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Trade, Labor, Legitimacy

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INTRODUCTION

The World Trade Organization (“WTO”) has little to say about labor practices and workers’ rights. It has no committee or working group on trade and labor, no agreement addressing labor standards, and the only directly relevant provision in the General Agreement on Tariffs and Trade (“GATT”) is an Article XX exception to trade obligations for measures relating to the products of prison labor.¹ The WTO is so determined to keep labor issues at a distance that it explicitly stated in its 1996 Singapore Ministerial Declaration that “[t]he International Labour Organization (ILO) is the competent body to set and deal with these [core labor] standards.”² Despite the WTO’s resistance, however, the relationship between trade and labor remains a topic of heated discussion, appearing in regional trading

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1. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT], art. XX(e).

2. Ministerial Conference of the World Trade Organization, Singapore Ministerial Declaration, adopted Dec. 13, 1996, 36 I.L.M. 218 (1997), available at http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm. Consistent with the WTO’s reluctance to deal with labor issues, the more recent Doha Ministerial Declaration failed to address labor standards, except to state that WTO members “reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization.” World Trade Organization, Doha Ministerial Declaration, para. 8, adopted Nov. 14, 2001, available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm (last visited Feb. 26, 2003).

agreements,³ domestic debates about trade,⁴ political protests,⁵ and academic discourse.⁶

On one side of the debate is the fact that trade liberalization puts resources to more efficient use and increases the welfare of all states. Allowing states to impose trade sanctions against exporting states whose labor practices are found wanting would open the door to protectionist abuses that undermine these benefits. The resulting barriers to trade would be especially harmful to poor workers, who have a comparative advantage in labor and whose production would be targeted by labor-based sanctions.⁷ More generally, there is ample evidence that trade promotes economic growth and reason to think that labor rights improve as a country's per capita wealth increases,⁸ suggesting that sanctions may be exactly the opposite of what is needed to improve labor conditions.

On the other hand, trade sanctions may be the only effective way of establishing core labor standards. International law imposes some limits on permissible labor conditions within a state. At a minimum, all member states of the ILO are bound by the Declaration on Fundamental Labor Rights, which imposes a set of labor standards.⁹ Though the existence of

3. Under the North American Free Trade Agreement ("NAFTA"), for example, the parties must enforce their own labor laws and are subject to dispute resolution procedures and potential trade sanctions in the event of noncompliance. This issue will surely be contentious in the negotiation of a Free Trade Area of the Americas Agreement. See North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, Sept. 13, 1993, available at <http://www.naalc.org/english/infocentre/NAALC.htm>.

4. See, e.g., Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA)*, 33 U. MIAMI INTER-AM. L. REV. 1, 18 (2002) (discussing how the intensity of the debate about the relationship of trade to labor and the environment resulted in President Clinton's loss of 'fast-track' authorization).

5. See Mark Weisbrot, *One Year After Seattle: Globalization Revisited*, Nov. 27, 2000, Center for Economic and Policy Research (discussing a range of trade related issues, including labor), available at <http://www.cepr.net/wto/seattleplusonefinal.htm>.

6. See, e.g., Steve Charnovitz, *The Influence of International Labor Standards on the World Trading Regime: A Historical Overview*, 126 INT'L LAB. REV. 565 (1987); Robert Howse & Makau Mutua, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization, in RIGHTS AND DEMOCRACY* (2000), available at <http://www.ichrdd.ca/english/commdoc/publications/globalization/wtoRightsGlob.html>; Brian A. Langille, *Eight Ways to Think About International Labour Standards*, 31 J. WORLD TRADE 27 (1997); Virginia Leary, *Workers' Rights and International Trade: The Social Clause*, in FAIR TRADE AND HARMONIZATION: PREREQUISITES FOR FREE TRADE? 177 (Jagdish N. Bhagwati & Robert E. Hudec eds., 1996); MICHAEL J. TREBILCOCK, TRADE POLICY AND LABOUR STANDARDS: OBJECTIVES, INSTRUMENTS AND INSTITUTIONS (University of Toronto Law and Econ. Research Paper No. 02-01, 2002), available at http://papers.ssrn.com/sol3/delivery.cfm/SSRN_ID307219_code020501530.pdf?abstractid=307219; Chantal Thomas, *Trade-Related Labor and Environment Agreements?*, 5 J. INT'L ECON. L. 791 (2002).

7. One of the strongest proponents of this view is Jagdish Bhagwati. See Jagdish Bhagwati, *Afterword: The Question of Linkage*, 96 AM. J. INT'L L. 126 (2002).

8. See Alan O. Sykes, *International Trade and Human Rights: An Economic Perspective* (2001) (prepared for the World Trade Institute Conference on Human Rights and International Economic Law, Aug., 2001) (on file with author).

9. These standards include:

these obligations is undisputed, they are often ignored, and the ILO has no effective mechanism to encourage compliance. Trade sanctions aimed at abhorrent or illegal labor practices may bring pressure on states to change those practices—improving, and even saving, the lives of workers. If one believes that the labor rights in question are indeed fundamental human rights, then the argument in favor of enforcing them through trade sanctions has some merit.¹⁰

All of this is familiar in the trade and labor debate.¹¹ Rather than rehash the existing debate, this Essay suggests that any relationship between trade and labor should be determined through a political process of negotiation rather than through the quasi-judicial dispute resolution processes of the WTO. At present, the WTO's Appellate Body ("AB") is presumed to be the appropriate body to resolve the issue,¹² and much of the trade and labor debate is focused on how it should decide the question. The AB, however, is not the ideal forum in which to consider the relationship between these issues. It is undemocratic and unaccountable, operates largely in secret, and has not been granted any formal rule making power.¹³ Furthermore, although the AB at times makes controversial and politically charged rulings,¹⁴ fundamental policy trade-offs are outside its competency and mandate.

The relationship between trade and labor is exactly the sort of policy issue that is ill-suited to the AB. The key questions involve the complex and incompletely understood trade-offs between the benefits of trade and the welfare of workers, the appropriateness of international intervention

Freedom of association and the effective recognition of the right to collective bargaining;
 Elimination of all forms of forced or compulsory labour;
 Effective abolition of child labour; and
 Elimination of discrimination in respect of employment and occupation.

