

## The WTO and the Social Clause: Post-Singapore

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In December 1996, the first Ministerial Conference of the newly created World Trade Organization (WTO) was held in Singapore. The Conference attracted considerable attention, particularly the negotiations concerning the controversial issue of the 'social clause' – the linking of labour standards with trade liberalization. A compromise on the issue resulted in a paragraph on labour standards in the final Declaration of the Conference, the first time that a reference to such standards was included in a WTO official document. At first blush, the paragraph appears to close the door to further consideration of the link of trade with labour standards within the WTO, but this is unlikely to be the case. The efforts to examine the link between labour standards and trade within the WTO will continue after Singapore.

The WTO was established at Marrakesh in 1994 at the conclusion of the Uruguay Round to provide an institution to administer the General Agreement on Tariffs and Trade (GATT) and other Uruguay Round agreements as well as to provide a more effective dispute resolution mechanism than existed under GATT. The subject of a social clause was discussed at Marrakesh, but no decision was taken on the subject. While a Committee on Trade and Environment was set up as a result of pressure from developed countries, no WTO committee or working group was created on labour standards and trade. The only mention of the subject at Marrakesh was a brief reference in the Chairman's lengthy list of issues that could eventually be considered in the WTO work programme.

The Ministerial Conference meets every two years and is the highest WTO authority. At the first Conference in Singapore a number of important issues, in addition to the social clause, were on the agenda. A virtually complete agreement on Information Technology was adopted at the Conference, working groups were established to examine the relationship between trade and the areas of investment, competition policy and government procurement, the Committee on Trade and Environment was established as a permanent WTO body, and the WTO signed a cooperative agreement with the IMF, similar to an agreement earlier signed with the World Bank. Several months after Singapore a much-heralded agreement on telecommunications was adopted. Once again, the ministers refused at Singapore to set up a committee or working party on trade and labour standards.

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The controversy over the social clause arose early in the Conference when an officers' invitation to Michel Hansenne, Director-General of the International Labour Organisation (ILO), to address the ministers was withdrawn due to objections from developing countries who wanted no discussion of labour issues at the meeting. The linking of trade and labour standards within WTO was urged most strongly by the United States, France and some other developed countries, and opposed by a substantial number of developing countries (and the United Kingdom). A compromise between the proponents and opponents resulted in the inclusion of the following paragraph in the final Ministerial Declaration (which has already been given differing interpretations):

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organisation (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.<sup>1</sup>

What is the significance of this statement for the future work of the WTO and trade/labour standards linkages? In one sense, it is a breakthrough for those promoting a link since labour standards are finally mentioned in an official WTO document. In addition, it is a clear statement of support for core labour standards by WTO membership – in other words, support as WTO members and not only as members of the ILO. Nevertheless, it appears to lay at rest the addition of an explicit social clause to WTO agreements which would permit member states to refuse trade benefits to states violating core labour standards. The Declaration emphasizes that the ILO, and not the WTO, is the competent body to set and deal with labour standards, thus rejecting suggestions that the WTO itself might take the lead in setting and enforcing labour standards.

But the Declaration does not mark the end of efforts to raise the subject of the link between labour standards and trade at the WTO. While an explicit social clause is no longer (if it ever was) a viable option within GATT/WTO, the broader problematique of the link between trade and labour standards as an issue within the WTO was not put to rest at Singapore, despite the Concluding Remarks of Mr Yeo Cheow Tong, Chairman of the Conference. He stated,

... There is no authorization in the text for any new work on this issue.... Some delegates had expressed the concern that this text may lead the WTO to acquire a competence to undertake further work in the relationship between trade and core

1 World Trade Organization, Singapore Ministerial Declaration, para. 4. WT/MIN(96)/DEC/W. 13 December 1996. An earlier draft of this Declaration, discussed in Geneva, and serving as a starting point for negotiation in Singapore, included the sentence: 'We recall that all members have subscribed to the Universal Declaration on Human Rights.' The reference to human rights was dropped in the final draft of the Declaration.

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labour standards. I want to assure these delegations that this text will not permit such a development.

As Charlene Barshevsky, the US Acting Trade Representative, pointed out in a news conference, it is the text of the Declaration which expresses the agreement of the delegates – the Chairman's remarks are his own interpretation and do not represent the collective views of the Ministers. And the language of the Declaration does not expressly foreclose further consideration of trade/labour standards links within WTO. Indeed it refers to continuing collaboration between the ILO and WTO in this regard.

The relationship of labour standards to trade liberalization will continue to be an issue at the WTO due to (i) continuing pressure by leading industrialized countries; (ii) the raising of the issue in relation to WTO work, for example, on labelling and investment; (iii) continuing criticism of the WTO from consumer organizations, trade unions and other concerned groups for failure to consider the social aspects of trade liberalization.

The inclusion of a reference to labour standards for the first time within an official WTO document indicates the importance that leading trading countries accord to the subject, and will undoubtedly continue to accord to it as attested by the statements of numerous ministers at Singapore. Equally significant is the acceptance by developing countries opposed to trade/labour linkages of a reference to labour standards in a WTO document – even if interpreted as rejecting further consideration. The US threatened to refuse to sign the Declaration if it did not refer to labour standards.<sup>2</sup> The Dutch and Scandinavian Ministers also supported WTO consideration of labour standards. Speaking for the European Union, Sir Leon Brittan gave mild support, hindered from a stronger endorsement by the opposition of the United Kingdom. Developing countries, most notably Malaysia and Egypt, argued strongly against consideration of labour standards by the WTO, reiterating contentions that the trade/labour standards link was a reflection of protectionist tendencies and was aimed at limiting the comparative advantages of developing countries.

