Trade Agreements: A Pro/Con Analysis of Including Core Labor Standards

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Summary

The 107th Congress is expected to consider extending fast-track trade implementing authority to the President. Fast-track procedures provide for limited debate and no amendments to legislation that implements certain trade agreements. A key area of debate will likely be whether to require resulting trade agreements to include core labor standards in the body of the agreement backed by enforcement procedures. Since standards for protecting intellectual property rights (patents, copyrights, industrial designs, trade secrets, integrated circuit layout designs, geographical indications such as Champagne, and trademarks) are already included in the World Trade Organization (WTO), proponents argue that including standards that protect labor rights in trade agreements is a logical next step, while others believe that such a move could cause more harm than good. This report explores arguments for and against inclusion of labor standards in trade agreements. This report will not be updated.

The 107th Congress is expected to consider extending to the President fast-track trade implementing authority (also now called trade promotion authority). By extending this authority Congress agrees to limit debate on resulting non-tariff trade agreements and to vote on the pending legislation within a given time frame and without amendments. This is intended to give our trading partners confidence that negotiated trade agreements will definitely be brought to a vote and that they will not be amended, thereby necessitating renegotiations. As examples, the North American Free Trade Agreement (NAFTA) and the agreement creating the World Trade Organization (WTO) were negotiated using fast-track authority. However, this authority expired in 1994, and subsequent attempts to renew it have failed. Fast-track authority contains guidelines the Administration must follow to qualify for this special consideration. *1*

One of the more contentious issues is the debate on fast track in the past has been attempts to require the President to incorporate labor and environmental standards directly into new trade agreements. *2* Proponents point to the U.S.-Jordan Free Trade Agreement awaiting congressional approval as a model. This agreement includes environmental and labor provisions directly within the agreement with enforcement via access to the dispute settlement mechanism.*3* This report will explore arguments for and against inclusion of core labor standards in trade agreements as well as suggestions for finding common ground.

The labor standards that have received wide acceptance as the "core" standards/principles were identified in the International Labor Organization's (ILO) 1998 Declaration on Fundamental Principles and Rights at Work. The document:

Declares that all Members, even if they have not ratified the Conventions in questions, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:
(a) freedom of association and the effective recognition of the right to collective bargaining;
(b) the elimination of all forms of forced or compulsory labour;
(c) the effective abolition of child labour; and
(d) the elimination of discrimination in respect of employment and occupation.*4*

With support from developed country governments, the Declaration was adopted. Eight ILO conventions (treaties) have been identified as embodying these core principles. *5*

However, discussions of core labor standards in the trade debate typically refer to the more general principles listed above.

Arguments For and Against Including Core Labor Standards in Trade Agreements

The Uruguay Round of trade negotiations created the WTO which incorporated revised General Agreement on Tariffs and Trade (GATT) provisions and introduced new areas of coverage, including trade in services, and protection of intellectual property rights. Proponents of including labor standards in trade agreements point to WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) as setting a precedent for incorporating within trade agreements standards which establish legal frameworks for protecting the rights of resource holders. Many argue that intellectual property rights and worker rights are fundamentally similar and both deserve protection. TRIPS formulated legal standards protecting owner rights for seven types of intellectual property (copyright, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and trade secrets). Proponents of including labor standards in trade agreements contend that if the WTO is the appropriate venue for setting legally binding standards protecting intellectual property rights, then it and other trade agreements are the proper venues for similarly protecting labor rights. They see access to the dispute settlement processes typically included in trade agreements as a distinct advantage in ensuring labor standards are enforced. For example, with the WTO's dispute settlement process, charges of violating WTO rules cannot be brushed aside, and if the charges are found to have merit, the violating party is required to provide a solution. Failure to provide a solution may result in trade sanctions. *6*

Additionally, some observers argue that including labor standards in trade agreements can be justified on humanitarian grounds. Some also contend that if one government fails to protect

labor rights, workers at home and abroad may incur lower wages or lost jobs. They further contend that trade measures enforcing labor standards could alleviate these adverse wage and labor pressures in a manner similar to WTO measures aimed at countering polices that artificially increase exports.

Harvard Professor Dani Rodrik argues that importing items produced using labor standards vastly lower than those prevailing in the United States is little different morally from producing the product in the United States with the same lower standards. He argues that the only difference between using child labor to produce footwear in a Honduran sweatshop versus producing the footwear with the same sweatshop process in the United States is that the production in the United States is against the law. He goes on to draw a distinction between a country having a comparative advantage in producing an item based on differences in resource endowments and a comparative advantage based on lower standards. *7*

A group of 99 intellectuals and leaders of non-governmental organizations is an open letter presented a developing country point of view. They asserted that arguments for including labor standards in trade agreements are made by one of two groups: politically powerful lobbying groups that are protectionist and morally-driven human rights and other groups. They further contend that the morally-driven groups are misguided because their actions may harm the developing country laborers they are trying to help by forcing them out of their jobs without providing a viable alternative. The authors concluded that the end result of trade-based labor standards, whether protectionist or morally motivated, is protecting developed country firms from developing country competition. *8* Many economists concur and also point out that in addition to the possible adverse impact on developing country workers, consumers in developed countries may have a more limited choice of goods and face higher prices for the goods available.

