iv)). Beyond this agreement of principle, there remains some debate as to whether or not the WTO should have an active implementation role.⁴⁴ What is clear is that the *primacy of the ILO* in this domain remains uncontested. Especially in the wake of the crisis, the thrust of the discussion has refocused on the need to dramatically strengthen the capacity of the

⁴³. This chapter draws heavily from the findings of a workshop on trade and employment organized by NGLS and the Friedrich Ebert Stiftung (FES) Foundation on 20 May 2009 in Geneva.

⁴⁴. There are proposals to amend the WTO Agreement on Subsidies and Countervailing Measures to include labour standard abuses as comparable to a non-permissible export subsidy. >>>

ILO and counterpart national institutions to implement labour provisions (including the capacity to undertake comprehensive labour inspections) and continue promoting ratification of core labour conventions where this is not yet the case.

Labour standards are certainly increasingly referred to in regional and bilateral trade agreements. Their principal weakness lies in supervision, particularly in countries that have not ratified the relevant ILO Conventions (Doumbia-Henry and Gravel 2006). Moreover their effectiveness on promoting the decent work agenda cannot be treated in isolation from the broader impact of these trade agreements on employment, especially on the economically less competitive trading partner. This brings us to consider the other dimension of the relationship between trade and decent work, which so far has received much less attention in trade policy debates.

THE IMPACT OF TRADE LIBERALIZATION ON EMPLOYMENT

In discussing how to promote greater coherence between the multilateral trade and decent work agendas, ILO Director-General Juan Somavia has noted that a major mistake made by advocates of free trade has been to ignore the fact that intensified international competition increases the pace of both job creation and job destruction – and does so in very uneven ways within and between countries.⁴⁵ A pioneering joint study by the ILO and WTO secretariats has begun shedding new light on this issue. The study noted that the predictions of conventional trade theory that expanded trade will be equalizing no longer hold true. Instead, *there appears to be widespread tendency for wage and income inequality to increase in the wake of trade liberalization and related developments such as the increase in trade in services and intermediate goods, increased flows of FDI and outsourcing, and the diffusion of skill-biased technological change.* Also, adjustments to trade liberalization do not only affect import-competing sectors, but other sectors as well. So job insecurity is much more pervasive than previously assumed (ILO/WTO 2007).

As awareness is growing that the social dislocations caused by trade liberalization are much greater than assumed, much of the current policy discussions and research on trade and labour are increasingly focusing on *how labour markets can better adjust to trade reform* (in effect: adjust to trade liberalization). These concern national policies to deal with negative distributional effects, including through strengthened social protection and active labour market policies to help better match labour supply and demand, including through skills and retraining programmes.

The above measures are only beginning to receive the attention they deserve in mainstream economic and development policy discussions, as noted in Chapter 3. They are essential, irrespective of purely trade factors, as social dislocations are also the result of other causations such as technological change, obsolescence of demand for certain products and financial instability or crisis.

>>> (See for example speech delivered by James Howard, ITUC in: “What Future for Global Economic Governance? – Potential Role of the WTO,” Report of the session at the WTO Public Forum 2008, jointly organized by Friedrich Ebert Stiftung / Evian Group / CUTS International, Geneva, 25 September 2008.)

45. Keynote address at an international conference on “Decent Work: A Key to Social Justice for a Fair Globalization,” organized by the Norwegian government in cooperation with the *Financial Times* on “Decent Work: A Key to Social Justice for a Fair Globalization,” 5 September 2008, Oslo.

However, the other side of the equation is equally important: namely, *how should trade policies and rules be adjusted to be made more consistent with the objective of full and productive employment?* This concern was already expressed by the ILO's World Commission on the Social Dimension of Globalization, which stated that in order to achieve fairer multilateral trade rules, one essential principle is that:

“Trade liberalization should not be enthroned as an end in itself. It is but a means for achieving ultimate objectives such as high and sustainable growth, full employment and the reduction of poverty. As such, *trade policies should be framed with these ends in mind and be evaluated accordingly*” (ILO 2004a:82, emphasis added).

Frank and honest policy debate on this other side of the equation is much more difficult. In part, it is because trade liberalization has been enthroned as an end in itself. As noted in the previous chapter, unqualified free trade theory has deeply influenced development policy. Yet the lessons of rapid and across-the-board trade liberalization in Africa and Latin America since the 1980s suggest that there were many instances where this form of trade liberalization led to the destruction of existing industries, particularly of those that were at their early stages of development, entailing massive job losses without necessarily leading to the emergence of new ones. According to some estimates, total income losses for sub-Saharan Africa from trade liberalization amounted to US\$270 billion over the past two decades – more than the total ODA received by the region (UNCTAD 2005; Akyüz 2008).

