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LABOR AND ENVIRONMENT IN TRADE SINCE NAFTA:  
ACTIVISTS HAVE ACHIEVED LESS, AND  
MORE, THAN THEY REALIZE

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As it reshaped the North American Free Trade Agreement (“NAFTA”) in 1993, the Clinton administration had several goals. By endorsing the agreement, the administration hoped to encourage growth and good relations with America’s neighbors. By adding labor and environmental side agreements, it hoped to gain the Democratic support necessary for NAFTA to pass Congress, ease divisions over trade within American liberalism, and avoid a split between American liberals and developing-country governments.

In some ways, the administration—and American advocates of linking trade with labor and environmental policy—succeeded. The administration won Mexican and Canadian assent to the side agreements and convinced Congress to pass NAFTA. Labor and environmental chapters appear in all fourteen free-trade relationships negotiated since, steadily taking more elaborate forms and drawing more from international standards developed at the International Labour Organization (“ILO”) and multilateral environmental agreements (“MEAs”).

But in some ways they failed. No consensus over trade emerged among American liberals: NAFTA remains a magnet for criticism, and few advocates of labor and environmental linkages to trade are better pleased with more recent agreements. Nor have the gaps separating American liberals from developing-country governments and intellectuals closed. Officials and scholars in India, China, South Africa, Egypt, Brazil, and Mexico itself remain suspicious that labor linkages, in particular, are ploys to discriminate against poor-country goods.

Why the continuing controversy? This Article suggests two complementary explanations: (1) overestimation of the power of free trade agreements (“FTAs”) to achieve the goals, and (2) conflicting goals in the campaign for labor linkages. But it concludes with some optimism, arguing that environmental linkages to trade have become widely accepted, while labor standards have advanced outside the world of policy, as businesses react to public pressure by

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developing an elaborate labor-linkage system outside the realm of government policy that is much more extensive than the system included in FTAs.

#### I. LABOR AND ENVIRONMENTAL ISSUES IN TRADE POLICY, 1984–2009

Since 1985, the United States has negotiated twelve FTA relationships with seventeen countries.<sup>1</sup> In theory, though not quite in practice, the agreements remove all barriers to trade retained under America's "Normal Trade Relations" ("NTR") system of tariffs, quotas, and other trade regulations. Meanwhile, the United States has developed six "preference" programs that offer temporary waivers to many (though not all) tariffs imposed on goods from over 130 countries and dependent territories.<sup>2</sup> The earliest FTAs and preference programs had no labor or environmental provisions; more recent agreements and programs have many.

##### A. *Free Trade Agreements*

Treatment of labor and environmental issues in FTAs has evolved in four distinct phases, from the United States-Israel FTA in 1985 to the United States-Peru Trade Promotion Agreement of 2007.

###### 1. *Israel-United States Free Trade Agreement and Canada-United States Free Trade Agreement, 1985–1992*

The first American FTA, the United States-Israel agreement of 1985,<sup>3</sup> has no labor or environmental provisions. Its provisions on services, intellectual-property rights, agriculture, and other topics are often also modest compared to those of more recent agreements. The second FTA, with Canada in 1988,<sup>4</sup> also had neither a labor nor an environmental clause.

###### 2. *The North American Free Trade Agreement, 1993–2000*

NAFTA in 1993 marked a second phase, as the Clinton administration, under U.S. Trade Representative Mickey Kantor, negotiated "side agreements" to the 1992 base text<sup>5</sup> that created a Commission for Labor Cooperation ("CLC") and a Commission for Environmental Cooperation ("CEC") and delineated their

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1. *See infra* Part I.A.

2. *See infra* Part I.B.

3. Agreement on the Establishment of a Free Trade Area, U.S.-Isr., Apr. 22, 1985, 24 I.L.M. 653 [hereinafter U.S.-Israel FTA]. The footnote to the summary table of contents states that the agreement was "the first free trade agreement entered into by the United States." *Id.*

4. Free-Trade Agreement, U.S.-Can., Dec. 22, 1987–Jan. 2, 1988, 27 I.L.M. 281. The content summary states that the U.S.-Canada agreement was "the second free trade agreement that the U.S. has signed." *Id.*

5. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 & 605 (1993) [hereinafter NAFTA].

responsibilities.<sup>6</sup>

NAFTA's labor side agreement, the North American Agreement on Labor Cooperation ("NAALC"), covers enforcement of "labor law, including in respect of occupational safety and health, employment standards, industrial relations and migrant workers," and "collective agreements," and focuses on the three parties' existing labor laws.<sup>7</sup> It defines the enforcement requirement as follows:

[E]ach Party shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light.

... Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action . . . .<sup>8</sup>

The environmental side agreement, the North American Agreement on Environmental Cooperation ("NAAEC"), is similar, directing each NAFTA partner to "ensure that its laws and regulations provide for high levels of environmental protection and [to] strive to continue to improve those laws and regulations," and to "effectively enforce its environmental laws and regulations through appropriate governmental action."<sup>9</sup>

In both cases, disputes can cover only "trade-related" failures of enforcement, and require an intricate process to decide whether there is a "persistent pattern of failure by the party complained against [either] to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards" or "to effectively enforce its environmental law."<sup>10</sup> Should these consultations in the end show failure of compliance, and if the parties cannot reach an amicable settlement, the injured NAFTA party could in theory suspend the agreement's benefits. That is, the party could return tariffs to the NTR rates imposed on goods from countries that are not FTA partners, on a proportionate amount of

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6. North American Agreement on Labor Cooperation, U.S.-Can.-Mex., art. 8, ¶ 1, Sept. 14, 1993, 32 I.L.M. 1499 [hereinafter NAALC] (establishing the Commission for Labor Cooperation); North American Agreement on Environmental Cooperation, U.S.-Can.-Mex., art. 8, ¶ 1, Sept. 8-14, 1993, 32 I.L.M. 1480 [hereinafter NAAEC] (establishing the Commission for Environmental Cooperation). For a discussion of Mickey Kantor's role in negotiating the side agreements, see Laura Okin Pomeroy, *The Labor Side Agreement Under the NAFTA: Analysis of Its Failure to Include Strong Enforcement Provisions and Recommendations for Future Labor Agreements Negotiated with Developing Countries*, 29 GEO. WASH. J. INT'L L. & ECON. 769, 773-75 (1996).

7. NAALC, *supra* note 6, art. 4, ¶ 2.

8. *Id.* arts. 2-3.

9. NAAEC, *supra* note 6, arts. 3, 5.

10. NAALC, *supra* note 6, art. 36, ¶ 2(b); NAAEC, *supra* note 6, art. 24, ¶ 1.

trade, based on the following clause:

If in its final report a panel has determined that a measure is inconsistent with the obligations of this Agreement or causes nullification or impairment . . . and the Party complained against has not reached agreement with any complaining Party on a mutually satisfactory resolution . . . such complaining Party may suspend the application to the Party complained against of benefits of equivalent effect . . . .<sup>11</sup>

The two NAFTA side agreements, in sum, share three main features. They require parties to fully enforce existing labor and environmental laws, focusing on domestic law rather than international standards. They offer an option for appeal to dispute panels in cases of persistent violation of these laws, though under different and more complex procedures than dispute-settlement panels convened over other issues. And they envision reimposing NTR tariffs should the offending country persist in failing to enforce its laws.

To date, no complaint under either the NAALC or the NAAEC has led to a sanction. (Nor has any other NAFTA complaint, although the United States' refusal to allow Mexican trucks to operate on U.S. roads was determined to be a breach of its NAFTA obligations.)<sup>12</sup> The two panels, however, have been active in other ways. Since 1993, the CEC has accepted more than seventy petitions for alleged failures of enforcement (for instance, failure to enforce environmental laws on gravel mining in Sonora, air pollution levels in Montreal, and oversight of transgenic corn planted in Chihuahua)<sup>13</sup> and has taken up a variety of research projects on issues, like conservation of the monarch butterfly and its migratory habitats.<sup>14</sup> The CLC, meanwhile, has accepted twenty-

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11. NAFTA, *supra* note 5, art. 2019, ¶ 1.

12. See Final Report of the Panel, *In the Matter of Cross-Border Trucking Services*, ¶¶ 295, 297, Secretariat File No. USA-Mex-98-2008-01 (Feb. 6, 2001), available at <http://www.worldtradelaw.net/nafta20/truckingservices.pdf>; see also Gary Clyde Hufbauer, *International Economic Law in Times That Are Stressful*, 5 J. INT'L ECON. L. 3, 7 (2002) ("The NAFTA contemplates tripartite adjudication, leading to possible fines and trade sanctions—though these have never been imposed by one member against another."); Chad MacDonald, Note, *NAFTA Cross-Border Trucking: Mexico Retaliates After Congress Stops Mexican Trucks at the Border*, 42 VAND. J. TRANSNAT'L L. 1631, 1641 (2009) (noting that the NAFTA arbitration panel "authorized Mexico to impose economic sanctions on the U.S." but that Mexico "chose not to impose retaliatory tariffs at that time").

13. See generally Comm'n for Env'tl. Cooperation, Registry of Citizen Submissions, <http://www.cec.org/Page.asp?PageID=751&SiteNodeID=250> (last visited May 1, 2010) (providing hyperlinks that lead to information on each submission).

14. See Comm'n for Env'tl. Cooperation, All Projects, <http://www.cec.org/Page.asp?PageID=122&ContentID=1496> (last visited May 1, 2010).

three complaints<sup>15</sup> and has held seminars for experts, government officials, and advocates on issues such as aging and its implications for North American labor markets, mine safety procedures, youth employment, and workplace antidiscrimination law.<sup>16</sup>

Subsequent agreements often take a more ambitious approach. But NAFTA covers far more trade than all other U.S. FTAs combined—\$590 billion in goods and services imports in 2008, nearly a quarter of all U.S. imports<sup>17</sup>—and remains the single trade instrument doing the most to impose labor and environmental conditions on American trade. A 2001 report criticizing the labor agreement by Human Rights Watch, a Washington, D.C.-based nongovernmental organization (“NGO”), called NAFTA “the most ambitious link between labor rights and trade ever implemented.”<sup>18</sup> Given the huge scale of NAFTA trade, the statement remains true today.

### 3. *United States-Jordan Free Trade Agreement and Seven Successors, 2000–2007*

The United States-Jordan FTA<sup>19</sup> opened a third phase. Negotiated in the autumn of 2000 by the Clinton administration and ratified a year later under George W. Bush, it was the first post-NAFTA FTA and the first to include labor and environmental chapters in its core text. Its labor chapter incorporates NAFTA’s commitment to enforce national law,<sup>20</sup> but adds to this commitment in several ways. First, it states a commitment to the spirit of the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, which defines the international “core” or mandatory labor standards, including bans on forced labor and abusive child labor, minimum working ages, nondiscrimination, and the rights to

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15. See Foreign Affairs and Int’l Trade Canada, Side Agreements: The North American Agreements on Labour and Environmental Cooperation, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/nafta-alena/side.aspx> (last visited May 1, 2010).

16. Comm’n for Labor Cooperation, Cooperative Activities, <http://new.naalc.org/coop-activities.htm> (last visited May 1, 2010).

17. Compare Office of the U.S. Trade Rep., North American Free Trade Agreement (NAFTA) (July 27, 2009), <http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta> (stating that U.S. goods and services imports under NAFTA totaled \$595.6 billion in 2008), with Bureau of Econ. Analysis, U.S. Dep’t of Commerce, U.S. International Trade in Goods and Services, exhibit 1 (Jan. 12, 2010), [http://www.bea.gov/newsreleases/international/trade/trad\\_time\\_series.xls](http://www.bea.gov/newsreleases/international/trade/trad_time_series.xls) [hereinafter Goods and Services Data] (listing total U.S. imports at \$2.52 trillion in 2008).

18. HUMAN RIGHTS WATCH, TRADING AWAY RIGHTS: THE UNFULFILLED PROMISE OF NAFTA’S LABOR SIDE AGREEMENT 1 (2001), available at <http://www.hrw.org/legacy/reports/2001/nafta/nafta0401.pdf>.

