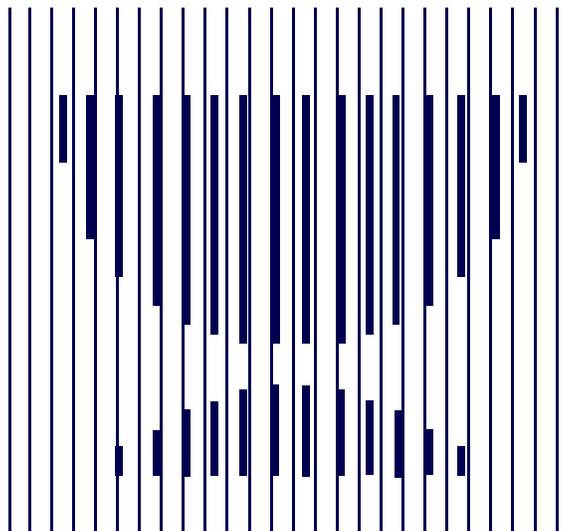




CBO MEMORANDUM

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

April 1997



CONGRESSIONAL BUDGET OFFICE



CBO

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

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SUMMARY AND INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

HOW THE UNITED STATES AND INTERNATIONAL ORGANIZATIONS DEFINE WORKER RIGHTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. The OECD has identified certain conventions of the ILO as providing "internationally negotiated definitions" of core labor standards.
- b. As of October 1995.
- c. OECD, *Trade, Employment and Labour Standards*, p. 11, states that "there is no convention that addresses the issue of child labor exploitation as such. Instead, Convention 138 provides for a minimum employment age, while remaining silent on the possibility of non-exploitative forms of child labour."

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

Worker Rights and Human Rights

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

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

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

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

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

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

that arise from the “equal and inalienable rights of all members of the human family.”⁸

Worker Rights and Standards

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

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

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8. See United Nations, *Universal Declaration of Human Rights*, Preamble (1948), *International Covenant on Economic, Social, and Cultural Rights*, Preamble (1966), and *International Covenant on Civil and Political Rights*, Preamble (1966).
 9. Some analysts distinguish between worker rights and labor standards and others do not. For example, Steve Charnovitz uses the terms “international fair labor standards,” “worker rights,” and “social clause” synonymously. See Steve Charnovitz, “The Influence of International Labor Standards on the World Trading Regime,” *International Labor Review*, vol. 126, no. 5 (September-October 1987), p. 582, note 2. Gary Fields defines a standard as “something we would aim towards and rather have than not have.” He defines a right as “something that is not to be violated except under the most extreme circumstances.” See Gary Fields, *Trade and Labour Standards: A Review of the Issues* (Paris: OECD, 1995), p. 11.
 10. For a somewhat different view of labor standards, see Steve Charnovitz’s discussion of international fair labor standards in “Fair Labor Standards and International Trade,” *Journal of World Trade Law*, vol. 20 (January-February 1986), p. 75. Charnovitz distinguishes between absolute standards, which are the same for all countries regardless of their level of development, and relative standards, which depend on the country’s level of development. He also distinguishes between fixed standards, which governments either meet or do not meet, and incremental standards, which can be used to measure progress.
 11. See Mita Aggarwal, *International Trade, Labor Standards, and Labor Market Conditions: An Evaluation of the Linkages*, Working Paper (U.S. International Trade Commission, Office of Economics, June 1995).