

**LINKING LABOR RIGHTS AND TRADE IN
THE WORLD TRADE ORGANIZATION**

by

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Abstract

Globalization has jeopardized the plight of workers in developing nations, and the International Labor Organization (ILO) has proven largely ineffective in remedying the situation. As a result, there has been heavy debate over using the World Trade Organization (WTO) as a forum to promote labor standards. This thesis analyzes the debate over making trade conditional upon the observance of labor standards in the WTO, a concept referred to as “linkage.” It is argued that the linkage debate has stalled theoretically, as the answers to certain crucial questions remain elusive, and practically, as a coalition of developing nations have successfully kept linkage off of the WTO agenda. Nevertheless, trade has been linked to labor standards among certain WTO members, albeit outside of the WTO, through vehicles such as bilateral free trade agreements (FTAs) and generalized system of preferences (GSP) schemes. The result is ironic: proponents of linkage have generally focused on bringing the WTO on board the linkage project; yet linkage is being achieved by keeping the WTO out of the way.

Chapter 1

INTRODUCTION

When the World Trade Organization (WTO) convened its 1999 Ministerial Conference in Seattle, over 50,000 protestors showed up. The conference will never be remembered for its proceedings. It will be remembered for the massive anti-globalization demonstrations that overshadowed them. The reason for the protesting: like other instruments of globalization, the WTO had earned the reputation of prioritizing the bank accounts of the world's rich over the rights of the world's poor. For example, children in underdeveloped nations were working in sweatshops to produce the clothing that turned Nike and GAP into billion-dollar enterprises, and the WTO was doing nothing about it. Shouldn't the World Trade Organization enforce labor standards so the lives of the poor are not sacrificed to make others rich? The protestors at Seattle thought so. But the issue is not that simple.

This thesis analyzes the debate over using the WTO as a vehicle to make trade amongst nations conditional upon the observance of labor standards, a concept referred to throughout the relevant literature and this thesis as "linkage." The purpose of this thesis is not to make an argument for or against linkage. Rather, its aim is to develop a holistic view of the linkage debate so that it can be placed within the greater struggle to improve labor standards throughout the world. After providing an introduction in chapter one, Chapter two will provide the context and origins of the linkage debate. This chapter

concludes that globalization has jeopardized the plight of the worker and the International Labor Organization (ILO) has not proven effective in remedying the situation. Thus, many have argued that the WTO should help ensure the enforcement of international labor standards by adding a labor rights dimension to the current trading system, a concept referred to as linkage. However, the opposition to linkage has proved strong enough to block any and all efforts to achieve linkage in the WTO.

Chapter three provides a comprehensive analysis of the actors that favor and oppose linkage, the different methods by which linkage could possibly be achieved, and the arguments offered for and against linkage. The chapter concludes that the linkage debate has become excessively convoluted and has stalled both theoretically and practically. Certain crucial questions dominate the linkage debate, such as whether or not linkage would be effective in promoting labor rights and whether linkage would undermine or foster economic development in less developed countries (LDCs). Yet, despite numerous studies attempting to address these issues, they are yet to be resolved. Meanwhile, the issue of linkage has been sidelined in the WTO due to strong opposition from developing nations that believe linkage is a protectionist measure that will undermine the competitive advantage derived from cheap labor.

Chapter four concludes that, although the WTO has failed to explicitly address labor standards, other devices such as free trade agreements, Generalized System of Preferences (GSP) schemes, and corporate codes of conduct have effectively linked labor rights and trade. Thus, linkage has been achieved with some success among WTO members, albeit outside of the WTO. In the future, the WTO's Dispute Settlement Body may be forced to decide whether or not these forms of linkage that originate outside of

the WTO violate WTO legislation. Until then, linkage will be achieved by keeping the WTO out of the struggle for linkage, rather than bringing it in.

Chapter 2

BACKGROUND

In order to fully understand the current debate over linking labor rights and trade in the WTO it would be beneficial to examine the context in which the debate has emerged. The first part of this section will briefly describe the origins of the linkage debate, focusing on the International Labor Organization (ILO) and the impact of globalization on international labor standards. The second part of this section will examine the World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT), and how they have each (not) dealt with labor standards. Together, these two parts will provide the proper context for discussing where the linkage debate stands now and where it may progress in the future.

2.1 THE ORIGINS OF THE LINKAGE DEBATE

The concept of international labor regulation is not new. The general idea dates back at least to 1788 when Swiss banker Jacques Necker argued that France would only benefit from abolishing the Sunday rest day if other nations failed to follow suit (Hepple). Although Necker did not propose international labor standards (ILS), he clearly understood that free trade had made the labor standards of one nation relevant to another. Daniel Legrand, an Alsatian manufacturer, took Necker's argument a step further (Hepple). In the 1840s he argued that industrialized nations should adopt international

labor standards because without ILS each nation would fear foreign competition and fail to unilaterally improve its standards. Without ILS, argued Legrand, the mistreated masses of workers would likely rebel (Hepple).

Modest progress toward ILS came in 1890 when fourteen states participated in a conference in Berlin to discuss issues such as child employment and the length of the workday (Hepple). Further, in the first decade of the 20th century, the International Labor Office was formed in Basle. The office was a scientific institute that provided information on the protection of workers. In addition, between 1904 and 1915 several bilateral agreements on labor issues were signed among European nations (Hepple). Although each of these initiatives created momentum for the cause, the movement for international labor standards had still made very little progress (Hepple).

That changed with the inception of the International Labor Organization (ILO) in 1919. When it was founded, and to this day, the goal of the ILO has been to promulgate a set of minimum labor standards through conventions and recommendations (Potter). As a result, labor conditions would be eliminated as a factor in global competition. Since 1919 the ILO has adopted 185 conventions and 193 recommendations covering virtually every aspect of employment, from child labor and gender equality to social security protection (Potter). The ILO's most notable recent achievement came in 1998 when it promulgated the Declaration of Fundamental Principles and Rights at Work. These fundamental rights included (1) freedom of association and collective bargaining, (2) freedom from forced labor, (3) freedom from child labor, and (4) freedom from discrimination.

Despite these many accomplishments, the ILO's goals are far from being realized (Potter). A large part of the problem is lack of ratification. Most of the 175 ILO member states have ratified less than 25 percent of all ILO conventions (Potter). In addition, ratification has slowed even further in the past two decades: almost 80 percent of ILO conventions since 1984 have been ratified by 10 percent or less of member states (Potter).

The other part of the problem is implementation and enforcement. Being a voluntary organization, the ILO is limited to moral suasion and technical assistance to foster the implementation of ILS. The result is that conventions that are ratified are often not implemented (Sengenberger). Indeed, studies have shown only a modest correlation between ratification of ILO conventions and actual labor standards (Sengenberger).

Globalization's enormous impact on international labor conditions has made the ILO's shortcomings all the more apparent. Globalization has provided increased leverage to employers over employees as a result of the integration of world markets. Specifically, as it becomes easier to relocate production, labor costs are seen as a comparative disadvantage – something that must be avoided. Essentially, the plight of the worker in a globalized world is that capital is mobile; most labor is not. In addition, as states seek to attract foreign investment, lowering domestic labor standards is an attractive option. A large body of literature has investigated the possible “race to the bottom” that may result, as each nation seeks lower labor standards in order to secure a comparative advantage.

Other research has focused on the global firm and its impact on international labor standards. Over the last twenty or so years, more than 100 behemoth global corporations have emerged, each with annual revenues greater than the GDP of many nations (Arthurs). Arthurs (2006) has pointed out several ways in which the emergence of super-wealthy global corporations has jeopardized the plight of the worker. First, these corporations have the financial power to litigate endlessly and wait out boycotts and strikes. Second, states ease their labor laws in an effort to attract and reap the economic benefits of big business. Third, global firms are often very influential in forming the labor policies of their home country. Finally, according to Arthurs, firms “treat their workers as well as they need to in order to avoid adverse market reactions, embarrassing legal proceedings or political awkwardness at home or abroad. As well as they need to: but no better.” (Arthurs)

In summary, globalization has jeopardized the plight of the worker and the ILO has no “teeth” to do anything about it. It is in this context that the call for labor standards in the World Trade Organization has emerged. But before discussing the current debate over labor standards and the WTO, the next part of this section will examine the WTO and its predecessor, the GATT, and how both have failed to address labor standards.

2.2 GATT, WTO, AND LABOR STANDARDS

In 1947, the United Nations Conference on Trade and Employment adopted the Havana Charter, which would have created the International Trade Organization (ITO).

The ITO would have been the first trade regime to include a provision on labor standards.

Article 7 of the Havana Charter stated:

All countries have a common interest in the achievement and maintenance of fair labor standards relating to productivity, and thus the improvement of wages and working conditions...The members recognize that unfair labour conditions, particularly in production for export, create difficulties in International Trade and, accordingly, each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory (reprinted in Alben p. 1431)

The United States Congress, however, failed to ratify the Havana Charter, and therefore the ITO never came into being.