19. Agreement on the Establishment of a Free Trade Area, U.S.-Jordan, Oct. 24, 2000, 41 I.L.M. 63. [hereinafter U.S.-Jordan FTA].

20. See *id.* art. 6, ¶¶ 2–4.

freedom of association and collective bargaining.<sup>21</sup> Second, it commits the United States and Jordan each to “strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws as an encouragement for trade with the other Party,”<sup>22</sup> limiting to some extent the ability of agreement parties to revise or weaken existing labor law. It also refers disputes over labor to the same dispute-panel mechanism used in commercial disputes.<sup>23</sup>

On environmental matters, the United States-Jordan agreement includes NAFTA’s requirement to enforce national laws,<sup>24</sup> as well as its provision that “each Party shall strive to ensure that its laws provide for high levels of environmental protection and shall strive to continue to improve those laws,”<sup>25</sup> and creates technical-assistance programs to help train Jordanian officials in environmental remediation, habitat protection, and other topics.<sup>26</sup> And, as with labor policy, it opens the dispute settlement mechanisms available for commercial disputes to environmental disputes.<sup>27</sup>

The United States-Jordan agreement’s formula was applied to seven more FTAs ratified between 2001 and 2007. These joined the United States with Chile and with Singapore in 2003,<sup>28</sup> Australia and Morocco in 2004,<sup>29</sup> Bahrain in 2005,<sup>30</sup> five Central American

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21. The reference to ILO standards reads as follows:

The Parties reaffirm their obligations as members of the International Labor Organization (“ILO”) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The Parties shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in paragraph 6 are recognized and protected by domestic law.

U.S.-Jordan FTA, *supra* note 19, art. 6, ¶ 1. The original language can be found in Int’l Labour Org. [ILO], *ILO Declaration on Fundamental Principles and Rights at Work*, (June 18, 1998), available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang—en/index.htm> [hereinafter *ILO Declaration*].

22. U.S.-Jordan FTA, *supra* note 19, art. 6, ¶ 2.

23. *See id.* art. 17.

24. *See id.* art. 5.

25. Compare *id.* art. 5, ¶ 2, with NAEEC, *supra* note 6, art. 3.

26. *See* U.S.-Jordan FTA, *supra* note 19, art. 13.

27. *See id.* art. 17.

28. Free Trade Agreement, U.S.-Chile, June 6, 2003, 42 I.L.M. 1026, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text>; Free Trade Agreement, U.S.-Sing., May 6, 2003, 42 I.L.M. 1026, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/singapore-fta/final-text>.

29. Free Trade Agreement, U.S.-Morocco, June 15, 2004, 44 I.L.M. 544, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/morocco-fta/final-text>; Free Trade Agreement, U.S.-Austl., May 18, 2004, 43 I.L.M. 1248, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/australian-fta/final-text>.

30. Agreement on the Establishment of a Free Trade Area, U.S.-Bahr.,

countries and the Dominican Republic in 2005 (“CAFTA-DR”),<sup>31</sup> and finally, Oman in 2006.<sup>32</sup> The “Jordan” provisions thus apply to many more countries than do NAFTA’s labor and environmental chapters, though these countries are smaller trading partners, together exporting about \$80 billion worth of goods and services to the United States in 2008.<sup>33</sup>

4. *“May 10th Agreement” and United States-Peru Free Trade Agreement, May 2007–Present*

The most recent step came in a congressional-executive accord known as the “May 10th Agreement,” concluded by Representatives Charles Rangel of New York and Sander Levin of Michigan and Bush administration economic officials in 2007.<sup>34</sup> This agreement cleared the way for revision of the Bush administration’s previously negotiated FTAs with Peru, Panama, Colombia, and South Korea<sup>35</sup> and now applies in practice to the ratified United States-Peru Trade Promotion Agreement.<sup>36</sup> (The other three agreements still await congressional votes.)

The Peru agreement’s labor provisions go beyond those of the United States-Jordan FTA by requiring agreement parties to “adopt and maintain” the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work rather than “strive to ensure” compatibility with it.<sup>37</sup> The agreement does not, however, require parties to ratify or enforce the actual core conventions, which would

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Sept. 14, 2004, 44 I.L.M. 544 *available at* <http://www.ustr.gov/trade-agreements/free-trade-agreements/bahrain-fta/final-text>.

31. Dominican Republic-Central America-United States Free Trade Agreement, Aug. 5, 2004, *available at* <http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text> [hereinafter CAFTA-DR].

32. Agreement on the Establishment of a Free Trade Area, U.S.-Oman, Jan. 19, 2006, *available at* <http://www.ustr.gov/trade-agreements/free-trade-agreements/oman-fta/final-text>.

33. Trade data for each of these countries can be found at U.S. Census Bureau, U.S. Trade in Goods (Imports, Exports and Balance) by Country, <http://www.census.gov/foreign-trade/balance/index.html> (last visited May 1, 2010). *See also* Bureau of Economic Analysis, Private Services Trade by Area and Country, <http://www.bea.gov/international/xls/tab2a.xls> (last visited May 1, 2010) [hereinafter Private Services Import Data].

34. *See* Letter from Charles B. Rangel, Chairman, House Comm. on Ways & Means, and Sander M. Levin, Chairman, Subcomm. on Trade, House Comm. on Ways & Means, to Susan C. Schwab, U.S. Trade Representative (May 10, 2007), *available at* <http://waysandmeans.house.gov/Media/pdf/110/05%2014%2007/05%2014%2007.pdf>.

35. Sarah Lueck et al., *Bush, Congress Agree on Trade Standards*, WALL ST. J., May 11, 2007, at A2.

36. *See* H.R. REP. NO. 110-421, at 1 (2007).

37. *Compare* Trade Promotion Agreement, U.S.-Peru, Apr. 12, 2006, art. 17.2, *available at* <http://www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text> (2009) [hereinafter U.S.-Peru TPA], *with* US-Jordan FTA, *supra* note 19, art. 6. *See generally* ILO Declaration, *supra* note 21.

require Congress to revise U.S. labor law, at least for agricultural child labor and perhaps in other areas. The text adopted in the Peru agreement reads:

Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998) (ILO Declaration): (a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of compulsory or forced labor; (d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and (e) the elimination of discrimination in respect of employment and occupation.<sup>38</sup>

The agreement's environmental chapter makes a similar change. Beyond requiring enforcement of existing laws, it draws on international agreements, requiring the United States and Peru to "adopt, maintain, and implement laws, regulations, and all other measures to fulfill [their] obligations" under seven major multilateral environmental agreements to which the United States is a party.<sup>39</sup> These are the Convention on International Trade in Endangered Species ("CITES"), the Montreal Protocol banning chlorofluorocarbons, a 1978 agreement on preventing pollution from ships, a 1971 convention on wetlands conservation, a 1980 convention on Antarctic marine conservation, a 1946 agreement on whaling, and a 1949 convention on tropical tuna fishing.<sup>40</sup> Together with this, the agreement adds a mahogany-conservation and forest-protection program.<sup>41</sup>

### B. Preferences

FTAs, though visible and controversial, are not the U.S. government's only trade initiatives. Since 1974, the United States has developed six "preference" programs authorizing temporary tariff waivers for poor countries, which together cover more imports than the post-NAFTA FTAs. These have evolved less dramatically than the FTAs and do not contain environmental linkages, though the most recent of them has ambitious, complex labor conditions and references to international standards.<sup>42</sup>

The oldest, the Generalized System of Preferences ("GSP"), dates to 1974 and waives tariffs on about 3500 goods from over 130 poor countries, out of roughly 7000 goods covered by tariffs.<sup>43</sup>

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38. U.S.-Peru TPA, *supra* note 37, art. 17.2.

39. *Id.* art. 18.2.

40. *Id.* Annex 18.2.

41. *Id.* Annex 18.3.4.

42. *See, e.g.*, Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006, 19 U.S.C. § 2703a(d)(1) (2006).

43. Trade Act of 1974, 19 U.S.C. §§ 2461-2467 (2006).



Congress added labor conditions to the GSP in 1984, requiring that a GSP beneficiary “has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights,” defined in the statute (and later, the NAFTA side agreement<sup>44</sup>) as the ILO’s core standards and “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”<sup>45</sup>

The five more recent preference programs also waive tariffs on farm products as well as clothes, shoes, and some home-textile products, which the GSP excludes as “import-sensitive.”<sup>46</sup> One of these has no labor conditions—the Qualifying Industrial Zones program for Jordan, Egypt, and the Palestinian territories, which is technically a modification of the United States-Israel FTA.<sup>47</sup> Three of the other four duplicate GSP’s labor conditions: the Caribbean Basin Initiative, devised in 1983 and amplified since;<sup>48</sup> the Andean Trade Preference Act of 1991;<sup>49</sup> and the African Growth and Opportunity Act of 2000.<sup>50</sup>

The newest preference, “HOPE for Haiti,” has exceptionally ambitious labor provisions. It grants especially generous privileges for clothing trade through a favorable “rule of origin” as well as a tariff waiver.<sup>51</sup> As of 2011, it will require inspection of all Haitian factories exporting duty-free to the United States, and that the Haitian government improve labor law and inspection policies.<sup>52</sup>

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44. See NAALC, *supra* note 6, Annex 1 (listing “guiding [labor] principles that the Parties are committed to promote, subject to each Party’s domestic law”).

45. Trade and Tariff Act of 1984, 19 U.S.C. § 2462 (2006).

46. Compare Trade Act of 1974, 19 U.S.C. § 2463(b) (excluding certain “agricultural products” and “import-sensitive articles,” including “footwear, handbags . . . and leather wearing apparel,” from “duty-free treatment”), with United States-Jordan Free Trade Area Implementation Act, 19 U.S.C. 2112 (2006); Caribbean Basin Economic Recovery Act, 19 U.S.C. § 2703(a) (2006); Haitian Hemispheric Opportunity through Partnership Encouragement Act, 19 U.S.C. § 2703a(b) (2006); Andean Trade Preference Act, 19 U.S.C. § 3203(a) (2006); Africa Growth and Opportunity Act, 19 U.S.C. § 3721(a) (2006). *But see* Caribbean Basin Economic Recovery Act, 19 U.S.C. § 2703(b), (d) (2006) (excluding certain “agricultural product[s]” and “import-sensitive articles,” including “footwear” and “textile and apparel articles,” from “duty-free treatment”); Andean Trade Preference Act, 19 U.S.C. § 3203(b), (f) (2006) (permitting duty-free treatment for certain footwear, apparel, and other textile products “that are not import-sensitive,” but excluding duty-free treatment for certain agricultural products).

47. See West Bank and Gaza Strip Free Trade Benefits Act, Pub. L. No. 104-234, 110 Stat. 3058 (1996) (amending the U.S.-Israel FTA, *supra* note 3, regarding qualifying industrial zones).

48. 19 U.S.C. § 2703(b)(5)(B)(iii)(V).

49. 19 U.S.C. § 3203(b)(6)(iii)(V).

50. 19 U.S.C. § 3703(a)(1)(F).

51. See 19 U.S.C. § 2703a(b).

52. See *id.*

C. *Cambodia Textile Agreement*

A final example of trade-labor linkage—the intellectual source of the HOPE for Haiti program<sup>53</sup>—was a textile agreement with Cambodia in force from 1999 to 2004.<sup>54</sup> This agreement gave Cambodia additional rights to sell clothes to the United States, in exchange for a national program of labor-law reform and factory inspection overseen by the ILO.

The United States lifted its Vietnam War-era embargo on Cambodia in 1996,<sup>55</sup> and the country quickly attracted garment-sector investment from Hong Kong, Taiwan, and other wealthier neighboring Asian countries.<sup>56</sup> Clothing imports from Cambodia accordingly rose quickly. By 1998, under the quota system that governed U.S. clothing trade policy from 1974 to 2004, textile industries were petitioning to limit the growth of Cambodia's clothing exports to 6% per year.<sup>57</sup> The U.S.-Cambodia agreement negotiated in 1999, however, offered a more generous allotment of 14% growth in exchange for Cambodia's agreement to pass an ILO-drafted labor code and create a nationwide program of continuous factory inspection by ILO staff.<sup>58</sup> (In practice, the quota rose by only 9% annually.)<sup>59</sup>

After 2004, under the Uruguay Round's agreement on textiles

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53. See J. F. HORNBECK, CONG. RESEARCH SERV., THE HAITIAN ECONOMY AND THE HOPE ACT 17 (Oct. 1, 2008) (“[The HOPE for Haiti] approach is inventive because . . . it combines government, private sector, and international agency participation in a model first defined in the U.S.-Cambodia Textile Agreement that has received highly favorable reviews.”).

