Fair Labor Standards and International Trade

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WITHOUT FANFARE, the United States has established new labor standards for less developed countries wanting to qualify for trade preferences. While there were already a few labor protections in U.S. trade law and agreements, the recent legislation marks the first time that American policy has sought to protect a comprehensive range of worker rights. Over the next several years, the new standards could lead to far-reaching changes in trade practices and development patterns.

The first of the two labor standards appeared in the 1983 Caribbean Basin Initiative (CBI), a program that eliminates tariffs on most products from the Caribbean region. Under the CBI, the President determines the eligibility of beneficiary countries based upon a set of 18 criteria, including the degree to which workers are afforded "reasonable workplace conditions and enjoy the right to organize and bargain collectively."[1] The second and tougher standard came in the 1984 extension of the Generalized System of Preferences (GSP), a program that eliminates tariffs on most products from 140 developing nations. In order to retain their GSP eligibility, countries are required to take steps to afford "internationally recognized worker rights." These rights include the formation of unions and "acceptable" conditions of work.[2]

To some observers, the U.S. interest in boosting foreign unions may seem paradoxical. Why at a time of seemingly waning strength and influence of American unions would U.S. trade policy be modified to give active support to labor in other countries? There are two reasons. First, there has been a growing public concern about U.S. abetment of foreign human rights violations. It is one thing to know that conditions in the less developed countries (LDCs) are bad, but quite another to learn that some

[1] Caribbean Basin Economic Recovery Act (P.L. 98–67), Sec. 212(c) (8).
[2] Trade and Tariff Act of 1984 (P.L. 98–573), Sec. 503.

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LDC export processing zones may have worse working conditions than exist in the rest of the country.[3]

Second, the new standards are supportive of the Reagan Administration's goal of promoting private sector development and democratization. Unions are well known for their contribution in spreading participatory skills and in providing organization and leadership to nascent political parties. This is particularly so in the Caribbean and in parts of Latin America.

What is the significance of the new labor conditionality? The new standards have given the United States much greater leverage to prod the LDCs into adopting more progressive attitudes toward labor. By enhancing the role of unions as intermediary institutions, the labor standards may help spread the political and economic benefits of development across a broader range of population. The standards have also reopened the contentious issue of what status unfair working conditions should have in the rules of international trade. Should U.S. industries be forced to compete against the "cheap labor" or "wage-cutting" trade of the LDCs? With the advent of another round of trade negotiations, we can expect renewed efforts to secure agreement on this knotty problem.

The purpose of this article is to examine the basic issues involved in the concept of international fair labor standards (IFLS). We will start with a brief review of the progress made toward IFLS in the past, and then explore some problems of definition. Next we will consider the effect of labor standards on economic development, and analyze IFLS in the context of other trade policy objectives. We will then take a look at the major issues of implementation and, finally, offer a few observations.

History of labor standards

Lest one think that IFLS is an issue of only contemporary interest, it will be useful to take a brief tour of past actions aimed at promoting labor standards in trade. This historical review comes from the American perspective and emphasizes the U.S. legislative landmarks.

The modern history of IFLS began at the international labor conference in Bern of 1906, which adopted a treaty to prohibit the manufacture, import, or sale of matches containing white phosphorus.[4] (Phosphorus poisoning was one of the most loathsome occupational diseases, rotting the jawbones so badly that the stench kept even the doctors away.) By 1912, nine European nations had agreed to ratify the phosphorus match treaty.[5] Although the United States did not ratify the treaty directly, it did pass

[3] The best source on export processing zones is *Trade Unions and the Transnationals*. (Brussels: International Confederation of Free Trade Unions, March 1983.). See also D. L. U. Jayawardena, "Free Trade Zones," 17 *J. W. T. L.* (1983), p. 427.

[4] U.S. Bureau of Labor Statistics Bulletin No. 268, p. 19.

[5] The nine countries were: Germany, Great Britain, Denmark, France, Luxembourg, the Netherlands, Switzerland, Italy and Spain. U.S. Bureau of Labor Statistics Bulletin, No. 268, p. 132.

legislation that year to ban the import or export of such matches and to eliminate their production via a special tax.[6] This was the first time that U.S. trade law was used to protect the health of foreign workers.

At the end of the first world war in 1919, the Peace Conference appointed a Commission to draw up proposals on labor for inclusion in the Treaty of Versailles.[7] One part of the Treaty, the Convenant of the League of Nations, stated that members "will endeavor to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial nations extend . . ."[8] Another part of the Treaty laid the groundwork for establishing the tripartite International Labor Organization (ILO) to consist of government, worker, and employer representatives.[9]

In 1922, the Congress enacted a "flexible tariff," which directed the President to adjust import duties so as to equalize differences in the costs of production (including wages) between the United States and the principal competing country.[10] This provision was utilized throughout the 1920's, with tariffs raised much more often than lowered.[11]

In the Hawley-Smoot Tariff of 1930, the United States extended an earlier ban on imports produced by convict labor, and broadened it to include goods made by forced labor or indentured labor under penal sanctions.[12] Several other countries also banned imports made by prison labor including Britain, Canada, Australia and New Zealand. These prohibitions are still in place.[13]

In 1947–48, the United Nations Conference on Trade and Employment was held in Havana to write a Charter for an International Trade Organization. The main proposal on labor, which came from a group of Latin American countries, would have relieved each nation of obligations (under the new trade rules) toward any nation whose labor

[6] Act Providing For a Tax on White Phosphorus Matches and for Prohibiting their Import or Export, esp. Secs. 10 and 11. 1912 (26 U.S.C. 4805). The tax was repealed in 1976.

