

Last month, a number of Third World intellectuals and NGOs issued a sharp and pointed Statement, drafted principally by me but worked upon by a few others from prominent NGOs in the Third World, arguing against the Linkage of Labour (and environmental) Standards to WTO and to trade treaties.<sup>1</sup>

This meant that these signatories were also against the Social Clause being included in the WTO. Besides, their arguments implied clearly that they were for the questions relating to Labour Standards (or Rights) to be transferred wholly to the ILO, with the WTO kept substantively out of these issues. This is exactly what the first WTO Ministerial at Singapore had resolved, despite enormous pressures and threats from the United States: “The International Labour Organization (ILO) is the competent body to set and deal with [labour] standards”. The only ambiguous concession, wrung from a generally hostile set of nations opposed to Linkage by pretending that it would help close the Singapore meeting without amounting to anything substantive, was a weasel sentence at the end of the resolution about collaboration between the ILO and WTO secretariats.

Now, the United States, under obvious pressure from its labour lobbies, chief among them the AFL-CIO on whom the Clinton-Gore administration closely depends for election support, has escalated the issue to a demand for a Working Group of the WTO, not of the ILO, which would report within two years on these complex issues which simply do not belong to the WTO. And Chancellor Schroeder of Germany has also turned around on the matter, shifting the balance of forces within the EU closer to a support of the Social Clause and the US demands. He too is trying to pacify the restive leftwing of his party, after the LaFontaine departure and the

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<sup>1</sup> The Statement was published in its entirety in The Earth Times, September 16-30, 1999, Vol.8 (17), with a full list of signatories by then. The signatories, after just a couple of weeks of circulation, already included several NGOs

difficulties in which he finds his reformist proposals for a German embrace of the so-called Third Way of Mr. Blair, this move. But in throwing a bone at the leftwing and the unions, Messrs. Clinton, Gore and Schroeder are really throwing a bone down the gullets of the Third World nations and the WTO.

No wonder the developing countries see these shifts on the Labour Standards at the WTO as a breach of good faith. It also gives substance to their fears that the United States in particular cannot be trusted to advance the social good, despite its claims of leadership and altruism, and is simply a prisoner of its special-interest lobbies. It also justifies their fears that, given a foot in the door, it will cynically muscle its way past the door.

So, let me say why the developing countries' intellectuals and NGOs, indeed several economists in all parts of the world as well, see the injection of Labour Standards into the WTO or other trade treaties and institutions of lesser importance, as both inefficient and dangerous because of its capture by labour groups seeking to moderate the force of international competition in any way they can. Let me also remind the reader that this campaign, and statement (known by its acronym: TWIN-SAL)<sup>2</sup>, should disabuse the media and the governments in the developed countries of the self-serving notion, widely accepted by the mainstream media in the rich countries because of natural but lazy acceptance of the stories put out by rich-country lobbies and compliant governments, that those who oppose Linkage are corporate interests and malign governments.

At the outset, it is important to understand that the demand for Linkage via a Social clause in the WTO (and corresponding preconditions on environmental standards for WTO-

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from human rights, consumer, environmental and other movements from twelve developing countries. The text of TWIN-SAL and the initial list of signatories are available on my website: <http://www.columbia.edu/~jb38> .

<sup>2</sup> TWIN-SAL is the acronym for Third World Intellectuals and NGOs-Statement Against Linkage). I draw in this article on TWIN-SAL pretty extensively.

protected market access) is a reflection of the growing tendency to impose an essentially trade-unrelated agenda on this institution and on to other trade treaties. It is the result of an alliance between two key groups:

(i) Politically powerful lobbying groups that are "protectionist" and want to blunt the international competition from developing countries by raising production costs there and arresting investment flows to them; and

(ii) The morally-driven human rights and other groups that simply wish to see higher standards abroad and have nothing to do with protectionist agendas.

The former groups are not interested in improving the wellbeing in the developing countries; they are actuated by competitiveness concerns and hence are selfishly protective of their own turf. This is manifest, for example, in the selective nature of the contents of the proposed Social Clause: only issues, such as Child Labor, where the developing countries are expected to be the defendants rather than plaintiffs, are included. Thus, enforcement against domestic sweatshops, which is notoriously minuscule and lax in the United States where they abound in the textiles apparel industry, is not in the Social Clause; nor are the rights of migrant labor which is subject to quasi-slavery conditions in parts of US agriculture.

Nor does the Social Clause look askance at yet other unpleasant social facts in the developed countries. For example, the United States has almost as little as 12 to 14 % of its labor force in unions today. A country that insists on measuring trade openness of Japan by looking at "results" (i.e. actual imports), the US ought to be equally willing to treat the absence of unions in an industry as a prima facie presumption

that there is some de facto deterrence to union formation. As it happens, unionization in the US has almost certainly been handicapped, among several factors, by legislation (on matters such as the right to hire replacement workers during a strike) that has impaired unions' chief weapon, the ability to strike.

