José Manuel Salazar-Xirinachs / Jorge Mario Martínez-Piva

Trade, Labour Standards and Global Governance: A Perspective from the Americas*

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I. Introduction

The idea that the regulatory framework of globalization should have a set of universally agreed human rights regarding working conditions or labour standards is by now widely accepted. This, in and of itself is one of the hallmarks of an increasingly globalized world economy. Although the ILO has since 1919 been charged with the task of international coordination of labour policies and standards, the 1990s saw a growing international consensus on a number of core labour rights which is expressed in the ILO Declaration on Fundamental Principles and Rights at Work, signed in 1998 which binds the 175 ILO members.

However, while there is wide consensus on the need for regulation and international coordination in this area, there are major issues and disagreements about what means should be used to promote higher standards, whether the general concept of "labour rights" could be translated into a precise and operational definition of "labour standards", what allowance should be made for national circumstances and peculiarities, and what should be the role of international institutions like the ILO and the WTO in policing and enforcing labour standards?

In industrialized countries, factors such as: competitive concerns about trade with low-wage developing countries; the perception of the relative inability of the ILO to enforce core labour rights; coupled with the perception of the success of the WTO to enforce trade rules, among others, have led to mounting pressure to include la-

bour provisions in the WTO and in trade agreements in general, as a means of ensuring compliance with universally accepted labour rights. Those that oppose the trade-labour link argue that this is not an effective way of promoting implementation; that there are major difficulties in translating core labour rights into operationally uniform and enforceable labour standards; that it is a mistake to overburden trade institutions with "non-trade" concerns; and that, while there is a lot of scope for a cooperative approach, asymmetries in market size and political economy considerations provide a no win-win scenario for small economies to support a trade sanctions approach in this area.

There is also pressure to include labour provisions in regional trade agreements (RTAs). As one of the most proactive regions in the world in the proliferation of RTAs during the 1990s, the Americas has been a fertile ground for experimentation with new areas of discipline or "deep" integration, and some of the recent agreements in this region have included labour provisions, as well as environmental ones, that go well beyond multilateral disciplines and commitments in these areas.

The purpose of this paper is to analyze and assess the main arguments and related empirical evidence for and against the inclusion of labour provisions in trade agreements. The paper is organized as follows. Section II. contains some general comments on global governance and development issues, Section III. provides an overview of international and regional regulation issues in the labor area. Section IV. deals with the main arguments in favor of including labour provisions in trade agreements, while Section V. analyses the main reasons why most Latin American and Caribbean countries are opposed to this link, particularly if it involves the possibility of restrictions to market access. Section VI. analyzes the three models of labour cooperation agreements that have emerged in the Americas: the NAFTA (1995), the Canada-Chile Agreement (1996), and the Canada-Costa Rica Agreement (2001); as well as the U.S.-Jordan standard or model (2000). It is argued that there are important lessons to be learned from these regional models and that they have contributed to a more sophisticated understanding of the issues involved. The final section draws some conclusions on trade and labour regulation issues.

II. Global Governance and Development

The debate about globalization, its nature and impacts, has raised a number of fundamental questions relevant to the relationship between trade rules and labour rights and their international governance systems. Substantive policy questions include: Is it correct that global trade and market governance have developed more quickly than global social governance? Is there an imbalance between the economic and social pillars of the global governance system? How to make international trade rules more development friendly? What allowance should be made for national circumstances and peculiarities?

A number of important questions refer to decision making processes: Where and how to negotiate and define rules and institutions for international governance? How participatory and transparent is the process in terms of the engagement of nation-states and in terms of the participation of national or international civil society sectors and NGOs? How representative are NGOs wishes to participate in the policy-making process at the regional and global levels?

The WTO, in particular, has been a victim of its own success in enforcing global trade rules. Impressed by this success many groups have demanded the inclusion of a number of new issues in the WTO agenda. Should the WTO agenda be expanded to include new areas of international and domestic regulation such as labour and the environment? Is this expansion of the agenda in the WTO and centralization of the power to make and enforce rules desirable? Or is decentralization and specialization in the allocation of power for rule making, policing and enforcing a better global architecture? As discussed below, in the WTO Doha Ministerial Meeting some of these questions received specific answers that should reduce anxiety and conflict about these issues, at least for some time.

All of the above and others are legitimate and important questions. In trying to answer them two related traps should be avoided. One is reasoning exclusively from an industrial country perspective about the modern market economy and its institutions. The other is approaching the global trade and social governance issues unarmed with at least some rudimentary elements of that often forgotten subject called “development theory”.

As for rules and institutions, the international community has rediscovered their importance for development, the question is what kind of institutions? One of the fundamental insights to emerge

from institutional economics is that the state and the market can be combined in many different ways, that there are many different models of the mixed economy that can promote growth.[1] *Dani Rodrik* has put this insight as follows: "There is no single mapping between a well-functioning market and the form of non-market institutions required to sustain it. This finds reflection in the wide variety of regulatory, stabilizing and legitimizing institutions that we observe in today's advanced industrial societies … We need to maintain a healthy skepticism towards the idea that a specific type of institution – a particular form of corporate governance, social security system, or labour market legislation, for example – is the only type that is compatible with a well functioning market".[2] This point about the institutional diversity found in the international growth and development experience, is a healthy warning against a simplistic importation of international rules and standards that might not fit the specificities of developing countries.

The second trap would be not to give sufficient weight to the role of economic openness, trade and growth in reducing poverty and improving living standards and working conditions. Recent research has shown clearly that growth is important for poverty reduction, and that trade is important for growth. Faster growth is associated with faster poverty reduction, and economic contraction is associated with increased poverty. For poverty to increase with economic growth, there would have to be a drastic worsening of income distribution, and this is not generally the case in most countries. However, it is also equally clear that growth by itself does not necessarily improve income distribution, and that this requires a complex array of accompanying social policies. The point is that increased access to large markets and expanded trade is one of the major contributions that the world trading system can make to growth, poverty reduction and improving working conditions in developing countries. Policies that tend to restrict market access and trade do not contribute to increased standards of living in developing countries.[3]

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1 *Chang* (2002), *Easterly* (2001), *Williamson* (1985).

2 *Rodrik* (2001) 11.

3 Studies of the relationship between trade and growth, and growth and poverty reduction have followed two main lines. One uses econometric estimates based on cross-country time series data and panel estimation techniques. See *Levine / Renelt* (1992), *Sachs / Warner* (1995), *Sala-i-Martin* (1997), *Frankel / Romer* (1999), *Irwin / Terviö* (2000), *Dollar /*

These "development paradigm" issues are important because, as will become evident in the following sections, where one stands in terms of the trade-labour nexus, depends to a large extent on one's views about the fundamental determinants and links between trade, growth, development and poverty reduction. Let us now briefly review the evolution of international and regional regulation of labour issues.

III. International and Regional Regulation of Labour Issues

There is a long tradition of international coordination of labour law that dates back to the Industrial Revolution, however, the international labour rights agenda broadened significantly with the creation of the International Labour Organization in 1919. Initially, the ILO's focus was on the eradication of slavery and all forms of forced labour. Later, it expanded its agenda to include the rights to freedom of association and collective bargaining, non-discrimination in employment, and elimination of child labour.[4]

The 1990s saw a growing international consensus on a number of core labour rights, a trend that led to the 1998 ILO Declaration on Fundamental Principles and Rights at Work that binds the 175 ILO members. This Declaration states that:

> "… all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the Principles concerning the fundamental rights which are the subject of those conventions, namely:
> 1. freedom of association and the effective recognition of the right to collective bargaining,

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Kraay (2001). *Rodriguez/Rodrik* (1999) and *Rodrik* (2001) are skeptical about the robustness of some of these results regarding the relationship between trade openness and growth. *Jones* (2000), however, focusing on trade policy variables, concludes that trade restrictions are almost invariably harmful to long-run growth, although the magnitude of the effect is uncertain. The other line of research has been the development of General Equilibrium Models. World Bank (2002) contains a survey of the latter literature and results and new estimates of the significant gains for developing countries of different trade opening and integration scenarios.

[4] For history and further analysis of the trade-labour linkage see *Charnovitz* (2001a) Part III; *Leary* (1996).

