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Meeting the Challenges of Globalization: FTAA Developments in South America

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Abstract

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1. FTAA: Tuning the Negotiations toward 2005

Since November 2002, United States and Brazil are the co-chairmanship for the final phase of negotiations of the Free Trade Area of Americas (FTAA) aiming an agreement by January 2005. Preparatory activities have been taken place since 1994. Are the 34 nations more prepared today than in 1994 to enter into the FTAA?

In the economic sphere, the answer seems to be positive. In the social sphere, the answer seems to be negative. What are the facts?

The economic performance of the 34 nations during the 90s. was better than in the 80s. Economic growth reached an annual average of 3,55% whereas in the 80s. it was 3,26%. During the 90s the strongest locomotive was the United States, with a 3,5% annual growth for two decades. In a very short time - 20 years - the United States managed to double its economy! This became an extra stimulus for the 33 other nations to participate in that economy which, today, represents 80% of the hemispheric and 31% of the world markets.

But, the U. S. was not the only one to grow during the 90s. In Central America, annual growth jumped from 1,35% during the 8os to 4,45% in the 90s. The Andean Region, went from 1,67% to 2,76% a year; In Mercosur, the jump was from 1,62% to 3,32%. And in NAFTA, from 3,26% to 3,55%.

In Latin American, stringent fiscal policies helped to reduce inflation. The opening of the economies and privatization contributed to create a favorable climate for national and foreign direct investiments.

Today, the aggregate GNP of the 34 nations reaches US$ 13 billion. The United States is responsible for 80% of that figure; the NAFTA nations together respond for 89%. Adding Brazil, the figures goes up to 94%. In other words, the great bulk of the hemispheric GNP is concentrated in four countries. Today, the creation of FTAA depends basically of the United Sates and Brazil. Once created, FTAA will have few key actors (Silber, 2003).

Even so, the economic arguments to joint the FTAA are mixed. On the positive side, there are the following points: FTAA is an opportunity for Latin American economies (1) to have access to the largest and more fluid market of the planet; (2) to have access to the frontier of modern technology and best practices; (3) to buy industrial inputs at a lower price. On the negative side, it is pointed (1) the risk of increasing the disequilibrium of trade terms among the 34 nations due to the massive penetration of the the strongest economies in the weakest ones; (2) the risk to leave out of the free trade the products of higher interest to the poorer countries such as sugar, fish, meat, textiles, clothing, tobacco, orange juice, soybeans, steel and others.

In fact, protective practices and economic disparities are enormous among the 34 nations. In 2001, the TPA - Trade Promotion Authority (former fast track) was approved by the American Congress under severe limitations. Most of agriculture products, textiles and clothing in the United States were considered "sensitive" items and not subjected to immediate free trade. In 2002, the Farm Bill has increased the total amount of agricultural subsidies to US$ 190 billion for the next ten years. In the same year, a quota system and tariff increases made it very difficult to export steel to the United States. In 2003, the approval of terrorism control laws has limited the free movements of labor and migration to the United States. In addition to that, the United States continues to apply quotas for many products as well as to use anti-dumping measures based on national – and untouchable – national laws such as the Trade Act, renewed in 2002 (Rios and Rosar).

These defensive movements of American trade policy has exacerbated the feeling of frustration and distrust in the real possibilities of FTAA for Latin American countries. For the majority of nations, most of their exports to North America, as well as the European Union, is concentrated on the sensitive items. The case of Brazil is a little different. The country has managed to export airplanes, automobiles, auto parts, cell phones and other manufactured products to the developed world. Even so, the weight of coffee, sugar, orange juice, soy beans, meat and fish is considerable.

From the North, Latin Americans keep listening that free trade will be a key strategy to "lift nations and people because consumers will benefit from lower prices and access to a greater variety of products, better and more affordable health care, and increased opportunities. Workers benefit from new and higher-paying jobs. And farmers gain access to new markets (Zoellick, 2002; Aldonas, 2002).

In the Doha meeting, Brazil, Colombia, Chile and United States worked together to get a vague promise from European Union to reduce agricultural subsidies during the next two years (2001-03). During this period, however, nothing happened in that front. To the contrary, the United States decided to approve the Farm Bill, arguing that the the European Union remained static in protecting farming groups.

As a reaction, Brazil began to retaliate the United States by defining intellectual property as a sensitive item. For Brazilians, FTAA without agriculture is a non-starter game. For Americans, to leave intellectual property out of the negotiations is a bad move. To circumvent this impasse, Brazilian and American authorities are talking about agreeing on what is possible to agree until January 2005, that is, to establish a "Light FTAA".

That is enough for the economic debate. The social arguments to join FTAA are also mixed. On the positive side there are the promises (1) to increase commerce and create more jobs; (2) to improve labor capabilities in the use of new technologies; (3) to raise productive and real wages. On the negative side there are the argument that (1) technological advances will contribute to unemployment and informality; (2) productivity and regulatory disparities will favor the developed nations and marginalized the labor force of the poorer nations; (3) the imposition of higher labor and environmental standards will negative affect present competitiveness of less developed nations.

All these arguments are not new. However they became more acute as the FTAA deadline is approaching. In addition, most of Latin American countries went through severe drops of employment rates during the time their economies became healthier. After

several years of structural adjustment, unemployment increased from 6% to 10% during the nineties. Informal work went from about 50% to 57% after the adjustments (Freije, 2001).

Whether successful economic reforms were the cause of bad labor results and precarization of working conditions is a polemic issue. For some, privatization, fiscal control, opening of the economy, cheaper capital goods induced firms to substitute capital for unskilled labor as well as reducing inflation induced firms to reduce real wages (Lora and Oliveira, 1998).

For others, it was the excessive commercial regulations which made economic activities unaffordable by small entrepreneurs and less prepared to cope with changes coming from technology and globalization which, in turn, generated unemployment and informal work (De Soto, 2000). As a variant of this argument, there are those who blame high payroll taxes and severance payments as well as the rigidity labor codes as responsible for a large part of unemployment and informality in Latin America (Heckman and Pagés-Serra, 2000).

Finally, there are those who see neither economic reforms nor excessive labor regulations as the causes of growing informality in Latin America. The precarization of working conditions problem, they say, is due to a lack of enforcement of existing labor laws and, also, to attempts of flexibilization of existing regulations (DIEESE, 1997).

The disappointing performance of labor area has created frustration and skepticism with free market policies in Latin America. A strong wave against neo-liberal policies has gained the scene in many countries and has been responsible for the shifting of

political behavior toward populist and left governments. This is the case of Argentina, Brazil, Ecuardor, Venezuela and Peru.

Close to the FTAA deadline (January 2005), Latin America assist a growing opposition to liberal policies, including, liberal trade policies. Entrepreneurs are skeptical because of insisting protectionism at this time. Labor unions suspect a further precarization of working conditions with the intensification of unbalance trade policies of FTAA. Resistance increased with the victory of populist and left governments in recent elections in South America.

In Brazil, the Workers Party considered FTAA as a mere strategy to make Brazilian markets as an annex of American markets, with serious threatening to domestic production and national employment. In Argentina, labor unions fear FTAA as a repetition of the IMF which carried the country to the collapse and the default. In Peru, the labor press as referred to FTAA as a weapon of mass destruction in Latin America. And so for.

Of course, these manifestations will not be able to stop the process and the FTAA will be, very likely, to be signed in January 2005. When the agreement is seen as inevitable, the parties try to minimize its risks.

In the economic dimension, as it was mentioned, entrepreneurs are forcing the governments to retaliate. In the social area, labor unions are forcing the governments to accept social clauses as proposed by many entrepreneurs and labor unionists of the developed world during the discussion of the Uruguay Round and OMC agreements.

The closer is the deadline, the warmer is the debate on the labor question. In Brazil, President Lula is a former labor unionist. Most of his ministers and second rank officials have unionist background. The same picture is dominating Argentina where President Krichner has deep ties with the Peronist Party, traditionally involved with labor unions.

2. Labor Standards in Mercosur

Several economic arrangements have been established in Latin America during the last 25 years. All of them have direct or indirect references to labor rights. Mercosur is one of them.

Mercosur was created in 1991 among Brazil, Argentina, Paraguay, and Uruguay. The four countries formed a free trade zone, with no import tariffs (except for a few products). The highest instance of Mercosur is the CMC (Commom Market Council) which is formed by the Presidents and the Foreign Ministries of the four members states. The Executive authority is the CMC (Commom Market Group), formed by representatives of Foreign Ministries, Economy Ministries and the Presidents of Central Banks in the four nations.

During the 90's the international trade among the four countries increased 200%. After 1999, however, trade was severely affected due, in part, to the currency devaluation in Brazil and the severe financial crisis of Argentina. During 2000-02 period, economic trade dropped among the four countries. Presently (2003) Mercosur is in process of reactivation.

In 1995, Ministers of Labor of the four countries agreed to form a special Committee (SGT10) to deal with questions on employment, social security and labor questions in general. At the same time, Mercosur authorities agreed with the creation of the Consultative Socio-Economic Forum (SECF). Representatives from governments, entrepreneurs and labor unions are partners in the SECF. The Forum can make recommendations to the Ministerial Board of Mercosur. The Forum activities is guided by the following principles initially approved:

> "(a) it is of fundamental importance to eliminate all kinds of non-tariff barriers which may affect trade among the four countries; (b) it is important to harmonize the macro economic policies and the national laws; (c) it is urgent to create a committee of social policies to cover labor, education, health and social security; (d) it is indispensable to create a tribunal for conflict resolution".

As one of the first move toward a minimum of integration of labor legislation in the Mercosur area, the union representatives at the SECF proposed to establish an agreement on the eleven ILO conventions already ratified by the four members states, namely, conventions 11 (right to association in agriculture), 14 (weekend rest in industry), 26 (methods to fix minimum wages), 81 (labor inspection), 95 (wage protection), 98 (right to collective bargaining), 100 (equal remuneration), 105 (elimination of forced labor), 111 (elimination of discrimination), and 159 (job readaptation).

This proposal was rejected by the GMC under the argument that the nations had conflicting interests that, in themselves, were pushing the members states away from those conventions.

