Workers in the Global Economy

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Workers in the Global Economy

Abstract

[Excerpt] The Workers in the Global Economy project is part of a growing international labor rights movement. This movement brings together researchers, policy analysts, and advocates in trade unions and allied NGOs who want to make social justice the touchstone of an integrated international economy. Participants in the WGE project hope it contributes new understanding of the global economy and how it affects workers. More important, we hope that it gives labor rights advocates tools to change the effects of globalization on working people around the world.

Keywords
unions, trade unions, NGOs, labor movement, funding, labor rights, social justice, economy, globalization

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Professor Maria Lorena Cook served as principal investigator on behalf of the Cornell School of Industrial and Labor Relations.

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International Presenters
- Graciela Bensusan (Mexico)
- Isabelle Daugareilh (France)
- Bob Jeffcott (Canada)
- Vedi Hadiz (Indonesia)
- Michael Hindley (UK)
- Kjeld Jacobsen (Brazil)
- Fernando Leiva (Chile)
- Kamal Malhotra (Australia)
- Tania Palencia (Guatemala)
- Young-mo Yoon (Korea)

U.S. Respondents
- Thea Lee (AFL-CIO)
- Mark Levinson (UNITE)
- Lisa McGowan (Solidarity Center)

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Introduction

The Rise of Workers' Rights in Trade Policy Debates

For most of the twentieth century, demands to incorporate labor rights and standards like freedom to organize and child labor laws into international trade and investment agreements made policy experts grimace. "That's politics, social do-goodism," said government officials, international economists, and multinational executives and investors with dismissive waves. "We don't do that, we do trade," they explained as they laid down free trade rules to roll global commerce forward.

Multinational companies and finance capital drove a broadening current of global economic integration after the Second World War. New international bodies took shape to channel this globalization. They include Bretton Woods institutions like the World Bank and the International Monetary Fund, global trade groups like the General Agreement on Tariffs and Trade (GATT) and its successor World Trade Organization (WTO), and economic coordinating bodies like the Organization for Economic Cooperation and Development (OECD). Trade expansion engendered an international rule of law for such matters as intellectual property rights, investment guarantees, government procurement, free transit across borders for multinational lawyers, bankers, and executives, and other corporate interests. However, workers' calls for social justice in new trade regimes were mostly ignored.

As a result, global commerce and trade agreements have had profound, accumulating effects on working people around the world in the last decades of the 20th century. International trade is inherently social and political. Workers have to struggle for justice, power, and protection against labor rights violations in the new global economy. Their struggles are still rooted locally in the places where they work, in the communities where they live, and under the laws of their local, state, and national governments. But the link to the global economy and the growing importance of international rules cannot be denied.

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The New Labor Rights-Trade Link

In the past decade, a growing labor rights movement has begun to dismantle the wall that divided the trade and investment aristocracy from workers demanding a greater voice in international economic affairs. Here is where a labor rights-trade linkage emerges, with calls for a social dimension in international trade and investment agreements that would reward respect for workers’ rights.

The link between trade and labor rights has received official recognition in workers’ rights clauses under U.S. and European trade laws, in NAFTA’s labor side agreement (and more recently in the text of a U.S.-Jordan trade pact), in the European Union (EU)’s social protocols, in Mercosur’s social-labor declaration, and in a revitalized International Labor Organization (ILO). International financial institutions like the World Bank have begun addressing these issues. The Bank recently published a report acknowledging that respect for workers’ rights is critical to reducing economic inequality.

These new developments are only a beginning. Much work remains to be done to strengthen the connection between labor rights and trade and investment policy. The materials in this volume are meant to contribute to such an effort. Research papers, legal analyses, advocacy briefs, workshop reports on environmental, immigration, and women’s rights issues; all reflect this new stage in the labor rights-trade debate and what it means for workers, unions, companies and governments in the new global economy.

Project Components

Project Participants

The Workers in the Global Economy (WGE) project drew together Cornell University’s School of Industrial and Labor Relations (ILR) with researchers, analysts and advocates in three Washington, D.C.-based non-governmental organizations (NGO) that have been intimately involved in labor rights and trade policy. Together, Cornell ILR and the International Labor Rights Fund (ILRF), the Institute for Policy Studies (IPS), and the Economic Policy Institute (EPI) fashioned a broad program of research and dialogue on the implications for workers and trade unions of global economic integration.

The WGE project was supported by a grant from the Ford Foundation. Barbara Shailor, Ron Blackwell, and Thea Lee of the AFL-CIO helped shape the project proposal and agenda and facilitated trade union involvement in project activities.

Cornell’s ILR School has a long tradition of research and publication on international labor themes. As the most comprehensive university-based program in industrial and labor relations in the United States, several faculty members specialize in international labor studies, with particular faculty expertise covering North America, Latin America, Europe and Asia. Professor Maria Lorena Cook of the Cornell ILR School served as Principal Investigator for the WGE project, and ILR Senior Lecturer Lance Compa served as project director.
The three NGOs involved in the WGE project have been deeply engaged for years in the debate over labor rights and labor standards in trade and investment policy. The International Labor Rights Fund (ILRF) was central in the movement to insert labor rights amendments in U.S. trade laws, beginning with the Generalized System of Preferences (GSP) in 1984. The Fund has also been the most active NGO bringing complaints under the NAFTA labor side agreement, the North American Agreement on Labor Cooperation (NAALC). Developing labor rights monitoring systems and taking legal action against forced labor in Burma are recent ILRF initiatives. Pharis Harvey, Terry Collingsworth, and Bama Athreya are the ILRF’s principals in the WGE project.

The Institute for Policy Studies (IPS) was also a part of the labor rights amendments effort of the 1980s. In the 1990s, IPS took the lead coordinating trinational trade and development work to shape alternatives to NAFTA, and is now committed to similar work in the context of plans for a Free Trade Agreement of the Americas (FTAA). In the past year, IPS has focused on analyzing and critiquing global financial flows and the demise of the “Washington Consensus” on trade and investment liberalization, especially in the post-Seattle era. John Cavanagh and Sarah Anderson are the IPS principals in the WGE project.

The Economic Policy Institute (EPI) has undertaken research and analysis on a wide range of economic issues for more than a decade, with particular attention to U.S. trade policy. Challenging the dominant Washington consensus on free trade, EPI’s trenchant critiques have become key elements in debates about NAFTA, Fast Track, the FTAA, the global financial crisis, the WTO and other matters. Economist Robert Scott is EPI’s principal collaborator in the WGE project.

Project Papers

To launch the WGE project, each of these institutions drafted an overview paper reflecting its knowledge, experience, and opinions about globalization’s effects on workers and policies for dealing with the effects. Respondents from the United States, Canada, France, Great Britain, Korea, Brazil, Guatemala, Mexico, Chile, and Malaysia offered papers at a North-South conference held in October 1999 at the AFL-CIO’s labor studies center. WGE project principals revised their overview papers in light of responses and debates at the North-South conference. The revised papers make up the core of this volume. All these papers, as well as the papers by participants in the conference, are available at the web site of the ILRF: www.laborrights.org

The ILRF paper, “Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy,” analyzes the potential for a social dimension in global trade using trade sanctions to enforce workers’ rights. The paper presents a detailed and compelling argument for such labor rights-trade linkage, with due caution that trade sanctions not be used as a means of disguised protectionism, a key concern of developing country advocates.

The ILRF paper provides historical background on labor and trade linkage beginning with efforts in the last century. It considers experience under the U.S. trade laws like the Generalized System of Preferences (GSP) and other statutes using the GSP formulation of “internationally recognized worker rights.” It reviews labor rights regimes in regional trade agreements like NAFTA, the European Union, and Mercosur.
Introduction

The paper discusses developments in the ILO and its recent adoption of "core labor standards" with heightened obligations for all ILO members, including the United States. In addition, the authors discuss developments in the WTO and negotiations for a FTAA.

The ILRF paper presents a detailed proposal for implementing a social dimension in the international trade system by conditioning advantages of expanded trade on respect for workers' rights. But the paper is not intended to provide definitive answers; rather, it seeks to advance the debate. The authors offer a series of "issues to be resolved" on such matters as formation of a panel of experts to determine labor rights violations, the role of companies, trade unions and NGOs in setting standards, the identity and authority of monitoring bodies, the balance between national sovereignty and supranational authority, the timing and extent of economic sanctions, and others.

The final section of the ILRF paper examines experience with and prospects for codes of conduct and independent monitoring mechanisms. The authors review codes adopted by the ILO and by the OECD, and by companies like Nike and Reebok. They look at codes and labeling systems for particular industries, like the Rugmark label guarding against child labor in rug making, or the FIFA (the international soccer federation) guarantee of no child labor in the manufacture of soccer balls. The paper concludes with a sophisticated analysis of the strengths and weaknesses of codes of conduct and challenges to their implementation. This concluding section deals with the relationship between codes of conduct and international labor standards, the role of independent monitors, the issue of a "living wage" element, and the role of governments in connection with codes of conduct.

The IPS paper, "Bearing the Burden: the Impact of Global Financial Crisis on Workers and Alternative Agendas for the IMF and Other Institutions," deals with private capital flows, the Asian financial crisis and its “contagion effect” on workers in other regions, and the role of international financial institutions like the World Bank and the International Monetary Institution. The IPS paper details the explosion of private investment flows across national boundaries and how it has affected workers around the world.

The authors distinguish among flows to developed and developing countries, multiple sources of investment flows (commercial banks, pension funds, mutual funds and others), and various types of investment—long-term investment in plant and equipment, short-term investment in stock markets of emerging economies, and outright currency speculation. The IPS paper carefully analyzes and summarizes effects on workers in major Asian countries, and then studies further effects in Latin America, Russia, and the United States. Special attention is given to the impact on migrant workers and women workers.

The authors fashion detailed "alternative agendas" taking issue both with supporters of the international financial institutions and with market enthusiasts who attack international financial institutions from the extreme right for supposedly interfering with the free market. In place of these policy proposals, the authors call for policies to promote long-term investment instead of short-term speculation, a reduction of instability and volatility in international capital markets, and use of public investment to promote equitable development. Their detailed recommendations for reform at the international, regional, and national level include debt reduction for developing countries, establishment of an international bankruptcy mechanism, fundamental re-
forms of international financial institutions to emphasize sustainable development and support for education and health care, more transparency, accountability, and public participation in decision making, appropriate use of capital controls and investment performance requirements, and stabilizing exchange rate regimes.

The EPI paper, “Our Kind of Trade: Alternatives to Neoliberalism that Can Unite Workers in the North and South,” traces the effects of global trade on employment and wages. It addresses the tension between interests of Northern industrialized countries and Southern developing countries in meeting the needs of workers and their trade unions. This paper introduces the importance of adjustment assistance programs for workers affected by trade, and of debt relief and increased aid for developing countries.

The EPI paper challenges the widely held notions that enhanced workers’ rights and higher labor standards retard employment opportunities and growth, that developing countries need a “sweatshop” stage for economic take-off, and that high labor standards in developed countries cause unemployment and economic stagnation. Scott offers a proposal for labor rights protection along with macro and micro-economic policies to stimulate growth and equity.

The EPI paper discusses a critically important issue affecting workers and the global economy: the integration of large developing countries, particularly China, into the world economy. Scott examines the implications of China’s entry into the WTO and the possibility of using this opportunity to secure an agreement by all WTO members to respect workers’ rights as part of their trade regime.

The EPI paper concludes with a discussion of alternatives to the WTO model for regulating international trade. Scott calls for a fundamental realignment of exchange rates and a mechanism for regularly correcting structural trade deficits. He urges consensus on a new principle: that no new trade agreements, and no new expansion of existing agreements like NAFTA or the WTO, is preferable to agreements that fail to incorporate workers’ rights.

Project Workshops

The project also held a series of advocacy community workshops bringing together international labor rights advocates with counterparts in the environmental, immigration, and women’s rights communities. Reports on these dialogues are included here, and are also posted on the ILRF web site.

Labor Rights and Environmental Protection in the Global Economy

The first workshop compared experiences and perspectives of advocates committed to labor rights and environmental protection in global trade and investment. AFL-CIO environmental affairs coordinator Jane Perkins co-chaired the workshop.

Participants reviewed labor rights advocacy under U.S. trade laws and the “fast track” debate in Congress. They recounted experience under NAFTA’s labor side agreement, in FTAA negotiations, and in international institutions like the ILO and the WTO, identifying strengths and weaknesses in these institutions and related instruments.
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The labor rights review was followed by an examination of environmental advocacy in NAFTA institutions like the Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADBANK). Noting that there is no equivalent of the ILO setting global environmental norms, the workshop focused instead on international environmental treaties like the Endangered Species Convention, the Montreal Ozone Protocol, and the Hazardous Waste Convention. In contrast to most international labor rights regimes, the environmental treaties provide for economic sanctions against violators, a key enforcement mechanism for global standards.

Environmental advocates did gain a Committee on Trade and the Environment at the WTO, but suggested that the CTE’s disappointing results should give pause to labor rights advocates seeking a similar WTO committee on workers’ rights. A comparison of private-sector environmental and labor codes of conduct also revealed problems of monitoring and enforcement.

The workshop concluded with consideration of a broad agenda for labor-environmental collaboration in a variety of international forums. Among ideas developed here was creation of an International Environmental Organization akin to the ILO, and fashioning of “core” labor and environmental standards that can be linked to trade and investment disciplines. Environmental participants introduced the concept of “readiness” criteria setting a threshold level of environmental or labor standards and a national legal framework for enforcing them as a condition of any country’s entry into an international trade agreement. Workshop participants explored the possibility of a joint labor and environment complaint before the NAFTA labor commission and the NAFTA environmental commission challenging labor rights and environmental protection violations by multinational companies active in the U.S.-Mexico border region.

Migrant Workers’ Rights in the Global Economy

The second workshop convened labor rights and migrant workers’ advocates along with immigration policy experts to address issues affecting immigrant workers in the global economy. Ron Blackwell of the AFL-CIO’s corporate affairs department co-chaired this workshop.

Participants in the labor-immigration workshop identified different types of immigrant worker flows and abuses of immigrant workers’ rights in the global economy. They noted the absence of protection for migrant workers in many instruments held up as defining “core labor rights,” such as the ILO’s 1998 Declaration of Fundamental Principles and Rights at Work and the formulation in U.S. trade statutes of “internationally recognized worker rights.” Trade union participants spoke of the labor movement’s new stress on organizing immigrant workers and the need to review long-standing policy on “employer sanctions”—a view later reflected in the AFL-CIO’s adoption of a new position supporting amnesty and an end to employer sanctions.

This workshop also looked comparatively at migrant workers’ experience in Asia and Europe, noting in particular the European Union’s policy of maintaining a social assistance fund for wealthier countries to support development in less wealthy EU member countries. The workshop moved toward consensus on the need for such policies in other regions, and on a three-pronged human rights agenda for immigrant workers regardless of their documentation status: effective enforcement of labor standards, social protection through public benefit programs for
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all workers, and unity among all workers, especially through trade union organizing.

**Labor Rights and Women’s Rights in the Global Economy**

The third advocacy dialogue was co-sponsored by the Workers in the Global Economy project and the Center of Concern, a Washington, D.C.-based non-governmental organization that promotes social analysis, theological reflection, policy advocacy and public education on issues of global development. It brought together a small group of labor rights and women’s rights experts with a record of activity and publication in these fields, along with invited trade unionists, to address women’s rights and labor rights issues as they arise in trade and investment debates. Karen Nussbaum, director of the AFL-CIO’s working women’s department, co-chaired the workshop.

This workshop reviewed various approaches to women’s role in global economic development from the 1960s to the 1990s, and looked critically at World Bank and IMF Structural Adjustment Programs’ (SAPs) effects on women. In-depth discussion focused on recent activities in the International Confederation of Free Trade Unions (ICFTU), in advocacy for a social dimension in the FTAA, and at the ILO.

Some strategic differences emerged in the workshop over the effectiveness of a labor rights strategy emphasizing formal sector workers and trade union rights. This discussion gave rise to an agreed understanding that labor rights advocates must rethink and broaden their strategy for a social dimension in trade and investment regimes to include gender-specific issues. Plenty of room remains for labor rights advocacy. In labor rights clauses of U.S. trade laws, for example, non-discrimination is not included in the definition of internationally recognized worker rights. The workshop concluded that a campaign to include non-discrimination under U.S. labor rights law holds potential for common cause among labor rights and women’s rights advocates.

**Project Activities**

In addition to generating papers, workshops, and North-South dialogue, WGE principals from Cornell and the three NGOs in the project spoke at dozens of seminars, conferences and workshops nationally and internationally during the period of project activity. They presented results of the project to date and engaged in dialogue with researchers and advocates from developed and developing countries. They also wrote widely for research publications, newspapers, and journals of general interest to reach a wide reading public with materials from the project. They appeared in radio talk shows and televised events, and sometimes consulted with key media outlets for feature stories on the global economy.

Several milestone events in late 1999 and into 2000 provided important opportunities to advance the work of the project. For example, project principals took advantage of the Seattle WTO meeting in November-December 1999 to enhance the North-South dialogue aspect of the project. The ILRF sponsored an important forum in Seattle titled “Trade Union Voices from the South,” bringing together unionists and workers’ rights advocates from developing countries to meet with counterparts from the United States and Canada. EPI and IPS project principals were featured in large public forums which were broadcast nationally. They also distributed WGE
Introduction

papers widely among activist leaders in Seattle.

Events at the World Bank and IMF annual meeting in Washington, D.C., in April 2000 provided another important opportunity to advance the work of the project. WGE papers were disseminated to World Bank and IMF officials, and IPS project principal John Cavanagh was invited to address the World Bank executive directors during the meeting. Based on research for the WGE project, IPS principal Sarah Anderson served as a chief consultant to the special U.S. congressional commission on the World Bank and IMF.

The China WTO vote in May 2000 was another opportunity to disseminate results of the WGE project, as project principals, particularly EPI’s Scott and IPS’s Cavanagh, were immersed in forums, radio shows, C-SPAN broadcast events and other activities. The late stages of the project were devoted primarily to the FTAA and development of a detailed proposal on labor rights-trade linkage to bring to the 2001 Summit of the Americas meeting in Quebec.

Conclusion

The Workers in the Global Economy project is part of a growing international labor rights movement. This movement brings together researchers, policy analysts, and advocates in trade unions and allied NGOs who want to make social justice the touchstone of an integrated international economy. Participants in the WGE project hope it contributes new understanding of the global economy and how it affects workers. More important, we hope that it gives labor rights advocates tools to change the effects of globalization on working people around the world.

The WGE project does not hold out its work product as final or definitive. The papers, workshop reports and other elements of the project are offered as “works in progress” inviting comments, criticisms and alternatives like those of international participants in the project’s North-South dialogue (as noted, these are available in their original language and in translation on the project’s web site). Nor are the project’s materials reflective of a consensus even among its principal participants. As readers will discern, some key policy differences emerge in papers by each of the three major NGO participants in the WGE project.

Working people themselves—not those in universities or Washington-based NGOs—are forcing international labor rights onto the global agenda. Workers do not passively accept a role as disposable parts in a global trade and investment juggernaut. They defend themselves, through trade union organizing, collective bargaining, and strikes; through political organizing and political action; through alliances in social movements with other grassroots organizations; through rich interaction with advocates in human rights and social justice NGOs.

Trade policy administrators in national governments, multinational corporate executives, international trade and finance institutions, and others who think they command the heights of the new global economy should think again. Whether they like it or not, the international economic elite must now take into account the interests, passions, and rights of workers on the ground below where real wealth is created and real people live and demand both a fair share and fair treatment. We hope this project contributes to that end.
Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy

Introduction

The International Labor Rights Fund’s contribution to the project is to examine past and current efforts to protect labor rights in the global economy and to propose more effective implementation of these rights. An assumption of the ILRF analysis is that improved labor rights recognition and enforcement in the global economy is essential to a rational policy of sustainable economic development. Better implementation of labor rights will allow workers in the global economy to improve their wages and terms and conditions of employment. More fundamentally, global mechanisms to protect labor rights are essential to create the political space necessary to allow workers to form trade unions and other civil society organizations that can act to counterbalance the virtually unchecked power of global capital.

Any proposals for enforcing worker rights globally must be made in the incredibly complicated and confused context of global politics. While there are certainly flexible positions emerging from outside the U.S. and Europe,1 much of the debate over proposals to add labor rights to trade agreements is mired in an intense debate over the motives of the proponents of this idea: is there a genuine concern for workers or is it a pretext for protectionism? Those advocating some form of international labor rights regulation are often labeled protectionists, even by progressive organizations from the South,2 as well as Southern governments and business interests in the North,3 which oppose any social regulation that would endanger the current supply of cheap, exploitable labor, thus creating a very unlikely alliance of opposition to social regulation in the global economy. Fortunately, more and more trade unions and non-governmental organizations (NGOs) from the South are recognizing that their people are being exploited by multinational companies.

Pharis J. Harvey, the Executive Director of the International Labor Rights Fund, is the author of Trading Away the Future: Child Labor in India’s Export Industry. Terry Collingsworth, General Counsel of the ILRF, is the author of numerous articles on labor rights in the global economy. Bama Athreya, Deputy Director of the ILRF, is the author of a forthcoming book on workers in Indonesia.
Developing Effective Mechanisms

(MNCs) operating on a global basis, and the only solution for dealing with them is worldwide labor regulation. The lingering perception by opponents of a global labor regulation that North Americans and Europeans, regardless of institutional or political affiliation, are pressing in unison for a social clause to prevent job loss in their own countries by removing the comparative advantage of cheap labor in the South must be directly addressed. Based on past practice, this view is not entirely without justification. Many Northern trade unions and governments have been very clear in advocating policies designed to protect and preserve jobs. Before the recent, systematic integration of the global economy, that was a reasonable strategy for any nation to pursue. Everything has changed now, however. No country can pursue a domestic agenda in a vacuum. No union or NGO can confront effectively the global power of MNCs without global allies. While unions and NGOs continue to have their territorial battles within and across national boundaries, the MNCs (largely North American and European) are united in their global vision to protect property and investments, and to keep wages low and profits high. This is evidenced quite dramatically by the success of highly-competitive technology firms in cooperating for their mutual interest in securing the inclusion of very strict rules to protect intellectual property rights in the last GATT round and in the North American Free Trade Agreement (NAFTA). This is in sharp contrast to the failure of labor and human rights organizations to achieve inclusion of an enforceable labor or social rights clause in these trade agreements.

From the perspective of trade unions and NGOs from the North seeking to advance a new economic vision for workers in the global economy, a necessary prerequisite for successful cooperation with partners from the South then is resolution of a very basic question: If the major reason that unions and NGOs in the North would act internationally to improve conditions for workers is to protect jobs, then the workers in Bangladesh or Mexico or China or any other country where MNCs have moved significant manufacturing operations should refuse to cooperate with any initiatives that could endanger their jobs. At the same time, unless unions and NGOs from the North can successfully reach out to workers in other countries to implement a strategy to enforce worker rights globally, no one will be able to address the needs of any workers in the global economy, whether from the North or South.

The major point of this paper is that workers in different countries are not adversaries and there is no actual conflict of interest between them. Broad-based economic development is a win-win proposition for workers. Workers in all countries must grasp that they are presently in a doomed competition for low-wage jobs, while MNCs are reaping the benefits of a global surplus of cheap labor. Workers everywhere must return to basics and act together to deal with the global power of MNCs. The unifying theme can be that all workers will benefit if global wages rise. The economic analysis supports this position. Workers in the North will benefit if rising wages in the South fuel consumer demand and a growing part of this is consumption of products from the North. If in fact workers in the South can enjoy rising incomes without suffering significant job loss, this will be a substantial benefit for them. The bottom line is that the global economy can not grow if workers in the U.S. and Europe, whose high wages fuel global demand for consumer goods, are losing their jobs to workers in the Philippines or El Salvador, who earn currently bare subsistence wages.

The basis for the unifying ideology is the often-repeated mantra: Trade is not an end in itself.
The preamble to the original General Agreement on Trade and Tariffs (GATT), signed in 1947, stated: “Relations among countries in the field of trade and economic endeavor should be conducted with a view to raising standards of living and ensuring full employment.” This long dormant idea should be the central tenant of an international policy for worker rights. Growth in the global economy must now be fueled by rising incomes of the enormous number of workers in China, India, Mexico, Brazil and other emerging economies. If these workers can obtain a liveable wage and have some disposable income to purchase consumer items, this will increase global demand and create jobs for workers everywhere. If the MNCs, and World Bank and IMF economists don’t accept this proposition, then the global trading system must be reassessed for its failure to realize the noble goal of the GATT preamble. It would be difficult for working people in any country to continue to support a system that shifts jobs from high-wage to low-wage countries if it doesn’t offer the immediate prospect for creating new growth through rising wages for the poorest workers, and prohibiting exploitative labor practices.

In this paper, we consider two areas that offer significant prospects for using global trade as a vehicle for improving enforcement of labor rights, including the fundamental rights to associate and organize trade unions, which provide the only sustainable mechanism for ensuring that workers have a voice in the larger economic debate. First, trade agreements can be conditioned to include a substantive standard for worker rights. There is a significant consensus on what international labor rights should constitute a labor clause, which largely includes International Labor Organization (ILO) Conventions ratified by or satisfied by the domestic laws of most countries in the world. This approach requires the direct cooperation of governments and is dependent upon a significant change in direction from a well-rooted “free trade” status quo to an ideology that prioritizes issues of concern to working people and the environment. A second area is the development of “codes of conduct” and mechanisms for monitoring that, in effect, impose a private regulatory system on companies operating in the global economy, enforced by consumer choice. This approach depends upon consumer education and participation, as well as company cooperation. Both avenues offer practical mechanisms for enforcing labor laws and can be pursued on parallel fronts. No proposal for a more just economic system in the global economy can be achieved, however, unless the working people most affected agree to pursue a cooperative strategy.

I. Using Trade as a Lever for Improved Enforcement of Labor Rights

A. The Trade-Labor Rights Linkage

In 1843, Edouard Ducpéiaux, a Belgian economist, issued a challenge to the future that has yet to be realized:

> What argument is so often leveled against projects for industrial reform? It is the tyranny of competition . . . Man disappears in this desperate struggle; he is no longer anything more than a weapon with the aid of which blows are given or parried. . . . Let nations unite for social reform instead of frustrating one another’s efforts. Let them summon a general congress to regulate their mutual concerns: commercial and industrial relations and the problems of workers. All civilized nations should concur in this truly holy alliance which should open to humanity a new area of well-being and universal satisfaction.
Developing Effective Mechanisms

Starting with Ducpétiaux, the historical and conceptual basis for linking labor rights with trade is solid. The founding of the ILO, with ratification of its constitution in 1919, offered real hope of progress with its bold declaration that:

Whereas universal and lasting peace can only be established if it is based upon social justice; And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures. Whereas also 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 . . . .

The vision of the ILO’s preamble remains unrealized, but the ILO has itself consistently reaffirmed the rhetoric. The ILO’s Declaration of Philadelphia, ratified in 1944, stated as a basic principle that “lasting peace can be established only if it is based on social justice.”

The previously cited language of the GATT preamble explicitly linking trade to “raising standards of living and ensuring full employment” demonstrates that even those involved at the early stages of drafting trade rules understood that the major purpose of trade was to benefit people. Following the drafting of the GATT, there was an innovative effort to create an International Trade Organization (ITO) to implement the new trading regime. The ITO would have been charged with ensuring that trade met specific social aims, including elimination of unfair labor conditions. This effort failed largely due to the United State’s refusal to ratify the ITO charter.

In 1927, Herbert Feis’ *International Labour Legislation in the Light of Economic Theory* provided a pre-Great Depression analysis of the relationship between labor standards and international economic growth. Since then, numerous commentators and politicians have affirmed the obvious link between trade and the most essential aspect of the means of production, labor. As former Congressman Donald J. Pease stated as his objective in authoring U.S. legislation linking labor rights to trade: “We seek to provide working people everywhere with the tools with which they can help themselves share more fully in the benefits of international trade.”

The basic rationale for linkage is that poverty eradication and improved conditions for workers
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should be the focus of and primary objective of trade, not incidental, “trickle down” by-products of an exploitative system that provides lopsided benefits to a few MNCs.21 The initial development goal stated in the GATT preamble and echoed in the ILO’s Constitution and the Declaration of Philadelphia has been substituted with a raw form of laissez-faire capitalism that surpasses in cruel effects the last experiment in trickle down economics early in this century.22 The ideology of trade policy has been captured by the MNCs, the one interest group that should be the subject of regulation, rather than the drafter of the rules.

It is essential to any understanding of the need for a new trade policy that there is no such thing as “free trade.” The final draft concluding the Uruguay Round of negotiations and creating the World Trade Organization (WTO) includes several hundred pages of regulations setting the rules of trade and protecting market access for MNCs.23 A 32-page Annex I C deals only with protecting intellectual property rights, and the U.S. government has pursued aggressively the claims of such companies as Microsoft, which charged the Chinese government with failing to enforce its laws on copyright piracy. This current system, which values computer codes more than children and young people who make CDs in sweatshops, reflects the concentrated power of MNCs to impose regulations that protect their interests, and to resist regulations that might cut into their enormous profits. There is no defensible distinction for allowing regulations in a “free trade” regime to protect property but not people.24 This distortion will remain until advocates for worker rights and social justice unify to counterbalance the power of MNCs in setting the rules of the global economy.

B. History of Trade-Labor Rights Linkage in U.S. Trade Law

Labor rights advocates in the U.S. have been quite successful in legally mandating the link between labor rights and trade on a unilateral basis in U.S. law.25 A series of laws have been passed that explicitly condition certain trade benefits on compliance with labor rights:

1. The Generalized System of Preferences Act (GSP),26 which grants developing countries duty free status on many exports to the U.S. conditioned on compliance with “internationally recognized worker rights,” thus providing a substantial comparative advantage in U.S. markets. The worker rights conditionality was added to GSP in 1986. The idea was that the U.S. was spending billions of dollars on direct foreign assistance that was having little permanent impact on solving the underlying problems of poverty. The theme of GSP was “trade not aid,” meaning that it would be a better policy to give benefits that helped economies to develop and grow so that countries could become self-sustaining and direct foreign aid could be phased out;

2. The Caribbean Basin Economic Recovery Act (CBERA),27 which is virtually identical to the GSP program but focuses on the Caribbean basin.

3. Overseas Private Investment Corporation (OPIC),28 which provides financing and insurance to U.S. companies investing in developing countries provided that the host country is in compliance with “internationally recognized worker rights”;

4. The Omnibus Trade and Competitiveness Act, passed in 1988, which amended section 301 of the Trade Act of 1974,29 which applies to all U.S. trading partners and makes failure to comply with “internationally recognized worker rights” an unfair trading practice and subjects the of-
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fender to a wide range of sanctions. Compliance with this law ensures that a developing country will not be subject to trade sanctions;

5. The 1992 Amendment to the Foreign Assistance Act of 1961, which restricts funding of U.S. AID programs that contribute to the denial of “internationally recognized worker rights”;

6. The 1994 Amendment to the Foreign Assistance Act, which provides that “the Secretary of Treasury shall direct the United States Executive Directors of the International Financial Institutions . . . to use the voice and vote of the United States to urge the respective institution . . . to adopt policies to encourage borrowing countries to guarantee internationally recognized worker rights”;

7. The 1997 Sanders Amendment to Section 307 of the Trade Act of 1930, which clarified that the ban on importation of products made with “forced” labor applied to products made with “forced or indentured child labor.”

All of these laws incorporate the five-factor definition of “internationally recognized worker rights” from the GSP provision:

(A) the right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

These U.S. experiments in trade-labor rights linkage have not been very successful for a number of reasons, but they do demonstrate the conceptual premise that trade conditionality can be an effective tool for regulating worker rights. These models also offer insight into the problems that will be encountered in seeking to develop an enforceable labor rights clause as part of the rules of trade.

The most significant problem in realizing the objective of improved labor rights enforcement is the combined foot dragging by conservative U.S. governments and powerful lobbying by the MNCs has prevented any real enforcement of the laws. The administrations of Presidents Reagan, Bush and Clinton have consistently used their discretionary authority to decline to enforce the worker rights provisions of the various laws. The concerned bureaucracies at the U.S. Trade Representative and the Departments of State, Commerce, Labor, and Treasury opposed rigorous enforcement of the worker rights provisions, ultimately resulting in litigation brought by the ILRF to challenge the non-enforcement of the law. Likewise, the ILRF is currently pressuring the Treasury Department to comply with its obligation to require respect for worker rights as a condition to U.S. support for international financial institutions. To date, the Clinton Administration has been hostile to pursuing worker rights at the International Monetary Fund (IMF) or the World Bank. This experience demonstrates that any future solution requires a mandatory and transparent process, not easily undermined by bureaucratic hostility or inertia. Most recently, efforts by ILRF to require the U.S. Customs Service and the Department of Treasury to enforce the child labor provision of section 307 of the Trade Act of 1930 have met with extreme bureaucratic resistance.
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For outside observers of this process, it is crucial to understand that there is not any homogenous “U.S. view.” Advocates for workers pushed for legislation that provided tools to work to improve enforcement of internationally recognized worker rights. The U.S. government and corporate interests disagreed with the policy and have worked to undermine it. That advocates for workers want stronger language and a multilateral mechanism does not change this fundamental dynamic.

The U.S. approach of linking trade to worker rights, while never enforced adequately, drew considerable criticism for being unilateral. This reflects a basic suspicion in the South, and in Europe for that matter, of anything that is perceived as U.S.-initiated action. However, the critics have failed to understand that the U.S. government, as represented by the executive branch, never wanted the laws, never enforced the laws, and resisted any effort to introduce social policy into trade policy. The entire process was an effort by labor rights advocates, with allies in the U.S. Congress, to force the U.S. government to treat labor rights as a priority in its trading relations. These advocates also pressed Congress to pass a law that required the U.S. government to push for inclusion of a social clause in the GATT.

The preferred solution remains a multilateral provision that firmly links labor rights to the trading regime. However, the combination of lackluster U.S. advocacy for the policy, and the absence of any strong allies in the multilateral discussions, resulted in the ratification of the Uruguay Round document without any social clause. At its first Ministerial, the WTO managed to sidestep a renewed call for a social clause by refusing to discuss the addition of a social clause, and reiterating its commitment to observe the Conventions of the ILO, an alternative all concerned knew meant there was no prospect of any enforcement threat since the ILO has no power to impose any penalty for non-compliance. Thus, U.S. advocates for labor rights are left in a bind: they are criticized for pursuing unilateral measures, but received little support in efforts to persuade other governments to join the U.S. in pushing for a social clause at the WTO. Again, any ultimate solution requires a unified effort by labor rights advocates on a global basis. This requires recognition that labor rights advocates in the U.S. are struggling to force the U.S. government to incorporate worker rights into its global trading agenda; the U.S. government is largely a hostile and unwilling partner in this effort, or, at its best, a divided and ambivalent ally.

C. Regional Trade Agreements:
Experiments With Multilateral Labor Rights-Trade Linkage

A firm labor rights-trade linkage with an enforcement mechanism has not been established at a multilateral level. With more than 100 member countries each, the two principal multilateral institutions, the WTO and the ILO, each possess one-half of an enforcement mechanism. The WTO allows economic sanctions against countries that violate GATT rules, but has so far refused to adopt rules on labor rights, insisting that labor issues belong in the ILO. For its part, the ILO can investigate and determine violations of international labor standards, but has no sanctioning power. Another multilateral institution, the 29-member Organization of Economic Cooperation and Development (OECD), has “guidelines” for multinational corporations in their dealings with unions, and a forum for consultation on alleged violations. However, the OECD does not contemplate sanctions as a remedy.

Regional labor rights regimes are starting to fashion a stronger link between labor rights and
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trade. Each of the three main regional groupings—the European Union (EU), the Common Market of the South (Mercosur), and the North American Free Trade Agreement (NAFTA)—has created institutions and mechanisms to treat issues of workers’ rights in connection with economic integration. A review of these three efforts to create labor rights regimes offers valuable lessons for developing new, effective means of enforcing labor rights in trade on a global basis.

1. European Union

Since its founding by the Treaty of Rome in 1957, the EU has developed an elaborate institutional framework for both economic integration and for coordination of military, political, and monetary policy. This includes a plan for a single currency beginning in 1999, although the plan has run into resistance from workers and citizens concerned about cuts in labor standards and welfare benefits considered “acquired rights” after decades of social progress.47

Europe has seen a series of “social charters” of varying scope and effectiveness before the current **Community Charter of Basic Social Rights for Workers** was adopted in 1989:

1. Social provisions of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms included several labor rights provisions drawn from the UN's Universal Declaration of Human Rights. The European Convention and a series of protocols that followed have given rise to many cases involving labor rights and labor standards brought before the European Court of Human Rights, which remains independent from the EU structure.

2. The 1957 Treaty of Rome contained a brief statement of social rights, but with no accompanying mechanism for oversight or enforcement.

3. A 1961 European Social Charter was adopted by the Council of Europe (not an EU institution), applicable to all the countries of Europe.

4. A 1987 Protocol to the 1961 European Social Charter added clauses on social rights affecting workplace equality between men and women, rights to information and consultation in the workplace, and worker participation in setting working conditions.

5. A 1989 Social Charter was approved as part of the formation of the European Free Trade Area (EFTA), which included the members of the EU plus the Scandinavian states and the historically neutral states, along with Eastern European countries that have gradually been joining the EFTA and have now begun to join the EU.

The 1986 enlargement of the EU to include a “South” of Portugal, Spain and Greece prompted a reshaping of these many “social charters” into a new detailed, **Community Charter of Basic Social Rights for Workers** in 1989. The Charter was followed by the “Social Protocol and Agreement” to the Maastricht Treaty on European Union in 1992, which set conditions for adopting binding, Europe-wide legislation on labor rights.

The **Community Charter of Basic Social Rights for Workers** covers these subjects:

— the right to freedom of movement
In the EU system, “Directives” proposed by the European Commission and adopted by the Council of Ministers require member countries to conform their laws to a European standard. On labor rights, the EU has adopted several Directives on such matters as health and safety, equal treatment of men and women, and consultation with workers. A recent Works Council Directive requires that European companies—defined as firms with 1,000 or more employees in two or more countries—consult annually with worker representatives on future employment plans.

The European Commission and the Council of Ministers are the predominant operative bodies in the EU structure. The Commission proposes and the Council, which represents the executive authority of each member country, adopts Directives, the only true “legislation” in the EU system. However, a popularly elected European Parliament is growing in importance, from its beginnings as a merely advisory body to one that is now more assertive. Although it still does not have any power to enact legislation, a power reserved to the Council, the European Parliament does have a role in initiating or blocking Commission proposals.

The Maastricht Treaty of 1992 revised EU decision making powers to permit Directives on certain topics to be adopted by qualified system of majority vote through a weighted voting system meant to balance interests of large and small members. This revision ended the power of a single country to veto a Directive, and binds countries that vote against a Directive that passes with a qualified majority.

The Maastricht social protocol creates a three-tier system of issues subject to possible Europe-wide legislation in the form of Directives. The EU can adopt Directives by qualified majority voting in matters of health and safety, working conditions, information and consultation of workers, equality between women and men, and persons excluded from the labor market. Unanimity is required for Directives that deal with social security, job security, worker participation, employment of third-country nationals, and job creation. However, Maastricht prohibits any Directives on union organizing, collective bargaining, or the right to strike. Considered so integral to national character and so dependent on national history, these matters are reserved to the domestic polity. This is a salient “tiering” of labor rights into different categories with different levels of enforcement, a phenomenon also found in the NAFTA labor rights structure.

A country’s failure to implement an EU Directive in its domestic law can be challenged in the European Court of Justice after exhausting all domestic tribunals. However, the ECJ does not
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have the power to order economic sanctions or to send out a European police (no such police exists) to enforce its judgments when violations are found. The “enforcement” power in the European Union comes down to willingness of countries to abide by ECJ rulings out of a sense of responsibility to each other, based on the notion that if countries began to spurn ECJ decisions, the entire fabric of European integration could start to unravel.

For example, British laws were found by the ECJ to violate EU Directives requiring worker consultation in a plant closing.50 France amended laws limiting night work by women after an ECJ ruling found the laws in violation of EU Directive on equal treatment of men and women.51 German laws providing affirmative action for women workers were recently struck down by the court on similar grounds.52 The German affirmative action ruling suggests that controversies over “reverse discrimination” are not limited to the United States. It also demonstrates that a supranational labor rights authority is not certain to hand down decisions always to the liking of progressives.

There is a general impression outside Europe that the EU labor rights regime is a model to be emulated in NAFTA or in other mechanisms to implement workers’ rights in trade.53 Interestingly, however, European trade unionists and labor rights advocates are highly critical of the EU scheme. A recent proposal to revise the European labor rights system has been submitted by over 100 labor law experts, with the support of European trade unions. They call the current EU labor rights instruments “inadequate” and say that they have “fallen far short of an effective protection of fundamental rights.”54

The Community Charter of Fundamental Social Rights of Workers is a “side agreement,” not an integral part of the Treaty of European Union. It remains an aspirational instrument, not real norms with which countries must comply. Where binding Directives have been enacted, they tend to be in relatively uncontroversial areas like health and safety or worker consultation. As noted above, European Directives can be used to strike down affirmative action laws.

No directives can be adopted on union organizing, collective bargaining, or the right to strike. European employers are pressing for deregulation of the employment relationship and cuts in social benefits, and the European Commission has pulled back from promoting the “Action Programme” for implementing the Community Charter in favor of deregulating measures.55 The movement to “flexibilize” European labor relations has accelerated in recent years as unemployment has risen and manufacturing shops have “run away” to lower cost EU members, to non-EU European countries, and to the United States.56

There is no true Europe-wide collective bargaining. Trade unions are still embedded in their national frameworks, with intermittent cross-border communication and collaboration, despite the presence of Europe-wide labor bodies and efforts to coordinate action under the Works Council Directive. Indeed, some employers are embracing the Works Council Directive as a device to bypass unions and deal with employee representatives drawn from white-collar and lower-management ranks.57 Cross-border collaboration between trade unions through the Works Council process (when a union is the representative for the Works Council) offers great unrealized potential.

2. Mercosur
The Common Market of the South—known as Mercosur in Spanish—resulted from the re­
newed political and economic ties between Argentina and Brazil following the return to demo­
cratic rule in both countries in the mid 1980s. The growing bilateral ties evolved into the idea
of Mercosur when Uruguay and Paraguay joined the two countries with the signing of the Treaty
of Asuncion in 1991 (Chile and Bolivia have since become associate members). As the most
ambitious attempt yet toward regional integration in Latin America, the ultimate goal of Mercosur
is the creation of a “common market,” allowing for the free mobility of investment, labor and
services, as well as trade in goods, among the members. As an interim step toward that goal, as
of January 1995, Mercosur organized itself as a customs union in which the member countries
have a common external tariff covering imports from third countries, with largely tariff free
trade among the four members.

Mercosur countries have focused their attention on the intricacies of economic integration, and
did not initially take up labor rights as part of their agenda. Unions from the four countries
organized a coalition, the Southern Cone Central Labor Coordination (CCSCS in its Spanish/
Portuguese acronym) and fought to have the Mercosur discussions opened up to workers and
social organizations. As a result of this pressure, in 1992 a tripartite Mercosur Working Group
on Labor Relations, Employment, and Social Security was set up, with the initial mandate of
harmonizing labor laws and benefits in the region. Government, employer, and trade union
representatives made up the Working Group and created subcommittees on the following top­
ics:

—individual labor relations
—collective labor relations
—employment
—training
—health and safety
—social security
—sectoral matters (specifically in transportation and agricultural labor)
—review of ILO Conventions and draft of a Social Charter.

Among other accomplishments, the labor Working Group called for member countries to each
ratify 34 Conventions of the ILO deemed relevant and necessary for fair labor standards in the
Southern Cone market. Among these, the Working Group noted that 11 Conventions had al­
ready been adopted by all four countries:

—No. 11 on unionization in agriculture
—No. 14 on weekly days of rest
—No. 26 on minimum wages
—No. 81 on labor inspectors
—No. 95 on salary protection
—No. 98 on freedom of association and the right to bargain collectively
—No. 100 on equal pay
—No. 105 on the abolition of forced labor
—No. 111 on non-discrimination in employment
—No. 115 on protection against radiation poisoning
—No. 159 on retraining.
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The Working Group characterized these universally-adopted ILO Conventions as substantive labor rights norms for Mercosur, setting a stage for consideration of further measures. The CCSCS went further and drafted a complete Social Charter for consideration in the Working Group, incorporating relevant clauses from international human rights instruments and from other ILO Conventions.

As described by the Brazilian Confederasion Unica de Trabajo (CUT), the Charter “was conceived as a way to improve social and living conditions, strengthen democracy and protect those sections of the population most vulnerable to the effects of economic integration. It is inspired by a concept of human rights that extends beyond labor rights, encompassing the basic individual rights of all citizens in the Mercosur—life, liberty, health, education, nutrition, a safe and healthy working environment, and a social safety net—as well as collective rights, such as freedom of organization, collective bargaining, the right to strike, and freedom of information.”

To date, the governments have not officially responded to the Charter proposal, effectively blocking its adoption.

The unions have further proposed that issues related to the Charter of Fundamental Rights be dealt with by two additional institutions: the Mercosur Commission for Social Rights and the Committee of Specialists. The Commission for Social Rights would be made up of two representatives from each country’s government and one from each country’s professional sectors. Its functions would be “to ensure compliance with the rights and obligations stipulated in the Charter; to issue directives to increase the effectiveness of the Charter; and to propose to the Council of the Mercosur economic measures, such as fines or tariffs, as penalties against countries that fail to comply with the Commission’s resolutions.”

The 1994 Protocol of Ouro Preto established a permanent institutional structure for Mercosur. However, the countries rejected new trade union demands for a Social Charter with enforceable labor rights. Instead, Ouro Preto created an Economic and Social Consultative Forum (FCES in its Spanish/Portuguese acronym) in which business, labor, and other social sectors can make non-binding recommendations to the governments on labor rights and labor standards. Ouro Preto also created a Joint Parliamentary Commission (CPC) for selected lawmakers of member countries to consult with each other and to serve as a bridge to their respective legislatures for Mercosur matters. Meanwhile, Working Group 10, the formal tripartite Mercosur body on labor relations, employment, and social security, continues to deal with labor issues, although control by government and employer representatives makes a breakthrough on labor rights unlikely in the near term.

As with the FCES, the CPC has no power to adopt a “charter” or any form of Mercosur-wide legislation. Both bodies have an inherent weakness of a purely recommendatory function. Both governments and employer organizations have resisted an elaboration of region-wide labor rights and labor standards, insisting that these issues remain in the domestic lawmaker sphere. However, trade unions and popular organizations have recognized the potential of the FCES and the CJC, as well as of Working Group 10, as arenas for promoting progressive labor policies to accompany regional economic integration.

Within these limits of the Mercosur framework—the labor Working Group controlled by governments and employer groups that continue to block a Social Charter, and an FCES and CJC
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It remains to be seen whether a common market can be built without a complex institutional structure that can act as one of the driving forces of the integration process. Without independent supranational institutions, it is unlikely that Mercosur will be able to make much progress toward a common market, and thus development of common labor and environmental standards may be a very slow process. This is illustrated by the EU process, where the countries have a much higher level of economic development but are still struggling with the economic aspects of integration. The Southern Cone trade unionists generally concede that they will not be able to achieve their goals in the current context, and are actively pursuing other strategies. One alternative is demanding the inclusion of a formally constituted Labor Forum, equivalent in status to the already existing Business Forum, in connection with the creation of the Free Trade Area of the Americas (FTAA).

Despite the significant political obstacles to establishing enforceable social clauses within the Mercosur structure, the experience of creating the Charter of Fundamental Rights and working jointly for worker representation in the Mercosur negotiations has created the conditions necessary for the unions and social organizations to exercise mutual solidarity in the countries of the region, and has generated innovative proposals for implementing a social clause.

3. NAFTA

The labor side agreement to the North American Free Trade Agreement (NAFTA), the North American Agreement on Labor Cooperation (NAALC), is the first labor agreement explicitly related to a regional trade pact containing potential economic sanctions for labor rights violations following an arbitration process. NAALC has, however, been consistently criticized for being primarily cosmetic because these sanctions apply only to a narrow category of rights. With respect to the most important labor rights, particularly the right to associate, there are no meaningful enforcement mechanisms.

