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Labour Standards and Trade Preferences in Sri Lanka

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1 The rationale for trade preferences

Developments in international trade concentrate on market access and removal of trade barriers – both in developed and developing countries – thereby increasing competition. A smaller number of mainly larger developing countries, such as Brazil, India, and China, i.e. the most competitive developing countries, will be able to increase their exports and raise their market share as a result of enhanced market access. Many LDCs and several small developing countries, which are less competitive, will have greater difficulties in competing and maintaining their market share. There is a clear need to focus on these countries' particularities, and to find solutions that are beneficial to them. Special and differential treatment is not enough. They need real market access opportunities as well as reinforcement and development of their supply-side capacities. Market-access opportunities are determined not only by tariff reductions but also by non-tariff barriers such as health and safety requirements or packaging requirements as well as by supply-side constraints. One of the (short-term) solutions proposed is preferential market access to developed country markets, one possible approach to increasing the exports of these more vulnerable countries that has been under discussion for several years now. These preferences allow countries to export at tariff rates below the MFN rate.

2 Pressure on workers' rights

However, with tariffs declining over time, and with negotiations progressing on tariff reductions in agriculture and non-agricultural goods, leading to lower tariffs particularly in developed countries, these possibilities for trade preferences will ultimately disappear. Moreover, increased competition among developing countries, resulting from trade liberalization and reinforced by the end of the quota system in textiles and clothing, but also in other manufacturing sectors, has resulted in increased pressure on workers' rights in developing countries, in particular in export-processing zones (EPZs), where there are hardly any workers' rights. EPZs have increased in number over the last twenty years, from 176 EPZs in 1986 to 5,174 in 2002, with an increase of 2,000 EPZs over the last two years. Some 43 million workers are employed in EPZs. Besides widespread violations of workers' rights in EPZs, other potential benefits of these zones often remain limited. Technology and skills transfers have remained low, and tax breaks leave governments without benefits, while they are still forced to provide the necessary infrastructure. This situation has, in some cases, also led to environmental pollution, and most EPZs are marked by poor safety and health conditions.

An example of a country facing strong competition, particularly in textiles and clothing, and where workers' rights are not respected, is Sri Lanka. The quota system in textiles and clothing has played an important role in developing the textiles and clothing industry in Sri Lanka, but increased trade liberalization and competition have led to increased violations of workers' rights in the free-trade zones (FTZs) in Sri Lanka. High poverty rates and frequent company relocations have made workers extremely vulnerable, enabling companies to suppress labour standards, in particular the right to organise and the right to collective bargaining.

3 Linking trade preferences and social concerns

A system of trade preferences can therefore both address market-access concerns and concerns bearing on labour standards, and serve to eliminate some competitive pressure. One example is the European GSP (Generalised System of Preferences), with its additional preferences for compliance with labour standards. The GSP has a general component which provides for tariff reductions on 3,700 sensitive products as well as for zero tariffs on 3,300 non-sensitive products. The tariff reductions for all sensitive products are 3.5%, with a 20% reduction for textiles and clothing. Besides the general provision of trade preferences, which applies to all participating developing countries, there are four additional schemes. One is the EBA (Everything but Arms), which provides for zero tariffs for all products from Least Developed Countries, except for arms, and with quantitative restrictions for bananas, rice and sugar. The other three additional schemes are the drugs scheme, the environmental scheme and the labour standards scheme, which provide for additional tariff reductions for countries that combat drug production and trafficking, protect the environment or comply with core labour standards. Tariff reductions provided under the general scheme are doubled under the labour standards scheme. Sri Lanka is one of the beneficiaries of the General EU GSP, and since the beginning of 2004 Sri Lanka has also benefited from the additional preferences in exchange for compliance with core labour standards.

