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THE AMERICAN EXPERIENCE WITH LABOR STANDARDS AND
TRADE AGREEMENTS

by

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There has been ongoing debate concerning whether labor standards should be part of trade liberalization agreements. The United States has supported such standards, but the developing world has mainly opposed them as disguised protectionism. As part of the NAFTA agreement, however, a side accord has included labor standards applicable to the United States, Canada, and Mexico. Much confusion surrounds the labor standards issue. What is at stake are "core" standards, such as freedom of association, not some type of international minimum wage. Moreover, there is evidence that to the extent that American labor has felt adverse impacts from international trade, the impacts have been a function of the U.S. trade deficit rather than import competition per se. The deficit is a reflection of macroeconomic variables such as the overall savings rate and is unlikely to be affected by the existence of labor standards. Given that conclusion, labor standards can be seen mainly as a device to make trade liberalization more politically acceptable in the United States and other developed countries.

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I. INTRODUCTION: WIDENING CONFLICT AND CONTROVERSY

International trade remains an area of controversy in the American policy.¹ Divisions of left and right do not easily characterize the positions of political leaders when it comes to trade. The controversy has been fanned by complaints of job losses due to the North American Free Trade Agreement (NAFTA), especially after the Mexican peso crisis, leading to rejection of a presidential request for "fast-track" authority to negotiate new trade agreements. There has even been a lawsuit by the United Steelworkers charging that NAFTA should be voided because it was improperly adopted.² Lingering in the background is the Asian financial crisis, which has, to varying degrees, infected countries that were once winners in the rapid-growth sweepstakes and pushed them into sluggish performance or even severe recession. Keeping the debate hot is ongoing discussion of incorporating labor standards into trade agreements and making trade concessions—particularly those covered by the World Trade Organization (WTO)—contingent on adherence to formal labor standards.

Of course, the very fact that such issues are debated in the United States and other developed countries makes developing countries suspicious.³ They often assert that concern about labor standards is, in reality, disguised protectionism aimed at keeping their goods out of major markets.⁴ Developing countries also argue that labor standards are internal

¹ This Article is an updated version of an earlier article, Christopher L. Erickson & Daniel J. B. Mitchell, *Labor Standards and Trade Agreements: U.S. Experience*, 19 *COM. LAB. L.J.* 145, 145-83 (1998). Used by permission.

² *Steelworkers, Non-Profit Sep NAFTA Treaty Was Enacted Improperly, Should Be Voided*, Daily Lab. Rep. (BNA) No. 184, at A-2 to A-3 (July 14, 1998).

³ Marley Weiss, *Presentation by Marley Weiss, Professor, University of Maryland School of Law*, 12 *AM. U. J. INT'L L. & POL'Y* 867, 872 (1997) (summarizing roundtable views on foreign trade and labor standards).

⁴ See Daniel S. Ehtremberg, *The Labor Link: Applying the International Trading System to Enforce Violations of Forced and Child Labor*, 20 *YALE J. INT'L L.* 361, 381 (1995) (discussing imposition of labor standards in international trade); Juli Stensland, *Internationalizing the North American Agreement on Labor Cooperation*, 4 *MINN. J. GLOBAL*

(national) concerns, which should not be subject to external pressures. Not surprisingly, when words such as protectionism and national sovereignty become key elements of the controversy, careful analysis is often a casualty. Below we will illuminate three areas of fallacy on the trade/labor standards issue, two areas of trade's potential impact on the American labor market, and our own three-fold conclusions. Our bottom line, however, is that incorporation of labor standards into trade agreements would be a benefit to those countries that seem most opposed to such standards because they preserve both access to external markets and the possible export-led growth.

A. *Three Fallacies About Trade and Labor Standards*

The first fallacy is that wages and labor standards are the same thing. The level of wages in a country and its labor standards are not the same thing, at least in the context of the raging debate over incorporating such standards into trade agreements. As will be seen below, a country with a low level of wages relative to the United States—and such levels characterize developing countries to varying degrees—could nonetheless adhere to the kinds of labor standards generally discussed.⁵ Perhaps the Asian crisis, with its large devaluations of several currencies, helps make this point. To compare foreign to American wages, both must be translated into a common currency at the going exchange rate. Would it be reasonable to find that a country that met international labor standards was suddenly out of compliance because its currency depreciated, thus lowering its wage in dollars? Clearly not.

The second fallacy is that absolute sovereignty can exist among trading nations. An absolutist concept of national sovereignty cannot be sustained in the modern context.⁶ Once countries engage in international trade and investment, their economies are significantly linked.⁷ For example, consumers in one country may choose to express, through their purchasing behavior, their disdain for internal conditions in another. As movie producer Sam Goldwyn is supposed to have said, "If people don't come to the box office, you can't stop them."⁸ When the purchases are from a home-based multinational, such sentiments are likely to be especially strong. Similarly, notions of sovereignty as easily support national policies restricting imports from offending countries as they do noninterference in internal affairs. There is the much overworked statement that "we live in a global economy" (usually said by an employer who wants to

TRADE 141, 149 (1995) (noting developing countries' reservations about allowing more developed countries to dictate international labor standards).

⁵ See discussion *infra* Part VI.

⁶ Flora Lewis, *The End of Sovereignty*, N.Y. TIMES, May 23, 1992, at 23 (opining that capitalism respects no territorial border).

⁷ Charles Champlin, *Mr. Peck, After All These Years*, L.A. TIMES/CALENDAR, Oct. 20, 1991, at 4.

do something nasty to its workforce). But the phrase applies well to the sovereignty issue; globalism impinges inevitably on nationalism.⁹ Countries following export-led growth strategies cannot simultaneously ask for an exemption from globalism.

The final fallacy is that the trade pattern and trade deficit are closely related. If the sovereignty confusion is largely the province of developing countries, this third confusion is particularly characteristic of the United States. There are two chief economic measures of trade that can be cited. The first is the *trade pattern*, i.e., which country exports or imports what type of goods.¹⁰ The second is the *trade balances*, i.e., the degree to which a country's exports in value terms exceed or fall short of its value of imports.¹¹ These two measures of trading activity have different causes and effects. Of course, there is a relationship between the two—almost all economic variables are somehow linked—but for purposes of our discussion of labor standards, we do best to treat them separately. Yet discussion in the United States often blurs the distinction.

B. *The Direct and Indirect Impacts of Labor Standards Tied to Trade*

Developing countries commonly assume that labor standards are mainly constraints that will have an adverse impact on their economies.¹² As we will note below, developed countries may also face scrutiny of their labor practices if labor standards linked to trade are imposed.¹³ But aside from that element, the direct impact on the local economy of developing countries is likely to be small. However, the indirect economic effect, operating through the political channel, could be large. The political channel works through the politics of developed countries, making trading relationships with developing countries more acceptable. Of course, authoritarian regimes in developing countries may be reluctant to pay the internal political price for such market access, the price being greater acceptance of pluralism. And employers may fear that a shift away from authoritarianism would actually produce labor-friendly governments and resultant wage increases; there is, in fact, some empirical evidence linking democracy positively to wage levels.¹⁴

C. *Three Conclusions*

Our analysis leads to three conclusions. First, labor standards in developing countries will not have much impact on the labor markets of

⁹ Lewis, *supra* note 6, at 23.

¹⁰ See, e.g., DAVID J. HAYWARD, INTERNATIONAL TRADE AND REGIONAL ECONOMIES: THE IMPACTS OF EUROPEAN INTEGRATION ON THE UNITED STATES 13-54 (1995) (analyzing trade among states and foreign countries).

¹¹ *Id.*

¹² Stensland, *supra* note 4, at 150.

¹³ See *infra* Part II.

¹⁴ DAN RODRIK, DEMOCRACIES PAY HIGHER WAGES (National Bureau of Economic Research Working Paper No. 6864, 1998).

the developed countries with which they trade. The effects of labor standards are just too small. Developing countries whose exports are reflective of an abundance of unskilled labor will continue to export such products, with or without labor standards. To the extent that such products have a displacement effect on labor markets of importing developed countries, the effect will continue with or without labor standards. Second (and following from the first conclusion), in terms of the direct economic effect, labor standards should be evaluated in terms of their potential impact on developing countries. But the indirect effect, market access to the developed world through the political channel, must not be neglected. Finally, as long as developing countries wish to maintain economic relations with other nations (and other than North Korea, it is hard these days to find any countries that do not), absolutist concepts of national sovereignty are not tenable.

II. NATIONAL AND INTERNATIONAL LABOR STANDARDS

The debate over labor standards in the United States has been as contentious as any in the developed world. Nonetheless, the Clinton administration has pushed for labor standards to be incorporated into the enforcement powers of the WTO.¹⁵ The United States cannot be said to have been greatly successful in this endeavor; even a proposal for a study of the topic was rejected at a WTO meeting in 1996.¹⁶ However, U.S. policy has officially remained supportive of a trade/standard linkage as an eventual goal. A spokesperson for the U.S. Department of State declared in 1998 that the Clinton administration believes that "respect for worker rights and the liberalization of free trade are objectives that are inextricably linked."¹⁷

Proponents of labor standards tied to trade can be optimists or pessimists about the outcome of this official U.S. policy, even while looking at the same set of facts. There is the old saw that both optimists and pessimists agree that we live in the best of all possible worlds. However, it is noteworthy that the United States is already party to NAFTA, which contains labor standards provisions, albeit in a side agreement.¹⁸ Other regional trade agreements involving the United States also contain labor standards elements.¹⁹ And as the debate over fast-track authority illus-

¹⁵ Administration Will Continue to Press for Creation of Labor Group at WTO, Daily Lab. Rep. (BNA) No. 245, at A-1 (Dec. 20, 1996).

¹⁶ *Id.*

¹⁷ U.S. Delegates to ILO Conference Have High Expectations for New Declaration, Daily Lab. Rep. (BNA) No. 128, at C-4 (July 6, 1998).

¹⁸ Jorge F. Perez-Lopez, *Labor and the North American Free Trade Agreement*, 11 Dick. J. Int'l L. 565, 571-74 (1993) (addressing labor standards in preamble, chapter 11, and chapter 9).

¹⁹ See also Caribbean Basin Economic Recovery Act (CBERA), 19 U.S.C. §§ 2701-2706 (1994) (providing for duty-free imports to the United States when certain criteria, including the degree to which workers are afforded reasonable workplace conditions, are met).

trates, whenever the issue of trade agreements arises in Congress, the labor standards question is an important element of the debate.

There is a parallelism between national and international labor standards. Early this century in the United States, the notion gradually developed that standards should be set nationally, rather than state-by-state.²⁰ Basically, the idea was to avoid what is now termed a "race to the bottom" by states competing for investment. Modern economic analysis would require a qualification to this notion: for certain types of labor standards, wages might absorb some or all of the costs entailed, leaving competitiveness unchanged. But for other types of standards—such as limits on child labor, prison labor, or the setting of minimum wages—the absorption proviso would not so easily apply.

Historically, various motives could be found for proponents of labor standards at the national level, with goals ranging from simply "doing good" to preventing competition from low-wage regions.²¹ However, the two motives were intertwined, as they often are in the contemporary debate over international labor standards. Laissez-faire economists often saw those who wished to impose labor standards for humanitarian reasons as misguided in their attempts to distort the marketplace.²² They would argue, for example, that child labor, while objectionable to reformers, might be the best alternative available to poor children.²³ Good outcomes were sometimes cited, e.g., textile factories in the American South sometimes provided some schooling for workers' children. Reformers and some institutional economists believed such arguments focused excessively on the short run and would produce a static replication of impoverished generations. In the long term, they argued, children provided with free public education and an opportunity to study without working would break out of a cycle of poverty.²⁴ Those who have followed the contemporary debate on international labor standards must surely come away from this earlier history with a sense that little has changed.

²⁰ Jeremy S. Sosin, Note, *The Price of Killing a Child: Is the Fair Labor Standards Act Strong Enough to Protect Children in Today's Workplace?*, 31 VAL. U. L. REV. 1181, 1199-1201 (1997).

²¹ RICHARD ROTHEIN, ECONOMIC POLICY INST., SETTING THE STANDARD: INTERNATIONAL LABOR RIGHTS AND U.S. TRADE POLICY 17 (1993); Lance Compa & Tashia Hinchliffe-Darricarter, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663, 669 (1995) (reviewing policies and goals underlying labor standards).

²² Claudia R. Brewster, Note, *Restoring Childhood: Saving the World's Children from Telling in Textile Sweatshops*, 16 J.L. & COM. 191 (1997).

²³ James P. Kelleher, *The Child Labor Deterrence Act: American Unilateralism and the GATT*, 3 MINN. J. GLOBAL TRADE 161, 184-85 (1994).

²⁴ See DANIEL J.B. MITCHELL & JOHN CLAPP, LEGAL CONSTRAINTS ON TEENAGE EMPLOYMENT: A NEW LOOK AT CHILD LABOR AND SCHOOL LEAVING LAWS, chs. 1-2 (UCLA Institute of Industrial Relations, 1979) (discussing early history of child labor laws).

For the most part, national labor standards within the United States began to be set in the 1930s and included such elements as a minimum wage, limits on child labor, requirements for overtime pay, and protection of union rights.²⁵ Social Security also was established during that period.²⁶ During the 1960s and 1970s, there was another round of national standard setting, including bans on employment discrimination on grounds of race, sex, religion, or national origin; protection of pension plans; and workplace safety and health regulation.²⁷ Finally, in the 1980s and 1990s, new national laws were enacted that required prenotification of mass layoffs and grants of leaves of absence for family reasons.²⁸ Efforts at making health insurance more portable across jobs also led to national legislation.²⁹

A. *The American Position Concerning the ILO and the WTO*

At the international level the notion of setting labor standards took root in the form of the International Labour Organization (ILO) over a decade before the United States began to enact such national standards. Indeed, it may be that discussion of standard setting at the international level predates the national discussion. References can be found to the international version of the idea as early as the late eighteenth century.³⁰

The ILO was created after World War I as part of the creation of international institutions such as the ill-fated League of Nations. But while the League is long since gone, the ILO continues. In essence, the ILO incorporated an ideal that at the time of its creation was in circulation in several countries, including the United States. The notion was that labor (unions), management, and government could develop mutually beneficial solutions to their problems if only they had the appropriate forum. Immediately after World War I, American unions were at a peak in membership, having benefited from wartime conditions and government policies.³¹

²⁵ Richard S. Belous, *Fair Labor Standards in the United States: The Rationale, the Record and Current Challenges*, in LABOR STANDARDS AND ECONOMIC DEVELOPMENT 45-73 (Chung-Hua Institution for Economic Research, 1996).

²⁶ Social Security Act, 42 U.S.C. §§ 301-1397e (enacted Aug. 14, 1935, Title II, § 204, 49 Stat. 624).

²⁷ See, e.g., Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 (1994); Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 (1994); Civil Rights Act of 1964, 42 U.S.C. § 2000 (1994).

²⁸ See, e.g., Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified at 29 U.S.C. § 2601 (1994)).

²⁹ David B. Kendall & Mark V. Pauly, *Health Care Reform Starts with Tax Reform*, WALL ST. J., June 10, 1996, at A18. See also Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1986 (codified in scattered sections of 18, 26, 29, 42 U.S.C.).

³⁰ DANIEL J.B. MITCHELL, ESSAYS ON LABOR AND INTERNATIONAL TRADE ch. 4 (1970).

³¹ ARCHIBALD COX ET AL., LABOR LAW 35-36 (12th ed. 1996).

Thus, the ILO was to be the forum for such tripartite solutions at the international level and was to foster world peace by alleviating economic deprivation and promoting fairness in world trade. The "theory" behind the ILO procedures was that the three actors would agree on minimum standards that would prevent competition on the basis of labor conditions.³² This concept has been restated many times since the ILO's founding, recently in game theory terminology.³³ But the bottom line is that the idea of international labor standards is not new; only the recent controversy is new.

