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THE MULTINATIONAL'S MANIFESTO ON SWEATSHOPS, TRADE/LABOR LINKAGE, AND CODES OF CONDUCT

Donald C. Dowling, Jr.[†]

I. INTRODUCTION

These days we hear lots of talk about sweatshops and about linking free trade with labor standards. Just in the last several months, long articles on these topics have appeared in the *New York Times Sunday Magazine*, *Atlantic Monthly*, *Foreign Affairs*, *Rolling Stone*, and plenty of other places. But have you noticed that pretty much everything out there on sweatshops and trade/labor linkage sets out the views of labor unions and anti-sweatshop activists—not *multinational employers*? This is strange, because American business is rarely so reticent. Think of all the other issues that pit *Fortune* 500 companies against champions of individual workers' rights—topics from unionization to family leave to minimum wage to affirmative action to class-action discrimination lawsuits to mandatory employer-provided health care. In all these areas, U.S. companies do a fine job of telling us where they stand. But when the subject turns to sweatshops and trade/labor linkage, America's multinationals get strangely quiet.

Of course, we know that big U.S. companies *say* they oppose "sweatshops," and we know the big U.S. companies all have adopted, finally, "codes of conduct." But we also know that U.S. companies *fight* any move to link minimum labor protections to global free trade rules. How do they reconcile these positions? Beyond these basic (and

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seemingly contradictory) positions, we know little about U.S. businesses' analysis of sweatshop/fair trade issues. For example, how do America's multinationals respond to charges that they exploit third-world labor by paying pennies per hour to virtual slaves toiling overseas in Dickensian factories? And how can American business possibly justify its position that it is okay to free up world trade *without* taking any meaningful steps to regulate third-world labor standards?

I, of course, do not speak on behalf of the *Fortune* 500 or America's multinationals. But in the consulting work I do with international companies' employment operations, I have thought a lot about labor unions' and anti-sweatshop activists' claims. And to me, the unions and activists seem guilty of a huge omission: they ignore (or dismiss out-of-hand) the excellent job third-world countries' *own legal systems* already do in protecting poor workers. That is, rich-country unions and anti-sweatshop activists make a fundamental mistake when they assume that work standard laws in rich countries like the United States (U.S.) protect laborers better than the corresponding rules in poor nations. And rich-country labor unions and anti-sweatshop activists are way off base when they accuse poor countries of not *enforcing* their existing worker-protection laws against multinationals and local employers in world trade.

If you follow the anti-sweatshop and "free trade is fair trade" debate from the U.S., my position surely comes as a shock. Pretty much everyone else in rich countries, even the multinationals, seems reflexively to accept the underlying assumption that dirt-poor countries do not adequately protect their own impoverished workers. That is why (according to the accepted thinking) we need the rich first world to step in and impose its more-enlightened work standards to protect poor countries' workers from themselves (or from their uncaring governments). But, surprising as it may be to us in rich countries, the third world has long boasted—on the books—*much tougher* anti-sweatshop (worker protection) laws than the U.S. And these poor-country anti-sweatshop laws are—already today—well *enforced* against the activists' targets: multinationals and local companies involved in international trade.

My thesis here is that rich-country labor unions and anti-sweatshop activists need to learn a lot about poor countries' worker protection laws (and law enforcement) before they criticize poor countries for weak laws and weak enforcement. When these unions and activists understand how tough poor countries' labor laws and enforcement really are, they will realize they have to ground their anti-sweatshop crusade in a respect for all that poor countries do to protect their own workers. Indeed, multinational companies themselves should study poor countries' laws and law enforcement, and then re-visit their codes of conduct, which today mostly

grow out of rich-country aspirations divorced from the tough rules of the third-world workplace. Corporate codes of conduct should all begin with, and be grounded in, a commitment to comply with poor countries' surprisingly tough worker protections.

To establish my thesis, I will address three main topics. First I will examine precisely what poor countries' tough worker protection laws actually say and how they are enforced. This first step is critical because the rich world's mushrooming anti-sweatshop movement grows out of the reflexive—but dead wrong—assumption that poor nations' worker protection rules are inadequate and inadequately enforced. Second, I will address how any credible drive to link labor standards to international free trade has to begin with a respect for poor countries' tough labor laws. And third, I will tell multinationals how to design codes of conduct that factor in poor countries' tough anti-sweatshop rules and assure compliance. The goal of my paper is to study the realities of third-world labor protection laws and how they are enforced, and to understand the issues behind trade/labor linkage, in order to help multinationals craft viable codes of conduct that work in the real world and that respect the people we all want to protect.

II. UNDERSTANDING EMPLOYMENT TRADITIONS AND LAWS IN THE WORLD'S POOR COUNTRIES

The starting point for everything I will say in this paper is counter-intuitive to anyone from a rich nation steeped in the anti-sweatshop and trade/labor linkage battle: *the poorest countries of the world do a lot better job than the U.S. does in legislating and enforcing worker protections against sweatshops*. This position will seem so heretical to workers' rights activists (in rich countries) that it will take pages and pages of facts and proof to back it up. So here we go.

A. *The Developing World's Employment Laws and Traditions—and the Globalizing Multinational*

Employment rules and cultures differ markedly even *among* rich countries. France, famously, now boasts a thirty-five hour work week; Germany and the Netherlands are recognized for their unions and works councils; Japan is famous for its lifetime employment system; Canada and Australia are known for enlightened rules respecting the dignity of the worker; and the U.S. is envied worldwide for its rock-bottom unemployment. But we are not here to examine these differences among employment traditions in rich countries. We are concerned with sweatshops in poor countries. And the difference between first-world and third-world employment traditions and laws is even more immense than

the differences among rich country systems. So let us put aside the media-fed preconception that impoverished workers in poor countries suffer under lax labor protections and even more lax labor law enforcement. We need to focus on what third-world work standards and employment *actually are*.

Because it is chiefly human rights and organized labor groups *based in the U.S.* that make an issue of multinationals' third-world sweatshop conditions, we need to compare third-world anti-sweatshop laws *to those of the U.S.* The dream of anti-sweatshop and anti-free trade activists is that the third world would live up to standards at least as good as those of the U.S. The good news: that dream is already a reality. Poor countries' existing (and enforced) worker protections are not only *adequate*, they are decades *ahead of* corresponding U.S. rules.

However, laying out the analysis to support this statement takes some time, because, unfortunately, there is no consistent definition for "sweatshop." (The word "sweatshop" gets used loosely as a label for workplaces with conditions that do not please the speaker.) Of course, if we want to study anti-sweatshop protections for workers, we need to focus on actual laws and rules—not on activists' gut feelings. So let us compare the laws now on the books—and enforced—between poor countries and the U.S., laws that mandate all the components that add up to whether a workplace is or is not a "sweatshop": laws on minimum workplace protections; child labor; forced labor; labor union rights (collective organization); and mandatory benefits.

1. Minimum Worker Protections

Let us turn first to the basic, lowest common denominator laws that protect workers by requiring decent work conditions: *minimum worker protections*. To judge the adequacy of third-world laws on minimum worker protections, we of course need a standard. Because the rich-country labor unions and anti-sweatshop activists crusading on behalf of impoverished workers mostly come from the U.S. and usually hold the U.S. up as their standard, we need to begin by reminding ourselves just what are *America's* minimum worker protection rules.

Employment-at-will, of course, is still the starting point and legal underpinning of employment relationships in the U.S. American human resources experts and employment lawyers like to say the employment-at-will rule has been "eroded" away (mostly by U.S. anti-discrimination laws). But this is a historical, not an international, perspective. Talk to employment experts in any other country, be it in Asia, Africa, Europe, the Mid-East, or Latin America. You will hear that, by international standards, American employment-at-will is alive and robust. Indeed,

many in America today credit this iconoclastic U.S. employment-at-will rule with no less than U.S. domination of high technology and the world economy. According to a recent *New York Times* editorial, "U.S. firms are quick[est] to absorb new technologies because they can easily absorb the cost of the new investment by *laying off the workers who used to perform that task.*" No less an expert than Alan Greenspan said (in July 2000) that America's world-beating economic performance grows out of the good old American "freedom to hire . . . and fire."

For those concerned with the plight of poor workers, the point is that America's employment-at-will doctrine leaves U.S. employers free to dictate most aspects of work life. The result: America lags behind much of the world—rich and poor alike—in tough worker protection requirements. For example, American law imposes absolutely no cap on hours worked in a day or week (overtime *pay* is required, but an American boss can legally assign an eighty hour week). No U.S. law gives employees a right to any rest periods, meal periods, coffee breaks—or even bathroom breaks (although certain states have rest period laws, and in extreme cases OSHA safety rules might kick in). No U.S. law entitles workers to any rest between shifts, except for special cases like airline crews. And no U.S. law stops employers from assigning work on Sundays and holidays (indeed, U.S. workers do not even have a right to premium-rate pay for working a Sunday or holiday if it is not overtime).

Not surprisingly (indeed, *inevitably*), America's lack of minimum worker protection laws leads to "sweatshops" on U.S. soil. This is why American sweatshops get "discovered" all the time—particularly in urban immigrant communities in New York and Los Angeles. The *Washington Post* says "there are thought to be 2,000 or more *illegal* sweatshops in New York City." Our point here, though, is that America's wholesale lack of tough laws on rest periods, caps on overtime, and the like mean the number of *legal* "sweatshops" in America is much higher.

Of course, most U.S. workplaces are not sweatshops. Lots of big U.S. companies offer cushy, well-paid jobs boasting plenty of rest periods, vacations, time off, and the like. Any American reading this article likely enjoys one of these comfortable jobs, or is studying to qualify for one. But U.S. labor unions and anti-sweatshop activists do not waste their time on rich workers with comfortable positions. Their concern is the plight of the *poorest* workers with the *worst* jobs. And you can be sure that—right here in America—there are thousands of small, under-the-radar employers exploiting America's working poor by *legally* assigning mandatory overtime and by *legally* denying American workers rest periods, adequate time off, and the like.

So that is *America's* system, the system that labor unions and activists use as a comparator internationally. Now let us look at laws in the third world. Let us look at some *typical*—not particularly generous—examples of specific minimum worker protection laws in specific poor countries. Going way beyond America's stingy employment-at-will, "hands-off" workplace regulation philosophy, third-world countries impose minimum wages, they cap hours worked, and they mandate rest breaks. China caps work at nine hours per day—one hour of which must be paid as overtime. Brazil, Chile, Ecuador, Macedonia and most other counties define a standard workday and allow *some* premium-pay overtime—although subject to an absolute cap on overtime worked. Bulgaria simply prohibits overtime entirely, except in national emergencies or other extreme situations.

Rest period laws are common in poor countries, usually with full pay. Filipino workers all get a full hour off for lunch, and Filipino law mandates twenty-four hours rest after six days worked. Sri Lankan and Turkish law both decree a worker get a *full hour's rest* during each shift. Guatemala, El Salvador and most all countries outside the U.S. impose mandatory meal breaks. And poor countries' labor codes commonly force employers to give workers Sundays and public holidays off—often *with pay*. Dominican Republic workers enjoy a legal right to *paid* holidays off. El Salvador requires Sundays off. Nepal and Mexico require at least one day off per week; in Mexico, the day off must be *paid*. And a South Korean *criminal law* requires all employers to give women employees, in addition to their vacation and holidays, an *extra day off every month, with pay*. (Taking this leave though, can get a little awkward: Korean women's monthly paid day off is for menstruation.)

In one area related to sweatshops—health and safety laws—some third-world nations *do* lag behind rich countries. But contrary to what labor unions and activists in the rich world will tell you, developing nations' health and safety codes are far from a free-for-all. Two typical examples are Bulgaria and the Philippines. Each impose complex "Occupational Health & Safety Codes" spelling out specific rules for various types of work. The codes have catch-all clauses imposing on employers a general duty to ensure worker health and safety. Brazil not only has a comprehensive safety law, but it requires all but the smallest employers to employ a doctor on-site. And Pakistan's safety code is particularly detailed. It spells out, for example, ventilation requirements by industry, and it gets so down-and-dirty that it not only establishes minimum numbers of toilets, it regulates how employers *clean* them. (At least two lime washings per year, and records must be kept.) Also, almost all poor countries commonly have *worker compensation* systems for on-job

injuries similar in concept to those of the U.S. Nigeria not only boasts a workers' compensation system, it outstrips the U.S. by offering workers a *paid sick leave* program covering even non-work-related illness.

