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Asna Afzal

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PAKISTAN, THE WTO, AND LABOR REFORM

ASNA AFZAL*

Abstract: This Note examines the economic and legal implications of developing nations' membership in the World Trade Organization (WTO). Specifically, the article analyzes Pakistan's labor reforms subsequent to its membership in the WTO. The Note first provides a historical background of Pakistani membership in the WTO. Next, the Note discerns that despite the lack of established WTO labor standards, developing nations face pressure to implement labor reforms incidental to trade liberalization policies. The author argues that the pressures imposed on lesser-developed countries (LDCs) such as Pakistan have, as of yet, spawned only superficial labor reforms. The final section of the Note suggests that whether or not the WTO chooses to set labor standards in the future, international trade commitments must adequately account for the economic and legal constraints of LDCs in order to spur lasting labor reform.

INTRODUCTION

As a founding member of the World Trade Organization, Pakistan has faced a myriad of challenges stemming from its status as a developing nation.¹ Many of these challenges derive from the nation's substantial decline in economic growth in recent years.² From 1997 to 2004, GDP growth remained below 6.0%.³ The country's economic struggles mirror the steady growth in poverty levels.⁴ Approximately

* Asna Afzal is an Executive Editor of the *Boston College International & Comparative Law Review*.

¹ See generally CTR. FOR INT'L DEV. AT HARVARD UNIV., GLOBAL TRADE NEGOTIATIONS HOME PAGE, PAKISTAN SUMMARY (2004), <http://www.cid.harvard.edu/cidtrade/gov/pak-istangov.html> [hereinafter PAKISTAN SUMMARY].

² See *id.*

³ ASIAN DEV. BANK, ASIAN DEV. OUTLOOK 2005: PAKISTAN (2005), available at <http://www.adb.org/Documents/Books/ADO/2005/pak.asp>.

⁴ See U.S. AGENCY FOR INT'L DEV., CONGRESSIONAL BUDGET JUSTIFICATION—FY 2005: ASIA AND THE NEAR EAST: PAKISTAN (2005), available at <http://www.usaid.gov/policy/budget/cbj2005/ane/pk.html>.

one-third of the nation's 148 million people live below the poverty line.⁵

In addition to poor economic health, Pakistan has confronted other crises common among developing nations: political instability and lack of transparency.⁶ Budgetary constraints, largely due to steep military expenditures, further limit spending in the education and health sectors.⁷

Pakistan has undertaken various reform measures in accordance with its trade liberalization policies.⁸ While the WTO does not formally incorporate labor standards in the obligations imposed upon members, developing nations such as Pakistan face pressure to implement labor reforms incidental to trade liberalization policies.⁹ For example, the country has faced pressure to adopt internationally accepted wage and safety requirements.¹⁰ Despite the impetus for labor reform underlying many of Pakistan's WTO obligations, however, the nation has encountered difficulty in enacting sustainable labor reforms.¹¹

This Note analyzes the relationship between labor reform sustainability and the constraints unique to Pakistan as a developing nation member of the WTO. Part I introduces the WTO accession process and discerns key reforms instituted by Pakistan pursuant to WTO commitments, including pressures for labor reform that underlie trade liberalization. This section also highlights the current status of labor standards enforcement on the WTO agenda. Part II describes the labor reforms indirectly spawned by Pakistan's implementation of WTO commitments, and argues that they are superficial due to the constraints associated with developing nations. Finally, Part III suggests that whether or not the WTO chooses to set labor standards in the future, it must adequately consider the economic and legal constraints of LDCs in order to spur lasting labor reform.

⁵ *Id.*

⁶ *See id.*

⁷ *Id.*

⁸ *See* PAKISTAN SUMMARY, *supra* note 1.

⁹ *See* CTR. FOR INT'L DEV. AT HARVARD UNIV., GLOBAL TRADE NEGOTIATIONS HOME PAGE, LABOR SUMMARY (2004), <http://www.cid.harvard.edu/cidtrade/gov/pakistangov.html> [hereinafter LABOR SUMMARY].

¹⁰ *See* Hammad Bashir, *Opportunities of WTO Membership for Pakistan*, PAK. & GULF ECONOMIST, Jan. 5, 2004, available at <http://www.pakistaneconomist.com/page/issue01/i&e2.htm>.

¹¹ Telephone Interview with Practicing Advocate, Punjab Province (Oct. 9, 2004) [hereinafter Telephone Interview].

