

WORKING P A P E R S

Breaking the Labor-Trade Deadlock



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PREFACE

The Inter-American Dialogue Trade Policy Group (TPG) was formed in 1999 to gather together experts from the policy and business communities, multilateral institutions, and the legal profession to address critical issues facing Western Hemisphere trade policy makers. As part of its activities, the TPG will periodically publish policy briefs and working papers on trade issues. Given the contentious nature of the trade and labor standards debate and its centrality to future progress on both trade negotiations and worker rights, the TPG decided to undertake a review of this issue as its first project. This working paper is the result.

The members of the TPG are listed at the end of this paper. Four members of the group—Scott Otteman, Phil Potter, Staci Warden, and Sidney Weintraub—are the principal authors of the paper, while the other TPG members participated in discussions, read and offered comments on drafts, and—except as indicated by the asterisks by their names on the list—endorse the paper’s overall approach and conclusions. The TPG would like to thank Donald Mackay for contributing a think piece to help frame our discussions, and former Mexican commerce secretary Jaime Serra for participating in meetings that helped our understanding of the issues. The financial support of the Tinker Foundation for this project is gratefully acknowledged.

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EXECUTIVE SUMMARY

This paper is an effort to shake loose the current policy logjam in the FTAA/ALCA* process and elsewhere over incorporating labor issues into trade agreements. It calls for the establishment of a work-study program to determine the desirability and viability of commencing negotiations on a hemispheric agreement aimed at securing adequate coverage and enforcement of internationally recognized labor standards.

The work-study program and any eventual negotiations would be conducted by the FTAA/ALCA nations' labor ministers under the existing authority, with slight modifications, granted to them by leaders in the Miami and Santiago Summit of the Americas Declarations and work plans. This process of analysis and possible negotiation would be carried out in parallel to, rather than as part of, the FTAA/ALCA process. This approach delinks the labor issue from regional trade negotiations, enabling more rapid progress in both areas.

Before describing the details of this hemispheric process, we lay the intellectual groundwork for our proposal by arguing that the trade sanctions approach currently advocated by industrial countries is neither advisable nor politically feasible. We then develop a set of principles that should guide any effort to enforce labor standards, either at the global (International Labor Organization, or ILO) or regional (FTAA/ALCA) level, and argue that the ILO, with its recent improved performance and recently gained consensus on internationally recognized labor rights, would be a preferable forum to the World Trade Organization (WTO) for applying those principles in negotiating an enforcement regime, though progress might not be as speedy on a global basis as would be possible in the Western Hemisphere.

Our case against using trade sanctions to enforce labor standards is threefold. First, a trade sanctions approach is misdirected. Trade sanctions only penalize companies that trade internationally, while the nontrading sectors of developing-country economies are where the vast majority of workers are employed, where labor standards are lowest, and where enforcement is worst. Sanctions tend to unfairly target export industries even though they have higher labor standards and better enforcement than other industries. Second, sanctions-oriented enforcement is unfairly one-sided between nations, since sanctions can only be credibly applied by developed countries against developing countries and not vice versa. Third, a trade sanctions approach is politically infeasible; developing-country trading partners (32 of the 34 FTAA/ALCA countries) have steadfastly refused to incorporate labor provisions into trade agreements.

Instead, we argue, an alternative approach must be developed that addresses the legitimate, fundamental concerns of all sides. In this approach, developing nations would have to be satisfied that the process and its result would not be used to penalize their exports for protectionist purposes. Developed countries, in particular their organized labor constituencies, would have to be reassured that an alternative framework could be capable of delivering expanded coverage and better enforcement of internationally recognized core labor standards.

We argue that an alternative approach should incorporate five fundamental principles:

- Cooperation, consultation, and consensus must be favored over confrontation;
- Enforcement mechanisms must stop short of discriminatory trade sanctions;

* Free Trade Area of the Americas/Área de Libre Comercio de las Américas

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- National compliance with core labor standards should be the main objective;
- Diversity among nations should be acknowledged and respected; and
- Penalties should be targeted and specific.

The ILO has established a broad international consensus on five internationally recognized core labor standards. These provide an excellent basis for negotiation of a non-trade-sanctions enforcement regime at both the global and regional level.

Breaking the Labor-Trade Deadlock

INTRODUCTION

The issue of how best to promote respect for internationally recognized core labor standards in an increasingly interconnected world has become a major stumbling block to progress in international trade negotiations, both at the multilateral and the regional level. Developed countries, led by the United States, are insisting that the linkages between trade and labor issues be discussed in institutions and negotiating forums that in the past have dealt almost exclusively with the negotiation of trade and investment liberalization. Developing countries, including most in the Americas, have steadfastly opposed bringing labor issues into trade negotiations and appear intent, in light of the failed Seattle World Trade Organization (WTO) ministerial meeting and its aftermath, on maintaining a unified stand in blocking consideration of the labor-trade linkage in the global trade body.

The United States argues that discussing (and ultimately making rules to govern) the relationship between labor and trade is necessary to ensure that the benefits from trade-liberalizing initiatives are widespread, and also to gain public and political support for approval of future trade agreements. Most developing countries fear that discussion of labor issues in forums where trade rules are set and enforced will lead inexorably to proposals that labor standards be enforced with trade sanctions; such an arrangement would be unacceptably detrimental to their national interests, they argue, in that it would be used by competitors to target a main source of their exports' comparative advantage—relatively lower labor costs. Neither side appears prepared to cede ground. The result is a lose-lose policy stalemate that neither provides the incentives and resources necessary to improve labor standards nor allows further multilateral or regional progress in removing trade and investment barriers.

This paper represents an effort to shake loose the current policy logjam. It attempts to do so by asserting and describing a viable and credible win-win alternative approach that holds the potential for markedly improving the coverage and enforcement of core labor standards without resort to trade sanctions (or insertion of labor issues into trade negotiations). We begin in Section I by laying out what we believe is a strong case against the effectiveness of using trade sanctions as tools for fighting lax or poorly enforced labor standards.¹

In Section II, we lay out a set of basic principles by which, whenever possible, any alternative enforcement regime based on collective action should abide; these include the need to emphasize cooperation and capacity building over confrontation and sanctions, and the need to target

¹ It is unfortunate that a legitimate concern for improving labor standards and worker rights in developing countries has become a roadblock to the advancement of trade negotiations, because available data and mainstream analyses suggest that the progressive lowering of trade and investment barriers over the past half-century has been a critical contributor—if complemented by sound domestic macroeconomic policy management—to improving worker livelihoods and labor standards across the globe. Some of the research describing the contributions of increased trade to workers' status is summarized in the appendix and documented in the bibliography of this paper.

