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Striking a Proper Match? Strategies to Link Trade Agreements and Real Labor Rights Improvements

Susan Ariel Aaronson, Ph.D and Michele Rioux, Ph.D

Executive Summary:

A growing number of nations including Canada, Chile, the EU, New Zealand, Norway, Switzerland and the U.S., now include labor rights provisions in their free trade agreements. But we don't yet know if such links actually empower workers or lead to improved labor rights governance. Moreover, because each government takes a different approach to these agreements, policymakers may be sending confusing signals on how to promote labor rights; what labor rights are internationally accepted core labor rights; and how important these rights are to good governance.

Recommendations:

We recommend that trading nations work towards a common approach to trade/labor links. In addition, national trade policymakers should:

- collaborate on capacity building (the supply side of good governance) to send a consistent message regarding the importance of labor rights;
- focus on the demand side of good governance by including language regarding political participation and due process rights in the labor rights chapters of trade agreements and
- finance and disseminate research on what kind of trade/labor links actually work.

We also recommend that governments work at the WTO to:

- explore a “no standards lowering clause,” as delineated in China’s accession agreement to the WTO;
- remake the generalized system of preferences (GSP) to advance good governance and to make the system of preferences universal and incentive based;
- ensure that nations can not ignore their labor laws in their export processing zones; and
- seek clarity regarding whether WTO members can use policies such as procurement or social labeling policies to reward responsible market actors that promote labor rights.



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Introduction

In 1999, economist Jagdish Bhagwati and 98 other prominent individuals from the developing world issued a public statement, arguing that labor rights should not be linked to the WTO or to any other trade agreement. Bhagwati and his cosigners asserted that such links could undermine development. They argued that labor rights are *non trade* issues and should not be allowed to “contaminate” trade rules.¹ UN Secretary General Kofi Annan and trade officials from Thailand and the Philippines seconded this point of view.²

But a growing number of countries are including labor rights provisions in trade agreements. For example, the EU ACP Partnership Agreement (a trade preference program) covers some 79 countries and includes labor rights obligations and the US also has preferential agreements with some 140 developing countries with labor rights conditionality. The EU has bilateral agreements with over 15 countries with labor rights provisions, while the US has some 20 free trade agreements (FTAs) with labor standards conditionality. Canada includes labor rights obligations in side agreements to its FTAs.

How can we explain this growing trend? For the first time, many of the world’s major trading nations such as Chile, Norway, Switzerland, New Zealand, Canada, and the United States, as well as the EU, are signaling to their trade partners that they believe that labor rights are essential elements of “good governance.” These nations are promoting a shared definition of labor rights, relying on internationally accepted core labor standards as delineated in the ILO Declaration.³ *But policymakers are not all sending the same message about labor rights.* Each government has adopted different strategies to advance labor rights, reflecting its own political, economic, and social circumstances. For instance, as noted above, some governments such as New Zealand and Canada address labor rights in side agreements, while the U.S. and EU address labor rights in the body of their FTAs. Governments also differ in the scope of labor rights obligations they include in trade agreements. Canada includes provisions governing migrant workers, but the U.S. does not. The EU, Canada and New Zealand mention the ILO’s decent work agenda, but other governments do not. Chile, Switzerland and Norway generally do not include non derogation clauses, but most governments now include such clauses, which are designed to prevent states from ignoring labor regulations in the interest of stimulating trade. Finally, while the US and Canadian

governments have made labor right provisions actionable under dispute settlement, the EU and New Zealand prefer settling disputes through cooperation and dialogue. The template below shows the many differences among our case study countries.⁴