I. BACKGROUND

A. *The Accession Process*

Article XII of the WTO Agreement provides: “Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations . . . may accede to this Agreement, on terms to be agreed between it and the WTO.”¹²

Pakistan was among the founding members of the WTO, established in 1995.¹³ For non-founding members, the accession process begins when the WTO General Council and the working party to the Council approve a nation’s request.¹⁴ Next, the nation is required to detail all elements of its trade and economic policy that have an impact on WTO agreements.¹⁵ Upon resolution of fundamental policies, individual WTO members begin bilateral negotiations with the prospective member, determining the specific policies that will be agreed upon as a precursor to membership. A member’s protocol consists of the negotiated terms of membership.¹⁶ After completion of negotiations, the working party finalizes the accession terms, which are then presented to the WTO General Council for approval by member nations.¹⁷

B. *Pakistan’s Membership in the WTO*

The broad principles underlying Pakistan’s WTO membership centered upon commitments that would position the nation to garner maximum gains from free trade.¹⁸ In the international realm, Pakistan sought to further this goal through increased participation in a global multilateral trading system; in the domestic arena, the nation focused on promoting efficient and competitive domestic production activities.¹⁹ A key underlying aim of liberalization rested on the ability

¹² Agreement Establishing the World Trade Organization, art. XII, Apr. 15, 1994, 1867 U.N.T.S. 154; 33 I.L.M. 1144 (1994) [hereinafter WTO Agreement]. See generally World Trade Org., *How to Become a Member of the WTO*, http://www.wto.org/english/thewto_e/acc_e/acces_e.htm (last visited Dec. 2, 2005) [hereinafter How to Become a Member].

¹³ PAKISTAN SUMMARY, *supra* note 1.

¹⁴ How to Become a Member, *supra* note 12.

¹⁵ World Trade Organization, Membership, Alliances, and Bureaucracy, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org3_e.htm (last visited Dec. 2, 2005) [hereinafter Membership].

¹⁶ See *id.*

¹⁷ *Id.*

¹⁸ See WORLD TRADE ORGANIZATION, TRADE POLICY REVIEW OF PAKISTAN 12 (1995) [hereinafter TRADE POLICY REVIEW].

¹⁹ *Id.*

of a free and competitive trade environment to spur social and economic progress.²⁰

Pursuant to the nation's WTO membership, the following broad goals were set forth for 1994/1995:

- *Improve market access in goods*: The nation set the stage for an increasingly liberalized global economy resulting from the Uruguay Round Agreements.²¹ To this end, Pakistan sought export growth, by means of providing readily available access to raw materials, inputs, and machinery.²²
- *Enhance transparency*: In light of transparency and governance concerns, Pakistan aimed to establish viable governance mechanisms, thereby reducing administrative controls.²³
- *Reduce protection*: Pakistan also agreed to reduce economic controls. Through liberalization, the nation would derive growth from increased reliance on market forces in lieu of economic control mechanisms.²⁴
- *Advance technology*: Pakistan committed itself to promoting the growth of intellectual capital, specifically through expanding research and development capabilities and human resource development.²⁵ Correspondingly, the nation agreed to promote the transfer of technology into the country in support of industry diversification.²⁶
- *Strengthen macro-economic policy*: Pakistan agreed to set forth policies aimed at economic stability, in part through fostering consistency in policy planning.²⁷

C. Status of Labor Standards on WTO Agenda

Strictly speaking, the WTO has not established a multilateral agreement on labor standards.²⁸ Nonetheless, the establishment of formal labor standards remains subject to extensive debate in the or-

²⁰ *Id.*

²¹ *Id.* The Uruguay Round Agreements spurred the first major reform of the world's trading system since the inception of GATT, including key reforms in the dispute settlement process and agreements to further liberalize the world trade regime.

²² *Id.*

²³ See TRADE POLICY REVIEW, *supra* note 18.

²⁴ See *id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 13.

