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OECD Global Forum on Trade

TRADE POLICY ISSUES: THE LABOUR, ENVIRONMENTAL AND COMPETITION DIMENSIONS
FOREWORD

The rapporteur, Mr. Jean-Pierre Cling, (DIAL - Développement et insertion internationale) drew up this report on the discussions for distribution to participants at the Forum held on 8 and 9 March 2001. The report reflects the opinions of the author, except where the latter are expressly attributed to participants, and do not necessarily match the views of other participants or of the OECD.
1. This note reports on the seminar organised by the OECD on “Trade Policy Issues: The Labour, Environmental and Competition Dimensions”, which was held in Paris on 8-9 March 2001. The seminar brought together representatives of Member and non-Member countries (diplomats, economists, union officials, managers, international organisations, NGOs, etc.) The main focus here is on the statements and discussions concerning trade policies and labour standards, to which the bulk of the seminar was devoted.

2. Coming a little over a year after the WTO Ministerial Conference in Seattle and a few months ahead of the next conference in Doha, the seminar had two main objectives: first, to take stock of the situation as regards the complex and controversial subject of the link between trade policies and labour standards, at the same time providing some keys to understanding the issues, notably thanks to the results of economic research conducted recently and, second, to analyse the links between the different possible forms of intervention and the justification for them. The inclusion of this topic on the agenda of the forthcoming round of multilateral trade negotiations, which was proposed by the European Union and the United States, has in fact been responsible for causing a real North-South conflict.

3. As the first part of this report shows, the seminar confirmed that very appreciable progress in clarifying what is at stake and what is being discussed has been made in recent years. The debate has moved from one that originated in the industrialised countries and was centred on the supposed distortions of international competition generated by the developing countries’ cost-competitiveness, to one that is more global in terms of ethics and universal values and has to do with respecting man’s fundamental right to work. At the same time, economic studies have made for better analyses of the correlations between standards and development, while globally rebutting the assumed vicious circle of a lowering of standards (levelling down or “race to the bottom”) at the international level. Despite the absence of any such vicious circle, it is recognised that core labour standards are frequently contravened at world level. Such breaches concern in particular union rights and child labour, the two categories of violation most frequently cited and studied.

4. This justifies finding effective methods for ensuring compliance with core labour standards, though there are considerable differences of opinion, a matter which is dealt with in the second part of this report. The only point on which there is a consensus is the ILO’s role in defining and monitoring standards. The many other non-WTO forms of action (promotional mechanisms, technical assistance, development assistance, action at bilateral or regional level) are the subject of debate, particularly with respect to their effectiveness and legitimacy. To some extent, the WTO is a victim of its own success. On the one hand, it is certainly becoming the main focus of the debate on globalisation, whereby a gradual
expansion of its scope entailing an extension of the use of trade policies has been criticised. Conversely, it is for many people difficult to imagine a system of world governance, particularly concerning core labour standards, in which the WTO would not have to intervene.

5. The third part of the report summarises the main results of the OECD’s work on the linkages between trade policies, competition and the environment, and also the discussions on these subjects at the seminar. As in the case of labour standards, these are topics which several OECD Member countries propose should be incorporated in the WTO framework.
I. THE PAST DECADE HAS GREATLY CLARIFIED THE DEBATE AND PRODUCED A BROAD CONSENSUS ON THE CONTENT OF CORE LABOUR STANDARDS, AND ALSO ON THE REJECTION OF THESE STANDARDS BEING IN ANY WAY USED FOR PROTECTIONIST PURPOSES

6. In the industrialised countries, the debate about labour standards derives essentially from the fear occasioned by the increase in trade with the developing countries and its specific impact on employment. In some countries (Scandinavia in particular), concern has focused rather on issues related to respect for human rights. It fairly soon became necessary to define these standards more precisely by distinguishing between two sorts of factors.

