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International Trade and Labor: Leveling Up or Down, 35 J. Marshall L. Rev. 227 (2002)

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LECTURE SERIES

INTRODUCTION

The John Marshall Law School proudly hosted the Third and Fourth Annual Arthur J. Goldberg Conferences on December 6, 2000, and December 12, 2001. The Third Annual Conference entitled, "International Trade and Labor: Leveling Up or Down," and was devoted to several areas that intersect in realms of Justice Goldberg's interests—labor relations, international trade, international law and workers' rights. The speakers were:

W. Gary Vause, Vice President and Dean, Stetson University College of Law.¹ Mr. Vause taught labor law, collective bargaining, arbitration and other subjects at Stetson University for over twenty-five years. He previously was a partner in a Connecticut law firm specializing in labor and employment law and business law. Dean Vause is a graduate of the Yale Institute of Far Eastern Languages; he received his B.A. and J.D. degrees from the University of Connecticut and his Masters of Laws, L.L.M. and S.J.D. degrees from the University of Virginia. He has authored many articles and books on labor, labor law and arbitration, including a two-volume treatise on labor and employment law on Florida law policy and practice.

Speaking after Dean Vause was Mr. Don Turner, the President of the Chicago Federation of Labor. Prior to becoming President of the Chicago Federation of Labor, Mr. Turner was the Secretary/Treasurer of the Federation. While working his way through college, he was a member of the Steelworkers union and Baggage Handlers Union. Mr. Turner was a high school business teacher, became a member of the Chicago Teacher's Union and was elected a Union delegate in 1968. He then served as Chicago Teacher's Union's administrative director from 1977 to 1984. Mr. Turner's experience outside of the Unions includes a number of matters involving international business and international labor. He is a member of a number of committees and board, including the Chicagoland Labor Management Committee. Mr. Turner also served on former Governor Jim Edgar's trade mission to Asia, Mayor Daley's trade mission to Mexico; he served as an election

1. The article by Dean Vause upon which his speech was based is available at W. Gary Vause, *Labor Issues in International Trade*, LAB. L.J. 86 (2000).

observer in Nicaragua in 1989 and represented the American Federation of Labor-Congress of Industrial Organizations on visits to Poland for various purposes.

After Mr. Turner, William Workman, the Vice President and General Manger International of the United States Chamber of Commerce, spoke. Mr. Workman previously served as Vice President of the Center for International Private Enterprise, special negotiator for international trade controls with the United States Department of State, Director of Strategic Planning and Policy at the Bureau of Export Administration in the United States Department of Commerce, senior policy and program analyst to the Assistant Secretary of Commerce for the Trade Administration, and has held various program and management positions at the United States Department of Justice and United States Customs Service.

The fourth and final speaker was Mr. Ira Arlook, founder and, for over twenty years, Executive Director of Citizen Action. Mr. Arlook also founded New Economy Communications in 1998 with his colleague, former Democratic Maine Congressman, Tom Andrews.

THIRD ANNUAL ARTHUR J. GOLDBERG CONFERENCE

INTERNATIONAL TRADE AND LABOR: LEVELING UP OR DOWN

DON TURNER, WILLARD A. WORKMAN, IRA ARLOOK

Turner: Good afternoon. Many thanks to the members of the Goldberg Advisory Committee for their kind invitation to attend this conference. I would particularly like to thank [Professor Gerald E. Berendt] for opening up the law school. It is commendable and refreshing to see personnel at a law school open up to the labor movement the way you have Gerry. And I think it is also important that you have included the labor community in important discussions like this, just as you have also opened up your classes to those of us in the labor movement.

But I am here to express labor's view on open markets and free trade and I suspect some of the panelist may disagree. Just the same, I am sure we can all agree that neither the existence of open markets nor their value can be taken for granted. But, I would like to make a few observations about this situation. When we talk about globalization, we must hold a constant awareness that all the world's people do not share the same cultural values that we hold. The world is shrinking but just because people are sitting there watching CNN and drinking Coca Cola does not mean that this superficial Westernization has changed some deep-rooted cultural attitudes about economics, politics, and a lot of other issues. So, when you hear the media trying to blend these diverse cultures, I think we have to keep in mind that there are going to be a lot of tears and a lot of conflict about this blending process.