²⁸ LABOR SUMMARY, *supra* note 9.

ganization.²⁹ A 1996 Singapore Conference produced a Ministerial Declaration stating that the WTO would collaborate with the International Labor Organization (ILO) to set forth and enforce core labor standards (relating to issues such as child labor, wages, and discrimination) for WTO member nations.³⁰ In the Conference's concluding remarks, however, the chairman noted that the declaration did not put labor on the WTO agenda.³¹

Despite this official reservation, many developing nations assert that labor concerns often provide their developed counterparts with an excuse for protectionism.³² While neither the WTO's current scheme nor its predecessor (the General Agreement on Trade and Tariffs, or GATT) discern labor violations as a formal basis upon which trade barriers can be erected against the accused country, developed nations have invoked GATT provisions in support of sanctions against alleged violators.³³ Article XX is invoked by member governments to restrict trade with a nation whose labor standards threaten "public morals" or "human life and health."³⁴ Developed nations seeking sanctions against their developing counterparts have also argued that inadequate labor rights in export industries constitute "social dumping."³⁵

As such, developed nations, led by the United States, the European Union, and Canada, assert that the WTO's use of economic sanctions is the only way to ensure that member nations abide by labor standards.³⁶ Developing nations counter that such sanctions represent a bid by developed members to undercut the comparative advantage of "cheaper labor" trading partners amidst increasingly liberal capital markets.³⁷ For example, Pakistan's former ambassador to the WTO, Munir Akram, argued that "the EU's suggestions to bring labor issues onto the [WTO] agenda have little to do with human rights and

²⁹ Brewster Grace, *WTO Trade & Labor Standards*, FOREIGN POLICY IN FOCUS, Apr. 26, 2000, at 1.

³⁰World Trade Organization, Ministerial Declaration of 13 December 1996, ¶ 4, WT/MIN(96). See generally World Trade Organization, *Labour Standards: Highly Controversial*, http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm (last visited Dec. 2, 2005) [hereinafter *Labour Standards*].

³¹ *Labour Standards*, *supra* note 30.

³² BETSI BEEM & KIMBERELY MANNING, *THE WTO AND LABOR* (1999), <http://www.washington.edu/wto/issues/labor.html>.

³³ *LABOR SUMMARY*, *supra* note 9.

³⁴ See *id.*; WTO Agreement, *supra* note 12.

³⁵ Grace, *supra* note 29; General Agreement on Tariffs and Trade, art. XXIII, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter *GATT*].

³⁶ *LABOR SUMMARY*, *supra* note 9.

³⁷ *Labour Standards*, *supra* note 30.

everything to do with attempts to keep out competing goods from low-cost nations."³⁸

D. *Underlying Pressures for Labor Reform*

Though the WTO agenda does not directly encompass labor reform, developing nations often face pressure to abide by core labor standards in connection with trade liberalization policies.³⁹ For example, with regard to market access in goods, Pakistan committed itself to increasing export growth.⁴⁰ In this arena, the nation has focused specifically on the textile industry, its economic backbone.⁴¹ The industry serves as the source of employment for 38% of industrial workers and generates a staggering proportion (60%) of foreign exchange earnings.⁴² As such, the nation has attempted to boost textile exports significantly.⁴³ Developed nation trading partners, interested in protecting their own industries, or weary of child labor and sweatshop scandals, often seek assurances that the products are made in accordance with standards accepted in their own nations.⁴⁴

Similarly, amidst growing trade relationships spurred by WTO membership, Pakistan faced pressure from trading partners related to gender discrimination in the workplace.⁴⁵ Given that women, a significant portion of the nation's intellectual capital, lack significant legal protection in the workplace, Pakistani companies faced increasing pressure to assure against discriminatory practices.⁴⁶

The merits and role of the WTO in enforcing labor standards remains a point of contention within the organization, and is a topic beyond the scope of this Note's analysis.⁴⁷

³⁸ BEEM & MANNING, *supra* note 32.

³⁹ See, e.g., *Labor Wages to be Revised After Every Three Years*, PAK. NEWS SERVICE, Sept. 24, 2002, available at <http://www.paknews.org/avantgo.php?news2=flash1&id=2&date1=2002-09-24> (on file with author).

⁴⁰ See TRADE POLICY REVIEW, *supra* note 18, at 12.

⁴¹ See Farzana Noshab, *World Trade Organization: Critical Issues for Pakistan's Agriculture and Textile Industry*, 2000, http://www.issi.org.pk/strategic_studies_htm/2000/no_4/article/11a.htm.

⁴² See *id.*

⁴³ See generally TRADE POLICY REVIEW, *supra* note 18.

⁴⁴ See Noshab, *supra* note 41, at 15.

⁴⁵ See *Labor Wages to be Revised After Every Three Years*, *supra* note 39.

⁴⁶ See *id.*

⁴⁷ See PAKISTAN SUMMARY, *supra* note 1.

