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# Promoting Higher Labor Standards

*Steve Charnovitz*

FOR MANY DECADES, the United States has promoted higher labor standards throughout the world.[1] U.S. interest in this area began during the negotiations for the Treaty of Versailles and was reinforced two decades later in the Atlantic Charter. Over the years, this policy has had a mixture of motivations. One was to thwart communism through pluralist institutions like free trade unions. Another was to seek fairness in international trade. A third was to improve the prospects for foreign economic development.

The Clinton administration has actively sought to upgrade labor standards in other countries. Its first initiative was to negotiate a side agreement on labor to the North American Free Trade Agreement (NAFTA). Then in 1994, the administration proposed taking up "worker rights" in the new World Trade Organization (WTO).[2] This effort became embroiled in controversy after many nations disagreed with the administration that the relationship between trade rules and worker rights should be examined. The contentious debate that ensued has cast doubt on the longtime assumption that governments should work together to raise labor standards.

The purpose of this article is to show how higher labor standards can be promoted in a non-protectionist way. The first section provides historical background on the issues. The second discusses the role of the International Labour Organization (ILO) and makes recommendations for its reform. The third explains why the international trading system will not be able to avoid the issue.

## Labor Standards and the World Economy

Unlike the response to some global challenges, such as terrorism, in which cooperation among countries is essential, nations can carry out their labor policies autonomously. The rationale for an international labor regime is that coordinating national actions may make it politically easier for individual countries to achieve optimal regulation. An analogous situation exists with the international trade regime. The General Agreement on Tariffs and Trade (GATT) has helped governments pursue trade policies that are in their own national economic interest.

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The strongest case for the creation of an international regime is to address transborder physical spillovers. Disease control, telecommunications, and ozone protection are examples of such regimes. Some international regimes are not engendered by physical spillover, but rather by economic spillover. International cooperation is sought because the policies of one country can affect the economy of another. The international trade regime, for example, seeks multilateral action to lower tariffs and trade barriers. The international labor regime seeks multilateral action to raise employment standards. Both regimes lay down rules for competition among governments.

Despite economic common sense, continued progress in trade and investment liberalization may not occur. Politicians must develop and retain voter support for open economic borders. In the United States, there are many pockets of resistance to free trade on the grounds of job loss, unfair competition, and the immorality of buying products from countries and corporations that mistreat their workers. Attention to labor standards, therefore, may be a way to reduce opposition to new trade agreements.

Almost all proposals for incorporating labor standards into international rules have been based on the use of international labor standards, not the domestic labor standards of the importing country. International labor standards are the policies and principles for guiding national lawmaking to which numerous nations have agreed. In many instances, such as ILO conventions, the ratifying countries regard them as international law.[3] Indeed, the ILO sometimes refers to its body of conventions as the "International Labour Code."

There are international labor standards to (1) outlaw forced labor; (2) permit freedom of association; (3) uphold the right to organize and bargain collectively; (4) regulate the use of child labor; and (5) regulate dangerous workplace conditions. There are also ILO conventions on many other issues (e.g., discrimination and sickness benefits), but, for the purpose of this article, only the standards listed here will be discussed. Contrary to popular perception, there are no international labor standards regarding minimum wages or wage adequacy.

All governments have labor standards and embody them in national or subnational law. Businesses generally support reasonable labor standards because, in their absence, an employer seeking to provide decent workplace conditions would face competitive pressure from less scrupulous employers. Labor standards are justified because of well-recognized imperfections in labor markets (e.g., information on occupational risks) and because markets must be undergirded with certain legal (or natural) rights. As the U.S. Council of Economic Advisers explains, "Core labor standards represent fundamental human and democratic rights in the workplace, rights that should prevail in all societies whatever their level of development."[4] Few would question the need for labor standards by arguing that an unregulated labor market can yield an optimal outcome.

In any good labor standard, the social benefits of the regulation exceed the social costs. For some labor standards, the individual benefits of the regulation to the employer may exceed its individual costs (e.g., workplace hazards). But for the most part, higher labor standards probably add to the cost of production. Whether labor standards redistribute income depends

on the ability of employers to pass through these higher costs to workers in the form of lower wages.

The impact of ILO standards on economic development and growth has not been sufficiently studied. There is some evidence that freedom of association promotes economic development.[5] In its study of East Asian countries, the World Bank cited the examples of Hong Kong and Japan to show that countries need not repress unions to achieve high economic growth.[6] The Organization for Economic Cooperation and Development (OECD) is carrying out a new research program that may illuminate this issue.

The idea that national labor policies needed to be coordinated began to dawn in the nineteenth century. This recognition led to the creation of the ILO as part of the Treaty of Versailles 76 years ago. The ILO was one of the earliest intergovernmental economic institutions and the first intergovernmental social institution. It is the only surviving organization from the original League of Nations and was the first specialized agency of the United Nations (UN). Its membership now includes over 170 countries.

The ILO was established for two reasons.[7] First, the governments involved believed 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."[8] The persistence of low labor standards in some nations could make it harder politically for other nations to raise their labor standards. Through cooperation, nations could upgrade their labor standards together.

Second, the governments believed that fair labor standards were important to commercial policy. The Treaty of Versailles called on governments to endeavor to secure humane conditions of labor at home and "in all countries to which their commercial and industrial relations extend."[9] In other words, the concern was that just as competition needed to be regulated within a domestic market, it also needed to be regulated in the international market. As the U.S. War Labor Policies Board explained in 1919, "nations with higher labor standards are handicapped in competition with nations having lower standards."[10]

The idea that labor standards in one nation can adversely affect those of another is under challenge today. Looking back seven decades, it seems clear that the "obstacle" noted in the Treaty of Versailles was not as overpowering as the authors of that provision presumed. Nevertheless, as national economies become more interdependent and as barriers to capital (and perhaps labor) mobility are removed, there may be increasing pressure to lower certain labor standards to achieve greater competitiveness.[11] The power of unions to resist this pressure has been attenuated by their minimal transnational bargaining and the growing financial and political clout of multinational corporations.[12]

Although the first meeting of the ILO in 1919 was held in Washington, the United States did not join the organization because the U.S. Senate failed to approve the Treaty of Versailles. It was not until 1934 that President Franklin D. Roosevelt and Secretary of State Cordell Hull took important steps to abandon the postwar isolationism of the United States by joining the ILO and by initiating the Reciprocal Trade Agreements program. The United States withdrew from the ILO in 1977 following an increased politicization of ILO conferences, but rejoined in 1980 after the

ILO undertook corrective action to regain a focus on labor matters.

The ILO is unique among international organizations in being tripartite. Its delegates consist not only of government officials, but also of employers and workers from each member nation. For the United States, the U.S. Council for International Business represents the employers and the American Federation of Labor–Congress of Industrial Organizations (AFL–CIO) represents the workers.

The ILO carries out four main activities. First, it passes resolutions on international economic and social policy. Second, it provides technical assistance to labor ministries. Third, it writes labor conventions that impose binding minimum standards on nations that ratify them. From the very beginning it was recognized that these conventions needed to be sensitive to the differential needs of developing countries. Fourth, it reviews national adherence to ILO conventions. This latter function includes an adjudication process that permits complaints to be registered by nongovernmental organizations. Although the original ILO treaty provisions contemplated the use of economic and legal enforcement, such tools were never employed.[13] Instead, the ILO seeks to use moral suasion and exposure to convince countries to raise labor standards.

Concerns about "social dumping" (and the term itself) go back to the 1920s. Social dumping is the exportation of products at prices below what the costs of production would be if international labor standards were followed. At one time, several countries had trade remedy laws to respond to social dumping. For example, Austria provided for a dumping duty on foreign goods from countries that had not ratified and were not following the ILO Convention on Hours of Work (no. 1).[14] The ILO has never advocated such social dumping duties.