| | USA, | CANADA | Chile | New Zealand | EU-new template | Norw Switz€ |
|-----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----------------------|
| Agreements w/out labor provisions | Before NAFTA | Some | Many | Two, Australia, Singapore | Some | Many |
| Do agreements uphold ILO Declaration? | Yes | Yes | Yes, | Yes | Yes | Yes. Preat FTA text. |
| Requires parties to adopt, maintain and enforce <i>in their own laws and in practice labor rights as delineated in ILO Declaration.</i> | Yes | Yes | Yes but not always | Yes. | Yes | No. |
| List of obligations beyond ILO Declaration | Acceptable conditions of work; procedural guarantees of access to labor justice. | Acceptable conditions of work, protection of migrant workers. | Migrant workers (Peru); Acceptable working conditions (Colombia) Public awareness | Public awareness | Decent work agenda and up-to-date conventions; 2006 UN ECOSOC Declaration Migrant workers (some) | None. |
| Non-derogation clause | Yes | Yes | No. Except with United States | Yes | Yes | No (Norw. with EU) |
| Special provisions on child labor? Workers' rights in EPZs? Trafficking in workers? Labor Mobility | Yes, covered EPZ covered No No | Yes, covered EPZ covered No No | Guiding principles only No No No | No. No No. Immigration No. But FTAs have provisions | No. | No. No No No |
| Decent Work Agenda? | Not specifically mentioned. | Recently | as a cooperation activity | Yes | Yes | Not yet a |
| Have partners changed laws to comply? | Yes | No | No | No | | Not know |
| Labor rights in body or side agreement? | Body or core text of agreement. | Side-Agr. or Chapter with S-agr. | Varies. Mostly Body | Side-Agreements | Body, sustainable development chapter | Preambuli agreemer |

| | | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------|---------------------------------|------------------------------------------------------------|--------------------------------------------------------------------------|--------------------|
| Enforcement and/or monitoring mechanisms? | Labor Affairs Council | Yes | Yes, vary | Labor Committees | Yes | No |
| | USA | CANADA | Chile | New Zealand | EU-new template | Norv Switz€ |
| Are labor rights obligations subject to Dispute settlement procedures? Are there differences related to specific labor rights | Yes | Yes | Yes | Yes | In most cases, mechanism specific to sustainable development. | No |
| Labor rights obligations subject to the same dispute settlement procedures as other commercial provisions? | Yes recent | No, specific | No | No | No, in most cases, a specific dispute settlement mechanism. | No |
| Rely on fines or sanctions and if fines, they go to? | Trade sanctions, with possibility to pay fine, goes to Treasury. | Yes, Trade sanctions, Fines to joint cooperation | No. Except with Canada and USA | No | No, main enforcement mechanism is public scrutiny, cooperative approach. | No |
| Create body to promote cooperation? | Yes | Yes | No. Except with Canada and USA. | Yes. | Yes. | No |
| Linked to adequately funded capacity building? | Yes | Yes | ? | ? | Yes | No |
| FTA impact assessment? | Yes, ITC | Yes | yes | Periodic. | yes | No |
| Is there a set template | Set template. | Set template. | Mostly Yes. | Yes | Set template | No. |
| Incentives to bolster local demand for labor rights? | Yes | | | None specific | Yes | |
| Individual right to seek investigation? | Disputes are government to government. Individuals may petition government. | Disputes are government to government. Individuals may petition government. | Depends, with Canada and the US | Yes, but communicated to and discussed between Governments | ? | No. |

| | | | | | | |
|-------------------|------|------|------|----------------|-----|----|
| | | | | (consultation) | | |
| Public access ... | Some | Some | Some | Yes | Yes | No |

Not surprisingly, many officials from developing and middle income nations remain opposed to including labor rights obligations in trade agreements. They often argue that industrialized country policymakers include these labor rights provisions to appease special interests at home. They fear that labor rights provisions could increase costs to both taxpayers and producers and over time, make their exports less competitive. Moreover, they also stress that industrialized countries are demanding that developing countries make labor rights protection a governance priority at the same time that many such governments are struggling to ensure an adequate supply of food and medicine for their people. Despite these concerns, many of these same policymakers are acceding to labor rights provisions. They do so because trade agreements can give their exporters preferential access to important export markets.

It is ironic that governments are acting at the national level (*and not the multilateral level*) to prod their trading partners to promote *internationally* accepted labor standards.⁵ Throughout the history of the GATT/WTO member states have been unable to find language to deal with labor rights questions that bedevil trade. The members of the WTO did not include labor rights as an issue to be negotiated in the Doha Development Round. Many countries are turning to FTAs because the WTO's 152 member states have struggled to find common ground on Doha Round issues. But by turning to bilaterals to improve labor rights governance, WTO members are creating more complexity for the world's developing countries. Because each government takes a different approach to these agreements, they may be sending confusing signals regarding what labor rights are important and which are not; how to promote labor rights; and how important these rights are to good governance.