[7] *The American Labor Legislation Review*, Vol. IX, No. 3, pp. 302–314, 348–349.

[8] Treaty of Peace between the Allied and Associated Powers and Germany (Treaty of Versailles), June 28, 1919. Part I, Art. 23.

[9] Treaty of Versailles, Part XIII "Labour."

[10] Tariff Act of 1922 (the Fordney-McCumber Tariff), Sec. 315. The maximum adjustment permitted was 50 percent of the statutory duty.

[11] John M. Dobson, *Two Centuries of Tariffs: The Background and Emergence of the U.S. International Trade Commission.* (Washington: USITC, 1976), p. 100.

In 1934, the Reciprocal Trade Agreements Act sharply circumscribed the flexible tariff by withdrawing its applicability from products covered by a trade agreement (19 U.S.C. 1352). While the equalization of costs provision remains in law today (19 U.S.C. 1336), no investigation under it has been conducted since 1962.

[12] The earliest convict labor provision was in the McKinley Tariff of 1890, Sec. 49. The provision enacted in 1930 is found at 19 U.S.C. 1307.

[13] United Kingdom Foreign Prison-Made Goods Act 1897 (c. 63). Canada Customs Tariff Schedule, Item #99.206-1. Australia Customs (Prohibited Imports) Regulations, First Schedule, Items 15 and 16. New Zealand Customs Act of 1966, Section 48(1).

standards were lower.[14] Although this proposal was not accepted, the Charter did include a specific article on "Fair Labour Standards." It called upon member nations to take appropriate action to eliminate "unfair labour conditions, particularly in production for export . . ."[15]

Unfortunately, the Trade Organization never came into being, largely because it failed to gain U.S. ratification. In the current General Agreement on Tariffs and Trade (GATT), the only mention of labor standards is the provision in General Exceptions permitting nations to take measures against "products of prison labour".[16]

The Administration of President Dwight D. Eisenhower brought increased attention to IFLS in the United States. This started with President Eisenhower's first State of the Union Message, in which he named labor standards as one of the issues to be addressed in the extension of the Reciprocal Trade Agreements.[17] Later in 1953, the U.S. State Department made an informal proposal for adding an unfair labor clause to the GATT, but international agreement could not be reached on how to define "unfair."[18] The U.S. proposal defined "unfair" to be the "maintenance of labor conditions below those which the productivity of the industry and the economy at large would justify."[19] In 1954, the U.S. Commission on Foreign Economic Policy (Randall Commission) recommended that no tariff concessions be granted on "products made by workers receiving wages which are substandard in the exporting country." The term "substandard" meant wages for a particular commodity that were well below accepted standards in the exporting country.[20]

In the first International Tin Agreement of 1954, the parties agreed that "in order to avoid the depression of living standards and the introduction of unfair competitive conditions in world trade, they will seek to ensure fair labor standards in the tin industry."[21] Subsequently, labor clauses have been included in the International Sugar Agreement (1966), the International Cocoa Agreement (1975), and the International Rubber Agreement (1979).

As a result of the United States–Japan tariff negotiations of 1955, Japan announced that wage standards and practices would be maintained

[14] Clair Wilcox, *A Charter for World Trade*. (New York: Arno Press, 1972.) pp. 47 and 139.
[15] Clair Wilcox, *A Charter for World Trade*. (New York: Arno Press, 1972), pp. 233–234.
[16] *GATT. Basic Instruments and Selected Documents*. Vol. IV. Art. XX(e).
[17] "Annual Message to the Congress on the State of the Union," *Public Papers of the Presidents. Dwight D. Eisenhower*. 1953. February 2, 1953, p. 15.
[18] *Staff Papers Prepared for the Commission on Foreign Economic Policy*, February 1954, pp. 437–438.
[19] "Compendium of Papers on United States Foreign Trade Policy," U.S. House of Representatives, Committee on Ways and Means, 1958, pp. 789–790.
[20] *Report of the Commission on Foreign Economic Policy*. January 23, 1954, p. 62.
[21] Ulrich Kullman, " 'Fair Labor Standards' in International Commodity Agreements," 14 *J.W.T.L.* (1980), p. 532.

at "fair levels."[22] Japan soon followed this up by enacting its first minimum wage law.

Despite the strong push of the American trade union federation (the AFL-CIO), the Trade Expansion Act of 1962 did not include a fair labor standards provision. During the Kennedy Round of trade negotiations, there were no significant discussions held on IFLS.[23] In 1971, the U.S. Commission on International Trade and Investment Policy (Williams Commission) recommended that the United States "actively support a multilateral effort to gain international acceptance of a code of fair labor standards . . ."[24] This recommendation was incorporated in the Trade Act of 1974, which directed the President to seek several revisions in the GATT, including "the adoption of international fair labor standards."[25] This statutory negotiating objective remains in effect.