2. Child Labor

What about protections for *children*—child labor laws prohibiting employers from hiring kids? Rich-country labor unions and human rights activists talk so much about child labor abuses in the third world that most of us in rich countries just assume poor countries have not laid down the law on keeping kids out of the workplace. What are the facts?

Again, to judge the adequacy of third-world laws we need some standard, some yardstick for comparison. The U.S. labor unions and activists always hold out the U.S. So let us start by asking what are *America's* child labor laws. The lowest U.S. work age is *not* sixteen. The U.S. Code allows kids as young as *fourteen* to work agricultural and certain other jobs. And when an agricultural employer is a parent, America's minimum age actually dips to just *twelve*. Indeed, the U.S. imposes *no minimum work age whatsoever* for children who work making wreaths, delivering newspapers, or acting. And a little-known clause in the U.S. Code conjures up *The Grapes of Wrath* by allowing kids *as young as ten* to do "piece rate" work as "hand harvest laborers in an agricultural operation." And do not think we are listing technicalities buried in law books and the U.S. Code. Child labor is rampant at all levels of American society. Mark Brady, a lawyer and city councilman in the tony ski resort of Snowmass, Colorado, sent his son off to work as a supermarket grocery-bagger at age *eleven*. At that market, Brady's kid labored alongside co-workers as young as *nine*.

Now let us look at child labor laws in the third world to see how they measure up to U.S.-law standards. Poor countries' child labor laws are downright *strict*. According to a scholarly law article citing the International Labour Office, "almost every country, through domestic or international law, prohibits children from performing work that interferes with their educational, physical, mental, and moral development." Some typical (not selective) examples: minimum work age in Egypt and Nepal is fourteen, and is subject to caps on hours until a youth reaches seventeen. Brazil's minimum age is fourteen, but no one under eighteen can work at night. South Africa's and Vietnam's minimum ages are fifteen. China's is *sixteen*, and no one under eighteen can work dangerous jobs. (China may often get criticized for *forced* labor, but even human rights and U.S. organized labor groups do not accuse China of tolerating widespread *child* labor.) India prohibits working until a kid is fourteen, but then imposes special restrictions; for example, Indians under sixteen cannot exceed four

and a half hours worked per day, and no Indian under eighteen can work unsupervised in a mine. Indeed, most poor countries specially safeguard kids just entering the workforce (and often women) barring them from working certain dangerous jobs and working at night. (The U.S. Supreme Court has held that special protections like these, as applied to women, are unconstitutional.)

3. Forced Prison Labor

Another huge sweatshop bugbear is forced labor—that is, prison, or so-called “slave” labor. Do poor-country laws adequately prohibit it? Again we need some yardstick to measure “adequacy,” so let us turn first to the U.S., the country that American labor unions and activists hold out as the standard to spread to the third world.

With slave labor, the U.S. is no international role model at all. After all, we are the folks whose forefathers wrote slavery into our constitution—a shameful mistake we corrected only after our Southern states lost a civil war they fought to preserve their constitutional right to own slaves. These days, while America, of course, now bans most forms of slavery, there is a big qualification: even today, America freely allows *prison labor*. Few Americans understand that the old Southern chain-gang approach to U.S. penology did not disappear; it morphed into the widespread present-day practice of using American prisoners to man sub-minimum wage factories.

Right now, more than 80,000 U.S. inmates make stuff in American prison factories at hourly wages ranging from 21 cents to little over \$1. Take Arthur Burnam, a convicted armed robber serving time in the Federal Correctional Institution in Milan, Michigan. Burnam is a lucky one; his job as a quality control inspector in a for-profit private furniture factory nets him \$1.65 per hour—a whopping wage for a U.S. prisoner. However, if Burnam were Chinese, U.S. Customs would bar the furniture he helps make as illegal contraband—the product of forced labor. Incredibly and hypocritically, while it is *legal* to make (and sell) stuff in America using prisoners, it is *illegal* to import into the U.S. anything prisoners made abroad.

And prison labor aside, in America *other* forms of forced labor and slavery, although illegal, are more common than Americans think, because the U.S. does not enforce its anti-slavery laws very well. In April 2000, the *New York Times* disclosed a secret CIA report called “International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery.” According to the CIA report, real slavery (including “virtual sex slaves” and “indentured servitude”) on U.S. soil is far more widespread than is generally known. The CIA report blames

weak American enforcement and weak penalties, and offers the example of seventy Thai slaves recently caught on U.S. soil toiling twenty-hour shifts in a California sweatshop. The slave drivers, according to the report, got off too easy, with sentences ranging from a few months to a few years.

Against this backdrop, let us examine forced, slave, and prison labor laws in poor countries. Forced and slave labor are widely *illegal* abroad; indeed, many nations exceed the lax U.S. standard and prohibit domestic prison labor. The pool of countries that human rights and U.S. organized labor activists point to as hotbeds of forced labor is small (China and Burma are the two lead examples). Even the activists do not claim slaves or prisoners make many goods exported out of Latin America, Africa, Eastern Europe, and much of the rest of Asia.

The best proof that forced/prison labor is not all that widespread abroad, at least in international trade, is enforcement of the U.S. Customs law we mentioned, on the books for decades, that bans U.S. imports of goods made from forced, including prison, labor. Although Customs has stepped up enforcement of this law in recent years in response to public outcry against slave/prison labor, the amount of goods made using forced labor that importers try to sneak into our country is, by all accounts, negligible.

4. Labor Unions and the Right to Organize

Another huge “sweatshop” issue regarding developing-world employment is the existence and viability of *labor unions*—the right to organize. Labor unions and champions of human rights in rich countries insist that the right to organize collectively is a basic human right. They imply that workers in the third world are commonly denied this right. What are the facts? Again, we need some standard by which to measure how well poor countries are doing, so we first need to understand the right to unionize in the U.S. While American workers in theory have a *legal* right to organize, they *exercise* that right infrequently. The U.S. private-sector unionization rate in 2000 was just 9.0%—so low that in September 2000 a human rights organization, Human Rights Watch, declared the U.S. in violation of international human rights standards, for *effectively* denying Americans the right to organize.

In sharp contrast, organized labor in much of the developing world thrives. Virtually every country in the world—even Communist Cuba and China—offers workers some right to organize, and countries like Brazil and Vietnam actually *require* unions. Even where not required, workers in many, perhaps most, developing nations exercise their right to unionize a lot more often than American workers do. Poor nations around the globe boast *high* labor unionization and high days-lost-to-strike rates, and they

boast even more workers covered by collective agreements (abroad, “sectoral” collective agreements often protect even non-union workers in an industry). Indeed, some poor countries (Mexico and Venezuela are two examples) have been dominated by labor-affiliated political parties—and therefore boast union laws much more union-friendly than those of the U.S. And much of the developing world prohibits employers from using strike replacements—a heavy-handed, anti-union practice still perfectly legal stateside.

In some Asian and Latin American nations, labor unions are sometimes accused of being *too* strong (examples include Argentina, Brazil, Indonesia, India, South Korea, and Taiwan). Nationwide strikes have brought developing countries to a standstill (this happened in Malaysia in 1999 and would have happened in Nigeria in 2000 except that the Nigerian government caved in to big labor’s demands regarding gasoline pricing). Even within the European Union, it is the *poorest* country (Greece) that leads the continent in workdays lost to strikes. (Ironically, when a poor country gets shut down by a nationwide strike, rich countries, rather than praise “labor democracy in action,” actually *complain*, bemoaning “instability” and “social unrest.”) And collective action in the third world extends beyond just the blue-collar sector. In February 2000, in India, the *lawyers* went on strike. Attorneys swarmed the streets of New Delhi until—in what sounds like a lawyer joke come true—police beat them back with water canons and bamboo clubs.

But what about *employer domination* of unions in the third world? American unionists will tell you that some poor countries tolerate employer-established unions (in-house bodies that are not truly independent). This is true. Few nations have labor union laws as adversarial as those of the U.S.—so other countries tend *not* to see employer involvement with worker groups as evil. But overseas, employer-dominated unions do not often choke out real, independent labor organizations. Look at Mexico, an oft-cited example of a country that tolerates employer-dominated unions. While Mexican industry *does* indeed have plenty of employer-dominated worker groups and even a good number of sham unions, Mexico simultaneously boasts a thriving sector of *truly independent* unions. These real unions represent a far bigger chunk of the Mexican national workforce than American organized labor represents stateside. Therefore, U.S. unions are in no position to condemn Mexico for holding down real labor organization.

However, organized labor in a handful of countries—including notably Communist countries like China and Cuba—can be too beholden to *government*. And sometimes poor-country governments try to wrest control of organized labor. For example, because Venezuelan unions have

traditionally been so strong and independent, Venezuela's authoritarian president Hugo Chavez in late 2000 tried to replace union bosses with his own cronies.

5. Mandatory Worker Benefits

In looking at anti-sweatshop laws we started with the basics—worker protections, rules against child and forced labor, and laws allowing for labor unions. The next level up is *mandatory benefits*. What extra goodies do poor countries force employers to give workers, over and above their wages? Again, we need a standard, so let us start with the U.S. American-style employment-at-will leaves U.S. employers free to decide the benefits their talent gets. This means U.S. law leaves U.S. companies free to offer *no* health care, *no* vacation (paid or unpaid), *no* holidays (paid or unpaid), *no* severance pay, *no* paid maternity leave, and *no* retirement money beyond meager social security. Of course, lots of cushy American jobs do come with many of these benefits. But we need to compare “apples” with “apples”: Because our sweatshop concern is for the third world's worst-off workers, we have to compare to *America's* worst off. And millions of low-wage Americans toil daily getting *no* health insurance, *no* private retirement plans, *no* paid vacation, holidays, or severance.

In sharp contrast to the U.S., even the poorest third-world nations force employers to hand out generous goodies (called “statutory benefits”) over and above wages. And some of these goodies (like profit-sharing and Christmas bonuses) are *cash* benefits. Indeed, in most poor countries wages make up a much smaller component of total compensation than in the U.S., precisely because poor-country employers hand out so many extras.

What kinds of goodies do workers in poor countries have legal rights to receive? For starters, legally mandated paid vacation and holidays are the rule outside the states. Overseas, vacation periods are long—often a month or more per year. Moreover, some developing countries (such as Brazil, Mexico, and Uruguay) even require premium pay for vacations—meaning a worker goes on vacation and *gets a raise*. A handful of poor countries mandate extended paid leaves. For a long-tenured employee, Papua, New Guinea is a paradise: log fifteen years on a job and get a legal right to full-pay “long service” leave for *six months*.

Next, look at profit sharing. Although uncommon and not legally mandated in a single U.S. state, governments throughout Latin America—Chile, Ecuador, Mexico, Peru, and Venezuela—force companies to set aside a chunk (5% to 15%) of their annual profits and distribute it to employees, over and above wages. Brazil requires all employers to offer so-called “Result-Sharing Plans.” And year-end or Christmas bonuses are

similar. While uncommon and never required stateside, countries like Mexico require paying a substantial year-end bonus (called the "*aguinaldo*"), meaning that employees get up to thirteen months' pay. In Argentina, Christmas comes twice each year—a legally mandated *aguinaldo* is due at mid-year and again at year-end. Brazil's law, called the "thirteenth salary," is similar.

Consider severance pay, something else not legally required in the U.S., but something that most all poor (and rich) countries mandate. For example, a fired Argentine with five years on the job gets two months' pay per year worked—and partial years over three months get rounded up. So a fired Buenos Aires factory worker with just over ten years' tenure walks away with a legal right to almost *two years' salary*. In Mexico, fire someone even hired relatively recently and the law requires severance of about four months' pay. And beyond severance, many poor countries go beyond U.S. law by injecting government bureaucrats into the firing process. In China, Colombia and elsewhere, it is flatly illegal to lay off anyone without express government permission. Other countries, like South Korea, require *notice* to bureaucrats and a showing of "economic necessity" in order to lay people off. (And even an employer that complies still has to pay severance.)