II. DISCUSSION

A. *Workplace Safety*

Pursuant to WTO commitments regarding market access in goods, Pakistan has sought export growth, particularly in the textile industry.⁴⁸ During the period from 1974 to 1994, the Multi-Fibre Agreement (MFA) governed bilateral agreements and allowed developed nations to restrict textile imports from developing nations; in 1994, members reached an agreement to phase out the MFA by 2005.⁴⁹

While the phasing out of the MFA has expanded market access for Pakistan in this sector, it simultaneously subjects key low-cost textile producers, primarily developing nations heavily dependent on labor-intensive industries, to increased competition from one another.⁵⁰ This increased competitive pressure is compounded by the fact that developed trading partners seek high-quality products, low turnaround times, and assurances that the products conform to labor standards in their own nations.⁵¹

The “credibility gap,” the perception that developing nation exports will not be on time or of high quality, marks a significant handicap for Pakistani exports.⁵² In an effort to maintain market share amidst heightened competition, production objectives may override labor concerns.⁵³

Furthermore, the nation is ardently pushing for additional expansion in this arena, as reflected in a policy report entitled “Textile Vision 2005.”⁵⁴ The report outlines an ambitious goal for textile growth in the post-MFA quota arena: propelling the nation from the world’s eighth largest textile exporter (\$4.9 billion) in 1998 to the fifth largest in 2005 (\$13.8 billion).⁵⁵

The pressure to remain profitable in an intensely competitive business environment gives rise to the risk that some textile mills may purchase advanced machinery without providing the necessary training, and others may attempt to pack additional capacity into existing

⁴⁸ See Noshab, *supra* note 41.

⁴⁹ See *id.*

⁵⁰ See *id.*

⁵¹ See generally *id.*

⁵² See Noshab, *supra* note 41.

⁵³ See generally *id.*

⁵⁴ See *id.*

⁵⁵ See *id.*

infrastructure.⁵⁶ In response to watchdog group concerns over questionable safety conditions and lack of union rights, new trading partners and multinational companies voiced the desire for appropriate regulations.⁵⁷

Existing labor laws, such as The Factories Act of 1934 (the Factories Act), specifically §§ 27–33, indicate that measures must be taken to ensure safety in the design, construction, maintenance, testing, and inspection of machinery, tools, and equipment.⁵⁸ While the Factories Act in theory addressed the concerns of trading partners, much work remains to be done in order to spur lasting change in workplace safety conditions.⁵⁹ A survey conducted by the Centre for the Improvement of Working Conditions and Environment (CIWCE) discerned major weaknesses in basic hygiene facilities, exhaust filters, fire prevention and medical facilities, emergency transport, waste disposal services, and warning signs.⁶⁰ Further, in the case of injury, families who seek remedy under legislation such as the Factories Act lack strong success rates, as courts tend to favor the employer due to lack of proof of negligence.⁶¹ Thus, while WTO market access commitments have spawned export growth, the incidental pressures for labor reform from developed trading partners often take a secondary role to production objectives.⁶²

B. *Transparency*

Pakistan has also undertaken trade-related commitments in the area of transparency, which often imply heightened monitoring of labor conditions.⁶³ To this end, the existence of labor laws such as the Factories Act, which empowers authorities to monitor, suspend, restrict, or prohibit work that poses a serious threat to worker safety, is notewor-

⁵⁶ See generally *id.*

⁵⁷ See e.g., International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association, Global Meeting of Coca-Cola Workers: Delegates Vow to Continue Fight for Worker Rights, http://www.iuf.org.uk/cgi-bin/dbman/db.cgi?db=default&uid=default&ID=747&view_records=1&ww=1&en=1 (last visited Dec. 2, 2005).

⁵⁸ Labour Code of Pakistan (11th ed., Shafi 1986), available at http://www.ilo.org/dyn/cisdoc/cisdoc_legosh.view_record?p_mfn=47581&p_ctry=pak&p_lang=E (last visited Dec. 2, 2005).

⁵⁹ See Telephone Interview, *supra* note 11.

⁶⁰ UNIVERSITY OF IOWA COLLEGE OF NURSING, OCC. HEALTH, <http://www.occhealth.nursing.net/pakistanO.htm> (last visited Dec. 2, 2005).

⁶¹ See *id.*

⁶² See Telephone Interview, *supra* note 11.