An alternative attempt was made to move the nations to agree on a sort of Social Charter on Fundamental Labor Rights. Argentina vetoed the proposal under the argument that no agreement on labor rights can be reached before a fiscalization mechanism is approved by the members. As a counter-proposal, Argentina suggested the creation of a "Labor Relations System of Mercosur" and a "Labor Relations Board of Mercosur" which was considered unacceptable by the other nations.

In 1995, the nations agreed to work in the futures toward a minimum package of labor standards. Theses standards would be based on the principles of the eight ILO core labor standards expressed in conventions 87 (free association), 98 (collective bargaining), 29 and 105 (forced labor), 100 and 111 (non discriminatory measures), 138 (minimum age) and 182 (the worst forms of child labor). These conventions were not unanimously ratified by the four countries, but they have agreed to respect their basic principles in future arrangements.

In 1998 (Rio de Janeiro meeting), Mercosur countries signed the "Declaración Sociolaboral" (Socio-Labor Declaration). This documento was approved by the CMC (Chahad, 2001) and it deals with (1) individual rights; (2) collective rights, (3) employment policies; (4) labor inspection; (5) social security; and (6) conflict resolution procedures (Cruz, 2001).

According to the Declaration, the member states agreed to respect the above mentioned rights according to the national laws and labor practices. For this purpose, they agreed to create a "Comissão Sociolaboral Regional" (Regional Labor Commission), not to sanction, but to promote and to monitor the application of such rights.

The Commission has not been established to this date (September 2003). In practice, there is no mechanism such as NAALC to guarantee compliance of labor standards among Mercosur nations. Yet, in 2002, the Mercosur Council approved the creation of a Permanent Tribunal of Appeal (formed by five lawyers with a mandate of six years) to resolve commercial disputes. Labor disputes are not prohibited in this Tribunal. But, to not a single case was presented to the Tribunal[1].

To this date, labor rights in Mercosur are regulated by national laws. In general, national laws are very detailed on individual rights and very vague on collective rights as well as on the role of collective bargaining. The existing laws cannot be overruled or modified by collective agreements, even when the parties feel more useful to introduce economic and social clauses which are different from the legal norms.

In Argentina, the 1994 Constitution establishes the minimum wage, the maximum working hours (8 hours a day and 48 per week), paid vacation, free association, health protection, equal pay for the same work and validity of the collective agreements. The ratified ILO conventions have a constitutional status. They require constitutional changes to be denounced whereas in Brazil this procedure can be taken by federal government. The Argentinean Labor courts do not have a "normative power" which permit

[1] This is very common in Latin American cultures – disputes resolution procedures come before compliance mechanisms (Cordeiro, 2000).

to the judges to extend the results of a judicial sentence to many firms and segments of the labor force. However, this power can be used by the Minister of Labor, which is not possible in Brazil.

In Brazil, labor protection are spread in the 1988 Constitution, the Brazilian Labor Code (CLT) and other laws. The Constitution has about 40 provisions in the area of labor and the CLT has more than 900 detailed articles on individual rights, bargaining agreements, Labor Courts, health and safety, and regulations for especial occupations. Nothing in the Constitution or in the CLT can be bargained or modified even when the parties agree to do so. But, there are three exceptions. Wages, working hours, and profit share participation can be negotiated within certain limitations. In the case of wages, trade unions have to agree with the difficulties argued by the managers. On working hours, an eventual increase in daily hours has to be compensate with a decrease in the same week. In the case of profit share, the unions and the enterprises have to establish in advance the criteria to be meet to guide the distribution.

Paraguay also has a very detailed set of legal regulations spread in the 1992 Constitution and in the 1993 Labor Code. In general, the rigidity of Paraguayan laws is very similar to the Brazilian ones. However, under specific circumstances (severe economic crises, damage from disasters, etc.) the enterprise is entitled to change a few contractual dispositions.

Uruguay has no labor code. Individual relations are regulated by scattered laws and ILO conventions. It is the only country in Mercosur where collective bargaining has a wide range of application. Even so, many issues are established top down. For

instance, at the federal level, a tripartite council defines, annually, the value of wages for several categories for the whole country.

The four countries present variations, however, in the types of legal contracts. In Argentina and Uruguay there is a wide range of labor contracts, with special provisions for small and medium enterprises, young workers, seasonal work, etc. In Brazil and Paraguay these possibilities are very restricted and have been reasons for protests and attacks from trade unions.

The four countries present variations on working hours, paid vacation and holidays as well as the remuneration of days not worked such week end. Brazil is the only one with 8 hours a day and 44 hours a week. The three others work 48 hours per week. Brazil is the only one to have a vacation allowance (1/3 of the monthly salary) and a rule to pay the non working days during weekends for contracts signed on a hourly basis. These variations have different impacts on social costs to hire labor in the four countries, what is presented in the next section.

Trade unions of the four countries are not satisfied with the vague intentions and lack of compliance in the area of labor. But they keep pressing for a more practical mechanism. In general, they seem to have a preference for the “biting model” – such as WTO - rather than the moral model – such ILO. This is the tendency of most trade unions in other Latin American countries.

3. Labor Standards in other Latin American Nations

The history of Latin American nations has been marked by a very comprehensive system of labor laws and labor courts. Most countries have ratified the ILO conventions which deal with the core labor standards. In addition, national labor laws are very detailed in establishing individual rights. In this respect, Latin American labor codes and regulations promise much more than North-American laws. The problem is compliance.

Latin American laws guarantee that workers can organize their unions with no interference of the State or entrepreneurs. Unionized workers are free to bargaining once a year to renew the labor contract or whenever is necessary. In the area of discrimination, laws are becoming tighter. Forced labor is prohibited by law. Slave and bonded labor is under rigid combat by Courts. Child labor is not permitted. And so on.

This is the case also of the countries which were invited to join Mercorur, namely, Chile, Bolivia and Venezuela. If one takes the core labor standards as measures of basic protections, all these countries enjoy a good status. Table 1 shows the ratification of the ILO key conventions.

87 (free association), 98 (collective bargaining), 29 and 105 (forced labor), 100 and 111 (non discriminatory measures), 138 (minimum age) and 182 (the worst forms of child labor).

Table 1. Ratification of ILO Fundamental Conventions

	Ratified Conventions							
	29	87	98	100	105	111	138	182

Countries	Forced labor	Free association	Collective bargaining	Discrimination	Forced labor	Discrimination	Minimum age	Worst forms child labor
Argentina	Yes	Yes	Yes	Yes	Yes	Yes		
Brazil	Yes	No	Yes	Yes	Yes	Yes		
Paraguay	Yes	Yes	Yes	Yes	Yes	Yes		
Uruguay	No	Yes	Yes	Yes	Yes	Yes		
Chile								
Venezuela								
Bolivia								

National laws cover also a wide range of individual rights such as working hours, resting periods, vacations, holidays, health and security, unemployment, social security,

In other words, there is no lack of laws for labor protection in Latin America. The problem is that the existing laws are not enforced for people working in the informal sector – which exceeds 50% in most countries.

Very little of the legal provisions are respected in the informal labor markets. Informal employees are not unionized and do not bargain with employers. Wage differentials among men and women as well as black and white are much greater in the informal sector than in the formal one. Child labor is more common in rural households of the informal sector than in formal jobs of manufacturing sector of urban areas. Moreover, a large part of the informal workers are self employed.

People in the informal sector do not have the minimum protection provided by social security schemes. When they temporarily stop working, there is no unemployment insurance. When they get sick, there is no paid sick leave to take care of their health. When they are older, there is no retirement provision. When they die, they leave no protection to their descendents.

Take the case of Brazil. In 2002, there were about 75 million Brazilians at work. Out of these, 30 million had protection from social security and 45 million did not have it. Out of these 45 million, about 19 million were non-registered employees; 15 million were self employed; 6 million were non-wage workers (usually working for parents and relatives); 4 million were non-registered maids; and 1 million were employers. Informality is a problem of large magnitude. It is unlikely to be solved by fiscalization and labor courts. The Ministry of Labor has about 7,000 labor auditors and the Justice has about 5,000 judges. They have to take care of 45 million informal workers and 2,5 million legal process entering in the labor courts every year. It is an impossible task.

Changes have to be introduced in the labor code and in the dispute resolution procedures.

But labor reform has been very difficult in Brazil. Trade unionists blame flexibilization for all the workers problems, particularly, unemployment and informality. Judges complain about excess of work but do not support any kind of descentralization or voluntaristic mechanism for labor disputes (conciliation, mediation, arbitration, etc.). It is very likely that the labor law and the judicial system will remain rigid for a long time and, as a consequence, informality will keep increasing for years to come.

The problem of compliance will continue to be a serious one. Under poor economic condition, lack of growth, high unemployment and large labor supply, unrealistic laws, tend to make it difficult to achieve compliance. Take the case of the social costs generated by stringent labor laws. In Brazil, social costs reach 103,46% of the nominal wage for a firm to contract an employee legally, as seen in Table 2.

The Cost of Legal Contracts in Brazil
Hourly workers

Social Costs	% of wage
Group A – Social Obligations	
Social Security	**20,00**
Severance Fund	**8,50**
Educational contribution	**2,50**
Accident contribution (average)	**2,00**
Social services (SESI/SESC/SEST)	**1,50**
Vocational training (SENAI/SENAC/SENAT)	**1,00**
Entrepreneural promotion (SEBRAE)	**0,60**
Agrarian reform (INCRA)	**0,20**
Subtotal A	**36,30**
Group B –Non working time I	
Paid weekend	**18,91**
Vacation	**9,45**
Vacational Allowance	**3,64**
Holidays	**4,36**
Severance time (aviso prévio)	**1,32**
Sick leave	**0,55**
Subtotal B	**38,23**
Group C –Non working time II	

Christmans salary	**10,91**
Dismissal Penalty	**3,21**
Subtotal C	**14,12**
Group D –Cumulative Incidences	
Group A/Group B	**13,88**
Severance Payment/Christmans salary	**0,93**
Subtotal D	**14,81**
GRAND TOTAL	**103,46**

Source: Constitution and Labor Code.

As it was mentioned, in spite of the generalized rigidity, the national laws of the Mercosur nations present variations on working hours, paid weekends, dismissal procedures, length of vacation and number of paid holidays. These differences affect the social labor costs very substantially as shown in Table 4.