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penalties more accurately and effectively. We rule out bringing the labor issue into the WTO, or into any other multilateral or regional initiative whose primary mission is the swapping of trade-liberalizing concessions and the arbitration of trade and investment disputes. Instead, we conclude that the International Labor Organization (ILO) can and should be reformed into a credible vehicle for achieving progress on key labor standards. Thanks to recent progress at the ILO, we find that there is sufficient consensus among governments as to what constitute properly defined “internationally recognized core labor standards” to form the basis for possible collective private or governmental action towards improving coverage and enforcement.

We then propose in Section III, consistent with our findings and principles, a work program of future research and possible governmental negotiations on jointly agreed-upon labor issues that would run parallel to trade negotiations instead of being tied directly to them. Our proposal focuses on actions that can be taken by ministers of labor and regional development institutions in the Western Hemisphere. By engaging fewer actors and interests, a regional approach seems capable of producing concrete results on this controversial issue in the short to medium term. Should it succeed, a regional approach, adopted by key developed- and developing-country actors, can subsequently be broadened multilaterally or used as a starting point or model in other parts of the world, with enhanced prospects for success.

The Western Hemisphere seems an ideal testing ground for several reasons. It has an active process of governmental discussions and negotiations—including regular inter-American meetings of labor ministers—that has been ongoing since 1994 under the Summit of the Americas initiative. The region includes several of the main protagonists in the ongoing dispute over trade and labor issues, principally the United States, Mexico, and Brazil. In addition, some of the most noteworthy and innovative examples to date of ways to deal with the trade-labor issue in the context of trade negotiations can be drawn from the Americas. These include the North American Free Trade Agreement (NAFTA) labor side agreement, the Chile-Canada labor accord, the Southern Common Market (Mercosur) consultation structure, and the Civil Society Committee established as part of the region-wide Free Trade Area of the Americas talks. Finally, it is the region we know best and can therefore comment on with the highest degree of confidence.

SECTION I: WHY TRADE SANCTIONS ARE COUNTERPRODUCTIVE

Governments have long recognized that trade sanctions are an imperfect enforcement tool and should be resorted to only when all other options for settling a commercial dispute have been exhausted. Most economists believe that trade sanctions typically reduce trade, and therefore lower overall economic welfare, in all countries involved. Yet they are included as the last resort in most international trade agreements because the threat of trade retaliation is thought to encourage compliance by governments that resist fulfillment of their obligations under global trade rules. In every dispute, the hope is that differences can be settled—via consultation, the good offices of trade secretariats, the encouragement of industry-industry discussions, and/or the negotiation of compensation—before sanctions come into play.

When it comes to promoting improved coverage or enforcement of labor standards, however, there are a number of persuasive reasons why using trade sanctions is particularly inappropriate and counterproductive.

A trade sanctions approach ignores the domestic economies of the developing countries—where the vast majority of workers are employed, where labor standards are lowest, and where enforcement is worst.

By far, most workers in the developing world are employed in the agricultural, services, and informal sectors of their domestic economies. Likewise, the greatest potential and actual abuse of workers' rights—with respect to the use of child labor, for instance—is found precisely in those domestic industries. The main priority of any effective initiative to improve labor standards for the large bulk of workers in the developing world must therefore be to take direct aim at standards and enforcement in those sectors. Because a regime built around trade sanctions penalizes only exporters, who are responsible for fewer jobs and rights violations, it is ill suited to promoting comprehensive progress where it is most needed. Most dispute settlement regimes use a combination of sunshine (publicity), carrots (incentives and technical aid), and sticks (penalties) to promote compliance, and in the case of labor standards, the stick must be able to directly strike those firms and governmental rules in the domestic economy.

Trade sanctions unfairly target export industries, which tend to have the highest labor standards and best enforcement.

Trade sanctions can inflict pain only on (and thus elicit compliance only from) industries and governments engaged in international trade. Not only do those industries employ a small (but growing) proportion of the overall developing-country workforce, but on the whole they already offer the best working conditions and highest labor standards available in most emerging economies. Indeed, many developing-country governments—encouraged by the international development and financial institutions—view their export sectors as key drivers for improving the livelihoods of their people and lifting them out of poverty.

This explains why governments are so resistant to the notion of trade sanctions—because sanctions target their main source of comparative advantage in international trade, their prime development vehicle, rather than the institutional and resource barriers that block improving labor standards throughout the domestic economy. In fact, to the extent that sanctions hurt the export sector and push resources to the informal sector where labor standards are lower, sanctions can exacerbate the problem.

A trade sanctions approach is one-sided because sanctions can be credibly applied only by developed countries against developing countries and not vice versa.

To be a credible threat, action to block imports of a trading partner must hurt the trading partner more than the country threatening to adopt the measure. For this reason, developed-country sanctions threats carry more weight than ones made by developing countries.

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Most developing countries depend on a few major exports to generate most of their foreign exchange. More often than not, those critical exports are destined for developed-country markets. So when a major trading partner such as the United States, the European Union, or Japan threatens to curb a developing country's exports, the developing country must pay attention.

Threats by developing countries don't carry nearly the same leverage. If a U.S. product is denied entry into a developing country, it may hurt the prospects for individual firms, but it certainly will not threaten the government's primary source of foreign exchange reserves or create a national political crisis. A developing country's domestic market is smaller than the U.S. market, and sales into that country are probably not a make-or-break proposition for the developed-country company involved, much less for the U.S. Treasury. Yet the very differences in development levels means that the U.S. government has the financial, human, and legal resources to actively contest any sanctions threat, whereas many developing countries do not. So in the hands of the industrial giants, the sanctions stick becomes a huge club poised to wallop emerging economies and do significant damage. But when the stick is in the other hand, it shrinks to the size of a splinter that can annoy but do little harm to a large, developed, diversified economy.