2. the elimination of all forms of forced or compulsory labour,
3. the effective abolition of child labour, and
4. the elimination of discrimination in respect of employment and occupation".

Over time the ILO has developed a number of Conventions that member countries are free to join and ratify. Table 1 presents the list of Conventions corresponding to the core labour rights.

This broad-based international consensus around a set of general rights or values for the treatment of labour is a remarkable feature of the new realities of the global economy. However, it is one thing to reach consensus based on general rights or values, and quite another, to agree on precise definitions to make common labour standards operational.[5]

Table 1:
Ratification of Core ILO Conventions

	Convention		Ratification	
	Year	Number	Total Members	Western Hemisphere
Minimum Age	1973	138	93	20
Worst Forms of Child Labour	1999	182	43	20
Forced Labour	1930	29	154	31
Abolition of Forced Labour	1957	105	147	34

to be continued

[5] *Brown* (2001) analyzes of some of the difficulties of defining common labour standards as well as the complex relationships between labour standards and economic efficiency. The author concludes that "Taking steps to reduce forced labour, child labour, and discriminatory behavior, or to support free association and collective bargaining will often have a mixture of effects … We cannot make a general statement that universal labour standards derived from commonly held moral values will always produce positive economic outcomes. The effect on economic performance and the lives of workers and their families of legally imposed labour market constraints of the sort contemplated by labour rights activities cannot be presumed to be positive, but instead must be empirically investigated on a country-by-country basis". (97).

Table 1 (continued):
Ratification of Core ILO Conventions

	Convention		Ratification	
	Year	Number	Total Members	Western Hemisphere
Non-Discrimination in Employment and Occupation	1958	111	149	30
Equal Remuneration	1951	100	145	30
Freedom of Association	1948	87	132	30
Right to Organize / Collective Bargaining	1949	98	147	30

Source: ILO

The thirty-four countries in the Western Hemisphere have a fairly good record of ratifying ILO conventions (Table 1, and Table 2 for more detail) and a tradition of cooperation on labour issues. In the Inter-American system there is cooperation at two levels: sub-regional and hemispheric. At the sub-regional level, Central America is a good example, where Ministers of Labour, including those of Panama and the Dominican Republic, meet regularly to undertake joint actions under the auspices of the regional ILO office. The main initiative, however, is Hemispheric. Ministers of Labour of the hemisphere meet every two years. At their meeting in Viña del Mar, Chile, in 1998 the Ministers of Labour agreed on a Plan of Action, and established two working groups: one on Globalization of the Economy and its Social and Labour Dimensions; and another on Modernization of the State and Labour Administration.[6] Minis-

[6] The Working Groups that were established in Viña del Mar, made considerable progress. The Working Group on Globalization of the Economy and its Social and Labor Dimensions promoted a variety of surveys and analysis including: an analysis on "Labour Standards in Integration Agreements in the Americas" conducted by the ILO; and an exhaustive survey of professional training and educational experiences in the region. The group responsible for the Modernization of the

ters identified priority areas and a number of initiatives designed to ensure progress in each area, including: the role of the Ministries of Labour, employment and the labour market, vocational training, labour relations and basic workers' rights, social security, health and safety, enforcement of national labour laws and administration of justice in the labour area, and social dialogue.

Table 2: Western Hemisphere: Ratification of ILO Core Conventions, 2001

	Freedom of association and collective bargaining		Elimination of Forced and compulsory labour		Elimination of discrimination in respect of employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 00	Conv. 111	Conv. 138	Conv. 182
Americas (34)[7]	30	30	31	34	30	30	20	20
Antigua and Barbuda	x	x	x	x		x	x	
Argentina	x	x	x	x	x	x	x	x
Bahamas	x	x	x	x	x	x		x
Barbados	x	x	x	x	x	x	x	x
Belize	x	x	x	x	x	x	x	x
Bolivia	x	x		x	x	x	x	
Brazil		x	x	x	x	x	x	x
Canada	x			x	x	x		x
Chile	x	x	x	x	x	x	x	x
Colombia	x	x	x	x	x	x	x	
Costa Rica	x	x	x	x	x	x	x	
Dominica	x	x	x	x	x	x	x	x

to be continued

State and Labour Administration developed cooperation projects in the areas of preventive mediation; automatization of trade unions' registration and related services and modernization of labour intermediation systems.

7 Includes all countries participating in the Free Trade Area of the Americas (FTAA) process.

Table 2 (continued): Western Hemisphere: Ratification of ILO Core Conventions, 2001 (continued)

	Freedom of association and collective bargaining		Elimination of Forced and compulsory labour		Elimination of discrimination in respect of employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 00	Conv. 111	Conv. 138	Conv. 182
Dominican Republic	x	x	x	x	x	x	x	x
Ecuador	x	x	x	x	x	x	x	x
El Salvador			x	x	x	x	x	x
Grenada	x	x	x	x	x			
Guatemala	x	x	x	x	x	x	x	
Guyana	x	x	x	x	x	x	x	x
Haiti	x	x	x	x	x	x		
Honduras	x	x	x	x	x	x	x	
Jamaica	x	x	x	x	x	x		
Mexico	x		x	x	x	x		x
Nicaragua	x	x	x	x	x	x	x	x
Panama	x	x	x	x	x	x	x	x
Paraguay	x	x	x	x	x	x		x
Peru	x	x	x	x	x	x		
St. Kitts and Nevis	x	x	x	x	x	x		x
Saint Lucia	x	x	x	x	x	x		x
St. Vincent and the Grenadines		x	x	x				
Suriname	x	x	x	x				
Trinidad and Tobago	x	x	x	x	x	x		
United States				x				x
Uruguay	x	x	x	x	x	x	x	x
Venezuela	x	x	x	x	x	x	x	

Source: ILO web page (http://www.ilo.org/) 2001.

Ministers of Labour of the Americas met again in Washington D.C. in February 2000 and in Ottawa, Canada in October, 2001. Ottawa's Plan of Action established two working groups: one will examine the labour dimensions of the Summit of the Americas process, and has been asked specifically to analyze questions of globalization related to employment and labour, identify areas of agreement and issues where further work needs to be done, and create a process for improved collaboration and cooperation on these labour dimensions with other government ministries. This working group will build upon the results of the Working Group on Globalization of the Economy and its Social and Labor Dimensions created under the Viña del Mar Declaration. It will also examine the implications of the ILO report "Labour Standards and the Integration Process in the Americas". Continuing the work of its predecessor, the second group will focus on capacity building of labour ministries to effectively implement labour laws, and on the promotion of the ILO *Declaration on the Fundamental Principles and Rights at Work,* and its *Follow-Up,* in the Hemisphere.

IV. Assessment of Rationales for Inclusion of Labour Provisions in Trade Agreements

Many different arguments have been put forward to justify the inclusion of labour provisions in trade agreements. In this section these arguments or rationales are grouped under five categories: common sense arguments; economic justifications; moral, humanitarian and human rights rationales; institutional and political considerations.

A. Common Sense and Trade-Relatedness

The basic common sense argument for linkage says that since trade and labour issues are intimately related, there should be no reason to oppose linkage. Although widely used in political discourse, and perhaps appealing to the intuition, this is not a good basis to make decisions in this area. The fact that trade is related with and affects almost every aspect of human life reduces this position to the absurd. For instance, trade and income distribution issues are also intimately related. Should there be an income distribution clause in trade agreements? Obviously not. A common sense approach does not take us very far.

Departure from common sense can take two directions. One is an analytical direction. *Maskus*, for instance, develops an interest-

ing framework to analyze the degree of trade-relatedness of different areas of regulation such as intellectual property rights, competition policy, labour and environmental issues.[8] Although the impact of these academic ideas should not be underestimated, this issue will not be resolved only on academic grounds. At the other extreme there is the pragmatic view that "trade-related" is ultimately anything that governments decide to define as trade-related. While true, this attitude involves the risk of leaving the issue wide open to the winds of political economy and pressure group politics. Therefore, governments and policy-makers would be well advised to reject common sense and political expediency as rationales for deciding how to respond to the pressures for linkage and how to allocate the powers for policing and enforcing labour rights among international institutions.