Legal requirements	Argentina	Brazil	Paraguay	Uruguay
Annual working hours				
Group A – Social Obligations				
Social Security				
Severence Fund				
Educational Contribution				
Accident Insurance (average)				
Social Promotion				
Vocational Training				
Entrepreneural promotion				
Agrarian Reform				
Subtotal A				
Group B – Non Working Time – I				
Paid weekend				
Vacation				
Vacational Allowance				
Holidays				
Severance time (aviso prévio)				
Sick leave				
Subtotal B				
Group C – Non Working Time II				
Christmans salary				
Dismissal Penalty				
Subtotal C				
Group D – Others				
Life Insurance				
Remuneration Tax				
Group E – Cumulative Incidences				
Group A/Group B				
Severance Payment/Christmans salary				
Subtotal D				

Despesas de Contratação no Mercosul

(Setor Industrial - Horistas)

Tipos de Despesas	% sobre o salário Brasil	Argentina	Uruguai	Paraguai
Horas Anuais Trabalhadas	**2.015**	**2.264**	**2.264**	**2.304**
A-Contribuições Sociais				
INSS/Seguridade	20,00	33,00	19,50	15,50
Fundo de Garantia	8,00	-----	-----	-----
Salário-Educação	2,50	-----	-----	-----
Acidentes do Trabalho	2,00	-----	2,00	-----
Serv. Social (SESI)	1,50	-----	-----	-----
Formação Prof. (SENAI)	1,00	-----	-----	1,00
SEBRAE	0,60	-----	-----	-----
INCRA	0,20	-----	-----	-----
Sub-total A	**35,80**	**33,00**	**21,50**	**16,50**
B-Tempo não Trabalhado I				
Repouso Semanal	18,91	-----	-----	-----
Férias	9,45	4,54	8,11	4,77
Feriados	4,36	3,24	1,62	3,18
Abono de Férias	3,64	-----	-----	-----
Aviso Prévio	1,32	-----	-----	-----
Aux. Enfermidade	0,55	6,78	-----	-----
Subtotal B	**38,23**	**14,56**	**9,73**	**7,95**
C-Tempo não Trabalhado II				
13° salário	10,91	9,74	9,74	9,55
Rescisão (2)	2,57	4,00	2,00	4,00
Subtotal C	**13,48**	**13,74**	**11,74**	**13,55**
D-Outros				
Seguro de Vida	-----	0,04	-----	0,12
Imposto s/Remuneração	-----	----	1,00	----
Subtotal D	**-----**	**0,04**	**1,00**	**0,12**
E-Reflexos dos Anteriores				
Incidências de A sobre B	13,68	4,80	2,09	1,31
Incidência do FGTS s/13°	0,87	----	----	----
Incidência de A/13° sal.	-----	3,21	2,09	1,57
Outras Incidências	-----	0,92	----	----
Sub-Total E	**14,55**	**8,93**	**4,09**	**2,88**

TOTAL GERAL	**102,06**	**70,27**	**48,06**	**41,00**

The incidence of 103,46% is universal, that is, it is applicable to micro, small, medium, large and mega enterprise. It has been very difficult for the smaller firms to cope with this amount and with the bureaucracy to fill all the forms to collect the payments. Yet the smaller firms are responsible by a large part of present employment, as seen in Table 3 which focus on formal and informal employees of the urban sector.

Tabela 3 – Formal and Informal Employees in Urban Areas in Brasil

	Size			Total
Sector	Micro e Small	Medium	Large	
Manufacture	3.522.689	1.636.721	2.465.939	7.625.349
Commerce	5.457.983	311.642	1.076.120	6.845.745
Service	4.629.485	715.689	10.641.999	15.987.173
Total	13.610.157	2.664.052	14.184.058	30.458.267

Source: IBGE, 2000.

Among urban employees, most of the informality is found in micro and small firms. Out of 13,6 million workers of those firms, about 9,2 (68%) have no social protection from the retirement and pension system. Medium size firms of the non-tradable sectors also face many difficulties to cope with cost and bureaucracy top hire workers legally.

Yet, resistance to labor reform has been widespread not only in Brazil but in all Latin America. Trade unions, the press, the midia and the law makers tend to be against any kind of reform that tries to reduce labor protection or to shift the contractual basis from

the law to negotiation. The protected group speak louder and manage to avoid any kind of change that theoretically would hurt their privileges.

Take the recent case of pension reform in Brazil. In the private sector the average value of a retirement allowance was US$ 100 per month. In the public sector, it was US$ 1,000. For the judges, US$ 4,000. The 2003 reform tended to correct this picture, gradually, and with several transition rules. The 24,000 judges threatened to stop the courts and forced the law makers to maintain their situation basically unchanged. For the private sector, the 20 million workers remained with the US$ 100 allowance and were subjected to more rigid rules for retirement and pension.

Informality and inequality usually go together. An unequal society tends to force a large majority of its people to live in the informality and to protect the few to live in the formal market. In general, people in the informal have unstable jobs, low income and poor education. The most vulnerable are the young and the women workers. They have little access to land, urban property and legal facilities. For them, to be unemployed is a luxury, since most of them never had a formal employment which guarantees unemployment insurance. To use the legal facilities is also a rarity, due to the bureaucratic complexities, the length of time to resolve a dispute and the high opportunity cost involved in the process (Pinheiro, 1998; Herrero and Henderson, 2003). In Brazil, a legal action takes 7 years, in average, to be resolved when the parties appeal to state and federal courts. In spite of that, judicial reform has been very difficult to carry on. The Brazilian Congress is discussing such a reform – which, in fact, is very far from the needs of the country, for 15 years with no perspective a short term solution.

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The complexities of international trade prevent the Latin America public opinion to form an objective view about the advantage of reducing import tariffs among the 34 American countries - the aim of FTAA. Even the specialized press has its difficulties to inform the readers about the intricacies involved in the negotiation of a large trade agreement such as FTAA.

With little information, opinions tend to be based on emotion and ideological ingredients. Very often, people become radical (Abreu, 2002; Jakobsen, 1999). For some, the FTAA is the greatest opportunity to access rich markets (US and Canada), to improve technology in the domestic sectors, and to raise employment through exports. For others, the FTAA is a weapon through which the United States and Canada will impose their interests in Latin America, suffocating the national producers and workers.

Between these two radical positions, there are those who maintain a skeptical view about the sincerity of North America to help the Central and South America. They argue that the rhetoric on trade liberalization has no counterpart on concrete actions. The recent decision of President George W. Bush to protect inefficient U.S. steel plants and to impose losses on efficient Brazilian steel producers made these people wonder what is the true intention of the United States in the field of international trade.

In the next three years Brazil will have to deal with three important negotiations: the ongoing discussions of the World Trade Organization; the consolidation

of FTAA; and the establishment of an agreement between Mercosul and European Union. These negotiations will require a colossal amount of information and a superb professional preparation to overcome the conflicts which will emerge at the bargaining table.

In the case of FTAA, the aim is to eliminate trade barriers among the 34 American Nations. All barriers? All products? No. The process will admit exceptions for "sensible items". The achievement of an agreed list of exceptions is one of the most difficult problems to deal with. For example, if the United States define agriculture products as sensible goods, Brazil, in particular, and Latin America, in general, will face a loss that may discourage these countries to negotiate FTAA (Jank, 2002a ; 2002b).

The concretization of FTAA will face not only the adjustment of 34 national interests and national trade laws but also the adjustment to the rules of five existing regional agreements, namely, North America Free Trade Area, Andean Community Market, Common Market for Central America, Caribbean Community Market, and Mercosul. On top of that, the final rules have to respect the World Trade Organization norms.

The negotiators will have to match the national and regional rules on tariff and non-tariff barriers, including environment and labor. It is, unquestionably, a fantastic task. Technical, economic, social, political and ideological arguments will have to be overcome to reach a minimal consensus among the 34 nations of America.[2]

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[2] Brazil is the key point of interest for the United States and Canada. With a population of 170 million people and a GDP of about US$ 600 billion Brazil is the largest economy in South America, with a great potential to grow and to become an important player in the international trade. Brazil is the key point of interest for the United States and Canada. With a population of 170 million people and a GDP of about US$ 600 billion Brazil is the largest economy in South America, with a great potential to grow and to become an important player in the international trade.

In the middle of such complexities, labor standards will come to the bargaining table. So far, the negotiators, who are fully occupied with the technical and economic details, have avoided the issue. But it is part of the agenda and will have to be faced in the next 18 months. All the questions in this agenda are scheduled to be resolved until the end of 2003. The following year will be used to sign the documents and the FTAA will enter in operation in 2005.

2. Labor Standards and International Trade

The idea of including labor standards as part of international trade agreements has generated one of the hottest debates in the field of industrial relations. The pressure for this inclusion seems to arise from the advancement of globalization and competition.

Globalization has brought several asymmetries. Capital became extremely mobile and unregulated, whereas labor remained stagnant and regulated. In the last 15 years, the inflows of foreign direct investment to developing countries increased substantially. Yet, the proportion of people working outside their own countries did not exceed 2%, including refugees. Migration remains subject to rigid national laws. Technology has freely and homogeneously spread to most countries. Working conditions remained heterogeneous and restricted by national rules.

The capital-labor asymmetry led many theorists to anticipate serious problems for the proper functioning of economies and the well being of workers, which can be summarized as follows:

When capital is free to move and labor is not, workers enter a disadvantageous situation. Exploitation becomes a common fact. Many argue that, under these circumstances, wages and working conditions are forced to run a "race to the bottom", as a result of violated social codes and labor standards. This (supposedly) would have negative effects upon workers for whom labor protection is assured. "To a worker in an industrialized society, who is displaced by an underage child laborer, it makes little difference whether that child works at home or abroad" (Krueger, 1997:287).

In short, it is assumed that lower labor standards determine lower labor costs and unfair competitive advantage. Also, it is argued that foreign companies prefer to invest where labor costs are lower. Both phenomena are bad for international trade and for the workers. The exploitation of the weaker is said to affect their very lives and the lives of the better off. Wage erosion, unemployment, part time jobs, precariousness of work and other contemporary labor problems of developed nations are assumed to be a result of unfair international competition.

From this perspective, unfair trade hurts both the poor and the rich. For instance: it is argued that child labor deteriorates working conditions at home and abroad, passing substantial advantages onto capital. When, for example, a pair of tennis shoes is produced in China, by children who make US$ 1 a day, and the same pair is sold in the United States for US$ 150, the productivity equation favors profit over labor, concentrating income and wealth in areas with high capital ownership and impoverishing vulnerable workers. In this sense, economic globalization is said to instigate the globalization of inequalities.

