

Doha and Global Labor Standards: The Agenda Item that Wasn't

ANDREW J. SAMET*

Try as some might, you can't find labor standards on the agenda of the Doha Round of World Trade Organization (WTO) negotiations launched in November 2001. Nor, in fact, did the Bush administration make any effort to put it there. This marked a departure from the Clinton administration's approach at WTO Ministerials—first in Singapore in 1996, and then more forcefully in Seattle in 1999—when including labor standards on the WTO's work program was a priority.

Several interesting questions emerge from the decision at Doha to put aside the international labor standards debate within the WTO. First, does declining to take up the issue matter in the effort to improve global adherence to core labor standards? Second, does passing on the issue help or harm the overall mandate and responsibility of the WTO to expand global trade? Third, will it matter to the Bush administration or any subsequent administration seeking a Congressional vote on any Doha trade agreement that the WTO has nothing to report on the labor standards issue?

It is, of course, far too early to know the answers to these questions. But how we think about the absence of labor standards in the Doha agenda depends upon the lens through which we look at the issue.

When it comes to trade and labor standards there are four general viewpoints: (1) Trade is the Answer, (2) Leave it to the International Labor Organization (ILO), (3) Labor Rules, and (4) the Third Way (Again):

- The "Trade is the Answer" viewpoint stresses that more trade increases economic growth, which leads to improved labor standards. Any effort to focus the WTO on labor standards is dismissed as a misguided distraction, or perhaps a more insidious protectionist ploy.
- The "Leave it to the ILO" viewpoint believes that labor standards is a serious concern, but the WTO isn't really equipped to work on the subject. Rather, it should be left to the ILO. Indeed, the ILO should be strengthened to do so.

*Andrew J. Samet is with the law firm of Sandler, Travis & Rosenberg, P.A. He is a former Deputy Under Secretary of Labor for International Affairs, and U.S. Representative to the International Labor Organization. Mr. Samet was the coordinator of the labor working group for the Clinton administration at the Seattle WTO Ministerial.

- The “Labor Rules” viewpoint is premised on the existence of a correlation between labor standards and trade. Thus, since international labor standards are so important to trade flows (still an empirically controversial proposition), WTO rules should permit trade measures for a failure to comply with international labor standards.
- The “Third Way (Again)” viewpoint is that there is nothing inherently inconsistent between expanding trade and improving implementation of core labor standards. The objectives are mutually reinforcing, rather than mutually exclusive, and there is a political benefit for both institutions to be seen working together. This notion has led to a search for ideas on how to better integrate the mandates of the WTO and ILO.

It is the interplay of these different perspectives that has been actively debated within the United States, and at both the WTO and ILO, for the last decade.

The Declaration adopted at the WTO Ministerial in Singapore in 1996 reflects the dominance of the “Trade is the Answer” and “Leave it to the ILO” perspectives (with the “Third Way (Again)” just barely still in the game).¹ Nevertheless, Singapore represents a symbolically important event. The Singapore Declaration was the first time—in the half-century of the WTO (back to the General Agreement on Tariffs and Trade (GATT))—that the importance of labor standards was discussed. Paragraph 4 of the Declaration at Singapore states:

We renew our commitment to the observance of internationally recognized core labour standards. The [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.²

It was only after insistence by the United States, with support from Norway and nominal support from the European Union, that this language was included.

Of course, it was no sooner than the document was completed before many WTO Member States did all they could to prevent collaboration between the WTO and the ILO. Thus, while the principle of labor standards being important to the WTO was adopted in Singapore, no actual forum for work on the issue was established. It was this lack of content that the United States, and a far larger list of supporting countries, sought to address at Seattle in 1999.

In the meantime, one consequence of the Singapore Ministerial debate was consensus within the ILO that it must respond to the contentious labor standards debates at the WTO, as well as similar debates involving the International Monetary Fund, and the World Bank. Moreover, if, as the Singapore Declaration said, the ILO is the competent body to deal with labor standards, what message would be sent if the ILO didn’t take any action?