At the time the ILO was created, it was not foreseen that the United States would refuse to join because of the isolationism that engulfed American politics after World War I. After all, Samuel Gompers, the President of the American Federation of Labor, had played a prominent role in the ILO's establishment.³⁴ However, after World War II the United States *did* become an active role member state, with the exception of a hiatus and withdrawal for several years over ILO Middle Eastern policy.³⁵ A noteworthy early event was the Declaration of Philadelphia of 1944, which opened a wider potential role for the ILO and dealt with such matters as full employment, social security, and living standards.³⁶ These concerns mirrored earlier New Deal reforms in the United States. But despite general support for the ILO, the United States has remained reluctant to subject itself to international scrutiny and has ratified relatively few ILO conventions. Obviously, this limited record of ratification tends to compromise U.S. insistence on maintenance of labor standards by other countries. Opponents can readily point to the "do as I say not as I do" posture of the United States. As a result, U.S. officials recently have discussed seeking official American ratification of more ILO standards.³⁷

Yet even for countries that have ratified many conventions, the ILO has no direct enforcement powers. It can undertake investigations of violations of rights under ratified conventions or engage in various forms of contacts with affected governments.³⁸ Ultimately, however, the ILO is not

³² Herbert Feis, *International Labour Legislation in the Light of Economic Theory*, in *INTERNATIONAL LABOUR STANDARDS AND ECONOMIC INTERDEPENDENCE* 29-55 (Werner Sengenberger & Duncan Campbell eds., 1994) [hereinafter *INTERNATIONAL LABOUR*].

³³ See generally Brian Langille, *Labour Standards in the Globalized Economy and the Free Trade/Fair Trade Debate*, in *INTERNATIONAL LABOUR*, *supra* note 32, at 329-38 (casting the notion of a "race to the bottom" as a prisoner's dilemma).

³⁴ Stephen I. Schollberg, *United States' Participation in the ILO: Redefining the Role*, 11 *COMP. LAB. L.J.* 43, 66 (1989).

³⁵ *Id.* at 68-71.

³⁶ See John D. French, *The Declaration of Philadelphia and the Global Social Charter of the United Nations, 1944-45*, in *INTERNATIONAL LABOUR*, *supra* note 32, at 19-26; Eddy Lee, *The Declaration of Philadelphia: Retrospect and Prospect*, 133 *INT'L LAB. REV.* 467, 467-84 (1994).

³⁷ U.S. Delegates to ILO Conference Have High Expectations of New Declaration, Daily Lab. Rep. (BNA) No. 128, at C-1 to C-4 (July 6, 1998).

³⁸ See Jean-Michel Servais, *Flexibility and Rigidity in International Labour Standards*, 125 *INT'L LAB. REV.* 193, 193-208 (1986) (providing an analysis of procedures taken in

a court and cannot impose penalties. And governments in emerging countries often are not well equipped to enforce legal standards; the small firms that often account for substantial employment in such countries are difficult to police.³⁹ Ratification may mean little absent enforcement or penalty. The notion of a trade penalty, through a linkage between trade concessions and adherence to standards, thus becomes attractive to proponents of effective, rather than paper, labor standards.

Lack of ILO enforcement powers is relevant to the debate over whether labor standards should be left to the ILO and its expertise or should be added to the WTO's agenda. Those who are not keen on labor standards at all often argue, as a fallback position, for leaving employment-related matters to the ILO.⁴⁰ At the December 1996 meetings of the WTO, those in opposition to the U.S. position suggesting WTO involvement noted as an alternative the historical role of the ILO in labor matters. The result was an effort within the ILO administration to develop a role for itself in the trade issue, as encouraged by the United States.⁴¹ However, at the subsequent ILO meetings in June 1997, this approach was blunted. Strong opposition to an active ILO role arose from employer, union, and government representatives of countries that earlier had argued against WTO involvement.⁴² The position seemed to be that the ILO should look after labor matters as it always has, but it should not have enforcement powers through a trade linkage, and the WTO should stay out of labor issues entirely.⁴³

As the WTO has a limited staff with no particular expertise in labor affairs, it is not clear that it alone could monitor a linkage of labor standards and trade, even if one were created by international agreement. Thus, if labor standards were to be linked to trade, some kind of joint ILO-WTO responsibility would probably be required, with the primary role for judging compliance and providing technical advice and expertise left to the ILO. Under such a regime the issue of WTO-related sanctions would arise only after ILO procedures were exhausted. In any event the ILO does seem to be moving toward a larger role in the trade-labor issue, despite opposition. In June 1998 the ILO adopted a general declaration on core labor standards and voted to create a formal, although vague,

the case of an alleged violation of freedom of association conventions); Jean-Michel Servais, *ILO Standards on Freedom of Association and Their Implementation*, 123 *INT'L LAB. REV.* 765, 765-81 (1984).

³⁹ INTERNATIONAL BANK FOR RECONSTRUCTION & DEV. (WORLD BANK), *WORKERS IN AN INTEGRATING WORLD* 76 (1995) [hereinafter *WORLD BANK*].

⁴⁰ *Employers' Group Opposes U.S. Attempt to Link Worker's Rights and Trade*, Daily Lab. Rep. (BNA) No. 107, at A-5 to A-4 (June 4, 1996).

⁴¹ *United States Supports ILO Official's Call for Linking Trade and Labor Standards*, Daily Lab. Rep. (BNA) No. 114, at A-4 to A-5 (June 13, 1997).

⁴² *Asian Governments, Unions Oppose Linkage Between Trade, Labor Standards*, Daily Lab. Rep. (BNA) No. 127, at A-5 to A-6 (July 2, 1997).

⁴³ *Id.*

"global report" on the subject.⁴⁴ Notably, the ILO also declared that the declaration and report were not to be used for protectionist purposes.⁴⁵

The ILO's role is not limited to the formalities of conventions and recommendations, and it certainly does not depend on an official connection with international trade. It also undertakes research, offers technical assistance, and provides a channel for intergovernmental programs aimed at elevating labor standards. For example, through the ILO the International Labor Affairs Bureau of the U.S. Department of Labor (ILAB) funded a program in Thailand and other countries aimed at eliminating child labor and child prostitution.⁴⁶ Work of this kind can continue whether or not the international community ever adopts a formal trade/standards linkage. As long as the United States continues to be unsuccessful in pushing for a formal linkage, but remains committed to expanding treaties to lower trade barriers, it is likely to highlight these more limited activities. In addition, the ILO can emphasize, as it apparently has during the Asian crisis, labor standards and conditions in interactions with monetary institutions such as the International Monetary Fund (IMF).⁴⁷ It has also urged affected Asian countries to implement various social protections for workers displaced by the crisis.⁴⁸

B. Labor Standards Outside the WTO and the ILO Frameworks

While labor standards have not been incorporated into general trade accords, they have appeared in some commodity agreements, such as rubber, tin, and sugar agreements. Other agreements in which the United States plays an important role—such as the Caribbean Basin Initiative of 1983, which provides preferential access to the U.S. market for Caribbean countries—have encompassed such standards.⁴⁹ In 1984 the U.S. Congress, in renewing the "GSP" or Generalized System of Preferences (reduced tariffs for developing countries), authorized the President to withhold the preferences for countries not "taking steps" to live up to specified labor standards.⁵⁰ Legislation also required that if American investors abroad received risk insurance from the Overseas Private Investment Corporation (OPIC), the countries receiving the investments must

⁴⁴ ILO Adopts Declaration on Worker Rights, *Clears Way for New Child Labor Convention*, Daily Lab. Rep. (BNA) No. 118, at AA-1 to AA-2, E-1 to E-2 (June 18, 1998).

⁴⁵ *Id.*

⁴⁶ ILAB Seeks to End Child Labor in Bangladesh, Daily Lab. Rep. (BNA) No. 105, at A-17 (May 31, 1996).

⁴⁷ *Law Linking Bailouts with Labor Records Is Taken Seriously*, *Treasury's Rubin Says*, Daily Lab. Rep. (BNA) No. 241, at C-1 to C-2 (Dec. 16, 1997).

⁴⁸ REGIONAL OFFICE FOR ASIA & THE PAC., INTERNATIONAL LABOUR ORG., THE SOCIAL IMPACT OF THE ASIAN FINANCIAL CRISIS 22-24 (1998), available in International Labour Org., *Cross-Departmental Analysis and Reports Team* (visited May 27, 1999) <<http://www.ilo.org/public/english/60cmptor/cdatr/bangkok/preface.htm>>.

⁴⁹ Caribbean Basin Economic Recovery Act, 19 U.S.C. § 2701 (1994).

⁵⁰ 19 U.S.C. § 2462(c)(7) (1994).

meet the same standards.⁵¹ The Asian crisis stimulated South Korea's interest in reviving eligibility for OPIC business, which it had earlier lost over the labor standards issue.⁵²

By law, U.S. representatives at the World Bank and IMF are directed to push for human rights and labor standards in lending agreements.⁵³ During the Reagan administration, two nations, Romania and Nicaragua, both under left-wing regimes at the time, lost their GSP preferences.⁵⁴ However, such actions were not confined exclusively to the left side of the political spectrum: Paraguay was suspended, and Chile lost its preferences for a time after an investigation.⁵⁵ Later, Paraguay sought assistance from the U.S. Department of Labor in redesigning its labor inspection system, largely in response to concerns about loss of GSP.⁵⁶ The European Union (EU) countries appear to be moving still further with their version of GSP; the EU will give tariff reductions to those developing countries that can prove compliance with ILO conventions on rights to unionize and on limitations on child labor.⁵⁷

Although the United States has not wanted international supervision of its own labor practices (hence its low rate of ILO convention ratifications, noted earlier), it has been willing to assert jurisdiction over others.⁵⁸ Thus, certain employment standards have been asserted to apply to the foreign operations of American-based firms.⁵⁹ In the related area of international human rights, American courts have also claimed jurisdiction.⁶⁰ Also, states and localities within the United States occasionally engage in unilateral foreign policies, such as refusing to do business with firms operating in certain countries.⁶¹ Such unilateral positions tend

⁵¹ PETER DORMAN, U.S. DEP'T OF LABOR, WORKER RIGHTS AND U.S. TRADE POLICY: AN EVALUATION OF WORKER RIGHTS CONDITIONALITY UNDER THE GENERAL SYSTEM OF PREFERENCES (1989); Gijbert van Liemt, *Minimum Labour Standards and International Trade: Would a Social Clause Work?*, 128 INT'L LAB. REV. 433, 439-43 (1988).

⁵² *Clinton Will Announce OPIC's Return to South Korea*, *Source Says*, Daily Lab. Rep. (BNA) No. 109, at A14 (June 8, 1998).

⁵³ William B. Gould, NAFTA, *American Labor Law and the Idea of International Labor Standards*, Daily Lab. Rep. (BNA) No. 53, at E-6 to E-8 (Mar. 19, 1996).

⁵⁴ *Id.* (Paraguay); Proclamation No. 5758, 52 Fed. Reg. 49,129 (1987) (Chile).

⁵⁵ *Revised Paraguay Labor Inspection Manual Expected to Clarify Law for Labor*, *Business*, Daily Lab. Rep. (BNA) No. 116, at A-6 to A-7 (June 17, 1996).

⁵⁶ *EU Links Tariffs for Developing Nations to Adherence to Three ILO Conventions*, Daily Lab. Rep. (BNA) No. 103, at A-8 (May 29, 1998).

⁵⁷ James M. Zimmerman, *International Dimension of US Fair Employment Laws: Protection or Interference?*, 131 INT'L LAB. REV. 217, 217-30 (1992).

⁵⁸ *Id.*

⁵⁹ For instance, the Unocal Corporation, which is constructing an oil pipeline in Myanmar, might be liable for human rights abuses committed by a government-owned partner firm in that country. See Evelyn Irtani, *Unocal May Be Liable in Myanmar Case*, *Judge Rules*, L.A. TIMES, Apr. 17, 1997, at A1.

⁶⁰ A Massachusetts law, for example, denies state contracts to firms operating in Myanmar and has provoked a protest by the EU. See Evelyn Irtani, *Massachusetts Law Sets Off Trade Flap*, L.A. TIMES, June 19, 1997, at D1.

to undermine the American push for multinationally agreed world labor standards.

Not all U.S. concerns in the labor area relate to trade directly, although sanctions on imports from any country could result in a trade impact. For example, the above-mentioned interest in eliminating child prostitution is quite far removed from trade concerns.⁶² The issue of other forms of child labor is more closely linked to trade as children can be used to produce traded goods.⁶³

There is some evidence, however, that egregious labor conditions are more likely to be found in nontraded goods production and in services than in export-oriented sectors.⁶⁴ It has also been found that congressional representatives from districts with many unskilled workers are less likely than others to support a ban on imports of the products of child labor.⁶⁵ This surprising result may reflect general conservatism in Southern states. Put another way, the motivation for tying labor standards to trade is complex and appears to involve humanitarian, protectionist, and political-ideological influences.

U.S. public opinion is likely to view the matter in simple terms, e.g., that bad working conditions should not be permitted to exist and that trade policy should reflect this principle.⁶⁶ Policy analysts more often see shades of gray in the debate over labor standards and often view the issue from a standard economic perspective.⁶⁷ That perspective can cut both ways. Bans on forced labor and discrimination are seen by policy analysts as justified because involuntary labor and discrimination violate norms of economic "efficiency." Freedom of association rules are largely taken as reflecting noneconomic "values." On the other hand, complete prohibitions on child labor are questioned in American policy circles on the grounds of economic circumstances, i.e., the stage of national economic development.⁶⁸

It is argued that what the child would want (if he could make the decision rationally) might make child labor the best option from an unhappy menu of outcomes, *given existing conditions*. As one economist

put it, "A policy of good jobs in principle, but no jobs in practice, might assuage our consciences, . . . but it is no favor to its alleged beneficiaries."⁶⁹ Thus, one author suggested a limited standard declaring that "[c]hildren have the right not to work long hours whenever their families' financial circumstances allow."⁷⁰ But there have been exceptions to this approach in the economics literature.

One theoretical study notes that child labor is a reflection of family poverty and the low wages of parents.⁷¹ Removing children from the workforce might raise adult wages through decreased labor market competition and thus remove the incentive for families to put their children into the workforce. Left to their own devices, families *individually* will choose child labor (rationally). But if all poor families could act *collectively*, they would not necessarily select child labor because of the adult wage effect. Because such coordination cannot be undertaken privately, a case can be made for government bans on child labor.⁷²

The gap between public opinion and the dispassionate economic reasoning of policy makers has recently been put to the test by embarrassing disclosures concerning well-known retailers, other enterprises, and celebrities.⁷³ Reports linking popular brands and personalities to clothing produced with child labor and other "exploitative" conditions have produced quick reactions aimed at avoiding further bad publicity. Such well-known names as Wal-Mart, Disney, and The Gap and entertainer Kathie Lee Gifford are among those who have been featured in such disclosures.⁷⁴ Nike and its CEO, Phil Knight, were the target of Michael Moore's film, *The Big One*, because of Nike's use of very young workers. Nike reacted with denials and retractions, but also a pledge to raise the minimum age for workers in its Asian factories.⁷⁵

These developments have given rise to suggestions that multinational firms might sign codes of conduct, agreeing to enforce core labor standards in the same way they once agreed to anti-apartheid codes for operations in South Africa.⁷⁶ One concrete outcome was the formation of

⁶⁹ *Id.* (quoting economist Paul Krugman). See also Kenneth Swinerton, An Essay on Economic Efficiency and Core Labor Standards (Feb. 1996) (unpublished working paper, on file with U.S. Bureau of International Labor Affairs, Department of Labor).

⁷⁰ Gary S. Fields, *Book Review of International Labour Standards and Economic Interdependence*, 49 INDUS. & LAB. REL. REV. 571, 572 (1996).

⁷¹ Kausik Basu & Pham Hoang Van, *The Economics of Child Labor*, 88 AM. ECON. REV. 412, 412-27 (June 1998).

⁷² *Id.*

⁷³ Reich, and Kathie Lee Gifford announce July Anti-Sweatshop Forum, Daily Lab. Rep. (BNA) No. 106, at A-9 to A-12 (June 3, 1996).

⁷⁴ *Id.*

⁷⁵ John Clark, *Nike Challenges Kimmaker in 'Big Battle'*, L.A. TIMES, Apr. 17, 1998, at D1.

⁷⁶ EMPLOYMENT, LABOUR & SOC. AFFAIRS COMM. & THE TRADE COMM., ORGANIZATION FOR ECON. CO-OPERATION & DEV., JOINT REPORT ON TRADE, EMPLOYMENT, AND LABOUR STANDARDS 9 (1996).