ILO Declaration on Fundamental Principles and Rights at Work, International Labor Conference, art. 2, 86th Session, Geneva, June 1998 [hereinafter ILO Declaration], available at <http://www.ilo.org/public/english/standards/decl/declaration/index.htm>.

10. See Robert Howse, *The World Trade Organization and the Protection of Workers' Rights*, 3 J. SMALL & EMERGING BUS. L. 131, 148-66 (1999) (discussing the justifications for enforcing labor obligations on other states).

11. See generally TREBILCOCK, *supra* note 6; MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE*, 441-63 (2d ed. 1999); Howse, *supra* note 10; Yasmin Moorman, *Integration of ILO Core Rights Labor Standards into the WTO*, 39 COLUM. J. TRANSNAT'L L. 555 (2001); Clyde Summers, *The Battle in Seattle: Free Trade, Labor Rights, and Societal Values*, 22 U. PA. J. INT'L ECON. L. 61 (2001); Sykes, *supra* note 8.

12. The AB seems to be the only currently existing body suitable to address this issue. See Howse, *supra* note 10, at 168 ("The most promising short- and medium-term possibility is that WTO jurisprudence might evolve to allow a coherent approach" to trade and labor.).

13. See Jeffery Atik, *Democratizing the WTO*, 33 GEO. WASH. INT'L L. REV. 451, 455 (2001); see also *infra* text accompanying notes 46-47.

14. See, e.g., Appellate Body Report, EC Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, WT/DS48/AB/R (Jan. 16, 1998); Appellate Body Report, United States—Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998) [hereinafter *Shrimp-Turtle*].

into the labor policies of individual states, and the willingness of the international community to reduce economic welfare in pursuit of labor rights. Even among disinterested observers there is no consensus on the question of whether trade should be linked to labor practices and, if it is, how that should be done. Nor is there sufficient legal guidance for the AB or any other body to fairly conclude that the member states of the WTO came to an agreement on how these issues interact.

For these reasons, leaving the AB to resolve the trade and labor issue is an inadequate solution. Whatever the AB does (even if it does nothing) will generate criticism and place tremendous stress on the WTO and the international trading system. This Essay argues that the trade and labor issue is a political problem requiring a political rather than judicial solution and proposes a possible approach. Representatives from nation-states must negotiate the relationship between trade and labor, the way in which trade sanctions (if any) might be applied, and the relevant labor standards.

But if there are to be negotiations, where should they be held? The WTO is the most likely forum because it is in the business of establishing the rules governing international trade. If trade sanctions are to be permitted, an exception to existing WTO rules will be necessary, and that sort of change must be done at the WTO itself. In addition, with labor-based sanctions comes the risk of protectionist abuses. Distinguishing legitimate from illegitimate sanctions will require some form of dispute resolution, and the WTO has the only system that could plausibly be adapted to interstate disputes involving trade and labor.

From the labor perspective, however, there is legitimate concern that negotiations within the WTO will give undue weight to trade interests at the expense of labor interests. After all, the WTO is a trade organization, staffed by trade specialists with trade interests, and the negotiators who participate in WTO negotiating rounds are by and large trade negotiators.

The dilemma, therefore, is as follows. Unless negotiations of trade and labor issues take place within the WTO, they will be out of touch with the way in which the international system regulates trade, and will have difficulty changing the existing trading rules. But if negotiations are held within the WTO, there is reason to worry that the institutional structure of the organization will cause trade concerns to trump labor concerns. Ultimately, there is no solution to this problem within existing institutions. Nor can the problem be solved with the creation of a new institution as long as the WTO remains the source of international trading rules.

To place labor and trade values on an even footing without undermining the significant benefits that the WTO delivers to the international system, I propose a set of reforms to the WTO.¹⁵ The key to these reforms

15. In a companion paper, I discuss these reforms in the context of a broad set of nontrade issues. See ANDREW T. GUZMAN, *GLOBAL GOVERNANCE AND THE WTO* (UC Berkeley Public Law and Legal

is the creation of independent trade and labor departments within the WTO. The labor department, for instance, would have considerable autonomy from the rest of the organization, would be staffed by labor specialists, and would have the authority to hold its own periodic rounds of negotiations limited to labor issues. Such negotiations would result in binding obligations. In addition, from time to time the WTO would host negotiating rounds that include both the labor department and other WTO departments, including the trade department. These larger rounds would permit states to reach a negotiated agreement on the relationship between trade and labor. Because the agreement would be the product of consensus, a negotiated settlement would engender more legitimacy than any AB determination could provide.

The Essay proceeds in three Parts. In Part I, I argue that the trade and labor issue is ultimately a political question because its legal status is uncertain and there is no agreement on the normative question of what (if any) link should exist between trade and labor. Part II discusses the reasons why a strategy of inaction—which would leave the issue in the hands of the WTO's AB—is unwise. Part III offers an alternative, process-based approach to the trade and labor problem that could open the door to a political dialogue at the WTO, and overcome the trade bias of that institution.

I

THE POLITICAL NATURE OF TRADE AND LABOR

A. *The Ambiguous Legal Issue*

The debate about labor rights and the WTO is taking place against a blank legal slate. Though the WTO establishes a clear set of rules about what constitutes a violation of international trading obligations, and ILO commitments impose legal obligations regarding labor rights, there is no international legal instrument that addresses the connection between these two issues.¹⁶ Nor has a WTO panel or its AB issued a ruling on the question of how labor and trade obligations interact.

There are times, of course, that silence is informative. In this instance, silence may indicate that the WTO provides no exception for labor rights. If WTO obligations create binding obligations without regard for the labor practices of other states, such trade obligations coexist with ILO labor obligations without any real legal problem. Where a violation of one of these agreements exists, the remedies are appropriately sought through the

Theory Research Paper No. 89, 2002) (presenting a comprehensive proposal for WTO reform and incorporation of new regulatory issues).

16. It is a slight overstatement to say that the WTO never addresses labor issues. At a minimum, Article XX(e) provides an exception for the products of prison labor. *See supra* note 1. Whether a broader exception exists is a debatable question and is addressed below.

relevant agreement.¹⁷ Since the ILO and WTO operate independently and the actions of one have no direct impact on the other, there is no need to explain the legal relationship between these organizations.