Although the United States raised IFLS informally at the Multilateral Trade Negotiations (MTN) in 1978, little backing was obtained from other countries. The only active support came from the Nordic nations, which wanted to legalize selective import safeguards against countries having substandard labor conditions. The LDCs were generally hostile to IFLS, opposing their consideration in the absence of other structural reforms. The LDCs also suggested that the issue be referred to UNCTAD, where they would be able to exercise greater control.

In November 1978, the Commission of the European Communities made a proposal to the EC Council of Ministers to link the Lomé II Convention to the observation of basic international labor standards.[26] The Lomé Convention provides EEC trade preferences to certain African, Caribbean, and Pacific countries. The Lomé beneficiary countries strongly opposed the EC Commission's proposal, arguing that it was paternalistic, protectionist, and hypocritical in not being applied to EEC–South African trade.[27] In 1979, the EEC decided to extend Lomé without

[22] "Administration and Operation of Customs and Tariff Laws and the Trade Agreements Program," Hearings Before a subcommittee of the House Ways and Means Committee, Part 2, September 1956, p. 919.

Joseph Mintzes, "Union Views of Fair Labor Standards in Foreign Trade," *Monthly Labor Review,* October 1960, p. 1027.

[23] There was a brief mention of international labor consultations in "Special Message to the Congress on Foreign Trade Policy," *Public Papers of the Presidents. John F. Kennedy.* 1962. January 25, 1962, p. 74.

[24] *United States International Economic Policy in an Interdependent World,* Report to the President submitted by the Commission on International Trade and Investment Policy, July 1971, p. 65.

[25] Trade Act of 1974 (P. L. 93–618), Sec. 121(a)(4).

[26] "Report of the Section for External Relations on Development Cooperation Policy and the Economic and Social Consequences of Applying Certain International Standards Governing Working Conditions," EEC Economic and Social Committee, June 20, 1980, pp. 10–17.

[27] Philip Alston, "Linking Trade and Human Rights," *German Yearbook of International Law 1980,* pp. 126–158.

Economic and Social Consequences of Applying Certain International Standards Governing Working Conditions," EEC Economic and Social Committee, June 20, 1980. Pages 16–17.

any labor standards, and did so again in 1984.

Although the United States tried to get IFLS included in the post-MTN work program, no agreement could be reached within the GATT Consultative Group of 18.[28] The official U.S. proposal, offered in July 1979, was to consider two "minimum international labor standards." The standards suggested were: (1) to prohibit export sectors from having lower standards than other sectors and (2) to set maximum exposure levels for toxic substances dangerous to life at any level of development.

The most recent endorsement of IFLS came from the Brandt Commission in 1980. The Brandt Commission recommended that "Fair labour standards should be internationally agreed in order to prevent unfair competition and to facilitate trade liberalization."[29] Since 1980, the United States has not proposed any further multilateral action on IFLS.

In October 1982, the United States suspended Poland from receiving most-favored nation (MFN) treatment. One of the reasons given by President Ronald Reagan was that the Polish government had taken further steps " . . . to increase its repression of the Polish people by outlawing the independent trade union Solidarity . . ."[30] This is the only time that the United States has explicitly linked MFN status to the upholding of labor rights.

Now we come to the recent U.S. legislation which, for the first time, established the policy of actively promoting higher standards. In August 1983, the United States approved the Caribbean Basin Initiative (CBI), to provide duty-free treatment to certain products imported from eligible countries. Eligibility is based on the President's determination as to whether a country meets the seven mandatory and eleven discretionary criteria in the CBI law. One of the discretionary criteria involves labor rights. This provision, drafted by the Reagan Administration, calls for the President to take into account the degree to which workers are afforded "reasonable workplace conditions and enjoy the right to organize and bargain collectively."

While it is unclear whether this criterion has kept any countries out of the CBI program, the labor standard did lead to significant commitments by several countries, including Haiti, the Dominican Republic, Honduras, and El Salvador.[31] To cite one example, the government of Haiti announced the right of unions to form federations and affiliate with international trade union organizations. These new rights, together with

[28] Howard D. Samuel, "International Occupational Health Standards; An American Perspective," *American Journal of Industrial Medicine,* Vol. 6, 1984, p. 69.

[29] Report of the Independent Commission on International Development Issues, *North-South: A Programme for Survival.* (Cambridge: MIT Press, 1980), pp. 25, 152, 182–183, 186, and 288.

[30] *Public Papers of the Presidents. Ronald Reagan.* 1982. Proclamation 4991. October 27, 1982, pp. 1391–1392.

[31] For a full discussion of the CBI labor agreements, see Steve Charnovitz, "Caribbean Basin Initiative: Setting Labor Standards," *Monthly Labor Review,* November 1984, pp. 54–56.

several reforms in the labor code, could lead to the formation of a viable, independent labor movement in Haiti, a country well known for its lack of pluralist institutions.

In October 1984, the Congress attached a labor standard to the eligibility criteria for GSP.[32] Unlike the discretionary standard in CBI, the GSP standard is mandatory.[33] The language of the GSP standard is also stronger than in the CBI in requiring that preferences be withheld or withdrawn "if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country)."[34] These rights are statutorily defined to include the right of association, the right to organize and bargain collectively, a prohibition against forced labor, a minimum age for child labor, and "acceptable" conditions of work, with respect to minimum wages, hours, and safety and health.[35] Although the GSP law does not specifically point to ILO Conventions, they are the only comprehensive "internationally recognized" rights of workers.[36] At this time, it is too early to tell how effective the new GSP provision will be.