The issue of social dumping received attention at the UN Conference on Trade and Employment of 1946–48, which wrote both GATT and the more comprehensive Charter for the International Trade Organization (ITO). Although both agreements permit antidumping duties, neither permits social dumping duties. Instead, the ITO included an article on "fair labour standards," which provided that

> 1. The Members recognize that measures relating to employment must take fully into account the rights of workers under intergovernmental declarations, conventions and agreements. They recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The Members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.
>
> 2. Members which are also members of the International Labour Organization shall cooperate with that organization in giving effect to this undertaking.
>
> 3. In all matters relating to labour standards that may be referred to the Organization in accordance with the provisions of Article 94 or 95 [i.e., GATT Article XXIII], it shall consult and cooperate with the International Labour Organization.[15]

This provision has significance for the current debate in several ways.

First, the governments recognized "the rights of workers" within a trade agreement. Second, the governments agreed that fair labor standards were in the common interest, and thus not exclusively a domestic issue. Third, the governments agreed unfair labor conditions in export industries could present a trade problem. Fourth, the governments agreed that unfair labor conditions could be the subject of a nullification and impairment complaint in ITO dispute settlement (i.e., articles 94 and 95).

Unfortunately, President Harry S. Truman was unable to get Congress to approve U.S. membership in the ITO, which died after other countries decided not to go ahead without the United States. It bears noting that the fair labor standards provision was not a significant factor in making the ITO unpopular in Congress. Indeed, the National Association of Manufacturers and the U.S. Chamber of Commerce had supported the negotiation of this commitment.[16]

Some commentators have suggested that the ITO charter reflected only the views of Western or high-income countries. That is not the case. The nations that wrote the ITO were geographically and economically diverse.[17]

The ITO provision on fair labor standards was not included in GATT. Except for the provision in article XX(e) that permits governments to ban trade in goods produced using prison labor, GATT says nothing about labor standards. Several efforts have been made to remedy this omission. The Eisenhower administration sought to amend GATT with a social clause. The Carter administration sought to add labor standards to GATT's post–Tokyo Round work program. The Reagan administration sought to add "worker rights" to the negotiating topics for the Uruguay Round. The Bush administration sought to convene a GATT working party to discuss the topic. The Clinton administration sought to add labor standards to the WTO's work program. None of these efforts was successful.

Because all members of GATT are also members of the ILO, the current opposition to discussing international labor standards in GATT does not seem to stem from a denial of the legitimacy of such standards. Rather, the main concern seems to be that higher labor standards should be directly pursued only in the ILO, not in GATT. This notion of institutional specialization is a repudiation of the linkage between commerce and labor standards that the architects of the trading system saw five decades ago.

The recent effort by the Clinton administration was widely perceived to be inspired by protectionism.[18] There were several reasons for this. First, the administration did not articulate its goal on worker rights, or its proposed program, before asking GATT to put it on the agenda. Second, the administration had already pursued policies linking labor enforcement to trade sanctions in the NAFTA side agreement, and therefore it was assumed that the administration might be seeking the same remedy for the rest of the world. Advocacy of a "Blue 301" by Richard Gephardt (D–Mo.), then House majority leader, further clouded the issue, because many foreign governments may have thought that this was part of the administration's strategy. (Section 301 is the provision in U.S. trade law that permits the U.S. Trade Representative [USTR] to impose trade countermeasures against other countries; "Blue" 301 was a proposal to allow this for blue collar issues.) Third, although the administration denied that its GATT initiative was designed to push up foreign

wages, President Bill Clinton praised the NAFTA for raising labor costs in Mexico.[19] He also lauded the "unprecedented commitment by the Government of Mexico to tie their minimum wage structure to increases in productivity and growth in the Mexican economy and to make that a part of the trade agreement."[20] In addition, Labor Secretary Robert Reich made a widely publicized speech discussing criteria for "decisions to restrict economic relations with low-wage countries in the name of workers' rights."[21] Given the confusing signals, it was not surprising that many observers thought the United States was more interested in jacking up foreign wage levels than in promoting respect for worker rights.

Coming in a critical period before the signing of the WTO agreement, the Clinton administration's worker rights initiative caught many close observers by surprise and led to a vociferous reaction from the U.S. business community, congressional Republicans, the GATT Secretariat, and other countries. Until 1993, the pursuit of worker rights in trade policy had been a bipartisan objective. Unfortunately, the rash statements and actions by the administration have polarized the issue in the United States and may have set the cause back. The administration has little to show for its efforts so far except new attention to the issue in the OECD.

U.S. Trade Representative Mickey Kantor characterizes his initiative as a success because the WTO preparatory committee agreed to allow the United States to reintroduce the issue of labor standards. According to Kantor, "this is the first time that we have achieved a breakthrough of this kind in the GATT framework."[22] This boast is unjustified, however. The issue of labor standards was raised by the United States at GATT during the Eisenhower, Carter, Reagan, and Bush administrations. In actuality, the Clinton administration's labor rights initiative of early 1994 was more of a breakdown than a breakthrough. Not only did it instigate domestic Republican opposition to worker rights, but it also decreased the likelihood of the issue returning to the GATT or WTO agenda in the near future. So far, Kantor has not followed up on his "breakthrough."

The inability of the Clinton administration to articulate a coherent position on labor rights is perhaps most apparent in the ease with which Malaysian prime minister Mahathir Mohamad has cast the U.S. government as the villain. Mahathir has excoriated the U.S. position on labor standards as protectionist. Despite the fact that Mahathir's government is a very serious violator of such rights, the Clinton administration was unable to respond successfully.

The U.S. business community gave no support to the worker rights initiatives of the Reagan, Bush, and Clinton administrations.[23] That community has three main concerns. First, it fears that new international agreements on labor standards could be a backdoor way to push up labor standards in the United States. Second, it fears that any labor enforcement mechanism in GATT could make trading rights less predictable. Third, it fears that boosting foreign labor standards could raise the costs of overseas production and make it less profitable. It is interesting to note that this third view is echoed in other countries. For example, Singapore's foreign minister has complained that creating labor rules in the WTO would be "equivalent to removing our competitiveness."[24]

With the Republican ascent to power in Congress, the Clinton ad-

ministration needs to rebuild a bipartisan consensus on this issue. That will not be easy. Instead of the lone ranger approach, the USTR should try to develop a coalition with other governments, such as Australia, that are seeking new ways to promote worker rights.[25] The European Parliament also supports giving the WTO a role in labor standards.[26]

## The International Labour Organization and Its Need for Reform

The ILO is probably the most idealistic and forward-looking international institution ever created. It was highly successful in its early decades as it promulgated basic labor conventions. On its fiftieth anniversary in 1969, the ILO won the Nobel Peace Prize for its "lasting influence on the legislation of all countries." In the 1970s, the ILO began to go downhill as it got whipsawed in both East–West and North–South tensions.

The collapse of communism should have reenergized the ILO, but it has not. The ILO has continued to produce at least one new labor convention each year, but it is just now starting to weed out those that are obsolete. The present level of 175 conventions is far too high.[27] The ILO's annual budget is rather small—about $233 million—and has seen little increase in recent years. It does not have sufficient resources to provide technical assistance or to fund innovative programs aimed at raising labor standards. Its research program is also underfunded.

Unlike the new WTO treaty, which contains a specific set of obligations, the ILO treaty is fairly general. The specific labor obligations are contained in ILO conventions that must be approved separately by each country on an à la carte basis. (In this regard, the ILO resembles the GATT Tokyo Round agreements.) The ILO has an elaborate supervisory machinery for ratified conventions, but a country that fails to ratify a convention can avoid that supervision. The two exceptions to this are the Conventions on Freedom of Association (no. 87) and the Right to Organize and Bargain Collectively (no. 98), which can be reviewed by the ILO regardless of whether a member government has ratified them.

