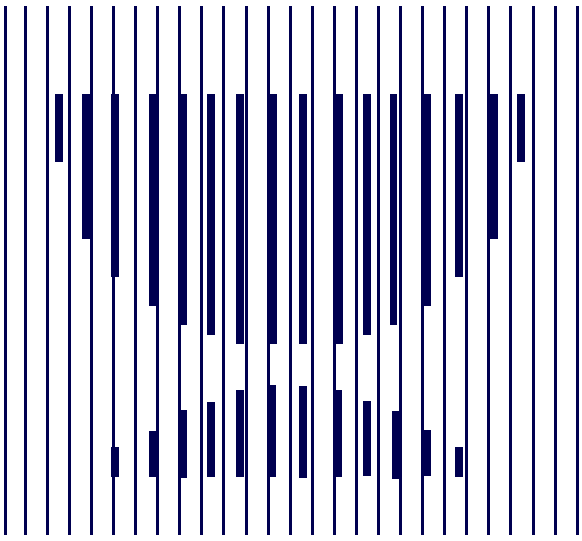
CBO MEMORANDUM

PROMOTING WORKER RIGHTS IN DEVELOPING COUNTRIES: U.S. POLICIES AND THEIR RATIONALE

April 1997



CONGRESSIONAL BUDGET OFFICE

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CONGRESSIONAL BUDGET OFFICE
SECOND AND D STREETS, S.W.
WASHINGTON, D.C. 20515

International economic integration is drawing increasing attention to the issue of worker rights. This Congressional Budget Office (CBO) memorandum analyzes U.S. efforts to promote such rights in developing countries. It was requested by the Ranking Minority Member of the House Committee on Banking and Financial Services to assist the Congress in its deliberation on the issue of international worker rights.

The memorandum was prepared by Victoria A. Greenfield, formerly of CBO's Natural Resources and Commerce Division, under the supervision of Jan Acton and Elliot Schwartz. The author wishes to thank Kimberly Ann Elliott, Gary S. Fields, Marvin H. Kosters, Roger G. Noll, Robert M. Stern, Kenneth A. Swinnerton, and Karen E. Thierfelder for their valuable comments on an earlier draft of this analysis. Within CBO, Juann Hung, Eric Labs, and Stephanie Weiner provided many useful suggestions on the initial draft.

Christian Spoor edited the manuscript, and Marlies Dunson provided editorial assistance. Rae Wiseman prepared the memorandum for publication.

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SUMMARY AND INTRODUCTION

The United States government attempts through various policies to promote "internationally recognized worker rights" in developing countries. According to the Trade Act of 1974, such rights include freedom of association, freedom to organize and bargain collectively, a prohibition on any form of forced or compulsory labor, a minimum age for employing children, and acceptable working conditions in such areas as minimum wages, hours of work, and occupational safety and health.

U.S. policies on worker rights are motivated by a combination of economic and humanitarian concerns about working conditions in developing nations (also known as less developed countries, or LDCs). Some policymakers seek to raise standards in LDCs primarily for the benefit of U.S. workers—that is, to protect U.S. workers from what they perceive as unfair competition. Others are moved by the desire to help workers in the LDCs.

Among the first group, concerns about labor standards arise in part from more general concerns about the effects of international economic integration. Economists have shown that the overall economic benefits of freer international trade and investment outweigh the costs. But moves toward freer trade and investment tend to create "winners" and "losers." In particular, the net benefits of such integration come from shifts in the structure of production and trade. As countries eliminate barriers to international trade and investment, they shift resources—such as labor and capital—from less productive to more productive uses. Such shifts impose real costs on the resources employed in less competitive industries. Thus, increased trade with LDCs means that U.S. workers in industries that use low-skilled labor will feel stronger competitive pressures and face possible displacement even if the LDCs do not engage in any unfair practices.

Do labor policies in developing countries affect workers in the United States, as many policymakers fear? The weight of the evidence suggests that low standards *per se* have little direct bearing on the majority of U.S. workers. Most economists believe that the low cost of labor in LDCs generally reflects low productivity—stemming from the relative abundance of low-skilled labor—rather than unfair trade or labor policies. And even where the cost of labor (including wages, fringe benefits, and the value associated with other working conditions) appears to be too low compared with the productivity of labor, higher standards are unlikely to affect U.S. workers, for various reasons. A significant one is that few developing countries are in a position to influence the world prices of the products they export. Thus, they can affect neither the prices of U.S. imports nor the prices of goods produced in the United States, which implies that they also cannot affect the wages of U.S. workers. Several economic studies suggest that factors other than international trade, such as changes in technology, are more important in determining conditions in U.S. labor markets.

Policymakers who seek to raise standards in LDCs primarily for the benefit of workers in those countries operate from two main motivations. They may seek higher standards in order to promote worker rights, as defined in the Trade Act, or they may seek higher standards as an intermediate goal, with an eye toward overall reforms in economic, social, and political institutions in LDCs.

What effects would higher labor standards in LDCs have on workers in those countries? Neither economic theory nor empirical studies provide a definitive answer. To a large degree, whether the effects would be positive or negative depends on existing conditions in the developing country. If the low cost of labor reflects low productivity, then higher standards could force resources into less productive uses, resulting in additional hardship for workers there. If, however, the low cost of labor results from repressive labor or human rights policies, higher standards could directly benefit workers by helping to build or improve institutions that support free markets.

U.S. policy on worker rights operates along three tracks—unilateral, multilateral, and private. Unilateral programs, such as the Generalized System of Preferences (GSP) and the Overseas Private Investment Corporation (OPIC), form the core of U.S. efforts. In many cases, the government ties access to U.S. markets, trade preferences, investment programs, and foreign aid to a country's observance of worker rights. The United States also supports such rights multilaterally through its participation in the International Labor Organization (ILO) and the United Nations.[1] The United States has also sought provisions for worker rights in international financial institutions such as the World Bank, in the General Agreement on Tariffs and Trade (GATT), and in the recently formed World Trade Organization (WTO) that grew out of the GATT. And as part of drafting the North American Free Trade Agreement (NAFTA), the United States negotiated a side agreement on labor standards. In addition, the federal govenment encourages private-sector action on eliminating exploitative forms of child labor and promoting other worker rights.

The issue of international worker rights is likely to be hotly debated this year as the Congress considers the President's request for new authority to negotiate international trade agreements under "fast-track" procedures. (Such procedures bind the Congress to a direct up-or-down vote on trade agreements.) In the wake of NAFTA, a schism has developed between lawmakers who strongly support including a specific labor provision in new legislation to authorize fast-track negotiations and those who just as strongly oppose including such a provision.

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1. The ILO is a specialized agency of the United Nations whose mission is to set standards for working conditions, promote compliance, and provide technical assistance to developing countries. It sets standards in "conventions" that create treaty-like obligations for the countries that ratify them, but compliance is voluntary. For a partial list of conventions, see International Labor Organization, *Summaries of International Labor Standards*, 2nd ed. (Geneva: International Labor Office, 1991). The United Nations addresses worker rights in declarations and covenants.

Other legislative proposals considered during the 104th Congress, and likely to be reintroduced in the 105th Congress, would place additional restrictions on trade, investment, and aid, both unilaterally and multilaterally. For example, the proposed International Child Labor Elimination Act of 1996, which had bipartisan support in the House of Representatives, would impose economic sanctions on countries that allow child labor. In particular, it would prohibit any product made with child labor from entering the United States and would restrict bilateral and multilateral assistance to countries using such labor. Trade with China will be subject to Congressional review as part of the debate on the Chinese Slave Labor Act (H.R. 320) and during the annual debate on renewing that country's "most-favored-nation" tariff status. Finally, the Congress is likely to consider proposals to renew the authority of existing trade and investment programs, such as the Generalized System of Preferences and the Overseas Private Investment Corporation.

In addition to such government actions, private firms will most likely continue to address their foreign labor practices through such means as developing and subscribing to codes of conduct and employing third-party certification of labor conditions. They have been encouraged to take those steps both by the federal government and because of market pressures resulting from negative publicity about their labor standards.

HOW THE UNITED STATES AND INTERNATIONAL ORGANIZATIONS DEFINE WORKER RIGHTS

The Trade Act of 1974 (as amended in 1984) defines "internationally recognized worker rights" as including:

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

The act, drawing from various international sources, combines broad concerns for basic rights (such as freedom of association) with narrower concerns for specific practices (such as minimum wages). In recent multilateral discussions, however, the emphasis has shifted away from specific practices toward basic rights.

For example, the Organization for Economic Cooperation and Development (OECD) has identified a set of "core standards" for labor—including freedom of association, the right to organize and bargain collectively, prohibition of forced labor, elimination of child-labor exploitation, and nondiscrimination in employment (see Table 1). The OECD chose those standards primarily because "they embody important human rights and . . . they derive from the Universal Declaration of Human Rights."[2] More recently, the World Trade Organization cited those standards in the Singapore Declaration that came out of its meeting of trade ministers in December 1996.

U.S. policymakers have embraced the core standards, at least for the sake of multilateral discussions. The former Secretary of Labor, Robert Reich, pushed for their recognition well in advance of the WTO ministerial meeting. (He presented a similar list, which he referred to as "fundamental human rights," during a Department of Labor symposium in April 1994.)[3] As evidence of the shift in focus, Reich and other U.S. policymakers did not seek provisions for minimum wages, work hours, or occupational health and safety during the WTO meeting.

Whether all countries will accept the OECD standards is unclear. Some resistance, especially from developing countries, may stem from concerns about the potential for trade-related sanctions and for misuse of the standards as a protectionist policy. The World Trade Organization has flatly rejected the use of labor standards for protectionist purposes, and the United States did not seek provisions for trade-related sanctions during the WTO ministerial meeting. But some countries may view an open discussion of worker rights as the first step toward establishing a provision in the WTO or international financial institutions that would allow for sanctions based on a country's domestic social policy.[4] At present, however, such a provision —known as a social clause—seems unlikely in any multilateral forum.

Regardless of whether a definition of worker rights is adopted in principle or attached to a social clause, its effect may depend as much on the degree of specificity as on the issues it covers. A definition can provide general guidelines toward meeting a goal, or ironclad regulations with enforcement provisions, or something in between. General guidelines, such as those found in the Trade Act, offer flexibility, but they require administrative discretion and can be difficult to enforce.

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2. See Organization for Economic Cooperation and Development, *Trade, Employment and Labour Standards: A Study of Core Workers' Rights and International Trade* (Paris: OECD, 1996), p. 10.

3. Robert B. Reich, "Keynote Address," in Department of Labor, Bureau of International Labor Affairs, *International Labor Standards and Global Economic Integration: Proceedings of a Symposium* (July 1994), p. 2.

4. The delegates of 14 developing countries at the WTO meeting "expressed their full commitment to the pursuit of national policies to protect labour rights and advance labour welfare," but found no clear evidence of a link between trade and labor standards and concluded that the ILO should be the only, rather than the primary, institution to deal with this issue. See *Inside U.S. Trade* (October 4, 1996), pp. 11-13.

TABLE 1. THE OECD'S CORE LABOR STANDARDS AND RELATED ILO CONVENTIONS

Core Labor Standard	Related Conventions[a] No.	Title	Aims in Brief	Number of Countries Ratifying[b]
Freedom of Association and Collective Bargaining	87	Freedom of Association and Protection of the Right to Organize, 1948	"The right, freely exercised, of workers and employers, without distinction, to organize for furthering and defending their interests."	133
	98	Right to Organize and Collective Bargaining, 1949	"Protection of workers who are exercising the right to organize; noninterference between workers' and employers' organizations; promotion of voluntary collective bargaining."	125
Prohibition of Forced Labor	29	Forced Labor, 1930	"Suppression of forced labor."	137
	105	Abolition of Forced Labor, 1957	"Prohibition of the recourse to forced or compulsory labor in any form for certain purposes."	115
Elimination of Exploitative Forms of Child Labor	138[c]	Minimum Age, 1973	"The abolition of child labor. The minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling (normally not less than 15 years)."	46
Nondiscrimination in Employment	111	Discrimination (Employment and Occupation), 1958	"To promote equality of opportunity and treatment in respect of employment and occupation."	119

SOURCES: Organization for Economic Cooperation and Development, *Trade, Employment and Labour Standards: A Case Study of Core Workers' Rights and International Trade* (Paris: OECD, 1996), pp. 26, 35, and 40; and International Labor Organization, *Summaries of International Labor Standards*, 2nd ed. (Geneva: International Labor Organization, 1991).

NOTE: OECD = Organization for Economic Cooperation and Development; ILO = International Labor Organization.

a. The OECD has identified certain conventions of the ILO as providing "internationally negotiated definitions" of core labor standards.

b. As of October 1995.

c. OECD, *Trade, Employment and Labour Standards*, p. 11, states that "there is no convention that addresses the issue of child labor exploitation as such. Instead, Convention 138 provides for a minimum employment age, while remaining silent on the possibility of non-exploitative forms of child labour."

Ironclad regulations ensure consistency, but they may be inappropriate in some circumstances.

Worker Rights and Human Rights

The trend in multilateral forums toward core labor standards underscores the close relationship between worker rights and human rights—and in some cases, the difficulty of distinguishing between them. That relationship in turn draws attention to the linkage between economic and humanitarian objectives of U.S. policymakers.

The U.S. Department of State addresses individual rights, civil liberties, political rights, discrimination, and worker rights (as defined in the Trade Act) under the rubric of "respect for human rights."[5] The State Department identifies as a civil liberty "freedom of peaceful assembly and association," including the ability of trade associations, professional bodies, and similar groups to maintain relations or affiliate with recognized international bodies in their fields. However, it identifies "the right of labor to associate and to organize and bargain collectively" as a worker right. Thus, two aspects of the same right can be thought of as either a civil liberty or a worker right, depending on the context of the discussion.[6] The State Department provides guidelines for reporting on worker rights that identify freedom of association, the right to organize and bargain collectively, the prohibition of forced labor, and the absence of discrimination as "basic principles contained in human rights standards" (see Appendix A for more details of those guidelines).