The Research Center on Integration and Globalization of the University of Montreal at Quebec sponsored a conference held on April 8-9 in Montreal designed to examine the implications of these many different approaches and to encourage governments to develop a common approach. The conference chairs were Dr. Michele Rioux of the University of Montreal at Quebec and Dr. Susan Ariel Aaronson of George Washington University.

The conference organizers invited eminent scholars, representatives of international organizations, enterprises and trade unions as well as the general public to participate in this discussion. Senior trade/labor negotiators from Canada, Chile, Norway, the EU, New Zealand, Switzerland and the United States also attended the conference. Specifically, participants discussed:

- How do the major trading nations link trade and labor rights? Are these strategies effective?
- Are there ways to foster greater convergence among different approaches? Are there ways that governments can collaborate on capacity building?
- What role should CSR, capacity building, and trade adjustment assistance programs play in supporting these labor rights provisions?
- How will policymakers link labor rights and trade in the future? What roles will the WTO, the private sector, the ILO and development organizations play in improving labor rights?

How to think about Trade/Labor Links

The marriage of trade and labor rights is often a match of convenience, but it is never a marriage of equals. Trade agreements are designed to facilitate trade by establishing rules governing trade and by regulating how and when national policymakers can apply policies that can distort trade. Moreover, the betrothal of trade to labor rights may not yield a happy or effective marriage over time. We don't yet know if such links actually empower workers or improve labor rights conditions.

It is not easy to link trade and labor rights.⁶ In designing such links policymakers should not violate trade norms of national treatment, MFN, and like-product.⁷ Moreover, policymakers should

- support the core labor standards delineated under the ILO's Fundamental Principles and Rights at Work and not national labor standards;
- ensure transparency and accountability through regular dialogue with civil society, both at the national and the bilateral levels.
- strengthen governance capacity among trade partners; and
- stimulate the demand for good governance by empowering workers (as individuals or in unions). Workers can not consistently and effectively advocate for their rights without freedom of speech, political participation, and due process rights.

We recognize that policymakers are unlikely to develop a universal template for linking trade and labor rights. Trade agreements are creatures not only of economic objectives but of political realities. In the interest of stimulating debate, this short paper proposes strategies to facilitate further trade/labor links. We would welcome your comments, which can be emailed to us or posted at the Global Labor Governance web site:

<http://www.er.uqam.ca/nobel/ceim/ggt/spip.php?article964&lang=en>

Strategies at the National Level to Advance Both Trade and Labor Rights

Approach: Bolster the Demand for Labor Rights

1. In general, policymakers seeking to improve labor rights with trade agreements focus on the supply side of good governance - what policymakers can and should do to ensure that labor rights are not violated as goods and services are produced for trade. But policymakers should also develop language designed to bolster the inherent demand for good labor rights governance among their trade partners.

Policymakers should therefore include provisions that support public participation and due process rights in labor related decision-making in the labor chapters of trade agreements.

The U.S. has been trying to do this since 2005.⁸ For example, in DR-CAFTA, Article 16.3 of the Labor Chapter provides procedural guarantees and public awareness, noting: "each party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws."

The language in these chapters is not perfect, for example, "appropriate access" is not

defined. The agreement also delineates that each party shall promote public awareness of its labor laws by ensuring public information about labor laws and encouraging education of the public regarding its labor laws. But the signatories did not clarify how to ensure that the public receives and understands such information. Finally, in Annex 16.5, "Labor Cooperation and Capacity Building," each party "shall consider the views of its worker and employer representatives, as well as those of the ...public." mandated.⁹ We encourage governments to expand upon this language. Policymaker should also supplement such pretty words with capacity building projects designed to ensure that the public understands their labor rights and understands how to challenge labor violations.

Pros: Fosters democracy and labor rights-a more comprehensive approach to good governance.

Cons: Too interventionist?

