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**The case for international labour standards:
a “Northern” perspective**

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Stephanie Luce is an Associate Professor at the Labor Center, at the University of Massachusetts-Amherst. She is working collaboratively with Naila Kabeer, IDS Fellow and Researcher of the Development Research Centre on Citizenship, Participation and Accountability, on a project called 'Labour Standards, Workers' Rights and the Challenge of Accountability: Global Perspectives and Local Realities'. This is part of the Citizenship DRC Rockefeller projects on North-South exchanges. It involves a dialogue between a Northern researcher, Stephanie Luce, and a Southern researcher, Naila Kabeer, on labour standards, followed by joint fieldwork in the North and in the South. The outputs agreed for this project were two working papers, which convey their different perspectives and, later on, a joint book on these issues. This working paper is the first of the two agreed as a DRC output. Comments are welcome and can be sent to sluce@econs.umass.edu

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Summary

The last few decades have seen heated debates over the issue of international labour standards. As governments sign up to international trade agreements, some of their constituencies call for the inclusion of labour agreements that would oblige them to abide by certain standards protecting workers' rights. Some oppose this demand on the grounds that it would interfere with free trade; others object because they feel labour standards may be applied unfairly, in ways that would harm the workers they are intended to help. This paper reviews the economic and political arguments for international labour standards, particularly those found in the global North. It concludes that while there are many reasons why workers in the global South may be suspicious of initiatives coming from the North, there are strong reasons to support the demand for international labour standards as a means for workers to organise and an opportunity to build cross-border solidarity. In the end, it is not so much the standards themselves, but the way in which the fight for the standards happens and the way in which they are used that matters most. The struggle for labour standards should be seen as a tool to aid workers to organise, rather than as a solution to poor working conditions.

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Preface

Citizenship DRC working paper: debate on labour standards, workers' rights and the challenge of accountability: global perspectives and local realities.

The Realising Rights and Claiming Accountability Research Programme of the Citizenship DRC sees the improvement of accountability mechanisms within civil society and the corporate sector as central to making development policy more responsive to people's struggles to realise their rights. One of the key questions this group has been dealing with is:

- Do “rights” and standards make a difference? And how are they translated in specific contexts?

These working papers address this question specifically on the issue of labour standards by creating a dialogue between a “Northern” and a “Southern” perspective. These papers tackle the different discourses on labour standards, analysing who is making these claims and on what grounds, and what are the different perspectives from different stakeholders from the local to the global level, in the North and in the South. These papers were conceived as part of an action research project whereby researchers from the north and south put forward their arguments to each other, debate their positions and engage in joint research in each others' contexts to examine the implications to implement different approaches to corporate, state and multilateral accountability, such as labour standards, for workers in contexts that they are not familiar with and to consider whether – and how – the interests of such workers can be reconciled.

Working papers in this debate include:

The case for international labour standards: a “Northern” perspective, by Stephanie Luce

The problem with international labour standards: a “Southern” perspective, by Naila Kabeer

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1 Introduction

The last several decades, and particularly since the passage of the North American Free Trade Agreement (NAFTA) in 1993 and the launching of the World Trade Organisation (WTO) in 1995, have seen heated debates over the issue of international labour standards. As “pro-trade” governments sign onto trade agreements, some of their constituency calls out for the inclusion of labour agreements that would mandate countries involved in the agreements to abide by certain standards protecting workers’ rights. But the calls for labour standards are controversial, and the debates have created strange allies. On the one hand, labour standards advocates include nationalist politicians and protectionist trade union bureaucrats, worried about saving jobs. But it also includes many human rights and anti-sweatshop activists, as well as several unions with a more international perspective. On the other hand, opponents of labour standards include free-marketeers who object to government regulations on trade; also feminist activists and NGOs who fear that labour standards could result in job loss for some of the most vulnerable workers in the world, such as young women in the global south who have little opportunity for economic independence.

In this paper I review the arguments by different sides of the labour standards debate and take a close look at who the actual voices are. While many have framed this as a struggle on the traditional left between the global north and the global south, I find the views of unions, anti-sweatshop activists and NGOs to be much more varied – both in the North and the South. I begin the paper with an effort to categorise different types of labour standards. The term is used loosely, but can refer to at least three major kinds of standards: government regulations, trade agreements, and voluntary codes. I argue that debates over standards should consider all three forms and recognise that each form has strengths and weaknesses. Workers’ movements may find the need to utilise all three forms at various stages in order to improve their conditions of work. I then review some of the major arguments relevant to the debate. First, there are economic questions about the relation between market interventions and employment, between growth and equality, and between wages and poverty. Second, there are political and technical questions about monitoring and enforcement. Finally, there are political questions about standards versus rights, what counts as a right, who determines what rights are, and the relationship between self-organisation and solidarity movements. This section includes examples of how labour standards can be used in international struggles for workers’ rights.

2 Workers’ rights in an international context

It is challenging to talk about international labour standards without discussing the larger economic and political context in which they exist. At the heart is the fundamental need to raise the standard of living of much of the world’s population. This includes the majority of people in the global south, whether they are part of the formal or rapidly growing informal economy. It also includes a growing share of people in the global north: the permanently unemployed and disenfranchised, and a growing share of workers earning poverty-level wages. To do this would require a massive redistribution of wealth, as well as a vision of how to create a secure safety net. It would also require addressing the fact that no capitalist economy has

ever solved the issue of unemployment, which means in capitalist economies that there will always be groups of people without means to income through work, and that there will always be competition over jobs.

Addressing these large issues requires finding economic systems that address at least two fundamental problems: providing economic security for those who don't have formal jobs, and improving the wages and working conditions for those that do. In a global economy, it also requires that we have just and fair mechanisms of governance that address the movement of capital, goods, services *and* people across borders.

Given these challenges, the debate over international labour standards is already limited, in that standards can really only address the second issue: improving conditions for those who hold formal jobs. No matter how effective labour standards might be at doing that, they alone cannot solve the problem of providing a safety net for those in the informal economy. Therefore, at their best, labour standards can only be a complement to other strategies or policies for improving the standards of living for the global working class. However, it is possible that international labour standards, or the systems of governance set up to enforce them, could have adverse effects – such as by moving some from the formal to the informal sector, or by increasing the barriers for movement from the informal to formal sector. For this reason, we must evaluate the merit of labour standards by several criteria. First, can they improve the standard of living for the workers they cover? Second, do they have unanticipated negative consequences? Third, are there other options that would be preferable alternatives? Finally, does the struggle for labour standards have the potential to achieve other political aims?

3 International labour standards: an overview

First, we must begin with a definition of international labour standards, because the phrase refers to different things. We must distinguish between at least three different *forms* that labour standards can take: government regulations, trade agreements and voluntary codes. These are not mutually exclusive, but each carries a different approach and mechanism for enforcement, so each will be discussed separately below.

In addition, there are differences in the *content* of the labour standards. The International Labour Organisation (ILO) has defined 180 conventions and 185 recommendations for improving working conditions. According to the ILO, eight of these conventions are fundamental to humane working conditions in any country, regardless of level of development and are the necessary foundation to winning any other rights at work. In this way, they can be considered *rights* – which do not vary from country to country, more than *standards*, which can vary.¹ Some make the distinction between labour rights, which are about processes, while standards are about outcomes. This means that labour rights, such as the right to

1 Guy Standing of the ILO argues that 'In developing a strategy [for labour standards], you need to identify a core of standards that are a floor of human decency; then practices that accord with a country's capacities and a firm's size and structure; and then standards that are reasonable aspirations.' (Standing 2001).

organise unions, create a process by which labour market outcomes, such as wage levels, are determined. Therefore, the content of labour standards regulations or agreements could include labour rights or processes, and/or labour standards or outcomes.²

The eight core conventions can be put into four categories: (1) abolition of forced labour; (2) abolition of child labour; (3) elimination of discrimination; and (4) the right to organise and freedom of association. According to economists Elliott and Freeman (2003), the abolition of forced labour and the elimination of discrimination are relatively non-controversial, and while there appears to be long-term consensus on the need to abolish child labour, its application in the short-term is disputed. Some argue that eliminating child labour without addressing poverty would simply lead to starvation for the children and their families. Finally, Elliott and Freeman note that the ILO freedom of association standard is the most controversial, and perhaps one that employers violate most frequently.

Countries can belong to the ILO even if they do not sign on to the conventions. As of 2004, 163 of the 177 member countries had signed onto one of the forced labour standards; 150 to one of the child labour standards; 161 to the anti-discrimination; and 154 to the freedom of association. The US is one of the countries signed onto the fewest: it has only signed onto the elimination of forced labour (signed in 1991) and the elimination of the worst forms of child labour (1999).