International conventions, declarations, and covenants also cross the bridge between worker rights and human rights. Appendix B provides a brief history of the main international agreements on worker rights. The ILO has classified freedom of association, the abolition of forced labor, and equality of opportunity and treatment as "basic human rights."[7] The United Nations' Universal Declaration of Human Rights, its International Covenant on Economic, Social, and Cultural Rights, and its International Covenant on Civil and Political Rights have collectively affirmed freedom of association, the right to organize, the right to just and favorable conditions of work, and other, more specific conditions of employment as principles

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5. See Department of State, *Country Reports on Human Rights Practices* (1994).

6. Freedom of association and collective bargaining have also been described as democratic rights, "quite separate from the question of economic efficiency and labor policy"; see Overseas Development Council and Department of Labor, Bureau of International Labor Affairs, *Beyond Subsistence: Labor Standards and Third World Development* (August 1989), p. 19.

7. International Labor Organization, *Summaries of International Labor Standards*, p. 123.

that arise from the "equal and inalienable rights of all members of the human family."[8]

Worker Rights and Standards

For the purposes of this analysis, "worker rights" refer to basic principles or absolute conditions, and "labor standards" refer to rules or benchmarks for government or private action.[9] (An exception is the term "core standards," which refers to the specific set of principles outlined in Table 1.) In practice, a standard might quantify, or establish procedures for quantifying, a particular right. For example, the definition of worker rights in the Trade Act includes the right to "a" minimum age for the employment of children, whereas a standard would specify "the" minimum age. Some standards, such as those prohibiting slavery, look like rights because they are all or nothing; others identify points along a continuum.[10] As an example of the latter, a lower bound, or floor, for the employment of children could be set at age 16, 15, 14, or younger. An upper bound, or ceiling, on the length of the work day could be set at 8, 9, 10, or more hours.

Standards for worker rights can also be defined in terms of either processes or outcomes.[11] Some standards, such as those relating to free association and collective bargaining, provide rules for processes that then shape specific outcomes in the labor market. For example, a process standard might provide rules for wage negotiations. Other standards, such as those relating to acceptable working conditions, provide rules for the outcomes themselves. For example, an outcome standard might specify rules for ventilation. Within that framework, standards can provide floors or ceilings for labor practices, including processes and outcomes.

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8. See United Nations, *Universal Declaration of Human Rights*, Preamble (1948), *International Covenant on Economic, Social, and Cultural Rights*, Preamble (1966), and *International Covenant on Civil and Political Rights*, Preamble (1966).

9. Some analysts distinguish between worker rights and labor standards and others do not. For example, Steve Charnovitz uses the terms "international fair labor standards," "worker rights," and "social clause" synonymously. See Steve Charnovitz, "The Influence of International Labor Standards on the World Trading Regime," *International Labor Review*, vol. 126, no. 5 (September-October 1987), p. 582, note 2. Gary Fields defines a standard as "something we would aim towards and rather have than not have." He defines a right as "something that is not to be violated except under the most extreme circumstances." See Gary Fields, *Trade and Labour Standards: A Review of the Issues* (Paris: OECD, 1995), p. 11.

10. For a somewhat different view of labor standards, see Steve Charnovitz's discussion of international fair labor standards in "Fair Labor Standards and International Trade," *Journal of World Trade Law*, vol. 20 (January-February 1986), p. 75. Charnovitz distinguishes between absolute standards, which are the same for all countries regardless of their level of development, and relative standards, which depend on the country's level of development. He also distinguishes between fixed standards, which governments either meet or do not meet, and incremental standards, which can be used to measure progress.

11. See Mita Aggarwal, *International Trade, Labor Standards, and Labor Market Conditions: An Evaluation of the Linkages*, Working Paper (U.S. International Trade Commission, Office of Economics, June 1995).

Specific concerns about low labor standards in developing countries arise in part from more general concerns about the effects of international economic integration, including freer trade and investment with LDCs. Moves toward freer trade and investment tend to create so-called "winners" and "losers." The net benefits of international economic integration—after accounting for the gains and losses to specific groups—accrue from shifts in the structure of production and trade between various sectors of the economy. As countries eliminate barriers to trade and investment, they shift resources—such as labor and capital—from less productive to more productive uses. Such shifts impose real costs on the workers and the owners of capital in declining industries. Workers, for example, must find new jobs, and some may earn lower wages after they do so. In the United States, freer international trade tends to shift labor and capital out of labor-intensive industries, especially those that rely heavily on low-skilled labor.

Economists have shown that the economic benefits of freer international trade and investment outweigh the costs. But because the winners need not compensate the losers, international economic integration may seem unfair, regardless of the labor policies of developing countries. According to a recent poll, more than half of the U.S. public thinks that trade agreements between the United States and other countries have cost U.S. jobs. (Only 5 percent of economists who were surveyed agree.)[12]

As for specific concerns that labor policies in developing countries adversely affect workers in the United States, the weight of the evidence suggests that low standards *per se* have little direct impact on most U.S. workers. Labor and trade economists offer different perspectives on working conditions, both leading to the same general conclusion.[13] Most labor economists look at domestic markets, focusing on the supply of and demand for labor. From their perspective, imports affect working conditions in a country to the extent that they "embody" foreign labor and so displace domestic labor. In their view, the relatively small percentage of imports in the U.S. economy means that imports probably have only a small effect on the supply of labor. Most trade economists, by contrast, look at international markets, focusing on the prices of traded goods. From their perspective, only changes in international prices will change the returns on domestic resources, such

12. Mario A. Brossard and Steven Pearlstein, "Great Divide: Economists vs. Public," *Washington Post*, October 15, 1996, p. A1.

13. For a more complete discussion of the divergent perspectives of labor and trade theorists, see Sherman Robinson and Karen Thierfelder, *The Trade-Wage Debate in a Model with Nontraded Goods: Making Room for Labor Economists in Trade Theory*, TMD Discussion Paper No. 9 (Washington, D.C.: International Food Policy Research Institute, February 1996).

as the real wage of low-skilled labor.[14] And in their view, few countries are large enough, in terms of market power, to affect the prices of internationally traded goods.

As for developing countries themselves, the evidence about whether efforts to raise standards help or hurt their workers is ambiguous. In some cases, higher standards might lower economic efficiency and retard economic growth. If workers are already paid in rough accord with their productivity, imposing higher standards could reallocate resources away from the most productive uses. In other cases, those standards might help to build or improve institutions that promote economic growth.

The Benefits of International Economic Integration

Most economists agree that the economic benefits of international economic integration, including freer trade and investment with LDCs, outweigh the costs. Those benefits stem from changes in resource allocation according to a country's comparative advantage, from economies of scale resulting from a country's access to larger markets, and from improvements in productivity.[15] In essence, economic gains occur because a country can use its resources, such as labor and capital, more effectively when it opens its borders to trade and investment.

A country's comparative advantage arises primarily from its endowments of resources. The United States, for example, derives comparative advantage from a relatively abundant supply of high-skilled labor and capital, whereas many developing countries derive comparative advantage from a relatively abundant supply of low-skilled labor. Firms in developing countries can produce goods that require intensive use of low-skilled labor at lower cost, relative to other goods, than can firms in the United States. Likewise, firms in the United States can produce goods that require intensive use of high-skilled labor and capital at lower cost, relative to other goods, than can firms in developing countries. On that basis, both the United States and developing countries gain when they trade.

The net benefits of freer international trade and investment result from gains and losses to specific groups as resources shift from less productive to more productive uses. The gains accrue to firms and workers in growing industries and, more generally, to consumers. Open markets ensure that consumers pay the lowest

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14. The relative abundance of resources determines the structure of production and trade, but international prices determine the returns on those resources. Thus, a change in resource supplies, such as the supply of low-skilled labor, could change the structure of production and trade but not the relative return, such as wages paid to low-skilled versus high-skilled labor. See Robinson and Thierfelder, *The Trade-Wage Debate.*

15. The gains from trade and investment are discussed in Congressional Budget Office, *A Budgetary and Economic Analysis of the North American Free Trade Agreement* (July 1993).

possible prices for the goods they buy, in part because international competition can eliminate monopolies in local markets. Moreover, consumers gain access to a wider variety of goods—that is, international trade increases their choices about what to buy. In addition, open markets can lower production costs by allowing firms to take advantage of the economies of larger-scale production. When unit costs drop, those savings can be passed on to consumers in the form of lower prices.

The losses, some temporary and some permanent, fall on workers and firms in declining industries. Workers who lose their jobs in an industry may require special assistance, including retraining so as to move to another industry and temporary income replacement.[16] Moreover, some workers may face lower wages even after they change jobs. That may be especially true for low-skilled workers.[17] (Intuitively, the relative abundance of low-skilled labor in developing countries compensates for the relative scarcity of low-skilled labor in the United States, so low-skilled labor becomes more valuable in the developing countries and less valuable in the United States.) Such losses are inherent in freer trade and are separate from any potential influences based on unfair trade practices.

How large an effect does international trade have on U.S. workers? A number of studies have looked at the impact on wages, employment, and income in the United States.[18] Many of those studies suggest that factors other than trade, such as technology, have had a more direct bearing on U.S. workers. They argue that changes in technology have shifted the demand for labor in the direction of high-skilled workers. Nevertheless, the possibility remains that international trade has contributed to the downward pressure on the wages of low-skilled workers in the

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16. Federal programs that provide such assistance include the Economic Dislocation and Worker Adjustment Assistance program and the Trade Adjustment Assistance program.

17. Economists predict that, under certain circumstances, open trade will equalize the returns on resources, such as the real wage of low-skilled labor, so that the real wage in one country will equal the real wage in another. For that to happen, the real wage of low-skilled workers would fall in the United States and rise in developing countries. That prediction is based on a simple model with two goods, two countries, two resources, perfectly competitive markets, and identical technology, in which both goods are produced in both countries. For a summary of the results, see Peter B. Kenen, *The International Economy*, 3rd ed. (Cambridge, England: Cambridge University Press, 1994), pp. 82-84. In practice, returns on resources may diverge because of barriers to trade, transportation costs, differences in technology, and other such departures from the simple model.

18. See Jagdish Bhagwati and Marvin H. Kosters, *Trade and Wages: Leveling Wages Down?* (Washington, D.C.: AEI Press, 1994); George Borjas, Richard B. Freeman, and Lawrence F. Katz, "On the Labor Market Effects of Immigration and Trade," in Borjas and Freeman, eds., *Immigration and the Work Force* (Chicago: University of Chicago Press, 1992), pp. 213-244; Gary Burtless, "International Trade and the Rise in Earnings Inequality," *Journal of Economic Literature*, vol. 33, no. 2 (June 1995), pp. 800-816; Paul Krugman and Robert Z. Lawrence, *Trade, Jobs, and Wages*, Working Paper No. 4478 (Cambridge, Mass: National Bureau of Economic Research, 1993); Robert Z. Lawrence and Matthew J. Slaughter, "International Trade and American Wages in the 1980s: Giant Sucking Sound or Small Hiccup?" *Brookings Papers on Economic Activity: Microeconomics*, no. 2 (1993), pp. 161-226; Edward E. Leamer, *Trade, Wages, and Revolving Door Ideas*, Working Paper No. 4716 (Cambridge, Mass: National Bureau of Economic Research, 1994); Jeffrey D. Sachs and Howard J. Shatz, "Trade and Jobs in U.S. Manufacturing," *Brookings Papers on Economic Activity*, no. 1 (1994), pp. 1-84; and Adrian Wood, "How Trade Hurt Unskilled Workers," *Journal of Economic Perspectives*, vol. 9, no. 3 (1995), pp. 57-80.

United States, either directly or indirectly. In particular, one study notes the difficulty of separating the effects of trade and technology "because, for example, increased competition from international trade could stimulate more rapid technological change and consequent changes in production processes."[19]

Do Labor Policies in Developing Countries Affect Workers in the United States?

Some policymakers and others fear that freer international trade and investment hurt U.S. workers because many developing countries have lower labor standards than the United States does. But the weight of the evidence suggests that the labor policies of developing countries have little direct effect on most U.S. workers. Drawing from the different perspectives of labor and trade economists, that conclusion rests on three key factors: the size of the domestic portion of the U.S. economy, the gap in the cost of low-skilled labor between the United States and most developing countries, and the inability of most LDCs to affect world prices. In sum, the major effects of low standards in LDCs (whether fair or unfair) are more likely to be felt in the LDCs, as they compete among themselves for market share, than in the United States.

The U.S. economy is open to international trade and investment, but most economic activity continues to be domestic. For example, in 1994, the total value of imports into the United States was equivalent to about 12 percent of U.S. gross domestic product, and exports to 10 percent.[20] In other words, most of the goods and services produced in the United States stay there, and most consumption is from domestic sources. Moreover, the U.S. economy tends to invest domestically. In 1994, new foreign direct investment totaled about $65 billion, less than one-tenth the amount of new domestic investment ($667 billion).[21] Intuitively, those figures suggest that the overall effects of freer trade and investment cannot be very large, regardless of the labor policies of LDCs.

The gap in the cost of low-skilled labor between the United States and most developing countries is so large that any realistic set of higher standards in LDCs is unlikely to close it enough to affect U.S. imports from those countries substantially.[22]

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19. Marvin H. Kosters, "An Overview of Changing Wage Patterns in the Labor Market," in Bhagwati and Kosters, *Trade and Wages*, p. 29.

20. Council of Economic Advisors, *Economic Report of the President* (1997), Table B-1.

21. The domestic investment is measured in terms of private expenditures on nonresidential fixed capital; ibid., Tables B-1 and B-105.

22. See Alan Krueger, *Observations on International Labor Standards and Trade*, Working Paper No. 5632 (Cambridge, Mass.: National Bureau of Economic Research, June 1996), pp. 12-13.