Approach: Remake Labor Rights Capacity Building

2. The major industrialized countries should collaborate on labor rights objectives and projects. By so doing, they are more likely to strengthen both public support and the governance capacity needed to protect labor rights in the developing world. This will not be easy. Most countries have effectively "branded" their approaches to trade and foreign aid, in the hopes that they will reap positive spillovers (such as better foreign relations) from these policies. Yet, by collaborating, policymakers can save taxpayers money, and could focus their efforts on the capacity-building efforts that they do best. For example, the United States excels in areas such as promoting worker health, whereas the EU excels in helping other governments promote the rule of law.¹⁰ We believe that if the industrialized countries work with the ILO and each other to advance labor rights and trade, they are more likely to be effective at building both a demand for labor rights as well as a supply of laws, skills, and administrative expertise for labor rights in the developing world.

Pros: Sends a Consistent Message on labor rights. Recipient countries will avoid repetitive reporting requirements and duplicative administrative costs.

Cons: Taxpayers don't reap the public relations (PR) benefits of their foreign aid.

Approach: Stimulate and Disseminate Research on Best Practices and Stimulate a Dialogue about What Works

3. Policymakers, activists, scholars, and other interested parties know relatively little about the efficacy of trade/labour links. Therefore, policymakers should create an online-open access trade labor links forum to stimulate and disseminate research.

The network could be funded by concerned governments and exist across borders, akin to international research networks established by the EU. In addition, national governments should work with the ILO to encourage and disseminate research on trade/labor links. This forum should include information on the specifics of each country's evolving approach to linking trade and FTAs such as how the agreement relates to domestic labor laws; whether or not the trade agreement is linked to incentives such as capacity building assistance; and whether or not the agreement includes non-derogation clauses etc... The forum could also disseminate information on how governments assess, monitor, and ensure compliance with labor standards delineated in trade agreements.

Pros: Will provide interested parties with information about these agreements, enabling citizens and others to assess and provide feedback on them.

Con: Will policymakers pay attention?

Strategies at the Multilateral Level to Advance Both Trade and Labor Rights

Approach: Get Clarity Regarding the Relationship between International Trade and Labor Rights at WTO

4. To clarify the relationship between trade law and domestic labor law, link the WTO and bilateral/regional FTAs to a no standards lowering clause, similar to that delineated in China's accession agreement to the WTO.¹¹ This accession agreement requires China to notify the WTO about "all the relevant laws, regulations and other measures relating to its special economic areas." China was then required to ensure that "those laws, regulations and other measures pertaining to and affecting trade shall be enforced."¹² Should China fail to enforce labor rights (a regulation affecting trade), the accession agreement provides a tool to challenge such failure. Applying this approach to trade agreements in general,¹³ such a clause would establish a bottom line of good governance and the rule of law. Members must agree to uphold the rule of law throughout their territories and should not be allowed to trade from areas where they do not fully enforce the rule of law. A no-standards lowering clause would require parties to enforce the rule of law (domestic law throughout all national territory). Governments could initiate a trade dispute if the failure to effectively enforce the law appeared to distort trade.¹⁴

Pros: encapsulates domestic law within the trade agreement; makes it clear to governments that they can not willfully ignore their own laws in the interest of stimulating trade.

Con: who decides what adequate enforcement means? What if governments lack the funds? What if governments have emergency policy priorities and can not focus on enforcing relevant laws?

5. To reward countries that devote resources and attention to labor rights, remake the generalized system of preferences (GSP) to advance good governance and to make the system universal and incentive based. Members of the WTO have long used a waiver of WTO rules to put in place preferential trade programs for developing countries. However, most industrialized countries have adopted varied approaches to their preferences program. For example, the EU's Generalized System of Preferences-Plus (GSP-Plus), provides additional market access to developing countries that support sustainable development and good governance policies. Specifically, these countries must have ratified key human rights and labor rights conventions (as well as labor rights and environmental laws) and effectively implemented them through national law.¹⁵ Across the pond, the United States also promotes worker rights but does not include other international human rights conventions.¹⁶

The EU approach is worth replicating because it puts good governance on the same plane as trade expansion and it uses incentives to change behavior. The EU's GSP program grants either duty-free access or a tariff reduction to certain imported products, depending on

which of the GSP arrangements a country enjoys. But a beneficiary country is not automatically or unconditionally entitled to these benefits. The EU can withdraw trade preferences granted to developing countries under these arrangements if the beneficiary country systematically violates core UN and ILO conventions on human and labor rights or exports goods made by prison labor.¹⁷ The members of the WTO should adopt a similar approach. Member states could link the reduction or elimination of tariffs with progress in achieving compliance with ILO (and other human rights) core conventions. Such proposals could also include provisions for development assistance to increase the capacity of ministries of labor to monitor and enforce national labor law, and for local non-governmental and labor organizations to monitor compliance with ILO core conventions.¹⁸

Pros: These strategies should be universal and countries that improve their governance should be rewarded with the potential for greater trade. Moreover, in this way, the WTO will be seen as promoting other important international norms.