Nor has any developed-country proponent of the Social Clause proposed that the developed countries ought to take a far greater commitment to labour rights than the developing countries that are at a much lower stage of development. Thus, while unionization must surely be permitted in developing countries, should not the United States require, in the interest of genuine economic democracy, union representation on Boards of Directors the way some European nations do? Ironically, in the United States, one cannot even begin to do this in a meaningful way since unions are absent from most factories in the first place. Thus, in these ways, we see that the moral face of these developed-country lobbies agitating for higher labour and environmental standards in the developing countries, whether they are labor unions or corporate groups, is little more than a mask which hides the true face of protectionism. They stand against the trading and hence the economic interests of the developing countries and are in fact advancing their own economic interests; and they need to be exposed as such.

On the other hand, there are also morally-driven groups that genuinely wish for better standards for labor and the environment in the Third World; and they must be fulsomely applauded. But their demands for Linkage, i.e. the inclusion of provisions for improvements in standards as preconditions for trade access in the WTO and other trade treaties and institutions, while not deceptive and self-serving, are nonetheless mistaken and must also be rejected. Superior ways of advancing these objectives and agendas exist, which lie outside of the trade context and can be pro-actively pursued instead. Thus, consider:

(i) Self-serving Selectivity: Contaminating the Moral Agenda: If we treat these standards from a moral viewpoint as "social" and "ethical" agendas to be advanced everywhere, we still confront the fact that the agendas will continue to be selected from the viewpoint of trade-competitiveness concerns. Therefore, they will inevitably tend to be selectively biased against the developing countries. They will also protect the developed countries from symmetric scrutiny of their own violations of non-selected social and ethical, "human rights" norms that have been incorporated in international agreements such as the United Nations International Covenant on Civil and Political Rights, and the United Nations Covenant on the Child.

This has already happened. What a neutral and universal approach to the use of trade sanctions requires instead is that their use in the case of all significant human rights norms be subjected to an agreement among nation states. Thus, the possibility of juvenile capital punishment in the United States, an egregious violation of the Covenant on the Child that offends the moral sense of nearly all civilised nations today, should equally be a subject for suspension of trade access to US products generally.

If trade proscription against the United States is rejected, as we should all agree, on the ground that it cannot proscribe even the widely-condemned possibility of juvenile capital punishment because it is politically extremely difficult to do so, how can the inability of India and Bangladesh to effectively eliminate (even "exploitative") child labor, an immensely more difficult economic and social problem, become a subject for rapid-fire proscription via the Social Clause?

Surely, it makes sense to treat all such lapses from the human rights covenants, by every country, in their total economic, political and social context, and then to advance sophisticated and nuanced public policy programs that enable sustainable progress to be made on implementing the desired change. Besides, this approach should be symmetrically applied to the problems endemic to the developed countries as much as to those afflicting primarily the developing countries. In short, the human-rights approach must reflect a genuine commitment to the entire slate of important human rights, treating the matter of sanctions impartially and symmetrically sans borders and without favouritism towards the rich and the powerful nations.

It is distressing that one sees no evidence that, except for a few groups such as Amnesty International, this symmetric approach is taken to the issue of trade sanctions. The developing countries, looking at the Social Clause for instance, cannot but regard it as having therefore been contaminated by the selectivity imposed by the rich nations. And this is not a matter for surprise.

For, deep down, this selectivity reflects the competitiveness concerns that inevitably dominate trade negotiations and treaties and institutions: competitiveness is the name of the trade game! You cannot expect anything but hard play if you go to a poker game; to expect the poker players to burst into singing hymns while they drink whiskey and utter profanities is to be naive.

(ii) You Cannot Kill Two Birds with One Stone: By thus contaminating and

devaluing the moral objectives, even though the subset of groups advancing them have truly a moral rather than a disguised competitiveness objective, we wind up harming both trade liberalization (which is the true objective of the WTO) and advancement of the social and moral agendas.

Thus, the proponents of trade liberalization divide over the appropriateness of these agendas: developing countries oppose them and developed countries end up with internal division. In the United States, we have Democrats who want to go after the developing countries on their standards even more vigorously than the Clinton administration and many Republicans who instead oppose Linkage altogether. Not surprisingly, the Clinton administration failed to get fast-track authority for trade liberalization renewed for the first time in US history last year.

At the same time, the advancement of the social and moral agendas gets held up because it is being pursued (under protectionist pressures) in an evidently cynical and self-servingly selective fashion by the developed countries that push for it, mainly the United States and France (and now Germany).