In addition to these eight core standards, some suggest adding the freedom of movement, or right to migrate, to the fundamental rights of workers. Because the international trade agreements make it easier for capital to move across national borders, some argue that labour should be given comparable rights. While the ILO has a few conventions that relate to the right of migrants (such as Convention 97, the 'Migration for Employment Convention of 1949'), these primarily relate to the rights of migrant workers, and not the right to migrate.

In contrast to the conventions, which can be considered labour rights, there are labour standards, which can vary from country to country. These include such things as minimum wage laws, health and pension benefits, other benefits such as paid holidays and vacations, and maternity leave. Health and safety laws are somewhat ambiguous: some argue that these should be fundamental rights, while others suggest that they are more like standards which vary from country to country (Elliott and Freeman 2003). It is possible that some health and safety provisions, such as fire extinguishers and bathroom breaks, should be considered rights, while others, such as safety goggles, are standards (See Table 3.1). Some, such as Singh and Zammit (2004) have argued that the core standards should include 'the right to a decent living' or a right to a living wage.

² Elliott and Freeman (2003) distinguish between cash and non-cash standards: cash standards are those that cost money, such as higher wages and health benefits. Non-cash standards are those that have no direct cost, such as abolishing child labour.

Table 3.1 Labour rights versus labour standards

Labour rights	Labour standards
Freedom of association	Minimum wage or living wage laws
Right to collective bargaining	Health insurance
Abolition of forced labour	Maternity leave
Abolition of child labour	Pension
No discrimination in employment and wages	Paid vacation or holidays
Freedom of movement/right to migrate	Health and safety standards (though could be considered a right)

Approaching labour rights as human rights can add to the current rights-based debates in development that tend to ignore workers’ rights. According to the United Nations, a rights-based approach in development provides a framework that allows practitioners and governments to focus on development policy that “is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”, rather than a sole or primary focus on economic growth (United Nations 2002). Although a rights-based approach introduces concepts of participation, empowerment and accountability, labour rights are not usually explicitly addressed.

4 Forms of labour standards

We now return to the question of the forms that are used to promote labour rights and standards. The first is government regulation, which refers to federal, state or local laws that regulate labour conditions. These come with the power of “hard law,” meaning that workers can sometimes lodge formal complaints and governments can penalise companies found in non-compliance. In the US, the main labour standards struggle in the 1800s and early 1900s was for a shorter working day (initially for a 12 hour working day, then 10 hour, and then eight hour), and for minimum wage laws. Other labour standards included restrictions on the use of child labour, requirement of overtime pay, and health and safety laws. Labour standards in the US also include the right to form a union and engage in collective bargaining.

Workers in the US are often surprised to learn that labour laws and regulations are often stronger in other countries, including those in the global North and South. For example, workers in Mexico are entitled by law to holidays and vacations, wages paid in cash, severance pay and profit sharing. Of course, the laws themselves do not guarantee that employers will comply, and labour laws are commonly violated around the world (Sengenberger 2002). This is in part because most countries are seriously understaffed in terms of government labour inspectors. Still, laws can give workers some leverage in their struggle for labour rights and standards.

Table 4.1 Forms of labour standards

	Government regulations	Trade rules and agreements	Voluntary corporate codes	Negotiated codes
Main target	Corporations	Countries	Corporations and their subcontractors	Corporations and their subcontractors
Usual method of monitoring	Labour inspectors (hired by government)	Bodies such as the NAALC; the ILO	Social auditing (Verité, Price Waterhouse Coopers) – “vigilantes and verifiers”	Social auditing (WRC, NGOs) – “vigilantes and verifiers”
Penalty	Fines	Fines; quotas	Bad publicity; consumer boycott	Bad publicity; possible legal actions
Coverage	Labour rights and standards	Usually emphasises labour rights rather than standards	Labour rights and standards	Labour rights and standards
Examples	Minimum wage laws; child labour laws	US Generalised System of Preferences; NAFTA Labour Side Agreement	Levi’s Corporate Code of Conduct	Global Framework Agreements
Strengths	Enforceability, “hard law”	Fills in holes not covered domestic laws; international pressure may be only way to get government accountability	Power of consumer pressure	More enforceable than top-down voluntary codes
Weaknesses	Domestic focus; can have laws on books but not enforced	Reduces to country versus country approach; penalises country v. company	Weak enforcement	Potential trap of company v. company approach

The second form of labour standards are those attached to trade agreements. These can range from domestic policies that govern a country’s trade, such as the US Generalized System of Preferences (GSP); bilateral agreements, such as the US-Jordan; or multilateral agreements. In some cases the labour standards are incorporated directly into the agreement whereas with the North American Free Trade Agreement (NAFTA), labour rights were included as a labour side-agreement. Some have proposed including labour (and environmental) standards into the WTO, also known as the “social clause”. We will discuss each of these in order.

First are domestic efforts at imposing international labour standards through unilateral trade policy. The US has a Generalized System of Preferences (GSP), which gives greater access (duty-free) to US markets to those countries who meet certain conditions.³ In 1984, the GSP legislation was amended to include specific labour standards as part of those conditions, including the freedom of association and abolition of child and forced labour. Specifically, if a country is found to violate some of the conditions, it can lose its duty-free status. Since the GSP conditions were adopted, US unions and NGOs have filed dozens of petitions against trade with other countries where labour rights are being violated. Elliot and Freeman summarise the petitions filed between 1984 and 2000 and find that of the relevant and accepted

³ The European Union also has a similar system of preferences.

petitions, about half (15 out of 32) resulted in successful changes, and half (17 out of 32) did not. Elliot and Freeman conclude that the successful cases were in countries that had a greater percentage of exports to the US and countries with more resources (greater per capita income).

Another variation of unilateral policy is the 1974 US Trade Act, which lays out principles of fair trade between the US and trading partners. Although it has been used in the past to challenge violations of trade related to intellectual property rights or dumping, the Trade Act has never been used to file claims based on violation of workers rights (or “social dumping”). However, in 2004, the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) filed the first charge related to labour standards. Specifically, the AFL-CIO asserted that Section 301(d) of the 1974 US Trade Act can and should be used to rectify unfair advantages in trade that China enjoys due to systematic repression of workers’ rights. Section 301(d) ‘is the principal statutory authority under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny US rights or benefits under, trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict US commerce’ (Grier 2001). The AFL-CIO petition argues that since China persistently denies workers freedom of association, encourages forced labour, does not enforce its own wage, hours and safety laws, China receives a cost-advantage in competing with US firms. The petition calls on the US Trade Representative and President to impose trade remedies or sanctions against China, to compensate for this cost advantage and that the US should enter into no new trade agreements unless the WTO requires members to enforce workers’ rights. There has been no decision in this case as of October 2004, but the petition represents another approach to enforcing labour standards across borders. Elliott and Freeman find that even when the Trade Act is used to apply economic sanctions in non-labour cases, it is only moderately successful. Their data on Trade Act cases from 1985 to 1994 shows that while economic sanctions are more effective than GSP rulings in changing behaviours, the success rate is still only 61 per cent (compared to a 47 per cent success rate in GSP rulings for the same period).

The idea of attaching labour standards to bilateral or multilateral trade agreements is intended to create international mechanisms for labour law enforcement. Critics point out that the core ILO conventions have little meaning on the ground, as many countries that have signed on fail to comply with the standards. While the ILO has the ability to investigate and make public non-compliance, it has no power to enforce. Thus, the ILO standards become most useful as an educational tool. Because of this, advocates of international labour standards argue for stronger mechanisms to enforce worker rights.

One model already in place is the labour side agreements of NAFTA, known as the North American Agreement on Labour Cooperation (NAALC).⁴ The NAALC was negotiated as a parallel agreement to NAFTA after unions pressured their governments to include labour standards if they were going to pass NAFTA. The NAALC created a Commission on Labour Cooperation, comprised of the labour secretary from each country and a secretariat to oversee the enforcement of the NAALC. The NAALC basically

⁴ Labour standards also exist in a few other US trade agreements, including the US Free Trade Agreements with Cambodia, Morocco, Jordan, Canada, Chile and Singapore. Trade agreements with labour standards in other countries include the Mercosur Social-Labour Declaration.

requires each country to comply with its domestic labour laws. Each country established a National Administrative Office within its Department of Labour. These offices work with the Commission in order to monitor compliance.

Similar to the ILO, the NAALC has little power. None of the organisations established under the NAALC have legal power to force the US, Mexico or Canada to enforce their laws, or to override federal or state laws. In reality, the Commission serves as a body to hear complaints and only has the power of “soft law”. It can investigate non-compliance and recommend fines or sanctions in cases where there are violations of minimum wage, child labour and safety and health violations. In cases of violations of worker rights to organise, the Commission is only allowed to recommend that the employer change the behaviour. However, even the conservative think tank Heritage Foundation acknowledges, ‘A long and cumbersome process must be followed before either fines or sanctions can be resorted to, with many safeguards limiting any potential action’ (Smith 1993). On the 10 year anniversary of the NAALC, researchers at the University of California, Los Angeles, examined the performance of the Commission and concluded that while the agreements had managed to investigate and expose instances of labour standards violations: ‘The NAALC has failed to protect workers’ rights to safe jobs and is in danger of fading into oblivion’ (Delp *et al.* 2004). Despite these failures, some activists continue to call for labour standards to be attached to trade agreements such as Central American Free Trade Agreement (CAFTA). In fact, Delp and her co-authors argue that including standards directly rather than as a side agreement will help improve chances for enforcement.