The perpetuation of these asymmetries supposedly transforms free trade into unfair trade. Thus, unscrupulous entrepreneurs and middlemen use workers on an illegal basis and maximize exploitation. To guarantee fair trade, the practice of “social dumping” must be fought by all means.

These types of considerations have led some authors to defend the idea that "global business requires global rules", including global working rules, based on the best-practice concept derived from agreed upon international labor standards (Mehmer, Mendes and Sinding, 1999). The practice of good labor standards would lead wage, employment and working conditions worldwide, to a desired middle ground.

In the labor literature, the issue is not new. Article 7 of the Havana Charter (1948) explicitly linked international trade to labor standards. In 1966, David Morse, the General-Director of ILO, announced that international conventions aimed not only at establishing minimum labor standards, but also at discouraging exports promoted with the exploitation of workers (social dumping) (Morse, 1966).

More recently, Americans reintroduced the idea of labor standards in multilateral negotiations of the Uruguay Round at the Ministerial Conference of Marrakech, in 1994, and repeated that intent at the Ministerial Conference of the World Trade Organization (WTO), in Singapore, in 1996, and in Seattle, in 1999. The idea is to write the trade agreements in a way that economic sanctions can be applied to nations which do not respect international labor standards[3].

[3] France, Germany and the Scandinavian nations (at the WTO level) supported the United States.

At the beginning the discussion focused on labor standards in general. Today the aim is on the "core labor standards", namely, (1) the prohibition of child and forced labor; (2) the right to organize and bargain collectively; (3) the guarantee of freedom of association; (4) and the prevention of discrimination in employment.

In the last five years, literature on this topic has grown very fast and in different directions. In addition to economic arguments, core labor standards have been identified with "basic human rights". In this context, they should apply universally and irrespectively of a country's level of development. Poverty should not be a pretext for not respecting human rights and, as a consequence, core labor standards (Dessing, 1999).

For the advocates of this idea, international trade regulations should cover not only the field of investments, competition and intellectual property, but also basic working rules. The proper context to define and implement these rules, it is argued, is the arena of trade agreements. Any effort outside this environment is sure to fail.

3. Human Rights and Protectionism?

The real world has not shown too many instances of sincerity coming from those who define themselves as interested in improving the lives of workers in poor countries. Many people in developed countries, for example, want to be sure that children did not make a particular product. But very few are inclined to pay more for that, as compensation for strengthening the children's family income and improving school facilities in poor countries.

Surveys among high income consumers in developed countries indicate declining support for providing aid for the education and well being of children in developing countries (Mohan, 1997: 308), and many studies show that multinational companies resist adopting international labor standards when they operate abroad. Jagdish Bhagwati has proposed the application of US labor standards to American companies operating outside the United States. His proposal was bluntly rejected by US companies based in Mexico and South East Asia (Bhagwati, 1995). His argument is very simple: "An American does not cease to be an American just because he operates abroad. French firms have no reason to behave badly when they work overseas" (Bhagwati, 1999).

The analysis of proposals of advocates who link international trade to labor standards has generated some important lessons, which can be summarized as follows.

1. The implementation of common labor standards across the planet is a very complicated matter.

2. Gains in efficiency from core labor standards are indeed possible, but this depends on complex circumstances.

3. The idea that wages and labor conditions in developing countries exert downward pressure on wages and labor conditions of these countries must be proven.

4. The extent to which low labor standards in poor countries are a real matter of concern for consumers of developed countries is also a matter to be demonstrated.

The main issue is not to make a long list of international labor standards, but rather, to assure international enforcement of existing standards - which are quite numerous.

The clamor for applying international standards abroad, at times when developed countries have their own domestic problems, is not unique to the area of labor. Because of the inability of rich governments to enforce their drug laws, for example, much illegal production and trafficking arise in Latin American and Asian countries, thereby harming their societies and economies. Should poor countries therefore demand trade sanctions against rich countries because of the inability of the latter to curb the illegal use of drugs?

From a more cautious position, one could certainly argue that the internationalization of minimum labor rules would never take place through confrontation. A continuing dialogue process and global cooperation are essential in reaching solutions of mutual interest. During the process, it will be necessary to not only affirm, but also sincerely demonstrate, that the introduction of the intended social clauses is not a disguised means of protectionism.

More recently, both the International Monetary Fund and the World Bank have rejected the idea of making the approval of loans to poor countries to their compliance to the core labor standards. These two organizations recognize, however, the importance of promoting the core labor standards through persuasion and moral pressure using the methods of the International Labor Office but never using the compliance as a condition for lending (Fischer, 1999; Holzmann, 1999).

Special attention must be placed on the issue of compliance. A realistic approach in this area is to consider that effective compliance are more likely to occur when countries export more, rather then less. If enforcement is not compulsory, it has to prove its efficiency as a voluntary method.

Credible communication campaigns are needed to prove that the claim for better standards is really a humanitarian one, and not a disguised artifact of protectionism. Bhagwati is one who firmly believes in the use of guilt and shame as instruments for disseminate and persuade people to adopt good practices. "It´s like the Pope who has no troops or Ghandi who never used sanctions. If you have a good cause, I do believe in the power of morality" (Bhagwati, 1999). In this sense, it is worthwhile to consider the campaigns which aim the voluntary codes of conduct.

In addition, a credible way of showing that one derives satisfaction from improving the conditions of the poor is by helping them, by contributing to raising their educational level and facilitating the mastering of new technologies and productivity.

This sort of attitude is very different from simply imposing tariffs as sanctions and penalties on those who are not aligned with better labor standards. Unrealistic standards will be ignored and the remedy for noncompliance is not to set the standards high, but rather at the level the public considers adequate and feasible. The best way to modify this situation is not by having more trade ties, but rather, by reaching a situation in which violation cannot be excused.

4. The Problems to Reach an Implementable Agreement

In taking the idea of linking labor to trade for granted, there are at least five key questions to be answered before countries will eventually come to an agreement, namely, (1) what is the best form of intervention to achieve a desired social goal, in which capital and labor can enjoy a more human relation? (2) How can this reform be initiated? (3) How can international rules be imposed on national laws? (4) How can one ignore the importance of cultural and political traditions of nations involved in global trade? (5) Why would some industrial countries seek to impose international labor standards?

Even those who defend the need of internationalizing working rules recognize that labor standards cannot be imposed by one nation or another. "To maximize compliance, there must be full participation in rule-making" (Mehmer, Mendes and Sinding, 1999: 34). This means labor standards must be negotiated multilaterally and established through a consent dialogue.

Would the internationalization of working rules mean abandoning the comparative advantage of nations?

The International Labour Organization's (ILO) response to this question is simple: comparative advantages are to be respected, as long as nations respect the core labor standards, namely, freedom of association (Convention 87); the right to bargain collectively (Convention 98); the elimination of child labor (Conventions 138 and 182); and the absence of discrimination and forced labor (Conventions 29, 35 and 105).

For most countries, however, the main question is not approving national laws or ratifying the ILO Conventions, but rather, guaranteeing compliance with such laws

and conventions. Obedience depends on feasibility. For instance, it is easy to prohibit child labor. It is not clear, however, whether this prohibition will maintain the child in school. He or she can be moved from labor to drugs, crime or prostitution. For those countries the simple removal of a child from labor may be a solution. But for countries responsible for that child, the shift from work to drugs, crime or prostitution is a much bigger problem.

Moreover, there is no consensus in the existing literature over whether the assumption that respect for core labor standards automatically improves the lives of workers of both poor and rich countries. In fact, research does not provide solid support for the supposed causation. The OECD studies, for example, revealed that: (1) there is no clear correlation between freedom of association and higher salaries; (2) the impact of freedom of association depends on a series of other measures to be approved and implemented by national states; (3) there is no clear association between weak labor standards and an abnormal attraction of direct foreign investments in developing countries; (4) as a rule, labor standards play a minor role in determining export prices (OECD, 1996). This research was repeated by OECD in year 2000, practically, with the same results (OECD, 2000).

A recent study tested the idea that low labor cost is one of the most fundamental criteria for factory location. In a research covering hundred of managers of multinational corporations, the cost of labor was considered in the 9th place, after the growth of the market, size of the market, profit perspectives, political and social stability, quality of labor, legal and regulatory environment, quality of infrastructure and manufacturing and services environment (Hatem, 1997). Rodrik, studying multinational corporations in 40 countries, finds no relationship between manufacturing and economic performance, on one hand, and the number of ILO conventions ratified (Rodrik, 1999).

Kucera, using a methodology which captures the effective implementation of core labor standards (rather than law provisions) find no solid evidence to support the conventional wisdom that foreign investors favor countries with weaker worker rights (Kucera, 2001).

In short, "the review of the empirical evidence on labor standards and U.S. trade suggests that there is no case to be made that low foreign labor standards are harmful to American and European firms and workers. Moreover, foreign direct investment appears to be more attracted to countries with high rather than low labor standards. The policies of the United States and other industrialized countries should be directed to maintaining open markets and encouraging the economic growth of their developing countries trading partners. This is the surest way to achieve labor standards since there is pervasive historical evidence that standards are improved with higher levels of per capita incomes" (Stern, 1998).

In spite of all these evidences, lobbying groups continues pressing for connecting labor standards with trade. The issue is no longer a technical one. To the contrary, it entered in the territory of politics. Entrepreneurs and unions in the developed countries managed to diffuse the idea that to trade with a country with low labor standards is a bad deal. In this campaign they have counted upon many unions from the developing countries.

There is no dispute over whether trade unions are important institutions to help workers to achieve collectively what they cannot achieve individually. But the claim that trade unions and collective bargaining, per se, improve productivity and raise wages, is ambiguous. Exaggerated union pressure has a negative effect on productivity in countries

with strong barriers against product and market competition. In this case, reforming government regulations to assure market liberalization has a much greater positive effect on productivity than freedom of association and collective bargaining. It is true that once liberalized, the market and the workers can benefit from freedom of association and collective bargaining. But the impact of labor standards on raising wages and improving labor conditions is highly dependent on what happens to the product and market environment. Data reveals that rising inequality in labor markets coincides with the opening of markets to international trade (Pastore, 1997). This correlation, however, does not imply causation. Changes in technology, market regulation and union behavior can also be causes for these market trends. Therefore, approval and implementation of core labor standards and linking them to trade is no guarantee for removing labor inequalities. As Krugman points out, the U.S. labor movement, by ignoring the real conditions of the developing countries, is working against the workers of the poor regions. “It is workers against workers battle” (Krugman, 2000).