A trade sanctions approach is politically infeasible, because developing-country trading partners simply won't incorporate labor provisions into trade agreements that permit ultimate resort to such sanctions.

Since the failed December 1999 WTO ministerial meeting in Seattle, developing countries have continued to vigorously resist discussing labor issues in the context of trade negotiations at the multilateral and regional level. Antagonized by the nongovernmental organization and labor protests in the streets of Seattle and the public comments President Clinton made at that time, developing countries have been reluctant ever since to consider even minimalist plans, such as the establishment of a joint WTO-ILO study group on key labor-related issues. There appears to be little give in the position these countries are taking, which they base on a belief that incorporating labor issues into trade talks will ultimately lay the basis for a framework of trade sanctions targeting their most successful exports.²

Whether or not this is the case, it raises a legitimate question as to the practicality of continued insistence on directly linking labor issues with trade negotiations. Policy makers must ask themselves: Is it possible to make desired progress on extending and enforcing internationally recognized worker rights in the context of trade negotiations if developing countries continue to maintain a relatively unified boycott on any such discussions? In the absence of a powerful force that could change the position of these countries, continued pressure from the United States and other developed nations—pressure, for example, to raise the issue at the WTO—can only serve to poison the atmosphere in Geneva and retard the launching of a new round of multilateral trade talks.³

² Various governments and interest groups, including the United States, proposed multilateral approaches to resolve the deadlock in Seattle, such as WTO work programs on labor rights, collaboration between the WTO and the ILO, or dispute resolution and enforcement powers over labor rights for the ILO that would be similar to those the WTO has over trade. None of these proposals met with substantial acceptance, much less consensus.

³ Besides developing-country fears of trade sanctions, there are other reasons to worry about addressing core labor standards through the WTO. When it comes to child and forced labor, unsafe working conditions, sweatshops, and other such issues,

The question then arises: If one's goal is to improve labor standards and their enforcement, does it continue to make sense to hold multilateral or regional trade-liberalizing talks hostage to this impasse, or would it be more fruitful to let trade negotiations move ahead while exploring alternative mechanisms for making sustained, incremental progress on labor standards?

Because we believe that the economic growth and prosperity required for improved living and labor standards in the emerging economies depends on continued economic integration fostered, in significant measure, by global and regional trade talks, we favor exploring alternatives.

SECTION II: PRINCIPLES FOR AN ALTERNATIVE APPROACH & THE ILO AS AN ALTERNATIVE VENUE

A mechanism not centered on the WTO for achieving increased implementation and improved enforcement of these core standards must be credible to, and engage the participation of, as many of the interested parties as possible. That means that an alternative framework must attempt to address—or create a process reasonably capable of addressing—the legitimate, fundamental concerns of all sides. Developing nations would have to be satisfied that the process and its result would not be used to penalize their exports for protectionist purposes. Developed countries, in particular their organized labor constituencies, would have to be reassured that an alternative framework could be capable of delivering what they say they favor: expanded coverage and better enforcement of internationally recognized core labor standards. To accomplish this, the process may have to provide for some meaningful penalty—short of trade sanctions—that could prod positive, incremental change by governments or firms in specific cases where voluntary private-sector action (consumer boycotts) or cooperative governmental efforts (technical aid or consultations) fall short of achieving compliance.

An alternative approach that would be acceptable to developing countries (and the U.S. business community), yet also garner considerable support from moderate political forces in the developed nations, should satisfy certain principles. We have identified five that are fundamental:

- Cooperation, consultation, and consensus must be favored over confrontation;
- Enforcement mechanisms must stop short of discriminatory trade sanctions;
- National compliance with core labor standards should be the main objective;

labor standards have significant moral and social consequences. Requiring the WTO to arbitrate disputes over all these consequences is unrealistic at best, since the organization has no expertise or charter to resolve such disputes. Inclusion of labor standards in trade agreements, whether enforced by trade sanctions or not, becomes, if carried to its logical conclusion, a precedent for inclusion in trade agreements of many other social, moral, and human rights issues that have some indirect economic consequences. Core labor standards are fundamentally different from investment and intellectual property rules included in trade agreements, in that the latter have primarily economic consequences and are subject to national treatment standards.

In addition, this precedent would require WTO members to pick and choose which nontrade, socioeconomic issues to include in WTO disciplines. That will be disrupting and debilitating for the WTO and will simply cause new stalemates that deter the WTO from accomplishing its primary mission—to liberalize trade and enforce common rules to remove, not increase, trade barriers. The challenge is to find an alternative mechanism outside of the WTO framework for pursuing the legitimate, shared goal of improving the coverage and enforcement of internationally recognized core labor standards.

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- Diversity among nations should be acknowledged and respected; and
- Penalties should be targeted and specific.

The approach must favor cooperation, consultation, and consensus over confrontation.

Cooperation, consultation, and consensus building are still the essential processes by which sovereign governments reach agreement on difficult issues and differences. It is increasingly difficult, if not impossible, for one sovereign nation to impose its standards on another in this post–Cold War era of globalization. Instead, technical assistance, training, and financing aimed at capacity building in the domestic institutions responsible for regulating labor practices should be a central element of any approach. Neutral arbitration leading to possible penalties should be resorted to only when other options have been exhausted.

Enforcement should not rely on discriminatory trade sanctions.

Core labor standards should apply uniformly within any national jurisdiction to both exporting and non-exporting firms. Government enforcement of those standards should also be meted out evenhandedly. If the objective is fair implementation and enforcement of core labor standards, as opposed to trade protection, penalties for noncompliance must be the same for all companies regardless of the destination of their sales. Because trade sanctions can be applied only to the products of exporting firms, they provide no incentive for compliance by non-exporting firms, and are inherently discriminatory. If used to penalize noncompliance by non-exporting firms, they discriminate against exporting firms or sectors that are in compliance.