Cons: How and who should decide effective implementation?

6. To ensure that trade does not undermine labor rights, WTO members should seek clarity that governments can not ignore their own labor laws in export processing zones: EPZs. Trade rules can have a major effect on how governments attempt to attract foreign direct investment. But WTO members (and staff) have not addressed the potential negative trade spillovers of some members' decisions to ignore, reduce or selectively enforce labor rights in EPZs. When the members of the WTO defined illegal subsidies, they described a subsidy as a "financial contribution," which could also include "government revenue that is otherwise due which is forgone or not collected." The members did not view the failure to enforce existing laws such as labor law as a subsidy.¹⁹ The WTO however, has no language or precedent prohibiting the use of labor exemptions in EPZs. The WTO does not address labor legislation or labor rights in trade per se.

The ILO and the WTO could form a joint study group to make recommendations to the members of the WTO on how to address this problem. In addition, as part of the ILO/WTO collaborative process, designed to assess and address the effects of trade on decent work,²⁰ staff should examine if the failure to enforce labor rights can distort trade and negate the objective of decent work for the world's workers. If these organizations find that this practice is trade-distorting, the Secretariat could ask members to examine whether it makes sense to amend the Subsidies Code to include a provision prohibiting non-financial forms of financial subsidies including violations of labor rights.

Pros: It is past time for members to address this problem. It also allows the WTO to learn to work more effectively with the ILO and in so doing, promote labor rights.

Con: WTO members could ignore findings of joint ILO/WTO efforts.

Approach: Develop Incentives for Strategies that Prod Firms or Governments to Protect Labor Rights

7. Members of the WTO should seek clarity regarding whether they can use policies such as procurement or social labeling policies to reward responsible market actors that promote labor rights. These policies could violate WTO norms of national treatment

and like product. However, several member states such as Belgium and South Africa use social labels to reward domestic and foreign market actors for their human rights practices²¹ and South Africa uses procurement policies (BEE) to provide preference to those firms that empower disadvantaged South Africans. But the members of the WTO have yet to clarify whether or not such actions violate WTO norms.²²

If the WTO deems that procurement policies can be used to promote human rights, WTO member states should adopt labor standards performance and reporting criteria for the granting of government loans, grants, overseas investment insurance or other benefits tied to cross-border trade and investment. Companies that provide annual transparent public reports on their processes and performance in ensuring compliance with ILO core conventions in their wholly owned facilities and supply chains should be given preference for trade and investment support.

Pros: More governments are likely to use such signals to reward responsible market actors. More companies will respond to such incentives and make labor rights part of their management practices.

Cons: Although clarity can be provided by further negotiations; by decisions of the members; or by a trade dispute, it may be a long time coming. Who will monitor? ILO does not want to be the global monitor of labor rights.

Final Thoughts: Recommendations to Policymakers

We must be realistic about the potential for trade agreements to truly improve labor rights governance. Trade agreements are designed to facilitate trade; not to promote particular human rights. Thus, creating trade labor links should be one of several strategies industrialized country governments adopt to help other governments advance and protect core labor standards. Other incentive based strategies (such as capacity building programs) can be equally important and should be linked to trade agreements, when possible. In this regard, Canada is trying to link disincentives (penalties) to inadequate performance of labor rights obligations; but it is also providing capacity building to ensure that its trade partners have the funds and expertise, as well as the will to monitor labor rights.

In addition, policymakers should find ways to encourage business to make human rights a business priority. Labor rights are one of the few areas where business' human rights responsibilities are clearly delineated. Industrialized country policymakers should send a consistent message to executives that their firms are responsible for ensuring that internationally accepted worker rights are not violated in the factories where they produce and source.