7. On the one hand, there are elements of a quantitative nature that make up the direct determinants of the wage cost (wage rate, working hours, etc.). Analyses have shown that the low level of wage costs in the developing countries is mainly attributable to their level of development, and constitutes their comparative advantage in international competition. Even if it is generally recognised that the growth of trade with these countries results in an overall gain for the industrialised countries, it is not the case for all categories of the population. Unskilled workers, for example, can be disadvantaged in the process, although estimates of the magnitude of the impact on wages and employment for this category of worker vary widely. As was pointed out during the seminar, some disagreement remains as to the respective magnitudes of the two effects. Most economists, however, reckon that technical progress has a much greater impact than international trade on trends in employment and relative wages (Brown, 2000; Stern, 2001).

8. In contrast with the previous elements, core labour standards are above all qualitative in nature and relate to respect for human dignity, in the same way as civil and political rights. The 1998 adoption by the ILO of the Declaration on Fundamental Principles and Rights at Work marked a major step forward in this area. The Declaration defines four types of fundamental standard (see Box 1 below): freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labour; effective abolition of child labour; and elimination of discrimination in respect of employment and occupation. These fundamental standards relate to universally accepted values, most of which are contained in the Universal Declaration of Human Rights. The very rapid progress made in ratifying the ILO’s fundamental conventions shows that the adoption of the ILO Declaration has accelerated international awareness in this area: since October 1995, the number of ILO Member countries that have ratified all the fundamental conventions has more than doubled, reaching a total of 35 countries in mid-2000.

9. As a number of speakers said, core labour standards are still being disregarded in many countries. Freedom of association, for example, is frequently not guaranteed in practice, even when it is recognised in law. Likewise, child labour is still very widespread in the developing countries, though we have no precise estimates of it. Similarly, there have been many proven cases of forced labour, while discrimination based on ethnicity or gender remains commonplace. That said, the increase in the number of known violations of the conventions does not prove that the situation has worsened as regards compliance. Rather, it is evidence of a growing number of countries ratifying the conventions, and also of the improved follow-up mechanism put in place by the ILO.
Box 1: Fundamental Principles and Rights at Work
and fundamental conventions, as laid out in ILO documents
and decisions

1. Freedom of association and the effective recognition of the right to collective bargaining
   - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
   - Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

2. Elimination of all forms of forced or compulsory labour
   - Forced Labour Convention, 1930 (No. 29).

3. Effective abolition of child labour
   - Minimum Age Convention, 1973 (No. 138).
   - Worst Forms of Child Labour Convention, 1999 (No. 182). [This Convention is now designated as
     the eighth fundamental convention].

4. Elimination of discrimination in respect of employment and occupation
   - Equal Remuneration Convention, 1951 (No. 100).
   - Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Source: OECD (2000a)

10. The survey of the economic literature, presented by the OECD at the seminar, was based on a
    recent study of the subject by the Organisation (OECD, 2000a), updating its 1996 study. It shows that
    compliance with core labour standards favours development. It is a source of economic efficiency and
    improved skills and productivity. The studies on child labour also show that outlawing child labour can be
    an effective way of increasing adult wages (by reducing labour supply). In some cases, however, such
    bans can put households in a precarious situation.

11. The OECD had shown back in 1996 that there was nothing to suggest that non-compliance with
    core labour standards produced gains in competitiveness. Some more recent studies find a negative
    correlation between observance of labour standards and trade performance. A weakness of these
    econometric studies is that they consider labour standards to be “exogenous”, whereas it is clear that they
    are partly “endogenous”. First, they are often part of an industrial or development policy, and second,
    every country gradually improves its labour standards as its economy expands - as the experience of the
    industrialised countries over the past century shows, moreover.