4 Sri Lanka – the role played by trade and FTZs

Sri Lanka has three Free Trade Zones (FTZs): Katunayake, Biyagama and Kogala. All three are located near Colombo and the international airport. The zones are surrounded by barbed wire and security guards. Companies with factories in these export-processing zones cover a wide range of sectors and products such as textiles and clothing, mattresses, footwear, housewear and electronics. The apparel industry in Sri Lanka is the largest sector in the zone and accounts for 50% of total export earnings and 5.5% of GDP. Many companies have come to Sri Lanka to benefit from the textiles and clothing quota, and some 340,000 people are employed in the apparel industry, 87% of whom are women. Approximately 830 factories are found in the apparel sector, 600 of which employ fewer than 500 workers. Another 600,000 workers are indirectly dependent on the apparel industry.[1] Almost one third of Sri Lankan exports (29%)[2] go to the European market (64% to the UK). Sri Lanka's share in the EU clothing market was 0.9% in 2002,[3] and apparel exports to the EU accounted for 51% of total exports to the EU in 2003.[4] Some 95% of the country's apparel output is exported.[5] There are serious concerns about the phasing out of the textiles and clothing quota by the end of 2004 as well as over the impact on textiles and clothing production in Sri Lanka. Predictions vary, but the ITGLWF, for example, has estimated that 300,000 out of 350,000 jobs in the textiles industry could disappear.[6] Estimates by the trade unions vary between 70,000 and 150,000 direct job losses in the short and medium term (2005-2006).[7]

The general EU GSP provides for zero tariffs for all non-sensitive products and tariff reductions on sensitive products. In exchange for compliance with core labour standards, Sri Lanka receives additional tariff reductions on sensitive products. The two schemes combined, Sri Lanka is provided zero tariffs for all non-sensitive products, an 8.5 percentage point tariff reduction for all sensitive products, and a 40% tariff reduction on textiles and garments, twice the 20% rate under the general scheme. In exchange for these additional preferences, Sri Lanka is obliged to comply with (ratify and enforce) the eight ILO core labour standards, i.e. freedom of association and the right to collective bargaining, non-discrimination in employment and remuneration, elimination of child labour, and elimination of forced labour.[8] Sri Lanka has ratified all eight core labour standards, but in practice many violations still take place. The EU has therefore decided to grant Sri Lanka additional preferences on the condition that its compliance with core labour standards be reviewed in the course of 2004, and depending on the outcome of this review, additional preferences may be withdrawn. 31% of Sri Lanka's total exports to the EU have been exported under the GSP scheme.[9]

5 Compliance with core labour standards

Compliance with core labour standards in Sri Lanka is particularly a problem with regard to freedom of association and collective bargaining in the Free Trade Zones. Few trade unions exist within the three FTZs in Sri Lanka. Those that do exist have gone through a long struggle before being recognised, and they continue to face difficulties. In Sri Lanka, the law provides for recognition of trade unions if at least seven workers take part. To engage in collective bargaining, however, a trade union needs to have a membership of at least 40% of the workers, and in practice recognition is granted only on the basis of this 40%. Moreover, many trade unions are not recognised at all by the employer, even if they represent much more than 40% of the workers.[10] Employers use several different tactics to avoid formation and recognition of trade unions. They intimidate, threaten or transfer workers who try to form a trade union and threaten

1 The MFA and beyond: responding to the challenge through dialogue and action, 2004

2 CBSL, Central Bank of Sri Lanka

3 WTO: http://www.wto.org/english/res_e/statis_e/its2003_e/section4_e/iv68b.xls

4 Marketing labour standards: where can it take us?, Bilesha Weeraratne, Institute of Policy Studies, Sri Lanka

5 The MFA and beyond: responding to the challenge through dialogue and action, 2004

6 ITGWLF quoted in "Disaster looms with the ending of the quota system", Samuel Grumiau, ICFTU, November 2004

7 The MFA and beyond: responding to the challenge through dialogue and action, 2004

8 These core labour standards are a set of minimum standards that countries need to enforce. They were taken up in the ILO Declaration of Fundamental Principles and Rights at Work, in 1998, which was signed by all ILO member countries.

