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International Trade

Session 8

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Welcome to the course on International Trade.

The eighth session of the course provides an introduction into the **international debate about labor and environmental standards**.

Producers in developed countries often assert that they lose in competition with cheaper import products, because foreign producers have a **regulatory competitive advantage**. They argue that because of the higher labor and environmental standards in their home country, they have higher costs, so at the end of the day their products are more expensive not because they are less efficient but because they have to comply with higher regulatory standards. Furthermore, local works often complain that **producers tend to relocate their production capacities to countries which have lower labor standards** and, hence, enable employees to save considerable expenses. All these interest groups designate this regulatory competition as unfair competition.

As a result of this criticism, some WTO members **endeavor to introduce generally applicable international labor and environmental standards** to eliminate the regulatory competition advantage of developing countries, which they consider unfair. There are solid arguments that WTO law's general exceptions may be used to cut out foreign products for process-based considerations. A **product-based restriction** is justified by the characteristics of the product. A **process-based restriction**, however, if justified by the characteristics of the production process, which is may have no impact on the products itself. An example for a process-based restriction may be if a county bans the importation of tuna, if the fishing technology does not ensure that no dolphins are killed when harvesting the tuna. This may be extrapolated to goods produced by workers whose fundamental rights are not respected or goods produced by factories which do not

comply with the fundamental environmental standards.

Furthermore, new generation free trade agreement generally contains chapters and disciplines on labor and environmental standards.

Please watch the discussion organized by the Markkula Center for Applied Ethics on Labor and Environmental Standards in China. Liu Baocheng, executive director of the Center for International Business Ethics, talks with Kirk O. Hanson, executive director of the Markkula Center for Applied Ethics about. The sheds light on the core issues of international labor and environmental standards through the example of China. The discussion is available at <https://www.youtube.com/watch?v=XjOhtv7qmXM>

Please read Csongor István Nagy, Trade Interests and Extraterritorial Value Considerations in New-Generation Free Trade Agreements: The Psychology of Redirection. 18(2) Journal of International Business and Law 128-162 (2020). It is available at <https://ssrn.com/abstract=3666015>

This paper analyzes the phenomenon of environmental and labor standards in world trade, their place in WTO law, their remarkable emergence in new generation FTAs, and explores whether the insistence of developed countries on their protection has been driven by the moral desire to protect fundamental values or whether value-standards are the products of selfish trade interests.

First, it examines member states' possibility under WTO law to erect extraterritorial value considerations against their trading partners and unilaterally restrict trade with reference to such considerations. As a matter of principle it argues that such

extraterritorial value-considerations may be accommodated in Article XX GATT and Article XIV GATS.

Second, it gives a short account of the **approach of new generation FTAs, the emerging “folklore”, and showcases how non-trade values are becoming an integral part of trade.** It argues that FTAs, including their regimes on environmental and labor issues fused into the concept of sustainability, have the perspective for the same carrier path as BITs. Although international investment protection has always remained predominantly bilateral, with a few exceptions, since its appearance in 1959 these bilateral strands resulted in a taut fabric that is often treated as a multilateral scheme.

Third, it presents the **two traditional explanations on the relationship and interaction between values and economic interests.**

Fourth, it concludes that **while the debate on core labor rights and environmental protection is fueled by “selfish economic interests”, it is undeniable that these are genuine global values.** Extraterritorial value considerations emerge under circumstances where regulatory competitive pressure is perceived to be exceptionally high, and the standard is regarded as non-negotiable by the local electorate. Although environmental and labor standards are both trade or value-driven, they are a redirection activity.

At the end of the session, please answer the following questions:

- What is regulatory competition?
- What is the international debate about labor and environmental standards about?
- Are process-based restriction lawful under WTO law?
- What are the major arguments for the position that every country should comply with the minimum labor and environmental standards?