B. Economic Arguments

The second category of concerns behind the pressures to include labour provisions in trade agreements is economic. There are four basic sets of economic issues: (1) The race to the bottom argument, (2) the idea that to compete with countries where low-wages prevail is unfair competition, (3) the notion that trade liberalization without harmonization of labour standards is bad for wage dispersion and income distribution in advanced industrial economies, and (4) the concern about job dislocation and displacement produced by competing imports.

1. Race to the bottom

The race to the bottom refers to the fear that in the absence of international coordination, countries will have an incentive to lower their own standards to be more attractive to foreign investment or to gain a competitive advantage. Notwithstanding how appealing this argument may look intuitively, there is simply no evidence to support it. A review of the relevant literature suggest the following:

As regards the link between export performance and labour standards one of the principal findings of the well-known OECD 1996 study was that there is no evidence that countries with low core labour standards enjoy a better global export-performance than high-standards countries. This means that lowering labour standards would do nothing to help a country's export performance. The 2000 update of this study states that this finding has not been challenged

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[8] *Maskus* (2000).

by new evidence. On the contrary, a study by *Aggarwal* comparing more export-oriented and less export-oriented sectors indicates that core labour standards are often lower in less export-oriented or non-trade sectors.[9] The evidence is also clear that firms in Export Processing Zones pay higher wages and offer less onerous working conditions than do firms in the rest of the economy.[10] These findings are quite robust across different studies and suggest that export activities actually help to lift people out of poverty and can be seen as contributing to a "race to the top".

As regards the link between investment and labour standards, studies of investment location decisions of multinational companies show that these decisions are influenced by many factors of which critical ones are political and macroeconomic stability, quality of infrastructure, logistics and of labour skills. There is no evidence that low quality of labour standards constitute a significant investment decision variable.[11] On this point, the 2000 OECD study concludes that: "With the notable exception of China, countries where core labour standards are not respected continue to receive a very small share of global investment flows. There is no evidence that low-standards countries provide a haven for foreign firms".[12]

Thus, there is no evidence that export performance or FDI flows are correlated with low labour standards or low wages relative to the rest of the economy. In fact, labour standards and wages are higher in export sectors than in non-traded sectors. Even in cases where there might be an incentive to lower standards, democracy, accountability, strong local institutions and international cooperation are probably the best deterrent for any country to engage in such race.

2. Low-wage competition is "unfair competition"

The argument that competition from low-wage or low labour-cost countries is "unfair competition" is in direct conflict with the basic principle of comparative advantage and rests on two mistaken ideas: (a) that governments in low-income countries have discretion to define the general level of wages or labour costs, and (b) that a competitive advantage based on low wages is illegitimate and con-

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9 *Aggarwal* (1995)
10 OECD (1996); *Maskus* (1997).
11 *MacCormack/Newman/Rosenfield* (1994).
12 OECD (2000) 13.

sequently unfair. Neither of these propositions is good economics nor supported by evidence.

What determines the general level of wages in an economy and the growth in incomes over time? The key factors include the relative factor endowments; cumulative investments in education, infrastructure and health; the skill profile of the labour force and technological progress. Empirically, there is a close correlation between the growth in the level of wages or labour costs and the growth of productivity over time, in both developed and developing countries. This means that wage levels are closely associated with the country's stage of development. Except on the margin, for instance, to adjust minimum wages, the general wage level is not a variable that governments can establish by decree to gain comparative advantage.

A relatively abundant supply of low cost and low skilled labour has been typical of countries in the early stages of development and industrialization. Differences between countries in factor endowments and their relative prices have always been part of legitimate advantages in trade. In fact, the essence of the gains from trade is that due to differences in underlying fundamentals, countries differ in their abilities to produce different products. The 2001 Communication from the European Commission on Promoting Core Labour Standards recognizes this point by adopting the position that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.[13]

3. Impact of trade with low-wage economies on industrial economies

The third set of economic concerns is linked to the perception that increased trade with low-wage economies (the South), has contributed to wage dispersion and income inequality in rich countries (the North), particularly by hurting employment and income of unskilled workers. In other words, the idea that trade with poor countries hurts the poor in rich countries. It is a fact that since the early 1980s the United States has experienced three trends: (a) a fall in real wages of the lowest skilled workers, measured either in real terms or relative to wages of high-skilled workers; (b) a fall in the relative employment of less-skilled workers; and, as a result, (c) an increase in the share of total labour income going to high-skilled

[13] European Commission (2001).

workers. However, what factors have caused these trends? Many papers and volumes have been written on these issues.[14]

Two main factors are widely cited as possible explanations of these changes: international competition from low-wage countries and skill-biased technological change that has increased the demand for skilled workers. There are two conclusions from this literature that need to be stressed. First, as noted by a recent volume and survey of this literature by the National Bureau of Economic Research: "A large amount of research during the past two decades has sought to evaluate both explanations, with the result that … skill-biased technological change is often thought to be more important".[15]

Second, there is some degree of consensus around the view that the effect of international competition from low wage countries is small or even negligible.[16] However, *Bhagwati* goes beyond this and develops the plausible theoretical possibility that the effect of trade with the South is favorable, not adverse, to workers in the North.[17] To our knowledge, *Bhagwati*'s interesting economic story of beneficial effects for the North has not yet been tested.

Another strand of this literature analyses not just the differences in the level of wages but the associated question of whether wages are related to labour standards. No robust relationship is found between labour standards and the level of wages. *Robbins* finds that neither theory nor evidence supports the premise that stronger labour standards translate into higher wages.[18] Similarly, *Brown* concludes that in general, the link from low labour standards in low-income countries to the wage of unskilled workers in industrialized countries is not strong.[19]

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[14] *Wood* (1994) was the first academic study to put forward the view that trade with the South has hurt unskilled workers in the North, reducing their wages and pushing them out of jobs. Since then there has been an extensive analysis of the issue that has overwhelmingly rejected this view. See *Bhagwati / Kosters* (1994); *Krugman* (1994), (1998b); *Krugman / Lawrence* (1994); *Feenstra* (2000).

[15] *Feenstra* (2000) 3.

[16] *Rodrik* (1999).

[17] *Bhagwati* (2000), chapter "Play It Again Sam: A New Look at Trade and Wages".

[18] *Robbins* (1997).

[19] *Brown* (2001)

In conclusion, the notion that trade liberalization without harmonization of labour standards is bad for wage dispersion and income distribution in the North, is not well supported by the available evidence.

4. Job dislocation and displacement

Finally, as regards the job dislocation effect, it is clear that trade and the shifting pattern of comparative advantage can indeed produce job displacement and dislocation. In fact, from a *Schumpeter*ian perspective this is essential for the process of "creative destruction" that drives a healthy process of economic transformation and provides vitality to capitalist economies. The right response to this effect is not to resist these changes with protectionist responses but rather to facilitate adjustment via trade adjustment assistance policies, including income support, retraining programs, worker relocation and other safety nets mechanisms. Of course, there are complex political economy dynamics behind any such process and countries must be able to afford these programs. In addition, it must be recognized that the WTO and trade agreements have mechanisms such as transition periods, safeguards against import surges, anti-dumping, and others that can be used to help workers and industries to adapt to the new competitive environment.

In summary, none of the four varieties of economic concerns analyzed provides a solid rationale for inclusion of labour provisions in trade agreements. In fact, as will be discussed in the next section, developing countries are right in suspecting protectionist interest when any one of these different but related types of competitive arguments is expressed. While the economic arguments discussed above focus on the impact of trade on workers and citizens in the importing countries, the next category is concerned with the well being of workers and citizens on exporting countries.

C. Moral, Humanitarian and Human Rights Rationales

The typical moral concerns say that: "We should not do business with countries that violate labour or human rights", or "we should not buy from countries or companies that pay poverty wages". These expressions of moral outrage, common among opponents of globalization, are misguided. First because, as explained above, there is clear evidence that trade is good for growth and productivity and that growth is essential to increase living standards. Export-oriented growth has lifted many workers in developing countries from extreme poverty. In the absence of these export-oriented ac-

tivities and jobs, even if they are badly paid by developed country standards, workers face the alternative of even lower paid jobs or no jobs at all. Therefore, if the moral or humanitarian concern is about the well being of the majority of the poor in developing countries, limiting trade does not help people in developing countries, it actually punishes them. As *Paul Krugman* has argued, moral indignation about "cheap labour" stems from not thinking the matter through. "And when the hopes of hundreds of millions are at stake, thinking things through is not just good intellectual practice. It is a moral duty".[20]

Think for instance, about the implications of the following fact: according to ILO figures, less than 5% of child labourers in developing countries are employed in export industries, 95% of the problem lies in the non-tradable sectors. This statistic means that even if morally well intended, a trade or sanctions approach to compliance would fail to have any effect on the non-tradable sectors and the general conditions of underdevelopment that are actually at the root of the child labour problem.