To say that laxity of labor standards in developing countries exerts a deleterious impact on labor conditions in developed countries is a powerful argument in the political debate. However, it has been very difficult to prove that working conditions in developing countries are a key factor in determining income inequalities and structural unemployment in developed nations. To begin with, the developing countries participate with no more than 20% of imports of the developed nations: 80% of trade is done among developed countries.

In order to assure that limited core labor standards of poor nations have a significant impact on the labor market of rich nations, a long list of factors must be

considered. Research has shown that when one considers the role of new technology, production and distribution systems, financial market changes, the national environment and labor laws, in determining domestic output, employment, salaries, and working conditions of developed countries, the effect of the so-called "social dumping margin" is very small (Maskus, 1997: 45).

In discussing these matters, it is important to see the other side of the coin. In this respect, it is very likely that many rich countries will have to mitigate their own market regulations and moderate their national labor protection to improve their competitive power in the new economy. The same can be said in regard to the expectations of the populations of these countries. If consumers of developed nations say they derive more satisfaction from buying goods produced by workers who enjoy higher labor standards, then, by the same token, they must be willing to pay more for those goods.

"This solution would generate a compensatory transfer from consumers in developed economies to producers in developing economies in the name of higher labor standards, while not interfering with trade. In contrast, a tariff on developing countries goods would induce substitution in favor of goods from developed economies, without necessarily having any impact on core labor standards (Maskus, 1997:47)".

Tariffs can backfire by pushing vulnerable workers, in particular, children and women, into less desirable activities, including underground activities, thereby weakening the economic position of their families. Moreover, labor standards are often not targeted at the poorest, because the very poor are not working, or they are in the informal sector, where labor standards are not followed. As Krueger says, child labor is a tolerated

"normal evil" when societies are poor, but not when societies are rich, in which case the absence of children in the labor market is considered to be “good and normal”. For this reason, one should expect, for instance, higher child labor standards in developed societies. Economic growth has proven to be the most efficient way to reduce child labor and elevate other labor standards.

To sum up, the simplistic linking of labor standards to international trade faces an enormous amount of practical and theoretical barriers. To overcome these barriers seems to depend much more on small scale and concrete pilot projects than on massive actions to be undertaken within the realm of the WTO, or other international organizations. It is unrealistic to expect that economic sanctions will automatically improve the working conditions of poor workers.

5. The Debate in the United States and Europe

For a long time, under the national legislation, the United States has used labor standards as a criteria to block imports from non-compliance countries. In 1890, for example, the U.S. Government prohibited importing goods made by prisoners. In the 50’s, this prohibition was extended to products made by children. In 1984, the General System of Preferences (GSP) stated the need for any exports to the United States to obey the: (a) respect for free association and collective bargaining ; (b) prohibition of child and forced labor; (c) respect to minimum salary, legal working hours and safety norms. In 1988, under the 301 Provision of the United States Trade Representative, these restrictions were expanded. A new law authorized the Secretary of Treasure to notify the American Directors of the multilateral financial agencies (World Bank, Inter-American Development Bank,

International Monetary Fund and others) not to approved loans to nations which disrespect labor standards. During the period of 1984-95, more than 40 countries were investigated by American authorities and 10 had the exports suspended, namely, Nicaragua, Paraguay, Romania, Chile, Burma, Libya, Syria and Mauritania.

In spite of these actions, the issue remained debatable in the United States. Academics have been warning about the blind adoption of the idea according to which low labor standards are contra-productive to the U.S. economy and must be combated at any cost. This is the case of university professors who formed the Academic Consortium on International Trade (ACIT) who says:

> "We, the undersigned, are concerned about the process by which decisions are being taken by some academic institutions in the ongoing Anti-Sweatshop campaign to establish Codes of Conduct to be applied to American firms manufacturing apparel with university/college logos in poor countries and about the choice among agencies appointed to monitor the activities of those firms.
>
> We recognize the good intentions of the Worker Rights Consortium and Fair Labor Association, which are the two main anti-sweatshop groups competing for membership commitments by universities and colleges. Both of these groups, however, seem to ignore the well-established fact that multinational corporations commonly pay their workers more on average in comparison to the prevailing market wage for similar workers employed elsewhere in the economy. In vases

> where subcontracting is involved, workers are generally paid no less than the prevailing market wage. If multinational corporations are persuaded to pay even more to their apparel workers... the net result would be shifts in employment that will worsen the collective welfare of the very workers in poor countries who are supposed to be helped.
>
> In view of the complexity of the broad economic and related issues..., we stress the need for universities and colleges to properly research, debate, discuss, and take decisions on this matter in a manner more appropriate to the fact they, of all institutions in society, must promote informed decision-making" (Baldwin et. al., 2000).

Ignoring these warnings and responding to public opinion claims, labor barriers have been used also by U.S. magazines and industries, as part of their codes of conduct. In 1995, for example, Levy Strauss refused to continue buying jeans from Asian countries which used child labor in the production. Liz Claiborne, Timberland, Wall-Mart, Sears, Macy's, Reebock and Nike[4] followed the same procedure.

The European Union also has a General System of Preferences (GSP). Among other things, this system aims to enforce principles which (1) support the workers rights and (2) protects the natural environment. The European countries are entitled, therefore, to block imports which may hurt either of these two principles.

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[4] Today, Nike is no longer a footwear producer. The company contracts to 740 factories which employ about 600,000 workers. Nike has 1,200 production managers in the field and 100 "corporate responsibility" auditors who monitor the compliance to the company's code of conduct which does not include wage values. In addition, the company counts on an external auditing done by PricewaterhouseCoopers (Adams and Hallock, 2001).

In Europe, the codes of conduct are also expanding. In addition, many nations are using the principles of the European Social Charter to impose the compliance to labor standards as a condition to trade.

In the United States and Europe most of the labor unions have supported the initiatives of the entrepreneurs and governments. The same movement, under a different language, has been promoted by a variety of non-governmental organizations (NGOs). A high concentration of these voices was present at the World Social Forum of Porto Alegre (Rio Grande do Sul, Brazil), in February 2002. More specifically, hundreds of NGOs and labor unions declared against the formation of FTAA if the labor questions are not included in the ongoing negotiations.

It the past, American and European firms which were operating abroad paid little attention to the low level of labor standards of other countries. In the 80's, for example, Nike contracted the great bulk of tennis production in Indonesia, were workers were not unionized and were making US$ 38.00 per week. Several French hotels, in the 90 ´s, used British workers to avoid paying the non-salary costs and many German construction firms used foreign workers with the same purpose. At that time, for the companies of the developed nations, "labor laws seemed to be good when they protected their interests; and bad when they swallowed their profits" (Collingsworth, 1994). Until today, particular political circumstances promotes the opening or the closing of the markets[5].

[5] In 2001, after the terrorists' attacks to the World Trade Center and the Pentagon, the U.S. administration relaxed the restrictions on carpet imports (and other textiles) from Pakistan which became a key ally to fight Afghanistan (Brainard, 2001).

In the United States, government has been working for an authorization to finalize the negotiation of trade agreements without the approval of the Congress. The Congress has been reluctant to pass this power to the central government. The Trade Promotion Authority (former Fast Track) is part of a law, under discussion in the Congress, which pass that power under a series of conditionals, among which, the respect to labor standards. The government has no choice. The United State Trade Representative consider the TPA a crucial step to put the country in the forefront of trade negotiaions:

> "The Trade Promotion Authority provides the tools for expanding trade opportunities that will help jump-start our nation's economy so more hard-working Americans can save, build, provide for their families, and achieve their American dream. Twelve million Americans work at jobs that depend on exports of goods and services. While America delays, other countries are cutting deals that place American exporters at a disadvantage: Of the more than 130 existing free trade agreements, America is a party to only two - with Israel and the NAFTA countries. Europe is a party to 27 free trade arrangements, with 15 more currently under negotiation. Only 11 percent of world exports are covered by American trade agreements, compared with 33 percent for European Union free trade agreements and customs agreements. Trade Promotion Authority will open new markets for thousands of small and medium-size companies that employ the vast majority of American citizens: Ninety seven percent of exporters are small or medium-

> size enterprises with fewer than 500 employees. Firms with 20 workers or less represent two-thirds of American exporters. American agricultural exports support 750,000 jobs. Trade improves labor conditions both at home and abroad: In addition to creating new economic opportunities for American workers, trade creates new economic opportunities for workers abroad. Creating those economic opportunities is key to giving workers the freedom to choose to work for employers offering better pay and better working conditions (USDC and USDA, 2001).

In sum, in spite of theoretical controversies, the discussion of international labor standards seems to be unavoidable in FTAA. The Latin American countries may resist it. But the United States and Canada will certainly insist on that discussion. In this move, the United States will certainly count on the support of Mexico as a partner of NAFTA.

6. Labor Discussions in FTAA

The need to introduce labor standards as part of the new trade agreements (or in a parallel document) became a political issue. The available economic and the practical evidence will probably be insufficient to change the idea of the lobby of the interest groups and the political forces which see the obedience to some sort of labor standards as a necessary condition to the fair play in the trade arena.

The FTAA is very likely to be negotiated under such an atmosphere and the question of labor standards will be pushed by governments and management groups of the

United States, Canada, Mexico as well as by most of the labor unions in Latin America and in the NAFTA's member states. Several ONGs, also, have stimulate the press to diffuse the “urgent need” to respect labor standards. Government officials representing U.S. and Canada have to provide a satisfactory solution to their constituencies, the press and all the organizations which are fighting for that cause. There is no doubt. Labor standards became an unavoidable political battle.

To face this problem, the FTAA negotiators will have a variety of models to choose from.

In one extreme, there is a model that "can bite", like the inclusion of a social clause in WTO. Most managers and union leaders of developed countries believe that the only way to achieve compliance is through economic punishment.