In contrast to the WTO, there are no significant legal benefits to joining the ILO. Countries join to get help in raising their own standards and to improve the international regime. The great achievement of the Uruguay Round, that is, to link together various agreements under the single WTO umbrella, could not be repeated in the ILO because there is no commercial carrot for ratification of ILO conventions. Even the ILO's technical assistance is not preconditioned on the ratification records or enforcement performance of member countries.

It is often suggested that the ILO should use trade controls to secure adherence to its conventions. (For example, the Eisenhower administration proposed this for the Convention on the Abolition of Forced Labor.) Although the ILO may have legal competence to pursue such enforcement, it has studiously avoided doing so in favor of convincing countries that to follow conventions is in their own interest because the social benefits exceed the costs. Because ILO standards are drawn up in a consensual, tripartite process, it was reasonable to hope that voluntary adherence would work.

In recent years, some analysts have questioned the usefulness of ILO conventions. It is suggested that legal standards may be ineffective in raising working conditions because the mar-

ket determines the conditions that employers can afford and employees really value. Seen in this way, governments are impotent to push labor standards up in a sustainable way.[28]

This view defies both logic and economic history. Individual workers face too many impediments to bargain successfully with employers, particularly on issues such as occupational health. Just as governments must enforce certain rules for commercial markets to work well (e.g., property rights), rules are also needed for labor markets to work well (e.g., union recognition). Moreover, as the International Labour Office has noted, there is a symmetry between the freedom of trade and the freedom of workers to bargain collectively.[29] In addition, there are many key labor issues, such as child labor, in which governmental paternalism is desirable to override decisions by individuals.

Some who are skeptical of labor standards argue that better conditions will eventuate automatically through economic growth. A similar claim is often made with regard to environmental standards. It is possible that growth may have that salutary effect, but it does not necessarily follow. As Michel Camdessus, managing director of the International Monetary Fund (IMF), explains:

> The building of consensus within and among nations regarding the nature of the economic and social problems they face and the requisite remedies is a *sine qua non* if the latter are to be successful. Economic growth, by itself cannot solve these problems.[30]

Skeptics also suggest that international workplace standards may be too rigid for the diversity in national conditions. This could be true in particular instances, but the ILO has tried to avoid the "one size fits all" approach. Indeed the ILO was providing special treatment for developing countries many decades before the trading system did so. It is interesting to note that when the United States joined the ILO in 1934, there were about 14 developing country members out of a total membership of 48.[31]

## Making the ILO More Effective

In its recent report, the Commission on Global Governance pointed out that greater openness of world markets and greater labor mobility are likely to increase the ILO's relevance.[32] The current ILO is unprepared for these new challenges. There are a number of steps that the ILO could take to improve its effectiveness:

*1. Address Overregulation.* When the ILO constitution was written in 1919, it was presumed that ever higher national labor standards were better. The drafters had not experienced the modern welfare state, and therefore did not anticipate that governments might impose regulations whose social benefits did not exceed their costs. In some instances, current ILO rules may prevent government reform. For example, one convention from 1949 would prohibit replacing bureaucratic public employment agencies with for-profit providers.

The world economy today is different, but the ILO has not changed in response. Its current approach to labor standards is unbalanced because it looks only at where countries should raise their standards. Because the goal of the ILO is to reduce unemployment and to increase national welfare, these blinders reduce its potential effectiveness. When countries require lengthy advance notice before layoffs, or pro-

vide excessive unemployment benefits, or impose high taxes on employment, these matters should draw the attention of the ILO. France has the right to complain about sweatshops in India. But India should have the right to complain about government-induced unemployment in France that reduces French demand for imported goods.

The reason why international organizations like the IMF, the WTO, or the ILO get involved in domestic policymaking is to help governments effectuate better policies. It has been found that international standards and international surveillance can facilitate governmental decisions that are politically difficult at home. If the ILO asked governments with unrealistic and inflexible labor laws why they retained such rigidities, it might be easier for reformers in those countries to get more efficient laws enacted.

Reinventing the ILO so that it deals with overregulation, in addition to underregulation, could also have the salutary effect of getting the employer members more interested in the process. For years, employers have pursued very limited agendas in the ILO, focusing mainly on "damage control." A better-functioning ILO would be of great interest to employers and, in the long run, would help workers too. As Robert J. Morris, senior vice president of the U.S. Council for International Business, has noted:

> American business has long supported efforts to redirect the focus of the ILO's work . . . toward engaging the governments and unions in a genuinely common effort to deal with issues which really matter to working people: unemployment and the low standards of living and working conditions that are the inevitable accompaniment to low levels of economic performance and growth.[33]

Frank P. Doyle, executive vice president of General Electric, expresses a similar view in stating that a new ILO agenda "will have to recognize the fact that worker rights that don't promote employment growth and economic development are not in the best long term interest of workers."[34] The ILO needs to make its standards more relevant to the high unemployment and low productivity growth that many countries suffer.

The thesis of this article differs considerably from that of many analysts who suggest that the ILO's defect is that it has no means of enforcing its conventions. Inadequate implementation of labor laws is certainly a problem in developing countries. It is a problem in many industrial countries too. But the deficiencies in the ILO would not be cured by trade sanctions. Very little of international law is in fact enforced through trade sanctions, so the ILO is not atypical in that respect.

*2. Set up Committees on Forced and Child Labor.* Since 1951, the ILO has had a Committee on Freedom of Association to deal with complaints submitted to it either by governments or by organizations of employers or workers. The committee will consider a complaint about a government even if that government has not ratified applicable ILO conventions. This same principle of review regardless of ratification should be applied to two other fundamental ILO principles regarding forced labor and the protection of children.

Hardly anyone defends the continued use of forced labor and prison labor by governments and the use of indentured labor and bonded labor by the private sector to produce goods for

commerce. Although the two ILO conventions on forced labor have a large number of ratifications, some of the most egregious violators are nonratifiers (e.g., China). Establishing a specific committee on this topic would highlight the issue and provide greater publicity to the ILO's investigations.

In contrast to forced labor, there are many defenders of child labor who argue that although the employment of children may be bad, the unemployment of children may be worse. It is said, for example, that if an 11-year-old girl were not working in a rug factory, she might be out on the street, homeless, and working as a prostitute. This defense of the increasing use of child labor is not immoral; but it is complacent.

The ILO estimates that there are 100 to 200 million child workers today. According to the U.S. Department of Labor, less than 5 percent of these children are employed in export sectors, such as in manufacturing and mining.[35] But 5 to 10 million children producing for international trade is a huge number. It is already hard enough to defend the WTO to the American public without having to explain why the WTO has rules against the exploitation of trademarks, but no rules against the exploitation of children.

Establishing an ILO Committee on Child Labor would be a signal to the world that the status quo is not acceptable. The new committee should vigorously pursue investigations of weak government rules or lax enforcement and should publicize its findings. The ILO should also work with countries to establish better incentives to avoid child labor. Children who stay in school might be given inducements such as meals.[36] The new ILO program on the Elimination of Child Labor and the UN Children's Fund (UNICEF) are pursuing some creative strategies to address child labor conditions.[37]

The employment of children, particularly in unsafe factory jobs, is a violation of human dignity and a shortsighted development strategy. It is appropriate for international organizations like the ILO, the World Bank, the IMF, and the WTO to send signals to countries to discourage such practices. As the recent letter concerning child labor from over 80 Nobel Prize laureates noted, "the exploitation of child work is at too high a cost—rendering their future worthless."[38]

*3. Promote Social Labels.* In addition to institutional improvements, the ILO should also try to harness market forces to deal with problems like child labor.[39] There are already a number of social labeling programs under way to identify whether products are produced in accordance with good practices.[40] Consumers who want to avoid buying a rug woven by a 12-year-old ought to be able to do so. The ILO should not institute its own labeling program, but should instead provide technical assistance. A number of socially conscious companies, like Reebok and Levi Strauss, have already taken steps to require suppliers to meet certain minimum labor standards. The ILO should look for ways to encourage such private sector "enforcement."