The effects of globalization on workers do create a new reality. Globalization is a process of breaking down trade barriers between national economies. From our perspective, it is driven by a corporate agenda and it is accelerated by a changing technology. The global economy is a reality, and I think it is pretty much dominated by the United States and foreign multi-national corporations. That, in itself, makes it unlikely that it will go away. So from our perspective, the rules of global trade have to be defined and the benefits have to be demonstrated. If it is left to expand without rules or with the wrong rules, we believe that globalization will produce an inevitable downside.

What I am saying is that there is a difference between trade and development. Yet, at the same time, these two things are linked. But, development is not always sustainable, so we must keep that in mind too. Also, it is our view that an unregulated global economy will produce a growing income inequality within nations and between nations. This inequality in the United States is approaching a level as high as it has been in many, many years. It does seem that as the long-term trend line for this inequality within the United States is growing, so too is the trend line between nations.

If we looked back to 1960 and we took the top fifth of the world's economies and the bottom fifth, there was approximately a one to thirty difference in terms of the value in those economies. Now, we are looking at about a one to eighty difference. So, we see this differential between the economies increasing. So, we look at it and note the downside of globalization on working families is real and it is very pervasive. Therefore, we need some changes in the rules. We say what we need is a new approach. We need a new internationalism if you will. We need to establish some fair rules that make the global economy work for all.

This challenge is similar to the challenge that workers faced at the beginning of the Twentieth Century when they were dealing with the destructive product of industrialization. Then, the challenge was the power of big monopolies and the formation of some kind of integrated national economy. Now, the challenge is the power of the multi-nationals and their capital. What we need and what we are seeing is the formation of an integrated global economy. The question is what kind of rules will this globalization have. What will they be and who will set them? Will they be private understandings between CEOs or heads of state or will they be the result of an open, democratic process? But I do know that if labor itself is not involved in this process that you can be sure that corporate interests will dominate this process. It will probably be a much more secretive and less transparent process if we are not involved. So what are the fundamental tests of globalization?

We say it is not whether markets are more open or less open. That mistakes the means for the end. The test is human development. Is it helping to lift the poor from poverty? Is it empowering the many, not just the few? Are its blessings widely shared? Does it elevate working people? If those things happen, I think we can say globalization is a success. But, if these things do not happen, then it will be suspect. Now, I think the American view parallels the world-view in some ways.

There is a tension between our individual hunt for personal wealth and our sense of civic and community purpose in which we define success by how much we cherish the individual, the

individual's ability to grow, and the community's overall progress. We weigh that against individual personal wealth. Are we going to respect the fact of wealth or the how of wealth? That is the way we look at it. In the last few years, greed has been mainstream. But, we have to look at it and ask whether greed is worth enshrining. Is the mere hording of personal wealth the fundamental purpose of our democracy? If we say no, then we have to put some limits on corporate power and a corporation's ability to make these kinds of decisions affecting globalization.

In short, we should measure the success and the strength of our democracy by the fortunes of the middle class in this country, and the scope of opportunity offered to each child, whether that child realizes his potential or not. We should measure success by access to the American dream, not by whether it provides lavish wealth to a very small elite class.

So, I think we have to look at this in a different way. Gary touched on it. Trade can kill jobs and it can depress wages. R.C. Longworth in his book on the global squeeze talked about it, and he mentioned some ways in which this happens. Number one, we have a company here that in order to meet foreign competition puts in labor saving devices and those labor saving devices drive people out of work. So, that is one way in which it happens. We have this spin-off, you know the normal ratios, one factory job to four jobs outside. So, when we lose one factory job, then we lose four spin-off jobs. All you have to do is drive to the south side of Chicago and look at the area where the steel mills used to be, and you see pretty clearly that those other four jobs are gone. Those jobs were in restaurants and banks and so on. So that also depresses job creation.

Two, we also have the threat of competition keeping wages low, and we see that at the bargaining table. We, in the union movement, find ourselves in competition with what we feel are unfair wages coming in from overseas. The question is: how are you going to compete with those wages and so on? You simply cannot negotiate better agreements for your people even if you have an inflationary economy because of low wages overseas.