Instead, the General Agreement on Tariffs and Trade (GATT), which consisted of only limited parts of the ITO charter, became the core of the world's multilateral trading system. Upon inception, and to this day, the primary purpose of the GATT is to spur international trade through reciprocal reductions of barriers to trade such as tariffs and quotas. Unlike the ITO, The GATT treaty makes no explicit mention of labor standards except for Article XX (e), which allows a nation to suspend its GATT obligations to products made with prison labor.

There were several early attempts to add a labor rights dimension to the GATT.

For example, the United States submitted the following proposal in 1953:

The Contracting Parties recognize that all countries have a common interest in the achievement and maintenance of fair labour standards related to the productivity, and thus the improvement of wages and working conditions...and that unfair labor conditions...particularly in the production for export, may create difficulties for international trade which nullify or impair benefits under this Agreement. (reprinted in Howse p. 177)

The proposal, however, did not lead to action. The Parliament of the European Communities submitted an identical proposal in 1983 (Howse). The European attempt also did not succeed. Three years later, the United States suggested the creation of a

working group to investigate the possibility of adding a “social clause” to the GATT, linking labor rights and trade (Howse). The proposal garnered support from the European Parliament, but was widely opposed by developing nations and was never implemented (Howse).

During discussions at Marrakech in April 1994, the United States and several other nations pushed for the Final Act of the Conference to include a statement addressing the link between labor rights international trade (Howse). Again, the opposition prevailed. All that came from the United States’ efforts was the following statement in the Concluding Remarks by the Chairman of the Trade Negotiations Committee:

In the statements which they made in the course of this meeting, Ministers representing a number of participating delegations stressed the importance they attach to their requests for an examination of the relationship between the trading system and internationally recognized labour standards (reprinted in Howse p. 179)

Ultimately, the talks at Marrakech proved to be a victory for environmental concerns, but not for labor issues.

Since the inception of the World Trade Organization at the Uruguay Round of GATT negotiations, labor standards have remained outside of the GATT and WTO framework. Indeed, the opposition to linkage has proved strong enough to ensure that the topic has remained off the WTO agenda over the past decade.

The opposition’s most notable victory was the WTO’s 1996 Singapore Declaration. Prior to the Singapore Ministerial meeting, the United States, France, Norway, and the European Commission once again pressed for a working party to address the linkage question (Howse). The issue was widely discussed at the meeting

itself, but was never decided upon. The final outcome of the debate was summarized in paragraph 4 of the Singapore Declaration, which states:

We renew our commitment to the observation of the internationally recognized core labour standards. The International Labor Organization (ILO) is the competent body to set and deal with these standards and we reaffirm our support for its work promoting them...We reject the use of labor 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. (reprinted in Howse p. 180)

The Singapore Declaration represents an enormous victory for the opposition to linkage in the WTO: in its first official statement addressing labor standards, the WTO only cheered the ILO and then vowed not to undermine the ability of developing nations to exploit cheap labor. Howse, Langille, and Burda (2006) aptly summarize the implications of the Singapore Declaration on the labor and trade linkage debate in the WTO. They write:

The Singapore Declaration at once establishes the trade and labour link, takes a strong stand on one aspect of it, but then denies and declines any competence regarding the issue it has just pronounced (if only in a one sided manner) upon, and closes the door (institutionally and legally speaking) to a possible WTO role. (Howse, p. 96)

At the WTO Ministerial Conference at Doha in 2001, the importance of core labor standards was only briefly mentioned (Tandon). But the issue was not debated at all, and has remained off the negotiating table since. To this day, the WTO has failed to act on the labor and trade issue. And, the opposition to linkage is strong enough to keep the linkage debate off the WTO agenda for the foreseeable future.

Yet, the idea of linking labor conditions and international trade in the WTO still looms large among many scholars, advocacy groups, and certain nations. The next

section will examine which actors advocate linkage and which are opposed, how linkage may be achieved, and the theoretical arguments made by each side.

Chapter 3

THE PLAYERS AND THE ARGUMENTS

This chapter will detail the current debate over linking labor rights and trade in the WTO.

The first section will determine which actors oppose linkage and which ones favor linkage. The second section will examine the debate over how linkage should be achieved. The third and final section will analyze the arguments for and against linkage.

3.1. WHO'S ON WHICH SIDE?

This section will begin by examining the nations that support and oppose linkage. Because the United States has led the campaign in favor of linkage and India has led the campaign against linkage, this part will include brief case studies of the evolution of each of these nations' policy towards linkage. The latter part of the section will examine the stances of other actors - such as academics, non-governmental organizations, and unions - toward linkage.

NATIONS AND THE LINKAGE DEBATE: THOSE IN FAVOR OF LINKAGE

It is often stated that developed nations tend to support linkage and developing nations tend to oppose linkage. While this distinction is generally accurate, it leaves much unsaid. For example, as this section will demonstrate, several nations that are

typically said to support linkage have actually only made very weak statements in favor of linkage. In contrast, as this section will also demonstrate, nations opposing linkage have been quite clear and strong in their opposition.

In his article, “Core Labor Standards at the WTO: What Have Trade Ministers Said?” Edward Sussex (2006) examines linkage-related statements made by trade ministers, and groups the statements into two categories: pro-linkage and anti-linkage. Many of the statements that Sussex (2006) considers to be pro-linkage never even mention labor standards. Rather, they just call on the WTO to address issues such as ‘social justice’ and ‘sustainable development.’ Consider the following quotations that Sussex considers pro-linkage. Mr. Kimmo K.I. Sasi, Finland’s Minister for Foreign Trade said during the Doha round, “Let us also remember that sustainable development will not be possible without social justice and respect for human rights” (Sussex, p. 4). Ms. Paula Lehtomaki, Finland’s Minister for Foreign Trade and Development added at Cancun, “sustainable development is not only a question of trade... but necessitates also sustained economic growth, social justice, and respect for human rights” (Sussex, p.4). Mr. Charles Goerens, the Minister for Cooperation and Humanitarian Aid of Luxembourg, said at Doha, “my country...today reiterates its desire to see negotiations in the WTO deal with... the link between trade and social development” (Sussex, p.6). Mrs. Lydie Polfer, Luxembourg’s Vice-Prime Minister and Minister of Foreign Affairs and External Trade added at Cancun, “Luxembourg hopes that environmental and social considerations will be integrated in all the work done at the WTO” (Sussex, p.6).

Similarly, Germany's Deputy Minister for Foreign Affairs, Mr. Yannis Zafeiropoulos, said at Doha:

The EU has always advocated a broad agenda for a new round which opens up the WTO for the so-called new issues. These are trade and the environment, trade and social development, trade and investment, and trade and competition... It is important for us to develop the opportunities of globalization to the benefit of all WTO members and to minimize the risks by utilizing our scope for policymaking and rule setting. (Sussex, p.5)

Finally, Mr. Gerrit Ybema, the Netherlands' Minister for Foreign Trade said during the Doha round, "As to the social dimension of trade... this is a complex, but important issue and we should not fear dialogue" (Sussex, p.6).

Without ever explicitly mentioning labor standards in their statements, it may be a stretch to conclude that Finland, Luxembourg, Germany, and the Netherlands are supportive of linking labor rights and trade in the WTO. It would be more appropriate to argue that these nations have indicated support for a WTO that moves beyond purely trade considerations, and works toward social justice and sustainable development. Linkage may or may not be part of such a WTO platform.

Other nations have been more direct in their support of linkage. A common theme among pro-linkage statements has been to indicate support of the ILO and its goals, and call for greater cooperation between the WTO and ILO. Consider the following quotations. Dr. Martin Bartenstein, Austria's Federal Minister of Economic Affairs and Labor said at Doha, "We fully support the ILO's work in promoting the compliance with core labor standards... this is an area where cooperation must be intensified by creating institutional dialogue between the ILO and WTO" (Sussex, 3). Mrs. Annemie Neyts-Uyttebroeck, Belgium's Minister of State for Foreign Affairs, on

behalf of the Presidency of the European Union said at Doha, “the European Union therefore supports the work in the ILO on social aspects of globalization and feels it necessary to associate the WTO to that process” (Sussex, p.4). Canada positioned itself as a staunch supporter of linkage when the Honorable Pierre S. Pettigrew, the nation’s Minister for International Trade said at Doha, “It is particularly unfortunate that members have not been able to agree on the need to ensure that the WTO works with the ILO to advance core labor standards” (Sussex, p.4). Denmark’s Minister for Foreign Affairs, Dr. Per Stig Moller, commented in Hong Kong “We would also like to see further progress on the dialogue between the WTO and the ILO on workers’ rights” (Sussex, p.4). Very similar statements – ones that indicate support for greater cooperation between the WTO and ILO to further the ILO’s goals - were made at Doha by France, Greece, Norway, Sweden, and Switzerland.