Criteria-based Arguments. Although the Uruguay Round did not utilize a formal set of criteria in determining if intellectual property rights (IPRs) should be included in the WTO, an Institute for International Economics (IIE) study developed a set and applied it to several standards, including intellectual property rights and labor. The evaluation criteria were: determine how trade-related the proposed standards are; coordinate failures of countries to enforce collective interest through stronger standards; determine the importance of international market or policy failures (i.e., an externality) the standards may address; and consider the ability of the dispute settlement mechanism to deal with standards effectively. *9*

Regarding IPRs, the study found that: (1) they are strongly trade-related; (2) inclusion of IPRs in trade agreements will allow for stronger, more uniform standards, and (3) standards varying from country to country introduce the possibility of policy-or market-induced failure. The study also found that both trade agreements and IPRs deal with similar commercial activities. Hence, the study concluded that the WTO dispute settlement process can be effective in dealing with intellectual property rights violations. *10*

However, the study found that violations of core labor standards are not clearly trade-related. It states that typically, in developing countries the sectors of the economy most often found to violate core labor standards are not involved in international trade, and the export sector is typically the most likely to conform to the standards.*11* Hence, a set of standards backed up by a threat of trade sanctions would oftentimes punish the most compliant sector. Second, if the most numerous violations are in the non-traded sectors, it is difficult to argue that trade-based labor standards are likely to develop stronger, more uniform standards to support the trading system. Third, this study maintains that incorporation of labor standards within a trade agreement may actually cause a policy failure rather than correct existing market failures. For example, as a result of trade sanctions, employment may fall in the impacted country's export sector and workers may be forced to seek employment in less-compliant sectors. Finally, the study found that trade agreements are not well suited to deal with "moral" issues such as labor rights. Trade agreements are typically structured to deal with quantifiable, commercial transactions. As a result, they may not be well equipped to deal with the judgments necessary in enforcing core labor standards. Another study based on similar criteria also concluded that labor standards should not be included in trade agreements, and others have concluded that because the WTO takes decisions by consensus, resistance by developing countries to addressing core labor standards within the WTO makes it impossible to include core labor standards within the WTO. *12*

In contrast, an Economic Strategy Institute study developed five questions to assess if core labor standards should be included in the WTO. The questions dealt with the: possibility of members agreeing on standards and resulting principles; possibility of international enforcement increasing members income and growth; extent of standards and principles violations; possibility that applying the dispute resolution process would result in increased income and growth; and assessment of the appropriateness of the WTO as a forum for addressing the issue.

The study concluded that "the United States should propose an LRTA(Labor Rights and Trade Agreements) in the WTO, and should seek similar provisions in regional and bilateral agreements." This conclusion was based, in part, on the belief that the WTO offers developing countries greater opportunity to seek concessions in other areas to compensate for "the economic adjustments and technical and financial burdens an LRTA could impose on them." *13* For example, they could seek technical assistance, or they could seek trade concessions in areas such as developed country barriers on agricultural and textile trade.

Finding Common Ground

While there appears to be a consensus on the importance of core labor standards, there are differing opinions on the best method or way to ensure widespread adoption. The fast-track debate today may, in effect, be viewed as a search for compromise or the finding of a middle ground on labor treatment in future trade agreements.

A number of possibilities have been suggested in terms of a compromise. Some point to an enhanced ILO as a possibility. Currently, the ILO attempts to utilize a strategy involving sunshine (openness), carrots (technical assistance and reward for compliance), and sticks (penalties for non-compliance). *14* However, many critics believe that in the past the ILO has been a weak and ineffective organization incapable of adequately enforcing core labor standards. For example, in the past, penalties for non-compliance were generally limited to adverse publicity. At the same time, others believe that the ILO has made substantial progress in improving its capacity to address labor standards. They point to the recent hardline stance the ILO has taken in calling for member nations to take appropriate actions against Burma because of the country's use of forced labor. As a result, some members including the United States and the European Union have indicated willingness to implement sanctions if Burma remains out of compliance with ILO recommendations.

Furthermore, the sunshine, carrots, and sticks approach does not require that the ILO be the implementing body. For example, a recent study developed a set of principles intended to guide any effort to enforce labor standards, either at the global or regional levels. *15* While the study concluded that the ILO is the appropriate body at the global level, it also concluded that the comprehensive regional agreements such as the proposed Free Trade Area of the Americas (FTAA) could address labor standards through effective reporting, assisting developing countries to achieve compliance, and targeted penalties for non-compliance (i.e., via enhanced sunshine, carrots, and sticks). In particular, the study stressed that penalties need to be more precisely targeted at companies that engage in practices that violate labor standards or government agencies that fail to enforce the law. The 1997 Agreement on Labor Cooperation between Canada and Chile (part of their comprehensive trade agreement) with its potential monetary enforcement assessments for violating labor provisions may serve as one model.