Telling fair from unfair

One way to clarify the meaning of fair labor standards is to list the types of violations against which such standards could be applied. Based on various studies, the worst kinds of problems appear to be the following:

— The torture or murder of labor leaders is the ultimate deprivation of worker rights. In recent years, union leaders have been executed by the governments of Iraq, Grenada, and Suriname, and killed in circumstances suggesting government complicity in Guatemala, El Salvador and Chile.[37] Of course, it should be noted that these countries still had unions to repress. There are several countries, such as Cuba and Ethiopia, where the government has extirpated what was once a vibrant trade union movement.

— Numerous countries have edicts which ban trade unions or

[32] Don J. Pease and J. William Goold, "The New GSP: Fair Trade With the Third World?" *World Policy Journal*, Spring 1985.

[33] The mandatory criterion can be waived by the President if he determines it to be in the "national economic interest." There is also an almost identical discretionary labor standard in the GSP law.

[34] 19 U.S.C. 2462(b)(8) and 19 U.S.C. 2464(b).

[35] Trade and Tariff Act of 1984 (P.L. 98–573), Sec. 503(a).

[36] Other sources of internationally recognized worker rights are the Universal Declaration of Human Rights, Articles 23–24; International Covenant on Civil and Political Rights, Part III, Articles 8(3) and 22; and International Covenant on Economic, Social and Cultural Rights, Part III, Articles 6–12.

[37] *Trade Union Rights: Survey of Violations 1983/84*. (Brussels: International Confederation of Free Trade Unions, 1984).

interference with collective bargaining.[38] Of the ten countries with the highest level of exports relative to gross domestic product, trade unions are prohibited in three (Saudi Arabia, Oman and the United Arab Emirates), are dominated by the government in one (the Congo), and are considerably interfered with in two (Singapore and Malaysia).[39] In addition, no communist country allows free trade unions, although many of them do have government-run worker organizations.

— Several countries use forced or prison labor to produce goods for export. The Soviet Union leads the world in forced labor, but there is evidence that other countries, such as China, may export such goods too.[40]

— Among countries open for inspection, some of the worst working conditions are in the Asian countries which make heavy use of child labor in industry. For example, there are reports from Thailand of young girls, ages 10–14, being placed in factories where they must work for fifteen hours a day without ventilation. While there is child labor throughout the world in subsistence agriculture, the use of such labor in production for export puts the consuming nations in the position of bearing some responsibility.

The question of what constitutes "unfair" working conditions presents a thorny problem of definition. It would be of little use to make low wages the identifying characteristic of unfairness, since wages reflect productivity, and productivity in the LDCs is, almost by definition, low. One could define unfair conditions to be any which do not meet the standards of the ILO. But such a definition has the undesirable consequence of putting just about every nation in the doghouse on at least one of the ILO's 161 Conventions. Still another approach is to define as unfair those workplace conditions which, in some way, "exploit" workers. Aside from resting on tautology, such a definition raises the difficulty of trying to second-guess what may be a voluntary labor market transaction. As Joan Robinson so pungently put it: " . . . the misery of being exploited by capitalists is nothing compared to the misery of not being exploited at all."[41]

[38] The information on labor conditions comes from "Country Reports on Human Rights Practices for 1984," Senate Report 99–6, February 1985.

[39] Data on exports relative to GDP are found in *World Development Report 1985.* (New York: Oxford University Press, 1985), Table 5. The other four countries are Belgium, the Netherlands, Hong Kong, and Kuwait. They have no restrictions or minor restrictions on unions.

[40] "Forced Labor in the Soviet Union." Hearing before a subcommittee of the House Committee on Foreign Affairs and the Commission on Security and Cooperation in Europe, November 9, 1983.
"International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor," U.S. International Trade Commission, December 1984, pp. 28–36.

[41] Joan Robinson, *Economic Philosophy.* (Chicago: Aldine Publishing Company, 1962.) p. 45.

Constructing any definition of IFLS must proceed from a foundation of moral, political, and economic values. Since the nations of the world do not share a common set of values, there cannot be one set of standards that would be acceptable to every party. Nevertheless, it may be possible for the democratic nations to agree to a definition of fairness based on the following two principles. First, the labor market should operate under voluntary choice, not coercion. Second, there should be a floor for workplace conditions below which no nation can go.

The easiest cases to proscribe are situations where workers are not permitted to make labor market choices freely. For example, there has been a longtime U.S. ban on importing goods made by forced labor. While forced labor is the most blatant kind of coercion, there is also coercion when young children are sent off to work in factories or when governments prohibit workers from forming trade unions.

More difficult are the cases when workers do make voluntary choices, but the decision making is irrational or shortsighted. For example, a worker may choose to work seven days a week to get more income. Yet a standard requiring a weekly day of rest can be justified as being in his health interest. A worker may choose to take a job handling methyl isocyanate (the lethal chemical in the Bhopal disaster) after being warned that it is risky. Yet a standard requiring adequate safety precautions can be justified because most workers are incapable of evaluating technological risk. Although a floor on labor standards could make some workers worse off (for example, if a company decides not to open a new pesticide plant), it can be argued that such a floor would help all workers, in the long run, if widely enforced.