The Czech Republic, Ireland, Italy, New Zealand, and South Africa have each made statements that indicate their support for linkage in slightly different ways. Mr. Miroslav Somol, Deputy Minister of Industry and Trade for the Czech Republic, summarized the issue quite succinctly at Doha: “the text dealing with labor standards falls also short of our expectations and should therefore be changed” (Sussex, p.3). Italy took a very strong stance in support of linkage at Doha, even offering a brief description of what a linkage system in the WTO might look like. The honorable Antonio Marzano, Italy’s Minister for Productive Activities said:

Core labor standards are the other important issue in which, I think, the WTO should be much more engaged... We could for instance devise positive measures for training and technical assistance as well as trade facilitation actions for those countries that pledge themselves to improve protection of core labor standards. (Sussex, p.4)

Ireland's Minister for International Trade, Mr. Tom Kitt, took a much softer stance in support of linkage at Doha. He said:

The issue of trade and labor standards has evoked strong views on both sides. We are anxious that a satisfactory outcome is achieved on the issue, which... indicates this organization's sensitivity to the social dimensions of globalization. (Sussex, p.4)

South Africa indicated support of linkage with the following statement by Mr. Alexander Erwin, Minister of Trade and Industry:

A dialogue is needed on this interplay between labor and social standards and the world trade system... the misperception has been generated that there is an inherent incompatibility between the WTO agreements and just social clauses like...labor standards. (Sussex, p.7)

The Honorable Jim Sutton, New Zealand's Minister for Trade Negotiations, said in Doha: "My government wants labor standards better integrated with trade agreements" (Sussex, p.6). Mr. Sutton then continued, "But not, I repeat not, by impeding in any way access to markets for developing nations" (Sussex, p.6). This statement is especially cryptic given that linkage without the prospect of "impeding in any way access to markets for developing nations" is linkage without any enforcement mechanism whatsoever.

Similarly to Mr. Sutton of New Zealand, several other trade representatives combined their calls for linkage with warnings against protectionism (i.e., that developed nations will use alleged labor standards violations by developing nations as a method of discriminating against products originating from developing nations in order to protect their own domestic industry). Austria accompanied its statement moderately supporting linkage with the following condition: "we reaffirm that comparative advantages of

developing countries should not be called into question and that we stand against... protectionist measures in this context” (Sussex, p.3). Very similar sentiments were expressed by Belgium, Denmark, Germany, New Zealand, and South Africa, all nations that made statements in favor of linkage.

The dialogue on linkage and protectionism became exponentially more controversial on Tuesday, November 30, 1999, when Michael Paulson of the Washington Post interviewed Bill Clinton just hours before Clinton arrived at the WTO’s Seattle Ministerial Conference. In the interview, Clinton, for the first time, endorsed the idea of using trade sanctions in the WTO in response to labor standards violations. Then-President Clinton said:

I think that what we ought to do first of all is to adopt the United States’ position on having a working group on labor within the WTO, and then that working group should develop these core labor standards, and then they ought to be a part of every trade agreement, and ultimately I would favor a system in which sanctions would come for violating any provision of a trade agreement. (Transcript)

Clinton addressed the concerns over the potential for sanctions to be used as disguised protectionism. According to Clinton, the motivation for enforcing labor standards in the WTO is not protectionism; rather, it is a matter of respecting the human dignity of workers in developing nations. Clinton continued in the interview:

I wouldn't support labor's objectives if I thought they were just purely protectionist and they didn't want Americans to compete with people from other places, because we can compete quite well. For every job we've lost in America, we've gained two or three more... So if I thought the labor agenda was purely protectionist, I wouldn't be for that.

On the other hand, I think it is legitimate to say that if people are out there working and selling their products in an international arena and Americans are going to buy them, Europeans are going to buy them, all of us who come from wealthy countries where most people have the basic necessities of life we ought not to buy from countries who violate the child labor norms, we ought not to buy

from companies that basically oppress their workers with labor conditions and lack of a living income, and there's a way to strike the right balance here so that we put a more human face on the global economy. (Transcript)

As the words of then-President Bill Clinton suggest, the U.S. was the key player advocating sanction-enforced linkage in the WTO. In order to fully understand the words of Bill Clinton and the United States' efforts toward this end, it would be beneficial to examine a brief history of American attitudes toward international labor standards in general. In his book, *Defining Global justice: The History of U.S. International Labor Standards Policy* (2001), Edward C. Lorenz describes five eras of American policy toward ILS, and details the roles of organized labor, women's organizations, professional social scientists, business interest groups, consumer groups, churches, and the legal profession in each era. This next section will provide a brief case study of the evolution of U.S. policy toward ILS, drawing mostly on Lorenz's *Defining Global justice: The History of U.S. International Labor Standards Policy* (2001) and Steve Charnovitz's *The Influence of International Labor Standards on the World Trading Regime: A Historical Overview* (1987).

NATIONS AND THE LINKAGE DEBATE: U.S CASE STUDY

The first era of United States policy toward international labor standards began around 1890 when a coalition made up of labor leaders, influential women's organizations, social scientists, business interest groups, and religious organizations emerged in support of ILS. This coalition's first major victory came in 1890 when the United States banned all imports made with convict labor (Charnovitz, 1987). At the turn of the century, organized labor's support of ILS came chiefly from the American

Federation of Labor (AFL) and its leader, Samuel Gompers. A small group of elite women, who were repulsed by the exploitation of working class women and children, also supported ILS. Florence Kelley, Alice Hamilton, Frances Perkins, Grace Abbott, and Mary Anderson were among the most influential of these women (Lorenz).

Lorenz describes social scientists as “extremely important, if not preeminent, in the creation and support of the movement” toward international labor standards (p. 27). Indeed, a group of social scientists led by Richard Ely, John R. Commons, and John Andrews, formed the nucleus of the American Association for Labor Legislation (AALL), which was a crucial early supporter of ILS and the ILO. James Shotwell, a historian at Columbia University, also led a group of scholars in support of the ILS movement and helped draft the section of the Versailles Treaty that created the ILO.

The issue of ILS proved divisive for business interest groups. In the early twentieth century, the Chamber of Commerce was split on the issue (Lorenz). The National Association of Manufacturers was adamantly opposed to ILS (Lorenz). In contrast, The National Civic Federation, which was created to reconcile differences between business and labor, was a staunch advocate of ILS (Lorenz).

Churches and synagogues of various disciplines have played a crucial role in establishing labor standards, beginning with abolition. Regarding international labor standards, Christian social philosophy influenced the thinking of Richard Ely and John L. Commons, who helped establish the AALL (Lorenz). This first era of U.S. involvement with ILS came to an end as the pro-ILS movement achieved its biggest victory: the

Versailles Peace Conference created the ILO as part of the League of Nations (which soon collapsed).

From 1920 until 1934, the U.S. refused to join the ILO, which came to symbolize the movement for ILS. Business groups remained split on the issue. For example, the Chamber of Commerce invited ILO officials to its meetings, despite the U.S. not being a member (Lorenz). However, most small businesses and those not competing in the world market were opposed to the ILO (Lorenz). Meanwhile, academics lobbied Congress to join the ILO. For example, James Shotwell toured Washington distributing his publication, *The Origins of the International Labor Organization*. His efforts eventually paid off.

In 1934 the U.S. joined the ILO and moved to the forefront of the ILS movement (Lorenz). Frances Perkins, a key leader in the female movement for ILS was the secretary of labor at the time, and helped secure the United States' entry into the ILO. The United States' involvement in the ILO culminated in 1944 when it hosted the Philadelphia conference. There, the U.S. "defined the ILO's role, linking it to the postwar economic regime" (Lorenz, p. 36). According to Charnovitz (1987), the Congress of Industrial Organizations (CIO) and the Textile Workers Union of America were extremely influential lobbyists for adding labor standards to international trade agreements during the 1940s. When GATT was formed in 1947, the U.S. was the main advocate of including labor standards in the framework (Frundt).

During the 1940s, the role of academics in promoting ILS faded with the aging of John Commons and the deaths of Richard Ely and John Andrews, the prominent figures

of the American Association for Labor Legislation. When the AALL ended in 1943, labor scholars turned away from advocacy in favor of more traditional scholarship (Lorenz). In addition, the Chamber of Commerce and the National Association of Manufacturers appointed delegates to the ILO who were highly critical of the organization (Lorenz). Indeed, the escalation of the Cold War proved detrimental to the ILO and the struggle for ILS. Lorenz (2001) writes:

Former allies became Cold War enemies. The various factions of the domestic and international labor movement quarreled. The ILO had to fight for a place in the U.N. structure. Within a few years the wartime commitment to labor standards enforcement collapsed. Redefined consumerism and renewed free trade movement helped Americans forget about any need for international labor protections. (p. 36)

During the 1950s and 1960s, the ILO was preoccupied with ideological splits stemming from the Cold War (Lorenz). U.S. labor, led by the combined AFL and CIO, campaigned against the ILO for accommodating communist nations and their oppression of workers. It was mainly labor that spurred the United States' withdrawal from the ILO in 1977 (Lorenz).

Although the United States' support for the ILO waned during this period, the U.S. continued to support the inclusion of labor standards in GATT, calling into question Lorenz's (2001) claim that "Americans forgot about any need for international labor protections" (p.36). In 1953, the U.S. proposed (unsuccessfully) that unfair labor standards could be sanctioned under article XXIII, an argument that will be revisited later in this paper (Charnovitz, 1987). The following year, the United States argued that trade restrictions should be

implemented against nations that pay wages well below accepted standards (Charnovitz, 1987). Finally, in 1979, the U.S. unsuccessfully lobbied for the inclusion of minimum labor standards in GATT that included “certain working conditions that are dangerous to life and health” (Charnovitz, 1987: p. 572).

