

Addressing Environment and Labor in the WTO

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The linkages between trade, environment, and labor should be addressed by the World Trade Organization (WTO) both to increase public support for freer trade and to achieve more coherent international governance. This paper will suggest that there are many useful steps that the WTO could take in Seattle. For those who follow environment and labor issues, my proposals may look minimalist. But in working on these issues for many years, I have seen how hard it is to make any progress.

A few news items can help in framing the debate. In July 1999, the Secretary-General of the United Nations issued a Joint Statement with the International Chamber of Commerce (ICC) reporting on the continuing dialogue between the two organizations. Among many interesting points, the Statement said:

The rules-based multilateral trading system was not designed to address these non-trade issues [meaning labor rights, human rights, and environmental protection]. To call on it to do so would expose the trading system to great strain and the risk of increasing protectionism while failing to produce the desired results.¹

Around the same time a Thai government official said that Thailand will reject any proposal that labor issues be included in the new trade round.² Another report said that The Philippines will call on the WTO to defer inclusion of labor and environment issues in its new agenda.³

How should one appraise these statements and similar ones coming from many developing countries? It depends on what they mean. If Kofi Annan and the ICC are saying “Don’t try to negotiate labor and environment policy in the upcoming WTO round; keep these issues in the international institutions where they belong,” then this would be good advice. If Mr. Annan and the ICC are saying that the rule-based trading system has no jurisdiction over national measures used for environmental protection, then this would be welcome news to many non-governmental organizations (NGOs) who were disappointed with WTO Clean Air and Shrimp-Turtle cases. (But the news would be untrue!) If Mr. Annan and the ICC are saying that there are no economic and ecological links between trade and non-trade issues, then the Joint Statement would surely be wrong.

That salient links exist between trade flows and environmental protection cannot seriously be questioned.⁴ In the absence of proper environmental regulation and resource management, increased trade might cause so much adverse damage that the gains from trade would be less than the environmental costs.⁵ Years of analytical work have shown that the scale, structure, and physical effects of trade can potentially harm the environment. While it is probably true that most trade causes little adverse impact, the fact is that when trade does cause harm (even outside the territory of the exporting nation), the WTO does nothing about it.

In view of the inattention to these linkages, it may not be surprising that over 500 environmental NGOs in 60 countries have teamed up to fight the new round. Similarly, some environmental groups are opposing an “early harvest” in forest products liberalization out of a fear that it would accelerate deforestation. These NGOs are surely overreacting. But can anyone honestly assure them that their fears are wholly unfounded?

Links also exist between trade and labor, but of a different kind. While exploitative labor conditions can be bad for workers (leaving aside the question of whether they get compensated by higher wages), such conditions exert no physical effect on consumer in the importing country. There is nothing analogous in labor policy to transborder spillovers of environmental “bads,” or to global challenges like climate change. The trade-labor effects are purely economic, and largely distributional. Trade can cause job loss, but is unlikely to do so for a country as a whole. While there have been many episodes where export imperatives have led governments to violate core labor rights, these episodes have typically occurred in non-democratic countries. Thus, at least among democratic countries, greater trade is unlikely to be bad for workers in aggregate.

The different manner in which trade affects the environment from how it affects workers points to the need to separate “trade and environment” from “trade and labor” as policy issues. Prescriptions for environment may be inappropriate for labor. Of course, the world community acknowledged in 1919 when establishing the International Labor Organization (ILO) that labor policy cooperation among governments was desirable and that labor rights were to be part of international law.⁶

Appropriate Policy Assignment

It is unlikely that Mr. Annan and the ICC are denying that trade, environment, employment, and development are all linked. Rather, they are making a point about appropriate policy assignment in the

international community. What they seem to be saying is “Don’t put environment and labor on the *agenda* for the next WTO round.” Thailand and The Philippines are probably saying the same thing.

Undertaking trade negotiations regarding environment and labor measures would be a bad idea.⁷ To start with, it would be fruitless. The issues are far too polarized within the WTO to achieve a consensus, especially at a time when new protectionist measures are being taken. But the more important reason to avoid such negotiations is that international environment and labor issues deserve continuous attention by governments rather than episodic attention in Rounds held years apart. Furthermore, environment and labor do not fit well into a negotiation where nations horsetrade their perceived commercial interests.

It would make no sense to condition further trade liberalization upon progress on labor and environmental issues.⁸ That would be like the ILO refusing to approve a treaty addressing the worst forms of child labor unless governments agreed to reform antidumping laws that thwart developing country exports. In general, progress on one goal should not be held up to await progress on another (especially when complementary).⁹ The sooner we can achieve more trade liberalization, the better.