54. Cambodia Bilateral Textile Agreement, U.S.-Cambodia, Jan. 20, 1999, available at [http://cambodia.usembassy.gov/uploads/images/M9rzdrzMKGi6Ajf0SluJRA/uskh\\_texttile.pdf](http://cambodia.usembassy.gov/uploads/images/M9rzdrzMKGi6Ajf0SluJRA/uskh_texttile.pdf) [hereinafter U.S.-Cambodia Textile Agreement]; see also Press Release, Office of the U.S. Trade Rep., U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers' Rights (Jan. 7, 2002), available at <http://www.fordschool.umich.edu/rsie/acit/LaborStandards/LaborInUSCambodiaTextile.pdf> (announcing Memorandum of Understanding extending the agreement for an additional three years).

55. Act of Sept. 25, 1996, Pub. L. No. 104-203, 110 Stat. 2872 (extending “most favored nation” treatment to products of Cambodia).

56. See SOK HACH ET AL., CAMBODIA DEV. RES. INST., CAMBODIA'S ANNUAL ECONOMIC REVIEW – 2001 50–51 (2001).

57. See ILO, International Institute for Labor Studies [IILS], *Harnessing Global Forces to Create Decent Work in Cambodia*, at 3 (2009) (prepared by Sandra Polaski), available at <http://www.betterwork.org/public/global/public-files/publications/harnessing-global-forces-to-create-decent-work-in-cambodia-sandra-polaski/view>.

58. See U.S.-Cambodia Textile Agreement, *supra* note 54, ¶ 10(D) (“[T]he United States will make a determination by December 1 of each Agreement Period . . . whether working conditions in the Cambodia textile and apparel sector substantially comply with such labor law and standards. If the United States makes a positive determination, then the Specific Limits . . . shall be increased by 14 percent . . .”).

59. See HACH ET AL., *supra* note 56, at 56; NICOLE SAYRES & THOMAS LUM, CONG. RESEARCH SERV., CAMBODIA: BACKGROUND AND U.S. RELATIONS 5 (2002).

and clothing,<sup>60</sup> the United States abolished quotas for all World Trade Organization (“WTO”) members, including Cambodia, and the agreement lapsed.<sup>61</sup> Cambodia’s government retained the labor system without benefits from the United States, hoping it would help Cambodian exporters differentiate themselves from competitors.<sup>62</sup> Jordan and Lesotho have launched similar efforts, bringing the count of voluntary trade-labor linkage programs to three.<sup>63</sup> But the financial crisis of 2008 has cost Cambodia’s garment industry about a quarter of its orders and cut employment from about 353,000 to 289,000, and the U.S. government has offered no policy steps—such as waiving tariffs on Cambodian clothing—that might support the industry.<sup>64</sup> To date, Cambodia’s government remains nonetheless committed to the labor program.<sup>65</sup>

#### D. Summary

If the goal is to integrate labor and environmental issues into FTAs, labor and environment advocates have succeeded. The United States’ FTAs—and its preferences, too—have steadily added labor and environmental content to U.S. trade policy over the last twenty-five years. As of 2008, trade-linked labor and environmental

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60. Agreement on Textiles and Clothing, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994) (“This Agreement and all restrictions thereunder shall stand terminated on the first day of the 121st month that the WTO Agreement is in effect, on which date the textile and clothing sector shall be fully integrated into GATT 1994.”).

61. U.S.-Cambodia Textile Agreement, *supra* note 54, ¶ 19 (providing for the agreement’s labor standards provisions to remain in force and be referred to the Textile Monitoring Body of the WTO if Cambodia becomes a member of the WTO before 2005, at which point the agreement lapses and quota restrictions end).

62. See POLASKI, *supra* note 57, at 8 (noting that the Cambodian government asked the ILO in 2003 to continue the monitoring project called “Better Factories” developed under the 2000 agreement between the ILO, the Cambodian government, garment manufacturers, and trade unions); World Bank [WB], Foreign Inv. Advisory Serv., *Cambodia: Corporate Social Responsibility & the Apparel Sector Buyer Survey Results* (2004) (showing that 74% of buyers concluded that international labor standards were of moderate to major importance to their consumers and 57.1% of buyers intended to increase purchases with Cambodia following the 2004 elimination of quotas).

63. See ILO, *We’re in Business! From Better Factories to Better Work*, WORLD OF WORK: THE MAGAZINE OF THE ILO, Apr. 2008, at 10–12 (announcing the launch of the “Better Work” project, which includes three pilot programs in Jordan, Lesotho, and Vietnam modeled after “Better Factories Cambodia”).

64. See ILO, *Cambodian Garment Industry: Challenges and Opportunities* (April 2009), available at [http://www.betterfactories.org/content/documents/Fact%20sheet%20April%202008\(En\).pdf](http://www.betterfactories.org/content/documents/Fact%20sheet%20April%202008(En).pdf).

65. Press Release, ILO, Global Economic Crisis Still Affecting the Garment Industry, but Factory Working Conditions Generally Remain Good (Dec. 16, 2009), available at [http://www.betterfactories.org/content/documents/2009-12-16%2023rd%20Synthesis%20Report%20\(en\).pdf](http://www.betterfactories.org/content/documents/2009-12-16%2023rd%20Synthesis%20Report%20(en).pdf).

standards applied to relationships totaling about \$1.05 trillion out of the United States' \$2.52 trillion in imports.<sup>66</sup> At each juncture, the labor and environmental chapters have grown more complex, ambitious and closely linked to international standards. Neither the European Union, nor Japan, nor any other wealthy economy has achieved as much.

## II. FTAS LESS POWERFUL THAN ADVOCATES REALIZE

But despite their success, advocates seem discontented. Why? One reason is that advocates have followed the U.S. government in overestimating the importance of FTAs. The U.S. government has viewed them as powerful tools for reshaping trade patterns; advocates therefore conclude that they will also be powerful tools for reshaping factory life and environmental quality. But the FTAs have had less influence on trade flows and investment decisions than the government believed, and also less power to force reform of labor and environmental policy, than advocates hoped. The “Most Favored Nation” (“MFN”) trade system, the WTO, and other international agreements cover more trade than the FTAs, even in relationships with FTA partners and preference beneficiaries, and offer much more powerful policy tools. A policy focused on FTAs—or on FTAs and preference programs—rather than on America’s more basic trade regime and the multilateral system of trade, labor, and environmental agreements, is not capable of effecting the basic changes advocates seek.

### A. *The “Most Favored Nation” Trade System*

First, to understand this, we need to examine the United States’ permanent trade regime and its obligations as a WTO member. This trade regime, known as the MFN system, is essentially a set of tariffs, trade-remedy laws, quotas, and import-regulation policies applied where the United States does not have FTAs or offer preferences. Trade with most of the United States’ large partners proceeds under this system: investment and services trade with the European Union; manufacturing imports and technology sales to China, Vietnam, Japan, Taiwan, Hong Kong, and Korea; energy imports from Saudi Arabia; agricultural trade with New Zealand; and so on. The MFN system also applies to more trade with FTA partners and preference beneficiaries than observers realize. The basics are as follows.

#### 1. *Tariffs*

The basis of the MFN system is the set of tariff schedules written up under the Smoot-Hawley Act of 1930,<sup>67</sup> as modified by

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66. See *infra* notes 110–12 and accompanying text.

67. Tariff Act of 1930, Pub. L. No. 71-361, 46 Stat. 590 (codified as amended

nine tariff-reducing multilateral trade agreements since 1945.<sup>68</sup> America has about 11,000 tariff lines on which the simple average rate is about 3%<sup>69</sup> and the “trade-weighted” average is 1.6%, but individual tariffs range from 0% to 48% in manufacturing and sometimes to higher rates in agriculture.<sup>70</sup> No major changes have been made to the tariff schedules since the WTO’s Information Technology Agreement in 1996.

In general, though not universally, the MFN system treats poor countries more severely than rich countries. More precisely, the system is relatively simple and open for rich countries and some poor countries that rely on natural-resource exports, but relatively closed for poor countries that rely on farm products and light-manufacturing exports. This is because America’s tariff system is not a level 3% or 1.6% tax, but rather a highly uneven array of tariffs applied to 11,000 different kinds of goods. Most natural-resource products are duty-free: metal ores, natural gas, gems, coffee and tea, most woods, most fish, most live animals, tropical fruits, and vegetables; crude oil has only nominal fees of five to fifty cents per barrel.<sup>71</sup> High-tech manufactured goods are also usually duty-free, including computers, telecommunications equipment, digital cameras, medical equipment, airplanes, pharmaceuticals, and military ordnance.<sup>72</sup> Services imports likewise face relatively

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at 19 U.S.C. §§ 1202–1677k (2006)).

68. Since GATT’s creation, there have been eight rounds of trade negotiations completed and one round that is still ongoing: 1947: Geneva; 1949: Ancey; 1951: Torquay; 1956: Geneva; 1960–61: Dillon Round; 1964–67: Kennedy Round; 1973–79: Tokyo Round; 1986–94: Uruguay Round; 2001–present: Doha Round. The completed rounds are incorporated into the full GATT text. See WORLD TRADE ORG., UNDERSTANDING THE WTO 10–17 (2007), available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/utw\\_chap1\\_e.pdf](http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf).

69. See Meredith Broadbent, Ass’t U.S. Trade Rep. for Indus., Market Access and Telecomm., Remarks at Symposium on “The WTO at 10 and the Road to Hong Kong” (Sept. 29–30, 2005), in 24 ARIZ. J. INT’L & COMP. L. 1, 70 (2007) (“U.S. tariffs are already the lowest in the world. The United States imposes tariffs of about 3% on average . . .”).

70. See David A. Gantz, *The “Bipartisan Trade Deal,” Trade Promotion Authority and the Future of U.S. Free Trade Agreements*, 28 ST. LOUIS U. PUB. L. REV. 115, 118 (2008) (“The United States remains one of the most open markets in the world with a trade-weighted average applied tariff rate of 1.6%.”); see also, e.g., U.S. INT’L TRADE COMM’N, HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES, chs. 20, 24 (2010), available at <http://www.usitc.gov/publications/docs/tata/hts/bychapter/1000htsa.pdf> [hereinafter HARMONIZED TARIFF SCHEDULE] (showing tariffs well in excess of 100% for specific products).

71. See HARMONIZED TARIFF SCHEDULE, *supra* note 70, ch. 28 (establishing that ores are duty-free); *id.* ch. 27, (natural gas); *id.* ch. 71 (gems); *id.* ch. 9 (coffee and tea); *id.* ch. 44 (wood); *id.* ch. 3 (fish); *id.* ch. 1 (live animals); *id.* ch. 7 (fruits); *id.* ch. 8 (vegetables); *id.* ch. 27 (oil products).

72. See *id.* chs. 85, 90 (establishing that telecommunications equipment is duty-free); *id.* ch. 90 (digital cameras); *id.* (medical equipment); *id.* ch. 88 (airplanes); *id.* ch. 30 (pharmaceuticals); *id.* chs. 87, 93, 98 (military ordnance).

few barriers, unless one counts limits on business travel.<sup>73</sup> This is why exporters in rich oil sheikhdoms, poorer oil states like Nigeria and Venezuela, or rich countries like Britain, Japan, or Australia face few tariff or other barriers in the United States.

Tariff rates can be much higher on the types of goods often produced in poor countries. Manufacturing tariffs rise to peaks of 32% for clothes and 48% for shoes, and agricultural tariffs peak at even higher rates for butter, fruit juice, and a few other food products.<sup>74</sup> Similar rates hit luggage, costume jewelry, and home linens,<sup>75</sup> while sugar and dairy imports are controlled by strict quotas.<sup>76</sup> This makes U.S. policy quite tough on Cambodia, Pakistan, Bangladesh, Nepal, and other low-income Asian and Muslim states. The United States is not unique in this tilt—most other rich countries and large developing countries also are toughest on food and clothes<sup>77</sup>—but it is more visible than most.