The 1980s and early 1990s were dominated by laissez-faire economic ideology, such that any regulatory effort was met with opposition. Yet, it was in this climate that the U.S. became the world’s most influential lobbyist for linkage in the WTO. How was this possible? A number of critical factors combined to influence the Clinton Administration’s actions. By the late 1980s, the labor standards movement became refocused by the apparent labor abuses resulting from globalization and the expansion of multinational corporations. Labor once again emerged as a prominent advocate of ILS. Consumer advocacy groups that seemed to focus exclusively on product quality, safety, and price during the early 1980s began prioritizing ILS. Religious groups intensified their ever-present support for ILS, and the field of human rights law burgeoned. Possibly most importantly, the Clinton Administration wanted to distinguish its trade policy from that of George Bush’s, and linking trade to labor standards was the perfect solution (Lorenz). Clinton added the North American Agreement on Labor Cooperation (NAALC) as a side agreement to NAFTA, endorsed the 1998 ILO Declaration of Fundamental Principles and Rights at Work, and ratified the ILO’s newest child labor convention. In 1994, Robert Reich, then Secretary of Labor, gave a keynote address to a U.S. Labor Department-sponsored symposium. He argued that “slavery, forced labor, the suppression of freedom of association, and the employment of very young children” are

violations of fundamental human rights that should be upheld regardless of circumstance (Fruendt, p.64). Reich identified a range of options that could be explored to combat abuses of these fundamental rights. One such option was to lobby for the inclusion of labor standards into the framework of GATT, as the U.S. had done sporadically since GATT's inception. In 1995, out of GATT was born the World Trade Organization, and soon the Clinton Administration argued for labor rights enforcement in the WTO.

NATIONS AND THE LINKAGE DEBATE: THE OPPOSITION

Of the handful of developing nations that have made statements against linkage, many have cited protectionism as a crucial reason for their objections. For example, Mr. Abdul Razak Dawood, Pakistan's Minister for Commerce, Industry, and Production, said:

The Pakistan delegation is deeply concerned at the insertion of a reference to labor standards in the draft declaration despite the strong objections of the developing countries. Whatever the disclaimers, we see the underlying motive of such a move as protectionist. (Sussex, p.8).

Other developing nations opposing linkage argued that although international observance of core labor standards is an admirable goal, the ILO, not the WTO, is the proper forum for such a goal. The United Arab Emirates' Minister of Economy and Commerce, Mr. Fahim bin Sultan, summarized this position by stating:

The UAE has no difficulty whatsoever with the question of observance of core labor standards. We have subscribed to a substantial number of international labor conventions that deal with these very important issues. But we believe that the International Labor Organization and not the WTO is the appropriate forum to address the issue of compliance of core labor standards. (Sussex, p.8)

Similar sentiments have been expressed by Venezuela, Sri Lanka, Bahrain, Cuba, Egypt, and Honduras.

Unlike many of the statements supporting linkage, statements by nations opposing linkage have often been very direct. For example, Malaysia's Minister of International Trade and Industry, the Honorable Dato Seri Rafidah Aziz, said, "Labor standards clearly has no place in the WTO, and no country should attempt to reintroduce it into the present or future discussions" (Sussex, p.8). Zimbabwe's statement on the issue was also very clear and concise: "We are also opposed to the introduction of core labor standards in the WTO" (Sussex, p.8). Finally, India offered one of the most direct and marked statements in opposition to linkage at Doha. The Honorable Murasoli Maran, India's Minister of Commerce and Industry, said, "We firmly oppose any linkage between trade and labor standards. The Singapore Declaration had once and for all dealt with this issue and there is no need to refer to it again" (Sussex, p.8). Statements such as this symbolize India's leadership of the coalition of nations against linkage.

In order to better understand the opposition to linkage and its motivations, the next section will provide a brief case study of how India emerged as the leader in the struggle against linkage. The section will draw mostly from Kolben's *The New Politics of Linkage: India's Opposition to the Worker's Rights Clause*, (2006).

NATIONS AND THE LINKAGE DEBATE: INDIA CASE STUDY

According to Kolben (2006), A confluence of forces came together in India to oppose a worker's rights clause in the WTO and then to organize and lead a block of developing nations against linkage. Strong evidence of India's opposition to linkage dates back to the Indian government's meeting of the tripartite Standing Labor Committee in September 1994, when the government "put forward a resolution asking

for a unified stance by the government, unions, and employers opposing a workers' rights clause, (Kolben p. 235). The resolution passed unanimously. Thus, when Bill Jordan, the General Secretary of the International Confederation of Free Trade Unions (ICFTU), traveled to India in January of 1995 to ask for India's support for linkage, union leaders Sanjeev Reddy of the Indian National Trade Union Congress and Umraol Purohit of the Hind Mazdoor Sabha turned Mr. Jordan away (Kolben). Jordan then met with Pranab Mukherjee, India's Minister of Commerce, and P.A. Sangma, India's Minister of State for Labor. Both government leaders told Jordan the same thing: not only would India not support linking labor rights and trade in the WTO, it would aggressively seek to oppose any attempt at linkage (Kolben).

Opposition to linkage came not only from unions and the federal government, but from India's civil society as well. Kolben writes:

The increasing attention paid by the Indian government to the workers' rights clause issue sparked the media's interest in the beginning of 1995. Major newspapers around the country began to print a slew of editorials that, by and large, opposed the worker's rights clause, arguing that it was motivated by bad faith and was not in the best interest of India...Arguments in support of a worker's rights clause were generally given less coverage, and evidence that the impact of a worker's rights clause might not necessarily be to the detriment of India's economy was largely discounted...Both labor-oriented NGOs and non-labor-focused NGOs also opposed the trade and labor linkage. (Kolben p. 237)

Non-governmental Organizations in India, both labor-focused and non-labor-focused, have also opposed linkage since the early 1990s. The Consumer Unity and Trust Society (CUTS), a consumer-rights group, and the Center for Education and Communication (CEC), an organization that has close ties to India's unions, both led active campaigns against linkage (Kolben). According to Kolben (2006), discussion of

linkage by unions, NGOs, the press, and India's government was dominated by accusations of Western protectionism.

Once domestic consensus opposing linkage was achieved, the Indian government worked to build a coalition of developing nations to defeat any proposal of linkage that might arise in the WTO (Kolben). India used the Fifth Conference of Labor Ministers of Non-Aligned and Other Developing Countries in 1995 in Delhi to push its anti-linkage agenda. The conference brought together 85 developing nations, and after India lobbied its cause, the conference issued a statement known as the Delhi Declaration, proclaiming the conference's unanimous opposition to adding a labor rights dimension to the WTO (Kolben).

After the Delhi Declaration, India's Prime Minister Narasima Rao used the November 1995 G-15 summit in Buenos Aires to lobby against linkage. By the WTO's 1996 Singapore Ministerial Conference, the opposition to linkage was influential enough to have the WTO withdraw an invitation it had previously given to ILO Director General Michael Hansenne to speak to the Ministerial (Kolben). The India-led opposition to linkage culminated with the Singapore Declaration, which acknowledged the importance of internationally recognized core labor standards, but insisted that the ILO and not the WTO is the competent body to deal with labor standards.

3.1.5 OTHER ACTORS: NGO'S, UNIONS, AND ACADEMICS

As is the case in India, many unions, NGOs, and employers in developing nations oppose linkage. Arguments against linking trade and labor in the WTO also come from the academic world, especially from economists (Phelan). In contrast, most trade unions

in the West advocate linkage, as do most non-governmental organizations (NGOs) and human rights groups (Phelan). The International Confederation of Free Trade Unions (IFCTU), with 241 affiliated organizations in 156 countries and territories, has been a strong advocate of linkage. In addition, numerous pundits and scholars have argued in favor of adding a labor rights dimension to the WTO.

3.2 HOW TO ACHIEVE LINKAGE

Before the arguments in favor of and in opposition to linkage are presented, it would be beneficial to examine exactly what linkage would entail. In other words, if there were to be a labor rights dimension of the WTO, what form would it take? This section will attempt to answer that question.

Proponents of linkage advocate a “social clause” in the WTO allowing one nation to suspend its WTO commitment to another nation based on the latter nation having poor working conditions. Specifically, what is meant by ‘WTO commitment,’ is the principle of Normal Trade Relations (NTR) status, which states that with respect to tariffs or any other trade measure, a WTO member cannot provide more favorable treatment to products of one nation than to ‘like products’ of a different nation. So, a social clause would provide a nation with the ability to renege on its commitment to provide all nations NTR treatment, and allow the nation to discriminate against products made under substandard labor conditions. All those in favor of linkage agree a social clause is desirable; yet, there is disagreement over the specific form the social clause should take. This section will explore three possible methods for establishing a social clause in the WTO: 1) interpret existing GATT legislation to include a social clause, 2) bring an

appropriate case to the WTO's Dispute Settlement Body (DSB), and 3) create a new entity to promote linkage.