⁶² U.S. BUREAU OF INT'L LABOR AFFAIRS, DEP'T OF LABOR, FORCED LABOR: THE PROSTITUTION OF CHILDREN (1996). Child prostitution violates various ILO conventions regarding forced labor and the rights of children. UN and UNICEF conventions are also violated.

⁶³ U.S. BUREAU OF INT'L LABOR AFFAIRS, DEP'T OF LABOR, BY THE SWEAT AND TOLL OF CHILDREN (1994 & 1995).

⁶⁴ U.S. Int'l Trade Comm'n, *Special Focus: International Trade and the Role of Labor Standards*, INT'L ECON. REV. 18 (Aug. 1995).

⁶⁵ ALAN KRUEGER, OBSERVATIONS ON INTERNATIONAL LABOR STANDARDS AND TRADE (Industrial Relations Section, Princeton Univ. Working Paper No. 362, 1996).

⁶⁶ *Majority of Survey Respondents Favor Linking Labor, Environment with Trade*, Daily Lab. Rep. (BNA) No. 110, at D-11 (June 9, 1997).

⁶⁷ Allen R. Meyerston, *In Principle, a Case for More Sweatshops*, N.Y. TIMES, June 22, 1997, at § 4, p. 5.

⁶⁸ *Id.*

an Apparel Industry Partnership in the United States after some embarrassing revelations. Remedies included pledges to pay at least the minimum legal wage or the prevailing industry wage if higher, bans on child and forced labor, and respect for freedom of association and collective bargaining rights.⁷⁷

Some suggest that the optimum policy would be to give consumers information through labels concerning the conditions under which the goods were produced.⁷⁸ Some proponents would require the labeling; others would leave it to the market on the grounds that firms with good conditions would want to publicize that fact.⁷⁹ How far the input-output connections would be traced in such labeling is unclear. That is, a firm could certify its own working conditions, but not the conditions of its contractors. Or it might certify the working conditions of itself and its contractors, but not have information about the labor conditions surrounding the raw materials used by itself or its contractors.

Nevertheless, the reaction of retailers and others suggests that products labeled "made with child labor" would not have a buoyant market in the United States. Imagine a label stating that although child labor was used, it was first determined that, all things considered, it was in the children's best interest that they work. Such a label probably would not be enticing to retail consumers.

Nepal agreed to place on its carpets for export the RUGMARK label, certifying that child labor had not been used.⁸⁰ However, RUGMARK has not been a uniform success by any means. The carpet industry in India has reportedly been strongly opposed.⁸¹ Yet the prospect of a complete ban on imports produced by child labor may soften such opposition, even if the initial reactions are hostile. The Indian government threatened a WTO case against the United States if Congress banned imports of products produced by child labor.⁸² Labels may ultimately be a compromise in

⁷⁷ Among the firms included are L.L. Bean, Nike, Reebok, and Liz Claiborne. See *Clinton Endorses Plan to Curb Sweatshops Through Using Code of Conduct, Monitoring, Daily Lab. Rep.* (BNA) No. 72, at AA-1 to AA-2 (Apr. 15, 1997); *Report of Apparel Industry Partnership to President Clinton*, Daily Lab. Rep. (BNA) No. 72, at E-5 to E-7 (Apr. 15, 1997). Various firms also report having their own internal codes. See U.S. BUREAU OF INT'L LABOR AFFAIRS, THE APPAREL INDUSTRY AND CODES OF CONDUCT: A SOLUTION TO THE INTERNATIONAL CHILD LABOR PROBLEM (1996).

⁷⁸ Richard B. Freeman, *A Hard-Headed Look at Labor Standards*, in INTERNATIONAL LABOR STANDARDS AND GLOBAL ECONOMIC INTEGRATION: PROCEEDINGS OF A SYMPOSIUM (U.S. Dep't of Labor 1994); T.N. Srinivasan, *International Labor Standards Once Again*, in INTERNATIONAL LABOR STANDARDS AND GLOBAL ECONOMIC INTEGRATION: PROCEEDINGS OF A SYMPOSIUM (U.S. Dep't of Labor 1994).

⁷⁹ See generally Basu & Hoang Van, *supra* note 71, at 426.

⁸⁰ *Grants Tell DOL That Labeling Programs Should Be Part of Comprehensive Campaign*, Daily Lab. Rep. (BNA) No. 70, at A-9 to A-10 (Apr. 21, 1997).

⁸¹ *Id.*

⁸² *India Will Take to WTO Bill to Ban Exports Made with Child Labor if Enacted*, Daily Lab. Rep. (BNA) No. 240, at A-9 (Dec. 15, 1997).

such situations. Still, monitoring the veracity of such labels can itself be an expensive process.⁸³

A significant factor influencing U.S. attitudes is the economic success of various countries that have adopted export-led growth strategies. Indeed, prior to the financial crisis, it was often asserted that the lack of standards was the key to Asian successes. However, with the financial problems that developed among emerging Asian economies in late 1997, there may be increased willingness to insist on labor standards. Some of the Asian "tiger" countries, such as South Korea and Taiwan, have in fact included a heavy dose of government involvement in other aspects of their economic policies.⁸⁴ Others, such as Hong Kong, have been more laissez-faire. Education and human capital seem to be important elements in determining their national growth rates.⁸⁵ Nonetheless, trade seems to have been central to Asian economic achievements prior to the financial crisis.

Americans may now fear that emerging countries around the world will target the U.S. market with their exports to emulate the earlier success stories. The Asian financial crisis may well cause tigers-in-distress to try to export their way back to prosperity. Thus, concerns about concepts such as labor and human rights abroad have become connected to fears about economic consequences at home. As a result, there have been calls to condition IMF bailouts on maintenance of labor standards.⁸⁶

Through the fall of 1998, the U.S. economy seemed to shrug off the Asian crisis. Dollar appreciation relative to Asian currencies held down domestic inflation and thus retarded any anti-inflation interest rate hikes by the Federal Reserve.⁸⁷ And the crisis eventually caused cuts in American interest rates despite a booming economy. Flight capital from Asia initially helped prop up U.S. financial and asset markets as well as the dollar, but there were concerns that a situation in which Asian misery enhanced U.S. prosperity could be transitory.⁸⁸ These concerns were

⁸³ *Id.*

⁸⁴ DANI RODRIK, GETTING INTERVENTIONS RIGHT: HOW SOUTH KOREA AND TAIWAN GREW RICH (National Bureau of Econ. Research Working Paper No. 4964, 1994); Stephen C. Smith, *Industrial Policy and Export Success: Third World Development Strategies Reconsidered*, in U.S. TRADE POLICY AND GLOBAL GROWTH: NEW DIRECTIONS IN THE INTERNATIONAL ECONOMY 267-98 (Robert A. Blecker ed., 1996).

⁸⁵ ERIC A. HANUSHEK & DONGWOOK KIM, SCHOOLING, LABOR FORCE QUALITY, AND ECONOMIC GROWTH (National Bureau of Econ. Research Working Paper No. 5399, 1995).

⁸⁶ *Law Limiting Bailouts with Labor Records Is Taken Seriously*, Treasury's Rubin Says, Daily Lab. Rep. (BNA) No. 241, at C-1 to C-2 (Dec. 16, 1997).

⁸⁷ Michael M. Phillips, *In the Oasis: How Long Can the U.S. Stay Immune to What Ails World Economy?*, WALL ST. J., Feb. 5, 1999, at A1.

⁸⁸ *Id.*

heightened by volatile stock market conditions as the Asian situation made investors nervous.⁸⁹

Short-term concerns in the United States have been intensified by long-term projections that almost all of the growth in the world's labor force during the next few decades will be outside high-income countries.⁹⁰ Thus, developed countries are haunted by the specter of the high-income labor force, now less than a sixth of the world labor force, competing with an ever-larger sea of lower income workers.⁹¹ We will return to this issue below in discussion of trade with China.⁹²

III. NAFTA LABOR STANDARDS

The original General Agreement on Tariffs and Trade (GATT) permitted countries to restrict imports made by prison labor, but was otherwise silent on labor standards.⁹³ However, two major trade integration treaties now have labor standards linked to them. First, final approval of the U.S.-Canada-Mexico free trade agreement involved the negotiation of a side accord on labor and other matters.⁹⁴ Second, the EU, which sprang originally from a 1957 customs union and common market accord, has a revamped Social Charter. Also, the EU has imposed other labor standards on its member states. As the United States is a key member of NAFTA and not the EU, we will concentrate on the former treaty below.

The Clinton administration, after a hiatus due to the 1996 presidential election, at first moved to extend NAFTA to other western hemisphere countries, particularly Chile. Chile reportedly agreed to accept labor standards in such an accord.⁹⁵ The Canadian government also pushed the United States for a fast-track extension to Chile and other countries.⁹⁶ In particular, Canada negotiated a separate deal with Chile that has NAFTA-like labor provisions.⁹⁷

⁸⁹ Sara Webb, *Concerns over Brazil and New China Rattle Markets in Asia, Europe, Americas, but Not Japan*, WALL ST. J., Jan. 22, 1999, at C14.

⁹⁰ The World Bank projects that 99% of the growth in the world's labor force from 1995 to 2025 will be outside the high-income countries, whose share of the labor force will drop from 15% to 11% over that period. See WORLD BANK, *supra* note 89, at 9.

⁹¹ *Id.*

⁹² See *infra* notes 168-176 and accompanying text.

⁹³ Jagdish Bhagwati, *Policy Perspectives and Future Directions: A View from Academia*, in INTERNATIONAL LABOR STANDARDS AND GLOBAL ECONOMIC INTEGRATION: PROCEEDINGS OF A SYMPOSIUM (U.S. Dep't of Labor 1994).

⁹⁴ *Supra* note 18 and accompanying text.

⁹⁵ *Chile Willing to Accept Labor Accord to Join NAFTA*, *USTR Official Says*, Daily Lab. Rep. (BNA) No. 47, at A-4 (Mar. 11, 1997).

⁹⁶ Under fast-track procedures Congress authorizes the President to negotiate a trade agreement on which it must vote as a package with no amendments.

⁹⁷ Maria Lorena Cook et al., *Making Free Trade More Fair: Developments in Protecting Labor Rights*, 48 LAB. L.J. 524 (1997); *Christen Requests Fast-Track Extension of Chile's Negotiating Authority for NAFTA*, Daily Lab. Rep. (BNA) No. 68, at A-11 (Apr. 9, 1997).

But the issue of whether labor standards should be part of such an extension has been a major point of dispute between the Democratic President and the Republican Congress. Because Democrats in Congress often oppose NAFTA, the President must rely on Republican votes to approve both the authorization for fast-track negotiating authority and the subsequent ratification of any treaty that might emerge. Republicans have generally opposed the idea of labor standards in trade treaties. The Clinton administration proposed that it would negotiate only labor standards that were "directly related" or "necessary and appropriate" to reducing trade barriers. Other agreements, presumably outside of the fast-track process, would deal with labor and environmental issues. This compromising failed to overcome the Democratic opposition and indeed may have intensified it. The administration withdrew the proposal in the face of certain defeat in the fall of 1997, although it asserted it would try again in the (unspecified) future.⁹⁸ Possibly Congress will reconsider the issue even if a reluctant Clinton administration fears losing the vote.⁹⁹ For a Republican Congress such a vote serves to highlight and exacerbate fractures within the Democratic Party over trade.

The arrangements reached when the original U.S.-Canada free trade agreement was renegotiated to cover Mexico had elements of the type the Clinton administration proposed for fast-tracking. That is, the labor components were in side accords. The North American Agreement on Labor Cooperation Supplemental Agreement set forth a number of general objectives, such as improving working conditions and living standards in each party's territory and promoting compliance with and effective self-enforcement of its labor law.¹⁰⁰ This Supplemental Agreement established a Commission for Labor Cooperation, consisting of a council and a secretariat. In addition, each country under the Agreement is required to create a National Administrative Office (NAO) to deal with its obligations. Unresolved disputes are referred to an Evaluation Committee of Experts for an advisory report.

At the time the Supplemental Agreement was signed, it was undoubtedly expected that the cases posed would mainly involve Mexico, as the low-standards country. The commonly expressed fear was that low Mexican labor standards would pull down those of Canada and the United States.¹⁰¹ However, Mexican legal standards are not always below American or Canadian standards. For example, Mexico requires certain

⁹⁸ *Clinton Concedes Defeat on Fast Track; Pledges to Pass Legislation Next Year*, Daily Lab. Rep. (BNA) No. 218, at AA-1 to AA-3 (Nov. 12, 1997).

⁹⁹ *Clinton Seizes Other Trade Priorities over Fast-Track Negotiating Authority*, Daily Lab. Rep. (BNA) No. 129, at D-6 (July 7, 1998).

¹⁰⁰ North American Agreement on Labor Cooperation Preamble of the NAFTA Supplemental Agreements between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, 32 I.L.M. 1480, 1482 (1993).

¹⁰¹ David A. Dilts & William H. Walker, Jr., *Labor Standards and North American Free Trade: Economic Dynamics or Dilemmas?*, 44 LAB. L.J. 445, 445-48 (1999).

employers to offer profit sharing to workers, while the other two NAFTA countries do not.¹⁰² Labor cases filed to date are summarized on Table 1, and as can be seen, there were cases filed by Mexico against the United States.¹⁰³ Also, a consortium of U.S. organizations sought to file a case against the United States through Canada. Finally, a U.S.-based union filed a complaint against Canada.¹⁰⁴ However, most of the cases have been complaints about Mexico.

In the earliest cases the Teamsters and the United Electrical Workers unions claimed before the American NAO that Mexican subsidiaries of Honeywell and General Electric had denied workers the right to join an independent union not linked to the Mexican Labor Federation. The Federation has historically been tied to the long-dominant Institutional Revolutionary Party in Mexico. According to the allegations, the independent union activists were discharged. In its report, however, the NAO was unable to make a finding that Mexican labor laws were not properly enforced.¹⁰⁵

Publicity and political pressure may have an impact in some situations. In cases filed involving Sony and Maxi-Switch, the plaintiffs alleged discharges of union activists in Mexican plants and failure by Mexican labor authorities to protect such workers. Even if a finding confirmed such allegations, it is unclear that any legal remedy would result. In the Maxi-Switch case, however, the local authorities ultimately recognized the independent union as legitimate after the NAO filing, perhaps to avoid further investigation.¹⁰⁶

Moreover, important changes that may influence the NAFTA relationship are occurring outside the formal NAFTA machinery. In 1996 Mexico's Supreme Court of Justice ruled (in a case unrelated to NAFTA and involving the public sector) that under an ILO convention signed by Mexico in 1950, allowing only one union in a workplace was unconstitutional. Possibly this decision could eventually affect private sector operations in that country.¹⁰⁷ Another development was the death of the longtime president of the dominant Mexican union federation, an event

viewed by many as potentially encouraging independent unions.¹⁰⁸ Of course, a shift in Mexico away from the long-ruling Institutional Revolutionary Party at some point in the future could have still more dramatic effects.

Somewhat apart from the NAFTA labor standards issue, the Teamsters union in the United States succeeded in delaying implementation of a section of NAFTA that would permit Mexican trucks to operate in the United States. Obviously, the union was mainly concerned with job protection for its members against low-wage Mexican competition. But on the basis of highway safety objections, the union was able to have the U.S. Department of Transportation undertake a review of cross-border trucking.¹⁰⁹ At the time of this writing, the trucking issue remains unsettled and clouded by a report by the U.S. General Accounting Office questioning the safety of Mexican-operated trucks. In addition, negative publicity results from the occurrence of major accidents involving Mexican trucks operating in the United States; such accidents raise issues in the media about the wisdom of providing wider access to Mexican trucks and drivers.¹¹⁰ However, the United States and Mexico did agree to standards for drug and alcohol testing for commercial drivers, a step that could advance cross-border truck driving at some point.¹¹¹

The first of the three cases filed by Mexico against the United States was a charge that American labor laws were not being properly enforced in a case involving the telephone carrier Sprint. Sprint had closed a Spanish-language telephone subsidiary in California and laid off its employees. At the time of the closing, there had been an organizing drive among the employees by the Communications Workers. After the layoffs the union filed unfair labor practice charges with the National Labor Relations Board (NLRB) claiming that the closing was an illegal denial of the right to organize. An NLRB administrative law judge initially found that the closure was based on economics rather than anti-union animus and thus denied any legal remedy. Then, subsequent to the NAFTA review, the NLRB reversed that initial opinion. It ruled instead in the union's favor and ordered reinstatement of the dismissed Sprint workers. But that ruling in turn was successfully appealed to the courts by the employer.¹¹²

¹⁰² Charles J. Hollen, *Employee Profit Sharing Under the Mexican Federal Labor Law*, 47 Lab. L.J. 523, 523-26 (1996).