The same is true when trade sanctions are used to penalize a government's failure to enforce its labor laws. While the imposition of border measures on imports might in some instances create political pressure that can force compliance by governments of exporting countries and non-exporting firms, it may also fail to do so, leaving innocent parties damaged for no good purpose. Applying to exporting firms trade sanctions that go above and beyond general domestic penalties is also discriminatory. It creates a form of double jeopardy for exporters and does not improve general domestic enforcement or compliance.

If the goal is to target violators and promote improvement of labor standards within a national economy, it is particularly inappropriate to place the burden of sanctions only on exporting firms. The most egregious and widespread violations of labor rights typically occur in nontrading sectors, such as the informal sector, domestic services, and traditional agriculture. An effective approach must focus on improving the coverage and enforcement of core labor standards across the board rather than just where foreign trade is involved.

National compliance with core labor standards should be the main objective.

The principal goal of any initiative should be to encourage national governments to adopt, implement, and enforce internationally recognized core labor standards for companies operating in their national jurisdictions. In pursuing this goal, cooperative and voluntary private-sector remedies or self-regulation should be the first resort. Multilateral conventions or agreements

would be negotiated only on a clear showing that there are substantial differences in the standards adopted, the forms and levels of implementation, or the forms and levels of enforcement.

If there are sufficient differences in adoption, implementation, or enforcement of internationally recognized core labor standards, governments can determine whether to pursue a collective alternative that includes dispute resolution beyond consultations and nontrade sanctions.

Diversity among nations should be acknowledged and respected.

Any jointly agreed-upon measures should account for cultural and social differences, differences in legal systems, and differences in size and diversity of sectors within national economies. Though globalization is producing an increasing level of economic interaction and integration among national economies, it need not change national social, cultural, or legal systems. Uniform labor standards, wages, and environmental and other protections are not required among all nations in an open-market environment. Governments should avoid actions that block natural comparative advantages of other economies in trade. This principle should be applied to any multilateral agreement or convention on core labor standards.

To be effective, penalties should be targeted and specific.

Trade sanctions are controversial in part because they are a relatively blunt instrument that penalizes the sales of exporting companies not necessarily guilty themselves of labor violations. If a multilateral or regional labor accord were to include a dispute resolution mechanism that accepted, evaluated, held consultations on, and perhaps developed advisory and/or binding panel rulings on the merits of particular complaints, the penalties ultimately assessed should be targeted as narrowly as possible to force corrective action by the specific firm involved or government agency whose action had been found to be in violation. This would limit unwarranted spillover effects and pinpoint responsibility with the appropriate party.

One possible mechanism is the assessment of monetary penalties, or fines, against the responsible national agencies. If the violation is an enforcement failure by the government agency responsible for compliance, the fine could be earmarked from the general treasury for action to remedy that enforcement failure. Alternatively, fines could be paid, via a bond or deposit, to an independent body set up under the agreement that would be responsible for verifying eventual compliance and allocating funds to ensure compliance. If the national government agency achieved compliance within a reasonable period of time, the bond would be canceled or the deposit returned. In cases where firms are responsible in spite of adequate governmental enforcement, the government could be encouraged to assess equivalent fines against those firms to recover its costs.⁴

⁴ Monetary assessments, or fines, are used as enforcement tools in the Mexico-Canada labor and environmental NAFTA side agreements, as well as in the Chile-Canada labor side agreement.

The ILO as an Alternative Venue

One obvious venue for applying these alternative principles outside the context of trade negotiations is the International Labor Organization.⁵ Though the organization is often criticized by labor groups as ineffectual and lacking an effective dispute settlement mechanism (that is, it does not include explicit resort to trade sanctions), these criticisms are not necessarily accurate. In recent years, the ILO has been experiencing a mild renaissance under the vigorous leadership of Director-General Juan Somavia. Regular reporting requirements for participating countries and a global report issued by the director-general each year are contributing to a clear understanding of the legal status of labor standards and enforcement efforts around the world. In addition, since the mid-1990s, the ILO has played a critical monitoring and technical role in a series of cooperative agreements that have helped curb child labor in the Bangladeshi garment industry, the Pakistani soccer ball industry, and the Cambodian textile and apparel industry.⁶

The ILO's dispute mechanism does not actually rule out ultimate resort to trade sanctions, though they never have been applied. But under Somavia, the ILO has shown an increased willingness to use its dispute settlement mechanism in an aggressive manner short of trade sanctions. For instance, the ILO's governing body, in an early 2000 case involving Burma's use of forced labor, prohibited ILO technical assistance to the country except as necessary to end the forced labor and declared a ban on Burma's attendance at most ILO meetings. When that did not yield results, the ILO body for the first time in its history invoked Article 33 of the ILO charter, which does not rule out trade sanctions in that it allows the organization to "recommend . . . such action as it may deem wise and expedient to secure compliance." The ILO's recommendations include calls for member states to take appropriate measures to make sure that Burma cannot continue its use of forced labor, as well as calls for other international organizations to consider whether their activities directly or indirectly abet the practice.⁷

Of particular importance, the ILO's International Labor Conference approved in 1998 its Declaration on Fundamental Principles and Rights at Work, which identifies five internationally recognized labor rights that nearly all members of the international community believe should be promoted. The five internationally recognized core labor standards are the right of association; the right to organize and bargain collectively; the prohibition on the use of any form of forced or compulsory labor; the elimination of child labor; and nondiscrimination in employment.⁸ The North-South debate with respect to these core rights is not, in principle, over whether they

⁵ The ILO is different than the WTO in that it is a tripartite organization that includes government, labor, and private-sector participation. In recent years, it has gotten more attention and more resources from the Clinton administration than in the past.

⁶ See Kimberly Ann Elliott, "The ILO and Enforcement of Core Labor Standards," Institute for International Economics International Economic Policy Brief No. 00-6 (Washington, D.C.: Institute for International Economics, July 2000).

⁷ For a much more detailed account of the Burma sanctions action and a full discussion of the ILO's possibilities for enforcing core labor standards, see Elliott. Our description draws from that article.

