

Bilateral and regional trade agreements

Report of the GURN Online discussion, March 2005

Background

The number of bilateral and regional trade agreements and negotiations is continuing to grow. Many contain provisions beyond WTO commitments, including in the areas of services, investment, government procurement, intellectual property, and competition policy. Interest in these negotiations has intensified since multilateral trade negotiations stalled at Cancún. Many governments have been looking for other ways to continue trade liberalisation and conclude bilateral or regional deals with those countries that are willing.

The reasons for an interest in bilateral trade agreements range from political ones to commercial ones. Many developing countries have been feeling pressure to conclude bilateral deals so as not to be excluded from agreements that provide market access to industrialised countries, even if they are concerned about the consequences for domestic producers that may face more competition as a result. Some trade agreements are linked to aid and development programmes such as the EPAs (economic partnership agreements between the EU and ACP countries) and AGOA (African Growth and Opportunity Act between African countries and the US), which make the developing countries concerned more likely to negotiate.

There have been various criticisms of free trade agreements from different quarters. Some have argued that negotiating and implementing so many agreements requires significant resources from often very resource-strapped governments, with each agreement having different provisions (the so-called “spaghetti bowl” of trade agreements). Secondly, because of the complexity of the agreements as well as the speed with which they are frequently negotiated, many commitments are made without proper economic, social and environmental assessment of the consequences. Trade unions are not properly consulted, if at all, about the ongoing negotiations and the commitments that are being considered by their governments.

The WTO has warned regularly about the consequences of bilateral and regional trade agreements for multilateral trade. Dr. Supachai asked for increased focus on the Doha Development Round rather than on bilateral agreements, and the APEC Summit of November 2004 concluded with a reaffirmation of commitment to the Doha negotiations, rather than to start APEC regional trade negotiations as business leaders had requested. In December 2004, Dr. Supachai said that the WTO would institute a mechanism to ascertain whether RTAs and FTAs contributed to the multilateral process of integrating and easing world trade. According to him, FTAs are costly both in terms of financial and human resources, and the benefits remain low compared to multilateral negotiations.¹ Questions arise with regard to the compatibility of bilateral trade agreements with WTO agreements. So far only two bilateral trade agreements have been looked at in the WTO. Some FTAs with the US for example include intellectual property provisions that contradict the August 2003 WTO decision on TRIPS and public health.

¹ Financial Express, India, Don't go whole hog on FTAs : Supachai, 6 December 2004

Clearly, it is important to look into the commitments made in bilateral and regional trade agreements, which are likely to have an impact on future commitments in the WTO. Trade unions should be informed and consulted during the negotiations. Moreover, they should have the possibility to cooperate and consult with trade unions of the other countries that participate in the trade negotiations.

In order to increase and improve trade union participation in trade agreements an online discussion was organised in March 2005, over 4 weeks, which considered the involvement of trade unions in trade agreements, the role they play and the influence they have on the final outcome of trade agreements. Discussions took place on the different strategies that trade unions could use and on how to improve them. These provided more insight into the multitude of agreements, both with regard to the inclusion of labour standards into trade agreements and with regard to the impact of trade liberalisation and provisions on investment, services, competition and intellectual property on employment, workers' rights and working conditions.

And finally the discussion provided for an exchange of experiences between trade unions in different countries. Some 60 people registered for the discussion, and around 20 people participated actively in the discussion. The different questions that were addressed during the discussion can be found in Annex I.

Summary of the discussion

The *first week* of the online discussion focused on the problems of bilateral and regional trade agreements for trade unions, and on trade union involvement in those agreements. The central question that guided the discussion was: What are the key problems and opportunities of bilateral and regional trade agreements for trade unions?

A wide variety of contributions were made, providing different regional perspectives.

It was clear from the discussion that trade union participation and consultation in bilateral and regional trade agreements takes places at different levels in different countries. Some trade unions are consulted on trade agreements through a formal structure, which is for example the case in Belgium as well as Mercosur and Caricom. Others are only consulted on an ad hoc basis (such as Andean and Central American countries). Some are not consulted at all, as in Serbia and in many West African countries.

Most consultations are limited to labour issues or labour related issues, such as in India where trade unions were only consulted concerning "social clause" proposals but do not have any access to information on the GATS commitments the government has tabled. Others are consulted on a broader range of issues.

Several factors were identified that have an impact on trade union participation and consultation in trade agreements. Some of the most important ones are the lack of human and financial resources to deal with these issues; the lack of willingness from the government to consult trade unions on trade issues (or on issues beyond labour); trade unions failing to push for consultations (beyond labour issues); the lack of a

tripartite tradition; the influence of World Bank and IMF in dictating trade regimes in many developing countries without including trade unions; and political instability as an excuse to avoid consultations.

Other observations from the discussion include the risk that bilateral and regional trade agreements undermine WTO agreements and take away human and financial resources, especially in developing countries, that should be used in the multilateral negotiations, given the fact that these bilateral agreements have often little to offer for developing countries. Another problem that was identified is trade-aid dependence. Many bilateral trade agreements include an aid component which makes it more difficult for governments to refuse a bilateral deal that includes trade concessions.