Most economists posit that in reasonably well-functioning markets, workers are paid in rough conformance with their productivity. In theory, such payments include the value of all working conditions, including wages and any fringe benefits the worker receives. The "market-clearing" payment, which reflects the worker's productivity, occurs when the amount of labor offered equals the amount of labor demanded. Productivity is measured as the value added by the last unit of labor hired. For goods that are traded internationally, that "value added" is determined in part by the price for which the good can sell in international markets.

Empirical evidence tends to confirm the notion that as productivity rises (in both developed and developing countries), wages also rise. This suggests that the large gap in the cost of low-skilled labor between developed countries such as the United States and most LDCs can be explained by differences in the productivity of labor. But in some instances, other factors may come into play. Working conditions, including wages, may be too low because a country tolerates or actively engages in exploitative labor practices, or because market institutions are poorly developed. Where such factors hold down the cost of labor to a level below its productivity, local distortions may misallocate resources.

Whether those distortions can affect trade depends in large measure on whether the country can affect the world prices of the goods it trades. If a country cannot influence world prices, it cannot affect the returns on labor and capital in other countries—such as the real wage of low-skilled workers—regardless of its domestic policies. If a country can affect the world prices of the goods it trades, it can in theory affect the returns on resources in the United States, even if it has very little trade with the United States. However, with the possible exception of China, few LDCs have a large enough share of the total production of a commodity they trade to influence its world price.[23]

In most cases, local distortions are unlikely to have a significant effect on a developing country's wealthier trading partners. Even if a large LDC lowers the export price of a traded good by suppressing the cost of labor in its domestic markets, it is more likely to displace other, similar goods that the United States imports from other LDCs than to displace U.S. production. Given the relative abundance of low-skilled labor in most developing countries, it seems unlikely that raising standards in those countries would benefit labor-intensive industries in the United States, even

23. Some countries that have significant problems with child labor, slavery, and other worker rights are among the poorest and the least able to influence world prices. For example, Alan Krueger reports that the highest employment rates for children ages 10-14 are in Burundi, Uganda, and Rwanda (at 49 percent, 45 percent, and 42 percent, respectively). See Krueger, *Observations on International Labor Standards and Trade*, p. 24.

if higher standards led to an increase in the cost of labor in the LDCs.[24] Thus, the effects of local distortions in most LDCs are unlikely to affect U.S. trade or U.S. workers much, if at all.

One of the major concerns about suppressive labor policies is that as one country's exports are displaced by another's, the displaced country might retaliate by lowering its labor standards to regain market share or attract foreign investment, and the process might snowball as other countries compete by lowering their standards. Whether such vicious cycles are a worldwide phenomenon or have influenced investment at the expense of labor has not been definitively observed.[25] Even if countries do not ratchet their standards downward, some economists argue that in the face of such competitive pressures, they might not raise them as rapidly as they would otherwise. However, those arguments assume a direct link between labor standards, labor costs, and trade and investment, which probably overstates their relationship. With regard to investment, other factors such as market access, infrastructure, political stability, and tax incentives may be as important as labor costs in attracting foreign capital.[26] Public opinion may be another important factor—a company may be reluctant to invest in a country with low standards if the appearance of unfair labor practices will hurt its public image. One large U.S. firm recently decided not to continue operating in China, allegedly because of concerns about human rights violations there.

What Effect Would Higher Standards Have on Workers in Developing Countries?

Some policymakers seek to raise standards in LDCs primarily for the benefit of the workers in those countries. They may seek higher standards to promote worker rights (as defined in the Trade Act) or as a first step toward overall reforms in economic, social, and political institutions. In either case, such proponents may favor higher standards for humanitarian reasons, apart from their concerns about international trade or investment.

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24. Dani Rodrik of Harvard University's Kennedy School of Government shows that higher labor standards are associated with higher labor costs, all else being equal. See Dani Rodrik, "Labor Standards in International Trade: Do They Matter and What Do We Do About Them?" unpublished paper (February 1996).

25. Asad Alam cites evidence of capital shunting (the shifting of production to countries with low labor standards) "not only in the channeling of U.S. investment but also in the direct contracting-out of work by U.S. manufacturers to apparel firms in South and Southeast Asia." See Asad Alam, "Labor Standards and Comparative Advantage" (Ph.D. dissertation, Columbia University, 1992), pp. 4-5. In contrast, Dani Rodrik finds that low standards may deter foreign direct investment, all else being equal; Rodrik, "Labor Standards in International Trade."

26. The Commerce Department reports that the location of overseas production by U.S. multinational companies appears to be determined more by access to markets than by access to low-wage labor or to natural resources. See Department of Commerce, *Survey of Current Business* (December 1996), p. 11.

But generalizing about the effects of labor standards on workers in developing countries is difficult. Efforts to raise standards in LDCs may help or hurt the workers in those countries depending in part on existing conditions. For example, if workers are already paid in rough accord with their productivity, higher standards could lower economic efficiency by reallocating resources away from the most productive uses. Standards that pushed wages and other forms of compensation above their market-clearing levels—so they no longer reflected productivity—could reduce employment in "formal" or regulated markets.[27] Such standards could be even more harmful if they undermined the countries' gains from trade.

By contrast, some standards may help to build or improve institutions that support free markets. If working conditions (including wages) are too low because a country tolerates exploitative practices, or because its market institutions are poorly developed, higher standards could promote economic development. For example, promoting a standard of nondiscrimination in employment in a country where discrimination is practiced can improve economic performance by bringing idle resources into use. Moreover, higher standards for some worker rights could dissuade a country from actively engaging in exploitative practices, with similar results. Such may be the case if a country employs forced labor.

Economic Arguments. What does economic theory say about labor standards? In the basic model of competition, firms and workers reach the highest levels of economic well-being, for themselves and their countries, when they are free to pursue their own economic interests. A policy that interferes with their freedom may force resources into less productive uses. On that basis, opponents of labor standards argue that they interfere with some freedoms by setting floors on working conditions, including wages and other forms of compensation. Such opponents assume that markets would work well in the absence of regulation.

But markets do not always work well—sometimes because existing policies deny, or do not ensure, certain freedoms. If market failures exist, firms may produce too little or too much of some goods, or underpay or overpay their workers, compared with the competitive benchmark. For example, where forced or compulsory labor is used and labor costs are artificially low, resources may be misallocated from more productive activities to less productive ones because of

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27. For more on formal and informal markets, see Alejandro Portes, "When More Can Be Less: Labor Standards, Development, and the Informal Economy," in Stephen Herzenberg and Jorge F. Perez-Lopez, eds., *Labor Standards and Development in the Global Economy* (Department of Labor, Bureau of International Labor Affairs, 1990), pp. 219-237; Alejandro Portes and Richard Schauffler, "The Informal Economy in Latin America: Definition, Measurement, and Policies," in Gregory Schoepfle and Jorge F. Perez-Lopez, eds., *Work Without Protections: Case Studies of the Informal Sector in Developing Countries* (Department of Labor, Bureau of International Labor Affairs, 1993), pp. 3-39; and Schoepfle and F. Perez-Lopez, "Work and Protections in the Informal Sector," in *Work Without Protections*, pp. 247-279.

mistaken price signals. In such cases, standards could help to ensure that resources were used as effectively as possible, while serving other humanitarian goals.

Based on their opinions about how well local markets function, economists draw different inferences about the relationship between labor standards and economic development.[28] One group contends that prematurely raising labor standards in developing countries introduces economic distortions that could impede the growth of income and the creation of jobs. That group argues that working conditions should improve by themselves as an economy grows—because capital accumulation leads to increases in labor productivity, which are accompanied by increases in real compensation. Thus, from their perspective, each level of economic development has an appropriate set of working conditions, defined by the competitive benchmark. Anything that interferes with those conditions will hurt workers in the long run, they say.

Another group of economists views labor standards as a tool that could influence the social process of development in positive ways, depending on how policymakers applied them. That group seeks to find "the appropriate level of regulation to facilitate the operation of a socially acceptable and functional labor market."[29] Some members of the group perceive trade-offs between economic and noneconomic objectives, but those objectives are not always in opposition, as in the case of forced labor. Even if they are in opposition, lawmakers cannot ensure that one set of objectives will be realized when another is sacrificed.

Most economists would agree that the effects of a specific policy depend to a large extent on the conditions that exist when it is put in place. Developing countries vary widely, starting from very different economic, social, and other institutional bases. Consider the potential effects of a ban on child labor in a country that has unemployment.[30] In such a country, the ban would draw some adults into the workforce at existing rates of compensation. A household's income could rise or fall, depending on the distribution of new employment and the share of income previously coming from child labor. Alternatively, if a country had full employment, the ban would reduce the supply of labor and drive up compensation. A household's income could again rise or fall, depending in this case on the change in compensation

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28. For a more complete discussion of the "cleavage of opinion" among economists, see Overseas Development Council and Department of Labor, *Beyond Subsistence*, p. 9. For another presentation of the economic arguments for and against labor standards, see Mary Jane Bolle, *Worker Rights Provisions and Trade Policy: Should They Be Linked?* CRS Report for Congress 96-661 E (Congressional Research Service, July 30, 1996).

29. Overseas Development Council and Department of Labor, *Beyond Subsistence*, p. 9.

30. For simplicity, consider the effects in a developing economy that does not engage in trade. For more on specific standards under alternative market assumptions, see Göte Hansson, *Social Clauses and International Trade* (New York: St. Martin's Press, 1983), pp. 67-131.

and the share of income that had come from child labor. In either case, circumstances could improve for some children, but others could face additional hardship. Many people incorrectly assume that children released from employment will enter local schools, but the ban could push some children into more hazardous occupations, such as prostitution.

Some Empirical Evidence. The observable evidence offers some insight into the relationship between economic development and working conditions.[31] One economist, Gary Fields, used wage, employment, and income data to analyze the relationship between economic development and working conditions in four East Asian countries.[32] He found that over a period of several decades, working conditions—measured in terms of unemployment, the composition of employment, real earnings, and absolute poverty—improved in Hong Kong, South Korea, Singapore, and Taiwan, with only a few exceptions.[33] The data suggest that workers there shared in the growth of their countries' economies: "in all four economies in the 1980s, real labor earnings grew at least as fast as real per capita gross national product," with relatively low rates of unemployment and income inequality.[34]

Other economists provide further evidence that workers share in the improvements of their countries' economies. For example, Mita Aggarwal reported increases in real earnings—exceeding increases in real output—in Singapore, South Korea, Thailand, and the Philippines.[35] Two exceptions were India, where earnings grew more slowly than output, and Mexico, where earnings decreased even as output increased. Looking at data for textile industries by country, Aggarwal found that workers in Singapore, Hong Kong, South Korea, the Philippines, Indonesia, and India typically shared in the fates of their industries, for better or worse. And Alan

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31. A positive correlation exists between national income, as a measure of economic development, and the total cost of labor, as a measure of working conditions, in developed countries. See Organization for Economic Cooperation and Development, *Employment Outlook* (Paris: OECD, 1994), pp. 156-157, including Chart 4.2.

32. The data appear in Gary Fields, "Labor Standards, Economic Development, and International Trade," in Stephen Herzenberg and Jorge F. Perez-Lopez, eds., *Labor Standards and Development in the Global Economy* (Department of Labor, Bureau of International Labor Affairs, 1990), p. 23-25; Fields, "Employment, Income Distribution and Economic Growth in Seven Small Open Economies," *Economic Journal*, vol. 94 (March 1984), pp. 74-83; Fields, "Changing Labor Market Conditions and Economic Development in Hong Kong, the Republic of Korea, Singapore, and Taiwan, China," *World Bank Economic Review*, vol. 8, no. 3 (1994), pp. 395-414; and Fields, *Trade and Labor Standards: A Review of the Issues* (Paris: OECD, 1995), p. 18.

33. By contrast, Jong-il You describes poor safety conditions, long hours of work, and gender-based discrimination in Korea. See Jong-il You, "South Korea," in Herzenberg and Perez-Lopez, eds., *Labor Standards and Development in the Global Economy*, pp. 107-109.

34. Fields, *Trade and Labor Standards*, p. 17.

35. Aggarwal, *International Trade, Labor Standards, and Labor Market Conditions*, pp. 20-22.

Krueger found that the use of child labor declined sharply with increases in national income.[36]

Although the evidence suggests a positive relationship between economic development and working conditions, it does not explain the role of domestic policy. Fields found evidence of policies that restricted worker rights, especially in Singapore and South Korea, despite improvements in labor standards overall. Growth may have raised labor standards, as Fields argues, but how did domestic policy affect growth? Economists lack definitive answers. Domestic policies may have contributed to or detracted from growth.

U.S. POLICIES FOR PROMOTING WORKER RIGHTS

U.S. policymakers have sought to promote worker rights in developing countries to ease concerns about unfair competition and to ensure that the benefits of U.S. trade, investment, and aid programs reach the broadest sectors of the population in those countries. (See Box 1 for a list of U.S. legislation relating to worker rights.) In particular, special trade and investment programs, such as the U.S. Generalized System of Preferences program, the Caribbean Basin Initiative (CBI), the Andean Trade Preference Act (ATPA), and the Overseas Private Investment Corporation, and foreign assistance programs include criteria for worker rights. As a general rule, a country that loses access to the benefits of one of those programs because it fails to meet the criteria will lose access to the benefits of the others. Nonpreferential programs contain similar criteria for worker rights, but they have never been invoked.

In addition, U.S. policymakers have sought international cooperation in regional trade agreements and multilateral forums, including NAFTA, the GATT, the WTO, and international financial institutions such as the World Bank and the International Monetary Fund. The North American Free Trade Implementation Act of 1993 enacted a side agreement on labor cooperation between the United States, Mexico, and Canada. It addresses labor principles that indicate "broad areas of concern" for the three countries but does not seek to change their domestic laws (see Box 2). In some cases, violations of the provisions of the side agreement can result in fines or trade sanctions. Other recent initiatives, such as "Rugmark" and the "No Sweat" campaign, have focused on private voluntary efforts by nongovernmental organizations and companies to promote worker rights.