The agreement stresses cooperation on labor issues among the three NAALC countries, Canada, Mexico and the United States. At the same time, however, the NAALC creates procedures for critical reviews by each country’s labor department, and by independent, non-governmental experts, of another country’s performance in enforcing domestic labor laws. The governments that negotiated the NAALC are in the midst of a four-year review required by the Agreement. Unions, human rights organizations, employers, and other non-governmental actors have varying views of the NAALC, as do labor law and industrial relations experts that have been analyzing it.66

The core of the NAALC is found in 11 Labor Principles which, while not formally constituting a social charter, lay a foundation for common continental norms. The NAALC Labor Principles include:

1. freedom of association and protection of the right to organize;
2. the right to bargain collectively;
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3. the right to strike;
4. prohibition of forced labor;
5. labor protections for children and young persons;
6. minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;
7. elimination of employment discrimination on the basis of such grounds as race, religion, age, sex, or other grounds as determined by each Party’s domestic laws;
8. equal pay for men and women;
9. prevention of occupational injuries and illnesses;
10. compensation in cases of occupational injuries and illnesses; and
11. protection of migrant workers.

The NAALC expressly states that these Labor Principles “do not establish common minimum standards,” but the countries are “committed to promote” them in their domestic law. Indeed, despite the recognition in the NAALC preamble that there should be an effort to “protect, enhance and enforce basic workers’ rights,” the countries generally assume that their domestic laws already conform to the Labor Principles—an assumption that has been challenged in early cases alleging violations of the NAALC.

Connected to the NAALC Labor Principles are six Obligations spelled out in the Agreement. The first is a “general duty” obligation to provide “high labor standards.” Other obligations are to effectively enforce domestic labor laws, to provide for private right of action giving legal recourse to aggrieved workers under domestic labor law, to provide for due process, transparency, and other procedural rights in the domestic labor law system, to publish and provide public access to the labor laws, and to promote public awareness of workers’ rights.

The NAALC stresses sovereignty in each country’s internal labor affairs, recognizing “the right of each Party to establish its own domestic labor standards.” It does not create a new labor rights enforcement agency to supplant the domestic authorities of each country. NAALC negotiators took pains to declare that “nothing in this Agreement shall be construed to empower a Party’s authorities to undertake law enforcement activities in the territory of another Party.”

The NAALC also does not create a supranational tribunal to take evidence and decide the guilt or innocence of employers involved in labor disputes, or to order remedies against violators. This is left to domestic authorities. Instead, the NAALC countries created a system for mutual review of labor matters and labor law enforcement in defined areas of labor law. These reviews are conducted first by agencies in each others’ labor departments and then, depending on the subject area, by independent, non-governmental evaluation committees or arbitral panels.

One core obligation assumed by each of the NAALC parties is to “effectively enforce its labor law.” While the countries have not yielded sovereignty on the content of their laws or the authorities and procedures for enforcing them, they have broken with traditional notions of sovereignty by opening themselves to critical international and independent reviews, evaluations and even arbitrations over their performance in enforcing labor laws. In three key areas—minimum wage, child labor, and occupational safety and health—the countries created a prospect of fines or loss of NAFTA trade benefits for a persistent pattern of failure to effectively enforce domestic law.
Despite the availability of the NAALC to provide wide-ranging scrutiny of labor law enforcement in member countries, fewer than ten complaints have been filed in the four years since the Agreement went into effect. The lack of concrete remedies to benefit workers whose rights have been denied discourages participation by organizations lacking resources to participate in a process that will most likely result only in a “Ministerial Consultation.” No employer has ever bothered to appear and present testimony in defense of allegations of labor rights violations since there is absolutely no provision in NAALC allowing a remedy against a private employer. One complaint of discrimination against pregnant women workers in the maquiladora factory zone along the U.S.-Mexico border was the first case with the potential to go beyond ministerial consultation. In the hearing on the Han Young case, substantial evidence was presented on health and safety violations, raising for the first time the prospect of a case going to the arbitration procedures of NAALC. There still has not been a case filed raising squarely matters of minimum wage or child labor, other issues that can be subjects of arbitration under the NAALC.

Most complaints have been aimed at events in Mexico. In the one case involving the United States, a plant closing by the Sprint Corporation came under intense scrutiny through a NAALC review and led to a broad study of anti-union plant closings in the three NAALC countries. However, a U.S. court of appeals ultimately overruled a decision by the National Labor Relations Board (NLRB) that the plant closing was an unfair labor practice. The court’s final ruling found in favor of the corporation, declaring that the plant closing was motivated by economic factors, not by anti-unionism. U.S. unionists have asserted that this case exposes the fundamental flaw of NAALC: if domestic law fails to adequately protect worker rights, NAALC is powerless to improve the substantive standard for worker rights.

There is no question that the NAALC was designed to be a cooperative process which did not interfere with domestic labor law standards. Advocates for worker rights have consistently identified three fundamental weaknesses preventing NAALC from serving as a process for improving worker rights enforcement:

- the lack of harmonized international labor standards, based on ILO Conventions or other agreed sources, that compel countries to improve their labor laws,

- the inability of the NAALC to achieve specific remedies when workers’ rights are violated, and

- a division of the 11 Labor Principles into three “tiers” by which only three of the Principles (minimum wage, child labor, and health and safety standards) can be subject to arbitration and possible use of trade sanctions as a remedy, and the three key Principles for trade unions—those on organizing, collective bargaining, and the right to strike—can only be subject to review and ministerial consultation, and not to independent evaluation or arbitration.

In sharp contrast, NAFTA sets strong, common international standards on Intellectual Property Rights (IPR), forcing changes in Mexican laws that provide for swift, sure remedies for violations. NAFTA carefully defines intellectual property rights and protections for such things as patents, copyrights, trademarks, service marks, plant breeders’ rights, industrial designs, trade secrets, semiconductor chips, computer programs and databases. These careful definitions of protected rights are followed by tough enforcement mechanisms. Violators of intellectual prop-
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Despite its weaknesses, the hybrid approach of the NAALC—preserving each country’s sovereignty over labor laws and their enforcement, but submitting to reviews by each other and by independent, non-governmental bodies—is probably as far as the three parties to the accord countries were willing to go in fashioning the first labor accord connected to an international trade agreement. This is especially true where the United States dominates the economic relationship among the three NAFTA countries, and both Mexico and Canada see their own labor laws as more protective of workers than those of the United States. The smaller economies resist any move toward harmonization that would be influenced by the gravitational pull of U.S. economic power. Indeed, there is already a fear among labor rights advocates in Mexico and Canada that the U.S. deregulatory model of labor relations is making inroads in their countries.85

The NAALC contains several features that might be encouraged in further development of a global clause linking labor rights and trade. For one, the 11 Labor Principles range far beyond the three or four “core” labor standards often advocated as the basis of a labor rights regime. For another, NAALC is a good model for access to the process and transparency. There is ample opportunity for the involvement of trade unions and NGOs to use the NAALC, both in filing complaints and in participating in public hearings and other events. Finally, procedures for review, evaluation, and arbitration force governments to be called to account for their domestic labor law enforcement in a public international forum. This provides much greater scrutiny than behind-the-scenes ILO investigations, or other forms of diplomacy.

Other benefits stemming from NAALC relate to the unprecedented increase in exchange, communication and collaboration among trade unionists, labor rights advocates and labor researchers at the tri-national level. Under the Agreement’s procedures, complaints about violations in one country must be initiated in another country. Thus, trade unionists and their allies are compelled to collaborate across North American borders to use the NAALC. Labor solidarity is growing and will hopefully gain strength to allow worker groups to have the political power to insist upon an improved mechanism for enforcing labor rights. Workers in the three NAALC countries are cooperating and demonstrating that they have much to gain by acting in unity against violators of their rights. Trade unionists and allied groups in the three NAALC countries now regularly send delegates to each others’ conventions, conferences and other activities. They are trading bargaining information, translating papers and studies and finding new ways to link their movements. In some instances, union organizers have crossed borders to assist in organizing campaigns in another country. While it is not only the labor side agreement driving these actions, the NAALC creates a framework for concrete work nourishing long-term gains in labor solidarity.

4. APEC

Concrete steps have been taken to discuss integration of the economies of Asia through a loose association called Asia Pacific Economic Cooperation (APEC). Despite the lack of any binding agreements on integration and the early stage of the discussions, trade unions and NGOs have used the APEC forums to gather to express solidarity, and to make clear at a very early stage of the discussions that any economic integration must include provisions to protect work-
ers and the environment. Following the Manila People’s Forum in November, 1996, those as­
sembled issued a “Plan of Action” that included a demand to the governments of APEC coun­
tries to honor their existing international commitments, including ILO Conventions ratified, and
to “respect, enforce and improve national laws protecting human and labor rights, and where
these laws do not meet international standards, to amend them and bring them into compli­
ance.” Addressing a particular concern in Asia, the Plan requires that “informal sector work­
ers, migrants, farm workers and free trade zone workers must be included within labor laws and
governments must inform migrant workers of their legal rights.” The challenges of integrating
the extremely diverse economies and cultures of the Pacific basin are enormous. The APEC
process must also be viewed as a crucial challenge for advocates for social justice to use the
lever of trade to improve labor rights enforcement in countries of Asia that represent some of the
most repressive regimes in the global economy.

5. Concluding Summary of Regional Trade Agreements

A review of regional labor rights regimes reveals a rich variety of mechanisms for implement­
ing labor rights in trade. The European Union has elaborated an extensive social charter, includ­
ing free movement of workers, and has a mechanism for enacting Europe-wide legislation through
Directives in selected labor rights areas. A European Parliament provides a democratic political
voice for EU citizens, even though its functions are basically advisory rather than legislative.

The European Court of Justice takes up labor rights cases, and has succeeded in changing some
wide consultation between employers and workers, which might contain seed of Europe-wide
collective bargaining.

Mercosur has not adopted either a social charter of the European type, or a statement of prin­
ciples like that of the NAALC. However, Southern Cone unions have drafted and promoted a
complete Social Charter, and the Southern Cone countries have established an innovative mecha­
nism for the participation of trade unions and other social groups in the Economic and Social
Consultative Forum, and in Working Group 10 on Labor Relations, Employment, and Social
Security. Mercosur also established a Joint Parliamentary Commission giving a voice (non­
binding) to elected representatives in the region. The Mercosur unions are also taking the lead in
demanding a Labor Forum equivalent in status to the Business Forum in negotiations on a hemi­
spheric free trade agreement.

The NAALC provides an extensive set of Labor Principles that prepare the ground for a social
charter even while domestic sovereignty over labor law matters is preserved. It provides for a
broad, flexible program of international reviews, consultations, evaluations, and possible arbi­
trations on questions of domestic labor law enforcement, with many opportunities for participa­
tion by trade unions and allied groups.

All the regional systems have critical weaknesses, too. The Social Charter has not halted the
drive toward U.S.-style “flexibility” in employment relations. The EU continues to preclude
rights of organizing, collective bargaining, and strikes from treatment by Europe-wide Direc­
tives. The NAALC precludes the same subjects from independent evaluation or arbitration, and
avoids setting common international standards and specific remedies for labor rights violations.
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The Mercosur labor rights framework is limited to consultation and recommendations with no binding effect. In all three regimes, the focus is on the actions of governments rather than on actions of the multinational corporations that violate workers’ rights.

The European Union has taken more than 40 years to reach its current, still-flawed social charter. NAFTA and Mercosur countries have just begun experimenting with new instruments addressing the labor rights-trade linkage. The strengths and weaknesses of various regional labor rights regimes provide a rich field for analysis and dialogue among labor rights advocates along North-South, North-North, and South-South axes. Such a dialogue can move us beyond generalized demands for high labor standards toward a concrete, practical agenda to implement labor rights in trade. If labor rights advocates see the EU, Mercosur, and NAFTA labor rights regimes as “first drafts” of a worker rights-trade link, then we can begin developing a long-range strategy to improve them in future “drafts,” conscious that there is no finality—there is only continuing struggle—in the movement for labor rights in international trade. We now have sufficient experience, however, to move towards agreement on a universal model for a social clause so that advocates can work in solidarity towards the same objective. Emerging regional trading blocs, such as FTAA and APEC, present immediate opportunities to improve upon existing models.

D. The Substance of a “Labor Clause”

There is an emerging consistency on the substance of the “labor clause” to trade agreements. The debate really begins with how such a clause would be enforced internationally, the topic of the next section.

The most widely-accepted version of the labor clause has been proposed by the International Confederation of Free Trade Unions (ICFTU), the international body of national trade union federations. The ICFTU’s proposal is to define the social clause based on key Conventions of the ILO, which have been ratified by most countries of the world. These are:

- the right to associate (ILO Convention No. 87);
- the right to organize and bargain collectively (ILO Convention No. 98);
- equal employment opportunity and non-discrimination (ILO Convention Nos. 100 and 111);
- prohibition of Forced Labor (ILO Convention Nos. 29 and 105); and
- prohibition of Child Labor (ILO Convention No. 138).

This version of the labor clause is endorsed by most of the International Trade Secretariats, which are international groupings of trade unions on a sectorial basis. Two of the largest and most influential, the International Textile, Garment & Leather Workers Federation (ITGLWF), and the International Metalworkers Federation (IMF), have produced booklets to promote and explain this version of the social clause to their affiliates.

Perhaps most significant, the OECD has specifically endorsed a version of the labor clause nearly identical to that proposed by the ICFTU. In a recent publication, *Trade, Employment and...*
Labour Standards: A Study of Core Workers’ Rights and International Trade, the OECD advocates for inclusion of “core” labor rights, which are identified as freedom of association and the right of collective bargaining, prohibition of forced labor, prohibition of discrimination in employment, and prohibition of exploitative forms of child labor. The OECD characterizes these worker rights as part of “international jurisprudence concerning human rights.” Except for a refusal to endorse the ILO’s child labor convention (No. 138), the OECD Report expressly accepts the same ILO Conventions as the ICFTU in giving substance to the core labor standards. Regarding child labor, the OECD took issue with the ILO’s focus in Convention No. 138 with the age of the child rather than the conditions under which children worked. The ILO now has a new Convention No. 187 on child labor that will focus on the most “intolerable” forms of child labor. Perhaps this will merge the ILO and OECD views. At this point, it is significant to note that the OECD has, for all practical purposes, proposed a social clause that is virtually identical to that proposed by the ICFTU.

Other proposed versions of a labor clause include minimum standards for health and safety and an acceptable minimum wage, based on the level of economic development of a particular country. This approach is consistent with the definition of “internationally recognized worker rights” contained in the provisions of U.S. law that link worker rights with various trade benefits, which includes “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.” Likewise, the 11 Labor Principles of NAALC go well beyond the “core” labor standards and include issues of wages, health and safety, and migrant worker protections.

There is some disagreement over the merit of including a working conditions provision in the social clause. Some argue that it fuels the “protectionist” objection to the social clause and reinforces the accusation that those in the North simply want to drive up wages in the South to protect Northern jobs. The response to this is that the proposal to include a minimum wage, for example, has always been stated firmly by worker rights advocates to be intended to set wages in the context of the level of economic development of the subject country, which would certainly allow for an extremely broad range of wages and would permit low wage countries to retain a significant comparative advantage. In the Bangladesh garment sector, for example, the monthly minimum wage set by law for an unskilled worker is 930 taka per month, approximately $23. Virtually none of the workers in the garment sector received the minimum wage, and were instead paid 500 taka per month or less.

The greatest danger for a developing country trying to improve wages and develop a domestic economy is that a close competitor would try to undercut its labor costs to steal business, not that U.S. or European workers, who earn more than 50-100 times what workers in the least developed country earn, will successfully lure jobs back following a modest increase in the minimum wage. Thus, if Bangladesh wanted to raise its wage rates in the garment sector to $80 a month, but China, not bound to any social clause at this point, keeps its wages at $40, Bangladesh would no doubt lose business to China. Bangladesh’s decision to increase its minimum wage to $80 per month would certainly not cause a company to return its manufacturing to New York City, where even workers making the minimum wage earn at least $1000 a month. This reality was emphasized last year in Indonesia, when shoe manufacturers stated that if the country’s minimum wage continued to rise, they would shift operations to countries with lower wages.
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MNCs also use countries’ desires to maintain their “competitive advantage” to undermine trade union rights. A union leader in the Philippines recently expressed his difficulty in organizing unions: “Our biggest problem here in the Philippines is job flight . . . As soon as we start to organize a union, the company threatens to move to Vietnam.” For this reason, it is crucial to include language protecting workers’ rights to associate in any social clause.

It is thus in the interest of Bangladesh, or the Philippines, or any other country seeking to raise the standard of living of its people, to support a social clause with minimum standards to ensure that no country is able to win the race to offer the cheapest, most exploited labor in the world. Without a binding social clause to set a floor under which no country could go, the world’s poorest workers remain pawns in a “beggar thy neighbour” economy in which only the MNCs are truly happy.

Assertions that exploitative working conditions and extremely low wages are a natural step of economic development are misplaced. Early in this century when new industrial companies were struggling to develop, sweatshops were the norm. What has changed is that highly developed companies like Motorola and Wal-Mart, are taking advantage of the undeveloped state of countries in the South to exploit workers until the countries do develop, and then they move on to another place and exploit a different group of workers. The only economic law at work here is that companies are looking for the lowest possible wages and the most docile workforce, not to survive a struggle to get a foothold in the market, but to maximize already impressive profits. Based on our research in Bangladesh, India, Indonesia, Thailand, and other evolving economies, there is little question that for most workers the minimum wage is the prevailing wage rate. Until trade unions are able to secure collective bargaining agreements for these workers that improve upon the minimum wage, it is important to emphasize just how crucial the wage issue is to most workers. We encourage an international process to develop a formula for determining a liveable wage, based on local economic conditions, and to incorporate this in the labor clause.

Whether to ultimately include a provision in a social clause setting minimum wages and conditions remains an economic, political and strategic decision that should follow careful discussion between the organizations participating in an alliance to promote the social clause. Likewise, whether to add environmental or other social provisions is a strategic question based on what can reasonably be accomplished. It should be noted, however, that at a people’s forum parallel to a governmental gathering in Brazil in May 1997 to discuss the creation of a Free Trade Area of the Americas (FTAA), there was an extraordinary showing of unity between unions and NGOs resulting in a broad declaration stating:

There should be no FTAA agreement if it is to be created along the lines of other existing agreements, such as NAFTA. We need an agreement that promotes genuine development for all of the peoples of the hemisphere, one that recognizes and attempts to reduce the differences in levels of development, one that allows for integration of our economies based on democratically determined national development models, and one that is based on consensus. . . We are proposing an agreement designed for sustainable development rather than for trade liberalization. Any trade agreement should not be an end in itself, but rather a means towards combatting poverty and social exclusion and for achieving just and sustainable development.
The Declaration also demands democratic participation in negotiating any FTAA, and to require a social clause that includes protection for labor rights and the environment, as well as provisions aimed at regulating capital flows, negotiating debt reduction, and resolving disputes over non-tariff barriers. The declaration was ultimately signed by the ICFTU’s Inter-American Regional Organization of Workers, the Alliance for Responsible Trade, which includes the ILRF and IPS, a number of significant NGOs, including the Mexican Action Network on Free Trade (RMALC), Common Frontiers (Canada), the Brazilian Association of NGOs (ABONG), the National Indigenous Council of Mexico, and the Canadian Association of Labor Lawyers.

There are a number of other very compelling models for a social clause. As a function of proposals made during the NAFTA debate, several organizations produced a document, *A Just and Sustainable Trade and Development Initiative for the Western Hemisphere*, which suggests five basic principles that should govern any trade agreement: respect for human rights, environmental and social sustainability, reduction of inequalities, democracy and open participation, and non-preemption of government protections. Ultimately, a detailed plan for a social clause embracing worker rights, environmental protection, land reform, debt reduction, protection for rights of women and indigenous people, and democratic processes is proposed.

Again, inclusion of issues beyond the core labor standards must be resolved in the context of deciding which form of the clause has the best chance of becoming a reality. If, however, environmental and/or social NGOs are to be added to a “social clause” coalition, some provision to address their specific concerns will need to be included in the social clause that may require financial incentives to offset compliance. Perhaps the most fruitful approach would be to first agree on the components of the social clause and then engage in a prioritization process to phase in the list of rights across several years. As part of this discussion, development aid and debt reduction could be used to offset the costs incurred by a developing country as it phases in the rights of the social clause. The EU used a phase in approach with its GSP system, first activating prohibitions on forced or child labor, and then gradually phasing in other core labor rights.

The issue of development aid targeted to compliance with labor standards is an extremely important component of any effort to secure agreement internationally with a social clause. To take one example, India, with at least 50 million child workers, could never sign on to a labor clause that included a prohibition on child labor. Regardless of whether India could afford to solve its own child labor problem by reprioritizing available resources, India has no incentive to force its own compliance by supporting a labor clause. To overcome present noncompliance, countries like India will require significant development assistance.

To conclude on this issue, we refer to the negotiation process that occurred at Belo Horizonte in drafting the declaration. The ILRF and IPS participated in the discussion. There was remarkably little disagreement over what issues to cover in the labor clause. Generally, the organizations represented understood that any of the options would be an amazing victory if it could be included in the FTAA or other trade agreements. Virtually everyone accepted the reality that the proposal for a social clause must be “reasonable” to have any chance of being enacted. The issue that few had thought about carefully, but most acknowledged was the key question, was how the social clause would be enforced. This alone would determine whether the goals expressed in the
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substance of the clause would be realized. This would also determine the force of resistance from the MNCs and hostile governments. If there was little or no threat of enforcement, such as with the ILO Conventions, then those in opposition would not be overly concerned. If, however, the labor clause is designed with real teeth, then the opposition would be fierce. Also, to gain support of unions and NGOs in the South, these enforcement provisions must be carefully designed to ensure that the teeth are not used for protectionist purposes. The major challenge remains to have an enforceable mechanism that will allow workers to realize their rights.

E. A Proposal to Enforce the Terms of a Labor Clause

1. Background Introduction

A labor clause, whatever the specific terms ultimately are, will make a concrete improvement in the lives of working people in the global economy only if there is an effective enforcement mechanism. This assertion is best illustrated by considering that the ILO, which celebrated its 80th anniversary in 1999, has developed nearly universal labor standards, but has not played a significant role in alleviating worker exploitation in the modern global economy because it lacks enforcement power. Likewise, the Labor Principles provided in the NAALC, while comprehensive, have not been significantly advanced by the NAALC due to extremely weak enforcement provisions.

The labor clause, by its nature, raises issues of individual harm suffered by workers and their families as a result of the failure of employers to comply with labor laws set in domestic law and by international standards. Further, there is almost always an issue of a government failing to act to enforce properly the labor laws. A labor clause is thus designed to give voice and authority to workers, often against the combined power of governments and employers. This will only be realized if there is a democratic process to finalize the terms of any trade agreements to not only include a labor clause, but to ensure that the other provisions of the trade agreement support social and environmental sustainability. In other words, an enforceable social clause is not a panacea; trade agreements themselves should reflect a primary concern with improving the lives of people and protecting the environment. If, instead, a trade agreement permits widespread exploitation of workers and the environment, and it has some mechanism for seeking redress for harm that has already occurred, this is not a sensible path to sustainable development. This highlights why it is not advisable, therefore, simply to advocate using mechanisms that protect intellectual property in the WTO, for example, to protect the rights of workers. The WTO, as it is presently constituted, can not be trusted to protect the rights of workers because the government and MNC powers that created the WTO are the powers from which workers need to be protected.

It is our hope that by the process for developing an effective enforcement mechanism for the labor clause, we will also stimulate debate in other areas, including among advocates for the environment and indigenous people, to ensure that we speak with one voice. Any future trade agreements must be negotiated using a democratic process with the aim of creating a new trading regime that deals with social issues as the primary objective of trade, rather than as a remedial afterthought, if at all. This was certainly the sentiment expressed by the assembled labor, human rights and environmental NGOs in drafting the Belo Horizonte Declaration.
As worker rights advocates managed to do in denying President Clinton “fast track” negotiating authority, one aspect of eventually achieving the goal of a labor clause is to block efforts to expand free trade agreements unless they reflect acceptance of the idea that trade should benefit people and protect the environment. The major task for proponents of a labor clause is to devise a politically realistic enforcement model so that we can promote a positive agenda, rather than serve only in a reactive role. Further, it bears repeating what many argued during the original NAFTA debates: obviously increased global trade and economic integration are occurring at a rapid pace even if there are no new trade agreements. Doing nothing, or serving only a blocking role, will not halt global integration. We need to advance a clear alternative agenda. Each new trade agreement presents an opportunity to promote an alternative view of the trading system.

Many organizations have implicitly or explicitly assumed that the ultimate goal is creation of a supranational enforcement body that oversees protection and enforcement of labor rights in the global economy by issuing binding remedial orders against offending governments and/or MNCs. The processes of this body would be democratic and transparent, and individual workers could file complaints to have their rights fairly adjudicated. While this may be a possible goal, it is not likely to happen in the near future. It is hard to imagine the major powers in the global economy, especially the U.S. and China, ceding significant national sovereignty to enforce worker rights to a supranational body.

There is room for a concrete series of steps to achieve an ultimate and more ideal result, but careful thought should be given to devising intermediate steps that are worth accomplishing in themselves. The discussion in this section will first provide an introduction to and context for the idea of an enforcement mechanism for the labor clause. We will then provide a recommended proposal which includes the key elements for effective enforcement. In the proposal we will identify areas where strategic choices need to be made between specific options. It is our goal to facilitate the development of agreement on a uniform enforcement mechanism that can be applied to virtually any trade agreement. Like the substance of the labor clause itself, it is essential to develop consensus around a proposal for enforcement.

2. Context for Seeking Enforcement of a Labor Clause in Trade Agreements

Until the WTO held its first Ministerial Conference and issued the Singapore Ministerial Declaration on December 13, 1996, most of the discussion for enforcing a social clause centered on inclusion of a social clause in the WTO. The ICFTU’s proposal for enforcement was to add a provision to the WTO Charter:

The contracting parties agree to take steps to ensure the observance of the minimum labour standards specified by an advisory committee to be established by the WTO and the ILO, and including those on freedom of association and the right to collective bargaining, the minimum age for employment, discrimination, equal remuneration and forced labour.

This proposal would have tied the enforcement mechanism to the WTO, while giving the ILO responsibility for determining whether a country was in compliance with the labor standards. This was designed to capitalize on the strength and credibility of the ILO in identifying violations of its conventions, but keeping enforcement power at the WTO. This position was solidly
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endorsed by commentators as the best way to proceed.\textsuperscript{133}

The national trade WTO, however, soundly rejected the idea of a social clause and issued the following language relating to worker rights:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in supporting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must be in no way put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.\textsuperscript{134}

The statement leaves no room for optimism that a labor clause will soon be a reality at the WTO. In a thorough assessment of the implications of the WTO’s position, Steve Charnovitz reports that subsequent statements by WTO officials restricted even further the WTO position.\textsuperscript{135} For example, the former WTO Director General, Renato Ruggiero, clarified that the cooperation with the ILO would be limited to information exchange, such as whether ILO programs ran afoul of international trade rules.\textsuperscript{136} There should be no doubt then that the WTO is hostile to the idea of a social clause, there was virtually no support for the social clause at the Singapore Ministerial,\textsuperscript{137} and, as we noted before, it is our belief that even the well-publicized U.S. support was pro forma.\textsuperscript{138} The now famous “Battle in Seattle,” the Second Ministerial held in November 1999, confirmed the WTO’s indifference to social issues, but, more important, demonstrated the widespread dissatisfaction with the current regime for managing the global economy.

The 1999 WTO Ministerial in Seattle also highlighted the need for stronger North/South dialogues. While the U.S. trade negotiating team did agree to raise the idea of a working group on labor within the WTO, in exchange for AFL-CIO support for the overall negotiating agenda, the trade negotiators did little to ensure support for the idea from any developing nation. Indeed, the U.S. team’s disregard for developing-nation input in the Seattle meetings led to a threatened walkout by sub-Saharan African delegates, furious at being excluded from key negotiations. This, perhaps to an even greater extent than actions in Seattle’s streets, led to a breakdown in the meetings. In such a context, the U.S. government cannot be relied upon to raise even the working group idea, let alone that of a social clause, in a manner that will gain widespread acceptance. The push will have to come from somewhere else, and still requires much groundwork. Commentators continue to urge that the labor clause be implemented by a WTO/ILO collaboration,\textsuperscript{140} but this must now be viewed realistically as a long-term goal that can only follow implementation on a regional level of trade agreements with a social clause. As Charnovitz put it, “[t]he stonewalling at Singapore should force a re-examination of strategy.”\textsuperscript{141} Continuing to press member states for inclusion of the social clause in the WTO, as well as including democratic reforms to allow for meaningful participation by workers in the process, should remain a top priority. In the near term, we first need to develop a universally accepted enforcement mechanism that can be used in both regional trade agreements and, ultimately, at the WTO. There should be clear agreement on what interested organizations mean when they press for...
enforcement of a labor clause so that strategic energies can be spent working to gain acceptance for the idea, rather than continuing to debate internally what it is they want, allowing divisiveness to delay concrete action.

3. Key Elements of an Effective Enforcement Mechanism for the Social Clause

The elements described below represent the key aspects of a mechanism designed to enforce the labor clause. It is our initial assumption, based on the discussion in the preceding section, that the immediate prospects for major change at the WTO are not good, and that an alternative should be to work immediately to ensure that any new regional trade agreements include an enforceable labor clause. Probably the most promising initial opportunity is in the context of the FTAA, particularly given that trade unions and NGOs have already signed the Belo Horizonte Declaration. However, the approach here is to develop an enforcement mechanism that can be integrated with the labor clause into any trade agreement with minor modifications. Achieving enforcement of the labor clause through a series of regional trade agreements is a realistic goal, and one that offers the prospect of multiple experiments. As more and more major trading partners are covered by a labor clause, those countries already committed to the labor clause would have some incentive to support changes to allow for inclusion at the WTO level, along with democratic changes.

Our recommendation for an enforcement mechanism does not require any radical changes for the countries involved. The most fundamental concept that must always be at the forefront of efforts to gain acceptance of an enforceable labor clause is that virtually every country in the world has domestic labor laws and has ratified international instruments, including ILO Conventions, that already require compliance with all of the terms of the labor clause. What’s lacking is enforcement, and the effort is to provide for labor laws what already exists for property rights in the global economy: a mechanism to ensure adequate enforcement. We believe, as was discussed earlier, that the major barrier to enforcement of labor laws in the global economy is that individual countries fear that if they require MNCs to comply with the law, the companies will flee to another country that will offer greater freedom from regulation. A major objective of the labor clause is ultimately to provide a worldwide floor for labor standards so that there can be no place that a company could flee to in order to avoid compliance. Thus, the provisions proposed below are designed to achieve what most countries are already legally bound to do: compliance with the terms of the labor clause. The powerful dynamic for enforcement will be to provide incentives for each country to cooperate in obtaining compliance by MNCs with the labor clause and corresponding domestic laws.

We believe that all of the elements discussed below are essential, but there are several options for achieving the objective of a given element. Those choices must be resolved as part of an overall political strategy, and are highlighted here to facilitate debate and resolution among advocates for a social clause. Sample language is offered in discussing some elements in order to better illustrate the concept. Our intention is to facilitate discussion towards agreement on an enforcement mechanism that can become part of a universal effort by unions and NGOs to speak with one voice in pressing for an enforceable social clause.

a. Compliance with the labor clause as a condition to participation in the trade agreement. Regardless of whether we are talking about admission to the WTO or to a new regional agree-
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ment, such as the FTAA, a firm principle must be that all countries seeking to participate in the trade agreement must be in compliance with the clause as a condition to membership. Each country would participate in an extensive review of its law and practice to determine compliance with the standard. If a country is found not to be in complete compliance, it could have probationary membership, provided it agrees to implement specific reforms within two years, for example, subject to ongoing monitoring. The necessary revisions to law and practice could be identified as part of participation in the harmonization process discussed in the next section. If at the end of the two-year period it fails to be in complete compliance, then its membership in the trading group would be terminated with the right to reapply only when there is complete compliance with the labor clause.

Issues to Be Resolved:

i. Who determines compliance with the labor clause? Ideally, this would be something the ILO could do. Certainly, in the context of an agreed format by the participating nations, the ILO is well-suited to assessing whether any given country is in compliance with core ILO Conventions. Indeed, the ILO already performs this function to a certain degree through its annual review of members’ compliance with ratified conventions. Further, when there are persistent problems with a particular country’s compliance with one or more conventions, there is a procedure to create a Commission of Inquiry to investigate fully. The ILO thus has the experience and mandate to perform this function. If, however, the ILO declines to participate, or the process for getting its cooperation is too cumbersome, or, as some assert, the ILO is too lethargic to play a constructive role in international worker rights enforcement, then the subject trade agreement could assemble its own panel of experts to make these determinations. The committee could be drawn from a balance of labor ministry staff from the participating countries and outside experts, or, as was agreed to in the NAALC, could be made up entirely of credible, outside experts. Likewise, trade unions participating in Mercosur have proposed using a “Committee of Specialists” to evaluate compliance with social standards. Whatever its composition, for the remainder of this discussion, the body will be referred to as the “Panel of Experts.”

ii. Can a country not in compliance participate in the trade agreement on a probationary basis while implementing a plan to get into compliance? We recommend that there be a probationary period and suggest two years as a reasonable period to make significant progress. The reason for the recommendation is simply to acknowledge the reality that most countries will not be in complete compliance, and allowing a probationary period will provide some incentive to participate in making progress. This also reflects our view that trade agreements represent an opportunity to make progress on worker rights. If the standard for participation is too high, then the result will be that there will not be any trade agreements and no opportunities to make progress. Assuming this approach is accepted, the idea then is to have the Panel of Experts draft a very specific work plan to bring the country into compliance with the social clause, including specific recommendations for reform of labor laws and improving enforcement mechanisms. A major part of the plan should be evaluation of what development assistance is necessary to secure compliance. It should be very clear that the failure of a country to comply with implementation of the plan within the two year probation period will result in automatic expulsion with the option of reapplying only when there is complete compliance. No country will take its obligation seriously if there is a regular pattern of extending time.
b. Participation in a process to harmonize laws upwardly to be consistent with the social clause. The premise of the social clause is that one or more of the countries participating in the trade agreement either does not have adequate laws or is not enforcing its laws. Otherwise, a social clause would not be necessary. In order to emphasize that the individual countries maintain primary responsibility for ensuring the conditions of the social clause, to allow for unique national solutions, and to avoid creating new multilateral institutions that exist in perpetuity, a process of upward harmonization is recommended. More fundamentally, this will reduce concerns of loss of national sovereignty by emphasizing that the primary intent is to encourage countries to rapidly improve their own enforcement processes to assume responsibility for upholding the law. This will, if taken seriously, require each country to adjust its laws and enforcement mechanisms upwards and to assume direct responsibility for enforcement of the provisions of the social clause. This is one of the major strategies for achieving implementation of the European Economic Community Treaty and was also advanced as a key aspect for the social charter proposed for Mercosur and by trade union advocates at the APEC People’s Summit. This is in sharp contrast with NAFTA, which, in the NAALC, precluded review of or changes to the domestic labor law of the signatories.

Achieving harmony among the relatively similar economies of the European Community is significantly different from attempting to unite the Americas with the extremely diverse levels of economic development, but harmonization should be accepted initially as the ultimate goal. It is important to add, however, that with respect to the issue of minimum wages, or other issues that are based on relative economic condition, we are not suggesting that standards be harmonized to be identical. The issue would be whether there is a minimum wage, for example, that meets the standard in the given country. As noted earlier, in many developing countries, the minimum wage is the prevailing wage, so for most workers having the minimum wage also be a liveable wage, based on local economic conditions, is the most immediate concern that they have. This should be a key concern of the harmonization debate. Another issue that must be specifically addressed is whether the laws of a given country provide for sufficient remedies and penalties to encourage compliance by employers.

A further principle of harmonization is that countries that lack resources and capacity to improve the enforcement of labor laws must be provided with direct assistance to support these activities and offset the costs of compliance. This need goes well beyond compliance with law. For example, a country with a serious child labor problem could need targeted assistance to remove children from the workforce and place them in schools. This is a form of development aid that could actually lead to concrete and sustainable development benefits for working people.

Issues to Be Resolved:

i. Who participates in the harmonization planning process? Certainly, representatives of the member countries should be participants, but there should also be direct participation from concerned organizations, as well as from acknowledged experts. Perhaps the Panel of Experts could provide staff resources for the harmonization process, since the inspections will reveal the precise issues to be addressed with harmonization. There should also be participation from labor unions, NGOs, and employers.
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ii. How long should the harmonization process take? The ultimate decision on this issue depends upon which group of countries is involved. If the entire world is participating through a reformed WTO process, for example, that would obviously require a much longer period than adding another country to NAFTA. It is essential however, to have a clear time frame with specific steps beginning with assessing the laws that need to be improved, amending the laws, and then fully enforcing the new laws. If the subject countries have already agreed to be bound by the social clause, then amending and implementing changes to domestic law to be in compliance with the social clause should not require any major changes in the way things are done and therefore should not require an overly lengthy period of time. This is particularly true since most countries already have adequate laws to satisfy the labor clause and the adjustments will only need to be made to secure enforcement.

c. Participation in an information audit by companies operating in more than one country of the trade area. There must be a firm recognition that employers, not governments, initially deny workers their rights, and then the role of government is to enforce the law. A major goal for effective enforcement of a social clause is to develop a way to regulate the employment practices of companies operating in the countries bound by the social clause. Most of the problems relating to a denial of the rights created in the social clause would be solved if companies respected the law.

In order to have a basis for monitoring the activities of companies, more information is needed. This process can be initiated by requiring as part of the enforcement mechanism for a social clause that all participating countries must cooperate in developing an annual Labor Information Audit of businesses operating in two or more of the trade agreement countries. The audit would be conducted by independent monitors, and would be required of any company that seeks to export or import within the area covered by the trade agreement. The companies would be required to report information pertaining to all of their operations, whether under their own corporate form or through subsidiaries, joint ventures, contractors, or other business forms. The information would include: a) location, b) total number of employees, categorized by job classification and pay grade c) wages paid for each job classification and/or pay grade specified by form of payment (i.e., hourly, daily, weekly, monthly etc. or average wages for piecework) d) total benefits provided to all individual or group of employees, present unionization status of any employees specifying the name of the union, number of represented employees, status of, and a copy of the most recent, collective bargaining agreement, affiliation of union with any central labor body or confederation e) health and safety records, and f) some record of employment practices that might violate the law in one or more trade area countries. The information would be publicly available to inform governments and organizations seeking to enforce domestic laws or the provisions of the social clause.

Issues to Be Resolved:

i. Who would conduct the audits? To ensure credibility, the audits must be done by “independent” auditors. Whether this includes representatives from the respective governments is optional, but it would be desirable to improve the enforcement capacity of government inspectors. The Panel of Experts could certainly be recruited to survey the companies as well, but if the ILO is ultimately selected to serve as the Panel of Experts, it would not necessarily be the ideal group to survey employers. Perhaps a body of independent experts within each country could be
appointed to focus exclusively on performing the annual labor audit. The ILO could play an important role in providing uniform information and/or training to these national bodies, to facilitate standardization of reviews.

ii. How to require company compliance. There will have to be some commitment by the governments to mandate company compliance as part of the trade agreement. This should include a thorough audit of each country’s labor laws to clarify employer obligations under the law.

iii. What is the result if a company is found in the audit to be violating either the labor laws or the social clause? Any violation of the labor laws discovered in the audit should be reported to the country where the violation occurred. There should be a process for monitoring to ensure that the country took action to enforce the law. Violations of the social clause by companies are dealt with in the next two provisions.

d. Require that companies operating in more than one country of the trade area must comply with the terms of the social clause. The audit described in part c, above, is designed to develop information to promote better compliance with labor standards. However, in order to ensure that companies comply with the law, they should be required to abide by the terms of the social clause, in addition to the labor laws in the countries where they operate. This is not a radical proposition. The OECD and the ILO have both called for developing codes of conduct for MNCs that incorporate similar substantive standards as the proposed social clause. Binding the companies to the social clause would provide an alternative, albeit more mandatory, mechanism for ensuring company compliance. This provision is essential to clarify the responsibility of MNCs in participating in efforts to improve respect for labor laws. Once harmonization occurs following completion of part b above, compliance with the provisions of the social clause would be redundant with compliance with the labor laws.

Issues to Be Resolved:

i. What is the relationship between obligations created by the social clause and any effort to develop a binding code of conduct? It is important not to create conflicting obligations for the companies. The best course would be to view Codes of Conduct as offering a private regulatory system to further ensure compliance with the social clause.

ii. What is the scope of coverage for a company’s responsibility? Should it extend to the subcontractor level? Since an increasing percentage of global production is done by subcontractors, it would seem essential to hold the buyer-company responsible for the conditions of production for products it sells. This issue is also central to the debate on codes of conduct.

ii. What happens if a company refuses to agree to be bound by the social clause? There could be a discussion about a grace period for companies that cannot comply immediately due to the need to make comprehensive changes in the way they operate. That could be a legitimate issue. However, for companies that simply refuse to cooperate, the penalty should be the same as for companies that are found to have violated the social clause, discussed in part e below.

e. Remedies following a violation of the social clause by a member country and/or a com-
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pany operating within a member country. This, of course, is ultimately the issue that will cause resistance to participation by governments. Whether it is the U.S. or Haiti, no government wants another authority to have enforcement power over it. This provision will necessarily be more complex. To facilitate discussion, suggested language will be offered to accomplish the key points.

Notice of Violation. To leaven the perception that the social clause will override national authority we must constantly emphasize that any penalty imposed against a participating government would flow from a voluntary trade agreement that all member states have agreed to abide by that imposes substantive standards in the labor clause that each country is already bound to through domestic labor law, or international instruments, including ILO Conventions. The power to avoid penalties rests with the member states’ ability to avoid violations. To emphasize strongly this point, the first clause of the remedy provision should require notice and opportunity to correct:

Prior to any investigation or hearing of any sort under this or any other provision, any complaint submitted to the Panel of Experts that a party has violated any provision of the social clause must be provided to the appropriate authority of that party in writing with any documentation. No action may be taken by the Panel of Experts, nor any penalty imposed, nor will the allegation be considered a violation for purposes of cumulating violations, if the party that is the subject of the allegation addresses the allegations to the satisfaction of the complaining party within 30 days of the provision of notice.

Penalties for Failure to Correct Violations of the Social Clause. If a country fails to remedy a violation of the social clause, which would normally mean it refuses to enforce its laws, there must be a system of penalties to encourage compliance. There should be a clear recognition that normally the government doesn’t violate the rights protected directly, but is charged with enforcing the law with respect to companies operating within its territory. Given that each country will have, by necessity, passed an assessment of compliance with the social clause as per part a, above, to qualify for participation in the trade agreement, there should not be too many issues of inadequate law. Penalties directed at companies, with the cooperation of the host government, will resolve most problems. The penalties therefore should be designed to encourage enforcement. Again, this leaves solving the problem within the firm control of the individual governments and allows them to act to prevent any protectionist use of the social clause.164 If a country ultimately refuses to enforce its own laws as per the commitment made in accepting the social clause, then the remedy must be exclusion from the trade agreement and the corresponding benefits. The following provision is an effort to accomplish these objectives:

Any products found by the Panel of Experts to be made in violation of any of the provisions of the social clause shall be deemed to be tainted products that may not be shipped within the trade area. Following such a finding, all member countries have the right to ban immediately the importation of that product from the country that was the subject of the finding. Alternatively, the countries could impose a tariff on the product to reflect the unfair cost advantage of producing the product in violation of the social clause. If it is not practical to identify within a class of products which items were made in violation of the social clause, all products within the class are subject to the ban unless the producer can demonstrate with satisfactory evidence that his or her products were not made in
Any party to the trade agreement, or any person or organization adversely affected by a violation of the social clause, may bring a formal complaint to the Panel of Experts within one year of the occurrence of the last act constituting a violation. In order for a country that is a party to the agreement to bring a complaint to the Panel of Experts, that country must itself be in full compliance with the social clause. The Panel of Experts, which shall develop its own rules of procedure to be submitted for approval to the parties to the trade agreement, must hold a public hearing on all complaints and must resolve all complaints with a written opinion within 180 days of the filing date.

Following a finding by the Panel of Experts that there was a violation of the social clause, the country where the violation occurred shall immediately institute proceedings to enforce the law with respect to the company or entity identified as denying the rights of the social clause. The country shall file with the Panel of Experts monthly reports, available for public inspection, indicating steps being taken to enforce the law. In no case shall the enforcement process at the first level of adjudication available in the country take more than six months to complete.

In any case in which a single company, and for purposes of the social clause a single company includes all subsidiaries or other entities under its direction or control, is the subject of more than two findings by the Panel of Experts of a violation of the same provision of the social clause within a one year period, whether or not the violation occurred in the same country of the trade area, the third violation will be deemed a systematic failure to comply with the law. The company will be suspended from the benefits of the trade agreement for a period of one year, and all products produced by the company within the trade area must be subject to tariff treatment by all member countries as if they were produced outside the trade area and may be subject to any other trade sanctions any country within the trade area wishes to impose. Appropriate steps must be taken by member countries to prevent transshipments of products through a non-sanctioned company. After a one year period, the company may apply to have the suspension lifted and must then participate in a new audit as per part (c) above to determine whether the company is in complete compliance with the social clause.

In any case in which a member country is the subject of more than two findings by the Panel of Experts of failing to enforce the same provision of the social clause within a one year period, whether or not the violation concerns the same company or entity, the third violation will be deemed a systematic failure to enforce the law and the country will be suspended from the benefits of the trade agreement, allowing all other countries to adjust tariffs or otherwise impose sanctions as if the subject country was not a party to the trade agreement. This penalty will also apply in any case in which a country fails to comply with any of the affirmative requirements of this enforcement provision to provide information to the Panel of Experts or otherwise cooperate in obtaining enforcement of the social clause. If the violations are specific to a particular sector of the economy, the Panel of Experts may opt to impose the penalty only with respect to that sector. After a one year period, the country may reapply for membership through the provisions of part (a) above.
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Issues to Be Resolved:

All of the issues addressed in the recommended language should be thoroughly debated to identify the best options. Some general explanation may be helpful in focusing the discussion. The emphasis is on respecting national sovereignty by acknowledging that countries must have the primary responsibility for enforcing laws within their territory, and the social clause serves as a backup device, as well as a monitoring instrument. There are significant opportunities for countries to avoid penalties, first by requiring notice and an opportunity to correct, then by permitting up to two violations before permitting penalties for systematic violations, assuming the country otherwise cooperates in resolving the first two violations. Whether this standard should be higher or lower is certainly something that should be thoroughly debated. Further, we recommend penalties focused on removal of trade benefits with the possibility of banning the tainted products from trade. The permissible remedies should be the focus of special attention in discussions. There certainly are other options, including monetary fines. We have tried to propose a reasonable mechanism that would not be viewed as too onerous by countries. It seems fair that the trade agreement provides specific benefits for countries that comply with the provisions, including the social clause, and that countries will lose these benefits if they violate the provisions. Likewise, with respect to companies, penalties are designed to achieve compliance and provide an incentive to cooperate to avoid suffering loss of market access.

II. Developing Codes of Conduct with Independent Monitoring Systems to Improve Labor Rights Enforcement

A. Introduction and Background

As noted earlier in this paper, a number of private enforcement initiatives directed at corporations, rather than governments, have been proposed in recent years as alternatives or complements to bilateral labor rights clauses in trade agreements and regional social charters. These initiatives attempt to address directly the problem of employer violations of labor rights worldwide.

Corporate codes of conduct and mechanisms to enforce them provide a means to identify and address worker rights violations using consumer pressure, without directly relying on either individual government or international legal enforcement mechanisms. However we recognize that approach is limited to certain consumer-oriented MNCs with high-profile brand names. Ultimately, therefore, the approach cannot be a substitute for the broader project of enhancing international labor standards and their enforcement.