## 2. Trade Remedies

America has three trade-remedy laws, known as “anti-dumping,” “countervailing duty,” and “safeguards.”<sup>78</sup> These impose about twenty temporary tariffs a year above “bound” WTO tariff rates—often at prohibitive levels—on imported goods found to have been subsidized, sold at below-market prices, or simply to have “surged” so quickly as to disrupt markets. None of these laws envision limiting imports based on “unfair-trade” claims arising from labor or environmental policy. They were last changed in 1994

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73. See generally General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994) (extending the multilateral trading system and the MFN treatment to the services sector).

74. See HARMONIZED TARIFF SCHEDULE, *supra* note 70, ch. 61 (establishing 32% tariff for certain items of clothing); *id.* ch. 64 (establishing 48% tariff for some shoes); *id.* ch. 4 (establishing \$0.123/kg tariff for butter); *id.* ch. 20 (establishing \$0.64/liter tariff for some fruit juices).

75. See *id.* ch. 42 (establishing 20% tariffs on certain luggage); *id.* ch. 71 (establishing 11% tariffs on certain costume jewelry); *id.* ch. 83 (establishing 20.9% tariffs on certain home linens).

76. See *id.* ch. 17 (establishing quotas for sugar); *id.* ch. 4 (establishing quotas for dairy products).

77. See, e.g., Kevin C. Kennedy, *The GATT-WTO System at Fifty*, 16 WIS. INT'L L.J. 421, 467 (1998) (“[I]t would be hard to argue with one economist’s conclusion that [the textile and clothing] sector was (and in many respects continues to be) ‘the most systematically and comprehensively protected sector in the world . . .’” (quoting WILLIAM R. CLINE, *THE FUTURE OF WORLD TRADE IN TEXTILES AND APPAREL* 145 (1987))).

78. See WILLIAM H. COOPER, CONG. RESEARCH SERV., CRS REPORT FOR CONGRESS: TRADE REMEDY LAW REFORM IN THE 108TH CONGRESS 1–3 (July 22, 2003), available at [http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/RL30461\\_07222003.pdf](http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/RL30461_07222003.pdf).

after the Uruguay Round agreements that created the WTO.<sup>79</sup>

### 3. *Other Import Regulation and Subsidies*

The MFN system also includes an array of quotas, agricultural subsidies, import-regulation programs, and a few services trade limits. The quotas, generally dating to the 1930s, limit imports of sugar, beef, tobacco, peanut, and dairy products by country.<sup>80</sup> Like the trade-remedy laws, these were last addressed in the Uruguay Round agreements.<sup>81</sup> Import regulation and import bans based on scientific and professional judgments by agency experts and congressional direction appear irregularly on grounds of public health and safety.<sup>82</sup> A few forms of services imports are limited as well, for example through “Jones Act” requirements for coastal shipping and similar restrictions on foreign air carriers in the United States.<sup>83</sup>

### 4. *Labor and Environmental Features*

The MFN system also has labor and environmental features. The United States has barred imports of goods made in prisons or by other forced-labor methods since 1890.<sup>84</sup> (Perhaps oddly, it does not bar *exports* of prison-made products, and at least one state—Oregon—advertises prison-made blue jeans and shirts for international sale.)<sup>85</sup> Other laws bar imports of goods banned from production and sale on environmental or health grounds under domestic law,<sup>86</sup> and in a few cases limit imports of goods produced

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79. See Uruguay Round Agreements Act, Pub. L. No. 103-465, §§ 211–270, 301–04, 108 Stat. 4809, 4842–4922, 4932–4938 (1994) (codified as amended at 19 U.S.C. §§ 1671–73h, 2251–54 (2006)).

80. See Agricultural Adjustment Act, 7 U.S.C. §§ 601–624 (2006); Dale E. McNiel, *United States’ Agricultural Protectionism After the Uruguay Round: What Remains of Measures to Provide Relief from Surges of Agricultural Imports*, 23 N.C. J. INT’L L. & COM. REG. 281, 296–98 (1998) (reviewing U.S. quotas on sugar, beef, tobacco, peanut, and dairy products dating to the 1930s).

81. See *supra* note 79 and accompanying text.

82. For example, in 1998 the United States took the precautionary approach of banning all imports of beef from Europe for public-health reasons. See *National News Briefs; Ban on Cattle and Sheep is Extended to All Europe*, N.Y. TIMES, Dec. 14, 1997, at 42.

83. See, e.g., Merchant Marine Act of 1920, ch. 250, § 27, 41 Stat. 988, 999 (codified as amended at 46 U.S.C. § 55102 (2006)).

84. See McKinley Tariff Act of 1890, ch. 1244, § 51, 26 Stat. 567, 624 (codified as amended at 19 U.S.C. § 1307 (2006)).

85. Jeff Gerritt, Editorial, *Clothing Industry Would Be a Good Fit for State Prisons*, DETROIT FREE PRESS, Jan. 9, 2006, at A8.

86. This is the sort of prohibition contemplated by the health and safety exception of the GATT. See General Agreement on Tariffs and Trade art. XX(b), Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 [hereinafter GATT]; Janet McDonald, *Greening the GATT: Harmonizing Free Trade and Environmental Protection in the New World Order*, 23 ENVTL. L. 397, 459–62 (1993).

through environmentally unsound methods.<sup>87</sup>

*B. Obligations Under the World Trade Organization Agreements*

Second, the United States accepts international obligations as a member of the WTO. Evolving through twelve multilateral trade agreements since 1947, these now cover tariff rates, customs valuation, sanitary and phytosanitary standards, services trade, industrial and agricultural subsidies, intellectual-property rights, and other topics.<sup>88</sup> They apply to 153 countries and nonsovereign customs territories (e.g., Hong Kong and the European Union), and in practice apply to U.S. trade with all major economies except for Russia and Iran—that is, about 97% of America’s imports and exports.<sup>89</sup>

WTO rules “bind” virtually all U.S. tariffs at MFN levels. They also require the United States to keep agricultural and industrial subsidies within defined limits and block creation of new quotas. (They also protect foreign-held copyrights, trademarks, and patents, require that health- and safety-related import bans and restrictions be based on science, and so forth.) These obligations make imposition of new import limits difficult, unless they are (a) designed to avert threats to public health, morals, or security; or (b) imposed in defined and temporary circumstances under trade-remedy laws.<sup>90</sup> This limits the penalties that any FTA can impose. For example, the United States-Peru FTA removes a permanent 1% tariff on copper and allows it to be reimposed in the event of a violation,<sup>91</sup> but WTO rules bar imposition of a 2%, 10%, or 100% tariff on copper in the event Peru were to violate the FTA in some way.<sup>92</sup>

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87. See, e.g., Marine Mammal Protection Act, 16 U.S.C. § 1371(a)(2) (2006) (banning the importation of tuna). The import ban had nothing to do with the quality of tuna imported into the United States, but was aimed at tuna caught through standards thought to be environmentally unsound. See Ernest E. Smith, *Environmental Issues for the '90s: Golden-Cheeked Warblers and Yellowfin Tuna*, 47 ME. L. REV. 345, 360 (1995).

88. See Multilateral Agreements on Trade in Goods, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round, 33 I.L.M. 1125 (1994).

89. See UNDERSTANDING THE WTO, *supra* note 68, at 112; WTO, The WTO in Brief: Part 2: The Organization, [http://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr02\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr02_e.htm) (last visited May 1, 2010) (“The WTO . . . account[s] for over 97% of world trade.”).

90. GATT, *supra* note 86, arts. XX–XXI.

91. See U.S.-Peru TPA, *supra* note 37, Annex 2.3, ¶ 1(a) (“[D]uties on originating goods provided for in the items in staging category A in a Party’s Schedule shall be eliminated entirely and such goods shall be duty-free on the date this Agreement enters into force.”); *id.* (listing “copper ores and concentrates” as part of Category A); *id.* art. 8.1, ¶ 2(b) (a party may “increase the rate of duty” on goods to remedy a violation of the Agreement).

92. See *id.* art. 8.1, ¶ 2(b)(ii) n.2 (“The Parties understand that neither



The WTO system also has environmental clauses, most notably Article XX of the General Agreement on Tariffs and Trade (“GATT”).<sup>93</sup> This allows limits or bans on imports on some environmental grounds, as long as these are the “least trade-distorting” and apply to domestic industries along with foreign producers.<sup>94</sup> Article XX gives WTO members a clear and unchallenged right to exclude or limit goods that pose direct environmental threats (for example, plutonium). Trade limits imposed by MEAs, at least so far, have led to no conflict. WTO members have not, however, systematically addressed questions about limits on imports that are not inherently environmentally risky, but are produced in ways the United States considers unsound. Here the organization has developed policy ad hoc through disputes rather than through a clear general rule (for example, in its qualified approval of America’s ban on shrimp caught in nets lacking “Turtle Exclusion Devices”).<sup>95</sup> Finally, WTO and United Nations Environment Programme staff recently argued that WTO rules allow some leeway for governments to limit some imports on grounds of climate-change policy.<sup>96</sup>

Further environmental linkages at the WTO may develop in the near future, as the WTO’s Doha Round negotiating mandate envisions agreements to cut or abolish environmentally damaging subsidies (in particular, those contributing to overfishing), reduce trade barriers imposed on environmentally valuable technologies and services, review relationships between the WTO agreements and MEAs, and study environmental labeling.<sup>97</sup> The agenda does not entirely match the goals held by many American environmentalists,<sup>98</sup> but it does suggest that WTO members broadly

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tariff rate quotas nor quantitative restrictions would be a permissible form of safeguard measure.”).

93. GATT, *supra* note 86, art. XX.

94. *See id.* (stating that the GATT must not be applied “in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade”); Konrad Von Moltke, *Must Environmental Policy Be Protectionist?*, 25 N.Y.U. J. INT’L L. & POL. 323, 332 (1993) (“Applied to the area of environmental policy, trade policy translates into the position that governments can and may adopt policies to achieve environmental goals, provided these policies adopt the least trade-distorting approach.”).

95. Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 186, WT/DS58/AB/R (Oct. 12, 1998) (finding that although the United States’ use of Turtle Exclusion Devices “serves an environmental objective that is recognized as legitimate under paragraph (g) of Article XX of the GATT 1994,” the United States used the devices “in a manner which constitute[d] arbitrary and unjustifiable discrimination”).

96. *See* WORLD TRADE ORG. & UNITED NATIONS ENV’T PROGRAMME, TRADE AND CLIMATE CHANGE 89 (2009).

97. *See generally* World Trade Organization, Ministerial Declaration of 14 November 2001, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002).

98. *See, e.g.,* Arie Reich, *The New Text of the Agreement on Government*

accept links between trade negotiations and environmental policy.

By contrast, WTO members have not accepted negotiations on labor standards, and seem unlikely to do so soon. Article XX does authorize the U.S. ban on goods made in prisons.<sup>99</sup> But beyond this, most developing-country governments have opposed discussion of the issue, unless one counts their own interest in liberalizing temporary migration for work.<sup>100</sup> Attempts by the Clinton administration in 1996 and 1999 to create a Labor Working Group failed in the face of opposition.<sup>101</sup> No subsequent attempt has succeeded, and the Doha Round has no labor negotiating mandate.

### *C. Multilateral Environmental Agreements and International Labor Organization Obligations*

Third, the United States accepts labor and environmental obligations under a series of ILO conventions and MEAs. The network of MEAs is the main vehicle for environmental obligations. Several of these agreements contain trade limits. The 1973 CITES creates an extensive system of import permits, quotas, and bans regulating trade in about 30,000 species of rare and threatened animals and plants.<sup>102</sup> The 1987 Montreal Protocol bans production and use of chlorofluorocarbons as threats to the atmospheric ozone layer.<sup>103</sup> Other MEAs attempt to manage fisheries in international waters and control trade in tropical timber.<sup>104</sup> The United States is a party to the CITES, the Montreal Protocol, and several

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*Procurement: An Analysis and Assessment*, 12 J. INT'L ECON. L. 989, 992-93 (2009) (claiming that government procurement agreements are an important part of the environmental agenda but were absent from the Doha Round negotiations).