Beyond these legally-mandated benefits, lots of countries force employers to give out goodies that, by U.S. standards, seem downright strange. Examples include transportation to work, meals, and even housing. And poor countries from China to Mexico offer employees a web of employer-funded social benefits such as housing funds. Legally-required handouts range widely. Tunisia forces employers to give each worker, annually, two suits of work clothes, two pairs of shoes, and one hat, at half-price. India requires mines and docks to provide workers with sports facilities. My personal favorite is Peru and Venezuela's requirements of *free child-care*. And even where the law does not require extra benefits, third-world employers, by custom, hand out things voluntarily that would be highly unusual in the states. For example, poor-country employers sponsor and equip employee sports teams, provide free transportation to work, free lunches, and even free housing.

These mandates of across-the-board benefits are mostly designed to help poor countries' manual labor, but third-world countries also protect even executives, in certain regards, in ways outstripping U.S. standards. Mexican law, for example, requires counting years spent abroad working as an expatriate in calculating severance pay. And Mexico's constitution renders non-compete agreements unenforceable (except, perhaps, as to money damages). Unlike in the U.S., everyone in Mexico enjoys a constitutional right to work.

B. Enforcement of Anti-Sweatshop Laws Against Multinationals and Companies in World Trade

So we see that the worker protection laws on the books in the third world outstrip their U.S. equivalents, in theory protecting third-world workers against abuses and sweatshop conditions substantially better than corresponding U.S. laws. From the point of view of what is written in the law books, Americans are in no position to pontificate to poor countries about worker protections and sweatshops.

But what about *enforcement*? American labor unions and human rights activists insist that poor countries do not *enforce* their anti-sweatshop laws. Do they? To answer that question, we need to start by defining *whom* we are looking at enforcement *against*. It is impossible to generalize about each poor country's enforcement of all its employment laws among all its employers—large and small, multinational and purely-local alike. But remember that the rich-country labor unions and human rights activists who champion global sweatshop issues (and who want to link free trade to labor rights) themselves do *not* focus on purely-local third-world mom-and-pops. Rather, in confronting institutions like the World Trade Organization (WTO), the International Monetary Fund (IMF), the World Bank, and the U.S. Congress, the rich-country unions and activists themselves choose to target *multinationals* and *companies involved in world trade* (including locally-based suppliers of products sold abroad). So our actual “enforcement” question becomes: *what kind of job do poor country governments do in enforcing their worker protection and anti-sweatshop laws against multinational employers and local employers involved in world trade?*

Activists' charges of weak employment law enforcement are undoubtedly true in some workplaces. But most of the bad enforcement is at the level of *purely local employers*—that is, the mom-and-pops in poor countries that make stuff purely for the domestic market (and, therefore, lie beyond the reach of multinationals and those who work in world trade, like the WTO, the IMF, the World Bank, and U.S. Congress). Small, local employers are the most likely to cruise along under local regulators' radar.

But everything changes when we look at poor-country labor law enforcement against multinationals and local companies who sell goods in international trade. Poor countries do a *good* job enforcing worker protection and anti-sweatshop laws against players in global commerce. Indeed, a third-world bureaucrat whose job is to enforce local labor laws has a political *incentive* to crack down on the big, foreign-based companies and their suppliers. (Overseas, American multinationals make popular targets; they are symbols of American economic and cultural imperialism. Think of Jose Bose, the French protester who rode to fame by dismantling

a McDonald's; think of all the hullabaloo about Nike's factories abroad; think of the regulators in India who made a splash a few years ago by denying Kentucky Fried Chicken a license to do business.) Busting a big multinational—particularly an American one—can be a career-making move for a third-world labor law enforcer. And, politics aside, larger workforces have higher visibility on enforcers' radar screens; it is tough for a giant to hide. (Most multinationals and local companies making goods for world trade are bigger than most poor-country companies involved only in domestic commerce.)

Anecdotal evidence bears out the logic. Contrary to what activists tell you, in poor countries multinationals and employers engaged in world trade boast *good* compliance records. The Mexican *maquiladora* factories I have toured were well maintained, nice-looking places even by U.S. standards. One I saw even gives employees spotless tennis and jai alai courts. In my experience, U.S.-run *maquiladoras* in Mexico abide by the law. Go to Monterrey, Mexico, where hundreds of U.S.-based companies make stuff for the U.S. market. At quitting time, ask the thousands of Monterrey factory workers you see whether they get their premium-pay vacation, their thirteenth-month salary, their annual profit-sharing check, their free or subsidized lunches, and their severance pay when they are fired. The answer will be "sí."

According to the *Wall Street Journal*, "in El Salvador, women workers at [Nike supplier] Hilasal's textile plant in San Salvador have company doctors, a pediatric clinic, maternity leave and a company-subsidized store." One big Brazilian company I once worked with offers its factory workers an on-site medical clinic—that actually does surgery. While Nike gets criticized because its supplier factories in Vietnam pay workers \$55 per month, that is over double the *average*—not *minimum*—Vietnamese per capita income (\$26 per month). Supporting all this, documents I see in merger and acquisition deals (as part of "due diligence") show that poor country workers in multinationals' factories *do* get their *aguinaldo* Christmas bonuses, their premium-pay vacations, their profit-sharing, their free child-care, and most everything else in which they have a legal right. And my experience in deals shows poor-country workers, far more often than their U.S. counterparts, actually belong to labor unions and come under collective agreements.

In fact, I am bewildered by how widespread is the myth that poor countries do not have or enforce tough labor protections and anti-sweatshop rules against multinationals and local employers involved in world trade. The reason I am so confused is that the very U.S. activists who complain about third-world labor laws and "enforcement" will, when pressed, concede that the Western multinationals that open up shop in

poor countries actually *respect* local laws and *improve* workers' lives. I have heard this concession from plenty of sources aligned with labor unions and worker-rights advocates—sources as diverse as the *Atlantic Monthly*, Bill Clinton, a Chinese sociologist, and a Pakistani child-rights advocate. Here is what they say.

1. *Atlantic Monthly*

A splashy *Atlantic Monthly* article in February 2000 reported that, in 1994, China passed a sweeping labor law granting broad workplace rights. But the article complained that China's tough law was weakly respected among Chinese-domestic and Asian-owned factories, where employers imposed the "harsh regimens and abusive treatment of the stereotypical sweatshop." But *Atlantic Monthly* actually *praised* Western multinationals for respecting the new Chinese labor protection law saying, "the more Westerners there are doing business in China, the better Chinese working conditions are likely to become."

2. Bill Clinton

The former President of the United States agrees. According to Bill Clinton, "more and more of China's best and brightest are starting their own companies or seeking jobs with *foreign-owned companies*, where generally they get higher pay, more respect, and a better working environment."

3. Chinese Sociologist

According to Dai Jianzhong, a sociologist at the Beijing Academy of Social Sciences in China, "the European and American firms, especially the bigger ones, often play a model role in worker safety."

4. Pakistani Child-Rights Advocate

Even a Pakistani child-rights advocate elevates the big multinationals and companies in international trade to the top of poor countries' "good-employer" list. Not long ago, rich-country human rights activists launched an initiative they called the "Foul Ball" campaign—an attempt to eradicate child labor from Pakistan's international soccer ball industry. (Pakistani kids made soccer balls that Reebok sold around the world.) Pakistan happens to be one of the few poor countries that does indeed suffer from widespread, horrid child labor abuses. But the abusers are *local domestic* employers, not Pakistani suppliers of soccer balls in world trade. The "Foul Ball" campaign led Pakistani child-rights activist Fawad Usman Khan to complain:

If it were up to me, I would take all [Pakistani] child labourers out of the more hazardous [and purely domestic] professions and put them *into* the [world-trade] soccer ball industry—there are no chemicals, they are well paid and the hours are flexible. The children can work at home in their spare time, mixing it with housework or after school. I am very worried that the children taken out [of soccer ball production] will end up in more dangerous occupations.

This Pakistani situation raises the special concern of enforcement of the developing world's *child labor laws*. As we have seen, most all poor countries boast child labor laws at least as strong as their U.S. equivalents. But what about child labor *enforcement*? Rich nations have fretted over the plight of impoverished children in poor countries at least since Jonathan Swift's 1729 screed, *A Modest Proposal*. Today—notwithstanding the developing world's tough laws on the books—we still hear about gross child labor abuses abroad. We hear that millions of children worldwide, including in the U.S., toil illegally, sometimes starting at scandalously young ages.

But when you hear about child labor abuses, keep in mind three things: the magnitude of the problem; the age of working children; and the distinction between purely local child labor and child labor in world trade. First, as to the magnitude of the problem, remember that while too many young children around the world are working, that is not the same as saying a large percentage of the world's young children work. Happily, most kids even in poor countries are unemployed. Even child labor advocates will concede that certain huge impoverished countries, like China, are largely free of child labor abuses. Second, remember that the issue is *young* children. International Labour Organization (ILO) statistics on "child" labor often include *older* children, such as fourteen and fifteen-year-olds who could legally work in the U.S., in agriculture and other tough sectors. Focus on *young* child labor and the numbers shrink—and worldwide enforcement looks that much better. Third, keep clear the distinction between purely local child labor and child labor in world trade. The saddest third-world child labor anecdotes we hear involve purely-domestic industry outside the reach of multinationals and world trade, beyond the reach of the WTO, the IMF, the World Bank, and the U.S. Congress. As Pakistani activist Fawad Usman Khan says, rich-country efforts to stamp out child labor among multinationals and companies in world trade may actually *harm* the world's kids. In the developing world, child labor abuses among purely-domestic companies dwarf those among multinationals and businesses in world trade.

C. *If Third-World Anti-Sweatshop Laws Are So Strong and Enforcement Is So Good, Then How to Account for All the Horror Stories?*

If what we said up to now is true (and it is), that means the poor countries of the world have, on their books, *better* laws protecting workers and banning sweatshops than the U.S. has. And it also means that third-world nations *do* enforce their laws against multinationals and local companies making goods for world trade. But surely you are skeptical. Surely you are asking, if poor countries' laws *do* adequately protect workers from sweatshop conditions, and if poor countries *do* adequately enforce worker protection laws against multinationals and companies involved in world trade, then why on earth do we in rich countries hear so much about horrid third-world employment conditions? This is a good question, and it has three good answers: low but livable wages, local employment, and comparing "apples" with "oranges."

1. Low but Livable Wages

In poor countries people are, by definition, poor. Although we have noted that poor countries often require employers to give cash benefits in addition to wages (paid Sundays, profit sharing, Christmas bonuses), no one denies that by rich-country standards, even total compensation packages for manual labor in poor countries are very low and always will be. (Jesus Christ said "the poor will always be with us.") Yet while by rich-country standards base wage rates in the developing world can be incredibly low, they are still *livable*; no one claims poor-country workers with full-time jobs (or their families) are starving, naked, or homeless. Nevertheless, field hands in India can earn less than 50 cents a day; doctors in Cuba earn under \$10 per month; per capita annual income in places like Chad can run under \$100. (But this is not always the case: blue-collar workers in more advanced parts of the developing world, such as Argentina, Mexico, and South Korea, earn thousands or tens of thousands of dollars per year.)

While we in rich countries can be shocked to hear about the incredibly low wages that poor-country laborers earn, always remember: *low* wages are better than *no* wages. This point came home to me in September 2000, when Pulitzer Prize-winning journalists Nicholas Kristof and Sheryl WuDunn (who specialize in Asia reporting) wrote an article in the *New York Times Sunday Magazine* called *Two Cheers for Sweatshops*. According to Kristof and WuDunn:

We moved to Asia outraged by sweatshops. In time, though, we came to accept that the simplest way to help the poorest Asians would be to buy more from sweatshops, not less. It may sound silly to say that

sweatshops offer a route to prosperity, when wages in the poorest countries are sometimes less than \$1 a day. Still, for an impoverished Indonesian or Bangladeshi woman with a handful of kids who would otherwise drop out of school and risk dying of mundane diseases like diarrhea, \$1 or \$2 a day can be a life-transforming wage.

