Towards experimentalist governance in EU trade and labour rights? A case study of the Bangladesh Sustainability Compact

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Abstract:
This paper examines to what extent the Bangladesh Sustainability Compact (BSC) to promote ‘continuous improvement in labour rights and factory safety’ in the Ready Made Garment (RMG) industry in Bangladesh provides a model for a new approach to EU trade and labour rights policy based on ‘experimentalist governance’ (Sabel and Zeitlin). The Rana Plaza factory collapse of April 2013, in which 1,136 lives were lost, a few months after a fatal fire at Tazreen Fashions, in which 112 died, sent shockwaves through the EU, the ILO, the US and transnational corporations (TNCs) whose supply chains had become so dependent on the rapid growth of the RMG sector in Bangladesh. It threw a spotlight on longstanding concerns about factory safety, working conditions and denial of labour rights in the Bangladesh RMG industry and the limitations of the EU’s traditional laissez-faire approach to trade and labour rights in Bangladesh based on incentives and soft promotionalism through the Generalised System of Preferences (GSP). By bringing together the EU, Bangladesh, the US, the ILO, employers, trade unions and other key stakeholders, the BSC seeks to secure short and long-term commitments related to three inter-linked pillars: 1) respect for labour rights; 2) structural integrity of buildings and occupational safety and health; and 3) responsible business conduct. It has many features of what has become known as ‘experimentalist governance’: sharp focus on specific outcomes with continuous co-ordination and monitoring; involvement of key stakeholders; and co-operation between global actors. However, despite some significant results, such as new labour laws, critics, such as the European Trade Union Institute, have highlighted
how it remains extremely difficult for workers to exercise their fundamental rights in Bangladesh. The paper will examine this evidence and consider what further steps are needed to make the BSC more effective in securing its objectives.

1. Introduction

The EU’s response to the Rana Plaza disaster has been to “stay engaged”. Unlike the US, which responded by revoking its Generalised Scheme of Preferences (GSP) with Bangladesh, the EU has maintained its GSP and has engaged more deeply with the Bangladesh Government and local actors in an attempt to foster the improvement of labour rights and factory conditions in the garment sector through an unprecedented approach, involving the International Labour Organisation, the US and other key stakeholders in the Sustainability Compact. This tactic to a great extent mirrors the EU’s internal approach to experimentalist social governance when it aims to improve the effectiveness of its social and employment policies through engagement, benchmarking of best practices and multilateral surveillance. This paper will assess the extent to which the EU’s experimentalist governance agenda has been mirrored in its response to the Rana Plaza disaster through the BSC, and offer suggestions on improving the Compact’s objectives.

2. Social Dialogue

Social partners, as representatives of management and labour, play a key role in augmenting the adoption of labour laws at EU, national and sectoral levels through the EU’s social dialogue. Here, discussions, consultations, negotiations and joint actions are undertaken between the social partners on a variety of issues.¹ Since its establishment, social dialogue has grown in both scope and importance,² and today there are many different forms of social dialogue. This involvement of social partners at EU decision-making level creates a form of ‘stakeholder democracy’³ which is a feature of

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³ Jeff Kenner, EU Employment Law: From Rome to Amsterdam (Hart Publishing 2003) 266.
experimentalist governance proposed by Sabel and Zeitlin,\(^4\) namely a method of ‘bottom up’ as opposed to ‘top down’ governance, whereby civil society is given a greater propensity of involvement in decision-making at the supranational level.

The primary focus in Bangladesh is on improving labour rights, factory conditions and related social rights in the garment sector which dominates the Bangladesh economy and is central to the supply chain to the EU’s internal market. At EU-level, there is a sectoral social dialogue committee on Textiles and Clothing. Here, the social partners include ‘industriAll European Trade Union’ (the employee organisation) and ‘The European Apparel and Trade Organisation’ (the employer organisation).\(^5\) This involvement of social partners at EU level in the textile and clothing sector is an important step towards recognising the importance of social partners in fostering labour rights in industries not merely across Europe, but into the EU’s external agenda. One key question is to what extent is the experience of European sectoral social dialogue in the textile and sector relevant and useful for addressing labour rights and related issues in the garment sector in Bangladesh.

3. The EU-Bangladesh Relationship and the Rana Plaza Disaster

The EU’s relationship with Bangladesh is epitomised through the GSP scheme. This is a unilateral form of trade preferences given with the ultimate aim of fostering the development of the country concerned (here Bangladesh). There are three forms of the GSP: Everything but Arms (EBA), GSP+ and the standard GSP arrangement. Each has different implications regarding the amount of trade preferences given to the partner country. Bangladesh, as one of the world’s Least Developed Countries (LDCs) under UN criteria, benefits from the EBA arrangement, meaning that all the goods it exports (with the exception of ‘Arms’), including garments, are tariff and quota free.