In counseling against such negotiations, I do not mean to suggest that environment or labor should be absent from the new round. There are environmental reasons to liberalize trade and reduce distortions and it is appropriate to talk about that in the WTO. Negotiations on services -- such as energy and tourism -- might be given a boost by pointing to the environment as a reason to conclude the talks quickly. Negotiations on subsidies could benefit from greater attention to the environmental harms of fishery, agriculture, forest, energy, and mining subsidies.

That’s why the idea of conducting an environmental impact assessment of the new round is so valuable.¹⁰ Environmental factors should be considered by government trade negotiators. If a trade initiative will help the environment, then it should be given a high priority. If a trade initiative will hurt the environment, then governments should reconsider the wisdom of going ahead with it. Having a process of environmental assessment should lead to a more nature-friendly trade round and will also give the public greater assurance that the WTO does not look at its mandate too narrowly.

To assure that the environmental impact of trade agreements is given adequate consideration, it would be helpful for the U.N. Environment Programme to create a group of environment ministers to monitor the new round. Such a parallel group could also give advice to trade negotiators regarding any new WTO rules being considered.

So far I have identified with Secretary-General Annan, the ICC, and the ASEAN countries, but for the remainder of this paper I am not sure whether we agree. While labor and environment as such should not be negotiated in the new round, there are several useful initiatives that trade ministers can begin in Seattle regarding these two issues. The WTO is now a cutting-edge international organization with institutional capacity to interpret its rules, propose WTO amendments, cooperate with other international organizations, and work with civil society.¹¹ It must not hesitate to make new policy outside of the context of trade rounds.

Next Steps on Environment

The Ministerial Council should take the following actions on trade and the environment:¹²

1. **Subsidies**– Analytical work in the Organisation for Economic Co-operation and Development (OECD) and the WTO Committee on Trade and Environment have shown that some subsidies – for example, agriculture and fisheries – can be bad for the environment as well as trade-distortive. It is time for the WTO to address this problem in cooperation with other international organizations. One option is to get governments to agree to phase out such harmful subsidies. Another is to prohibit such subsidies, just as export subsidies are prohibited. Another is for the WTO to publicize these subsidies in order to inform citizens in the country using them. The WTO might assign this issue to its Committee on Subsidies and Countervailing Measures and ask for a report and recommendations within a year. It should be noted that earlier this year, several governments proposed that the WTO work to reduce or eliminate fishery subsidies that contribute to overfishing.¹³

2. **International Standards**– The WTO Agreement on Technical Barriers to Trade (TBT) calls on governments to use international standards as a basis for their technical regulations (unless such standards would be ineffective or inappropriate).¹⁴ The preeminent standardizing organization, the ISO, has several environmental management standards (e.g., ISO 14000). The Seattle Ministerial should direct the TBT Committee to promote the use of ISO environmental standards and to assist developing countries in acquiring the technical assistance that they need.¹⁵

3. **Dispute Settlement**– The WTO should try to avoid becoming embroiled in trade and environment disputes. The WTO dispute settlement provisions (art. 5) authorize the Director-General to offer good offices, conciliation, and mediation, but these procedures have not been utilized. The Seattle Ministerial Conference should issue a declaration calling on WTO members to try to resolve

environment-related conflicts without invoking dispute settlement. Such a declaration should also call for the Director-General to appoint a high-level conciliator when new disputes arise. For example, in the Shrimp-Turtle case, a conciliator might have helped both sides work out an international agreement to safeguard endangered sea turtles.

Many other actions by the WTO are needed – for example, clarifying that trade measures taken pursuant to multilateral environmental agreements will not be adjudged a WTO violation.¹⁶ While no such measure has been challenged in the WTO, environmental negotiators are under increased pressure not to use trade measures in new environmental treaties. A solution to this problem is long overdue. But in the present political climate, it is difficult to imagine any progress being made.¹⁷ None of the governmental proposals comes close to resolving the issue in a balanced way.