In response to a flurry of exposes about inhumane conditions in the production of big-name consumer items—especially garments, footwear, and toys—a number of MNCs which have significant elements of their corporate value tied up in name identification have turned to the strategy of adopting and publicizing corporate codes of conduct. Typically, such codes stress the company’s commitment to good environmental practices, to prohibiting forced labor and child labor, to fair and safe working conditions for employees, variously defined, and to non-discrimination for reasons of gender, race, or other factors not relevant to the performance of
work. A few of these corporate codes go further, attesting to the company's commitment to recognize their employees' right to form trade unions and to bargain collectively.166

Nevertheless, codes of conduct and independent monitoring initiatives can play an important role in breaking new ground on labor rights enforcement, and thus paving the way for proposed mechanisms outlined in the previous section. In particular, they have played a useful role in mobilizing large numbers of consumers and workers to fight for better implementation of international labor standards.

History

Efforts to promote codes of conduct began in the 1970s. Revelations of the involvement of ITT and other U.S. corporations in the bloody coup against the Allende government in Chile in 1973, and of huge bribes paid by the Lockheed Corporation to Japanese political figures to gain military contracts in 1975, led to a movement by NGOs and governments of developing countries to demand greater corporate accountability. In 1975, the United Nations created a Commission on Transnational Corporations that set out to negotiate a UN Code of Conduct on Transnational Corporations. However, during the 1980s, the UN Commission found it impossible to develop any mechanisms to make this code relevant, or even to research the level of compliance by companies or countries with the terms of the codes. By the end of the decade, the Commission itself was virtually without funds and unable to carry out even a modicum of its original mandate. Under strong pressure from the US government, it was dismantled in the early 1990s.

In 1976, the OECD passed guidelines on MNCs that recognize the rights of workers to organize and to bargain collectively. However, this document only affects OECD countries, most of which already have strong trade union movements and relatively consistent enforcement of labor laws. Furthermore it is voluntary and thus cannot be enforced.

In 1977, the ILO adopted a Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, a code which encompasses a broad range of rights and principles, including a detailed complaint procedure that allows for an ILO Standing Committee on Multinational Enterprises to investigate a company's practices. However, this code has no sanctions or other enforcement mechanisms, and the Standing Committee has been unable even to launch investigations. In 1993 the committee received a request to review labor practices at a Pepsico bottling facility in Guatemala following severe harassment and intimidation of trade union members there.167 The employer representatives on the ILO Standing Committee blocked the request. According to the committee report, the Employer Vice-Chairman stated "that the Employers did not perceive respect for human rights as a precondition for investment. If that were the case, she argued, employers would not have accepted the Tripartite Declaration."168

Despite the failure of these attempts, pressure to create codes to regulate employer behavior worldwide grew. During the 1980s, however, several academics and grassroots activists investigated and publicized reports of environmental, labor and land rights abuses by MNCs expanding into developing countries.169 By the early 1990s these investigations had led to public exposés of practices by several U.S.-based companies. In 1991, investigators found that jeans maker Levi-Strauss was using a contractor in the Northern Marianas, where young women from China and Thailand were being shipped in to work in factories under near-bonded conditions.
and denied any access to labor law protection. Dismayed by the negative publicity, Levi-Strauss set out to implement a code of conduct both for its own operations and for those of its suppliers and contractors. This was the first known example of a company code of conduct adopted as a means to combat both bad conditions and bad publicity.170 Starting in the early 1990s and continuing to the present day, shoemakers Nike International and Reebok International have been the subjects of a series of reports about labor rights abuses in shoe production facilities in China and Southeast Asia.171 Reebok responded by adopting the first code of conduct to contain language protecting the rights to associate freely and bargain collectively.172 Walmart was the subject of a television expose that revealed that garments it retailed carrying a “Made in USA” label were actually produced with child labor in Bangladesh. The National Labor Committee, a U.S.-based NGO, found and publicized the fact that the “Kathy Lee” label, owned by TV personality Kathy Lee Gifford, was being produced in factories in Honduras employing 13-year-old girls.

These incidents were given further poignancy by the discovery in 1995 in El Monte, California of a factory producing garments for a number of name-brand U.S. companies that had kept 76 women workers from Thailand in a state of complete captivity for as much as seven years. The realization that “globalization” had brought the worst possible Third World conditions home to the U.S. provided stark evidence of the need to challenge corporate behavior.

“No Sweat” Campaign. Consequently, U.S. Labor Secretary Robert Reich reached out to the apparel industry, to trade unions and to NGOs to consider answers to a growing dilemma: how to monitor and control corporate behavior in a situation in which governments, including the U.S. Government, have rapidly declining resources to inspect factories and punish violators, and where competitive pressures are narrowing margins of profit at the labor-intensive end of production. The Department of Labor attempted to use publicity, both positive and negative, to induce reforms within the domestic industry. Consistent violators of U.S. labor laws, particularly wage and hour regulations, were targeted in a quarterly list of violators. On the other hand, the department established a “Trendsetter List,” highlighting for special commendation companies that were making particularly strong efforts to weed out labor abuses in their domestic facilities. This effort, while useful in a transition to serious enforcement of standards, also demonstrated its weakness when several “Trendsetter” companies were found to have serious violations in some of their subsidiary operations. Also, as was pointed out by critics, the “Trendsetter List” only targeted domestic producers; the worst human rights violations in the garment industry still take place, despite the revelations about El Monte, in developing countries with weak labor regimes. An international approach to codes of conduct and monitoring was clearly needed. The outcome of the “No Sweat” Campaign was the creation of the Apparel Industry Partnership Fair Labor Association, to be described in the following section.

B. Model Initiatives

The biggest issue facing advocates for a code of conduct approach today is that of implementation. How can it be ensured that companies or industries are obeying their own codes? What kinds of sanctions can be applied for failure to implement? Below are a few examples of specific initiatives to address the implementation issue. While each of the examples below has its own unique history and problems, overall they may provide a basis for development of a broader implementation strategy.
Rugmark. Reports of bonded child labor amounting to virtual slavery in the carpet industries of India and Pakistan were displayed in shocking detail on European television in the mid-1980s. This news caused an immediate and potentially disastrous loss of sales of carpets from India in Europe, especially in Germany, the largest market for oriental carpets in the world. Alarm at the prospects of losing an important source of foreign exchange, Indian non-governmental organizations, together with export promotion agencies linking Germany to India, began to discuss appropriate means to market good corporate behavior in the making of rugs. A number of labeling programs grew out of these discussions, including the Rugmark program. The program was later implemented in Nepal, as well.

Rugmark is a private, voluntary certification program founded in September 1994. It is administered as a foundation. The program aims to reduce the use of child labor in the industry and thereby avoid consumer boycotts. It also seeks to improve the long-term prospects of children who are removed from jobs in the industry. The program administers two systems of licensing, one for manufacturers and exporters and the other for importers and retailers in consuming countries. Licensed parties are required to pay a licensing fee, which is used to cover inspections and monitoring, administrative costs, issuance of Rugmark labels and to provide funds to establish educational programs for children removed from carpet work.

Inspections are carried out by professional Rugmark inspectors, and representatives of local NGOs are permitted to accompany inspectors at any time. When child labor is detected, licensees are given one warning before they are sanctioned. Once carpets are completed and ready for export, a carpet identification number is issued on a label affixed to the carpet, which allows the carpet to be traced back to the actual loom on which it was produced.

As of December 1999, the Rugmark program had succeeded in licensing more than 180 manufacturers and exporters in India, and had certified the export of one and a half million carpets from India and several thousand from Nepal. Most of these were shipped to Germany, with smaller numbers reaching the United States, U.K, Italy, Spain, Switzerland, France, the Netherlands and Japan. The Rugmark program had also succeeded in establishing seven schools in Nepal and India to rehabilitate former child workers. A Rugmark Pakistan program has recently become operational.

FIFA Code of Conduct/ILO Sialkot Monitoring Program. The soccer ball industry, centered around the city of Sialkot in Pakistan, has come under fire in recent years for employing child workers. Public attention to this issue led to the model Code of Labor Practice adopted in September, 1996 by the International Federation of Football Associations (FIFA), the world regulatory agency for soccer.

FIFA already had a program of quality control in place to certify and label all balls used in international tournament play. The organization collaborated with three trade union bodies: the International Confederation of Free Trade Unions (ICFTU), the International Textile, Garment and Leather Workers Federation (ITGLWF), and the International Federation of Commercial, Clerical, and Technical Employees (FIET) to develop a code of conduct to be added to the quality control criteria for all goods bearing its logo. The code that was adopted is perhaps the most comprehensive code of conduct among the many that have been proposed or developed. This is due, in part, to the fact that no industry representatives were involved in its formulation.

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Negotiated by labor unions and a regulatory agency with power to impose it on producers, this code could establish maximum standards without the need to compromise in order to gain adherence.

Unsurprisingly, this code attracted considerable anxiety and animosity from the World Federation of Sporting Goods Industries (WFSGI) when it was announced, leading to the formulation of a WFSGI Code, announced in early 1998, and to an effort to limit damage to the industry by a program to eliminate child labor from the making of soccer balls in Sialkot. This program was negotiated between the ILO, UNICEF, Save The Children UK, and the Sialkot Chamber of Commerce, representing soccer factories. Soccer ball manufacturers agreed to participate in a monitoring program sponsored by the ILO. The program had the stated goal of eliminating child labor from the soccer ball industry in Pakistan within 18 months. The program intended to provide former child workers with educational opportunities, so that they were not simply forced to work in another industry.

In early 1999, a year into the program, independent researchers discovered that child labor still existed in the Sialkot soccer ball industry. Moreover, even according to the ILO’s own assessment of the program, the program was beset with a number of problems. These included:

• Many manufacturers who signed onto the program had not paid dues or provided any details about their stitching centers.

• Participating employers were still using children in their stitching centers, and in home-based employment; the ILO is not empowered to apply any sanctions to these employers.

• Soccer ball production may be shifting from Sialkot to nearby, unregulated regions of Pakistan, and some children may be moving from production of soccer balls to production of surgical instruments.

• Schools established for soccer-stitching children may instead be serving other children, while former soccer stitchers are employed in other work.

Despite these problems, the ILO indicated it was planning to expand the program to the soccer ball industry in India and initiate a similar program in the carpet industry in Pakistan.

A major flaw in the ILO program is that it contains no sanctions for offending employers, nor any “reward” for good behavior. The program has explicitly been designed, as per the desires of industry representatives to the process, so that it did not contain any social labelling component. The ILO itself was reluctant to take on a labelling or certification role, although it has been willing to lend its affiliation, and the approval that affiliation implies, to the participating manufacturers and retailers. Without a label or other means to identify to consumers manufacturers and retailers that comply with the program, there is little incentive to comply, and a serious problem, noted by the ILO’s own assessment, of a significant level of “free riders” to the program.

For the program to work, it may be necessary to revisit the Partners’ Agreement, and to strengthen it to include sanctions against manufacturers within the program who fail to comply with its...
commitments to cease employing children.

**SA8000.** Another response to the welter of demands for greater corporate accountability has been the Center for Economic Priorities’ development of a code and monitoring system based on the ISO series of quality standards. Called SA8000, this code to measure “Social Accountability” is an effort to provide standards that can be monitored by professional accounting firms to declare individual factories or work sites “socially accountable,” so that multinational firms can contract with them in the assurance that they have been declared acceptable. The terms of the code are similar to others, and in some instances superior. For example, the code calls clearly for payment of a “living wage” and for reparations or rehabilitation funds to be paid to children who are laid off by companies in order to comply with the standards.

A detailed analysis of the program by Janneke van Eijk of the European Clean Clothes Campaign noted several of the program’s flaws. Among issues raised were the fact that monitoring cannot simply be conducted on a periodic “spot check” basis, but must involve the establishment of reliable, permanent mechanisms through which workers can report problems and grievances; such mechanisms are lacking in the SA8000 plan.

Another problem noted by van Eijk is the program’s focus on individual factories, rather than on retailers. A participating MNC can apply for certification of a single factory, or handful of factories, and receive such certification even if the vast majority of its facilities or suppliers remain uninspected. A company might thus choose to spotlight a model facility under the program, and receive the public benefit of such inspection, even when the vast majority of its production takes place under unregulated conditions. While the program’s spokespeople have responded that they provide certification only to factories, not to retailers, the overall “report card” approach of the Center for Economic Priorities may nevertheless convey to consumers the suggestion that a company has received, as a whole, a clean bill of health.

A final flaw of the program is that monitors must pay a fee to receive accreditation from the program, a process that many local NGOs may find prohibitive. Although the program is in theory open to any sort of organization that may wish to be accredited as a monitor, to date monitoring has been carried out by a small handful of MNCs with expertise in financial auditing or the area of customs inspection, principally Societe Generale de Surveillance.

The SA8000 scheme is likely to win some support among MNCs as being a consistent and relatively easily implementable approach. However, treating labor rights as a “quality control” issue similar to other ISO standards is unlikely to appease critics of corporate behavior from the trade union and NGO communities. Unlike verification of the quality of a product, independent monitoring of codes requires the establishment of relationships of trust between monitors and workers, as shall be described in the Issues section below.

**Apparel Industry Partnership/Fair Labor Association.** In August, 1996, President Clinton threw his support behind an effort which, building on the “No Sweat” initiative, began to develop a cooperative code of conduct for apparel and footwear companies for both their domestic operations and their subsidiaries and suppliers all around the world. This initiative is the White House Apparel Industry Partnership (AIP). Initially composed of ten major apparel and footwear companies, two unions and four civic groups (human rights, labor rights, religious and
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consumer organizations), the AIP presented its proposed code of workplace practices to President Clinton in April 1997. In addition to a code of conduct and a set of monitoring principles applicable both to internal company monitors and to external independent monitors (defined below), the report called for the creation of an organization that is to have responsibility for accrediting monitors, overseeing monitoring, educating the consumer public, and researching the causes of poor labor practices. The charter document for this new Fair Labor Association (FLA) was unveiled in November 1998, and the association itself was incorporated as a nonprofit organization in 1999.

The AIP represents an effort by concerned businesses and worker advocates to work together to develop labor standards for worldwide operations, and to implement these standards. However, following the announcement of the FLA Charter in late 1998, the participating unions, the Union of Needletrades, Industrial and Textile Employees (UNITE) and the Retail, Sales and Department Store Workers’ Union (RSDWU) pulled out of the partnership, as did the single representative from the ethical investment community, the Interfaith Center for Corporate Responsibility (ICCR). Not only these groups, but others in the U.S. sweatshop activist community criticized the agreement reached in the charter document. Primary criticisms focused on the level of monitoring, on the fact that companies may select their preferred monitors from a roster of groups accredited by the FLA, and on what was considered to be inadequate language on wages.

Despite these criticisms, the FLA became fully operational in 2000 with the hiring of an Executive Director, and the development of accreditation protocols for independent monitors. The next steps were to accept applications from organizations that wish to be accredited as monitors, and to develop full guidance for independent monitoring reporting. In the meanwhile, two of the FLA partners have already experimented with NGO monitoring (described below in the section on single-company initiatives). Another strength of the program is that it provides for the creation of a channel for third-party complaints to be filed against employers/retailers whose facilities are believed to be in violation of the code of conduct.

The initiative still suffers from a number of weaknesses, as well as some important open questions. After three years, program participants had not yet reached agreement on the benchmarks for determining compliance on issues not fully defined by the code of conduct, or by international standards, such as definitions of sexual harassment, or the extent of benchmarks on occupational safety and health matters. Also, the channel for third party complaints had not yet been established. The decisions reached on these matters, as well as the initial implementation of independent monitoring under the program, will be the real tests of its success.

Ethical Trading Initiative

In early 1998, U.K.-based retailers and representatives of NGOs and trade unions came together to create the Ethical Trading Initiative. The participants negotiated a model code of conduct, and began a series of pilot projects in Asia and Africa to determine how best to verify implementation of this code. The approach differs significantly from the AIP in two regards. First, it is not restricted to a single industry; company participants include clothing retailers, food and beverage producers, a cosmetics company and others.

In 1999, ETI consolidated its organizational structure and entered discussions with NGO part-
ners in developing countries regarding the implementation of pilot programs to test ways to verify the ETI code, in different settings and industries. The pilots were focused on apparel production in China, tea plantations in Zimbabwe, and beverage production in South Africa. An interim review of these projects was completed in November 1999.

The ETI approach, focused on small-scale experiments rather than on ambitious plans to create monitoring and verification systems with worldwide applicability, has some notable advantages over the AIP. First, because the initiative has been focused on promoting dialogue rather than prescriptions, it has avoided the tensions and political problems faced by AIP members. Second, the pilot approach has integrated important real-world learning, based in some part on integration of views from the global South, into the discussion on monitoring and verification. That said, the initiative has moved forward extremely slowly, and it remains to be seen whether it will ultimately contribute to the larger debate on worldwide labor regulation. Moreover, at least one of the pilot projects has had difficulty going forward; the sensitive issue of monitoring in China, a country with no independent NGOs or trade unions, has not yet been overcome.

**Fair Trade Charter**

In 1994, a model code of conduct called the Fair Trade Charter for Garments was developed by the Netherlands-based Clean Clothes Campaign, the Dutch trade union federation FNV, and the overseas development organization NOVIB. In 1996, Dutch garment manufacturers and retailers’ associations agreed to participate in a working group to discuss the possible creation of a foundation to oversee implementation and monitoring of the Charter. The working group has reached agreement on a number of issues, such as composition of the Board, governance functions of the foundation, and some principles regarding monitoring, but there remain a number of outstanding issues to be resolved before the initiative will be ready to undertake monitoring and verification activities.

**Canadian Partnership for Ethical Trading**

Labor and NGO allies in Canada came together in early 1999 to form the Canadian Partnership for Ethical Trading, a taskforce convened by the Canadian government at the behest of sweatshop activist groups. Participating organizations include the Canadian Labor Congress, the Union of Needletrades, Industrial and Textile Employees (UNITE), and the Maquila Solidarity Network (MSN), which houses a working group related to the initiative, the Ethical Trading Action Group. The group proposed a base code of conduct in November 1999 but that code continues to be the subject of negotiation with Canadian retailers.

**Worldwide Responsible Apparel Production (WRAP)**

Also in 1999, the American Apparel Manufacturers’ Association (AAMA) launched its own code of conduct and monitoring initiative, known as the Worldwide Responsible Apparel Production (WRAP) Certification Program. The WRAP program requires participants to undergo self-assessments of compliance with the WRAP principles, and calls for some independent verification of these self-assessments.

The Canada-based MSN has conducted a thorough and detailed critique of the WRAP pro-
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The critique points out that the independence of the initiative cannot yet be addressed, as the program’s governing Board has not yet been named. Moreover, MSN points out two serious flaws in the program’s code of conduct and planned operation. First, the code fails to protect workers’ rights to organize and to bargain collectively.

The assessment states:

On the key issue of freedom of association, WRAP only requires that manufacturers respect that right where it is legally recognized (“Apparel manufacturers will recognize and respect the right of employees to exercise their lawful rights of free association, including joining or not joining any association”). The last part of that clause —“or not joining any association”—is consistent with “right to work” legislation, subverting collective bargaining. WRAP’s “Production Facility Self Assessment Handbook” forbids “discrimination against employees who choose not to join any association.” Collective bargaining—another ILO convention (#98)—is not recognized as a right by WRAP.

The second serious flaw is that the program does provides for any level of public disclosure of factory monitoring reports, or any other information that would allow outside bodies or consumers to independently evaluate the effectiveness of the program. In short, the program lacks transparency and provides no ways in which outside consumer or other pressure might be effectively used to improve the program or to generate change among employers in violation of the WRAP principles.

Single-Company Initiatives

a. Independent Monitoring Group of El Salvador. In 1995, the National Labor Committee, a U.S.-based NGO that had been active in supporting human rights in Central America for a decade, documented abusive labor conditions in El Salvador, including the firing of several hundred workers who tried to organize a union in a factory called Mandarin. Mandarin produced clothing for Liz Claiborne, The Gap and other American companies. Liz Claiborne chose to avoid negative publicity by ceasing all orders to the factory. The Gap also tried to sever its ties to the company, but under the pressure of public criticism, developed a code of conduct instead. By the spring of 1996, The Gap accepted the services of a monitoring group in El Salvador comprised of local human rights and labor research organizations, the Independent Monitoring Group of El Salvador (GMIES). This group maintained communication with a committee based in New York in which several North American labor and human rights groups participated. These committees negotiated with The Gap a process to respect workers rights and to reinstate the workers who had been fired.

This dual structure established a model monitoring operation that included a number of innovations; NGO monitors were allowed free access to the factory on a regular and frequent basis; monitors were given financial data to determine when production had reached a level sufficient to enlarge the work force by rehiring retrenched unionists, and a regular reporting system was established between the monitors on the ground and the advisory committee in New York. By 1997, this scheme had resulted in the rehiring of six fired trade union leaders and several dozen workers who had been laid off during the labor conflict, and a marked improvement in working conditions within the Mandarin plant.
While a recent survey revealed that the overwhelming majority of workers in the plant felt that conditions had improved since the introduction of the monitoring group, the project has had its problems. The issue of who would fund the project had not been resolved. In the first year, the monitoring group received matching funds from the National Labor Committee and The Gap. In the second year, The Gap discontinued funding and it is not clear who will fund the group in future. Another issue concerns the relationship between the monitoring group and the trade union it was established to assist. Since that time the company has established its own union within the plant, which has all but destroyed support for the original union. The monitoring group has been unable to intervene in this problem. The limitations of the monitoring project vis-à-vis the Mandarin’s two trade unions will be taken up below in the Issues section of this paper.

It should also be noted that despite the success of this program, The Gap has not initiated independent monitoring of any other supplier factories anywhere in the world, despite pressure from investors and campaign groups, and its promises to do so.

b. Commission to Verify Codes of Conduct (COVERCO)

In October 1999 a Guatemala-based consortium of human rights and labor activists, the Commission to Verify Codes of Conduct (COVERCO), completed an independent assessment of labor issues at a garment factory producing apparel for Liz Claiborne, Inc. The problems identified included forced overtime, hazardous safety and health conditions, and improper record-keeping. The investigation was conducted with the full knowledge and support of Liz Claiborne, Inc.

The COVERCO investigation marked the first time that a U.S.-based retailer contracted directly with human rights groups in a producer-country, both to investigate and report publicly on problems in its supplier factories, and to provide ongoing monitoring of those factories to ensure that problems are corrected. The report, issued on October 15, 1999, represented the conclusion of the initial investigation. The retailer agreed to take remedial action in problem areas identified by the initial investigation, and COVERCO will continue ongoing monitoring work of the facility to ensure that recommendations are implemented.

Other single-company initiatives include a 1999 audit of Mattel Corporation’s toy facilities in China and Southeast Asia by an independent monitoring body convened expressly for this purpose (the Mattel Independent Monitoring Council, or MIMCO), and a report by an Indonesian team of researchers, commissioned by Reebok corporation, of two Reebok sport shoe factories in Indonesia (the Peduli HAK report).

Monitors for Hire

During the past two years a number of companies have developed labor auditing services, provided to companies on a for-profit basis. These companies include accounting firms Ernst and Young and Price Waterhouse Cooper. The problems with for-profit auditing initiatives are discussed in the next section. An independent non-profit organization, Verite, has also been established to provide labor auditing services to companies on a paid, contractual basis.
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Issues to be Resolved

Initiatives to promote codes of conduct and independent monitoring and verification systems have made great strides in recent years. While these initiatives have garnered far more widespread attention and support from employers, consumers and trade unions than any previous such efforts, and have achieved notable success in pushing the discussion on corporate responsibility forward, nevertheless there remain several outstanding issues under debate. Below we review the most significant of these questions and outline our position on each.

1. Do Codes Undermine Collective Bargaining?

Although unions and union federations have been prominent participants in the promotion of, and creation of bodies to monitor, codes of conduct,\textsuperscript{187} nevertheless many activists in the trade union movement both in the United States and elsewhere have expressed fears that codes of conduct, if implemented, may obviate the need for trade unions to negotiate collective bargaining agreements on behalf of an enterprise’s workforce. They fear that monitors will most likely be appointed from the NGO community, and, in handling grievances, take over the function of democratically elected union leadership, thus removing the democratic right of workers to have a direct say in their own wages and working conditions.

The experience of the Independent Monitoring Group of El Salvador highlights the relevance of such fears. GMIES emerged as a response to a particular situation, that of the mass dismissal of independent trade union activists at the Mandarin plant. It succeeded in its original goal to compel the company to re-hire the fired activists. However, subsequently the group was saddled with the larger responsibility of monitoring overall company compliance with The Gap’s code of conduct, a task for which it was unprepared and which it undertook in a vacuum of coordinated guidance or oversight.

GMIES’ role shifted away from one of supporting the independent union, and toward one of investigating and handling complaints of company non-compliance with labor standards in its code. By early 1998, the group had adopted a “neutral” stance vis-a-vis the conflict between the original, independent union and the company union. Superior resources and friendly relationships with management had allowed the company union to win widespread support among workers, whereas the independent union had dwindled to a small handful of supporters.

While the GMIES experiment did not lead to the establishment of a vibrant, independent trade union in the factory, it did serve to neutralize some of the factors that had previously made union organizing impossible, and to assist fired trade unionists to regain employment. This may reflect more broadly an important role for NGO monitors: they may serve as a check on employer behavior to prevent workers from exercising their right to associate. While this role is a limited one, given the severe restrictions on workers’ right to associate today, particularly in the garment and other light manufacturing industries, monitoring may play a very useful role in strengthening nascent trade union activity.

We note that in most developing countries, employers are free to employ a wide variety of union-busting techniques at the slightest sign of independent organizing activity. The International Confederation of Free Trade Unions (ICFTU) has estimated that between 300 to 500
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Workers are killed each year for their organizing activities. Thousands more are arrested, beaten or intimidated. There are between 65,000 and 75,000 cases of union leaders reported to be fired for their activities each year. Many thousands more cases go unreported. Those who suggest that independent monitors will prevent independent unions from forming are to some extent ignoring the far more significant impediments that exist to independent union formation, such as employers’ ability to enlist the support of police or other local authorities to arrest or intimidate workers, and the near-impossibility of resolving unfair terminations in a timely manner through local judicial systems.

One of the most important roles a monitoring group can play, particularly in closed polities such as China where information flow on labor issues is carefully restricted, is to collect information about such terminations and to pressure employers to act immediately to rehire these workers. This is an area in which immediate pressure from Western consumers and advocacy groups is far more likely to be effective than recourse to local judicial processes. The practice is also likely to act as a deterrent to any future such firings, thus removing a significant obstacle to union organizing.

Where independent unions exist, monitors within the workplace should be delegates of the union itself. In many if not most light manufacturing enterprises in developing countries, however, independent unions have not been able to form. In such a context, monitors may also serve a useful role in simply providing information to workers about their rights under a company’s code. In this way, non-union monitors can and should become allies to union activists, not replacements for them.

Codes may help promote development of trade unions, provided they contain protections for workers’ rights to associate and form unions, and to bargain collectively. By and large, the protections listed in codes of conduct do not vary significantly from protections contained in most countries’ labor laws. Abuses occur because governments fail to enforce these laws. One area in which the problem is not enforcement, but weak legislation itself, is that of trade union activity. Many developing countries have consciously adopted a strategy of suppressing or heavily regulating all trade union activity. The links between such strategies and governments’ desires to attract foreign investment, particularly in the manufacturing sector, are exemplified by the additional restrictions placed on labor organizing in export processing zones. In short, the “race to the bottom” has been as much a race to weaken trade union and bargaining rights as it has been a race to provide cheap wages. Codes of conduct have the potential to play a critical role in the promotion of free trade unions in such places, provided they contain language protecting workers’ rights to associate and form unions and to bargain collectively. By pressuring MNCs not only to adopt but to honor such language, worker advocates may be able to create a context within which free trade unions can develop even under restrictive legal frameworks.

2. Who Should Monitor Companies’ Compliance with their Codes?

Companies have experimented with three types of monitoring of codes: internal, external and independent. These definitions are taken from the report, “The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?” produced by the U.S. Department of Labor’s Bureau of International Affairs in 1996. The definitions themselves are the subject of debate. Some feel that external monitoring is, in fact, independent monitoring while
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others feel it more closely resembles internal monitoring. This paper retains the DOL definitions in order to distinguish between monitoring performed on contract to the company and that which is not. For the purposes of the discussion below, internal monitoring is that conducted by representatives of the company (either the MNC or the supplier) itself. External monitoring is conducted by a third party, a “monitor-for-hire,” under contract to the company on a for-profit basis. Independent monitoring (also referred to as independent verification) is that which is performed by a group which does not have a direct or exclusive relationship with the company; usually some level of public reporting is a part of independent monitoring.

Internal Monitoring

Internal monitoring is that conducted by employees or representatives of the retailer itself or of its supplier. Its advantages are that monitors may be allowed free access to all information relevant to the production process without risk of jeopardizing any privileged information, such as trade secrets. The basic problem with internal monitoring is that it relies on the “good faith” of the company itself. The premise of consumer pressure is removed because even those companies with the best of intentions will have no incentive to reveal their own bad practices to the public. Where the company has a genuine desire to be a good corporate citizen, or to improve its labor practices for reasons of improved efficiency, stability, or to avoid negative publicity, individuals entrusted with monitoring may be able to enforce real compliance with standards. Where, however, the monitoring is being done merely to placate a hostile consumer audience, efforts to monitor may be restricted to a mere exercise in public relations. Under such circumstances, information presented by the company to the public cannot be relied upon.

An example of such an exercise in “bad faith” was the advertising campaign launched by Guess? Inc. in December 1997. In previous years, Guess? had been the target of consumer campaigns to publicize the company’s labor abuses. In December, the company took out full-page ads in the New York Times and other regional newspapers advertising its jeans as “sweat free” and stating that the company had been given a clean bill of health by the US Department of Labor. In fact the Department of Labor had cited Guess? suppliers in the United States for labor violations earlier in the year and insisted that the company remove the claim from its advertisements. The Guess? strategy illustrates the problems consumers might face if their only source of information were companies themselves.

External Monitoring

External monitoring is monitoring contracted out by the company itself to a third party. Nike International provides an example of a company using external monitoring. For the past few years the corporation has hired the accounting firm Ernst and Young to provide labor audits of its plants in Southeast Asia. In 1997, Nike also contracted Goodworks International, a non-profit led by former U.S. Ambassador Andrew Young, to inspect its plants in China and Southeast Asia.

External monitoring carries an information flow problem similar to that of internal monitoring. Since the external monitor is on contract to the company, the monitor is not free to disseminate information publicly. Instead, a confidential report is issued to the company which the company itself may or may not disseminate. This was a problem which arose in the Nike/Ernst and Young example. The company discovered serious health and safety hazards at Nike producing
facilities in Vietnam, but it was precluded from publicizing this information. Despite its find­ings, Ernst and Young nonetheless certified that Nike was in compliance with its code. Nike chose not to correct the violations, and continued to assert publicly that the audits were assisting suppliers to improve their labor conditions. An independent NGO representative discovered and publicized the violations uncovered by Ernst and Young, to the company’s embarrassment.

Another criticism leveled against external for-profit monitors is that they may not have the expertise or sensitivity necessary to conduct accurate interviews with workers. This criticism operates on two levels. First is the suggestion that an accounting firm or otherwise inexperienced group may simply not know what questions to ask. This problem can be overcome by a system to train and accredit monitors, a subject to be discussed in the following section. Second is the suggestion that workers may be afraid to provide external monitors, whom they perceive as company representatives, with accurate information. This was the criticism leveled against Andrew Young, who conducted his tour of Nike factories accompanied by factory management and made no attempts to interview workers in a confidential setting.

Independent Monitoring/Verification

Independent monitoring is that conducted by a third party not on exclusive contract to the company itself. Independent monitoring may use “monitors-for-hire” or may use local organizations, including labor, religious, human rights or other community-based groups, to conduct labor investigations in zones where such groups are located. This approach is exemplified by the Independent Monitoring Group of El Salvador, described earlier in this section. In theory monitoring by a firm such as Ernst and Young may be considered independent if the monitor is not acting as an agent of the company it is monitoring, or is not subject to a conflict of interest caused by the fact it may have or seek other commercial relationships with the company. For example, Ernst and Young could not be considered independent monitors, even if their labor audits were paid for by a source other than Nike, because they have a separate commercial relationship with Nike to conduct the company’s financial audits and a consequent disincentive to be overly, or even appropriately, critical of labor practices, since the other financial interest outweighed the social auditing program incentive.

Monitoring cannot work without a reliable, confidential reporting procedure. Workers in most developing countries know that they are vulnerable to being fired without cause, and that legal redress, if it is available at all, may take years in process. Rather than lose their jobs, most individual workers will exercise caution in criticizing their employer or airing their grievances publicly, or even confidentially. The most trustworthy interviewers will inevitably be those who arise from the ranks of the workers themselves, or from their communities. Local organizations are also best equipped to deal with language and other locale-specific barriers, since they possess the cultural knowledge necessary both to frame questions appropriately and to interpret answers accurately.

Independent trade unions, led by representatives elected directly by an enterprise’s workers, are the organizations best equipped to set up a monitoring and reporting process within a factory. Independent trade unions may already have in place the grievance-handling procedures necessary to obtain reliable ongoing information from workers. As self-funding organizations, trade unions are also the most cost-effective monitors. Unfortunately, in many of the
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countries to which production of consumer goods has fled, authoritarian regimes prohibit or control labor organizing and unions, if they exist at all, are neither independent nor representative of workers’ interests. Indonesia under Suharto provides a prominent example of such practices. Even where laws protecting unions are adequate, lax enforcement often means that in practice workers’ bargaining power is weak. In such countries, community based organizations often take an active role in promoting workers’ welfare. Staff of such organizations may spend a considerable amount of time getting to know workers and their families, and may have sufficient trust and status within the area to be able to probe for sensitive information.

In cases where trade unions do not exist or are not free to play a key role in this process, NGOs provide a viable alternative. There are some drawbacks to the NGO approach; most notably, because it is localized, start-up of a monitoring effort is extremely time- and labor-intensive. Another problem with the NGO approach is that, again because it is localized, it may suffer from consistency between regions or countries. It may be that “levels” of monitoring are needed, where one level, that of direct worker interviews, is conducted by local groups and other levels (such as measuring levels of hazardous substances, or verifying adequate ventilation and fire precautions) is conducted in a more generalized or standardized fashion.

3. How Should Monitoring be Regulated?

Whether independent monitoring is conducted by international or by local groups, there is a need to regulate the monitors themselves in order to ensure that information to be provided to consumers is consistent and accurate. Initially, monitors should be accredited by a body that is recognizable and trusted by consumers. After accreditation, groups should be provided with guidance as to the types of information they are expected to provide. If the strategy of using local organizations is adopted, companies and worker advocates in consuming countries may wish to develop a training program to teach such organizations how to gather the relevant information and how to present it in a standard format that can be used easily by companies and consumer advocates. An essential function of an accreditation body would be to revoke accreditation from monitors who are found to be unreliable or otherwise substandard.

A regulatory body serves the additional role of middleman between the company and the monitor. As noted above, independent monitoring precludes that contracted directly by the company, except under carefully regulated circumstances. In order to preserve the independence of monitoring groups, whether they be business firms or NGOs, an independent regulatory body must evaluate information, ensure that it meets standards of the accreditation program, and ensure transparency of the process in such a way as to preclude any inappropriate relationships between the monitors and companies. The Rugmark program has such a body. The Fair Labor Association and Fair Trade Foundation represent other examples of regulatory intermediaries between companies and monitors.

The ILO may be able to play a useful role in the area of standardization of monitoring and reporting, by sharing through training or informational programs its own measures or benchmarks for compliance with ILO conventions. Such an exchange might also facilitate convergence of different private initiative toward a globally applicable labor rights monitoring framework.
4. Who Should Pay for Monitoring?

The possible sources of funding are, in essence, corporations, governments and worker/consumer advocates (trade unions and other civic organizations). Various mixes of funding from these entities may provide for monitoring to take place and to remain independent. The critical issue here is not who provides the funding, but what steps are taken to ensure that monitors may retain their independence from any single party and are not biased by the source of funding. Direct financial relationships between the monitor and company are not precluded, as long as the public interest is protected by measures that include transparency of monitoring contracts, some form of public access to results of audits, and protections against side payments or other improper transactions between the contracting parties.

The Rugmark example provides one workable funding scenario: companies wishing to utilize the services of monitors pay a licensing fee to an independent overseer (in this case, the Rugmark Foundation) and that overseer in turn provides inspection services. Since inspectors are not paid directly by their clients they are able to maintain their objectivity. The Rugmark program also institutes other safeguards to ensure that inspectors are not vulnerable to bribery or other possible compromises of their integrity.

The Independent Monitoring Group of El Salvador in its first year used another model of funding, one in which the company itself and a worker advocate, the National Labor Committee, contributed equally to its upkeep. The group’s independence from each funder was thus assured. However, The Gap’s failure to provide a second year of funding is indicative of problems with this approach that might best be addressed if funding were to be channeled through a neutral body with ongoing oversight responsibility.

5. Do Codes Undermine Efforts to Strengthen National and International Labor Standards?

Some have expressed concern that by functioning independently of any country’s legal system, codes of conduct and independent monitoring may palliate local desire to improve legal standards. In fact we feel codes and independent monitoring provide an important, complementary mechanism to augment enforcement of existing legal systems, and may foster greater desire to improve those systems. By adopting a code, a corporation also acknowledges its responsibility to abide by local labor laws. In most cases, local labor laws even in developing countries offer adequate protections for workers, conforming with at least minimum international standards on subjects such as working hours, overtime compensation, forced labor and child labor. However, abuses occur because governments lack adequate enforcement budgets, or are offered multiple incentives to protect the interests of elites and capital rather than enforcing these laws. For example, in both China and Indonesia, partnerships between top military officials and investors have been documented. Such alliances give the military in both countries every incentive to safeguard their investments by participating in labor repression.

If monitored, codes may improve enforcement of local labor laws. The codes approach recognizes that in many developing countries, workers may be unaware of existing legal protections. Even where they have information about such laws, workers may hesitate to involve corrupt or unsympathetic labor officials in their grievances. Through monitors, workers may gain access to information not only about a company’s code of conduct but also about local labor laws and
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legal protections. Furthermore, if effective monitoring mechanisms can be established, it may be easier and less intimidating for a worker to use such mechanisms than to bring problems to the attention of local officials or courts. The development of such alternate dispute resolution mechanisms for MNCs with codes of conduct may provide officials in developing countries with incentives to better enforce existing labor laws, in order to preserve their own jurisdiction. At very least such an approach provides some workers with another option to seek redress for grievances. This approach may ultimately have a spillover effect from MNCs that adopt and comply with codes to local employers, as workers share information between enterprises. Workers in local enterprises are ultimately unlikely to tolerate dual systems of enforcement.

The codes approach may also create incentives for some MNCs to become allies in the movement for harmonized labor standards and consistent enforcement of those standards. By initially creating an environment of greater accountability for MNCs with codes, it puts them at a competitive disadvantage to MNCs in the same industry without codes producing in the same countries. The approach may therefore convince “good” companies that in order to compete effectively, they too have an interest in advocating for uniform adoption and implementation of labor legislation.

6. Should Codes Define a Living Wage?

The basic content of most codes of conduct does not vary significantly from the internationally recognized worker rights called for in debates for a social clause in international trade agreements. Insofar as this is true, the standards represent a broad international consensus on fundamental worker rights established by advocates in both developed and developing countries. The list of generally agreed-upon standards includes elimination of forced labor, elimination of child labor, decent wages and working conditions, decent health and safety standards, non-discrimination, the right to organize and bargain collectively. Most industry and company codes incorporate all of these standards. One issue that remains unresolved is the debate on wages. The AIP and ETI codes call for employers to pay either minimum or prevailing wages in the countries where they produce, and to recognize the need for those wages to meet workers’ basic needs. Critics of this provision note that in most developing countries, the minimum or prevailing wages are insufficient to provide a basic market basket of goods to most workers. These critics call for the establishment of criteria to define what a living wage would be in each country, and call on companies to agree to pay this amount rather than minimum wage.

The debate on living wages has been a contentious one, in no small part because, unlike other rights covered by corporate codes, the definition of a living wage has yet to be clearly established by any international convention. Nor do economists or other social scientists agree on a cross-country definition of a standard market basket of goods. Since international consensus on this issue is lacking, consumer country advocates for a living wage clause have been particularly susceptible to the argument that they are acting out of protectionist rather than humanitarian motivations.

It is our position that the living wage issue cannot be resolved without (a) substantial further research and the development of a reasonable and widely acceptable cross-cultural index to measure basic needs; and (b) substantial effort by developed country advocates of a living wage to engage in open dialogue on this issue with trade unions and NGOs in developing countries. We note that to date, such dialogue has consisted principally of Northern NGOs asking Southern
partners to make assessments of economic indicators in their particular countries, rather than engaging in participation as full partners in the issue of standard-setting. As noted in this paper’s earlier discussion on the development and promotion of a social clause, the wage issue is an extremely important one, but it is unlikely that it can be promoted by U.S. or other consumer-country advocates in a manner that adequately addresses developing-country fears of protectionism.

International dialogue, perhaps oriented toward a re-examination of ILO language on wage-fixing machinery, is a vital first step to further discussion and definition of the living wage. Without such dialogue, advocates in the North run the risk of undermining gains made by NGOs and trade unions in the South. In the meanwhile, it is our position that codes of conduct should not set wages, but rather should provide an absolute floor for wages. Promotion and vigilant monitoring of workers’ right to bargain collectively is the ultimate way to ensure that workers receive wages adequate to meet their basic needs.

This view, however, does not lessen the moral and pragmatic imperatives to provide workers with wages adequate to allow them to live decently.196 Trade unions and other worker advocates should bring the living wage discussion into the broader context of the debate for a social clause, and should, through continued consumer pressure, support and bolster efforts by trade unions and NGOs in the South to negotiate appropriate wages.

Conclusion

The codes of conduct approach offers a valuable means to create and foster dialogues between developed world and developing world advocates for labor and consumer rights. The strategy is, in effect, an extension of an older, proven strategy to mobilize consumer support for workers: the boycott. Threats of boycott action have helped turn the tide in labor/management battles in the United States and other developed countries on numerous occasions. Codes of conduct help to extend consumer awareness of labor’s problems and battles in less-developed parts of the world. Exposes of labor rights abuses, whether child labor in the soccer ball industry or trade union harassment in El Salvador, were made possible by the creation of alliances between developed world and developing world advocates.

Consumers in the U.S. and other developed countries have become increasingly aware that many of the goods they consume are produced under inhumane or substandard conditions in locales such as Pakistan and Guatemala. As this awareness increases, so does the awareness of citizens of developed countries that they live in a global economy, and that trade relations between countries do affect their day to day lives. This awareness has in recent months led to the mobilization of the North American and European consumer publics around issues such as the meetings of the WTO in Seattle in 1999, the World Bank and International Monetary Fund meetings in Washington, DC in April 2000, and even the relatively obscure Multilateral Agreement on Investment. In short, raised awareness about conditions in garment and toy factories has helped introduce and foster broader debates on trade and human rights issues.

The area of activism is, moreover, one that has given rise to significant, far-ranging and quickly progressing new efforts at global regulation over the past few years. In addition to the initiatives detailed in this paper, UN Secretary General Kofi Annan has led the United Nations into new initiatives in the area of voluntary codes of conduct and corporate accountability.
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fears of some advocates that such efforts will undermine more stringent attempts to promote global governance, a natural convergence of the strategies has occurred in at least two areas: that of internationally binding legislation, and that of cross-border contract negotiations.

As early as 1991, the U.S. Congress attempted to legislate a code of conduct for U.S. corporations doing business in China. The code would have required an annual review of the practices of all corporations in China, and would have provided for some sanction to those companies that failed to implement the code. The initiative has been revived a number of times over the past decade, and at different moments was passed by both the House of Representatives and the U.S. Senate. A new version has recently been circulated, and in the wake of debates over China’s entry into the WTO, may well find support in both legislative houses, creating a precedent for binding corporations to a code of conduct, allowing for public review of corporate behavior, and sanctioning non-compliant corporations. A parallel initiative was taken by the European Parliament last year, which passed a resolution calling for EU-based corporations to abide by a set of human rights principles in their operations worldwide. However, while the European Parliament may be empowered to review corporate behavior, it is unable to impose sanctions on violators.

Another notable initiative is that undertaken by the International Federation of Building and Wood Workers (IFBWW), which in recent years has negotiated an internationally applicable code of conduct with furniture manufacturer IKEA Corporation. IKEA has agreed to accept the code as binding on its relationships with all IFBWW member unions, in all countries of operation, setting an important precedent for contract negotiations at the worldwide level.

III. Strategies for Cooperation to Improve Labor Rights Enforcement

The discussion of using trade as a mechanism for regulating social issues confirms both that there is a growing consensus on what to do and a significant increase in cross-border solidarity and cooperation. The success of U.S. activists in denying in the U.S. Congress President Clinton’s request for “fast track” authority to expand NAFTA, and the diversity of opposition to the WTO as evidenced by events both inside and outside the 1999 Ministerial meetings in Seattle, demonstrate that now is the time to build on the momentum of opposition to “free trade” and work to develop an alternative model of economic integration that respects people and the environment. This success should not be overstated, however. There was a significant block of votes in opposition to fast track that would not support any effort to include a social clause in future trade agreements. We should likewise be encouraged that trade unions of the Mercosur countries have agreed among themselves to the terms of a social charter and they have managed to get a seat at the table in discussing the process of economic integration. They have not yet, however, managed to overcome the united effort of employers and governments to block inclusion of the social charter in the Mercosur agreement.

In no single country does the labor movement, with supporting NGOs, have the political clout to have its agenda enacted into law. Considering the resounding defeat of the first effort to gain inclusion of the labor clause at the WTO, ultimate success may be a very long-term goal. There is much to do, but generally we know what needs to be done. First and foremost, we must cooperate globally with trade unions, human rights and environmental NGOs, church groups,
academics, and progressive members of the business and government communities to agree on a final version of a social clause and get to work on a political strategy to press for its adoption in all trade agreements. We must develop allies in key countries to pressure their governments to support the labor clause in all future trade agreements and support its inclusion in the WTO. We must act as educators at every event we can attend to inform people about the need for a social clause, how it would work, and why it is essential to an overall strategy of achieving sustainable economic development. We must work in our own countries to defeat efforts to expand the existing corporatist trade agenda and work to convert our governments to become advocates for the labor clause at multilateral gatherings.

There is also much to do on a company-specific basis. We must share information about MNCs and cooperate in targeted consumer boycotts. Perhaps we can agree with allies to select each year a company to be named the worst labor violator in the world, and have that company be the focus of global boycott activities for a year. We have seen the power of cross-border cooperation in several NAALC cases. In one case involving independent union organizing in the Han Young factory, a Hyundai affiliate in Tijuana, the NAALC complaint provided a forum for international action including demonstrations at Hyundai dealerships in the United States. Pressure from the AFL-CIO and its affiliates caused President Clinton to raise the issue with President Zedillo, and the Mexican government took immediate action to enforce the law and protect the rights of the individuals who had sought to form an independent union. One way to get support from the business community for a labor clause is to create enough grassroots-driven boycott activity that resistant companies will want to have stable rules to govern the situation.

Immediate first steps should center around building upon the momentum of the 1999 Seattle events; a promising follow-up was made at meetings of the World Bank and IMF in Washington, DC, in early 2000 although more work is needed to ensure that messages from developed and developing-world advocates can be reconciled. The grassroots agreement to oppose present policies on trade and investment must blossom into an alternative vision, and specific alternative proposals.

Ultimately, advocates for worker rights must trust each other. We need to move beyond nationalist suspicions and judge by actions that have achieved positive results. MNCs and governments are allied on a global level. The WTO is the best example of their power of unity. Workers have the advantage of numbers, voting power, and a belief in their cause. In unity, we can overcome the obstacles and earn justice for workers in the global economy.

Notes

2 M. Khor, Northern Trade Protectionism and Workers’ Rights, Third World Economics, 16-30 (April 1994). At a February 6, 1998, presentation at IPS, Khor clarified that his concern is that whatever the motives of advocates pressing for a social clause, once enacted, Northern governments could use the clause for protectionist purposes. This then presents a challenge to draft the social clause and its enforcement provisions so that this risk is eliminated or substantially minimized.
3 In the recent debate over renewal of President Clinton’s “fast track” negotiating authority,
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simply asserting that there should be open debate and a slower process resulted in vehement assertions of "protectionism" by the pro-business press. See, e.g., P. Bluestein, "Free Trade vs. Social Policy," Washington Post, G-1& 8 (Sept. 19, 1997)(Citing Senator Gramm who claims that advocates for labor and environmental standards in trade agreements are simply trying to keep competitive products out of the market).