36. Krueger used data on employment among 10-year-old to 14-year-old children collected by the ILO; Krueger, *Observations on International Labor Standards and Trade*, pp. 24-25.

BOX 1.
PROVISIONS FOR WORKER RIGHTS IN U.S. LAW

McKinley Tariff Act of 1890, chapter 1244, section 51—prohibits imports of goods made by convict labor.

White Phosphorus Match Act of 1912, chapter 75—prohibits imports and exports of white phosphorus matches; taxes their domestic production.

Smoot-Hawley Tariff Act of 1930, chapter 497, section 307—prohibits imports of goods made by convict, forced, or indentured labor under penal sanction (unless required for domestic consumption).

National Industrial Recovery Act of 1933, chapter 90 (Found unconstitutional in 1935)—restricts imports of goods that impair codes of fair competition, including the right to organize and bargain collectively, the right to join, organize, or assist a labor organization, and compliance with maximum hours of work and minimum rates of pay.

Trade Act of 1974—Seeks "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT [General Agreement on Tariffs and Trade]."

Caribbean Basin Economic Recovery Act of 1983 (commonly referred to as the Caribbean Basin Initiative)—establishes discretionary worker-rights criteria for determining eligibility and benefits for the Caribbean Basin Initiative (CBI).

Generalized System of Preferences Renewal Act of 1984—defines "internationally recognized worker rights"; establishes mandatory and discretionary worker-rights criteria for determining eligibility and benefits for the Generalized System of Preferences; requires country reports on worker rights and eligibility reviews.

Overseas Private Investment Corporation Amendments Act of 1985—establishes mandatory worker-rights criteria for activities of the Overseas Private Investment Corporation (OPIC); requires public hearings.

Comprehensive Anti-Apartheid Act of 1986—codifies the Sullivan Principles for U.S. firms operating in South Africa.

Foreign Operations, Export Financing, and Related Programs Appropriations Act for Fiscal Year 1988—restricts U.S. contributions to the Multilateral Investment Guarantee Agency.

Omnibus Trade and Competitiveness Act of 1988—establishes discretionary worker-rights criteria for market access (section 301 of the Trade Act of 1974); establishes additional provisions for OPIC activities in China; cites worker rights as a "principle negotiating objective" for the United States in the GATT; requires country reports on economic and trade policy, including worker rights.

BOX 1.
CONTINUED

Caribbean Basin Economic Recovery Expansion Act of 1990—establishes mandatory and discretionary worker-rights criteria for CBI eligibility and benefits.

Andean Trade Preference Act of 1991—establishes mandatory and discretionary worker-rights criteria for determining eligibility and benefits for Andean trade preferences.

Jobs Through Exports Act of 1992—establishes additional provisions for OPIC (concerning the responsibility of investors to observe worker rights).

Foreign Operations, Export Financing, and Related Programs Appropriations Acts for Fiscal Years 1993, 1994, 1995, 1996, and 1997—restrict appropriations for foreign assistance. The act for fiscal year 1995 also encourages fair labor practices in countries borrowing from international financial institutions.

North American Free Trade Implementation Act of 1993—enacts the North American Agreement on Labor Cooperation between the United States, Mexico, and Canada.

Uruguay Round Agreements Act of 1994—seeks to establish a working party for worker rights in the World Trade Organization.

Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996—defines a "transition government" as one that makes a public commitment to, and is making demonstrable progress toward, allowing the establishment of independent trade unions, as set forth in ILO conventions 87 and 98.

SOURCE: Congressional Budget Office based in part on Asad Alam, "Labor Standards and Comparative Advantage" (Ph.D. dissertation, Columbia University, 1992), p. 25.

Preferential Programs and Foreign Assistance

The Trade Act of 1974 (as amended in 1984) defined internationally recognized worker rights for the purposes of the GSP program; other U.S. programs, such as the CBI, the ATPA, and OPIC, have adopted the definition.[37] The GSP program gives preferential treatment to goods from developing countries that are not internationally competitive, while retaining some protection for domestic industries that are sensitive

37. The provisions for worker rights in the CBI predate the provisions in the GSP program but were later revised to mirror those in the GSP program. For more information on the CBI provisions, see Steve Charnovitz, "Caribbean Basin Initiative: Setting Labor Standards," *Monthly Labor Review* (November 1984); and Jorge F. Perez-Lopez, "Worker Rights in the U.S. Omnibus Trade and Competitiveness Act," *Labor Law Journal* (April 1990).

BOX 2.
OBJECTIVES AND GUIDING PRINCIPLES OF THE
NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

The 1993 North American Agreement on Labor Cooperation, a side agreement to the North American Free Trade Agreement, specified seven objectives for its signatories:

- to improve working conditions and living standards in each party's territory;
- to promote, to the maximum extent possible, the labor principles set out in Annex 1 (see the discussion below);
- to encourage cooperation in order to promote innovations and rising levels of productivity and quality;
- to encourage publication and exchange of information, data development and coordination, and joint studies to enhance mutually beneficial understanding of the laws and institutions governing labor in each party's territory;
- to pursue cooperative labor-related activities on the basis of mutual benefit;
- to promote compliance with, and effective enforcement by each party of, its labor law; and
- to foster transparency in the administration of labor law.

Annex 1 of the agreement specified certain guiding principles with explanatory notes: "The following are guiding principles that the parties are committed to promote, subject to each party's domestic law, but do not establish common minimum standards for their domestic law. They indicate broad areas of concern where the parties have developed, each in its own way, laws, regulations, procedures and practices that protect the rights and interests of their respective workforces."

- *Freedom of association and protection of the right to organize:* the right of workers, exercised freely and without impediment, to establish and join organizations of their own choosing to further and defend their interests.
- *The right to bargain collectively:* the protection of the right of organized workers to engage freely in collectively bargaining on matters concerning the terms and conditions of employment.
- *The right to strike:* the protection of the right of workers to strike in order to defend their collective interests.
- *Prohibition of forced labor:* the prohibition and suppression of all forms of forced or compulsory labor, except for types of compulsory work generally considered acceptable by the parties, such as compulsory military service, certain civic obligations, prison labor not for private purposes, and work exacted in cases of emergency.

BOX 2.
CONTINUED

- *Labor protections for children and young persons:* the establishment of restrictions on the employment of children and young persons that may vary taking into consideration relevant factors likely to jeopardize the full physical, mental, and moral development of young persons, including schooling and safety requirements.

- *Minimum employment standards:* the establishment of minimum employment standards such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements.

- *Elimination of employment discrimination:* elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions, such as, where applicable, bona fide occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination.

- *Equal pay for women and men:* equal wages for women and men by applying the principle of equal pay for equal work in the same establishment.

- *Prevention of occupational injuries and illnesses:* prescribing and implementing standards to minimize the causes of occupational injuries and illnesses.

- *Compensation in cases of occupational injuries and illnesses:* the establishment of a system providing benefits and compensation to workers or their dependents in cases of occupational injuries, accidents or fatalities arising out of, linked with, or occurring in the course of employment.

- *Protection of migrant workers:* providing migrant workers in a party's territory with the same legal protection as the party's nationals in respect to working conditions.

to imports. Under the program, eligible goods from countries designated as "beneficiary developing countries" are imported duty-free. Other industrial countries administer their own GSP-type programs. The CBI and ATPA provide special preferences for developing countries in the Caribbean and Andean regions, respectively. OPIC encourages U.S. private investment in developing countries and emerging-market economies.[38] Its primary noncredit program is political risk insurance against losses resulting from expropriation, inconvertibility of currencies, and damage from political violence. Its primary credit program is investment financing through loans and loan guarantees.

38. See *Budget of the United States Government, Fiscal Year 1995: Appendix*, pp. 90-95.

Besides providing a definition, the Trade Act also established criteria for worker rights in the GSP program. In particular, "the President shall not designate any country a beneficiary developing country under this section . . . if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country)."[39]

The CBI, the ATPA, and OPIC have adopted similar criteria, with some modifications. The Overseas Private Investment Corporation differs from the other programs because it places the burden of responsibility on the private sector as well as the beneficiary country. Specifically, OPIC requires that countries take steps to promote worker rights, but it also requires that participating investors not "take actions to prevent employees of the foreign enterprise from lawfully exercising their right of association and their right to organize and bargain collectively. The investor further agrees to observe applicable laws relating to minimum age for employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety, and not to use forced labor."[40]

The mechanism for assessing worker rights in the GSP program consists primarily of a process of petition and review. The process begins when an interested party files a petition seeking a review of the labor policies of a beneficiary developing country. An interagency committee of the executive branch uses information from public hearings, U.S. embassies, and annual reports on labor practices and human rights to establish whether the country has, in fact, failed to satisfy the worker-rights criteria. The findings of the committee affect the country's status under the GSP and other preferential programs. To date, 12 countries have been removed or suspended from the GSP program because of the worker-rights criteria. (See Appendix C for a summary of findings under the GSP reviews.) Some countries that participate in OPIC but not the GSP program require separate assessments. To date, five countries have been suspended by OPIC.[41]

The worker-rights criteria for foreign aid programs are somewhat different, focusing on specific projects and activities. Section 599 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act for Fiscal Year 1993 specified that none of the funds appropriated by the act could be used to provide

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39. Generalized System of Preferences Renewal Act of 1984, section 503(b)(6)—19 U.S.C. 2462(b)(7), 98 Stat. 3019—amending the Trade Act of 1974, section 502(b)(7). The GSP Renewal Act of 1996 designates that provision as section 502(b)(2)(6). Under section 502(b) of the Trade Act, as amended, the President may waive the worker-rights condition and some others.

40. Jobs Through Exports Act of 1992, section 102—22 U.S.C. 2191a(a), 106 Stat. 3651—amending the Foreign Assistance Act of 1961, section 231A(a)(1).

41. Those countries were Ethiopia (1987), South Korea (1991), Qatar (1995), Saudia Arabia (1995), and the United Arab Emirates (1995). OPIC reopened the Ethiopia program in 1992.

assistance for any projects or activities that contribute to the violation of internationally recognized worker rights in the recipient country, including any designated zones or areas in the country. Those criteria have been repeated in subsequent acts.[42]

General Provisions

Section 301 of the Trade Act (as amended in 1988) authorizes action, on a discretionary basis, if "an act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce."[43] Such action includes imposing duties or other import restrictions; suspending or withdrawing concessions made in trade agreements; and agreeing with the foreign country either to eliminate the act, policy, or practice, to eliminate the burden or restriction on U.S. commerce, or to provide the United States with compensatory trade benefits. Section 301 defines "unreasonable" as including any act, policy, or practice that constitutes a persistent pattern of conduct that denies or violates worker rights.[44] To date, that provision has not been invoked.

Multilateral Forums

Besides U.S. programs, multilateral bodies such as international trade orgainzations and financial institutions have provided another forum for U.S. policymakers seeking to promote worker rights. In 1974, the Congress sought "the adoption of international fair labor standards and of public petition and confrontation procedures in the GATT."[45] And in 1988, the Omnibus Trade and Competitiveness Act included worker rights among the "principal trade negotiating objectives" of the United States. In particular, that act established a three-step goal:

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42. See the Foreign Operations, Export Financing, and Related Programs Appropriations Acts for fiscal years 1994, 1995, 1996, and 1997, sections 547, 545, 539, and 538, respectively.

43. Omnibus Trade and Competitiveness Act of 1988, section 1301—19 U.S.C. 2411(b)(1), 102 Stat. 1165—amending the Trade Act of 1974, section 301(b).

44. Omnibus Trade and Competitiveness Act of 1988, section 1301—19 U.S.C. 2411(d)(3), 102 Stat. 1167—amending the Trade Act of 1974, section 301(d).

45. Trade Act of 1974, section 121(a)(4); P.L. 93-618, 88 Stat. 1986.

- "To promote respect for worker rights;

- "To secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to ensuring that the benefits of the trading system are available to all workers; and

- "To adopt, as a principle of the GATT, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade."[46]

The Uruguay Round Agreements Act of 1994 directed the President to seek the establishment of a working party in the World Trade Organization to explore the relationship between worker rights and international trade (see Box 3). Worker rights were not placed on the WTO's agenda, but the issue was taken up by the OECD and raised during the first official meeting of the WTO. The World Trade Organization's Singapore Declaration of December 1996 included a short statement on core labor standards:

> We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization . . . is the competent body to set and deal with these standards and we affirm our support for its work in promoting 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 in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.[47]

Regarding international financial institutions, the Foreign Operations, Export Financing, and Related Programs Appropriations Act for Fiscal Year 1988 instructed the U.S. director of the Multilateral Investment Guarantee Agency to seek the adoption of policies and procedures that would prevent issuing loan guarantees "in any country which has not taken or is not taking steps to afford internationally

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46. Omnibus Trade and Competitiveness Act of 1988, section 1101(b)(14); 19 U.S.C. 2901(b)(14), 102 Stat. 1125. The GATT contains one explicit provision for worker rights, insomuch as Article XX permits restrictive measures relating to the products of prison labor.