3.2.1 EXISTING GATT LEGISLATION

Possibly the most controversial issue is whether or not existing GATT and WTO legislation can be interpreted to include a social clause. Howse (2006) argues that it can. Specifically, he points to Article XX of GATT which provides several 'general exceptions' under which a nation can lawfully suspend its WTO commitment to another nation. Article XX (a) allows for otherwise GATT-inconsistent measures "necessary to protect public morals" (Howse p. 203). Given the international consensus that underlies the notion of core labor standards, there is reason to believe that they do constitute 'public morals' (Howse). In addition to Article XX (a), Article XX (b) of GATT allows for exceptions to GATT rules when it is "necessary" to "protect human life and health" (Howse). It may be possible to interpret the elimination of certain labor abuses, such as forced child labor, as necessary to protect human health (Howse).

However, there are numerous obstacles to such interpretations of GATT Article XX. Hepple (2005) describes what he considers the two greatest challenges. First, it is unclear whether the exceptions in question pertain only to domestic public morals and health or to the morals and health of another nation (Hepple). For example, in order for nation *X* to make use of GATT Article XX (a) to discriminate against products from nation *Y*, would nation *X* have to demonstrate that the working conditions of nation *Y* are somehow jeopardizing nation *X*'s public morals? Or would nation *X* have

to demonstrate that nation *Y*'s labor standards are undermining nation *Y*'s public morals? According to Hepple (2005), that question is yet to be answered.

Second, Article XX (a) and (b) both require the trade measure to be 'necessary' to protect public morals or human health. Regarding Article XX (b), Samida (2005) points out that, because the effectiveness of using trade sanctions to eliminate child labor is debatable, it would be difficult to demonstrate that sanctions are 'necessary' to protect the lives of child workers. Also, if there is an alternative measure (other than sanctioning the product) that would likely achieve the same goal, Article XX (a) or (b) would not be applicable because sanctions would therefore not be 'necessary' (Hepple).

3.2.2 THE WTO'S DISPUTE SETTLEMENT BODY

Some scholars (see Josephs (2001) have argued that the optimal strategy for those in favor of linkage would be to bring an appropriate case to the WTO's Dispute Settlement Body (DSB) and have them rule on these difficult issues. Of course, others disagree. Guzman (2003), for example, contends that the WTO's Appellate Body (AB) is not the proper forum for determining the outcome of the linkage debate because the AB is: (1) undemocratic, (2) unaccountable, and (3) not positioned to understand complex labor issues (Guzman). Rather, argues Guzman, linkage needs to come about through a transparent political process.

Such a political process could result in a protocol to existing GATT treaties that clearly establishes a social clause. For example, Steger (2002) advocates revising Article XX to include measures necessary to enforce the labor rights included in international human rights treaties and ILO conventions. Bagwell (2002) recommends modifying

Article XXIII of GATT to allow for a nation to raise its tariff on a given import for labor concerns if it also raises labor standards on the imports competing domestic industry so that the imported product's market access remains unchanged. To illustrate, imagine country X imports 100 units of product A from country Y, and also produces 100 units of product A domestically. Country X could decide to implement stricter domestic labor standards in the industry that produces product A. Stricter domestic labor standards in country X would translate into a higher cost for domestically produced product A. Thus, country X may begin to produce only 50 units of product A domestically and import 150 units of product A from country Y. However, under the modification to Article XXIII of GATT proposed by Bagwell (2002), country X would earn the right to increase its tariff on product A from country Y when country X increases its domestic labor standards. Thus, with the new tariff on country Y's product A, country X would go back to producing 100 units of product A domestically and importing 100 units of product A from country Y. The end result is that (1) country Y is unharmed: it still exports 100 units of product A, (2) country X is unharmed: it still produces 100 units of product A domestically, and (3) country X's labor standards were improved. Bagwell (2002) uses this logic to argue that his proposed amendment to GATT Article XXIII is a winning situation for all.

3.2.3 A NEW INSTITUTION

Very involved political solutions that create entire new entities to promote linkage are also an option for adding a social clause to the WTO. For example, Guzman (2003) suggests the creation of an independent trade and labor department within the WTO. The

new institution would be staffed by experts on labor and would hold its own rounds of negotiations during which concessions on labor rights could be made. Periodically, the labor department would be involved in negotiating rounds with the trade department during which the overall relationship between trade and labor would be discussed.

Lieberwitz (2006) calls for the creation of a completely new international organization to promote freedom of association throughout the world. He argues that only by promoting freedom of association can labor be given enough power in the long-term to successfully combat increasingly powerful MNCs. The idea that the WTO is not the most effective organization to address linkage is not new. Other scholars (e.g., Mansoor 2004, Steger 2002) have also argued that not only is the WTO not particularly competent in labor issues, but it is already overburdened as its role in international trade has steadily increased.

3.3 THEORETICAL ARGUMENTS

The theoretical debate over the merits of linkage is characterized by endless arguments and counterarguments. Proponents of linkage believe that it is desirable to have an arrangement in the WTO in which a nation's rights to trade are made conditional upon that nation's labor standards. The argument most often cited in favor of linkage is that if labor standards are determined by the free market alone, the result will be suboptimal international social conditions (deWet). Specifically, proponents of linkage feel that 'social dumping' - or the relaxation of labor standards to essentially act as a subsidy and boost export performance - will occur (Valor). Eventually, a 'race-to-the-bottom' will result as each nation lowers its labor standards in an attempt to gain a

competitive advantage over competing nations (Valor). Thus, linkage is desirable to avoid social-dumping, a race-to-the-bottom, and the resulting social inequalities and frictions.

In contrast, opponents of linkage believe that making trade rights conditional upon labor standards is a violation of the principals that underlie international trade.

Erika de Wet (1995) aptly summarizes this position. She writes:

Regulatory diversity is one dimension of comparative advantage, to argue against diversity is to argue against the rationale for trade itself. This argument is rooted in the neoliberal economic doctrine, that sees labor standards as an interference in the market process, impeding efficiency, creating suboptimal allocation of labor, stifling competition, deterring investment, and constraining growth. Thus, multilateral negotiations on international labor standards would be no more than a distorting mechanism, incompatible with the principles of free trade. (de Wet p. 445-446)

According to this logic, the imposition of labor standards would undermine the comparative advantage of those nations who rely on cheap labor for export performance and foreign direct investment (FDI). Several studies (see Mah, 1997) have, in fact, shown that the export performance of developing nations is negatively correlated with the promotion of core labor rights. As will be discussed later, there are also studies that conclude the opposite.

Opponents of linkage also argue that theory and case studies do not support the race-to-the-bottom theory. On the theoretical level, Brown (2001) argues that a nation will consider social costs and benefits as well as production costs when implementing its labor standards. Brown provides the hypothetical example of a nation that raises its minimum age of employment to attain the increase in human capital that would result as more young people attend school. Gitterman (2002) examines the labor policies of a

handful of nations and concludes that a race-to-the-bottom is not taking place; rather, a minimum floor for labor conditions has emerged.

By and large, LDCs have argued that linkage is a thinly disguised attempt at protectionism by developed nations. That is, developed nations desire linkage so that LDCs will be forced to raise their labor standards or forfeit their trading rights - either option leaves domestic producers of developed nations better off. In the late '90s, India's Ministry of Commerce wrote in its online newsletter that "the issue of labour standards at the international level can be appropriately addressed only in the ILO and not in the WTO. The use of trade measures to enforce labour standards is a protectionist device and has to be rejected" (reprinted in Kolben p 246). Stern (2005) argues that the concerns of India and much of the developing world are not without merit. He suggests that organized labor in the U.S. would aggressively pursue alleged violations of labor standards by developing nations if linkage were to be achieved (Stern 2005).

However, several scholars have argued that linkage is not an attempt at protectionism. For example, Elliot and Freeman (2006) review a history of U.S. trade-related behavior toward poor nations and find that there is no evidence of disguised protectionism. Other scholars point out that linkage would not beget protectionism because competition between developed and developing nations is steadily declining. McIntyre (2006) writes, "the labor standards-as-protectionism argument is a red herring. The main reason for promoting a social clause in trade agreements is not North-South but South-South competition. The small gains achieved by some workers in Mexico are now threatened by competition from China" (McIntyre p. 6).

According to Howse, linkage could be used for protectionist purposes. However, he argues that that is only one side of the dilemma. He writes that the other half of the problem is “that allegations of protectionism and differences in comparative advantage can be used as a smokescreen and justification for the violation of core labour rights, and as a bar to sensible collective action concerning these violations” (Howse p. 188).

Regardless of all other arguments, contend advocates of linkage, labor rights are human rights and therefore must be enforced based on moral grounds alone. Valor (2006) argues that other egregious violations of human rights (e.g., apartheid in South Africa) warranted economic sanctions; therefore, so should violations of core labor standards. But are workers rights human rights? Hepple (2006) argues that workers rights are indeed human rights, although they are given little attention by the human rights movement, which has focused more on civil and political rights. Valor (2006) points out that the number of nations that have ratified ILO conventions guaranteeing freedom of association, freedom from forced labor, freedom from discrimination, and freedom from child labor suggests that these are universally held human rights. In addition, the International Covenant on Economic, Social, and Cultural Rights, which has over 150 signatory nations, mentions several human rights that pertain to the worker (“International”).