4 See, for example, the discussion below at pages 15-18 of innovative proposals made by unions in "South America for a Social Charter" as part of Mercosur.

5 Final Act Embodying the Results of the Uruguay Round of Multinational Trade Negotiations, December 15, 1993, Annex I C.

6 NAFTA, Part VI, Chapter 17.

7 The irony is that the current economic system is based on this premise but takes no direct steps to improve wages for the working poor. Global capital accepts the theory but is, for the moment, enjoying the best of both worlds—global markets and cheap labor. Global growth obviously is not an infinite progression. There must be serious concern for sustainability. However, the overall theme of our approach is that there must be a major focus on redistribution of the benefits of global growth to support domestic demand in developing countries, rather than propping up wealthy elites. The economic analysis for our position is supported by the EPI paper, Alternatives to the Neo-Liberal Model that Address Differences Between North and South, and Labor and the Environment.

8 The papers by EPI and IPS will explore the economic arguments underlying this assertion.


10 See discussion at pages 25-31 infra for the precise parameters of the social clause.


12 Preamble to the Constitution of the International Labor Organization (1919).


14 Id. at 23 (emphasis added). The ILO is attempting to revive the spirit of its Preamble and the Philadelphia Declaration with a recent initiative to focus on "core" labor standards that will expand the scope of its present investigatory powers to include all of the core rights. It will still, however, be left without power to enforce its findings. See Defending Values, Promoting Change, Social Justice in a Global Economy: An ILO Agenda, Report of the Director General to the 81st Session of the International Labour Conference (1994).

15 See note 8, supra.


17 Id.

18 15 International Labour Review 491 (1927).

21 Economic evidence to support the assertion that trade has resulted in increasingly skewed income distribution rather than broad-based development is continuing to accumulate. See, One World, Ready or Not: the Manic Logic of Global Capitalism; also Frederick Deyo, Beneath the Miracle: Labor Suppression in East Asia.
22 See Time for a Global New Deal, supra note 18, at 9-11.
23 Final Act Embodying the Results of the Uruguay Round of Multinational Trade Negotiations, December 15, 1993.
24 Time for a Global New Deal, supra note 18, at 8-10.
32 19 U.S.C. § 1307 (1997). Following passage of the child labor provision, the ILRF immediately filed the first petition seeking to ban the importation of hand-knotted carpets from South Asia made with child labor.
35 These agencies comprise the Trade Policy Committee, which attempts to coordinate U.S. trade policy.
37 Correspondence between the ILRF and Treasury Secretary Rubin is on file at the ILRF.
38 Correspondence between the U.S. Customs service and the ILRF regarding the non-enforcement of section 307 is on file with the ILRF.
41 See infra pages 34-36 and the accompanying text for a discussion of the effort to include a “social clause” to the WTO at the December 13, 1996 Singapore Ministerial.
42 Singapore Ministerial Declaration, ¶4 (December 13, 1996).
43 See text at notes 133-138 infra for a discussion of the WTO’s refusal to deal with worker rights.
44 See OECD, Declaration on International Investment and Multinational Enterprises (1976, revised 1979).
45 See B. Glade and E. Potter, Targeting the Labor Practices of Multinational Companies, Focus on Issues (U.S. Council for International Business, July, 1989); D. Campbell and R. Rowen, Multinational Enterprises and the OECD Industrial Relations Guidelines (1983); J. Robinson,
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Multinationals and Political Control.


49 See discussion at pages 21-22, infra.


56 See, e.g., Helen Lachs Ginsburg, “Fall From Grace: Entrance in the EU has Increased Pressure on Sweden to Dismantle its Welfare State,” In These Times, December 23, 1996, at 21.


59 INFOSUR Informacion Sindical Sobre el Mercosur, No. 2, Coordinadora de Centrales Sindicales del Cono Sur, 1996.


61 Id. at 36.

62 See, e.g., “The Failed Experiment: NAFTA at Three Years,” a joint study by The Economic Policy Institute, the Institute for Policy Studies, the International Labor Rights Fund, Public Citizen’s Global Trade Watch, the Sierra Club, and the U.S. Business and Industrial Council Educational Foundation (June 26, 1997)(Copy on file at ILRF).

63 In a January 30, 1998, letter to the National Administrative Office as part of the NAALC review, the ILRF was strongly critical of the NAALC and urged reforms to provide improved enforcement powers (Copy on file with ILRF).

64 NAALC, Annex 1.

65 Id.

66 NAFTA Preamble, p. 1.

67 NAALC, Part II, Arts. 2-7.

68 NAALC, Art. 2.

69 NAALC, Art. 3.

70 NAALC, Art. 4.

71 NAALC, Art. 5.

72 NAALC, Art. 6.
The cases cannot go farther to independent evaluation or arbitration.

The Mexican government did appear in the Fisheries Case (No. 9601) both as the government and the employer.

The NAO issued its report in Case No. 9701 on January 12, 1998 and requested a Ministerial Consultation. If the result of the consultation is not satisfactory, the NAO can request that an Evaluation Committee of Experts (ECE) be created under Art. 23. This process is still pending.


LCF Inc., D/B/A La Conexión Familiar v. NLRB, 129 F. 3d 1276 (D.C. Cir. 1997).

See generally, NAFTA, Part VI, Arts. 1701-21 for provisions relating to protection of intellectual property rights.


See pages 25-31 _infra_ for a discussion of labor provisions generally included in proposals for a social clause.


Id.


“Enabling Workers to Share the Benefits of World Trade (ITGLWF) and Trade and Workers’ Rights—Time for a Link” (IMF)( Both are on file at the ILRF).


Id. at 27.

Id. at 33-36.

Id. at 35-38.


See discussion at pages 7-10, _supra_.


Terry Collingsworth, _Justice for Workers: A Manual for Enforcing the Labour Laws_ of
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Bangladesh 16-17 (1995)(Published by the Bangladesh Independent Garment Workers Union, Dhaka, Bangladesh, and on file at the ILRF).


104 Greider, supra note 18, at 101.

105 See, e.g., Myerson, New York Times, Section 4, page 5, Column 1 (June 22, 1997) (describes the positions of Jeffery Sachs and Paul Krugman calling for more sweatshops as the answer to the “backbreaking poverty” of Africa).

106 Richard Rothstein has prepared an excellent paper discussing the process for setting minimum wages based on local economic realities, “Developing Reasonable Standards for Judging Whether Minimum Wage Levels are Acceptable” (1996)(Copy on file with ILRF).

107 Declaration: Building a Hemispheric Social Alliance to Confront Free Trade ¶1 (May 15, 1997)(copy on file at the ILRF).

108 Id. at ¶2.

109 Id. at ¶3.

110 Id. at ¶4.

111 Id. at ¶5.

112 Id.

113 Id. at ¶6.

114 See, e.g., the Philippines Declaration signed by NGOs in the APEC countries, which calls for a social clause that incorporates labor rights and a broad range of social issues (On file at ILRF).

115 Produced by the Alliance for Responsible Trade, Citizen Trade Campaign, and the Mexican Action Network on Free Trade (July, 19, 1994)(Copy on file at the ILRF).

116 Id. at 2-5.

117 Id. at 9-13. See also, “Social Charters, Perspectives From the Americas,” produced by Common Frontiers and the Latin American Working Group (1996)(Copy on file at the ILRF), which summarizes proposals for a social clause from various organizations in the Americas.

118 It is beyond the scope of this article to develop the details of an environmental social clause. For an introduction to the issues, see H. French, “Reconciling Trade and the Environment,” in L. Brown et al, State of the World (Worldwatch Institute 1993).

119 At an October, 1999 International Forum supported by the Ford Foundation to discuss this paper and the related papers by EPI and IPS, the need for targeted development assistance was emphasized by labor rights activists from the South as the key barrier to gathering support for the labor clause in their countries.

120 See note 2 supra for concerns expressed by Martin Khor about protectionist uses of the social clause.


123 See, e.g., ILRF’s January 30, 1998 letter to the U.S. National Administrative Office, as part of the NAALC review process. (On file with the ILRF).


pursuing the goal of higher labor standards").

See text at notes pages 29-30, supra.

See text at notes pages 29-30, supra.


This was evident in discussions at the Belo Horizonte meetings with trade unions and NGOs in May, 1997 leading to the Belo Horizonte Declaration. See discussion in text at notes at pages 29-30, supra.

See the discussion in the next session indicating the failure of efforts to include a social clause in the WTO. This is a strong indication of the long-term nature of any plans for global enforcement of worker rights.


ICFTU Circular No. 38 at 3 (June 29, 1995)(Copy on file with ILRF).


WTO, Singapore Ministerial Declaration, Doc. No. 96-5315 (December 13, 1996).


Id. at 157-58.

Id. at 154. Charnovitz reports that the European Commission, Canada and Norway joined the U.S. in proposing a social clause.

See text at note 39, supra.

See pages 9-11, supra, for a discussion of the U.S. government’s unwillingness to enforce U.S. laws linking trade with worker rights.


Charnovitz, supra note 69, at 158-63. Charnovitz advocates giving the ILO enforcement powers, which could be provided consistent with its present charter. Id. at 160. However, the tripartite character of the ILO would certainly make agreement to this within the ILO problematic. The very same nations that voted overwhelmingly to defeat a social clause at the WTO are unlikely to agree to give the ILO enforcement powers over the same issues. The resistance is not due to a belief that the WTO is the inappropriate forum, but to the idea of an enforceable labor clause. Certainly the employer representatives at the ILO would work to defeat an effort to give the ILO enforcement powers.

See pages 29-30, supra for a discussion of the Belo Horizonte Declaration.

The Southern Cone trade unions made this a primary argument for uniform labor standards and documented the ILO Conventions that had been ratified by all of the participating countries. See discussion at pages 15-17, supra. China and Vietnam are notable and significant exceptions. Neither have ratified the key Conventions, nor do their domestic labor laws adequately protect the core labor rights. For a list of ILO Convention ratifications by country, see ILO, Lists of Ratifications by Convention and by Country, Report III (Part 5)(1995)

See page 28, supra.

Art. 22, Constitution of the ILO.
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146 Id. at Art. 26.


148 Further concerns are whether the ILO could in fact perform all of the functions required in enforcing the social clause and whether giving the ILO enforcement powers would cause employer and government representatives to take concerted action to dilute the standards set by the Conventions, which to date have been more viewed as of academic interest since there is no threat of enforcement.

149 NAALC Arts. 23-24. In limited cases, the NAALC allows for the formation of an “Evaluation Committee of Experts.”

150 See pages 16-17, supra.

151 If the labor clause evolves into a broader social clause that includes environmental standards, then the Panel of Experts would need to include experts in this field as well.


153 See discussion at pages 15-17, supra.

154 See discussion at pages 23-24, supra.

155 See NAALC, Art. 3(1) requiring that “[e]ach Party shall promote compliance with and enforce its own labor law . . . .” The Labor Principles of Annex 1 specifically “do not establish common minimum standards for [the parties’] domestic law.”

156 See pages 27-29, supra for a discussion of inclusion of a minimum wage in the social clause.

157 Id.

158 Of course governments, when acting as employers, can and do violate their own labor laws.

159 See discussion in section 111(C)(2) below of the need to have independent monitors for implementing Codes of Conduct.


162 See section III below for a complete discussion of codes of conduct.

163 See discussion at page 54, supra.

164 This will hopefully address concerns that the social clause could be misused for protectionist purposes. See note 2, supra.

165 Campaigns to influence corporate behavior have employed various strategies, from shareholder resolutions to lawsuits. Promoting codes of conduct are only one among these strategies. For a discussion of the corporate accountability movement, see Broad and Cavanagh, “The Corporate Accountability Movement: Lessons and Opportunities,” paper prepared for the World Wildlife Fund Project on International Financial Flows and the Environment, on file at IPS and ILRF.

166 For a sampling of these codes, see Appendix A.

167 Correspondence from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations to the International Labor Rights Fund, on file at ILRF.


169 See e.g., Mies, María, The Lace Makers of Narsapur: Indian Housewives Produce for the
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See Appendix A.

This program is described in great detail in the report, By the Sweat and Toil of Children Vol. IV: Consumer Labels and Child Labor, U.S. Department of Labor, Bureau of International Labor Affairs, 1997. See also, Pharis Harvey, “Rugmark: After One Year” (October, 1996)(Copy on file at ILRF).

Approximately 75 percent of all the world’s soccer balls are produced in the Sialkot area.

In late 1998, the Association of Network for Community Empowerment (ANCE), based in Lahore, Pakistan, conducted an independent investigation into the effectiveness of the ILO program. A research team visited 23 villages in the Sialkot region to determine whether or not children continued to work on soccer ball production either within village stitching centers or at home, and whether new educational opportunities had been offered to these children through the ILO program. The ANCE report is on file at ILRF.


The representative from RSDWU, the union’s president emeritus Lenore Miller, later rejoined the FLA as a member to its NGO advisory council.

Companies would be required to monitor 100 percent of their own facilities, and 30 percent of the facilities worldwide would be subject to independent monitoring.

The AIP/FLA code of conduct mandates employers to pay either minimum or prevailing wages in the country of operation, whichever is higher. Although the document references the need for wages to meet workers’ basic needs, some groups, including ICCR, felt that companies should be made to commit to paying such wages, even when higher than minimum wage.


A full list of ETI participants is available on the ETI website, http://www.ethicaltrade.org/participants.


A new ILRF initiative, funded by a consortium of U.S. universities, may allow ILRF to assist GMIES to develop and expand its monitoring work.

Principally, the ethical investment organization, Interfaith Center on Corporate Responsibility, and the NGO Global Exchange.

See i.e., the Union of Needletrades, Industrial and Textile Employees (UNITE) and Retail, Sales and Department Store Workers’ Union (RSDWU) participated in the creation of the AIP code of conduct; the British Trades Union Council is a member of the ETI; the Dutch union
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federation FNV is part of the Fair Trade Foundation; the International Textile, Garment and Leather Workers’ Federation (ITGLWF) Secretary-General Neil Kearney is a board member of the Council on Economic Priorities’ new SA 8000 program.


189 For a case study of government strategies of labor repression in Asia, see Deyo, F Beneath the Miracle: Labor Suppression in East Asia.

190 For example, Pakistan, Bangladesh and Malaysia all allow trade unions to function elsewhere but not in EPZs; see ILRF petition on Pakistan’s GSP privileges. Sri Lanka placed severe restrictions on labor in EPZs until a GSP petition brought about improvement.

191 Smoke from a Hired Gun, report by Dara O’Rourke, Transnational Research and Action Center (TRAC), November, 1997. This report is on file at ILRF and also available at TRAC’s Corporate Watch website (http://www.corpwatch.org).

192 An exception to this generalization are local laws regulating trade union activity, discussed below.

193 See Johannes Simbolon, “ABRI, from War Machine to Big Business Bureaucrats,” in Jakarta Post, October 1, 1995; also “China’s People’s Liberation Army: Where to Find PLA Companies in America, What Products the PLA Sells in America and Who are the PLAs Customers,” report issued by Food and Allied Service Trades Department, AFL-CIO.

194 The UN’s Universal Declaration of Human Rights notes the right of workers to earn a living wage. The ILO’s Tripartite Declaration also affirms the responsibility of MNCs to provide a wage at least adequate to satisfy the basic needs of workers and their families. However, neither of these international fora have been able to resolve the question of how minimum wages or basic needs should be measured or set. See Richard Rothstein, “Developing Reasonable Standards for Judging Whether Minimum Wage Levels in Developing Countries are Acceptable,” Bureau of International Labor Affairs, U.S. Department of Labor, June 1996; see also Bama Athreya and Natacha Thys, “Empowering Workers Toward a Living Wage: A Position Paper,” International Labor Rights Fund, Fall 1999.

Bearing the Burden:  
The Impact of Global Financial Crisis on Workers and Alternative Agendas for the IMF and Other Institutions

Introduction

In the aftermath of the global financial crisis that exploded in July 1997, tens of millions of workers lost their jobs around the world. Hundreds of millions watched their real wages fall. Millions of immigrant workers were sent home. The ripple effects were felt by workers in every country. Meanwhile, those most responsible for causing the crisis suffered little of the pain. As former World Bank Chief Economist Joseph Stiglitz, put it:

In East Asia, it was reckless lending by international banks and other financial institutions combined with reckless borrowing by domestic financial institutions—combined with fickle investor expectations—which may have precipitated the crises; but the costs—in terms of soaring unemployment and plummeting wages—were borne by workers. Workers were asked to listen to sermons about “bearing pain” just a short while after hearing, from the same preachers, sermons about how globalization and opening up capital markets would bring them unprecedented growth.1

By the end of 1999, most of the crisis countries were showing signs of recovery in terms of their economic growth rates. But while international investors celebrated, working families in these countries saw little improvement in their own lives. A World Bank study released in January 2000 reveals that incomes of the low and middle class in East Asia have not been restored. Urban poverty has risen, as laid-off industrial workers struggle to survive with little or no social safety nets. In many countries, displaced workers have returned to rural villages, where they try to eke

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out a living on small family plots.  

Perhaps even more disturbing than the lingering effects of the financial crises of the last half decade is the fact that little has been done to prevent such tragedies in the future. Although the crisis did provoke a vigorous debate around a “new global financial architecture” no clear and comprehensive vision has emerged from official policy makers. Moreover, even though workers bore the brunt of the last crises, their representatives are not among those at most tables where the new financial architecture is being debated and drawn. Hence, it should come as little surprise that official proposals for change either ignore workers’ interests or undermine them. This said, there are well-developed proposals for new rules and institutions that would serve workers’ interests. In addition, it is widely recognized that the massive demonstrations against the World Trade Organization (WTO) by the international labor movement and others in Seattle in December 1999 have opened up new opportunities for promoting a labor and social agenda within all the international financial institutions. There remains, however, a major challenge to educate and mobilize people on this issue in order to raise the profile of workers’ concerns in both the public and the official debates. This paper attempts to bring alive the impact of the financial crisis on working people. It outlines the mechanisms by which the crisis has hurt workers. It also offers an analysis of the impact of the crisis on workers in eight countries: Korea, Indonesia, Thailand, the Philippines, Russia, Brazil, Ecuador, and, finally, the United States. A final section outlines the official debate on resolving the crisis as well as components of an emerging North-South citizens agenda on the global financial crisis that advances the interests of workers.

I. The Overall Impact of the Global Financial Crisis on Workers

A. The Crisis

Today international financial markets resemble a global casino where traders gamble in split-second trades on market fluctuations. In 1980, the daily average of foreign exchange trading was $80 billion; today, more than $1.5 trillion flows daily across international borders. Over ninetenths of capital flows are speculative, rather than productive in nature. The global financial casino is the conscious creation of public policy. Over this past decade, the World Bank, the International Monetary Fund (IMF), and the U.S. Treasury expanded their focus on free trade to press governments around the globe to open their stock markets and financial markets to short-term international investments. The resulting quick injections of capital from mutual funds, pension funds, and other sources propelled short-term growth in the 1990s, but they also encouraged bad lending and bad investing. According to the World Bank, the amount of private financial flows entering poorer nations skyrocketed from $44 billion in 1990 to $256 billion in 1997. Roughly half of this was long-term direct investment, but most of the rest—as recipient countries were soon to discover—was footloose, moving from country to country at the tap of a computer keyboard.

When international investors got spooked in Thailand, Indonesia, and several other countries in mid-1997, the “hot money” panicked and left much faster than it had arrived. Big-time currency
speculators like George Soros deepened the crisis by betting against the currencies of the crisis nations. IMF policy advice seemed only to quicken the exodus. Currencies and stock markets from Korea to Brazil nose-dived, and as these nations slashed purchases of everything from oil to wheat, prices of these products likewise plummeted. As the financial crises have spread to the productive economies of Indonesia, Russia, and several other countries, there has been widespread pain, dislocation, death, and environmental ruin. According to U.S. President Bill Clinton, “the world faces perhaps its most serious financial crisis in half a century.”

B. The Impact on Workers in Crisis Countries

The impact of the financial crisis on workers is often swift and direct. In crisis countries, the chain reaction of economic events typically has started with a plunge in the currency and stock market as investors flee. Desperate to regain investor confidence and to get emergency funds, countries turn to the IMF or the World Bank or both to get a “seal of approval” and a quick loan. Before new funds are disbursed, the Bank and Fund demand certain “structural adjustment” reforms. These invariably hurt workers through any of seven effects:

1. Hiking Interest Rates

Countries are encouraged to raise interest rates to strengthen the currency and to attract back the foreign investment. Yet higher interest rates cripple domestic business, which must repay debts at higher rates, as well as workers who have borrowed funds. In Mexico, Brazil, and elsewhere, thousands of small enterprises have gone bankrupt, adding millions to the ranks of the unemployed. Furthermore, sky-high interest rates discourage new borrowing, which reduces investment and makes an economic downturn even more severe.

2. Massive Public Sector Layoffs

World Bank and IMF policies in poor countries can be summed up in four words: “Spend less, export more.” As governments cut expenditures, civil service downsizing is often one of the first targets.

3. Spending Cuts in Basic Social Services

In addition to public sector layoffs, governments have been pressed by adjustment loans to cut basic social services. As education, health care, and other social program budgets are cut, not only are jobs lost directly but the future health and productivity of the workforce are undermined.

4. Crippling Wage Freezes and Labor Suppression

The World Bank and IMF also press countries to slow or stop the rise in wages, both to attract foreign investment and to repress demand. In some countries, the lending programs have also undercut workers by promoting so-called “labor market flexibility” measures. These can include making it easier for firms to fire workers and weakening the capacity of unions to negotiate on behalf of their members. Meanwhile, the IMF and World Bank refuse to actively promote enforcement of international core labor standards. In a letter to American University Professor Jerome Levinson, Joanne Salop, World Bank Vice President for Operations Policy and Strategy,
explained that “with respect to freedom of association and the right to collective bargaining, the Bank is in the process of analyzing the economic effects in order to form an informed opinion.”

5. Devaluation of Local Currencies

One of the prominent reasons why workers face rising prices in adjusting countries is the common policy prescription that countries should devalue their currency. Devaluations have the effect of making a country’s exports cheaper and its imports more expensive. Workers’ wages, in local currency, buy fewer imported goods. In addition, more of their tax money is required to meet interest payments on foreign debt that is denominated in foreign currency.

6. Promotion of Export-Oriented Production

The World Bank and IMF pursue a series of policies in addition to devaluation to encourage countries to shift more land from basic food crops to export-oriented production of shrimp, broccoli, cut flowers, coffee and dozens of other products. In addition to hastening ecological decline (shrimp farmers can ruin the water table; the cash crops often rely on more chemical inputs), this shift has often been accompanied by rising malnutrition as basic food prices rise and millions of peasants and indigenous people are displaced from their land. The World Bank has also been a big promoter of “free trade zones” where young women often work in exploitative conditions to produce light manufactured goods for export to Wal-Mart, Sears, K-Mart and other outlets. While a small elite gains from these new export ventures, the rising inequalities between the winners and the workers creates new tensions and instabilities.

7. Abolition of Price Controls on Basic Necessities

A favorite target of IMF and World Bank policies is the low prices on basic necessities that governments often subsidize in urban areas. The elimination of these subsidies can be devastating and in several countries, has led to riots and bloodshed.

In sum, in their zeal to correct macroeconomic imbalances and speed the generation of foreign exchange to repay creditors in the rich countries, the IMF and World Bank have visited enormous suffering on the workers of the poorer two-thirds of the world.

C. What Types of Workers are Hardest Hit?

We outline the impacts of the crisis on workers by country in a subsequent section. Across countries, two groups of workers have been particularly hard hit: women and immigrants.

1. Migrant workers:

The crisis exacerbated the already vulnerable position of migrant workers, who often become scapegoats for surging unemployment. To demonstrate their concern for their own citizens, governments in many countries cracked down on immigrants. Singapore sent home Malaysians; Malaysia sent home Thais and Indonesians, and Thailand sent home Burmese.7 The Hong Kong government cut the minimum wage for migrant domestic workers, a move that primarily affects the 100,000 Filipina maids in the country. In Argentina, former President Carlos Menem intro-
duced bills to Congress to stem the flow of illegal immigration from neighboring countries. The new laws would fine individuals or companies up to $500,000 if caught hiring undocumented workers.8

2. Women workers: The gender dimensions of the crisis are complex and vary by region. However, there are several indicators pointing to a disproportionate burden for women, according to an International Labor Organization (ILO) report:

- Asian employers fired unjustly women workers and claimed that women were less likely than men to get severance pay upon dismissal.
- In Thailand, female undocumented foreign workers were more likely than men to be arrested and repatriated.9

In some cases, women clearly bore the brunt of layoffs. In Korea, for example, employment between April 1997 and April 1998 declined by 3.8 percent among men, but by 7.1 percent among women.10 Jayati Ghosh, an economist at Jawaharlal Nehru University in New Delhi, has documented that women workers in Korea and Thailand have been most affected by mass layoffs in the textile, computer-related and consumer electronics industries—all sectors that primarily employ women. In Thailand, women workers in low-tech labor intensive export industries like low-end garments, furniture and low-end plastics were the first to be laid off, Ghosh says. In Indonesia as well, large numbers of women previously employed in export industries have lost their jobs.11

In some of the crisis countries, men make up a greater share of the official overall unemployed. However, there is some reason to suspect that this may be because unemployment rates for women are underestimated. Moreover, some studies have shown that women who are laid off are often quickly rehired, but at lower wages.12

According to the World Bank, many women who previously did only unpaid family work sought employment in the informal sector, including prostitution, in order to survive the crisis. An Indonesian foundation stated that in 1998, 50 to 100 women per month were taking up work in red light districts of Jakarta, compared to 20 per month in 1997.13

According to Lisa McGowan of the AFL-CIO’s Solidarity Center, the fact that women have suffered disproportionately as a result of the crisis is not surprising: “Part of the structure of the global economy is that you have zones of discrimination. When crisis hits, this becomes hyper-discrimination. And long after the international financial community declares that a crisis is ‘solved,’ the problems of racism and sexism will remain.”14

D. Boomerang Effect on U.S. Workers

As workers in the global South suffer, the same World Bank and IMF policies have boomerang effects on U.S. workers. By pressing Southern countries to export their way out of crisis with depressed wages, the World Bank and IMF increased low-cost exports to the United States. Likewise, World Bank and IMF policy-based lending have a negative impact on U.S. exports and hence, U.S. jobs, in several ways because many of the loans:
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1. prescribe currency devaluations that have the effect of making imports of U.S. and other products more expensive;
2. mandate cuts in government spending that eliminate government jobs, which cuts purchasing power;
3. push for the elimination of government subsidies on the prices of locally produced basic necessities, which decreases the income people have to spend on U.S. goods; and
4. prescribe a privatization agenda, which in most developing countries has cost jobs, which again cuts the purchasing power of people to buy U.S. goods.

The World Bank and IMF structural adjustment programs also destroy U.S. jobs by promoting policies that encourage U.S. firms to shift production offshore. Many of the loans are conditioned on the creation of export processing zones, which provide cheap labor and a liberal regulatory environment to attract foreign investors.

II. Impacts on Workers by Country

The current global financial crisis began in Asia in 1997, spread to Russia in 1998 and engulfed much of Latin America by 1999. This section profiles impacts on workers and some of their responses in the four Asian nations that received quick new IMF programs, four Latin American nations, Russia and the United States.

A. Asia Region

1. Korea:

Employment

According to the World Bank, official Korean unemployment rose during the first year after the crisis from 2 to 7.5 percent, and peaked at 9 percent in early 1999. Although the country achieved a remarkable expansion in 1999, growing by more than 10 percent, unemployment only declined to around 6.5 percent. The World Bank has stated that this level is still “unacceptably high,” particularly since most of the displaced are uninsured.15

The LG Economic Research Institute argues that the nation’s real unemployment rate is actually higher than official data indicate, because so many people are working for their family businesses without salary.16 Another trend has been for employers to lay off workers and then rehire them as “temporary” or “casual” workers at 60 to 70 percent of their previous wage and with no union rights or unemployment benefits. According to Human Rights Watch, between early 1997 and February 1998, casual workers increased by 8.7 percent and day-hires by 5.2 percent, while full-time workers fell by 3.3 percent.17

In response to reports of gender discrimination in layoffs, the Labor Ministry established a task force on equal employment in November 1998 charged with conducting spot checks at companies to prevent them from targeting female workers during their restructuring.18 The Korea Labor Institute had reported in August 1998 that the number of female office workers had plummeted 22.8 percent compared to the previous year, while women working in the manufacturing sector decreased by 17.7 percent during that period.19
Like most of the other crisis countries, Korea took steps in the aftermath of the crisis to reduce immigration. In May 1998, the Korean government stopped allowing the entry of foreign workers. Although the government had also planned a mass deportation of undocumented workers, this became less urgent when many foreign workers fled voluntarily. The Ministry of Justice reported that between the end of 1997 and April 1998, 36 percent of undocumented foreign workers left the country.  

**Unemployment Benefits**

Korea’s unemployment insurance program normally pays benefits only for two to five months. In response to the crisis, the government launched a six-month program in July 1998 and in January 1999 announced a further six-month extension. The extension was expected to affect about 150,000 unemployed Koreans. In addition, the government announced that the minimum benefit would be raised from 50 percent to 70 percent of the minimum wage. For families that cannot get by on unemployment benefits, the government allows increased social welfare assistance. President Kim Dae Jung’s government also put about 300,000 day laborers to work on public works projects in the aftermath of the crisis. Korea is the only Asia crisis nation that offers unemployment benefits. Coverage has applied only to firms with at least ten workers, although this is being extended, in stages, to firms with at least five workers. However, while this safety net is more than what most Asians enjoy, many Koreans who are eligible for unemployment benefits decline to accept them because of a strong social stigma against accepting handouts.

**Wages**

During the first year of the crisis, the World Bank estimates Korean real wages dropped 0.4 percent (compared to a 7.3 percent rise during the year prior to the crisis). By the third quarter of 1998, monthly average real wages had dropped 14 percent to 1.2 million won (about U.S.$950). Many companies were cutting salaries by as much as 30 percent. Even unionized workers accepted a wage cut averaging 3 percent. Workers were not only earning less but working more. Average work hours of salaried employees increased by 0.85 hours to 202.6 hours a month.

One indication of the economic strain was the drop in consumer spending. The Bank of Korea reported that consumer spending took the steepest drop during the first three quarters of 1998 in Korean history. Spending dropped by an annual rate of 12 percent, compared with a 4 percent increase for the same period in 1997. Purchases of durable goods, such as home appliances and automobiles, plunged 44 percent.

While Korea’s economic growth rate increased 10 percent in 1999, regular (non-overtime) wages grew by less than 4 percent. As of this writing, unions, employers and the government were locked in tense negotiations over pay increases for the upcoming year. Unions were demanding increases of more than 10 percent to make up for their losses after the crisis. Some analysts questioned whether the unions had the leverage to achieve a satisfactory outcome from the tripartite process, given that unemployment levels are still higher than during the pre-crisis period and many firms have increased their use of part-time and temporary workers.
Bearing the Burden

Impact on Labor Laws and Unions

Although labor unions helped elect Korean President Kim Dae-Jung in late 1997, relations with his administration have been tense. In February 1998, the Korean National Assembly passed legislation that overturned laws which made it difficult to legally fire workers unless a company was bankrupt. The new law allows companies to lay off workers when they face “emergency situations,” such as financial trouble, mergers or acquisition. The legislation was one of the key demands of the IMF’s $57 billion bailout package for Korea.

Labor leaders had threatened to launch a nationwide strike if the layoff bill was legislated, but the unions later backed down when the government offered a compromise plan that granted greater labor freedoms, such as the allowance of teachers’ unions, and a requirement that corporate management must give 60 days notice before they dismiss workers and must rehire workers if business improves. Economic experts predicted that about a million job losses would result from the bill.

Relations between the government and labor unions have continued to be tense. In July 1998, 5,000 workers at a Hyundai auto factory took over the plant, demanding that the company drop its plan to lay off 2,000 workers. A solidarity strike in Seoul drew 100,000 people. In response, Dae Jung ordered the arrest of the president of the Korean Confederation of Free Trade Unions (KCFTU) and many other union officials. That same summer, in response to a strike by the Korean Metal Workers Federation (KMWF), 400 police arrived at the union’s headquarters to arrest KMWF president Dan Byon-ho. Although he eluded police and took sanctuary in a cathedral, several other union leaders were arrested.

Unions and other groups staged numerous mass rallies in Korea to demand that corporations and corrupt politicians, not workers, shoulder the burden for the crisis. On November 15, 1998, the FKTU organized a rally involving 50,000 workers. A resolution released at the rally included demands for better unemployment benefits, stricter enforcement of labor rights laws, and workers’ participation in corporate management. In February 1999, KCTU, which represents 550,000 workers, pulled out of the Tripartite Committee that involved labor, business, and government in a dialogue aimed at solving the country’s labor problems. The KCTU complained that the government was not upholding promises to prevent unemployment and ensure union involvement in corporate restructuring plans.

The strain on unions was reflected in a decline in unionization rates immediately following the crisis. The proportion of union workers in the labor force declined 1.1 percent to 12.2 percent in 1997, the lowest participation rate in 30 years. The number of union members decreased 7.2 percent to 1.5 million. The number of unions also fell, declining 10.8 percent. Publishing, shipping, textile and rubber industries recorded the largest reductions. The Labor Ministry attributed the decline to company failures and mergers, in addition to an 18 percent increase in part-time workers.

2. Indonesia

By most accounts, Indonesia has suffered the most of any nation from the crisis, followed by Russia. These are the world’s fourth and fifth most populous nations, respectively.
Employment

The ILO estimated that the crisis wiped out one-fifth of non-farm jobs in Indonesia in 1998. The World Bank found that unemployment grew from 4.9 to 13.8 percent during the year after the crisis began. Among the East Asian crisis countries, it has been the slowest to show signs of recovery, posting an economic growth rate of only 0.5 percent in 1999.

One of the hardest-hit sectors is the banking sector. Under stiff pressure from the IMF, Indonesia shut down sixteen of the most debt-ridden banks in the last quarter of 1997, which touched off a confidence crisis in the entire domestic banking system. In December 1998, Indonesian authorities announced plans for the merger of four ailing state banks into a single bank. The merger was expected to result in the layoff of 15,000 to 17,000 of the banks’ 25,000 staff. Then on March 14, 1999, the government closed an additional 38 banks because they were deemed to be inadequately capitalized.

Since Indonesia has no unemployment insurance, jobless workers throughout the country face desperate conditions. In the aftermath of the crisis, even those who were able to hold their jobs faced extreme difficulty in finding transportation to their jobs. Taxis raised fares and private bus operators in a number of cities demonstrated to demand that the government provide subsidies for spare parts and allow fare increases. Following the rupiah's nose-dive, prices of spare parts rose 300 percent in 1998 because many of them are imported. In Jakarta, 79 of the city’s 690 public-transport routes had been halted as of October 1998. One private company had reduced its buses from 1,500 to 600.

Wages

The World Bank estimates that real wages dropped 40 to 60 percent in the first year of the crisis, while the poverty rate skyrocketed. According to the World Bank, Indonesia’s poverty rate doubled between the onset of the crisis and mid-1998, when 20 percent of the population were below the poverty line.

According to the ICFTU, the Indonesian minimum wage was worth 6.3 kilograms of rice in January 1997; by June 1998, it was worth only 2.6 kilograms. In mid-February 1999, the Indonesian government announced that it would raise the basic minimum wage by an average of 16.1 percent (depending on the province) beginning April 1, 1999. However, the government allowed companies that could not afford the raise to apply for a postponement. Moreover, by the government’s own admission, the higher wage level still covered only about 80 percent of a worker’s basic needs. The minimum wage applies to full-time workers who have been employed by a company for less than a year.

In the beginning stages of the crisis, the drop in wages was exacerbated by rising prices. Between August 1997 and January 1998, consumers experienced extreme increases in the cost of electricity (200 percent), milk (50 percent), rice (36 percent), and cooking oil (40 percent). In response, students and other Indonesians rioted, demanding the removal of long-time ruler Suharto. After Suharto gave in to pressure to resign in May 1998, the IMF continued to pressure the Indonesian government to implement reductions in subsidies on food, fuel and electricity, although at a slower pace than Suharto had pursued. When protests continued, the IMF agreed in June 1998 to a revised reform plan that postponed austerity measures until the country’s economy recovered.
Bearing the Burden

Impact on Labor Laws and Unions

After a period of severe repression under Suharto, Indonesian independent labor unions dramatically increased their activity. Former President Suharto refused to recognize independent unions, used the military to squash labor unrest and jailed labor leaders. Although the government in 1994 authorized plant-level unions that theoretically could negotiate with their employers, these unions have typically colluded with management against the interests of workers. One group, the Indonesian Prosperity Trade Union (SBSI), has struggled to develop a genuinely independent union movement in Indonesia. SBSI leader Muchtar Pakpahan was jailed for writing subversive speeches in 1995 and 1996.

After the fall of Suharto, one of the first actions of the new administration was to ratify the International Labor Organization’s Convention 87 regarding the freedom of association. Stanley Fischer, First Deputy Managing Director of the IMF, claims that this came about as the result of the IMF’s intervention to press the post-Suharto government to adopt this core worker right. This was a break with the IMF’s traditional lack of support for labor rights. This action suggests that perhaps the true motive for this pressure may have been to create a force (in this case, unions) to help erode the power of the corporate crony system that flourished under the Suharto regime.

With the help of international pressure from the AFL-CIO and other groups, the post-Suharto government released Pakpahan in 1998. These events have helped create an explosion of organizing activity by SBSI, as well as by students and nongovernmental organizations. Since Pakpahan’s release, SBSI has been active in organizing workers in a number of locations in the country. According to the AFL-CIO, about 80 SBSI unions had been recognized as of early 1999.

3. Thailand

Employment

The World Bank estimates that Thai unemployment rose from 1.5 to 10.9 percent during the first year of the crisis. Total unemployment at the end of 1998 was estimated at four million workers, or 15 percent of the workforce. Underemployment, according to the ICFTU, rose to 1.5 million, or 4.6 percent of the labor force in 1998.

According to the Far Eastern Economic Review, many poor urban Thai workers who lived at their factories or on construction sites had nowhere to go after they were laid off. The government reported in May 1998 that some 200,000 had returned to rural villages where work was also scarce. Many others who remained in urban areas entered the informal economy by selling food on the street, offering motorcycle transport or becoming involved in prostitution. Labor experts have criticized the government for providing measures to help big businesses, while more people are employed by small and medium-sized business.

A study by the Thai Farmers’ Bank in December 1997 predicted that layoffs in Thailand would hit construction workers hardest, with around 225,000 people (13.5 percent of the sector’s workforce) expected to lose their jobs. The study predicted that the massive layoff would result in the...
gradual migration of construction workers to their home provinces to resume farming. As in Indonesia, Thailand’s finance sector workers have been hard hit. The Thai government’s plan to solve the banking sector’s problems were expected to result in some 34,000 out of the 114,000 bank workers being laid off. Unionists demanded that the government come up with measures to cope with bank workers’ unemployment.55

Another service sector industry facing a sharp drop in employment was the advertising industry, where about 10 percent of the workforce had lost their jobs as of May 1998. Local advertising agencies suffered when local corporate clients cut their advertising spending by over 40 percent.56

Unemployment Benefits

Thailand currently provides no unemployment insurance. In September 1998, labor unions demonstrated to demand that such a safety net be created through early enforcement of a social security welfare program for retrenched workers. Thailand’s Social Security Act, passed in 1990, began with a first phase to provide benefits for non-work related illnesses; maternity benefits; benefits for invalids and assistance with funeral expenses. Contributions from three sectors (employers, employees, and the government) finance the scheme.57

Unions argue that extending the program to laid off workers would require raising social security contributions from 1 percent to 2.5 percent of salaries in order to secure unemployment benefits. However, the Social Security Office claimed it was not capable of expanding the program to cover unemployed workers because of computer and other problems.58 In addition, an economic adviser to Prime Minister Chuan Leekpai was quoted in the Far Eastern Economic Review as saying that “Thailand does not aspire to emulate the Western unemployment insurance scheme. Rather than handouts, the present administration prefers soft loans towards the establishment of small-scale business.” The standard loan provided is worth about $235.59

Wages

The World Bank estimated that real wages dropped 10.3 percent in the first year of the crisis.60 The ICFTU determined that real income per earner dropped by 21 percent by the end of 1998.61 As of January 2000, Thai media reported that some companies had started raising wages again, but that they still did not measure up to what they were before the economic meltdown.62

Migrant Workers

In February 1998, Thai Prime Minister Chuan Leekpai announced that the country would expel more than one million undocumented workers by the end of 1999, with a target figure of 300,000 deportations by June 1998. In March 1998, Thai officials also announced new measures to discourage the hiring of illegal workers, including a requirement that migrant workers be paid the same wage as Thai workers.63 According to Human Rights Watch, Burmese migrants, who make up the majority of foreign workers in Thailand, earn about one-third of a Thai worker’s wage for the same job. U Maung Maung, General Secretary of the Federation of Trade Unions of Burma, explains that Burmese have fled to Thailand in droves to escape forced labor and relocation, economic hardship, and civil war.
Bearing the Burden

Unions

Although Thailand does not allow public sector workers to organize unions or to strike, private sector employees do have the right to unionize. However, unionization rates are very low, with only 2 percent of the total workforce and 11 percent of industrial workers unionized. One major factor in these low rates is that 50 percent of the workforce is in the agricultural sector. Moreover, labor repression also persists. In the aftermath of the crisis, NGOs reported that companies were unfairly targeting labor leaders in their layoffs with the intention of destroying the unions.

4. Philippines

Employment

According to the National Statistics Office, three million Filipino workers were without jobs as of October 1998, up from 2.3 million a year previous. The unemployment rate reached 9.6 percent, up from 7.6 percent the year earlier. The number of underemployed workers also increased, as Filipino workers, with no access to unemployment benefits, scrambled to get by. As of December 1999, the unemployment rate remained at about the same level as the peak of the crisis—about 9.4 percent. As in many countries, the Philippines' official unemployment rate gives an incomplete picture of joblessness. In this case, the government considers a person to be employed if they worked for at least one hour during the survey week.

One survey indicated that manufacturing had by far the most layoffs in the aftermath of the crisis, making up 61.6 percent of the country's total layoffs, followed by construction and the wholesale and retail trade, both making up around 10 percent.

Whereas other countries focused on expelling migrant workers, for the Philippines, the primary concern in the crisis period was the loss of income from Filipinos employed overseas. The Philippine Overseas Employment Administration reported that in the first ten months of 1998, deployment of overseas Filipino workers declined by 14.39 percent, from 747,696 in 1997 to only 640,054. Those who work as seamen or ship personnel were the most affected by the economic crunch, with their remittances dropping by 10.98 percent. Land-based workers remitted 1.91 percent less from January to July 1998 than in the same period in 1997.

In February 1999, the government of Hong Kong cut the minimum pay for foreign maids by 5 percent. Filipino domestic helpers account for nearly 80 percent of the country's 180,000 foreign maids and most send a large portion of their wages back to family members in the Philippines. In response to the wage cut, several Filipina domestic workers shocked Hong Kong officials by demonstrating outside the office of Hong Kong's Secretary for Education and Manpower.

Wages

The Manila-based Ibon Foundation calculated that the Philippine peso has lost 29 percent of its value in the past four years. Minimum wage workers earn enough to fulfill only 32 percent of food and nonfood requirements in one week.
Impact on Labor Laws and Unions

Under the strain of the crisis, unions in the Philippines worked to hammer out compromises with employers and the government while continuing to struggle to expand the number of Filipinos with union representation. For example, in January 1999, labor unions and companies in export processing zones signed an agreement to avoid layoffs and abstain from labor strikes for the following six months to one year in an effort to survive the financial crisis. Management committed to exhausting all means to boost productivity and keep finances in order before resorting to job cutbacks. Labor, for its part, agreed to hold back any mass actions or temper demands for higher wages. This accord was based on a similar agreement adopted by employers outside the zones and their respective unions in 1998. Democrito Mendoza, President of the Trade Union Congress of the Philippines (TUCP) said that the agreements would not ban work stoppages, but only “commit them to resort to strike sparingly.”

There are 107 export processing zones in the Philippines. During the years 1996 and 1997, the Trade Union Congress of the Philippines (TUCP) organized new unions in the zones at a rate of one per month. Despite the devastating impact of the economic crisis, TUCP still managed to organize eight additional unions in the zones during the first 10 months of 1998.

Despite these gains, there is a risk that Filipino workers may experience diminished legal protections. In early 1999, the Philippine government formed a task force to amend the labor code and recommend “investment-friendly” labor policies. A source said the President’s top priority was to expand exemptions to the minimum wage law. Trade Secretary Jose Pardo said that amending the labor code was the only way to attain the industrial peace demanded by prospective investors who are being counted on by the government to help lift the country out of the economic crisis.

B. The Contagion Effect: Impact on Workers Outside the Asia Region

In a world of financial deregulation, crisis in one country can spread like wildfire across borders and even oceans. The Asian crisis that erupted in mid-1997 spread to other countries through three main channels:

- Trade relations
  Faced with negative economic growth and weak currencies, the crisis countries are importing less, affecting the exports of countries around the world. For the United States, reduced exports to Asia contributed record trade deficits in 1998 and 1999. For Latin America, which does not rely heavily on Asian markets, the primary concern has been a drop in exports to Brazil.

- Commodity prices
  A less direct, but equally serious effect is the impact of global financial crisis in depressing world commodity prices. This is particularly devastating for developing countries that remain dependent on raw materials exports. Between June 1997 and August 1998, oil prices dropped about 30 percent (affecting Ecuador, Mexico, Russia, and Venezuela, among others), coffee prices fell 43 percent (affecting Brazil and Colombia), and gold prices sank 17 percent (affecting Russia, South Africa).
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- Investor panic

The Asian crisis made investors nervous about emerging markets in general, preferring to shift their capital to developed economies that they considered safer. Investors were particularly spooked by countries that bore resemblance to the Asian crisis countries in terms of high budget deficits, such as Brazil. In response, governments have been forced to jack up interest rates as they in an attempt to put the brakes on capital flight. High interest rates in turn hurt locally owned businesses.

In the following section, we describe examples of countries that have been affected, to varying degrees, by these channels of contagion, and the diverse ways in which their governments have responded.

Latin America

In the aftermath of the Asian financial crisis and even more so after Russia defaulted in August 1998, Latin America suffered from an overall drop in investor confidence in emerging markets. Private lending to the region declined from $119 billion in 1997 to $77 billion in 1998 and many countries suffered from depressed prices for their leading export commodities.

1. Brazil: Origin of the “Samba Effect”

The most dramatic impact of contagion occurred in Brazil, which began struggling in 1997 to prevent crisis through spending cuts, tax increases and high interest rates. In January 1999 the country gave up efforts to shore up its currency, the “real,” allowing it to fluctuate against the dollar, leading to a drop in value of almost 36 percent. This set off a dramatic plunge in the country’s stock market and created fears that Latin America could be in for an Asia-style crisis. Brazil is the eighth-biggest economy in the world and the largest in Latin America, producing about half of the region’s industrial output. Many countries in the region depend on exports to Brazil.

A month after the crash, the Brazilian government agreed on the framework of an austerity program as required by a $41.5 billion rescue package from the IMF, the United States and other world lenders. By the end of 1999, Brazil showed better than expected economic growth (slightly positive average growth, compared to the decline of 3.5–4 percent projected in the March 1999). Nevertheless, the official unemployment rate persisted at 7.7 percent in the period April–September 1999, only slightly lower than the 7.9 percent rate in the same period of 1998. Independent groups claim that the true unemployment rate is closer to 20 percent. By contrast, Brazil’s official unemployment rate was only around 3 percent in the late 1980s and early 1990s.