47. See "Final Singapore Declaration," *Inside U.S. Trade*, Special Report (December 16, 1996), p. S-3.

BOX 3.
THE URUGUAY ROUND AGREEMENTS ACT:
THE PROPOSAL FOR A WORKING PARTY ON WORKER RIGHTS

The Uruguay Round Agreements Act of 1994—the law to approve and carry out the trade agreements concluded in the Uruguay Round of multilateral trade negotiations—contains provisions to seek the establishment of a working party to examine the relationship between internationally recognized worker rights and both the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).[1] The provisions are specified in section 131, titled "Working Party on Worker Rights":

> (a) IN GENERAL.—The President shall seek the establishment in the GATT 1947, and, upon entry into force of the WTO Agreement with respect to the United States, in the WTO, of a working party to examine the relationship of internationally recognized worker rights, as defined in section 502(a)(4) of the Trade Act of 1974, to the articles, objectives, and related instruments of the GATT 1947 and of the WTO, respectively.[2]
>
> (b) OBJECTIVES OF THE WORKING PARTY.—The objectives of the United States for the working party described in subsection (a) are to—
>
> > (1) explore the linkage between international trade and internationally recognized worker rights, as defined in section 502(a)(4) of the Trade Act of 1974, taking into account differences in the level of development among countries;
> >
> > (2) examine the effects on international trade of systematic denial of such rights;
> >
> > (3) consider ways to address such effects; and
> >
> > (4) develop methods to coordinate the work program of the working party with the International Labor Organization.
>
> (c) REPORT TO CONGRESS.—The President shall report to the Congress, not later than 1 year after the date of the enactment of this Act, on the progress made in establishing the working party under this section, and on United States objectives with respect to the working party's work program.[3]

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1 In addition, section 102(a)(2) ensures that nothing in the act shall be construed "(A) to amend or modify any law of the United States including any law relating to (i) the protection of human, animal, or plant life or health, (ii) the protection of the environment, or (iii) worker safety, or (B) to limit any authority conferred under any law of the United States, including section 301 of the Trade Act of 1974, unless specifically provided for in this Act."

2 Section 2 defines GATT 1947 as "the General Agreement on Tariffs and Trade, dated October 30, 1947. . . as subsequently rectified, amended, or modified . . . before the date of entry of the WTO Agreement." It defines the WTO Agreement as "the Agreement Establishing the World Trade Organization entered into on April 15, 1994."

3. 19 U.S.C. 3551, 108 Stat. 4839.

recognized rights to workers in that country."[48] More recently, the International Financial Institutions Act (as amended in 1994) directed the Department of the Treasury and the U.S. executive directors of the institutions to work to establish a process for evaluating member countries' adherence to internationally recognized worker rights and to make the issue an integral part of the institutions' policy dialogue with each borrowing country (see Box 4).[49] The Treasury must report annually to the Congress on the progress toward those two goals. The first such report found that, "as a general matter, the institutions have not specifically integrated ILO worker rights standards into their operational procedures."[50]

Any discussion of U.S. efforts to promote worker rights in multilateral forums leads inevitably to the issue of U.S. participation in the International Labor Organization. The United States has fallen about $25 million behind in its payments to the ILO and has ratified only one major convention (Convention 105 on the abolition of forced labor).[51] It has endorsed the ILO's International Program for the Elimination of Child Labor, with contributions of $1.5 million in both fiscal years 1996 and 1997, and clearly abides by the spirit of other major conventions. But the failure to make payments on arrears and to ratify the major conventions, even as a symbolic gesture, has detracted from U.S. efforts to promote worker rights in other multilateral forums. Some key sticking points that have held up U.S. ratification include concerns about national sovereignty and states' rights.[52]

Voluntary Efforts by the Private Sector

Besides initiatives of the federal govenment, U.S. policymakers have tried to encourage the private sector to make voluntary efforts to improve labor standards, such as establishing corporate codes of conduct and labeling programs. Recent progress in those areas may spring from firms' concerns about working conditions in developing countries or their concerns about corporate image. Observers posit that

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48. Section 405 of H.R. 3750, as enacted in P.L. 100-202, 101 Stat. 1329-132. For more information on the Multilateral Investment Guarantee Agency, see Perez-Lopez, "Worker Rights in the U.S. Omnibus Trade and Competitiveness Act."

49. Department of the Treasury, *1995 Annual Report to the Congress on Labor Issues and International Financial Institutions* (1995), p. 1.

50. Ibid., p. 2.

51. For more information on U.S. payments to the ILO, see Lois McHugh, *The International Labor Organization and International Labor Issues in the 104th Congress,* CRS Report for Congress 96-836 F (Congressional Research Service, October 17, 1996).

52. See Vita Bite, *Human Rights Treaties: Some Issues for U.S. Ratification,* CRS Report for Congress 96-736 F (Congressional Research Service, August 23, 1996).

BOX 4.
FAIR LABOR PRACTICES AND
INTERNATIONAL FINANCIAL INSTITUTIONS

Section 526(e) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act for Fiscal Year 1995 amended title XVI of the International Financial Institutions Act by adding section 1621, titled "Encouragement of Fair Labor Practices."[1] That section directs the U.S. executive directors of the institutions to use the influence of the United States to urge the institutions to take steps to encourage fair labor practices in borrowing countries. It states:

> (a) The Secretary of the 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—
>
> > (1) to adopt policies to encourage borrowing countries to guarantee internationally recognized worker rights . . . and to include the status of such rights as an integral part of the institution's policy dialogue with each borrowing country;
> >
> > (2) in developing the policies referred to in paragraph (1), to use the relevant conventions of the International Labor Organization, which have set forth, among other things, the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, and certain minimum labor standards that take into account differences in development levels among nations including a minimum age for the employment of children, acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and
> >
> > (3) to establish formal procedures to screen projects and programs funded by the institution for any negative impact in a borrowing country on the rights referred to in paragraph (1).

The section also requires the Secretary of the Treasury to provide the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Foreign Relations with an annual report detailing the extent to which each borrowing country guarantees internationally recognized worker rights to its labor force and the progress toward achieving each of the goals described in subsection (a).

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1 Section 1701(c)(2) of the International Financial Institutions Act, as amended, defines "international financial institutions" as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation.

such efforts may say as much about the effect of negative publicity and the profitability of self-promotion as they do about altruism.

In the tradition of the Sullivan Principles for foreign businesses operating in South Africa and other voluntary guidelines for multinational corporations, the Clinton Administration has proposed five "model business principles" for U.S. firms operating overseas (see Box 5 on page 30).[53] The principles address labor, environmental, and other business practices. Along similar lines, Representative Lane Evans introduced legislation in the 104th Congress that would have required the Secretary of State to establish a set of voluntary guidelines to promote socially responsible business practices for U.S. businesses operating in foreign countries. Some U.S. companies, such as Levi Strauss and Nike, have already publicized and adopted their own codes of conduct.[54]

Proposals for new labeling programs have also come to the fore. In general, such programs are intended to tap into consumers' preferences for products made under "good" working conditions. One such program that is already up and running was founded in South Asia by the Rugmark Foundation, a group consisting of non-governmental organizations in the region, industry representatives, and international organizations. By using a special trademark—a carpet with a smiling face—to indicate that a rug has been made without child labor, the foundation has sought to discourage the use of child labor in developing countries. Manufacturers must sign a licensing agreement to obtain the trademark, after which they are legally obligated to adhere to the conditions of its use.

During the past year, attention has been drawn to the issue of child labor because of publicity alleging that clothing and sports equipment sold under celebrity endorsements were made by children working in sweatshops. In a particularly visible case, U.S. talk show host Kathie Lee Gifford testified before the Congress on the use of child labor among subcontractors producing "Kathie Lee" garments. Public pressure on firms accused of profiting from exploitative practices has lead them to act voluntarily to engage third-party investigators or other independent groups in order to certify that the working conditions in their plants, and those of their subcontractors, in developing countries are not exploitative.

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53. The Reverend Leon Sullivan introduced the Sullivan Principles in the 1970s as a private voluntary effort. They were adopted by more than 100 U.S. businesses operating in South Africa and were later codified in the Comprehensive Anti-Apartheid Act of 1986. The Organization for Economic Cooperation and Development introduced "Guidelines for Multinational Enterprises," and the International Labor Organization introduced the "Tripartite Declaration of the Principles Concerning Multilateral Enterprises and Social Policies," in 1976 and 1977, respectively. For more information on other codes of conduct, see Jorge F. Perez-Lopez, "Promoting International Respect for Worker Rights Through Business Codes of Conduct," *Fordham International Law Journal*, vol. 17, no. 1 (1993), pp. 1-47.

54. For a list of such firms, see Department of Labor, Bureau of International Labor Affairs, *The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem* (1996), Appendix C.

As this memorandum was being completed, representatives of U.S. apparel and shoe manufacturers reached a voluntary agreement on a code of conduct for their factories, both at home and abroad.[55] The code was developed under a Presidential task force to address alleged sweatshop conditions in those industries. The Workplace Code of Conduct prohibits forced labor, the employment of young children, and physical, sexual, or psychological abuse or harassment. It also requires contractors to pay a minimum wage, establish maximum working hours, and recognize the right of employees to associate freely and bargain collectively. Independent monitors will inspect factories worldwide. Companies adhering to the code will feature "No Sweat" labels on their products.

In another recent campaign, major sporting goods manufacturers, the ILO, and child-advocacy organizations (including Save the Children and UNICEF) have joined together in an effort to eliminate child labor in the production of Pakistani soccer balls. At present, an estimated 10,000 Pakistani children between the ages of 6 and 14 work up to 10 hours a day stitching the leather balls, for the equivalent of about $1.20 a day. Pakistan produces 75 percent of the world's hand-stitched soccer balls. The program was spurred by embarrassing news reports of child labor, a letter-writing and petitioning campaign, a GSP finding, and ultimately the refusal of FIFA (the international soccer federation) to endorse soccer balls unless manufacturers certified that they were not made by children. The program established a $1 million fund for paying independent monitors to inspect ball-making sites, educating children, and attempting to offset some of the income that families will lose when their children stop working.[56]

KEY ISSUES FOR THE CONGRESS

The Congress is most likely to consider the issue of worker rights in the context of new legislation for authority to negotiate trade agreements under "fast-track" procedures. In the past, such legislation, which authorizes the President to negotiate trade agreements and binds the Congress to a simple up-or-down vote, has been accompanied by a statement of goals. Whether worker rights should be explicitly included among those goals, and thus covered under the fast-track procedures, or specifically excluded will be a major issue surrounding the passage of new legislation.

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55. Paul Blustein, "Apparel Industry Reaches Agreement to End Sweatshops in U.S. and Abroad," *Washington Post*, April 14, 1997, p. A10; and Bob Herbert, "A Good Start," *New York Times*, April 14, 1997, p. A25.

56. Steven Greenhouse, "Sporting Goods Firms to Fight Sale of Soccer Balls Made by Children," *New York Times*, February 14, 1997, p. A12.

BOX 5.
VOLUNTARY CODES OF CONDUCT FOR CORPORATIONS

In 1995, the Clinton Administration circulated "model business principles" for U.S. firms operating overseas. The principles arose from concerns about human rights and labor practices in the Peoples Republic of China, but the draft did not name China specifically. (The Administration formally delinked China's trade status from its human rights record in May 1994 but promised to address China's human rights performance in the future.) The principles cover working conditions, human rights, and environmental concerns. The model business principles state:

> Recognizing the positive role of U.S. business in upholding and promoting adherence to universal standards of human rights, the Administration encourages all businesses to adopt and implement voluntary codes of conduct for doing business around the world that cover at least the following areas:
>
> 1. Provision of a safe and healthy workplace.
>
> 2. Fair employment practices, including avoidance of child and forced labor and avoidance of discrimination based on race, gender, national origin or religious beliefs; and respect for the right of association and the right to organize and bargain collectively.
>
> 3. Responsible environmental protection and environmental practices.
>
> 4. Compliance with U.S. and local laws promoting good business practices, including laws prohibiting illicit payments and ensuring fair competition.
>
> 5. Maintenance, through leadership at all levels, of a corporate culture that respects free expression consistent with legitimate business concerns, and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued and exemplified by all employees.
>
> In adopting voluntary codes of conduct that reflect these principles, U.S. companies should serve as models, encouraging similar behavior by their partners, suppliers, and subcontractors.
>
> Adoption of codes of conduct reflecting these principles is voluntary. Companies are encouraged to develop their own codes of conduct appropriate to their particular circumstances. Many companies already apply statements or codes that incorporate these principles. Companies should find appropriate means to inform their shareholders and the public

BOX 5.
CONTINUED

of actions undertaken in connection with these principles. Nothing in the principles is intended to require a company to act in violation of host country or U.S. law. This statement of principles is not intended for legislation.

Although the draft says U.S. companies should serve as role models and encourage similar standings for their partners, suppliers, and subcontractors, the prospect of a voluntary code has raised concerns that U.S. companies will lose ground in competitive international markets.[1]

When the proposal was circulated, its critics fell into two camps. On one side, some critics suggested that the proposal represented the "camel's nose"—that is, the first step toward establishing the principles in U.S. law.[2] Such concerns have some historical basis. The Sullivan Principles, which began as voluntary principles for firms operating in South Africa, were later codified in U.S. law as part of the Comprehensive Anti-Apartheid Act of 1986. On the other side, some critics argued that the Administration's model principles were too soft.[3] Compared with some narrower provisions in current law, the voluntary principles are less restrictive. In particular, U.S. law requires stronger commitments from private investors seeking guarantees from the Overseas Private Investment Corporation.

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1 See David E. Sanger, "Clinton to Urge a Rights Code for Businesses Dealing Abroad," *New York Times*, March 27, 1995, pp. D1 and D5.

2 See "U.S. Firms Divided Over Response to Administration Business Principles," Inside U.S. Trade (March 31, 1995), pp. 8-9; Sanger, "Clinton to Urge a Rights Code."

3 See "U.S. Firms Divided Over Response to Administration Business Principles"; A. M. Rosenthal, "The Limp Noodle," New York Times, March 28, 1995, p. A19; Sanger, "Clinton to Urge a Rights Code"; and Frank Swoboda, "White House Unveils Code for U.S. Businesses Abroad," *Washington Post*, May 27, 1995, pp. F1-F2.

The Congress may also turn its attention to the criteria in preferential and nonpreferential programs and to more targeted measures aimed at U.S. multinational companies and countries that do not prohibit slavery or child labor. Specifically, the issue of whether to extend most-favored-nation (MFN) trade status to China will involve a review of China's record on human rights, and most likely on worker rights as well. In view of the findings of the Treasury Department's report on labor issues and the international financial institutions—as well as other recent statements, such as the Singapore Declaration—it seems unlikely that multilateral organizations will adopt a social clause in the near future.