Because such process-related labels can turn into unfair trade barriers, the ILO should work with other international organizations to assure that social labeling is done without protectionist intent. In particular, the ILO should promote joint attention to labeling by the WTO's new Committee on Technical Barriers to Trade, the International Organization for Standardization (ISO), and the UN Confer-

ence on Trade and Development. There will be a need to balance clarity for consumers and sensitivity to differing practices in producing countries.

*4. Facilitate Codes on Conduct.* The success of the Sullivan Principles in South Africa has stimulated interest in promulgating new corporate codes regarding labor rights. Although the ILO could attempt to update its 1977 Declaration of Principles Concerning Multinational Enterprises and Social Policy, such an exercise would probably not be worth the effort. Instead, the ILO should serve as a clearinghouse for information about voluntary codes and their effectiveness. Unilateral governmental efforts to develop such codes are not likely to be successful.[41]

*5. Link Labor Standards to Development Aid.* The idea of conditioning development aid upon labor standards was first proposed during the postwar planning meetings in the early 1940s. In 1945, an international labor union conference recommended "making long-term loans for the economic and industrial development of colonial territories and backward countries conditional upon the observance of internationally agreed working conditions."[42] It is interesting to note that this same labor conference called for the creation of an international institution "capable of promoting a steady expansion of foreign trade [and] of regulating international trade and tariffs." This was the era in which labor unions supported freer trade.

It is generally viewed as more constructive to link labor standards to aid, rather than to trade. Restricting trade typically subtracts from world economic welfare. But channeling aid to the countries with the most fruitful economic policies can add to world economic welfare. The use of aid instruments may also be a better way to get the attention of foreign governments, because trade restrictions do not immediately hurt governments in the direct way that they hurt business.

The World Bank does not condition its structural adjustment lending on whether a country follows ILO standards. On the contrary, countries are sometimes urged by the Bank to undertake changes that conflict with international labor law.[43] Much closer coordination is needed between the ILO and the Bank on issues like this so that these organizations do not work at cross-purposes to each other.

The ILO also needs to provide more technical assistance on labor and employment programs, especially in regions that are eager to improve their human resources (such as Eastern Europe). The ILO should receive greater funding for this goal either from governments directly and through the UN Development Programme (UNDP). Greater attention to employment issues by international development agencies might boost the effectiveness of aid programs.

## Improving U.S. Government Policies

The Clinton administration has paid little attention to the ILO. This inattention is ironic because the ILO may be more relevant to the world's economic problems in this time of rapid economic change than it has ever been. While U.S. Trade Representative Kantor has pushed hard for GATT to become more open to nongovernmental groups, the ILO is already open to such groups—indeed these groups are full members—a policy recently reflected in the observation by ILO director general Michel Hansenne that, "It is striking that all international institutions established since 1919 should have espoused the principle of the government being the

sole representative of the States."[44] In an era in which the American public is growing more skeptical of government, and at a time in which the Clinton administration has been seeking to reinvent government, it would have been timely for the administration to seek better use of the ILO and the nongovernmental groups active within it.

The United States is a permanent member of the ILO Governing Body and contributes about 25 percent of the ILO's budget. The Clinton administration could therefore exert considerable influence in reforming the ILO if it tried. When President Clinton convened a summit of the Group of Seven (G–7) in March 1994 in Detroit to discuss the unemployment challenge, he did not even invite the ILO. (The summit yielded little.) The most fruitful U.S. initiative in the ILO in recent years occurred in the early 1980s, when the Reagan administration pressed for ILO support of democratic trade unions in Eastern Europe and Latin America.

There are several ways for the U.S. government to improve its policies vis-à-vis the ILO:

*1. Ratify More ILO Conventions.* The United States has become a party to only 12 ILO conventions, including 5 in recent years. This is the worst record of any major industrial nation. It undercuts the diplomatic effectiveness of the United States in promoting higher labor standards and in complaining about egregious practices in other countries.[45]

This disinclination to ratify ILO conventions stems mainly from two concerns. First, because U.S. treaties are the "supreme law of the land," ratifying an ILO convention could supersede federal and state labor laws if provisions of the convention can be enforced in domestic courts. Second, many Americans are reluctant to have U.S. policy reviewed by an international organization. As a consequence, the United States has not ratified the core ILO conventions on freedom of association and the right to organize, nor has it ratified any of the child labor conventions.

In all U.S. ratifications to date, the president and the Senate have declared that it was appropriate to ratify the convention because U.S. law was already in conformity with it. This is a valid argument for ratification. But it should not be the prerequisite for ratification. In many other areas of international law, the United States changes its law in order to meet a new international standard. The legislation to approve the WTO, for example, contained a number of statutory changes to bring U.S. practice into conformity (e.g., on patents). Environmental treaties also engender changes in U.S. law. But when it comes to labor conventions, the U.S. government takes a parochial and non-cooperative stance, that is, no ratification unless the United States already meets the convention.

Obtaining Senate approval of ILO conventions by a two-thirds vote is a formidable challenge. There is no requirement in the Senate for a timely vote. The ILO Convention on Freedom of Association (no. 86) has been pending on the Senate's treaty calendar since 1949. The Employment Policy Convention (no. 122) has languished in the Senate since 1966.

Although ILO conventions have traditionally been sent to the Senate as "treaties," there may be other methods of securing approval for them. One approach is to approve ILO conventions similarly to the way that trade

agreements are approved.[46] That is, Congress could pass a joint resolution authorizing the president "to enter into ILO Convention #__." Such a law could also declare that (1) the convention is not to be considered a self-executing treaty; (2) the convention does not supersede federal law; and (3) the convention does not supersede state law. Of course, the United States should not ratify a convention just to become a delinquent. This legislative method should only be used when a consultation between the executive branch, Congress, the AFL–CIO, the U.S. Council for International Business, and the National Governors Association demonstrates widespread agreement in favor of the purpose and terms of a particular convention.

*2. Appoint a U.S. Ambassador to the ILO.* Although the United States has an ambassador at GATT and the OECD, it lacks comparable high-level representation at the ILO. There is a U.S. ambassador to the UN in Geneva, but that individual has many other responsibilities. The day-to-day coordination of U.S. policy regarding the ILO is handled by the labor attaché in the U.S. mission in Geneva.

A new U.S. initiative on the ILO should commence by appointing an ambassador. The ambassador would spend some time in Geneva, some time in Washington, and some time visiting other countries in order to develop support for needed ILO reforms. Given the tripartite nature of the ILO, the ambassador would also need to develop close ties to international business and labor organizations.

During the Reagan administration, the deputy under secretary of labor for international affairs was given the personal rank of ambassador. That is a pertinent precedent. But the ILO ambassador ought to be a full-time job. The ambassador should not be a line official at the U.S. Department of Labor or at the U.S. Department of State.

*3. Convene the President's Committee on the ILO.* The President's Committee on the ILO has not met during the Clinton administration (although informal consultations have occurred). This committee is chaired by the secretary of labor and includes the secretary of state, the secretary of commerce, the director of the National Security Council, the president of the AFL–CIO, and the president of the U.S. Council for International Business. President Clinton should convene this committee and ask it to develop a plan for improving the ILO.

*4. Reform International Financial Institutions.* In August 1994, Congress passed a law requiring the secretary of the treasury to instruct the U.S. directors to international financial institutions to "use the voice and vote of the United States" to urge these institutions to "adopt policies to encourage borrowing countries to guarantee internationally recognized worker rights" and "to include the status of such rights as an integral part of the institution's policy dialogue with each borrowing country."[47] The Clinton administration should fully execute this law, which could have a favorable impact on many countries. The administration should also seek to multilateralize the initiative by getting other major donor nations to press for the same policy.