¹⁰³ See *infra* Table 1.

¹⁰⁴ *IBT Files Complaint Under NAFTA in Dispute over Canadian McDonald's*, Daily Lab. Rep. (BNA) No. 203, at A-9 (Oct. 21, 1998).

¹⁰⁵ Lance Compa, *Going Multilateral: The Evolution of U.S. Hemispheric Labor Rights Policy Under GSP and NAFTA*, 10 Conn. J. Int'l L. 387, 353 (1995).

¹⁰⁶ *CWA Drops NAFTA Charge After Mexico Recognizes Workers' Independent Union*, Daily Lab. Rep. (BNA) No. 74, at A-7 to A-8 (Apr. 17, 1997); *Mexican Labor Group Calls for Action Following Vacuum in Mex-Switch Complaint*, Daily Lab. Rep. (BNA) No. 81, at A-4 to A-5 (Apr. 28, 1997); *NAFTA Complaint Adds to Recognition of Mexican Union, According to Experts*, Daily Lab. Rep. (BNA) No. 78, at A-1 to A-2 (Apr. 23, 1997).

¹⁰⁷ *Mexican Law Allowing Only One Union Per Workplace Ruled Unconstitutional*, Daily Lab. Rep. (BNA) No. 102, at A-17 to A-18 (May 28, 1996).

¹⁰⁸ *Independent Unions in Mexico to Form New Labor Federation, Seek Wage Gains*, Daily Lab. Rep. (BNA) No. 146, at A-2 to A-3 (July 30, 1997).

¹⁰⁹ *Mexico and United States Examine Safety Review Process for Trucks*, Daily Lab. Rep. (BNA) No. 79, at A-10 (Apr. 24, 1996).

¹¹⁰ Emily Orant et al., *4 Die in Fire Flareup as Crashes Swirl Traffic*, L.A. Times, Mar. 27, 1997, at A1; *Vehicle Safety Issues Cloud Enactment of Free Trade Pact Trucking Provisions*, Daily Lab. Rep. (BNA) No. 98, at A-3 to A-5 (May 21, 1997).

¹¹¹ *Mexico, United States Sign Accord on Drug/Alcohol Testing, Discuss Labor*, Daily Lab. Rep. (BNA) No. 114, at D-17 (June 15, 1998).

¹¹² *NLRB Orders Sprint to Rehire 177 Workers at La Conexion Familiar*, Daily Lab. Rep. (BNA) No. 250, at AA-1 (Dec. 31, 1996); *Sprint Lawfully Shut Down Divisions During Union Campaign, Court Rules*, Daily Lab. Rep. (BNA) No. 228, at A-1 (Nov. 26, 1997).

The NAFTA aspect of the Sprint case was initiated by a telephone workers' union in Mexico cooperating with the American union. Its charges led to a public hearing of the facts surrounding the Sprint closure and layoffs. Although such a hearing by itself could not reverse an NLRB or court decision, it appears that NAFTA's labor standard side letter has created an alternate forum for American unions.

Various other cases have been brought by Mexico against the United States. One such case, filed in 1998, was effectively on behalf of the Teamsters against Washington State apple growers.¹¹³ A complaint was also filed in Mexico alleging violation of union organizing and other labor protections at a plant making solar panels in the Los Angeles area. It is also possible for complaints to be filed against the United States on the basis of generally inadequate enforcement of labor protections. Mexico has filed against the United States on the basis of inadequate safety and health enforcement at an egg farm; another complaint has been filed in both Canada and Mexico concerning inadequate enforcement of minimum wage and overtime pay standards in the United States.¹¹⁴

Although most of the union-related cases have involved organizing and representation, the NAFTA side accord could be used as leverage by unions in other cases. During the course of a labor dispute involving flight attendants at Aeromexico, the Mexican government took over the airline to prevent a strike. Although reportedly satisfied with the eventual wage settlement, the union representing Aeromexico flight attendants indicated it would work with its American counterpart to file a complaint under NAFTA concerning the take-over action.¹¹⁵

As one review of the NAFTA record suggests, the operation of the side accords is likely to be quite sensitive to the political complexions of the three governments involved. The Clinton administration, in particular, proved to be more persistent in its use of the labor accord than some future administration might be. But despite the uncertainties, the NAFTA labor and environmental components, negotiated when a low-wage country joined a high-wage free-trade area, set a precedent of including such provisos in wider trade agreements.¹¹⁶

¹¹³ Mexico Agrees to Investigate Charges U.S. Failed to Protect Apple Workers' Rights, Daily Lab. Rep. (BNA) No. 136, at D-7 (July 16, 1998).

¹¹⁴ Canadian NAO Seeking Legal Advice on Complaints Against U.S. Practices, Daily Lab. Rep. (BNA) No. 198, at A-8 (Oct. 14, 1998); Labor Ministers to Review Cases; Proceed with Review of NAFTA Side Accord, Daily Lab. Rep. (BNA) No. 191, at A-6 to A-7 (Oct. 2, 1998); Mexico Accepts NAFTA Complaint Filed by Workers Against DeCoster Egg Farm, Daily Lab. Rep. (BNA) No. 157, at A-2 (Aug. 14, 1998).

¹¹⁵ Aeromexico Flight Attendants End Strike but Plan to File NAFTA Complaint, Daily Lab. Rep. (BNA) No. 110, at D-24 (June 9, 1998).

¹¹⁶ Roy J. Adams & Parbudyal Singh, Early Experience with NAFTA's Labour Side Accord, 18 *Comp. Lab. L.J.* 161 (1997); David Greenaway & Chris Milner, *The World Trade System and the Uruguay Round: Global Employment Implications*, 134 *Int'l Lab. Rev.* 497, 516-17 (1995).

Still, experience under NAFTA—with American collective bargaining law being challenged—might well give pause to U.S. negotiators concerning what kind of core labor standards they propose for the WTO in the future. Any such standard involving collective bargaining is likely to be vague. Congress would almost certainly resist the idea of the WTO or a WTO-ILO consortium challenging decisions of the NLRB or the courts in domestic labor relations matters. In principle, lack of legislation could also be the subject of a NAFTA case against the United States. The Washington State Apple case filed by Mexico has that potential as federal labor relations law exempts agriculture from coverage and Congress has never shown enthusiasm for extending such protection to farming. How would Congress react to an external tribunal pointing to this coverage gap and indicating it should be filled?

Still, much of the labor-related controversy over NAFTA has involved not standards, but rather job creation and destruction. Clearly, in individual plants and industries, an expansion of trade can create or eliminate jobs. Within the United States the NAFTA-Transitional Adjustment Assistance Program provides job training and extended unemployment payments to adversely affected workers. To qualify, workers must be certified by the U.S. Department of Labor as having become unemployed because of the operation of NAFTA. About 150,000 employees received such aid under this program from 1994 (when the extension of NAFTA to Mexico occurred) through December 1997.

While most such layoffs receive little publicity, occasionally a shift in facilities from the United States to Mexico will receive significant media attention. The apparel manufacturer Guess, for example, received significant adverse publicity after announcing such a move.¹¹⁷ Thus, the NAFTA job creation/destruction issue remains a major one in the United States.

Unfortunately, the job issue is often poorly defined. An aggregate level economist do not expect much change in the total job count due to trade.¹¹⁸ Rather, trade will mainly shift jobs between the trade and non-trade sectors. These shifts could have an effect on income levels, e.g., through a worker's shift from a high-wage manufacturing job to a low-

¹¹⁷ Stuart Silverstein et al., *Guess, Inc. to Move Much of L.A. Work South of the Border*, L.A. Times, Jan. 15, 1997, at A1.

¹¹⁸ The Clinton Administration reported that in the first three years of NAFTA's existence, the Agreement resulted in an increase of 311,000 jobs. NAFTA: *Administration Report Says NAFTA Has Had Modest Positive Impact*, Daily Lab. Rep. (BNA) No. 134, at A-1 (July 14, 1997). See also *Trade Administration Prepares for FTAA Talks: New Survey Shows Job Gains Under NAFTA*, Daily Lab. Rep. (BNA) No. 42, at A-8 (Mar. 4, 1998) (discussing a recent survey among North American businesses in which over half of the companies surveyed reported increasing workforces). However, the Economic Policy Institute (EPI) has estimated a loss of at least 420,000 jobs because of NAFTA. NAFTA: *Economists Say Higher Trade Deficit with Mexico, Canada Has Cost U.S. Jobs*, Daily Lab. Rep. (BNA) No. 35, at A-6 (Feb. 21, 1997). Current EPI analyses are available at <http://www.epinet.org>.

wage service or retail job. However, overall employment levels are largely determined in the short term by macroeconomic policy and conditions and in the long term by labor force trends, though there may be significant short-run displacement effects of trade on individual workers.¹¹⁹

Moreover, if exports are viewed as job-creating and imports as job-destroying, the two influences will tend to offset. In the United States trade with Canada and Mexico accounted for well under a fifth of the nation's trade *deficit* (goods only) in 1997 and the overall (all-country) trade deficit was only about 2.4% of GDP that year.¹²⁰ Thus, regardless of the details of the calculation, it is not surprising that estimates of NAFTA's overall effect fail to show dramatic job effects on the large U.S. labor force.

Even when the focus is just on exports, which the Clinton administration prefers to emphasize, large numbers of jobs created relative to the total workforce cannot be found.¹²¹ In 1997 American goods exports to Canada and Mexico were under three percent of GDP.¹²² Such exports are likely to be less labor-intensive than the output of the U.S. economy as a whole.¹²³ As a result, any plausible calculation of the direct job impact of NAFTA exports is going to produce a number well under four million jobs (out of 130 million). In fact, the official administration estimate for the prior year was 2.3 million, about two percent of total employment.¹²⁴ Despite all of the rhetoric about living in a global economy and building bridges to the twenty-first century, it is hard to make the case that NAFTA is a crucial element of U.S. economic prosperity. Moreover, much of the American trade expansion with Mexico is due to the unilateral decision of the Mexican government in the late 1980s to liberalize the economy and to abandon an earlier protectionist policy. NAFTA was a ratification in treaty terms of this change within Mexico, not the cause of it.

¹¹⁹ Such displacement effects are evidenced by the increasing number of workers seeking job retraining. Between October 1 and December 31, 1998, over 25,000 dislocated workers were certified as eligible for aid under the Trade Adjustment Assistance Program, compared with under 19,000 workers during the same three-month period in 1997. *Dislocated Workers: DOL Data Shows Trade-Related Job Losses Increasing During First Quarter of FY 1999*, Daily Lab. Rep. (BNA) No. 15, at C-1 (Jan. 25, 1999).

¹²⁰ See U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 451, 798-802 (8th ed. 1998) (providing gross domestic product data in Table No. 715 and trade data with Mexico and Canada in Table No. 1323).

¹²¹ See *supra* note 118 and accompanying text.

¹²² In 1997 exports to Canada totaled over \$151 billion, and exports to Mexico totaled over \$71 billion. See STATISTICAL ABSTRACT OF THE UNITED STATES, *supra* note 120, at 801-03.

¹²³ See *id.* at 788 (detailing types of private service transactions exported to several countries, including Canada and Mexico).

¹²⁴ *Administration Report Says NAFTA Has Had Modest Positive Impact*, Daily Lab. Rep. (BNA) No. 134, at A-1 to A-2 (July 14, 1997).

IV. U.S. POLITICS AND THE TRADE AND LABOR ISSUE

In recent years official rhetoric from successive administrations in the United States has favored expansion of trade and lowering of trade barriers.¹²⁵ However, public opinion is edgy and, depending on economic developments and political leadership, could turn against free trade.¹²⁶ Table 2 displays the result of a poll taken in September 1997, a period of economic expansion and low unemployment. The Table shows an even split in public opinion about the benefits of NAFTA. Moreover, two-thirds of the public supported import restrictions to protect American industries and jobs.

Controversy over trade policy is not new in American politics.¹²⁷ Historically, trade debates have been an important force on the American political scene. Arguments over tariff issues between the free-trade-oriented southern states (exporters of cotton and agricultural products) and the import-competing manufacturing northern states are often seen as a major cause of the Civil War.¹²⁸ Linked to the North at the time of the Civil War and for decades thereafter, the Republican Party was traditionally the party of protection.¹²⁹ To deal with the large revenues tariffs produced, Republicans supported continual enhancement of (Northern) Civil War veterans' pensions to expend the monies.¹³⁰ Democrats, tied to the South, typically advocated tariff reductions,¹³¹ and Confederate veterans received no federal pensions.¹³² As is the case today, arguments for protection were often phrased in terms of protecting jobs and workers.

The Smoot-Hawley Tariff, the last major boost in U.S. tariff rates, was passed on the eve of the Great Depression by a Republican administra-

¹²⁵ J. Michael Finger, *The Meaning of "Fair" in U.S. Import Policy*, 1 *MINN. J. GLOBAL TRADE* 35, 40 (1992); John Linarelli, *International Trade, Relations and Separation of Powers Under the U.S. Constitution*, 13 *DICK. J. INT'L L.* 203, 204 (1995).

¹²⁶ See David B. Spence, *Administrative Law and Agency Policy-Making: Rethinking the Positive Theory of Political Control*, 14 *YALE J. ON REG.* 439-40 (1997); William E. Spriggs & James Stanford, *Economists' Assessments of the Likely Employment and Wage Effects of the North American Free Trade Agreement*, 10 *HOFSTRA LAB. L.J.* 495, 498 (1993).

¹²⁷ See Jeffrey L. Dunoff, *Rethinking International Trade*, 19 *U. PA. J. INT'L ECON. L.* 347 (1998); William A. Lovett, *Current World Trade Agenda: GATT, Regionalism, and Unresolved Asymmetry Problems*, 62 *FORDHAM L. REV.* 2001 (1994); Daniel K. Tarullo, *Law and Politics in Twentieth Century Tariff History*, 34 *UCLA L. REV.* 285, 285-86 (1986).

¹²⁸ Ronald A. Brand, *GATT and the Evolution of U.S. Trade Law*, 18 *BROOK. J. INT'L L.* 101, 106-07 (1992); Michael S. Knoll, *Perseance to Dream: The Global Economy and the American Dream*, 66 *S. CAL. L. REV.* 1999 (1993).

¹²⁹ See Tarullo, *supra* note 127, at 285-86.

¹³⁰ Steven A. Bank, *Origins of a Flat Tax*, 73 *DENV. U. L. REV.* 329, 402, n.317 (1996).

¹³¹ Tarullo, *supra* note 127, at 286.