The Debate on Fast-Track Authority

The Administration has indicated its desire to obtain new fast-track authority to negotiate trade agreements with other countries. With such authority, the President

can submit a trade agreement to the Congress with the guarantee of a simple up-or-down vote within 90 days. Fast-track authority is considered necessary to assure foreign negotiators that the deals they make with U.S. negotiators will not be changed by Congressional amendments.

In the wake of NAFTA, which included side agreements on labor and the environment, the scope of issues covered under fast-track authority has become the subject of controversy. Over the past decade, U.S. law has addressed worker-rights goals as among the "principal trade negotiating objectives" of the United States. But until NAFTA, those goals had little tangible recognition in the agreements that were reached. Following NAFTA, a rift has developed between those U.S. policymakers who adamantly insist that new fast-track authority should not cover labor or the environment—to the point that they are seeking a specific exclusion—and those who just as adamantly insist that it should cover both issues.[57]

Trade Relations with China

Although the domestic policies of most U.S. trading partners in the developing world are unlikely to directly affect the United States economically, China stands out as a possible exception. It accounts for a substantial portion of world trade in some goods, and it has a record of significant human rights and worker-rights abuses. Those factors taken together mean that China's domestic policies might affect U.S. markets.

Under current law, U.S. extension of nondiscriminatory tariff treatment to China (most-favored-nation status) is subject to annual renewal, usually in late spring. Accordingly, the Congress is likely to review China's trade status this year. Past reviews have included consideration of China's human rights policy and alleged unfair trade practices. Some legislators have argued that China should be denied MFN treatment for human rights or other policy reasons, whereas others have argued that trade relations should not be conditioned on humanitarian or political concerns.

Legislation to change China's trade status permanently and end the requirement for annual MFN renewal may also come before the 105th Congress. Such legislation could provide a vehicle for efforts to influence China's human rights and labor policies. Other, more narrowly targeted bills may also address labor issues in China. One bill—the Chinese Slave Labor Act (H.R. 320)—already introduced in the 105th Congress by Representative Gerald Solomon, would prohibit the importation of articles produced in China by forced labor.

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57. See Vladimir N. Pregelj, *Fast-Track Implementation of Trade Agreements: History, Status, and Other Options*, CRS Report for Congress 97-41 E (Congressional Research Service, December 27, 1996).

Other Proposals That Would Impose Sanctions

The Congress may consider legislation to deal with specific international labor issues that have gained recent attention, such as child labor and slavery. Observers expect much of the legislation introduced in the 104th Congress that dealt with child labor abuses to be reintroduced in the 105th Congress. Among those bills are the International Child Labor Elimination Act, the Working Children's Human Rights Act, and the Child Labor Deterrence Act. In general, such legislation would impose economic sanctions on countries that allow child labor by prohibiting the United States from importing any article produced by such labor. Some bills would place additional restrictions on U.S. bilateral and multilateral assistance.

Reviewing Preferential Trade and Investment Programs

The 105th Congress is likely to consider proposals to renew the authority of existing trade and investment programs—in particular, the Generalized System of Preferences and the Overseas Private Investment Corporation. In addition, the Congress may examine the special tariff treatment that the United States provides to Caribbean Basin countries. As noted in the previous section, each of those programs includes criteria for adherence by participating countries to international worker rights.

Although the GSP and OPIC have provided a forum for publicizing concerns about a country's labor practices, and countries have been denied benefits because of negative findings, the direct economic value of those programs to many recipient countries is not compelling. For many recipient countries, including those that have been denied benefits, the two programs account for a small share of their total trade and investment, and an even smaller share of their national income. (For some industries, however, the programs account for larger shares of trade and investment.)

Whatever economic leverage those programs may have had in the past is waning, for at least two reasons. First, the United States' nonpreferential tariff rates are declining, so the GSP program has become less important in influencing which countries become U.S. trading partners and how those countries behave. Second, increased budgetary pressures and, more generally, the expectation of closer Congressional scrutiny of the GSP and OPIC programs means that they face uncertain futures and cannot be counted on as policy levers in the future. The GSP program has lapsed three times in the past five years and will expire again in May 1997. And OPIC, which came under fire in the 104th Congress, has received little support in the 105th Congress.

Despite their declining economic importance, however, the overall leverage of those programs may still be significant. One reason is that negative publicity

about labor practices in a recipient country can deter firms in the United States and elsewhere from doing business there, which gives that country an economic incentive to improve its labor standards. In addition, such publicity may have other, non-economic consequences. As the ILO has found over the past 75 years, many nations respond to the spotlight of public information even in the absence of an economic penalty. Countries tend to value their reputation for more than its importance to trade and investment.

Encouraging Private Voluntary Programs

The spotlight of public information may encourage other countries to change their domestic policies, but U.S. policy also shines that spotlight on U.S. firms in order to persuade them to change their business practices. In some cases, negative publicity—or the fear of it—prompts U.S. companies to participate in programs to promote worker rights, adopt higher standards in their overseas operations, or take action against offending subcontractors.

Noting that some U.S. multinational corporations have already adopted voluntary codes of conduct, Representative Lane Evans introduced legislation in the previous Congress to require the Secretary of State to establish a set of voluntary guidelines that U.S. companies operating in foreign countries could follow to promote socially responsible business practices. At a minimum, the guidelines would be based on principles contained in the OECD's "Guidelines for Multinational Enterprises," the ILO's "Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy" and its child-labor standards, the standards on prison labor contained in article XX of the GATT, the Sullivan Principles, the MacBride Principles, and similar codes of conduct.

APPENDIX A: STATE DEPARTMENT GUIDELINES FOR REPORTING ON WORKER RIGHTS

U.S. law defines "internationally recognized worker rights" as including the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. This appendix reproduces text from the Department of State's annual report on human rights practices.[1]

Right of Association

" 'The right of association' has been defined by the International Labor Organization (ILO) to include the right of workers and employers to establish and join organizations of their own choosing without previous authorization; to draw up their own constitutions and rules, elect their representatives, and formulate their programs; to join in confederations and affiliate with international organizations; and to be protected against dissolution or suspension by administrative authority."[2]

"The right of association includes the right of workers to strike. While strikes may be restricted in essential services (i.e., those services the interruption of which would endanger the life, personal safety, or health of a significant portion of the population) and in the public sector, these restrictions must be offset by adequate guarantees to safeguard the interests of the workers concerned (e.g., machinery for mediation and arbitration; due process; and the right to judicial review of all legal actions). Reporting on restrictions affecting the ability of workers to strike generally includes information on any procedures that may exist for safeguarding workers' interests."

Right to Organize and Bargain Collectively

" 'The right to organize and bargain collectively' includes the right of workers to be represented in negotiating the prevention and settlement of disputes with employers; the right to protection against interference; and the right to protection against acts of antiunion discrimination. Governments should promote machinery for voluntary negotiations between employers and workers and their organizations. Reporting on

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1. Department of State, *Country Reports on Human Rights Practices for 1996* (January 30, 1997), Appendix B (available at http://www.state.gov/www/issues/human_rights/1996_hrp_report/appendb.html).

2. Rights of association, organization, and collective bargaining are commonly regarded as basic human rights. They are addressed in major ILO conventions as well as in provisions of the Universal Declaration of Human Rights; the International Covenant on Economic, Social, and Cultural Rights; and the International Covenant on Civil and Political Rights.

the right to organize and bargain collectively includes descriptions of the extent to which collective bargaining takes place and the extent to which unions, both in law and practice, are effectively protected against antiunion discrimination."

Prohibition of Forced or Compulsory Labor

" 'Forced or compulsory labor' is defined as work or service exacted from any person under the menace of penalty and for which the person has not volunteered. 'Work or service' does not apply in instances in which obligations are imposed to undergo education or training. 'Menace of penalty' includes loss of rights or privileges as well as penal sanctions. The ILO has exempted the following from its definition of forced labor: compulsory military service, normal civic obligations, certain forms of prison labor, emergencies, and minor communal services. Forced labor should not be used as a means of (1) mobilizing and using labor for purposes of economic development; (2) racial, social, national, or religious discrimination; (3) political coercion or education, or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social, or economic system; (4) labor discipline; or (5) as a punishment for having participated in strikes. Constitutional provisions concerning the obligation of citizens to work do not violate this right so long as they do not take the form of legal obligations enforced by sanctions and are consistent with the principle of 'freely chosen employment.' "[3]

Minimum Age for Employment of Children

" 'Minimum age for employment of children' concerns the effective abolition of child labor by raising the minimum age for employment to a level consistent with the fullest physical and mental development of young people. In addition, young people should not be employed in hazardous conditions or at night."

Acceptable Conditions of Work

" 'Acceptable conditions of work' refers to the establishment and maintenance of machinery, adapted to national conditions, that provides for minimum working standards, i.e., wages that provide a decent living for workers and their families; working hours that do not exceed 48 hours per week, with a full 24-hour rest day; a

3. The International Labor Organization provides two major conventions on forced or compulsory labor: convention 105 and convention 29. In addition, the U.N. Covenant on Civil and Political Rights prohibits forced or compulsory labor, and the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights prohibit slavery and servitude without exception.

specified annual paid holiday; and minimum conditions for the protection of the safety and health of workers. Differences in levels of economic development are taken into account in the formulation of internationally recognized labor standards. For example, many ILO standards concerning working conditions permit flexibility in their scope and coverage. They may also permit countries a wide choice in their implementation, including progressive implementation, by enabling countries to accept a standard in part or subject to specified exceptions. Countries are expected to take steps over time to achieve the higher levels specified in such standards. It should be understood, however, that this flexibility applies only to internationally recognized standards concerning working conditions. No flexibility is permitted concerning the acceptance of the basic principles contained in human rights standards, i.e., freedom of association, the right to organize and bargain collectively, the prohibition of forced labor, and the absence of discrimination."

APPENDIX B: INTERNATIONAL ORGANIZATIONS AND AGREEMENTS ON WORKER RIGHTS

Concerns about worker rights span two centuries of economic and political change. According to one analyst, "concerns about basic rights and specific practices surfaced in the nineteenth century, with the spread of industrialization and international commerce."[1] Some early advocates of international standards for labor believed that conflicts between domestic policy and international competition would undermine both.[2] They, like many contemporary policymakers, voiced economic, humanitarian, and political concerns. Such advocates provided the groundwork for the International Labor Organization (ILO) and other agencies that deal with worker rights.

Early Support for Worker Rights

Some of the first international treaties on worker rights sought to end slavery and the slave trade. Fay Lyle of the Department of Labor provides a historical overview:

> Initial international treaties relating to worker rights [Peace Treaties of Paris of 1814 and 1815, the Declaration of the Congress of Vienna of 1815, and the Declaration of Verona of 1822] incorporated the general idea that the slave trade was abhorrent to justice and humanity, admonished nations worldwide to prohibit it, and enjoined the signatory countries to take action against it. Later treaties [Treaties of 1831 and 1833 between France and Great Britain, the Treaty of London of 1841 and the Treaty of Washington of 1862] covered joint action at sea to suppress the slave trade and afforded mutual rights to visit, search, and capture ships suspected of participating in slave trade enterprises. Finally, in the late nineteenth century, the General Act of the Berlin Conference of 1885 and the General Act of the Brussels Conference of 1890 attempted to suppress the institution of slavery itself as well as slave trading. These were the first attempts to regulate international trade on moral grounds.[3]

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1. Göte Hansson, *Social Clauses and International Trade* (New York: St. Martin's Press, 1983), p. xx.

2. Some studies refer to "international legislation" rather that "international standards." As used in this appendix, "international standards" refers to standards for worker rights that bind two or more countries, including those established under the auspices of international agencies. Ernest Mahaim, "The Historical and Social Importance of International Labor Legislation," in James T. Shotwell, ed., *The Origins of the International Labor Organization*, vol. 1, *History* (New York: Columbia University Press, 1934), p. 12, states: "The term 'international labor legislation' is currently used today to describe the body of conventions accepted by a greater or smaller number of states and laying down legal rules for labor questions."

3. Fay Lyle, *Worker Rights in U.S. Policy* (Department of Labor, Bureau of International Labor Affairs, May 1991), p. 1.

Some analysts describe Robert Owen, a British industrialist, as the first advocate of international labor standards because he sought protective measures and a social commission during the Congress of the Holy Alliance in 1818.[4] Other analysts give more credit to Charles Hindley, a British politician; Daniel Legrand, a French industrialist; and Jerome Blanqui, a French economist. Those men saw potential conflicts between international competition and domestic labor standards.[5] An overview of the origins of the ILO presents three historical arguments for international labor standards. The first is humanitarian, the second is political, and the third is economic:

- to improve "the harsh lot of the working masses,"
- to "consolidate social peace in industrializing countries," and
- to equalize "conditions for international competition."[6]

Regarding international competition, some of the early proponents of international labor standards "sought to make it clear that an international regulation of labor would prevent countries which had protective national legislation in labor matters from paying doubly for their social policies in the form of economic disadvantage in international trade."[7]

The Berne conferences on labor—held in Berne, Switzerland, in 1905 and 1906—marked a transition in the history of international policy.[8] The conferees produced two international conventions: one to prohibit women from working at night, and another to prohibit the use of white phosphorous in the production of matches. The first convention addressed hours of work and the second occupational health and safety. Several European countries eventually ratified both conventions.

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4. For more on the early history of worker rights, see Asad Alam, "Labor Standards and Comparative Advantage" (Ph.D. dissertation, Columbia University, 1992), pp. 10-14; Victor-Yves Ghebali, "From Philanthropy to Foundation: The Roots of the ILO," *World of Work*, no. 8 (June 1994), pp. 8-9; Hansson, *Social Clauses and International Trade*, pp. 11-13; and Mahaim, "The Historical and Social Importance of International Labor Legislation."