*5. Improve International Development Efforts.* The Clinton administration should assist the ILO in getting more funding for technical assistance to help countries meet international labor standards. The administration should

also seek to get the UNDP to devote more attention to labor issues. It is noteworthy that the UNDP's recent *Human Development Report* contains almost nothing about employment policies, the ILO, job training, or workplace conditions. The only initiative in the labor area that it highlights is "job-sharing," hardly an effective response to global unemployment problems.[48] Job sharing may be appropriate in some occupations to provide time away from around-the-clock demands. But it is not a solution to involuntary underemployment.

In summary, many actions can be taken to improve the ILO. 1995 offers two windows of opportunity. First, the ILO conference in June will consider results from the new Working Party on the Social Dimensions of the Liberalization of International Trade that was created at the June 1994 conference. Second, the G–7 summit in Halifax in June will be considering the framework of international institutions. The United States should push to reinvent the ILO.

## The World Trade Regime and Labor Standards

One of the important achievements of the Uruguay Round is the creation of a new institution for trade policy, the WTO. The WTO will be establishing relationships with the World Bank, the IMF, the ISO, the Codex Alimentarius, and the World Intellectual Property Organization. Although the charter of the International Trade Organization (of 1948) provided for a direct link to the ILO, the new WTO agreement does not even mention it. Moreover, the GATT ministerial declaration on the "Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policymaking" does not mention workers or the ILO. The WTO should rise above GATT's parochialism.

The expansion of the trade regime in the Uruguay Round to include intellectual property makes it harder for the WTO to avoid other collateral issues like labor standards. If the WTO can make trade relations contingent upon respect for intellectual property conventions, there is no reason in principle why it cannot do the same for labor rights conventions.[49] Although some commentators object to the use of trade measures to enforce international labor standards by saying that publicizing violations is the best solution, the same solution is not perceived as adequate for the enforcement of intellectual property standards.

Of course, intellectual property is a private right and ILO conventions largely address public policy. But one anticipated "new" trade issue, antitrust, is also a public policy. Although there is a good reason for harmonization of antitrust policy because of national regulations that can overlap on a company doing business in more than one country, competition policy is no more intrinsic to trade policy than labor standards would be. It is interesting to note that the ITO charter of 1948 included provisions on both competition policy and labor standards.

U.S. efforts since 1986 to raise the issue of "worker rights" in GATT have provoked strong opposition from many countries. The topic is often branded as "protectionist," but that is an ironic charge coming from countries like Brazil or India. The real reason why some GATT countries oppose consideration of worker rights is that their governments suppress democ-

racy.[50] Free trade unions cannot exist without a democratic government. Thus, any examination of worker rights in such countries by an international organization may be viewed as a threat to the regimes in power.

The negotiation of regional free trade agreements raises the issue of whether labor law should be included. It is not the tariff-cutting itself that leads to this question; unilateral liberalization can be done without regard to labor standards. It is the other components of an integration agreement, such as harmonization of standards and the provisions for managing liberalization, that inevitably lead to a question of what the scope of the integration should be. As trade agreements broaden into economic agreements, it will be hard to keep labor issues off the table.

The Uruguay Round strengthens dispute resolution. The new WTO agreement provides for the automatic right to impose trade sanctions against a country that does not implement a WTO panel report. Furthermore, this retaliation can be cross-sectoral and cross-agreement. By contrast, the ILO dispute system has not been strengthened in recent years. There is no right of retaliation against a country that does not ameliorate deficiencies cited in ILO reports. When labor unions suggest the use of trade to enforce labor standards, they are told that trade sanctions do not solve economic problems. The eagerness of the trading system to legitimize such sanctions under the WTO has buttressed the belief among many worker groups that the trade regime is hypocritical.[51] Indeed, one might argue that of all international economic regimes, the trade regime should have been the most resistant to granting legitimacy to new trade sanctions.

## The WTO and Labor Standards

As the previous section explained, the ILO is the appropriate international institution to focus on labor standards. The WTO has many other important responsibilities. Nevertheless, given the trade-related aspects of the labor standards issue, it would be appropriate for the WTO to cooperate with the ILO, as the interim ITO started to do in the late 1940s.[52] There are also a few areas in which the WTO could appropriately take action of its own.

*1. Address Labor Standards in the WTO.* Some of those opposing the Clinton administration's initiative on labor standards have argued that the only reason to incorporate rules on labor standards into the WTO would be to permit trade sanctions, but that because sanctions are a bad idea, there is no reason to involve the WTO. This view is too quickly dismissive. There are good reasons to add a labor standards provision to the WTO without any intention of justifying trade penalties.

The WTO may not be able to succeed in governing trade relations and in promoting continued liberalization if it neglects issues that the public thinks are important. In view of the serious problems with forced labor, child labor, union bashing, and so forth, it would seem reasonable for the WTO to have a rule on labor rights. In drafting such a rule, the WTO might try to blend together the provisions that were in the Treaty of Versailles and the charter of the International Trade Organization. One possibility would be:

> The Members recognize that inhumane conditions of labor, particularly in production for export, create difficulties in international

> trade. Accordingly, each Member should take all feasible action to eliminate such conditions within its territory. Members should also cooperate with any investigation of their labor practices by the WTO.

*2. Undertake Surveillance.* In arguing for a social clause in GATT, labor unions have consistently sought to enforce it with trade restrictions. Similarly, U.S. Trade Representative Kantor has resisted suggestions that the United States drop the matter of enforcement in the interest of gaining agreement on the principle of WTO consideration of worker rights. Because enforcement of worker rights in the WTO is a nonstarter, any policy initiative predicated on trade enforcement is going to fail.

If a general obligation on humane labor conditions can be agreed to, then the WTO should undertake surveillance, not enforcement. Using the Trade Policy Review Mechanism, the WTO (in conjunction with the ILO) might examine respect for fundamental ILO principles in each country. Major problems could be reviewed in the WTO General Council. Although the Trade Policy Review Mechanism is generally focused on trade policies, it also looks at policies that have an indirect effect on international trade.[53] Another model is the IMF, which has a provision for surveillance of national financial policies.

*3. Investigate Export Processing Zones.* The one area in which the WTO might reasonably take a more active stance regards labor abuses in export processing zones. When governments impose tighter restrictions on unions in such zones than they do elsewhere in their countries, such manipulation can be viewed as a trade and investment distortion. The WTO should establish a working party to investigate this problem.

*4. Cooperate with the ILO.* Despite their close physical proximity in Geneva, GATT has resisted any interaction with the ILO.[54] Because the two organizations share a similar mission—raising standards of living by improving the utilization of resources—they ought to coordinate their efforts. The GATT treaty itself notes the "need for appropriate collaboration" between it and agencies of the UN system "whose activities relate to the trade and economic development of less developed countries."[55] Nonetheless, GATT was very insular. One way to effect such links would be to establish a WTO working party to explore cooperative initiatives with the ILO. If the WTO showed more sensitivity to the adverse effects of trade on some workers, it might provoke less public hostility. Cooperation with the ILO would also provide a mechanism for the WTO to secure input from nongovernmental organizations.

## The WTO and the Public

Increasingly, international organizations are seeking to engage public opinion in support of their objectives. The GATT Secretariat, under Director General Peter Sutherland, is doing more of this than in the past through reports, studies, newsletters, and speeches. This is a useful development.

As a new international organization with a fairly high profile, the WTO has an opportunity to shape the future debate on trade liberalization. Instead of viewing labor standards in the negative manner that it now does, the WTO should look for opportunities to promote higher labor standards as a way of generating needed public support for free trade. This potential for a

fruitful connection has been noted in numerous studies. For example, in 1956, the Group of Experts examining the social aspects of European economic integration (chaired by Bertil Ohlin) suggested that preventing labor standards "from falling below an internationally accepted level might eliminate abnormal competition and thus facilitate the establishment and preservation of a regime of freer international trade."[56] In 1980, the Brandt Commission endorsed international action on "fair labor standards" for the same reason.