Third, if wages fall because of this wage depression, then other kinds of jobs leave, too. You know, the neighborhood bookstore may go out of business, that type of thing. So, wage floors where you have a major social safety net like they have in Europe are probably not as important as they are here in the United States where there is less of a social safety net. Wage floors become a much more important thing in our economy.

We are not against growth in general, but certain types of growth. We do not want to see growth in the wrong direction. I mean cancer is a growth, too, but that is not the direction we want to go. So, we have to look at this thing with a little different slant.

For this new internationalism, this new globalization to benefit all of us, it has to contain three elements: one, effective laws that secure basic human rights, environmental safety and consumer protections; two, some kind of sensible, financial market regulation; and three, some core international labor standards, such as freedom of association, right to organize and bargain collectively, prohibition on any forms of compulsory labor or prison labor, the end to child labor and certainly the end of discrimination in employment for women and other groups.

Some places have tried to implement the second element, market regulation. In Chile they said, "you must keep jobs here for at least a year. You cannot just pull them out and cause disruption to the local economies." Also, from our perspective, the third element, having labor standards is a win/win situation. It is a win situation for the workers in the developing world. These labor standards are necessary in order to shift the global economic development into a path that is fair and sustainable and stable for the long haul.

The opponents to this viewpoint will undoubtedly bring up some arguments against core labor standards. One of the arguments that you hear is that it is nothing more than disguised protectionism. Well, there are 50 ways to leave your lover and there are 50 ways to keep foreign imported goods out of the United States without resorting to labor standards. We have an open economy. This nation imports one half the goods exported from the developing world. Any kind of sanctions we applied resulting for violations of labor standards would not make a dent in our life here, but they might serve to change behavior in those offending countries. That is one possible way to look at it.

We also have to note that the International Labor Organization (ILO) did adopt a solemn declaration with respect to promoting these labor rights. They made this declaration in an attempt to realize good faith and a fundamental set of rights and principles for workers. The opponents also say that labor standards are better handled by the ILO, but as Gary pointed out, the ILO does not possess, nor does it wish to possess, the capacity to enforce labor standards. Without enforcement, labor standards are a sham.

At some point in the process, there must be a fair and transparent enforcement mechanism for the ILO labor standards to have any effect. That is our view. Opponents also say that incorporating labor standards would be difficult, especially given the structure and the dispute resolution process that is available in the WTO. It would be difficult, but you know what? It would not be impossible. Other subjects like intellectual property rights, bribery, corruption, and e-commerce have been successfully introduced. They have been put on the agenda of the World Trade

Organization (WTO). In light of the introduction of these subjects, it is not unreasonable to expect the WTO to address labor rights. What is required, however, is the requisite political will to execute the process. The opponents also say that labor rights are not the same as intellectual property rights, and that there are some valid reasons for including intellectual property rights in the WTO.

First, international variations in intellectual property rights clearly and directly influence trade flows. However, we could say that for labor, too. This comparison suggests that they fit within the purview of the trading system. Also, the problems with coordinating international policy on the issue of intellectual property rights is analogous to the coordination of different views about labor rights from around the world. So, I do not think the creation of international labor rights would be *overwhelmingly* difficult.

We in the labor community believe that core labor standards should be in the agreements because doing so would be morally correct. Without international standards, the unequal power relationships would continue to produce conditions ripe for the exploitation of workers around the world. In the words of Sister Susan Mikva, founder of the Coalition for Justice in the Maquila D'Oros, "Morality does not know borders. It's unconscionable for multi-national corporations to behave differently in developed countries than in less developed countries." As Robert Reich, former Secretary of Labor, said, "Child labor is a moral issue." It is a moral issue. So why should there not be an international standard?

Children who work in the fields in the United States – does that raise a moral question? Of course, it is a moral question. The same thing would apply internationally. It is a moral question because in a country as prosperous as ours, it is an outrage to see children performing grueling manual labor in the fields and not playing, not being children.