On the other hand, the WTO might not be quite so silent on labor issues. There is serious debate about whether the "General Exceptions" listed in Article XX of the GATT encompass a labor-based exception to the obligations of WTO member states.¹⁸ This dispute includes two sets of issues. The narrow legal question is whether Article XX includes such an exception. A closely related but distinct question is whether there should be such an exception.¹⁹

Although the AB clearly has the authority to interpret the WTO Agreements, it has not addressed the question of a labor-based exception.²⁰ If a trade and labor case were to come before the AB, that body could conclude either that no labor-based exception to WTO obligations exists²¹ or that Article XX of the GATT includes an exception for labor rights violations.²²

The case for an Article XX exception has been championed eloquently by Professor Robert Howse, who has outlined an argument under

17. From this perspective, when a state is in violation of its obligations under, for example, the ILO's Fundamental Declaration, any sanction must be consistent with WTO obligations. This is simply an application of the general principle that the violation of one rule of international law does not authorize the violation of other rules in retaliation. It is argued, however, that trade sanctions are needed for labor violations because the absence of an effective dispute resolution mechanism within the ILO leaves trade as the only practical enforcement option. This argument overlooks the fact that ILO member states chose to construct the organization without a dispute resolution mechanism and their decision to join was made against a background of weak enforcement limited to diplomatic pressure and reputational sanctions. That some observers believe this to be an inadequate set of incentives is somewhat beside the point—it is what states agreed to and what binds them. See Andrew T. Guzman, *The Design of International Agreements* (2003) (draft working paper, on file with author). In addition to excluding a dispute resolution mechanism, the ILO has on other occasions declined to adopt stronger measures targeting labor rights violations. For example, in 1997, the ILO rejected a proposal under which it would promote and administer a system of country-based certification and labeling of products from countries in compliance with core labor standards. See TREBILCOCK, *supra* note 6, at 3 (citing Christopher McCrudden & Anne Davies, *A Perspective on Trade and Labor Rights*, 3 J. INT'L ECON. L. 43 (2000)).

18. See GATT, art. XX(a), (b).

19. Not surprisingly, most commentators who favor an exception also conclude that one exists in Article XX, while those who oppose an exception conclude that none exists. See, e.g., Howse, *supra* note 10, at 142 ("Article XX(a), which permits otherwise GATT-inconsistent measures 'necessary to protect public morals' might be invoked to justify trade sanctions against products that involve the use of child labor or the denial of workers' basic rights.").

20. Critics of a labor exception would be quick to add that the AB "cannot add to or diminish the rights and obligations provided in the covered agreements." Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2 (1994) [hereinafter DSU] art. 3.2.

21. The exception would be the explicitly mentioned Article XX(e) prison labor exception. See *supra* note 1.

22. A third possibility is for the AB to simply duck the issue of whether such an exception to WTO obligations exists. See William J. Davey, *Has the WTO Dispute Settlement System Exceeded Its Authority?*, 4 J. INT'L ECON. L. 79, 96-110 (2001).

which Article XX(a) can be used to justify sanctions against labor practices that violate universal human rights.²³ This represents a novel legal theory, and one that has not yet come before a WTO panel. The basic claim is that the content of the “public morals” exception of Article XX(a) should change over time as societal views on public morality evolve. Howse suggests that basic human rights have become a matter of public morality and, therefore, fall within Article XX(a). In addition, Howse argues that the Article XX(b) exception for measures necessary to protect human life or health might apply to some labor rights measures.²⁴

Critics point out that House’s interpretation is neither the only possible nor the most plausible reading of Article XX.²⁵ The absence of an explicit provision for labor rights within the agreements, the fact that there is no working group on trade and labor, the Singapore Declaration’s suggestion that labor issues should be taken to the ILO, and the absence of any AB jurisprudence supporting an exception for labor, are all evidence that no such labor exception exists.

Ultimately, the legal question of whether Article XX of the GATT includes an exception for labor rights represents little more than the battleground for the larger question of whether there should be an exception of this sort. Though legal commentators have offered arguments both for and against the existence of a labor exception, it is hard to imagine that member states intended such an exception and even harder to believe that the AB has been charged with establishing the contours of that exception. For reasons discussed in more detail below, the AB is not qualified to weigh the merits of a trade-labor link,²⁶ let alone to develop its precise content. Most importantly, given the silence of the WTO Agreements on the issue, the fact that no labor-focused committee or working group exists, and the importance of the issue, the trade and labor question cannot fairly be seen as simply a matter of interpretation to be left to the AB. Rather, it is a political issue that should be addressed through a political process.

23. Howse, *supra* note 10, at 142-45. See also Salman Bal, *International Free Trade Agreements and Human Rights: Reinterpreting Article XX of the GATT*, 10 MINN. J. GLOBAL TRADE 62 (2001); Sarah H. Cleveland, *Human Rights Sanctions and International Trade: A Theory of Compatibility*, 5 J. INT’L ECON. L. 133 (2002).

24. A similar, though not identical argument for a labor-based exception can be found in Howse & Mutua, *supra* note 6, at 8.

25. See Jose E. Alvarez, *How Not to Link: Institutional Conundrums of an Expanded Trade Regime*, 7 WIDENER L. SYMP. J. 1, 1-14 (2001). Even Howse hedges, using terms such as “possibly,” “there is an argument,” and “might” when presenting his arguments. See Howse, *supra* note 10, at 142, 144 (stating that “possibly Article XX(a) . . . might be invoked to justify trade sanctions” in response to labor rights violations; “there is an argument that the interpretation of public morals should not be frozen in time”; and “some labor-rights measures might also be justified under Article XX(b)”).

26. See *infra* Part II.

B. *The Missing Normative Consensus*

One of the challenges facing proponents of a link between trade and labor is to explain why a state should concern itself with labor conditions in other states. It is sometimes suggested that low standards in one country impose a cost on other countries because the low labor standards make it impossible to compete while maintaining higher standards. States then must either reduce their own standards or accept a loss of economic welfare.²⁷ This argument is unpersuasive because the only victims of a state's weak labor standards are the workers in that state.²⁸ In contrast to, for example, environmental issues, poor labor standards have virtually no harmful cross-border effects. Poor labor standards may allow a state to reduce the price of its exports, but this yields a benefit for an importing state, not a cost. Like any other policy that reduces the cost of production, lower labor standards increase the welfare of those who trade with the state.²⁹ Put another way, if one is wholly unconcerned about the welfare of foreigners, foreign labor practices that reduce the cost of production—no matter how abhorrent—are not a cause for concern.