5. "The point which should be noted is that, from the outset, the idea of international labor legislation is bound up with the idea that competition between manufacturers in different countries is an obstacle in the way of establishment and development of national legislation." Mahaim, "The Historical and Social Importance of International Labor Legislation," p. 4.

6. Ghebali, "From Philanthropy to Foundation," p. 9.

7. Ibid.

8. For a brief history of the Berne conferences, see Ghebali, "From Philanthropy to Foundation," pp. 10-11; Hansson, *Social Clauses and International Trade*, pp. 17-18; and Mahaim, "The Historical and Social Importance of International Labor Legislation," pp. 9-12. Ghebali identifies Berne as the source of the first conventions on international labor regulation.

The United States did not participate in the Berne conferences, but it adopted an independent ban on imports and exports of white phosphorous matches and a tax on their domestic production in 1912.

The International Labor Organization

The International Labor Organization was founded in Part XIII of the Treaty of Versailles in 1919. The ILO, which is now a specialized agency of the United Nations, sets international standards for working conditions, promotes compliance with those standards, and supports technical assistance in developing countries. As such, it covers a wide range of sectoral and global issues.

History and Structure. In 1919, the conferees of the Paris Peace Conference appointed the Commission on International Labor Legislation to establish a charter for the first permanent international labor organization. The commission was directed to "inquire into the conditions of employment from the international aspect, and to consider the international means necessary to secure common action on matters affecting conditions of employment, and to recommend the form of a permanent agency to continue such inquiry and consideration in co-operation with and under the direction of the League of Nations."[9]

The Treaty of Versailles founded the ILO as a permanent organization associated with the League of Nations.[10] Part I of the treaty, known as the Covenant of the League of Nations, called for an international organization "to secure and maintain fair and humane conditions of labor for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend."[11] Part XIII of the treaty, which formed the constitution of the ILO, established the structure and composition of the organization. It created a General Conference of Representatives of the Members and an International Labor Office controlled by a Governing Body. (The conference is the legislative and policy-making branch of the ILO, the Governing Body is the executive council, and the International Labor Office is the administrative branch.) Part XIII also set up a tripartite governing structure based on representation by governments, employers,

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9. International Labor Office, *Official Bulletin,* vol. 1 (1923), p. v.

10. For more on the origins, history, and structure of the ILO, see Lois McHugh, *Trade Agreements and the International Labor Standards of the ILO,* CRS Report for Congress 94-535 F (Congressional Research Service, June 30, 1994); and Diana Vincent-Daviss, "Human Rights Law: A Research Guide to the Literature—Part III: The International Labor Organization and Human Rights," *Journal of International Law and Politics,* vol. 15 (Fall 1982).

11. See Part I of the Treaty of Versailles, Article 23, reprinted in International Labor Office, *Permanent Labour Organization Constitution and Rules* (Geneva: ILO, 1923).

and workers; it identified the original members of the League of Nations as the original members of the ILO; and it provided ILO membership for all future members of the league.[12] Other members, such as the United States, were admitted in later years. (The United States first joined in 1934, withdrew in 1977, and rejoined in 1980.) The ILO has grown since 1919, with a current total of 174 members, but its basic structure has not changed.

The founders of the ILO were motivated, in the words of Part XIII of the treaty, "by sentiments of justice and humanity as well as the desire to secure the permanent peace of the world." (See Box B-1 on page 44 for the text of Part XIII.) The constitution of the ILO asserted the necessity of social justice ("such a peace can be established only if it is based on social justice"), drawing a link between economic, humanitarian, and political concerns ("conditions of labor 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"). The founders created the ILO to improve those conditions and to further "the well-being, physical, moral and intellectual, of industrial wage-earners."[13]

The ILO focused initially on setting international standards for conditions of employment, labor protection, social security, and occupational health and safety.[14] The first session of the International Labor Conference convened in Washington, D.C., on October 29, 1919, with 123 delegates representing 40 countries. It adopted standards for hours of work, unemployment, reciprocity of treatment for foreign workers, maternity protection, restrictions on night work for women and children, various health concerns, and the minimum age for industrial employment. In 1944, the ILO adopted the Declaration of Philadelphia as an annex to its constitution (see Box B-2 on page 46). The declaration embraced the doctrine of social justice while establishing new and broader economic and social objectives.[15] In 1946, the International Labor Organization became a specialized agency of the United Nations.

Contemporary Activities. Drawing from the founding principles of the Treaty of Versailles and the broader objectives of the Declaration of Philadelphia, the ILO sets international standards for working conditions, some of which it identifies as

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12. For more on membership, see Article 387, Constitution of the International Labor Organization, Part XIII of the Treaty of Versailles, reprinted in International Labor Office, *Official Bulletin,* vol. 1.

13. Treaty of Versailles, Part XIII, Article 427.

14. See Vincent-Daviss, "Human Rights Law," pp. 215-216.

15. Ibid., pp. 216-217. As Vincent-Daviss notes, the ILO extended its reach from industrial workers to workers in all occupations and, in some cases, to the entire population.

standards for "basic human rights."[16] The organization uses formal "conventions" and less formal "recommendations" to promote standards.[17] Conventions, which are like international treaties, are binding for the members that ratify them, although compliance is voluntary, as discussed below. (The principle of freedom of association is an exception; it applies to all members regardless of ratification.) Recommendations, which are not binding, provide guidance for domestic policy. The ILO also furnishes countries with technical assistance, supporting development programs, educational activities, advisory missions, and research.

As of January 1997, the ILO had adopted 180 conventions and recorded 6,392 ratifications. Its major conventions are among those most ratified; they include the conventions covering freedom of association, the right to organize and to collective bargaining, forced labor, nondiscrimination, and child labor.[18] Other conventions address wages, hours of work, occupational safety and health, social security, migrant labor, and other issues. Some conventions address the more narrow concerns of a particular sector, such as the protection of dock workers employed in loading and unloading operations (convention 152). The United States has ratified 12 conventions, including one major one—convention 105 on the abolition of forced labor (see Table B-1 on page 48).

The ILO cannot force compliance, but by focusing attention on the issue, it plays an important part in international efforts to promote worker rights.[19] The ILO examines reports from governments and communications from workers' and employers' organizations to determine whether a member country has met the terms of the conventions it has ratified. If the ILO finds that a member has persistently failed to meet those terms, it may publish a "special paragraph" in its report to the International Labor Conference, which highlights cases where previous discussions have had little effect. Such paragraphs are considered a serious condemnation. The ILO may also recommend that the country in question request an ILO advisory

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16. Specifically, the ILO identifies its standards for freedom of association, forced labor, and equality of opportunity and employment as standards for "basic human rights." See International Labor Organization, *Summaries of International Labor Standards*, 2nd ed. (Geneva: International Labor Office, 1991), p. 123.

17. The discussion of conventions and recommendations is based on Article 19 of the Constitution of the International Labor Organization, as amended, reprinted in *Constitution of the International Labor Organization and Standing Orders of the International Labor Conference* (Geneva: International Labor Office, December 1992), and on various other ILO publications.

18. For another list of major conventions, which includes freedom of association, the abolition of forced labor, nondiscrimination, equal remuneration, employment policy, social security, migrant workers, labor inspection, and tripartite consultation, see Nicolas Valticos, "The Golden Age of Standards," *World of Work*, no. 8 (June 1994), p. 13.

19. This discussion is based on McHugh, *Trade Agreements and the International Labor Standards of the ILO*, pp. 6-8. For more information, McHugh cites an unpublished paper written by the Department of Labor's Bureau of International Labor Affairs in July 1993.

BOX B-1.
THE CONSTITUTION OF THE ILO
(PART XIII OF THE TREATY OF VERSAILLES)

Part XIII of the 1919 Treaty of Versailles formed the constitution of the International Labor Organization (ILO) and established its founding principles and procedures. Section I, titled "Organization of Labor," asserted the importance of social justice as a foundation for universal peace, the need to improve specific conditions of labor that produce unrest and threaten peace, and the difficulty of improving the conditions of labor in one country when inhumane conditions persist in others. It states:

> Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based on social justice;
>
> And whereas conditions of labor 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 hours of work, including the establishment of a maximum working day, the regulation of the labor 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 of old age and injury, protection of the interests of workers when employed in countries other than their own, 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 labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries.
>
> The High Contracting Parties, moved by sentiments of justice and humanity as well as the desire to secure the permanent peace of the world, agree to the following . . . .

Section II, titled "General Principles," recognized that "differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labor difficult of immediate attainment" but held "that labor should not be regarded merely as an article of commerce." On that basis, the treaty established certain "methods and principles for regulating labor conditions which all industrial communities should endeavor to apply, so far as their special circumstances will permit." Among those methods and principles, the treaty featured nine of particular importance:

> *First.* The guiding principle above enunciated that labor should not be regarded merely as a commodity or article of commerce.
>
> *Second.* The right of association for all lawful purposes by the employed as well as by the employers.

BOX B-1.
CONTINUED

Third. The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth. The adoption of an eight-hour day or a forty-eight- hour week as the standard to be aimed at where it has not already been attained.

Fifth. The adoption of a weekly rest of at least twenty-four hours, which should include Sunday whenever practicable.

Sixth. The abolition of child labor and the imposition of such limitations on the labor of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh. The principle that men and women should receive equal remuneration for work of equal value.

Eighth. The standard set by law in each country with respect to the conditions of labor should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth. Each State should make provisions for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

SOURCES: Part XIII of the Treaty of Versailles reprinted in International Labor Office, *Official Bulletin*, vol. 1 (1923). The text has also been printed and discussed in a number of secondary sources, including Göte Hansson, *Social Clauses and International Trade* (New York: St. Martin's Press, 1983).

mission, which provides technical assistance to promote compliance with the standard. In addition, the ILO considers complaints under two special procedures. One procedure applies to the principle of freedom of association, and the other applies to all conventions.

BOX B-2.
THE PHILADELPHIA DECLARATION OF 1944

The General Conference of the International Labor Organization (ILO) adopted the Declaration of Philadelphia in 1944 as an annex to the organization's constitution and a statement of its aims, purposes, and principles. The declaration has been described as "the first universal charter of fundamental human rights to have been adopted by an international organization." The conference reaffirmed the fundamental principles on which the ILO was based—in particular, that:

- "Labor is not a commodity,"
- "Freedom of expression and of association are essential to sustained progress,"
- "Poverty anywhere constitutes a danger to prosperity everywhere," and
- "The war against want requires to be carried on with unrelenting vigor within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare."

The conference also reaffirmed the need for social justice as a foundation for lasting peace. On that basis, the declaration asserts specific principles of social justice, the aim of national and international policy, and the role of the ILO:

- "All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity."
- "The attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy."
- "All national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective."
- It is a responsibility of the International Labor Organization to examine and consider all international economic and financial policies and measures in light of this fundamental objective."
- "In discharging the tasks entrusted to it the International Labor Organization, having considered all relevant economic and financial factors, may include in its decisions and recommendations any provisions which it considers appropriate."

In addition, the conference recognized the "solemn obligation" of the ILO to promote programs with certain economic and social objectives, such as:

BOX B-2.
CONTINUED

- "Full employment and the raising of standards of living;"
- "The employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;"
- "The provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labor, including migration for employment and settlement;"
- "Policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;"
- "The effective recognition of the right of collective bargaining, the cooperation of management and labor in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;"
- "The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;"
- "Adequate protection for the life and health of workers in all occupations;"
- Provision for child welfare and maternity protection;"
- "The provision of adequate nutrition, housing and facilities for recreation and culture;" and
- "The assurance of equality of educational and vocational opportunity."

The conference pledged the ILO's full cooperation with such international organizations as might be entrusted with promoting "the fuller and broader utilization of the world's productive resources" (including a variety of specific economic measures, such as those to promote production and consumption, economic stability and development, and international trade) and "the health, education, and well-being of all peoples." The conference also affirmed the universality of the declaration's principles, although it acknowledged that its members faced unique and varied circumstances: "the manner of [the principles'] application must be determined with due regard to the stage of social and economic development reached by each people."

SOURCE: The Declaration of Philadelphia reprinted in *Constitution of the International Labor Organization and Standing Orders of the International Labor Conference* (Geneva: International Labor Office, 1992).

TABLE B-1. ILO CONVENTIONS THAT THE UNITED STATES HAS RATIFIED

Number	Title and Year of Convention
53	Officer's Competency Certificates Convention, 1936
54[a]	Holidays with Pay (Sea) Convention, 1936
55	Shipowners Liability (Sick and Injured Seamen) Convention, 1936
57[b]	Hours of Work and Manning (Sea) Convention, 1936
58	Minimum Age (Sea) Convention, 1936
74	Certificate of Able Seamen Convention, 1946
80	Final Articles Revision Convention, 1946
105[c]	Abolition of Forced Labor Convention, 1957
144	Tripartite Consultation (International Labor Standards) Convention, 1976
147	Merchant Shipping (Minimum Standards) Convention, 1976
150	Labor Administration Convention, 1978
160	Labor Statistics Convention, 1985

SOURCE: International Labour Conference, 81st Session, *Report III (Part 5): List of Ratifications by Convention and by Country, as of December 31, 1993* (Geneva: International Labor Office, 1994), and other publications of the International Labor Organization.

NOTE: The United States was a member of the International Labor Organization from 1934 to 1977 and from 1980 to the present.

a. Convention 54 is no longer open to ratification (a revising convention has entered into force).

b. Convention 57 was revised by a later convention.

c. Convention 105 has been identified as a "core" convention.

The United Nations

The United Nations addresses worker rights in the principal documents of the International Bill of Human Rights.[20] In 1948, the United Nations adopted the Universal Declaration of Human Rights to serve as "the common standard of achievement for all peoples and nations."[21] The International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) followed in 1966. Those three documents, which collectively form the heart of the International Bill of Human Rights, reject slavery and discrimination and affirm freedom of association, the right to organize, the right to just and favorable working conditions, and other rights of employment. They treat worker rights as among "the equal and inalienable rights of all members of the human family."