Second, labor standards are consistent with sustainable development. Research has shown that observing fundamental workers' rights is good for growth. It is not an obstacle. Strong democratic institutions smooth economic transitions and provide aid during financial crises. Protecting worker rights contributes to the development of a democracy by building popular and stable democratic institutions. Labor standards decrease inequality. Observing these rights encourages political participation. Unfortunately, political participation by the worker is not a popular idea to some. Labor organizations are fundamentally important in bridging ethnic and religious differences in the workplace and push for greater public and private investment in education, training and economic growth. In addition, labor organizations contribute to the development of a strong middle

class. This will result in real trading partners who are more likely to buy and purchase United States goods.

Third, good companies and good countries are spared from the need to compete with those who have chosen the low road to economic development and economic profit. No country should be allowed to attract investment on the basis of repression of workers' rights. A mechanism is needed for the more equitable distribution of benefits of trade. If the benefits of trade continue to go to the wealthy few, a national consensus supporting United States trade policy will never be achieved. The preamble to the Constitution of the United States starts with, "we the people." It does not say we, the investment banker, or we, the multi-national corporation. It talks about we, the people. And as Pope John-Paul the XXIII said, "Economic prosperity of any people is to be assessed not so much from the sum total of goods and wealth possessed as from the distribution of those goods according to some norms of justice.

Are there precedents for including labor rights in trade agreements? Certainly. Gary mentioned many of them. I would like to add a couple more to the huge bag that Gary filled. The McKinley Tariff Act of 1890 banned the import of goods that were produced by prison labor. We also had the Tariff Act of 1930 that banned the import of goods made by forced or indentured labor. We actually had a side agreement within the NAFTA agreement that covered labor. Obviously, we would have felt better if it was in the agreement rather than in the form of a side agreement, but this shows that there is a history of dealing with this issue. It really is a question of political will. The time for international labor rights has come. It is time to stop talking about the problems of incorporating labor standards into the WTO and time to do something about it. The global market has been forged primarily in the last twenty years, and what's happening is it's now being called to account.

I think Seattle was a wake up call, a political wake up call, that suggested that current course of action could not be taken for granted. Seattle was important. Protests in the streets by workers, environmentalists, farmers, and students from across the world were mirrored inside the hall by developing countries. These sentiments were mirrored by the delegates from those countries that felt they had been locked out of the process as much as the demonstrators in the street. So, if we care about some kind of equitable, sustainable development, and the impact on people, the environment, health, food safety, democratic participation, and urgent issues such as debt forgiveness, then these things cannot be left to chance. So, understand the message of Seattle. It was not an isolationist rejection of open markets. It was a call for new global rules. Workers in the North and the South and from many parts of the world marched together, and all those voices together

made one clear statement. The current course of action is not sustainable and some kind of fundamental reform is needed.

Now, we give markets their due. We understand that they are not perfect. They are far from perfect. They are just a system of getting the buyer and seller together. That is all the global market is, but it has little to do with decency or equity or religious values. The market does not concern itself with community interests like childcare or national holidays or transportation or voting. It does not have a moral dimension. From our perspective, we have to do better, and if we do not and if this global system continues to generate a growing inequality, if it continues to generate environmental degradation and destruction and if it becomes a race to the bottom, then I can assure you it will generate an increasingly violent reaction that will make Seattle look tame. In the short time, it is going to be more losers than winners. In a democracy – when we count all the ballots (Laughter)—the majority decides. It is not an accident that the nations most supportive of globalization are the most developed nations, those that have the greatest social safety net. But, as globalization grows, we are going to have more and more dislocations.

Leaders of global institutions are facing a legitimacy crisis that can only be resolved by doing things in a different way. It will not be resolved by a public relations contest. If they do not try to resolve it, their institutions are going to become irrelevant. Leaders of developing nations are going to face a growing inequality of income and hope. They are going to need jobs and they are going to need to preserve their democratic institutions. They should not be forced into some kind of an economic straight jacket by trade. And, Gary touched on it.

But, what is happening is leaders of individual countries have less and less control over their futures. And what is needed is some way for them to reach out and put bans on this and get it contained in such a way that they still have some control over their futures. The countries that adopt labor reforms have to see some tangible benefits, environmental advances, and things of this nature. The world community has to reward developing nations in order to encourage them to be part of this process. These nations cannot see it as a rush to the bottom. So, global, non-governmental organizations (NGOs) have raised some very legitimate fundamental concerns.