“For all the misery they engender,” Kristof and WuDunn concluded, “sweatshops at least offer a precarious escape from the poverty that is the developing world’s greatest problem.” But why not force multinational employers and companies involved in world trade in these countries to pay *more*? Kristof and WuDunn explain that “if companies are scolded for paying those wages,” then “labor costs” will rise “across the board.” This, in turn, “encourages less well established companies to mechanize and to reduce the number of employees needed,” or else it “shifts manufacturing to marginally richer areas.”

Still skeptical? Talk to University of Puget Sound student Elie Wasser, an activist crusader who traveled to Managua, Nicaragua to investigate and blow the whistle on exploitive multinationals. In October 2000, *Rolling Stone* ran an article with the news that when crusaders like Wasser investigate poor-country factories, even they end up conceding that multinationals offer decent jobs with tolerable conditions and livable, above-minimum wages. *Rolling Stone* quotes Wasser: “Before I came here [to Managua], I knew sweatshops were bad. But now I realize it would be disastrous if the factories in the Free Trade Zone and the jobs they provide were taken away.” (And *Rolling Stone* reports that Wasser’s Managua trip left a companion activist, Duke sophomore Jonelle Grant, filled with “self-doubt” and “equivocation” because she could *not* in good conscience label the Nicaraguan garment factory she had investigated a “sweatshop”!)

2. Local Employers

Apart from low but livable wages, a second reason we hear so much about sweatshops in poor countries has to do with abuses by local employers *not* involved in world trade and *outside* the reach of the WTO, the IMF, the World Bank, and the U.S. Congress. We already discussed this issue in the context of child labor enforcement; as with child labor, the more gruesome third-world *sweatshop* horror stories we hear involve purely-local jobs tucked well away from big multinationals and the world trade community.

A great example: the *New York Times* recently did a splashy expose of horrid work conditions in China’s “shoe town,” Bishan. Bishan shoemakers toil long hours for a pittance in dank factories using glues that emit benzene fumes causing severe anemia and leukemia. But Bishan

shoes are not Prada, they are not Nike, and they are not even Payless. Bishan shoes retail for \$4 a pair and get sold domestically to Chinese peasants who cannot afford better. No one—not even the most strident defender of human rights—blames Bishan's horrors on any Western multinational, because Bishan factories are locally-owned mom-and-pop outfits. Yet you cannot even accuse the moms-or-pops of exploiting workers; Bishan factory owners toil as hard as their workers, and their factories are *inside their own houses*—meaning factory owners and their families inhale more benzene than anyone!

No one denies local employment stories like this are awful. And no one has figured out how to solve these local employment problems. Our point is simply that the way to solve local employment problems is *not* to tie the hands of the very Western multinationals offering the highest paying, safest, and most comfortable jobs. Nor is the way to solve local employment problems to pretend that local domestic tragedies are world trade issues implicating the giant multinationals and companies involved in world trade.

3. Comparing “Apples” with “Oranges”

Low but livable wages and the “local employers” issue aside, the third reason that the poor-country sweatshop horror stories we hear sound so grim has to do with our tendency to compare “apples” with “oranges,” between rich and poor-country workplaces. When you hear about bad work standards in poor countries, be sure you compare low-wage factory jobs in the *third* world to the harsh realities of low-wage gritty work in the *first* world.

Macroeconomic trends have shifted so much heavy production out of rich countries that most Americans do not know any manual laborers in bad jobs. Therefore, we forget how harsh low-wage factory life still is *in the U.S.* We end up comparing the media's descriptions of, for example, Nike factories in Vietnam to, say, our air-conditioned office cubicles, or, at worst, to deep-fryer duty at a local Burger King. That comparison is unfair. The next time you hear a description of a third-world sweatshop, compare it to a comparable American job, like a laborer in a West Virginia coal mine or a harvester on a Florida sugarcane farm. Or take the example of a law-abiding non-union metal castings factory in Ohio, where American laborers toil, for little over minimum wage, in Dickensian conditions, pouring molten steel in dirty buildings that, in summer, get hot enough to bake food. These are *real* “sweatshops.” I toured one once, wearing a suit, and had a hard time looking workers in the eye.

Only if you understand how tough low-wage manual factory labor is right here in our country can you appreciate the sincerity of C.T. Park, a

South Korean who owns a 10,000-employee factory in Vietnam making Nike shoes. Park, whose facility was recently the target of rich-country human rights activists' complaints, laments, "I had pride in my factory. And then suddenly it was the worst factory in the world."

III. LINKING LABOR STANDARDS TO GLOBAL FREE TRADE

Having now looked at employment protection laws and enforcement within poor countries, one topic remains before we can work through the actual steps a multinational needs to take to factor these issues into its code of conduct. We now turn to the cross-border diplomatic issue of how worldwide employment standards link to global free trade.

A. *The Labor Rights/Global Trade Era Dawns*

Compared to innocent times as recent as November 1999, we now live in an era where the public at large is keenly aware of international labor practices. These days, the *public relations* component of international human resources is critical to every multinational doing business in the third world that values its reputation and stock price. In this regard, the topic of "international labor policies" has done a complete flip-flop; until recently, this was a subject so dry it could make even an ILO delegate's eyes glaze over. But now, this area is a tinderbox that, quite literally, touches off riots in the streets, from Seattle to Washington to Prague.

I mark the Seattle World Trade Organization meeting of December 1999, when rioters overwhelmed the local police department, destroying \$3 million in property until forcibly arrested under a state of martial law, as the dawn of an era in which international labor practices entered the public debate and America's national agenda. *Before* Seattle, lots of Americans had still remained unsure of what the international labor/free trade "linkage" issue even was. Seattle, for the first time ever, splashed international labor (along with international environmental) issues onto the front pages of newspapers around the world.

For the activists and protesters, Seattle was just a beginning. As the chaos wound down, demonstrators referred to their future plans as "the battle after Seattle." Indeed, the following month, January 2000, saw protesters swarm a tiny Swiss ski resort, Davos, disrupting a meeting of the World Economic Forum. The Davos demonstrators vandalized a McDonald's until subdued by Swiss riot police. Then, in April 2000, the activists came back in full force, this time in Washington, D.C., trying to stop the World Bank and IMF annual meetings. Washington shut down. A wall of police in riot gear surrounded the World Bank and IMF buildings and cordoned off most of downtown. I was there and saw it (police kept me out of the World Bank's lobby). Tens of thousands of

protesters swarmed the city. Skirmishes broke out. The *New York Times* ran a front-page color photo showing a cop with a club hitting a protester in the back of the head. Washington escaped full-scale riots thanks only to brute force. The city's police department spent over \$2.6 million on riot gear and overtime and arrested more than 1300.

The next World Bank/IMF meeting was in Prague in September 2000. Thousands again took to the streets, trashing yet another McDonald's (and a Kentucky Fried Chicken), and hurling Molotov cocktails and fist-sized stones. It took 11,000 Czech police in riot gear, using percussion grenades, water cannons, and tear gas, to maintain order.

The *New York Times* now calls the international labor rights "movement one of the nation's largest since the 1960s." On America's college campuses, a crusade rages against sweatshop labor in poor countries. A rift widens between the academic and business worlds as more and more big-name universities join extremist groups like the Worker Rights Consortium that reject businesses as members. The international labor (and environmental) fight has also broken out on Wall Street. *Billions* of dollars are now under management in "socially responsible investment" funds. New investment houses—Calvert Group, for one—have sprung up, trafficking exclusively in securities of companies they deem "socially responsible." More tellingly, even *mainstream* investment houses—from Salomon Smith Barney to Vanguard, America's second largest fund family—now offer investment products limited to the securities of companies whose international labor (and environmental) practices please activists. At annual meetings nowadays, multinational CEOs regularly field hostile investor queries about human resources practices overseas. Indeed, hard-liners like Naomi Klein, author of the influential *No Logo*, recently published in eight countries, now get mainstream media attention as they use international labor issues as a springboard for a broader agenda—condemning everything connected with big multinationals.

B. The Globalizing Multinational and the Link Between Labor and Free Trade

During the 1999 Seattle WTO meeting, President Clinton virtually demanded that the Organization tie global trade rights to labor responsibilities. Clinton insisted that the WTO impose, as a rider to the *benefit* of low-tariff trade rights, a quid pro quo *burden* that each WTO country ensure its products in global commerce not come from sweatshops, children, slaves, or anyone without a right to join a union. What Clinton championed was the "linkage" thesis—if businesses want more free trade, then they better accept tough labor law standards.

Think, for a minute, about “linkage” from the point of view of the globalizing multinational—the company that claims it is a *really* “global” corporation. Any new rules that harmonize minimum employment standards across the globe should be a *good* thing—a step in the direction of globalized employment standards (which, in turn, facilitate real globalization). Right? Well, maybe not. Lots of multinationals, even those that insist they are “global,” *oppose* any link between minimum employment standards and WTO-style free trade. Many American multinationals want the WTO to stick to its knitting—trade—and leave harmonizing international employment standards to the experts at the ILO. Cynics, though, note that the ILO has been largely impotent, at least regarding the U.S. (the U.S. has adopted notoriously few ILO resolutions).

If a multinational claims to be “globalizing” yet simultaneously *opposes* any link between workplace standards and global free trade, it needs to reconcile the apparent conflict. If the push to yoke workplace issues to free trade *really does* go against a multinational’s best interests, then the company better be ready to explain its position to its employees and stockholders around the world. If the company tries to sweep under the rug any apparent inconsistency, it could hurt its credibility and stall its quest to become *really* global.

C. *Understanding the Various Positions in the Trade/Labor “Linkage” Debate*

Because a multinational’s philosophy on “linkage” is crucial to its code of conduct (as well as to other aspects of being a *really* global corporation in the new century), before any company arrives at a position, it better be sure it understands how the trade/labor “linkage” debate has evolved, and what the arguments are today. So let us now examine the diplomatic issues in the “linkage” debate and the respective positions of the parties.

1. International Institutions (Non-Governmental Organizations)

To understand the positions and issues in the “linkage” debate, we start with what the international institutions—the so-called Non-Governmental Organizations (NGOs)—did to get us into the current state of turmoil. Why did international institutions long ago fail to forge some link between labor standards and global trade?

The United Nations (U.N.), to take the most obvious NGO, focuses on governmental level diplomacy much more than on private commerce. Those less significant arms of the U.N. that *do* look at labor rights and free trade have been largely separate from one another. In any event, the U.N. seems chilly toward the “linkage” issue. U.N. Secretary-General Kofi Annan has issued a statement warning that any link between labor rights

and trade standards would undermine world trade systems, yet “do little to achieve social goals.”

Turning to the ILO, which has, for decades, issued declarations on minimum labor standards meant to apply worldwide. But these declarations are, for practical purposes, entirely divorced from international *trade* issues. Next, the General Agreement on Tariffs and Trade (GATT) (predecessor to the WTO) over the last several decades made substantial headway toward freeing up world trade by lowering tariffs (taxes that make imports less attractive to consumers) and eliminating other trade barriers like quotas (ceilings on how much of something a country imports). But, the GATT always steered clear of employment issues.

The General Agreement on Trade in *Services* (GATS) is the new offshoot of the GATT offering some potential for someday helping multinationals—at at least, multinational *services* providers—to iron out cross-border workplace standards. The GATS exists to liberalize international trade not in goods, but in *services*—inherently a global-employment concept. But so far the GATS has had little impact in changing the way multinationals offer services across country borders (except to streamline certain visa rules). The GATS, like these other NGOs, has had no significant voice in the labor rights/global trade debate.

2. The Pre-WTO Push to Link Labor Standards with Global Free Trade

Because none of these international institutions forged a link between labor standards and global trade, when the “linkage” issue grew into a divisive social force, it fell, like it or not, at the feet of the WTO. But before we look at the WTO’s emerging role in this area, we need to understand the social forces that teed up this issue for the WTO’s agenda.