⁶³ See generally TRADE POLICY REVIEW, *supra* note 18.

thy.⁶⁴ Despite the presence of such legislation, however, potential remains for substantially greater progress in the area of transparency.⁶⁵ A primary reason is that in developing nations, governance issues have not reached a level of prominence comparable to that prevalent in the developed world.⁶⁶ As such, business owners as well as monitoring authorities lack understanding of the purpose or implications of transparency standards set forth pursuant to labor legislation.⁶⁷

The problem is further magnified by administrative complexity, leading to arbitrary application of regulations.⁶⁸ As one Pakistani economist noted, "It is not uncommon that the attitude of government functionaries towards the industry and business people is harsh. Instead of helping them and guiding them to be in full compliance of the prescribed requirement, they are reminded of the possibilities of big fines and punishment"⁶⁹

Additionally, business owners have voiced concerns regarding inconsistent application.⁷⁰ As a result, minimal incentives exist for them to comply with transparency standards in the long term, inhibiting the ability of external entities to monitor labor standards, as theoretically provided for in legislation such as the Factories Act.⁷¹

C. Gender Discrimination in the Workplace

Another key pressure Pakistan faced as a result of its WTO obligations stemmed from trading partners' concerns over gender discrimination in national industries.⁷² In 1996, Pakistan ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁷³ CEDAW required the provision of effective remedies for

⁶⁴ See INT'L LAB. ORG., *supra* note 58.

⁶⁵ See Telephone Interview, *supra* note 11.

⁶⁶ See *id.*

⁶⁷ See Muhammad Bashir Chaudhry, *Getting Ready for WTO Era Challenges*, PAK. & GULF ECONOMIST, May 26, 2004, available at <http://www.pakistaneconomist.com/database1/cover/c2003-30.asp>.

⁶⁸ *Id.*

⁶⁹ See *id.*

⁷⁰ See Telephone Interview, *supra* note 11.

⁷¹ See Chaudhry, *supra* note 67.

⁷² See Telephone Interview, *supra* note 11.

⁷³ See SEHER MIR, ISLAMIC INSTITUTE FOR HUMAN RIGHTS, WOMEN IN PAKISTAN, available at <http://www.iiflr.com/womens%20website/ppsehermir.html> (and on file with author); Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Dec. 18, 1979, 1249 U.N.T.S. 13.

any act of gender discrimination in the labor sector.⁷⁴ The use of national legal machinery to fulfill CEDAW obligations is rendered difficult by the fact that the majority of the nation's female labor force participants are employed in the informal labor sector, which is accorded minimal protection under national labor laws.⁷⁵

Many Pakistani women are employed in menial positions in the textile industry, often working up to 16 hours daily.⁷⁶ Nonetheless, they are typically classified by profession as homemakers and are thus deemed to be outside the labor force.⁷⁷ While domestic labor laws in the textile sector encompass most labor management affairs, they do not provide legal protection for the informal labor sector.⁷⁸ Additionally, Pakistani labor laws apply only to workplaces with more than fifty workers, further excluding the substantial contributions of women through the informal labor sector.⁷⁹ As a result, despite Pakistan's ratification of the CEDAW in spirit, its substance has yet to be fulfilled in practice.⁸⁰

Typical working conditions in the informal labor sector include irregular and low wages, vulnerability to sexual harassment, and minimal job security.⁸¹ Such conditions not only lack legal redress, but also lack statistical recognition.⁸² Since national labor statistics only encompass the formal labor sector, the majority of female employment is excluded from national labor indicators.⁸³

The lack of legal protection for women is compounded by the fact that increasingly liberalized trade provides opportunity for expanding companies to exploit the key sources of low cost labor, namely those susceptible members of the work force who are unprotected by the law.⁸⁴ This is particularly problematic as the MFA is phased out, and

⁷⁴ See Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13.

⁷⁵ See Rubina Jamil, Women and the Global Economy: The Case of Pakistan, Open World Conference of Workers, <http://www.owcinfo.org/owcnews/owcnews39.htm> (last visited Dec. 2, 2005).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See Huma Nawaz Syal, *WTO and Working Conditions of Women in Pakistan*, SDPI RES. & NEWS BULL., Jan.-Feb. 2004, available at http://www.sdpi.org/help/research_and_news_bulletin/nbjjanfeb04/articles/WTO.htm.

⁷⁹ Jamil, *supra* note 75.

⁸⁰ See Telephone Interview, *supra* note 11.