Some scholars claim, however, that labor rights are not human rights. For example, Bhagwati (1995) argues that the only principle for which there is near-universal consensus is freedom from forced labor. He contends that other issues, such as collective bargaining and child labor, are not as clear-cut. Brown (2001) points out that even the

United States has not ratified any ILO conventions pertaining to nondiscrimination, freedom of association, and collective bargaining. He concludes, “statements about labor standards may be attractive general goals, but they vary too much across countries to be defined as rights” (Brown p. 94).

Even if labor rights were considered human rights, would linkage be an effective tool to secure better labor rights? Phelan (2004) contends that throughout history, legislation has not been enough to advance labor conditions on a national level. Rather, improved labor conditions have primarily been the result of economic development. He concludes that WTO enforced trade sanctions would therefore most likely not result in improved labor conditions throughout the world.

Other scholars have argued that linkage would actually hurt those it is supposed to help. Samida, for example, explains why trade sanctions in response to child labor would actually be counterproductive:

only a small percentage of child laborers are employed in the export sector – perhaps as low as 5 percent. A trade ban would do little to protect child laborers if they found work elsewhere. Presumably, for at least some children, the export sector is the best option in terms of wages, working conditions, or both. Even if a large portion of child labor was involved in the export sector, a trade ban would simply mean that child labor would move elsewhere as the existence of an export sector itself does not spawn child labor.

Moving child laborers out of the export sector would tend to increase the labor supply in other sectors, which could depress wages, lead to worse working conditions, or both. Wages from foreign-owned entities tend to be higher than domestic companies, and inasmuch as the export sector is proportionally made up of a greater number of foreign firms than domestic firms, moving labor from this sector to others could tend to reduce wages for those laborers even if the movement did not depress wages in other sectors. (Samida p. 421-422)

Mansoor (2004) agrees that sanctions would be counterproductive and claims poverty alleviation alone can ameliorate the problem of child labor. He argues that

families rely on the income provided by an extra worker in the household and to deprive them of that would be to jeopardize the family's well being. The only solution, from this perspective, is to lift the family out of poverty, eliminating the need for child labor.

Criticism that linkage would be counterproductive extends beyond just child labor issues. Barry (2006) offers four strong arguments against the effectiveness of linkage. First, because linkage attacks the source of LDCs' comparative advantage and thus their economic vitality, linkage will result in an overall decline in their economic well being. Second, linkage would increase the cost of hiring workers, therefore causing a reduction in overall employment. Third, linkage would lower family and individual welfare by impeding individuals from entering into contracts through which they expect to benefit. Finally, linkage prevents a nation from enacting labor policies that are most appropriate for its level of development. Specifically, writes Barry, "premature imposition of labor standards can act as an obstacle to the development process" (Barry p. 563).

Given these arguments, linkage is said to impose the greatest burden on those who are already less-advantaged – poor people in poor nations - while the rich consumer bears virtually no cost (Barry). This leads Mansoor (2004) to argue that if consumers are bothered by the fact that their products are produced under "improper" working conditions, then the consumers and their respective nations should bear the costs of attenuating the problem. Specifically, social labeling – labeling products as either worker friendly, or not – and increased monitoring of each company's labor conditions is the proper solution according to Mansoor.

Along similar lines, a joint publication by the Trade Policy Group of the Inter-American Dialogue and the Carnegie Endowment for International Peace, titled

“Breaking the Labor – Trade Deadlock” (2001) argues that the problem with linkage is that it would fail to address labor abuses in developed nations because trade sanctions will most likely not be imposed on developed nations. The report says, “[T]o be a credible threat, action to block imports of a trading partner must hurt the trading partner more than the country threatening to adopt the measure. For this reason, developed-country sanctions threats carry more weight than ones made by developing countries” (“Breaking” p.3). Further, it is not the case that rich nations are free of labor rights abuses. Valor (2006) writes that freedom of association is “seriously repressed” in the United States (Valor p. 267) and that child labor is more prevalent in Europe than one might expect. In a system of linkage, these violations of labor standards may go unpunished, while similar violations in developing nations are met with painful sanctions.

Despite the arguments that linkage would not be effective in securing better working conditions, many studies have found that trade sanctions can result in positive effects for workers. Trebilcock and Howse (1999) conclude that trade sanctions can be effective if they are imposed consistently, so that production does not shift from one abuser to the next, and on non-compliant companies, rather than nations.

Additionally, a number of researchers argue that workers rights actually foster development. Indeed, a study by the Organization for Economic Cooperation and Development in 1996 (then updated in 2000) concluded that: (1) nations that raise labor standards do not sacrifice export performance, (2) core labor standards actually increase economic development, and (3) nations with core labor standards will more easily transition to liberalization (cited in Phelan p. 504).

A number of arguments support the idea that strengthening labor standards would not hinder, and may even spur, economic development in LDCs. Empirical evidence demonstrates that FDI avoids nations with terribly low labor standards (Phelan). Thus, although labor standards do increase the cost of labor, that impact is offset by positive non-labor-cost effects that managers of multinational corporations value (Phelan).

Consider a survey in which managers of MNCs ranked criteria, in order of importance, which they consider when deciding the location of FDI. Overall, “cost of labor” was ranked 9th most important out of 13 items, while “political and social stability” was ranked 4th (Phelan p. 518).

Further, Gurney (2006) explains why specific labor rights lead to economic development. He writes:

The abolition of child labour increases the life expectancy and the working life of future generations, and improves economic growth by facilitating investment in ‘human capital’ through education...

Effective legislation against discrimination allows previously under-utilised skills, particularly those of women, to enhance workplace productivity...

Free and representative trade unions are essential to political stability, which in turn attracts economic investment, creates jobs and contributes to economic development. (Gurney p. 5)

Gurney’s position is supported by empirical evidence. Bazillier (2008) assessed the impact of core labor standards on the per capita GDP of 104 countries and concluded that the relationship is positive.

Sandra Polaski, writing for the Trade, Equity, and Development Project (Polaski 2003), provides two reasons why LDCs are misguided in their opposition toward linkage. First, she argues that if developing nations advocate linkage, politically influential groups in developed nations such as progressive politicians, labor unions, and consumer groups

will be more likely to support increased trade with LDCs. Increased trade would then foster economic development in LDCs. Second, ensuring workers rights should cause reductions in poverty and inequality. Combined, these reasons make linkage a win-win strategy for LDCs.

But even if the opposition conceded that linkage would benefit LDCs economically (which the opposition certainly will not), the debate would remain unsettled because opponents argue that linkage is simply not feasible. One obstacle, for instance, is how to measure compliance or non-compliance with certain labor standards. Moran (2005) writes:

Even with decades of ILO interpretations, the determination of what obligations particular countries have in many key areas is not at all settled. The question of how to ‘operationalize’ compliance so that independent observers ‘know compliance or non-compliance when they see it’ is in the early stages of appraisal...

The contention that dispute settlement panels, or appellate review boards could be instructed on how to rule on compliance with child labor, or discrimination, let alone freedom of association or forced labor is simply not currently defensible.

[O]ne cannot conclude that there is yet anything approaching international consensus on how to determine compliance across more than 170 countries of varying stages of development, to judge when countries should be allowed to suspend their commitments under the WTO in order to punish a member state for violating a core labor standard. (Moran p. 152)

Even if each core labor standard were operationalized so that there existed objective criteria for compliance, the amount of information that would have to be gathered to implement a linkage system may be unfeasible. As Barry (2006) argues, millions of small firms all over the world, existing largely in the informal sector, would have to be monitored.

If this section makes one point clear, it is that the debate over the merits of linkage is infinitely complicated. Certain key questions simply elude resolution. For example, would linkage benefit or hurt underprivileged workers in LDCs? Would linkage foster or hinder economic development in developing nations? Is linkage just disguised protectionism on the part of rich nations and therefore something to be avoided by poorer nations? Or could linkage be a successful long-term strategy to reduce poverty and inequality in developing nations? For each of these issues, each side offers an abundance of compelling arguments. However, a clear resolution is lacking, and will most likely not emerge anytime soon. Thus, just as the linkage debate within the WTO has been stifled because of immense opposition by developing nations, the theoretical debate among scholars and advocacy groups is also at an impasse.

Chapter 4

WTO LINKAGE IN CONTEXT

As the previous section illustrated, the linkage debate is infinitely complicated. There are a plethora of arguments for each and every facet of the linkage question, from how linkage would be implemented to whether or not linkage would even be effective. The debate rages among scholars, intellectuals, and advocacy groups, yet the most difficult questions remain unanswered. Meanwhile, the issue has not been broached at the WTO for over half a decade, as many developing nations firmly believe that linkage would jeopardize their comparative advantage and represents nothing more than disguised protectionism by developed nations. Thus, the contentious debate over creating a labor and trade link in the WTO is at an impasse.