¹³² Catherine R. Albiston & Laura Beth Nielson, *Welfare Queens and Other Fairy Tales: Welfare Reform and Unconstitutional Reproductive Controls*, 38 *HOW. L.J.* 473, 477-78 (1995).

tion as a measure to save jobs.¹³³ But American policy was reversed in the mid-1980s under the Democratic Roosevelt administration.¹³⁴ It moved instead toward reciprocal tariff reduction agreements with most-favored-nation clauses.¹³⁵ In the immediate post-World War II era, this policy of reducing trade barriers resumed with the negotiation of the GATT.¹³⁶ Opposition in Congress blocked a more comprehensive accord that would have had a labor standards element and would have established an International Trade Organization (ITO).¹³⁷ However, pursuant to GATT, various international tariff and trade barrier reducing agreements were subsequently negotiated.¹³⁸

Major reductions were agreed upon in the 1960s in the "Kennedy Round" negotiations pursuant to the Trade Expansion Act of 1963.¹³⁹ However, by the late 1960s the political parties' respective positions on trade were reversing.¹⁴⁰ Organized labor, with ties to the Democrats, saw some of the industries it represented begin to shift from being exporters to import-competing. Thus, although the AFL-CIO had supported the Kennedy administration's Trade Expansion Act in the early 1960s, by the next decade it backed import quotas. Big business, with ties to the Republicans, became increasingly multinational rather than just domestic-oriented. The American business agenda moved in the direction of trade expansion and barrier reduction.¹⁴¹

At present the two political parties do not have unified views on the issue of free trade versus protection, with prominent and vocal propo-

nents of both positions co-existing within each party.¹⁴² Thus, Clinton, a Democrat, pushed for congressional ratification of the NAFTA extension to Mexico negotiated by his Republican predecessor.¹⁴³ But because his campaign rhetoric had called for modification of the pending treaty, he added the labor and environmental side accords described earlier.¹⁴⁴ Later, Clinton sought U.S. ratification of the "Uruguay Round" agreements establishing the WTO, the distant heir of the long-abandoned ITO.¹⁴⁵ He succeeded in both cases by relying heavily on Republican congressional votes.¹⁴⁶

In contrast, Patrick Buchanan, Republican primary candidate for the presidential nomination in 1992 and 1996, called for trade barriers to protect American workers and opposed NAFTA and similar agreements.¹⁴⁷ Ross Perot, the third-party presidential candidate who received nineteen percent of the popular vote in 1992 and about half that percentage in 1996, also called for a "social tariff" to protect American workers.¹⁴⁸ Similar views have been expressed by Jerry Brown, former California Governor and long-shot 1992 candidate for the Democratic presidential nomination.¹⁴⁹

The contemporary American polity features *import limiters* (themselves divided between those calling for "fair trade" and those calling for unilateral import barriers), *export promoters* (calling for managed trade or aggressive use of import restriction threats mainly to open up foreign markets to American goods), and *free traders*. It is within this confusing context that American policy's emphasis on labor standards in international agreements can best be understood.

Nearly all of these interests can see some merit in labor standards, depending on how such standards are framed. Free traders can view labor standards as a small "price" to pay for political support for trade

¹³³ Smoot-Hawley Tariff Act of 1930, Pub. L. No. 71-361, 46 Stat. 590 (1930); Brand, *supra* note 128, at 109.

¹³⁴ Reciprocal Trade Agreement Act, 19 U.S.C. §§ 1351-1354 (1994); C. O'Neal Taylor, *Fast Track, Trade Policy and Free Trade Agreements: Why the NAFTA Turned into a Battle*, 28 GEO. WASH. J. INT'L L. & ECON. 1, 17 (1994).

¹³⁵ Reciprocal Trade Agreement Act, 19 U.S.C. §§ 1351-1354. See also Guy T. Perillo, *Free Trade Area Agreements and U.S. Trade Policy*, 18 N.Y.U. J. INT'L L. & POL. 1281 (1986); Ruth E. Olson, Note, *GATT - Legal Application of Safeguards in the Context of Regional Trade Arrangements and its Implications for the Canada-United States Free Trade Agreement*, 73 MINN. L. REV. 1488 (1989).

¹³⁶ See Miguel A. Figuerosa, *The GATT and Agriculture: Past, Present, and Future*, 5 KAN. J.L. & PUB. POL'Y 83, 93-94 (1995).

¹³⁷ Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 LAW & POL'Y INT'L BUS. 181 (1993).

¹³⁸ Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L.J. 421, 442 (1998).

¹³⁹ John H. Jackson et al., *Implementing the Tokyo Round: Legal Aspects of Changing International Economic Rules*, 81 MICH. L. REV. 267, 271 (1982).

¹⁴⁰ See, e.g., John K.M. Ohnesorge, *States, Industrial Policies & Antidumping Enforcement in Japan, South Korea, and Taiwan*, 3 BURE. J. INT'L L. 289, 388-92 (1996) (noting that although Federalists and Republicans initially favored protectionism and Democrats preferred fewer tariffs and trade barriers, the roles have been somewhat reversed in recent years).

¹⁴¹ See *id.* at 387-92 (discussing the political history of trade in the United States from the early nineteenth century to the present).

¹⁴² See Lovett, *supra* note 127, at 2023 (noting that Democrats are sharply divided in Congress on the issue of free trade and that Republicans, with notable exceptions such as Patrick Buchanan, generally endorse free trade pacts).

¹⁴³ Alexandra Maravel, *Constructing Democracy in the North American Free Trade Area*, 16 NW. J. INT'L L. & BUS. 331, 337 (1996).

¹⁴⁴ *Id.*

¹⁴⁵ See Clinton to Push for GATT Passage Before August recess, *Kentler Says*, Daily Lab. Rep. (BNA) No. 100, at D-18 (May 26, 1994).

¹⁴⁶ See Andrew R. Herrup, *Addressing Environmental Concerns Regarding Chilean Accession to NAFTA*, 10 CONN. J. INT'L L. 221, 225-26 (1995) (noting that a majority of Republicans voted in favor of NAFTA, while Democrats generally opposed the Agreement). See also *Senate Approves GATT Trade Bill 76-24*, *Clearing Way for New WTO Early Next Year*, Daily Lab. Rep. (BNA) No. 230, at D-29 (Dec. 24, 1994) (noting that 35 Republican Senators voted in favor of the Uruguay Round legislation).

¹⁴⁷ *Perot v. Perot: When It Comes to Free Trade, the Son is Right*, DALLAS MORNING NEWS, May 18, 1993, at A16.

¹⁴⁸ David Lauter, *Democratic Rivals United on Issues, Divided on Style Politics: Clinton and Tsongas See Many of the Same Problems, but Their Solutions Form the Dividing Line*, L.A. TIMES, Mar. 15, 1992, at A1.

barrier reductions, although business interests may reflexively still oppose such standards.¹⁵⁰ Import limiters can see standards as partly protective of domestic or labor interests, and the concept of raising world labor standards appeals to the general public. Thus, as previously noted, the United States, under the Clinton administration, has pressed unsuccessfully for labor standards to be incorporated into the arrangements underlying the new WTO.¹⁵¹ However, the standards proposed would not involve harmonization across countries, but would be a set of minimal "core" standards.¹⁵²

V. COMPARATIVE WAGE TRENDS

The history of wage developments suggests a tendency for convergence of nominal wages (at prevailing exchange rates) among *developed* countries.¹⁵³ Table 3 illustrates this effect for selected countries. Wages shown are not adjusted for purchasing power because the dollar equivalents, not purchasing power, determine international competitiveness. Foreign wages were uniformly below American levels in 1960. But there was considerable progress during 1960 to 1970. By the mid to late 1970s, U.S. wages were in the middle range in comparison to the developed world. Foreign wages fell relative to U.S. levels during the 1980s, thanks to a phenomenal run-up of the American dollar in foreign exchange markets. Indeed, it has been argued that the "overvalued" dollar in the mid-1980s led to pressure for American protectionism.¹⁵⁴ But in the second half of the 1980s, the dollar fell and U.S. wages again assumed their current mid-range position in the developed world.

Wages shown on Table 3 reflect the drops in currency values that occurred in 1997 for many of the selected countries.¹⁵⁵ The 1998 data, when they become available, will likely show still more currency-related drops in relative wages. Still, it is likely that over the decades, the wage convergence process will resume for countries that have made rapid economic progress in the past. The dollar's run-up and then reversal against developed countries' currencies in the 1980s suggests the lesson that such

¹⁵⁰ The U.S. Council for International Business, the U.S. employer representative at the ILO, argued against labor clauses on the ground that these may lead less developed countries not to sign trade agreements. *International Labor: Employers' Group Opposes U.S. Attempt to Link Worker's Rights and Trade*, Daily Lab. Rep. (BNA) No. 107, at D-8 (June 8, 1996).

¹⁵¹ *International Trade: President Addresses Labor Standards in Annual Trade Policy Report to Congress*, Daily Lab. Rep. (BNA) No. 51, at A-7 (Mar. 17, 1997).

¹⁵² *International Labor: ILO Continues to Debate Text of Declaration on Core Worker Rights*, Daily Lab. Rep. (BNA) No. 26, at CC-1 (Feb. 9, 1998).

¹⁵³ See generally Gary C. Huffman, *The Coming Boom in Services Trade: What Will It Do to Wages?*, 25 LAW & POLY INT'L BUS. 433 (1994).

¹⁵⁴ C. MICHAEL AHO & JONATHAN DAVID ARONSON, *TRADE TALKS: AMERICA BETTER LISTEN!* 8-9 (1995).

¹⁵⁵ Hong Kong, with its currency board peg to the U.S. dollar, was an exception among the four Asian tigers.

resumption is also likely for the Asian tigers in the 1990s and beyond. It also suggests, however, that years may pass before a resumption of convergence occurs.

Textbook trade theory, the well-known Heckscher-Ohlin-Samuelson model, suggests that wages of trading nations *ought* to converge.¹⁵⁶ Over the period covered by Table 3, there was much expansion of world trade, as well as the conclusion of pacts aimed at lowering tariff and other barriers.¹⁵⁷ Technology tended to spread around the globe through various channels, including direct investment by multinational companies. As wages did, technology and productivity tended to converge in the case of developed countries, but not necessarily for less developed nations.¹⁵⁸ However, there were forces other than trade influencing national wages, including the build-up of the capital stocks of countries outside the United States. Just liberalizing the economy does not by itself seem to guarantee success. The poor performance of Mexican relative wages on Table 3 illustrates this unpleasant fact. (Mexican wages had shown some tendency to increase before the peso crisis and its aftermath during the mid-1990s.) We will return to the theory of trade-induced wage convergence later.¹⁵⁹

A. The Asian Experience

Particularly remarkable in Table 3 is the performance of Japan. Japanese wages started at only ten percent of U.S. levels in 1960! By the end of the period shown, they had more than caught up. Although comparable data on the four Asian tigers (South Korea, Singapore, Hong Kong, and Taiwan) are available only beginning in 1975, these economies seemed to be emulating the Japanese example through 1996. In the mid-1970s their relative wages were about at the level of Japan in 1960. By 1996 the four tigers' wages were in the range of one fourth to one half of the U.S. level, roughly where Japan was in the early 1970s. And the four tigers also appeared to be forming something of a trade-integrated labor market of their own at the time, as they converged toward American wage levels.¹⁶⁰

¹⁵⁶ See, e.g., PETER H. LINDEBT & THOMAS A. PUOEL, *INTERNATIONAL ECONOMICS* 51-73 (10th ed. 1996).

¹⁵⁷ See, e.g., Convention of the International Telecommunications Union, 142 CONG. REC. S10566-02 (1996); International Grains Agreement, 143 CONG. REC. S2799-01 (1995); Free-Trade Agreement, Jan. 2, 1988, U.S.-Canada, 27 I.L.M. 281 (U.S.-Canada Free Trade Agreement); Agreement Concerning Trade in Semiconductors, Sept. 2, 1986, U.S.-Japan, available in 1986 WL 230416; Horacia A. Grigera Naon, *Sovereignty and Regionalism*, 27 LAW & POLY INT'L BUS. 1073 (1996) (ASEAN and the Andean Pact).

¹⁵⁸ CONVERGENCE OF PRODUCTIVITY: CROSS-NATIONAL STUDIES AND HISTORICAL EVIDENCE (William J. Baumol et al. eds., 1994).

¹⁵⁹ See *infra* Part VI.H.

¹⁶⁰ DAVID E. BLOOM & WASEEM NOOR, IS AN INTEGRATED REGIONAL LABOR MARKET EMERGING IN EAST AND SOUTHEAST ASIA? (National Bureau of Econ. Research Working Paper No. 5174, 1995).

As noted, the Asian financial crisis and resultant depreciation of the tigers (especially South Korea) reversed some of this convergence. However, if the hypothesized long-term resumption of convergence develops, the four tiger countries might have their wages at American levels within twenty years. Assuming complete convergence is someday achieved, it will then be hard to argue that these countries' exports to the United States are based on cheap labor. But until that time, the issue remains sensitive, and the fall in dollar-denominated wages of the Asian countries because of the financial crisis will heighten the sensitivity.

Also aggravating the issue is the fact that the four tiger economies tended to report chronic labor shortages during their period of rapid growth, which suggested that, for one reason or another, wages were not rising fast enough to clear the labor market.¹⁶¹ In at least one case—Singapore—in certain periods there was a history of overt government policy aimed at wage repression.¹⁶² Others in various periods have discouraged unionization, policies which could raise questions in relation to the ILO's labor standards regarding freedom of association and collective bargaining.¹⁶³

Japan had many years of very low unemployment, and employers there complained of labor shortages, even during periods of sluggish performance.¹⁶⁴ Some observers argued that such reported shortages resulted from the wage payment system, rather than the wage level per se.¹⁶⁵ The Weitzman "share economy" model has been applied to Japan with the suggestion that the important bonus system acts as a de facto profit sharing plan, thus reducing the marginal cost of labor and producing a labor shortage.¹⁶⁶ Bonuses could be playing such a role in the other Asian economies, too. Yet the experience of the U.S. economy during the 1990s suggests that persistent labor shortages can occur without a wide-spread share or bonus system.

¹⁶¹ David M. Forman, *Protecting Philippine Overseas Contract Workers*, 16 *COMP. LAB. L.J.* 26 (1994) (quoting Blas F. Ople, *The Last Labor Exporting Country*, *PANORAMA*, Nov. 22, 1992, at 44-45).

¹⁶² Sarosh Kuruvilla, *Linkages Between Industrialization Strategies and Industrial Relations/Human Resource Policies: Singapore, Malaysia, the Philippines, and India*, 49 *INDUS. & LAB. REL. REV.* 635, 640 (1996).

¹⁶³ INTERNATIONAL BANK FOR RECONSTRUCTION & DEV. (WORLD BANK), *THE EAST ASIAN MIRACLE: ECONOMIC GROWTH AND PUBLIC POLICY 270-79* (1993); ORGANIZATION FOR ECON. CO-OPERATION & DEV., *TRADE AND LABOUR STANDARDS: A REVIEW OF THE ISSUES* 21, 35 (1995); ORGANIZATION FOR ECON. CO-OPERATION & DEV., *TRADE, EMPLOYMENT AND LABOUR STANDARDS* 85 (1996).

¹⁶⁴ *Japan Needs to Step Up Efforts to Cope with Labor Shortages*, *Labor Ministry Says*, *Daily Lab. Rep.* (BNA) No. 134, at A-1 (July 13, 1992).

¹⁶⁵ Erin E. Lynch, Comment, *Late-Life Crisis: A Comparative Analysis of the Social Insurance Schemes for Retirees of Japan, Germany, and the United States*, 14 *COMP. LAB. L.J.* 389, 343 (1993).

¹⁶⁶ Richard B. Freeman & Martin L. Weitzman, *Bonuses and Employment in Japan*, 1 *J. JAPANESE & INT'L ECON.* 168-94 (1987).

In any case, there could be explanations beyond either wage repression or share and bonus systems. It may be that rapidly expanding economies will often "naturally" exhibit labor shortages.¹⁶⁷ Perhaps in some countries employers have a propensity to complain that they have "vacancies" that are unfilled due to institutional factors.¹⁶⁸ The concepts of labor shortage and vacancy are not rigorously defined. Whatever the explanation, chronic complaints about labor shortages created the impression that there was scope for greater wage increases in Asia than actually occurred. The labor shortage reports, if they resume after the Asian financial crisis, could become a future source of friction between these economies and the United States.¹⁶⁹

B. China's Differences from the Four Tigers

Despite the Asian tigers' economic and political diversity, wage convergence with the United States was a common feature of the four tigers prior to the crisis.¹⁷⁰ With China, however, wage convergence has not been a consequence of growth or trade expansion. Total employment in mainland China was well over 600 million by the mid-1990s and over half of this employment was in agriculture, creating a large pool of labor from which a rapidly expanding modern sector in the coastal economic zone could draw.¹⁷¹ In effect, we might see in China the kind of growth once envisioned for developing nations by W.A. Lewis.¹⁷² In Lewis's model, originally proposed in the 1950s, labor released from the traditional sector at a subsistence wage fuels continued development, but without rising wages.¹⁷³

Unfortunately, wage data of the type shown in Table 3 are not available for China. As an approximation, Table 4 shows China's monthly wage for employees under various forms of ownership (state, urban col-

¹⁶⁷ See, e.g., *International Labor: Singapore Faces Labor Shortages, Will Allow More Foreign Workers*, *Daily Lab. Rep.* (BNA) No. 191, at A-8 (Oct. 2, 1997).