### Fairness in Trade

Some policymakers have suggested that the harmonization of labor standards is needed to assure fairness in international trade. For example, South African president Nelson Mandela argues that: "Trade must be based on a minimum floor of standards and rights. . . . The ILO's principle of tripartism and international labour standards ought to constitute the floor upon which the nations of the world engage in trade."[57] It is beyond the scope of this article to deal with the question of which issues are appropriate for international harmonization and which are not. But there are a few issues, such as trade in prison-made goods and derogations of standards in export processing zones, that can unquestionably lead to trade "unfairness." Otherwise, fairness is somewhat subjective.

Advocates of raising labor standards should be careful in unfurling the unfairness argument. Perceiving unfairness in foreign labor standards might imply a need for antidumping or countervailing duties, but that would not be constructive. A better argument for raising labor standards is that to do so constitutes sound economic policy.

### Improving U.S. Government Policies

The United States has two laws that provide for unilateral trade restrictions in response to foreign labor practices. The Tariff Act of 1930 prohibits the importation of products made by convict or forced labor. Restrictions of this type are permitted by GATT article XX(e). Even with this law, there continue to be allegations of imports of convict-made goods, especially from China.[58] The second U.S. law is section 301 of the Trade Act of 1974, which permits the USTR to take action against nations that do not accord internationally recognized worker rights. This provision has never been used; doing so would very likely not be legal under GATT.

The United States has three laws that condition trade preferences for developing nations on whether those nations are taking steps to adjust their practices to accord with internationally recognized worker rights. They are the Caribbean Basin Initiative (CBI), the Generalized System of Preferences (GSP), and the Andean Trade Preferences Program. Whether these programs are viewed as unilateral or bilateral, conditioning trade preferences on actions by foreign governments does not violate GATT. Nevertheless, the United States is the only one of 16 GSP donor countries that maintains such conditions.

The first of these trade–labor linkages, in the CBI, was initiated by the Reagan administration in 1983. The ensuing negotiations led to significant labor commitments by several governments such as Honduras, El Salvador, the Dominican Republic, and Haiti. For example, El Salvador agreed to permit union organizers to enter its free trade zone.

The GSP linkage has led the United States to withdraw trade benefits from

other countries. Four countries were removed during the Reagan administration; five during the Bush administration; and one during the Clinton administration. In addition, many countries took sufficient steps to improve worker rights to avoid losing their GSP benefits.

Administering the GSP labor condition is difficult because it is a two-edged sword, as the ongoing dispute with Indonesia demonstrates. On the one hand, countries like Indonesia may be willing to make minor reforms to retain the GSP, but they do not want to appear to be yielding to U.S. "imperialism." On the other hand, the U.S. government can threaten to withdraw GSP treatment from Indonesia, but considerable opprobrium from the U.S. business community would attach to doing so. In other words, the USTR has some leverage over Indonesia but Indonesia, and its business supporters, have some leverage over the USTR.[59] This dispute may continue to exacerbate trade relations between the two countries for the foreseeable future.

The U.S. government could improve its trade policy regarding labor standards by taking the following steps:

*1. Stop Trade in Goods Made Using Forced Labor.* When there are credible allegations that imported products are being made by prison or forced labor, the Customs Service should demand foreign government certifications as to the "prison-free" content of suspect goods. The Clinton administration might also propose a declaration in the WTO that all countries should ban prison-made trade. In line with that goal, Congress should ban the export of prison-made goods from the United States, which is now legal.

*2. Improve the GSP Program.* The GSP law requires that countries not taking steps to provide worker rights be excluded from the program, but the USTR has adopted a passive stance, waiting for petitions rather than acting first. When petitions about infractions are lodged, the USTR handles them in an arbitrary fashion as it "rejects" them, "defers" them, "pends" them, or slowly investigates them. The USTR has also developed some Kafkaesque distinctions. For example, the agency has refused to consider the assassination of a trade union leader as a worker rights violation, pretending instead that it is a "human rights" violation, not susceptible to discipline under the GSP program. Even Haiti, with all its labor and human rights violations, maintained its GSP eligibility until the United States imposed a complete trade embargo.

The GSP law has both a mandatory and a discretionary worker rights condition. Paradoxically, the USTR seems to be implementing only the discretionary condition while ignoring the mandatory one. A recent report by the General Accounting Office confirms a focus by the USTR on the discretionary condition only.[60]

The USTR has a conflict of interest. The agency cannot be credible in promoting trade liberalization when at the same time it preconditions trade benefits on worker rights. The recent Indonesian episode is a case in point. How can the USTR seek Indonesia's support in the Asia–Pacific Economic Cooperation forum while at the same time threatening to withdraw its GSP? This inherent conflict suggests that the president should reassign the administration of the GSP worker rights provision to another agency, such as the U.S. Department of Labor.

Reassignment would not mean that more countries would lose GSP benefits. The GSP law allows the president to waive the worker rights

condition if it is in the "national economic interest" to do so. But reassignment would allow the U.S. government to make a reasonably objective determination each year as to whether a GSP country is taking sufficient steps to improve worker rights. As of now, USTR determinations are highly subjective.

It would also be useful for Congress to modify the definition of "worker rights" in the GSP law later in 1995 (the program expires on July 31) so as to remove any reference to minimum wages. It is noteworthy that in conjunction with President Clinton's trip to Asia in November 1994, Indonesia announced that it would increase regional minimum wages and step up enforcement of minimum wage laws and occupational safety rules. This author does not know whether the USTR asked for such changes, but they send precisely the wrong signal, because many observers presume that the U.S. government used its GSP leverage to raise wages in Indonesia.[61]

A top priority for GSP reform should be to get countries other than the United States to impose labor conditions in their GSP programs. When there is only one program with such conditions, countries like Indonesia can issue counter threats. If the European Union imposed labor conditions, too, beneficiary countries would have less room for evasion. In addition, judgments as to whether the beneficiary government is taking sufficient steps could be made by a committee with many countries represented on it rather than on a unilateral basis. That would take some heat off the U.S. government's GSP decision making.

The European Commission has expressed interest in an initiative to reduce GSP benefits for countries that permit slavery or the exportation of prison-made goods. The commission would also condition supplementary GSP benefits on whether countries meet labor and other standards. In early 1994, Abraham Katz, president of the U.S. Council for International Business, suggested that the USTR work with other GSP donors to establish a common labor rights condition and to seek support from developing countries by reducing the number of products excluded from the GSP.[62]

Unfortunately, the USTR showed no interest in broadening the number of countries imposing GSP conditions. One problem was that the USTR did not seem to want to expand GSP benefits. Agency officials also viewed GSP conditionality as lacking teeth and being inferior to the establishment of a GATT committee on labor standards. Clearly, this was a missed opportunity.

*3. Suspend Section 301.* The section 301 provision on worker rights has never been invoked by the USTR. Surprisingly, not a single petition has been filed. Still, this provision rankles other countries. To demonstrate that he favors a cooperative approach to labor rights, President Clinton should issue an Executive Order directing the USTR to suspend any activity on section 301 worker rights. As Hansenne has pointed out, multilateral progress on labor rights "would logically entail a renunciation" by industrial countries of unilaterally imposed trade barriers related to worker rights.

*4. Renew Fast Track.* Fast track is the parliamentary process invented 21 years ago to streamline congressional approval of trade agreements. Congress preauthorizes negotiations, and then permits the president to submit implementing legislation, which is voted on by the House and Senate without amendment. Fast track authority expired in 1993. In fall 1994,

the Clinton administration tried to get this authority renewed, but the overture was spurned by Congress. The USTR had proposed new U.S. negotiating objectives for worker rights and the environment to establish that the failure to comply with internationally recognized labor or environmental standards would be viewed as an unfair advantage in world trade. This proposal was ill-timed and legally unnecessary because current law provides sufficient direction to the president on these issues.[63]

One demand made by congressional Republicans ought to be easy for the Clinton administration to fulfill. The Republicans have said that the fast track approval process should not be used to approve trade agreements that change U.S. labor or environmental laws. The administration should embrace this suggestion, because such changes are inappropriate in privileged legislation that is unamendable on the House or Senate floor.