The more persuasive justification for the use of trade sanctions against countries with poor labor practices is based on the claim that some set of labor rights are human rights that exist independently of national boundaries.³⁰ If this claim is accepted, attempting to modify a country's treatment

27. J. M. Servais, *The Social Clause in Trade Agreements: Wishful Thinking or an Instrument of Social Progress?*, 128 INT'L LAB. REV. 423 (1989); Katherine Van Wezel Stone, *Labor and the Global Economy: Four Approaches to Transnational Labor Regulation*, 16 MICH. J. INT'L L. 987, 992-94 (1995).

28. Though arguments about "unfair competition" or a "race to the bottom" are common, such concerns are unfounded. For example, one such argument is that unskilled workers in the importing country will face a decline in wages as a result of trade with poor countries. Even if such a reduction in wages took place, the overall impact on the importing country would be positive, meaning that there would be an increase in national wealth. Rather than addressing the problem through trade barriers, then, any harm suffered by unskilled workers could be offset through the domestic tax system, and the importing state would still be better off. In any event, existing empirical evidence suggests that this feared wage effect would be small, and perhaps nonexistent. Similarly, "race-to-the-bottom" arguments suggesting that low standards abroad impose downward pressure on domestic labor standards find no support in existing empirical evidence. Daniel W. Drezner, *Globalization and Policy Convergence*, INT'L STUD. REV. 67 (2001) (stating "[f]here is little empirical evidence to support the RTB ('race-to-the-bottom') hypothesis"). For a comprehensive discussion of the fallacy of "unfair competition" or "race-to-the-bottom" arguments, see TREBILCOCK & HOWSE, *supra* note 11, at ch. 16 (Trade and Labour Rights); TREBILCOCK, *supra* note 6, at 7-11; Sykes, *supra* note 8.

29. See Paul Krugman, *What Should Trade Negotiators Negotiate About?*, 35 J. ECON. LITERATURE 113, 115 (1997) (pointing out that trade is no more or less beneficial based on the labor or environmental conditions abroad).

30. Howse, *supra* note 10, at 149. There is a fair degree of consensus with respect to the set of labor rights or standards that should be at issue when discussing the connection between trade and labor. Most salient among the set of relevant rights are the core rights of the ILO Declaration. See ILO Declaration, *supra* note 9. The ILO Declaration is central to the discussion of labor standards because it states that all members of the ILO are bound by its core labor standards, even if they have not explicitly consented to those standards.

of its workers is justified, especially when national governments fail to represent the interests and views of their citizens.

If it is appropriate to influence labor standards in foreign states, there remains the question of how to do so. The next step in the argument of those who support a labor-based exception to WTO obligations, therefore, is to assert that trade sanctions are an effective means of encouraging countries to change their labor policies. Indeed, some argue that other plausible reactions to labor rights abuses such as boycotts, military intervention, diplomatic protests, compensation-based strategies, social labeling, and so on, either lack credibility or are unlikely to influence state policy, making trade sanctions the only practical and effective tool with which to influence foreign labor practices.³¹

A fair assessment of the evidence, however, must conclude that the effectiveness of trade sanctions remains an open question. Proponents of trade sanctions argue that these measures can influence state policies and improve working conditions, while opponents believe that sanctions will only serve to reduce the welfare of workers in the targeted state—ultimately hurting the very people the policy seeks to help—and generate resentment toward the sanctioning state.³² At present, this empirical

31. See TREBILCOCK, *supra* note 6, at 16-18; Adelle Blackett, *Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct*, 8 IND. J. GLOBAL LEGAL STUD. 401 (2001); Janelle Diller, *A Social Conscience in the Global Marketplace? Labour Dimensions of Codes of Conduct, Social Labelling and Investor Initiatives*, 138 INT'L LAB. REV. 99 (1999); Howse, *supra* note 10, at 159-62. Compensation-based strategies, which involve making a payment to states that achieve a positive change in their practices, are criticized both because they involve the dubious practice of compensating states who have tolerated the worst labor practices, and because they generate perverse incentives. Compensation for improvement that is not accompanied by a scheme for penalizing a deterioration in those same standards generates an incentive for states to lower their standards so they can subsequently be improved and the state can capture the payment. Howard F. Chang, *An Economic Analysis of Trade Measures to Protect the Global Environment*, 83 GEO. L.J. 2131 (1995). The effectiveness of social labeling (the placing of a label on products that are produced by workers able to exercise their core labor rights) is also subject to significant limitations. The primary weakness of labeling is the voluntary nature of compliance and the lack of enforcement mechanisms. See Heidi S. Bloomfield, "Sweating" the International Garment Industry: A Critique of the Presidential Task Force's Workplace Codes of Conduct and Monitoring System, 22 HASTINGS INT'L & COMP. L. REV. 567 (1999) (discussing more generally problems of enforcement and monitoring in voluntary codes of conduct for multilateral corporations); Alicia Morris Groos, *International Trade and Development: Exploring the Impact of Fair Trade Organizations in the Global Economy and the Law*, 34 TEX. INT'L L.J. 379, 408 ("WTO rules mandate that goods cannot be subject to statutory labeling requirements or differentiated on the basis of how they are produced."). To the extent that enforcement stems from consumer preferences, social labeling also suffers from a collective action problem. The individual consumer has an incentive to purchase lower priced goods produced under poor labor conditions, relying on other consumers to bear the cost of the higher priced goods produced under core labor standards. See TREBILCOCK, *supra* note 6; Anjali Garg, *A Child Labor Social Clause: Analysis and Proposal for Action*, 31 N.Y.U. J. INT'L L. & POL. 473, 504-05; Katherine Van Wezel Stone, *To the Yukon and Beyond: Local Laborers in a Global Labor Market*, 3 J. SMALL & EMERGING BUS. L. 93 (1999).