¹⁶⁸ See, e.g., *Japan Needs to Step Up Efforts to Cope with Labor Shortage*, *Labor Ministry Says*, *Daily Lab. Rep.* (BNA) No. 134, at A-1 (July 13, 1992) (noting that much of the labor shortage could be caused in part by the traditionally low number of employment opportunities for women).

¹⁶⁹ See, e.g., *International Finance: World Bank Says Developing Countries Are Not Stealing Jobs from Rich Nations*, *Daily Lab. Rep.* (BNA) No. 126, at D-25 (June 30, 1995) (illustrating the concern that developed economies such as the United States may be harmed by the labor shortages in less developed nations if workers are lured abroad).

¹⁷⁰ However, since Asian countries began experiencing financial crisis, wage convergence trends have disappeared, and there are increasing risks that wages in less developed nations will start to decline relative to developed nations. *Id.*

¹⁷¹ *International Labor: China Warns of Employer Penalties for Violations of Work Hours Regulations*, *Daily Lab. Rep.* (BNA) No. 81, at A-6 (Apr. 28, 1997) (stating that the majority of China's 688.5 million workers are employed in either agriculture or the state sector).

¹⁷² W. Arthur Lewis, *Development with Unlimited Supplies of Labor*, 22 *MANCHESTER SCH.* 139-91 (1954).

¹⁷³ *Id.*

lective, and "other," presumably including private). The critical point is not the precise ratio, however, but the facts that the Chinese wage is very low by U.S. standards when converted into U.S. dollars and that it does not show the kind of upward convergence seen with the four tigers.¹⁷⁴

The first observation must be qualified by the tendency of Chinese state firms to provide a variety of welfare benefits.¹⁷⁵ If such benefits (housing, and so on) doubled the level of labor costs, the Chinese wage might be roughly where the four tigers were in the mid-1970s or where Japan was in 1960. But the state firms have not been the source of rapid economic growth, and they are due to be weaned from government subsidy.¹⁷⁶ Large-scale layoffs from this sector are expected as a consequence. Thus, the proportion of the Chinese workforce receiving welfare benefits from state firms will undoubtedly shrink. And it is not clear that nonstate firms are providing substantial nonwage benefits.

One study of a sample of Chinese firms reports that wages became progressively more linked to productivity and profitability during the 1980s.¹⁷⁷ It is unclear whether some forms of share bonuses are omitted from the official wage figures. The absence of good data for China is a major problem in evaluating labor market conditions there. Perhaps an upward relative wage trend is occurring, but is undetectable in the limited official statistics. Unfortunately, anecdotal evidence and impressions of experts and travelers are no substitute for reliable numbers. If there is a hidden upward wage trend in China along the lines shown by the four Asian tigers through 1996, Chinese statistical authorities would be well advised to document that tendency.¹⁷⁸ Although it is not technically the

¹⁷⁴ Data are available for compensation per employee (including benefits) of affiliates of U.S. firms operating in China. As a proportion of comparable U.S. data, these wages are much higher, about a fifth of U.S. levels as of 1994. But relatively few employees are involved (24,000 as of 1994), and it is likely that the higher ratio simply reflects expatriate pay. If only 10% of the workers at these enterprises were expatriates earning 200% of the U.S. average wage, the wage ratio would have to be at least one-fifth. It might also be noted that during the period for which these data are available (1990-1994), no upward trend was apparent. The data on which these observations are drawn come from U.S. BUREAU OF ECON. ANALYSIS, U.S. DIRECT INVESTMENT ABROAD: 1994 BENCHMARK SURVEY, PRELIMINARY RESULTS (1997), Tables II-G-3 and II-G-6, and earlier issues. The comparable U.S. domestic pay level was drawn from the national income accounts by dividing total compensation by the number of full- and part-time employees.

¹⁷⁵ Anil Verma & Yan Zhiming, *The Changing Face of Human Resource Management in China: Opportunities, Problems and Strategies*, in EMPLOYMENT RELATIONS IN THE GROWING ASIAN ECONOMIES 516-35 (Anil Verma et al. eds., 1995).

¹⁷⁶ Daniel C.K. Chow, *An Analysis of the Political Economy of China's Enterprise Conglomerates: A Study of the Reform of the Electric Power Industry in China*, 28 LAW & POL'Y INT'L BUS. 383, 414-15 (1997).

¹⁷⁷ Gary H. Jefferson & Thomas C. Rawski, *Enterprise Reform in Chinese Industry*, J. ECON. PERSP., Spring 1994, at 53 (especially Table 2).

¹⁷⁸ The monthly Chinese data of Table 3 are drawn from the ILO. However, they appear to be identical to annual data—but divided by 12—that appear in CHINA, STATE STATISTICAL BUREAU, CHINA STATISTICAL YEARBOOK (Beijing: China Statistical

kind of labor standard usually proposed to be linked to trade, the ILO encourages the collecting of good labor market data.

Other areas of the world may have developed along Lewis-model lines in the past without having much effect on the United States; Charles P. Kindleberger, for example, applied the Lewis model to Western Europe in the 1950s.¹⁷⁹ However, no other area has had the labor supply "hinterland" that China has for world markets and that India will have if it continues to move toward economic liberalization. Thus, even taking account of productivity differentials, the longer term future impact of "labor arbitrage" on U.S. wage standards could be unlike previous experience. Eventually, if the impact were perceived as adverse to American wages, U.S. public opinion—which, as Table 2 shows, has protectionist tendencies—could be mobilized against future trade pacts and toward restrictions.

VI. WAGES, LABOR COSTS, AND LABOR STANDARDS

Although wages come quickly to mind when labor standards are discussed, in the international context this natural connection is misleading. The kinds of core labor standards that have been discussed in debates over international trade policy do not include the setting of a global minimum wage. Generally, at least in official discussions, labor standards are taken to mean such principles as freedom of association, rights of collective bargaining, bans on child or forced labor, and provisions to eliminate racial or sexual discrimination. NAFTA's labor side accord, for example, lists ten items: (1) freedom of association and the right to organize, (2) the right to bargain collectively, (3) prohibition of forced labor, (4) labor protections for children and young persons, (5) minimum employment standards (such as minimum wages), (6) elimination of employment discrimination, (7) equal pay for equal work (male and female), (8) prevention of occupational injuries and illness, (9) compensation for such injuries or illness, and (10) the protection of migrant workers. The three NAFTA countries are left to deal with these issues according to their own domestic policies. Discussions for global trade-linked standards usually entail a shorter list. But there is also usually the notion that the ILO or some other body would audit compliance.

Publishing House, various issues). Data in the Yearbook, which at this writing goes only through 1994, permit a break-out of the three forms of ownership. Neither the state-owned nor the urban collectives exhibit a rising wage ratio relative to the United States through that year. Data for "other" ownership forms do not go back to 1980. After 1985 if there is any upward trend for that group, it is very modest. The annual ratio has varied between 3.0% and 4.4%, with up and down fluctuations.

¹⁷⁹ See CHARLES P. KINDLEBERGER, EUROPE'S POSTWAR GROWTH: THE ROLE OF LABOR SUPPLY (1967).

A. *Impact on Comparative Advantage*

Even if the standards include reference to minimum wages, it is the process of setting and enforcing the minimum, rather than the actual wage level, that is involved. Minimum wage levels vary substantially across countries, and in emerging economies they will be substantially below those of developed countries. Thus, in 1997 average hourly compensation in Mexican manufacturing was about \$1.75, including benefits. In the United States during that year, the legal minimum wage, excluding benefits, was raised from \$4.75 to \$5.15. Thus, the average Mexican manufacturing worker earned far below the U.S. minimum. Any attempt to raise the Mexican minimum to U.S. levels would have entailed more than tripling wages in Mexico for the average worker. Clearly, such a move would have undermined Mexican competitiveness and was never considered as part of NAFTA's labor standards arrangements.

Labor standards could have some indirect effects on labor costs and wages, of course. For example, the unions that might form under the protection of laws guaranteeing rights to collective bargaining could negotiate wage increases. However, the right to bargain does not guarantee that such bargaining will produce big wage gains; unions face market forces and management resistance in negotiations. Bans on child labor under labor standards might also raise production costs in some cases. But it seems unlikely that in countries whose comparative advantage is based on abundant low-wage labor, the types of labor standards previously discussed would significantly reduce that advantage. The effects of variable exchange rates and events such as the Mexican peso crisis of 1994 or the Asian currency crises of 1997 are likely to eclipse any cost effects that labor standards could impose. Certainly, if the issue is short-term wage movements, currency fluctuations have a far greater effect on relative wages than, say, child labor restrictions.

B. *Trade Pattern Versus Trade Deficit*

American debate over the impact of trade on the U.S. domestic labor market often confuses the trade pattern and the trade deficit. The two concepts are by no means equivalent. Moreover, while somewhat related (as are all economic variables), trade patterns and trade deficits stem largely from different causes.

The trade pattern refers to the mix of industries and products in a country's exports and imports. Thus, a particular country might export labor-intensive products (e.g., apparel) and import capital-intensive products (e.g., heavy machinery). A trade deficit or surplus represents the difference between the value of a country's exports and the value of its imports. Japan, for example, has run persistent trade surpluses; the value of its exports exceeds the value of its imports. The United States, in contrast, has run persistent deficits; the value of American exports falls short of the value of its imports. To run a trade deficit, a country must (net) be

spending down its financial claims on the rest of the world or be going into debt. Thus, the United States has become the world's largest debtor because of its persistent trade deficits. Regardless of its trade pattern, the United States can continue to run up its net debt—run a deficit—as long as the rest of the world collectively is willing to finance that run-up. If anything, the immediate impact of the Asian crisis was to enhance that willingness. The dollar appreciated in 1997 and well into 1998 as international capital, including flight capital from Asia itself, moved out of Asia and into U.S. asset markets.

Much world trade occurs between developed countries, which are similar in economic structure and living standards. Thus, in the United States more than half of goods exports and imports in the mid-1990s were with countries considered to be economically developed. This empirical fact may be surprising. Trade theory emphasizes that comparative advantage stems from differences between countries, which lead to differences in the cost of production of particular goods. Nonetheless, the fact that a large volume of trade involves similar countries has an important bearing on the question of trade's impact on the labor market.

If much trade occurs with similar countries, if exports and imports are therefore produced under similar conditions, and if trade is balanced (the value of exports equals the value of imports), then trade will have little impact on the types of workers in demand domestically. That is, the labor intensity of the products exported and those imported is unlikely to be substantially different. Imports may displace some domestic production, but similar worker skills will be demanded by export industries. And although workers may be shifted between tradable goods industries, they will not be bumped (net) into the nontradable sector. Nor would the reshuffling that occurs have much impact on wage levels.

To the extent, however, that trade occurs between dissimilar countries, the kinds of workers and skills displaced by imports may not be offset by exports, even with balanced trade. Imports may be more labor-intensive than exports. Thus, even with equal values of both, the displacement effect of imports could exceed the job creation effect of exports. There could be some bumping of the displaced workers into the nontradable sector. Typically, nontradables are services that can include transportation, wholesale or retail, various business support activities (e.g., legal and janitorial), and personal (e.g., health). Although the service sector contains many high-paying occupations (e.g., doctors and lawyers), unskilled workers bumped out of the trade sector are more likely to end up in jobs at the lower end of the pay distribution.

Trade deficits stem mainly from causes other than comparative advantage. As noted, such an imbalance means that the country either must be running down its stock of foreign financial assets (previously obtained claims on the outside world) or must be borrowing from

abroad.¹⁸⁰ In the U.S. case net borrowing was substantial in the 1980s and 1990s. Thus, even trade with similar countries will likely push some American workers from tradables (often relatively high-paying manufacturing) to nontradables. Such displacement could have the effect of lowering the average wage. The question is this: how much displacement is occurring?

C. A Qualification

Before turning to the empirical evidence, it is important—at least for academics—to note a qualification. The argument above suggests that the wage effect of trade depends on its net displacement of different types of workers. A large observed displacement suggests a large wage effect; a small one suggests the opposite. If real wages of unskilled workers are falling in the United States, the empirically minded economist would look for some change in the factor content of trade that led to decreased demand for such workers relative to their supply.

Pure theory, however, does not necessarily support such correlations. If the world economy functioned as the Heckscher-Ohlin-Samuelson model suggested, internal real wages would be set by world prices of traded goods.¹⁸¹ An increase in the net domestic supply of unskilled workers would not affect the real wage. The difficulty with this approach is that it assumes that trade remains determined by world prices over the relevant time frame, an assumption that makes it hard to define the issue of the effect of trade on wages.

Presumably, when the wage and trade question is asked, implicit in it is the notion that in some earlier period the economy did not function according to the model, and now it does. What is entailed in the question is a shift in regime from one model to another, i.e., the process of "globalization." This shift or process might be the result of such influences as trade agreements that reduced tariffs and other barriers or reduced costs of transportation and communications. Such a shift would likely show up in trade pattern alterations, and the magnitude of these alterations would be correlated with wage trends.

An alternative possibility, however, is that globalization did not play a major role and that one ought to look at other influences on labor supply and demand. That does not mean that trade, as opposed to the process of globalization, had no wage effect. There remains, as we have noted earlier, the potential influence of the trade deficit, rather than the trade pattern. The empirical evidence below suggests that the deficit is likely to have had more of an effect than the pattern, at least through the mid-1990s.

¹⁸⁰ This statement neglects "unilateral transfers," such as gifts and foreign aid. In the U.S. case the net effect of such transfers in fact intensifies the need to borrow abroad because the United States typically transfers more abroad than it receives.

¹⁸¹ A review of these issues can be found in *IMPORTS, EXPORTS, AND THE AMERICAN WORKER* (Susan M. Collins ed., 1998).

D. Empirical Evidence

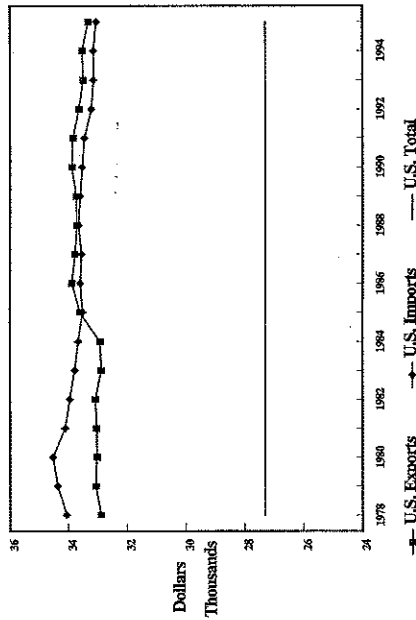
To examine the empirical evidence for the United States, we have broken U.S. trade down, generally at the two-digit industry level, by country source over the period 1978 to 1995. We have distinguished between trade with the four Asian tigers plus China (designated the "Five Tigers") and trade with the rest of the world. Using the 1987 input-output table for the United States and other data sources, we estimated ratios of inputs to export and import industry production.¹⁸² Export and import values were then deflated to 1987 levels so that estimates of inputs at 1987 base levels could be made. *Because 1987 is set as the base year, year-to-year variations in input-to-output ratios are not reflected in the resulting estimates. Only the impact of changing trade patterns and volumes is included.*

Figure 1A shows the wage level (annual compensation per full-time-equivalent employee) implicit in U.S. exports and imports with all countries except the Five Tigers. Again, it must be emphasized that all values shown on this figure and those that follow are at 1987 U.S. levels. As can be seen, there has been little difference between the two trade flows in this measure of job "quality" over the period. Both U.S. exports and imports with these non-tiger countries involve similar compensation levels. Therefore, the impact of trade on labor force quality, were the trade flow balanced, would be nil as a first approximation. However, both

¹⁸² The input-output table was the source of industry value of output. We did not use input-output estimates of the indirect content of exports and imports. Although there is a case for including such estimates, there are some analytical problems because they presume a pattern of domestic intermediate good use. In an international setting, however, inputs can be obtained externally. Because input-output analysis tends to intertwine trading industries with the general economy, the contrast between the labor content of tradables and nontradables tends to blur if indirect content is included. The input-output estimates appear in the U.S. DEPT. OF COMMERCE, *74 SURVEY OF CURRENT BUSINESS* 115 (Apr. 1994). Data were drawn at the two-digit SIC level, except that agriculture was treated as a single industry and motor vehicles were treated separately from other transportation equipment. For employment, we used either employed civilians (with breakouts for female, black, and Hispanic workers) in 1987 from the Current Population Survey as published in BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, *35 EMPLOYMENT AND EARNINGS* 191-98 (Jan. 1988) or, where appropriate, full-time-equivalent employees from the national income accounts as published in U.S. BUREAU OF ECON. ANALYSIS, U.S. DEPT. OF COMMERCE, *2 NATIONAL INCOME AND PRODUCT ACCOUNTS OF THE UNITED STATES* 1959-88, at 215 (1992). The latter publication was also the source of data on compensation. *Id.* at 209. Union-represented workers were estimated using union coverage rates for 1988 from BARRY T. HIRSCH & DAVID A. MACPHERSON, *UNION MEMBERSHIP AND EARNINGS DATA BOOK 1993: COMPLETIONS FROM THE CURRENT POPULATION SURVEY* 71-83 (1994). Workers with 12 or fewer years of education were estimated by industry from a CD-ROM of data from the Current Population Survey available from the National Bureau of Economic Research. An average of 1986, 1987, and 1988 was used for the education estimates to provide ample sample size. The value of trade data (domestic exports and imports for consumption) were supplied on diskette by the U.S. Bureau of the Census for trade with all countries and, in particular, China, Hong Kong, Singapore, South Korea, and Taiwan.

exports and imports have implicit compensation levels well above the 1987 average for the overall U.S. economy. The overall U.S. 1987 compensation level appears as a horizontal line on Figure 1A and those that follow. Thus, net displacement from the trade sector, as would occur under a trade deficit, would tend to push employees toward lower paid industries.