Finally, there is growing evidence that countries that protect human rights implicitly signal to traders and investors that they are good places to do business.²³ Governments that protect labor rights are likely to attract investment over the long term and reap benefits in productivity and growth. After all, people are the principal wealth of nations.

ENDNOTES

¹ See Jagdish Bhagwati et al. "Third World Intellectuals and NGOs Statement against Linkage" <http://64.233.161.104/search?q=cache:Mu7ru9z3->

XkJ:www.columbia.edu/~jb38/TWIN_SAL.pdf+third+World+Intellectuals+and+NGOs+Statement+Again+st+Linkage%E2%80%9D&hl=en&gl=us&ct=clnk&cd=1, last searched 9/12/06. The letter was published in August 1999. The signatories claimed that they presented a developing country point of view. They asserted that arguments for including labor standards in trade agreements are made by one of two groups: politically powerful lobbying groups that are protectionist and morally-driven human rights and other groups. The authors concluded that the end result of trade-based labor standards, whether protectionist or morally motivated, is to protect developed country firms from developing country competition. Also see Jagdish Bhagwati "Trade Liberalization and 'Fair Trade' Demands: Addressing the Environmental and Labour Standards Issues." *World Economy*. Vol. 18 (745-759), Nov. 1995 and Jagdish Bhagwati, "After Seattle: Free Trade and the WTO." *International Affairs*. Vol. 77, 1 (15-29). 2001.

² Annan, Thai, and Philippino officials are quoted in Steve Charnovitz, "Addressing Environmental and Labor Issues in the World Trade Organization, PPI Briefing 11/1/ 1999, fns 1-3; at http://www.ppionline.org/ppi_ci.cfm?knlgAreaID=108&subsecID=128&contentID=649; also see CUTS International, "Campaign on Linkages," CUTS Panel Discussion: Labor Linkage from the Viewpoint of Trade Sanctions, 6/20/2000, www.cuts-international.org/linkages-meeting-29.htm, both last searched 8/30/2006.

³ Until May 10th, 2007, the U.S. did not include all of the ILO Core Labor Standards in the labor chapters of its FTAs, but under an agreement with US Trade Representative Susan Schwab and the Congressional Democrats, all new FTAs would include such standards. <http://waysandmeans.house.gov/Media/eNewsLetter/5-11-07/07%2005%2010%20New%20Trade%20Policy%20Outline.pdf>

⁴ The countries involved were invited by the Research Center on Integration and Globalisation of the University of Montreal at Quebec (www.ceim.uqam.ca) conducting the third phase of the Global Labour Governance project (www.ggt.uqam.ca). These countries represent the major countries/trade blocs attempting to foster links between trade and labor rights.

⁵ Some advocates of linking trade agreements and labor rights point to the U.S. Cambodia textile trade agreement as a model; that agreement that linked market access to improvements in labor rights. They argue that this approach should be replicated as it is incentive based and also because it successfully involved the ILO, and the private sector in monitoring and disclosing factory labor rights performance. The agreement is not easy to replicate; it was a temporary trade agreement covering only one sector and, violated several WTO norms (Cambodia was not, at the time) a WTO member. Nonetheless, many NGOs such as the Ethical Trading Action Group (<http://en.maquilasolidarity.org/en/node/219/print>); the International Right-to-Know Campaign www.irtk.org; and www.corporatesunshine.org have put forth interesting ideas building on that model. Many academics have also pushed for a link between trade policy, disclosure and private sector self-regulation, including monitoring regimes. See Charles Sabel, Dara O'Rourke, and Archon Fung, "Ratcheting Labor Standards: Regulation for Continuous Improvement in the Global Workplace," Kennedy School of Government Working Paper No. 00-010, 5/2/2000; Kevin Kolben, "Integrative Linkage: Combining Public and Private Regulatory Approaches in the Design of Trade and Labor Regimes," *Harvard International Law Journal*, Vol. 48: No. 1, Winter 2007, 203-256; and Sandra Polaski, "How to Build a Better Trade Pact with Central America," Issue Brief,

⁶ Among the most important work assessing such links are: Drusilla Brown, Alan V. Deardorff, and Robert M. Stern, "Pros and Cons of Linking Trade and Labor Standards," Paper Prepared for Murphy Institute Conference on "The Political Economy of Policy Reform," at