12. Along the same lines, it is not possible to point to any vicious circle of falling standards at
    international level (“race to the bottom”) with the effect of increasing developing countries’ attractiveness
    to foreign investors. Big multinational firms, which are the main source of direct investment in these
    countries, tend on the whole to base their investment decisions mainly on criteria such as the size and
    buoyancy of the markets or the political and economic environment, not labour standards. Countries that
    do not comply with core labour standards receive only a minute share of international investment (China
    being a special case).
13. The main exceptions are export processing zones (EPZ). The actual principle of such zones is to give investors special advantages compared with national legislation, usually for tax purposes and sometimes also as regards labour laws. In this respect, the main contradiction in the way the zones operate is that, even when they do not observe core labour standards, wage levels and working conditions in the firms in question are often better than in the rest of the economy. According to the ILO (Hayter, 2001) and Moran (2001), the impact of EPZs on development in host countries depends largely on the strategy that the countries pursue: a strategy aimed at attracting quality investment, backed by a policy of manpower training and observance of core labour standards (see the example of Costa Rica), maximises the development impact of such investment. Conversely, a strategy based on over-exploiting unskilled labour, in violation of core labour standards, is likely to leave the country concerned in a "poverty trap".

14. A representative of the ILO broadened the perspective by showing that individual liberties are at once an instrument and an aim of development. This approach is based on the work of Amartya Sen, holder of a Nobel Prize for Economics (Sen, 2000), whose work is included in the latest World Development Report (World Bank, 2000). If it is accepted that human rights are an essential component of development, then approaches that ask questions about the link between political and social liberties and development (defined according to strict criteria such as GDP) are somewhat simplistic and specious, so that attempting to work out correlations between these variables is of little significance.

15. A conclusion shared by economic studies on the question (OECD, 2000a), and which was not called in question by the seminar participants, concerns the non-optimal nature of trade measures as an instrument for ensuring compliance with core labour standards. This is particularly true of measures to combat child labour, where a policy directly targeting the imperfections of the labour market (in other words, aimed at reducing the incentive for parents to have their children work) is deemed preferable. In the same way, there is no proof that trade sanctions can encourage the creation of unions in a particular sector of activity (on the contrary, they tend to reduce demand for labour in a given sector while increasing the power of employers). The lack of an optimal economic policy instrument accepted by all prompts us, in the following section, to wonder about the effectiveness and legitimacy of the large variety of means of action available in this area.

II. THERE REMAIN, HOWEVER, BIG DIFFERENCES OF OPINION AS TO THE BEST WAY OF ENSURING THAT Core LABOUR STANDARDS ARE OBSERVED

16. The international consensus regarding the scope of core labour standards also exists when it comes to the ILO role in defining the standards and ensuring compliance with them, which is partly explained by the Organisation’s tripartite nature, bringing together government, union and employers’ representatives. The adoption of the ILO Declaration was followed by the introduction of a mechanism for strengthened monitoring of the implementation of the conventions: annual report on non-ratification of the conventions; annual report on trends with regard to compliance with core labour standards throughout the world, etc. Along with this mechanism, the emphasis is very much on technical assistance and co-operation with these countries. In addition, the ILO went so far as to use Article 33 of its Constitution for the first time in November 2000, asking its members to re-examine their relations with Burma, which was found to be imposing forced labour on its population.

17. However, the ILO does not really have the power to punish countries in breach of the standards. The sanctions that the ILO imposed last year on Burma, for example, have not for the time being had any...
effect, apart from the not inconsiderable international pressure they have brought to bear. So in this sense it is “toothless”, to use the familiar expression. So the question arises as to how to make sure that core labour standards are observed throughout the world. The possible methods are quite varied and, at the same time, the degree of consensus about them differs widely (see Box 2) and their effectiveness is also very uneven. Generally speaking, the least coercive instruments are quite naturally those that arouse the least opposition.