A broader humanitarian argument emerges when labour issues are placed in the context of a human rights perspective.[21] While appealing at a philosophical level, this human rights perspective presents a number of problems: First, it is not entirely coherent, because to the extent that it leads to policy prescriptions that restrict trade and curtail growth it goes against the interests of those it purports to defend. Second, being by its very nature universalistic the human rights perspective naturally leads to include many varieties of human rights. Why stop at labour rights? To be coherent, a human rights perspective would have to include also civil, social, economic and cultural rights. Going down this road would end up incorporating the whole international diplomatic agenda into trade institutions. Third, it is important to make a distinction between at least two cases of human rights violations: regimes that systematically violate human rights as a matter of policy (e.g apartheid, genocide, disposition to use weapons of mass destruction). In this case the international system already has a number of mechanisms to act via the United Nations, including interventions from trade sanctions to military operations. But this is not what the trade-labour nexus issue in trade agreements is about. In this latter case the

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[20] *Krugman* (1998a) 85.

[21] *Trebilcock* (2002) analyzes this issue.

issue is whether there is a valid and mutually beneficial justification for using market access restrictions as a lever to deal with labour standards in the context of trade agreements among trading partners with shared economic and political values but in different stages of development. In the view of the authors, the answer to this narrower question is no, at least not under a trade restricting approach. Developing country views on this question are examined in the section V.

D. Institutional Arguments and Issues

The institutional argument for including labour provisions in trade agreements and in the WTO is based on the assumption that the ILO has no "teeth", that is, no enforcement power, while the WTO and trade agreements do. Those that make this argument are not only interested in including labour provisions in trade agreements, but are specifically interested in a sanctions-based approach. These views pose a number of questions: Is the enforcement capacity of the ILO really as weak as sometimes portrayed, and if so, can it be improved? Can the WTO really be a better enforcer than the ILO? How to assess the strengths and weakness of the ILO and WTO to effectively improve compliance with core labour rights?

The idea that the ILO has no teeth is not entirely correct. Traditionally, the ILO has relied on principles of voluntary participation, transparency, dialogue and capacity building to achieve its objectives. In particular, the ILO has traditionally recognized that the feasibility of raising labour standards depends on national circumstances and that a significant time period and capacity building may be required to achieve the recommended improvement. In line with this pragmatic approach the main instruments to promote enforcement at the ILO include:

- The Regular Supervisory System: every two to five years, Members submit a report on the measures taken to give effect to the conventions they have ratified, which is examined by a Committee of Experts. This Committee can identify particular problems and request additional information. This is a "peer pressure" mechanism. Each report is examined by a tripartite Committee on the Application of Conventions and Recommendations, and then submitted to the Annual ILO Conference.

Morici and *Schultz* report a mixed record of enforcement based on this mechanism.[22]

- The complaint procedure: Under the provisions of Article 24 this procedure can lead to the establishment of a Commission of Enquiry. Where a country fails to implement its recommendations, the ILO may apply the provisions of Article 33, under which, in case of grave and persistent violation, the Governing Body can recommend to Member states measures to secure compliance.
- General Surveys on the application of one or more specific conventions. According to a rotational system, one of the four core labour standards is under examination every four years.

Three additional mechanisms were established as follow-up to the 1998 Declaration: (a) a yearly reporting requirement for non-ratifying countries created by the 1998 Declaration, (b) a Global Report that the Director General should present each year, focused on the identification of trends and needs on each one of the four core labour standards, and (c) technical assistance encompassing advising on legislative reform and different aspects of capacity building.

Recently two proposals for further strengthening of the ILOs role in promoting labour standards have been made, one by the Commission of the European Communities[23] and the other by the ILO itself.[24]

The view of the Commission is that "The ILO has in recent years enhanced very substantially its means for promoting respect for core labour standards".[25] The European Commission proposal is quite different from some of the mainstream positions in the US debate on these issues. The proposal has a number of basic tenets: rejection of any sanctions-based approaches; the principle "that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question"; the idea that "poverty, poor governance and extensive informal sectors are often the main cause of the weak implementation of core labour standards in developing countries"; and the notion that "sustained economic growth can contribute to the respect and effective application of

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22 *Morici/Schultz* (2001).
23 European Commission (2001).
24 ILO (2001).
25 European Commission (2001) 13.

labour standards and of the social regulatory framework and vice versa".

Based on these premises the EU initiative proposes an approach to promote core labour standards and improve social governance that "comprise instruments and actions within different policy fields". A central pillar of this integrated strategy is making the ILO a more effective enforcer by giving more weight to observations in reports; giving greater publicity to the supervisory mechanism; improving the effectiveness of complaint procedures; and consideration of positive incentives in a wider sense.

The European Commission strategy also proposes other specific actions at the EU level as well as at the international level: increasing support for multilateral technical assistance, including the ILO; launching a forum for international dialogue; increasing trade incentives through the generalized system of preferences; addressing the issue in bilateral relations through assistance and capacity strengthening; making better use of the sustainability impact assessment (SIA); supporting private and voluntary schemes for the promotion of core labour standards through social labeling and industry codes of conduct.

In an area where the specificities and particularities of countries make it difficult, if not altogether impossible, to agree on operationally useful and precise definitions of labour standards for countries at very different stages of development, the question emerges as to how to assess the strengths and weakness of the ILO and WTO to effectively improve compliance with core labour rights?

Many consider the fact that the ILO has no teeth, in a trade sanctions sense, as a weakness of the ILO. However, it is persuasive to argue that this is the strength of the organization, not its weakness. The ILO's strength is precisely its pragmatic reliance on principles of voluntary participation, transparency, tripartite social dialogue and cooperation for capacity building rather than on an inflexible and legalistic approach in which little allowance can be made for national peculiarities and where the asymmetries in market size mean that small economies have very limited ability to punish strong countries who break the rules.[26] This pragmatic approach means that weaker and smaller countries do not have reason to regard the ILO as an instrument of more powerful countries or

[26] *Rowthorn* (2000).

sectors within countries, and this induces cooperation rather than confrontation and resentment.

As to the idea that because of its reliance on the trade sanctions tool the WTO is a better enforcer there is a growing body of analysis that puts this conventional wisdom into question. *Charnovitz* reviews this work and makes a strong case that, as he puts it: "The WTO may have the best dispute settlement system of any international organization, but it does not have the best compliance system".[27] Based on the WTO experience so far, *Charnovitz* concludes that the disadvantages of the sanctions tool outweigh its advantages, that the current WTO system is too coercive and state-centric, and that the WTO needs to design better ways to get governments to follow WTO rules. He suggests that pulling out the WTO's teeth and substituting them for a variety of softer, non-trade distorting mechanisms will improve the WTO compliance system. On a first analysis this view might seem extreme, and certainly, as the author recognizes, at present the elimination of sanctions in the WTO system is inconceivable. However, these conclusions are reached after serious and thoughtful analysis. The underlying issues are among the most important challenges facing countries as regards the regulatory framework of globalization, and there is no doubt that they will continue to receive a significant degree of attention in the next few years.

For present purposes, however, the main conclusion from the previous discussion is that the popular institutional rationale to bring labour issues into the WTO, based on the idea that the ILO has no teeth while this is the main strength of the WTO, is highly simplistic. And the same conclusion applies to the institutional justification for incorporating labour issues in regional trade agreements using sanctions as an enforcement tool.