It would be a mistake, however, for Congress to impose restrictions on new negotiating authority—by trying, for example, to forbid the president from attempting to reach mutually beneficial labor agreements with other countries. Handicapping the president will not reverse the growing relationships between trade, investment, employment, and environmental policies.

*5. Regional Trade Agreements.* In fall 1994, the Clinton administration sought to include labor issues in the trade section of the "Plan of Action" approved by the Summit of the Americas. According to press accounts, the administration "claimed victory" for obtaining desired language about labor. The exact language obtained, however, seems less significant than advertised.

The summit's "Declaration of Principles" states that "Free trade and increased economic integration are key factors for raising standards of living, [and] improving the working conditions of people in the Americas." The "Plan of Action" states that, "As economic integration in the Hemisphere proceeds, we will further secure the observance and promotion of worker rights, as defined by appropriate international conventions." Both statements are positive. But they do not add to the labor commitments that have been enshrined in the charter of the Organization of the American States (OAS) for decades. For example, the charter lists "acceptable working conditions" as one of the OAS objectives.[64] Under the charter, nations agree to "dedicate every effort to the application" of principles such that workers "have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike." In addition, and most significant, the charter declares that

> The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries . . . so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal.[65]

When viewed against the backdrop of these long-agreed commitments, it is hard to view the general language obtained by the Clinton administration at the Miami Summit as exemplifying progress.

The Clinton administration has suggested that NAFTA and its side agreements will be the "floor in all respects" for the Free Trade Area of the Ameri-

cas. At the very least, the administration wants to extend the NAFTA labor and environmental side agreements to Chile. The administration should rethink this idea. The NAFTA side agreements aim at the wrong target—enforcement of a nation's own laws—rather than at the attainment of better laws and adherence to international standards. In addition, the NAFTA labor commission is barely operational. It took 14 months just to name an executive director. Expanding the commission now would likely grind all activity to a halt.

In summary, although the most important initiatives on labor standards need to be accomplished in the ILO, there are also some things that can be done in multilateral and regional trade agreements. Such trade initiatives must be part of an overall program. The Clinton administration erred in beginning its efforts at reform by pushing only within GATT.

## Conclusion

Promoting higher labor standards is an appropriate goal for multilateral policy and an appropriate goal for the United States. The Clinton administration's efforts so far have proved disappointing. The advent of a new Congress may complicate this policy but does not doom it to failure. The administration should develop new bipartisan initiatives that draw the support of other countries, the business community, and U.S. labor unions.

The ILO is an underutilized institution of global governance. Its mandate to reduce unemployment and raise labor standards is highly relevant to contemporary economic challenges. Its membership structure—which includes workers and employers—shows that nongovernmental organizations can play a very useful role in international agencies. Yet after 76 years of activity, the ILO needs an overhaul.

The USTR is not at fault for the administration's unimaginative policies toward the ILO. That is not the USTR's job. The responsibility lies with the members of the President's Committee on the ILO. President Clinton should convene the committee quickly and ask how U.S. leadership can be exerted to improve the ILO. Support by the business community will be critical for this. The ILO has always been concerned about equity. Now it needs to get equally concerned about efficiency.

The USTR should work with governments in other countries to develop a joint proposal for cooperation between the WTO and the ILO. The first topic could be the inclusion of core labor standards in the WTO's Trade Policy Review Mechanism. The USTR should also pursue a few concrete initiatives such as encouraging other countries to apply a GSP labor condition.

National labor standards are an important international concern and have a significant linkage to trade policy. But that does not legitimize trade sanctions as the right remedy. Although the WTO should play a supportive role, the lead agency should be a newly reinvigorated ILO that will champion worker rights as a key component of emerging international law.

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*The views expressed are those of the author only.*

## Notes

1. By *labor standards*, I mean the legal regulations imposed by governments for the employment of child labor, the formation of trade unions, etc., and the effectiveness of the enforcement of these standards. This contrasts with *labor conditions*, which are market outcomes, such as wage levels. This article excludes minimum wages from labor standards because the Interna-

tional Labour Organization (ILO) has no convention regarding the adequacy of wages. (The one exception is the ILO's convention no. 109 on maritime wages, which applies to vessels engaged in trade by sea.)

2. In calling on the president to pursue this issue in GATT, the Omnibus Trade and Competitiveness Act of 1988 uses the term "worker rights." The previous U.S. law on GATT reform goals used the term "fair labor standards." The terms are synonymous, but have different connotations. Some countries may be willing to improve labor standards without conceding that they are preexisting rights.
3. The Convention on Freedom of Association (no. 87) has been ratified by 108 countries. The Convention on Collective Bargaining (no. 98) has been ratified by 121 countries. The Convention on the Abolition of Forced Labor (no. 105) has been ratified by 112 countries, including the United States. The Convention on Labor Inspection (no. 81) has been ratified by 111 countries.
4. U.S. Council of Economic Advisers, *Economic Report of the President* (Washington, D.C.: GPO, 1995), p. 250.
5. See Guy Caire, *Freedom of Association and Economic Development* (Geneva: ILO, 1977), and Steve Charnovitz, "Fair Labor Standards and International Trade," *Journal of World Trade Law* 20 (January–February 1986), pp. 61, 70–72. See also "Democracy and Growth," *Economist*, August 27, 1994, p. 15.
6. World Bank, *The East Asian Miracle* (Washington, D.C.: World Bank, 1993), pp. 270–273.
7. Some analysts list the humanitarian motive as a third reason. See, for example, Joseph Chamberlain, "Legislation in a Changing Economic World," *Annals of the American Academy of Political and Social Science* 166 (March 1933), pp. 30–31.
8. Treaty of Peace (Treaty of Versailles), 1919, part XIII.
9. Treaty of Versailles, article 23(a). Article 23(e) called for the "equitable treatment" of commerce.
10. U.S. War Labor Policies Board, *Report on International Labor Standards* (Washington, D.C.: GPO, 1919), p. 7.
11. See ILO, *World Employment 1995* (Geneva: ILO, 1995), pp. 72–74. This new report states that "International action is clearly required to safeguard against a competitive debasement of labour standards in the drive to improve shares in world trade and attract foreign investment" (p. 74).
12. For background, see Robert W. Cox, "Labor and the Multinationals," *Foreign Affairs* 54 (January 1976).
13. For a discussion of the original provision, see Steve Charnovitz, "The Influence of International Labour Standards on the World Trading Regime," *International Labour Review* 126 (September–October 1987), pp. 575–576.
14. See Federal Trade Commission, *Antidumping Legislation and Other Import Regulations in the United States and Foreign Countries* (Washington, D.C.: Federal Trade Commission, 1934), p. 13. The Austria measure was enacted in 1924.
15. Charter of the International Trade Organization, article 7.
16. See testimony by Clair Wilcox in hearings before the Senate Committee on Finance on the International Trade Organization, March 20, 1947, p. 119. Wilcox was the director of the Office of International Trade Policy, U.S. Department of State.
17. Of the 53 national representatives that signed the ITO, only 17 were from Europe, Canada, or the United States. Another 17 were from Latin America and 10 were from Asia. The 9 remaining signatories represented countries in the Middle East or Africa.
18. For example, see George Melloan, "Even Before Birth, the WTO is a Troublemaker," *Wall Street Journal*, August 8, 1994, p. A–13. See also "Standard Deviation," *Economist*, October 1, 1994, Survey, p. 32, and "Labor Standards and Trade," *Journal of Commerce*, February 6, 1995, p. 8A.
19. See *Weekly Compilation of Presidential Documents*, 1993, pp. 2288 and 2305.
20. See *Weekly Compilation of Presidential Documents*, 1993, p. 1640.
21. See U.S. Department of Labor, *International Labor Standards and Global Economic Integration: Proceedings of a Symposium* (Washington, D.C.: U.S. Department of Labor, 1994), p. 4.