In contrast, the newly-industrialized economies in East Asia had taken a much more gradual and selective path to trade liberalization, as part of a long-term industrial policy, and only after they had reached a certain level of industrialization and development when firms were in a position to compete internationally. Paradoxically, free trade advocates used the East Asian economic success story as evidence to push for across-the-board liberalization in other developing countries as part of structural adjustment programmes (UNCTAD 2005).

NEW POLICY SPACE RESTRICTIONS UNDER THE WTO

The 1994 Uruguay Round agreements have significantly restricted the policy options now available to developing countries. Here are a few examples:

- The Agreement on Subsidies and Countervailing Measures (SCM) prohibits subsidies that are conditional on export performance and those that are contingent on the use of domestic rather than imported inputs. However, LDCs and countries with a per capita income of less than US\$1,000 (so called Annex VII countries) are exempted until graduation from this category.
- The Agreement on Trade-Related Investment Measures (TRIMs) requires the elimination of a number of measures such as compelling or providing incentives for an investor to use
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) has made development tools such as reverse engineering and imitation less feasible and raised the cost to developing countries of acquiring technology (ILO 2004a; Akyüz 2008).

POLICY SPACE IN TRADE RULES FOR NATIONAL DECENT WORK STRATEGIES

A key operational dimension to make global trade rules fair and equitable is to ensure that developing countries have enough **policy space** to tailor national measures to local conditions and needs, as part of the principle of special and differential treatment for developing countries. The ILO World Commission had noted that the new trade rules adopted with the founding of the WTO at the end of the Uruguay Round in 1994 now make the selective protection or strategic promotion of domestic enterprises vis-à-vis foreign competition much more difficult. Many of the development tools used by now developed countries and by successful East Asian economies are no longer allowed (see Box 6.1, page 45).

Policy space remains controversial and would benefit from a more systematic and explicit treatment from the angle of its contribution to the goal of decent work for all.

An important step towards a common understanding was multilateral consensus recognition of the concept of policy space achieved at the 11th United Nations Conference on Trade and Development (UNCTAD XI). It is now accepted that multilateral rules do impose constraints on policy space in developing countries (see Box 6.2). According to some analysts, the main limitation is that the consensus views policy space as a “trade-off” vis-à-vis the benefits of multilateral rules and disciplines, rather than treating policy space as a necessary and integral part of global rules. Does a trade-off mean that negative consequences can be expected as a result of opting out of multilateral disciplines if that is the only avenue to achieve needed policy space? Does this in effect mean “a choice between the bad and the worse?” In many respects, this limitation is reflected in the current approach to Special and Differential Treatment in the WTO where, at best, greater policy space and flexibility are treated as exceptions with longer time frames that have to be bargained for, rather than an integral part of global rules needed for these to be fair and equitable (Akyüz 2008).

Within a framework that supports open economies and open societies, it should be possible to examine existing agreements as well as the ones under negotiation to see whether greater policy space should be embedded within these to ensure they are compatible with

BOX 6.2

AGREED MULTILATERAL TEXT ON POLICY SPACE

“The increasing interdependence of national economies in a globalizing world and the emergence of rules-based regimes for international economic relations have meant that the space for national economic policy, that is, the scope for domestic policies, especially in the areas of trade, investment and industrial development, is now often framed by international disciplines, commitments and global market considerations. It is for each government to evaluate the trade-off between the benefits of accepting international rules and commitments and the constraints posed by the loss of policy space. It is particularly important for developing countries, bearing in mind development goals and objectives, that all countries take into account the need for appropriate balance between national policy space and international disciplines and commitments.”

2004 UNCTAD XI São Paulo Consensus, para. 8

the goals of full and productive employment and decent work for all. Part of the challenge is to distinguish those provisions that genuinely have to do with avoiding harmful international trade practices from the ones that are unduly impinging on domestic economic policies linked to the progressive realization of the right to decent work.

Another important dimension would be to distinguish “protectionism” in the sense of “beggar-thy-neighbour” policies (e.g. tariff escalations of the type that brought down the international trading system in the 1930s) from the policy space needed for developing countries to promote productive employment as discussed in the previous chapter. This may involve the fine-tuning of tariff policies to protect vulnerable farmers from import surges and price drops for example, but these types of policies should not be simplistically equated to “protectionism.” As far as crisis mitigation measures are concerned, the new consensus terminology used at the UN Conference on the world economic and financial crisis was developing countries’ “right to use legitimate trade defense measures.”⁴⁶

Some of the main topics affecting the decent work agenda in the current Doha Round of multilateral trade negotiations relate to:

- Industrial tariff liberalization;
- A special safeguard mechanism to protect livelihoods and food security in developing countries; and
- Financial services liberalization.

Beyond that there is the proliferation of bilateral trade and investment treaties that go much beyond current obligations under the WTO. These issues are on the forefront of international civil society advocacy campaigns.