32. See KEITH E. MASKUS, SHOULD CORE LABOR STANDARDS BE IMPOSED THROUGH INTERNATIONAL TRADE POLICY? (World Bank Policy Research Working Paper 1817, 1997).

question remains unresolved. Though each side makes claims to the contrary,³³ a review of the available data reveals that the evidence is mixed.³⁴ There is at least some evidence that these sanctions can have a positive effect on policy,³⁵ although whether they can cause significant changes in labor practices remains open to doubt.³⁶

Even if there were general agreement that sanctions represent an effective tool with which to influence labor practices, there likely would remain disagreement as to whether these benefits are worth the cost of increased protectionism. As with any exception to WTO obligations, an exception for labor rights would open the door to abuses and protectionist policies. Like virtually all trade issues, trade sanctions are subject to the political realities of the day, which generates a concern that states will only impose sanctions when there are domestic political gains to be had. Furthermore, the threat of trade sanctions may serve as just another source of leverage, allowing powerful states to influence the behavior of weaker states in areas other than labor. Labor abuses by friends of the United States and the European Union, for example, may be ignored while abuses by their enemies face sanctions.³⁷

Still more worrisome, where the possibility of political gains exists, a labor exception to WTO obligations may invite trade sanctions even when there are no violations. Even if one were to limit the labor exception to, for example, the rights covered by the ILO Declaration, there would remain room for protectionism backed by false claims of labor abuses.³⁸ The danger, then, is that a labor-based exception would do little to improve labor

33. The most important empirical evidence can be found in GARY C. HUFBAUER ET AL., *ECONOMIC SANCTIONS RECONSIDERED: HISTORY AND CURRENT POLICY* (2d ed. 1990). This work is at times cited in support of claims that sanctions often fail. *See, e.g.*, Sykes, *supra* note 8, at 16-17 n.23. At other times it is cited in support of the claim that sanctions often succeed. *See, e.g.*, Howse, *supra* note 10, at 158-62.

34. For a brief discussion of the literature on sanctions, see Howse, *supra* note 10, at 158-59.

35. *See* SOPHIE DUFOUR, *ACCORDS COMMERCIAUX ET DROITS DES TRAVAILLEURS* 65 nn.159, 161 (1998); Lance Compa, *Labor Rights and Labor Standards in International Trade*, 25 *LAW & POL'Y INT'L BUS.* 165, 170 (1993).

36. *See* Sykes, *supra* note 8, at 17.

37. Whether this disparate treatment takes place would depend in part on how an exception to WTO obligations is worded. Under Article XX states are not to adopt measures "which constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail." GATT art. XX. If an exception to WTO obligations is grounded in article XX, sanctioning states would face at least some limit on their ability to discriminate among states. *See* Shrimp-Turtle, *supra* note 14. Given that the sanctioning state would presumably be entitled to choose the labor abuses that it wishes to sanction (just as states can choose the environmental or health measures they wish to enforce), however, there would remain room to craft sanctions that penalize enemies without harming friends.

38. This danger is especially serious in the WTO context because once a trade sanction is imposed the only legal recourse for an affected country is the DSU. If a complainant wins before the DSU, the defendant is asked to bring its practices into compliance, but is not sanctioned. Thus, a state that imposes a politically motivated set of sanctions with labor practices as a justification gets the political benefits of the action for a period of time, and never has to face any punishment.

conditions but would provide an additional way for states to erect barriers to trade.

A glance at the primary supporters of a trade-labor link stimulates further concern about protectionism.³⁹ The proponents of such a link are mostly northern nongovernmental organizations ("NGOs"), and northern labor unions. Developing countries themselves are aggressively opposed to any form of trade-labor linkage.⁴⁰ If a trade-labor link truly served to improve labor standards in poor countries, the most likely beneficiaries of that linkage would be the developing countries that already have acceptable labor standards. They are most likely to be the next lowest cost producer of goods, so they would be able to increase exports when other states were sanctioned. The consistent opposition from developing countries suggests they believe that a labor-based exception generates too much risk of abuse and protectionism.

None of this requires the conclusion that trade and labor should not be linked. It may be that trade sanctions are able to influence labor practices and it may be that there is only a small increase in the risk of protectionism. Put simply, there is enough uncertainty about the appropriateness and impact of trade sanctions aimed at labor practices that conclusions must inevitably rest as much on the observer's instincts and biases as on objective evidence. Despite this uncertainty, policy decisions about the relationship between trade and labor must be made. By failing to address labor issues directly, negotiators at the Uruguay Round made the decision, perhaps inadvertently, that trade and labor would not be linked in the short term. The AB may one day have to revisit that decision. As with many other complicated and uncertain policy decisions, this one involves trade-offs that are incompletely understood. In a domestic system, this sort of question would fall squarely within the jurisdiction of the legislature. In the

39. Notice also that if a trade-labor link is really about international labor practices rather than protectionism, it is unclear what is special about labor. The legitimate arguments in favor of a labor exception could be applied to other human rights issues, including genocide, torture, slavery, or other cruel, inhuman, or degrading treatment or punishment, prolonged arbitrary detention, or systematic racial discrimination. See RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 (1987). Some might argue that labor rights issues are more closely tied to trade and, therefore, a more suitable target for trade sanctions. This argument does not hold for two reasons. First, as already discussed, the only convincing reason to sanction a state for poor labor practices is that it is abusing the human rights of its citizens. See *supra* note 28. Objections that it is able to produce the good more cheaply or that it may provoke a "race to the bottom" in labor standards are misplaced for reasons already discussed. See *id.* If the concern is a human rights one, there is no reason that poor working conditions are any more deserving of our attention than, for example, genocide or torture. Second, many of the labor practices in question take place in nontrade sectors of the economy. For example, the majority of child labor takes place in domestic agriculture, services, retail, and other sectors that do not produce traded goods. See TREBILCOCK, *supra* note 6, at 18.

40. See Brian A. Langille, *Eight Ways to Think About International Labour Standards*, 31 J. WORLD TRADE 27, 31 (1997) ("In developing nations there is a widespread view that the motivations behind the pursuit of the labour standards agenda are nothing more than disguised protectionism on the part of the developed nations.").

international arena there is no legislature to make these decisions, so the question has been left for the AB.