The United Nations describes the Universal Declaration as having "primarily moral authority," without binding force. The two covenants, by contrast, are international treaties; like the conventions of the ILO, they bind the countries that ratify them. As of June 30, 1994, 129 members of the United Nations had ratified the ICESCR, and 126 members had ratified the ICCPR. The United States signed both covenants in 1977. It ratified the ICCPR in 1992 but has not ratified the other.

The Universal Declaration of Human Rights. The Universal Declaration rejects discrimination and slavery and asserts the right to freedom of peaceful assembly and association:

Article 1 "All human beings are born free and equal in dignity and rights."

Article 2 "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[22]

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20. Other U.N. documents also address aspects of worker rights. For example, see Article 32 (on the employment of children) of the U.N. Convention on the Rights of the Child (1989).

21. See the preamble to the Universal Declaration of Human Rights in United Nations, *The International Bill of Human Rights* (New York: United Nations, 1993), p. 4. This discussion draws from the introductory material provided on pp. 1-3.

22. For other explicit prohibitions of discrimination based on race, color, sex, language, religion, or other factors, see the opening statement of the Universal Declaration of Human Rights, which asserts the "equal rights of men and women," and Articles 7, 16(1), 23(2), and 25. Such provisions are consistent with provisions found in the charter of the United Nations and subsequent conventions. The charter asserts the "equal rights of men and women" and "the principle of equal rights," seeking human rights and fundamental freedoms "for all without distinction as to race, sex, language or religion." See Charter of the United Nations (1945), Preamble and Article 1.

Article 4 "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

Article 20 (1) "Everyone has the right to freedom of peaceful assembly and association."

(2) "No one may be compelled to belong to an association."

The declaration also addresses labor practices and economic and social conditions:

Article 22 "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."

Article 23 (1) "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

(2) "Everyone, without any discrimination, has the right to equal pay for equal work."

(3) "Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."

(4) "Everyone has the right to form and to join trade unions for the protection of his interests."

Article 24 "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."

Article 25 (1) "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Articles 25(2) and 26(1) address the rights of children—to the extent that they call for social protection for children and the right to education, including free and compulsory elementary education—but the declaration does not address child labor directly. However, a policy of compulsory elementary education, if adopted and enforced, would eliminate the possibility of children's full-time employment.

The International Covenant on Economic, Social, and Cultural Rights. The ICESCR also rejects discrimination, but it does not deal with slavery as the International Covenant on Civil and Political Rights does.[23] Part III of the ICESCR addresses the right to work, the right to just and favorable conditions of work, the right to unionize and strike, the right to social security, the rights of children in employment, the right to an adequate standard of living, and the right to education (including free and compulsory primary education).

Article 6 (1) "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard these rights."[24]

(2) "The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual."

Article 7 "The States Parties to the present Covenant recognize the right to work of everyone to the enjoyment of just and favorable conditions of work, which ensure, in particular:

(a) remuneration which provides all workers, as a minimum, with: (i) fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those being enjoyed by men, with equal pay for equal work; (ii) a decent living for themselves and their families in accordance with the provisions of the present Covenant;

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23. See Articles 2(2) and 3 for statements concerning "discrimination of any kind" and the "equal rights of men and women." For other explicit prohibitions of discrimination based on race, color, sex, language, religion, or other factors, see Articles 7(a) and 10(3).

24. Unlike the Universal Declaration of Human Rights, the ICESCR does not explicitly assert the right to protection against unemployment.

(b) safe and healthy working conditions;

(c) equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."

Article 8 (1) "The States Parties to the present Covenant undertake to ensure:

(a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) the right of the trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) the right to strike, provided that it is exercised in conformity with the laws of the particular country."[25]

Article 9 "The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."

Article 10 (2) "Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period

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25. Article 8(2) permits "the imposition of lawful restrictions" on the exercise of the rights defined in Article 8(1) by members of the armed forces, police, or administration of the state, and Article 8(3) establishes the primacy of the International Labor Organization's convention of 1948 on freedom of association and protection of the right to organize.

working mothers should be accorded paid leave or leave with adequate social security benefits."

(3) "Special measures of protection and assistance should be taken on behalf of children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which paid employment of child labor should be prohibited and punishable by law."

Article 11 (1) "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

The ICESCR also establishes a consultative and informational relationship between the Secretary-General, the Economic and Social Council, and the specialized agencies of the United Nations and contains a clause requiring compatibility between the provisions of the covenant, the Charter of the United Nations, and the constitutions of the specialized agencies (see Part IV of the ICESCR, various articles).[26]

The International Covenant on Civil and Political Rights. The ICCPR reasserts the principle of nondiscrimination and reaffirms the prohibition of slavery contained in the Universal Declaration of Human Rights.[27] It also prohibits forced or compulsory labor, except under certain conditions:

Article 8 (1) "No one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited."

(2) "No one shall be held in servitude."

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26. The Economic and Social Council was established in 1945 as a principal organ of the United Nations by the Charter of the United Nations (Article 7).

27. See Articles 2(1) and 3 for statements concerning nondiscrimination and gender equality. For other explicit prohibitions of discrimination based on race, color, sex, language, religion, or other factors, see Articles 4(1), 20(2), 24(1), 25, and 26. The following note accompanies the text of the covenant: "Contents of this booklet, other than the section on the applications of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to Hong Kong, are extracted from the 'International Bill of Human Rights' Fact Sheet No. 2 published by the Centre for Human Rights, United Nations Office at Geneva."

(3)(a) "No one shall be required to perform forced or compulsory labor;

(b) "Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;

(c) "For the purpose of this paragraph the term 'forced or compulsory labor' shall not include: (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention; (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors; (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community; (iv) Any work or service which forms part of normal civic obligations."

The ICCPR also addresses the right of peaceful assembly and the rights to freely associate and unionize:

Article 21 "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order . . . the protection of public health or morals or the protection of the rights and freedoms of others."

Article 22 (1) "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."

(2) "No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order . . . the protection of public health or morals or the protection of the rights and freedoms of others. This article shall

not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."[28]

The ICCPR establishes a Committee on Human Rights and an informational link between it and the Secretary-General, the Economic and Social Council, and the specialized agencies of the United Nations (see Articles 28 and 40). It too contains a compatibility clause covering the contents of the covenant and those of the Charter of the United Nations and the constitutions of the specialized agencies (see Article 46).

Provisions in Trade Agreements

Both the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization cite higher standards of living and full employment as goals of trade and economic relations, which some analysts have interpreted as references to worker rights.[29] More specifically, Article XX of the GATT permits restrictive measures relating to the products of prison labor.[30]

Of historical interest, the countries that established the GATT undertook to observe some of the general principles of the Havana Charter—which would have set up an International Trade Organization—pending their acceptance of the charter.[31] (The Havana Charter was ultimately not ratified.) Among those principles were the following:

> The members [of the proposed International Trade Organization] recognize that . . . all countries have a common interest in the achievement and maintenance of fair labor standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit. The members recognize that unfair labor conditions, particularly in production for export, create

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28. Article 22(3) establishes the primacy of the International Labor Organization's convention of 1948 on freedom of association and protection of the right to organize.

29. See John Cavanagh and others, *Trade's Hidden Costs: Worker Rights in a Changing World Economy* (Washington, D.C.: International Labor Rights Education and Research Fund, 1988), pp. 44-45.

30. The WTO agreement incorporates this provision in Annex 1A. See the General Agreement on Tariffs and Trade (1947), Article XX, as amended through 1966; and the Agreement Establishing the World Trade Organization (1994), Article II and Annex 1A. In addition, Article XXIII of the Agreement on Government Procurement (also associated with the WTO agreement) permits restrictive measures relating to the products or services of prison labor.

31. See Hansson, *Social Clauses and International Trade*, pp. 22-23; Cavanagh and others, *Trade's Hidden Costs*, pp. 44-45; the General Agreement on Tariffs and Trade, Article XXIX, as amended through 1966; and the Agreement Establishing the World Trade Organization, Article II and Annex 1A.

difficulties in international trade, and accordingly, each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.[32]

32. Reprinted in Hansson, *Social Clauses and International Trade*, p. 22, and Cavanagh and others, *Trade's Hidden Costs*, p. 45.

APPENDIX C: WORKER-RIGHTS PETITIONS, ACTIONS, AND DECISIONS UNDER THE U.S. GENERALIZED SYSTEM OF PREFERENCES

The table below provides a summary of findings for beneficiary countries of the Generalized System of Preferences program through July 1996. Most of these countries were named in petitions filed under the annual review of the program, but some were investigated under the general review completed in 1987.

			Decision (Effective date)			
Country	Year of Petition	Action on Petition	Benefits Retained	Benefits Removed or Suspended	Benefits Reinstated	Review Ongoing
Africa						
Benin	1989	Accepted	X (1990)			
Central African Republic	1987	Accepted		X (1989)		
	1990	Accepted			X (1991)	
Liberia	1988	Accepted		X (1990)		
Malawi	1992	Accepted	X (1993)			
Mauritania	1991	Accepted		X (1993)		
Morocco	1993	Rejected				
Sudan	1990	Accepted		X (1991)		
Zaire	G.R.	n.a.	X (1987)			
Zambia	1987	Rejected				
Asia and the Pacific						
Bangladesh	1990	Accepted	X (1991)			
	1992	Rejected				
Burma (Myanmar)	1988	Accepted		X (1989)		
Fiji	1992	Accepted	X (1993)			
Indonesia	1987	Accepted	X (1987)			
	1988	Rejected				
	1989	Accepted	X (1989)			
	1991	Rejected				
	1992	Accepted[a]				
Malaysia	1988	Accepted	X (1988)			
	1990	Rejected				
	1993[b]	n.a.				
Maldives	1993	Accepted		X (1995)		
Nepal	1989	Accepted	X (1990)			
Pakistan	1993	Accepted		X (1996)[c]		
Philippines	G.R.	n.a.	X (1987)			
	1988	Rejected				
	1989	Rejected				
	1995[d]	n.a.				

(Continued)

Country	Year of Petition	Action on Petition	Decision (Effective date) Benefits Retained	Benefits Removed or Suspended	Benefits Reinstated	Review Ongoing
Singapore	1987	Rejected				
South Korea	G.R.	n.a.	X (1987)			
	1987	Accepted	X (1987)			
Sri Lanka	1991	Accepted	X (1991)			
	1993	Rejected				
Taiwan	G.R.	n.a.	X (1987)			
	1987	Accepted	X (1987)			
Thailand	1987	Accepted	X (1987)			
	1988	Rejected				
	1989	Accepted	X (1989)			
	1991	Accepted				X
Europe						
Romania	G.R.	n.a.		X (1987)		
	1994	Accepted			X (1994)	
Turkey	1987	Accepted	X (1987)			
	1988	Rejected				
	1990	Rejected				
Middle East						
Bahrain	1992	Accepted	X (1993)			
Israel	1988	Accepted	X (1988)			
	1989	Rejected[e]				
Oman	1992	Accepted	X (1993)			
Syria	1988	Accepted		X (1992)		
Yemen	1992	Rejected				
Western Hemisphere						
Chile	G.R.	n.a.		X (1988)		
	1990	Accepted			X (1991)	
Colombia	1990	Rejected				
	1993	Rejected				
	1995[d]	n.a.				
Costa Rica	1993	Accepted	X (1993)			
Dominican Republic	1989	Accepted	X (1990)			
	1991	Rejected				
	1993	Accepted	X (1994)			
El Salvador	1987	Rejected				
	1988	Rejected				
	1989	Rejected				
	1990	Accepted	X (1993)			

(Continued)

Country	Year of Petition	Action on Petition	Decision (Effective date) Benefits Retained	Benefits Removed or Suspended	Benefits Reinstated	Review Ongoing
Guatemala	G.R.	n.a.	X (1987)			
	1987	Rejected				
	1989	Rejected				
	1990	Rejected				
	1991	Rejected				
	1992	Accepted				X
Haiti	G.R.	n.a.	X (1987)			
	1987	Rejected				
	1988	Accepted	X (1990)			
	1992[f]	n.a.				
	1993	Accepted[g]				
Honduras	1991	Rejected				
	1995[d]	n.a.				
Mexico	1991	Rejected				
	1993	Rejected				
Nicaragua	G.R.	n.a.		X (1987)		
Panama	1991	Accepted	X (1992)			
Paraguay	G.R.	n.a.		X (1987)		
	1990	Accepted			X (1991)	
	1993	Accepted	X (1993)			
Peru	1992	Rejected				
	1993	Accepted	X (1993)			
Surinam	G.R.	n.a.	X (1987)			
	1987	Rejected				

SOURCE: Congressional Budget Office based on informal data provided by the Office of the U.S. Trade Representative. The format was adapted from Fay Lyle, *Worker Rights in U.S. Policy* (Department of Labor, Bureau of International Labor Affairs, May 1991), p. 17.

NOTES: G.R. = general review; n.a. = not applicable.

There was no annual review in 1994. In 1995, interested parties submitted petitions for Colombia, Guatemala, Honduras, Indonesia, Pakistan, the Philippines, and Thailand. This table excludes the petitions for Guatemala, Indonesia, Pakistan, and Thailand because those countries were already subject to an ongoing or suspended review at that time. The petitions for Colombia, Honduras, and the Philippines are under evaluation.

a. The review was suspended in 1994.

b. A petition was filed in 1993, but the decision to accept it was deferred.

c. The U.S. Trade Representative has recommended the partial suspension of Pakistan from the GSP program. The suspension was made retroactive to July 1, 1996. It would include Pakistani sports equipment, carpets, and surgical instruments.

d. The petition submitted in 1995 is still under evaluation.

e. Request for reconsideration of a prior decision.

f. A petition was filed in 1992, but the decision to accept it was deferred.

g. A petition was accepted in 1993, but no active review was conducted.