9 Marketing labour standards: where can it take us?, Bilesha Weeraratne, Institute of Policy Studies, Sri Lanka

10 For example, in Joy Lanka factory, Bensiri Rubber Products, Dulon Zipper, Topstar branch in: Rights: Denied! Sri Lanka case study by Kelly Dent and Anton Marcus, May 2002

other workers with dismissal to discourage their participation in or support for a trade union. Furthermore, employers seek to undermine trade unions by forming so-called employees' councils. The employees' councils fall under the responsibility of the Board of Investment (BOI) in Sri Lanka. The BOI is located with the Ministry of Finance and has formulated guidelines [11] for companies which allow for the formation of employees' councils. These councils are set up on the initiative of the employer, with the objective of offering workers an alternative to trade unions, but in reality they are developed to undermine trade unions. The employer permits members of the employees' council to hold a one-hour meeting per month in a room provided by the company, a provision which does not apply to trade unions. Moreover, the employees' council can bargain collectively if the trade union does not have the required 40% membership, and if it is authorised to do so by at least 40% of the workforce. Given this favourable treatment and the fact that members of an employees' council do not pay fees (the employer funds the council), they clearly undermine trade unions. The employees' councils are under the control of the employer and therefore lack the independence of trade unions. These employees' councils have been a real problem for trade unions in Sri Lanka. It is quite striking that most employees' councils are only set up in those factories where workers try to form trade unions, clearly showing that the sole objective of these councils is to prevent the formation of trade unions. The employees' councils have been the subject of discussion, also at the ILO's Commission on Freedom of Association,[12] which has made recommendations for a number of changes in the BOI guidelines. These recommendations by the ILO commission will be part of the review process on compliance with core labour standards that the EU is set to undertake in 2004.

Moreover, these practices of intimidation, and the undermining of trade unions through employees' councils, have not been adequately dealt with by the government, which has remained reluctant to take a clear stance on the enforcement of Conventions No. 87 and No. 98. Complaints made by trade unions and workers are not dealt with and very often remain unresolved. Workers therefore do not get the protection they are legally entitled to. The fact that the government does not enforce labour standards in FTZs, while at the same time claiming it does, i.e. through participation in the EU GSP labour standards scheme, needs to be highlighted. In fact, this non-enforcement of labour legislation is not always due to a lack of human and financial resources, it is due, rather, to a lack of political will. Some government officials openly claim that workers in FTZs simply do not wish to join trade unions, whereas these workers are, in fact, simply afraid to join trade unions, for fear of losing their jobs. Indeed, if the government fails to protect this right of workers to organise, by refusing or neglecting to enforce the legislation, these fears will become reality. That is exactly what is happening in Sri Lanka; the government is not dealing effectively with unfair labour practices and non-recognition of trade unions, and it is therefore providing a wrong signal to both employers and workers. Workers are loosing faith in the ability of the legal system to protect them. Employers, knowing that the government will not intervene, will not change their behaviour. And workers are paying the price. The government needs to provide a clear signal to investors that it will not accept violations of core labour standards, and it must show its commitment to the EU review process for continued trade preferences.

6 Situation of women working in FTZs

The situation of the (mainly) young women working in the FTZs is not very bright. In Sri Lanka, the monthly income of girls in EPZs may be higher than in companies outside the zones, but the pace of work in FTZs is much higher as well, with production targets that are difficult to reach. Some have to stitch 200 labels per hour, for at least ten hours, and practically without any breaks. Many of them have to stand all day because "the employer gains place". If girls do not reach their targets they are dismissed, or they have to pay excessive fines and penalties, which are deducted from their salaries. Salary deductions are also common in the case of sickness, for being late, refusing compulsory overtime, or exceeding weekly time limits for toilet visits. This makes it extremely difficult to calculate how much workers earn per month, and spending on housing and transport for girls from rural areas that work in the FTZs and live around the zones is high. Pay levels are between US$ 1 and US$ 1.5 per day, a fact which means pov-

[11] http://www.boi.lk/pdf/employeesguidelines.pdf

[12] Case No. 2255, Complaint against the government of Sri Lanka, GB 288/7

erty wages for many hours of harsh work.[13] Most girls are forced to work overtime. The legal maximum for overtime work is sixty hours per month, and most girls work those sixty hours per month on a regular basis, often even more. If they do not wish to work overtime, they are threatened with dismissal or fines. No social benefits are paid on overtime work. When work goes beyond sixty hours of overtime, a different set of punchcards is used. Taking leave is difficult, and accumulating days for a family visit in the country is almost impossible. Sexual harassment is widespread around the FTZs and lists of abortion fees are widely available outside the zones, creating an awkward situation in which girls are abused, and, on top of that, have to pay for an abortion if they want to keep their jobs. Most girls are recruited in the countryside and live in houses close to the FTZs. The living conditions of girls in boarding houses and houses around the zones are poor. Many girls live together in a room with a few square meters, where they sleep, cook, eat and live, with poor sanitary provisions. After several years of work the girls return to their villages, where they use their savings for their dowry. Girls from FTZs have a bad reputation, but only enough savings will allow them to get married.