⁸ These core standards are incorporated in seven ILO conventions identified by the ILO's governing body as fundamental to the rights of human beings at work, irrespective of levels of development of individual member states. They were approved in 1998 in the Declaration on Fundamental Principles and Rights at Work, and a follow-up mechanism was established that requires annual reports from participating countries on actions they are taking to promote the principles. These rights are a precondition for all the others in that they provide for the necessary implements to strive freely for the improvement of individual and collective conditions of work. The seven conventions fall into four thematic areas: freedom of association (ILO Conventions 87 & 98); the abolition of forced labor (Conventions 29 & 105); equality (Conventions 111 & 100); and the elimination of child labor (Convention 138).

should be implemented and enforced—it is largely agreed they should. The debate is over how best to accomplish this mutual goal.⁹ Resolving differences on how to accomplish a common goal calls for negotiations, and this can best be done via the active pursuit of multilateral (ILO) and/or regional (Summit of the Americas) initiatives aimed at bolstering adherence to them. In other words, the five core rights contained in the fundamental ILO conventions could form the basis for collective action and treaty making between interested governments.

While the ILO should pursue an agreement on enforcing labor standards at the broadest international level, we note that the degree of consensus between the developing and developed worlds on ILO core rights is most pronounced in the Western Hemisphere, where democratic constitutional arrangements, Western conceptions of civil society, and open-market economies increasingly hold sway. Twenty-five of the 34 Western Hemisphere democracies involved in the Summit of the Americas process have ratified at least five of the seven fundamental ILO conventions that deal with the five core standards.¹⁰ If one agrees that any potentially successful effort to pursue multilateral or regional agreement must seek to formalize and build on areas where consensus already exists, or is clearly reachable, rather than try to bridge vast differences, then the Western Hemisphere and its Summit of the Americas process offer perhaps the best hope for progress in the near term.

SECTION III: PROPOSAL FOR A WESTERN HEMISPHERE WORK PROGRAM ON CORE LABOR STANDARDS

There is a process in place to address a broad array of economic and social issues in the Western Hemisphere. The Summit of the Americas in December 1994 established the framework and timetable for negotiating the Free Trade Area of the Americas/Área de Libre Comercio de las Américas (FTAA/ALCA), but it also addressed other societal issues. The process was augmented in Santiago, Chile, in 1998, at a second hemisphere-wide Summit of the Americas meeting. The Santiago Summit Ministerial Declaration and Plan of Action that came out of the meeting included sections titled “Basic Rights of Workers” and “Modernization of the State in Labor Matters.”¹¹

This regional initiative provides a useful and readily available process to examine alternative approaches to address core labor standards separate from trade negotiations. A Committee of Government Representatives on the Participation of Civil Society was established under FTAA/ALCA to address labor rights, among other issues, and that committee issued a report in November 1999. The report takes note of submissions by nongovernmental groups on

⁹ Since May 1995, when a campaign to ratify the fundamental ILO conventions was launched, the ILO has registered more than 70 ratifications and confirmations of previous obligations. More than 120 countries have ratified six of the seven fundamental conventions. As of June 9, 1999, 77 countries had ratified the other one—the 1973 Minimum Age Convention.

¹⁰ Eleven hemispheric countries have ratified all seven fundamental conventions; twelve have ratified six; two have ratified five; three have ratified four; two have ratified three; and only the United States has ratified just one.

¹¹ The Santiago Summit Ministerial Declaration and Plan of Action, which is referred to extensively in this section of the paper, can be found in its totality at <http://www.sice.oas.org/ftaa/santiago>.

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substantive and procedural means for incorporating (or excluding) the labor issue into (or from) the FTAA agreement.¹²

Proposals for an alternative approach on labor rights are directly relevant within the Summit of the Americas framework. Up to now, the 34 governments have excluded negotiations on core labor standards within the FTAA/ALCA process, and there is substantial agreement among the governments of the hemisphere that trade sanctions are inappropriate for enforcement of such labor rights. The presidents and prime ministers of the FTAA/ALCA countries rejected use of labor standards for protectionist purposes. Those positions are consistent with the findings and principles in this paper.¹³

The Inter-American Conference of Ministers of Labor, under the authority of the Santiago Summit Ministerial Declaration and Plan of Action, is authorized to exchange information regarding labor legislation of the respective countries and promotion of core labor standards recognized by the ILO. That information is to include “mechanisms and/or legal authorities of Ministries of Labor to implement core labor standards” and information relevant to changes in such implementation authority.

The Organization of American States (OAS) and the Inter-American Development Bank (IDB) have been authorized, with assistance of the ILO, to assist the ministers in this plan. The presidents and prime ministers also state that their governments will “further secure their observance and promotion of internationally recognized core labor standards.”

The Santiago plan additionally calls on governments to “take actions towards assuring that the Ministries of Labor have the necessary means to carry out this Plan of Action in areas within their jurisdiction.” It calls for the ministries to promote measures that will “provide high-quality programs and assistance for workers and employers,” especially with regard to “decentralization of their functions, the incorporation of new technologies, active labor market policies, better and more timely information regarding the labor market, and improvement of safety and health conditions in the workplace.” It calls for special attention to be given to incorporating socially disadvantaged groups into the workforce, and to addressing the issue of children at work.

The authorizations contained in the Summit of the Americas declaration could possibly be expanded into developing and executing a process to further address whether it is desirable or practical to create an inter-American convention for implementation and enforcement of these core labor standards in the hemisphere. The process, described in the following paragraph, could address three distinct areas of study and, if agreed upon, a two-stage, multilateral work program that could lead eventually to the negotiation of a regional labor convention. The three study areas are possible private-sector remedies or self-regulation; technical assistance and transparency

¹² The November 4, 1999, report's paragraph on labor standards reads: “Some submissions [by nongovernmental groups] raised the issue of labor standards and advocated the formal inclusion of this issue in the FTAA. They included recommendations of both a substantive and procedural nature to accomplish this goal. Some other submissions asserted that labor standards not become technical barriers to trade, and specifically objected to the use of trade sanctions to enforce labor standards. Some submissions called for labor standards to be addressed completely outside of the FTAA.”