99. GATT, *supra* note 86, art. XX (“[N]othing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . relating to the products of prison labour . . .”).

100. See UNDERSTANDING THE WTO, *supra* note 68, at 75 (“[M]any developing countries believe [that labour issues have] no place in the WTO framework. They argue that the campaign to bring labour issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower wage trading partners . . .”).

101. See Aaron Bernstein & Paul Magnusson, *Free Trade Needs a Nod from Labor*, BUS. WK., Nov. 22, 1999, at 150 (“The U.S . . . pushed for labor rights at the first WTO ministers meeting in Singapore, in 1996. The move was roundly defeated . . .”); Marcus Noland, Peterson Inst. for Int’l Econ., Speech to the D.C. League of Women Voters (Feb. 16, 2000) (“President Clinton arrived [at the 1999 Seattle negotiations] telling everyone that he thought it might be a good idea to use trade sanctions to enforce workers’ rights in other countries. His comments sabotaged efforts underway to find a compromise.”).

102. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 12 I.L.M. 1085.

103. Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1541.

104. Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Sept. 5, 2000, 40 I.L.M. 278; International Tropical Timber Agreement, Jan. 26, 1994, 33 I.L.M. 1014.

agreements on shipping, timber, and fishery trade, but has not ratified other major MEAs dealing with biodiversity, climate change, or cross-border shipments of hazardous waste.<sup>105</sup>

The ILO defines American and international labor standards. It has passed eight Conventions giving legal expression to its 1998 Declaration on Fundamental Principles and Rights at Work,<sup>106</sup> of which the United States has ratified two. These cover “core” standards, banning abusive child labor and forced labor (with an exemption allowing required labor for convicts and military drafts), creating a fifteen-year lower limit on working age, requiring nondiscrimination in employment, and guaranteeing freedom of association and the right to collective bargaining.<sup>107</sup> They do not contain language authorizing even those ILO members who have ratified the conventions to enforce those rules through trade policy. Furthermore, the ILO Declaration specifically insists that labor standards “should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.”<sup>108</sup>

#### *D. Implications for Free Trade Agreements and Preferences*

Altogether, the WTO agreements, ILO conventions, and MEAs create an extensive system of rights and obligations. These agreements make it difficult to unilaterally decide to add new restrictions on imports without an international consensus to change the WTO, ILO, and MEA system, unless the United States were to withdraw from at least the WTO.

FTAs and preferences are voluntary decisions to eliminate all or

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105. See, e.g., Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 32; United Nations Conference on Environment and Development: Convention on Biological Diversity, June 5, 1992, 31 I.L.M. 818.

106. These eight Conventions are: Convention Concerning the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, June 17, 1999, ILO No. 182, 38 I.L.M. 1207; Convention Concerning the Minimum Age for Admission to Employment, June 26, 1973, ILO No. 138, 1015 U.N.T.S. 297; Convention Concerning Discrimination in Respect of Employment and Occupation, June 25, 1958, ILO No. 111, 362 U.N.T.S. 31; Convention Concerning the Abolition of Forced Labour, June 25, 1957, ILO No. 105, 320 U.N.T.S. 291; Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, June 29, 1951, ILO No. 100, 165 U.N.T.S. 303; Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, July 1, 1949, ILO No. 98, 96 U.N.T.S. 257; Convention Concerning Freedom of Association and Protection of the Right to Organise, July 9, 1948, ILO No. 87, 68 U.N.T.S. 17; Convention Concerning Forced or Compulsory Labour, June 28, 1930, ILO No. 29, 39 U.N.T.S. 55.

107. See *supra* note 106.

108. ILO Declaration, *supra* note 21.

many of the import restrictions retained under the MFN system. Because most MFN tariffs are low or nonexistent, and because FTAs rarely if ever change agricultural-subsidy and quota programs or trade-remedy laws, these import restrictions are limited and their removal alters trade patterns only modestly. Because most MFN tariffs are “bound” and cannot be raised under WTO agreements,<sup>109</sup> the penalties imposed for violation of FTAs are usually only the modest step of returning tariffs to MFN levels. Thus FTAs and preferences are exhaustively negotiated, arouse emotional debates, and capture public attention, but change policy much less than most realize, and have only modest value as “levers” to improve standards in the industries they cover.

On the surface, this seems to defy fact. Over 40% of America’s \$2.52 trillion<sup>110</sup> worth of goods and services imports came from FTA partners and preference beneficiaries in 2008—\$590 billion from NAFTA partners Canada and Mexico, nearly \$400 billion more from preference beneficiaries, and \$70 billion from other FTA partners.<sup>111</sup>

TABLE 1. U.S. IMPORTS FROM MFN COUNTRIES, FTA PARTNERS, AND PREFERENCE BENEFICIARIES, 2008<sup>112</sup>

Source	Value	Share
Total imports	\$2.52 trillion	100%
Imports from MFN-only partners	\$1.46 trillion	58%
Imports from labor/environment partners	\$1.05 trillion	42%
<i>From Canada and Mexico</i>	\$0.59 trillion	23%
<i>From preference beneficiaries</i>	\$0.39 trillion	16%
<i>From other FTA partners</i>	\$0.07 trillion	3%

But this bottom-line figure exaggerates the amount of trade the

109. See UNDERSTANDING THE WTO, *supra* note 68, at 10.

110. Goods and Services Data, *supra* note 17

111. This data was generated using the United States International Trade Commission’s Interactive Tariff and Trade DataWeb. DataWeb requires that the user submit queries to generate the requested data, but does not supply a useable URL for generated data. For reader convenience, the data has been posted at the *Wake Forest Law Review* website.

In 2008, the United States imported from NAFTA partners \$551.5 billion in goods and \$40.2 billion in private services. U.S. Int’l Trade Comm’n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (NAFTAImports tab). In 2008, the United States imported \$374.9 billion in goods from preference beneficiaries not including Costa Rica, Jordan, Oman, and Peru, and imported \$25.9 billion in private services from preference beneficiaries Argentina, Brazil, India, Indonesia, Philippines, South Africa, Thailand, and Venezuela. *Id.* (GSPCountryImports tab). In 2008, the United States imported \$57.4 billion in goods from other FTA partners, and \$11.3 billion in private services from FTA partners Australia, Chile, and Singapore. *Id.* (OtherFTAImports tab); see also Private Services Import Data, *supra* note 33.

112. See *supra* note 111.

FTAs shift. By nature, they eliminate trade barriers in place under the MFN system, which already allows almost half of all imports fully duty-free entry.<sup>113</sup> Chilean copper, Canadian natural gas, Guatemalan coffee, and Singaporean semiconductor chips were duty-free, faced no quotas, and encountered no other border barriers before the relevant FTAs went into force. They would remain duty-free should the United States repeal NAFTA, CAFTA-DR, and the FTAs with Chile and Singapore. Importers of these goods virtually never bother to register them as FTA products, because doing so offers no tangible benefit but adds paperwork and limits the flexibility of supply chains through complex rules of origin.<sup>114</sup>

Failures to implement labor and environmental standards cannot lead to reimposition of MFN tariffs on these industries, because the MFN tariff is zero.<sup>115</sup> For practical purposes, the same is true for energy, which makes up half our imports from preference beneficiaries and a third of our imports from Mexico and Canada.<sup>116</sup> Nor does the United States have any easy way to impose penalties on the roughly \$80 billion in service imports from FTA partners and preference beneficiaries, such as tourist spending on visits to Machu Picchu, fees for Singapore-issued credit cards, tuition for study at McGill University, or royalties paid for showings of Australian films in U.S. cinemas.

Excluding these zero-tariff goods and services from FTA trade, and also excluding goods from preference beneficiaries still subject to tariffs (like Filipino shirts or Brazilian steel),<sup>117</sup> the FTAs and preferences actually cover about \$250 billion in imports.<sup>118</sup> This is

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113. See ED GRESSER, MORE GROWTH, LESS GRIDLOCK: TOWARD A NEW TRADE AGENDA 9 (2009), available at <http://www.dlc.org/documents/MoreGrowthLessGridlock.pdf>.

114. See *id.*

115. See *supra* Part II.A.

116. Of the \$374.9 billion in goods imported from preference beneficiaries not including Costa Rica, Jordan, Oman, and Peru in 2008, energy imports (HTS Commodity Number 27) made up \$214.4 billion (57%). U.S. Int'l Trade Comm'n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (GSPEnergyImports tab). Of the \$551.5 billion in goods imported from Canada and Mexico in 2008, energy imports (HTS Commodity Number 27) totaled \$153.8 billion (28%). *Id.* (NAFTAImports tab).

117. In 2008, \$138 billion in tariffs were paid on imports of \$734 billion of knitted and crocheted clothing (HTS Commodity Number 61) from the Philippines, almost none of which was imported under the preference system. *Id.* (PhilippinesClothingImports tab). In 2008, \$6 million in tariffs were paid on imports of \$3 billion of iron and steel (HTS Commodity Number 72) from Brazil, almost none of which was imported under the preference system. *Id.* (BrazilSteelImports tab).

118. Excluding energy and services, \$893 billion in goods were imported into the United States in 2008 tariff-free under no labor or environmental conditions. The bulk of this was \$865 billion in goods (excluding energy, HTS Commodity Number 27) imported tariff-free under no FTA or preference program. *Id.* (NoProgram\_GoodsImports tab) (indicating \$1.331 trillion total

only 10% of America's total imports.

TABLE 2. GOODS AND SERVICES IMPORTS, IN AND OUT OF FTAs<sup>119</sup>

	Import Value	Comment
Total Imports	\$2.52 trillion	Total U.S. goods/services imports
– Services	<u>– \$0.42 trillion</u>	Services not tariffed
	= \$2.10 trillion	All goods
– Energy	<u>– \$0.49 trillion</u>	Crude has nominal tariffs; gas, none
	= \$1.61 trillion	All goods excluding energy
– Zero Tariff Goods	<u>– \$0.90 trillion</u>	Rarely imported under FTAs/preferences
	= \$0.71 trillion	All dutiable goods
– MFN Goods	<u>– \$0.34 trillion</u>	From E.U., China, Vietnam, Japan, etc., not imported under FTAs/preferences
	= \$0.37 trillion	Dutiable goods from FTAs/preferences
– Uncovered Goods	<u>– \$0.13 trillion</u>	Tariffed goods from FTAs/preferences
= Covered Goods	= \$0.24 trillion	Ten percent of imports covered by labor and environmental conditions: \$202 billion under NAFTA, \$21 billion under other FTAs, \$21 billion under preferences

Trade between the United States and Peru in 2008 provides a real-world example. Table 3 shows that U.S. imports from Peru in 2008 totaled about \$6.4 billion, including \$5.9 billion in goods imports with an assumed \$0.5 billion in services imports.<sup>120</sup> Of this,

goods excluding energy); *id.* (NoProgram\_DutiableImports tab) (indicating \$466 billion dutiable goods excluding energy). This total also includes \$23 billion in pharmaceuticals and \$2 billion in civil aircraft imported tariff-free, as well as \$3 billion in goods (excluding energy) imported tariff-free under the U.S.-Israel FTA. *Id.* (TotalImports\_AllPrograms tab). Sixty-four billion dollars in goods (excluding energy, HTS Commodity Number 27) were imported into the United States in 2008 from FTA partners and preference beneficiaries subject to tariffs, under no FTA or preference program. *Id.* (GSP\_FTA\_DutiableImports tab).

119. The United States had energy imports (HTS Commodity Number 27) of \$488 billion in 2008. *Id.* (EnergyImports\_AllPrograms.htm tab). The value of covered goods is computed by subtracting the energy imports under NAFTA, other FTAs (CAFTA-DR, U.S.-Australia, U.S.-Bahrain, U.S.-Chile, U.S.-Jordan, U.S.-Morocco, and U.S.-Singapore), and preferences (GSP, AGOA, ATPA, CBI, CBTPA, and QIZ) from the total goods imports under those programs. *Id.* (TotalImports\_AllPrograms.htm tab). For other values in this table, see *supra* note 118.