E. Political Economy Arguments and Realities

The fundamental political argument is that intellectual property rights were "given" to Capital, and that it would be fair to "give" labour rights to Labour. For authors like *Maskus*,[28] the labour-trade linkage is a clear matter of political economy as was the issue of intellectual property rights: "To a considerable extent, the answer (to why the TRIPS agreement is in the WTO) relies on considerations of political economy. Three powerful and easily organized

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[27] *Charnovitz* (2001) 792.
[28] *Maskus* (2000) 3.

industries (pharmaceuticals, recorded entertainment, and software) presciently recognized the opportunity afforded by the Uruguay Round to protect their intellectual property in the future and made IPRs a core issue for the United States Trade Representative (USTR)". Some analysts in fact think that the inclusion of IPRs in the WTO family of agreements was a mistake, and that, although it cannot be undone, it should not be repeated. As stated above, there are great risks in leaving the issue wide open to the winds of political economy and pressure group politics. As explained next, developing countries are making an important contribution in balancing these pressures in industrial countries and explaining the nature of their concerns.

V. Why are Most Latin American Countries Opposed to Inclusion[29]

Most Latin American and Caribbean (LAC) countries are quite willing to cooperate on labour issues globally in the context of the ILO, and hemispherically in the context of the Labour Initiative in the Inter-American system, but are generally opposed to linking trade and labour issues in the WTO and in bilateral or regional Free Trade Agreements, particularly under any approach involving trade restrictions or sanctions.

To provide a better understanding of the motives for this opposition, in this section the main reasons are grouped into six categories: (A) negotiating priorities; (B) political economy perceptions; (C) stage of development issues; (D) questions concerning the logic of trade negotiations, (E) considerations of efficiency in achieving social objectives and (F) arguments related to the architecture of the global trading system.

A. Distraction from Negotiating Priorities

LAC countries' negotiating priorities are closely related to market access issues. These include: elimination of high tariffs and of non-tariff barriers in sectors where they have comparative advantages (textiles, clothing, footwear, leather, food, agriculture); elimination of tariff escalation; tougher disciplines in the application of trade remedies by large industrial countries; further strengthening of dispute resolution mechanisms, and enlarged access for their skilled labour to global markets for services. They are also very

[29] This section draws from *Salazar-Xirinachs* (2000).

interested in more access to international investment flows, but recognize that this is fundamentally a matter for domestic policies to improve the investment climate: from macro-disciplines, to normative frameworks for investment protection, to the core factors of competitiveness.

These priorities are linked to the widely held view that trade and investment are the engines of economic growth and, in conjunction with appropriate social policies, offer the best chance for creating employment and reducing poverty. This focus on growth is the main reason why the priority is expanding trade and obtaining larger and more secure access to the large country markets and to each others' markets. The introduction of other issues that threaten to complicate, delay, or even derail the negotiations is seen as a diversion from the main objectives in terms of growth and development.

B. Political Economy Perceptions

Like many other developing countries, those of LAC understand the pressures in developed countries to include labour issues in trade negotiations emanate from two major constituencies, sometimes acting in alliance: (1) powerful lobbying groups interested in defending protection and privileges, who want to limit international competition from developing countries by raising their production costs and deterring investment flows to them; and (2) morality-driven human rights and other groups that want to see higher standards abroad and have no protectionist agendas. The first group is perceived as not genuinely interested in improving the well-being in developing countries but rather motivated by competitiveness concerns and perceptions that they will be losers from freer trade. Hence, many trade authorities in LAC countries are concerned that the motivations for including labour issues in trade negotiations are at best mixed, and at worst not really humanitarian at all, but rather expressions of protectionist interests. Given these apprehensions, this is a game that these authorities would rather not play.

This attitude is exacerbated by the perception that self-interest or protectionist intent is clear from the selective focus on certain labour issues. Thus, the refusal to include social clauses on issues of importance to some countries – such as the rights of migrant labourers or enhanced access for skilled labour in services contracts – is taken as a signal that even if labour issues were included in negotiations, the playing field would not be level.

C. Stage of Development Issues

These take various forms. One, is the view that since poverty, informality, and labour market conditions in developing countries are quite different from those of an advanced industrial economy, the strict application of uniform labour standards, is at best questionable and at worst technically and politically unfeasible. For example, by including labour issues in trade negotiations, countries might have imposed upon them models of labour / management relations that are inappropriate, be it because of their stage of development, or because changes in labour processes induced by globalization and the technological revolution are rendering such models increasingly obsolete. Questions also emerge as to whether developed countries ought to undertake far greater commitments in the labour rights area than developing countries that are at a much lower stage of development (e.g. union representation on boards and other aspects of the European model of labour relations).

D. Logic of Trade Negotiations

The fundamental asymmetry in market size and relative importance as trading partners between the US on the one hand, and developing countries (LAC in particular), on the other, makes a trade sanctions approach to enforcement of labour rights a no win-win proposition. The argument is that the US is the only country that can threaten with credibility and actually produce damage, in many cases disproportionately so, by closing its market to the other trading partners. Accepting the link between market access or trade sanctions and labour issues, as suggested by US President *Clinton* in Seattle is, in practice, a way of institutionalizing unilateralism in a multilateral context, either in the WTO or in the FTAA. No win-win outcome is perceived in this.

A second line of reasoning, that explains not so much the opposition to linkage as the strong feelings and inflexible positions on this issue by some countries, is the fear that any concession made to establish a Working Group on Trade and Labour, as proposed by the US in Seattle, or a joint ILO / WTO Standing Working Forum on Trade, Globalization, and Labour Issues, as suggested by the EU and several other Members, is a slippery slope. Countries see no end to it. For instance: at which point are trade unions or NGOs in the US going to support fast track? Will this support be delivered upon *establishment* of the Working Group on Trade and Labour in the WTO? Probably not. Countries will have to wait for the rec-

ommendations of the Working Group. But what if the recommendations of the group are not acceptable for trade unions and NGOs? Thus, every solution engenders its own problems and some of those seem even worse than the current difficulties.

Third, there is the view that inclusion of labour and environmental issues in trade negotiations entails the risk of overloading negotiations and making them extremely complex, to the point of at best delaying or at worst impeding the achievement of results.

E. Efficiency in Achieving Social Objectives

Are trade sanctions the best way to achieve results in improving labour standards or other social objectives? Are there superior ways of achieving these objectives and agendas? A majority of countries favor a context of cooperation rather than one of negotiation, not only because of the economic and social damage that limitations to market access could inflict on them, but also because they are convinced that, to an important extent, the source of the problem lies in the lack of capacity to implement core labour rights, linked to limitations in institutional infrastructure and human and financial resources. From this perspective, technical assistance and capacity building are seen as first-best instruments to achieve results. In other words, this is not a problem that can be overcome merely by using trade measures as mechanism to bring governments into line. The difficulties that many developing countries are facing in implementing Uruguay Round commitments in areas such as Technical Standards, Intellectual Property, and Customs Valuation illustrate this point. It is not merely a matter of getting provisions and rules into the WTO, but of actual institutional and administrative capacity to implement them.

There is also the view that insisting on linkage creates a confrontational and divisive agenda that undermines the objectives, instead of promoting goodwill and creative solutions and cooperation on labour issues.

F. Global Governance Issues

Finally, there are fundamental global and regional governance questions: What is the appropriate governance at the international level? What is the appropriate architecture for the global trading system?

A rather technical but important point concerns the architecture of the GATT / WTO system. Trade negotiators, in particular – and this is not only a developing country concern – worry about over-

loading the WTO with issues that the WTO was not designed to deal with and which could ultimately lead to the destruction of the multilateral, rules-based trading system. This can be clearly illustrated with the debate around the proposals to accommodate in the WTO unilateral trade measures based on process and production methods (PPMs) in the country of export. The concern is that discriminating against products on the basis of the method by which they are produced, rather than their intrinsic qualities, amounts to the extra-territorial or extra-jurisdictional application of domestic regulations, perverting the long-established GATT / WTO principle of national treatment of goods in the country of import. The crux of the argument is that the principles of "national treatment" and "most-favoured nation" are intimately linked to the notion of "like product". These are the cornerstones of a multilateral trade regime that works well and has fostered a predictable and stable global trade regime. Allowing discriminatory treatment based on production methods, labour standards, or human rights would destroy the predictability and undermine the fundamentals of the system. So there is a widespread agreement among trade experts that it is not advisable to amend WTO rules to accommodate unilateral discriminatory treatment.