INDUSTRIAL TARIFF LIBERALIZATION (NAMA)

The Doha Round includes an agenda item that involves principally industrial tariff reductions. Referred to as Non-Agricultural Market Access (NAMA), it also deals with other non-agricultural items such as fisheries. The NAMA negotiations are problematic because (a) they could lead to significant job losses and very significant tariff revenue losses not recouped from other sources; and (b) they could narrow the remaining policy space for many developing countries to pursue industrialization strategies by removing the flexible use of tariffs between sectors and over time.

Strategic use of tariffs can mean applying very low tariffs at one point of time for imported inputs but higher tariffs on other final products for which the local economic base is not yet ready to compete internationally. History shows that developed countries and East Asian success stories made abundant strategic use of tariffs as part of their development strategy (Chang 2002). Currently, developing countries on average have much lower tariffs than developed countries had at a comparable stage of development. But many developing countries still have the potential to use tariffs flexibly because their current applied rates are much lower than the rate at which they already committed to in the WTO (the “bound rates”). That flexibility could be removed, both in terms of the actual level of tariffs and the ability to use different tariff levels for different sectors at different stages of development.

46. Paragraph 15 of the Conference Outcome Document.

The International Trade Union Confederation (ITUC) has undertaken a simulation using the range of tariff reduction coefficients currently proposed in the negotiations for five countries that would appear to have to undertake some of the most drastic tariff reductions. In some cases, the new bound rate would be significantly below the current applied rate, while in others the new bound rate is close to the applied rate, thus removing all future flexibilities to raise tariffs in support of industrialization. In the first cluster of cases, the amount of jobs directly at risk are significant (and a function of the degree of competitiveness of the local firms), but the indirect job losses might be much higher due to inter-sectoral linkages. ITUC highlights also the risk that affected developing countries could be locked in low-value added production paths that would hinder the potential to create more productive employment and decent jobs and move up the development ladder.⁴⁷

In light of these concerns, would commitments to policy coherence not require that there should be a more systematic and comprehensive ex-ante employment impact assessment of various NAMA outcomes for all countries affected, to ensure that NAMA is not inconsistent with the multilateral commitment to full and productive employment?

A SPECIAL SAFEGUARD MECHANISM FOR AGRICULTURE

As discussed in the previous chapter, most developing countries have undertaken rapid liberalization of agriculture which has made small farmers very vulnerable to import surges and price drops. Import surges can have a devastating effect on livelihoods. For example, in Honduras, domestic rice production covered nearly 90 percent of consumption in 1991; but by 2003 imports had increased drastically and the share of domestic production in total consumption was down to less than 10 percent.⁴⁸ This is a widespread phenomenon.

A key proposal on the Doha Round agenda is the introduction of a **Special Safeguard Mechanism (SSM)** that would act as an insurance scheme against price depressions and import surges. That scheme would aim to isolate small producers in developing countries from these risks – so to protect livelihoods and jobs, reduce the uncertainty associated with agricultural production and ultimately, by reducing this risk, promote a more conducive environment for investments in agricultural productivity. The basic mechanism is that in cases of import surges or import price drops on specific agricultural products that would threaten livelihoods and food security, developing countries would have the right to raise the corresponding tariffs to a neutralizing level, even if that level is above the “bound rate” in the WTO.

It is a group of developing countries (the G-33) with support from civil society that have taken the lead on this proposal. As part of this effort, the International Centre on Trade and Sustainable Development (ICTSD) has undertaken case studies in some 20 countries, using different indicators associated with livelihood security, food security and rural development, as well as vulnerability to further trade liberalization, to determine which products need some kind of mechanism that can protect small producers from price depression and import surges. The set of products are fairly consistent across the country studies and often correspond to the ones that are the most subsidized in developed countries. From

47. Based on presentation by Esther Busser, Deputy Director of the ITUC Geneva Office, at the NGLS/FES workshop on trade and employment, 20 May 2009, Geneva.

48. Source: FAO cited by ICTSD at NGLS/FES workshop.

that perspective, the use of tariffs could partly be seen as a counterpart of the subsidies used by developed countries to protect their farmers from external shocks, but which developing countries cannot afford to match.⁴⁹

Disagreements over the “trigger” mechanism that would allow initiation of the safeguard was widely reported as a major reason for the breakdown of WTO ministerial negotiations in July 2008. A major concern of civil society is the risk that the final compromise on modalities of application would render the mechanism ineffective in most cases. If that hurdle was overcome, there would also need to be infrastructure in place for the timely monitoring of import volumes and prices so that action can be taken before the damage is done. This is a major challenge, but some creative solutions are worth exploring. UNCTAD, for example, has developed a technical cooperation programme to modernize customs systems in developing countries that could be adapted for this purpose.⁵⁰

It should also be noted that many grassroots small farmers’ movements believe that the safeguard mechanism does not go far enough and is unlikely to be effective against the livelihood threats they face. They have for a long time called for a complete removal of agriculture from the WTO jurisdiction, some proposing that the governance of agricultural trade would be more fairly handled by other international bodies such as FAO.