There is also debate over including labour standards into the WTO, or giving the ILO power of “hard law” to enforce labour standards in conjunction with WTO rulings. Critics note that even though the WTO is supposed to be democratic, with one-country/one-vote, the reality is otherwise. Wealthy countries have more power because they have more weight in much of the negotiations (the “green room” negotiations). In addition, wealthy countries have more power to ignore WTO rulings, as we’ll discuss more below. One concern about adding labour standards to the WTO is that the countries that might be most affected will have the least amount of say in setting up the structure. For example, it is possible that large apparel-producing countries such as Bangladesh, El Salvador and Thailand could be excluded from the negotiations that establish the labour standards and their enforcement. However, according to Martin Khor of the Third World Network, initial resistance of developing countries to labour standards “softened” in recent WTO ministerials (Khor 1997). In the 1996 Singapore meetings, countries agreed to include language affirming commitment to international labour standards in the WTO text – this text asserts that the ILO is the appropriate body to continue work on the issue and that labour standards cannot be used for protectionist purposes.

Still, the concern about unequal power remains, and relegating enforcement to the ILO will not necessarily resolve all problems. Many critics of the ILO argue that this organisation is not adequate for dealing with labour relations in most countries. The ILO was constructed on a model of corporatist tripartite structures. This model recognises corporations, governments and unions, but does not recognise

non-union workers, rank and file union members, NGOs or other elements of civil society. Given the structure and emphasis on collective bargaining, the ILO also has little to say to informal sector workers.

A third form of labour standards included is voluntary mechanisms (see Table 4.2). One common method is the use of corporate codes of conduct. Some corporations themselves have developed internal codes that specify the conditions under which their production will occur. Levi-Strauss was the one of the first corporations to establish such a code in the early 1990s, in response to growing consumer and NGO pressure on companies to reduce the incidence of sweatshops.

There are several problems with voluntary codes. First, the codes differ greatly from company to company, making it difficult for consumers to know what code compliance means. Second, companies cannot be expected to adequately enforce their own standards. In some cases, they hire outside monitors – including accounting firms or private organisations such as Verité – to investigate compliance. One prominent group is Social Accountability International (SAI), a US-based non-profit organisation that works to investigate sweatshops. SAI has developed the SA8000, a voluntary international workplace standard (similar to the ISO9000, a voluntary international quality standard). However, even these efforts have been criticised for a lack of transparency. Since it is the corporations that hire the monitors, the corporations still have control over which factories are inspected, when inspections occur and how much of the report will be available to the public.

These lead to another form of voluntary standards: negotiated codes. These are similar to corporate codes in that they generally lack the power of hard law. However, they are not instituted from the top-down. Instead, they are the result of bottom-up pressures from workers, unions or consumer groups, and the codes have buy-in from multiple stakeholders. One form of the negotiated codes is Global Framing Agreements, which are negotiated between corporations and entities such as the International Textile, Garment and Leather Workers' Federation. So far, there are several dozen Global Framing Agreements in existence, of varying strength.

Another example of negotiated codes comes from the US university-based anti-sweatshop movement. In the late 1990s and early 2000s, student groups around the country affiliated with the United Students Against Sweatshops, and pressured their colleges and universities to adopt codes that governed the universities purchases of apparel. In addition, the students created a non-profit independent monitoring organisation called the Workers Rights Consortium (WRC). The WRC is funded by member universities and run by a board consisting of students, university representatives and independent labour rights experts. Their approach is to work with the licensees to make sure apparel is produced in factories that are not violating workers' rights – inside and outside of the US. The WRC acknowledges that it cannot inspect every factory producing college-logo apparel, but it attempts to collect accurate and systematic information about conditions in as many factories as it can. The WRC has no legal authority to enforce its codes – rather, it relies on informational and pressure campaigns to get factories to comply with standards. According to the WRC website, the goal 'is not to embarrass licensees but to promote real

improvements in factory conditions. For this reason, when violations are identified at a factory, the WRC always generally seeks to give licensees an opportunity to address the problems prior to the issuance of a public report.⁵

Now that we have discussed the variation in the content and form of labour standards, I turn to the arguments for and against them. Recently, the arguments receiving the most attention are related to attaching standards to trade agreements. However, many of the arguments are similar to those used regularly in debates over establishing domestic regulations. This includes both economic and political arguments, which I review below.

5 Economic arguments for and against labour standards

The main arguments against “hard law” labour standards come from several perspectives. First, free market advocates argue that labour standards interfere with free trade, thereby impeding opportunities for economic growth. Rather, the best avenue for improving wages and working conditions is to open economies to more unrestricted trade. Poor countries with little infrastructure or technology will find a comparative advantage in competing on low cost labour. Labour standards would only hinder these countries advantage in international trade.

Second, some NGO and workers rights’ groups argue that labour standards will be applied unevenly, punishing the most vulnerable countries most harshly. This in turn will hurt workers who hold these jobs. In many cases those working in *maquiladoras* face few other opportunities for employment. Some have been pushed off their land or out of public sector jobs due to stabilisation and structural adjustment policies imposed by the International Monetary Fund (IMF) and World Bank. As Naila Kabeer points out in *The Power to Choose*, jobs in the apparel export industry may provide the only or best avenue to independence for women in countries like Bangladesh (2000). Scholars such as Singh and Zammit note that while they believe labour standards are desirable and an important indicator of economic development, using trade sanctions to enforce standards is the wrong approach. Instead, they argue that ‘their promotion is best achieved in a non-coercive and supportive international environment, such as that provided by the ILO’ (Singh and Zammit 2004: 102).

Labour standards’ advocates also come from different perspectives. Some of the most vocal come from the US labour movement, which has had a history of opposing “free trade”.⁶ This group asserts that reducing tariffs and quotas will do several things: first, increase foreign imports which are produced at lower prices, reducing demand for US-made products and therefore cutting US jobs. Second, trade agreements reduce restrictions on the mobility of US firms, allowing them to shift production to other

⁵ Workers Rights Consortium, www.workersrights.org/about_faq.asp.

⁶ Interestingly, while there is a commonly held perception that US unions are among the most vocal advocates of international labour standards, it is difficult to find much evidence of this in the media. For example, Lexis-Nexis searches of major newspapers for stories on labour standards and unions find a far greater number of stories from other countries than for the US. This may be because US newspapers tend not to deal with union issues – but at the same time, even in US union press releases and on union websites, the topic of labour standards is generally not prominent, or in some cases, even evident.

countries, also eliminating US jobs. In the 1980s and early 90s the attention was on manufacturing jobs, but this has increasingly affected service sector jobs as well (e.g. call centres, data entry, IT, financial services). The argument for labour standards says that countries paying low wages enjoy an unfair advantage in trade, and US workers should not have to compete for jobs against countries where wage levels are much lower (Singh and Amit 2000).

As Kabeer rightly points out, proponents of labour standards often work from protectionist motives, such as with the efforts of the Child Labour Coalition (a Washington DC based NGO) and the Asian-American Free Labour Institute (an AFL-CIO constituency group) to ban child labour in Bangladesh. Another notorious example has been the efforts by the International Brotherhood of the Teamsters to keep NAFTA from opening the trucking industry beyond the border regions. In radio ads, mailings and public presentations, Teamsters officials argued that Mexican truck-drivers were likely to smuggle drugs into the country and lower safety conditions. At a conference of labour educators in 2000, Teamster staff member Gerald Boesen stated that Mexican truck-drivers are likely to be ‘on coke’ and to ‘patch up their trucks with bubble gum’.⁷

On the other hand, there are some in the labour movement who also advocate for international labour standards but align themselves more closely to anti-sweatshop activists, NGOs, and some in the global South who assert that international labour standards should be included in trade agreements in order to give some moral and legal backing to workers’ efforts around the world to combat multinationals and protect workers’ rights. For example, United Students Against Sweatshops (USAS) has evolved over time to have a much more nuanced view of international labour issues. US students new to the sweatshop issue often begin with a view that all work in the global South is “sweatshop work” and the women who hold these jobs are passive victims. They generally begin with a desire to purchase “American-made” apparel that they believe is “sweat-free”. However, over time most USAS leaders have come to realise that these images are not necessarily correct – that US apparel may be produced in sweatshops as well, that boycotting apparel from other countries solves nothing and could in fact harm workers, that other industries beyond apparel can also have “sweatshop”-like conditions, and that the women working in these workplaces have agency.