Next Steps on Labor

As noted above, labor is different than the environment. With one historical exception, there are no multilateral labor treaties that use trade measures as an instrument of employment policy. Nor are there expected to be many labor-related disputes going to the WTO. Nevertheless, there is much that the Seattle Ministerial can do to reposition the WTO to promote higher labor rights. The Ministerial Council should take the following actions on trade and workers:

1. **Forced Labor**- The General Agreement on Tariffs and Trade (GATT) Article XX(e) permits governments to ban products made by prison labor. Yet the WTO provides no assistance to governments in knowing when forced or prison labor is being used in exported products. Some might argue that this is none of the WTO's business. Yet the WTO could lift its esteem with the public if it were to work with other organizations to foster more information-gathering about the "forced labor content" of exports. Not many countries currently ban imports made by forced labor. Yet more would do so if better information were available. It is interesting to note that in June 1999, the ILO passed a resolution deploring the widespread use of forced labor in Myanmar.¹⁸

2. **Social Labels**– There is pressure within some countries to use trade measures to prevent imports of products made under labor conditions violative of fundamental labor rights. A less coercive approach would promote new labeling systems to certify that the production process did not violate any core international labor standards. The Seattle Ministerial might establish a working group to examine social labels that could work with the ILO in any future consideration of a Convention on private labeling

and certification. It is important that labels be truthful and not be designed in a way that disadvantages imports.

In October 1999, the U.S. government proposed that the WTO establish a Working Group on Trade and Labor to study the linkages between trade and employment, social protections, and core labor standards.¹⁹ This is surely a well-intentioned proposal. But a Working Group of trade bureaucrats seems a doubtful modality for studying complex economic, social, and legal phenomena. Certainly, the thin record of accomplishment since 1991 from the GATT and WTO committees on trade and environment should give policymakers pause in setting up another such mechanism.²⁰ If governments seek a thoughtful study of these relationships, then a much better modality would be for the WTO to set up an eminent persons commission as the GATT did in preparation for the Uruguay Round.²¹

New Institutional Steps

Although 20th century experience demonstrates the advantage of functional international organization, it is apparent that the lack of coordination among organizations is a major deficiency. As Renato Ruggiero stated several months ago, “We can no longer treat human rights, the environment, development, trade, health, or finance as separate sectoral issues, to be addressed through separate policies and institutions.”²² The WTO needs to do a much better job of coordinating its work with the World Bank, the OECD, the U.N. Conference on Trade and Development, the World Health Organization (WHO), the Food and Agriculture Organization (FAO), UNEP, the ILO, and others. The Seattle Ministerial should call for improved coordination and provide that the WHO, UNEP, and the ILO be given opportunities to participate in WTO Committees and to observe Council meetings. The ILO participated in the conferences that drafted the GATT in 1947. Can its involvement today be less needed?

For high profile issues, the WTO should consider establishing more extensive cooperative procedures. For example on food safety, there should be closer cooperation with the Codex Alimentarius Commission. On emissions trading, there should be cooperation with the Parties to the Climate Change Convention. On fishery subsidies, there should be cooperation with the FAO. On trade and employment, there should be cooperation with the ILO Working Party on the Social Dimensions of the Liberalization of International Trade.²³ On access to medicine in poor countries, there should be cooperation with WHO.²⁴ On the patenting of life forms, there should be cooperation with the parties to the Convention on Biological Diversity.

Another vital institutional step would be for the WTO to improve its interface with civil society. Although some governments argued last March at the WTO Symposia that NGOs should provide input through “their own government,” this is inadequate in at least three ways. First, transnational NGOs, such as Consumers International, are established to influence all governments. Second, some NGOs operate in countries that have not been allowed to join the WTO (e.g., China). Third, many NGOs in protectionist countries have lost political battles at home and hope to use the WTO to put pressure on their governments to follow WTO rules. Thus, no normative reasons exist for the WTO to continue resisting NGO involvement.

It would be good for the WTO to hear a broader range of views than are put forward in Geneva by government officials. Consultation and cooperation with NGOs can make the WTO more effective and has the potential of generating public support for a rule-based trading system.²⁵ There are many modalities for achieving greater NGO involvement. For example, the U.S. Business Roundtable recently proposed that once a year, the WTO convene a meeting of various groups such as consumers, business, environment, and labor.²⁶ The WTO could also ask two NGOs headquartered in or near Geneva – the World Conservation Union/IUCN and the International Centre for Trade and Sustainable Development – to help manage the process of NGO input. It should also be noted that if the WTO confers cooperative status on the ILO, the ILO would be able to send observers from labor unions and employer organizations.

Conclusion

The debate on environment, labor and the WTO remains polarized among governments as well as interest groups. There is a danger that mismanagement of these issues in Seattle could undermine support for the new round even before it begins. The WTO should not negotiate environment and labor as such.²⁷ But the WTO can take steps in Seattle that would promote greater harmony between free trade and other social objectives.

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¹Joint Statement on the Global Compact proposed by the Secretary-General of the United Nations, July 5, 1999.

²“Thailand Will Reject Inclusion of Issues Connected to Labor in WTO Trade Round,” *Daily Report for Executives*, July 8, 1999, at A59.