7 The GSP review process and the way forward

A meeting on compliance with core labour standards with respect to the review of the GSP scheme, which took place in September of this year[14], will hopefully bring some change in Sri Lanka. The meeting brought together most of the relevant stakeholders, such as government officials, employers and trade unions, and discussed the steps that Sri Lanka needs to take in order to comply with core labour standards, and, of crucial importance, to improve the dialogue between different stakeholders. This meeting has strengthened cooperation amongst trade unions with regard to the review process, and, hopefully, also with regard to other labour issues, and it has also showed a clear need for more solidarity amongst trade unions. The meeting has likewise led to improved dialogue among trade unions, employers and relevant ministries, in particular the ministry of labour and the ministry of commerce. Unfortunately, the BOI has not participated in these meetings, whereas in fact BOI involvement will be important, given the conflicting role the BOI has played with regard to labour issues in the FTZs.

It will be important for Sri Lanka to retain its trade preferences in the EU market, and therefore to continue its efforts towards compliance with core labour standards, efforts that now seem to have got off to a positive start. Besides the GSP review process, Sri Lanka needs to look at other ways to safeguard its textiles and clothing production; these include e.g. investments in textile mills, but also improvement in the use made of the preferences that have been granted. GSP utilization rates in Sri Lanka are rather low: 32% for knitted apparel, 11% for non-knitted apparel, 34% for pearls, precious and semi-precious stones, and 12% for electrical machinery and equipment, against 88% for rubber articles, and 84% for coffee and tea. Sri Lanka faces strict rules of origin under the EU GSP. Sri Lanka imports many primary products from third countries as inputs for production, a fact which prevents exports under the GSP scheme. The rules of origin criteria for Sri Lanka should be widened, so as to include more countries or regional groupings such as ASEAN. Most inputs for textiles produced in Sri Lanka come from Hong Kong (29%), South Korea (15%) and Taiwan (14%).

Sri Lanka is one example among many countries that are faced with fierce competition. There is a need to respond to this growing competition in textiles and clothing, but in other sectors as well. Trade liberalization has led to increased competition, and in particular to tighter delivery deadlines and decreasing costs. Workers worldwide are paying the price, earning lower wages for more working hours and having to accept more overtime work to meet deadlines. Worst of all, they do not have a choice as they all need the income, as low as it may be. On top of this, the most important instrument workers have – freedom of association and the right to organise and collective bargaining – to improve their working conditions and wages and to gain a fair share is taken away from them. The WTO trade liberalization agenda is leading to more competition, and it should therefore also address the concern of workers, who are increasingly paying the price for growing competition, and provide a clear message in which governments in the WTO encourage the protection of workers' rights and

[13] Rights: Denied! Sri Lanka case study by Kelly Dent and Anton Marcus, May 2002

[14] Organised by the FES Colombo office, on the 14 September 2004, EU GSP Social Clause: Challenge or Opportunity?

the right of workers to organize. Governments should, finally, face up to their responsibilities and enforce core labour standards in their countries. They should stop competing with each other through reduced labour standards and greater tax incentives.[15] If they fail to do so, we will continue to see gains for the few and misery for most of the people in our world.

[15] "..from an individual developing country's point of view, FDI inflows are exogenous to a very substantial extent. It is doubtful, therefore, whether developing countries' efforts to "attract" FDI inflows by offering special incentives are worthwhile, particularly since these could be discriminatory toward domestic enterprises and could also generate unhealthy competition." See further ILO/GB.291/ESP/2, Trade, foreign investment and productive employment in developing countries

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