The ILO’s 1998 Declaration on Fundamental Principles and Rights at Work and its

1. Singapore Ministerial Declaration, Dec. 13, 1996, LEGAL INSTRUMENTS—RESULTS OF THE SINGAPORE ROUND (1996), available at http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm.

2. *Id.* ¶ 4.

Follow-up (1998 Declaration) was the response.³ After Singapore, if the ILO did not act to advance the labor standards agenda, given the pressures of the globalization debate, the ILO risked appearing increasingly irrelevant. Renato Ruggiero, the former Director-General of the WTO, observed in 1998 that Singapore “opened the door for the [ILO] to make real progress in its Declaration. . . .”⁴

The 1998 Declaration was not technically a new legal instrument, nor did it create new international obligations. It did, however, provide an authoritative political statement that set forth the core labor standards applicable to all nations regardless of their level of economic development, from the international organization most empowered to make such a determination. After all, there was and continues to be a great deal of debate about which labor standards are human rights standards and which standards should reflect levels of development. For example, what were the core labor standards the WTO supported in Singapore? Moreover, some commentators, such as Jagdish Bhagwati, even challenge the notion that there is such a thing as international labor standards.⁵

ILO Member States have since pronounced which labor standards must be adhered to by all countries regardless of their level of economic development:

- Freedom of association and the effective recognition of the right to collective bargaining;
- Elimination of all forms of forced or compulsory labor;
- Effective abolition of child labor; and
- Elimination of discrimination in respect of employment and occupation.

The ILO also adopted two new reporting mechanisms to increase the level of transparency and scrutiny with regard to actual adherence to these standards. Indeed, the ILO debate in 1998 emphasized that, if there was no meaningful or credible follow-up to the 1998 Declaration—if failure to adhere to the fundamental rights had no consequences—then the effort could not be considered a success. The implication was that an ILO failure would see the debate move back to the WTO and other economic institutions, and the ILO would be seen as not really so “competent” after all.

Ironically, however, many of the countries most opposed to any activity at the WTO on labor standards pressed during the drafting of the 1998 Declaration at the ILO to make the follow-up mechanisms as weak as possible. Assurances that the 1998 Declaration process could not lead to any trade consequences—even though this notion was never put forward—preoccupied a number of delegations. In hindsight, the delegations that sought a weak outcome have largely gotten what they wanted. So much for strengthening the ILO.

The first report under the 1998 Declaration was completed in 2000, and the impact of the annual reports since has been modest at best, limited by the ILO’s failure to develop a politically potent process to debate and prioritize the labor standard violations. These reports are considered in a one-day session of the ILO’s Annual Conference, where delegates

3. ILO—Declaration on Fundamental Principles and Rights at Work, INTERNATIONAL LABOUR ORGANIZATION (1998), available at <http://www.ilo.org/public/english/standards/decl/declaration/text/tindex.htm> (last visited Feb. 19, 2003).

4. Renato Ruggiero, *The Next 50 Years: Challenges and Opportunities For the Multilateral Trading System*, Address to the Friedrich-Ebert-Foundation, Hamburg (June 11, 1998), available at http://www.wto.org/english/news_e/spr_e/hambur_e.htm.

5. See *International Labor Standards and Global Economic Integration: Proceedings of a Symposium*, U.S. Department of Labor, Bureau of International Labor Affairs, July 1994, Jagdish Bhagwati, *Policy Perspectives and Future Directions: A View from Academia*, at 59.

make five-minute statements to a largely empty room, and receive applause for their efforts. There could be a United Nations rule that if each statement is greeted with diligent but unenthusiastic applause, absolutely nothing of consequence is happening. Thus, for example, when the Burmese government speaks of ending forced labor, or the Cuban government reports of protecting freedom of association, or the Pakistani government speaks of ending child labor, and each receives polite applause for its report—nobody is really paying attention nor is there any accountability for the truthfulness or accuracy of what is said.