¹³ The leaders of the FTAA/ALCA governments stated in the Santiago Summit Plan of Action section titled “Basic Rights of Workers” that “economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these [core labor] standards and should lead to higher levels of employment; similarly reject the use of labor standards for protectionist purposes, and, in this regard, note that the World Trade Organization (WTO) and ILO Secretariats shall continue their collaboration.”

measures; and active labor market policies. The first stage of the multilateral work program would examine the level of adoption of internationally recognized core labor standards and analyze both the implementation of those standards into domestic law and the enforcement of that law. It would also identify voluntary actions that individual governments could take upon receiving the results of these studies. The second stage of the multilateral work program would explore the specific details of a regional labor convention, including mechanisms for hearing complaints, resolving disputes, and imposing possible penalties.

The first area of study would focus on private-sector remedies or self-regulation in promoting adherence to core labor standards. One remedy has consisted of labeling products to indicate that they were not created in sweatshops. This technique might be applied to other core labor issues such as the right to organize and strike, as long as truth-in-labeling laws are followed. The marketplace would determine the success of labeling plans. The United States has already tried to determine, in a limited way and with mixed results, whether consumers will pay more for domestic goods with “the union label.” Labeling is likely to work best when applied to issues with some moral suasion, such as child labor, but private-sector approaches permit diversity. There is no need for a one-size-fits-all program.

Multinational codes of conduct have also proven successful in a few instances. Again, the successful programs appear to involve issues with a high degree of moral suasion. The most notable example has been the various boycotts, under the Sullivan Principles, of countries doing business in apartheid South Africa. Here too, the marketplace would determine the range of issues for which such an approach would be effective.

The Inter-American Conference of Ministers of Labor would act as a convener for the development of a proposed work program to review possible private-sector remedies under existing Summit of the Americas authority. The OAS and the IDB, with the assistance of the ILO, are authorized to help prepare for such a meeting and could propose and review other options. We would propose that the Economic Commission for Latin America & the Caribbean (ECLAC), which teams with the OAS and IDB in providing technical assistance to the regional FTAA/ALCA trade-negotiating process, also be authorized to assist in this area.

The second area of study would focus on technical assistance and transparency measures. The technical ability to analyze, implement and enforce labor laws on their books is limited for countries with very scarce government resources, both financial and human. Analyzing how to implement certain labor standards in a particular economy requires technical expertise often lacking in some developing countries.

Technical assistance and technology measures lend themselves well to multilateral approaches under a cooperative framework. The OAS, IDB, and ECLAC are providing technical resources to support smaller economies and general interests under the FTAA/ALCA negotiations. The coordinated efforts of these three multilateral organizations can be effective in providing remedies for promotion of core labor standards.

Transparency through multilateral reporting and review of existing laws and enforcement requires consensus. The OAS, IDB, and ECLAC could do an initial survey and analysis of current laws and levels of enforcement, which would be the first step in transparency. (See the first-stage studies in the multilateral work program described in the box on pp. 12–13.)

MULTILATERAL WORK PROGRAM LEADING TO A POSSIBLE LABOR ACCORD IN THE AMERICAS

First-stage studies.

Level of adoption of internationally accepted core labor standards.

The Santiago Declaration lists most of the core labor standards recognized by the ILO. The OAS, IDB, and/or ECLAC could perform an analysis of the extent to which existing labor laws in each country reflect those ILO standards. This analysis would go beyond that already prepared by the ILO in that it would identify specific similarities and differences in legislation and regulations implementing ILO fundamental conventions and core standards in the various countries.* The ILO should be consulted as required. Conduct of such an analysis appears to be within the authority of the Declaration, but the Inter-American Conference of Ministers of Labor, which last convened in February 2000 in Washington, D.C., should direct that the analysis be done or updated.

Analysis of implementation of core labor standards into laws of the respective countries.

This analysis goes slightly beyond existing authority of the Inter-American Conference of Ministers of Labor under the Santiago Summit Declaration, but the conference could specifically authorize the analysis. The Declaration directs labor ministers to exchange information on “their labor legislation, mechanisms, and/or legal authorities . . . to implement core labor standards as a fundamental component of productive workplaces and positive labor-management relations.”

Analysis of enforcement of laws implementing core labor standards.

This should also be specifically authorized by the Inter-American Conference of Ministers of Labor. The Santiago Declaration directs the ministers to “further secure their observance and promotion of internationally recognized core labor standards” and recognizes the ILO as the “competent body to set and deal with these standards.”

Voluntary action of individual governments following analysis.

At the first level, it would be the responsibility of each national government to take such actions as it deems appropriate to resolve deficiencies and seek technical assistance and resources from the OAS, IDB, and ECLAC for implementation and enforcement of its own laws in consideration of competing needs from those institutions.

Second-stage studies.

Review by labor ministers.

The Inter-American Conference of Ministers of Labor would review all analysis and voluntary compliance on adoption, implementation, and enforcement of core labor standards. In consultation with heads of government and their own private-sector interests, the ministers would determine whether to require or advise additional study to explore alternative multilateral mechanisms to implement and enforce core labor standards in the hemisphere.

Possible initiation of study program.

Provided the governments determine that such further study and exploration would help resolve trade and labor policy differences in the hemisphere and move trade liberalization forward, the ministers

* A document prepared by the ILO's regional office for the Americas for the February 2000 Inter-American Conference of Ministers of Labor meeting, “Las Normas Laborales en los Acuerdos de Integración en las Américas,” compares the labor-related provisions incorporated into both binding and nonbinding integration agreements negotiated to date in the Americas.

would authorize the OAS, IDB, and ECLAC, with the assistance of the ILO and in consultation with the WTO, to commence such studies toward an alternative regional mechanism to promote the implementation and enforcement of the listed core labor standards.

Possible development of work program.

The OAS, IDB, and ECLAC would propose a work program to explore options for such a mechanism, including a cooperative agreement or convention under the authority of the Inter-American Conference of Ministers of Labor to promote the adoption, implementation, and enforcement of the listed core labor standards; to hear complaints about noncompliance with such standards; and to conduct consultations between the various labor ministers or their designees to resolve such complaints.