**Box 2: Who should do what?**
*(Ranking by descending order of consensus)*

1. International Labour Organisation
2. Codes of Conduct (OECD, UN Global Compact, etc.)
3. Bretton Woods institutions (IMF, World Bank, etc.)
4. Regional agreements (NAFTA, Cotonou Convention, etc.)
5. Bilateral actions (Generalised System of Preferences, etc.)
6. World Trade Organisation

18. The codes of conduct observed by firms are meeting with growing success. They can be determined unilaterally by firms, by associations that handle social labels and, by international organisations (e.g. the OECD’s Guidelines for Multinational Enterprises, the UN Global Compact, etc.). Their success rests on the concern of consumers (particularly in North America and western Europe) that the products they buy are manufactured in line with the ethical principles to which they adhere. However, the non-coercive nature of the codes lessens their effectiveness, which is greatest in the case of consumer goods. An ILO study (Diller, 1999) shows, however, that the codes of conduct introduced by the multinationals on their own account often omit what is most restricting for them, and in particular matters concerning union rights. What is more, unions have expressed concerns that they may result in the “privatisation” of labour administration.

19. As much for internal reasons (the linkage between labour standards and development was not deemed sufficiently established) as because of the opposition from some of their shareholders, the Bretton Woods institutions had hitherto refused to include labour standards in their field of action. However, a change is now taking shape, as regards conditionality (for Poverty Reduction Strategy Programmes - PRSPs - in particular) and the targeting of aid (measures to combat child labour). More generally, the desire to ensure better compliance with core labour standards in the developing countries means an increased official development assistance effort by the industrialised countries (in particular the linkage between income and child labour). It is paradoxical, in this respect, that the major powers’ increasing demands in this regard go hand in hand with a trend reduction in their official development assistance budgets.

20. The inclusion of social clauses in North-South regional agreements (NAFTA, Cotonou Convention, etc.) is a means for the industrialised countries to get around the developing countries’ opposition to their inclusion in multilateral agreements. It may be deemed less coercive than the bilateral approach in that countries are free to sign regional agreements or not. By means of these agreements, the industrialised countries to some extent exchange access to their markets (accompanied, in the case of the
EU, by financial assistance) for a commitment by the developing countries to observe labour or environmental standards which satisfy their partners’ collective preferences.

21. Withdrawing the benefits accorded to developing countries under the major countries’ Generalised System of Preferences (GSP) is a purely unilateral course of action. In this sense, it is the strategy that prompts the most opposition - with the exception of the inclusion of this subject in the ambit of the WTO - because it is closest to that corresponding to the “social clause” concept proposed in the WTO. It is a policy employed with some success by the United States. As was shown during the seminar, the threats against Bangladesh led the government to authorise unions in the EPZs, whereas they had previously been banned. To the extent that the main investors in these EPZs come from OECD countries (Japan, Korea and the United States), the cogency of a co-ordinated approach - between OECD countries, for example - rather than the bilateral approach taken by the United States deserves to be raised in the future. The incentive method adopted by the European Union in the form of a more favourable GSP has for the moment not aroused a great deal of interest on the part of those potentially interested countries.

22. The desire to establish a link between labour standards and trade policies, by including this topic within the competence of the WTO, is profoundly ambiguous - as is illustrated below. This is due, first of all, to the fact that those who support this sort of approach each justify it on very different grounds involving considerations relating to fair trade, ethics and respect for universal values. It is due, also, to the ambiguity surrounding how this topic might possibly be brought within the competence of the WTO, which is partly because those promoting such a strategy are doing so for different reasons, and partly because of a certain lack of understanding of how the WTO works. On this last point, it must be pointed out that the sanctions handed down by the Dispute Settlement Body (DSB) are fundamentally different in nature from those imposed by the United Nations in that they only penalise countries whose trading practices harm some of their partners.

23. Originally, the justification for linking labour standards and trade practices had to do with observing a certain fairness in trade. The speech given by President Clinton at the Seattle Conference in November 1999 was a typical example of this concern: instead of addressing child labour throughout the world, he spoke about children working for export industries, and implications for the competitiveness of these industries with respect to American workers. So the debate about labour standards was born of the desire of a handful of industrialised countries to introduce a “social clause” in the WTO when it was set up in 1994, along the lines of what had been planned in the context of the Havana Charter in 1948. Such a clause, based on thinking similar to that which justified the adoption of anti-dumping measures, would have enabled one member country to withdraw tariff concessions from another on the grounds that competition had been distorted by failure to respect labour standards.