Finally, the discussion provided information on different trade blocs and trade agreements such as the SAARC and SAFTA, Mercosur, FTAA, NAFTA, CAFTA, APEC, Caricom and the Andean Community. Information was provided on trade union consultations in these blocs, on new initiatives for trade union consultation and participation (EU/Mexico and CAFTA), and finally on the politics behind trade agreements between different trade blocs/countries.

The *second week* of the discussion focused on trade union strategies with regard to bilateral and regional trade agreements. Such strategies can be on a participatory basis, which means that trade unions have some form of consultative status whether formal or informal, and whether structural or ad hoc. This is the insider strategy. Another possibility is the outsider strategy, in which trade unions try to influence trade agreements from the outside, such as through information campaigns, publication of reports, boycotts, demonstrations etc.

Most of the contributions showed that either an insider or participatory strategy is used by trade unions (in different degrees), or that there is no trade union involvement at all. An exception is the FTAA agreement which is currently negotiated and which has received a lot of protest from trade unions in Latin American countries. In most Latin American countries we find some sort of consultative structure, which is effective in some cases and less effective in others. Again financial resources are often lacking to bring trade unionists of different countries together.

Other strategies focus on training and development of training programmes such as the master programme for trade unionists “Labour Policies and Globalisation”. These training programmes however are often only offered in English, thus making it difficult for French and Spanish speaking trade unionists to participate in such programmes.

Another participant argued that there is a need for stronger trade unions in order to influence trade agreements and other policies and suggested to make better use of workers’ capital (such as workers’ provident and pension funds) and the possibilities this can offer to improve trade union strength.

It was suggested to make more use of the GURN web page on bilaterals as a place to exchange information between trade unions on trade union strategies with regard to trade agreements.

The ASEAN Social Charter was mentioned by one participant as a way to include a social dimension in ASEAN, and several strategies were presented to make progress on this.

A final point was the need for trade unions to focus on trade agreements and their impact on development. This requires a much broader approach than focusing on achieving a consultative status or on workers' rights or social provisions in trade agreements. It would involve the need to look at how trade liberalisation can be beneficial for a country's economy and its productive capacity. This requires accompanying government policies that maximise the benefits of trade agreements and minimise the adverse effects.

The *third week* of the discussion focused on the inclusion of social issues and labour standards in trade agreements and strategies for trade unions to include such issues.

From the discussion it became clear that the inclusion of social issues in trade agreements can take place at different levels, ranging from commitments to the application of national labour legislation to the creation of common binding supranational social legislation.

The enforcement of the social commitments can vary from dialogue or technical assistance to fines or trade sanctions. There can be positive incentives (such as providing more market access if core labour standards are respected) or negative incentives (such as imposing trade sanctions)

In some countries there is no inclusion of social issues or core labour standards in trade agreements, as in the case of Benin, although the current EPA negotiations under Cotonou are supposed to include labour standards and other social issues. However, trade unions in countries negotiating EPAs should make sure that the social issues are included in the final agreements.

In AGOA (African Growth and Opportunity Act) there is reference to core labour standards (except for discrimination) in section 104, but there is no transparency in monitoring and reporting, and generally it is not used. One example was given of how this section was used to change labour legislation in Swaziland, but legislative changes are often not enough to change actual practices.

In the Americas there has been inclusion of social issues in NAFTA, but provisions have remained weak. In Mercosur a tripartite Social and Labour Commission was set up, which undertakes annual reviews of the commitments member states have taken. The US-Chile and US-CAFTA agreements include commitments to core labour standards (except for the ILO core conventions on discrimination and equal remuneration), but no enforcement mechanism is attached. In Caricom there is a policy of harmonisation of labour rights in four areas: equality, security, health and working environment, recognition of wages, and termination of contract. Another recently agreed agreement is the CSN (Confederation of South American Nations), which has not included a social dimension so far. The CCSCS (Mercosur) and the Andean consultative labour council have proposed a socio-labour instrument for the CSN, similar to what is included in Mercosur.

It was stressed that the ILO needs to be strengthened, that there needs to be closer cooperation between the ILO and the WTO, such as an observer status of the

ILO in the WTO, and that they should work together on a social clause to ensure respect for core labour standards. Such a social clause linked to dispute settlement is however strongly opposed by many governments in the WTO, but opposition to trade sanctions can be found in bilateral and regional trade agreements.

A number of strategies were proposed for trade unions with regard to the inclusion of a social dimension in trade agreements. First of all trade unions should make more and better use of the existing instruments, which requires engagement in the technical processes. In addition, trade unions should cooperate more in bilateral and regional trade agreements, and coordinate their actions. Trade unions need to have clear objectives on what they try to achieve through participation in commissions and consultations. Trade unions should lobby for changes in agreements if the need arises. And finally employers should be more seriously involved in negotiating social paragraphs.