II

LABOR AND THE APPELLATE BODY

When the question of decision-making authority is broached, it is normally assumed that the AB must resolve the trade and labor issue. The absence of a legislative body makes this a reasonable assumption in the short-term. Leaving the question to the AB is a risky long-term strategy, however, that is likely to damage the legitimacy of the WTO and the international trading system.

It is no secret that the WTO is the target of intense criticism from a range of entities, and that much of the criticism challenges the institution's legitimacy. The trade and labor issue contributes to this legitimacy problem.⁴¹ The WTO's ability to withstand the criticism that will inevitably follow any resolution of the trade and labor debate will be heavily influenced by the perceived legitimacy of the decision-making process that is used. Has the AB addressed issues that are considered to go beyond matters of legal interpretation? Are the relevant decisions the product of a reasonably democratic and inclusive process? Have the interests of all states been considered? Are the resulting obligations consistent with those that states accepted at the Uruguay Round of negotiations, or are states being subjected to these obligations without their consent? The answers to these questions depend on the process by which the trade and labor issue is resolved. If the issue is resolved by the AB, the answers are not likely to favor the WTO and its stability.⁴²

41. See generally Kal Raustiala, *Sovereignty and Multilateralism*, 1 CHI. J. INT'L L. 401 (2000); Anne-Marie Slaughter, *Building Global Democracy*, 1 CHI. J. INT'L L. 223 (2000); Paul Stephan, *Accountability and International Lawmaking: Rules, Rents, and Legitimacy*, 17 NW. J. INT'L L. & BUS. 681 (1996); Robert O. Keohane & Joseph S. Nye, Jr., *Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy* (Feb. 2001) (unpublished manuscript, on file with the John F. Kennedy School of Government, Harvard University, Faculty Research Working Paper Series).

42. Even if the AB were to decide that trade and labor should be linked, there remain serious issues that could not easily be resolved within the context of an arbitral ruling. For example, the precise list of labor practices that are deemed to fall below the minimum acceptable level and, therefore, permit the use of trade sanctions, would still need to be determined. The ILO Declaration provides a useful starting point, but it too leaves important questions unanswered. For example, should child labor be banned based on a universal minimum age for labor, or should the minimum age depend on more contextual factors such as culture, type of labor, and economic circumstances? Does the ban on discrimination include only race, or should gender also be included? What about social class? Sexual orientation? And the right to collective bargaining has different limits in different countries, including limits on the right to strike. All of these interpretive questions, and many more, will have to be answered if trade and labor are to be linked.

The AB contributes to the WTO's legitimacy problem when it addresses issues perceived to go beyond matters of legal interpretation.⁴³ The creation of a labor-based exception will provoke developing countries' fears of protectionism. If no exception is created, labor activists, NGOs, and developed countries will complain that fundamental workers' rights have been sacrificed on the altar of free trade and that no effective mechanism exists to encourage compliance with labor obligations. This is a question of policy rather than law. The AB is not charged with policy-making of this sort, and is not equipped to manage political issues. As such, it is unreasonable to expect the AB to offer a definitive resolution. Certainly, the AB could issue a ruling backed by legal argument, but there is no reason to think that this would truly resolve the issue in the minds of interested parties.⁴⁴

In addition, the AB lacks guidance on questions such as the relative value of labor and trade concerns, the wisdom of opening the door to increased protectionism in the hope of placing pressure on countries with poor labor practices, and the manner in which sanctions might be selected and approved. This lack of guidance is all the more worrisome because AB panelists are not labor experts. Panels and appellate panels established under the WTO's Dispute Settlement Understanding ("DSU") are chosen based on their trade expertise.⁴⁵ There is no reason to think that they will be sufficiently informed about or interested in labor to strike an appropriate balance between trade and labor issues.

The WTO's legitimacy problem is further aggravated by the AB's lack of democratic accountability. Decisions of the AB are the product of a quasi-judicial process beyond the control of member states, and those decisions bind all WTO member states even when the results are inconsistent with the intent of the WTO Agreements. Appellate panels consist of three individuals who are neither elected nor accountable to the members of the organization.⁴⁶ The AB is not monitored by any form of democratic process or reviewed by any authority, and the panels operate largely in secret. Once an AB ruling is made, it is effectively irreversible, short of an agreement among all members to overturn it.⁴⁷

43. See Jeffrey L. Dunoff, *The Death of the Trade Regime*, 10 EUR. J. INT'L L. 733, 734 (1999); Joel P. Trachtman, *The Domain of WTO Dispute Resolution*, 40 HARV. INT'L L.J. 333 (1999).

44. See Claude E. Barfield, *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*, 2 CHI. J. INT'L L. 403, 407-09 (2001).

45. See DSU, *supra* note 20, arts. 8, 17.

46. See *id.* art. 17(1).

47. An AB ruling is automatically adopted by the DSU, which includes representatives from all states, unless there is a consensus against adoption. *Id.* art. 17(14). Once adopted, an AB decision can be overturned by a decision of the Ministerial Conference or the General Council to adopt a contrary interpretation. Marrakesh Agreement Establishing the World Trade Organization, art. IX, in THE LEGAL TEXTS—THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS (1999). See Atik, *supra* note 13, at 455 ("The WTO Dispute Settlement Body enjoys a form of judicial

Precisely because the AB is undemocratic, unrepresentative, and unaccountable, its role is limited to the interpretation of WTO Agreements.⁴⁸ DSU panels and appellate panels are not and have never been intended to be the forum for new policy initiatives. Though any judicial or arbitral body will “make law” when it interprets legal texts, there are differences between relatively aggressive interpretations and those that remain closer to the text of the document and existing practice. The more appellate panel decisions look like policy-making, and the less they look like interpretation, the greater will be the legitimacy challenge for the AB and the WTO. Opening the door to a labor-based exception would require an exploration of the trade-off between the traditional trade values that have motivated the WTO and the nontrade values of labor rights. While a discussion on this trade-off should take place, it should not be done by this quasi-judicial body.⁴⁹

III

A PROCESS-BASED SOLUTION

The AB is at the center of the trade and labor debate largely because no other solution is on the table. Without some other strategy for addressing the important and timely question of the interaction of labor and trade, that body will have no choice but to interpret the relevant WTO Agreements, and in particular Article XX.