Back in the early 1990s, as the cold war ended, international diplomacy turned less political and more commercial. Human rights activists and labor unions in rich countries (chiefly the U.S.) saw that if they wanted to advance their international agendas they would have to hook themselves up to the freight train of international free trade. So these groups went to where the action was—new treaties freeing up world trade. These groups insisted that these treaties include assurances that any country benefiting from free trade should simultaneously guarantee its workers minimum workplace rights and protections (as well as impose environmental protections).

The “linkage” battle first broke out fiercely when, early in President Clinton’s first term, the U.S., Mexico and Canada negotiated the North American Free Trade Agreement (NAFTA). U.S. organized labor and

presidential candidate Ross Perot fought NAFTA, chiefly on *employment-related grounds*. Perot bluntly warned that signing NAFTA would cause a “giant sucking sound” of “American jobs” going to Mexico. (Perot never bothered to feign concern for Mexican job security. He nakedly wooed rich American labor, with no empathy for unemployed or low-paid workers desperate for jobs with big multinationals but living south of the Rio Grande and not eligible to vote in the U.S.)

While NAFTA started out as a trade-only treaty, to assuage Perot and U.S. organized labor, President Clinton at the last minute agreed to link, in name at least, trade to labor standards. That link is called the NAFTA “labor side agreement” (technically the “North American Agreement on Labour Cooperation”). But contrary to what a lot of Americans still think, the NAFTA labor side agreement does not require a single substantive labor protection in any NAFTA country’s laws. The side agreement merely tells each NAFTA country to *enforce* its *own* existing domestic employment protections, whatever they happen to be.

If you remember what we said about the surprisingly-comprehensive worker-protection laws on the books in poor countries (like Mexico), you can guess *why* the NAFTA side agreement neglected to mandate even a single new worker right: Mexico, as we saw, boasts worker-protection laws far *more comprehensive* than those of the U.S. or Canada. If NAFTA had required a leveling of the labor-rights playing field, it would have forced the *U.S. and Canada* to rise up to the standards of heavily-unionized *Mexico*, by mandating rights like the right to profit-sharing, Christmas bonuses, premium-pay vacations, severance pay, *paid* maternity leave, a worker housing fund, and the like.

Because the NAFTA labor side agreement mandates no substantive labor protections, it should not surprise you that, in the years since NAFTA passed, the labor side agreement has had absolutely no effect on day-to-day work life in any NAFTA countries. Every year a tiny handful of politically-motivated charges does get filed under the side agreement (some of these are charges *Mexico* files against the U.S. and Canada, just to keep everyone honest). But the charges usually go nowhere. They have never led to any systemic change in any NAFTA country’s labor law enforcement practices, defeating the very purpose of the side agreement.

The NAFTA side agreement proved to be little more than a face-saver, but it did whet an appetite for a *real* link between labor standards and free trade. After NAFTA, American human rights activists and labor unions regrouped, enlisting help from some of their overseas counterparts. They then turned their attention to a bigger stage: the world and its trade organization.

3. "Linkage" Politics in the WTO Era

That brings us to the various agendas and motives of the parties involved in the "linkage" debate as it now stands before the WTO. Of course, it is easy to figure out which of the interested parties tend to champion trade/labor "linkage" (the U.S. government, human rights groups, U.S. organized labor) and which favor separating trade from labor (developing country governments and multinational business). But what is going on *behind* these positions? And what are the opinions of the people everyone is trying to protect—the oppressed workers in poor countries? Here is one view.

Let us start with the position of the U.S. government. Those who follow labor/trade "linkage" were not at all surprised when, in Seattle, President Clinton insisted so strongly on binding labor standards to global free trade. Years before, Clinton's NAFTA fight had used up lots of credibility with organized labor. While Clinton always did support free trade rather strongly, he had, as well, long championed "linkage," including a link between human rights and "fast track" U.S./China trade. Indeed, Clinton has claimed: "I believe I was the first person in a national campaign ever to advocate the inclusion of labor . . . provisions in trade agreements." This support for "linkage" always made Clinton's allies, particularly human rights groups and labor unions, a little less uncomfortable with his pro-free-trade stance.

After Seattle, Clinton's Secretary of Labor, Alexis Herman, designated the fight for world labor rights as her number one issue. She started an "Advisory Committee on Labor Diplomacy" and actually appointed an AFL-CIO honcho to chair it. Herman and Clinton flew to Switzerland on Air Force One to lobby the ILO for an even tougher resolution against child labor. In early 2000, Clinton asked the U.S. Congress to green light a record-setting budget to fight child labor around the planet. The Clinton Administration even monkeyed with a federal statute that bans imports of products made from forced labor. When he somehow lost a bid to pass a similar U.S. law banning the import of goods made by *children*, Clinton had Customs enforce the forced-labor-goods law as if it also prohibits importing stuff made by children.

D. The Positions of the Other Players

We have now looked at the politics behind the "battle after Seattle," the move to link labor standards to global free trade, and the position of the U.S. government. So now we can break this down and examine the positions of the other players and parties in interest: human rights activists, college students, "socially-responsible investors," U.S. organized labor,

workers and governments in the third world, multinational employers, and companies involved in world trade.

1. The Point of View of Human Rights Activists, College Students, and “Socially-Responsible Investors”

Rich-country human rights activists, college students, and “socially-responsible investors,” of course, excoriate multinationals for imposing or tolerating harsh work conditions in the third world, and for paying poor-country workers peanuts. This position, by the way, is not new. As far back as the seventeenth century, Britons were outraged at the East India Company’s ventures in the slave trade. And over 125 years ago, the workers’ human rights issue was so hot it ignited a civil war in the U.S.

These days, human rights activists in rich countries (along with college students and “socially-responsible investors”) have crystallized their position into a claim that if companies producing goods in poor nations want to sell their stuff in rich markets, they better accept a trade-off—enforcing employment protections consistent with ILO declarations, eradicating “sweatshops,” and paying workers a “living wage.” Otherwise (the activists, students, and investors insist), rich-country consumers exploit third-world workers every time they buy something that is artificially cheap because it is a product of sweatshop, child, or forced labor.

2. The Point of View of U.S. Organized Labor

The point of view of U.S. organized labor, though, is more complex. U.S. unions are the one group that has to confront the dichotomy between “saving American jobs” and helping oppressed workers abroad. (On this issue, American unions have no solidarity with their union-brothers and -sisters abroad—at least in poor countries.)

America’s unions like to position themselves as directly aligned with the human rights crowd, the college students, and the social investors. One AFL-CIO leader, for example, claims to fight on behalf of oppressed people in poor countries who “offer their labor at wages below subsistence, sacrifice their children, and cash in . . . their personal health—all in a desperate struggle to survive.”

But there is a real difference in motives here. When U.S. unions champion tougher labor standards in poor countries, they usually slip up and mention “taking away American jobs” or poor countries’ “unfair advantage” in “attracting” jobs. U.S. unions, for example, drew a lot of heat in mid-2000 when they opposed the U.S. African Growth and Opportunity Act as *African* unionists begged U.S. Congress to *pass* the law. To many, America’s unions seemed *too* eager to keep dirt-poor African textiles workers unemployed. Slip-ups like this one lead some to

question U.S. labor unions' good faith. Do America's unions fight for tougher standards in poor countries only to raise marginal employment costs and put some third-world laborers *out of work*, thereby repatriating marginal jobs stateside? The African textile debacle led *New York Times* commentator Thomas L. Friedman to condemn "the unions' phony-baloney assertions" that they "just want to improve worker rights around the world." "Shame on" the unions, said Friedman: do not champion "more worker standards" in the third world unless you *also* support "more work."

A trade unionist from India appears to agree. D.L. Sachdev, Secretary of India's 2.5 million-member Trade Union Congress, laments that "unfortunately, trade unions in developed countries feel that because of cheap labor and relocation of industries by multinational corporations, their employment prospects are imperiled." The Indian union-leader's position on "linkage" is typical among developing-country worker advocates, and also among developing-country governments themselves. Governments of developing countries align with their own local human rights and organized labor activists and *resist* any link between employment rights and free trade. Much of the developing world sees the whole "linkage" concept as a rich-country plot to obliterate poor countries' only big competitive advantage in international trade and employment—low wage labor. Egypt's economy minister insists "the world was not represented on the streets of Seattle. Developing countries like us want a fairer share of the pie, not to destroy the pie."

3. The Point of View of Workers and Governments in the Third World

This leads into the point of view of workers and governments in poor countries. The first point to make here is that the activists and demonstrators who purport to speak for the world's poor are themselves a quite different group: They are the world's *rich*. For example, the Seattle WTO protests included (according to the *New York Times*) "only a handful of people from what the participants call the global South, or developing nations."

The activists vocal in the poor-country sweatshop debate not only hail from rich countries—they are almost exclusively *white*. The *Wall Street Journal* notes: "While the antiglobalization crowd purports to speak for people of color worldwide, here in the U.S., the protesters themselves tend to be people of pallor." During the World Bank/IMF demonstrations, the *Washington Post* ran a long article exploring why almost everyone at Howard (Washington's prestigious black university) sat-out the demonstrations in the dorms. The rioters in Prague in September 2000

were neither oppressed minorities nor third-world workers; they were, rather (according to the *New York Times*) "Czech anarchists, Italian Communists, British schoolteachers, and German truck drivers."

The dichotomy between the want-to-be advocates for the world's poor and the world's poor themselves was never clearer than on May Day 2000, when labor-related protests broke out all over the world. While *human rights activists* in London vandalized a McDonald's (to them, the classic symbol of corporate imperialism), *workers* simultaneously took to the streets in São Paulo, Brazil. The difference: the Brazilian demonstrators did not care about world trade or about international labor rights. Rather, they protested low local Brazilian wages and high Brazilian unemployment.

So what is the position of the poor countries and their workers themselves? Third world nations complain that saddling poor countries with culturally-inappropriate work standards, standards that post-industrial-revolution rich countries developed only recently, is imperialism that hurts the *very workers everyone claims to want to help*, by putting them out of a job. Mexico's president, for example, says he resents rich countries and their do-gooders trying "to save the people of developing countries from development." Ebrahim Patel, head of one of Africa's biggest textile unions, champions unfettered free trade, urging: "[a]s with all the poorest economies of the world, one way to raise our development quickly is for you to give us preferential access to your markets." Or take India, which is especially savvy in how it aims to exploit the new millennium's unprecedented reliance on technology. India has trained hundreds of thousands of engineers and other technicians, creating a "talent advantage" which, India believes, is its most valuable ticket for cashing in on the high-tech, talent intensive future. But many in India, bureaucrats, unionists, and workers alike, fear that the movement in rich countries to link labor standards to free trade (in both goods and services) is a plot designed to keep poor countries in poverty while the rich get richer.

4. The Point of View of Multinational Employers and Companies Involved in World Trade

Having looked at all the other positions, it is now time to ask where multinational employers (and companies involved in world trade) weigh in on the linkage debate. Multinationals and companies in world trade, of course, have an especially strong interest in the linkage issue because they benefit so directly from global free trade, and because they employ so many people around the world, both directly and indirectly (through suppliers and contractors).

Given their keen interest in “linkage,” the multinationals have been strangely quiet. We all suspect that most big companies privately oppose any tie between work standards and free trade—after all, who wants to be encumbered by a web of costly rules that do not boost profits or stock prices? But *individual* multinationals rarely tell you this. The farthest most companies go is to say we do not *need* trade treaties to impose labor standards on poor countries; because the multinationals have done such a good job with their voluntarily-adopted in-house human rights codes of conduct. Multinationals claim that their conduct codes adequately prohibit sweatshops, child labor, slave and forced labor, sub-living wages, and (sometimes) union busting.

There are, though, more telling aspects to the multinational viewpoint on linkage that never seem to get aired in the public debate. We already noted that sources as diverse as *Atlantic Monthly*, Bill Clinton, a Chinese sociologist, and a Pakistani child-rights advocate will all tell you that when American multinationals go into the third world they raise wages and work standards and generally offer the best jobs around. This is true. Take the example of Motorola. According to a recent book, “Motorola is one of the largest—and *most highly regarded*—employers in Malaysia.” Meanwhile, Motorola’s huge Singapore-based affiliate, Flextronics, makes Motorola-brand cell phones and broadband products employing armies of third world workers from Asia to China to Hungary to Mexico to Brazil. The multinationals’ implicit argument is that they do good, not harm, by bringing jobs to poor countries. Applying pressure to multinationals to do even more good actually acts as a *disincentive* for them to keep doing the good they are doing now.