120. Goods imports from Peru in 2008 were \$5.9 billion. *Id.* (PeruTotalImports tab). Commerce Department services-trade data does not cover Peru, but for the purposes of this paper I assume that the total is approximately half of the \$1 billion in services imports from Chile in 2008.

about \$1.9 billion was duty-free metals, coffee, shrimp, and tropical fruits. Oil and refined copper, which have de minimis tariffs of 0.1% and 1.0%, accounted for another \$2.1 billion. Additional commodities imports of \$0.2 billion were covered by neither an FTA nor a preference program. And the likely \$0.5 billion in services imports came from unregulated exchanges such as American spending on Inca Trail visits and overseas study. Thus, the agreement actually removed trade barriers on only about \$1.7 billion in clothes, jewelry, and vegetables, and violations can lead to reimposition of tariffs on only these products.

TABLE 3. U.S. IMPORTS FROM PERU, 2008<sup>121</sup>

Product	Value	Comment
Total	~\$6.4 billion	\$5.9 billion in goods, likely \$0.5 billion in services
Services	~\$0.5 billion	No data available, main import would be tourism
Goods	\$5.9 billion	
Zero tariff	\$1.9 billion	Silver, gold, tin, coffee, shrimp, wood, etc.
Minimal tariff	\$2.1 billion	\$1.25 billion in oil, \$0.84 billion in refined copper
Tariffed	\$0.2 billion	Clothes, etc. (not imported under FTA/preference)
Covered goods	\$1.7 billion	Vegetables, etc. (imported under FTA/preference)

NAFTA is similar. In theory, it oversees \$590 billion in imports.<sup>122</sup> In practice, buyers of \$180 billion in duty-free goods and \$40 billion in services ignore it, and buyers of \$120 billion in Mexican and Canadian oil register their imports to avoid small fees, but have little reason to fear retaliation.<sup>123</sup> NAFTA thus removes

Private Services Import Data, *supra* note 33.

121. Oil imports (HTS Commodity Numbers 2709, 2710) and refined copper imports (HTS Commodity Number 7403) totaled \$2.1 billion in 2008. U.S. Int'l Trade Comm'n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (PeruTotalImports tab). Tariffs were paid on a little more than \$150 million worth of goods not including oil and refined copper. *Id.* (PeruDutiableImports tab). The value of \$1.9 billion in zero tariff imports is computed by subtracting the oil and refined copper imports and tariffed imports from the total goods imported from Peru under no FTA or preference program. *Id.* (PeruImports\_NoProgram tab). The remaining \$1.7 billion includes \$0.27 billion in goods imported under the GSP, and \$1.45 billion of goods (not including oil and refined copper) imported under ATPA. *Id.* (PeruImports\_ATPA tab).

122. In 2008, the United States imported from NAFTA partners \$551.5 billion in goods and \$40.2 billion in private services. *See supra* note 111.

123. Energy imports from NAFTA partners in 2008 included \$100 billion in crude oil (HTS Commodity Number 2709) and \$18 billion in non-crude oil (HTS Commodity Number 2710). U.S. Int'l Trade Comm'n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (NAFTAEnergyImports tab). The value of \$180 billion in duty-free goods is computed by subtracting the value of dutiable goods (excluding energy) imported under no program (\$17 billion) from the total customs value of goods (excluding energy) imported under no program (\$196 billion). *Id.* (NAFTAImports\_NoProgram tab); *id.*

significant barriers on about \$200 billion in goods, a third of imports from Canada and Mexico.<sup>124</sup>

Preference programs cover even less trade. America's \$400 billion in imports from preference beneficiaries includes about \$25 billion in services.<sup>125</sup> Of the remaining \$375 billion of goods imports, \$214 billion is energy (crude oil, gas, etc.).<sup>126</sup> Permanently duty-free goods like telephones and metal ore account for another \$88 billion.<sup>127</sup> Import-sensitivity concerns dating to the 1970s exclude \$44 billion of the remaining \$73 billion in goods, from Filipino clothes to Brazilian steel, Indian jewelry, and Thai flowers.<sup>128</sup> Preferences therefore remove tariffs from only \$29 billion in goods.

Finally, the tariff advantages of an FTA or preference program seem to be waning. As global supply chains make compliance with rules of origin relatively more costly, the share of goods imported under these programs has dropped. The NAFTA share of imports, for example, has fallen to 26% in 2008 from 30% in 2000 (even including energy), and is now barely above the 25.9% share for 1993.<sup>129</sup>

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(NAFTADutiableImports tab).

124. The value of \$200 billion in goods covered by NAFTA is computed by subtracting \$74 billion in energy imports (HTS Commodity Number 27) from the total \$275 billion in goods imported under NAFTA. *Id.* (NAFTAClaimedImports tab).

125. *See supra* note 111.

126. Energy imports (HTS Commodity Number 27) from GSP beneficiaries were \$214 billion in 2008, not including \$2 billion from FTA partners Costa Rica, Oman, and Peru. U.S. Int'l Trade Comm'n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (GSPEnergyImports tab).

127. In 2008, the United States imported \$132 billion in goods from GSP beneficiaries under no FTA or preference program, after excluding \$6 billion imported under no preference program from FTA partners Costa Rica, Jordan, Oman, and Peru, and excluding \$176 billion in energy imports under no preference program from other GSP beneficiaries. *Id.* (GSPImports\_NoProgram tab); *id.* (GSPEnergyImports\_NoProgram tab). Of this \$132 billion total, \$44 billion was dutiable, after excluding about \$1 billion in dutiable imports from FTA partners Costa Rica, Jordan, Oman, and Peru, and another \$83 billion in dutiable energy imports from other GSP beneficiaries. *Id.* (GSPDutiableImports\_NoProgram tab); *id.* (GSPEnergyImports\_Dutiable tab). The remaining \$88 billion was imported tariff-free under no preference program.

128. For calculation of the \$44 billion dutiable goods value, see *supra* note 127. For specific examinations of the tariffs imposed on these goods, see *supra* note 117.

129. The \$551 billion in goods imported from NAFTA partners Canada and Mexico was 26% of the total \$2.10 trillion in goods imported in 2008. U.S. Int'l Trade Comm'n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (GoodsImports\_2008 tab). In 2000, the \$365 billion in goods imported from NAFTA partners Canada and Mexico was 30% of the total \$1.22 trillion in goods imported that year. *Id.* (GoodsImports\_2000 tab).



*E. Summary*

FTAs and preferences have been the main vehicle for the addition of labor and environmental standards to trade policy. Advocates have agreed with the U.S. government in considering them powerful tools.<sup>130</sup> But they are proving weaker than most imagined. They miss most of America's big trading partners and have little relevance to trade with partners and beneficiaries that is already duty-free or essentially duty-free. And WTO tariff bindings prevent them from imposing severe penalties for infractions. Therefore the FTAs and preferences really apply only to about a tenth of U.S. trade, have only a modest effect on U.S. imports and investment, and create only modest leverage for labor, environmental, or other issues. More "enforceable" approaches will be hard to find, unless advocates convince developing-country governments that changing WTO rules to incorporate labor and environmental standards is in their interest—and this is not easy to imagine happening soon, as the nature of the U.S. trade regime mixes with an uneasy blend of humanitarian sentiment and competitive anxiety that characterizes appeals for labor linkage to arouse suspicion among many of these governments.<sup>131</sup>

## III. GOALS OF LINKAGE IN CONFLICT?

Trade-labor rhetoric, and sometimes trade-environment rhetoric, mix two different themes—a humanitarian concern for working conditions and environmental quality, and an alarm over "unfair" competition from low-wage workers<sup>132</sup>—that are not readily compatible. The first suggests a hope to improve working life in poor-country export industries; the second, that the competitive strength of these industries is unjust. The theme of unfair competition leaves many developing-country governments, whose analyses of their countries' and workers' problems often differ from those of U.S. advocates, suspicious about the effects of, and even the motivation behind, linkage proposals.<sup>133</sup> The fact that the U.S. tariff system already tilts against developing countries adds to this distrust. Trade-labor linkages thus remain controversial and (with the Cambodian and more recent Jordanian and Lesothan exceptions) have not been accepted outside the confines of FTAs and preference programs. Here we should begin with an examination of the problems developing-country governments believe they are addressing through trade policy.

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130. EDWARD GRESSER, *FREEDOM FROM WANT* 93–94 (2007).

131. *Id.* at 137.

132. *Id.* at 122, 131, 147, 154–55.

133. *Id.* at 137.

A. *Background: Policy and Demographic Change in Developing Countries*

The NAFTA debate, in retrospect, marks the opening of a new phase in American trade controversies more generally, focused on trade with developing countries rather than on wealthy competitors. This was not only because NAFTA was a big initiative but also because it came at the beginning of a substantial shift in developing-country demographics and trade policy, which in turn has reshaped American trade patterns.<sup>134</sup>

Many developing countries used the decades before NAFTA for experiments in varying degrees of autarky. In the 1950s, much of Latin America adopted nationalistic import-substitution plans and bans on foreign investment.<sup>135</sup> China broke its links with the global economy in 1949 and remained sealed for three decades.<sup>136</sup> India's Nehruvian socialism created isolation barely less complete than China's.<sup>137</sup> As these policies failed to fulfill their hopes, governments in the 1970s and 1980s began changing course. China moved away from Maoism in 1979.<sup>138</sup> Mexico and India abandoned much of their nationalism in the mid-1980s,<sup>139</sup> and Vietnam and Brazil did the same a few years later.<sup>140</sup>

Policy change coincided with demographic change. Developing-world urban populations have doubled since 1980, rising by 1.6 billion, while rich-country urban populations mostly stabilized.<sup>141</sup> Thus, newly open economies offered newly enlarged urban labor pools. By 1993, a vast industrial complex was emerging in Asia and Latin America.<sup>142</sup> Sixteen years later, these cities—in particular

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134. See *infra* notes 138–40 and accompanying text.

135. Michael Gestrin & Alan M. Rugman, *Economic Regionalism in Latin America*, 49 INT'L J. 568, 570 (1994); see also Rafael X. Zahraiddin & C. Todd Jones, *Venture Capital Opportunities and Mexican Telecommunications After the Passage of the NAFTA and the Ley de Inversion Extranjera*, 20 DEL. J. CORP. L. 899, 901 (1995).

136. See Mark Williams, *Wal-Mart in China: Will the Regulatory System Snare the American Leviathan?*, 39 CONN. L. REV. 1361, 1365–67 (2007).

137. See S. K. Kaushik, *India's Evolving Economic Model*, 56 AM. J. ECON. & SOC. 69, 71–73 (1997).

138. See Winberg Chai, *The Ideological Paradigm Shifts of China's World View: From Marxism-Leninism-Maoism to the Pragmatism-Multilateralism of the Deng-Jiang-Hu-Era*, 30 ASIAN AFF. 163, 167 (2003).

139. See Kaushik, *supra* note 137, at 76.

140. See Mary Ann Von Glinow & Linda Clarke, *Vietnam: Tiger or Kitten?*, ACAD. OF MGMT. EXECUTIVE, Nov. 1995, at 35–36 (discussing Vietnam's liberalization of trade in 1986–87); Ademar Seabra de Cruz Jr. et al., *Brazil's Foreign Policy Under Collor*, 35 J. INTERAMERICAN STUD. & WORLD AFF. 119, 119–20 (1993) (discussing Brazil's liberalization of trade in 1990–91).

141. See *infra* tbl.4 (showing that low- and medium-income urban population has increased by 1.57 billion since 1980, while high-income urban population has increased by only 0.18 billion in that time).