So, we undermine both of these important tasks that progressive intellectuals and NGOs in the Third World would indeed like to see advanced in a nuanced and sustainable fashion. The underlying reason for such an unsatisfactory outcome is that you are

trying to kill two birds with one stone. Generally, you cannot. So, trying to implement two objectives, the freeing of trade and the advancing of social and moral agendas, through one policy instrument such as WTO, you will undermine both. You will miss both birds.

(iii) Our Proposal: Get Another Stone: This leads to the main proposal of the Third World Intellectuals and NGOs:

Linkage is like trying to kill two birds with one stone, so we need another stone or a whole slew of sharp pellets. That stone has to be a pro-active set of agendas, at appropriate international agencies such as the ILO, UNICEF and UNEP; moral and financial support for NGOs in the developing countries; and so on. The opponents of this idea argue that the ILO, for instance, lacks teeth. But the teeth fell out because the ILO was sidelined when the United States had pulled out of it. Today, if we are serious, the US and other rich nations can open ILO's mouth and give it a new set of teeth.

The ILO can be asked, like the WTO with its built-in trade reviews under the Trade Policy Review Mechanism (TPRM), to bring out annual Review Reports on member countries' conformity to the ILO conventions; UNICEF could do the same for Children's Covenant; UNEP for Environmental Standards, and so on. Appropriate agencies putting out such impartial reviews would enable numerous NGOs to build their crusades on impartial analyses that are truly symmetric just the way the WTO has managed with the TPRM. Do not underestimate the value of information and exposure as long as it is



impartial between nations. The Dracula Effect --- expose evil to sunlight and it will shrivel up and die --- can be very potent indeed.

Therefore, it is intellectually compelling to argue that Linkage be buried. It should be replaced by Appropriate Governance at the international level, where each agenda is pursued efficiently in appropriate agencies.

This does not mean that there are no necessary interfaces. This is especially true between UNEP and WTO to address inherently overlapping problems: e.g. the solution to conflicts between trade-sanction provisions in MEAs and WTO obligations, and the “values”-related unilateralism on sanctions that led to the contentious Dolphin-tuna and Shrimp-turtle cases. It is important to remember, at the same time, that these interfaces can be addressed often by imaginative solutions that can be pursued without sacrificing either trade or the environment.

In lieu of the confrontations that have become common now between groups pushing for trade and those pushing for the social agendas, it is time at Seattle that we banish the Linkage issue from the WTO agenda. Instead, we must devote all energies to these "necessary-interface" questions (that inhere on the environmental, not labour, questions) with goodwill and creative solutions.

If the developed countries' governments, intellectuals and NGOs are allowed to do otherwise, the Third World will have to bear the burden. This is evident from what happened to the successful crusade to get Intellectual Property Protection (IPP) into the WTO. This subject does not really belong to the WTO whose organizing principle must be the basic attribute of free trade: that each member

benefits since trade liberalization is a mutual-gain policy. By contrast, the WTO Trade-Related Intellectual Property Rights or TRIPs Agreement, which enshrines IPP into the WTO, essentially redistributes income from the developing to the developed countries. We cannot even claim that the TRIPs Agreement advances the world good: nearly all economists agree, for instance, that the 20-year Patent length, which was built into the TRIPs Agreement, is almost certainly inefficient and exploitative of the vast majority of the developing-country nations. But it got into the WTO, as part of the Uruguay Round agreement, simply because it was backed by developed-country power as reflected in Special 301 retaliations by the United States, and also because of endless repetition in the public arena --despite economic logic to the contrary-- that it was good also for the developing countries (an assertion in which the World Bank economics leadership joined, evidently under the shadow of Washington). The intellectual objections of Third World economists, and the negotiating objections of some of their governments, were simply brushed aside.

The same is likely to happen on Linkage unless the Third World unites and is vociferous. This time, however, the NGOs of the developed countries, like the developed-country corporate lobbies under IPP, are unfortunately into the game instead. In fact, they now argue that, having delivered IPP to corporations, the WTO must now give Linkage to Labor and for Nature. So, having been successfully harmed once, the poor nations are to be harmed again for equity among the lobbies of the developed countries. The NGOs pushing for Linkage need to be reminded that IPP was pushed into the WTO, not for corporations everywhere, but for their corporations!

It is time to raise our voices and call a spade a spade. The WTO's design must reflect the principle of mutual-gain; it cannot be allowed to become the institution that becomes a prisoner of every developed-country lobby or group that seeks to advance its agenda at the expense of the developing countries. The game of lobbies in the developed countries seeking to advance their own interests through successive enlargement of the issues at the WTO by simply claiming, without any underlying and coherent rationale, that the issue is "trade-related", has gone too far already. It is time for us to say forcefully: Enough is enough.