FINANCIAL SERVICES LIBERALIZATION

The recent global economic crisis has brought home the importance of strong financial market regulatory regimes to preserve financial stability and by extension, employment growth and stability. The Stiglitz Commission notes that the WTO’s General Agreement on Trade in Services (GATS) Financial Services Agreement provides the only significant regulatory regime for international financial services, but with insufficient regard for its consequences either for growth or stability. It notes with concern that its provisions, if enforced, would “impede countries from revising their regulatory structures in ways that would promote growth, equity, and stability” (UN 2009:104).

Many civil society organizations have expressed similar concerns, especially with respect to restrictions on the ability of governments to limit the size of banks, introduce new regulations and ban risky activities.⁵¹

There does seem to be a disconnect between momentum for greater financial regulation and the thrust of these agreements, which the Stiglitz Commission argues were conceived and developed at the instigation of “special interests [that] often do not realize (or care

⁴⁹. Based on presentation by Christophe Bellmann, Programme Director, ICTSD, “Addressing decent work concerns through trade agreements: The case of the special safeguard mechanism,” at the 20 May 2009 NGLS/FES workshop.

⁵⁰. UNCTAD has developed a computerized customs management system, the Automated System for Customs Data (ASYCUDA), which is already installed in more than 90 countries. Even if the system was not designed to support implementation of an SSM, the data systems in place could easily be used to monitor changes in product-specific import prices and volumes, provided customs data are centralized in a timely fashion, which UNCTAD experts say is technically feasible (Per. Com.).

⁵¹. The “prudential carve-out” provision on domestic regulation under the GATS Annex Article 2(a) would appear sufficiently ambiguous in its wording to be potentially self-nullifying. It states: “Where such [prudential] measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member’s commitments or obligations under the Agreement” (Public Citizen 2009).

about) the vulnerabilities that these commitments impose on other aspects of their economy or the international economy” (UN 2009:103).

This WTO agreement on financial services so far mainly concerns developed countries. However, many developing countries have already signed or are in the process of signing financial deregulation provisions in a number of other bilateral and regional agreements which contain commitments that restrict the ability of countries to respond to the current crisis with appropriate regulatory and macroeconomic reforms (including the above mentioned capital management and heterodox monetary tools). “More broadly,” the Stiglitz Commission insists, “all trade agreements need to be reviewed to ensure that they are consistent with the need for an inclusive and comprehensive international regulatory framework which is conducive to crisis prevention and management, counter-cyclical and prudential safeguards, development and inclusive finance” (UN 2009:104).

It is evident that these reviews are a necessary part of the intensified international cooperation called for in the Global Jobs Pact to “*build a stronger, more globally consistent supervisory and regulatory framework for the financial sector so that it serves the real economy, promotes sustainable enterprises, decent work and better protects the savings and pensions of people.*”⁵²

PROLIFERATION OF NORTH-SOUTH REGIONAL AND BILATERAL TRADE AGREEMENTS

The financial deregulation commitments in bilateral and regional trade agreements are part of a broader set of concerns voiced by civil society and other actors regarding the proliferation of North-South regional and bilateral deals that seem to have accelerated as developing countries have increased their bargaining capabilities within the WTO. Many of these agreements and those under negotiation also involve steeper tariff reductions and much tighter policy space restrictions notably with respect to investment and intellectual property rights. The ILO World Commission had expressed concern that despite possible market access gains, bilateral and regional agreements between countries of very different economic weight “*may result in unbalanced outcomes, such as more limited space for national development policies in lower income countries, or difficulties of economic adjustment that lead to job losses without resources to compensate those adversely affected*” (ILO 2004a:73).

Many civil society groups are thus calling on UN bodies to examine whether these trade agreements support or undermine efforts towards greater policy coherence at national, bilateral, regional and multilateral levels.

A GOVERNANCE VACUUM

Moreover, the international trading system is not only suffering from unfair rules, but also of an absence of rules in areas such as exchange rates (which can play the same function as trade tariffs) and commodity price speculation. These issues are linked to defects in financial governance but their effects on trade and employment are much more significant than modest movements in tariff rates and non-tariff barriers. In its submission to the

52. Paragraph 21.(1) of the Global Jobs Pact.

Stiglitz Commission, the International NGO Working Group on Trade-Finance Linkages noted in this regard:

“The fast dissemination of the crisis shows that the fate of developing countries in the trading system does not lie so much in the achievement of enhanced market access as on meaningful reforms to the international financial architecture in which context such trade is conducted.”⁵³

53. See: http://www.un-ngls.org/cfr_article.php?id_article=709.

