

Protecting Occupational Health in Trade Treaties -- NAFTA's Failure and Future Needs

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Key points

- Context of hazards and treaties
- Bad experiences to date: NAFTA
- What's needed in treaties to protect workers' health and safety
- What we can do

Economic Context

- 51 of 100 largest economies in the world are transnational corporations -- not countries
- 500 largest transnational corporations :
 - 70% world trade
 - 1/3 manufacturing exports
 - 3/4 trade in commodities
 - 4/5 technical and management services

Economic Context

- Profound shift in manufacturing:
 - from: “well-regulated,” high wage, often unionized plants in developed world
 - to: very low wage, basically unregulated, non-union plants in the developing world
- All these plants are competing with one another for maximum competitive advantage in production costs

Economic Context

- Long, long production chains:
 - International brands
 - Contractors
 - Sub-contractors
 - Brokers and agents
 - Industrial homework in workers' houses

Economic Context

- Examples:
 - Nike: 700+ factories, 50+ countries, 600,000 factory workers -- not one of them working for Nike
 - Wal-Mart: 20,000 factories in China alone, millions of workers -- none of whom work for Wal-Mart

Economic Context

- Vulnerable workforces:
 - 225 million children (ages 5-14) at work
 - 310 million immigrant/migrant workers (including 190 million migrants in China)
 - 67 million in “Export Processing Zones” (EPZs) with few or no legal rights
 - Millions working as temporary, “contingent,” or “perma-temp” workers in both developing and developed countries

Economic Context

- Growing inequality and deep poverty:
 - 40% of world (~3 billion people) live on less than \$2/day
 - 980 million people live on less than \$1/day
 - Top 1% has more wealth than bottom 57% of world's population

Economic Context

- Number of “least developed” countries (per capita income < \$75/month) doubled from 25 to 49 countries from 1979 to 2000
- 80 countries have seen a per capita decline in income over the 1992-2002 period

Economic Context

- Ferocious competition between corporations roaming the world in search of the lowest possible production costs and the most accommodating governments
- Huge labor pool of people so desperate for work that they are unable to refuse any work -- no matter how dangerous or unhealthy

Economic Context

- Transnational corporations have political power along with economic size:
 - Wal-Mart's 2004 global sales (\$285 billion) is more than the combined budgets of India and Russia together
 - Top 6 TNCs have greater gross revenues than combined budgets of 64 countries with 58% of the world's population

Economic Context

- Corporate political power:
 - Control or dominate political parties
 - Control or dominate national, regional and local governments
 - Dominate the regulators
 - Prevent new laws from being enacted
 - Obstruct implementation and regulation
 - Demand subsidies, tax breaks, exemptions

Bad Experiences to Date

- One key way to exercise this power: international trade treaties
- Bilateral: US-Canada
- Regional: NAFTA, CAFTA, FTAA
- Global: WTO
- Real goal is not trade but setting the “rules of the game” in favor of the corporations

Bad Experience: NAFTA

- No improvements in regulatory enforcement -- policies, procedures or benchmarks -- by Mexican government workplace safety and health agencies
- No correction of any specifically identified hazards in Mexican workplaces

Bad Experiences: NAFTA

- No reinstatement of any worker fired for organizing to improve workplace safety
- Abandonment of the NAALC process in the Auto Trim/Custom Trim case to form the alternative Tri-National Working Group
- Continuation of secrecy, lack of participation and lack of accountability in the Tri-National Working Group

Bad Experiences: NAFTA

(1) Weaknesses of NAALC procedures

- Lack of transparency
- Lack of worker and public participation
- Lack of accountability
- Cumbersome and lengthy procedures

Bad Experiences: NAFTA

- (2) Failure to recognize Mexico's larger economic and political context
 - Economic disincentives for enforcement
 - Absolute lack of political will
 - Lack of human, financial and technical resources

Bad Experiences: NAFTA

- 1994-2007: 36 complaints filed
- 25+ accepted and investigated by NAOs
- 12 “resolved” by Ministerial Consultations, none have gone beyond this step
- 9 complaints filed with OHS focus
- 2 key cases: Han Young in Tijuana and Auto Trim/Custom Trim in Matamoros and Valle Hermoso

Bad Experiences: NAFTA

- All complaints have ended with reports, seminars, conferences, websites and “outreach” sessions which fail to address, let alone remedy, the underlying causes of employer non-compliance, government non-enforcement and adverse health effects to ill and injured workers.

Bad Experiences: NAFTA

- NAALC results contrast sharply with NAFTA's "Chapter 11" protections of corporation's "lost profits" due to regulatory enforcement
- 42 corporate lawsuits filed against NAFTA governments, including Metalclad Corp.'s successful \$16.7 million suit against Mexico

Bad Experiences: CAFTA

- CAFTA treaty actually worse:
 - Fewer protected labor principles than NAFTA
 - Scope limited to existing laws -- but few laws exist
 - No complaint mechanism for workers or NGOs
 - NAFTA's "Chapter 11" provisions included, allowing corporations to sue governments (Harken Oil's threatened suit v. Costa Rica)

What's Needed

- Recognition of crippling effect of foreign debt and payments on OHS enforcement
- Adoption as OHS measures:
 - Outright debt forgiveness or major restructuring
 - Immediate moratorium on debt payments
 - Provision of adequate financial resources, technology transfer and technical assistance for genuine regulatory enforcement

What's Needed

- Step-by-step “upward harmonization” of the regulatory floor in the global economy:
 - ILO conventions and recommendations
 - Consensus standards
 - Industry “best practices”

What's Needed

- Accountability of TNCs in the global economy:
 - ILO “Declaration of Principles Concerning Multinational Enterprise and Social Policy”
 - OECD “Declaration and Decisions on International Investment and Multinational Enterprises

What's Needed

- Effective, timely complaint mechanism that is transparent and participatory
- Enforceable sanction with meaningful penalties for both governments and employers (small, large and multinational) who permit or operate unsafe workplaces

What's Needed

- Open negotiation process involving civil society as well as governments, and one that is mutually agreeable to developed and developing countries that results in step-wise and feasible timetables of upward harmonization of laws and “compliance assistance” for effective enforcement

What We Can Do

- Educate yourself and others on the impact of trade agreements -- join the APHA Forum on Trade & Health!
- Organize with APHA and others to demand public health principles and input in negotiating treaties
- Organize to promote agreements that genuinely protect and enhance worker safety and health in the global economy

Contact Information

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