Workers in the automobile sector suffered the hardest immediate impact in the aftermath of the Asian crisis. General Motors cut 1,800 workers in 1998 in a first round of layoffs and in January 1999 cut another 1,000, out of a total of 8,900. Ford laid off 2,800 at its Sao Bernardo plant the day before Christmas in 1998. According to Kjeld Jakobsen, of the CUT labor federation, workers occupied the plant for 20 days and in the end managed to negotiate a dismissal program that provided the workers with higher compensation. In early 1999, Ford threatened to lay off a third of its 1,800 workers at a lorry factory in Ipiranga.
In the midst of rising unemployment, Brazilians also faced rising costs for basic necessities. The number of reais needed to purchase a typical basket of goods rose 3.5 percent in January 1999.81

Union Response

Brazilian labor unions worked to oppose IMF-imposed austerity measures and criticized the undemocratic nature of the bailout negotiations while at the same time working to ease the immediate burden of the crisis on workers. For example, two major trade union federations, the CUT and the Forca Sindical, reached an agreement with car manufacturers in the Sao Paulo region designed to prevent mass layoffs. The plan proposed that the government lower the industrial production tax in exchange for the employers guaranteeing jobs and reducing the price of cars to “pre-devaluation” levels. The union estimated that the proposal would result in increased car sales that would make up for the government’s loss in tax revenue.82 Likewise, at the railway company Ferroban, workers threatened with a 50 percent cut in jobs negotiated with the firm, offering reduced working time and wages in order to preserve as many jobs as possible.

IMF Battles Against Anti-Poverty Programs

In early 2000, the Brazilian government announced a plan to spend more than $22 billion over 10 years to fight poverty. Despite the IMF’s recently proclaimed commitment to eradicating poverty, Fund officials were sharply critical of the plan. The New York Times quoted the IMF representative in Brazil as saying that “the government plan established a precedent that could become dangerous....this money has to be used more effectively.”83 Although this official later retracted his statement, then-IMF Managing Director Michel Camdessus later reacted to the Brazilian plan by commenting that countries should pay off debts and achieve economic growth before handing out charity.

2. Argentina: Hurt by Dependence on Exports to Brazil

Argentina suffered ripple effects (known as the Samba Effect) from the crisis in Brazil, Argentina’s main export market. Prior to the crisis, as much as 40 percent of Argentine exports went to Brazil. With the depreciated real making Argentine products more expensive for Brazilian consumers, Argentine sectors that depend on exports to Brazil suffered. The auto sector, which typically exports 60 percent of its products to Brazil, has been wracked by layoffs. For example, Fiat and Renault announced layoffs of 5,200 workers in late January 1999. Ford initiated a voluntary retirement program, aiming to reduce its workforce by 1,430 workers. Other Argentine sectors that rely heavily on the Brazilian market are textiles, pork, poultry, footwear, and rice.84

In the immediate aftermath of the Brazilian crisis, Argentina also saw significant losses in construction jobs as well as the first-ever drop in service sector jobs. An Argentine official attributed the strain in these sectors to high interest rates driven up by the Brazilian crisis.85 Immediately after Brazil’s devaluation, prime rates in Argentina rose from 10.62 to 15 percent, while rates for small- and medium-sized firms were near 20 percent.86

In late 1999, Brazil’s troubles were continuing to contribute to Argentina’s economic problems. Argentina’s GDP was estimated to have declined by about 3 percent, while the rate of unemployment-
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ment increased to 14.5 percent by August 1999, before declining to 13.8 percent in the last quarter of the year. Argentines are dismayed that their unemployment rate is once again rising after having made progress in driving down the high jobless rate caused by the “tequila effect” of the 1994 Mexican financial crisis. From 18 percent in 1995, the rate had dropped to 12.4 percent in 1998. As recently as 1991, Argentina’s unemployment rate was 6.3 percent.

3. Ecuador: Victim of Low Commodity Prices and Other Contagion Effects

The contagion effects of the global financial crisis have contributed to extreme political and economic turmoil in Ecuador. The country suffered particularly severely from the drop in prices for oil, its main export, as well as capital flight related to the international financial crisis. El Niño storms also socked the country with billions of dollars worth of damage during this period.

In early March 1999, Ecuador’s then-President Jamil Mahuad announced a package of harsh austerity measures and plans to privatize state-run enterprises. The austerity measures included an increase in gas prices of 170 percent and in the sales tax from 10 to 15 percent, as well as restrictions on bank withdrawals.

Labor unions, indigenous groups, and others responded to the plan with hostility, arguing that it would exact the most economic pain on the poor. (Some two-thirds of the Ecuadoran population lives in poverty.) When unions called for a two-day general strike, President Mahuad countered by declaring a 60-day state of emergency and deploying troops to keep the peace.

Two days into the state of emergency, the president of the Ecuadorian Confederation of Free Trade Unions (CEOSL) reported that the headquarters of the federation was surrounded by police and that some labor leaders were being constantly followed. He also said that the police were breaking up groups of protestors through indiscriminate tear-gassing. Nevertheless, strikers persevered. For several days, taxi and bus drivers blockaded roads in the capital city with cars and burning tires. On March 15, IMF head Michel Camdessus lamented that the lack of unity behind an emergency program for Ecuador was the only factor preventing approval of an IMF bailout.

Tensions have continued to escalate as economic conditions worsened, despite a recent rise in oil prices. In 1999, output fell by 7.5 percent, inflation was more than 60 percent, and living standards plummeted. Unemployment is at about 16 percent and average wages are about $48 per month. In September of 1999, the Mahuad government defaulted on about half of Ecuador’s $13 billion in foreign debt. In January 2000, Mahuad began a controversial process of “dollarizing” the economy (substitution U.S. dollars for local currency) in an attempt to regain economic stability. Unions joined with other groups to stage massive protests against the extreme measure, which they feared would make their savings worthless and force further austerity policies. On January 15, 2000, police arrested the president of CEOSL and other opponents on charges of subversion (they were released two days later). Then on January 21, indigenous groups allied with the military in a coup that ousted Mahuad. However, the military backed out shortly after assuming power, allowing Mahuad’s Vice President Gustavo Noboa to become President. Noboa soon announced that he would continue to pursue the process of dollarization. As of March 2000, unions and others were continuing to protest the policy.
4. Russia

Like Ecuador, Russia also suffered from the drop in the price of oil related to the Asian crisis. This factor exacerbated catastrophic conditions that have plagued the country throughout this decade as it struggled to implement an IMF-supported “shock therapy” program to transition to a market economy. By August 1998, contagion effects from the Asian crisis brought about a total meltdown. Russia defaulted on its foreign debt, the ruble took a nosedive, and the stock market crashed.

Even before this disaster, Russian workers had been facing extremely severe conditions. A major focus of the IMF “reform” program was to control inflation. With IMF support, the Russian government pursued an anti-inflation strategy that involved not paying wages to public employees. Private enterprises have also delayed salaries, in some cases because the firm was owed money from the government; in others, because the firm couldn’t compete in the market economy.

By August 1998, Russian workers were owed about $12.5 billion in back wages. A public survey in February of that year showed that 20 percent of all Russian workers in both the private and public sectors had gone without pay for an average of three to four months. Overall in 1998, average wages dropped 40 percent. In terms of wage nonpayment, health care workers were the hardest hit, with a 33 percent increase in nonpayments, followed by culture and arts (28 percent), education (17 percent), and housing (10 percent).

By the fall of 1998, workers were staging mass demonstrations and protest strikes. The ICEM reports that in some cases desperate workers have taken their employers or government officials hostage. There have been several cases of violence related to these disputes and, as in Asia, many workers committed suicide. The strikes and protests continued into early 1999, including a strike involving 100,000 teachers in mid-January. In response to this growing pressure, the Russian government announced in January 1999 that it was going to provide funds to cover current wages for workers directly employed by the government. The government also announced plans to raise the pay of government-sector workers by 50 percent, beginning April 1, 1999. However, consumers continued to face rampant inflation. Just in the month of January 1999, the cost of food jumped 10.4 percent.

Even though Russia’s economic growth rate in 1999 of 1 to 2 percent was better than expected, it is still about 3 percent lower than it was in 1997. The poverty rate in November 1998 was over 3 percentage points higher than it was in 1996. Unemployment in July 1999 was 12.4 percent, 1.5 percentage points higher than in July 1997.

5. United States

Despite the country’s record-low unemployment rate, the impact of the financial crisis on U.S. workers became evident in 1998, a record year in terms of both layoffs and the trade deficit.

The consulting firm Challenger, Gray and Christmas cited the financial crisis, combined with a merger boom, as a major factor in the huge increase in job cuts in the United States in 1998. Companies announced nearly 678,000 cuts, the largest number since 1989. The 1997 figure was 434,350 layoffs.
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The U.S. Department of Commerce reported that the merchandise trade deficit rose 25 percent in 1998 to its highest level on record. The aggregate U.S. trade deficit in goods hit $248 billion in 1998, an increase of $50 billion over 1997. According to the Economic Policy Institute (EPI), the newly industrializing and Pacific Rim countries other than China and Japan—those hardest hit by the Asian crisis—were responsible for about half of this increase. Japan and China were responsible for another third, with Europe, NAFTA and other countries responsible for the remainder. In 1999, the trade deficit grew further to $347 billion.

The broader goods and services deficit also increased in the years following the crisis. In 1998 it jumped 53 percent, to $169 billion, and then rose to $271 billion in 1999.

Rising trade deficits have already taken a toll on the manufacturing sector, which lost 513,000 jobs between March 1998 and January 2000. In 1998, increased imports of steel, particularly from Japan, Russia and Brazil, touched off demands from steel companies and the United Steelworkers Union for increased protections against dumping of steel at below-market values. In early 1999, the Clinton Administration announced plans to impose anti-dumping duties and other restrictions on steel products from a number of countries. These measures resulted in a decline of U.S. imports of iron and steel mill products of $4 billion.

Although their relative numbers are small, family farmers have been among the most severely affected by the crisis. The loss of Asian markets was a major factor in the drop of hog prices to their lowest level in two decades. Market prices as of February 1999 were less than half of production costs, giving most small producers no choice but to go out of business. Grain farmers as well faced plunging prices—a 60 percent drop for corn and 30 percent for soybeans between 1996 and late 1998. In early 2000, the U.S. Department of Agriculture was predicting another tough year for farmers, with net farm income expected to plunge 16 percent this year to $49.7 billion, the lowest since 1986.

III. Alternative Agendas

A. The Evolution of the Elite Debate on the Global Financial Architecture

For the first time since the end of World War II, there is now a genuine debate over the institutions and rules of the global financial system. The AFL-CIO has stated well a central goal for workers engaged in the debate: “We need a global New Deal that establishes new rules to temper the excesses of the market; promote sustainable egalitarian growth; and assure the rights of working people everywhere are respected.” But first, workers must fight their way to the table where the new “architecture” is being planned. As the International Confederation of Free Trade Unions has pointed out: “The debate over financial market reform has been held behind closed doors by bankers and financial ministry officials. There must now be full public participation.”

The context for workers’ organizations demanding a place at the table is that there is now, for the first time in decades, significant elite discord over how best to govern our international financial system. The views of these dissidents have appeared in the op-ed pages of all the major mainstream newspapers. For example, former Secretary of Defense Robert McNamara was quoted in the Wall Street Journal as likening the crisis to the Vietnam War: in both the managers lost control. As early as 1997, two sets of elite actors began to emerge.
1. The Shift Toward Capital Controls

The first set of elite critics support free markets for trade in goods and services but not for short-term capital. This set was well-represented in a task force sponsored by the Council on Foreign Relations, which issued a proposal in September 1999 for the future international financial architecture. Task force members including well-known free trade supporters such as former U.S. Trade Representative Carla Hills, former Federal Reserve Chairman Paul Volcker, and MIT economist Paul Krugman, among others, endorsed the report, which called for strong IMF support of capital controls. Specifically, the report stated that “the IMF should not merely permit holding-period taxes of the Chilean type on short-term capital inflows but should advise all emerging economies with fragile domestic finance sectors and weak prudential frameworks to implement such measures.”

There is also some support for this point of view in governments. The Canadian and Finnish parliaments endorsed the idea of an international tax on foreign currency transactions to discourage speculative transactions. A resolution modeled after the Canadian one is being sponsored in the U.S. Congress by Rep. Peter DeFazio (D-OR) and Sen. Paul Wellstone (D-MN). Most Western European governments also support at least limited versions of capital controls, and the government of France was instrumental in pulling the plug on the proposed Multilateral Agreement on Investment, which would have further lifted barriers to investment.

2. The Meltzer Commission Report

The second set of Washington Consensus dissidents include harsh critics of the IMF who root their critique in a profound defense of free markets. They charge that IMF rescue packages bail-out investors, thus eliminating the discipline of risk in private markets (a phenomenon they refer to as “moral hazard”). They also criticize the IMF’s long-term lending as an unnecessary use of public funds in an age when private financial institutions have dramatically increased their lending to the developing world. The proposed solutions of this camp range from abolishing the IMF altogether to drastically reducing the IMF’s role in providing assistance.

The views of this camp were reflected in a report issued in March 2000 by the International Financial Institutions Advisory Commission, a congressionally appointed bipartisan group chaired by Carnegie Mellon University Professor Allan Meltzer. The Majority Report of the Commission (signed by eight of eleven members) provides a severe and wide-ranging critique of the IMF, including undue interference in countries’ economic policies, financial bail-outs that reward reckless international creditors, and interventions of no clear gain to recipient countries. The report charges that the IM’s long-term policy lending goes far beyond the Fund’s original mandate of ensuring stability in the international exchange rate system. It recommends that the IMF be scaled back to serve only as a lender of last resort to solvent member governments facing liquidity crises. Long-term IMF assistance tied to conditions would be terminated under this proposal.

These aspects of the report were welcomed by IMF critics across the political spectrum. However, the details of the Meltzer Report’s recommendations on the IMF’s future role offer those on the progressive end of the spectrum little reason for enthusiasm. This is mainly because although the Commission would abolish the IMF’s power to impose conditions on developing countries in return for long-term assistance, it would still require that countries meet a list of rigid “pre-
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conditions” in order to be eligible for short-term (120 days maximum) crisis assistance. These “pre-conditions” include the following:

• freedom of entry and operation for foreign financial institutions

This requirement would disqualify from emergency assistance countries such as Brazil, which announced in early 2000 its intention to place controls on foreign banks. Indeed in many countries, the growing influence of foreign banks is a volatile political issue, stemming from the fear that these global banks are not as committed as domestic financial institutions to meeting local credit needs or maintaining the country’s financial stability. In the case of Brazil, for example, a former central bank president charges that in the midst of the country’s economic crisis, foreign banks advised their clients not to purchase Brazilian government bonds and other securities.

• commercial banks must be adequately capitalized

This, the report says, should be consistent with recommendations from the Basel Committee on Banking Supervision, an organization based at the Bank for International Settlements which was formed by the G-10 central bank governors to set voluntary standards for the international banking industry. The Basel Committee promotes a ratio between a bank’s investments and outstanding loans that is far higher than in most countries in the world. In fact, most developing countries currently have no standards at all on capitalization. If they could not meet this standard, they would be hung out to dry in the event of a liquidity crisis. Moreover, even if countries were to adopt such a standard, it is unclear whether this would have the desired stabilizing effect. According to Jane D’Arista of the Financial Markets Center, such a standard could worsen the impact of recession in developing countries since banks during these periods face difficulty attracting investments, and thus would need to call in loans to maintain the required capitalization ratio.

• a proper fiscal requirement to assure that IMF resources would not be used to sustain “irresponsible budget policies”

The problem with this requirement is that the IMF would be the body to define “irresponsible.” In the past, their knee-jerk approach has been to urge governments to slash spending on social programs. The IMF even chastised Sweden, a country with low inflation, tremendous productivity growth and falling unemployment, for providing overly generous unemployment insurance.104 There is nothing in the Commission’s report that would require a different approach in the future. The report also calls for IMF loans to be given a “clear priority claim on the borrower’s assets.” The method deemed “perhaps most promising” would involve requiring that other multilateral agencies and member countries refuse to provide loans or grants to any country that defaulted on its IMF loan.

These “pre-conditions” would allow the IMF to maintain tremendous influence over member country governments, even while terminating their long-term policy-based lending. Professor Jerome Levinson, a member of the Commission who dissented from the Majority Report, argues that the pre-conditions are so strict that the countries that are probably most in need of IMF assistance would be cut off.105 One only need to consider how investors are likely to react when the IMF announces that a certain country has failed to pre-qualify for emergency assistance. The
jitters this would likely provoke in the international financial markets would undermine the overall goal of stability.

One aspect of the Meltzer Report receiving favorable attention was a recommendation that the World Bank and IMF cancel all debts to the heavily indebted poorest countries. These debts, they concluded, are not repayable. However, the Report conditions debt cancellation upon the World Bank approving of the country’s economic development strategy. This would likely perpetuate the same type of pressure to implement structural adjustment programs that has been the target of criticism in the past. Furthermore, as Commissioner Levinson points out, placing conditions on debt deemed not repayable is illogical. He advocates an alternative plan whereby debt would be canceled unconditionally, but future assistance for these countries would depend on whether they effectively handled the funds freed up through debt relief.

While the Meltzer Report’s recommendations do not represent a model agenda for progressive activists, the Commission has clearly served to widen the crack in the elite consensus on these issues. Hoping to prevent the Meltzer Report’s recommendations from gathering support in the U.S. Congress, U.S. Treasury Secretary Lawrence Summers released his own IMF reform proposal in March 2000, which called for a more modest reduction in the IM’s role in long-term policy lending. Summers proposed ending the IMF’s long-term development loans to poor countries but not its long-term loans dealing with poverty reduction. He argued that the Meltzer Report’s more radical recommendations could put U.S. security at risk by preventing the lender from helping a wide range of countries that would not meet the pre-conditions laid out by the Commission.

3. Other Cracks in the Consensus

In a number of instances, elite actors have broken from the policies of the consensus in practice. In Hong Kong, long-heralded by free market adherents as a supreme example of free-market trade and finance policies, the government intervened in the stock market and acted to prevent currency speculation. And, after riots greeted the removal of price subsidies on key items in Indonesia in 1998, the IMF implicitly acknowledged that there were occasions when the costs of free market policies were unacceptably high. The IMF’s post-Suharto agreement allowed for greater social spending and the maintenance of food, fuel and other subsidies. At the World Bank, president James Wolfensohn has taken small steps to distance himself and his institution from the IMF and its policies. In 1997, he and several hundred NGOs agreed to carry out a multi-country review of the Bank’s structural adjustment policies. And more recently, Wolfensohn’s speeches and Bank publications have included attacks on the social and environmental costs of free market policies. In February 2000, Wolfensohn even warned that there could be a backlash against globalization in Latin America, if solutions could not be found to reduce the region’s increasing inequality.

B. Alternative Agendas with a Labor Perspective

With the ruptures in the elite consensus and widespread popular discontent, there is a battle over an alternative framework. The challenge for progressive citizens organizations is to take advantage of this crack in the consensus to push forward an alternative set of goals and policies that promote the interests of workers and communities.

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In Northern and Southern fora, unions, environmental groups, farmer organizations and others have already reached a certain level of consensus around a better alternative. They are suggesting that a broadening of development goals requires a reorientation of financial flows from speculation to long-term investment in the real economy at the local and national level. The ICFTU put it succinctly: “The aim must be to re-harness financial markets to facilitate long-term productive investment.” They are also suggesting that a premium be put on creating maximum space for local and national governments to set exchange rate policies, regulate capital flows and eliminate speculative activity. And they argue that mechanisms should be put in place to keep private losses private.

Such goals require new action at the international, national and local levels. Many of these proposals came together in December 1998 when Friends of the Earth, the International Forum on Globalization, and the Third World Network convened 70 representatives of the labor, environmental, faith-based, academic and other Northern and Southern networks to address whether there was yet a North-South citizens-labor agenda on the global financial crisis.

At that meeting, groups drafted a “Call to Action: A Citizens Agenda for Reform of the Global Economic System.” The Call lays out an agenda that unites labor and other citizens concerns in both North and South. It begins by asserting the following goals of a new financial architecture:

1. Reorient finance from speculation to long-term investment: The rules and institutions of global finance should discourage all speculation and encourage long-term investment in the real economy in a form that supports local economic activity, sustainability, equity, and reduces poverty.

2. Reduce instability and volatility: The rules and institutions of global finance should seek to reduce instability in global financial markets.

3. Enhance local and national political space: The rules and institutions of global finance should allow maximum space for national governments to set exchange rate policy, regulate capital movements, and eliminate speculative activity.

4. Keep private losses private: Governments should not absorb the losses caused by private actors’ bad decisions.

5. Development needs cannot be met by private capital flows alone. The rules and institutions of the global economy should seek to decrease private speculative flows while increasing those public flows that support sustainable and equitable development activities.

In the following sections, we expand on these goals and the debate surrounding them, drawing heavily from the recommendations put forward in the “Call to Action”. We have organized the policy proposals according to whether they are actions that governments should take at the international, regional, national, and local level.

**The Agenda:**

At the International Level Governments should:
1. Establish an International Bankruptcy Mechanism

An international debt arbitration panel should be established to ensure that financial crises and sovereign debt obligations do not place undue burdens on countries and to prevent a liquidity crisis from becoming a solvency crisis. When sovereign debt service threatens the welfare of a country’s people, the panel would restructure and/or cancel debts so as to ensure that important social services are not compromised in an effort to meet debt obligations. In a financial crisis, the panel would prevent a liquidity crisis from becoming a solvency crisis by arbitrating an agreement that meets the needs of sovereign debtor and creditor, thereby helping reduce the need for bailouts by the international community.

There are, by one recent count, at least ten proposals on the table to attempt to move in this direction, all of them drawing from U.S. bankruptcy laws as a model (under U.S. law, Chapter 9 proceedings deal with the insolvency of municipalities, and Chapter 11 deals with insolvent firms). The most interesting of the proposals remove the IMF or World Bank as the key arbiters in crisis situations. Instead, the key institution is an international court composed of nominees put forward by the debtor and creditors.

One of the more developed proposals, an international Chapter 9 for sovereign borrowers, proposed by Kunibert Raffer of the University of Vienna would allow those people affected by the solution to be represented by trade unions (as in U.S. Chapter 9), United Nations agencies, or non-governmental organizations. Raffer argues for symmetrical treatment for all creditors, including the World Bank and IMF, so that multilateral agencies can not insist on priority repayment. He suggests holding the multilateral institutions to account for the damaging effects of adjustment. Hence in Africa, where much of the debt has built up as a part of adjustment, these governments would be entitled to claim compensation for failed projects and reduce the debt burden further.

The major criticism of these types of proposals is that they are impractical in today’s global system, since the legal framework to force creditors to accept a Chapter 11 or Chapter 9 type workout does not exist on a global scale. Currently, there is no single jurisdiction internationally that covers all the creditors involved.

2. Reform or Replace the IMF

With the establishment of the bankruptcy mechanism above, the IMF would ideally retain minimal capability as a lender of last resort and as a gatherer and publisher of international economic data. However, this will not be accomplished overnight. In the meantime, citizens groups must to continue to press for changes in a number of areas:

a. Reorient the goals of lending

The goal of IMF, as well as World Bank, lending must be to reduce poverty and support sustainable development. Although both the Bank and the Fund have made recent gestures indicating a newfound interest in alleviating poverty, critics rightly question the commitment and expertise of these institutions in carrying out this stated goal. The ICFTU has designated the following as prerequisites for the IMF and World Bank to follow in order to show a serious commitment to
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poverty reduction:

• social protection: the institutions should encourage member governments to introduce programs aimed at developing a comprehensive system of social safety nets including retirement pensions, unemployment benefits, child support, sickness and injury benefits.

• primary education and health care: the institutions should support programs aimed at maintaining and enhancing school participation, especially for girls, increase the availability of health care for all, and request that countries develop or improve their strategies for eliminating child labor.

• employment, social institutions and sound industrial relations: the institutions should encourage labor market reforms that are based on respect for core labor standards as defined in the ILO Declaration on Fundamental Principles and Rights at Work. The Bank and Fund should also support the enhancement of programs to increase vocational training, establish and improve job search systems, and implement labor-intensive public works programs and counteract discrimination. According to the ICFTU, “In the emerging global economy, competitive advantage will lie with those countries that have strong social cohesion built on investment in education and training, health care and a sound industrial relations system founded on strong trade unions.”

The U.S. Executive Director is required by law to use his or her voice and vote on the IMF’s Board of Directors to support IMF programs that maintain and improve core labor standards. Unfortunately, it is currently impossible to monitor the extent to which the Executive Directors adhere to this obligation. A March 1999 report by the U.S. Treasury lists seven countries about which the U.S. Executive Director to the IMF had raised labor concerns. However, an AFL-CIO analysis reveals that these interventions were virtually unmentioned in public IMF documents and they appear not to have had any policy impact. A better system for monitoring the U.S. Executive Directors’ actions with regard to this legal obligation is clearly necessary. Jerome Levinson, a member of the International Financial Institutions Advisory Commission, goes further to argue that the U.S. government should condition its support for the World Bank and IMF upon the U.S. Executive Directors voting against financing proposals for countries that are egregious abusers of core worker rights.

b. Terminate pressure to liberalize capital accounts

Critics charge that the IMF paved the way for the financial crises of the late 1990s by insisting in the early part of the decade that more “protectionist” nations of Asia eliminate restrictions on the inflow of foreign capital. While the resulting explosion of private money into Asia made many people rich, they enhanced the countries’ vulnerability when economic conditions deteriorated and investors got spooked. Thus, the IMF should terminate its support for capital account liberalization and instead stick to the mandate of its charter, which authorizes member nations to “exercise such controls as are necessary to regulate international capital movements.”

c. Achieve a higher level of transparency, accountability, and public participation in decision-making
While the World Bank has taken some steps to release more information to the public about its operations and to consult with nongovernmental organizations, the IMF remains largely closed to outsiders. In response to public pressure for more transparency, the IMF did launch a pilot project in 1999 to make public full copies of reports on their "Article IV consultations." These reports form the basis of IMF advice and assistance to these countries. Unfortunately, the pilot program is voluntary, and only a small, unrepresentative fraction of IMF member countries have agreed to release the reports. Nevertheless, a review of the 21 reports that had been made public as of January 2000 do provide some insights into the Article IV process. For example, IMF staff consulted with business representatives in 19 cases, whereas labor unions had participated in only nine of the discussions and other nongovernmental actors were involved in only seven. The Article IV consultations are just one area in which the IMF needs to improve its process to introduce a higher level of public participation and transparency. The institution must go much further in releasing as much information as possible to the public about its operations.

d. Ensure that creditors bear their share

Large private banks deserve a good share of the blame for the financial crises because they lent a great deal of money to developing nations without rigorous checks. But while millions of workers suffered greatly as a result of the crisis, the IMF bailouts protected the banks and their executives from the pain. One indication of this is the fact that the CEOs of the six U.S. banks that had the greatest loan exposure to the Asian crisis countries in 1997 gave their top executives average raises of 18 percent that year. In the future, these institutions must bear their share of the burden. The IMF should have a stated policy that creditors and investors must make a substantial contribution before public moneys are disbursed in any future bailout.

What if IMF Reform Efforts Fail?

At this juncture, workers and their representatives should exert pressure on the IMF to reorient the institution to serve the needs of the world’s people rather than international investors. This can be pursued through a variety of means, including direct engagement with IMF officials, lobbying around IMF funding appropriations (in countries where this is possible), demonstrations, public education, and written critique. However, the IMF may prove unreformable. For this reason, more work should be done to develop proposals around what type or types of institutions should replace the IMF—if any. Some scholars, such as Walden Bello, argue that developing countries would be better off with no international financial institution rather than the current IMF because this would allow local and national governments and citizens groups more autonomy in pursuing alternative development strategies. However, in an era of global capital, we would ideally have international financial institutions that could help reduce volatility and contagion in ways that cannot be accomplished through nation states. An international bankruptcy mechanism has already been discussed. In addition, a number of scholars have proposed the creation of a new Global Financial Authority or Global Central Bank. The most detailed proposals for such an authority come from economists John Eatwell and Lance Taylor. They propose an institution that would:

- set global regulatory standards (such as capital requirements for financial firms) that national authorities would follow;
- consult with countries on their own capital market regime; and
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- develop innovative means to direct capital flows toward long-term needs.

(This proposal assumes that the IMF would continue to play the role of international lender of last resort.)

Citizens groups have emphasized that any plan for a new global financial institution would need to begin with the establishment of sound procedures for transparency and democracy.

3. **Provide Substantial Debt Reduction Detached from IMF and World Bank Conditions**

Currently, debt payments cripple the ability of many developing countries to invest in development. Thanks to pressure from Jubilee 2000 and other groups, there is currently a great deal of momentum around the world on debt reduction. Several European governments have unilaterally canceled bilateral debts owed by poor nations. The G-7 richest countries also announced in June 1999 an initiative to cancel the debts of the 33 most impoverished countries. Specifically, the countries agreed to cancel $20 billion in debts owed to national governments and to add an additional $27 billion to a joint World Bank/IMF debt initiative known as HIPC (highly indebted poor countries).

In the U.S. Congress, there were six bills introduced in 1999 in the U.S. House of Representatives and two in the U.S. Senate that involved debt relief. Some required that debt relief be linked to World Bank and IMF conditionality, while others, such as the “HOPE for Africa” bill by Rep. Jesse Jackson, Jr. (D-IL), did not. Others stipulated that the U.S. Congress should not give the IMF further funding until the institution canceled its loans to the poorest countries. As of this writing, these initiatives are pending.

Our recommendation is that any resolution of the debt crisis must include an expansion of the resources available and the countries eligible for bilateral and multilateral debt relief. This relief should not be conditioned on IMF and World Bank structural adjustment programs and it should allow countries to dedicate sufficient resources to health care, education, social services, and environmental protection.

4. **Establish a Speculation Tax**

In the late 1970s, Nobel-prize winning economist James Tobin of Yale offered a proposal to reduce short-term movements of capital by placing a small tax on foreign exchange transactions. A tax as low as 0.2 percent would, in the words of economist Robert Kuttner, “be a trivial burden on genuine investments but a useful deterrent to transactions that were mainly speculative.” The United Nations conference on Trade and Development (UNCTAD) predicts that a phased-in 0.25 percent transaction tax would reduce global foreign-exchange transactions by up to 30 percent, while generating tax revenues globally of around $300 billion.

Since Tobin’s proposal, there have been a flurry of proposals to tax short-term speculative flows. Some of the proposals posit the creation of a global development fund from the proceeds of the tax; a portion of the funds could be steered to environmental clean-up or other social goals. One of the most successful U.S. investors, Warren Buffet, has proposed a 100 percent tax on short-term (securities held less than a year) capital gains from stock trading, a measure that would
encourage long-term productive investment. Former President Francois Mitterand of France attempted to get the Group of 7 industrial governments to consider a variant on the Tobin tax, but the United States and the United Kingdom opposed the idea.

Critics claim that the Tobin tax would be hard to enforce and, unless all countries adopted it, trading would shift to tax-free havens. On the other hand, over 80 percent of foreign-currency transactions take place on the exchanges of Europe, the United States, and Japan, so a tax adopted by these countries alone would have a significant impact. Moreover, if the political will exists, it would be possible to develop a mechanism for penalizing transactions with tax havens and it is encouraging to see efforts in some governments to support the establishment of such a tax.

At a regional level governments should:

1. Establish Regional Crisis Funds

Japan proposed an Asian Regional Fund during the fall of 1997 to swiftly inject capital into Asian nations as financial crises emerged. The U.S. Treasury Department moved quickly to kill this proposal and has opposed similar proposals in different incarnations that have been tabled in 1998 and 1999. It seems that opposition to these proposals has more to do with the Treasury Department’s desire to maintain control over the global financial system than with any legitimate criticisms of such funds. We believe that countries should be encouraged to form such regional funds if they are designed to respond quickly to crises while maintaining regional sensibilities and interests.

At a national level governments should:

1. Retain the Right to Apply Speed Bumps and Capital Controls

The rules and institutions of the global economy should allow maximum space for national government policy-making to regulate the amount, pace and direction of capital movements. A financial crisis in one country often spreads panic quickly to a number of other countries with equally open and deregulated markets, the so-called “tequila effect.” However, countries with some form of capital controls have weathered the storm far better. This has opened up a debate over the wisdom of capital controls, a topic which previously the IMF and other international institutions placed off limits.

In fact, a January 2000 report by the IMF marked a rather dramatic departure from the Fund’s usual orthodoxy of encouraging openness to all forms of international capital. Authored by six IMF analysts, the study examined the experiences of Chile, Brazil, Colombia, Malaysia, Thailand, China, and India, all of which have used some form of capital controls for some period of time. While stopping short of giving an enthusiastic endorsement of all capital controls, the report concedes that these measures have been effective in certain situations. For example, with regard to the emergency capital outflow controls put in place by Malaysia in late 1997, the report states, “the controls gave Malaysian authorities some breathing space to address the macroeconomic imbalances and implement banking system reforms.” The report further concedes that China’s and India’s experiences with long-standing and extensive controls on capital flows “may have had some role in reducing the vulnerability of these countries to the effects of the recent regional
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crisis. In particular, they helped shift the composition of capital inflows toward longer-term flows.122

The IMF report supports the findings of an earlier study, conducted at the time of the 1994-1995 Mexican crisis by economists Barry Eichengreen and Charles Wyplosz. They examined the affects of the crisis on the interest rates of countries with some type of control on capital outflows (Brazil, Chile, Colombia, Indonesia, Malaysia, and the Philippines) versus those with none (Argentina, Mexico, Venezuela, Thailand, Singapore, and Hong Kong). In the first quarter of 1995, countries with controls maintained stable interest rates, while those without controls experienced significant increases in interest rates as they struggled to prevent rapid capital flight.123 A March 1999 poll of senior bank executives by BankBoston in March 1999 revealed that capital controls may face a bright future. Two-thirds of all bankers surveyed expect that capital control use will be increased in the future.124

While supporting the right to impose capital controls, workers should nevertheless be aware that these measures are insufficient by themselves to defend living standards from global financial crisis. Economist Fernando Leiva points out that in Chile, capital controls in place before and in the aftermath of the Asian financial crisis did make the contagion effect of the crisis less severe, but were not enough to prevent the country from entering a deep recession and experiencing a rise in unemployment. According to Leiva, “What is needed are more effective forms of social protection (unemployment insurance, job creation, training and re-training programs) that can temper negative social impacts from the increasing turbulence of the world economy. Ultimately, such protection requires transformation of the export-oriented models based on super-exploited labor and destruction of natural resources.”125

2. Encourage Long-Term, Productive Investment126

This goal can be pursued through a number of policies, including:

a. Eliminate Short-term Manipulative Instruments:

A Tobin-style tax would discourage speculative capital flows at the international level. At the national level, governments should also set regulations and incentives on cross-border transactions so as to eliminate capital flows that are entirely speculative (i.e. gambling on market fluctuations as differentiated from hedging risk) and that can undermine the real economy.

b. Place performance requirements on investment: Governments should retain the power to impose requirements on foreign corporations to ensure that their investments benefit the local community. These can include requirements that the company use a certain percentage of local or national content in production, hire local personnel, achieve the transfer of technology, and repatriate only a certain amount of assets in a given year. Similarly, governments should place performance requirements on corporations that receive government subsidies or tax breaks.

3. Maintain Stable Exchange Rate Regimes

National governments should strive to reduce the volatility that has characterized exchange rates since the collapse of the Bretton Woods arrangements in the early 1970s. In part, this problem
could be solved through the implementation of taxes on foreign exchange transactions, such as a Tobin Tax, and through controls on short-term capital flows, since these measures would reduce the speculative financial activity that contributes to exchange rate volatility.

However, according to economist Robert Blecker, even if these measures were in place, countries would still need to carefully choose a foreign exchange rate regime that would maximize stability. The new global financial architecture should allow national governments the power to make decisions about their own exchange rate policy rather than mandating any one particular option.

In the wake of the financial crises of the 1990s, however, the orthodoxy on exchange rates holds that countries should go to one extreme or the other, by pursuing either rigidly fixed or freely floating rates. This is in response to the failure of pegged exchange rate regimes pursued by crisis countries in East Asia and Latin America. In an effort to prevent devaluation, many countries spent billions of dollars and raised domestic interest rates to sky-high level—all to no avail.

Nevertheless, Blecker points out that neither firmly fixed nor fluctuating rates are without drawbacks. For example, fixed rates, such as the extreme proposal to “dollarize” the currency of Ecuador, impose severe constraints on a country’s economy and could drastically depress domestic demand, employment, and growth. Some have cautioned that the United States might even be able to use the dollar as a weapon, withholding currency from an intractable government to bend it to Washington’s will. In fact, the Bush administration took just that step against Panama as part of its effort to overthrow General Manuel Antonio Noriega.

Fluctuating rates, on the other hand, theoretically allow countries more autonomy. In troubled economic times, they can allow their currency to depreciate, in the hope that a devalued currency will spur export growth. However, this approach is unlikely to pay off in situations where many countries are simultaneously trying to export their way to prosperity, since the glut of goods on the world market will result in lower prices. Moreover, depreciation increases the cost of servicing debts denominated in foreign currency.

Blecker offers two alternative approaches that, while not without risks, may be preferable to either rigidly fixed or floating rates:

fixed rates with real targets: by focusing on real (adjusted for inflation), rather than nominal exchange rates, this approach avoids the risk of currencies becoming misaligned in real terms if inflation rates differ between countries. A proposal by Paul Davidson would create a new international institution to manage such a regime that also includes additional mechanisms to shift the burden of adjustment from debtor countries to creditor countries to foster higher average employment growth worldwide.

target zones: these would allow considerable but limited fluctuations in exchange rates. To compensate for international inflation differentials, the nominal targets would need to be revised periodically, allowing for “crawling bands.” One advantage of this system is that it would not require the creation of a new international institution.

At the local level governments should:
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1. Encourage Local Investment

As conventional wisdom begins to shift away from the free flow of capital across borders as the great panacea, there is a growing literature about the need to root capital locally. The AFL-CIO has created a Center for Working Capital to seek innovative ways to redirect workers pension funds to meet the long-term investment needs of local communities. The Institute for Local Self-Reliance has been an incubator of such ideas and many of the current success stories can be found in a book by Michael Shuman entitled, Going Local. To support these initiatives, local and national regulations, taxes and subsidies should be structured in such a way so as to encourage local investment in enterprises that support living wage jobs and environmental sustainability. The Washington, DC-based organization Good Jobs First provides support for a booming number of local initiatives to ensure that taxpayer dollars are used to support investment that results in well-paying, stable employment and combats sprawl. Local education initiatives should also inform citizens about the power of using their assets.

Conclusion

Nearly three years after the onset of the international financial crisis that began in Asia, workers in many countries of the world are still suffering the consequences and the world still has no comprehensive system in place to prevent future such crises from occurring. However, proposals now exist that would advance workers’ interests through a new global financial architecture. The success of these proposals in years to come depends on education, mobilization, and concerted political action.

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Our Kind of Trade: Alternatives to Neoliberalism That Can Unite Workers in the North and South

Executive Summary

The rapid globalization of markets for goods and capital has eliminated jobs, reduced wages and increased income inequality in many parts of the world in the past two decades. Labor rights and environmental standards have become ensnared in a desperate race-to-the-bottom in which corporations dangle scarce jobs to the highest bidders in a global auction.

Despite the widely touted benefits of international trade and investment, workers and consumers in both Northern and Southern countries are objecting to both the pace and the consequences of globalization. The North America Free Trade Agreement (NAFTA) has become a lightning-rod for worker anxieties in the U.S., resulting in the failure of fast-track legislation in the U.S. Congress for the past two years. In Europe, concerns about the proposed Multilateral Agreement on Investment have generated continental protests that began in the streets and moved into parliaments across Europe.

The evidence reviewed in this paper suggests that extreme increases in income inequality caused by the globalization of trade and investment has reduced real incomes for production workers in many countries. Global enhancement of labor rights and their enforcement could help restore broadly shared prosperity. However, developing countries, which have often suffered the most, are constrained by very real threats of job and capital flight in recently established export processing zones. Massive capital flight and its devastating consequences in the Asian, Russian and Brazilian financial crises of 1997-1999 have heightened these threats.

Several approaches are available to break the labor-rights deadlock. The developed countries can, and should, offer substantial debt relief and a series of “Marshall plans” providing greatly increased aid for developing countries. These resources can provide leverage in negotiations for

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improved labor rights and higher environmental standards. Economists can assist this process by demonstrating that aid increases are a win-win proposition, offering benefits for workers and consumers in both the North and the South.

New aid and debt relief, properly structured, can also be used to reduce persistent imbalances in trade flows that are major contributors to global economic instability. Japan’s structural trade surpluses, which have persisted for at least 20 years, have contributed to trade problems in the U.S. and elsewhere. Other countries in Asia have emulated the Japanese model of export-led growth, with similar consequences. One solution is to require that payments for new aid programs be proportional to the trade surpluses of developed countries.

These proposals should be pursued simultaneously in both regional and multi-lateral forums. It is important to recognize that the trade and finance policies developed in the past several decades are highly imbalanced, favoring the interests of multinational businesses and private capital flows, over those of workers. For the time being, social issues must take priority in rebuilding the architecture of the world’s trade and financial systems.

The U.S. and other developed countries have made the negotiation of a new Multilateral Agreement on Investment (MAI) a top international priority. This agreement will advance the interests of investors and holders of intellectual property rights, without providing similar protections for labor or the environment. Further progress on the MAI should be halted until substantial progress is achieved on international labor rights and environmental standards.

This paper identifies many areas where trade-restricting initiatives are justified because of unfair trade practices, or outcomes that injure workers or the environment. However, we also support the expansion of balanced trade, investment and technology transfer. These two positions are not mutually exclusive. While globalization has injured many workers, trade is not the root cause of these problems. Rather, it was the unregulated expansion of markets that has allowed inequality and the destruction of the global environment to proliferate. Properly regulated, the expansion of international markets can contribute to broadly shared prosperity.

For example, the integration of large developing countries such as China into the world economy presents a number of special problems. A number of discriminatory trade practices have combined to give China the most unbalanced trade relationship in the world with the U.S.—our imports from China are five times as large as exports to that market. Solutions will require that China respect core internationally respected worker rights before it is allowed to enter the World Trade Organization (WTO), while also meeting other standards of market behavior. In addition, the U.S., Europe and Japan must confront China’s currency manipulation, used to stimulate exports and discourage imports. Finally, specific monitoring and planning will be required in certain key industries, such as aircraft and parts. Temporary trade restrictions may be needed in sectors where China’s discriminatory policies are especially injurious to domestic industries.

The general approaches outlined here, such as aid for trade concessions, also can be used to obtain agreements with developing countries on the need for improved environmental standards. However, the need to limit global warming provides an additional opportunity to address the risks and opportunities of international integration. Some proposals for reducing greenhouse gas emissions could worsen imbalances in trade and finance flows, by accelerating the movement of
production to developing countries. However, careful application of improved technologies
could allow countries in the South to leapfrog carbon-based production technologies and go
directly to clean, energy-efficient systems. Such proposals can also build demand for (and ex­
ports of) high-tech capital goods from the North to the South. Once again, increased aid flows
will be a key ingredient in realizing the potential of this alternative.

The issues raised in this paper, and the others in this series on labor rights and the international
financial system, suggest that fundamental reforms of the international trade and financial system
are urgently needed. Some issues suggested here, such as the need for much more extensive
coordination of international macroeconomic and exchange rate policies could require new inter­
national institutions, such as a “new Bretton Woods Agreement” that may lie beyond the scope of
this project.

Many of the proposals in this paper would also require fundamental reforms in the WTO before
they could be implemented. Labor and environmental standards should be incorporated into the
WTO agreements, and made enforceable with trade sanctions. In addition, the fundamental
principles of national treatment and most favored nation trade status, which require that coun­
tries apply the same rules to trade relations with all members of the WTO, conflict the country­
specific remedies suggested here. It may be necessary to establish country-specific tariffs or
quantitative limits on the volume of trade flows in particular industries in order to correct persis­
tent, structural trade imbalances. For example, the U.S. should consider invoking the WTO
balance of payments exception, and also impose quotas in a few key industries where we have
severe bilateral trade problems.

While internationalization is a desirable long-run goal, it cannot be allowed to conflict with the
fundamental purposes of an economic system—to deliver a high and rising standard of living for
all of its citizens. The right forms of integration are essential ingredients in long-run solutions to
the problems of development. Rapid globalization with inadequate institutions can severely worsen
the level and distribution of incomes, as we have seen in the Asian financial crises.

We should use our sovereign powers to create the new international institutions to govern mar­
kets, including those for goods, labor and environmental resources. We can no longer afford to
pursue one-sided deregulation of trade and investment, while ignoring labor and the environ­
ment. New trade and financial institutions can stimulate global growth, and ensure that its ben­
efits are broadly shared between rich and poor, in the North and the South.

Introduction

In a recent article, Economic Policy Institute President Jeff Faux outlined some of the issues in
the broad debate on the Neo-Liberal model. The premises of this model are that:

• “The people don’t want big government;
• Even if they wanted it, they can’t afford it;
• Even if they could afford it, the global economy will not let them have it.”

The model argues that Social Darwinism rules: You are alone.
This argument applies with greatest force in the debates over the role of government in interna­
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tional economic policy.

The belief that government can have a positive role in the economy, both domestic and interna­
tional, is the foundation of the liberal response: You are not alone. There are many others who
have touched on this broad theme in the past year, including House Democratic Leader Richard
Gephardt in his 1997 speech at Harvard, which emphasized the need to tame markets to social
purposes, and a return to the principles of the Progressive Era. These broad perspectives will
inform our discussions of trade, labor, and the environment.

This paper proposes a framework for a progressive response to the challenges posed by global­
ization, and for remedying its destructive consequences for workers in the developed countries of
the “North” and the poor and developing countries of the “South.” Recently, a wide range of
government officials and leading economists have called for the development of a “New Archi­
tecture” of the international financial system, in response to the Asian financial crisis. The inten­
sive debate on these questions also suggests the need for a similar discussion of a new trading
system, to address closely related problems in the markets for goods and the distribution of
incomes. This paper presents a series of intentionally provocative proposals that are designed to
stimulate further debate on alternatives to the present structure of the world trading system.
These proposals are designed to integrate labor rights and environmental standards into that
system, and identify mechanisms to correct trade and financial imbalances while improving the
performance of the global economy and the distribution of incomes in the North and the South.

Background

The flows of trade and international investment have grown much more rapidly than world out­
put since the creation of the GATT and the Bretton-Woods institutions at the end of the Second
World War. As globalization has increased, global rates of growth have slowed and income
inequality has increased in both the North and the South, especially since the Bretton-Woods
system of fixed exchange rates collapsed in the early 1970s.

Between 1979 and 1989, world output in current, non-inflation adjusted dollars, increased five­
fold, from $3 trillion to $15 trillion. Total world exports increased nine-fold, rising from $300
billion to $2.9 trillion. During this same period, foreign direct investment increased more than
fifteen fold, rising from $13 billion to $196 billion.

Turning to the more recent period, between 1985 and 1997, exports grew 40 percent faster than
income for the world as a whole. However, Foreign Direct Investment grew nearly three times as
rapidly as overall output. All types of foreign private capital, including FDI, portfolio invest­
ments and other forms of debt (bonds and bank loans) have been flowing into developing coun­
tries, in particular, at a rapidly accelerating rate. Total private capital inflows to the developing
world rose from an average of $51 billion per year between 1977 and 1982 to $173 billion in

While foreign capital inflows have undoubtedly brought jobs and technology to a small number of
rapidly growing developing nations, the volatility of these flows has also exposed them to in­
creased risks of catastrophic economic collapse, as illustrated in the Asian financial crisis of 1997
and 1998. Total capital flows to the developing world tripled between 1977 and 1994, rising from
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2.4 to 3.6 percent of output in these countries. In the 1997 Asian crisis, the reversal of capital flows (from an inflow of $93 billion to an outflow of $12 billion) equaled 10 percent of the combined GDP of the five most heavily affected countries.²

There are many ways in which trade and capital flows injure workers in both the North and the South. In the U.S., our trade balance (the difference between exports, which create jobs, and imports, which eliminate domestic employment) shifted from a small surplus in the 1950s and 1960s into a sustained and growing deficit after the mid-1970s, as shown in Figure 1. In this chart, the trade balance falls from a surplus of about one percent of GDP (share of total output—shown on the right scale) to a deficit of 2.5 percent of GDP in 1997. This deficit will grow rapidly in the future as a result of the Asian financial crisis. The growth in the trade deficit has destroyed millions of high-wage, high skilled manufacturing jobs in the U.S., and pushed workers into other sectors where wages are lower, such as restaurants and health service industries.