The most difficult cases are doctrines that there are better criteria than the market for determining how much fruit should go to labor. For example, Pope John Paul II has written that a "just" wage would be remuneration sufficient for "establishing and properly maintaining a family . . ."[42] While there may be justification for such a wage adequacy standard, there are two dangers to it. One is that marginal workers will be disemployed. The other is that it may undermine the acceptance of the more moderate labor standards. Thus, at least for the time being, wage adequacy should probably be excluded from any set of standards.[43] Moreover, it should be noted that despite its 161 labor conventions, the ILO has never agreed upon a standard of wage adequacy, except in the case of certain seamen.

At its extreme, the concept of fairness can be taken to mean that all

[42] Encyclical *Laborem Exercens*, September 15, 1981. Offprint. p. 69.

[43] A good analysis of wage adequacy standards appeared in Robert B. Schwenger, "Fair Labor Standards for World Trade," *Monthly Labor Review*, November 1967. For a very thoughtful theoretical discussion, see Daniel J. B. Mitchell, *Essays on Labor and International Trade*. (Los Angeles: University of California, 1970), pp. 69–79.

international wage differences should be neutralized. Indeed, the rallying cry to "take wages out of international competition" has enjoyed a long tradition in American politics.[44]

Despite its popular appeal, the idea of neutralizing wages suffers two serious flaws. First, there is no rationale for distinguishing low wages from other advantages such as low-cost natural resources, technological prowess, and geography. Second, the same arguments against lower-wage foreign competition apply equally well to lower-wage domestic competition or to zero wage machines.

The fact that some LDC working conditions are deplorable does not necessarily imply that IFLS should be instituted. Before reaching that conclusion, one would have to know: (1) whether IFLS would help or hinder LDC economic development, (2) what effect IFLS would have on the goal of liberalizing world trade, and (3) how IFLS would be implemented. These matters will be discussed in the next three sections.

Labor standards and economic development

What impact will labor standards have on economic development? That depends on how development is defined. If development means growth with equity, then improved working conditions is a necessary byproduct, if not ingredient. If development means growth without regard for equity, then the impact of higher labor standards is not clear. On the one hand, they might be counterproductive in retarding investment. On the other hand, the LDC conditions may be so low that elevating them might actually boost growth. For example, reducing a 15-hour work day can protect health and increase productivity. Increasing the monetary returns to workers might broaden their power as consumers and generate stronger internal markets for goods.[45]

Two types of economic objections are raised about IFLS—one against unions and the other against workplace standards. The argument against unions is the familiar one often made in the industrial countries. To wit, unions are exclusionist organizations which help only their own members, not the truly poor. If they get too powerful, unions hinder growth both by raising wages at the expense of investment and by workplace rules that lower productivity.[46]

While there has not been much research on the effect of unions on LDC development, there are several studies which point out ways that

[44] For instance, the 1892 Platform of the U.S. Republican Party declared that " . . . on all imports coming into competition with products of American labor, there should be levied duties equal to the difference between wages abroad and at home." *National Party Platforms*. Vol. I. (Urbana: University of Illinois Press, 1978.) p. 93.

[45] Efren Cordova, "Labour Legislation and Latin American Development: A Preliminary Review," *International Labour Review*, November 1972, pp. 472–474.

[46] Göte Hansson, *Social Clauses and International Trade*. (London: Croom Helm, 1983). This book discusses many of the economic issues involved in labor standards.

unions might be beneficial.[47] First, unions can negotiate with employers to increase the share of returns going to labor. While some readers may have doubts as to whether unions are appropriate to LDC labor markets, it can be argued that the typically large pools of surplus labor increase the relevance of unions. The imbalance of power between the multinational corporation and the campesino is stark. Second, unions have the ability to collect and analyze information that ordinary workers, particularly the illiterate, do not have. Third, the presence of a union raises worker morale and provides a grievance mechanism to avoid wildcat strikes. The very process of collective bargaining adds legitimacy to the labor market, and reduces the grounds for political attacks. Fourth, unions can provide workers with a sense of participation in the development process, especially if the government regularly consults labor leaders. While there have been a few countries where LDC unions probably became too powerful (e.g., Argentina), by far the more common problem is that unions are too weak to get much accomplished.[48]

Opposing international workplace standards is the argument that a sovereign nation is in the best position to make the appropriate trade-off between improved social conditions and more investment. From a moral perspective, this is a good argument only for the democracies, whose citizens have a voice in making the trade-off. But the main problem with the argument is that the distribution of income shares between workers and employers does not translate neatly into a consumption versus investment trade-off. Not all returns to employers go into local investment.

Another basis for objecting to IFLS is the contention that the market makes the best determination of what labor conditions should be. Viewed in this way, it is impossible for any government to "pull up" labor standards without leading to inefficiency and reduced growth. Of course, this thesis can be rebutted by showing that it is based on the inaccurate assumptions of perfect competition. But the more interesting line of inquiry is whether an economy with high growth but no labor standards would end up with better labor conditions, in the long run, than a comparable economy which tried to push them up along the way. On that, the evidence is not yet in.