The first principle of USAS states:

We work in solidarity with working people’s struggles. In order to best accomplish this and in recognition of the interconnections between local and global struggles, we strive to build relationships with other progressive movements and cooperate in coalition with other groups struggling for justice within all communities campus, local, regional, and international.⁸

This principle developed over time as USAS activists learned that they alone could not “solve” the issue of sweatshops and that their role was best suited to providing solidarity support to workers’ struggles in the

⁷ Gerald Boesen, ‘South of the Border: A Union’s Position on Cross-Border Trucking’, presentation at the UCLEA Conference, Milwaukee, WI. 15 April 2000.

⁸ USAS, www.studentsagainstsweatshops.org/about/about.php.

US and around the globe. USAS and the WRC together have worked to build alliances with unions, workers and NGOs in the global south – particularly in Mexico, Central America and the Caribbean. For example, after the WRC released a fact-finding report in 2001 showing that the Kuk Dong factory in Atlixco de Puebla, Mexico had illegally fired workers trying to form an independent union, USAS mobilised a campaign in support of the Kuk Dong employees. Students called on Nike and Reebok to pressure Kuk Dong into rehiring the workers and recognising the union. Eventually, the company caved in and rehired all fired workers – an action virtually unheard of until that point. USAS and the WRC have also worked on campaigns related to US workers and working conditions, such as at the New Era hat company in upstate New York.

Robert Ross and Anita Chan argue that these kinds of examples suggest that debates over labour standards are actually not a North-South debate, but really a South versus South debate (Ross and Chan 2002). For example, they point out that while trade unions from India, Zimbabwe and Zambia have been vocal opponents to linking trade and labour standards, others in the South – notably South Africa and parts of Latin America have mostly argued in favour, based on positive experiences using labour standards to win gains for workers. In a regional meeting convened by the National Research Council, Homero Fuentes of the Commission for the Verification of Corporate Codes of Conduct (COVERCO) in Guatemala also argued that labour standards must be included in trade agreements and adequate resources must be provided to train inspectors and judges, collect data and educate workers (National Research Council 2004). Kelly Zidana of the International Confederation of Free Trade Unions-Afro, Kenya, adds that although many African countries incorporated the core labour rights in their constitutions, there are challenges to implementing these rights. In part, he argues that the IMF and World Bank have made it more difficult to enforce labour laws. Therefore, there is a need to strengthen international institutions like the ILO, so that they can enforce labour law and counter-balance the IMF and World Bank (National Research Council 2004). Unions elsewhere have even suggested some support for including labour standards in trade agreements. According to Ross and Chan, ‘the Korean Confederation of Trade Unions believes the “social clause can be a significant and effective instrument to protect and achieve social rights and the base trade union rights”’. Ross and Chan suggest that the differences in opinions in the global South rest in part on the histories of labour solidarity between countries. For example, ‘unions in Guatemala, Honduras and Nicaragua have strategically used the US threat of trade sanctions’ to bolster their own right to organise workers. We’ll discuss this more in a later section.

Given this range of opinions on the pros and cons of international labour standards, we will now review the research on some of the key questions: do labour standards reduce employment? Do labour standards hurt poor countries? Can labour standards be effective in improving working conditions for most workers? And are there other methods for raising standards that might be more effective?

5.1 Do labour standards lead to unemployment?

The first objection to labour standards begins from an ideological one: the fundamental belief of neoclassical economists that wage regulations will reduce employment in the firm. This argument is used

against domestic labour standards as well as international. Economist Paul Krugman wrote in a critique of US living wage ordinances in 1998, ‘So what are the effects of increasing minimum wages? Any Econ 101 student can tell you the answer: the higher wage reduces the quantity of labour demanded, and hence leads to unemployment’. However, Krugman admits that finding empirical evidence to support this theoretical assertion has ‘been hard to confirm with actual data’. After decades of debates over federal and state minimum wages, the evidence on their impact is mixed. Some economists argue that the most persuasive study to date is the “natural experiments” of David Card and Alan Krueger, who looked at firm-level data in fast food restaurants along the New Jersey and Pennsylvania border after New Jersey raised its state minimum wage from \$4.25 to \$5.05 in 1992 (Card and Krueger 1995). Contrary to the conventional wisdom among neoclassical economists, Card and Krueger found that employers did not automatically reduce employment. Rather, their findings suggest that several factors came together to pay the higher wage. First, the fast food restaurants were able to raise prices by a small amount. Second, employers found that with the higher wage, they had higher productivity – perhaps due to lower turnover and absenteeism. These factors can allow employers to cover a higher minimum wage without reducing employment.

Card and Krueger repeated their work in other areas, again showing that theoretical predictions don’t necessarily hold. In *The Living Wage: Building a Fair Economy*, Pollin and Luce (2000) examine employment trends over time and argue that macro-economic conditions are much more important for determining unemployment trends than are minimum wage laws. In addition, economists now have data from the movement to pass regional living wage ordinances in US cities over the past decade. Once again, opponents argued that setting higher wage rates for workers would lead to lay-offs and fewer jobs. However, no one has yet been able to find empirical evidence to support this claim.⁹ In fact, over time the opponents have changed their argument and now claim that the ordinances will not necessarily reduce employment, but allow employers to replace current workers with more skilled employees, thereby hurting the workers the ordinances were meant to help.

On the international level, the ILO has done studies comparing the Human Development Enterprise (HDE) Index across firms. The HDE provides firm-level indices of management preferences and processes, as well as outcomes (such as work security, skill development and economic democracy) and combines these factors into a score that ranges from zero to 25. The data shows that there is a strong correlation between firms with higher HDE scores and firms that perform better economically. This does not prove that higher labour standards won’t ever lead to lay-offs, but does suggest that firms may gain from better standards in a way that outweighs the costs (Standing 2001).

⁹ Economists David Neumark and Scott Adams have used the Current Population Survey (CPS) to estimate the employment and income outcomes in cities with living wage ordinances compared to cities without. They conclude that the ordinances result in an overall decrease in poverty rates and a small decrease in employment (e.g. Neumark and Adams 2000). This work has been critiqued by Brenner *et al.* (2002), who argue that CPS data is not appropriate for measuring living wage ordinance effects, due to the small coverage of living wage ordinances and small sample sizes in the CPS.

5.2 Does the absence of labour standards lead to employment?

Interestingly, the inverse of the standards-unemployment question is rarely addressed. Some economists may argue that fewer labour standards will create conditions more favourable to growth, but rarely is the issue framed around the relation of no labour standards to creating more jobs. As James Heintz argues, neither side of the labour standards debate tends to put enough attention on employment in general (Heintz 2004). While labour standards opponents emphasise access to employment opportunities, the discussion often fails to address larger structural questions. First, Heintz suggests that the labour standards debates should include more focus on the institutional relationships between producers and retailers, or global commodity chains. In various theories of development, increased labour productivity is one avenue for economic growth, leading to higher wages for workers, or employment opportunities for more workers. But in many of today's export industries (such as apparel, electronics and children's toys), this outcome is not possible. These global commodity chains are dominated by large oligopolistic retailers that are able to set prices that are paid to producers.¹⁰ This means that any gains in labour productivity will not be realised by the worker or their immediate employer, but by the retailer, in higher profits, or the end-consumer, in lower prices.

Standard economic theory might suggest that one avenue for employment creation for the producers is to lower wages even further, thereby lowering the cost of their final cost and increasing demand for their product. However, the evidence does not seem to bear this out. For example, as manufacturers have moved production around the globe in search of lower wages, they have not necessarily increased employment. In fact, Mark Anner finds a striking *decrease* in employment in many of the industries moving from North to Central and South America. For example, auto manufacturers opening new plants in Brazil in the 1990s have invested in technologies that dramatically reduce the number of employees needed (Anner 2004). As Heintz (2004) points out, 'labour costs amount to such a small fraction of the wholesale and retail price that it would take an enormous reduction in wages or a big increase in productivity to have a significant effect on demand.'

Instead, Heintz argues a more realistic path to employment generation is to raise incomes globally, thereby increasing aggregate demand for consumer products. Due to relative price elasticity, 'growth in the global income can lead to proportionately larger growth in demand for such imports, which in turn can create substantial numbers of employment opportunities and contribute to reducing inequality.' This would suggest that the absence of labour standards does not create favourable conditions for employment growth. Rather, policies resulting in increases in income would more likely result in this outcome.

¹⁰ This trend seems to be only increasing as Wal-mart increases in size and scope. Numerous retailers and trade association leaders have remarked on the growing power of Wal-mart to set prices for entire industries (see e.g. Heintz 2004; Featherstone 2004).

5.3 Would international labour standards hurt poor countries?

A second objection to labour standards is that they might not only hurt employment on the micro level within firms, but that they could actually impede economic growth on the macro level. In this way, labour standards could hurt the countries that are most vulnerable: the poorest countries that are paying the lowest wages.