The other line on the same chart shows that the average real wage for U.S. production workers peaked in 1978, declining more or less steadily through 1996. It is only in the past 18 months that significant real wage gains have been achieved. The small upturn since 1993 (barely noticeable until 1997) increased real wages by less than 2 percent, not nearly enough to offset a decline of more than 1 percent since the 1978, nor to return workers to the path of steadily rising wages they experienced from 1950 through 1973. Low unemployment in the mid-1990s has not solved the problem of falling wages in the U.S., which reflects a number of long-run problems.

So, what then is responsible for the decline of U.S. wages? Trade is certainly one of the most significant causes, because it hurts workers in several ways. First, the steady growth in U.S. trade deficits over the past two decades has eliminated millions of U.S. manufacturing jobs, as shown in Figure 2, below. Between 1979 and 1994, trade eliminated 2.4 million jobs in the U.S.³ Growing trade deficits eliminate good jobs and reduce average wages in the economy. Since then, many more jobs have been lost to NAFTA and other sources of U.S. trade problems, such as the Asian financial crisis.⁴
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The second way in which trade depresses wages is through the growth in imports from low wage countries. If the prices of these products fall, it puts downward pressure on prices in the U.S. Domestic firms are then forced to cut wages or otherwise reduce their own labor costs in response.

Another way in which globalization has affected wages is through foreign direct investment. When U.S. firms move plants to low wage countries, as they have frequently under NAFTA, they eliminate good jobs and increase the trade deficit. These moves also have a chilling affect on the labor market. The mere threat of plant closure is often enough to extract wage cuts from workers. This tactic has become much more common in the 1990s, and it is effective even when plants don’t move.

Many economists who are proponents of free trade, such as Laura Tyson, former chair of the President’s National Economic Council, have now concluded that trade is responsible for 20 to 25 percent of the increase in income inequality over the past two decades. Our own research suggests that trade is responsible for at least 15 percent to 25 percent of the increase in income inequality that occurred between 1979 and 1994 (see The State of Working America, 1996-97, p. 20, available through our web site). However, existing research can only explain about half of the change in income inequality. Therefore, trade is responsible for about 40% of the explainable share of increased income inequality. To put this in broader perspective, it is probably fair to say that there are three forces that share roughly equally blame for our income problems. These are: 1) globalization; 2) declining market power of production workers (e.g. weaker unions and de-regulation); and 3) macroeconomic mismanagement (e.g. excessively high interest rates and contractionary fiscal policies).

Figure 2
Jobs Lost Due to Trade, 1979-2000

Globalization has also lowered incomes for many workers in the developing world, but for different reasons than in the North. First, developing countries have become increasingly dependent on private capital inflows in the past two decades, as noted above. This makes them highly vulnerable to reversals in these flows, as illustrated by the Asian financial crisis. As capital has
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fled from the most heavily impacted countries in 1997, their currencies collapsed rapidly, as shown in Figure 3.

Currency values declined by 30 to 40 percent in South Korea, the Philippines, Thailand and Malaysia, and by 80 percent in Indonesia. Most of these countries have plunged into steep recessions, or depressions (in the case of Indonesia), with terrible consequences for all segments of society, and especially for the poor and unemployed. The absence of social safety nets has put millions of families at risk of starvation in the region. Wide segments of the middle class have been pushed into poverty, as well.

The Asian crisis has also reduced investor confidence in other developing-country markets, raising the risks of currency and financial crises in Latin America, Russia and elsewhere in Asia, especially in China. Economic disasters elsewhere in Asia have also exacerbated economic problems in Japan. Together, these problems threaten another round of market collapse and further economic contraction in Asia. The situation is so severe that many observers are now seriously discussing the possibility of a deflationary cycle of global contraction.

The second problem with globalization in the South is that it has widened the pay gap between skilled and unskilled workers. Rapid industrialization, especially in export processing and assembly sectors, increases demand for skilled labor, boosting wage premia for technical and managerial workers, groups that constitute less than 10 percent of the labor force.

Finally, globalization has also increased the economic pressures on unskilled and semi-skilled workers in many parts of the developing world. Demand for less skilled workers, who constitute the remaining 90 percent or more of the labor force, is often reduced by rapid opening to imported commodities that is a precondition for participation in the global economy. Agricultural
restructuring, which dramatically reduces subsistence farming, and the demand for farm labor, often results.

For example, rapid increases in low-cost corn imports in Mexico under the NAFTA agreement have greatly increased migration from rural to urban communities. The combination of rising demand for skilled workers with excess supplies of less skilled workers has resulted in rapid growth of skilled/unskilled wage ratios and income inequality in Mexico and many countries, as shown in Section 2. These trends are so strong that the real incomes of production and farm workers have been reduced by globalization in many countries in spite of high overall rates of growth in productivity and output. Until recently, the major exceptions to these trends have been in the newly industrializing countries in East and South East Asia, which have maintained extensive import protection and activist industrial and agricultural development regimes and substantial labor market development programs.

Trade Policies, Labor Rights and Environmental Standards

The closely related problems of rising income inequality and the exponential growth of pollution problems of many kinds, combined with the growing instability of the international financial system and its attendant negative effects on worldwide unemployment and incomes, suggest that: 1) a new architecture is needed to create global regulatory institutions scaled and designed to cope with the negative consequences of market systems; and 2) many new strategies and tactics will be required to restore balance and broadly shared prosperity to labor markets, financial systems and the environment.

This paper, and the others in this series, touches on a number of key elements in this system. The papers share a number of common assumptions about the dimensions of a progressive solution to these problems. Recognition of basic labor rights, as both human rights and internationally enforceable standards of behavior, are necessary conditions for improving income distribution in both the North and the South. Detailed proposals for implementing an expanded labor rights agenda is outlined in the paper by Harvey, Collingsworth and Athreya in this series. However, these measures will not be sufficient to cure all the ills discussed in these papers.

Prolonged, structural distortions in trade flows, as reflected in sustained and/or growing bi- and multi-lateral trade imbalances undermine the stability of both surplus and debtor economies. These imbalances create economic fault lines which, if untreated, will result in economic catastrophes in the future, not unlike those experienced in South and East Asia in 1997 and 1998. Because these imbalances injure workers in the debtor countries, firms, governments and workers in these countries are justified in using all available tools, including quantitative restrictions on trade flows, to obtain leverage in negotiations on restoring balance to the trading system. Thus, for example, this paper will propose imposing quotas on imports from China, in part because China’s extensive system of import controls, industrial and foreign exchange policies limits their imports to less than one-fifth of their exports to the U.S.

Although this paper does support the need for and right of individual countries to restrict trade for self-defensive reasons, it also supports the expansion of balanced trade, investment and technology transfer. These two positions are not mutually exclusive. While the neo-liberal expansion of trade and capital flows has injured many workers in the past two decades, trade was not the
root problem. Rather, it was the unregulated expansion of markets that allowed inequality and inefficiency to propagate. With adequate attention to locally based development strategies, expanded trade and capital flows can support, rather than detract from, progress towards broadly shared prosperity.

New multinational institutions are also needed to support a structural-Keynsian approach to promoting broadly shared international growth and stability. While the details of such institutions are beyond the scope of this paper, and the project as a whole, institutional change is clearly required to give governments the tools needed to attack the root causes of global stagnation. For example, a cooperative, global strategy to reduce world-wide short-run interest rates by 0.5 percent to 1.0 percent would have an enormous impact on growth, while having little impact on inflation or exchange rates.

Two closely related macroeconomic issues addressed here are debt relief and development aid. There is a growing recognition that greatly increased aid flows are needed to help restore and expand economic growth levels in the South, and increased awareness that such public investment can expand incomes in the North, as well. This paper will also propose that substantial increases in aid flows be used as incentives to encourage developing nations to accept and enforce higher labor and environmental standards (presuming that the developed countries hold themselves up to the same standards, which is not now the case in all cases).

The swiftness and severity of the Asian financial crisis has convincingly demonstrated the need for a new international regulatory structure for the global financial system. Public officials and mainstream academics are engaged in an intensive search for a “new architecture” for this system. The mainstream debate emphasizes issues such as transparency and the need for more intensive forms of security industry regulation, along the lines of the U.S. model. The need for capital controls has also become apparent, though their application to the larger developed economies has yet to be considered. These issues are addressed in the paper by Cavanagh and Anderson in this series.

The proposals discussed in all three papers also share a common recognition that the trade and finance policies that have been developed in the past several decades are highly imbalanced, in favor of the interests of multinational businesses and private capital flows, and biased against the interests of workers. We have attempted to identify the interests of the broadest possible set of working people, including the interests of organized as well as unorganized workers, the informal sector, women and minorities. All share an interest in achieving higher levels of growth that is more broadly shared, and in growth that sustains rather than destroys the natural environment. While some actions of organized groups of workers will protect their own interests at the expense of others, the goal of this paper is to create more opportunities for win-win policies that benefit the broadest possible class of workers in the widest possible range of countries.

This paper reviews the state of the debate on labor, environment and the international economy. For each of five major topics, it identifies missing or needed elements in the academic and policy literatures on these questions. We also summarize opportunities for raising these issues in domestic and international fora within the next twelve months, ranging from legislative debates to international events such as the April 1998 Summit of the Americas in Santiago, Chile. Finally, it posits one or more policy positions representing the views of the participants in the Cornell
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University project on “Workers in the Global Economy.” These views are intentionally provocative, and are designed to stimulate debate.

This paper begins with an analysis of the tensions between views of trade and labor issues in the developed world and in developing countries, especially in poorer parts of the world. The themes developed in these sections are further elaborated in an analysis of the alleged trade-off between worker rights and jobs in the second section, and in the third section, which examines the challenges of integrating China and other large developing countries into the international economy. We turn to an analysis of environmental issues by taking up the questions of growth versus sustainability in section four. These issues are tied together in the final section, which examines alternatives to the current structure of the WTO.

I. Reconciling North-South Interests

A protracted debate has existed for the past two decades on whether the advancement of worker rights and environmental standards through international trade agreements holds back developing countries. When the International Labor Rights Fund (ILRF) and allied institutions pressured the U.S. government to adopt worker rights as a top negotiating strategy for the Uruguay Round of GATT (1986-1994), most Southern governments registered immediate objections, referring to such measures as protectionism. The Malaysia-based Third World Network headed by Martin Khor, and some non-governmental organizations (NGOs) in Malaysia, India, Pakistan, and Bangladesh soon joined these governments. They likewise raised the following issues about the linkage:

• Northern governments would use the linkage to raise new barriers to keep out Southern goods;

• The GATT (and, since 1995, the WTO) is a profoundly undemocratic institution that is Northern-dominated; the South won’t get a fair hearing there;

• The GATT and WTO lack transparency: decisions on the linkage will be made behind closed doors with little Southern or citizen input.

Among the developing countries, there are significant variations in national responses. NGOs from India and Malaysia, for example, accuse those who advocate a social clause of seeking to prevent job loss in their own countries by removing the comparative advantage of cheap labor in the South. On the other side of the debate, those advocating linkage include most Southern and Northern trade unions, governments in most Northern countries (except Asia), and many Northern and Southern NGOs. They argue that without enforceable labor and environmental rights and standards in international agreements, corporations will bargain countries and factories down to the lowest common denominator.

Virtually this same debate has emerged in the climate change arena. Southern countries and some of their NGOs have argued that Southern countries should be exempt from strict standards in reducing greenhouse gas emissions; after all, the North “developed” without such restrictions. There are elaborate proposals on the table on how to compensate Southern countries for playing a part in greenhouse gas emission reductions.
Remaining clashes include:

- **Process vs. Product Standards.** Many Northern environmental groups think that the U.S. should be able to discriminate against the processes by which goods are made (through labels, social tariffs, sanctions, etc); some Southern NGOs and governments again view this as protectionist.

**Trade and Labor in the U.S.**

The failure of the President’s request for fast track trading authority in 1997 and 1998 has broadened the discussion on trade and labor standards, especially in the policy community. In addition to the broader international debates described above, there are three closely related dialogues developing on trade and wages, adjustment assistance and labor standards.

There is an emerging consensus that trade has had a depressing effect on wages in the U.S., as noted above. For example, Bill Cline of the Institute for International Economics concludes that trade is responsible for only 29 percent of the increase in U.S. income inequality, defined as the gap between production and non-production worker wages. However, careful review of Cline’s own results show that trade and immigration are responsible for about 53 percent of the explained growth in income inequality of 18 percent in the U.S., between 1973 and 1993. These findings are consistent with the view expressed above that trade, institutional changes that have reduced workers bargaining power, and flawed macroeconomic policies share roughly equal responsibility for the growth of income inequality in the U.S.

**Globalization and Incomes in the South**

In its 1997 *Trade and Development Report*, the UNCTAD reviewed some very important data showing that globalization has also been associated with rapidly growing income inequality in many developing countries. This report noted that globalization of international trade and finance can affect incomes in the South through at least two primary channels. First, increased access to international capital flows should reduce profits rates in the South (since capital is in scare supply in developing countries), and thereby improve the labor share of national income. However, the growth in trade flows in high-technology products that involve high levels of knowledge and skills content can also increase the premium earned by skilled workers, relative to less skilled labor. Thus unskilled workers can either gain or lose from globalization, depending on the relative importance of these two factors.

UNCTAD (1997, 135) found that countries engaged in rapid, unilateral reductions of barriers to imports have experienced a significant widening in income inequality. Latin America, in particular, has gone much further than East Asia in reducing trade barriers. The report reviews a number of studies of trade liberalization in Argentina, Chile, Columbia, Costa Rica, Mexico and Uruguay, and found:

almost unanimous evidence of rising rather than falling wage differentials. In most countries the wage gap widened while the real wages of unskilled workers actually fell and unemployment increased. ... [While] other factors... including those linked to macroeconomic adjustment and labour market reform ... may have contributed to increased wage inequality in
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some countries, it is explained primarily by trade liberalization.

UNCTAD also cited a report from the Economic Commission on Latin America (ECLAC 1997, 60), which found that in Latin America:

The distance separating the incomes of professional and technical personnel from those of workers in low-productivity sectors increased by between 40 per cent and 60 per cent in 1990-94. This was due to the rapid improvement of labour incomes of skilled manpower and the reduction or lack of growth in pay levels for workers not taking part in the modernization of production, who account for a large percentage of total employment.

It is important to note that in most developing countries so-called “unskilled” or production workers make up the vast majority, often more than 90 percent, of the labor force.

These findings contrast sharply with those of Adrian Wood, who provides qualified support for the proposition that “export oriented industrialization... reduces inequality within developing countries” (Wood 1994, 13). Wood’s analysis is based, in part, on an examination of wage growth in the East Asian economies. However, as the UNCTAD report points out, those economies have combined export promotion with import protection, and tariffs in Latin America are now significantly lower than in East Asia. UNCTAD concludes that manpower policies (training and education) combined with carefully managed industrial upgrading (through application of industrial policies) were key ingredients in East Asian development strategies that increased skilled labor supplies and helped prevent an increase in skills differentials and wage inequality (UNCTAD 1997, 124).

Globalization Is A Negative Sum Game For Most Workers

The growing body of economic research showing that trade has had negative effects on the distribution of income in both the North and many parts of the South in recent years suggests that trade is lowering the incomes of most workers in both regions. It is entirely possible that globalization can increase total income in two (or more) countries, but the growth of income of the minority can exceed that of the economy as a whole, to the extent that most workers would be better off without globalization, even though each economy might grow more rapidly with it. In other words, the distributional consequences of globalization could outweigh the gains through increased rates of growth. In the language of economics, the efficiency gains associated with trade (Harberger Triangles) can be easily outweighed by adjustment costs, losses of sectoral rents, and distributional effects, especially for small changes in trade barriers.

Thus, there is an emerging consensus in the economics profession and the development community that globalization, as experienced under the neoliberal model, has increased income inequality in both the North and the South. In addition, data and analysis reviewed here suggest that it may also have reduced real incomes for production workers in many countries.
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Policy Alternatives for Reducing the Costs of Globalization

Adjustment Assistance
Concerns for the costs of globalization have risen to such an extent that Nobel Prize winning, MIT economist Robert Solow recently stated:

With our fairly rapid movement to free markets, we have accumulated a significant inventory of resentment by the losers in this process, and it’s perfectly reasonable that we might decide not to go any further along that path until we find a way to be more vigilant in taking care of the losers.23

Solow’s view reflects the growing recognition in the economics profession that further progress on trade liberalization could be impossible without a massive new program to expand adjustment assistance. I recently estimated that a reasonable program could cost at least $4 billion per year in the U.S., for all workers displaced by trade, in contrast with current spending of much less $1 billion for all trade adjustment programs, but my estimate does not include any measures for community assistance, regional economic development or related, necessary items.24 Lawrence and Litan (Brookings Policy Review, Sept. 1997) also emphasize the need for new and expanded adjustment assistance in their critique of “Globalphobia.”

Trade and Labor Standards
Another surprising consequence of the debates on trade and wages is that a few mainstream economists are now more open to the incorporation of labor standards into international trade agreements. Dani Rodrik concludes that:

[international] institutions must encourage greater convergence of policies and standards (“deep integration”) among willing countries to help reduce tensions arising from differences in national practices. (Emphasis in the original)25

Obviously, the definition of what makes a country “willing” allows great interpretation, but Rodrik does argue in a footnote that the WTO is the proper forum for these new areas (without reference to the International Labor Organization (ILO)). According to Eyal Press, Rodrik believes “that multilateral trade agreements ought to include strong protections for labor unions and the environment,” but this may go beyond his intent.26 In any event, there is an opening here in the mainstream of the economics profession on the issues of concern to this project.27

Trade and the Environment
While there are similarities between labor rights and environmental standards, in that both concern “social issues,” there are also significant institutional differences in the way in which these issues have been addressed. For example, there is widespread support around the world for core labor rights and standards as defined in ILO’s conventions. However, there is no such agreement on the environmental side. There is no overall environmental body like the ILO that sets internationally recognized environmental rights and standards. Instead, there are now several hundred international environmental treaties that have begun to establish the foundations for a global agreement. This reflects, in part, the recent emergence of environmental issues on the national
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and global political agenda, and the greater fragmentation of the environmental community, as compared with organized labor. In the future, there may be opportunities for greater linkage between labor and environmental issues, as discussed below.26

Development Aid and Debt Relief Can Be A Positive Sum Game for All

While this statement may seem obvious to most development economists, it is a point of view that is not widely supported by the public, members of Congress, or most of the economics profession.29 There are two key issues that must be addressed in this context. First, many policy makers and economists now believe that most development aid is now used to support current consumption spending in recipient countries, and that there are few, if any, spillover benefits for the donor economies.30 The second, and related, assumption, is that development aid decreases incomes in recipient developing countries, and that it reduces incomes in the North.

An alternative view is that properly targeted development aid can increase the rate of growth of incomes in both donor and recipient countries. However, in order to achieve this goal, fundamental reforms in the structure of current aid programs are needed. There are four key elements of such reforms. First, a much larger share of aid should be used for public and private capital projects in recipient countries, and the primary purpose of those investments must be to serve the needs of local markets, not export markets, as is currently the case with FDI-lead development strategies. Second, a minimum share of such aid could be reserved for purchases of goods (not including services) from the donor countries providing the aid.31 Third, aid flows should be conditioned on the adoption of structural, fiscal and monetary policies by recipient countries, to stimulate non-inflationary growth of consumer incomes and demands for domestic and imported products by the broad working classes. These measures would include labor rights and standards, public education, investment programs and industrial policies to ensure that the fruits of growth are broadly shared. In this way, the promise of aid can also be used as an incentive in negotiations designed to raise labor standards in the South, through bi-lateral and multi-lateral agreements, as discussed below. Fourth, there must be far greater participation by citizen groups in recipient countries in the design and implementation of aid programs.

Aid flows can also be used to help correct structural imbalances in trade flows that have destabilized the international economy. More than two decades of large, sustained trade surpluses accumulated by Japan are an important example. Frequent large and persistent trade deficits in the U.S. have often mirrored the Japanese surpluses. Other non-industrial countries (e.g. China) have also distorted global trade and capital flows, for reasons discussed above.

It is easier for surplus countries to adjust by increasing imports (and hence domestic consumption) than for deficit countries, which would have to reduce imports (and consumption) to move towards trade balance. For these reasons, some have argued that industrialized countries with large current account surpluses should provide the largest amounts of foreign assistance in the aid-for-labor-and environmental-standards tradeoffs discussed below.32

Elements of a Potential Grand Bargain

Any workable solution must address North-South inequalities up front and link labor and environmental language to measures to reduce these inequalities. This will probably require signifi-
cant efforts to revive the debate over Third World debt. In addition, North-North trade imbalances should also be addressed in the design of new aid programs.

An overall compromise position was achieved in the discussions of Mexican, U.S. and Canadian unions and NGOs that accompanied the NAFTA negotiations. In the “Just and Sustainable Trade and Development Initiative for North America” (1993), the position taken was that enforceable labor and environmental standards are legitimate and necessary but only when combined with a series of measures to reduce the inequalities between rich and poor countries. This linkage is crucial and it was sadly missing in the most recent fast-track battle. Fast-track opponents often acted as though all would be well if negotiators simply included labor and environmental conditions in the core of trade agreements; and the concerns of Mexicans and others were largely ignored.

Another major step in the development of alternatives took place in April 1998 in connection with the Summit of the Americas in Santiago, Chile, where the official negotiations on the proposed Free Trade Agreement of the Americas (FTAA) were launched. Further progress was achieved by labor unions and NGOs from throughout the hemisphere that came together in a “People’s Forum” of individuals and groups opposed to the FTAA. The People’s Forum provided an important forum networking and advancing the substantive agenda through the development of alternative policy proposals. Preliminary positions were presented, ongoing areas of disagreement that needed to be resolved were identified, and topics for future discussion (such as dispute resolution) where identified.

The design and negotiation of alternative trade agreements is useful, for many reasons, including the creation of international links between progressive movements in many countries. However, because the negotiation of actual trade agreements will require the support of many segments of society, including business and government, it will necessary to design agreements and structures for their negotiation that appeal to a critical mass of countries, and a viable majority of the political base in each of those countries.

Because of its size and influence, it is essential to revitalize the debate over the larger role that the U.S. is to play in the world. The U.S. labor movement, for example, has begun to adopt international positions that go far beyond searching for new forms of cross-border alliances and promoting labor and environmental standards. For example, the AFL-CIO Executive Committee has recently adopted a revolutionary new policy which “calls for major changes in immigration policy, including the adoption of a new program for undocumented workers and the repeal of employer sanctions for hiring undocumented workers.” This new policy reverses the AFL’s long-standing position in support of employer sanctions that discriminate against immigrants. The threat of such sanctions has led to discrimination against undocumented immigrants and the denial of their labor rights.

Much stronger positions may be needed in favor of measures that will directly reduce inequalities between North and South. This does not necessarily mean advocating more aid, although this should be at least a long-run goal since most Americans do support aid, in principle. The most productive route for reducing inequalities would appear to be significant debt reduction not linked to an International Monetary Fund (IMF) austerity package.
In order to overcome the objections of businesses, governments and workers in the South to including labor rights, environmental standards in trade agreements (for example), the countries of the North should consider offering massively expand programs of debt relief and aid for (public and private) investment-oriented projects, as outlined above. However, rather than providing grants-in-aid, governments in the North should, wherever possible, provide investment capital that will generate a stream of revenue sufficient for the payment of principle and interest. This will require either a profitable private investment, or public infrastructure projects that will increase incomes and hence future tax revenues in recipient countries. This proposal is designed to provide resources which can be used as leverage or bargaining tools in negotiations on labor standards and environmental rights, in a spirit similar to Casteneda and Heredia (1993), as discussed in the initial proposal. However, it must be clearly distinguished from the activities of the World Bank and IMF, perhaps in volume, regions of focus, or simply as leverage in trade negotiations.

Proposals to increase debt relief and aid as part of a new trading regime must be clearly distinguished from the existing practices and economic theories of development. Appropriate development programs could increase the rate of growth of total factor productivity, and hence per capita incomes, in both the North and the South. By stimulating the demand for exports of producer goods from the North to the South, employment and output in these high-wage sectors could be directly increased in the North. This could lead to revitalization not only of manufacturing employment, but also of high-wage service sector jobs linked to those industries (e.g. software, legal, and accounting services). Since the fundamental rates of productivity growth are much higher in manufacturing than in other sectors of the economy (in the U.S.—Europe may be a different story), an increase in the manufacturing share of output can increase productivity growth rates.

The productivity argument may be one way to build domestic support for increased spending on foreign investment projects. This project must go beyond simply asserting that the countries of the North should trade aid for labor standards, to a discussion of concrete steps that can be taken to stimulate a dialogue and build support for this new approach to trade negotiations.

Payments for new aid programs should also be made, at least in part, in proportion to the overall current account surpluses of countries from the North. In the same way, aid flows to countries in the South could also be conditioned on the elimination of structural trade surpluses, although these imbalances could also be addressed with sectoral and macroeconomic policies (e.g. exchange rate re-alignments) that are discussed below. New aid programs involving payments in proportion to trade surpluses may reduce or eliminate the need for tied aid flows, for domestic political purposes.

II. Worker Rights vs. Jobs: Is there a Trade-off?

A number of Asian governments and NGOs argue that if worker rights were enforced in the developing world, then firms would go elsewhere and the number of jobs would diminish. Mexican NGOs argued along the same lines in the NAFTA debate. They called for worker rights provisions that were accompanied by measures to reduce inequalities between the U.S. and Mexico.

This debate seems to pair the multinational companies (MNC) that benefit from their ability to
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exploit workers in the South with subcontractors and their host governments in the South. Krugman and Sachs have argued that labor exploitation is a necessary step in the economic development of any country, calling for more sweatshops as the answer to the “backbreaking poverty” of Africa. Their position is that early in this century both countries and companies were struggling to develop, and sweatshops were the norm. What has changed is that highly developed companies, like Motorola and Wal-Mart, are taking advantage of the undeveloped state of countries in the South to exploit workers until the countries do develop, and then they move on to another place and exploit a different group of workers. The only economic law at work here is that companies are looking for the lowest possible wages. This is not to say that if there was a social clause that set a floor of reasonable conditions, companies would not still seek out labor that was comparatively cheaper.

Part of the difficulty in this debate is that there are no accurate numbers of how many Third World workers are employed by global corporations. There are fairly good figures from UNCTAD for direct employment in TNC subsidiaries, but this leaves out the millions of workers in subcontracting arrangements with firms like NIKE. These are important areas for future research, as noted below.

There is a real shortage of data on the effects of MNCs on employment in the North and the South. This is particularly true for countries such as China, where the state plays a very large role in the economy. We know, from anecdotal data in the aerospace industry, for example, that U.S. firms have transferred substantial amounts of production and technology to China, in exchange for sales. U.S. firms in autos and telecommunications have made similar arrangements. Yet the U.S. data on shipments to and from subsidiaries of U.S. MNCs in China are very small, relative to overall trade (in contrast to other Southeast Asian Countries). This is because U.S. firms are not allowed to have subsidiaries in China, but must, instead, work with local subsidiaries of state companies in many cases.

Note that this debate mirrors one that began in the 1960s and 1970s, concerning the effects of MNCs on U.S. trade and employment. Robert Lipsey (1994) reviewed a number of studies and concluded that U.S. MNCs were net exporters, while foreign MNCs in the U.S. are net importers. This reflects the prevailing model of MNC investment at the time, which viewed FDI as a market access tool.

Today, we are inclined to view MNCs investing in the South as engaging in export production only (the truth probably involves some of both, but the export platform model is probably more accurate for most of the South). The most colorful example is Harley Shaiken’s description of the “tourist exports” going to the Maquiladora zone in Mexico, and coming right back home again (about 2/3 of all U.S. exports now, according to Shaiken). Kravis and Lipsey (1988) also showed that for a given level of production, “a firm that produces more abroad tends to have fewer employees in the U.S.,” confirming this model.

There is No Necessary Tradeoff Between Full Employment and Labor Rights

Clearly, we support full employment and respect for basic worker rights everywhere. And, we don’t think there is a trade-off. Our view is that this is a false argument. Rights setting a minimum floor will not preclude wage-based competition at a higher level. If wages in the less developed
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countries are multiplied by a factor of four across the board, these countries would still offer labor far cheaper than in the North, with little effect on their own employment levels or unemployment rates.

We should clearly distinguish micro-economic from macro-economic forces. Holding everything else constant, raising wages in the North or the South alone (or labor rights, and thus the cost of employing labor), can reduce the overall demand for labor in that market. However, if labor rights are increased at the same time that we dramatically increase capital flows from the North to the South, then a strong, virtuous cycle could result. The increase in labor rights in the South will raise incomes and domestic spending in those regions, providing a stream of income to pay for the new investments. The shift of labor from agriculture to manufacturing will sharply increase national incomes and productivity in these regions, providing the economic foundation for the assumed increases in real wages (together with a redistribution of incomes from the rich and the corporate sector to working classes in these societies). Appropriate macroeconomic policies will also be required to ensure that local markets are deep enough to absorb most of the output of growing industries in the South. As a result, there will be a general increase in the trade deficits of the South, and in the net exports of the North, providing high-wage jobs and the increased capital needed to finance rising incomes in the North and capital investment in the South. Development will then begin to provide benefits to workers in both the North and the South, sustaining a race to the top, as opposed to the current race to the bottom that is the logical consequence of the global neo-liberal development model.

Global realignments in capital flows and labor rights alone will not be sufficient to achieve balanced growth and broadly shared prosperity. Regional and multilateral trade agreements must be renegotiated to achieve more equitable balance between the interests of workers and investors, on the one hand, and Northern and Southern interests, on the other.

For example, the U.S. Trade Representative is currently engaged in a headlong rush with other developed countries to develop and implement a new Multilateral Agreement on Investment (MAI) within either the OECD or the WTO. This agreement will advance the interests of investors and holders of intellectual property rights, without providing similar levels of protections for labor or the environment.

At the regional level, legislators from both Mexico and the U.S. have expressed dissatisfaction with NAFTA and have begun a review that could lead to re-negotiation of the Agreement. Massive surges in U.S. grain imports have caused widespread injury and displacement in Mexican agriculture. U.S.-backed protections for intellectual property rights and restrictions on industrial policies are perceived as significant constraints on Mexican development. U.S. workers complain about lost jobs and falling wages caused by competition with low wages in Mexico. NAFTA should be reviewed and proposals developed to revise the agreement in ways that will benefit workers, farmers and consumers in all three member-nations.

In effect, we are proposing a combination of micro- and macro-economic policies that will simultaneously stimulate growth and equity. It is structural Keynesianism, in the language of Tom Palley, which combines micro-economic or structural reforms to provide the foundation increased rates of economic growth and improvements in income distribution. This model recognizes and responds to the excess capacity traps, which the neoliberal model is prone to suffer (Greider...
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1996), while also addressing the structural problems that have been exacerbated by globalization of the economy.

III. The Integration of Large Developing Countries in the World Economy: China and the WTO

Roughly 40 percent of the new private investment that goes from all sources into the South goes to one country: China. Likewise, China is now eclipsing Japan as the country with the largest trade surplus with the United States. It is also an environmental nightmare, and a country in which labor and human rights are routinely violated. By the middle of the next century, China is also slated to become the world’s largest economy.

Hence, there is a raging debate on China which emerges in the United States in two fora: first, Congress must renew China’s “most favored nation” status each summer (a renewal which in the early 1990s was linked to performance on seven human rights criteria); and second, China has applied for membership in the WTO.

The debate has several positions. U.S. unions, the Citizen’s Trade Campaign (CTC), and the U.S. Right oppose the renewal of China’s trading status and oppose its membership in the WTO unless vast changes are made in labor and human rights and trade standards. The U.S. film and recording industries and others who are concerned with Chinese “piracy” of U.S. intellectual property rights want China to crack down on the “pirates” as a precondition to normalization. Parts of the U.S. business community are lobbying strongly for making China’s most favored nation status permanent and for bringing China into the WTO quickly. The Clinton administration is rather close to this business position, with a policy of “constructive engagement.” One other wrinkle in this complicated panorama is that the U.S. military is singling China out as the new enemy to contain, and hence it is quietly critical of the engagement policy. Asian NGOs, like the Third World Network, oppose the use of trade measures to press China on human and labor rights issues.

Strategic Issues

The major debate is on the best strategy for achieving reform in China: 1) opening the markets 2) cultivating democracy, and 3) encouraging the formation of independent trade unions. The Clinton administration and the MNCs take the constructive engagement view, and this is generally opposed by the linkage camp (especially by citizen’s groups and by conservative fair-trade advocates), which seek to remove trade privileges and access to U.S. markets unless China makes specific improvements. Our job should be to get an objective handle on the following issues:

- How big is China as a participant in the global economy? What would be the consequences if we were ever able to impose economic sanctions on China?
- Short of sanctions, what other tools exist that can be used to pressure China to make reforms?
- What are the main companies operating in China (primarily through subcontractors) and what products are they making?
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- Are there any other countries that might support efforts to pressure China?
- What organizations or individuals in Hong Kong or the PRC can we coordinate with to gather information? Focus particularly on migrant workers not in the party system.
- What is the trade union situation?

Economic Issues

China illustrates the flaws inherent in the Asian model of export-led growth that is now being imitated in developing countries in Latin America, and elsewhere, with the active support of the World Bank, the IMF and many others. China has been depressing the value of its currency for many years, devaluing by 30 percent in 1994. The World Bank estimated that in 1995 the Yuan was undervalued by almost 500 percent, relative to the market value of its output. China has accumulated more than $105 billion in foreign currency reserves, second only to Japan in the world, a direct result of its continuing interventions in foreign currency markets.

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As a result of its export promotion strategies, China has enjoyed a rapidly rising trade surplus with the U.S. Overall, China's trade is roughly balanced, though this picture is based on self-reported data (IMF Financial and Direction of Trade Statistics) that differs substantially from U.S. measures of the bilateral trade balance. The U.S. has absorbed most of the increase in Chinese exports because most other developed countries restrict imports from China using a combination of formal (e.g. anti-dumping duties and suspension agreements) and informal (such as "gentlemen's agreement's") measures. As a result of the trade deficit between the U.S. and China (including Hong Kong), the U.S. has absorbed a net, cumulative loss of 604,000 job opportunities. U.S. net job losses due to increased trade deficits with China and Hong Kong have eliminated 382,000 job opportunities since 1989, alone.

Alan Tonelson and others have noted that China is moving rapidly up the product life cycle. Whereas its exports in the 1980s were concentrated in low-tech manufacturers such as apparel, footwear and toys, its most rapidly growing exports in the mid-1990s were in mid-range, technology goods such as computers (computer parts, specifically) and telecommunication equipment (e.g. handsets). Of even more concern, China has been rapidly increasing production in the aerospace sector through the offsets and technology transfer agreements with producers from the U.S., and more recently the E.U. This is undermining U.S. aerospace employment, and the U.S. technological base for this leading high-tech sector. China illustrates the dangers of rapidly growing trade imbalances, with a large country in which the state plays a leading role in the economy, both through the ownership and operation of a large share of the production base, and through very intensive management of all external flows in the economy. One consequence of these structures is that today China's exports to the U.S. are roughly five times as large as its imports from the U.S., one of the most imbalanced relationships ever encountered by this country.

Alternative Approaches to Bringing China into the WTO

One possible strategy would condition China's WTO membership on an agreement by all member nations to respect the core internationally recognized worker rights. The ILO would supervise a two-year review of the entire membership which would determine which nations should be ex-
cluded from the WTO on these grounds and which aspiring countries (including China) should be included. The United States should be, as all nations, among those reviewed. This way we aren’t singling out China, but subjecting them to the same review as every other country.

The ILRF is also pursuing an alternative strategy. It works with specific companies and uses that access and leverage to expand activities. The ILRF believes that the efforts to isolate China or achieve effective sanctions will not be successful in the foreseeable future.

EPI favors a three-pronged approach to achieve reform of China’s trade, labor and investment regimes. First, the U.S., Japan and Europe should develop a common policy on the need for China to fundamentally re-align (revalue) its currency. This should be implemented through massive purchases of Yuan, if necessary (though it shouldn’t be—the announcement should be sufficient). If China is forced to revalue, then it will be compelled to look to its own markets for the engines of growth, as must be the case for such a large and resource rich nation.

Second, target or otherwise limit Chinese exports to the U.S. in key industrial sectors. Given the large role of the Chinese state, its fundamental opposition to opening the economy to imports, and its determination to regulate and exploit foreign firms within its borders, an important alternative is to continue regulating China’s exports until it complies with commonly accepted standards of market-based governance of economic activity. These standards are normal preconditions for membership in the GATT and WTO. Limits could be tied to the growth of U.S. exports to China, or to a gradual increase in U.S. imports, which could vary from sector to sector, as was the case with the Multi-fiber Arrangement. In other words, carefully managed trade. These limits should be determined in bilateral negotiations. Until these arrangements are completed, the U.S. should impose general section 201 (escape clause) limits on imports from China. We are the only major country in the world that allows unlimited inflows of Chinese goods in most industries. As a result, the U.S. absorbs the major burden imposed by China’s model of export-led growth. Our economy provides the external engine for their growth.

Finally, a comprehensive industrial monitoring and planning capability is needed in the U.S. In response to widespread targeting of our key strategic industries by China, and other large industrial powers (including Japan and the EU), the U.S. has no choice but to develop its own industrial policies. The first step in this direction would be the creation of a ministry of industry (a true Department of Commerce), responsible for monitoring trade and technology developments on a global basis. These sectoral departments should also work with industry and labor to develop comprehensive sectoral development plans. Note that sunshine laws are a major impediment to the implementation of effective industry-government panels. Completely open processes generate information/input overload, and are a barrier to action. In the presence of sunshine laws, little or no bargaining or substantive dialogue can take place. This suggests a tradeoff between public input and effective policy. Effective industrial policies are certainly facilitated by the existence of peak organizations that have the power to negotiate, behind closed doors, on behalf of the interests they represent. While such centralization is lacking at the present time in the U.S., positive results from particular planning efforts could provide incentives for greater coordination, centralization and institutional reform. Other similar tradeoffs are discussed below, in the section on the WTO.
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**IV. Alternatives to the WTO**

**Background**

Many approaches to reform of the WTO system have been proposed, ranging from the incorporation into the WTO of labor rights and/or a social charter that are enforceable through trade sanctions, to changes in the fundamental architecture of the system itself, including new or revised principles of organization. Within this project there are differences of opinion on how far we can or should go in proposing specific WTO revisions. At a minimum, we will discuss and devise a variety of new and existing ideas for WTO reform.

At a very basic level, we have become trapped in a box defined by the assumptions that form the basis for the WTO: 1) markets are the optimal mechanisms for allocating resources 2) governments should not interfere in domestic or international trade flows, nor should they subsidize most types of industrial development, and 3) core trade values are absolute standards, that should not be compromised.

The WTO, in particular, and the GATT, which it superceded in 1996, are built on three specific principals, which embody these assumptions. **Non-discrimination** requires that no country be treated differently from any other in trade relationships. **Most Favored Nation (MFN)** trade status implements this concept by establishing a common set of tariffs and trade rules that must be applied to trade with all members of the WTO. Countries are allowed to offer tariffs lower than the MFN rates (e.g. in a customs union or regional free trade area), but no tariff may be set higher than the binding level established in the WTO agreements. **Transparency** requires that trade provisions be “obvious and quantifiable.” In practice, these policies have led to the conversion of quotas and many other types of trade restrictions into tariffs (which were then subject to reduction in successive rounds of GATT and WTO negotiations).

**National Treatment** is an important, though a less widely applied concept that is the foundation for the MAI, and a number of related ventures. It requires that firms be treated identically, regardless of national origin. This principle, which has been adopted in OECD codes, and various bilateral investment treaties, prohibits countries from establishing national champions or preferences for domestic firms. In the extreme, the national identity of firms cannot be a consideration in the setting of public policy, and differential treatment (even if not intended as a trade goal) can be grounds for private redress (MAI takings/appropriate compensation agenda). The investment and intellectual property rights provisions of NAFTA, and the pro-business trade agenda (including currently proposed reforms to the IMF charter) attempt to expand the reach of national treatment provisions.

The WTO/GATT principles have been implemented in a process that is based on reciprocal bargaining (country A offers tariff cuts in industry X in exchange for concessions in from country B on its tariffs in sector Y). Consensus is also required for most major changes in these treaties, and in the past, countries could pick and choose the elements (articles) of the GATT in which they wished to participate. However, with the WTO, such opportunities for “opting-out” are much more limited.

The WTO/GATT model has been increasingly troubled by the growth of huge structural imbal-
ances in trade and investment flows, which are related, in part, to the development and proliferation of the export-led growth model in the last 30 to 40 years. These imbalances reflect fundamental differences in social attitudes about the appropriate role for government in society, and about the relative balance between markets and the social regulation of economic activities. As tariff barriers have fallen, through successive rounds of GATT negotiations over the past half-century, the importance of these differences, as reflected in structural imbalances, has increased dramatically. Increasingly, governments in Europe and Asia have used formal and informal regulations to control trade flows and promote the development of domestic industries, while the U.S. has opened itself to nearly untaxed and unregulated trade and investment flows.

Government regulatory regimes tend to evolve in long waves. The modern form of government, with substantial expansion and centralization of federal powers was first established in the U.S. under the new deal, in the 1930s, in response to decades of crises, which came to a head in the great depression. While this fact is well understood, there is less widespread appreciation for the fact that international institutions also come and go, and must periodically be changed in response to fundamental changes in the structure and organization of society. The Bretton-Woods system essentially replaced the British Gold standard, which regulated world trade and financial flows for two centuries. The Bretton-Woods system was, in turn, undermined by the growth of international capital flows and the absence of mechanisms to correct fundamental imbalances in trade and capital flows, and to pressure countries to reduce balance of payment surpluses.

Each change was tumultuous, and required a fundamental re-examination and restructuring of the principals of economic and political relationships. Galambos and Pratt (1988) have examined such regime shifts, and concluded that they tend to occur after prolonged periods of structural tension, as is now the case. David Gordon, Sam Bowles and many others have written extensively on the related concepts of Social Structures of Accumulation. These debates should be re-opened in light of current crises in world trade and investment flows.

V. A Fork in the Road: Forging A Global New Deal vs. Reducing the Influence of Multinationals in the WTO and Other International Financial Institutions

At the present time, there is significant tension between economic nationalists, and those who see further globalization as our only choices. These tensions reflect a deeper conflict between the desire for sovereignty and local decision-making (or subsidiarity, as it is expressed in the European context), and the need for every greater centralization. In the extreme, many of us would feel torn between the desire to promote internationalization, and the need to re-assert local control. These issues are reflected in debates over questions such as fast-track authority and regional trade agreements.

Robert Wright recently discussed the underlying tensions between sovereignty and internationalism. He argues that despite the costs of globalization, we have no alternative but to globalize, for three reasons: 1) international institutions can promote world peace (e.g. the E.U.) 2) free trade raises incomes in the North and the South (here he cites Krugman on sweatshops), and 3) international trade institutions can promote a liberal domestic agenda (here he cites the EU social clause). This argument contains several serious flaws. First, globalization doesn’t necessarily
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promote the growth of living standards, as shown in section 1, above. Second, it’s not globalization that supports the social clause in the EU’s liberal agenda—it is the strength of social movements, such as labor unions, in Europe. This reinforces our argument that it’s not globalization, per se, which is bad, but the particular way it’s done.

Foundations of Progressive Internationalism

Governments are intervening in trade flows. These interventions have become increasingly important in recent years, as reflected in growing structural imbalances. The U.S. model, which requires making the rest of the world adhere to our market principles and beliefs about the government role in the economy, and about business/labor/government relations, isn’t working (Schmitt and Mishel, 1998). We need to respond to these imbalances in three specific ways: 1) negotiate a fundamental re-alignment of exchange rates, and establish a mechanism for regularly correcting structural trade deficits (not as hard as it sounds—its just Japan and China who must be dealt with, at the moment); 2) discriminate among countries by setting up country-specific tariffs or quotas to address remaining trade imbalances; 3) where necessary, set limits on the volume of trade flows at the industry level with particular trading partners (e.g. Japan and auto parts, China and aircraft offsets). In general, these three themes are illustrated in my position on our trade problems with China (Section 3.D, above).

1. Integrate labor and environmental standards into the core of trade agreements, at both the regional and multinational level. Properly structured regional integration agreements (like the EU) can lead the way, demonstrating concepts that can gradually be added to the WTO (Wachtel 1998). Northern countries should use increased aid flows as incentives for developing countries to accede to these higher standards, and they must demonstrate restraint in advancing the interests of investors over those of workers, and of the needs of southern countries for effective development tools, such as industrial policy measures.

2. Widely promote the concept that no trade agreement, and no expansion of NAFTA or the WTO is preferable to bad agreements. Expansion of these agreements in ways that limit the role of governments in society, or that reduce choices about the government role (sovereignty) will only worsen the problems we are concerned with in this project. This means, in particular, that fast-track authority should be opposed unless it requires appropriate guarantees and procedures in the core of future agreements.

3. The U.S., in particular, should consider invoking the GATT balance of payments exception in order to limit the destructive consequences of the import surge expected in 1998 and 1999 as a result of the Asian currency crises. Business Week and many other mainstream financial institutions have that forecast trade deficits will increase from the current $210, or so (in 1997) to $300 or more billion in this period. Rapid increases of this size could bring a return of the rust belt, and result in the destruction of at least 1 million U.S. job opportunities, and unavoidably eliminating a minimum of 600,000 manufacturing jobs.

4. We should implement global quotas on a few key products that have or will be major problem areas, such as autos and electronic products. Rights to temporary quotas should be auctioned. Quotas should be used, rather than tariffs or import surcharges, so that import limits could be targeted at particular problem countries, such as Japan and China.
These proposals maintain internationalization as an ultimate goal, but recognize that institutional reform is a necessary precondition to solving the twin problems of economic stagnation and rapidly growing inequality. In the present situation, sovereignty is our best defenses against the problems discussed in this project. Trade liberalization should advance policies that promote rather than retard equitable growth, and must create, and not destroy, space for a positive role for government in the management of economic affairs.

Ultimately, global integration, including further increases in trade and capital flows, can be beneficial to workers in both the North and the South. The right forms of integration will be essential ingredients of long-run solutions to the problems of development. Without increased access to capital and technology from the developed world, Southern nations will be constrained to slow or even declining rates of growth in per capita incomes. However, rapid globalization with inadequate institutions can severely worsen the level and distribution of income in the North and the South, as shown in the first two Sections of this report. We should use our sovereign power to create the new international institutions needed to govern markets, including those for goods, labor and environmental resources. As these institutions are created and developed, and begin to assume effective control over markets, then, and only then, can we afford to surrender sovereign control of our own economic destiny.

Notes

1. American Prospect (November/December 97).
3. It is interesting to note that the World Bank, which many regard as a neoliberal institution, has begun to emphasize the importance of the government role in the economy, in reaction to the global de-regulatory jeremiad of the 1980s and early 1990s. See, for example, World Development Report 1997: The State in a Changing World (New York: Oxford University Press, 1997).
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The phrase “at least” used here is critical to our understanding of these issues. Most of the existing research has examined one, or at most two, channels through which trade and globalization can depress incomes. The most common method estimates only the effect of falling import product prices on the wages of U.S. workers. However, there are many other ways in which globalization can affect workers, as the best of these studies point out. In addition to the effects of plant closure threats and the destruction of good jobs through trade deficits discussed above, foreign outsourcing also eliminates jobs in supplier industries. Furthermore, capital outflows have also reduced the size of the U.S. manufacturing base, and hence our ability to compete with foreign producers in export markets. A complete accounting of the effects of trade on wages must include all of these effects, but no study has included more than one, or at most two. Therefore, we know that the 15-25 percent estimate is a lower bound.