In the other extreme, there is a model which uses the moral pressure – and not of economic sanctions – to convince the countries to respect core labor standards. This is the case of the ILO mechanisms which create a moral embarrassment for the violators of the international conventions and recommendations.

Between the two extremes there is a variety of possibilities, including the enforcement of codes of conduct established among the long production and retail chains (Williams, 2000). They are not exclusive alternatives and may be used in combination to agreed standards among member states of a trade agreement.

What kind of model the negotiators will use to frame the question of labor standards in the FTAA? It will be closer to WTO or ILO?

At this time, it is hard to know. It seems unlike that a “social clause” will be introduced in the FTAA. This model has been rejected by the WTO and this organization has already decided to pass the problem to ILO. On the other hand, US and Canadian managers and union leaders seem to be unsatisfied with the reduced implementation power of the ILO model.

An intermediary framework is the labor cooperation model adopted by NAFTA. It is likely that this approach – or a variation of it - will be presented in the bargaining table as a benchmark. The labor standards will not be defined or imposed from outside. Nations will be required to implement their own labor laws and to respect the ILO core labor standards. The control mechanism will be based on cooperation among the 34 countries rather than economic sanctions or moral embarrassment. This topic will be discussed at length in section 6.

What has been discussed so far by the FTAA negotiators in the area of labor?

Since launching the idea of the Free Trade Area of the Americas (FTAA), in Miami (1994), the question of labor standards has been considered as an important element to establish fair competition in international trade. But, the emphasis on this question has varied over time, following the same pattern observed during the negotiations at the World Trade Organization (WTO).

In the Joint Declaration of the Summit of the Americas, which took place in Denver, Colorado (June 30, 1995) the Ministers responsible for trade in the 34 nations declared:

> "We agreed to begin immediately the work program to prepare for the initiation of negotiations of the Free Trade Area of the Americas in which barriers to trade and investments will be progressively eliminated. Negotiations will be concluded no later than 2005".
>
> "We are committed to the protection of the environment and further observance and promotion of workers rights, through our respective governments".

In the Joint Declaration of the Second Trade Meeting (Cartagena, Colombia, March 21) the Ministers declared:

> "We recognize the importance of further observance and promotion of workers rights and the need to consider appropriate processes in this area, through our respective governments".

In 1996, the World Trade Organization had to face this topic again. The Ministers during the Meeting in Singapore signed an important declaration:

> "We renew our commitment to the observance of internationally recognized core labor standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labor standards

> for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and the ILO Secretariats will continue their existing collaboration."

In the Third Meeting of FTAA (Belo Horizonte, Brazil, May 16, 1997), the Ministers decided to approve the above WTO decision. In other words, the labor standards question in the FTAA became dependent on ILO prescriptions. From this point on, the discussions diminished substantially and became very vague.

For instance, in San Jose, Costa Rica (March 19, 1998) the only reference was:

> "We, the Ministers responsible for trade in the 34 countries reaffirm our commitment to the Singapore Declaration of the WTO - on the question of core labor standards".

The labor movement became unsatisfied with the low tune given by the Ministers during the FTAA negotiations. During the Meeting of Belo Horizonte (Brazil), the Brazilian and other Latin American labor unions pressed the authorities to give them a chance to participate, at least, in one session. The authorities resisted that the unions had to limit their action to street demonstrations.

But the demonstrations were not in vain. In the Fourth Trade Meeting (San Jose, Costa Rica, March 19, 1998) the Ministers, responding to those pressures, came with a compromising decision which reads as follows:

> "We, the Trade Ministers recognize and welcome the interests and concerns that different sectors of society have expressed in relation to FTAA. Business and other sectors of production, labor, environmental and academic groups have been particularly active in this matter. We encourage these and other sectors of civil societies to present their views on trade matters in a constructive manner. We have therefore established a committee of government representatives, open to all member countries, who shall select a chair. The committee will receive these inputs, analyze them and present the range of views for our consideration".

At that meeting, the Ministers drafted the Principles and Objectives of FTAA. On the labor question, the draft has the following wording:

> "We the Trade Ministers wish to further secure in accordance with our respective laws and regulations the observance and promotion of workers rights, renewing our commitment to the observance of internationally recognized core labor standards and acknowledging that the ILO is the competent body to set and deal with those core labor standards".

In the Fifth Meeting (Toronto, Canada, November 4, 1999), there was no specific reference to labor standards. The Ministers simply endorsed the previous commitments and reaffirmed the need to obtain the inputs from Civil Society through written submissions and report their considerations in the next meeting.

In the Sixth Meeting of FTAA (Buenos Aires, Argentina, April 7, 2001), the Ministers declared:

> "We are grateful for the contributions made by Civil Society and urge to continue to make these contributions in a constructive manner on trade-related issues of relevance to the FTAA. We reaffirm our commitment to raising living standards, improving the working conditions of all people in the Americas and better protecting the environment". We renew our commitment to the observance and promotion of workers rights and the observance of internationally recognized core labor standards and acknowledging that the ILO is the competent body to set and to deal with those core labor standards".

If the issue of labor standards has been de-emphasized in the official documents of the FTAA, on the other, it has grown among the labor unions, business associations, and the U.S. Congress, particularly, the discussions of the Fast Track or Trade Promotion Authority.

The labor unions of Latin America, in general, have been very vocal in favor of including labor standards commitments in the FTAA agreement. But their immediate aim is to include some sort of social clause in MERCOSUL.

7. The Labor Question in Mercosul

In South America, Mercosul was created in 1991 among Brazil, Argentina, Uruguay and Paraguay. The four countries formed a free trade zone, with no import tariffs (except for a few products). During the 90's the international trade among the four countries increased 200%. After 1999, however, trade was severely affected due, in part, to the currency devaluation in Brazil and the severe financial crisis of Argentina.

In 1995, Ministers of Labor of the four countries agreed to form a special Committee (SGT10) to deal with questions on employment, social security and labor questions in general. This group worked a very extensive agenda, resulting in the "Declaración Sociolaboral" (Socio-Labor Declaration) approved by the Board of Mercosul in 1998 which includes general principles on labor and social security (Chahad, 2001). At the same time, Mercosul authorities agreed with the creation of the Consultative Socio-Economic Forum (SECF).

Representatives from governments, entrepreneurs and labor unions are partners in the SECF. The Forum can make recommendations to the Ministerial Board of Mercosul. The Forum activities is guided by the following principles initially approved:

> "(a) it is of fundamental importance to eliminate all kinds of non-tariff barriers which may affect trade among the four countries; (b) it is important to harmonize the macro economic policies and the national laws; (c) it is urgent to create a committee of social policies to cover labor, education, health and social security; (d) it is indispensable to create a tribunal for conflict resolution".

Latin American has a long tradition in resolving commercial and labor question in Courts. The legal community, since the beginning of the negotiations, has been pushed Mercosul to create an International Tribunal (Cordeiro, 2000). In 2002, the Permanent Tribunal of Appeal was created as a decision of the Presidents of Argentina, Brazil, Uruguay and Paraguay (who signed the Olivos Protocol), who met in Buenos Aires (February 19, 2002).

Five lawyers, with a mandate of six years will form the new Tribunal. Four of them will be appointed by the four countries, which, in consensual basis will choose the fifth one. In addition, Mercosul has several Arbitration Tribunals, which are supposed to be activated on a case by case basis. However, they are not terminative. The new Tribunal will have the power to confirm, change or revoke the decisions of the arbitration tribunals. This Tribunal has been designed to deal, mostly, with commercial disputes but there is no provision to prohibit the judgement of labor cases.

The Brazilian labor unions – as well as their counterparts in Argentina, Uruguay and Paraguay – are working in Mercosul with an eye in FTAA. They seem to have a preference for the biting model rather than the moral pressure. Little reference has been made to the NAFTA model.

8. The Labor Question in NAFTA

During the discussion of the new treaty, leaders of AFL-CIO and entrepreneurs argued that NAFTA would provoke a wave of imports from Mexico and a massive exodus of firms and jobs to that country. The lack of labor standards would give to Mexico an unfair comparative advantage.

Surprisingly, Mexico had a very advanced labor legislation. The problem was more with compliance than with a lack of laws (McCaffrey, 1993). For this reason, the three countries come to agree in approving the NAALC with NAFTA. The North American Agreement on Labor Cooperation establish that each country will be responsible to implement its own labor laws.

NAFTA was approved in 1992 and implemented in 1994. Since then, the NAALC has been functioning as a monitoring board to enforce compliance and to decide about the sanctions in case of non-compliance[6].

The NAALC is the first multilateral agreement that links a regional free trade regime to a commitment on the part of governments involved to implement and improve certain labor principles in their territories (Dombios, 2002)[7]. In many circles, NAALC has been criticized for not having enough teeth. In fact, sanctions are little emphasized in the agreement. Its nature is of enhancing cooperation and not enforcing punishment.

The study of NAALC may be very useful for those who want to anticipate the kind of labor regulations which may be discussed during the FTAA negotiations.

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6 Although the authorities of the three countries have been considering NAFTA as an unqualified success, labor leaders and academic professionals have disputed both the agreement. Several authors argue that during the period of 1994-2000, the United States lost 766,000 job opportunities, especially, for the non-college population. Moreover, Mexico did not benefit from this loss. To the contrary, most of the US enterprises were established in export platforms in which wages, benefits and worker's rights are deliberately suppressed (Faux, 2001).

7 In 2000 the United States signed a trade agreement with Jordan. This was the first trade document which included workers' rights in the body of the agreement. In the same year the US-Caribbean Basin trade act extended workers' rights to the apparel sector and the US-Cambodia's trade pact did the same for the apparel and textile sectors (Compa, 2001).

NAALC respects the nations sovereignty. It does not try to impose a supranational labor law. To the contrary, it recognizes that labor laws are to be drawn by each country.

The United States took the initiative in drafting the labor agreement. In part, it was a response to public demands. The Clinton administration feared that government could not obtain the approval of the Congress if a side agreement on labor was not included in NAFTA. Also, the respect to national sovereignty is a very deep principle in the American diplomatic tradition. The United States would never accept the interference of a foreign law in the area of labor.