³“Philippines to Urge WTO Deferral of Links to Labor, Environment Issues,” *Daily Report for Executives*, July 8, 1999, at A5.

⁴For example, the new WTO Secretariat report on trade and environment details these links. WTO Secretariat, Trade and Environment, Special Studies 4 (1999), available on <http://www.wto.org> [hereinafter WTO Report]. The World Bank has also recently issued a volume on this topic. See World Bank, Trade, Global Policy, and the Environment, World Bank Discussion Paper No. 402 (Per G. Fredriksson ed., 1999).

⁵“Trade and the Environment,” in GATT, *International Trade 90–91*, at 20 (1992).

⁶Steve Charnovitz, “Promoting Higher Labor Standards,” *The Washington Quarterly*, Vol. 18, 1995, at 167.

⁷Of course, there is a counterargument: Since international environmental decisionmaking affects countries differently and requires some attention to national commercial interests (e.g., climate change), some issues might be brought into the WTO so that there will be broader issue sets among which mutually beneficial deals could be made. But any attempt to link trade liberalization with higher environmental standards is sure to give both the North and the South excuses to avoid further market opening.

⁸See, e.g., *Fair Trade and Harmonization. Prerequisites for Free Trade?* (Jagdish N. Bhagwati & Robert E. Hudec eds., 1996).

⁹For an analysis of when linkage might be appropriate, see Steve Charnovitz, “Linking Topics in Treaties,” 19 *University of Pennsylvania Journal of International Economic Law* 329 (1998).

¹⁰At least four governments – the European Union, the United States, Canada, and Norway – have announced that they will be doing such assessments. It would be good if an international process could be devised to examine such nationally-produced assessments. For a discussion of methodology of environmental assessments, see WWF, *Initiating an Environmental Assessment of Trade Liberalisation in the WTO*, March 1999.

¹¹Agreement Establishing the World Trade Organization, arts. IX:2, X:1, V:1, V:2.

¹²In proposing that the Ministerial Council take these steps, I am aware that some of them could be acted upon by the WTO Council or WTO Committees. But no such action has occurred at the lower levels since 1995.

¹³The countries are Australia, Iceland, New Zealand, The Philippines, and the United States.

¹⁴TBT art. 2.4. Some international standards might fall outside the purview of this article because they deal with processes and production methods that are unrelated to the product.

¹⁵TBT arts. 11, 13.

¹⁶The National Wildlife Federation has proposed an explicit deference to MEAs. "Trade Policy Lacking Environmental Content Cannot Win Public Support Needed to Succeed," NWF Press Release, May 20, 1999.

¹⁷According to India's Centre for International Trade, Economics & Environment, "developing countries continue to view attempts to accommodate MEAs in the WTO as a Northern agenda." *Ratchetting Market Access*, CUTS, 1998, at 34.

¹⁸Resolution on the Widespread Use of Forced Labour in Myanmar, International Labor Conference, June 1999.

¹⁹"U.S. Formally Seeks WTO Working Party on Labor Rights and Trade," *Inside U.S. Trade*, November 1, 1999, at 1; "Moves to Link Trade, Labor Could Scuttle Seattle Round, Developing Countries Warn," BNA Daily Report for Executives, Nov. 9, 1999, at A-10.

²⁰See Steve Charnovitz, "A Critical Guide to the WTO's Report on Trade and Environment," *Arizona Journal of International and Comparative Law*, Vol. 14, 1997, at 341.

²¹See GATT, *Trade Policies for a Better Future*, 1985. The Commission had seven members; the American was Bill Bradley.

²²Renato Ruggiero, "Beyond the Multilateral Trading System," April 12, 1999.

²³In June 1999, the G-8 Summit Communiqué stressed the importance of effective cooperation between the WTO and the ILO on the social dimensions of globalization and trade liberalization. Final Communiqué of Cologne Summit, para. 26, *Daily Report for Executives*, June 22, 1999, at T11. In July 1999, the European Commission proposed a joint WTO/ILO high level meeting on trade, globalization, and labor issues. See "The EU Approach to the Millennium Round," July 8, 1999. This might be a good idea if sufficient lower-level work preceded the high-level meeting.

²⁴"WHO to Address Trade and Pharmaceuticals," WHO Press Release, May 22, 1999.

²⁵In May 1999, the OECD Communiqué of Trade and Finance Ministers stated that “Active and constructive communication and consultation with civil society are essential for public understanding of the benefits and challenges of liberalisation.”

²⁶The Business Roundtable, “Preparing for New WTO Trade Negotiations to Boost the Economy,” May 1999, at 26.

²⁷See the section on “Limiting the WTO’s Role” in WWF Position Statement, March 1999.