For example, the administration has been willing to include more forceful language and procedures on labor standards in proposed legislative language regarding increased IMF funding (Leach and LaFalce Amendment to HR 3114, dated March 4, 1998). On the other hand, WTO chief Renato Rugerio stated that efforts to “enforce environmental or social standards were doomed to fail and could only damage the global trading system.” “Green Push Could Damage Trade Body—WTO Chief,” Reuters News Service, March 18, 1998.


Op cit., 264. In his Table 5.1 Cline shows that trade is responsible for 7 percentage points of the increase in inequality and immigration 2 percentage points, versus falling minimum wages and de-unionization, at 5 and 7 percentage points, respectively. These estimates explain 17 percentage points of the 18 percent increase in income inequality in this period. Cline also estimates that equalizing forces (increases in the supply of skilled labor) should have reduced income inequality in this period by 40 percent. He therefore concludes that technology and other forces (not specified) must have provided offsetting increases in inequality that were larger than the effects of trade. According to Cline, each of these point estimates should be chained rather than added to determine the overall effect on income inequality, over time.


Adrian Wood, North-South Trade, Employment and Inequality: Changing Fortunes in a Skill-Driven World (Oxford: Clarendon Press, 1997). Wood’s qualifications concern the distinction between literate and illiterate workers. He argues that globalization has increased the gap between these groups, and hence inequality. However, he also points out that there are comparatively few illiterates in the countries that are exporting products to the North, “[s]o the reduction in inequality should have predominated.” (Wood 1997, 14).


For example, Rodrik (1997, 78) acknowledges that “indeed, the dirty little secret of international economics is that a tiny bit of protection reduces efficiency only a tiny bit. A logical
implication is that the case for further liberalization in the traditional area of manufactured goods is rather weak.”

Although there is some remaining debate among economists about whether or not trade has increased income inequality in the U.S., even earlier skeptics such as Robert Z. Lawrence now acknowledge that trade has had a small but negative and significant effect on U.S. income distribution (Draft working paper for ILAB, 1997). See John Schmitt and Lawrence Mishel, “Did Trade Lower Less-Skilled Wages During the 1980s? Standard Trade Theory and Evidence,” Technical Paper (Washington D.C.: Economic Policy Institute, July 1996) for review and extension of Lawrence’s earlier work. In general, Schmitt and Mishel found that the import price data used by Lawrence is selective and incomplete. Using comparable domestic prices they show much larger and more significant effects of trade on wages.


See part 4, below.

Political support for development aid is complicated by widespread confusion about the size of U.S. aid budgets. “Most polls indicate that Americans think that foreign assistance programs are the single largest item in the federal budget and make up close to 20 percent of total government spending. The reality is far different: Economic and humanitarian assistance abroad makes up less than one-half of 1 percent of the federal budget (“Why Foreign Aid,” which is available from the U.S. AID web cite: http://www.info.usaid.gov/about/y4naid.html). The total U.S. Foreign Affairs budget request for 1997 was less that $20 billion (Craig Johnstone, “Foreign Policy on the Cheap: You Get What You Pay For,” March 12, 1996. See www.info.usaid.gov/press/speeches/johnston.htm.

With the exception of income that flows to expatriate officials and consultants from the North that manage development assistance programs. While such flows may be significant, they do little to stimulate real economic growth in donor countries.

Some object to such proposals on the grounds that they would lead to inappropriate technology and capital purchases. See Graham Hancock, Lords of Poverty: The Power, Prestige and Corruption of the International Aid Business (New York: Atlantic Monthly Press, 1989). He provides examples of Sudanese farmers who were given tractors, but could not use them due to shortages of gasoline and spare parts. Such problems illustrate the need for local input into design of appropriate development assistance programs, as noted below.


See the document drafted by the Social and Economic Alternatives Forum of the Peoples Forum in Santiago, “Principles For A Democratic, Inclusive And Sustainable Globalization.” This document is available from the peoples forum web site at: www.members.tripod.com/~redchile/introe.htm

35 Johnston (op cit.) cites a University of Maryland poll showing that “Americans think we should be spending 6 percent of the federal budget on international affairs,” whereas the actual level is only 1.2 percent of the federal spending. It is also important to note that “Japan has a larger foreign assistance program than the United States, and France and the Netherlands combined give almost as much foreign assistance as the United States” (“Why Foreign Aid,” op cit.).


38 One issue that requires much further thought is the linkage between this proposal and the flows of funds—how will the aid flows affect capital outflows from the U.S. and other developed countries, and how current accounts (trade balances) can and should change to support these investment flows.

39 Note that this proposal could cause conflict with environmental concerns about the sustainability of a high-growth global economy. However, it is possible to envision development policies that combine clean, energy efficient technologies with modern production technology. Transfers of such equipment and technology could be financed using revenues from potential greenhouse gas taxes, which will probably be needed to achieve the goals of the Kyoto agreements on global climate change. Such strategies could enable developing countries to leap-frog the developed world, and move to higher levels of development with clean technologies, avoiding the inverted-\(U\) pattern of development and pollution emission that has been postulated by Krueger and Grossman in Gene M. Grossman and Alan B. Krueger, “Economic Growth and the Environment,” The Quarterly Journal of Economics, May 1995, pp. 353-377.


41 For example, Raymond J. Mataloni, Jr., and Mahnaz Fahim-Nader, “Operations of U.S. Multinational Companies Preliminary Results from the 1994 Benchmark Survey,” Survey of Current Business, December 1996, pp. 11-37, report imports and export from U.S. multinationals, to and from their foreign affiliates (defined as a firm in which the multinational has direct investment which controls 10 percent or more of that firm’s assets). Table 19 reports trade with these affiliates:

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<tr>
<td>Malaysia 1994</td>
<td>1,291</td>
<td>2,219</td>
<td>-928</td>
<td>13,982</td>
<td>15.9%</td>
</tr>
<tr>
<td>Philippines 1994</td>
<td>337</td>
<td>595</td>
<td>-258</td>
<td>5,719</td>
<td>10.4%</td>
</tr>
<tr>
<td>Singapore 1993</td>
<td>4,033</td>
<td>9,087</td>
<td>-5,054</td>
<td>12,798</td>
<td>71.0%</td>
</tr>
<tr>
<td>China 1994</td>
<td>456</td>
<td>176</td>
<td>280</td>
<td>38,787</td>
<td>0.5%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>6,117</td>
<td>12,077</td>
<td>-5,960</td>
<td>71,286</td>
<td>16.9%</td>
</tr>
</tbody>
</table>

Total U.S. Imports from Foreign Trade Division, The Bureau of the Census, U.S. Department of

42 See Robert E. Lipsey, “Outward Direct Investment and the U.S. Economy,” National Bureau of Economic Research Working Paper: 4691, March 1994, pp. 16-17. “The preponderance of evidence from empirical studies points to either no effect, or a positive effect, of overseas production in a host-country market on home-country exports to that market.... On the other hand, the presence of affiliates from countries other than the U.S. was positively related to those countries’ exports to that host country and, where there was any significant relationship, negatively related to U.S. exports to the country.”


45 Note, however, that EPI studies of the effects of the recent (1996-97) increases in the minimum wage in the U.S. show largely positive results on income with little or no impact on employment opportunities. See, for example, Jared Bernstein and John Schmitt, “The Sky Hasn’t Fallen: An Evaluation of the Minimum Wage Increase,” Briefing Paper (Washington, D.C.: Economic Policy Institute, July 1997).

46 UNCTAD (1997, 121) notes that increases in productivity and real wages in the agricultural sector were also key factors in limiting the growth in income inequality in several East Asian countries. Food security, and the development of a vibrant farm sector, are therefore also key elements of successful development strategy.


49 World Bank, World Development Report (New York: Oxford University Press, 1997). The market value of GDP per capita to GDP measured using comparable international prices (purchasing power parity or PPP basis), and includes only countries where benchmark price data was available. Note, however, that PPPs may provide biased indicators of real developing country incomes because they fail to reflect underlying differences in labor productivity.

50 International Monetary Fund, International Financial Statistics, July 1997. This estimate does not include Hong Kong’s reserves of $77 billion. Total U.S. reserves were only $45 billion in the same period.


54 For example, the aerospace offsets issue has been under discussion for several years in the U.S. An interagency task force has been established by the National Economic Council to coordinate
Our Kind of Trade

development of policy initiatives in this area. The NEC is now discussing the establishment of a broader dialogue on the competitiveness of the U.S. aircraft industry that could lead to the formation of new industrial policy initiatives (see summary of remarks by Dorothy Robyn, in Wessner and Wolff 1998, op cit.).

Appendix A

Report on a Labor Rights-Environmental Advocacy Dialogue:

Labor Rights, Environmental Protection, and the Global Economy: Sharing Advocacy Experiences

April 1999
Appendix A

I. Comparing Labor Rights and Environmental Protection in Trade

This is a report on the first workshop in the “dialogue” phase of the Workers in the Global Economy (WGE) project. Dialogues proceeded along two tracks. One involved workshops with other advocacy communities that take up issues of social dimensions in trade policy and trade agreements, such as environmental protection, immigration, women’s rights, human rights and others. The other looked to develop a North-South dialogue with advocates from developing countries by means of written exchanges and plans for a larger-scale conference in late 1999.

Labor rights and environmental protection are usually mentioned in the same breath when policy analysts discuss the relationship of social standards and international trade. In the NAFTA debate, labor and environmental side agreements became critical issues in Congressional consideration of the trade accord. Their importance was replicated in the “fast-track” debate. However, advocacy groups in each of these two communities, while maintaining generally cordial communication, have not often coordinated activity on NAFTA and Fast Track. The two side agreements ended up with significant differences.

Although they have not engaged fully on international trade issues, there is new and important collaboration underway between labor and environmental advocates. New leadership in the AFL-CIO has sought to develop a positive and consistent approach to environmental issues and to work with allies on environmental problems, solutions, and their economic consequences. Labor has reached out to environmentalists, forming a “Blue/Green Alliance” (blue for blue-collar) to engage on labor and environmental issues that confront them. The new alliance has worked on climate change and the Kyoto Protocol, on technological impacts on environment and jobs, on issues of transition for workers and communities affected by measures addressing environmental problems, and on the relationship between developed and developing countries in responding to environmental challenges.

At the same time, labor and environmental standards remain high on the trade agenda. They are invoked by the Clinton administration as key elements in fast track reauthorization, in the proposed Free Trade Agreement of the Americas (FTAA), in the World Trade Organization (WTO), and other international arenas. This dialogue sought to engage advocates and activists who have confronted labor and environmental issues related to trade by comparing:

* each community’s experience under the NAFTA side agreements on labor and the environment and in other regional and multilateral arenas where labor rights and ecology issues are implicated;

* each community’s strategy for intervening in the Fast Track debate, in the FTAA, in the WTO or other international forums;

* the International Labor Organization (ILO) as a consensus source of international labor standards, while no counterpart global authority exists for the environmental community; and

* correspondingly, international environmental treaties and their enforcement mechanisms that may be significantly stronger than those of the ILO.

The December 15, 1998, WGE workshop engaged these and related issues in a free-flowing dialogue between key actors in both the labor rights and environmental advocacy communities who have been
directly involved in trade policy debates. This is a report on the dialogue that took place.

WGE Project Principals: Pharis Harvey and Terry Collingsworth (ILRF), John Cavanagh and Sarah Anderson (IPS), Rob Scott (EPI), Lance Compa (Cornell)

Trade Union Advocates: Jane Perkins (AFL-CIO environmental liaison), Thea Lee, Jennifer Marsh, and Joel Yudken (Public Policy), Ed Feigen (Field Services), Steve Beckman (UAW), Ann Hoffman (UNITE), Marge Allen (AFSCME), Russ Bailey (Airline Pilots), Larry Liles (IBEW), Chris Townsend (UE)

Environmental Advocates: Brent Blackwelder (Friends of the Earth), Brennan Van Dyke (Center for International Environmental Law), Frances Seymour (World Resources Institute), Vicki Arroyo-Cochran (Pew Climate Change Center), Deborah Siefert (Community Nutrition Institute), Dan Seligman (Sierra Club [supplied paper])

The workshop was co-chaired by Lance Compa and Jane Perkins and began after introductions with short descriptions of the WGE Project by Compa and the AFL-CIO’s environmental program by Perkins. The first session covered experience with international instruments and institutions under the general heading “Where Have We Been?”

II. Where Have We Been?

A. Labor Advocacy Review

GSP

Labor rights advocates from the WGE project and from the trade unions first discussed use of the labor rights amendment to the 1984 Generalized System of Preferences (GSP) program. Under this amendment, developing countries seeking preferential trade access to the United States must demonstrate that they are “taking steps to afford internationally recognized workers’ rights,” as the statute put it. The law established a five-part definition of such rights: 1) the right of association 2) the right to organize and bargain collectively 3) a prohibition on the use of any form of forced or compulsory labor 4) a minimum age for the employment of children, and 5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

This five-part formulation has since been repeated in many other U.S. trade statutes that contain labor rights amendments.

Since adoption of the GSP labor rights amendment in 1984, the United States has conducted approximately 75 country reviews on whether countries were taking steps to afford workers’ rights to workers in those countries. Because of labor rights violations, twelve countries have been suspended from GSP beneficiary status. More than a dozen more were placed on a temporary extension with continuing review.

Several of the suspended countries undertook labor reform measures to meet GSP requirements, and the review process persuaded others to make improvements, too. Notably, GSP benefits were suspended for Chile and Paraguay in 1987 when those countries were under military rule. GSP labor rights action
Appendix A

contributed to the restoration of democracy, including more freedom for workers.

However, selective enforcement of the GSP labor rights clause has been driven more by politics and foreign policy than by an honest assessment of workers' rights. The U.S. has failed to act on Malaysia, Indonesia, Colombia, and other countries where violations are rampant. There are a number of loopholes in the law that need correction if it is to prove consistently effective.

NAALC

The workshop then reviewed experiences under the NAFTA labor side agreement, the North American Agreement on Labor Cooperation (NAALC). Results here also have been mixed. Labor rights advocates have filed nine NAALC cases involving violations of workers' rights in Mexico (particularly in the maquiladora sector), five cases on violations in the United States (notably a major case on the Washington State apple industry), and two cases on Canada. The procedures under the NAALC provide a good forum for public exposure of violations and the failure of labor law authorities to effectively enforce a country's laws, but they do not provide effective remedies. Remedial action is left to domestic authorities, which often fail to act.

At the same time, the NAALC has provided a new opportunity for trade unionists and allied labor rights advocates in the three countries to broaden and deepen their collaboration. In all, dozens of trade unions, human rights groups, community groups and others have been involved in NAALC cases either as claimants or supporters. Many of them have been joint petitioners in several cases, and continue to coordinate their activity as evidenced in campaigns on behalf of migrant Mexican workers in the Washington State apple industry, in defense of workers in an auto parts factory in Mexico City, and in support of workers in several maquiladora factories along the U.S.-Mexico border.

Fast Track

The presentation then moved to labor rights advocacy in connection with the 1997 and 1998 "fast-track" debates in Congress. Negative experience under NAFTA and its labor side agreement contributed to an overall public skepticism about the effects of trade and trade agreements on workers. Labor, environmental, consumer and allied groups united to defeat fast-track proposals that failed to include an adequate social dimension addressing their issues.

Fast track may resurface as a hot-button issue in 1999. Advocates are seeking a fundamental reworking of the fast-track process to give Congress more voice in negotiations for new trade agreements, instead of being stuck with a yes-or-no vote on a fait accompli handed to it by the Administration. The absence of ground-breaking labor rights language will be another marker for labor rights advocates in deciding whether to mobilize again to defeat a fast-track bill.

FTAA

Another important forum for labor rights advocacy in 1998 was the opening of talks on a Free Trade Agreement of the Americas (FTAA). The FTAA is sometimes described as NAFTA extended to a hemispheric scale. Several of the WGE principals attended the alternative "People's Summit of the Americas" in Santiago, Chile in April 1998, which coincided with a heads-of-state summit launching
FTAA negotiations. Labor rights advocates are active in efforts to elaborate an alternative agreement that provides for strong, effective measures on workers’ rights, environmental protection, human rights, democracy and sustainable development. A particular demand of the hemispheric labor movement is an official “labor forum” commensurate with an already-recognized business forum that participates formally in FTAA proceedings with governments. While they have not yet acceded to this demand, the governments have established a civil society committee to take up views of unions and NGOs. It remains to be seen, however, whether this committee represents a serious commitment on the part of the governments or an exercise in form over substance.

**International Financial Institutions**

The Asian financial crisis of 1998 and the repercussions of financial crises in other parts of the world (Russia and Brazil, most notably) gave new prominence to international financial institutions like the World Bank and the International Monetary Fund as arenas for labor rights advocacy. These crises effectively broke the “Washington Consensus” on unchecked capital flows across borders, putting back on the agenda possible means of slowing and channeling capital movement to take into account concerns of workers, environmentalists, and other social actors.

Labor rights advocates made some progress in statutory language adopted by Congress in 1998 requiring international financial institutions to scrutinize their programs more closely for effects on workers’ rights and labor standards. The law created a new U.S. advisory committee with labor representation. Still, these are more in the nature of oversight measures than binding labor rights rules.

**ILO and WTO**

This last year saw important labor rights movement in one key multilateral body, the International Labor Organization (ILO), but continued stonewalling in another important multilateral forum, the World Trade Organization (WTO). The ILO adopted a new declaration on “core labor standards” covering freedom of association, forced labor, child labor, and discrimination in employment. The new declaration gives these norms a constitutional dimension obligating all member countries, not just those that have ratified the relevant ILO conventions (of the core standards, for example, the United States has ratified only the convention on forced labor). It also creates a new oversight mechanism with enhanced reporting requirements and periodic investigation of a country’s performance.

The WTO has refused to take up labor rights as part of its agenda. The December 1996 WTO ministerial referred all labor issues to the ILO and insisted that there should be no link between labor rights and WTO disciplines, in particular no “social clause” that would allow economic sanctions against countries that systematically violate workers’ rights. Despite calls from the United States and other countries to create a WTO working group or committee on labor rights, as was done for environmental matters, the WTO has not taken this step at the time of this workshop.

**B. Environmental Advocacy Review**

**NAAEC, BECC, and NADBANK**

Environmental advocates at the WGE workshop noted that there is no ecology-related conditionality in
Appendix A

the Generalized System of Preferences or other U.S. trade statutes giving rise to comparable experience in those venues. Environmentalists reported first on experiences under NAFTA’s side agreement, the North American Agreement on Environmental Cooperation (NAAEC). An important difference between the NAAEC and the NAALC is that the Environmental Commission has a standing trinational Joint Policy Advisory Committee (J-PAC) that includes representatives of environmental advocacy groups. The Commission for Labor Cooperation has no equivalent, relying instead on national advisory committees for three separate National Administrative Offices (NAOs) in each country’s department of labor.

Approximately 20 submissions have been filed with the NAAEC Secretariat in Montreal, Quebec. Of these, eight cases involve allegations of Mexican failure to effectively enforce its environmental laws, eight cases deal with alleged Canadian failure to enforce laws, and four challenge U.S. enforcement.

Environmental complaints have addressed such matters as wetlands pollution, fish habitat protection, and pollution from hog farm runoff in Canada; large scale bird poisonings, wastewater treatment, and hazardous waste site in Mexico; and timber harvesting and airborne toxic chemicals in the United States. The results of these filings have been mixed. As in the labor accord, enforcement remedies are left to domestic authorities, so no case has resulted by itself in solving an environmental hazard. However, also like the labor case experience, NAFTA’s environmental side agreement has created a forum for international collaboration among dozens of environmental advocacy groups in all three countries. For Mexican groups in particular, many of which were considered marginal in their effects on governmental policy, the NAAEC provided an opportunity for new voice and influence in that country’s environmental affairs.

Environmentalists pointed to other NAFTA-related features designed to address their concerns in ways that went beyond the scope of the two side agreements. U.S. and Mexican negotiators created a Border Environment Cooperation Commission (BECC) and a North American Development Bank (NADBANK) to identify environmental needs along the U.S.-Mexico border and to furnish funding to address those needs. However, participants reported that these institutions have not acted swiftly or effectively to carry out their mandates. Only two projects were funded in the first five years of their existence.

Fast Track

Environmental concerns played a vital role in fast-track debates in 1997 and 1998, much of it growing out of the NAFTA experience. Some national and regional environmental organizations supported NAFTA in the congressional debate of 1993. But when the Clinton administration sought fast-track authority in 1997 and 1998 to negotiate NAFTA-style trade agreements for the hemisphere or with other countries, the keen disappointment over the lack of progress on environmental conditions under NAFTA drove environmentalists to a nearly unanimous opposition to fast track. Environmental opposition carried special weight since it involved a reversal of position for key organizations, while labor’s opposition replayed its 1993 opposition to NAFTA.

FTAA

The environmental community is also active on the FTAA. Many environmental advocates par
Workers in the Global Economy

ticipated in the 1998 alternative summit meeting in Santiago. They have followed by engagement with
the governments’ civil society committee, pressing for strong environmental protection clauses along­
side strong labor rights language in the core of any new hemispheric agreement, in contrast to NAFTA’
side agreements on labor and the environment. Environmentalists also have joined labor, human rights,
sustainable development, women’s rights, and other sectors to elaborate an alternative FTAA proposal
with concrete measures for incorporating their concerns into a hemispheric trade pact.

A key difference with the labor movement in the FTAA context, as in many others, is that the
environmental movement does not have a universally recognized central body analogous to labor’s
Interamerican Regional Workers’ Organization (ORIT). ORIT groups the main labor federations
in all countries in the hemisphere, including the AFL-CIO. It has a charter and procedures for
adopting ORIT policy that allows it to speak with a single voice (although the single voice often
follows a contentious debate among labor delegates). For example, ORIT has demanded an offi­
cial Labor Forum as part of the FTAA process to match Business Forum participation in meetings
with governments. No such demand has been made by environmentalists. No single organization
speaks for all environmental groups.

International Treaties

International environmental advocates do not have a central body analogous to the ILO for
establishing international environmental standards. However, there are several important interna­
tional environmental treaties that provide useful comparisons with the ILO and other interna­
tional labor rights arenas. In most instances they are quite similar, consisting of various oversight
mechanisms characterized often as “soft law.” In addition, they are marked by broad statements
of principles and obligations backed by reviews, reports, recommendations, consultations and
similar measures, rather than “hard law” with sharply defined, binding legal rules backed by a
system for taking evidence, adjudicating guilt, and imposing punishment for violations. Nonethe­
less, as with labor rights cases, the power of public opinion informed by public exposure can have
remedial effect. Thorough oversight mechanisms can generate pressure for accountability in com­
plying with international agreements.

(CITES) offers one comparison with international labor rights enforcement. CITES has been
signed by 128 countries, establishing national authorities to license the export or import of cov­
ered species, as well as a scientific authority to evaluate the ecological impact of a proposed
transaction. Records such as the names and addresses of exporters and importers and annual
reports on implementation of the Convention must be filed with a permanent Secretariat. Non­
governmental organizations and the general public have access to this information.
The CITES Secretariat is empowered to request additional information from a party it believes may be
failing to comply with the agreement and to publicize possible noncompliance. The Secretariat can go
on to recommend remedial measures. NGOs have played an important part in monitoring treaty
compliance, advising poor countries, and exposing illegal trade in the media. CITES authorizes NGOs
to provide technical assistance to the Secretariat and to attend meetings of governments as observers.

The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer established interna­
tional rules to halt production and use of harmful chemical materials, most importantly freon used
in air conditioning systems. The Montreal Protocol is widely viewed as a success by the environ­
Appendix A

mental community. In this case, technological progress providing an adequate substitute for freon helped make the protocol work.

The 1992 Global Convention on the Control of Transboundary Movements of Hazardous Wastes (Basel Convention) aims to halt “dumping” of hazardous waste from industrialized countries in developing countries. The Convention requires safe disposal of hazardous waste in the country that generate it, allowing export only when the receiving country is willing to import such waste and is able to do so in a safe and secure manner. Record keeping, information sharing, monitoring, and publicizing of illegal traffic are among the responsibilities of a permanent Secretariat.

These and other multilateral environmental agreements (MEAs) contain trade-restricting measures. These measures are not intended as punitive sanctions, but are integral to the purpose of the agreement—restricting trade in endangered species, for example, saves endangered species. The use of trade measures poses the issue of whether trade agreements like those under NAFTA or the WTO should take MEAs into account and permit them to bend free trade rules for the sake of the environment, or whether free trade rules will override environmental pacts that somehow restrict trade.

NAFTA negotiators identified the three environmental treaties just discussed (CITES, the Montreal Protocol, and the Basel Convention) as exceptions whose rules should not be disturbed under NAFTA. These were the only environmental agreements so treated, however, despite the fact that there are many more international treaties on the environment that contain trade measures. This suggests that NAFTA could be used to overrule them.

Privileging only CITES, Montreal and Basel also leave open a wide range of domestic environmental regulations to challenge under NAFTA. The agreement’s investor-state provisions allowing corporations to sue governments for actions deemed interference with profits from trade are especially alarming. The recent example of the Ethyl/MMT case in Canada bears out these fears. Under pressure from U.S.-based Ethyl, Inc., which filed a NAFTA complaint seeking tens of millions of dollars in compensation, the Canadian government repealed a federal ban on imports of the fuel additive MMT and paid Ethyl $13 million in compensation. The ban had been adopted in light of MMT’s possible harmful effect. The case has raised a specter that any health or safety regulation where compliance requires additional costs to a company could be challenged under NAFTA, with taxpayers footing the bill.

WTO

The environmental advocacy movement is ahead of the labor movement in advancing an agenda at the World Trade Organization. The WTO created an environmental working group several years ago (actually under GATT auspices, before formation of the WTO at the end of the Uruguay Round negotiations in 1994). Labor interests have not been able to obtain even this preliminary step in WTO consideration.

In 1995, the WTO moved beyond a working group and established an official Committee on Trade and the Environment (CTE). However, many environmental advocates see the work of the CTE as a failure. Of the 80 members of the CTE, 70 came from trade ministries and only ten from environmental agencies. The CTE excluded other environment officials and NGOs from its meet-
ings, but invited the business-dominated International Standardization Organization (ISO). The CTE produced a report in 1996 suggesting that a country violating an international environmental treaty could turn to the WTO for relief from trade restrictions under the environmental treaties. Environmentalists were generally outraged. Most called for dissolving the CTE and creating a totally new forum.

Despite creation of a formal working group followed by an official committee, environmentalists are keenly disappointed with WTO action—or inaction—on ecological issues. Early WTO decisions implicating gasoline additives that pollute the air, beef hormones that raise health worries, and shrimp fishing methods that harm turtles suggest a “trade-uber-alles” approach with weak regard for environmental concerns.

ISO Standard Setting

Some environmental advocates adopted a strategy of going inside the ISO standard-setting process to affect a review of the ISO 140001 environmental management standard. They were driven by concerns that the 1996 ISO standard’s development process was dominated by multinational corporations with minimal input from NGOs or from developing countries. The result was a generic standard that has seen 3,000 enterprises certified as meeting the ISO 14001 requirements when these standards are driven by the market, not the public interest. Since then, however, several environmental groups have engaged in a process of review and reform of the standard, an effort that is still underway.

There is a long history of environmental “codes of conduct” with varying results. Labor participants noted similar efforts to address labor rights under the rubrics SA (Social Accountability) 8000, Apparel Industry Partnership (AIP), Ethical Trading Initiative (ETI) and other broad schemes for corporate social responsibility, as well as product-specific plans like Rugmark and a FIFA (International Federation of Football Associations) code for soccer balls.

Unionists cautioned that such codes are promoted mainly by brand name retailers concerned more about their image among consumers than about commitment to workers’ rights. These measures are not catching on with companies less dependent on consumer goodwill. There are also serious concerns about public disclosure both of factory locations and of findings of violations, independent monitoring, the role of professional accounting firms that claim to have a social auditing capacity versus monitoring by human rights organizations, the use of certification in advertising, the content of codes (especially whether they should contain a “living wage” clause), and other complex factors that have not been fully resolved. Trade unionists also warned that this type of private rulemaking and “enforcement” should not become an excuse to undermine the ability of governments to enforce domestic labor laws, or to avoid strong governmental and intergovernmental action to gain labor rights clauses in trade agreements with effective enforcement mechanisms.

International Financial Institutions and Private Financial Flows

The environmental advocacy movement has also outpaced the labor movement in moving its agenda before international financial bodies, particularly the World Bank. Under intense criticism for widely publicized environmental degradation connected to projects like the Narmada River dam in India, the World Bank created an in-house Inspection Panel several years ago to receive complaints about proposed Bank-funded projects and review the projects for environmental effects. More recently,
the Bank established a Structural Adjustment Policy Review Initiative (SAPRI) to consult with environmental organizations, sustainable development advocates, and other NGOs concerned with the effects of Bank policies. Only lately has the World Bank created a labor liaison function, but it has not yet taken further institutional form like the inspection panel or the SAPRI.

As in the case of the WTO, however, environmentalists are quick to point out the difference between getting on an institutional agenda and getting results. Some projects have been delayed by new outreach and review mechanisms, but the World Bank is still moving ahead with lending for large-scale projects with profound environmental effects.

Environmental participants in the WGE workshop pointed out that private financial flows far exceed the outlays of international financial institutions and stressed the importance of finding "leverage points" for influencing actors in the private financial arena to integrate environmental considerations into decision making. Suggested leverage points range from bottom-line concerns, where taking environmental performance into account will directly result in improved financial performance, to values-based leverage where individual or institutional investors might be willing to forego some financial advantage to promote environmental values. Policy leverage can bear on financial flows, too. Statutory and regulatory action by governments, and decisions by courts in many countries, can create new incentives for environmental protection.

Trade unionists noted that labor has long engaged in strategies for affecting domestic and international investment decisions, especially by pension funds managing union members’ retirement money. The AFL-CIO has enhanced its own in-house capacity for analyzing private investment flows, and for finding just the kind of "leverage points" that concern environmentalists.

III. Where Are We Going?

A. Unilateral Action

Following the review and comparison of experience with trade-related instruments and arenas, the WGE workshop explored the potential for combined action by labor rights and environmental advocates. Participants discussed whether the GSP or other unilateral U.S. trade legislative arena is a fruitful area where environmental protection can be added to labor rights conditionality. They noted that the GSP and other trade arrangements are gradually being overtaken by NAFTA and WTO disciplines, and by an FTAA if it takes shape. For example, the GSP once provided a significant tariff advantage to beneficiary countries. However, the broad reductions in U.S. tariff schedules under the GATT and now the WTO have lessened the significance of GSP beneficiary status, making the labor rights clause less a leverage on behalf of workers.

Developments in the WTO and elsewhere call into question the impact that can still be achieved by using U.S. trade statutes to promote labor or environmental protection. Nonetheless, some workshop participants believe there is still much potential in unilateral U.S. trade measures, especially in light of the continuing global financial crisis and the apparent turn to the United States as the "importer of first resort." Domestic trade laws may still be important to combat both classical "dumping" (selling products in the U.S. market lower than their true cost) and "social dumping," whether through labor or environmental abuses. Moreover, identifying labor or environmental rights violators under U.S. trade laws has a signal-sending effect. It puts international investors
on notice that attempts to seize a short-term trade advantage by exploiting workers or destroying the environment may hurt them in a longer run, as businesses that went into Burma have learned.

B. An “IEO” for the Environment

One possibility is combined support for an international environmental organization (IEO) or global environmental organization (GEO, for a more apt acronym) structured like the ILO. Such an IEO could be a tripartite body composed of government, business, and environmental NGO representatives. The question of representation was noted as a problem needing a solution. Representative national labor organizations can be identified as legitimate participants, while the more varied environmental movement is not so susceptible to centralized delegation of authority. Of course, there is strength in diversity as well, as value in having a variety of strategies and tactics spread across many groups. Environmentalists will have to work through the problem both domestically and internationally, finding objective criteria for membership in a “congress of environmental organizations” or an equivalent universal body that could participate in a global environmental organization analogous to the ILO.

C. Core Labor and Environmental Rights

Another prospect for joint labor-environmental action lies in the area of “core rights.” Labor advocates have been especially active on “core labor rights” (also called fundamental rights or core labor standards), achieving a consensual definition that has been accepted in the ILO, the OECD, the World Bank and other key institutions.

At its June 1998 conference the ILO adopted an important new, Declaration on Fundamental Principles and Rights at Work, committing all member countries to comply with core labor standards, regardless of whether or not they have ratified the relevant ILO conventions. This has special salience for the United States, which has ratified only ILO Convention 105 on forced labor among the specified core rights.

Core labor rights are universally recognized to include freedom of association, limits on child labor, prohibition of forced labor, and non-discrimination at work because of race or gender. The essence of core rights is based upon universal norms which no country should be allowed to breach in the name of economic development, growth, cultural differences or other claimed exceptions. Other labor standards like wage levels, social benefits and the like are seen to be variable, in light of a country’s level of development and need for competitive advantage in labor costs. It should be noted that while consensus has been reached on these core rights, debate on fundamental labor rights is not closed. Some advocates argue that workplace health and safety should be treated as a core right. Others argue for expansion of the non-discrimination clause to embrace other categories beyond race and sex.

Environmental advocates have not succeeded in shaping an analogous, bright-lined definition of core rights, but discussions are advancing on these lines. Areas most often mentioned as possible core environmental standards include:

1) the right to an environmental impact assessment of any new project;

2) the right to know the environmental impacts of any project already in existence;
Appendix A

3) the right to participate in planning projects with environmental effects; and

4) the right to sue in any country’s judicial system to enforce these rights.

An environmental impact assessment (EIA) should be conducted before authorization of major investments or government action that might have a major environmental impact. The EIA should include early identification of issues, opportunities for public comment early in project planning, a public review of alternatives (including halting a project), and continuing public comment and monitoring.

A right to know should provide prompt access to information about site-specific discharges of toxics; air, water and food quality, hazardous household and workplace products, condition of natural resources, and shipment of hazardous wastes. Private firms should make the same information publicly available.

Participation rights should include prior notice of proposed laws, regulations and policies with a right to comment and be heard, with special efforts to solicit and incorporate the views of racial minorities, low-income groups, and indigenous and traditional peoples in decisions that affect their communities, cultures, health, welfare and lands. Free speech guarantees should also be provided to protect against official or unofficial retaliation against citizens who protest environmental abuses.

A right to sue should make core rights enforceable in the courts of any country without requiring intermediate or implementing legislation. For example, the European Union permits such lawsuits by private citizens against their own or another government, or against European institutions, that fail to afford rights guaranteed under European Directives.

As with core labor rights, these measures do not necessarily dictate outcomes, like wage or emissions levels. Instead, they create a framework that allow workers, or citizens facing environmental impacts, to collectively bargain or to engage in democratic political processes or judicial recourse to achieve their goals.

D. Readiness Criteria

Environmental advocates introduced the concept of “readiness” criteria: establishing a threshold level of environmental or labor standards and a legal framework for enforcing them as a condition of any country’s entry into an international trade agreement. Such criteria could take into account a country’s level of development and the resources it can devote to enforcement, but at the same time guard against standards so low and enforcement mechanisms so weak or nonexistent that they invite a “race to the bottom” among trading partners. China’s proposed entry into the WTO was cited as an example, in light of its continuing human rights and labor rights abuses and environmental degradation.

Labor advocates noted that a “readiness” concept was a key factor in evaluating Chile’s proposed entry into NAFTA in 1995 and 1996. At the time seen as virtually a fait accompli, Chile’s joining NAFTA was stalled by the economic disaster that hit Mexico, widely publicized plant closings in the United States, the growing public skepticism about trade’s benefits, and the failure of the Clinton administration to gain fast track negotiating authority. Another factor, though, was criticism from trade
unionists in the United States and Canada (in consultation with Chilean labor leaders) that Chile's labor laws severely retarded workers' freedom of association, the right to organize, the right to strike, workplace health and safety and other labor rights. They were prepared to exploit Chile's eagerness to join NAFTA by pressing for labor law reforms that would comport with the "Labor Principles" of the NAFTA labor side agreement. The demise of fast track and the retreat from moves to have Chile join NAFTA removed the opportunity for such a campaign. However, negotiations on the FTAA provide a new setting for developing "readiness criteria" for any country to become party to a hemispheric trade pact.

E. WTO Action

Noting the WTO's refusal to take up labor rights by shunting the issue to the ILO, and in light of the failure of the WTO Committee on Environment and Trade, workshop participants debated the usefulness of a renewed campaign to advance these issues at the WTO. Some advocates cited the harsh opposition of several developing countries to consideration of a social dimension in the WTO on the grounds that such measures amount to "disguised protectionism" by industrialized countries to use a trade-linked social clause to keep out imports. Since WTO decisions are taken by consensus, prospects for a social clause are dim. However, the fact that the 1999 WTO trade ministers' meeting will take place in the United States in December 1999 may provide an opportunity for pressure that was lacking in Singapore, site of the 1996 ministerial.

F. NAFTA

Labor and environmental advocates at the WGE workshop explored the potential for a coordinated complaint to be filed jointly under each of the two NAFTA side agreements. Such a complaint would most likely combine workplace health and safety problems that threaten workers, and which also spill over (perhaps literally) into the surrounding community endangering the environment.

The maquiladora region along the U.S.-Mexico border is the most probable setting for such a complaint, but a similar problem originating in the United States should not be discounted. Participants agreed that a combined labor-environmental NAFTA complaint would have to be carefully drafted and would probably need advance discussion with the bodies that would receive such a complaint (the NAO for labor aspects, the NAAEC Secretariat in Montreal for environmental aspects). Advocates could persuade these agencies to coordinate investigative actions, public hearings, and ministerial consultations.

G. Fast Track

WGE workshop participants noted that it is still unclear whether the Clinton administration will push hard for fast-track reauthorization in 1999, or whether the issue is effectively dead until after the 2000 elections. There was general agreement that fast track would not come up in 2000 if it is not disposed of in 1999. It will be important to coordinate efforts if fast track moves on the 1999 legislative calendar, and to share ideas for proposed language in a fast-track bill that provides for strong labor rights and environmental protection.
Appendix A

H. International Financial Institutions

With the global financial crisis still swinging wildly, the World Bank, the IMF and other financial entities take on more importance as an arena for labor and environmental advocacy. Participants in the WGE workshop noted that the experience of environmentalists in the Bank’s SAPRI program contains key lessons for labor rights as the World Bank begins to address labor issues. At the same time, labor rights provisions in the 1998 statute governing U.S. participation and voting power in international financial institutions can, if they are effectively implemented, provide valuable lessons for environmentalists. The jury is still out on these measures.

I. Private Financial Flows

The labor and environmental advocates in the WGE workshop noted that private financial flows make up the majority of international investment. The private financial market is proving much more powerful than international institutions in affecting the fate of governments and economic development in many countries. The fact that the single largest source of investment capital is found in the United States creates special responsibilities for labor and environmental advocates to develop creative strategies for affecting investment decisions that might hurt workers or the environment. Environmentalists active on these issues should compare notes with labor’s “capital strategists” to find opportunities to work jointly, and with greater force, to halt harmful private international investment.

J. Private Sector Action on Labor Rights and Environmental Protection

WGE workshop participants agreed that codes of conduct, whether initiated within companies or by outside groups asking companies to “take the pledge” to comply with such codes, are proliferating as arenas for labor rights and environmental advocacy. However, the limits of such efforts in matters like standard-setting, monitoring, public disclosure and enforcement compel careful, even skeptical analysis as these schemes take shape. Some codes might provide valuable experiments in new ways to address labor or environmental concerns. In no way, however, should they substitute for strong, effective domestic or multilateral law enforcement. Neither should they substitute for strong, independent, democratic trade unions as the best means to defend workers’ rights, or strong, independent, democratic citizens’ organizations to defend the environment.

IV. Conclusion

Participants in the WGE labor-environmental workshop agreed to continue their dialogue and to expand their networks to share experience and insights on:

* use of GSP and other U.S. trade statutes to promote labor rights and environmental protection in countries that trade with the United States;

* the strengths and weaknesses of ILO structure and functioning that might inform plans for an analogous international organization for the environment;

* the role of “core rights,” especially in the wake of the ILO’s 1998 Declaration and its relevance
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for the United States, again to inform developments in the environmental advocacy community toward analogous “core” environmental standards;

* the use of labor and environmental readiness criteria as a central element of any new trade initiatives or trade agreements;

* potential (or lack of potential) for action on the WTO, especially movement to bring pressure on the WTO ministerial meeting in December 1999;

* potential for a joint labor-environment NAFTA complaint under the two side agreements;

* strategies to ensure that any new fast-track authorizing legislation contains strong protection for labor rights and the environment or, if it fails to do this, to ensure the defeat in Congress of any such proposal;

* the emerging sensitivity of the World Bank, the IMF, and other international financial institutions to considerations of workers’ rights and environmental protection in their lending or grant making programs—including whether the apparent sensitivity is really a sham;

* “capital strategies” seeking leverage points where pressure can be brought to bear on private international investment flows so that decisions will not prove harmful to workers or to the environment; and

* codes of conduct or similar private sector mechanisms meant to promote labor rights or environmental protection in international trade, and whether they can contribute to such ends, even as worthwhile experiments, or are intended to forestall stronger governmental or intergovernmental action.
Appendix B

Report on a Labor Rights-Immigrant Worker Advocacy Dialogue:

Labor Rights, Migrant Workers’ Rights and Immigration Policy in an International Economy

June 1999
Appendix B

I. Labor Standards and Immigrants’ Rights in Trade and Investment

This is a report on a second workshop in the “dialogue” phase of the WGE project.

The labor rights advocacy community has pushed for workers’ rights clauses in trade and investment agreements with varying degrees of success. Most of the emphasis has been on so-called “core” standards covering trade union rights of association, organizing, and bargaining, along with child labor, forced labor and nondiscrimination in employment. But labor rights advocates have shied away from immigration issues and the implications, especially in the Americas, of free movement of workers commensurate with free movement of capital.

NAFTA provides for movement of professionals and executives, but Mexican proposals to have NAFTA address movement of workers were decisively rejected by the United States. This contrasts sharply with the European Union’s (EU) social dimension, which does provide for free movement of workers (although it appears this principle is uncertain in any EU expansion to the East). However, immigrant workers’ protection was included in the labor side agreement to NAFTA, and there is beginning to be some experience with complaints under this mechanism.

The matter is coming up again in connection with the proposed Free Trade Agreement of the Americas (FTAA). Labor and NGO communities are mobilizing for a strong social dimension in any such continental pact on trade. How can issues affecting immigrants be addressed there? Like capital, people are flowing across national borders around the world. Should immigration join labor and the environment as a focus of demands around new trade and investment regimes?

Supporters of immigrants’ rights have a rich experience both as human rights advocates, with various international instruments like UN covenants and International Labor Organization (ILO) conventions that treat migration, and as domestic legislative and courtroom advocates. Continuing battles over immigration reform legislation and most recently over “guestworker” legislation provide a concrete foundation to discuss labor rights and immigration rights in international trade and investment.

International labor rights advocates and immigration rights advocates have a lot to learn from each other. However, advocacy groups in each of these two communities, while maintaining generally cordial communication, have not always coordinated activity or shared experience.

Participants in the WGE labor rights and immigration workshop confronted the challenge of incorporating effective protection for migrant and immigrant workers in international trade and investment agreements. The groups brought together for this exchange included international labor rights advocates, trade and investment analysts, labor unionists involved in both trade policy and migrant/immigration issues, community-based immigrant workers’ advocates, academics, and immigration policy specialists.

The March 1, 1999, workshop was designed to engage these actors in a free-flowing dialogue on labor rights and immigration with a view to finding ways to effectively take up immigration issues in trade and investment policy debates. This is a report on the dialogue that took place.

WGE Project Principals: John Cavanagh (IPS), Sarah Anderson (IPS), Rob Scott (EPI), Pharis
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Harvey (ILRF), Lance Compa (Cornell).

Trade Unionists: Ron Blackwell (AFL-CIO), Thea Lee (AFL-CIO), Howie Forman (UFCW), John Howley (SEIU), Muzzafar Chishti (UNITE). U Maung Maung (Burma labor federation in exile)

Immigrant Workers’ Rights Advocates: Jennifer Gordon (Long Island Workplace Project), Marnie Brady (D.C. Immigrant Coalition), Daphne Keller (Yale Workers’ Rights Project), Mike Jendrzejczyk (Human Rights Watch)

Policy Analysts: Demetrios Papademetriou (Carnegie Endowment), Vernon Briggs (Cornell), Daniel Sepulveda (National Council of La Raza)

The workshop was co-chaired by Lance Compa and Ron Blackwell and began after introductions with short descriptions of the WGE project by Compa and the AFL-CIO’s interest in the workshop by Blackwell. The first session reviewed experience with international instruments and institutions under the general heading “Where Have We Been?”

A. WGE Project Overviews

The dialogue began with WGE principals outlining trade and investment issues and alternative policy ideas discussed in their initial overview papers. These include:

* effective clauses in international agreements protecting labor rights and labor standards;

* sustainable development programs, transfer programs, debt relief and other measures to reduce the North-South wealth-poverty gap;

* capital controls to reduce the type of “hot money” flows that have led to deep crises in many countries (with often devastating effects on migrant workers, millions of whom have been displaced in times of financial crisis); and

* managed trade policies addressing structural imbalances.

WGE presenters highlighted a tension that has arisen within the community critical of neoliberal trade and investment programs. On one side are “engagers” who believe in integrating effective social dimensions into trade and investment agreements, even if they require a compromise on long-term goals. On the other side are “rejectionists” who believe that offering compromised social dimensions is only a fig leaf, and that unremitting opposition to trade and investment agreements is required. At the same time, however, there is a high degree of unity on demands for a “strategic pause” in any new trade and investment agreements so that the results of earlier experience can be thoroughly analyzed and judgments can be made about the content and viability of any social dimension that might be added to new agreements.

B. Varieties of Migrant and Immigrant Workers’ Employment Relationships

Workshop participants sought a common understanding of migrant worker and immigration is-
sues in a context of accelerating global economic integration. A threshold clarification involved identifying the various forms in which migrant and immigrant workers issues arise. Migrant agricultural workers, for example, might move continually from harvest to harvest through a wide expanse of territory. Some are legally authorized to work, some are not. Some workers might settle in one location where steady year-round agricultural work is available. Among these, some move into processing, packing, warehousing and shipping operation often related to agriculture. Some may shift to service sector work in hotels and restaurants. These jobs involve formal, above-ground employment relationships where social security taxes are paid. In contrast, some workers take jobs in the informal sector, like gardening and day labor, paid in cash with no record of employment or payroll taxes.

Some workers are recruited lawfully under “guestworker” programs that provide legal entry for a defined period. These may range from unskilled agricultural laborers to highly trained computer specialists. Other workers are recruited and transported illegally from one country to another, where they are provided false documents to find employment. Many others clandestinely cross borders on their own and find work with the help of family members or other networks from their country of origin who preceded them to the country of destination. Many take work in sweatshops, usually in the apparel sector, where wage and hour violations are rampant and subcontractors frequently go in and out of business to avoid regulation. Given these variations in flows and employment status, shaping coherent policies to protect migrant and immigrant workers’ rights is a daunting task.

II. International Trade Regulation and Immigrant Workers’ Rights

Most labor rights analysis of the phenomenon called “globalization” focuses on flows of goods, services, and capital across national borders. Critics usually examine how such flows affect workers who remain at home, especially industrial production workers. But compared with goods, services and capital moves, labor rights discourse has paid relatively little attention to the movement of people across borders.

Sharp critiques of the North American Free Trade Agreement (NAFTA), the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO), the Multilateral Agreement on Investment, (MAI) and other international instruments and institutions dealing with trade and investment warn of job losses and labor standards decline in a “race to the bottom” by countries and firms seeking competitive advantage in global commerce. Labor rights advocates focus policy criticisms on the lack of effective protection of labor rights like freedom of association and labor standards like the minimum wage. Counterparts in the environmental and consumer protection communities point to the vulnerability of domestic ecological standards, food safety standards, and other measures that often come under attack as barriers to free trade. But in general, international labor, environmental and consumer advocates have not come to grips with immigration problems.