<http://www.tulane.edu/~dnelson/PEReformConf/BDS-Pros.pdf>, last searched 2/22/2008; Christian Barry and Sanjay G. Reddy, "Just Linkage: International Trade and Labor Standards," August 25, 2005 at <http://mora.rente.nhh.no/projects/EqualityExchange/Portals/0/articles/BarryReddy11102005.pdf>; Sandra Polaski, "Protecting Labor Rights Through Trade Agreements: An Analytical Guide," *Journal of International Law and Policy*, (2004) at <http://www.carnegieendowment.org/pdf/files/2004-07-polaski-JILP.pdf>; and Kimberley Ann Elliott and Richard B. Freeman, *Can Labor Standards Improve Under Globalization?* (Washington: IIE, 2003).

⁷ Under WTO rules, WTO members can not discriminate between foreign and domestic products, producers and like products produced in different conditions.

⁸ In February 2005, the United States and its six partners in DR-CAFTA agreed to establish a mechanism and secretariat that would allow the general public to submit petitions regarding the operation of the agreement's environmental provisions. If members of the public from any party to DR-CAFTA believe that

any party is not effectively enforcing its environmental laws, they can make a new submission to this sub body, which reports to the Environmental Affairs Council established under the CAFTA-DR. The agreement also states that each party should review and respond to such communications in accordance with its own domestic procedures. Part of the Agreement's work program is to build capacity to promote public participation in environmental decision-making. The agreement was negotiated by the Department of State. Environmental Cooperation Agreement, 2/18/2005, <http://www.state.gov/g/oes/rls/or/42423.htm>; www.state.gov/g/oes/rls/or/2006/67395.htm. Also see U.S. Central America Dominican Republic Sign Environment Pacts, usinfo.state.gov/wh/archive/2005/feb/18-537689.html. The Council met for the first time on May 24, 2006. Communiqué of the Environmental Affairs Council of the Dominican Republic-Central America-United States Free Trade Agreement, 5/24/2006, at www.state.gov/g/oes/rls/or/2006/67395.htm.

⁹ The Labor chapter of DR CAFTA is

http://www.ustr.gov/assets/Trade_Agreements/Regional/CAFTA/CAFTA-DR_Final_Texts/asset_upload_file320_3936.pdf. The labor chapter in Colombia has the same language: http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Colombia_FTA/Final_Text/asset_upload_file993_10146.pdf

¹⁰ See as example, Lael Brainard, ed., "Security by Other Means: Foreign Assistance, Global Poverty and American Leadership," Executive Summary in possession of author, see, http://www.brookings.edu/global/security_chapters.htm.

¹¹ WTO, "Accession of the People's Republic of China, Decision of 10 November 2001," WT/L/432, (A) 1, which states: the 2001 Protocol on the Accession of the People's Republic of China states that as a condition of accession, China must enforce "uniform administration of Chinese law" throughout China. The agreement also calls on China to "apply and administer in a uniform, impartial and reasonable manner all its laws, regulations and other measures of the central government as well as local regulations, rules and other measures...pertaining to or affecting trade.... China shall establish a mechanism under which individuals and enterprises can bring to the attention of the national authorities cases of non-uniform application." The provisions of the WTO Agreement and this protocol shall apply to the entire customs territory of China, including...special economic zones...and other areas where special regimes for tariffs, taxes and regulations are established." <http://www.wto.org>

¹² Ibid, Sections (B), (C), 3.

¹³ This is different from a non derogation clause. Such clauses generally state that the agreement shall not generally "derogate from existing rights and obligations that Parties have to each other under any other international Treaty."

¹⁴ Susan Ariel Aaronson, "Seeping in Slowly: How Human Rights Concerns are Penetrating the WTO," *World Trade Review*, (2007) 6: 3,

¹⁵ EU Generalized System of Preferences,

<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/05/...>, last searched 2/17/2006.