⁸¹ Syal, *supra* note 78.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

multinational corporations gain greater freedom of movement between nations in pursuit of cheap raw materials, the absence of trade union rights, and low wages.⁸⁵

D. *Child Labor*

Export expansion has also subjected Pakistan to pressure for child labor reform, particularly in light of allegations that high-profile multinational corporations have used child labor in Pakistani production facilities.⁸⁶ The nation's developed trading partners, weary of child labor scandals, sought assurances that exports were manufactured under standards acceptable in their own nations.⁸⁷ Though child labor inspections have risen in recent years pursuant to legislation such as the Employment of Children Act of 1991, data shows that child labor remains under-prosecuted.⁸⁸

In evaluating the Employment of Children Act's success, it is instructive to examine the Pakistani soccer ball industry, which has been investigated on several occasions for allegations of child labor violations.⁸⁹ In 1996, 75% of the world's soccer balls were produced in Sialkot, Pakistan.⁹⁰ A 1996 International Labor Organization study estimated that more than 7,000 children between the ages of five and fourteen stitched balls on a full-time basis, and a significant number worked part-time.⁹¹

The dominant factor in the failure of child labor legislation lies in lack of incentives for compliance, on the part of employers as well as government officials responsible for monitoring the industry.⁹² In order to remain competitive with industrialized trading partners, developing nations must leverage their primary source of competitive advantage: cheap, abundant labor.⁹³ As Najanuddin Najmi, director general

⁸⁵ *Id.*

⁸⁶ See e.g., AMERICAN UNIVERSITY, NIKE: NIKE SHOES AND CHILD LABOR IN PAKISTAN, <http://www.american.edu/TED/nike.htm> (last visited Dec. 2, 2005).

⁸⁷ See *id.*

⁸⁸ FINNISH INSTITUTE OF OCC. HEALTH, CHILD LABOUR IN PAKISTAN—ISSUES, POLICIES AND ACTIONS (2000), available at <http://www.ttl.fi/Internet/English/Information/Electronic+journals/Asian-Pacific+Newsletter/2000-02/07.htm>.

⁸⁹ U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFFAIRS, SOCCER BALLS (2005), available at <http://www.dol.gov/ilab/media/reports/iclp/sweat4/soccer.htm>.

⁹⁰ *Id.*

⁹¹ DIRECTORATE OF LABOUR WELFARE AND THE INT'L PROGRAMME FOR THE ELIMINATION OF CHILD LABOUR (IPEC), CHILD LABOUR IN THE FOOTBALL MFG. INDUS. (1996).

⁹² See Jonathan Silvers, *Child Labor in Pakistan*, ATL. MONTHLY, Feb. 1996, at 79–92.

⁹³ See *id.*

of the government-sponsored Workers Education Program, notes: "There's little doubt that inexpensive child labor has fueled Pakistan's economic growth."⁹⁴

In addition to employers, government officials lack incentive to lend enforcement power to child labor legislation.⁹⁵ Despite the fact that government inspecting officers received special training in the enforcement of child labor laws, empirical evidence shows inconsistent inspections, prosecutions, and convictions.⁹⁶ One author aptly comments that: "[S]peaking officially, [Pakistan's leaders] deplore [child labor] and have nothing but pity for the roughly 11 million children working in factories, in fields, and on the streets. Speaking pragmatically, they regard the practice as a distasteful but unavoidable part of an emerging economy"⁹⁷

This systemic lack of incentive to enforce child labor standards lends credence to the argument that such stringent standards are unrealistic in the context of developing nations.⁹⁸ As Shabbir Jamal, advisor to the Ministry of Labor, remarked: "Europeans addressed slavery and child labor only after they became prosperous. Just as we are catching up with the West in industrial development, so we are catching up in workplace and social reforms."⁹⁹ Additionally, the stringent child labor standards advocated by Pakistan's developed trading partners ignore the underlying issue of poverty: high rates of adult unemployment dictate the necessity of multiple household incomes.¹⁰⁰

Given that labor-intensive sectors such as the textile and the soccer ball industry are the backbone of the nation's economy, there is little institutional incentive to legitimately implement and enforce child labor legislation, or other mechanisms that would significantly hamper the development of these sectors.¹⁰¹ As such, there is little incentive for enforcement, and that which exists is geared primarily toward appeasing developed trading partners.¹⁰² As the Human Rights Commission of

⁹⁴ *Id.*

⁹⁵ *See id.*

⁹⁶ *See* DEP'T OF LAB. PUNJAB, PUNJAB PROVINCIAL GOV'T, INT'L AND NAT'L LAWS RELATED TO CHILD LAB., available at <http://www.dolpunjab.gov.pk/r2.htm> (last visited Dec. 2, 2005).

⁹⁷ Silvers, *supra* note 92.