Therefore, NAALC respects all national legislation and institutions with no aim in interfering directly on the industrial relations systems of the three countries. The agreement contains several details to treat the case of violations. All of them are based on the philosophy of cooperation. Each country created a National Administrative Office to follow and supervise its legal obligations. Unresolved issues are submitted to an Evaluation Committee of Experts who have the responsibility to investigate the case and to try a negotiated solution to achieve compliance. If this route fails, the case is presented to a trilateral ministerial council which will use the same method, but including arbitration.

From 1994 to 2001, the special committees received only 25 complaints: 15 against Mexico, 8 against the United States and 2 against Canada. Most of the complaints against Mexico refer to the establishment of independent unions. In the case of United States, the majority of cases are against entrepreneurs who prevent the establishment of

unions representation within their companies[8]. The cases against Canada are concerned to the right to bargaining.

Many people complain that NAALC procedures are too slow and that no sanction has been applied to the violating parts. This is true and, in some sense, is proper of an institution which tries to reach solution through consensus. The effectiveness of NAALC has to be analyzed on different grounds. Has the mechanism contribute to open new channels of communications among the three countries? Have the cases prevented the occurrence of other similar cases? Are the parties more aware of the importance to respect the terms of the agreement?

For these three questions, the answer is yes. The NAALC seem to have achieved a gradual solution to improve labor standards without violating the sovereignty principle and without applying trade sanctions. Each country has its own peculiarities in the area of labor. In general, constitutional and statutory protection for workers in Canada and Mexico often match or exceed those provided for workers in the United States (Gregory, 1993). Prevention to have union representation in individual firms is much more admitted in the United States than in Canada or Mexico. These differences have been respected.

As we have seen, NAFTA and Mercosul took different directions regarding labor issues. In the first case the question was faced frankly and the countries came with a cooperative solution with no supranational legislation or tribunal. In the second case, the labor questions was avoided and, more recently, the talks are evolving toward supranational regulations and judicial tribunal to resolve pending problems.

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[8] "The United States has a dismal record when it comes to protecting the basic freedom of working Americans to join unions and to engage in collective bargaining (Friedman, 2001).

9. Flexibility and Rigidity in Latin America

Would Latin American countries accept the NAALC´s concept for FTAA? It is hard to tell. Judging by history, the governments of Latin America countries will try to resist as much as they can to include any sort of reference to labor standards in the FTAA. But, realistic, the three heavy weight members of NAFTA, Mexico included, will push to a different direction, telling a story of success in improving labor standards through cooperation and without interfering with national sovereignty and using legal tribunals. The adoption of either position will depend on the present economic and socio-political situation under which the final negotiations will take place.

According to Brown, Deardorff and Stern, "the dangers of using trade sanctions to enforce labor standards outweigh the benefits, both in terms of likely protectionism and in harm of affected workers. Therefore, we would prefer that labor issues continue to be left out of the WTO, as they are now. While developing countries should continue to resist inclusion of labor standards on the [trade] agendas, it would be unwise for this position to be a "deal breaker". If the only way to get a [trade] agreement is to permit labor standards to enter in a small way, developing countries should accept that and then do their best to deal with the issue in their own interests... (Brown and others, 2001)[9].

In this respect, NAFTA model is a soft one as compared with the initial proposals to include commercial sanctions at the WTO agreements. However, even the adoption of a sort of NAALC for the three Americas is not a pacific matter. The studies of labor-market and regulatory reforms in Latin America suggest that labor standards are not

[9] For a very comprehensive summary of pros and cons positions, see (Brown, 2000).

universally complied with, especially in the informal sectors, and that labor-market regulations are considerably more restrictive in LA countries than in the United States (Stern, 1998). Take the case of child labor. According to the Brazilian Constitution, children under 16 years of age are completely prohibited to work – with no exception – whereas the Federal Legislation in the United States is flexible and prohibits certain types of jobs for certain ages.

For example, in retail sector, a large number of activities can be done by minors of 14 and 16 years of age - all of which are prohibited by the Brazilian constitution. The Federal Fair Labor Standards on the chapter of minors says:

> (a) This subpart shall apply to the following permitted occupations for minors between the ages of 14 and 16 employed by retail, food service, and gasoline service establishments: (1) Office and clerical work, including the operation of office machines; (2) Cashiering, selling, modeling, art work, work in advertising departments, window trimming, and comparative shopping; (3) Price marking and tagging by hand or by machine, assembling orders, packing and shelving; (4) Bagging and carrying out customers' orders; (5) Errand and delivery work by foot, bicycle, and public transportation; (6) Clean up work, including the use of vacuum cleaners and floor waxers, and maintenance of grounds, but not including the use of power-driven mowers, or cutters; (7) Kitchen work and other work involved in preparing and serving food and beverages, including the operation of

machines and devices used in the performance of such work, such as but not limited to, dish-washers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders; (8) Work in connection with cars and trucks if confined to the following: Dispensing gasoline and oil; courtesy service; car cleaning, washing and polishing; and other occupations permitted by this section, but not including work involving the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with a removable retaining ring. (9) Cleaning vegetables and fruits, and wrapping, sealing, labeling, weighing, pricing and stocking goods when performed in areas physically separate from those where the work described in paragraph (b)(7) of this section is performed;

(b) Paragraph (a) of this section shall not be construed to permit the application of this subpart to any of the following occupations in retail, food service, and gasoline service establishments: (1) All occupations listed in Sec. 570.33 except occupations involving processing, operation of machines and work in rooms where processing and manufacturing take place which are permitted by paragraph (a) of this section; (2) Work performed in or about boiler or engine rooms; (3) Work in connection with maintenance or repair of the establishment, machines or equipment; (4) Outside window washing that involves working from window sills, and all work requiring the use of ladders, scaffolds, or their substitutes; (5) Cooking

> (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters) and baking; (6) Occupations which involve operating, setting up, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers, and cutters, and bakery-type mixers; (7) Work in freezers and meat coolers and all work in the preparation of meats for sale except as described in paragraph (a)(9) of this section; (8) Loading and unloading goods to and from trucks, railroad cars, or conveyors; (9) All occupations in warehouses except office and clerical work (DOL, 1991).

The same flexibility can be found for activities in the manufacturing, construction, transportation, and service sectors. Moreover, the activities not prohibited by the FLSA, are permitted to be done by people under age 14 . These include working for one's parents in occupations other than manufacturing, mining, or hazardous activities. Those employed as domestic laborers in and around their employers' homes, as well as actors or performers in movies, theaters, radio or television productions and children who deliver newspaper to the consumer are also exempt (Beyer, 1995). In Brazil, all of these activities are strictly prohibited by the Constitution.

In the United States, prohibitions may come from state laws. But, probably, for international purposes, the labor standards will be related to the national or federal law rather than states or counties regulation. This means that, to obey to the national law regarding child labor for Brazil will be a much more rigid undertaking than for the United

States. Most of the activities which are permitted in the United States are prohibited in Brazil.

10. The Labor Question for Brazil in FTAA

Altogether, the Brazilian labor laws are very advanced in terms of general protection and, particularly, regarding the core labor standards. The Constitution and the Consolidation of Labor Laws (CLT) guarantee the rights of free association and collective bargaining as well prohibit discrimination and forced and child labor.

The seriousness of the question of compliance depends on the point of view of the analyst. If he defines compliance as the application of all labor laws to the whole labor market, Brazil is far away from that goal. A large part of the labor force (60%) works in the informal market, where the labor laws are partially respected.

But if the analyst is interested on the compliance of the core labor standards, Brazil is in a very satisfactory position. The workers can organize their unions with no interference of the State or entrepreneurs. All unionized workers are free to bargaining once a year to renew the labor contract or whenever is necessary. The few cases of discrimination has been taking to courts whenever it occurs and the law is becoming tighter in this field. Forced labor by prisoners is non-existent due to law prohibitions and severe punishment to prisons authorities. Slave and bonded labor is very rare and is under rigid combat by government. Child labor is the only issue pending of a solution. Brazil has a sizable amount of children working illegally.

For the purpose international trade agreements the labor questions has been limited to the respect to the core labor standards and not to the extent of the informal labor

market. This was the case of NAFTA and the spirit of WTO when passed the labor question to ILO. After studying the question, ILO has limited the Fundamental Rights of Labor to the core labor standards.

Therefore, during the negotiations of FTAA, it is likely that Brazil will be in a good position, except in the area of child labor. However, even in this area, one has to consider the peculiarities of Brazilian law.

The Brazilian Constitution prohibits work of people under the age of 16. This is a very high standard comparing to other nations, including the developed ones. Moreover, the age of 16 is a very rigid limit. Brazilian Constitution does not admit any exceptions – not even for light work. There is a permission for teenagers between 14 and 15 to work under apprenticeship conditions in vocational schools.

In short, Brazil has a very severe legal minimum. This has been a result of an amendment to the Constitution approved in 1998. For work purpose, Brazil has created for herself a straight jacket. Moreover, in 2001, Brazil ratified the Convention 138 of ILO fixing the minimum age in 16 years. Brazil has ratified also the Convention 182 which aims to eliminate the worst forms of child labor. The Government has already defined these "worst forms" and several programs are underway to achieve that goal. Brazil still has some cases (not many) of children working in dangerous work in rural areas (cutting sugar cane, sisal, and others as well as burning wood for charcoal, brick making and others) and a few in the urban areas (heavy work in construction and transportation). There is no argument to defend those kinds of work under any circumstances. They have to be eliminated.

Brazil has been criticized for using child labor in general. Indeed, from a total labor force of about 80 million people, about 4.5 million children (5 to 15 years old) worked for some time during 1998. Approximately 47%, were teenagers between 14-15 years of age; 44% were in the group of 10-13 years; and 9%, between 5-9 years old (Schwartzman, 2001).

Children between 10-13 years of age work, basically, in non-paid agriculture activities, helping their parents in rural areas. Older children (14-15 years old)) work, predominantly, in the service sector, many of them as a household maids and babysitters and in urban areas.

Data show that most of these children work part time and go to school. One has to distinguish, therefore, the legal from the social dimension. Legally, the entrepreneurs who use these children are violating the Constitution. In practice, however, the situation may be better than many countries which have a lower minimum age for work.

How many of the 4,5 million working children are prevented from going to school. Among the working boys and girls of 10-13 years of age, 90,5% go to school; among the 14-15 years old, 76,1% go to school (Schwartzman, 2001). Therefore, working is not an obstacle for the majority of children and teenagers who work in Brazil. By the way, Brazil is well known for having a large population of worker-students. Night secondary schools and colleges are very popular among Brazilians.