142. See Saul Hansell, *At Morgan, New Markets and a Rohatyn Emerge*, N.Y. TIMES, Feb. 28, 1994, at D1 (“Few areas of the financial world are as hot as

China's coastal cities and Mexico's border towns—are a major source of the United States' light-industry goods.<sup>143</sup>

TABLE 4. URBAN POPULATION<sup>144</sup>

	1950	1980	2010
World	0.74 billion	1.75 billion	3.49 billion
<i>More Developed</i>	0.43 billion	0.74 billion	0.92 billion
<i>Less Developed</i>	0.31 billion	1.00 billion	2.57 billion
Developing Asia	0.22 billion	0.52 billion	1.35 billion
<i>China</i>	0.07 billion	0.20 billion	0.61 billion
<i>India</i>	0.06 billion	0.16 billion	0.36 billion
<i>Other</i>	0.09 billion	0.16 billion	0.38 billion
Latin America	0.07 billion	0.23 billion	0.43 billion
<i>Mexico</i>	0.01 billion	0.05 billion	0.09 billion
<i>Central America</i>	<0.01 billion	0.01 billion	0.03 billion

### B. *A Gap of Perception*

In a sense, this is an extension of the rich-world economy to urban and coastal swathes of poorer countries—or an intrusion of the poor-country economy into the rich world. In rich countries, it often seems an alarming and distasteful intrusion in which tens of thousands of factories employ workers at low wages in places where governments have little ability (and sometimes little desire) to regulate for safety, fair wages, and pollution control. The phenomenon arouses a mix of sympathy and fear.

The press frequently covers low-wage or unsafe sweatshops in poor countries, and occasionally highlights horrific pollution problems in China or on the Mexican border.<sup>145</sup> Americans respond with a sincere conviction that we as customers should feel some responsibility for the workers who make our clothes, shoes, and

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the emerging markets” in Asia, Latin America, and Eastern Europe, based on revenue from “the last three months of 1993.”)

143. In 2008, the United States imported \$37 billion in textile clothing (HTS Commodity Number 61), of which \$11 billion (29%) came from China alone. U.S. Int'l Trade Comm'n Import Data, <http://lawreview.law.wfu.edu/documents/45.2.data.xls> (ClothingImports tab). In 2008, the United States imported \$252 billion in consumer electronics (HTS Commodity Number 85), of which \$134 billion (53%) came from China and Mexico alone. *Id.* (ElectronicsImports tab).

144. See United Nations, World Urbanization Prospects: The 2007 Revision Population Database, <http://esa.un.org/unup/> (last visited May 1, 2010).

145. See, e.g., Nicholas D. Kristof, *Asia's Crisis Upsets Rising Effort to Confront Blight of Sweatshops*, N.Y. TIMES, June 15, 1998, at A1; Tim Weiner, *U.S. Will Get Power, and Pollution, from Mexico*, N.Y. TIMES, Sept. 17, 2002, at A3.

television sets. Public-opinion surveys suggest powerful public support for requiring poor countries to meet basic labor and environmental standards in order to trade with the United States.<sup>146</sup>

At the same time, low-wage export work in poor countries can appear to threaten jobs and production in the United States. To use one careful survey, a 2004 report by the U.S. International Trade Commission found that garment-industry wages in China were \$0.88 per hour, in Haiti \$0.49, in Kenya \$0.38, in Mexico \$2.45, in Colombia \$0.98, and in the Philippines \$0.76.<sup>147</sup> The Bureau of Labor Statistics, meanwhile, found that U.S. wages in the same industry were \$10.43 per hour—four times Mexico's rate, twelve times China's, and twenty times Haiti's.<sup>148</sup> This disparity can be alarming in a competitive sense as well as a reason for sympathy. The result is that one strand of rhetoric and emotion in the campaign for labor linkage, mixed with the humanitarian sense of responsibility to poor-country workers, is a desire to insulate Americans from competition with them. Jesse Jackson's insistence during the NAFTA debate that "we can compete with Mexican workers, but we cannot compete with 50 cent an hour wages"<sup>149</sup> has a more contemporary match in Senator Bernie Sanders' speech on the United States-Peru FTA, insisting that approving the agreement would force Americans into a competition with "people who make 91 cents an hour."<sup>150</sup>

To poor-country governments and intellectuals, these reactions often look contradictory and threatening. To them, export factories often seem less like zones of exploitation and low pay than portals through which very poor people can enter at least a fringe of the rich-world economy. Research by the ILO and the WTO, for example, finds that about 60% of developing-world workers are in informal sectors—that is, people picking up occasional work on construction sites, doing odd jobs, selling small-scale farm produce, and so on.<sup>151</sup> Such workers often have no regular salaries or hourly

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146. PROGRAM ON INT'L POLICY ATTITUDES, AMERICANS ON GLOBALIZATION: A STUDY OF US PUBLIC ATTITUDES 2, 20, 28–30 (2000), available at [http://www.pipa.org/OnlineReports/Globalization/AmericansGlobalization\\_Mar00/AmericansGlobalization\\_Mar00\\_rpt.pdf](http://www.pipa.org/OnlineReports/Globalization/AmericansGlobalization_Mar00/AmericansGlobalization_Mar00_rpt.pdf).

147. U.S. Int'l Trade Comm'n, Pub. No. 3671, *Textiles and Apparel: Assessment of the Competitiveness of Certain Foreign Suppliers to the U.S. Market*, at 3-7 (2004), available at <http://www.usitc.gov/publications/docs/pubs/332/pub3671/pub3671.pdf> [hereinafter *Textiles & Apparel*].

148. Bureau of Labor Statistics, Occupational Employment Statistics, <http://www.bls.gov/news.release/ocwage.t01.htm> (last visited May 1, 2010) (showing a mean hourly wage of \$10.43 for sewing machine operators).

149. Jesse L. Jackson, President, Rainbow PUSH Coalition, Address at May Day Rally Against NAFTA: Trade Should Not Be an End in Itself (May 1, 1993), available at <http://www.nathanneuman.org/EDIN/trade/NAFTA/Jess.html>.

150. 131 CONG. REC. S146,691 (daily ed. Dec. 3, 2007) (statement of Sen. Sanders).

151. See ILO & WTO, GLOBALIZATION AND INFORMAL JOBS IN DEVELOPING

wages at all; GDP data suggest that the informal sector accounts for only a third of developing-world GDP,<sup>152</sup> meaning that workers in it are very poorly paid.

The export-factory workers fall into a middle-earning tier, and sometimes a favored tier. At a \$0.49 hourly wage, for example, Haiti's 27,000 garment workers earn \$5 per day. They are among only about 300,000 of Haiti's 8.5 million people with wage-paying work, and make about three times the national per-capita income of \$1.81 per day.<sup>153</sup> On the other side of the world, the \$70 to \$90 per month that a Cambodian girl in a factory earns is enough to raise her rural family's food security from two months to a year.<sup>154</sup>

Thus, a gap of perception opens. The conscientious developing-country official or economist hopes to ensure employment for young people streaming out of impoverished rural areas, and views hourly-wage factory work as superior to intermittent informal work. To such people, proposals to link export privileges with labor and environmental standards—especially when coupled with rhetoric suggesting that competition with low-wage workers is unfair—are liable to take away jobs that can offer deprived people reliable wages. The comments of former Indian Commerce Minister Kamal Nath, listing potential threats to recovery from the financial crisis, are typical:

A . . . key risk that needs concerted global attention is that of protectionism. These protectionist measures could take the shape of erection of legitimate trade barriers (both tariff and non tariff) to free trade with a view to protecting their domestic industry or take recourse to disguised measures through non trade issues such as labour standards, animal welfare and other non trade measures which could be used as a basis of shielding uncompetitive domestic industries.<sup>155</sup>

### C. *In Summary*

Debates in the United States often blur concern for environmental quality and the well-being of workers with a fear of competition that is understandable, but can appear threatening to

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COUNTRIES 27 (2009), available at [http://www.wto.org/english/res\\_e/booksp\\_e/jobs\\_devel\\_countries\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/jobs_devel_countries_e.pdf).

152. *Id.* at 30.

153. See DoingBusiness.org, Doing Business in Haiti, <http://www.doingbusiness.org/ExploreEconomies/?economyid=85> (last visited May 1, 2010).

154. U.S. AGENCY FOR INT'L DEV., FACTORY-LEVEL ANALYSIS OF CAMBODIA'S APPAREL INDUSTRY 23–24 (2007), available at [http://www.usaid.gov/kh/documents/Cambodia\\_ValueChain\\_Garment\\_Industry\\_2008.pdf](http://www.usaid.gov/kh/documents/Cambodia_ValueChain_Garment_Industry_2008.pdf).

155. Press Release, Dept. of Comm., Gov't of India, Text of Kamal Nath's Speech at Davos on Managing Global Risks (Jan. 29, 2009), available at [http://commerce.nic.in/pressrelease/pressrelease\\_detail.asp?id=2371](http://commerce.nic.in/pressrelease/pressrelease_detail.asp?id=2371).

jobs in poor countries. Therefore, officials in many influential developing countries conclude that linkage proposals could do more to harm than to help workers—trapping them in wholly unprotected and very low-wage informal work, rather than improving their lives in factories—and remain suspicious of the concept. Therefore, U.S. labor-linkage achievements usually come through pressure on often unwilling partners, rather than through an international consensus that trade-labor linkages are appropriate, and the linkages are mostly confined to a few FTAs.

#### IV. PRIVATE-SECTOR INITIATIVES ARE UNDERESTIMATED

This situation leaves us a bit pessimistic. On one hand, successful efforts to use FTAs to spur labor and environmental reform have had only modest effects, and only three countries have voluntarily adopted trade-labor linkage programs. On the other, governments in many major developing countries believe that they have powerful reasons for resisting labor (and to a lesser extent, environmental) linkages to trade policy enforced on a broad scale through the WTO or other multilateral institutions.

But we also have some reasons for optimism. While advocates may have overestimated the effect of adding labor and environmental standards to FTAs, they have underestimated the real-world effect their campaign has had.

##### A. *Codes of Conduct*

In WTO debates, environmental linkages have been fairly successful whereas labor policy has been blocked.<sup>156</sup> Outside government, by contrast, labor standards have advanced rapidly through voluntary business codes of conduct and factory-inspection programs.<sup>157</sup> These labor standards cover flows of trade that, while not easily measured, are large, touching all major U.S. developing-country trading partners and much of our imports of clothes, shoes and sports gear, and increasingly toys and consumer electronics.<sup>158</sup> These standards' effect on the lives of poor-country export workers is also hard to measure but likely very positive.

When NAFTA was signed in 1992, most businesses viewed labor conditions as matters of national law which should be left to

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156. See *supra* notes 93–101 and accompanying text; see also GEORGE TSOOGAS, LABOR REGULATION IN A GLOBAL ECONOMY 130–33 (2001).

157. See TSOOGAS, *supra* note 156, at 62–63.

158. See *id.* at 37–38; see also, e.g., Toys “R” Us, Code of Conduct for Suppliers, [https://vendorconnect.toysrus.com/vendorextranet/common/act\\_download\\_pdf.cfm?str\\_filename=TRU%20SCOC%202008%2002%2012.pdf](https://vendorconnect.toysrus.com/vendorextranet/common/act_download_pdf.cfm?str_filename=TRU%20SCOC%202008%2002%2012.pdf) (last visited May 1, 2010) (describing goals “to enhance the quality of life for workers” and “to continually improve performance on workers rights [and] labor standards”).

governments.<sup>159</sup> When challenged over this, they argued that multinational businesses typically paid higher wages and operated according to higher standards than poor-country domestic businesses.<sup>160</sup>

At the time, only two companies offered a different approach. San Francisco apparel-maker Levi Strauss and athletic-shoe manufacturer Reebok adopted “codes of conduct” focused on labor conditions in 1991 and 1992, respectively, and required their suppliers to meet a uniform set of standards worldwide regardless of local law.<sup>161</sup> No other brand, retail chain, or trade association had such an initiative.

Sixteen years later, after intense public attention to workplace standards and abuses in the media, in Congress, and in trade negotiations, virtually all major U.S. retail chains, big-box stores, consumer-goods trade associations, and clothing and shoe brands have extensive inspection policies conducted by independent auditors.<sup>162</sup> And according to the Department of Labor, a majority of *all* apparel manufacturers and retailers have codes that address child labor.<sup>163</sup> Together they amount to (a) a world-wide system of factory standards based on concepts close to those advocates hope to

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159. See Lance Compa, *International Labor Rights and the Sovereignty Question: NAFTA and Guatemala, Two Case Studies*, 9 AM. U. J. INT'L L. & POL'Y 117, 118, 133–34 (1993) (describing opposition to international labor standards, and explaining that the NAFTA side agreement on labor required adherence to domestic labor law rather than uniform standards); cf. DAVID C. KORTEN, *WHEN CORPORATIONS RULE THE WORLD* 147 (1995) (listing members of the Business Roundtable who lobbied for passage of NAFTA).