Another issue of concern, particularly for the trade community, is the risk of overloading the dispute settlement procedures of the WTO with disputes that are about environmental or labour issues rather than about trade, even though there might be an overlap. Many believe that the WTO has neither the expertise nor the legitimacy to adjudicate these disputes and that asking it to arbitrate in such matters undermines its credibility and diverts attention from its first priority, enforcing free trade rules.

In the environmental field, arguments like this triggered the proposal to create a World Environment Organization to provide a focal point for Multilateral Environmental Agreements and other environment-related issues and disputes. Originally suggested by *Daniel Esty*, this proposal was adopted by *Renato Ruggiero*, Director-General of the WTO in early 1999.[30] The parallel with labour issues is clear. These discussions further underpin the view that linkage in general is not feasible, and that it should be replaced by appropriate governance at the international level, where each

[30] See *Runge* (2001).

agenda is pursued by a separate responsible agency, with appropriate coordination between them.

In conclusion, for the reasons explained above, the developing countries have been resisting the inclusion of labour provisions in the WTO and in trade agreements generally, particularly under any approach involving trade restrictions. The outcome of Doha represents a success for the developing countries on this issue and a disappointment for certain groups in the United States and the European Union.

In Doha the labour and environmental issues took different roads: while there is now a strengthened mandate to negotiate certain environmental issues,[31] on labour issues in Doha Ministers reaffirmed the Singapore position that the ILO is the competent body to set and deal with labour standards and limited themselves to "take note of work under way in the ILO on the social dimension of globalization" (Doha Declaration, paragraph 8). So it is to be expected that at least for the next few years, and specifically for this round of multilateral trade negotiations, the Doha Declaration put to rest the contentious aspects of the trade-labour nexus issue as a major divider between the developed and developing worlds in multilateral negotiations.

VI. Regional Innovation on Trade and Labour Issues

Given this outcome in Doha, and building on existing trends, it is probable that the labour issue will be revisited at the regional level, particularly at least in the Americas.

Despite their general opposition to linking, some countries in Latin America have agreed to include labour provisions in reciprocal trade agreements. Three models of incorporation of labour pro-

[31] The Doha Declaration contains a mandate to negotiate three specific issues: (1) the relationship between WTO rules and trade obligations set out in multilateral environmental agreements (MEAs); (2) procedures for information exchange between MEA Secretariats and relevant WTO committees, and the criteria for the granting of observer status; and (3) the reduction or elimination of tariff and non-tariff barriers to environmental goods and services. There is also mandated discussion in the Committee on Trade and Environment on: (1) clarifying WTO rules in relation to the effects of environmental measures on market access; environmental provisions under the TRIPS agreement such as the patenting of life forms and the relationship of TRIPS with the UN Convention on Biodiversity; and eco-labelling.

visions in trade agreements have emerged among countries of the Americas: the NAFTA (1994), the Canada-Chile Agreement (1996) and the Canada-Costa Rica Agreement (2001). These three FTAs incorporate labour provisions in the form of a side Labour Cooperation Agreement (LCA) to the FTA. The first two agreements are very similar in their characteristics and procedures; the last one is more unique, simpler and more comprehensive at the same time. The US-Jordan FTA (2000) contains a fourth, very different model of incorporation of labour provisions in a FTA. In this case labour is incorporated as a full discipline in the main text of the agreement. Among other implications, this means that the dispute settlement mechanisms of the agreement apply to the labour issue on the same basis as to all other disciplines, including the possibility of suspension of trade benefits.

This section compares these four models of incorporation of labour issues in trade agreements in the following dimensions: objectives; scope; cooperation activities; institutional mechanisms; procedures for consultation, evaluation and dispute resolution; and implementation and enforcement. Table 4 contains a summary of the main features of these agreements under each one of these dimensions.

The Canada-Chile Agreement is very similar to the North American Agreement on Labor Cooperation (NAALC), in part because of the explicit desire stated in the agreement to facilitate the accession of Chile to the NAALC. Consequently, these two agreements share the same language on objectives, scope, cooperation activities, and, with a few differences, institutional mechanisms and resolution of conflicts.

A. Objectives

The objective of all four agreements is the promotion of compliance with and effective enforcement by each Party of its own labour law, they do not establish minimum standards for their domestic law. Specifically, the general objectives in the three intra-regional agreements are the following: (a) Improve working conditions and living standards in each Party's territory; (b) promote, to the maximum extent possible, the labour principles set out in the Annex;[32]

[32] The three agreements have an annex where the following labour principles are listed: (1) Freedom of association and protection of the right to organize; (2) The right to bargain collectively; (3) The right to strike; (4) Prohibition of forced labour; (5) Labour protections for chil-

(c) encourage cooperation to promote innovation and rising levels of productivity and quality; (d) encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labour in each Party's territory; (e) pursue cooperative labour-related activities on the basis of mutual benefit; (f) promote compliance with, and effective enforcement by each Party, of its labour law; and (g) foster transparency in the administration of labour law.[33] The wording of the objectives in the US-Jordan agreement is different, as can be read from Table 4.

B. Scope

Scope of application is one of the most interesting differences between the existing agreements. The three LCAs cover the broad list of labour rights listed in Annex 1 of the Agreements. However, only the political consultations and evaluation process cover this complete list, the independent review panel or "arbitral panel" process for dispute resolution is much more narrow in scope in the NAALC and the Canada-Chile LCA. The NAALC and the Canada-Chile agreement limit the scope of the arbitral panel to the Party's *technical labour standards on occupational safety and health, child labour or minimum wage*.[34] Instead, the "review panel" process of the Canada-Costa Rica LCA has competence to review issues pertaining to all the rights recognized in the *ILO Declaration on Fun-*

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dren and young persons; (6) Minimum employment standards; (7) Elimination of employment discrimination; (8) Equal pay for women and men; (9) Prevention of occupational injuries and illnesses; (10) Compensation in cases of occupational injuries and illnesses; (11) Protection of migrant workers.

[33] In the Canada-Costa Rica Agreement there is a slight difference in objective (g) which says: foster full and open exchange of information between the Parties in regard to the application of their labour law.

[34] In the NAALC and Canada-Chile LCA, scope is defined in various ways: (a) According to objective 1b to promote, to the maximum extent possible, the labour principles set out in Annex 1; (b) Article 49 in NAALC and article 44 in Canada-Chile LCA define labour law to include laws and regulations, or provisions thereof, that are directly related to all of the above principles; (c) However, the evaluation by the Evaluation Committees of Experts and the resolution of dispute mechanisms cover only the following matters: Party's technical labour standards on occupational safety and health, child labour or minimum wage.

damental Principles and Rights at Work, 1998,[35] which means that it has competence over a much broader set of issues. The US-Jordan agreement covers the basic core labour rights with some exceptions such as elimination of employment discrimination and equal pay for women and men, which are not mentioned in the definition of scope. For the "labour laws" mentioned in paragraph 6 of the labour chapter, the dispute settlement procedures apply.

C. Cooperation Activities

The NAALC and the Canada-Chile agreements commit the parties to promote cooperative activities and list a wide range of specific areas such as: occupational safety and health; child labour; migrant workers; human resource development; labour statistics; social programs; labour-management relations and collective bargaining procedures; employment standards; etc. The Canada-Costa Rica agreement contains instead an "indicative list of areas of possible cooperation" including to: strengthen the institutional capacity of governmental departments responsible for labour affairs; strengthen and modernize labour inspectorates; strengthen the departments and bodies with jurisdiction over social security matters; and modernize systems for alternative dispute resolution as well as for the mediation and conciliation of individual and collective labour conflicts. These three agreements specify in similar fashion that the activities may be done through seminars, training sessions, working groups and conferences; joint research projects, including sectoral studies; technical assistance; and such other means as the Parties may agree.

The US-Jordan Agreement does not mention any specific cooperation activity, it only says that "The Parties recognize that cooperation between them provides enhanced opportunities to improve labour standards. The Joint Committee … shall, during its regular sessions, consider any such opportunity identified by a Party".

D. Institutional Mechanisms

Institutional mechanisms differ, particularly in the Canada-Costa Rica LCA (see Figure 1). The NAALC establishes the following mechanisms: (a) a Commission on Labor Cooperation comprised

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[35] These include: freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labour; labour protections for children and young persons; elimination of discrimination; and equal pay for women and men.