The alternative to decision making by the WTO’s quasi-judicial AB is a negotiated, political resolution.⁵⁰ The WTO is the most logical place for such negotiations.⁵¹ Because trade is at the center of the issue and because

supremacy that is democratically suspect, particularly because there is no meaningful legislative check on Dispute Settlement Body activism.”)

48. “Recommendations and rulings of the DSB [Dispute Settlement Body] cannot add to or diminish the rights and obligations provided in the covered agreements.” DSU, *supra* note 20, art. 3(2).

49. See José E. Alvarez & Debra P. Steger, *Afterword: The ‘Trade and . . .’ Conundrum—A Commentary*, 96 AM. J. INT’L L. 135, 144 (2002) (“Some ‘trade and . . .’ conundrums, I would argue, can be resolved only by the membership. The pressing ones, I believe, relate to the ‘other’ areas of human rights and labor rights . . .”); Dunoff, *supra* note 43, at 756 (“Given the institutional constraints on WTO panels . . . it is politically naive to urge WTO panels to ‘struggle openly’ with the value conflicts raised by ‘trade and’ issues.”).

50. Michael Trebilcock proposes one conceivable political solution in which the ILO and UN Human Rights Committees are charged with making determinations regarding human rights violations (including labor rights) but leave the question of whether trade sanctions have been “applied in a non-discriminatory and consistent fashion” to the AB. See TREBILCOCK, *supra* note 6, at 6, 26-27.

51. The other possible forum would be the ILO. However, the ILO lacks an effective dispute resolution mechanism or other enforcement tools, and is poorly suited to manage negotiations that include exceptions to international trade obligations. Various proposals to incorporate a trade-labor link have been advanced, but none seems to have captured the attention of policymakers. See, e.g., Steve Charnovitz, *Trade, Employment and Labour Standards: The OECD Study and Recent Developments in the Trade and Labour Standards Debate*, 11 TEMP. INT’L & COMP. L.J. 131, 162-63 (1997). The ILO itself does not seem interested in the use of sanctions to enforce labor rights. Howse, *supra* note 10, at 167 (citing INTERNATIONAL LABOUR ORG. CROSS-DEPARTMENTAL ANALYSIS & REPORTS TEAM, THE

exceptions to WTO obligations are at stake, the WTO will inevitably have to take part in the conversation. The key question in the debate, after all, is whether the system should permit a trade-based sanction for certain labor practices. Such sanctions can only be allowed through changes to the system of WTO commitments. A non-WTO agreement that permitted such sanctions would conflict with WTO obligations, and that conflict would ultimately find its way to the WTO's dispute resolution system.

At present, however, the WTO is poorly positioned to handle labor issues. Attempts to describe and mandate minimum labor standards raise many difficult and complex questions for which the WTO has neither appropriate experience nor sufficient funding.⁵² Consider, for example, how the WTO might implement the core labor rights embodied in the ILO Declaration. One such right is "the elimination of discrimination in respect of employment and occupation."⁵³ The definition of what constitutes employment discrimination has troubled the Congress, the executive branch, and the courts in the United States for decades. In an international context, the problem is even more difficult as it must also address the dramatic differences in culture, history, and circumstances that exist across states.⁵⁴ The current modest staffing and funding of the WTO would make it impossible to address such issues in a serious way. If the organization is to handle labor issues, it must have labor experts among its staff and funding to focus on labor questions in addition to trade.

There is also a serious question of whether the WTO could give labor concerns a fair hearing. Because it is a trade organization staffed with trade specialists, many observers believe that a trade bias is an inevitable part of the institution and other issues will always be secondary to trade concerns.⁵⁵ These are legitimate concerns, and if the WTO were to simply

SOCIAL DIMENSION OF THE LIBERALIZATION OF INTERNATIONAL TRADE 6 (1998)) ("A recent report by ILO research staff notes that discussions in the ILO Working Party on Social Dimensions of World Trade indicate very strong resistance to any approach that contemplates the possibility of trade sanctions to enforce compliance with core labor rights."). Even if it were, the ILO would suffer from a labor bias as much as the WTO suffers from a trade bias.

52. The annual budget of the WTO is less than one hundred million dollars. See Bhagwati, *supra* note 7, at 132.

53. See ILO Declaration, *supra* note 9.

54. See *supra* note 42.

55. See Salmon Bal, *International Free Trade Agreements and Human Rights: Reinterpreting Article XX of the GATT*, 10 MINN. J. GLOBAL TRADE 62, 107-08 (2001) ("[T]he free trade purpose of the GATT has been given priority over issues such as human or animal life and the environment. . . . By continually deferring to free trade the WTO panels continue to ignore the purpose of Article XX."); Marco C.E.J. Bronkers, *More Power to the WTO?*, 4 J. INT'L ECON. L. 41, 46 (2001); Sara Dillon, *Fuji-Kodak, the WTO, and the Death of Domestic Political Constituencies*, 8 MINN. J. GLOBAL TRADE 197, 208-09 (1999); James Thuo Gathii, *Institutional Concerns of an Expanded Trade Regime: Where Should Global Social and Regulatory Policy Be Made? Re-Characterizing the Social in the Constitutionalization of the WTO: A Preliminary Analysis*, 7 WIDENER L. SYMP. J. 137, 155 (2001); Patti Goldman, *The Democratization of the Development of United States Trade Policy*, 27 CORNELL INT'L L.J. 631, 645 (1994).

bring labor issues within its mandate without any other changes to the organization, it is probably true that a significant trade bias would exist.

One can nevertheless imagine a set of reforms that would make the WTO a sensible forum at which to address the difficult political problem of trade and labor without compromising the WTO's role in the international trading system. On one hand, to engage the trade and labor question without a trade bias requires the presence of labor specialists. On the other hand, bringing labor experts into the WTO risks undermining the benefits of specialization and focus. Fortunately, the priorities of inclusion and specialization need not be mutually exclusive. Labor specialists could be brought into the organization to overcome the risk of a trade bias, and a loss of specialization can be avoided by allowing the trade and labor specialists to act independently of one another. This could be achieved through the establishment of separate "departments" within the WTO. One department would focus on labor issues and how they can or should be governed. This department would conduct its own negotiating rounds at which labor issues would be negotiated and agreements reached.⁵⁶ Meanwhile, a parallel trade department would carry on much like the existing WTO. The trade department would hold periodic rounds at which trade issues would be negotiated. Neither the trade department nor the labor department would negotiate agreements that bear directly on the other's area of expertise.