Yet, interestingly, that does not mean that trade rights have not been made conditional upon respect for labor rights. The following three sections will illustrate three ways in which trade and labor rights have indeed been linked: 1) multilateral and bilateral free trade agreements, 2) the United States' generalized system of preferences scheme, and 3) corporate codes of conduct. Although these forms of linkage occur outside of the WTO, by remaining silent, the WTO has actually allowed linkage to slide in the back door of the international trading regime. As long as the WTO does not rule that these forms of linkage violate GATT legislation, trade between certain WTO members is effectively linked to labor standards.

4.1 MULTILATERAL AND BILATERAL FREE TRADE AGREEMENTS

Canada and the United States have each signed free trade agreements with developing nations making trade conditional upon labor conditions. In fact, The United States has included a labor rights dimension in every free trade agreement it has negotiated since 1993 (Doumbia-Henry). For example, NAFTA was complemented by the North American Agreement on Labor Cooperation (NAALC), which commits the United States, Canada, and Mexico to “protect, enhance, and enforce basic workers’ rights” (Doumbia-Henry). Since 2001, the U.S. has signed bilateral trade agreements with Chile, Jordan, Morocco, and Singapore that have each dealt with labor standards in the main body of the text. Additionally, the United States signed a Textile Agreement with Cambodia in 1999 that used an incentives-based approach to improve Cambodia’s labor conditions in its textile industry. Under the agreement, quotas for textile and apparel exports from Cambodia to the United States can increase if Cambodia enforces internationally recognized workers’ rights in the sector. According to Polaski (2005), the agreement led to tangible improvements in working conditions in Cambodia’s textile industry.

Similar to NAALC, the labor side agreement to NAFTA, Canada signed a free trade agreement with Chile in 1997 that was accompanied by the Canada-Chile Agreement on Labor Cooperation (CCALC). Additionally, a trade agreement signed by Canada and Costa Rica in 2001 includes an annex on labor cooperation that is integral to the trade agreement itself (Doumbia-Henry).

But, has this new wave of free trade agreements (FTA) that tie trade to labor standards led to significantly better labor standards? Or have they had little impact? As

might have been expected, it appears that the answer lies somewhere in between these two alternatives. As Doumbia-Henry (2006) writes, “there is evidence that the majority of FTA signatories have made some progress in terms of compliance with and improvement of their labour regulations” (p.198). Some free trade agreements have been more successful than others in promoting labor standards. As mentioned above, the Textile Agreement between Cambodia and the United States has generally been accepted as having had a significant positive impact. In contrast, the NAALC has widely been criticized as being ineffective (Doumbia-Henry).

4.2 GSP SCHEMES

In addition to free trade agreements, both the United States and the European Union (EU) have used Generalized System of Preferences (GSP) schemes to promote labor standards in developing nations. A section of GATT legislation known as the “Enabling Clause” allows for developed nations to extend preferential treatment for products made in developing nations. Out of the Enabling Clause has grown the GSP schemes of the United States and European Union. The United States GSP was adopted in 1974 and provides duty-free access to U.S. markets for over 3000 products from more than 145 developing nations (Hepple). Since 1984, the U.S. GSP scheme has had a labor rights provision prohibiting any nation “that is not taking steps to afford internationally recognized worker rights to its workers” from accessing U.S. markets (Hepple p. 91). The provision has led to thirteen nations being suspended from its GSP privileges (Hepple).

In his book, *Trade Conditions and Labor Rights: U.S. Initiatives, Dominican and Central America Responses*, Henry J. Frundt provides in depth case studies of how the United States has used its GSP scheme to link trade and labor standards in Central and South America. Examining these case studies will 1) illustrate how the United States has used GSP to unilaterally achieve linkage, and 2) help determine the effectiveness of GSP in promoting labor standards.

The United States removed Chile's \$87 million worth of duty-free exports in 1987, after the AFL-CIO filed a petition asking the USTR to review a new union-restrictive labor code passed by the Pinochet government. According to Frundt, "trade sanctions brought early results, and the Chilean government quickly got the message" (p. 95). GSP exclusion was lifted, and in 1994 a new Chilean labor code was ratified. Implementation of the new code, however, has been far from perfect (Frundt).

Paraguay's GSP privileges were suspended in 1987 after numerous petitions filed by the AFL-CIO and the American Institute for Free Labor Development (AIFLD). President Bush restored Paraguay's GSP privileges in 1991, despite continued workers' rights violations (Frundt, 1998). The AFL-CIO petitioned for the re-suspension of Paraguay's GSP privileges, and in 1993, the petition was accepted for review. In response, Paraguay's president, Juan Carlos Wasmosy, ratified a new and improved labor code, and the AFL-CIO withdrew its petition. The new labor legislation, however, was widely criticized for not being effectively enforced (Frundt).

The AFL-CIO filed a petition against Peru in 1992 after the Fujimori government increased its anti-union activities. The petition was denied in 1992, but the USTR

accepted the AFL-CIO's petition in 1993. The USTR's 1993 review found that Peru was 'taking steps' to improve workers' rights, and therefore, GSP was not suspended. The threat of GSP suspension did force the Fujimori government to amend certain legislation restricting union activity. However, progress was modest at best, and workers' rights abuses continued (Frundt).

"In Columbia," writes Frundt, "violence against trade unionists has been endemic" (p. 98). A petition by the ILRF asking the USTR to suspend Columbia's GSP privileges fostered a reformed Colombian labor code in 1990. An improved, more worker-friendly Social Security Act came in 1993, and in 1994, Columbia reduced certain discriminatory requirements for public service. However, in a 1995 report, the ILO chastised Columbia for allowing prison labor and not allowing public employees to negotiate collective-bargaining agreements. In addition, violence against union leaders, mostly perpetrated by state agents, remained unabated (Frundt, 1998). In 1995, the AFL-CIO petitioned the USTR to review these violations, but the petition was refused.

In 1988 and 1989 the AFL-CIO filed petitions against Haiti for its repressive labor code. The USTR agreed to review Haiti in 1991, found that the nation was 'taking steps,' and therefore did not suspend Haiti's GSP privileges. The AFL-CIO petitioned again in 1992, but the petition was rejected. Another petition came in 1993, this time citing the U.S. State Department's own finding of " 'widespread repression and violence against trade-union activities...arrests, beatings, and banning of meetings' " (In Frundt, p.99). This time the USTR agreed to review Haiti. In 1994, the returned Aristide government implemented modest improvements to labor standard conditions, but

pressure to attract foreign investment has encouraged continued worker abuses (Frundt, 1998).

Frundt (1998) evaluates the effectiveness of the United States' GSP program in El Salvador as follows:

The story of GSP petitions in El Salvador and the aftermath of petition withdrawal in 1994 reveals the limitations of trade conditionality in achieving labor reforms. The story portrays a government and a private sector that squirmed past genuine reforms – a quintessential example of policy subversion and broken commitments that thwarted petition objectives at nearly every turn. (Frundt, p.138).

Persistent petitioning from the ILRF and AFL-CIO from the mid-1980s into the 1990s brought more substantial labor rights progress in Guatemala. Here, the threat of GSP withdrawal brought about a new labor code, a substantial decrease in violence against trade unionists, a higher minimum wage, and two new labor courts. Yet, according to Frundt (1998), government and business made these improvements begrudgingly, and more substantial progress was certainly desirable.

These case studies elucidate the tenuous nature of the GSP process. Yet, Douglas (2004) highlights the fact that although GSP has fallen short of spectacular, the selective improvements that GSP has engendered in certain nations should not be overlooked. He writes:

In the cases of Swaziland, El Salvador, Guatemala, and the Dominican Republic, new and improved labor codes were passed. Violence against trade unionists in Guatemala was reduced, as was the use of the forced labor of Haitian migrant workers in the Dominican Republic. In Bangladesh, the use of child labor in the garment industry was reduced to a very low level, and thousands of children were moved from work to school. In Korea, substantial headway was made in cementing freedom of association and collective bargaining in legal terms. For the workers in these countries who gained better working conditions, higher pay, greater respect for their rights and thus more human dignity, these improvements in their lives were important (Douglas p. 298).

The United States is not the only nation to use a GSP scheme to promote labor standards in developing nations. The current GSP program of the European Union also links labor rights and trade. Under the EU scheme, a developing nation can request to be given special treatment for its exports if it shows that it complies with ILO conventions. In addition, preferential treatment of any nation can be withdrawn for violations of internationally recognized labor standards. The EU used this clause against Myanmar in March 1997 when Myanmar was involved in the widespread use of forced labor.

4.3 CORPORATE CODES OF CONDUCT

Since the early 1990s, there has been a tremendous growth in voluntary corporate codes of conduct that deal with labor standards. The impetus of voluntary corporate codes came from several important factors. During the 1960s and 1970s, there emerged a growing perception that transnational corporations (TNCs) posed a threat to smaller developing nations and their workers. Until recently, it was widely believed that the responsibility of regulating TNCs fell on the national governments of these jeopardized developing nations (Jenkins). In the late 1960s and 1970s, some 22 developing nations passed legislation regulating transnational corporations (Hepple). International efforts to establish corporate codes of conduct for TNCs emerged during the 1970s. Among the most influential of these was the UN Draft Code of Conduct on TNCs, developed by the UN Center on Transnational Corporations (UNCTC), and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, developed by the

ILO. These international codes augmented, but did not replace, the efforts of national governments to regulate TNCs.