As we already noted, when you hear the activists’ horror stories about sweatshops and young children and slaves working, you almost always hear about abuses in *local domestic* industry outside the reach of the WTO. We already saw the examples of soccer balls in Pakistan and shoes in Bishan, China. Let us now look at a couple of other examples that also made news in the U.S., to show that the bad guys exploiting third-world labor are not the multinational big boys. A Thai family “employed” Nurjanah Maytak as a maid and locked her in a cage, poked her in the gums, and forced her to cane herself. The mother of Sompote Chaikam, a ten-year-old Thai boy, withdrew him from school and “employed” him by forcing him to scavenge garbage dumps for sellable scrap metal. These horrid conditions are *purely domestic jobs* in no way linked to international trade. Nothing the WTO or multinational companies do can stop these horrid abuses, because they are inherently *local*. Meanwhile, those multinationals that do employ lots of people in poor countries get no positive media attention for all the benefits their jobs bring the world’s

poor, yet the media and activists give a free pass to haughty companies with standards too high to entrust their production to third-world talent. Think of clothing and shoes: Nike, Reebok, and Wal-Mart draw heat even though they bring desperately-needed jobs to thousands of needy people in dirt-poor countries. Meanwhile, no one criticizes the tony, high-end houses that make their stuff exclusively in rich nations (the Escadas, Versaces, and Bruno Maglis).

The same can be said about manufacturers boasting the "Made in America" label. This point came home to me vividly when, one day in Fall 2000, I poked around in Stanford University's bookstore. Because college students have helped lead the anti-sweatshop crusade, college logo clothing is an especially visible weapon in the war against sweatshops. And a whole floor of Stanford's bookstore sells Stanford logo clothing. Lots of these articles contain conspicuous "No Sweat" tags assuring that the clothes are made in factories known not to be sweatshops because they get inspected *four times a year*. But Stanford stuff I saw bearing "No Sweat" labels was also marked "*Made in U.S.A.*"—meaning that the quarterly sweatshop inspections are being done at *U.S.* factories!

While most college logo clothing used to be made in third-world countries, now, it appears, the anti-sweatshop movement is repatriating production stateside, thus taking jobs from the very laborers whom the activists want to help. This makes no sense. The point for multinationals and others that produce goods in the third world is that they should play up, as public relations strategy, the fact that they alone provide desperately-needed paying jobs to impoverished third-world workers. Unlike competitors making stuff in Italy, France, Canada, Japan, America and other rich places, only a multinational sourcing from the third world brings jobs to poor people in needy countries.

The trade/labor "linkage" argument, by its nature, imposes first-world values on third-world countries. This can be wrong. While no culture should tolerate horrid conditions like young-child labor or slavery, when we presume to improve labor conditions in other cultures we very quickly run into gray areas of *cultural imperialism*. For example: when Mattel opened its first factory in China (in Guangzhou), it built dormitories to house 1500 workers from remote areas. Mattel announced to everyone that it would cap work schedules at sixty hours a week, for humanitarian reasons. But the employees rebelled: living on-site and away from family, they wanted to earn money fast, not sit around, after sixty hours, doing nothing. Another example of the exact same point: when *New York Times* reporters Nicholas Kristof and Sheryl WuDunn first investigated labor practices in China, they were shocked to meet a woman stitching leather in a Dongguan factory from 6:30 a.m. to 7:00 p.m. *seven* days a week! To

Westerners this sounds like slavery, and the reporters were of course horrified. But when they probed further, they learned that workers in this factory had actually *urged* this schedule on the factory bosses. The factory manager complained about having to keep his facility open so long.

IV. INTEGRATING THE REALITIES OF THIRD-WORLD WORKER PROTECTIONS INTO HUMAN RIGHTS CONDUCT CODES ON CHILD, SWEATSHOP AND FORCED LABOR

We have looked in detail at what third-world countries do to protect their workers. We have also looked, in detail, at the various positions and interests in the diplomatic debate over linking labor standards to global free trade. Now it is time to *use* what we have learned to help multinationals craft a response to sweatshop concerns by issuing viable codes of conduct that account for the realities of poor-country labor laws and enforcement.

From a macro-political point of view, we might be at a stalemate. As to labor/trade linkage we have seen that the positions of the players are worlds apart. No one is going to come up with a common position on linking labor standards to free trade any time soon. But what about the parties in a position to do something now—the multinationals who put out codes of conduct? How can a multinational take what we learned about third-world worker protections and the various positions in the “linkage” debate and craft a workable code of conduct that respects third-world realities, rather than simply imposing utopian rich-country aspirations that ignore the third world’s tough worker protections?

During the 1990s, the issue of how multinationals employ people abroad morphed into a veritable *industry*—one the media loves to cover with news stories on specific multinationals’ sweatshop and child labor abuses. According to the Ethics Officer Association, now *every one* of the *Fortune* 500 has some code of conduct, and these codes are getting a lot more common among multinationals based overseas. (Over 60% of the United Kingdom’s top 500 companies now have codes, and the figure for Switzerland is not far behind.) Indeed, the European Union has task forces dedicated to the corporate code of conduct issue. And codes of conduct really are, somehow, changing employment conditions in the third world. Apo Leong, executive director of a Hong Kong labor rights group, says, “we are seeing the multinationals putting pressure on their contractors and subsequently *conditions have improved.*” (These companies appear to be raising work conditions in Asia above even local countries’ minimum standards—which, as we have already seen, are

generally tough and well-enforced against multinationals and local companies in world trade.)

A few years ago, the media focused the third-world worker human rights spotlight mostly on clothes makers, retailers, and oil companies—the Nikes, Reeboks, Kathie Lee Giffords, Wal-Marts, Shell Oils, and Unocals. Multinationals in other industries were pretty safe. But today, Internet-savvy human rights groups—the armies of mobilized and well-organized protesters who rioted in Seattle and Prague and shut down Washington, D.C.—pull *every* multinationals' third-world labor practices into public debate. Food industry multinationals, for example, fend off more labor rights pressure in Europe than in the U.S. According to the *New York Times*, “in the modern wired world, a company’s activities will not simply fall under the microscopic scrutiny of advocacy groups; those same groups will spread their assertions and criticism around the world within seconds on the Internet.” London’s *Financial Times* says that the “speed of communications and the transparency created by the Internet enable pressure groups to mobilise opinion rapidly, as with Shell’s controversies over Nigeria and the Brent Spar oil platform.” Sir Geoffrey Chandler, leader of Amnesty International, tells multinationals that “to go without a policy on human rights is to *go naked in a dangerous world*.”

As the workplace conduct code debate intensifies, so does the degree to which a multinational must confront its actual labor practices in poor countries. These days, posting a nice-looking code on a web site will not cut it. Activists monitor whether a multinational’s own people in the third world—including suppliers’ people—actually live by the code. Right now, human rights groups have spies (unauthorized, unannounced monitors) out in the field in poor countries checking up on multinationals’ facilities and interviewing workers. Indeed, a stint monitoring multinationals’ third-world employment practices is fast becoming a college-age rite of passage—sort of a “spring break for the socially conscious.” (We have already seen, though, that to their dismay lots of these spies are finding that multinationals tend to offer pretty good work conditions in poor countries. Nike, by the way, denounces these secret inspections, calling unannounced factory inspections “a ‘gotcha’ monitoring system” that is “not a serious way to eradicate sweatshop conditions.”)

To keep up, an entire corporate code of conduct *monitoring industry* has arisen. PricewaterhouseCoopers, for example, employs hundreds of conduct code monitors; they did 7,500 code compliance on-site inspections for clients in 1998 and 1999. And there are specialized firms—a leader is Verité—dedicated to nothing but conduct code audits in the third world. There is even a new business buzzword: “double bottom-line assessment.” Focusing on corporate *financial* results is no longer enough; activists and

“socially-responsible investors” now demand that multinationals audit their *second* “bottom line”: social (chiefly, *workplace*) equity. (Not surprisingly, these audits are finding the multinationals’ practices a lot cleaner than activists like to admit.)

A. *What a Human Rights “Code of Conduct” Is—and What a Multinational’s Code Should Look Like*

Human rights codes of conduct are voluntarily adopted policies internal to each company (but sectoral and industry model codes also exist, as do “multilateral” model codes from non-governmental organizations like the ILO and the Organization for Economic Co-Operation and Development (OECD)). A human rights conduct code spells out the rules that guide a company’s own employment practices—including employment practices of *suppliers* (companies are supposed to insert code of conduct terms into their supply agreements, getting supplier companies and contractors to pledge to comply). A code may or may not be available to the outside world: many companies proudly post codes on their web sites, but others thwart activists and keep codes internal. Sample codes appear at www.dol.gov, www.imra.org and www.lehr.org.

While conduct codes sometimes contain some topics that do not have anything to do with employment, the heart of any real human rights code of conduct is its discussion of how the company, and its suppliers, treat *employees* (the minimum workplace standards and worker rights guaranteed to people around the world who work for the multinational, its suppliers, and its contractors). And the codes are getting ever tougher. The new model code called SR 8000 (“SR” stands for “Social Responsibility”), modeled on international quality standard ISO 9000, has employers pledging to remain neutral in union-organizing drives, making all overtime voluntary, paying a “living wage,” and protecting homosexuals from discrimination.

To design or revamp an enforceable conduct code is a tough job because a multinational with a code has to answer to *three “masters”*: (1) its own corporate goals; (2) public relations concerns; and (3) all applicable local country laws. So now let us look at how, in crafting a workable conduct code, a multinational can account for *each of these three*.

1. Answering to Corporate Goals in a Code of Conduct

All multinationals will, these days, tell you they are “global” companies. But any multinational that is serious about being global, by definition, needs a concrete strategy for managing talent and human resources worldwide. These multinationals will want their codes of conduct to advance their talent-globalization strategy, as well.

Fortunately, a code will not likely conflict with a multinational's global human resources strategy: codes deal with such basic, lowest-common-denominator standards that not too much in them even rises to the level of what a multinational's talent globalization agenda covers. But a multinational has to ensure its code aligns with the company vision for managing talent globally. This might mean, for example, referring in the code to diversity, affirmative action, anti-harassment, or other workplace ideals the company might hold essential. In crafting an effective human rights conduct code, a multinational even needs to look *beyond* employment issues and factor in *other* agendas within the company. The biggie here is the corporate web site. So the way to begin drafting a conduct code for a particular multinational is to ascertain the multinational's precise reasons for wanting a workplace conduct code in the first place. That is, divine why the *particular corporation* wants a human rights code. Reasons, of course, will differ from company to company. But there is a cluster of standard answers. Multinationals will usually tell you they adopt conduct codes—and champion human rights in the workplace—for the following reasons:

- Being a “good corporate citizen”;
- Committing to the ideals of human rights and ethics—and the goals of “socially-responsible investing”;
- Globalizing by setting out, on paper, a clear worldwide policy prohibiting wrongdoing and improper work practices;
- Living by the ideal that “free trade” *can be* “fair trade”; and
- Showing good faith in case of any eventual lawsuit or investigation related to topics in the code—and limiting liability after conviction of a corporate crime (U.S. criminal sentencing guidelines actually credit companies that adopted relevant conduct codes before they committed the crime).

2. Factoring *Public Relations* Concerns into a Code of Conduct

Many of the reasons on the above list can be genuine. But surely the most *honest* reason explaining why 100% of the *Fortune* 500 have adopted workplace conduct codes and champion workplace human rights is something not on this list: *public relations*. According to an obscure European Union government report, the real reason multinationals adopt conduct codes and champion workplace human rights is “to improve their corporate image and at the same time minimize their vulnerability to negative consumer reaction, thus avoiding damaging boycotts and bad

publicity." The Seattle and Prague riots and the Washington D.C. demonstrations—together with pressure from "socially-responsible investors"—have made worldwide workplace human rights a powder keg. Multinationals just cannot afford to blow it off.