Those who make this claim must be able to show that there is a negative correlation between economic growth and enforcement of labour standards. Ideally, they would then be able to show that the latter condition caused the former. Data on both of these questions is difficult to find, as there are many measurement issues to consider (particularly, how to measure whether standards are being enforced). However, James Heintz of the Political Economy Research Institute uses a simple exercise that plots the relationship between initial wage rates for apparel workers against employment growth for 1982–1996 for 59 countries (Heintz 2002). The wage rates, measured in US dollars, are a three-year average centred on 1982, while the growth rates are average annual growth rates. Heintz first finds an overall negative relationship between wage rates and employment growth, suggesting that certain countries that started off with low wages saw job growth. He then examines whether changes in wage rates are associated with changes in employment. In this case, there is a negative relationship that appears only after controlling for certain factors. Heintz concludes from this that while initial low-wage levels can be important to attract industry, it is also possible to experience employment growth and wage growth at the same time. Indeed, this was the experience of several Asian countries in the 1970s and 1980s.

Heintz points out that there is still a lot of variation: countries with almost the same wage rates can still have very different growth rates. He concludes, ‘If other factors – such as prices, productivity or consumer demand – adjust appropriately when wages increase, space can be created to accommodate better standards without generating welfare-reducing job losses’ (Heintz 2002: 12). This suggests that standard economic models that predict employment loss or decreases in growth as an automatic result of wage increases are not complex enough to capture all of the economic and institutional factors involved in the actual functioning of markets.

Elliott and Freeman add to this point, by showing that while there is a correlation between growth and poverty reduction, it has been difficult to prove a causal link between free trade policies and growth. They cite Rodrik, Subramanian and Trebbi’s work (2002) as arguing that ‘the quality of institutions “trumps everything else” in explaining variations in income levels around the world’ (Elliot and Freeman 2003: 15). A few countries that appeared to be positive examples of the potential of free trade policies have recently suffered severe financial crisis, such as the “East Asian miracle” countries or Argentina. Sengenberger (2002) also cites evidence of countries that have a positive relation between enforcement of labour rights and economic growth.

A final concern regarding the potential negative impact on poor countries is the issue of enforcement. In particular, some opponents of labour standards suggest that we have no reason to expect an equal application of the laws or regulations. Countries with few resources and little power in the global economy may be more vulnerable than larger countries. In addition, the US could demand that its trading

partners adhere to regulations that it itself does not always follow within its own borders. Because of the power of the US market, the negotiations between the US and other countries never occur on an equal footing.

For example, even though the WTO is supposed to have power to enforce decisions over all countries, it seems clear that the US is better situated to ignore a WTO ruling than a smaller country. In September 2004, the US announced that it would ignore a WTO ruling that requires the US to repeal an anti-dumping law known as “the Byrd Amendment”. The Byrd Amendment, passed in October 2000, allows the US government to impose duties on countries it claims are dumping goods in the US market and then give those duties to the US corporations hurt by import competition.¹¹ The case was brought to the WTO by the EU, Canada, Japan, India, Brazil, Mexico, Chile and South Korea, who claim that the law impedes their right to free trade and gives US corporations an unfair advantage. The WTO ruled against the US and ordered it to repeal the Amendment, but the US Trade Representative’s Office said that it would continue to impose duties. This example suggests that it is not effective to set up international rules in a context when some players are so much more powerful than others.

To address this concern we must turn to the general question of monitoring and enforcement. There are reasons to believe that labour standards would or could be enforced unevenly between countries, but there is also a more general view that the standards will be hard to enforce in any case – whether due to lack of resources or political will. This will be discussed in a later section.

5.4 Cash versus “non-cash” standards

As mentioned above, not all labour standards are the same. While I distinguished between labour rights and labour standards, Elliot and Freeman (2003) suggest that the difference is between standards that are relatively free or low cost and those that cost money. They and others (e.g. Broad 2001) suggest that the main concern of labour activists should be to win the right to collective action. Once workers have the right to unionise, they have a mechanism to bargain over other standards, such as wages. Robin Broad echoes this, writing that focusing on basic rights such as the right to freedom of association ‘avoids a major pitfall: having to determine which standards are appropriate for which corporations or which levels of development – a potentially messy judgment call’ (Broad 2001).

While focusing on the right to organise seems a possible simple solution, there are critics on both sides. Opponents of labour standards still suggest that attaching trade sanctions to this right could still harm workers in countries where the law was not enforced. Some proponents of labour standards say that the right to organise is not enough. For example, Heintz argues that within the current global commodity chain structures, workers simply do not have enough power to bargain over wages (Heintz 2004). Indeed, even a large swath of unionised workers in the US find themselves relatively powerless to bargain wages upward – let alone keep their job. While stories of mass outsourcing are mostly exaggerated in terms of

¹¹ The Amendment went into effect in 2001. From 2001 to 2003, the US collected about \$728 million in duties, which it gave to about 1000 corporations. For more detail on the countries paying the duties or corporations collecting, see www.cbp.gov/xp/cgov/sitemap.xml.

their impact on total jobs in the US, a recent study found that in the first quarter of 2004, 39 per cent of all jobs leaving the country were union jobs (compare this to a national private-sector union density of only 8 per cent) (Bronfenbrenner and Luce 2004). Clearly, simply having a union does not provide workers in global industries much bargaining power.¹² In these cases, it is necessary to establish wage standards that serve as a floor, preventing a “race to the bottom” in wages even when unions are present.

5.5 Can labour standards really help workers improve their working conditions?

Because of the sheer number of factories around the world, many observers are sceptical that labour standards can be systematically and rigorously enforced everywhere – at least not by professional inspectors. For that reason, a number of scholars have worked on proposals and typologies of monitoring agents to develop realistic and workable options for enforcement.

But first we must be careful to define what we mean by implementation. In other work, I’ve argued that implementation of labour law can be divided into four main tasks: administration, monitoring, enforcement and evaluation (Luce 2004). Administration includes assigning a department to be accountable for implementation, hiring staff, establishing transparent rules and regulations on what is covered under the law, and informing covered employers and employees. Monitoring includes various means to make sure employers are complying: worksite visits, payroll review and investigating employee complaints. Enforcement refers to actions pursued when employers are found to be in non-compliance with any of the provisions of the ordinance and can include imposing and collecting fines or sanctions, collecting backwages, re-instating employees unjustly fired and negotiating with employers to develop reasonable time tables for making improvements. Finally, evaluation refers to steps taken by administrators to assess the implementation process over time, including highlighting loopholes and looking for ways to correct problems. Ideally, non-governmental parties would be included in the evaluation process as well (allowing workers, employers and NGOs to provide feedback).

6 Who will enforce?

Who will do all of this work in the hundreds of thousands of workplaces around the world? There are a number of enforcement models put forth by advocates of labour standards, which can differ on proposals about who should have responsibility for monitoring workplaces. Elliot and Freeman (2003) write about the need for “vigilantes” and “verifiers”. Vigilantes are self-appointed individuals and non-governmental organisations that investigate workplaces, publicise poor working conditions and attempt to generate public pressure campaigns to win improvements. Verifiers are organisations or non-profit organisations

¹² It is not only in mobile industries that unions suffer from weak bargaining power. Even in industries such as retail, janitorial services, day care and hotels, workers do not always see significant increases in pay with the presence of a union. In fact, in a few places unions that have been unable to win significant wage increases through bargaining have supported local living wage ordinances as a way to raise union members’ wages through legislation.

hired by firms, countries, or perhaps even by the vigilantes, to conduct more systematic investigations of workplaces. Unlike the vigilantes, verifiers work more cooperatively with the firms to find ways to improve working conditions.

The National Labour Committee (NLC) is an example of a vigilante. This organisation was founded by Charlie Kernaghan in 1981 to build labour support for campaigns to end US intervention in Central America. Today, the group focuses on labour issues around the world. It has five staff members and offices in the US, Central America and Bangladesh. The NLC works on international labour standards issues by generating campaigns around particular sectors, employers, or groups of workers, such as the ‘Toys of Misery’ campaign that publicises working conditions in Chinese toy factories, or the ‘Sean Jean Sweatshops’ campaign that focuses on a particular brand of clothing. The NLC works to raise public awareness through speaking tours of the workers from the campaigns and other means, in the hopes of pressuring employers to improve conditions. The group has won a number of these campaigns, such as the 1995 decision by GAP to allow independent monitors to monitor their code of conduct in their offshore factories.

An example of a verifier is the non-profit firm Verité. Verité is an independent auditing firm based in Massachusetts. It was founded in 1995, as a response to the growing number of companies that had established their own codes of conduct. Private companies hire Verité to inspect their factories and produce reports. Sometimes the companies will also work with Verité to develop solutions to the problems they find, or conduct trainings to teach the company’s in-house staff to audit working conditions.