In this sense, child work in Brazil deserves some qualifications. First, its proportion is decreasing. During the period of 1992-98, the work of the 5-15 years old, has been reduced in 30%. Second, most of the work is done in the presence of the children´s

parents, in agriculture or at home. Third, the great majority of working children are also students.

Most of the advancement in eliminating child labor has been done in the period of 1998-2000. A special tabulation of the 1999 PNAD shows that 88,4% of Brazilian children and teenagers of 10-14 years of age are in school and do not work; 6,3% are student-workers. This means that practically 95% are in school and only 5% work and are not in school. Among these, many of them have completed the primary school (MRE, 2000).

Data from the United States show, for example, that at the age of 13, 51% of the school teenagers do some work during the year. Among 14 and 15 years old, this proportion raises, respectively, to 57% and 75% (Entwisle et. al., 2000). Actually, the authors point out that, during high school, most of the Americans do some work as office-boys, fast food attendants, grass cutting, golf and tennis helpers, newspapers delivering, etc.

A more recent follow-up research shows that 50% of the teenagers of 13 years of age in 1996, had work when they were 12 years. Among those who were 14 in 1996, 52% worked previously; among the 15 years old, 57% worked; and among 16 years old, 64 worked in the previous year (DOL, 2001; DOL, 2000).

Among the working children in Brazil, research shows that their work is basically a result of household decisions, especially for income related reasons (Pastore, 1997). The inability to defer consumption obliges families to defer investment in human capital. Several studies have demonstrated that child labor is inversely related to family

income and school attendance (Maskus, 1997). This means the availability and quality of schools also count.

Therefore, children of vulnerable families would stop working and go to school if the family's consumption capacity is increased and the educational facilities improved. Does reality support this hypothesis? In the case of Brazil, the answer is yes.

Brazil is implementing several programs linking income aid for families to better schools for children. Most of these programs originated at the local level. The Federal Government launched a program in 1996 on the basis of local experiments to disseminate the "bolsa-escola" experience nationwide (3). Initially, the program aimed at benefiting 60,000 children, focusing in 1997 on the most vulnerable groups, i.e., people working the charcoal burners (in the state of Mato Grosso do Sul), in sugar-cane plantations (in the states of Pernambuco and Rio de Janeiro) and in sisal plantations (in the state of Bahia). The families were receiving between R$ 25 and R$ 50 (US$ 10 and 20, at April 2001 prices) per child attending school.

The number of vulnerable children to be assisted by federal programs was estimated at 800,000 in 1998. This figure, however, actually totaled only 130,000 children, with total expenditures of R$ 80 million (about U$ 32 million, at April 2001 prices) (Previdencia Social, 1999).

More recently, the Federal Law no. 10.219 (April 11, 2001) has extended the "bolsa-escola" program to all areas of the country. The program provides a monthly stipend of R$ 15,00 per child (US$ 6.00 at April 2001 prices) to poor families, up to a maximum of R$ 45,00 per family (US$ 18.00 at April 2001 prices). The total budget for 2001 is R$ 2

billion (US$ 800 million at April 2001 prices). Between April and September 2001, 2 million families had been enrolled. The goal is to enroll 5,8 million families and 10,7 million students until the end of 2002.

The program is highly decentralized. The local governments ("prefeituras") have a close responsibility for the implementation and monitoring of the resources. Previous experiences carried on in different counties ("municipios") of Brazil, during the period of 1993-2000 were used as pilot projects. Brasilia is one of them. The enrollment criteria and results are explained bellow.

Brasilia is Brazil´s capital, with more than 2 million people. The social composition of its population is very mixed. Top government executives live side by side with low level civil servants and an enormous amount of poor informal laborers, including some 80,000-working children under the age of 14 years.

In 1995, the Government of Brasília launched a program aimed at reducing the number of working children and increasing the number of children in school (1). The program provided a voucher in the amount of one minimum wage - R$ 100 - (US$ 40 per month, at April 2001 prices) to families which met the following conditions:

1. Each family had to maintain all children between the age of 7 and 14 in school, with a minimum attendance rate of 90%.

2. Families lost the voucher if one of their children missed two or more days of class per month without reasonable justification, which had to be approved by the

school's principal. Regular school attendance and good grades were crucial criteria for a family to continue receiving income aid.

3. Only those families which had lived for more than five years in Brasilia and had a per capita income of 50% (or less) of the minimum wage, were eligible for the program.

4. All unemployed members of the family had to be enlisted in the Public Employment Service and had to be willing to accept whatever available work or training they were offered.

What were the results of such a program? In 1997, the program was assisting about 45,000 poor children and 23,000 families. School attendance was higher than 90%. For poor children with no income aid for their families, the dropout rate was 11%, whereas for students receiving income aid, it was only 0.4%. The rate of failure, for these two groups was, respectively, 18% and 8% (Secretaria da Educação, 1998).

There seems to be enough evidence that avoiding child labor is feasible when the real causes are frontally attacked. In the case of Brazil, the causes seem to be related to poverty of families **and** of schools.

The total amount spent with the program was R$ 32 million (about US$ 13 million, at April 2001 prices), which represented 1% of the budget of the Government of Brasília in 1997. The per capita annual spent was R$ 711 (US$ 289), or R$ 59 (US$ 23) per month (2). It may be worthwhile to mention that the maintenance cost of a criminal child in a São Paulo reformatory in 1997, was more than R$ 1.000 per month (US$ 370).

The federal program provides a much lower stipend. R$ 15,00 (US$ 6.00) per child and R$ 45,00 (US$ 18.00) per family may be considered insufficient. However, the poor families live with a monthly per capita income of R$ 65,00; the bolsa-escola stipend (R$ 15,00) represents 23% and R$ 45,00 represents close to 70% of that income. Therefore, a well target program is a substantial help for most of the poor families in Brazil (Camargo, 2001).

In short, child labor seems to decrease substantially when the cause of the problem is handled directly – rather than its consequences. In Brazil, this type of program is succeeding in raising family income, while at the same time improving school availability for children.

11. Possible Brazilian Positions in FTAA

The most vulnerable point in the Brazilian situation is child labor. Many successful actions have been taken to reduce the problem. But child labor may remain for a decade or two, mainly, because of the high minimum standard fixed in the Constitution – 16 years.

During the negotiations of FTAA, the Brazilian government, followed by most the entrepreneurs will probably oppose the idea of imposing labor standards from outside as they have done in other occasions (WTO).

International labor standards, constitutional minimum age, national laws and an explicit prohibition of child labor, are necessary benchmarks for any society. But the effectiveness of imposing labor standards, through international trade and economic

sanctions, as means to improve the conditions of workers in poor countries is very doubtful. In the case of child labor, for instance, their effectiveness in shifting children from work to school is debatable. As Krueger points out: "Compulsory schooling laws can form an important component of child labor policy, but unless communities have adequate schools and families have financial resources, they will not send their children to school, and noncompliance will be rampant (Krueger, 1997: 299).

If countries lack the capacity (or the will) to enforce labor standards, there is little value in the international community pressing for more stringent rules. This energy would be better spent encouraging nations to enforce the laws they already deem adequate - and there are many. In Brazil, as summarized in this paper, the shift of children from labor to school presents encouraging results when the causes of the problems are dealt with directly, by improving family income and the quality of schools.

In addition, a lot of progress is going on in the country on the basis of voluntary actions. Many multinational corporations and large Brazilian companies have established codes of conduct to prevent the use of child labor in the production chain. Indirectly, this action is forcing small firms in several sectors to adopt the same behavior. Many ONGs are supporting important program to combat child labor. Through fiscal action and punishment based on the national labor law (CLT), Constitution and the Law of Protection of Children and Teenagers, the Ministries of Labor, Justice and Social Security - with the support of UNICEF and ILO - are firmly engaged in the combat to child labor. The results have been promising. Consumers themselves are becoming aware of the importance of eliminating child labor in Brazil.

But, what may be the position of Brazil if the NAFTA model is presented? Of course, only the negotiators can do a definite answer at the appropriated time. But one may speculate on this possibility.

With the exception of child labor, Brazil seems to be in good grounds to accept some sort of NAALC to monitor the core labor standards. In fact, this seems to be the most realistic model when the task is to harmonize 34 different labor laws in the Americas.

Regarding the child question, Brazil may take the following steps: (1) to revise the minimum age in the Constitution; (2) to denounce the Convention 138 and, immediately, to re-ratify it with age 14 or 15 which would be used by international purposes, including trade agreements; (3) to obtain a grace period from FTAA to achieve the age of 16 in, say, ten years.

There are three very difficult solutions. The political climate to back walk in the field of the Constitution is very unlikely to emerge during this time when human rights have been pushed upward by civil society.

The change before the ILO convention is complicated and will demand a lot of time. Conventions can be renounced every ten years. The next date for the Convention 138 is 2006, which overpass 2005 when FTAA will enter in operation.

The agreement on a grace period seems more feasible. But Brazil will be in an awkward position: it will be one of the few nations in which a 15 years old boy or girls cannot do anything in the world of labor.

One intermediate alternative would be to get a short grace period of three years (2005-2007) in order to have time to denounce the Convention in 2006 and to ratify it again, with a lower age, in 2007.

These are strategic alternatives to be considered by the negotiators of FTAA. Of course, their creativity may generate several other solutions to accommodate the Brazilian situation with the goals of the new treaty. On top of all theses speculations remain the question whether or not American States will reach the FTAA agreement and will show a sincere disposition to play the rules of free trade in the key economic sectors.

Endnotes

(1) This program was based on Decree number 16,270 of January 11, 1995, signed by the Governor of Brasília. In July 24, 1995, the state assembly approved Law number 890, which deals with a similar program referred to as "poupança-escola" ("school thrift voucher") through which children aged 7 to 14, with good grades, receive one minimum wage per year, which is deposited in an individual savings account, that can be used after graduation.

(2) The family allowance was also provided during school vacation months, to make sure children would not return to work.

(3) This program was initially labeled Bolsa de Desenvolvimento (Development Grant), then Bolsa Criança Cidadã (Child Citizen Grant) and, since May 1996, Programa de Erradicação do Trabalho Infantil (Program for the Erradication of Child Labor) aimed at attending all poor children aged 7-14 years.

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