The failure of the Ministerial Declaration to close the door explicitly on any further consideration of the topic leaves open the likelihood that the issue will surface in other work of the WTO concerning, for example, labelling and investment. The movement for the labelling of goods to indicate conformity with core labour standards – particularly the prohibition of extreme forms of child labour – is spreading in the United States and Europe. In Germany and other Western countries a campaign for the use of the label 'Rugmark' to indicate that children have not produced the carpets in question has been relatively successful. The WTO will be concerned that labelling not be used by countries as a means of forbidding imports

2 It was suggested by some prior to Singapore that the US might be using the labour standards issue only as a negotiating technique to obtain other highly desired results at Singapore. This does not appear to be the case. While the workers' rights issue may not have been the highest issue on the agenda of the US at the Conference, it was obviously an important issue to the US in its own right and there is no evidence of an effort to use the issue as a *quid pro quo* for other desired issues.

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in violation of WTO agreements. The ILO is currently undertaking research relating to labelling, and collaboration between the WTO and ILO on labelling issues can be predicted.

The issue of labour rights will undoubtedly also be raised in the new WTO working group on trade and investment. In 1976 the Organisation for Economic Co-operation and Development (OECD) adopted a Declaration and Guidelines on International Investment and Multinational Enterprises, which included provisions on employment and industrial relations. In 1996, the OECD published an extensive study on Trade, Employment and Labour Standards and, following the recent widespread strikes in Korea as a result of amendments to the Labour Law, the OECD called a special meeting to discuss labour issues in Korea. Membership in OECD is expanding beyond the limited group of highly industrialized states, as witnessed by the recent addition of Korea to OECD membership. OECD member states, also members of WTO, will already have considered the relationship of labour standards in the context of investment at the OECD. The issue can scarcely be avoided within the new working group on trade and investment.

Poul Nielson, Danish Minister for Development Cooperation, referred in Singapore to pressures on governments from consumer groups to link social issues and trade liberalization: 'The consumer is becoming increasingly powerful in international trade.... If the consumer feels that the WTO takes no interest in his main concerns, the WTO and the aim of liberalization of trade will lose public support.'<sup>3</sup>

Similar comments referring to lack of support for trade liberalization among consumer groups were also mentioned by other industrialized country ministers. Pressures by environmental organizations on developed countries and criticism of the GATT by these organizations led to the setting up of a WTO Committee on Trade and Environment; will continued concern by consumer organizations and trade unions lead to a similar response within the WTO? Since such criticism may inhibit further trade liberalization the WTO must necessarily be concerned. Developing countries will undoubtedly, however, continue to attempt to block further consideration of the issue, referring to the paragraph in the Declaration that the ILO, and not the WTO, is the organization concerned with labour issues.

As Michel Hansenne, Director-General of the ILO stated, 'The ball is now in the ILO court.' The ILO has now been recognized as the organization mandated to consider workers' rights in the context of trade, but this institution has long been hesitant to face the issue of trade and workers' rights in view of opposition from governments and employers' organizations.<sup>4</sup> A Working Party on the Social Dimensions of the Liberalization of International Trade was set up by the ILO Governing Body in 1994 on the seventy-fifth anniversary of the ILO, but has made little progress thus far. The recent efforts of the ILO have been mainly to clarify the concept of core

<sup>3</sup> WT/MIN(96)ST/6, 8 December 1996.

<sup>4</sup> See Leary, 'Workers' Rights and International Trade: The Social Clause (GATT, ILO, NAFTA, U.S. Laws)', in J.N. Bhagwati and R. Hudec (eds.) *Fair Trade and Harmonization*, vol. 1 (1996) 177.

international labour standards (the ILO conventions concerned with fundamental human rights) and to consider the strengthening of the ILO supervisory procedures.

It was the weakness of these procedures that initially led the trade unions to urge the linking of workers' rights with trade in the hope that trade sanctions might be used to enforce labour standards. To the extent that ILO procedures for implementing labour standards are improved, the pressure for trade sanctions may diminish. But despite the expressed support for core labour standards by WTO members in the Singapore Declaration, many countries – as well as employer organizations – continue to block better enforcement by the ILO. The statement in the Singapore Ministerial Declaration that the ILO and the WTO will continue to collaborate with regard to labour standards and trade is scarcely a total rejection of future work of WTO in this regard. However, the 'existing collaboration' of the WTO and the ILO on the issue has thus far been virtually non-existent. Other organizations, such as the OECD and UNCTAD (a UN organ which is also examining the issue), may contribute more than the ILO in the future to the issue of trade/labour links. If so, the ILO will have lost an important opportunity.

Another clause in the Ministerial Declaration deserves passing mention. The section of the Declaration referring to developing countries states: 'We will continue to work for greater coherence in international economic policy-making...'<sup>5</sup> One of the major critiques of the WTO as well as the Bretton Woods organizations has been their failure to take into account the social and human rights norms established by other international institutions. Thus, there has been a lack of a coherent approach among international organizations. Not too much should be read into the Singapore statement, since it is stated that there should be coherence only in 'economic policy-making'. Nevertheless, as other economic policy organizations such as the OECD and probably the World Bank in the future begin to consider the relevance of social norms, the WTO may also be led to consider them.

5 *Supra* note 1, para. 5.