It is likely not a mere coincidence that as the prospect of further WTO action on labor standards recedes and is dropped out of the discussions at Doha, the energy and relevance of the 1998 Declaration process itself also diminishes. Ultimately, it is unrealistic to expect the ILO to be strengthened, unless other international organizations with far more power, such as the WTO, World Bank, and IMF, are urgently focused on labor standards, and look to the ILO for answers.

It was precisely this concern to maintain the ILO's momentum that led the Clinton administration to press the labor standards agenda at the Seattle WTO Ministerial in 1999, and to table a proposal for a working party. Indeed, Seattle was, not surprisingly, the high-water mark for the Third Way (Again) proponents on labor standards. The Clinton administration tried to make progress on engaging the WTO on labor standards concerns, at the same time it tried to advance the effort to launch a new trade round. Why Seattle failed has been the subject of much discussion. Not surprisingly, given the dramatic street protests during the Seattle Ministerial, there are many theories, even myths, to explain it.

One such theory is that the labor standards agenda, and President Clinton's remarks about the potential to use trade sanctions, were to blame. This theory is false. In reality, an informal working group established under the able chairmanship of the Vice Minister of Trade of Costa Rica, discussed several versions of a possible outcome document involving a dialogue forum on labor standards and development, and progress was being made. The document being drafted was never even presented to the Ministers, since the meeting had already been suspended because of a failure to reach agreement on a range of other issues. But it seems unlikely that if there had been an overall agreement on the other issues, that a consensus could not have been found on how to move the labor standards work forward. Of course, we will never know.

At the same time it would be a misreading to suggest there was any likelihood of an agreement in Seattle that would include labor standards on the agenda for actual WTO negotiations. There was far too much opposition to any such suggestion, and it was never even made. What was being advanced by the United States, the European Union, Japan, Korea, and some key developing nations, however, was the notion of a forum that would involve the WTO, ILO, and other institutions looking at an agenda involving labor standards, trade, employment, and development. In other words, there was an effort to give some content to the collaboration mentioned in the Singapore Declaration. It was a working level debate mostly focused on process issues, such as how to constitute a forum, its length, and its institutional relationship to the WTO, among other points. But discussion stopped with the end of talks in Seattle.

No similar initiative was made by the Bush administration at the Doha meetings in November 2001. Without the United States' backing, it is not surprising that while labor standards was a major point of debate in Seattle it was no point at all in Doha. Rather, what was agreed to in Doha arguably further removed the WTO from the labor standards issue. Paragraph 8 of the Doha Declaration states: "We affirm our declaration made at the

Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the [ILO] on the social dimension of globalization.”⁶

The United States had nothing to say with regard to the labor issue at Doha, and left it to the European Union. Indeed, U.S. Trade Representative Robert Zoellick did not even mention the word “labor” in his plenary address at Doha—an omission that spoke volumes. But, a number of other ministers still pushed for some form of cooperation and dialogue between the WTO and ILO, including those from Austria, Belgium, Canada, Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, New Zealand, Norway, South Africa, Sweden, Switzerland, and Venezuela. Comments from Pierre Pettigrew, Canada’s Minister for International Trade, were notable. “I think it is particularly unfortunate that Members have not been able to agree on the need to ensure the WTO works with the [ILO] to advance core labour standards.”⁷

Countries that expressed opposition to any WTO activity on labor standards were Bahrain, Cuba, Egypt, Honduras, India, Malaysia, Namibia, Pakistan, Sierra Leone, Sri Lanka, United Arab Emirates, and Zimbabwe. Alec Erwin, Minister of Trade and Industry of South Africa, probably spoke in more detail than any other Minister in his plenary speech, and he presented a “third way” rationale on the need for some engagement by the WTO on labor standards:

A dialogue is needed on this interplay between labour and social standards and the world trade system. A similar dialogue is needed between the trade system and the financial system. We should not fear dialogue. However, if these matters are seen as pretext for protection then the real merits of issues will be lost as we revert to the beggar my neighbour mercantilist age. Wisdom and farsightedness are needed.⁸

It does not appear that such a dialogue is on the WTO agenda in the foreseeable future, although related work continues at the ILO. In 1994, at the urging of the Clinton administration, the ILO established a Working Party on the Social Dimension of International Trade Liberalization. It was this Working Party that developed the 1998 Declaration, and commissioned some other important research and discussion topics within the ILO on trade and labor standards. In 2000, after lobbying by the ILO Director-General the group was renamed the Working Party on the Social Dimension of Globalization—eliminating the word “trade” from the title.

The most notable development since that time has been the Working Party’s endorsement of an ILO World Commission on the Social Dimension of Globalization, with some two-dozen members. The idea for a Commission was initiated in June 2001 by the ILO Director-General in anticipation of Doha, and was built on many of the ideas discussed in Seattle such as an ILO-WTO forum on labor, development, and globalization issues. By housing the work with the ILO, one of the key unresolved controversies in Seattle about any direct participation by the WTO was sidestepped.

The Commission was formally approved by the ILO in November 2001, had its first meeting in February 2002, and is scheduled to issue its final report by the end of 2003. It

6. Ministerial Declaration, Nov. 14, 2001, LEGAL INSTRUMENTS—RESULTS OF THE DOHA ROUND (2001), ¶ 8, available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.

7. Pierre S. Pettigrew, Statement at the WTO Doha Ministerial Conference, Fourth Session (Nov. 13, 2001), available at http://www.wto.org/english/thewto_e/minist_e/min01_e/statements_e/st13.pdf.

8. Alec Erwin, Statement at the WTO Doha Ministerial Conference, Fourth Session (Nov. 13, 2001), available at <http://www.dfa.gov.za/docs/wtoerwin.htm>.

is unclear whether the ILO will release its report in time for the Mexico WTO Ministerial in September next year, and if it did, what difference it would make. Given the Commission's enormous scope of work, lack of clear mandate (trade is but one of a long list of topics), and its large membership, the Commission has undertaken an enormous challenge. The question remains whether it can produce focused and specific recommendations that will lead to further action within the ILO, and influence the agendas of other institutions such as the WTO, IMF, and World Bank.

It is notable that the former Director-General of the WTO, Mike Moore, addressed the ILO's Working Party on the Social Dimension of Globalization in March 2002 to underscore the Doha result and pledge WTO secretariat support to the ILO's Working Party and Commission. Moore specifically discussed the importance of assisting workers dislocated by trade. He said nothing on labor standards, but referred to the commitment in Doha for greater transparency, and committed the WTO to special (non-official) workshops with trade unions, environmental groups, and other non-government organizations, one of which was held in April 2002.

Just a week before this speech to the ILO, Moore addressed the International Confederation of Free Trade Unions. In those remarks, Moore gave a stark assessment of the situation at the WTO on labor issues, and challenged unions to recognize the difficulty of the message they were bringing to the WTO. Moore, a former trade union leader, said:

Distrust of the motives of unions and some developed countries, have made developing countries suspicious that labour issues will be used as protectionist measures against their workers' jobs and futures. Personally, I wish we could have done more on the social dimension of globalisation at Doha. This is a personal view. But please understand the feelings and suspicions of the overwhelming majority of our Membership. . . . They see labour issues as a backdoor approach to attack jobs in their own countries. This need not be so. . . .

So we must build trust, get results and remind ourselves that international solidarity and justice demands that the markets of the north open to the products from the south, especially in Agriculture and Textiles, which is politically sensitive to your membership in rich countries. But it's also a sensitive issue for the workers and Governments in the south.⁹

Thus, we are back to recognizing that after nearly a decade of heated WTO debate, there is no agreement to officially discuss the issue of labor standards. And at this moment there is no reason to believe that the next Ministerial meeting in Mexico will yield any different result.