Any work program shall respect the principle that compliance with core labor standards should ultimately be the responsibility of individual firms and workers' organizations under the laws of the sovereign government in the nation where they are resident. The reviews contemplated in any proposed regional mechanism would be limited to government-to-government consultations, and compliance would be related only to a government's enforcement of its own laws. Any regional, multilateral mechanism should have no direct authority over any individual firm or sector or workers' organization established under national or subnational authority.

Dispute resolution and sanctions.

The Inter-American Conference of Ministers of Labor should determine if it wants the OAS, IDB, and ECLAC to further study options for dispute resolution and nontrade sanctions as an element, in addition to consultation and cooperation elements, to be incorporated in any alternative mechanism presented for consideration.

If so, the regional organizations would conduct such studies as directed. Examples to be considered are the provisions relating to labor disputes associated with the recent free trade agreement between Chile and Canada; the labor and environmental side agreements associated with NAFTA; dispute panel systems under WTO and NAFTA, or those being considered under FTAA/ALCA; and such other mechanisms developed by the OAS, IDB, and ECLAC that are determined to be worthy of consideration.

Trade sanctions shall not be included in any form of sanction or enforcement mechanism. Fines, such as those under the Chile-Canada agreement, are to be imposed only upon noncomplying governments. Those governments may consider offsetting fines imposed on noncomplying firms under their jurisdiction, under laws in place at the time. Compensation or fines shall not be paid to another government bringing a complaint to the extent that the complaint is based on some loss or damage determined to have been caused to a competing firm or industry or workers' organization in the country of the complaining government.

Other issues.

If labor ministers choose to pursue a regional compact of some sort, they could give consideration to setting up consultation mechanisms for receiving input from private-sector groups, especially labor organizations.

Governments could consider providing additional allocations to the regional development institutions. The monies could be earmarked for bolstering the institutions' capacity to provide technical expertise in the field.

BREAKING THE LABOR-TRADE DEADLOCK

That analysis should have sufficient credibility to be accepted by most governments and private interests in the region. The OAS convention on bribery could be a model. This approach has the value of deterring unilateral sanctions such as those the United States uses to determine if governments cooperate sufficiently on illegal drug interdiction. A continuing program of transparent multilateral analysis and periodic reporting could eliminate many controversies and misunderstandings before they start.

The Inter-American Conference of Ministers of Labor would also act as a convener for development of a proposed work program to review possible technical assistance and transparency measures under existing Summit of the Americas authority.

The third area of study would examine active labor market policies (ALMPs). The principal objective of ALMPs is to assist workers—notably those threatened by unemployment, those who have actually lost their jobs, and those who remain unemployed over an extended period of time—in remaining or becoming job ready so that they can compete successfully for new jobs. As noted, labor ministries in the Western Hemisphere are under instruction to promote measures to provide high-quality ALMP programs.¹⁴ Information exchange and technical assistance are the minimal elements that could be pursued under this mandate.

CONCLUSION

Concrete, effective steps are available that can measurably expand the application and enforcement of internationally recognized core labor rights in the developing world without including trade sanctions in trade agreements. We have sketched out one possible alternative approach that Western Hemisphere governments could pursue with the backing of substantial elements of their private sectors, civil society groups, and legislatures that are interested in seeing progress both on workers' rights and on growth-inducing trade negotiations. The earliest logical point for the leaders of the Americas to address this issue is the third Summit of the Americas in Quebec City, Canada, in April 2001.

Without some movement in this direction, there is a real danger that continued stalemate over the issue of inserting labor issues into international trade negotiations may ultimately lead to the worst of all outcomes: further deterioration of today's already inadequate worker safeguards in the developing world, along with renewed trade protectionism that could undermine the foundations of economic prosperity on which sustained progress on worker rights depends.

¹⁴ If successful, these programs reduce the enforced idleness of human capital and ensure that labor is relocated from declining to expanding economic activities. Thus, the assistance element of ALMPs contributes to social equity, whereas the reallocation element contributes to labor market efficiency. Both active and passive labor market policies have historically played a role in accommodating the labor market consequences of trade and investment liberalization. For instance, trade adjustment assistance, introduced in the United States in 1974, consisted both of enhanced unemployment benefits and reemployment services offered to workers who lost their jobs in import-competing industries due to trade liberalization. However, because of the risk of benefit dependency, there has been a general shift in recent years toward active measures. This holds for trade-related measures as much as for labor market programs more generally. To stay with the example of the United States, dislocated workers are now profiled to determine whether they are at risk of becoming unemployed for the long term and, if this is the case, they are referred to job search assistance programs. Participation in these programs is in fact a condition of continuous receipt of unemployment benefits.

APPENDIX: RECENT EMPIRICAL FINDINGS ON THE RELATIONSHIP BETWEEN TRADE AND LABOR STANDARDS

This appendix looks at some of the recent empirical findings on the relationship between trade and labor standards. Among the key findings are that:

- Higher national income levels and open-market reforms are both associated with improved labor standards;
- There does not seem to be a relationship between labor standards and export performance; and
- Developing-country export sectors linked to the global market usually enforce higher labor standards than sectors producing only for local consumption.

Increasing income levels and market reforms are associated with improved labor standards.

Empirical evidence indicates that, as income levels rise, the coverage and enforcement of labor standards improve. Most obviously, labor standards in industrial countries today are far higher and more strongly enforced than labor standards in the same countries a century ago. But ILO research also shows significant differences among developing countries today, based on their national income levels. For example, 30 to 60 percent of children between the ages of ten and fourteen work in countries with per capita incomes of \$500 or less, whereas only 10 to 30 percent of children that age work in countries with per capita incomes between \$500 and \$1,000.

Labor standards might improve with income levels for two reasons. First, the additional resources bolster the capacity of governments to enforce labor laws and provide adequate infrastructure and education. By the same token, more prosperous companies are better able to afford—and a more affluent, better-educated workforce is more apt to demand—measures that improve worker safety and incomes. Second, the broad social demand for labor standards will improve with income, which is again shown in the social history of the industrialized economies.ⁱ

In addition, a 1996 Organization for Economic Cooperation and Development (OECD) study found a strong positive association over time between successfully sustained trade reforms and improvements in core labor standards.ⁱⁱ

ⁱ A recent examination of voting patterns of U.S. legislators found that those lawmakers from wealthier states were more likely to support bans on imports made with child labor than were their colleagues from poorer states—even though the workforce in the latter legislators' districts would more likely be directly threatened by low-wage competition from abroad. See Alan Krueger, *Observations on International Labor Standards and Trade*, NBER Working Paper 5632 (Cambridge, Mass.: National Bureau of Economic Research, 1996).

