

The ILO Centenary:

What role can the WTO play to help ensure the effectiveness of international labour standards?

Le centenaire de l'OIT:

Quel rôle l'OMC peut-elle jouer pour contribuer à garantir l'efficacité des normes internationales du travail?

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Introduction

On the occasion of the ILO 100th anniversary, it is unavoidable to pose questions about the effectiveness of its enforcement mechanisms.

Monitoring compliance:

- procedural compliance (concerned with formal obligations such as reporting) seems to be on the decline, and
- substantive compliance (i.e. whether states have fulfilled obligations set out in an international instrument) is also unsatisfactory, especially in terms that the ILO appears to be unable to respond to cases of non-compliance.

Although the ILO has proved its capacity to define, evaluate, and monitor international labour standards, it lacks the mechanism to enforce compliance with ILO agreements and to impose sanctions against countries that fail to comply with its agreements.

We should draw attention to the potential of the WTO in this regard. There are opinions claiming that the WTO dispute resolution system is “the jewel in the crown of the WTO”, and that thanks to the use of this system, the WTO would have a potential of being successful where the ILO has failed in holding member states responsible for labour violations. However, currently the WTO is facing a deep crisis. Could the forthcoming reforms turn out to be a now-or-never moment for a new emphasis on labour rights?

Moreover, there is a gap between international labour standards and the rules of multilateral trading system, which is caused by the ILO principle of ‘no sanctions’ and the GATT principle of ‘non-discrimination’ (between imported and domestic products). The WTO and the ILO lack provisions creating a nexus between both organizations.

How to bridge the gap?

Solutions

I. Can the WTO exceptions be interpreted in a way allowing trade sanctions for reasons related to violations of workers' rights?

Article XX (a) and (b) permit exceptions from GATT rules and disciplines where such exceptions are necessary in order to protect public morals, human, animal, or plant life or health. Exceptions could be built in a way allowing the application of trade measures against countries where e.g. child labour or forced labour occur, and - as a consequence - labour conditions are incompatible with public morals or present a threat to health.

However, “*exceptiones non sunt extendendae*”. It means that if GATT Article XX (e) *expressis verbis* deals with prison labour, it is not possible to conclude that other labour conditions fall within the scope of other exceptions indicated in GATT Article XX without being explicitly laid down.

II. The Scenario of the Integrated Legislative Approach

The integration of core labour standards into the WTO could be carried out in different ways, however, all of them would require changes to law.

- The WTO may establish an entirely new clause dealing with labour standards;
- Labour standards can be incorporated into the existing structure of GATT Article XX;

The WTO could amend GATT Article XX(e) and adopt the following language: “relating to the products of forced or compulsory labor, child labor, products produced under conditions preventing freedom of association and collective bargaining, and products produced under parties who employ discriminatory practices, and products produced under unacceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health”. This formulation of the provision should provide explicit guidelines on the types of labour practices that are forbidden and should bring the core labour standards within the dispute settlement mechanism under the framework of the WTO (Cohan Baclawski, 2016);

- The WTO should build on Article XX (e) by adding a provision that allows countries to sanction the specific sector of a country that has violated core labour standards, if the ILO has determined that there is indeed a violation (Elliott, Freeman, 2003);
- “Link” as an addition to the general exceptions listed in GATT Article XX, together with an agreement spelling out the details. “Link” would authorize trade restrictions provided that
 - (1) goods had been imported, over a number of years, from a country not having complied with CLS during that period of time and that
 - (2) imports from that country had steadily increased, at a considerable rate, over the same period (Plasa, 2015).

III. The Scenario of the Institutional Approach

Given the need to ensure the effective enforcement of labour standards, some proposals to combine the institutions, i.e. the ILO with the WTO, have appeared:

- Agency for Trade and Labour Standards (ATLAS) jointly governed by the WTO and ILO (Barry and Reddy, 2008);
- Joint ILO-GATT/WTO Enforcement Regime (Ehrenberg, 1996);
- The concept of a global labour and trade framework agreement (GLTFA) (Addo, 2015).

Limitations

- The Singapore Ministerial Declaration adopted at the first WTO Ministerial Conference on 13 December 1996 clearly reflected the anti-linkage approach using the following wording: “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...”.

- Most developing countries stand categorically against the linkage. Such resistance results mainly from economic arguments based on the view that the linkage is motivated by protectionism.

- The ILO and the WTO regimes differ one from another.

- The employment of sanctions may have counterproductive effects. The experience of Bangladesh in 1993 is given as an example. The owners of garment factories in Dhaka dismissed all children below the age of 16 due to the threat of US sanctions under the 1992 Child Labour Deterrence Act. As a result, many of these children ended up as prostitutes and street vendors or in factories and workshops not producing for export.

Conclusion

The poster presents different ideas on how the nexus between trade and labour could be framed. It makes three contributions.

First, it shows that the current interpretation of the WTO exceptions precludes imposing trade sanctions for reasons related to violations of labour rights.

Second, it presents the institutional approach which consists in combining forces of both the ILO and the WTO in order to ensure the effective enforcement of labour standards.

Third, it focuses on the integrated legislative approach assuming changes to the WTO law. It seems that such an approach would be more feasible and could be realised during the forthcoming wave of reforms. The simplest solution would be to incorporate labour standards into the existing structure of GATT Article XX.