Another example of a verifier is the Workers’ Rights Consortium (WRC). The WRC was formed by the United Students Against Sweatshops in 2000. The WRC is also a non-profit organisation, which is run by a board of USAS representatives, independent labour experts and university representatives (which includes some faculty members). The WRC was created because USAS felt that existing verifier organisations were not truly independent and were controlled by the corporations that ran them or hired them. The WRC has no corporate representatives. Approximately 150 universities and colleges belong to the WRC – every year, they must provide the organisation with a list of the companies they buy university-logo apparel from. Those companies must then provide the WRC with a list of the factories they use for production. The WRC maintains a database with information on the factories and conducts selective investigations into workplaces.

Elliott and Freeman do not distinguish between various organisations: meaning they do not argue for particular vigilante or verifier groups over others. However, anti-sweatshop activists do debate the strengths and weaknesses of particular organisations. The WRC was founded because student sweatshop activists were critical of the existing verifier groups – particularly the Fair Labour Association (FLA), a verifier organisation that has industry representation. Initially, anti-sweatshop groups felt that the FLA was flawed because it was not independent from industry and did not incorporate workers’ voices. USAS actively campaigned for universities to join the WRC instead of the FLA. Similarly, some anti-sweatshop

activists critique Verité as pro-management. The group is hired by companies rather than workers, and some believe this has led to Verité privileging employer needs over thorough investigations.

In terms of vigilante groups, some activists and scholars have been critical of the National Labour Committee (NLC) for its choice of tactics and rhetoric. Kabeer writes about how the NLC coaches young women workers who come to the US to do speaking tours about their jobs. They are pushed to speak only of the terrible conditions and not to speak of anything positive about the work. The workers are not allowed to present a ‘nuanced, balanced and differentiated account of ground-level realities in low-income countries – narratives that distinguish between situations in which working conditions are products of poverty and under-development, and those that entail the flagrant violation of basic human rights’ (Kabeer 2004: 12).¹⁵ Some USAS activists have also expressed concerns about the nature of the relationships the NLC has with workers. For example, they feel the NLC has not always taken proper precautions when visiting workers and union organisers. One year, the NLC took a group of USAS activists to Central America. The group met with union organisers who were working underground, as there has been a history of violence and murder of union activists. Some students videotaped the meetings. The next day, Kernaghan brought the students into a garment factory without permission. Guards stopped the group and confiscated their bags, including the videotapes of the clandestine meetings. This suggests that there may be a need to develop criteria for what makes for more politically effective vigilante and verifier groups.

While vigilantes and verifiers may both have a role to play in monitoring and enforcement, there are other stakeholders that may also be relevant. These include government agencies, international bodies such as the ILO, unions and the workers themselves. Ideally, as Elliott and Freeman themselves point out, workers in the factories would have unions, thereby providing a vehicle for workers to complain about conditions and bargain over improvements. It is the workers themselves that are the best judges of what wage they need and whether or not improvements made are adequate. Unfortunately to date, neither the vigilantes nor verifiers have had great success in helping create the conditions for workers to form their own independent unions. Other scholars echo this concern. Naila Kabeer (2000) writes that in the midst of heated debate about the sweatshop issue, ‘the views of Third World women workers themselves were largely unsought and unheard’ (Kabeer 2000: x). Guy Standing of the ILO adds that whether it is a large multi-national employing thousands of teenage women in Malaysia, or a small informal firm in China with two employees, ‘what was lacking was the voice of the workers, which was needed to pressure managers to make feasible changes and to give them *knowledge* of what to do’ (Standing 2001).

We cannot rely only on the workers themselves to monitor working conditions, for several reasons. First, without job security workers will be reluctant to come forward to make public complaints about working conditions for fear that they will be fired or disciplined. Second, some workplaces have high turnover, making it hard for workers to stay up-to-date on particular regulations, such as health and safety

¹⁵ The NLC says that the women who speak on the tours are speaking of their experiences and speaking of their own free will. This could be interpreted as an extension of Kabeer’s argument: just as the women who work in the garment factories are not passive victims, neither are the women who tour the US puppets of the NLC.

laws and difficult to ensure steady, systematic monitoring. Third, we cannot assume workers will have the time and resources to monitor workplaces and get the information to those who enforce the laws. For these reasons, it is necessary to bring other parties in to complement the monitoring efforts. These could include the vigilante and verifiers mentioned above. It could also include local-based community organisations. According to research by O'Rourke (2004) and Luce (2004), civil society organisations can play a vital role in enforcing regulations. O'Rourke looks at six case studies of environmental laws in Vietnam and finds that local governments on their own were not effective in enforcement. However, once community "bottom up pressures" of various forms were incorporated, monitoring and enforcement dramatically improved. Luce studied implementation of local living wage ordinances in over 80 US cities and found similar results. Where community organisations were involved in implementation – through outside protest, and/or through formal channels, living wage laws were much more likely to be enforced. Both authors conclude that governments do not have enough resources or incentives to enforce a range of regulations. Incorporating community organisations or unions that do have the motive and can add capacity, can improve monitoring and enforcement. Doing this should not mean that workers should be left out of the process. Rather, outside parties should be treated as complements, not substitutes, to the workers' efforts.

7 Mechanisms for enforcement

The question of "who" does the monitoring is closely related to the "how" – and specifically, what kinds of enforcement power the monitors should have. While most advocate some kinds of "soft law" remedies (recommendations and other informal incentives), there is disagreement about whether monitors should also have the formal power of "hard law" enforcement options (legal remedies such as economic sanctions).

Elliott and Freeman note that neither the vigilantes nor the verifiers have formal legal power. Rather, they rely on market pressure to get companies to improve standards. Their argument is that the cost of raising standards is relatively low in most cases and that cost could be covered easily through one of two means. First, the apparel industry is dominated by several large retailers who make substantial profits. Second, most studies show that consumers are willing to pay higher prices for sweat-free apparel. This means that there is enough room for the industry to improve labour conditions, with enough market pressure.

Fung, O'Rourke and Sabel (2001) also support the concept of improving labour standards through market pressure. Specifically, they argue that the most effective method does not rely on 'top-down regulation based on uniform standards on one hand and reliance on voluntary initiatives taken by corporations in response to social protest on the other' (ibid: 2). Their model, which they call Ratcheting Labour Standards (RLS), is based on creating formal, social and market incentives for firms to follow standards, and establishing a clear and transparent database that would make results of all inspections public. To participate in the system, retailers and manufacturers would need to adopt a code of conduct

and then select a monitor to regularly inspect its factories. Those findings would go into the database. The database would be held by a “super monitor” or umpire – an organisation created by major players such as the ILO, World Bank, international trade union confederations and key NGOs.

At the same time, Fung, O’Rourke and Sabel acknowledge that some “top-down” regulatory measures may be needed. In particular, companies may have to be required by law to provide a list of their factory locations. Others suggest that relying on market pressures alone is unrealistic and unlikely to result in major change without some “hard law” measures. There are additional concerns about existing labour standards monitoring programmes. One is that the vigilantes and verifiers described above focus on work in export industries. As Elliot and Freeman acknowledge, including a social clause in trade agreements would not address working conditions in non-traded sectors, such as domestic work and many forms of service work.

A related issue is whether the standards could be enforced in the informal sector, where a growing share of garment work is done. Could we expect monitors to enter private homes, where a small number of women and children may work? As many scholars point out, not only has there been a rapid increase in the extent of informal work in most countries, but there is not even necessarily a clear distinction between the formal and informal sectors. According to Guy Standing of the ILO, ‘[A] lesson from our surveys is that distinctions between “formal” and “informal” sectors make no sense. Informalisation has spread everywhere, including within so-called formal enterprises. This means that formalistic monitoring can only relate to a small part of the economy’ (Standing 2001). However, recognising the limitations of the “informal sector” concept, the ILO revised its definition in 2002 to include a larger “informal economy”. Acknowledging that there is still no single definition of the informal economy, the ILO states that this new term is more diverse – including wage-workers and the self-employed (or “own-account” workers). These workers share key characteristics: ‘they are not recognised or protected under the legal and regulatory framework’ and they experience a ‘high degree of vulnerability’ (International Labour Organization 2002). The ILO argues that it is a goal to achieve “decent work” for those in the informal economy, but that progress must be understood as a process, rather than a standard. The process includes multiple steps, such as legalising the work.

Others point out that most of the labour standards debate focuses on the global South, but ignores working conditions in the global North. As Kent Wong argues, the AFL-CIO’s petitions about China’s unfair trade advantages based on denying worker rights is hypocritical, as US employers notoriously violate labour law, including suppressing worker’s right to unionise; routinely violating wage, safety and health laws; and discriminating in employment and wages based on race, gender and other characteristics. Guy Standing suggests that countries that undercut their own labour laws are perhaps a more serious concern than countries that don’t have minimum labour standards at all.