Finally, it is argued that if unions and workplace standards have the effect of curtailing future employment, then IFLS will have worsened economic development and caused workers to suffer. While threats to

[47] Walter Galenson, ed., *Labor and Economic Development.* (New York: John Wiley & Sons, Inc., 1959); I.L.O., *Employment Growth and Basic Needs: A One World Problem.* (New York: Praeger Publishers, 1977), pp. 33, 65, 68, 193, and 204; ICFTU, *Towards A New Economic and Social Order.* (Brussels: ICFTU, 1978), pp. 30–35, Everett Kassalow and Ukandi G. Damachi, eds., *The Role of Trade Unions in Developing Societies.* (Geneva: International Institute of Labour Studies, 1978.).

[48] Guy Caire, *Freedom of Association and Economic Development.* (Geneva: ILO, 1977.) pp. 60–62, 131–134. All these points are discussed in Caire.

disinvest are commonly heard, there is no way to determine in advance how much of a shift in returns from capital to labor would be tolerated by a multinational investor. What is known, however, is that capital gets invested in LDCs because of low production costs. Capital is not likely to migrate for just a small shift in returns. Moreover, whatever "exploitation" means, it seems clear that management stands a better chance of getting away with it when there is no countervailing union power, than when unions are permitted to bargain for workers.[49]

The case for IFLS in promoting political development is that unions can become a significant pressure group for democracy and against totalitarianism. This conclusion was reached by the National Bipartisan Commission on Central America (Kissinger Commission) which stated: "The importance of unions, which represent millions of rural and urban workers, has been firmly established in the region. They have been not only an economic force but a political one as well, opposing arbitrary rule and promoting democratic values."[50] Unions can also play a political role in providing a vehicle for disenfranchised groups to work for improvements in human rights. In South Africa, the number of black trade unionists has increased from about 15,000 in 1968 to nearly 700,000 in 1984. In Poland, about ten million workers joined the short-lived Solidarity unions a few years ago.[51]

A final way in which IFLS can assist development is by establishing a common floor for labor conditions so that countries will not have to compete for investment on the basis of which can offer the lowest standards. In present circumstances, a multinational corporation can intimidate its host government by threatening to leave unless unions are suppressed.[52] While the ILO Constitution of 1919 recognized that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries," this obstacle has continued to exist because the ILO Conventions are not enforceable.[53] By linking labor standards and trade, the United States has taken a step toward removing this obstacle.

Role in trade policy

What is the relationship of IFLS to the core problems of international trade

[49] International Labor Office, *Employment Growth and Basic Needs: A One World Problem.* (New York: Praeger Publishers, 1977.) pp. 194–195.

[50] *The Report of the President's National Bipartisan Commission on Central America.* (New York: Macmillan Publishing Company, 1984.) p. 61.

[51] Herman Rebhan, "Trade Unions and Multinational Corporations," *Vital Speeches of the Day,* October 15, 1984.

[52] For an early discussion of this problem, see Lewis L. Lorwin, *Labor and Internationalism.* (New York: The Macmillan Company, 1929), p. 460.
For an opposing argument, see Frank D. Graham, *Protective Tariffs.* (New York: Harper & Brothers, 1934), pp. 121–123.

[53] Constitution of the International Labor Organization. (Geneva: ILO, 1980), p. 5.

policy? There are two issues here—first, the compatibility of IFLS with the rules of fair trade, and second, the role of IFLS in promoting freer trade.

As presently applied, the GATT rules of fair trade are inconsistent in their treatment of capital *versus* wage distortions. Consider two government policies to aid an industry producing for export. One policy relieves the industry from having to pay direct taxes on export profits. This violates the GATT Article on Subsidies (Article XVI). The other policy relieves the industry from having to recognize and negotiate with labor unions, despite such recognition in other sectors of the economy. Yet this does not violate the GATT.[54]

More common than direct interference is the case where an LDC government fails to take certain actions, such as the prohibition of dangerous factory conditions. This issue can be generalized to whether governments should be permitted to create trade advantage from placing small value on the lives of the workers. Certainly, an argument can be made that LDCs should be able to make use of whatever resources they have. And humans are sometimes the only resources that poor countries enjoy in abundance. Yet, in the past, this argument was rejected by Western nations, when they agreed in the Treaty of Versailles that "labour should not be regarded merely as a commodity or article of commerce."[55]

It may be useful to examine a couple of cases to see when international regulation would be appropriate. Consider the minimum wage. A worldwide minimum wage would be unfair not only to the workers in the LDCs, but also to the consumers in the industrial countries. There is nothing inherently wrong with American unions having to take foreign wage levels into account in negotiating their own wages.[56] The critical distinction is whether the foreign advantage comes from simply low wages, or low-wage government policies. In other words, the absence of a $3 per day minimum wage is entirely different from the presence of a government policy to suppress collective bargaining or strikes.

For a contrasting case, consider the regulation of a workplace hazard, like benzidine, whose carcinogenicity is not in doubt.[57] An international standard on exposure would benefit workers in all countries. If there were an American standard on benzidine, but no international standard, it would be wrong to put American unions in the position of having to

[54] During a 1953 GATT debate, the U.S. took the position that GATT Art. XXIII (Nullification or Impairment) could be invoked in cases of unfair labor standards. But the U.S. has never invoked the GATT for this purpose. See the *Staff Papers Prepared for the Commission on Foreign Economic Policy*, February 1954, pp. 437–438.