Figure 1A: Compensation/Full-Time Equivalent Employee: U.S. Trade with Rest of World Except "Five Tigers"

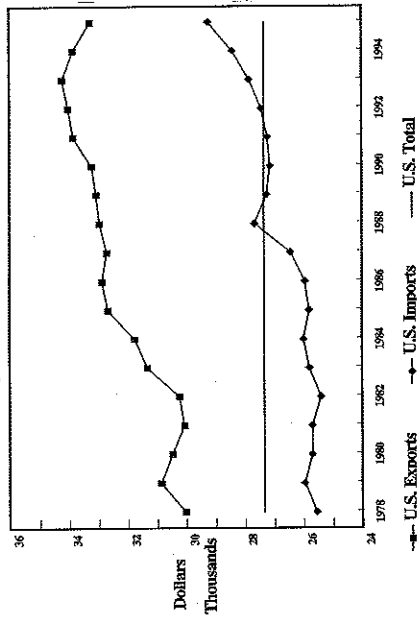


Source: See sources cited *supra* note 182.

Figure 1B shows the same estimates for U.S. trade with the Five Tigers. In the case of these countries, U.S. exports tend to be produced in higher paying industries than imports, consistent with trade theory. By the early 1990s, however, import pay levels (on the 1987 U.S. base) rose above the U.S. 1987 average (again shown as a horizontal line). Thus, deficits with the Five Tigers (low exports, lots of imports) could produce pressure on the U.S. labor market. Specifically, it could move workers out of tradable industries paying above average wages and toward lower paying nontradable industries.

Finally, comparable data for U.S. trade with all countries (the Five Tigers and all others) appear on Figure 1C. The growing importance of Five Tiger trade tends to widen the pay gap between exports and imports, relative to Figure 1A. However, the overall gap is still not wide. Thus, with balanced trade, displacement effects of imports would have been roughly counteracted by added demand to produce exports. With a deficit, however, workers might be pushed out of higher paying exportables and

Figure 1B: Compensation/Full-Time Equivalent Employee: U.S. Trade with the "Five Tigers"



Source: See sources cited *supra* note 182.

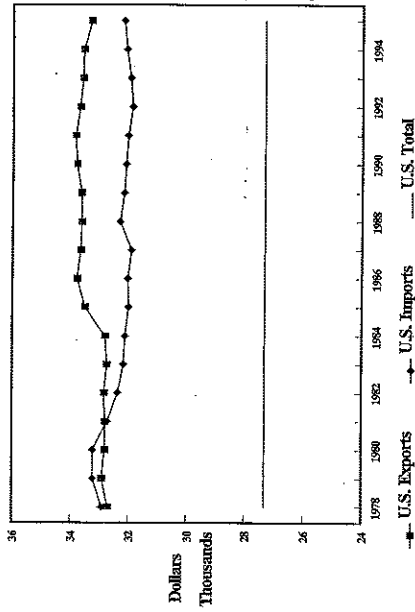
importables and toward lower paying nontradable production. And, of course, deficits, not balanced trade, were the reality.

E. Impact of the U.S. Trade Deficit

It is important to note that even deficits might not result in displacement if domestic demand is sufficiently high simply to absorb more net imports while leaving the level of internal production unchanged. Thus, during the early phases of the Asian crisis, U.S. consumer demand seemed to be counteracting at least some of the adverse effect of the Asian slump on the trade balance. For that reason the estimates below may overstate the deficit's impact. Conversely, if policies—say, increased trade barriers—were imposed to reduce the deficit abruptly, there would surely be some financial impacts. The improved trade balance would mean that the net capital inflow from abroad would also be reduced, perhaps raising interest rates and reducing the demand for investment goods and consumer durables.

There is also the theoretical proviso made earlier concerning the trade pattern analysis. Under the Heckscher-Ohlin-Samuelson model, wages are determined by the world prices for tradable goods. Unless the U.S. deficit changes these prices, variations in the deficit—or even its elimination—would not, in principle, have a wage effect. However, there are reasons, nonetheless, to look at the deficit as a possible source of declining real wages for unskilled workers and the growth of wage inequality. Wages in the tradable goods sector from which workers are

Figure 1C: Compensation/Full-Time Equivalent Employee: U.S. Trade with All Countries



Source: See sources cited *supra* note 182.

potentially displaced may contain premiums relative to the market wage in nontradables. Large industrial firms in the tradable sector may pay such wage premiums because of unionization or some "efficiency wage" reasons such as promoting loyalty or reducing employee turnover. Whatever the reason, a move of a group of workers from a high-wage to a low-wage sector will, by simple arithmetic, tend to lower average pay for the group.

The first three columns of Table 5 are based on the same data set used for Figures 1A through 1C. They provide numerical counts of net job displacement attributable to the actual pattern of U.S. trade in the years 1978, 1987, and 1995 (again with 1987 U.S. usage rates fixed for all three years). The large U.S. trade deficits that developed in the 1980s are reflected in the estimates of total displacement of over 1.2 million jobs in 1987 and 1995. In the latter year trade with the Five Tigers accounts for forty-five percent of this displacement, with the bulk of it attributable to U.S. trade deficits with China and Taiwan.

Estimated displacement is small when compared with the overall level of U.S. employment in 1995, about one percent of the total. And it must be repeatedly stressed that "displacement" here does not necessarily mean fewer jobs in the aggregate. As noted earlier, displacement is more likely to mean that some jobs were shifted from tradable production to production of nontradables. Nonetheless, the displacement that occurred was not evenly felt within the U.S. workforce.

F. The Union Sector

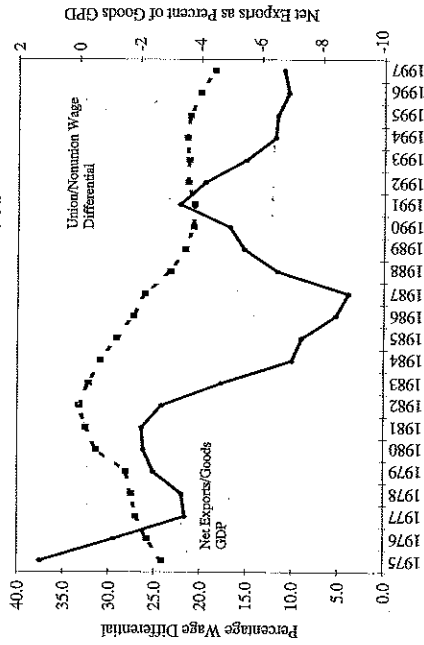
The over 300,000 union workers displaced in 1995 represented about three percent of private unionized workers. Those union workers affected were mainly in manufacturing, with a few in mining and agriculture. Compared to union workers in those three sectors, the 300,000 displaced union workers come to about eight percent of the total. Apart from any dislocations, this magnitude is certainly large enough to account for a weakening of union bargaining power in some industries and resulting union wage concessions. Even so, it should be noted that many union wage concessions in the 1980s also occurred in nontrading industries such as construction and retail foodstores. Deregulation in such nontradable industries as transportation (especially trucking and airlines) and communications also played a role. And in both tradables and nontradables, some of the early concessions, which may have initiated an ongoing movement of concession bargaining, seemed linked to the deep recession of the early 1980s. Both trucking (nontradable) and autos (tradable) fall into this category.

Figure 2A charts the union and nonunion wage premium in the private sector over the period 1975 to 1997.¹⁸² The premium rose and then peaked around 1982 to 1983, thereafter exhibiting a notable fall. This decline coincides roughly with the growth of the U.S. trade deficit as a percent of the goods sector component of GDP. An improvement in the trade deficit ratio to goods GDP in the late 1980s was accompanied by a bottoming out of the decline of the union wage premium. Worsening American deficits in the mid-1990s developed as the union wage premium again declined.

Of course, such loose associations are not definitive proof of any causal effect. As Figure 2B shows, the union wage premium in services (basically nontradables) also peaked around 1982. However, the drop thereafter in the union wage premium in the goods sector (mainly tradables) was more marked. There is also a more clear-cut bottoming out and limited reversal of the downward trend in the wage premium in the goods sector following the deficit's decline in the late 1980s and early 1990s. Deterioration of the trade balance is then followed in the goods sector by a resumption of the decline of the union wage premium. All of this is weak evidence that the trade deficit's wage impact may have been greater in the union sector than in the U.S. economy as a whole.

¹⁸² Figures 2A and 2B use wage data from the U.S. BUREAU OF LABOR STATISTICS, U.S. DEPT. OF LABOR, EMPLOYMENT COST INDEX (1998). The index for March 1988 was spliced to actual union and nonunion wage differentials on that date. The result is an approximation of the union and nonunion differential over the period shown. However, the differential at other dates may vary from the values shown because of changes in industry mix. The deficit ratio on Figures 2A and 2B is the merchandise trade balance as it appears in the balance of payments accounts, divided by goods GDP.

Figure 2A: Union/Nonunion Wage Differential and Net Exports of Merchandise as Percent of Goods GDP



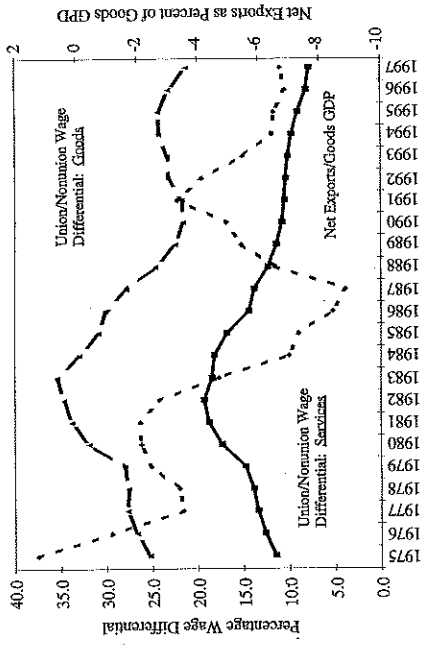
Source: See sources cited *supra* note 183.

G. Other Groups

Women, African-Americans, and Hispanics are somewhat over-represented among the displaced, but the proportions remain below two percent of the respective employment levels for these groups. Those workers with lower education levels are also over-represented. Workers with only high school educations or less (twelve or fewer years of education on Table 5) accounted for a little over forty percent of the workforce in 1995, but over seventy percent of the displaced. College graduates (sixteen or more years of education) accounted for over a fourth of the workforce, but only about an eighth of the displaced. Still, even among the high-school-or-less group, the displacement-to-employment ratio was below two percent.¹⁸⁴ It is these small ratios that suggest that the large decline in the relative earnings of lower educated workers is not due, in major part, to trade.

¹⁸⁴ Data used for the estimates of the total workforce in particular categories are from STATISTICAL ABSTRACT OF THE UNITED STATES, *supra* note 120, at 395; U.S. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, 43 EMPLOYMENT AND EARNINGS 158-59, 162, 165, 167 (Jan. 1996). Changes were made in the methodology of recording educational attainment after the base year 1987. However, the statements in the text are reasonably accurate.

Figure 2B: Union/Nonunion Wage Differential for Goods and for Services and Net Exports of Merchandise as Percent of Goods GDP



Source: See sources cited *supra* note 183.

H. Canceling the Deficit

Even if the magnitude is small in aggregate terms, there has definitely been displacement, and it has not been felt evenly throughout the U.S. workforce. But had the United States not run large trade deficits, the displacement rates of Table 5 would have been reduced dramatically. Of course, for the United States not to have run a deficit, it would have needed a different pattern of saving behavior and exchange rates. Trade patterns would have shifted with particular countries and with regard to particular commodities. While we cannot estimate how such a scenario would have played out with any precision, we can offer estimates indicating the likely consequences of such an alternative.

Our estimates of the impact of a hypothetical zero trade balance are shown in the three right-hand columns of Table 5. To make these estimates, we simply—and arbitrarily—raised U.S. exports to levels matching imports for the three years shown. Trade for each industry-country cell was increased by the same proportion. Mechanically, this adjustment shifted all estimates in a positive direction. Thus, net overall displacement of 1987 and 1995 is reversed; workers are drawn into the tradables sector instead of pushed from it. While net displacement still results from trade with the Five Tigers (with China and Taiwan still the source), that displacement is counterbalanced by trade with other countries. The United

States runs a deficit with the Five Tigers, but a countervailing surplus with other nations in this simulation.

Within the different worker categories, displacement of union workers shrinks to negligible levels.¹⁵⁵ Thus, these numbers suggest that balanced trade would have virtually eliminated whatever impetus for union concession bargaining was coming from trade. Displacement of lower educated workers also shrinks to negligible amounts. Even displacement of women, the largest category of the table, shrinks to about half of one percent of total female employment.

Of course, other configurations of balanced trade scenarios for the United States can be imagined. We could shrink imports down to export levels. Exports could be raised somewhat and imports reduced until the two were equal. But in terms of the general impact on the labor market, the results would have been similar. In short, trade's impact on the U.S. workforce was largely a function of the trade deficit rather than the trade pattern. And labor standards cannot be expected to have a significant impact on the deficit. Whatever illusions the general public may have on this score, policy makers should recognize the essential irrelevance of labor standards to trade deficits.

1. Summary: Wages, Labor Standards, Trade Patterns, and Deficits

Figure 3 summarizes the basic arguments of this Part. Emerging economies, such as the Five Tigers, may well have derived their comparative advantage from low-cost labor, as their trade flows with the United States seem to confirm. But labor standards should not be expected to have much impact on labor costs, certainly not enough to overcome emerging economies' comparative advantage in labor-intensive production.

Figure 3: Impacts Expected from Raising Wages or Imposing Labor Standards in Emerging Economies on U.S. Trade Patterns or Trade Deficit

Effect of: ↑ Effect ↓ on:	Raising Wages	Imposing Labor Standards
Trade Pattern (Comparative advantage)	Raising wage in low-wage countries reduces their comparative advantage in labor-intensive products.	Because imposing labor standards is likely to have only a small effect on labor costs, impact on comparative advantage is also likely to be small.
Trade Deficit (Exports minus imports)	Minor impact because U.S. trade deficit is due mainly to U.S. domestic saving and investment behavior.	Virtually no impact.

Hypothetically, raising wages in emerging economies through labor standards could reduce their comparative advantage and affect their trade patterns with developed countries. But the core labor standards that have been discussed in the context of world trade agreements do not involve setting a global minimum wage or anything remotely approximating one. The types of standards discussed generally do not significantly raise labor costs. Hence, labor standards are unlikely to have much impact on the trade pattern, and the impact of emerging economies' labor standards on the labor markets of developed countries would thus likely be small. Low-wage countries will still be low-wage countries after standards are imposed. Ultimately, the impact of long-term growth is the best hope for raising real wages in developing countries to developed country levels.