22. See "Kantor Letter to Metzenbaum," *Inside U.S. Trade*, December 2, 1994, p. 10.

23. "USCIB Paper on Trade and Labor," *Inside U.S. Trade*, March 10, 1995, p. 9.

24. See "ASEAN Members Oppose Linkage of Labor and Trade," *International Trade Reporter*, August 3, 1994, p. 1214.

25. In December 1994, Australia's minister for trade established a high-level working party to explore ways to promote labor standards. See also Guy de Jonquières and Robert Taylor, "France to Push Workers' Rights in WTO," *Financial Times*, February 2, 1995, p. 5.

26. European Parliament, "Resolution on the Introduction of a Social Clause in the Unilateral and Multilateral Trading System," Strasbourg, February 9, 1994.

27. ILO conventions are numbered sequentially. The founders of the ILO hoped to build international law as new conventions were added each year.

28. For a discussion of this view, see OECD, *Employment Outlook* (Paris, July 1994), pp. 155, 161.

29. See ILO staff report, "The Social Dimensions of the Liberalization of World Trade" (Geneva, November 1994), para. 26.

30. Michel Camdessus, "The ILO and the IMF at Major Milestones," *Visions of the Future of Social Justice* (Geneva: ILO, 1994), p. 60.

31. The following countries (using current names) were members: Argentina, Bolivia, Brazil, Chile, China, Colombia, India, Guatemala, Iraq, Liberia, Mexico, Peru, Thailand, and Turkey. This broad membership belies the suggestion that developing countries had no role in the writing of older ILO conventions.

32. See *Our Global Neighborhood*, Report of the Commission on Global Governance (Oxford: Oxford University Press, 1995), p. 269. For discussion of trade and labor standards, see pp. 169–170.

33. Robert J. Morris, "Labor Standards and International Trade," October 1994 (unpublished paper).

34. Frank P. Doyle, "International Labor Standards: The Perspective of Business," in U.S. Department of Labor, *International Labor Standards*, p. 45.

35. See U.S. Department of Labor, *By the Sweat and Toil of Children: The Use of Child Labor in American Imports* (Washington, D.C.: U.S. Department of Labor, 1994).

36. Kaushik Basu, "The Poor Need Child Labor," *New York Times*, November 29, 1994, p. A–25.

37. See Australia, Department of Foreign Affairs and Trade, *Report on Matters Relating to the Exploitation of Children* (Canberra, November 1994), pp. 7–8.

38. Open Letter from Jan Tinbergen et al., Amsterdam, January 1, 1994 (unpublished).

39. See Anna Quindlen, "Out of Hands of Babes," *New York Times*, November 23, 1994, p. A–23.

40. For example, see Mitchell Zuckoff, "'Rugmark' Certifies No Child Labor Was Used," *Chicago Tribune*, February 4, 1995, p. 16.

41. See John Maggs, "Clinton's Plan for Rights Code Breaks Down," *Journal of Commerce*, November 18, 1994, p. 1A. See also Bruce W. Nelan, "Business First, Freedom Second," *Time*, November 21, 1994, p. 78.

42. See *Declarations of the World Trade Union Conference* (London, February 1945), para. 18.

43. See Roger Plant, *Labour Standards and Structural Adjustment* (Geneva: ILO, 1994).

44. See ILO, *Defending Values, Promoting Change*, Report of the Director General (Geneva: ILO, 1994), p. 37.

45. For a discussion, see Philip Alston, "Labor Rights Provisions in U.S. Trade Law: 'Aggressive Unilateralism'?" *Human Rights Quarterly* 15 (February 1993), pp. 29–33.

46. For a discussion of the constitutional issues, see Bruce Ackerman and David Golove, "Is NAFTA Constitutional? The Rise of the Congressional–Executive Agreement in American Diplomacy," *Harvard Law Review* 108 (February 1995). See also Steve Charnovitz, "The NAAEC and Its Implications for Environmental Cooperation, Trade Policy, and American Treatymaking," *Temple International and Comparative Law Review* 8 (Fall 1994). In proposing a method similar to the trade agreement approval process, I am *not* sug-

gesting that the trade fast track be used for such congressional votes.

47. 108 Stat. 1634, 22 U.S.C. 1621. The one flaw in the law is that it includes minimum wages in the list of rights.

48. See UNDP, *Human Development Report 1994* (Oxford: Oxford University Press, 1994).

49. For a good analysis of how trade enforcement of worker rights in GATT could benefit the ILO, see Clayton Yeutter, "Policy Perspective and Future Directions: A View From a Former U.S. Trade Representative," in U.S. Department of Labor, *International Labor Standards*, p. 55.

50. For example, based on the Freedom House survey, several WTO members such as Burundi, Cameroon, Chad, Cuba, Egypt, The Gambia, Indonesia, Maldives, Mauritania, Nigeria, Sierra Leone, Swaziland, Tanzania, Togo, Tunisia, and the former Yugoslavia are "not free." *Freedom in the World Yearbook, 1994–95* (New York, N.Y.: Freedom House, December 1994).

51. One response from the trade perspective is that the WTO is not authorizing trade sanctions, but rather countermeasures to reequilibrate the balance of negotiated trade concessions. This just begs the question, however: Why should the trade regime be able to reequilibrate when the international labor regime cannot?

52. The draft agreement between the ILO and the ITO of October 1948 provided that the two organizations "will act in close co-operation with each other and will consult each other regularly in regard to matters of common interest." In addition, it permitted ILO representatives to participate in ITO meetings. See GATT Doc. ICITO EC.2/21, articles I and IV.

53. For example, the recent review of Canada criticized the barriers by provinces to trade *within* Canada. See "GATT Report Criticizes Inter-Provincial Trade Barriers in Canada," *Inside U.S. Trade*, December 2, 1994, p. 28.

54. The only joint project this author is aware of was the study begun in 1960 of the relevance to international trade of differences in labor costs, and other costs of production, of textiles and clothing. GATT dropped out of the study, but the ILO later published its conclusions that the problem of textile industries in advanced countries cannot be primarily attributed to the alleged unfairness of competition with low-wage countries. Perhaps dissatisfied with these conclusions, GATT embarked upon a series of protectionist textile arrangements that continue to this day. See Gardner Patterson, *Discrimination in International Trade: The Policy Issues* (Princeton, N.J.: Princeton University Press, 1966), pp. 306–307.

55. GATT article XXXVI:7.

56. ILO, *Social Aspects of European Economic Co-operation* (Geneva: ILO, 1956), para. 180.

57. Nelson Mandela, "The Continuing Struggle for Social Justice," in *Visions of the Future of Social Justice* (Geneva: ILO, 1994), p. 184.

58. See "New Evidence of Chinese Forced-Labor Imports to the U.S.," *Human Rights Watch Asia*, May 24, 1994.

59. See Manuela Saragosa, "Indonesia Spurns U.S. Pressure over Workers Rights," *Financial Times*, August 15, 1994, p. 4.

60. See U.S. General Accounting Office, *International Trade: Assessment of the Generalized System of Preferences Program*, GAO/GGD-95–9 (Washington, D.C.: GAO, November 1994), pp. 98–100. A letter from the USTR to the GAO reprinted in the report mentions only the discretionary provision (pp. 148, 150).

61. See "Indonesia Responds to U.S. GSP Pressure with Plan on Labor Rights," *Inside U.S. Trade*, November 18, 1994, p. 13.

62. Abraham Katz, "Trade and Workers' Rights: A Proposal." This was a personal proposal in the form of a paper circulated to policymakers.

63. See 19 U.S.C. §2901(b)(14) and 104 Stat. 4905.

64. Charter of the Organization of American States, article 31(f). An earlier Central American treaty was even more specific about forced labor and child labor. See Convention on the Unification of Protective Laws for Workmen and Labourers, which was signed at the Conference on Central American Affairs in Washington, D.C., in 1923.

65. Charter of the Organization of American States, article 44.