⁹⁸ *See id.*

⁹⁹ *See id.*

¹⁰⁰ *See* Kaushik Basu, *Compacts, Conventions, and Codes: Initiatives For Higher International Labor Standards*, 34 CORNELL INT'L L.J. 487, 495 (2001).

¹⁰¹ *See* Telephone Interview, *supra* note 11.

¹⁰² *See* BUREAU OF INT'L LAB. AFF., *supra* note 89.

Pakistan noted during a visit to Sialkot, manufacturers seemed to have instructed their contractors not to talk about child labor, and had taken the contractors to task “not so much for employing child labor as for letting it become visible.”¹⁰³ Such superficial labor reforms are further perpetuated by the lack of governmental personnel trained to monitor and develop sound *proactive* policy regarding child labor.¹⁰⁴

III. ANALYSIS

The pressure faced by Pakistan to implement labor reforms incidental to trade liberalization has spawned only superficial labor reforms that cannot be sustained in the long term.¹⁰⁵ In order to firmly entrench these reforms, trade liberalization commitments must adequately account for the economic and legal constraints of developing nations.

A. *Proposals for Pakistan*

This Note proposes three mechanisms to further the development of trade liberalization policies that adequately account for the economic and legal constraints of developing nations and drive lasting labor reform.

Firstly, trade commitments should appropriately consider the essential prerequisite for lasting legal reform: viable civil service infrastructure capable of developing, implementing, and enforcing sound labor policy.¹⁰⁶ The success of legal reform depends largely on a conducive institutional environment, which many developing nations such as Pakistan have yet to develop.¹⁰⁷ Building and modernizing institutional capacity will lay the groundwork for sustainable labor reform, allowing Pakistan to “speak the same trade . . . language’ as the rest of the world.”¹⁰⁸ One author, Dr. Abid Suleri, cites the inefficient use of resources in Pakistan’s current civil service structure, pointing out that government employees who receive WTO training courses are often

¹⁰³ *Id.*

¹⁰⁴ See Telephone Interview, *supra* note 11.

¹⁰⁵ See *id.*

¹⁰⁶ See Abid Qaiyum Suleri, *A Field Not So Level*, INT’L NEWS (Pakistan), May 25, 2003, available at <http://www.jang.com.pk/thenews/may2003-weekly/nos-25-05-2003/spr.htm#4>.

¹⁰⁷ See generally Chaudhry, *supra* note 67.

¹⁰⁸ Bashir, *supra* note 10.

transferred among departments before they are able to develop a particular area of expertise.¹⁰⁹

Dr. Suleri aptly suggests the development of a WTO cadre in the Pakistani civil service structure, dedicated solely to WTO issues and including representatives from the academic arena and the private sector.¹¹⁰ He also recommends government sponsorship of empirical research on WTO-related reforms, which would provide valuable data on the effectiveness of various mechanisms to enforce labor standards.¹¹¹

In addition to minimizing arbitrary interpretation and application of laws, strong institutional bases will counteract inconsistent application and misuse of enforcement resources.¹¹² One study reveals substantial budgetary planning inefficiencies in areas such as salary allocation for parliamentarians and hiring in various ministries.¹¹³

The creation of accountable civil service structures avoids such inefficiencies, rendering funds available to assist Pakistan in establishing more *advisory* institutions to complement those dedicated to enforcement.¹¹⁴ Employers stand to benefit from advisory resources that can aid them in better understanding and complying with labor legislation.¹¹⁵

Secondly, the prominent issue of child labor must be addressed with cognizance of the reality that child labor is viewed as a contributor to economic growth.¹¹⁶ Since both the government and employers in developing nations lack incentives to comply with labor laws, legislation designed to address the problem retroactively is largely ineffective. Pakistan should instead focus on policies aimed at eradicating the root causes of child labor: adult unemployment and poverty.¹¹⁷ Conservative estimates place the unemployment rate at 7.7%, with approximately one-third of the nation living in poverty.¹¹⁸

Research finds that in nations where child labor is a mass phenomenon, as is overwhelmingly the case in developing nations, a

¹⁰⁹ Suleri, *supra* note 106.

¹¹⁰ *Id.*

¹¹¹ *See id.*

¹¹² *See e.g.*, Syed M. Aslam, *Government Earnings and Expenditures*, PAK. & GULF ECONOMIST, Jan. 5, 2004, available at <http://www.pakistaneconomist.com/page/issue01/i&e3.htm>.

¹¹³ *See id.*

¹¹⁴ *See* Chaudhry, *supra* note 67.