160. See Manfred Fiedler, *Impact of the Potential Free Trade Agreement Between the United States and Mexico on Collective Bargaining from the Point of View of U.S. Companies*, in *THE NORTH AMERICAN FREE TRADE AGREEMENT: LABOR, INDUSTRY, AND GOVERNMENT PERSPECTIVES* 116, 117 (Mario F. Bognanno & Kathryn J. Ready eds., 1993); Robert F. Housman & Paul M. Orbuch, *Integrating Labor and Environmental Concerns into the North American Free Trade Agreement: A Look Back and a Look Ahead*, 8 AM. U. J. INT'L L. & POL'Y 719, 729 (1993).

161. See Lance Compa & Tashia Hinchliffe-Darricarrère, *Enforcing International Labor Rights Through Corporate Codes of Conduct*, 33 COLUM. J. TRANSNAT'L L. 663, 675–79, 681–83 (1995).

162. See *id.*; *supra* note 158; see also, e.g., GAP, INC., *CODE OF BUSINESS CONDUCT* (2009), available at [http://www.gapinc.com/public/documents/Code\\_English.pdf](http://www.gapinc.com/public/documents/Code_English.pdf); TARGET, INC., 2009 CORPORATE RESPONSIBILITY REPORT 21–23 (2009), available at [http://sites.target.com/images/corporate/about/responsibility\\_report/2009/full\\_report.pdf](http://sites.target.com/images/corporate/about/responsibility_report/2009/full_report.pdf) [hereinafter TARGET MANUAL]; WAL-MART STORES, INC., *ETHICAL STANDARDS, STANDARDS FOR SUPPLIERS MANUAL* 18–19, 33–48 (2009), available at <http://walmartstores.com/download/4216.pdf> [hereinafter WAL-MART MANUAL].

163. See U.S. DEP'T OF LABOR, *THE APPAREL INDUSTRY AND CODES OF CONDUCT: A SOLUTION TO THE INTERNATIONAL CHILD LABOR PROBLEM?* 8 (1996) (“[T]oday, the majority of the major apparel manufacturers and retailers have developed or are developing codes or business policies that address child labor and other working conditions.”).

embed in trade agreements, adding wage issues and safety standards to the ILO Declaration on Fundamental Principles at Work; and (b) an inspection regime more ambitious than those of the ILO or the U.S. government.

Codes of conduct are most advanced in the garment industry, perhaps because it attracts the most media and activist attention.<sup>164</sup> The Worldwide Responsible Accredited Production organization (“WRAP”) was launched in 2000 and now enrolls all members of the American Apparel and Footwear Association—the main U.S. clothing and shoe brands, and the big retail chains—along with textile industries in Mexico, El Salvador, Haiti, Hong Kong, Sri Lanka, Turkey, Colombia, and many other countries.<sup>165</sup>

WRAP’s code of conduct matches the labor and environmental conditions in recent trade agreements fairly closely. Like the United States-Peru FTA, it requires factories supplying WRAP members to obey national labor laws, comply with ILO core standards, and meet other workplace standards including limits on working hours, minimum wages, and workplace health and safety.<sup>166</sup> Its environmental code is less extensive than the Peru agreement’s environmental chapter—it does not refer to MEAs—but also requires factories to “comply with environmental rules, regulations and standards applicable to their operations, and observe environmentally conscious practices in all locations where they operate.”<sup>167</sup>

To qualify for WRAP certification, exporters apply online for certification and submit to a comprehensive audit (which reveals areas in which they fall short) and future unannounced inspections to ensure that compliance does not flag.<sup>168</sup> The enforcement apparatus associated with these codes is extensive, extending to sixty-two countries and roughly 11,000 certified factories, and carrying out about 3000 factory inspections annually.<sup>169</sup>

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164. *See id.* at 5–8.

165. WORLDWIDE RESPONSIBLE Apparel Production (WRAP), Production Facility Handbook 6 (2008), available at <http://www.wrapcompliance.org/images/handbooks/WRAPFacilityHandbook2008Edition.pdf> [hereinafter WRAP Handbook]. Since this handbook was published, WRAP has changed its name from “Worldwide Responsible Apparel Production” to “Worldwide Responsible Accredited Production.”

166. *Compare id.* at 5 (listing all fundamental ILO standards as well as wage and hour and safety provisions among WRAP principles and labor rights requirements for accredited factories), with U.S.-Peru TPA, *supra* note 37, art. 17 (adopting the ILO core standards and requiring adherence to national labor laws, defined to include wage and hour and safety standards).

167. WRAP HANDBOOK, *supra* note 165, at 5.

168. *See id.* at 4, 7–20.

169. *See, e.g.*, WRAP, <http://www.wrapcompliance.org/> (last visited May 1, 2010); William A. Douglas, *Who’s Who in Codes-of-Conduct?*, NEW ECONOMY INFORMATION SERVICE, Jan. 2, 2001, <http://www.newecon.org/DouglasCodesofConduct.html>.



This is one of five major certifying organizations.<sup>170</sup> The Worker Rights Consortium, an alliance of 186 colleges and universities (and at least five high schools) which sell branded clothes launched in 2000, has a similar inspection program.<sup>171</sup> The Fair Labor Association (“FLA”) dates to 1999, with similar enrollment.<sup>172</sup> Wake Forest’s own bookstore and apparel-licensing program is a case in point as a WRC participant.<sup>173</sup> The WRC website lets individual students buying T-shirts or bedsheets or administrators making licensing decisions use a database to find all the factories supplying the university with clothes and access regularly updated reports on their compliance.<sup>174</sup>

Most individual retailers have individual codes of conduct and inspection plans as well. The largest, most celebrated and most controversial firm, Wal-Mart, is a representative example. Its code bars suppliers from requiring more than sixty hours of work per week, prison labor, forced labor, child labor, and discrimination, and also requires recognition of collective-bargaining and unionization rights.<sup>175</sup> Target’s code is similar; among its provisions are bans on prison labor and forced labor, a fourteen-year-old minimum working age, a sixty-hour maximum working week, and a requirement that supplier factories comply with local wage and housing laws.<sup>176</sup>

If one estimates a cost of \$3000 per inspection, and 50,000 annual inspections performed worldwide under all codes, then businesses spend \$150 million on inspections each year. By comparison, the U.S. government’s global budget for labor activities through the Labor Department’s International Labor Affairs Bureau was \$81 million as of 2008, including money spent on the salaries of Labor Department officials and consultants, departmental overhead, and a \$40 million pass-through to the ILO.<sup>177</sup> The ILO, with its 1900 professional staff and 40 field offices, has an annual budget of about \$320 million as of 2009.<sup>178</sup> If the estimates are reasonably accurate, the private-sector programs developed since NAFTA now exceed the U.S. government’s international labor operations and

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170. *See id.*

171. Worker Rights Consortium, WRC Affiliated Colleges and Universities, <http://www.workersrights.org/about/as.asp> (last visited May 1, 2010).

172. *See* Fair Labor Association, About Us, <http://www.fairlabor.org/aboutus.html> (last visited May 1, 2010); Fair Labor Association, FLA Affiliates, <http://www.fairlabor.org/affiliates.html> (last visited May 1, 2010).

173. *See* Worker Rights Consortium, *supra* note 171.

174. *See* Worker Rights Consortium, About the Factory Disclosure Database, [http://www.workersrights.org/search/about\\_fdd.asp](http://www.workersrights.org/search/about_fdd.asp) (last visited May 1, 2010).

175. WAL-MART MANUAL, *supra* note 162, at 7–17.

176. TARGET MANUAL *supra* note 162, at 20–23.

177. U.S. DEP’T OF LABOR, FISCAL YEAR BUDGET IN BRIEF 56–57 (2009), available at [http://www.dol.gov/\\_sec/budget2009/BIB.pdf](http://www.dol.gov/_sec/budget2009/BIB.pdf).

178. ILO, *Programme and Budget for 2008–09*, at 1 (March 2009), available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_103527.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_103527.pdf).

rival those of the ILO.

*B. Gaps in Data and Coverage*

The private-sector initiatives have limits. One important limit involves data. Statistics on developing-country labor issues—union density, child-labor rates, working hours, failures to pay minimum wage, factory accidents, and fires—are scarce and difficult to compare among countries, making the effect of the codes over time difficult to evaluate. The same difficulty, of course, confronts governments involved in trade agreements involving labor and environmental standards.

A more troubling gap appears in rural industry. Codes of conduct and inspections systems appear to cover plantation-style export agriculture and natural-resource industries less effectively than urban labor-intensive manufacturing.<sup>179</sup> This gap may be hard to close, as rural industries may be more difficult to inspect and have aroused less interest among activists and media than factory work. The codes may also cover the consumer-electronics, jewelry, toy, and furniture industries less fully than clothing and shoe industries, though this gap seems easier to address.

*C. Summary*

Business codes of conduct have evolved along with trade-policy linkages to labor and environmental issues. Adopted by only two individual companies in 1993, codes now extend to most multinational importers of developing-country manufactured goods. Their terms are similar to those imposed by the labor chapters of FTAs and the labor conditions of preference programs, though their environmental conditions are somewhat less ambitious than those of the United States-Peru FTA.

Though outside the world of government regulation and enforcement based on laws and tariff retaliation, private-sector codes have some advantages. In contrast to FTAs and preferences, they apply to all major developing-country exporters rather than a few selected countries. They feature regular inspections of factories rather than inquiries done only in response to filings of complaints. And though they lack tariff-based legal enforceability, their ability to enforce a code through withdrawing orders from a factory in violation can be quick, direct, and targeted specifically to an offender rather than an entire industry or country.

CONCLUSION

Sixteen years after the NAFTA debate, the Clinton

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179. See generally EDOUARD SAOUMA, U.N. FOOD AND AGRIC. ORG., INTERNATIONAL POLICIES FOR AGRARIAN REFORM AND RURAL DEVELOPMENT, <http://www.fao.org/docrep/U8719E/u8719e05.htm> (last visited May 1, 2010).

administration's political hope remains unfulfilled. No trade consensus enjoying support from American liberals and developing countries has emerged. Instead, liberals remain unhappy with trade policy and most developing countries remain suspicious of proposals to link trade at least with labor policy.

In policy terms, the post-NAFTA record is mixed: many achievements, but these achievements often appear more significant on paper than they are in reality. Each of the FTAs negotiated since NAFTA contain labor and environment standards, as do four of the five new preference programs. But these agreements have brought less tangible change than advocates might have hoped, and do not appear capable of doing much more.

A few countries have voluntarily linked trade to labor standards, led by Cambodia, but these countries have attracted support only in the rhetorical rather than the policy sense.

But viewed from yet a different angle, advocates have reason for some satisfaction. If the campaign to link labor and environmental standards to trade is an effort to respond to a changing commercial world, in which developing countries take up greater roles as producers and exporters of manufactured goods, much has gone right. Trade-environmental linkages have not solved the world's environmental crises, but have gained wide international acceptance. Some FTAs, especially that with Peru, tackle issues with significant real-world environmental impact. At the WTO, environmental linkages have considerable worldwide support, and the Doha Round offers an opportunity to add them to the MFN trade systems that mean most.

Labor linkages have won less international acceptance from governments, but are now widely adopted in the actual world of sourcing and factory life. In 1993, virtually all labor regulation was left to developing-country governments; today, businesses operate a vast network of inspections around the world meant to enforce a more-or-less uniform set of worker rights and factory-quality standards. This system is incomplete, lacking a genuine legal foundation and with large gaps in rural industry, but reaches most of the developing world's light-manufacturing industry. Meanwhile, the American market has remained largely open to developing-country goods, providing one path for very low-income people to move from rural poverty to wage-paying regular work in cities. In this context, advocates can reasonably look back on the last twenty years with some frustration and self-criticism, but also as a period of accomplishment.