During the 1980s, the emergence of a new global economic paradigm highlighted the need for corporate regulation. Markets became increasingly integrated. Developing nations overlooked TNC regulation, focusing instead on trade liberalization, export promotion, and attracting foreign direct investment (FDI). Transnational corporations grew in size and strength, as Northern buyers came to control entire webs of Southern suppliers. Meanwhile, major moral disasters, such as those by Bhopal and Bearings Bank, made the ethical pitfalls of TNCs overwhelmingly apparent.

During the first half of the 1990s, the number of human rights NGOs and consumer rights groups exploded. Several initiatives were formed to pressure TNCs to clean up their act. Social Accountability International (SAI), the Fair Labor Association (FLA), and the European-based FairWear Foundation (FWF) each set out to develop uniform codes of conduct and compliance monitoring systems for TNCs. The Clean Clothes Campaign, a consumer advocacy group, the Ethical Trading Initiative, and the Workers' Rights Consortium each sought to gain corporate commitment to a standard set of work-place principles.

The importance of brands and corporate reputation continued to grow, and the explosion of the information age made corporate pitfalls all the more apparent. Suddenly TNCs were responsible not only for the quality and delivery date of the products coming from their factories, but also for the working conditions that occurred inside them. Firms had to respond in order to preserve their place in the marketplace. The result was an

emergence of voluntary codes of conduct enacted by leading corporations during the 1990s. Levi Strauss, adopted a strict labor standards code in 1992 after its foreign contractors were accused of treating their workers as slaves. Accusations of sweatshop factories and child labor pressured leading U.S. brands such GAP, Nike, and Disney to adopt similar corporate codes dealing with labor standards. A new form of linkage - one aimed at corporations rather than nations - was born, as the sales performance of behemoth TNCs was tied to workers rights.

As one might imagine, this system of labor standards emanating from the employers themselves is surrounded by a plethora of complications and controversies. The voluntary nature of corporate codes of conduct has been highly criticized for acting as a substitute for statutory regulation by national governments and international bodies. The most commonly raised objection to corporate codes of conduct is that rather than the workers themselves having reasonable input into the types of standards to which corporations subscribe, corporate codes are often decided upon by outside actors and then applied to workers. Shaw writes:

A core feature of the codes process has to be a strategy of genuine consultation and participation with workers in the industry. Ironically there is a danger that activists and policy makers in Europe and north America will be absorbed into codes debates that any consultation with workers themselves seems merely to complicate the process. However such consultation is absolutely necessary (Shaw in Jenkins, p. 109).

The result is that the codes of conduct developed may not actually cover the rights that workers care most about. Murray (2002) argues that although ILO conventions are generally accepted as a framework for corporate codes of conduct, they were written with the intent on applying to states, not corporations. Thus, the ILO's core labor standards

need to be modified and expanded in order to apply to corporations. According to Pearson (2002), the abuses that female workers most often complain about are not those that are commonly included in codes of conduct. Additionally, the standards that are included in codes are often breached, regardless.

That brings the discussion to the most relevant question: have corporate codes of conduct been an effective means of improving labor conditions? First, it must be noted that monitoring and verification of compliance with corporate codes has proven extremely difficult; therefore, measuring the effectiveness of corporate codes has not been easy (Ascoly). That being said, among studies that have been conducted to measure the effectiveness of corporate codes, conclusions have varied considerably.

Discussing the impact of corporate codes of conduct on women in the garment industry,

Shaw writes:

the prospects that codes offer for improving working conditions in the garment industry might seem fairly remote. Indeed there are many activists and organizations working on the garment sector that take this view. Yet there are others who are most optimistic, seeing codes as offering a potential tool in efforts to promote worker organization and education. (Shaw in Jenkins, p.109)

Kwan (2002) provides a strong criticism of the idea that corporate codes of conduct have improved the lives of factory workers in China. He writes:

Codes of conduct, as we have shown in this chapter, are not formulated, implemented and monitored by the people they are designed to protect. Codes are made elsewhere (in America or Europe), and have little relevance to workers (even if they are aware of them). In no arena...are workers themselves able to negotiate for themselves...workers are a silent and invisible stratum with no bargaining rights or ability to determine their conditions. Codes fail to provide workers with any means by which they might effectively make a difference in the way the factory is managed. Until workers are in a position to help write the rules or codes...they will remain voiceless. (Kwan in Jenkins p.133)

After examining the Sri Lankan experience, Dent (2002) offers a slightly less critical view of corporate codes of conduct. He writes:

Voluntary regulation focusing on a specific area, such as clothes, has its uses in spotlighting particular abuses and raising awareness... Codes may have some relevance to the workers of Sri Lanka if they can deliver the right to form and join unions, organize, collectively bargain and strengthen existing regulatory frameworks. If codes can assist the mostly women workers of Sri Lanka's FTZ, currently struggling to have their unions recognized at the factory level, then codes will be relevant. (p.144)

Dent then adds, "it is doubtful that this will occur on any widespread scale in Asia in the foreseeable future" (p.144). Although less crucial of corporate codes than many of his colleagues, Dent is far from optimistic about the potential for corporate codes of conduct to foster widespread and significant improvements in the lives of workers.

4.4 CONCLUSIONS

This thesis seeks to develop a holistic understanding of the debate over using the World Trade Organization as a vehicle to link labor standards to the international trading regime. Several factors - notably the integration of world markets, the increased mobilization of capital, and the growth of MNCs - have highlighted the shortcomings of the ILO and spurred debate over linking labor rights and trade in the WTO. However, that debate is at a stalemate. Several critical issues surrounding the prospect of linkage have attracted serious debate among scholars and various organizations. For example, would linkage foster or undermine economic development in LDCs? Would a system of linkage actually jeopardize the workers that it is supposed to help? Does the WTO have the proper personnel and capacity to effectively implement linkage? This thesis investigates these issues and many others, and concludes that anything close to a definitive conclusion regarding the merits of linkage remains elusive. Most importantly,

the opposition to linkage, comprised of an India-led coalition of developing nations, remains adamant that linkage is 1) an attempt at protectionism by developed nations, 2) a violation of national sovereignty, and 3) counterproductive. This coalition has blocked, and will continue to block, any serious talks of linkage from developing in WTO ministerial conferences.

This thesis argues, however, that linkage has been achieved without the WTO explicitly addressing the issue. Specifically, trade among certain WTO members has been linked to the observance of labor standards through free trade agreements, GSP schemes, and corporate codes of conduct. Whether it is a Cambodian textile factory enforcing child labor laws in order to benefit from U.S. tariff reductions under the U.S. Cambodian Textile Agreement; the Chilean government easing violence against union leaders in order to regain duty-free access to U.S. markets under the U.S. GSP scheme; or Nike providing safer working conditions to Sri Lankan women due to pressure from consumer groups, trade conditions are linked to labor standards among WTO members. These ‘backdoor’ methods of linkage represent an alternative to explicitly linking trade and labor in the World Trade Organization, which does not seem plausible in the near future.

These de facto forms of linkage have achieved limited success in certain circumstances; however, in general, they certainly leave much to be desired in terms of their ability to significantly improve working conditions throughout the world. For this reason, free trade agreements, GSP schemes, and corporate codes of conduct do not render insignificant the debate over explicitly linking labor rights and trade in the WTO. If anything, they may actually elucidate the importance of an explicit system of linkage

achieved through the WTO: because of its enormous influence, highly effective dispute settlement body, and significant enforcement power, there is reason to believe that an explicit system of linkage in the WTO would actually be more effective than the de facto systems of linkage that currently exist. For this reason, it is important that scholars, advocacy groups, and interested nations continue to investigate the prospect of linking labor rights and trade in the WTO.

Importantly, it is possible that the WTO may have to address linkage, not because the issue is raised collectively during a ministerial conference, but because a nation brings a relevant complaint to the WTO's Dispute Settlement Body (DSB). For example, it is certainly feasible that a nation may file a complaint arguing that the United States' GSP scheme violates the guiding principle of the WTO: that a WTO member cannot provide more favorable treatment to products of one nation than to 'like products' of a different nation. The DSB would then have to decide if it is a violation of WTO legislation for the United States to provide a better tariff scheme to product A from country X than product A from country Y because country X practices better labor standards than country Y. India came very close to filing such a complaint in December 2002, when it initially requested that a WTO panel be established to investigate, among other things, the labor rights dimension of the EU's GSP scheme. However, India ultimately decided to not include that specific challenge in its complaint. It is far from clear what the outcome would have been if India did not withdraw its challenge of the EU's GSP scheme. The issue certainly deserves attention from legal scholars, as a ruling on such a case would have vast implications on the linkage debate, international trade, and labor standards throughout the world.

Meanwhile, until the issue is addressed during negotiations or through the DSB, linkage will continue to occur without the WTO having anything to say on the matter. The result is ironic: proponents of linkage have generally focused on bringing the WTO on board the linkage project; yet linkage is being achieved by keeping the WTO out of the way.

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