The highest-profile target dogged by these public relations campaigns, of course, is Oregon-based Nike. An early lightning rod for accusations of abusing foreign workers, Nike ultimately got religion and adopted one of corporate America's tightest conduct codes. Nike posted its code on its web site and disclosed its supplier factories worldwide (www.nike.com). Nike now inserts code compliance clauses into supply contracts, and it now employs an army of hundreds of full-time inspectors policing code compliance. Nike even voluntarily raised wages at overseas factories above legal minimums and switched to using safer chemicals worldwide. But still the activists and the press criticize. The *New York Times Sunday Magazine* titled a five-page Nike exposé "The Swoon of the Swoosh—Liberals Think the Logo Means 'Exploits Asian Workers.'" A *Christian Science Monitor* piece, called *Nike Code of Conduct: "Just Do It" or You are Fired?*, transcribed, verbatim, complaints of Julia Esmerelda Pleites, an El Salvador seamstress at Nike supplier Formosa whom an organized labor group had flown to New York for a press conference. And an article in the local Chicago press even took on hometown hero—and Nike ad man—Michael Jordan, insisting he "follow through on a pledge he made to visit Nike factories in Asia." By mid-2000, Nike chairman Phil Knight got fed up; he reneged on a pledge to donate \$30 million to the University of Oregon because the university joined the radical anti-sweatshop Worker Rights Consortium.

Another lightening rod for boycotts and bad publicity campaigns related to international labor issues is Arkansas-based retailer Wal-Mart. As early as 1992, Wal-Mart adopted one of the first major conduct codes. But that did not slow the bad-publicity machine. By 1998, a U.S. organized labor group called the National Labor Committee announced a full-scale Wal-Mart *boycott* decrying Wal-Mart suppliers' low pay and alleged child labor abuses. The unions targeted Wal-Mart because, they explained, they were "taking on the largest retailer in the world—if we can move Wal-Mart in the right direction, we can change how the entire offshore production system operates." According to an eight-page National Labor Committee brochure urging the 1998 boycott, Wal-Mart may have claimed to be "proud of its Code of Conduct," but the monitors Wal-Mart used to audit code compliance were "none other than Wal-Mart's 'exclusive buying agents.'"

This National Labor Committee—along with human rights groups like Amnesty International, Global Exchange, Mobilization for Global Justice

and even the Prince of Wales Business Leaders Forum—has targeted bad public relations at many other multinationals, including Ann Taylor, Arrow Shirts, Bradlees, Disney, J.C. Penney, K-Mart, Liz Claiborne, Mattel, May Company, Reebok, and Sears. Still other targets include freight handlers transporting goods internationally: Sea Trade International and Freightman International, for example. And some activists focus their public relations spotlight on those multinationals that have been sued in U.S. courts for alleged labor abuses—Union Carbide, Chiquita, Dole, Del Monte, Shell Oil, Unocal, The Gap, Salent (Perry Ellis), and more. Now even industries that used to feel safe are getting pulled in. For example, recently a big drug company that uses a rare seed in making one of its drugs got spooked when it realized its suppliers buy the seeds from poor families in India whose children collect them along roadsides. To avoid a public relations scandal, the pharmaceutical giant altered its sourcing.

3. Accounting for Local-Country Workplace Laws in a Code of Conduct

Having ensured a multinational's conduct code accomplishes *business goals* and attempts to sidestep public relations problems, a multinational also needs to answer to a third "master"—the developing world's tough labor standards laws. We examined in detail how (contrary to what people in rich countries think) the labor protection and anti-sweatshop laws already on the books in the world's poor countries are surprisingly tough, and in virtually all cases outstrip America's weak worker protections. A few fresh examples we did not mention before, as a quick reminder of this key point: Brazil caps work hours at eight per day and requires at least eleven hours rest between shifts. India mandates a half-hour rest for each five hours worked. China prohibits everyone from working until they turn sixteen; the minimum work age in Vietnam is fifteen. Filipino health and safety law outstrips U.S. OSHA by requiring government inspectors, annually, to inspect *every* workplace. And we already said that poor nations are decades *ahead* of the U.S. in requiring bosses to hand out generous worker benefits—things like *premium-pay* vacations, *paid* maternity leave, Christmas bonuses, profit-sharing, and even free child care. But for some reason I cannot seem to divine, almost every corporation's code of conduct blithely ignores the developing world's well-thought-out local labor protection statutes. Instead, multinationals' current codes of conduct push utopian aspirational standards that arise out of first-world principles often from the ILO, principles with little grounding in the developing world's workplace reality.

The corporate giants have things backwards. Most U.S.-based multinationals are *already* doing a good job following third-world labor protection rules. We mentioned earlier that champions of worker rights as diverse as the *Atlantic Monthly*, Bill Clinton, a Chinese sociologist, and a Pakistani child rights advocate all agree that when big Western companies set up shop in poor countries, *work conditions actually improve*. Go kick around in a developing world zone where they make goods for U.S. companies (we already used the example of Monterrey, Mexico); you will see that U.S. multinationals' compliance with the tough local labor protection laws is impressive, and the goodies multinationals give poor-country workers exceed those of the U.S. In the words of a pro-business lobbying group, "the evidence is clear" that multinationals "have helped raise living standards around the world and have acted as engines of development and growth through the transfer of technology and skills and improved labor, environmental, and health and safety standards."

4. "Total Compliance Policies"—and Beyond

Given how comprehensive poor-country labor protection laws are, and given the obvious importance of respecting local authorities' superior knowledge of their own local work conditions, every multinational's code of conduct should do a U-turn to begin with, and center on, a commitment to comply with local employment and labor laws—a so-called "total compliance policy." In theory, lots of U.S.-based multinationals already have these "total compliance policies" (in-house credos mandating full compliance with all local laws where they operate around the world). Indeed, any U.S.-based company *without* a total compliance policy should adopt one. No American company wants to be a lawbreaker anywhere—especially given that U.S. multinationals make big, easy targets for local law enforcers and bureaucrats the world over.

The point here is that the text of a human rights *code of conduct* is the ideal place to articulate a total compliance policy. Openly binding an organization to comply with all applicable labor protection laws the world over makes good business sense. It reduces the risk of criminal penalties and lawsuits abroad, and it lowers exposure to lawsuits *in U.S. courts* (under emerging legal theories). Particularly in the international labor context, a "total compliance policy" will help insulate companies from public relations catastrophes and troubles with the law. When activists finally wake up to how tough poor countries' labor laws actually are, surely they will expose multinational law-breakers on their Internet sites, denounce them to the world media, and blow the whistle to local authorities.

But, given that multinationals *already* have pretty good records in complying with the world's labor protection laws, will a code of conduct centered on a "total compliance policy" change anything? Maybe, maybe not. Usually if a multinational is not respecting to the letter some labor protection law at some facility in some far-flung third-world country, no one at corporate headquarters will have any idea. Anchoring a code of conduct with a "total compliance policy" might actually help ensure each of a multinational's foreign facilities adheres to *every single* labor law that protects workers overseas. And, of course, the human rights world makes a big deal about raising standards at multinationals *contractors* and *supplier companies* (for example, supplier compliance is the bane of Nike's run-ins with the human rights crowd). So a thorough "total compliance policy" approach in a conduct code will extend to *suppliers'* employment practices. As we have discussed, multinationals' supplier companies and contractors, by definition, participate in international trade. And as a rule, their labor law compliance records already tend to be a lot better than those of purely-local companies only in domestic commerce. But there might well be room for improvement with any multinational's suppliers' and contractors' compliance practices. So U.S.-based multinationals should insert total-compliance-with-employment-laws clauses into their supply agreements.

This "total compliance" approach to codes of conduct may sound simple, but in practice it is not. For example, how far down the supply chain must a multinational go? Should it police its *suppliers' suppliers*? And even if a multinational inserts compliance language into supply contracts, how, in real life, does it audit work conditions at sites it does not control? And what does it do in markets like China, where Western companies buy from distributors who will not even tell who the actual producer companies are? And a multinational will still worry about *public relations*. If a multinational's code of conduct fails to appease U.S. organized labor, human rights activists, and "socially-responsible investors," the company will consider its code a total failure.

But, of course, accounting for what activist groups want is an especially tough job given that the various activist groups have radically-different agendas. We have already looked at the varying interests of these groups. When tens of thousands of protesters descended on Washington, D.C. in April 2000 to try to stop the World Bank/IMF meetings, the *New York Times* actually ran a chart to help readers sort out which activists want what. According to that *Times* chart, student groups want to improve "poor working conditions in overseas factories"; human rights coalitions fight to remedy "social injustice and poverty" and protect "indigenous cultures"; and U.S. organized labor aims to protect "workers'

jobs *in wealthy countries.*” The so-called “socially-responsible investor” funds seem to amalgamate these three groups’ desires. And there are other activists on the scene, according to the *Times*, but whose agendas have less to do with protecting workers: religious groups (pushing for poor-country “debt forgiveness”) and environmentalists (rejecting “free-market capitalism” because it “destroys the natural resources of poor nations”). Obviously, no multinational’s code of conduct, whether or not it is grounded in “total compliance,” is going to please all these people all the time. A company’s goal, therefore, should be to ensure its conduct code goes as far as it can to assuage potential critics while not departing from business reality.

The activist groups’ diverging agendas notwithstanding, we *can* isolate the two chief tenets of the “sweatshop” crusade: advancing substantive labor protections and promoting “transparency.” As we already saw, the activists’ starting point is their drive to eradicate “sweatshops,” ensure workers get a “living wage,” stop child labor, reject forced (slave, prison) labor, and guarantee the right to unionize. Juan Somavia, Director-General of the ILO, lists the “four essential principles” of worker rights as, essentially, these same topics: (1) granting “freedom of association and collective bargaining”; (2) prohibiting “forced or compulsory labour”; (3) guaranteeing gender equity in pay; and (4) eliminating “child labour.” The toughest items on the activists’ wish list are the two impossible-to-pin-down aspirations, the perennial bugbears of “sweatshops” and “living wages”—concepts that, notably, even the ILO’s Somavia omits from his four “essential principles.” Any activist group can, of course, claim any legal workplace it does not like is a “sweatshop” and can claim any legal compensation system it finds inadequate denies a “living wage.”

Besides substantive labor protections, the second big sticking point for the activists is “transparency” (a European term meaning “access to information”). Activists want multinationals to post on their web sites their codes, work rules, lists of their overseas facilities, and lists of all their supplier companies. Activists *really* want multinationals to post their codes, in translation, at each of their overseas workplaces (and at their suppliers’). Activists gleefully expose as a fraud any multinational that trumpets, at headquarters, a strong commitment to its conduct code, but then withholds readable versions from the very workers meant to benefit.

Therefore, multinationals’ codes of conduct not only have to answer to the three “masters” we discussed, they also need to guarantee substantive labor protections and transparency. How can a company draft a code of conduct meeting all these goals?

B. A Suggested Solution: Local Law Compliance—Plus a Few Core Values

Having considered all these points, a multinational should at last be ready to rework its worldwide workplace conduct code and draft a viable implementation plan. Here is what any serious multinational needs to do.

1. Anchoring a Code of Conduct in the Tough Labor Laws of the Developing World

There is only one way to craft a workplace conduct code that simultaneously accounts for business goals, for poor countries' laws, and for the activists' desires: anchor the code in a *total compliance commitment to poor countries' tough labor protective laws*. We have already discussed what that means in principle. But how does a multinational actually do this and create a viable code? It might seem, at first, that basing a workplace conduct code on complying with poor-country labor laws will not assuage activists' concerns.

Activists tend never to focus on the texts of poor countries' labor laws; activists assume, without support, that third-world governments fail to legislate adequate workplace protections. How can I so sweepingly accuse activists of ignoring the very countries they claim to want to protect? Only because I have seen them do it, time and again. Read the activists' own literature: you will find plenty of talk about aspirational U.N. declarations, ILO protocols, and multilateral treaties, but no activist will tell you what the developing country labor statutes actually say, or even acknowledge how tough they are. Activists denigrate poor-country labor codes out of good faith ignorance. They often say poor-country workplace laws and enforcement are weak, but they never tell you what those "weak" laws say, and they almost never cite examples of weak enforcement against multinationals or their suppliers.