So far, this structure mimics the existing environment with a trade group (like the current WTO) and a labor group (like the ILO).⁵⁷ Without more, there would be no way to negotiate a relationship between trade and labor issues—the same problem faced by the international system today. To allow such cross-issue talks, I propose periodic "mega-rounds" at which trade and labor issues would be negotiated simultaneously. These broader negotiations would address the relationship between trade and labor, and would allow for a collaborative, political solution to the problem. If, for example, a labor-based exception to trade obligations is valued by some states, those states would have the opportunity to gain the support of others in exchange for concessions on other issues, including trade.⁵⁸ Because the mega-rounds would bring together the trade and labor departments, both

56. See GUZMAN, *supra* note 15.

57. One significant distinction between this proposal and the current system is that under this proposal WTO members could choose to subject the labor obligations to dispute resolution through the DSU.

58. Notice that one could arrive at essentially the same organizational structure if, rather than reforming the workings of the WTO, one brought the WTO and ILO under the umbrella of a larger structure in which each would be responsible for their own agreements (as is currently the case) but periodic negotiations would take place in which both labor and trade are discussed. These periodic rounds would be analogous to the mega-rounds proposed here. To fully replicate the proposal advanced in this Essay one would also have to include some form of dispute resolution for any agreement dealing with the relationship between trade and labor.

trade and labor experts would participate in the negotiation, thus avoiding a trade bias.

It is true that these mega-rounds would be large and cumbersome, but that cannot be helped if more than one issue is on the table. The departmental rounds would provide a simpler setting for negotiations, so even if progress in the mega-rounds is slow, departmental negotiations can reach agreement within their areas of expertise. This political resolution is certainly imperfect, but it offers something no other approach can—a way to reach a negotiated, consensual agreement on the trade and labor issue within an organization that, if it is properly reformed, will not be biased toward any particular issue area.⁵⁹

The principal strength of the issue-oriented department proposal is its contribution to the WTO's legitimacy as an international organization. Despite the success of the WTO, there is a concern that including nontrade issues like labor will not only prevent further trade liberalization, but will also lead the world economic system into a more protectionist phase, and perhaps threaten the WTO itself. These concerns are not without merit, but they are more serious if the trading system refuses to acknowledge the relationship between trade and labor or if an exception for labor is introduced through the AB without the consent of member states. The relationship between trade and nontrade issues cannot be denied, and must be addressed in a political forum.⁶⁰ The political pressure on the WTO to deal with these issues is too strong to be pushed aside. My proposal to reform the WTO represents the best chance to manage these important issues in an orderly and legitimate fashion.

Those who fear that the introduction of labor issues will undermine the trading system should recognize that the international economic system must include nontrade issues in the debate because the pressure to do so continues to mount and has come to threaten the existing system, and because nontrade issues impact human welfare. In any event, I propose only that a suitable forum be established. If a labor-based exception to WTO obligations is unwise, states need not adopt one.

59. Compartmentalization of the type described above is not wholly foreign to the WTO, which already has the Council for the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs"), the Council for Trade, the Council for Trade in Services, and a variety of committees and working groups. Committees include those on trade and environment, and trade and development; working groups include those on trade and investment, and trade and competition policy.

60. The protests that plagued the Seattle Ministerial offered stark evidence that powerful groups were prepared to force change in the way trade and other international issues were discussed. Protesters at these meetings were successful in drawing attention to their concerns and demonstrated that the WTO cannot continue to focus on trade to the exclusion of labor, environmental issues, and human rights issues. See Weisbrot, *supra* note 5 (providing an opponent's view of the events at Seattle). The WTO has begun to address some nontrade issues, as evidenced by the inclusion of some environmental issues on the agenda for the Doha Development Round of negotiations. However, the WTO has not yet addressed labor issues. See Doha WTO Ministerial Declaration, *supra* note 2.

Those who believe that a labor-rights exception should be adopted should also support my proposal to bring labor within the WTO along with appropriate WTO reforms. The reforms to the WTO are designed to eliminate the trade bias of that institution while retaining its strengths in the form of regularized negotiations and a working system of dispute resolution. Only an agreement reached within the WTO will provide for a dispute settlement mechanism backed by trade sanctions. If one hopes for a labor-rights obligation that will change behavior, a reformed WTO is the best hope.

CONCLUSION

The fight over trade and labor will not be resolved anytime soon. The ILO is unable to tackle the relevant trade issues,⁶¹ and there is no sign that the current incarnation of the WTO is prepared to address the problem. States remain deeply divided over the issue, with developing countries firmly opposed to any linkage, and many developed states in favor. Similar disagreements, featuring NGOs, politicians, and academics, are present in the wider debate.

The trade and labor problem is difficult because it involves complex and incompletely understood relationships among trade, labor, international relations, and human rights issues. The associated trade-offs and uncertainty make it an appropriate topic for political resolution and an inappropriate topic for judicial solutions. If the AB were to rule on the appropriateness of a labor rights exception to WTO obligations it would be adding to, rather than quieting, the political controversy.

Because the AB may one day face just such a case, the debate has been focused on the question of how the WTO Agreements should be interpreted. I seek to offer a less immediate but more stable solution. Trade and labor issues present a political problem that requires a political solution. The most promising institution within which to produce such a solution is an appropriately reformed WTO. By establishing departments within the WTO, it would be possible to eliminate its trade bias without compromising the currently existing benefits of specialization and expertise. Once the institution is restructured in this way, states, through their representatives, would be in a position to discuss the proper relationship between trade and labor.

The solution proposed here is, admittedly, a long-term approach that will not offer a satisfactory resolution for some time. It would be better to solve this problem sooner, but there is no apparent short-term strategy that can settle the question without compromising the legitimacy of the WTO.

61. Moreover, the ILO has never established the sort of dispute resolution system that would be necessary to make a trade-labor link work. See *supra* note 17.