Voluntary measures could also play a role. For example, a labeling system indicating that participating companies producing products in accordance with core labor standards could be certified by an organization such as the ILO. Another voluntary measure could deal with corporate codes of conduct. While they are already relatively common, guidelines that move toward standardizing treatment of core labor standards may be helpful. *16* A likely key to any solution will be credibility. Developed and developing country leaders have to feel confident that the end result will be universal adoption of core labor standards formulated with developed and developing country interests in mind.

FOOTNOTES:

1. For information on fast-track see *Why Certain Trade Agreements are Approved as Congressional-Executive Agreements Rather than as Treaties*, by Jeanne J. Grimmet (CRS Report 97-896 A, updated March 28, 2001), or *Fast-track Implementation of Trade Agreements: Issues for the 107th Congress* by Lenore Sek (CRS Report RS20039, Updated Jan. 25, 2001).

2. NAFTA deals with these issues via side agreements The labor side agreement stresses cooperation, but may impose fines and trade measures as last resorts. For years U.S. law has reflected concern for international labor standards. For example, PL 95-118 instructs U.S. government representatives of financial institutions to encourage borrowing nations to meet worker rights, and there are numerous other examples of similar attempts to address these rights. However, NAFTA represents the first attempt to address labor standards via a trade agreement.

3. For information see "Jordan-U.S. Free Trade Agreement (FTA)" by Joshua Ruebner. *CRS Trade Briefing Book*. Last updated April 5, 2001. [http://www.congress.gov/brbk]

4. Available at [http://www.ilo.org]. For information on the ILO see In*ternational Labor Organization: A Fact Sheet* by Lois McHugh. CRS Report 95-766 F. Updated September 21, 1998.

5. They are: Convention #29-Forced Labor (No.156), #87-Freedom of Association and Protection of the Right to Organize (No,134), #98-Right to Organize and Collective Bargaining (No, 148), # 100-Equal Remuneration (No, 150), # 105 Abolition of Forced Labor (Yes, 151), # 111-Discrimination (Employment and Occupation) (No, 147), #138-Minimum Age(No, 105), and # 182-Worst Forms of Child Labor (Yes, 72). In parenthesis is whether the United States has ratified the convention and the number of countries that have ratified. Source: www.ilo.org. Title V of the Trade Act of 1974 as amended by Pl 98-573 spells out similar worker rights for developing countries receiving duty-free treatment for certain products. These are defined as: the right of association; the right to organize and bargain collectively; prohibition on the use of any form of forced labor; a minimum age for employment of children; and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

6. For details of the WTO"s operations see *The World Trade Organization: Background and Issues* by Lenore Sek (CRS Report 98-928 E, last updated January 12, 2001).

7. See *Has Globalization Gone Too Far?* By Dani Rodrik. Institute for International Economics. Washington, DC 1997, p.33./

8. See Bhagwati, Jagdish, et al. "Third World Intellectuals and NGOs Statement Against Linkage" [http://www.Columbia.edu/~jb38/]. They also believe that inclusion of intellectual property rights within the WTO is inappropriate. See also: Bhagwati, Jagdish. "Trade Liberlisation and "Fair Trade" Demands: Addressing the Environmental and Labour Standards Issues." *World Economy*. Vol. 18 (745-759), Nov. 1995 and Bhagwati, Jagdish. "After Seattle: Free Trade and the WTO." *International Affairs*. Vol. 77, 1 (15-29). 2001.

9. See "Regulatory Standards in the WTO" by Keith E. Maskus (Institute for International Economics WP 00-1, Jan., 2000). The study also applied these criteria to environmental and competition standards.

10. See Keith E. Maskus ibid

11. Peter Morici and Evan Schulz in *Labor Standards in the Global Trading System* (Economic Strategy Inst., Washington, DC, 2001) reported that an estimated 120 million children between 5 and 14 years old were fully at work in 1995 with about 12.5 million in export industries

12. See Khor, Martin. "A Comment on Attempted Linkages Between Trade and Non-Trade Issues in the WTO." Chpt. 7 (Part II); and Charnovitz, Steve. "Addressing Environment and Labor in the WTO." Chpt. 6 (Part II) of *The Next Trade Negotiating Round: Examining the Agenda for Seattle*. Columbia University, July 22-23, 1999.

13. See Peter Morici and Evan Schulz, op, cit

14. For a description of ILO operations see "The ILO and Enforcement of Core Labor Standards" by Kimberly Ann Elliott (Policy Brief 00-6, Institute for International Economics, July 2000).

15. See "Breaking the Labor-Trade Deadlock" by the Inter-American Dialogue and the Carnegie Endowment for International Peace. Working Paper 17, February, 2001.

16. The 1996 U.S. Department of Labor report *The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?* Concluded that "codes of conduct can be a positive factor in solving the global child labor problem."

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