24. That proposal was rejected by a number of developing countries which were afraid that it would be used to disguise protectionist arguments. Some less ambitious proposals were put to the European Union by the United States at the WTO Ministerial Conference in Seattle in late 1999. They suggested setting up either a working party (USA) or a forum (EU) to study the linkage between trade and labour standards. The said proposals were once again rejected by a number of developing countries. A compromise proposal made at the seminar by the Australian Ambassador to the WTO would involve setting up a committee made up of high-level representatives of the competent international organisations, including the WTO, but outside the latter organisation.

25. A second way of bringing this question within the ambit of the WTO would be to authorise a country to refuse to import goods produced under unethical conditions. This was the approach adopted by the United States with respect to the environment when it banned imports of shrimp caught with nets that might adversely affect marine fauna. The exception granted under GATT permitting action to restrain

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1 The United States was condemned by the DSB in respect of this case (shrimp/turtle ruling), the US losing the case by virtue of the details more than the principle behind the action.
trade in articles made by prisoners (Article XX) could also be extended to cover all core labour standards. That approach is often rejected in the name of WTO rules, which do not allow processes and production methods (PPMs) to be taken into account. However, apart from the fact that the above example constitutes an exception to that principle, it was observed at the seminar that a much more far-reaching exception had been made in signing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

26. A third justification for using trade policies is the universal nature of trade. That being the case, using trade sanctions is often the only way of retaliating against countries on which the international community imposes sanctions, usually decided on within the framework of the United Nations Security Council. The sanctions imposed on South Africa at the time of apartheid, or more recently on Iraq, come within this context. From this perspective, it would be possible to authorise WTO members to cease applying their multilateral commitments vis-à-vis countries liable to ILO sanctions, just as Article XXI provides in the case of countries liable to sanctions imposed by the United Nations Security Council. In the absence of such authorisation, there is the risk (albeit slight) of a country that has had sanctions imposed on it by another Member country, as a result of an ILO decision, filing a complaint with the DSB, and of the latter handing down a judgement that sets a precedent.

27. The setbacks encountered by those promoting labour standards at the WTO have not, however, put an end to the debate, particularly since the International Confederation of Free Trade Unions (ICFTU), which is the main union confederation at world level, is continuing to argue for social questions to be included in the WTO’s remit, though without saying how this should be done. Its position is backed by numerous unions in the developing countries, as was pointed out at the seminar by their representatives from South Africa, Brazil and Malaysia. However, some unions in the developing countries (in India particularly) are hostile, sharing their governments’ fears regarding the protectionist risks incurred in the event this type of measure were to be used by the industrialised countries.

III. THE QUESTION OF THE LINKAGE BETWEEN TRADE POLICIES, COMPETITION AND THE ENVIRONMENT IS GENERATING INCREASING INTEREST

28. The OECD work presented at the seminar identified the linkage between trade policies and competition (a lack of competition at national level being capable of counteracting the effects of the opening up of markets), and also the role of competition policies as a factor contributing to development (OECD, 1999). The representative of the Department of Trade and Industry (United Kingdom) observed that two factors mainly explained the growing interest being shown in this subject, which was evidenced by the fact that a hundred or so countries were in the process of drawing up competition laws: first of all, the Asian crisis had drawn attention to the risks involved in failing to observe elementary principles in this area, especially regarding concentration and transparency; secondly, the domestic liberalisation policies pursued by developing countries in recent years had enhanced the role of the market to the detriment of that of the state, by the same token increasing the need for market regulation.

29. Discussion of the possible content of multilateral agreements in this area prompted the following question: is the sole purpose to tackle procedural questions, such as compliance with principles of non-discrimination or transparency in policy implementation, etc.? Or is the object also to tackle substantive questions relating to policy content? The first approach seems more acceptable to many countries, so that a minimal agreement could cover the basic principles of competition law and policies,
while at the same time providing for co-operation between the national authorities responsible for competition and commitments as regards training.