8 Political arguments for labour standards

The economic arguments above avoid the most persuasive argument for international labour standards, which is that many of the standards are actually rights: whether they are civil rights, human rights or political rights. As mentioned above, the ILO treats the eight core labour standards essentially as basic rights, that anyone is entitled to in any country, no matter what level of development. Amartya Sen writes that some of these basic standards are basic political rights, that should be a given. Indeed, many of the standards are reflected in the Universal Declaration of Human Rights, which was ratified by all United Nations member states.

In reality, many labour struggles involve a variety of mechanisms and tactics, including campaigns for enforcement of domestic regulations, enlisting public pressure and using international pressure when available. I argue that the four types of labour standards listed in Table 4.2 should be seen as complements and not substitutes. Below, I provide some examples where different tactics were combined in labour struggles.

In addition, many labour struggles of the last century contain the same kinds of elements as found in today's anti-sweatshop movement, including protectionism. For example, a large segment of the US abolitionist movement was the white working class that saw slave labour as a threat to the notion of "free labour". Slaves in the North were craftsmen who competed directly with the "free worker". In the South, slavery as a concept degraded the notion of work. According to Martinot (2000):

This ideology derived from the Jacksonian valorisation of the "producing class" of workers and artisans. It affirmed the dignity and honour of work, and opposed slavery as demeaning to labour – but only within a white orientation. Ideologically, it equated black workers, both free and slave, with slavery and servility. It thus became part of the rationale for advocating the exclusion of all African-Americans from the new territories, on the claim that their mere presence would degrade the honour of white labour. All in all, white workers opposed slavery to exclude black people and opposed black people to exclude slavery.

In this sense, white workers fought to abolish slavery to protect the sanctity of their own jobs. At the same time, the existence of a protectionist movement did not preclude the formation of other abolitionist movements based on the concept of human rights. These rights-based movements included slaves themselves, who worked to end slavery by escaping, buying freedom and other forms of resistance; freed slaves and free blacks; religious organisations that saw slavery as an affront to God's will (such as the primarily white Quakers); and other allies in the US and elsewhere around the globe, who objected to slavery based on political and moral grounds.

The same was true later on, when movements to restrict child labour, regulate homework and establish minimum wage and hours laws developed. On the one hand, primarily white male trade unions advocated for protective legislation that would limit the ability of employers to hire children and women. This would not only keep more jobs available for union men, but would prevent challenging notions of

masculinity associated with particular occupations and industries. Some of the initial arguments for minimum wage laws were based on the concept of the family wage. By paying men enough money, they could provide for their families and their wives and children would not have to work, reinforcing traditional gender roles.

Again, these protectionist motives were paralleled by efforts of reformers with other goals. For example, early advocates of a “living wage” argued that those who must sell their labour to survive were entitled to the “full fruits of their labour”. Catholic priest Father John Ryan wrote in 1906 that companies had a moral obligation to pay their workers a living wage. Despite the gendered connotations of the “family wage”, many women were among the strongest advocates for minimum wage legislation. As historian Eileen Boris points out, the early minimum wage campaigns were in part a strategic response to court decisions that prohibited minimum wages for men, using the 14th Amendment as a basis to rule minimum wages as an infringement on the “freedom of contract” – but only for male workers. The courts saw women ‘as dependents and without the vote, whose potential motherhood placed them under the police powers of the state’ – therefore clearing the way for regulation on their behalf. Others used similar rhetoric, suggesting that labour standards were necessary to protect helpless and vulnerable women who could not advocate on their own behalf. Cynthia Daniels writes how social reformers fought to regulate industrial homework ‘on the claim that such work polluted the home and degraded the act of mothering’ (Daniels 1989: 21). The language used in these early campaigns is remarkably similar to language used today in describing “sweatshop workers”.

The Women’s Trade Union League (WTUL) – ‘a cross class organisation which fought for industrial equality for women as wage earners’ (Boris 2001) saw this opening to pass wage legislation as a way to improve their chances for organising in an industry notoriously difficult to work within. There had been efforts by consumers’ leagues to improve working conditions for garments through consumer pressure (by labelling garments as essentially “sweat-free”), but these efforts were of only limited success and only ‘regulated the market after the fact of exploitation’ (Boris 2001). Inspired in part by movements in Britain and Australia, the WTUL and other US activists fought for minimum wage laws where they could. This example again suggests that it is possible to have political movements that contain a range of motives within them at the same time, including protectionist wings and elements of self-organisation - from consumers to unions to priests.

These examples may help see today’s struggles around labour standards in a different light. Although there are protectionist labour unions and paternalistic NGOs within the larger movement, it does not rule out the possibility for workers to use the threat of trade sanctions to get labour standards enforced. For example, banana workers in Guatemala were able to build an international campaign to fight illegal firings of union members by Del Monte. Workers at Del Monte had been unionised for several decades, represented by SITRABI (Sindicato de Trabajadores de Bananeros de Izabal). But due in part to pressures by large customers (i.e. Wal-mart) to lower costs, Del Monte began efforts to break the union. In October

1999, the company illegally fired 900 workers (one-quarter of the workforce) and then sent 200 armed guards to the union hall where the union leaders were forced at gunpoint to resign their leadership positions. The leaders resigned and, threatened with death if they stayed, fled into hiding.

SITRABI had connections with a US-based NGO called US/LEAP, which had been engaged in US-Central American labour solidarity work. SITRABI and US/LEAP worked together to apply direct pressure on the employer through a corporate campaign and indirect pressure through threatening Guatemala with US trade sanctions using the General System of Preferences (GSP). US/LEAP worked with unions to help the exiled leaders get out of the country and testify about the situation. They then all worked together to get the US Trade Representative's office to suggest that it would apply sanctions if the Guatemalan government did not address the situation. In the end, the Guatemalan government gave in and promised to make arrests and hold a trial for those who had threatened the workers' lives. Pressure from the Guatemalan government, along with pressure from an international corporate campaign led to success in the end: 650 of the workers were rehired, the union leaders were reinstated, and most of the wage and benefit cuts were avoided. According to US/LEAP:

‘ ... the ability to use the GSP pressure and its focus on impunity was helped immensely by the fact that Guatemala has been on the GSP hot seat for nearly 10 years, due to the work of various organisations including US/LEAP, the AFL-CIO and the International Labour Rights Fund ... It was also important that the Guatemalan trade union movement had long been engaged in using the GSP process and was now ready to support suspension of benefits despite high risks’.¹⁴

In this case, Guatemalan unionists were able to use labour standards via the GSP to pressure their own government and employer. Although the GSP is a unilateral trade policy that would not seem on the face of it to favour workers' rights struggles, unions and NGOs were able to use it as a tool, to gain leverage in their struggle. However, they did not rely solely on the international pressure. Their campaign also tried to get domestic labour regulations enforced and appealed to voluntary measures through the corporate campaign.

Worker organisations have used the same threat of GSP trade sanctions in Nicaragua and Honduras, alongside other tactics. For example, workers in Honduras began organising for a union at the Kimi garment plant in 1997. The union met all conditions necessary under law to establish a union (SITRAKIMI) but management refused to negotiate. After numerous rulings by the Honduran Labour Ministry requiring the company to negotiate, it finally did so, but in bad faith. Finally, the union worked with the US union UNITE (Union of Needletrades, Industrial and Textile Employees) to build a campaign to pressure the US Trade Representative to threaten Honduras with trade sanctions. It was only when this became a serious threat that Kimi management began serious negotiations. An agreement was

¹⁴ US/LEAP, 'Lessons from the SITRABI Victory', US/LEAP Newsletter April, 2001. www.usleap.org/trade/SITRABITrial/LessonsfromSITRABI4-01.html (accessed 31 October 2004).

reached in March 1999. It is important to note that the threat of sanctions was not enough to lead to the successful contract. The union also relied on a range of tactics, from member mobilisation to international and technical support from other unions.¹⁵

These examples suggest that trade sanctions – even unilateral ones – can be used in a positive way to help workers improve working conditions, when used in conjunction with other tactics. The important lesson is that sanctions are simply a tool for organising. What is crucial is the way in which this tool is used. Sanctions can be a blunt tool used in a way that harms workers; but can also be used in a constructive fashion as one part of a larger campaign.

What are the conditions that distinguish a constructive international campaign from one that can harm workers? Several authors point to necessary factors. First, it is imperative that the workers affected have a voice in the direction of the campaign. This means that international campaigns cannot be driven from abroad (specifically, US-based NGOs or unions cannot be driving campaigns in global south countries). A few unions in Central America have noted problematic corporate campaigns launched by US-based NGOs such as the National Labour Committee, contrasting them to work done by NGOs that maintain a local presence such as US/LEAP which works in Guatemala City (Fruendt 2005).

