A ‘somewhat surprising and largely unexpected’ development

- Director, ILO’s Research Department
Labour provisions in TPP and TTIP

Trans-Atlantic Trade and Investment Partnership (TTIP)

- European Commission on its proposed a chapter on ‘Trade and Sustainable Development’:
  
  offers the most ambitious provisions ever put forward on these issues to any trading partner.

- USTR and US Department of Labor:

  T-TIP also presents a unique opportunity to raise the bar on labor. The European Union and United States have some of the highest labor standards in the world. T-TIP provides an opportunity for these two major players to develop a framework that not only reflects their own high labor standards but strengthens their collective capacity to address labor concerns in the dozens of developing countries whose largest trade and investment relationships are with the United States and the EU.
Labour provisions in TPP and TTIP II

Trans-Pacific Partnership Agreement (TPP)

- US: the strongest protections for workers of any trade agreement in history

- Australia: includes requirements for the highest labour standards
Labour provisions in TPP and TTIP: A comparison without a difference?

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Structure of paper

- *Labour provisions in trade agreements:*
  - Key dimensions
  - US and EU approaches
  - The ‘Labour’ Chapter of the TPP: An American Approach to Labour Protection through Trade Agreements

- *Preliminary observations on the impact of labour provisions in trade agreements on domestic labour standards (or why we might end up with American rules)*
Dimensions of labour provisions in trade agreements

• Dramatic increase: ILO on trade agreements notified to WTO:
  ➢ only four trade agreements included labour provisions in 1995;
  ➢ 21 in 2005;
  ➢ 58 out of the 248 trade agreements.

• Diversity:
  ➢ North South; South-South;
  ➢ Substance of provisions.
Dimensions II

*Four key dimensions*

- **Purposes:**
  - ‘level playing field’; rights; sustainable development
  - Stated and actual purposes

- **Legal nature (whether binding or not):**
  - E.g. non-binding: preamble; ‘recognise’; ‘recall’
  - E.g. binding: ‘shall’; ‘commit’; ‘agree to’
Dimensions III

Four key dimensions (continued):

- Substance of legal obligations:
  - ‘Soft’ and/or ‘hard’ obligations
  - Reference to ILO documents: in 2015, two-thirds refer with most referring to 1998 ILO Declaration on Fundamental Principles and Rights at Work
  - Beyond international labour standards

- Institutional processes:
  - Pre-ratification and/or post-ratification
  - Institutions (including whether independent agency)
  - Promotional v conditional
The current EU and US approaches I

- Increase attributed to EU and US foreign policies

- Not unrelated to the level of negotiations and its power dynamics (see WTO) – the geopolitics of labour provisions

- Current EU and US approaches from:
  - EU’s proposed labour provisions for TTIP in draft chapter on ‘Trade and Sustainable Development’
  - US negotiating objectives for TPP and 2007 Bipartisan Trade deal (TTIP proposals made to EU but not public)
The current EU and US approaches II

- See Table 1 on purposes and obligations:
  - EU: broader agenda
  - US: narrower agenda

- See Table 2 on institutional processes:
  - EU: principal emphasis on promotional measures
  - US: largely conditional

- Upshot:
  - EU: Broad agenda based on promotional measures
  - US: Narrow agenda based on conditional measures
The ‘Labour’ chapter of the TPP

• Purpose (in Preamble)

• Obligations, including:
  ➢ ILO 1998 Declaration: violation only when occurs ‘in a manner affecting trade or investment between the Parties’
  ➢ ‘acceptable conditions of work’: ditto
  ➢ Non-waiver and derogation
  ➢ Enforcement

• Institutional processes:
  ➢ Pre-ratification: none but note US ‘Labour Consistency Plans’ for Brunei, Malaysia and Viet Nam
  ➢ Post-ratification: domestic mechanisms; dialogue between Parties; dispute settlement
  ➢ No independent agency – no mandatory role for ILO
An American approach to labour protection through trade agreements

• Strong correspondence – see Table 3

• Not merely correspondence but adoption – the US writing ‘the rules of the road’
Preliminary observations on the impact of labour provisions etc
- or why we might end up with American rules

• Complex and diverse factors that will determine impact of labour provisions on domestic labour standards

• A conjecture regarding impact of TPP’s labour provisions:

  The provisions will have no or limited impact on domestic labour standards unless the United States is committed to enforcing them against a particular State party (especially through pre-ratification measures).
Reasons for conjecture

• Decisive character of power relations between States in context of State-State compliance processes – US as dominant party will set the tone

• *Orientation to non-application* because:
  - US in breach of core provisions re labour rights - ratified 2 out of 8 ILO Fundamental Conventions
  - Belief in compliance: e.g. May 2007 Bipartisan Trade Deal
  - Inability to comply due to political constraints – unlikely to have further ratification of ILO core conventions
  - Other State Parties will not require US to comply – no complaints (Vogt)
Illustrations of conjecture

• E.g. of orientation to non-application: Australia and US

• Orientation to non-application may also apply to TTIP for similar reasons

• Positive impact through double standards? TPP side-agreements between US with Brunei, Malaysia and Viet Nam
Concluding thought

The (Trans) National Labor Relations Act?