This record would tend to suggest that a tactical reassessment of WTO labor standards proponents might be in order. Certainly, regardless of what the Trade Act of 2002 negotiating objectives may be, it is highly unlikely that the WTO Doha Round results will include anything on labor standards. This is likely the case even if the Bush administration changes course and really makes an effort—which is highly improbable.

The record tends to suggest that the efforts of various countries over the last decade pressing the WTO to take up labor standards issues were misguided. The record tends to suggest that the idea of a "third way" on labor and trade issues involving the WTO is a chimera. It also tends to suggest that there is unlikely to be a WTO role in advancing the global implementation of core labor standards. We are then back to the question of whether this matters, and why?

9. Mike Moore, *Making Globalization Work*, Speech to the International Confederation of Free Trade Unions (Feb. 20, 2002), available at http://www.wto.org/english/news_e/spmm_e/spmm76_e.htm.

Despite the current environment of confrontation against terrorism that obscures the economic globalization focus of recent years, I do not think we have permanently left behind concerns for equity and social justice, let alone efficiency and productivity, in the world economy. Indeed, leaving aside the WTO for a moment, there have been a series of remarkable developments on labor standards. First, as discussed above, the ILO's 1998 Declaration defined the core labor standards (a concept that didn't exist a decade ago), which the WTO has affirmed its commitment to uphold. The 1998 Declaration answers what minimum set of labor standards must be applied by all nations, regardless of level of economic development. This was no small achievement by the ILO. That is not to say the list is static for all time, but it does now exist as a matter of international legal consensus. Note, however, it was and will remain that the pressure for action at the WTO, as well as the IMF and World Bank will determine how much traction the ILO has in the future. Current signals in that regard are not encouraging.

Second, an explosion of codes of conduct and related initiatives in the private sector incorporate these labor standards commitments by and large and often go beyond them. Indeed, major transnational corporations largely and overwhelmingly signed up to them—albeit with huge variances in the seriousness of their application. Media and public interests in labor standards issues are powerful drivers influencing corporations, intent on protecting their brands. Indeed, there seems to be a growing disconnect between the interest of many companies in having clear labor standards rules, and the on-going resistance to such developments among governments and international organizations.

Third, Congress, although in global terms still unique in this regard, has insisted that labor standards be reflected in free trade agreements. Left to its own devices on trade agreements, the Bush administration (as well as the Clinton administration) might have followed the more general global pattern not to integrate labor and trade agreements. But there is now a domestic mid-point on this issue that the Bush administration seems to be following, as indicated by its proposals to include labor and environment standards in the Singapore and Chile free trade agreements. With free trade agreements looming with another twelve nations in 2003, one can see the potential for a broader pattern to emerge.

These developments, together with interest in labor standards by the social investment community, all suggest that outside of the WTO commerce and labor linkages have exploded in the real world. When viewed in this light, it leaves the debate of the WTO trade ministers seemingly out of touch. One may wonder, therefore, why proponents of labor standards would spend any additional time on the WTO, when the real action seems elsewhere. The adage of “being careful for what you wish for” comes to mind. It may be that as progress is made on integrating labor standards into trade considerations outside the WTO, the balance of interests will change in the future—with unions no longer wanting help from the WTO and trade ministers eager to discipline the impact of labor standards on trade flows.

Still, it is hard to dismiss that for most of this century the concept of using trade measures to enforce international labor standards has been part of the public debate. Indeed, one need only look at article 7 on Fair Labour Standards of the Havana Charter of 1947, which linked the ILO to the stillborn International Trade Organization, to be reminded of the possibilities.¹⁰ But that is not a discussion for Doha.

10. Havana Charter for an International Trade Organization, Mar. 24, 1948, art. 7, available at <http://www.globefield.com/havana.htm>.