30. Also presented was the work of the OECD on methods of evaluating the environmental impact of trade liberalisation agreements (OECD, 2000b). The growing interest in this topic is due in particular to the pressure of public opinion in the industrialised countries, and impact appraisals are now an integral part of trade policy in the majority of OECD countries. However, the environment is an international public good - not unlike labour standards. As a result, it is not a subject that can be handled solely at national level, which justifies the positions held by those promoting the inclusion of the environment in international agreements.

31. In contrast with labour standards, no single international organisation is responsible for drawing up environmental standards or ensuring that they are respected. That responsibility is shared between the different multilateral environmental agreements (MEAs). Including the environment in the WTO framework could be warranted under the sustainable development objective set out in the preamble to its charter. As in the case of labour standards, however, the developing countries are afraid of the risks involved in using such rules for protectionist purposes. The representative of the World Wildlife Fund noted, in this connection, that if the developed countries are serious about this commitment, they ought to change their trade policies which have harmful effects for bio-diversity and are a source of environmental damage. A further avenue would involve including this subject in regional agreements as, for example, was done in the case of NAFTA.

CONCLUSION

32. Thanks to the Seminar it was possible to take stock of our knowledge and clarify the debate. There was also an opportunity for dialogue: between representatives of the industrialised and the developing countries first of all; and, secondly, with representatives of international organisations (OECD, ILO, WTO, UNCTAD), academics and representatives of civil society (employers’ and employees’ associations, NGOs, etc.) from the two groups of countries. It thus clearly emerged that the question of the linkage between trade and core labour standards is not just a North-South problem, but that promoters of the main points of view on this question are to be found in both the industrialised and the developing countries.

33. Adding competition and environmental policies to labour standards as seminar topics was justified because of their shared characteristic of being “new subjects”, whose inclusion in the WTO ambit is under debate. That said, with the seminar over, the synergies between the three themes appear limited. It is worth noting, though, that the increasing weight of the multilateral agreements on the environment (MEAs) as organisations that enact environmental standards in their areas of competence requires the WTO to take up a clear stance vis-à-vis these MEAs.

34. Concerning the policies to be pursued with respect to labour standards, three clear conclusions thus emerge from the seminar:

− there is a consensus that core labour standards should not be used for protectionist purposes;

− the ILO is recognised as being the competent organisation to set labour standards and monitor compliance;

− technical co-operation and promotional mechanisms have an important role to play in improving the implementation of core labour standards.
35. The main subject of disagreement concerns the best way to ensure that core labour standards are observed, and in particular the possibility of giving the WTO a role to play in this area. The debate is mainly about the possibility of applying trade sanctions and how effective they might be.

36. The seminar revealed the need for further research into these delicate and still in many cases inadequately explored topics. Of the many questions that require further investigation, three at least should be given priority:

- the first concerns analysis of the link between the conditions governing social and economic development in both OECD Member countries and non-Member countries, with particular emphasis on core labour standards. Analysis of this sort could provide some valuable lessons for the developing countries, particularly with regard to the nature of child labour and the factors that account for it;

- second, it is worth noting that the bulk of the discussion focussed implicitly on the linkage between standards and goods trade, services not really being debated. And yet, are the issues of structural adjustment, labour market adjustment and the nature of the possible disruptions coming in the wake of trade and investment liberalisation necessarily identical in all the productive sectors?

- lastly, very little is still known about the way EPZs work and what impact they have in terms of development (in particular, the development of EPZs exporting services). Yet, would it not be easier to move forward at international level on specific questions such as this, rather than continue with generalities as at present?

37. On all these questions, there is a need for multidisciplinary research and dialogue involving economists, legal specialists, sociologists, etc. It is probably true to say that one of the last important lessons of the seminar is that, to paraphrase a well-known saying: “the link between trade and core labour standards is too important a subject for it to be left just to economists”.

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