¹¹⁵ *See id.*

¹¹⁶ *See* Silvers, *supra* note 92.

¹¹⁷ *See* Basu, *supra* note 100, at 495.

¹¹⁸ Shamim Ahmed, *Poverty and Unemployment*, PAK. & GULF ECONOMIST, Jan. 5, 2004, available at <http://www.pakistaneconomist.com/page/issue01/i&e4.htm>; ECONOMIST INTELLIGENCE UNIT, COUNTRY REPORT: PAKISTAN (2004).

child's non-work is a luxury good in a household's decision-making.¹¹⁹ Often, a family cannot reach even basic sustenance goals without child income.¹²⁰ Hence, if trade liberalization policies lead to a reduction in adult unemployment, parents will, on their own initiative, withdraw children from the labor market.¹²¹ Moreover, these are long-run goals, and must be implemented accordingly. The WTO's social clause does not currently account for such considerations relating to child labor.¹²²

Finally, making WTO trade liberalization commitments more feasible for developing nations requires broader representation of their interests in the decision-making process.¹²³ In past WTO negotiations, major decisions were left primarily to the European Union, the United States, and a small number of other developed countries, despite the fact that approximately 100 of the WTO's members are developing nations.¹²⁴ Such marginalization reinforces the perception among developing nations that reforms set forth are simply an attempt to impose protectionist barriers against their exports.¹²⁵ This cynicism is particularly prevalent in the area of labor reform, as "[e]ssentially all developing nations see low labor costs (and, perhaps, lax regulation of child labor and working conditions and rights to organize) as an important—perhaps their only—comparative advantage in attracting foreign investment."¹²⁶ Meaningful inclusion of developing nations in WTO negotiations will allow them to voice their unique constraints and to develop attainable legal reform goals.¹²⁷ One way to promote such meaningful inclusion lies in effective consultation between WTO and NGOs.¹²⁸ As NGOs have a depth of experience in developing nations, they can contribute valuable input in the design of viable legal reform mechanisms.¹²⁹

At the national level, Pakistan should leverage trade relationships in the South Asian region to diversify its economy and decrease de-

¹¹⁹ See Basu, *supra* note 100, at 495.

¹²⁰ See *id.*

¹²¹ See *id.*

¹²² See *id.*

¹²³ See David Gantz, *Failed Efforts to Initiate the "Millennium Round" in Seattle: Lessons for Future Global Trade Negotiations*, 17 ARIZ. J. INT'L & COMP. L. 349, 351 (2000).

¹²⁴ See *id.*

¹²⁵ See *id.* at 354.

¹²⁶ *Id.*

¹²⁷ See *id.* at 351.

¹²⁸ See Maura Blue Jeffords, *Turning the Protestor into a Partner for Development: The Need for Effective Consultation Between the WTO & NGOs*, 28 BROOK. J. INT'L L. 937, 974 (2002).

¹²⁹ See *id.*

pendence on labor-intensive industries.¹³⁰ Decreasing the country's overwhelming dependence on such industries will generate greater incentive to comply with labor standards. Also, as Pakistani Chief Justice Nazim Hussain Siddiqui has noted, the legal systems of South Asian countries are confronted with common issues.¹³¹ As such, developing nations of South Asia can use their respective strengths to synthesize recommendations that adequately account for domestic conditions, setting the stage for sustainable labor reform.¹³²

CONCLUSION

As a developing nation member of the WTO, Pakistan confronts the difficulties of developing viable legal mechanisms necessitated by economic liberalization. In the face of pressure to implement labor reforms incidental to trade liberalization policies, Pakistan's unique constraints as a developing nation dictate the need for feasible reform expectations. By establishing a viable civil infrastructure, improving the adult labor market, and garnering a broader participatory role in the WTO, Pakistan holds potential to reap the rewards of economic growth accompanied by lasting labor reform.

¹³⁰ See PAKISTAN SUMMARY, *supra* note 1; Mohammad Akbar, *Trade Policy Lacking Diversification Measures*, DAWN INTERNET EDITION (Pakistan). Aug. 18, 2003, <http://www.dawn.com/2003/08/18/abr14.htm>.

¹³¹ Akhgar Anwar Awan, *Saarclaw Moot Emphasizes Strong Regionalism*, INT'L NEWS, (Pakistan), Feb. 23, 2004, available at <http://jang.com.pk/thenews/feb2004-daily/23-02-2004/main/main5.htm>.

¹³² See *id.*