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LABOUR STANDARDS IN A GLOBALISED ECONOMY SYMPOSIUM

Transcending the ‘buddy vs bully’ debate in light of the TTIP negotiations

A debate on linking labour rights and trade.

LORE VAN DEN PUTTE — 9 November, 2015



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The EU and US trade-labour linkage

Although the debate on linking labour rights and trade has a long history, the topic has become more prominent than ever in the last couple of years. Concerns expressed about the trade-labour linkage in the case of Colombia and debates about the protection of labour rights in the Transatlantic Trade and Investment Partnership (TTIP) are topical examples. While both the EU and the US are seen as

frontrunners in tying labour provisions to their trade agreements, their approaches are often described as opposite. The EU model is typically portrayed as promotional as it favours cooperation over sanctions, while the US model is seen as conditional because of its hard enforcement possibilities (i.e. penalties in case of non-compliance with respect for labour rights). If a third country does not respect labour commitments, the EU will approach it as a friend and talk about what has happened, while the US as an almighty father will point its finger to the country's bad behaviour. In more negative terms the EU approach is described as 'soft' while the US approach is regarded as 'hard'. At least, this is the common characterization.

In this post I want to argue that the sole focus on the 'buddy vs bully debate' should be overcome to (i) shed light on the many important differences and similarities of both approaches that are now obscured and to (ii) investigate what these approaches can achieve in practice in third countries. Only if the debate is opened up, we can think about the benefits and pitfalls of both approaches to come to a balanced model that could inspire for example TTIP negotiations.

Blind spots of the current debate

A first reason why the public and academic debate on the trade-labour linkage should be opened up is because it leaves us with a blind spot in two ways. First of all it impedes us to discuss the additional differences and, indeed, similarities that exist between both models. For example, it is quite unknown that US agreements, like EU agreements, include possibilities for civil society to monitor the implementation of labour issues. On some occasions civil

society organisations can in public meet with the labour minister of the US and a third country to provide their input on the implementation of labour provisions. Another similarity concerns the dispute settlement procedure: few know that EU agreements provide the possibility to set up a panel of labour experts to judge on a labour dispute between the EU and a trade partner, albeit that no sanctions are foreseen in case of non-compliance. Ultimately, the violation of labour rights can be dealt with under the so called 'essential elements clause', which refers to the protection of fundamental human rights of which the Core Labour Standards are part. Thus 'hard enforcement' is a possibility under EU trade agreements, albeit as the 'nuclear option'.

Secondly, by focusing solely on the absence or presence of sanctions our attention is diverted away from even more interesting questions related to the overall framework of their approaches. For example, why does the EU combine labour issues with environmental issues and frame it as part of sustainable development? Does the US see labour rights as a 'trade issue' because the lack of respect for such standards creates unfair competitive advantages? Indeed, why does the EU mostly seem to be driven by a concern for human rights while the US relies on the 'protectionism in disguise' argument? These are fundamental questions that deserve more attention.

Focus on Implementation and Impact Assessment

A second motivation why we should transcend current discussions is to open space to investigate what these models achieve in practice. This could be done in two steps. As a first step we should look at the actual implementation of the legal text of the trade agreements. We will soon

enough discover that the sanctions-based approach has never been fully implemented by the US. Only with the Guatemala case under the Dominican Republic-Central America agreement the final phase of dispute settlement has been reached. Indeed, in practice both the EU and the US are 'soft' when it comes to implementing labour aspects of trade relations, as research by Myriam Oehri has shown.

Debates on the working conditions of mostly female textile workers following the Rana Plaza disaster in April 2013 are quite illustrative in this regard. The EU as a first reaction considered withdrawing trade preferences under its Generalized System of Preferences (GSP), a scheme that grants developing countries like Bangladesh additional EU market access. It later on adopted a more cooperative stance. In the spirit of 'staying engaged' the European Commission together with the International Labour Organization (ILO) and the government of Bangladesh adopted the Global Sustainability Compact. The US took a tougher stance and suspended its trade preferences to the Asian country. Later it joined the EU in its cooperative Global Sustainability Compact.

As a second step we should, once implemented, investigate which impact these labour provisions have on the social realities of workers. This requires digging into the specific projects set up to advance respect for labour rights. What has been their goal, what did they achieve? Does civil society really have a voice when they discuss the implementation of labour provisions? Is there a sense of empowerment? Thus, without wanting to dismiss the use sanctions might have as a threat, the sole focus on the hard vs soft debate blinds us to see what might be achieved with cooperative measures.

This post has made the case for opening up the public and academic debate about the EU and US approach to the trade-labour nexus. A more comprehensive discussion would not only uncover additional elements of their approaches, it would also enable us to investigate how these agreements impact on social realities for workers both in third countries as well as in the EU and the US. The need for a more open view is timely, given that EU and US negotiators were meeting from 19 to 23 October in Miami to discuss the labour aspects of their future trade deal. Any future debate intending to set global standards should better transcend the carrot and stick discussion.

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