[55] Treaty of Versailles, Part XIII, Sec. II.

[56] For an opposing argument, see Jackie Presser, "How to Stop Exporting U.S. Jobs," *Fortune*, September 30, 1985.

[57] Sheldon W. Samuels, "The International Context of Carcinogen Regulation: Benzidine." Banbury Report 9: Quantification of Occupational Cancer, Cold Spring Harbour Laboratory, 1981.

bargain with companies who can claim that they are being beaten by foreign competitors under no standards. Put this in another way. While it may be economically impossible to raise wages everywhere by fiat, it would be possible to impose a benzidine standard everywhere, in the same way that phosphorus match production was abolished.

In summary, IFLS are fully consistent with the principles of fair trade. When countries are permitted to set up export processing zones with special restrictions on unions, the reduced cost of the labor input is every bit as real a subsidy as a government grant for a material input. There ought to be recognized limits on how far nations can go in quashing their workers to gain a trade advantage.

Would fair labor standards promote freer trade? The most serious charge against IFLS is that they are nothing more than disguised protectionism. Certainly, there is a potential for IFLS to be misused. Yet if implemented properly, IFLS could play a constructive role in liberalizing world trade.[58] The existence of labor standards would undercut one of the most common arguments for protection, which is that workers in industrial countries should not have to compete with "sweated labor" from LDCs. Once a set of standards was agreed to, it would be easier to draw the distinction between low wages *per se*, and working conditions that are involuntary, discriminatory, or unjustifiably hazardous. In the absence of an enforceable minimum for labor standards, it is too easy for protectionists to persuade the public that a low wage is itself an abuse. IFLS might also reduce protectionism by making evident that the common workers in LDCs, not just the elite, are benefiting from trade.

Another objection to IFLS is that they are inconsistent with the goal of reducing non-tariff barriers. How can the United States criticize the commercial regulations of other countries at the same time that it sets up an entirely new basis for determining the acceptability of imports? One answer is that labor is not the only "new" non-tariff barrier. Witness the recent efforts to protect intellectual property rights. If trade policy can be expanded to protect the rights of trademark and copyright holders, then why can it not be expanded to protect fundamental labor rights? The labor "rights" at stake are those of both domestic workers, whose standards are threatened by LDC practices, and foreign workers, who are being deprived of very basic human rights.

[58] John Mainwaring, "International Fair Labour Standards: Some Issues," Canadian Department of Labour, April 1979, pp. 21–22; Gus Edgren, "Fair Labour Standards and Trade Liberalization," *International Labour Review*, Vol. 118, No. 5, 1979; "Report of the Section for External Relations on Development Cooperation Policy and the Economic and Social Consequences of Applying Certain International Standards Governing Working Conditions," EEC Economic and Social Committee, June 20, 1980, p. 24; Philip Alston, "International Trade as an Instrument of Positive Human Rights Policy," *Human Rights Quarterly*. Vol. 4, No. 2, 1982, p. 183.

Implementing labor standards

The U.S. actions in CBI and GSP have raised anew the dilemma of whether fair labor standards should be pursued bilaterally or multilaterally. In view of the rejection of IFLS during the MTN, the United States has gained two advantages from its new bilateral approach. One is that it is getting results. Even without multilateral cooperation, the United States is a large enough trading partner of many nations for them to take any reasonable conditionality seriously. The CBI agreements on labor showed that. Contrary to widespread expectations, foreign governments did not reject discussions about their internal labor policies. The other advantage is that preemptive action by the United States might be the best tactic for getting foreign governments to focus on IFLS during the next round of trade talks.

If positive GATT action on IFLS becomes politically feasible, there would be several benefits in achieving multilateral standards. First, the multilateral approach provides greater LDC participation in the development of standards and, thereby, obtains a better climate for compliance. Another benefit of multilateral implementation is that it increases bargaining leverage. As with any economic sanction, cooperation can help prevent trade diversion or trans-shipments. Multilateral agreement would also prevent single nations from targeting their labor standards against others. For example, what if Japan were to restrict imports from countries that do not provide lifetime employment. Or Egypt were to restrict imports from an industrial nation on the grounds that its highly productive labor force was inadequately compensated.

In designing fair labor standards, the goal should be to set the standards high enough to make a significant improvement in working conditions, but not so high as to cause a large drop in LDC export opportunities. Ideally, all nations would agree to work toward meeting the new standards. But even if some nations do not agree, the United States and other cooperating nations should go ahead and channel their trade benefits to those nations willing to promote development through better labor conditions.

Although it is beyond the scope of this article to propose a specific set of IFLS, there are some general issues which can be discussed briefly. First, labor standards can be classified either as absolute, which would be the same for every country, or relative, which would differ with the conditions prevailing in each country. Some standards, like forced labor, would be absolute. Others, like age of child labor, would be relative. Another critical distinction is between the fixed standard, which governments either meet or do not, and an incremental standard, which measures the progress a government makes each review period. The development of an occupational health system is a good example of an appropriate incremental standard.