As the GSP is a unilateral scheme, permitted under WTO rules, the EU as the granting country holds a great deal of power over the country to which it grants the trade preferences. In the field of human rights, and here specifically labour rights, this authority


is exercised through conditionality, or the ‘carrot and stick’ approach. The EBA arrangement operates in this regard through negative conditionality, or the ‘stick’ approach, generally meaning that the EU is empowered to remove trade preferences when it is clear that human rights standards are not being met in Bangladesh.

Trade incentives, such as the EU’s GSP has enabled the textile and clothing industry in Bangladesh to expand rapidly, and today nearly 80% of Bangladesh’s exports consist of textiles, mainly ready-made garments (RMGs). As demand for cheap textiles has risen sharply with globalisation, this forces factories in countries such as Bangladesh to push down wages and increase working hours in attempt to maintain their dominant share of the market. The EU is the largest importer of garments from Bangladesh, and therefore the EU’s engagement with Bangladesh on garments and corresponding labour rights holds great importance.

The Rana Plaza factory collapse, which killed over 1000 people, has caused global tremors. Concerns have mounted over the position of workers in Bangladesh, in terms of their rights and their health and safety in factories. The EU’s response, however, was not to adopt the method of revoking Bangladesh’s GSP which would have signified a hierarchical top-down form relationship between the EU and Bangladesh, but instead to adopt the Bangladesh Sustainability Compact jointly with the ILO and the Bangladesh Government in 2013. Subsequently both the US and Canada have joined the BSC.

4. The Sustainability Compact as Experimentalist Governance?

The EU has become increasingly active over the past two decades in seeking to extend or export its internal norms to the wider world. The Rana Plaza disaster gave rise to an opportunity to transcribe the EU’s attempts at experimentalist governance for the internal ‘Social Europe’ to its response to the disaster.

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As a result, the BSC characterises the features of experimental governance. As identified by Zeitlin, experimentalist governance holds three virtues: first, in accommodating diversity in adapting general goals to local contexts as opposed to simply implementing a one-size fits all approach; secondly, in providing a mechanism for coordinated learning from local experimentation; third, the goals and means are provisional and subject to possible revision.

The BSC contains all of these elements. It reflects the adaptation of goals to local contexts as it covers key areas for improvement in Bangladesh to foster the development of labour rights. These include: enabling respect for labour rights, ensuring structural integrity of buildings and health and safety and ensuring responsible business conduct by stakeholders engaged in the Ready-Made Garment sector. In fact, it provides a mechanism for coordinated learning as it such an approach is at the opposite end of the traditional method of response to such labour rights abuses – such as withdrawing the GSP (as for example was the case in Myanmar/Burma). Third, the success and failures of the Compact is monitored and reported upon.

The EU, in its approach to the BSC, has promoted experimentalist governance. Firstly, it has laid down framework goals and measures, such as taking steps to improve the exercise of freedom of association. Here, again we can make a comparison with the importance the EU places on social partners, as the goals refer often to fostering the space for trade unions. Secondly, the EU has enabled ‘lower level units’ from industry, employers and trade unions to support the BSC. Thirdly, reports are made on the progress of the BSC. Here, the technical status report highlights key achievements in the BSC’s implementation. These include the fact that amendments in 2013 to the Bangladesh

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Labour Act 2006 have brought some improvements in freedom of association, collective bargaining and workplace safety, and there are moves to improve factory infrastructure. It also outlines key follow-up actions, including adopting the implementing regulations of the amended Labour Act and prioritising the effective investigation and prosecution of unfair labour practices.12

5. A Model for a New Approach to EU External Trade and Labour Rights Policy?

The Sustainability Compact is important in its approach to fostering the improvement of labour rights, bringing together key international actors in a way that will hopefully ensure that the response to the Rana Plaza disaster will be an unprecedented and successful one. To take a truly grassroots approach, however, the Compact would need to incorporate further the role that trade unions and organisations on the ground can be promoted in the hostile context of the Bangladeshi textile industry. It is important to note that there is support from NGOs and global trade unions to the EU approach of engagement but there is also criticism of the effectiveness of this soft experimentalism. To date the results of the BSC have been mixed, raising questions about the limits of experimental governance in the EU’s external sphere.

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