ⁱⁱ Organization for Economic Cooperation and Development, "Trade, Employment, and Labor Standards: A Study of Core Workers' Rights and International Trade" (Organization for Economic Cooperation and Development, 1996).

Labor standards do not seem to impact export performance or foreign direct investment competitiveness.

Several studies have failed to find evidence that export performance is correlated in any strong way with labor standards, or that low labor standards confer a competitive cost advantage to developing countries. For example, Rodrik found that labor standards have little effect on trade patterns. In addition, the 1996 OECD study found no evidence that countries with low labor standards had a better global export performance than high-standard countries. The OECD study also found that the price of imports of textile products was not associated with the degree of enforcement of child labor standards in the exporting countries.ⁱⁱⁱ These findings may reflect the fact that labor standards and wages may be to a large extent cost substitutes for a firm.^{iv}

Nor does there seem to be strong evidence that multinationals make location decisions based on the level of labor standards in a country. The OECD also found that standards are not important determinants of flows of foreign direct investment (FDI).^v And when managers of foreign export firms in the Dominican Republic and Mexico were surveyed, they indicated that their most important locational choice criteria were distance to export markets, wage levels, and the adequacy of infrastructure. The presence of unions was not an important criterion for these companies.^{vi} In fact, low labor standards may actually deter rather than attract FDI in manufacturing.^{vii}

Export sectors in developing countries adhere to higher labor standards than nontraded sectors.

For the most part, the evidence suggests that labor standards are higher in the export sectors of developing countries than in the nontraded, informal sectors. In a study of the relationship among trade, labor standards, and export competitiveness in ten developing countries, Mita Aggarwal found that core labor standards are often lower in less export-oriented or nontraded sectors such as agriculture and services. Moreover, within export-oriented sectors, workers in firms that were “more linked to the international market” received benefits similar to or greater than those other workers received. She also found that certain industries that are usually considered worse for labor standards, including textiles, carpets, garments, toys, footwear,

ⁱⁱⁱ See Robert Z. Lawrence, Dani Rodrik, and John Whalley, *Emerging Agenda for Global Trade: High Stakes for Developing Countries* (Washington, D.C.: Overseas Development Council, Johns Hopkins University Press, 1996). See also Organization for Economic Cooperation and Development. Krueger points out that the wage gap is still large enough between developed and developing countries that minimal labor standards would not bring much protection to workers in industrialized countries.

^{iv} That is, to the extent that improving labor standards are costly, firms may simply shift that cost to employees in the form of lower wages. For models, see Richard B. Freeman, “International Labor Standards and Trade: Friends or Foes,” in *The World Trading System: Challenges Ahead*, edited by Jeffrey J. Schott (Washington, D.C.: Institute for International Economics, 1996). Although the breakdown of costs may not impact overall firm competitiveness, it may be important to workers. Workers may prefer higher wages to improved working conditions, as they can spend wages precisely on those things that give them the most utility.

^v See Organization for Economic Cooperation and Development.

^{vi} Staci Warden, “A Profile of the Maquiladora Sector in Mexico,” mimeo.

^{vii} See Lawrence, Rodrik, and Whalley. Rodrik concludes that his results, “taken at face value . . . indicate that low labor standards may be a hindrance, rather than an attraction, for foreign investors.”

gemstone polishing, fireworks, and gold mining, do not occupy even the primary share of these countries' exports.^{viii}

The ILO estimates that in developing countries, child labor force participation rates are much higher in rural than in urban areas, and three-quarters of working children work in family enterprises. The study also found relatively fewer child workers in export industries (such as textile, clothing, carpets, and footwear) than in domestic activities. For example, probably fewer than 5 percent of child laborers are employed in the export manufacturing or mining sectors, and only 1 to 2 percent are employed in export-oriented agriculture. An ILO survey (cited in Aggarwal) found that 77 percent of economically active children under fifteen work in agriculture, hunting, forestry, and fishing. Other nontraded services that have high levels of child participation include shoe shining, newspaper selling, and domestic work.

The record on export processing zones (EPZs) is mixed. In some cases, countries have lowered labor standards or banned union activity with a view to attracting foreign investment or increasing international competitiveness. However, even when unions and the right to strike have been banned in EPZs, wages in these zones tend to be higher than wages in the domestic economy. Thus it does not seem that the absence of unions necessarily translates into lower compensation for workers.

Empirical studies also suggest that, for the most part, multinational firms pay higher wages and offer better working conditions than domestic firms in developing countries. There may be several intuitive reasons for this practice. For example, multinationals often have company-wide labor policies, so that they extend their home-country standards abroad. Aggarwal, for example, found that multinationals in the Philippines, Indonesia, and India “generally apply internationally accepted labor standards” in their firms and concludes that foreign investment is actually a “useful vehicle” for attaining internationally recognized labor standards. Multinationals may also face scrutiny about their business practices abroad from consumers in their home countries, as evidenced by U.S. consumer protests over U.S. firms using child labor in their operations abroad.

Last, in many middle-income developing countries, such as the better performers in Latin America and East Asia, the pressure to compete internationally has meant that exporting firms have had to set working conditions at or close to those in developed countries. Sophisticated products often require sophisticated production processes, so that firms will need more highly skilled workers and improved factories. Because innovation requires more productive workers, labor standards may improve both as a direct means of improving productivity and as an indirect method of keeping the best workers and encouraging their efforts.

Together, these findings suggest that the best way to improve labor standards in developing countries might be to encourage the development of export-oriented sectors in their economies.

^{viii} Mita Aggarwal, *International Trade, Labor Standards, and Labor Market Conditions: An Evaluation of the Linkages*, Office of Economics Working Paper 95-06-C (Washington, D.C.: Office of Economics, U.S. International Trade Commission, 1995).

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