A second issue is whether to aim the IFLS at products or at countries. An example of a product standard is the U.S. import ban on forced labor. The ban applies only to the offending products, not to overall trade with the country of origin. By contrast, a country violating the forced labor provision in GSP could lose all of its preferences, even if the country never exported a single product made by forced labor. By applying the standard to all production in a country, rather than to just production for export, one avoids the problem of dealing with forced labor in upstream suppliers.

Third, it is important that the IFLS-setting nations limit themselves to standards which they can meet. Nothing would be more destructive to the integrity of IFLS than for some of the rulemakers to violate their own standards. Inconsistency in this respect would also raise a GATT National Treatment (Article III:4) issue, insofar as countries apply different regulations to imported products than to domestic ones. Take an example that might provoke some criticism. In the United States there are about forty-six thousand convicts working in prison industries, a portion of which produce goods that may be sold on the open market or exported.[59] Although the U.S. practices are in accord with the applicable ILO Conventions, there could be a perception of a double standard when the United States sells and exports what it will not import.

Fourth, following the language of GATT Article XX, the IFLS should be applied in a consistent manner between countries where the same conditions prevail. For example, country A should not be penalized for forbidding strikes if neighboring country B with a similar no-strike policy is not being penalized.

Fifth, any set of standards should be clear and verifiable. Ideally, a multilateral organization would review compliance, rather than leave such decisions to the politics of each importing country. Such monitoring must go beyond a look at what laws are on the books to the question of how the laws are being enforced. The organization with the most competence to make such reviews is the ILO.

After a set of standards is developed and announced, the originating nations should proceed to consult with countries that do not meet the standards. Such consultations will have to be carried out gingerly to avoid charges of "imperialism." Since the ultimate goal is to raise foreign standards, not to restrict trade, the standard-setters can rightly compromise on the pace at which new labor policies are to be implemented. Yet at some point, the IFLS negotiators must draw a line. Without a credible threat to impose trade penalties, "target" governments will see no need to change their internal policies.

If the negotiations fail, there are a wide range of penalties which could

[59] "International Practices and Agreements Concerning Compulsory Labor and U.S. Imports of Goods Manufactured by Convict, Forced, or Indentured Labor," U.S. International Trade Commission, December 1984, pp. 15, 22–23.

be imposed. The lightest penalty would be to withdraw the benefits of special trade preferences, such as those granted under GSP or Lomé. Some intermediate penalties would be to levy countervailing duties (as is done in subsidy cases) or to withdraw mfn treatment from violators. The heaviest penalty would be to ban trade with the country in that product or in all products. The agent of enforcement would have to be the importing government, but the GATT might be given the role of approving the assessment of penalties.

Whenever penalties are applied, the extraterritorial authority imposing standards should offer technical assistance to the non-complying country in order to help it meet the standards in the future. Under a multilateral system, the ILO could be responsible for delivering the needed technical assistance.

Future of labor standards

What are the prospects for IFLS in the prospective new round of trade negotiations? Consider what has changed since the MTN. First, the United States has demonstrated the feasibility of linking trade to labor rights on a bilateral basis. It may now be in the interest of the LDCs to seek uniform standards before other nations impose labor standards of their own. Second, one of the objections to IFLS during the MTN was that the issue should be handled by the ILO. Since at that time, the United States was not a member of the ILO (it withdrew in 1977 and returned in 1980), the United States was not in a position to test the seriousness of such suggestions. Now it would be. (Of course, the fact that the United States has not ratified any of the major ILO Conventions would preclude it under the ILO rules from bringing any such cases against other governments.) Third, there is now well-established support for IFLS from international trade union organizations. This includes not only the International Confederation of Free Trade Unions, but also regional groups such as the Organization of African Trade Union Unity and the Caribbean Congress of Labor.

If the LDCs agree to negotiate an IFLS code, they are apt to suggest that part of the enforcement responsibility be shifted to the industrial countries, which could regulate the behavior of "their" multinationals. The LDCs are also likely to propose that other Brandt Commission recommendations be included in the new trade reform, such as the reduction of major barriers to LDC exports (e.g., apparel). Politically, it will not be enough for the industrial countries simply to deny that IFLS have a protectionist purpose. They must show that IFLS are not protectionist by opening their markets to LDC products that do comply with the new standards. And it is only by opening markets that the industrial countries will get the leverage needed to have IFLS accepted.

At this time, such a *quid pro quo* would probably not be acceptable to

American trade unions. The AFL-CIO strongly supports IFLS, but would not be willing to give up the current trade barriers for them.[60] While IFLS would reduce the competitive advantage of LDC imports over domestic production, the new labor standards are unlikely to inhibit imports severely so long as wage adequacy is not included. Clearly, the American unions recognize this.

As the Brandt Commission noted, the issue of labor standards in the South is linked to the issue of labor adjustment in the North.[61] Take the United States as an example. As the LDCs grow more competitive over a wider range of goods, U.S. protectionism is likely to increase unless foreign competition is perceived as fair and unless the potentially injured workers have confidence in their opportunities for retraining and reemployment. Despite the overall economic benefits from greater trade, there will be politically powerful objections to it whenever workers are exploited on the exporting end or disemployed on the importing end.

[60] A recent AFL-CIO statement is Resolution on "International Trade and Investment," October 1985.

[61] Report of the Brandt Commission, *supra*, n. 29, pp. 172–186.