A classic example is a scholarly article published in the Summer 1999 issue of the *DePaul Business Law Journal*, a forty-seven page, 217-footnote piece called *Nike Just Does It—And Why the U.S. Shouldn't: The United States' International Obligation to Hold [Multinationals] Accountable for Their Labor Rights Violations Abroad*. Although every page of the article condemns multinationals' "violations" of labor "standards," the article nowhere cites, mentions, summarizes, or describes even a single worker protection law in a single third-world country. Typical of the article's analysis is its very first sentence, which says: "United States based multinational corporations have a long history of engaging in systematic labor rights violations abroad." That sentence gets assigned footnote number one, but the text of footnote number one does not tell us what these "violations" are violations of (oddly, the text of this

footnote number one criticizes the employment of slaves discovered in 1995 in a *California* garment factory). Similarly, not long ago, the U.S. and European Union jointly hosted a two-day intergovernmental codes-of-conduct conference featuring dozens of human rights and organized labor speakers—even U.S. Secretary of Labor Alexis Herman. I was there. *Not once* in the two days did a single speaker tell us what even a single poor country workplace law said. Speakers generally indicted poor countries' workplace laws as "inadequate," but without offering any explanation, analysis, or support.

I recently served on a workplace human rights panel and gave a speech for which I was the token voice for multinational corporations. I urged respect for the third world's tough workplace protection laws. The audience—indeed, even my fellow panel members—had never heard this approach. They had no idea poor countries actually mandate real employment protections. In fact, afterwards a panel member—a *law professor*—stopped me and asked how she could research the developing world's employment statutes. Then another audience member, this one from Central America, stopped me and *thanked* me for pointing out what he had thought no American understood. The Central American went on to detail for me even more specific (and enforced) statutes in his country that protect workers better than corresponding U.S. laws.

The point is that because the activists ignore poor countries' tough labor laws, a multinational proving its compliance with these laws would not seem in any position to impress (much less to silence) activists. But *fortunately*, the activists' own desire to help poor workers warms them to an approach to codes of conduct that respects poor countries themselves. While activists show little initiative in researching third-world labor laws, their *emotional allegiance* to the world's poor opens them to a system like the total compliance approach that *respects poor countries themselves*. So the "total compliance" approach can work, even with activists. For example, one high profile multinational retailer did take the time to research all the actual employment protection laws of all the countries where it (and its suppliers) operates. The company developed a compliance and monitoring field guide more advanced than the monitoring tools of its competitors. That company's workers, today, are guaranteed to enjoy the generous rights their own governments have decreed they get.

The trick to using the "total compliance" approach and assuaging activists is *communication*. When a multinational using the "total compliance" approach assembles its field guide summarizing the workplace-protection laws of each country where it (and its suppliers) operates, the company needs to tell the world about the tough, concrete anti-sweatshop rules it actually follows. One way to do this is to guarantee,

in a company's code itself, that the company will comply with the *higher* of the applicable U.S. law or the local country law (as to basic worker protection and anti-sweatshop laws, not country-specific minimum wage and safety regulations, because these tend not to make sense out of context). Guaranteeing this will be the same as assuring compliance with local law (because poor-country worker protection laws are stricter than America's weak rules). But making this guarantee might be an especially-effective means of *communication*. Another communication idea: any multinational following "total compliance" should post a summary of applicable laws on its web site, letting the world see that, to the company, "total compliance" really means living up to real, articulable anti-sweatshop standards.

Indeed, the "total compliance" approach might ultimately *win a multinational favor* with activists, who themselves seem headed in this direction. People who champion better overseas work conditions are at last embracing *local* approaches (as opposed to rich-country, U.N./ILO ivory-tower solutions dreamed up in air-conditioned office buildings). Recently, a coordinator of the International Labor Rights Fund's Asia program criticized the ILO-centered approach to fighting child labor, noting, "often, the best solutions are those *organized by local groups in the area where the children live and work.*"

2. Augmenting the "Total Compliance" Approach with Extra Guarantees

A multinational that anchors its code of conduct in a total-compliance approach might, perhaps, decide to go even farther and additionally inject some first-world Western workplace values into its code—values that poor countries do not generally enshrine in their otherwise-tough worker protection rules. A company can, of course, *augment* a total-compliance-based code of conduct with any specific "extras" particularly important to its business. The main values that companies usually decide to extend universally involve age discrimination, pregnancy testing, child labor, and labor unions (the right to organize).

As to age discrimination: the U.S. and New Zealand stand alone in the world in effectively banning age discrimination. (Canada and a few other countries do have laws purporting to prohibit age bias, but they are not widely litigated, and they are subject to mandatory retirement caps, generally at age sixty-five.) American multinationals hate to admit it, but abroad they routinely discriminate on age. Example: one San Francisco-based multinational publishes a broad equal employment policy that claims it never discriminates on age anywhere in the world. This same company forces its people in India to retire at age fifty-eight. Most

countries' domestic statutes adequately ban *sex* and *race* discrimination, so a total compliance policy probably keeps a company covered there. A multinational that abhors *age* discrimination might consider using its conduct code to prohibit age bias in its worldwide operations. This would mean, for example, banning overseas offices from placing help wanted ads with age ranges, and stopping mandatory retirement worldwide (two common, although perhaps declining, practices overseas). Banning age discrimination in a conduct code offers any U.S.-based company an extra *bonus*: heading off the emerging trend in U.S. age discrimination lawsuits to expose a multinational's ageist practices abroad to show the U.S. jury that the purported company-wide rule against age bias is a sham. A multinational whose conduct code *effectively* bans age discrimination worldwide turns a vulnerability in U.S. courts into a strength.

As to pregnancy testing: mandatory pregnancy testing—obviously abhorrent by U.S. standards—is widespread in some countries, like Mexico. Ironically, in these countries employers test to get around tough local laws requiring *paid* maternity leave—a benefit far in excess of U.S. law. Today, there are plenty of U.S.-owned companies that actually require pregnancy tests at some overseas facilities. A multinational can use its code of conduct to put a stop to this. General Motors is a good example. Until 1998, G.M. tested its talent in Mexico for pregnancies, but then G.M. voluntarily issued an internal mandate stopping the tests.

As to child labor: if a multinational anchors its code of conduct in “total compliance” it will, necessarily, live up to the tough child labor laws of the third world. (I have heard activists claim poor countries have weak child labor laws, but when you ask them to name a nation with no minimum work age, or with one below the legal age for agricultural work in the U.S., they get very quiet.) A company that sees child labor as a public-relations hot button might, nevertheless, consider adding into its code a commitment to employ no one under a set age—even where local law allows employing those a year or so younger.

Finally, as to labor unions and the right to organize: as we have discussed, virtually every country on the planet recognizes workers' right to organize into trade unions. Indeed, many nations—even poor ones—enshrine this right in their very *constitutions* (although no labor rights whatsoever are mentioned in America's constitution). Of course, private-sector trade union organization rates, even in poor countries, outstrip America's measly 9.0%, which is now claimed to violate Americans' human rights. There is a small handful of nations that outlaw trade unions—Saudi Arabia, for example. But nothing anyone writes into any code of conduct will make a difference in a place where unions cannot exist in the first place. So why bother? A total-compliance approach in a

conduct code will, by definition, mean the company respects the right to organize. There is no need to address this right separately, except for public relations. Yet the right to organize is such a public relations hot button (particularly among U.S. organized labor, which scans for “union” clauses in multinationals’ conduct codes) that a multinational might decide its code should *explicitly address* the right to organize as a public relations maneuver. If so, the company should consider a provision that unqualifiedly affirms respect for local trade unions, union organizing laws, and applicable sectoral collective agreements.

One more thing to think about: in-house (“employer dominated”) unions. These bodies are similar to the works councils of Europe; outside the U.S., people do not tend to see these as inherently evil. But U.S. organized labor holds in-house worker groups in special contempt. So if a multinational does not believe in in-house unions either, then it should consider adding a provision to its conduct code banning them throughout its worldwide operations.

3. Monitoring and Enforcing

A multinational company might draft a fantastic human rights conduct code, but, if it neglects to communicate, monitor, and enforce it, it is a sitting duck for claims of human rights abuses and claims of hypocrisy. As we discussed in the context of “transparency,” activists demand access to codes of conduct and to backup information (lists of overseas facilities and suppliers). And unless a multinational hangs local-language translations of its code inside its overseas workplaces, its code is just a public relations puff-piece.

Keep in mind that the human rights conduct code movement has evolved to the point where the *text* of a code, alone, appeases no one. A multinational designing a compliance system needs to keep sight of the many college students roaming the field, right now, doing what Nike calls “gotcha monitoring.” As we have seen, some companies (like Nike) employ, in-house, hundreds of people monitoring their codes. Others tap into the growing industry of outside consultants doing on-site monitoring (such as PricewaterhouseCoopers and Verité). As a multinational designs a code of conduct monitoring system, it should keep in mind that the activists, at least, prefer *independent outside* auditors. Remember that unions grounded their 1998 Wal-Mart boycott on their contempt for what they saw as Wal-Mart’s biased network of monitors. And in selecting monitors, a multinational serious about compliance will steer clear of guys in suits carrying clipboards and cell phones. The most effective monitors speak the local language and establish rapport with workers on-site, to find out what is *really* going on.

V. KEEPING SIGHT OF THE BIG PICTURE

At the beginning of this article we spent a lot of time working through details of the developing world's labor protection laws. We did this to establish the surprising, perhaps shocking, point that the code of conduct and trade/labor "linkage" movement—a movement that has now led to violence in the streets of Seattle, Washington, D.C. and Prague (and that has led to the trashing of McDonald's elsewhere)—*is built on a fallacy*. That fallacy, as we saw, is the almost universal misconception that poor countries offer weak worker protection rules that are behind corresponding rules in the U.S., and that poor countries fail to enforce their worker protections against employers involved in global commerce.

Tellingly, while those who champion codes of conduct and linking worker rights to free trade like to tell horror stories about work conditions abroad, they never (in my experience) roll up their sleeves and investigate the actual workplace protection laws and enforcement patterns of third-world countries. If they did, they would be in for a surprise. As we saw, most all the stories that we in rich countries hear about Dickensian third-world work conditions are attributable *not* to weak worker protections or enforcement. Rather, these horror stories grow out of one or more of the following factors—none of which the rich-country labor unions, human rights activists, college students, or "ethical investors" are doing much of anything about:

- Abuses in purely-domestic sectors outside the reach of multinationals and the world trade community;
- Low but livable wages—which poor countries by definition will always pay;
- Bleak, unpleasant—even horrid—workplace conditions that, bad as they are, are a lot like the conditions of the least popular blue-collar jobs *in the U.S.*—the jobs that American white-collar thinkers and even many AFL-CIO members have all but forgotten about (West Virginia coal mining, Florida sugarcane harvesting, Ohio metal-castings factory work, and the like); or
- Differing work ethics, whereby some poor-country workers (such as in China) prefer to work in bursts and actually demand extremely long hours (so they can then retire or take long periods off work).

The fact that the movement for codes of conduct and linking labor conditions to free trade is built on a false assumption makes a corporate response difficult. This difficulty explains why almost everything you read in the press about third-world labor conditions comes from organized labor or human rights activists—normally loquacious U.S. business rarely has much to say on this hot social topic. However, as we saw, U.S.-based multinationals *can* design viable codes of conduct that make a difference in work conditions abroad and that simultaneously respect the people everyone says they want to protect: poor-country workers. The key is to build a code around a total-compliance policy, augmented, perhaps, by core additional values. Only by taking this approach will we in rich countries win the respect of poor-country governments, workers, and unions. The secret is to respect and appreciate all the work that poor country governments have already done in stamping out employer abuses with tough laws and enforcement. That means rejecting the off-putting, imperialistic “we know better than you” approach that has marked the suggested strategy in codes of conduct and trade/labor linkage circles.