The *last week* of discussion addressed the main non-trade components of bilateral and regional trade agreements such as provisions on investment, competition policy, government procurement, services, intellectual property, etc, and looked at the different commitments that countries make in these areas. The discussion focused on trade union strategies with regard to such “WTO plus” agreements.

It was noted that most FTAs include WTO plus provisions on investment, intellectual property, competition policy, services and government procurement, which governments may not have in the WTO but agree on in FTAs, sometimes even undermining WTO agreements. For example the TRIPS and public health decision at the WTO in August 2003, which allows for compulsory licensing, is undermined by US FTAs, which try to re-strengthen patent protection and data protection, therefore making cheap access to medication more difficult. Another example is services. Services are in many cases far more liberalised in FTAs than in the WTO (using a “negative list approach” in FTAs, versus a “positive list approach”, which specifies which sectors or subsectors will be liberalised, in the WTO). The risk is that these bilateral commitments are now going to be used as benchmarks for liberalisation in the WTO.

Other concerns were expressed with regard to investment provisions in trade agreements. These provisions generally offer a strong protection for investors, including investor to state provisions which allow investors to claim compensation in the case of government legislation or regulations that affect profits. The provisions on investment provide for national treatment, thus not allowing governments to treat foreign and domestic companies differently. In practice this means that subsidies to support domestic industries can no longer be provided. Moreover, international disputes on investment take place in a private setting and rulings are not objective.

Many agreements do not address technical barriers to trade and other NTBs. Developing countries are mostly excluded from taking part in these standard-setting bodies.

It is clear that these are all important issues to be looked at and to engage in, and that these are technical issues that require distribution of information, cooperation and increased knowledge.

Conclusions and Recommendations

Trade union participation in bilateral and regional trade agreements differs from one country to another, and the degree of involvement differs. Generally speaking, the level of trade union involvement in trade agreements has to be increased in order to cover all areas of the agreement, not just social issues. Some examples of a high degree of trade union involvement can be found in Latin America (in particular the Coordinadora for Mercosur), in South Africa, in the Caricom region, in the EU and in the US.

Some constraints need to be dealt with such as lack of information and knowledge on trade issues, lack of financial resources, and the language barriers in this field. These constraints need both a national and international approach.

Ways to improve trade union participation in trade agreements could be:

- to establish or improve tripartism and social dialogue as a basis for trade union consultation and participation in trade agreements;
- to develop trade union consultation beyond labour issues and to establish contacts with other ministries such as the trade ministry or ministry of commerce;
- to address information gaps on substantive issues (on trade in agricultural and industrial goods and services, and on issues such as provisions on investment, competition policy, intellectual property) in bilateral and regional trade agreements;
- to identify and analyse the impact of provisions in trade agreements that go beyond or undermine WTO provisions, such as provisions on intellectual property that restrict access to medicines, and to exclude such provisions;
- to include provisions on labour standards in trade agreements;
- to make better use of existing possibilities for trade union participation and consultation, and to make better use of possibilities offered by provisions on labour standards in trade agreements;
- to cooperate and coordinate with trade unions in those countries with which the trade agreement is negotiated;
- to increase trade union training in the area of trade agreements and their developmental impact;
- for trade unions to develop and focus on development strategies that include trade policies and investment policies with a strong social dimension;
- to look at best practices of trade union participation in trade agreements including in situations of political instability;
- to extend trade union participation in bilateral and regional trade agreements to participation in Bilateral Investment Treaties.

ANNEX I

Questions that were addressed during the online discussion

With regard to trade union participation:

1. Does or has your trade union participate(d) in the negotiation of bilateral or regional trade agreements, and if so in which ones?
2. How is this participation organised? Which people are involved? Are trade unions consulted at each stage (or round) of the negotiations? Is there a formal body or structure for consultations? Are consultations part of each negotiating process or does this process differ from one agreement to another?
3. What action does your trade union undertake? Do you provide comments on proposed agreements? Do you undertake impact assessments? Do you ask for impact assessments? Do you ask for adjustment measures? Do you organise public meetings or demonstrations?
4. Does the final agreement reflect the concerns and inputs by trade unions? If not, do you have ideas on how trade union participation could be improved and on how trade unions could put more pressure on governments so as to include their concerns?
5. Do you work closely with other trade unions, either in your country or with trade unions in the trading partner countries? Do you work closely with NGOs in your country on these issues?

With regard to the contents of the agreements:

1. Are there any provisions in the bilateral and regional trade agreements that your country has signed which deal with labour and social issues (including ratification and implementation of ILO core labour standards)? How are these provisions enforced? Is there a compliance mechanism and review mechanism in place, and how do these work? What is the effectiveness of such provisions and what results do they have with regard to the improvement of compliance with labour standards?
2. What are the main non-trade components of those agreements that your country is negotiating or has signed? (e.g. is investment included, and/or competition, and/or government procurement, and/or services, and/or intellectual property?)
3. What are the commitments that your country has made? And which of these commitments go beyond WTO commitments?
4. Are there any impact assessments of these trade agreements, either before or after the agreement coming into effect?
5. What were the most important social consequences (positive and negative) and employment effects of the trade agreements your country has signed?