¹⁶ U.S. T.R., U.S. Generalized System of Preferences Guidebook, 1/2006,

http://www.ustr.gov/Trade_Development/Preference_Programs/GSP/Section_Index.html

¹⁷ The Generalized System of Preferences,

http://europa.eu.int/comm/trade/issues/global/gsp/index_en.htm,

¹⁸ We have revised a proposal of the Ethical Trading Action Group, Proposals to the Canadian Government, 9/30/03, <http://en.maquilasolidarity.org/en/node/219/print>.

¹⁹ <http://www.unctad.org/Templates/webflyer.asp?docid=3154&intItemID=2261&lang=1> 9.

²⁰ Working Party on the Social Dimensions of Globalization, "Trade and Employment: Follow-Up to the Joint ILO/WTO Secretariat Study," GB.300/ WP/SDG/2; http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_084891.pdf

²¹ The South African government partnered with organized labor, business, government and community organizations, to support job creation and socially responsible business in South Africa. To use the "Proudly South Africa Label, a company's products or services must incur at least 50% of their production costs, including labor, in South Africa, and be "substantially transformed" (in other words a product that is merely imported and re-packaged would not be eligible) in South Africa, and meet high quality standards. A company must also be committed to fair labor, employment and sound environmental standards. By meeting these standards, consumers can be assured that companies and their products carrying the *Proudly*

South African symbol are of a high quality, are socially responsible and are supporting the local economy. While the *Proudly South African* label can be viewed as an incentive to attract and maintain production in South Africa through higher social standards, it can also be perceived as a potential trade barrier. Ayesha Kajee, "Made in China, Made Scared in a Textile Mill in Africa," www.saiia.org.za/modules.php?op=modload&name=News&file=article&sid=515. In January 2002, the Belgian Parliament approved a law aiming to promote socially accountable production by introducing a voluntary social label. According to the Belgian government the law "offers companies the possibility to acquire a label, which is granted to products whose chain of production respects the eight fundamental ILO conventions. The label is given by the Ministry of Economic Affairs after a positive and binding opinion of a stakeholder committee (composed of government officials, social partners, business federation, consumers, and NGO representatives for a maximum of three years (it can be renewed). The Committee for Socially Responsible Production established a program of control for the company and monitors its compliance. Certification is carried out by the inspection bodies accredited by the Minister of Economic Affairs. This social label was not designed to link to a trade agreement but was vetted both by the Belgian government and the European Commission to ensure that it was compatible with WTO rules. The label is not just for Belgian or EU firms. A US NGO, Social Accountability International, has been accredited under the Belgian Social labeling law. Thus, it does not seem to violate one key norm of the WTO, to treat foreign and domestic market actors similarly. Information on the Belgian Social Label at [/mineco.fgov.be/protection_consumer/social_label/home_nl.htm](http://mineco.fgov.be/protection_consumer/social_label/home_nl.htm) and europa.eu.int/comm/employment_social/emplweb/csr-matrix?c... SA8000, is a way for retailers, brand companies, suppliers and other organizations to maintain just and decent working conditions throughout the supply chain. [/www.sa-intl.org/SA8000/SA8000.htm](http://www.sa-intl.org/SA8000/SA8000.htm). Also on social labeling, see Drusilla k. Brown, "Can Consumer Product Labels Deter Foreign Child Labor Exploitation?" Discussion Paper 99-19, Department of Economics Tufts University, 1999 at <http://ase.tufts.edu/econ/papers/9919.pdf>. On the BEE, <http://www.info.gov.za/otherdocs/2003/dtistrat.pdf>; on trade distortions, see Scott Sinclair, "The GATS and South Africa's National Health Act, A Cautionary Tale," Occasional Paper 11, Municipal Services Project, May 2006; and Susan Ariel Aaronson and Jamie M. Zimmerman, Trade Imbalance: The Struggle to Weigh Human Rights in Trade Policymaking, (New York: Cambridge University Press, 2007), 81-86.

²² Susan Ariel Aaronson, "A Match Made In the Corporate and Public Interest: Marrying Voluntary CSR Initiatives and the WTO," Journal of World Trade, 41, No. 3, June 2007, 629-660; and Barbara Fliess et al, CSR and Trade: Informing Consumers about Social and Environmental Conditions of Globalised Production," OECD Trade Policy Working Papers No. 47, 10/01/2007.

²³ See References cited in Aaronson and Zimmerman, *Trade Imbalance*, 193-196, fn. 21-25.