It also means that the unions representing the workers should be authentic – not state-controlled, and democratic. Union democracy, or member control – is a challenge for any union, in any country, so it is unrealistic to expect purity on this dimension. However, unions that are top-down are less likely to meet the criteria of involving workers.

It is also important to examine the kinds of organisations involved in the international solidarity efforts. In the recent case of the AFL-CIO to impose trade sanctions on China through the Trade Act, the AFL-CIO's main coalitional partner in this effort is the US National Association of Manufacturers (NAM). There are no Chinese worker organisation partners in this campaign. As Kent Wong from the University of California-Los Angeles Labour Centre says: 'They are misleading workers into believing that the NAM are our allies, while China is our enemy' (Wong 2004: 91). He argues that a more effective campaign to improve working conditions in China, and the US, would come from a coalition of US and Chinese workers and unions, not US unions and manufacturers.

This leads into a related point, which is that more effective campaigns do not focus blame on countries: rather, they focus primarily on employers. While it can be effective to point out that certain countries do not enforce labour laws, a purely country-based campaign is likely to heighten protectionist sentiments. It also fails to note that many countries do a poor job on labour law enforcement. Therefore, for US unions to critique China or Mexico for ignoring labour law takes attention away from the fact that US labour law is terribly weak and parts of it routinely ignored.

How does this point relate to the question of labour standards and trade sanctions? The use of trade sanctions through mechanisms like the GSP are not necessarily the ideal tool for improving labour

¹⁵ It is also important to note that a number of these victories were not sustained. In some plants where workers eventually won a union and a contract, the factory eventually shut down and moved elsewhere. I'm not arguing that the use of trade sanctions is a guarantee of success, or even that it will lead to sustained victory. I'm simply arguing that it can be a useful tool in worker struggles.

standards, because they do in fact penalise countries rather than corporations. The first goal of any international labour rights campaign should be to target the corporation that is violating worker rights. But since this is not always easy or possible, governments can sometimes be used as leverage. Although *countries* as a whole don't violate workers' rights, *governments* do aid and abet corporations. Activists must be careful not to lose this distinction. To the extent that campaigns target governments, it must be framed as a way to apply pressure on corporations and not on the country as a whole.

Finally, the campaigns should frame the struggle for labour standards as political struggles, as much as economic ones. A great deal of the debate over labour standards returns to economics: how much is a living wage? Will employers cut employment if forced to comply with standards? What is the relationship between standards and growth? While these questions are important, they can de-politicise the issue. The market itself is a political construct and forces within it are not pre-determined. Eileen Boris echoes this point when she writes of the early feminist involvement in campaigns for US labour standards: 'Economists portray the wage as a market force, but feminists understand it as a product of gendered, indeed racialised gendered, ideology, reflecting structures of power and authority within the society' (Boris 2001).

The political struggle for labour standards must be placed in the larger context of political struggles over and within the WTO. There is no doubt that the WTO is an institution biased toward wealthy countries. There is also no doubt that the WTO is an institution designed to expand the rights of capital. In this context, we should argue that the WTO be abolished, as an undemocratic and illegitimate form of governance. But can we also still argue for a social clause within the WTO? History and political theory tells us that the way in which struggles are waged can be as important as the actual content of the demand. This means that there is a difference between a reformist demand to amend the WTO and a revolutionary demand. The former accepts the WTO as a legitimate authority; the latter rejects this idea. The revolutionary demand for international labour standards in the WTO is built on the idea that the inclusion of labour standards in the WTO could fundamentally transform it, or lead to its demise.

9 Other options for improving working conditions?

Finally, we should consider whether there are alternative strategies for improving working conditions of the global workforce. I argue that there are in fact a number of strategies, but they should be seen as complements, not substitutes. Many of these efforts are already underway: pressure on the IMF and World Bank to abolish structural adjustment programmes/poverty reduction strategy programmes, or to at least make a more serious effort to respond to criticisms and address poverty, equality and employment issues; pressure on the World Trade Organisation to address the outstanding "Doha Declaration"; the movement for debt relief; and the movement against new trade agreements such as the Central American Free Trade Agreement (CAFTA).

Labour attorney Lance Compa, among others, suggests that it is possible to use lawsuits to penalise corporations that violate workers' rights, even in international cases (Compa 2002). In some ways, he

points out, this is an ideal mechanism to enforce standards as it punishes the employer rather than the country. It can also allow workers to sue the parent company, rather than fight only with a subcontractor that is their direct employer. Compa gives several examples of how lawyers have used the law to penalise corporations, such as a group of Korean workers that worked near Seoul for a New York based company, Pico Products Inc. After the workers unionised and won a collective bargaining agreement in 1989, Pico closed its factory without warning – owing the workers wages for work done, as well as severance pay. Although the company violated both the union contract and Korean labour law, the workers felt their chances for penalising the company were strongest in US courts, as the company was based in the US. In the end the workers did not win the case, but since a federal judge accepted the case, it set a precedent for future cases. Lawsuits have the advantage of “hard law”: legally enforceable rulings. But there are many challenges to this approach: the law governing international worker rights is not clear (such as whether US law has “extraterritorial reach”), corporations usually have many more resources to stall and win a case, and US law is not favourable to workers in the first place. Still, Compa argues that litigation should be considered ‘one of many possible avenues to advance workers’ rights in the global economy’.

Other strategies include pushing states to invest in industrial policies that could focus on employment generation and ones that could lead to industrial upgrading.¹⁶ Finally, unions have undertaken efforts at cross-border organising. This includes unions working in the same industry in different countries sharing resources and information, sometimes even sending organisers to each other’s countries to help with work. In other cases, workers have collaborated on joint campaigns against the same employer.¹⁷

10 Conclusion: Arguments for internationalist international labour standards

There are many reasons why workers and labour activists should be wary of initiatives coming from the global North. Even withstanding US foreign policy, the AFL-CIO has a dismal history in international labour issues, from funding the American Federation of International Labour Development (AFILD), to its stance on immigration. For these reasons, labour activists are justified in suspecting the motives of US unions calling for international labour standards that are meant ‘to protect third world workers’. Similarly, history in the US and elsewhere shows that well meaning outside organisations who believe they are helping those with less power may in fact make conditions worse. NGOs claiming to be improving working conditions in sweatshops may employ paternalistic, patronising and demeaning language to describe the workers; presenting them as passive victims.

Yet the existence of groups with protectionist or paternalistic motives does not inherently negate the validity of the demand. Indeed, there are others in the movement for international labour standards who recognise the problems with the above-mentioned groups, yet still find the struggle worth pursuing. Some of these are the organisations of affected workers in countries such as Guatemala or Honduras, who see

¹⁶ For more on this see Heintz and Pollin (2003).

¹⁷ For more detail, see Ralph Armbruster-Sandoval (2005); Henry Frundt (1998) and others.

potential problems with the labour standards approach, but realise they have few options to struggle for better working conditions. Furthermore, the economic evidence does not show that labour standards reduce employment. Rather, the reality is much more complex. The relationship between labour law, wages, economic growth, employment and inequality is context-specific, depending greatly on macro-economic and political variables. Research to date suggests that it is not possible to predict a specific employment outcome when labour standards are established.

The history of NAFTA suggests to labour activists that the best case scenario is to have no new trade agreements, such as the impending CAFTA or Free Trade of the Americas (FTAA). But if CAFTA cannot be defeated, a CAFTA with labour standards is preferable to one without. Given the state of labour organising and labour rights in most countries that would be covered by CAFTA, any tool that might possibly serve as leverage cannot be dismissed.

Of course, for many reasons the debate itself is perhaps overblown. Labour standards are unlikely to enter the agenda seriously any time soon. Little progress of any kind has been made at the WTO in recent meetings. As Basu notes, even the struggle for labour standards within the US took a very long time: 'It is sobering to recall that in the United States the attempt to bring all states under a common labour code was on the agenda for decades (actively from 1906) before it could finally be implemented in the form of the Fair Labour Standards Act in 1938.' The reality is that most of the agenda behind the WTO has not been about trade, but investment. Multinational corporations and wealthy investors want to have the right to protect their investments in other countries and invest in lucrative arenas such as government assets. The same is true for many free-trade agreements, such as NAFTA and CAFTA, which are not motivated so much by a desire for US companies to sell goods to Latin American consumers, but by their desire to invest in those countries. This means that at their core, these institutions and agreements are about expanding the rights of capital. Because much of the capital-labour relationship is a zero sum game, as the rights of capital grow, the rights of labour recede. The challenge for labour is to find any handle – any possible leverage – to increase their power relative to the power of capital.

Given that labour is on the defensive in most countries, the issue is not likely to make much headway in any of the relevant agreements. Still, it is important to clarify what our demands are: the demands of those who wish to build international working class power. In the end, it is not so much the labour standards themselves, but the way in which the fight for the standards happens and the way in which they are used that matters. Labour standards should be seen simply in that way: as a tool to aid in further organising, rather than as a solution to poor working conditions.

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