For the most part, laws and agreements addressing workers’ rights in global trade are silent or sketchy in their treatment of migrant and immigrant worker issues. The United States’ own authoritative statement of “internationally recognized workers rights” in labor rights clauses of the Generalized System of Preferences (GSP), in Section 301 of the Trade Act, and other trade laws lists five such “rights”: 1) freedom of association 2) the right to organize and bargain collec-
tively 3) limits on child labor 4) prohibition of forced labor and 5) “minimum acceptable conditions” with regard to wages, hours and working conditions.

Notably, there is no reference to the rights of migrant and immigrant workers in the United States’ formulation of basic labor rights. Even more surprising, another fundamental right included in most other formulations of “core labor rights,” non-discrimination in employment, is absent from the U.S. definition of internationally recognized workers rights.

In 1998, the International Labor Organization (ILO) adopted a statement of core labor rights giving special consideration to freedom of association, non-discrimination, and a halt to child labor and forced labor. The ILO failed to include migrant and immigrant workers’ rights in its “core” formulation. ILO Convention No. 143 is cited as the ILO’s authoritative international statement of migrant workers’ rights. However, the Convention aims mainly at illegal trafficking of migrant workers, and its centerpiece policy recommendation is for employer sanctions holding employers criminally liable for hiring undocumented workers. Employer sanctions were introduced in U.S. law in the 1986 Immigration Reform and Control Act (IRCA), but have proven to be a failure in achieving any policy goal. Few countries have ratified Convention 143 and there is no record of ILO treatment of the issue beyond adoption of the Convention.

The WTO, the Organization for Economic Cooperation and Development (OECD), the World Bank, and other international organizations, to the extent they have taken up labor-related issues, have adopted the ILO’s “core standards” approach excluding migrant and immigrant workers’ rights from treatment under their still embryonic labor rights regimes. Similarly, while they now number in the hundreds, corporate codes of conduct issued by multinational companies and by NGOs are resoundingly silent on issues of migrant and immigrant workers’ rights. Paradoxically, even shamefully, one of the most pressing problems of social justice in the global economy affecting workers by the tens, even hundreds of millions around the world is almost totally absent from the international labor rights agenda.

A. FTAA Proposals

A broad-based coalition of trade unions and NGO advocacy groups met in Santiago, Chile in 1998 at a parallel “people’s summit” to the meeting of Western Hemisphere heads of state that launched negotiations for a Free Trade Agreement of the Americas (FTAA). Since that gathering, an international drafting committee (including some WGE project principals) has worked hard to produce, Alternatives for the Americas: Building a People’s Hemispheric Agreement, a detailed prescription for progressive trade and investment arrangements in contrast to several governments’ plan to simply extend NAFTA to the rest of the hemisphere. The Alternatives document provides concrete proposals on human rights, labor rights, environmental protection, investment rules, energy development, intellectual property, market access and other trade and investment topics.

But the drafting group has struggled over immigration policy. The disparities of wealth and power in the Americas provoke sharp differences about which countries should allow migrant workers to enter fairly freely, and which should be permitted to strictly limit immigration. In general, developing country advocates want their workers to be able to work in the United States and Canada, both to send remittances home while they work and to save money to be able to return
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and invest in their home country. At the same time, they express a need to restrain immigration into their countries from neighbors that are even less developed.

The compromise forged thus far is still unsatisfying. It calls for ratification of international instruments on migrant and immigrant workers’ rights, a prohibition on violence against migrants, non-discrimination, and “democratic” development of “humane” immigration policy with participation of migrant advocacy groups. But on key policy questions of actual movement of workers, the Alternatives calls for some countries to have an “open door” policy, and others not.

B. The NAALC Experience

NAFTA’s labor side agreement, the North American Agreement on Labor Cooperation (NAALC), is one of the few international labor rights instruments that expressly addresses migrant worker rights. The NAALC’s 11 Labor Principles commits the United States, Canada and Mexico to “[p]rotection of migrant workers: providing migrant workers in a Party’s territory with the same legal protection as the Party’s nationals in respect of working conditions.”

Three NAALC cases have been filed by advocates for migrant workers. Although they are still in early stages of procedures under the NAALC, these cases suggest that NAFTA’s labor accord can serve as a platform for effective cross-border solidarity work, public education on migrant worker and labor rights issues, and international scrutiny of country practices—U.S. practice, in these cases—affecting migrant and immigrant workers.

C. Washington State Apple Industry

A coalition of Mexican trade unions and farmworker organizations filed a wide-ranging NAALC complaint in May 1998 alleging failure of U.S. labor law to protect workers’ rights in the Washington State apple industry. The submission cited the lack of legal protection for farmworker union organizing, widespread health and safety violations, discrimination against migrant workers, and employers’ use of threats and intimidation in recent union representation elections in apple packing and shipping facilities.

The Union Nacional de Trabajadores (UNT), a new independent labor federation, the Frente Autentico del Trabajo (FAT), another independent labor group, and the Frente Democratico Campesino (FDC) of Mexico filed the complaint with the Mexican NAO. In preparing the submission, they collaborated with the U.S. Teamsters union and the United Farm Workers union, which are conducting organizing campaigns in the apple sector. The complaint called on the Mexican government to pursue multiple stages of review, consultation, evaluation, and arbitration under the NAALC.

The NAALC apple workers submission is the broadest case yet filed under the NAALC, citing labor law violations and inadequate enforcement in areas encompassed in seven of the NAALC’s 11 Labor Principles. Most earlier cases addressed union organizing issues. The Washington State apple industry complaint covers the right to organize, collective bargaining, minimum labor standards, non-discrimination in employment, job safety and health, workers’ compensation, and migrant worker protection.
The National Administrative Office (NAO) of Mexico accepted the Washington State apple case for review in August 1998. In December 1998, the NAO of Mexico held its first-ever hearing on a NAALC complaint. It was not a public hearing in the quasi-legal style of the U.S. and Canadian NAOs, but rather an “informative session” under the Mexican NAO procedural guidelines conducted in private in a roundtable setting. A delegation of workers from packing sheds and orchards in Washington State attended the hearing and presented direct testimony about pesticide poisoning, discharge for union activity, minimum wage violations, discrimination in the workers’ compensation system, discrimination against migrant workers, and other violations of workers’ rights.

The hearing garnered widespread publicity in the news media of both the United States and Mexico. The NAO of Mexico was to issue its report in February 1999, but the report has been delayed by personnel changes in the Department of Labor and the NAO. The report is now expected to be issued in June 1999.

D. DeCoster Egg Farm

In August 1998, the CTM labor federation filed a NAALC complaint with the NAO of Mexico on abusive treatment of migrant Mexican workers at the DeCoster Egg Farm. This was the first engagement of the official pro-government labor body in a NAALC case. The egg processing facility is located in the state of Maine, in the extreme Northeast of the United States. The submission alleged violations and failure to effectively enforce laws regarding minimum wages, health and safety, housing conditions, workers’ compensation for work-related injuries and illnesses, and other minimum conditions of work. The NAALC complaint followed action by the Mexican government filing a class-action lawsuit on behalf of 1,500 current and former DeCoster employees in U.S. federal court over the same allegations. The NAO of Mexico accepted the DeCoster case for review and a report is expected in mid-1999.

E. Labor Department-INS Memorandum of Understanding

In September 1998, a workers’ rights project of students at Yale Law School, joined by 20 local and national immigrants’ rights organizations, filed complaints with both the NAO of Mexico and the NAO of Canada challenging a policy laid out in a Memorandum of Understanding (MOU) between the U.S. Department of Labor and the Immigration and Naturalization Service (INS). Under the MOU, Labor Department inspectors who receive complaints alleging violations of minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) must determine the immigration status of workers who filed complaints. If any worker cannot produce authentic documentation, the Labor Department will inform the INS, and the worker faces deportation.

The effects of the MOU on effective enforcement of U.S. labor law are obvious. Workers whose immigration status is questionable are loath to complain when their rights are violated, for fear that the Labor Department will report them to the INS. This sets a vicious cycle in motion. Employers hire immigrant workers with a glance at their documentation, then cheat workers on minimum wage and overtime pay in full confidence that they will never complain to the Department of Labor. Even workers with proper documentation do not complain, because an investigation might reach their coworkers, often relatives or friends from the same country, whose docu-
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ments are questionable. The students who brought the NAALC complaint hope that international scrutiny will end the policy that makes the Labor Department an informant for the INS.

In December 1998, the NAO of Mexico announced that it accepted the MOU case for review, and a report is expected in mid-1999. The NAO of Canada announced declined to accept the MOU case in light of changes to the policy announced by DOL and INS in November 1998. Under these changes, the DOL will not inquire into the immigration status of workers who file individual complaints. However, it will forward information to the INS on immigration status in “directed” cases where employers are monitored as part of an ongoing DOL program of targeting non-compliant industries. Since many of these industries are populated by workers with precarious immigration status, the new MOU can still have a chilling effect.

III. Labor Movement Concerns

Describing the labor movement’s policy approach to migrant and immigrant workers issues as still underdeveloped, trade union participants in the WGE workshop welcomed the dialogue as an important opportunity to advance their analysis. The stakes for labor are enormous. The new leadership of the AFL-CIO has committed resources and energies to organize low wage agricultural, industrial and service sector workplaces where millions of workers are employed. Many of these workers—and in many workplaces a majority of them—are migrants and immigrants from other countries. Union organizing under U.S. law is unfamiliar to them (though some may have union experience in their country of origin). The American labor movement’s ability to reverse the decline in union density in the work force and to remain an effective advocate for working people in years ahead depends on a successful union organizing strategy among migrant and immigrant workers.

Union participants pointed out that the labor movement does not favor “open borders” and recognizes the need to regulate immigration into the United States. At the same time, they stressed the primacy of human rights and civil rights in fashioning and applying immigration policy, noting that measures like employer sanctions and border militarization have often led to violations of these rights.

Trade unionists also made the important point that rights of all workers, not just of migrant or immigrant workers, are implicated in these policies. Many workplaces with large numbers of migrant or immigrant workers are a melange of workers without legal documents, workers with documents authorizing them to work, and U.S. citizens. Vulnerability and fear affecting a large bloc of workers lead to violations of all workers’ rights to engage in union activity.

From a labor perspective, defending the rights of the most vulnerable is indispensable to protecting the rights of all workers. Where unions have had success in organizing, as in the janitorial services industry of many cities, stressing worker unity and the union’s role in defending everyone regardless of immigration status, overcame workers’ fears and led to large gains in union membership and in workers’ wages and working conditions.

Union participants focused their attention on violations of workers’ rights to organize and bargain collectively. They reported that immigration law has become for many employers a weapon to wield against workers who try to organize or who seek to improve wages and working condi-
Fear of raids using quasi-military tactics by the INS run deep in immigrant workers’ communities. As noted earlier, threats to call the INS were an important element in the anti-union campaigns by employers in the Washington State apple industry. Such threats technically violate the National Labor Relations Act (NLRA) and can be prosecuted by the National Labor Relations Board (NLRB). However, the standard remedy for such tactics is requiring the employer to post a written notice promising not to repeat the threats. It is often 2-3 years later that this remedy is finally enforced, when all union activity has ceased. By that time, the fear instilled by the threats has sunk deeply into workers’ consciousness of the risks associated with unionization, making a revival of the organizing campaign extremely difficult for unions and workers still willing to try to form a union.

Even more destructive of workers’ right to organize than time delays in NLRB action is the lack of a reinstatement remedy for undocumented workers under U.S. labor law. The NLRB may press unfair labor practice complaints against an employer for threats to call the INS or for dismissing a union supporter whether or not he or she is undocumented. However, employers have even fewer compunctions about firing undocumented workers than about firing U.S. citizens who try to organize. The citizen can obtain reinstatement, though as noted above it takes two to three years when an employer resists NLRB enforcement efforts. But an undocumented “discriminatee” — a worker fired for union activity—cannot be reinstated to the job. This is an invitation to employers to fire workers with impunity.

Even after winning a case, the most undocumented workers can obtain is a short period of time to try to regulate their status, but this is usually impossible. In one court decision chilling in its implications for workers’ organizing rights, a leader of a union campaign was ordered deported after she was forced to reveal her undocumented status. The employer had called the INS to break the union organizing campaign.4

The General Counsel of the NLRB has sought to soften these effects by instructing Board agents to object to any attempt by an employer in litigation to inquire into a worker’s immigration status during a Board proceeding.5 However, subtle differences in NLRB policy cannot overcome the broad and deep perception among migrant and immigrant workers that involvement in union activity jeopardizes not only their job but the entire life they have built up in the United States.

Recently the Social Security Administration has begun widespread issuance of “no-match” letters informing employers of workers on their payroll whose social security numbers fail to match account information in Social Security records. While these “no-match” letters do not require employers to take any adverse action against workers, many companies have dismissed employees named in the letters. Dismissals have occurred in many workplaces where union organizing activity was underway, effectively halting the organizing effort.

A. Fault Lines

While the workshop coalesced on the importance of protecting basic human rights of migrant and immigrant workers, the stark realities of labor market pressures revealed several fault lines among workshop participants. In some sectors of the economy and in some local labor markets, the
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seemingly unlimited supply of migrant and immigrant labor desperate for any work at any wage, under any conditions, overwhelms labor standards enforcement. An unending supply of hungry workers makes it impossible to uphold even minimum labor standards, let alone to advance wages and working conditions through organizing and collective bargaining.

While analysts may dispute the extent, they do not dispute the fact that an influx of migrant and immigrant workers suppresses wages and conditions of low-wage citizens or documented workers, particularly African-Americans and other workers of color. Many of the latter are themselves former migrants and immigrants who obtained legal status in the amnesty granted under the Immigration Reform and Control Act (IRCA) of 1986. They often see their own conditions as jeopardized by new migrants and immigrants, even from the same countries of origin. Policy prescriptions voiced at the workshop varied between two poles. On one side, some called for tighter limits on immigration with strict enforcement both at the border and in INS proceedings and implementation of a national ID card in keeping with the Jordan Commission recommendation. Others suggested a reformed, strengthened temporary worker visa program with improved wages, conditions, and protections for workers.

At the other side, some called for longer range measures to reduce poverty and oppression in developing countries that are the source of much immigration. While none called explicitly for “open borders,” a de facto open border policy was implicit in some proposals: no raids and no deportations, no employer sanctions, no beefed-up border patrol, no detention, broad asylum opportunities, broad family reunification, etc.

IV. Comparative Perspective: Asia and Europe

The workshop’s working lunch was devoted to comparative analysis of experience in Asia and Europe. The Asian financial crisis had devastating effects on migrant workers throughout the region who had migrated by tens and hundreds of thousands to countries one level higher on the development ladder to take up that country’s most menial jobs. With the regionwide depression wrought by the financial crisis, many migrant workers were expelled to their country of origin. In this context, talk of international labor rights and labor standards in regional and global investment regimes seems an esoteric concern of Northern intellectuals and do-gooders. Survival, not rights enhancement, is the primary concern of millions of migrant workers in Asia.

The situation is especially acute in Burma. Millions of citizens have been driven out of their homeland by the Burmese military dictatorship’s brutal policies. Not only poor villagers have had to flee; many urban professionals with high levels of education have also joined the exodus. Many Burmese have crossed the border to Thailand, where they took up the most dirty and dangerous jobs only to see these disappear when the Asian crisis ratcheted migrant laborers back down the ladder. Inside Burma, meanwhile, many rural citizens have become internally displaced as they try to avoid conscription into forced labor by the military government. As a result, large groups of desperate Burmese move about the Burma-Thailand border and within each country with no homes and no work.

Discussion of the European Union focused first on the contrast between the explicit labor mobility provided for in the Community Charter of Fundamental Rights of Workers, the EU’s basic “social charter,” and the renunciation any plan for free movement of workers in NAFTA except
for high level executives and professionals. In the EU, workers from less-developed Southern Europe member countries like Portugal and Greece can freely travel to Northern Europe countries like Germany or Sweden to find higher-paying jobs. High minimum wage requirements and extensive social safety nets in wealthier EU countries prevent a large scale undermining of labor standards because of an influx of workers from poorer EU member countries.

Workshop participants familiar with EU experience described reality as more complicated. First, not many workers move from poorer to richer countries even if wages are higher. Just 2 percent of EU nationals live in another EU country. For one thing, the kind of mobility across state borders within the United States, taken for granted by many Americans (although it can be exaggerated; it is not so easy for many American workers to pick up and move) is still exceptional in Europe. Language differences and cultural differences are captured in a film like Bread and Chocolate, where an Italian immigrant dyes his hair blond and speaks in monosyllables to fit into a Northern European country, but gives himself away and is beaten up when he impulsively cheers for the Italian soccer team in a local pub.

In general, there is more “rootedness” in European communities where workers’ families have lived for generations, or if ancestors have moved, it was from the provincial villages to urban centers in the same country. As a result, movement across borders by EU nationals is more common among educated professionals and corporate managers. Even for many of them, however, notwithstanding the principle of free movement for EU citizens, strict licensing requirements and other regulatory schemes retard movement.

Much more significant for the European Union than movement by EU nationals is the issue of non-EU immigration. Millions of workers from Africa, the Balkans, Eastern Europe and Russia, Turkey, Middle East and Gulf regions, Southern and Southeast Asia and other regions of the world have flowed into comparatively wealthier EU member countries in recent decades. Many of the challenges posed by such immigration are analogous to those faced in the United States: distinguishing legal immigrants from workers who came unlawfully; complexities of asylum claims, demands on educational and social insurance systems; cultural clashes over language and religious practices, problems of apprehension, detention, deportation; downward pressure on wages and working conditions in sectors heavily populated by immigrant workers, and so on.

The European Union has taken two important steps that contrast with NAFTA’s studied avoidance of immigration issues. First, the EU maintains social development funds and other forms of aid from wealthier to poorer member countries. These North-South transfer payments help the latter to maintain their own social welfare protection and develop physical and technological infrastructure that allows them to integrate more fully into the continental economy. This has some effect dampening the “push” factor in the immigration dynamic that compels workers to leave their home countries.

Second, wealthier member countries have for the most part maintained the social safety net preventing the worst forms of abuse of migrant workers and their families, whatever their legal status. In the United States, to take just one example, thousands of migrant Mexican farmworkers live on riverbanks and live in squalor harvesting cherries in Washington State. However, the contrast should not be overstated either. Europe is looking more like the United States in the range and type of problems posed by an influx of migrant and immigrant workers.
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V. Next Steps

The last session of the WGE Labor Rights/Immigration workshop asked: “Where do we go from here?” Policy proposals raised earlier were reintroduced and discussed, such as implementing the Jordan Commission recommendations including a national identification system. Proponents argued that a national ID card is technologically feasible and the only way to assure workers’ legal status. Some suggested that social security numbers are becoming a *de facto* national ID system and moving to a card that cannot be forged is a natural progression. Others countered that a national ID system is inimical to the American experience and would never “fly” politically.

Workshop participants raised broad policy initiatives addressing “push” factors. One priority is substantial debt relief for poor developing countries, allowing them to devote greater resources to their own social safety nets rather than having to repay Northern banks and international financial institutions. Another is greater controls on capital movement into and out of developing country economies—“hot money” flows provoking new immigration flows, as recently in Asia. Yet another need is for rapid, targeted North-South assistance addressing unforeseen crises that arise. Here, participants pointed to the example of Hurricane Mitch and the long delays obtaining Congressional approval for assistance to affected Central American countries, causing a new spurt of emigration to the United States.

As a more general policy response, some participants called for a pause in rapid economic integration according to the neoliberal model embodied in NAFTA. They argued that many workers are compelled to emigrate when their industries are suddenly thrown into the global marketplace without adequate preparation or protection from the shock effects of unbridled competition. Others, however, suggested that particularly in the U.S.-Mexico context, wage disparities are so great that many employed, relatively better-paid Mexican workers still migrate to the United States. In their view, immigration from Mexico would not be much different with NAFTA, without NAFTA, or with another NAFTA.

Two broad policy options were raised but not plumbed at the end of the workshop. One was the possibility of a new amnesty for currently undocumented workers. Regularizing their status will bring them up from underground to fully enjoy labor rights and protections, removing the drag on union organizing and labor standards enforcement that comes with fear of being found out. The other was a reformed guest worker program, unlike the current H2 program or recently proposed guestworker legislation perceived as a new “bracero” program by critics. Instead, a program might be designed where trade unions in the United States and Mexico would be involved in negotiating terms and conditions of employment and enforcing them through union representation, thus guarding against exploitation and discrimination.

Both ideas sparked strong reactions. A new amnesty might simply invite continued, even amplified unlawful immigration into the United States in hope of yet another amnesty a few years down the road. A new generation of underground migrants into low-wage labor markets could overcome any gains by amnestied workers. As for a guestworker program, there is strong skepticism that any reformed plan could overcome the inherent flaws of a captive workforce brought in for a defined period, then kicked back out when their usefulness expires.
A. Human Rights Consensus

Workshop participants achieved a strong consensus on three key policy goals based on the principle that humanitarianism and human rights advocacy, not economics or cost-benefit analysis, should drive reforms:

1) effective enforcement of workers’ rights and labor standards regardless of immigration status;

2) strong social protection for all workers, regardless of immigration status and the integration of immigrant workers into local labor markets, through educational and training opportunities, health insurance, unemployment insurance, workers’ compensation insurance, retirement security; and

3) unity among workers, especially through trade union organizing, regardless of immigration status.

B. Effective Enforcement

Weak labor law enforcement is the biggest obstacle to immigrant worker policies promoting workers’ rights. Employers know that many workers have simulated documents, but the employers glance happily at the papers and hire the workers, confident that they cannot be reached by the employer sanctions provisions of the immigration law. Knowing further that immigrant workers are afraid to file complaints with federal or state labor authorities for wage and hour violations, safety and health violations, discrimination and other unlawful abuses, employers violate the law with virtual impunity. The occasional exposé like the El Monte sweatshop case are viewed like airplane crashes: disturbing, but hardly a deterrent to continued worker exploitation (or air travel).

One attempt to confront the enforcement problem has taken shape in New York state, where a creative campaign led by immigrant workers and advocacy groups led to the passage of legislation that dramatically increases penalties against employers violating state wage and hour laws. In another initiative, the federal Department of Labor has launched a “No Sweat” program with targeted enforcement efforts in garment manufacturing shops in metropolitan areas with large garment industries. In its most recent enforcement sweeps, the Labor Department found a majority of California-based garment shops to be in violation of wage and hour laws, compared with 20 percent in New York and less than 5 percent in Massachusetts.

Most workshop participants agreed that strong, consistent enforcement of labor laws would end the unchecked exploitation of immigrant workers, but only if workers’ immigration status cannot be questioned if they file complaints. More vigorous enforcement must be coupled with assurance that workers will not be reported to the INS if they file labor law complaints. If the INS enters the scene, workers who file complaints and whose immigration status is not regularized should be eligible for protected status similar to that now afforded to undocumented residents who become witnesses in criminal proceedings. Over time, as employers learn they cannot violate labor laws and labor standards with impunity, they will be less inclined to hire undocumented workers and wages and conditions for current employees will improve, making jobs more attractive for authorized workers.
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C. Social Protection

Workshop participants agreed that human rights, labor rights, and working conditions of migrant and immigrant workers can only be enhanced when the rights and conditions of all workers are protected. Stronger labor law enforcement is one way of achieving this goal. Another is strong social protection in the form of unemployment insurance, trade adjustment assistance, provision of public health services (particularly child and prenatal health care), public education for children and opportunities for education and training for workers, adequate and secure retirement income, etc. These and other benefits should accrue to everyone in the United States regardless of their immigration status by creating an “upward harmonization” dynamic for workers in the country rather than an internal “race to the bottom” affecting more and more workers in the United States.

D. Worker Unity

Universal application of labor law enforcement and publicly supported social protection systems is the responsibility of government. But workshop participants recognized a responsibility of the labor movement to welcome all workers into its ranks regardless of their immigration status. They agreed that divisions among workers on any grounds—race, gender, sexuality, age, national origin, religion, and other qualities, as well as immigration status—mean weaker unions.

Immigrant workers are entering the U.S. labor force in precisely those sectors with the greatest potential for organizing, just when the problem of union organizing has reached crisis proportions. From a high of one-third of the U.S. workforce represented by trade unions in the 1950s and 60s, union density has fallen below 15 percent as the economy shifts away from a heavy manufacturing base toward service and “knowledge” sectors, as unmanaged trade policies displace more and more workers, and as employers emboldened by weak labor law enforcement unleash aggressive anti-union campaigns of fear and intimidation when workers try to organize.

Recent examples of union organizing successes like those among workers in the “Justice for Janitors” campaign around the country, hotel workers in Las Vegas, home health aides in Los Angeles County, nursing home workers in South Florida, and others have one paramount experience in common. All involved large numbers of immigrant workers, and all stressed unity and participation of all the workers whether or not they had regular or irregular immigration status.

VI. Conclusion: Applying Core Labor Standards to Conditions of Migrant and Immigrant Workers

The immediate challenge for international labor rights advocates is to ensure the application of the ILO “core” labor standards, particularly on freedom of association, the right to organize and bargain collectively, and non-discrimination in employment, to migrant and immigrant workers. Advocates should press the Clinton administration to address these workers’ conditions with respect to core standards in its forthcoming report to the ILO on U.S. compliance with core standards. They should also press the ILO to make clear in its own oversight and implementation of its core standards program that the standards reach migrant and immigrant workers, and that all countries will be held to account for how these workers are treated. Domestically, Congress
must be pressed to add migrant and immigrant workers’ right to the United States’ own definition of internationally recognized worker rights in its trade legislation.

Labor rights advocates can support migrant and immigrants worker supporters in demands for changes in U.S. law and practice to ensure that workers’ rights of association, organizing, and collective bargaining are protected, even privileged, where they come into conflict or tension with immigration law and policy. To this end, the INS should not interfere in any workplace where a union organizing campaign or collective bargaining is underway. Workers who file unfair labor practice complaints or who testify in labor law proceedings should be granted relief from deportation by application of current mechanisms in U.S. labor law: “parole” into the United States for persons who are needed to testify at a hearing or trial, broader use of “S” visas for witnesses in investigations, discretionary “cancellation of removal” for persons of good moral character who would suffer extreme hardship if deported, and other measures to overcome workers’ fear of exercising fundamental rights of association.

4 See Montero v. INS, 124 F.3d. 381 (2d Cir. 1997).
Appendix C

Report on a Labor Rights-Women’s Rights Advocacy Dialogue:

Women’s Rights and Labor Rights in Global Trade

September 1999
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I. Introduction to the Women’s Rights-Labor Rights Workshop

This is a report on a third workshop in the “dialogue” phase of the WGE project.

The third advocacy dialogue was co-sponsored by the Workers in the Global Economy project and the Center of Concern. It brought together a small group of labor rights and women’s rights experts with a record of activity and publication in these fields, along with invited trade unionists, to address women’s rights and labor rights issues as they arise in trade and investment debates.

The Center of Concern, a Washington, D.C.-based non-governmental organization, promotes social analysis, theological reflection, policy advocacy and public education on issues of global development, its domestic/global links, and just international policies on finance and trade. The Global Women’s Project at the Center, working with DAWN Caribbean, is engaged in developing a Strategic Planning Seminar on Gender and Trade to identify and promote a research agenda on the topic, to develop an advocacy agenda and to promote trade literacy and networking to mobilize the Global Women’s Movement to address the current regional and global trade regimes. DAWN, a network of third world women engaged in research and political action, is a recognized leader in the Global Women’s Movement.

The labor rights advocacy community has pushed for workers’ rights clauses in trade laws and in trade and investment agreements with varying degrees of success. Most of the emphasis has been on so-called “core” standards covering trade union rights of association, organizing, and bargaining, along with child labor, forced labor, and nondiscrimination in employment. However, issues of women’s rights have often received less attention in traditional labor rights discourse than rights of free association, forced labor, and child labor. For example, a non-discrimination clause is conspicuously absent from the standard formulation of “internationally recognized worker rights” in U.S. trade laws.

The Center of Concern has focused on women’s issues in global trade in precisely those areas relatively neglected by the conventional labor rights movement — gender-based social assumptions and expectations about women’s role in society and in the workplace (both in developed and developing countries), the different impacts of globalization on women and men, and sharpening an agenda for gender equity in the global economy.

International labor rights advocates and women’s rights advocates have a lot to learn from each other. This workshop was designed to engage these actors in a free-flowing dialogue on labor rights and women’s rights with a view to finding ways to effectively address gender issues in trade and investment policy debates.

WGE Project Principals: John Cavanagh (IPS), Sarah Anderson (IPS), Rob Scott (EPI), Pharis Harvey (ILRF), Bama Athreya (ILRF), Lance Compa (Cornell)

Center of Concern: Maria Riley, Marina Fe B. Durano, Alexandra Spielduch

Trade Unionists: Karen Nussbaum (AFL-CIO), Thea Lee (AFL-CIO), Jennifer Marsh (AFL-CIO), Ann Hoffman (UNITE)
Workers in the Global Economy

Academics and Advocates: Ellen Alrodi (HBF), Lourdes Beneria (Cornell University), Savitri Bisrath (Cornell University), Johanna Bond (Georgetown Law School), Marty Chen (KSG, Harvard University), Jessica Christensen (ILRF), Cathy Feingold (Ford Foundation), Karen Hansen-Kuhn (DGAP), Angela Meeutzeu (HBF), Catherine Powell (Columbia Law School)

A. Introductory Comments

In introductory comments, trade union representatives expressed keen interest in linking women’s rights and workers’ rights in the international trade arena, an interest sparked by the experience of women workers in the United States. After a generation of increased women’s participation in the workforce, women have become stronger economic actors. Women workers are forming and joining unions in greater numbers than men, and are more likely to support unions (a majority of non-union women in the United States say they would join a union tomorrow) and a union agenda.

Women’s issues—expanded job training and employment opportunities, child care, family leave, pay equity, health insurance and others—have moved up the ladder of national agenda priorities. Unions have taken up issues identified with women’s concerns more vigorously in the past decade and see these issues as basic union concerns. This is not to say that these problems have been solved, but women trade unionists and women workers generally have become more engaged in struggles for economic and political progress.

Trade union participants acknowledged that international issues like trade and investment are still not front and center for most working women, who face more immediate, local concerns in their own workplaces and communities. But participants agreed that concern for international labor rights must be heightened within the women’s movement, and that concern for women’s rights must become central to the international labor rights movement.

Women’s rights advocates made introductory remarks stressing the need for a solid research foundation to frame an agenda for women in international trade and investment. Pointing to a recent case study on Ghana, participants cited the need for a gender analysis in the World Trade Organization (WTO) taking into account that women:

* produce and trade in different goods and services than men (for example, they are more involved with local food production than with export crop production than men, and are preferred over men in export processing zone factory production for export)

* have more family, household, and community responsibilities than men, and this work is unremunerated;

* have more legal disadvantages, such as prohibitions on land ownership and limits on access to credit.

The WTO and other international organizations should undertake a new, massive program of gender-focused research that disaggregates information to assess the impact of trade and investment policies on women.
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Women’s rights, equality, and equity in the global economy are a necessary moral foundation, but gaps in knowledge about globalization’s effects on women must be filled in with reliable data and hard analysis. Advocates must develop greater international economic literacy for women, giving them the tools and the confidence to speak to trade and investment issues.

II. Review of Policy Approaches

After introductory remarks, women’s rights advocates reviewed a series of shifting policy approaches to women as global economic actors. The first, a “welfare” approach prevalent in the 1960s and 70s, purported to bring women “into” the process of development without acknowledging that they already were deeply involved in economic activity related to the global economy, such as the first generation of maquiladora factories and export processing zones.

An “equity” approach to women’s role in development strategy marked the mid-1970s to mid-1980s, growing out of the failure of the welfare approach. It challenged the status quo, but did not deal with race or class. This approach assumed the male experience as normative and sought to open it up for women—full-time work outside the home in the formal sector of the economy; that is, in a regular job with predictable pay and participation in the payroll tax-based social security system. However, this overlooked women’s reproduction, family and household responsibilities, and their more typical role as workers in domestic agriculture and the informal sector.

An “anti-poverty” approach followed, with less emphasis on equity and more on redistribution to women of new wealth generated by economic development. However, as the neoliberal ideology rapidly came to dominate trade and investment policies and related Structural Adjustment Programs (SAPs) in the late 1980s and early 1990s, this quickly gave way to an “efficiency” approach that views women as better managers of household and family care resources. International donors promoted “investing in women” so that they might better fulfill the donors’ development agenda. This assumed that women will deliver service without voicing their own agenda and aspirations that might envision other, more dynamic roles for women.

All these policy options avoid a more basic change that comes with an “empowerment” approach by which women define their own agenda, rather than adapting to various agendas of rich donor countries, private donor organizations, multinational corporations, neoliberal ideology, or their own society’s men. An empowerment approach would shift the balance by recognizing women’s role as workers and producers as well as family and household workers. At its broadest reach, the empowerment approach is most consonant with international human rights standards.

The WGE-CoC workshop’s discussion on these points focused on the need to combine elements of different policy approaches, especially equity and empowerment. Making human rights, international labor rights, and core labor standards a centerpiece of an equity/empowerment strategy is critical, some argued. But other commenters saw a tension between a labor rights agenda driven by Western governments, international organizations, and developed country trade unions and one focused on empowering grass roots women and organizations that have locally determined agendas.
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In the APEC (Asia-Pacific Economic Cooperation) setting, for example, women have made gains in areas like micro-lending and greater employment opportunities without reference to human rights or labor rights. A rights-based agenda is still seen by many Asian governments as an excuse for protectionism by Western industrialized countries, especially the United States. Other participants questioned whether “empowerment” in a system where a free market, neoliberal ideology holds sway is really empowering women, without addressing issues of working class power and trade union strength—or the lack of it—in the global economy.

A consensus emerged that women’s rights and an agenda shaped by women must be brought to global trade and investment debates. But the questions “which women?” and “which women’s agenda” were not resolved, recognizing that there is not a single group or agenda that rules women’s varied interests. The same is true for men, who neither form a single group or share a common agenda.

III. A Feminist Critique of Neoliberalism and SAPs

The next discussion began with a review of feminist critiques of neoclassical/neoliberal ideology and traditional Structural Adjustment Programs (SAPs) imposed by international financial institutions. Discussion started with the assertion that a global economy based on differential exploitation of women’s time, labor, and sexuality denies full humanity to both women and men. The experience of women in developing countries demonstrates the flaws in neoclassical economic theory that underpins SAPs.

The neoliberal paradigm views economic activity as the sum of individual decisions, ignoring situations where cooperative group action would bring better results. This prevalent ideology is based on a narrow experience of a few industrialized, male-dominated economies assumed to have universal application. Further, it is predicated on a fully monetarized society with developed markets and a European model of women’s role in society.

This view ignores the fact that in some countries law and custom inhibit women’s independent control of money and resources, ownership of property, and paid employment. It also fails to value women’s products, labor, and services related to family and community responsibilities. Nor does it take into account the dynamics of the male-female relationship and how men and women react differently to gains in income; namely that men are more likely to spend it on themselves while women “invest” it in the family. Neoliberal policymakers assume that women’s unpaid work is infinitely flexible. In fact, the austerity, privatization, and cutbacks in social programs mandated by SAPs put enormous new stress on a “reserve army” of wives, mothers, daughters, sisters, aunts, and grandmothers.

Additional dimensions of global trade and investment from the perspective of women come into play in the debate, each deserving of careful analysis. One dimension concerns the environmental and especially gender-specific health effects on women of child-bearing age working with chemicals in many factories. Another dimension is the spiritual, or rather the lack of a spiritual dimension in a global system that commodifies everything and everyone, including women’s sexuality in a burgeoning global sex trade.

Racial and ethnic discrimination is another critical problem affecting minority women and com-
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pounding the discrimination they already suffer as women. Finally, the entire trade system can be seen as “militarized.” Multinational corporations deploy capital and marshal workers to labor under tight discipline (including corporal punishment in some settings), then sacrifice them with workplace closures in search of new marketplace victories. Each of these problems deserves critical analysis and effective response by women’s rights advocates and workers’ rights advocates.

The exchange following this presentation focused on the potential of an international labor rights strategy—winning strong labor rights protections in trade and investment agreements or giving labor rights enforcement powers to the International Labor Organization (ILO)—as a point of access to trade issues affecting women. Some participants spoke of the potential for labor rights to become a protectionist strategy aimed at preserving Northern, mostly male factory jobs to the detriment of women in developing countries.

In this light, a labor rights-trade agenda has a cultural logic based in the Northern experience. A labor rights strategy does not take into account high levels of women’s involvement in the informal economy. In India, for example, only 8 percent of working women are employed in the formal sector. Nor does it account for the unremunerated work of hundreds of millions of women around the globe.

Participants articulating these views argued that analysts should rethink “worker” definitions to take into account women in the informal sector and unpaid household and community work. That is, the analysis should extend to a broader context taking in “labor” in all its varied forms. Advocates should also look at the effects of global trade and investment on women of different ages. Young women in maquiladora factories, often the main subjects of international labor rights discourse, are just a small portion of working women around the world.

Other participants noted, in response to these arguments, that women workers in Northern workplaces, typically apparel and electronics factories, suffer the most from plant closings and job losses attributable in part to workers’ rights violations in developing countries. These women are not insulated from the inequalities and dislocations caused by global trade and the lack of protections for workers in the trade and finance system. A labor rights strategy seeking a social clause in international commercial agreements or a strengthened ILO can be part of a solution. Other parts should include an expanded—and in many societies a new—social safety net and basic food subsidies.

The discussion took another tack with the argument that analysts and advocates should avoid a tendency to see women only as victims of the forces of global economic change. In fact, most women are strong and, in the setting of each of their societies, quite resourceful in dealing with the challenges of their working lives in formal, informal, household and community settings. It is important especially for advocates to base their arguments on findings developed by researchers who look for positive as well as negative evidence of women’s conditions, taking into account many variables in different economic sectors, in the different zones of women’s working lives, and in different national contexts. In Mexico, Malaysia, and many other countries, for example, maquiladora or export processing zone factory jobs are desirable for women, compared with the alternative of dawn-to-dusk work in agriculture or street corner vending.
IV. Three Reports: ICFTU, FTAA, ILO

Labor participants reported on an international conference of trade union women sponsored by the International Confederation of Free Trade Unions (ICFTU) held in Brazil in May. The conference reflected the fact that in many countries women are moving in increasing numbers into leadership roles in their national labor movements and are raising women’s issues higher on organized labor’s agenda—pay discrimination, equal opportunity for advancement, training for nontraditional jobs, reproductive rights, women’s health and safety, sexual harassment, unequal division of household labor, child care etc.

The ICFTU conference also addressed issues of atypical work that still tends to characterize many women’s employment situation: temporary, part-time, home-based, intermittent, or otherwise “contingent” on an employer’s whim. These new forms of work arise from the change in modes of production driven by the single-minded pursuit of production, efficiency and competition.

Women trade unionists at the Brazil conference also debated globalization and its effects on women. They agreed on the need to develop greater international links to ensure that working women’s concerns are placed high on the agenda in international trade and investment fora.

A second report came from WGE-CoC workshop participants advocating a social dimension in the Free Trade Agreement of the Americas. The FTAA is the planned hemispheric-wide trade pact now being negotiated among the nations of South America, Central America, North America and the Caribbean with a target date for completion of 2005.

A women’s rights agenda has had mixed progress in the FTAA context. At a “People’s Summit” in Santiago, Chile in April 1998 held concurrent with a meeting of hemispheric heads of state on the FTAA, civil society forums treated women, the environment, human rights, indigenous peoples, campesinos and the agrarian sector, education, poverty, ethics, and alternative economic integration policies. Besides these, Black activists led by Jamaicans and Colombians spontaneously forged their own forum to put issues of racial discrimination into the trade agenda.

All but one forum submitted consensus reports to the People’s Summit. The Women’s forum split because it was unable to resolve differences between mainstream feminists and a more radical, separatist current. Calling their final report to the plenary a “two-strategy” approach, one group focused on issues like the right to divorce, gender equality in trade unions, women’s access to education, their right to own and inherit land, and implementing programs from earlier meetings in Beijing and Copenhagen. The other group declared “total rejection of the patriarchal capitalist system” and called for building autonomous women’s organizations in all social movements.

Some of the WGE-CoC workshop participants in FTAA affairs are helping to craft a new Gender chapter for the Alternatives for the Americas document meant to contain concrete proposals for a social dimension in the FTAA. The draft notes that women are not only affected by global trade rules but are impacting the process of global trade by their participation as workers, producers, and consumers. On the whole, however, globalization and freer trade have exacerbated existing gender inequalities and deepened asymmetrical power relations between men and women.
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in the Americas.

The FTAA process should ensure that women and their organizations from all levels of society are included and engaged in the trade debate. A gender impact assessment and disaggregated male/female data should form the statistical baseline for trade and investment policy analysis and the formulation of new trade rules. To take just one example among many, how would new intellectual property rules affect traditional medicinal practices often carried out by women? Any new hemispheric trade pact should provide technical and development assistance to women, address problems of women in the informal sector, and recognize the value of women’s unpaid work.

A third report from international labor rights advocates dealt with the ILO’s 1998 adoption of a Declaration on Fundamental Principles and Rights at Work. Supported by unions, employers and governments in the ILO’s unique tripartite decision-making structure, the Declaration defines four core labor standards: 1) freedom of association and the right to bargain collectively 2) the elimination of all forms of forced or compulsory labor 3) the effective abolition of child labor, and 4) the elimination of employment discrimination.

Under the Declaration, all ILO member countries (nearly every country in the world) are obligated to give effect to the core standards whether or not they have ratified the specific ILO Conventions that address these issues. This is especially relevant for the United States, which has ratified only ILO Convention No. 105 on forced labor. However, the ILO Declaration, like ILO Conventions, does not entail a “hard” enforcement mechanism where countries that violate these norms suffer economic consequences. Rather, it creates a heightened “soft” reporting and oversight mechanism that supporters hope will persuade governments to respect the core standards.

The ILO Declaration contrasts with the definition of “internationally recognized workers’ rights” in U.S. trade laws governing the Generalized System of Preferences (GSP) and many other U.S. trade statutes. GSP is a program permitting beneficial tariff reductions for developing countries who export products to the United States as long as they afford the “rights” contained in the U.S. law. The five specified rights in the U.S. statutory regime are: 1) freedom of association 2) the right to organize and bargain collectively 3) prohibition of forced labor 4) limitations on child labor, and 5) minimum acceptable conditions on wages, hours, and health and safety. Conspicuous by its absence here is the issue of non-discrimination.

However, the ILO Declaration should not be seen as an authoritative final statement of core labor standards, especially with regard to women. The Declaration does not address health and safety of either women or men. It does not address migrant workers’ rights, including those of women or men. It does not define sexual harassment as a discriminatory practice. Finally, it does not speak to adequate income, to child care needs, to women’s unpaid labor, or to the informal sector.

A. Discussion and Critique of the Labor Rights Strategy

Commenting on these reports, participants noted that as with most international labor rights discourse, the ILO Declaration implicitly assumes a model of manufacturing or other well-
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established formal sector jobs. Some said it fails to address the plight of the majority of women for whom this is not the reality of working life. Advocates must go beyond an easy ethical consensus against discrimination among labor rights elites to promote grass-roots women’s organizations and address the problems of women at the grass roots.

Furthermore, said some participants, a labor rights strategy can sometimes bring adverse results. For example, an aggressive move to apply trade sanctions against countries failing to eradicate child labor can drive children out of relatively “better” work into street life, child prostitution, and abusive domestic service. In a counter argument, it was argued that this is not a reason to shrink from a labor rights strategy including economic sanctions, but rather a case for emphasizing getting children into school and providing the resources to accomplish this.

Some participants felt that focusing on a labor rights agenda at this point might be more effective than adopting a feminist agenda. Participants agreed that a dogmatic, one-size-fits-all labor rights strategy is not the answer. But a flexible, creative use of labor rights mechanisms is a start toward an answer.

Using NAFTA’s labor side agreement to attack the widespread practice of pregnancy testing in Mexico’s maquiladora sector is an example of innovative use of a labor rights mechanism. Two U.S.-based human rights groups, Human Rights Watch and the International Labor Rights Fund, along with the National Democratic Lawyers Association (ANAD) of Mexico, filed a complaint under NAFTA’s North American Agreement on Labor Cooperation in May 1997 alleging “a pattern of widespread, state-tolerated sex discrimination against prospective and actual female workers in the maquiladora sector along the Mexico-U.S. border.”

The submission alleged a common practice of requiring pregnancy testing of all female job applicants and denying employment to those whose test results are positive. The complaint also said that employers pressure employees who become pregnant to leave their jobs. Companies do this, the submission argued, to avoid the legal requirement of three months’ fully-paid maternity leave for workers who give birth.

The submitters argued that the practice by employers and the failure of the labor authorities to combat it—sometimes by omission, sometimes by overt support for the employers’ discriminatory policy—violates Mexico’s obligations under the NAALC. The complaint sought a U.S. labor department review, public hearings in cities along the Mexico-U.S. border, and the formation of an Evaluation Committee of Experts to report on employment practices related to pregnancy in Canada, Mexico, and the United States.

In January 1998, the U.S. Department of Labor (DOL) issued a report confirming widespread pregnancy testing that discriminates against women workers. Concluding consultations in October 1998, the labor ministers of Canada, Mexico, and the United States approved a program of workshops for government enforcement officials, outreach to women workers, and an international conference on gender discrimination issues. In the meantime, some U.S. companies in the maquiladora zones announced they would halt pregnancy testing, and Mexico’s federal government issued a new rule prohibiting pregnancy testing of women applying for employment in federal ministries.
Appendix C

Legislation has been introduced in the national congress by women deputies to explicitly prohibit pregnancy testing in employment. Perhaps most importantly, grass roots women’s advocacy organizations in the maquiladora region that were formerly marginalized and ignored by authorities have gained respect and power by bringing their concerns to an international forum, and ties have deepened between women’s groups on both sides of the border.

Some participants in the WGE-CoC workshop expressed doubt that existing international trade and investment agreements or institutions—NAFTA, GATT, WTO, FTAA etc.—are capable of addressing women’s rights and workers’ rights. One argument was made on behalf of the ILO as the best forum for progress. Others were skeptical about the ILO, citing the power of employers in its tripartite structure, the narrow scope of its core standards definition, and the lack of a strong enforcement mechanism. They remade the case that a social clause in trade and investment agreements backing up workers’ rights and working women’s rights with trade sanctions when rights are violated is the necessary goal in a globalizing economy.

Still others suggested that international agreements and institutions should have lower priority. The principal governmental actor on issues affecting women and labor is still the national government. This is where activists should devote their energy and passion, into building strong national movements for women’s rights and labor rights to safeguard them through strengthened national laws and effective law enforcement.

V. Conclusion

The WGE-CoC workshop concluded with discussion of a common agenda for future action. There was agreement that labor rights advocates must rethink and broaden their strategy for a social dimension in trade and investment regimes to include gender-specific issues, particularly the problems of women in the informal sector—the majority of working women in the world.

Participants agreed that women’s rights and labor rights advocates need more than a classical rights agenda. Advocates must raise demands for economic rights, challenging a system that privileges capital and underprivileges labor; that treats workers as cost factors and prioritizes growth, efficiency and fast profits. Important priorities include community, solidarity, sustainability, and fairness.

Trade union and labor rights advocates contended that to accomplish this, working people have to be able deal from a position of strength with governments, international institutions, multinational corporations and investors. They urged women’s rights advocates to put union-building on their agenda alongside such issues as new micro-lending programs for small handicrafts entrepreneurs. Correspondingly, women’s rights advocates urged trade unionists and labor rights strategists to broaden their field of analysis and action to take into account the multiple ways that women are differentially affected by global trade and investment flows.

One place to begin is for labor rights advocates to incorporate women’s rights into the demands being formulate for the WTO ministerial meeting in Seattle in December 1999. Alongside their own demands for a social clause, more consultation with workers’ organizations, and more transparency in the WTO, trade unionists and labor rights advocates can join women’s demands for research on and analysis of the differential impact of global trade and investment policies on
women, and for taking into account the situation of women in the informal sector. Unionists and workers’ rights advocates urged their women’s rights counterparts to use international labor rights instruments like the NAFTA labor agreement or the ILO Declaration to press women’s issues in novel venues that can give voice to women workers. Finally, raising the demand in the United States to add a non-discrimination clause to the “internationally recognized workers’ rights” definition in U.S. trade laws can give heightened visibility to the challenges faced by women in the global economy and create new arenas for advocacy and action.