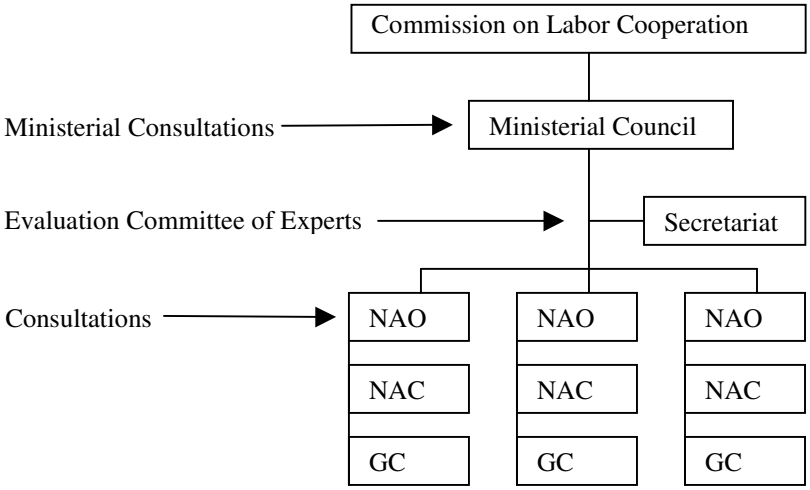
by a Ministerial Council and a Secretariat; (b) a Ministerial Council, comprised of labour ministers or their designees; (c) a Secretariat, headed by an Executive Director and whose task is to assist the Council; (d) a National Administrative Office for each Party as a contact institution and to assist the Commission; (e) a National Advisory Committee may be convened by each Party (including members of labour and business organizations) to advise it on the implementation and further elaboration of the Agreement; (f) a Governmental Committee may be convened by each Party (including members of federal and state or provincial governments), to advice it on the implementation and further elaboration of the Agreement. This institutional complexity of the NAALC is also present in the Canada-Chile agreement, except that this agreement does not set up a Secretariat and instead relies on the National Secretariats.

The Canada-Costa Rica LCA has a much simpler institutional structure. It establishes a ministerial council comprised of the Ministers responsible for labour affairs of the Parties or their designees, and National Points of Contact, within each party's government department responsible for labour affairs.

The US-Jordan agreement does not establish any labour-specific institutional instance. Instead, like all other disciplines in the agreement, labour issues fall under the responsibility of the Joint Committee (see Table 4 for details about this committee).

Fig. 1., Part I:
Labour-Related Institutional Mechanisms in Four Free Trade Agreements

NAFTA – LCA



NAO: National Administrative Office

NAC: National Advisory Committee

GC: Governmental Committee

Canada – Costa Rica LCA

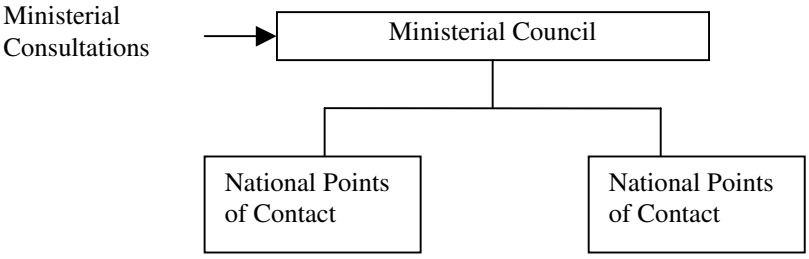
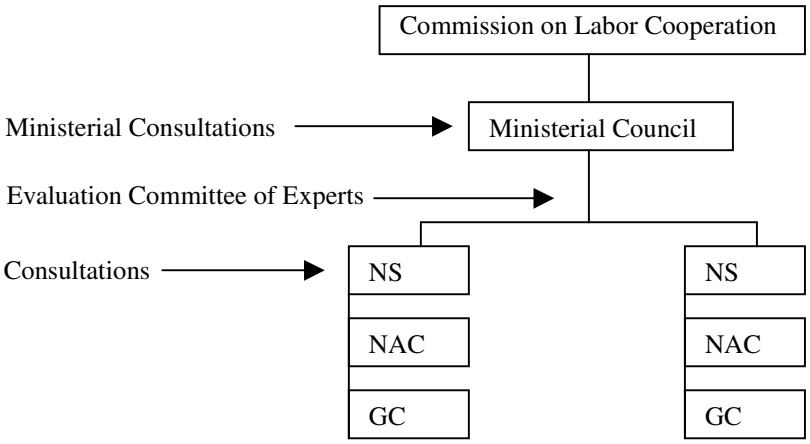


Fig. 1., Part II:
Labour-Related Institutional Mechanisms in Four Free Trade Agreements

Canada – Chile LCA

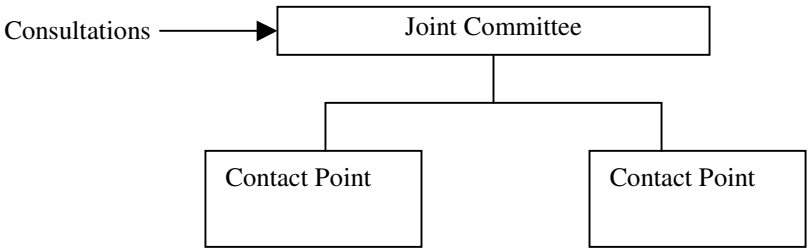


NS: National Secretariat

NAC: National Advisory Committee

GC: Governmental Committee

United States – Jordan FTA



Box 1:
Resolution of Disputes:
North American Agreement on Labor Cooperation (NAALC)

- Phase I: Ministerial Consultations.
- Phase II: Evaluation Committee of Experts (ECE) (300 days).
  - Draft Report (120 days) for consideration by the Council (30 days).
  - The Final Evaluation Report shall be presented to the Council (60 days), should be published (30 days).
  - Parties' written responses to ECE's recommendations (90 days).
  - Final Report and Parties' written responses shall be considered at the next regular session of the Council.
- Phase III: Arbitral Panel (540 days).
  - If there is no resolution in a regular session, Parties may request in writing more consultations (60 days).
  - If Parties fail to resolve the matter, any Party may request a special session of the Council (20 days).
  - If Council cannot resolve the matter within 60 days, the Council may convene an arbitral panel (180 days to present an Initial Report after the last panelist is selected).
  - The Parties may submit within 30 days written comments on the Panel's Initial Report.
- Final Report: 60 days after the presentation of the Initial Report.
  If in its Final Report the panel determines a "persistent pattern of failure to effectively enforce …" the Parties may agree on an Action Plan consistent with the recommendations of the panel.
- Review of Implementation: If Parties do not agree on an Action Plan or on whether it is being fully implemented, the panel can be reconvened (60-120 days; 180 days).

If the panel determines that the Plan has not been agreed / fully implemented, a "monetary enforcement assessment" can be imposed (90 days after the panel has been reconvened) (simplification).

E. Consultations and Evaluations and Resolution of Disputes

The NAALC as well as the Canada-Chile Agreement LCA have a long and complex procedure for consultations, evaluations, and resolution of disputes. Table 4 contains the details of these procedures and Box 1 a summary of the process for the NAALC and for

the Canada-Chile LCA. There are three phases in response to a complaint. The first phase consists of Ministerial Consultations, the second phase involves an evaluation by an Evaluation Committee of Experts (ECE), that could take up to 300 days. If the matter is not resolved, any Party may request that the Ministerial Council convenes an arbitral panel. This third phase of the arbitral panel can last up to 540 days or more, depending on numerous steps and procedures.

The Canada-Costa Rica LCA simplifies these procedures (see Box 2). It defines two phases. Similar to the other agreements, the first phase consists of Ministerial Consultations, but a time limit of 180 days is defined for this stage. If the matter has not been satisfactorily addressed through Ministerial consultations, a party may request that an independent Review Panel be convened, and a time limit of 270 days is defined for the Panel to present an Initial Report containing: (a) findings of fact, (b) determination whether the matter is trade-related and covered by mutually recognized labour law, (c) determination whether there has been a persistent pattern of failure, and (d) recommendations. An interesting innovation is that the Panel is asked that its: "recommendations shall take into account the existing differences in the level of development and size of the economies of the Parties". No such provision is found in the other agreements.