Trade deficits in countries such as the United States may well have the effect of bumping workers from higher paid tradable goods industries to lower paid industries in other sectors. However, neither the wages in emerging economies nor any labor standards that might be imposed have much to do with producing a trade deficit. The United States has run large trade deficits in the 1980s and 1990s. But these deficits have mainly

¹⁵⁵ A recent International Labour Office report attributes a general decline in unionization rates in many countries to trade competition, but fails to distinguish trade patterns from trade deficits. See INTERNATIONAL LABOUR OFFICE, WORLD LABOR REPORT, 1997-98: INDUSTRIAL RELATIONS, DEMOCRACY AND SOCIAL STABILITY 15-18 (1997).

to do with the tendency of American saving to fail to cover its domestic investment and the willingness of the rest of the world to accumulate U.S. financial assets. Exchange rates have adjusted to accommodate this gap between saving and investment. As a result, the United States has been a large net borrower and debtor in world markets. It will continue to be one whether or not labor standards are imposed, so long as its own current saving and investment behavior and that of the rest of the world persist.

Given our diagnosis, we can only speculate on why U.S. business interests and unions have put so much emphasis on opposing the international trade-labor standards issue. One possibility is that there could be a direct impact on internal U.S. labor market policies. The labor side accords to NAFTA potentially open U.S. labor policies to international scrutiny, as in the Sprint, Washington State Apple, and other cases. Unions in the United States can request assistance from foreign unions in raising such issues, as these cases illustrate. Thus, labor and management in the United States would align on opposite sides of the international labor standards issue, as they often do when domestic labor policy issues arise.

Another possibility is that the emerging country opposition to international labor standards is seen by American unions as a means of restricting such trade. Countries with authoritarian governments are likely to be leery of fostering freedom of association in employment. They may cite alleged economic effects, but they really fear political pluralism. If labor standards became part of international trade policy, the possibility of reducing imports from such countries arises. Countries that violate the standards would be potential targets for U.S. trade sanctions. Of course, many business interests, including American multinationals with investments or suppliers in such countries, would oppose trade-linked labor standards for the same reasons. However, we would suggest that even if trade were restricted with certain countries because of standards violations, the U.S. trade deficit might well persist (albeit with other countries).

Finally, another possibility is that labor unions, whose ideology leads them to consider the interests of all workers, foreign as well as domestic, would favor standards as a means of improving general working conditions worldwide. Business interests are more likely to focus on bottom-line concerns even if the actual profit implications are small; they are not likely to take up humanitarian causes unless the threat of bad publicity is present.

VII. CONCLUSIONS

Labor standards have become an area of controversy with regard to international trade treaties and international trade more generally. The United States has pushed—so far unsuccessfully—for incorporation of some type of labor standards in the WTO mechanism. But it has helped

keep the issue alive by supporting ILO moves to play a more important role in encouraging adherence to core labor standards. Finally, the United States is a participant in various trade pacts, most notably NAFTA with Canada and Mexico, that have labor standards as components.

Because labor standards and wages are not the same thing, notions that imposing labor standards will have significant impacts on the trade patterns of the emerging economies are incorrect. Labor-abundant, low-wage countries will still tend to export labor-intensive products. Even more incorrect is the idea that labor standards will have much effect on the U.S. trade deficit. Yet it appears that if international trade is adversely affecting the U.S. labor market, it is more due to the deficit than the trade pattern.

The initial phase of the Asian financial crisis was felt in the United States largely in terms of a larger trade deficit. But ebullient domestic consumers—perhaps initially stimulated by the run-up in American asset prices linked to an inflow of flight capital from Asia—tended to offset the impact. At this writing, there is no guarantee that such an offset will continue; the deficit is surely a variable worth watching in terms of a potential labor market impact. If the Asian crisis has an adverse effect on the U.S. worker, it is unlikely to be through labor standards enforcement or nonenforcement. The trade deficit and other macroeconomic channels are much more likely to be the linkage.

Over the longer term, the potential impact of China (and perhaps India) is worth watching as well. We have argued that so far the effect of the trade pattern on U.S. trends in real wages for the unskilled and on wage inequality seems small. But China and India both have huge labor supplies compared to the earlier Asian tigers; the experience as these countries become more integrated with world markets could be quantitatively different than that of the past.

Given this analysis of the U.S. experience with trade and labor standards, one lesson stands out: From an economic perspective, it is best to consider labor standards in terms of their direct effect on the emerging economies. Will the standards do more good than harm? If so, a case can be made for pressing for such standards. But it is a mistake—again, from an economic perspective—to push for labor standards in emerging countries because it is expected that some notable effect will be felt in the labor markets of developed countries.

Whether it is a *political* mistake is another question. It could be that labor standards make open trade more acceptable within the politics of the developed world, including the United States. If so, emerging economies following export-led growth strategies should carefully consider adopting labor standards simply to preserve market access. Indeed, we would advise them to do so.

Clearly, emerging countries are not taking this advice so far; many such countries continue strongly to resist considering labor standards within trade agreements. This resistance is surprising from an economic

perspective, given the small likelihood of adverse economic impacts and the potential positive gains from access to markets. However, other factors may be at play. These include the need for political leaders to maintain internal political credibility in the face of perceived threats to national sovereignty. There may also be fears of the pluralism through unionism that could challenge the existing political order. Some authoritarian governments may be fearful of repeating the Polish experience with the Solidarity labor union. Solidarity posed a major challenge to the communist state and eventually helped bring about its downfall.

Other arguments also have been put forward for resistance to labor standards in trade agreements. For example, it has been argued that the pushing of values incorporated in labor standards is a form of Western cultural imperialism. As such, labor standards impinge on sovereign nations' rights to set their own internal rules.¹⁸⁶ But this approach neglects the fact that international trade inherently involves more than one country. Multinationals and retailers from the developed world are increasingly locating operations in or obtaining products from countries whose labor standards differ from those in their home countries.

It is one thing to argue that developed countries have no right to impose values on purely indigenous companies operating within sovereign nations. But can the same argument really be made about overseas subsidiaries of multinationals or about contractors or subcontractors for retailers in developed countries? The meaning of sovereignty in a global economy is inherently blurred. In the modern world, foreign consumers, shareholders, and governments inevitably will influence what occurs outside their home-country borders. As such influence has occurred already in such areas as intellectual property rights, it seems unreasonable to treat labor standards as a wholly different concern.

Table 1: NAFTA LABOR CASES

Honeywell and General Electric (1994)	<i>U.S. complaints</i> filed by Teamsters and United Electrical Workers concerning Mexican subsidiaries of two American firms. U.S. NAO unable to determine if workers were deprived of right to be represented by union of their choice.
Sony (1994)	<i>U.S. complaint</i> filed by various worker rights organizations against subsidiary of Japanese firm. Complaint alleged workers were prevented from unionizing, which led to recommendation for ministerial consultations and a follow-up report. Report expressed view that improvements were occurring, leaving complaining parties disappointed.

¹⁸⁶ The authors made a presentation on labor standards at a conference on *The Multilateral Trading System in a Globalizing Economy* hosted by the East-West Center in Maui, Hawaii, August 7-9, 1996. Some participants advanced this argument.

General Electric (1994)	<i>U.S. complaint</i> filed by United Electrical Workers against Mexican subsidiary of U.S. firm. Complaint withdrawn before review completed.
Mexican federal workers (1996)	<i>U.S. complaint</i> filed by worker rights groups. Complaint alleged violation of freedom of association. Still under review.
Maxi-Switch (1996)	<i>U.S. complaint</i> filed by Communications Workers and Mexican union against Taiwanese subsidiary. Complaint alleged violation of freedom of association. Withdrawn after parties reported private settlement.
Maquiladora sex discrimination (1997)	<i>U.S. complaint</i> filed by worker rights groups. Alleged pattern of discrimination against women, such as discharge of pregnant women to avoid maternity pay. Led to ministerial consultations.
Han Young (1997)	<i>U.S. complaint</i> filed by Mexican union and worker rights groups. Complaint alleged subsidiary of South Korean firm intimidated and fired union organizers. Further allegation that local labor tribunal was prejudiced against union. Eventually, local tribunal certified the union, but firm failed to recognize. U.S. NAO found that worker rights were violated and recommended ministerial consultation. Safety and health violations were also noted. Issue pending.
Echlin-ITAPSA (1997)	<i>U.S. complaints</i> filed by various American and Mexican unions and worker rights groups. Subsidiary of U.S. firm alleged to intimidate workers trying to form independent union. U.S. NAO finds support for charges and health and safety violations. Recommended ministerial consultation.
Sprint in California (1996)	<i>Mexican complaint</i> alleging that Sprint shut down Spanish-speaking phone service in the United States on eve of union representation election. Complaint filed by Mexican union on behalf of Communications Workers. Led to tri-national hearings. However, the NLRB ruling favorable to union was overturned by a court decision.
Washington State Apples (1998)	<i>Mexican complaint</i> by Mexican unions on behalf of United Farm Workers alleging growers intimidated workers trying to form union and health and safety violations. Review pending.
Echlin-IATPSA (1998)	<i>Canadian complaint</i> paralleling charges in U.S. complaint (above). Review pending.
DeCoster Egg Farm in Maine (1998)	<i>Mexican complaint</i> over nonenforcement of safety and health standards.
Solec in California (1998)	<i>Mexican potential complaint</i> over failure to enforce union organizing and safety laws.

General nonenforcement of minimum wage and overtime pay laws in the United States (1998)

Canadian potential complaints over nonenforcement of labor protections filed by 20 U.S.-based groups, including the Yale Law School Workers Rights Project.

McDonald's in Quebec

U.S. potential complaints filed by Teamsters union alleging McDonald's restaurant in Quebec was closed when the union attempted to organize there.

Sources: *Report of the U.S. National Advisory Committee Reviewing Operation of NAFTA Labor Side Accord*, Daily Lab. Rep. (BNA) No. 89, at E-1 to E-14 (May 8, 1998); *First Complaint Filed with Canadian NAO Against U.S. Firm's Mexican Operation*, Daily Lab. Rep. (BNA) No. 56, at A-9 to A-10 (Apr. 7, 1998); *Mexico Agrees to Investigate Charges U.S. Failed to Protect Apple Workers' Rights*, Daily Lab. Rep. (BNA) No. 136, at A-1 (July 16, 1998); *Mexico Accepts NAFTA Complaints Filed by Workers Against DeCoster Egg Farm*, Daily Lab. Rep. (BNA) No. 157, at A-2 (Aug. 14, 1998); *Labor Ministers to Review Cases: Proceed with Review of NAFTA Side Accord*, Daily Lab. Rep. (BNA) No. 191, at A-6 to A-7 (Oct. 2, 1998); *Canadian NAO Seeking Legal Advice on Complaints Against U.S. Practice*, Daily Lab. Rep. (BNA) No. 198, at A-8 (Oct. 14, 1998); *IBT Files Complaint Under NAFTA in Dispute over Canadian McDonald's*, Daily Lab. Rep. (BNA) No. 203, at A-9 (Oct. 21, 1998).

Table 2: U.S. PUBLIC OPINION ON NAFTA AND TRADE.

Has NAFTA been good or bad for the U.S.?

Good: 39%
Bad: 39%
Mixed: 7%
Don't know: 15%

Should the U.S. restrict imports to protect American industries and jobs, or should there be no restrictions so that American consumers can have the widest choice and the lowest prices?

Restrict imports: 67%
No restrictions: 24%
Don't know: 9%

Has free international trade helped the economy, or hurt it, or hasn't it made any difference?

Helped: 39%
Hurt: 30%
No difference: 18%
Don't know: 13%

Note: The *Los Angeles Times* Poll is based on telephone interviews with 1258 adults conducted nationwide during September 6-9, 1997 through random-digit dialing. Poll results were weighted on the basis of Census figures with regard to sex, race, age, education, and region.

Source: *The Times Poll: Views on NAFTA/Medicare*, L.A. TIMES, Sept. 14, 1997, at A16.

Table 3: HOURLY COMPENSATION OF PRODUCTION WORKERS IN MANUFACTURING: U.S. DOLLARS (U.S. WAGE = 100%)

Country	1960	1970	1975	1980	1985	1990	1995	1996	1997
U.S.	100	100	100	100	100	100	100	100	100
Canada	80	83	94	88	84	106	93	94	91
Japan	10	24	47	56	49	86	139	118	106
Belgium	31	49	101	133	69	129	155	146	125
France	31	41	71	91	58	104	116	113	99
Germany (W.)	32	56	99	124	73	147	187	180	155
Italy	23	42	73	83	59	117	94	100	92
Netherlands	26	51	103	122	67	121	140	130	113
Sweden	45	70	113	127	74	140	125	138	122
U.K.	32	36	53	77	48	85	80	80	85
Korea (S.)	-	-	5	10	9	25	42	46	40
Hong Kong	-	-	12	15	13	21	28	29	30
Taiwan	-	-	6	10	12	26	34	34	32
Singapore	-	-	13	15	19	25	43	47	45
Mexico	-	-	23	22	12	11	9	9	10

Note: Compensation includes wages, benefits, and payroll taxes.
 - = not available

Sources: Daniel J.B. Mitchell, *International Convergence with U.S. Wage Levels*, in PROCEEDINGS OF THE THIRTY-SIXTH ANNUAL MEETING 249 (Barbara D. Dennis ed., 1984) (Industrial Relations Research Association, Dec. 28-30, 1983); U.S. BUREAU OF LABOR STATISTICS, USDL 98-376, INTERNATIONAL COMPARISONS OF HOURLY COMPENSATION COSTS FOR PRODUCTION WORKERS IN MANUFACTURING, 1997 (1998).

Table 4: CHINESE AND U.S. WAGES: U.S. DOLLARS

Year	Chinese Monthly Wage Converted to U.S. Dollars*	Average Weekly Earnings in U.S. Multiplied by 4**	Ratio: Chinese Wage/ U.S. Wage (%)
1980	\$42	\$940	4.5%
1985	\$33	\$1196	2.7%
1990	\$37	\$1381	2.7%
1991	\$37	\$1416	2.6%
1992	\$41	\$1454	2.8%
1993	\$49	\$1495	3.3%
1994	\$44	\$1545	2.8%
1995	\$55	\$1579	3.5%
1996	\$62	\$1625	3.8%

* Data refer to all forms of ownership (state, urban collectives, and other). Two exchange rates were used in 1985 by China. At the alternate rate, the ratio of Chinese to U.S. wages would be slightly higher.

** Data refer to private sector production and non-supervisory workers. Nonwage benefits and payroll taxes are excluded.

Note: Wage data have been rounded to the nearest dollar.

Source: Data compiled from the International Labour Office, *Year Book of Labour Statistics*; International Monetary Fund, *International Financial Statistics*; U.S. Bureau of Labor Statistics.

Table 5: NET DIRECT U.S. JOB GAIN (+) OR DISPLACEMENT (-) DUE TO MERCHANDISE TRADE FLOWS (thousands of employees)

	Actual Trade Balance		Trade Balance Set Equal to Zero	
	1978*	1995*	1978*	1995*
Total Trade Displacement	+54	-1299	+440	+232
"Five Tigers"				+171
China	-106	-517	-80	-346
Hong Kong	+9	-37	+11	-13
Singapore	-37	-86	-32	-60
South Korea	+7	-28	+12	+1
Taiwan	-25	-127	-17	-78
Rest of World	-60	-240	-54	-195
Union Employees	+160	-782	+519	+578
Employees with 12 or Fewer Years of Education	-42	-356	+37	-30
Employees with 13-15 Years of Education	-12	-921	+222	-13
Employees with 16 or More Years of Education	+37	-222	+120	+111
Females	+29	-156	+98	+134
Blacks	-90	-623	+5	-243
Hispanics	-31	-164	-4	-58
	-25	-161	+2	-59

* Calculated at 1987 productivity rates.
 ** Less than 500 in absolute terms.
 Note: Details need not sum to totals due to rounding.
 Source: See sources cited *supra* note 182.

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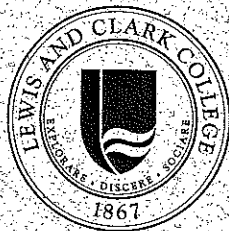
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THE AMERICAN EXPERIENCE WITH LABOR
STANDARDS AND TRADE AGREEMENTS

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