The US-Jordan agreement has a very simple three-stage procedure for consultations: first, between contact points, if not resolved at this stage in 60 days the matter can be referred to the Joint Committee, and if not resolved within 90 days, either Party may refer the matter to a dispute settlement panel.

Box 2:
Review of Effective Enforcement: Canada-Costa Rica Labour Cooperation Agreement

- Phase I: Ministerial Consultations (180 days).
  - Consultations shall be concluded no later than 180 days after the request, unless both Parties agree to other date.
- Phase II: Review Panel (270 days, then two years).
  - If the matter is not resolved, a Party may request that a Review Panel be convened.

to be continued

Box 2: (continued)

- Initial Report: 180 days after the last panelist is selected. The recommendations shall take into account the existing differences in the level of development and size of the economies of the Parties.
- Parties may submit written comments within 45 days
- Final Report: Shall be submitted to Ministers 90 days after the Initial Report.
- Final Report shall be available to the public in the three official languages: 120 days after it is transmitted to the Ministers.
- Implementation: If the Final Report determines a "persistent pattern of failure …" the Party "shall make best efforts to remedy the pattern of failure, including by responding positively to the recommendations of the panel".
- Review of Implementation: Two years after the publication of Final Report, the Panel may be reconvened to review the implementation of recommendations. The Follow-Up Report shall be presented within 90 days to Ministers and published 120 days after it is transmitted to Ministers.

If Panel determines that the Party has not remedied its pattern of failure on issues related to the rights set out in Annex 1, the Party that made the request "may take reasonable and appropriate measures, exclusive of fines or any measure affecting trade, but including the modification of cooperative activities …"

F. Implementation and Enforcement

In the case of the NAALC and the Canada-Chile LCA, if in its final report, a panel determines a Party's persistent pattern of failure to effectively enforce its occupational, safety and health, child or minimum wage technical labour standards, the disputing Parties may agree on a mutually satisfactory action plan which normally must conform to the determinations and recommendations of the panel. If the disputing Parties have not agreed on an action plan, or cannot agree on whether the Party complained against is fully implementing an action plan, the panel can be reconvened. Where a panel has been reconvened it may establish whether a plan has been proposed or fully implemented and if this is not the case, it may impose a monetary enforcement assessment, no greater than 20 million US dollars (US$ 10 million in the case of the Canada-Chile LCA). The revenues from these fines "shall be expended at the

direction of the Council to enhance the labour law enforcement in the Party complained against".

At this point there is a major difference between the NAALC and the Canada-Chile LCA. In the former, where a Party fails to pay the fine within 80 days after it is imposed by the panel, "any complaining Party or Parties may suspend NAFTA benefits in an amount no greater than that sufficient to collect the monetary enforcement assessment". In the Canada-Chile LCA, in contrast, no suspension of trade benefits – trade sanctions – is contemplated, instead jurisdictional procedures ensure the payment of fines.

The Canada-Costa Rica agreement has neither monetary enforcement – fines – nor suspension of trade benefits:

> "If the panel determines that the Party that was the object of the request has not remedied its persistent pattern of failure to effectively enforce its labour law directly related to principles and rights set out in Annex 1, the Party that made the request may take reasonable and appropriate measures, exclusive of fines or any measure affecting trade, but including the modification of cooperative activities (Art. 12), to encourage the other Party to remedy that persistent pattern, in keeping with the panel's determinations and recommendations." (Art. 23, 5)

That is, the Canada-Costa Rica agreement introduces a totally new approach based exclusively on cooperation and technical assistance to promote compliance and effective enforcement of national labour laws.

In the US-Jordan agreement the dispute settlement panel presents to the Parties a non-binding report. After this "the Joint Committee shall endeavor to resolve the dispute, taking the report into account, as appropriate". And "If the Joint Committee does not resolve the dispute within a period of 30 days after the presentation of the panel report, the affected Party shall be entitled to take any appropriate and commensurate measure".

G. Track Record of Utilization of the Labour Cooperation Agreements

To date, twenty-four submissions have been filed under the NAALC, most of them involve allegations on issues of freedom of association and targeting Mexico enforcement (see details in Table 3). Most important, none of the submissions have ended in trade sanctions and many specific cooperation activities had taken place

as result of the ministerial agreements – under the ministerial consultations process.

In the case of the Canada-Chile LCA there are no complaints registered. The parties have emphasized the development of a program of cooperation to promote transparency of labour laws and practices in both countries. This has included exchange of information among experts and civil society actors in a broad range of topics; the organization of numerous forums and seminars in both Canada and Chile involving leaders and representatives of labour, business and academic sectors; as well as exchange and visits of personnel of the Ministries of Labour.[36] The Canada-Costa Rica agreement was signed in April, 2001 and has not yet entered into force.

Table 3:
NAALC Scoreboard

Submissions	Twenty-four submissions have been filed.
Allegations against Canada	Two submissions involved allegations against Canada and were filed with the US NAO
Allegations against Mexico	Fifteen submissions involved allegations against Mexico and were filed fourteen with the US NAO and one with the Canada NAO
Allegations against USA	Seven submissions involved allegations against US and were filed five with the Mexico NAO and two with the Canada NAO
Issues referred in the allegations	Although some submissions involved several issues, there are seventeen out of twenty-four, which involved issues of freedom of association. Safety standards, immigrants rights, gender discrimination, and one case of child labour, were also alleged.

to be continued

[36] Information provided by Mr. *Pablo Lazo*, Labour Consultant to the Ministry of Foreign Affaires, Chile.

Table 3:
NAALC Scoreboard (continued)

Status	From the submissions filed with the US NAO, three were withdrawn by the submitters before hearings were held or the review process completed. Hearings were held on nine. Five of the US submissions have gone to ministerial level consultations. The US NAO declined to accept three submissions for review. The US NAO will determine whether to accept US submission 2001-01 for review by August 28, 2001. Four Mexican NAO submissions resulted in ministerial consultations. Another Mexican NAO submission has requested ministerial consultations. One Canadian NAO submission resulted in a request for ministerial consultations. Canada declined to accept two submissions one is now under appeal.

Source: the US Department of Labor Web Page (http://www.dol.gov/), August 21, 2001

VII. Conclusions

This paper analyzed and assessed the main arguments for and against inclusion of labour provisions in trade agreements. Of the five rationales identified for inclusion, the following were rejected as incoherent, unfounded either in economic theory or empirical evidence, or otherwise inappropriate: common sense arguments; economic justifications; institutional views that the ILO has no teeth; and purely political considerations. A human rights perspective is the only ground where some defensible arguments for linkage were identified. However, even this perspective presents serious problems, and in the authors' view does not justify a sanctions approach in trade agreements between trade partners with shared economic, political and social values but in different stages of development.

When the perspective, arguments and concerns of developing countries are taken into account, it becomes easier to understand why these countries oppose the trade-labour linkage, particularly under any trade restricting approach. It also becomes apparent why attempts to bring labour issues into global or regional trade agree-

ments, under a sanctions approach, will hardly be feasible and will probably continue to be fiercely resisted. This does not mean developing countries are reluctant to cooperate on labour issues but they strongly prefer compliance systems based on transparency (or sunshine) methods, education, capacity building and stakeholder participation, rather on inflexible and legalistic approaches in which little allowance can be made for national peculiarities and where the asymmetries in market size mean that small economies have very limited ability to punish strong countries who break the rules. From this point of view the ILO's reliance on these "soft" mechanisms can be considered a source of strength not a weakness of the organization. Similarly, such "soft" mechanisms can also be considered a strength of the Labour Cooperation Agreements associated with the Canada-Costa Rica and Canada-Chile FTAs.

The analysis in this paper suggests two general scenarios for the treatment of labour issues in trade agreements and negotiations. If the predominant view on labour issues remains pro-sanctions, the trade-labour issue will continue to be a divisive and confrontational issue in international trade talks. If the predominant view accepts that in this area the best compliance system is one based on transparency, education, capacity building and stakeholder participation, the stage would be set for a truly mutually reinforcing process of improvement in labour rights and conditions driven by more open global and regional trade systems on one hand, and parallel efforts of global and regional international coordination of labour policies and issues on the other.

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