The NGOs are developing because they speak for a broader constituency. There is a limit to how far national governments can go. NGOs, using the Internet, have quickly become world players. They have banded together and they are trying to address things that cannot be addressed through the normal political process, a process that is in some cases dysfunctional. It is important now,

we think, that NGOs go from opposing what should not be and begin proposing what should be. That would advance the case. They must not assume that the price of development requires that we cash in our basic human rights or our democratic ideals.

Heads of global corporations and banks should not be misled by their rhetoric. For example, they will be held accountable by boycotting consumers who have learned that products were made with child labor. This is one way in which we in the labor movement plug in so we can address the process because it circumvents all the other hoops that you have to jump through. So, in a sense, we are going to take our story to the street and to boycotts and bans on products and so on and bring up the state of how that company functions in a developing nation. You are seeing that already by consumers, workers, and environmentalists.

You will increasingly see it by governments, too. Leaders of corporate communities must join to build some kind of enforceable laws that put limits on cutthroat competition. Their participation will show that it is not to a company's economic advantage to gain a couple of pennies on a product by going to a developing nation and polluting the environment or abusing workers. They should not be permitted to do that. Some kind of rules must be agreed upon by these entities. Labor leaders across the world must also change how we meet these new challenges.

At the AFL-CIO, we know that we have to deepen our commitment to a growing internationalism, to develop a new sophistication in bargaining and organizing across national lines. We also recognize that we must join our voices with those in developing countries calling for high road development strategies. We must work to ensure that developing countries are no longer crippled by debt that will not be paid and have the resources needed to engage in trade negotiations on equal footing. This must include technical support to implement and enforce labor and environmental agreements.

Seattle marked a crossroads. Joined by millions of others across the world, labor pledged not to rest but to continue to press for core workers rights that are the basis of economic freedom and equitable development.

For this panel, at this conference, I am sure I raise one voice, but I am sure that this voice is also shared by a growing number of people both in the United States and around the world. We are joined by people who believe in international workers' rights, in sustainable environmental rights, and in a system of enforcement for these rights. These rights should not go unheard. Let us all agree on one thing at least: if we are going to have a global civil society, then business as usual cannot be the order of the day. The global economy will either be reformed or face even greater

resistance at home and abroad. Thank you.

Mr. Workman: I am going to give you hopefully, if this works right, a multimedia presentation. But I wanted to start off by talking a little bit about some of the difficult decisions or problems posed by the issue of trade and labor and the intersection between the two concepts. This is a live issue. This is not going away, because we have concluded a free trade agreement with the Kingdom of Jordan that incorporates into the text of the agreement, for the first time in United States' trade agreements, provisions dealing with labor and environmental standards. This is also a continuing issue, because this past Monday, United States and Singapore negotiators met in Washington to negotiate a free trade agreement. And the United States trade representative's position is that we want to use the Jordan Free Trade Agreement (FTA) as the boilerplate or the model for the Singapore FTA. It is also an issue because next year, the free trade agreement between the United States and Israel will come up for renewal. I imagine that the Histaroot Organization of Trade Unions in Jerusalem will be very interested in having labor provisions in the U.S./Israel FTA. The issue will also arise in the context of discussions and attempts to amend the bilateral trade agreement between the United States and Vietnam. The agreement was negotiated a year ago and finalized this past summer, and will come before the United States Congress some time in the year 2001. So these are live issues.

Anyway, the trade and labor issue will come up as a question of what to do. For example, in Venezuela President Chavez conducted a plebiscite where he essentially ousted the CTV, the traditional labor organization for Venezuela, and replaced it with his own trade unions. The people at the International Labor Organization (ILO) in Geneva have spoken out. The European Trade Union Movement has spoken out. The issue of Chavez and his Bolivarianism, son of Fidel Castro's People's Revolution, was also an issue that is of some import.

Trade and labor issues also raise tough moral questions. For example the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) filed as a petitioner under the Worker Rights Provisions contained in the Generalized Systems of Preference Act, and claimed that the Lukishenko regime in Belarus was not allowing the free assembly of trade unions. President Lukishenko does not allow the free assembly of anybody. This man keeps a picture of Stalin next to his bed at night. So the AFL-CIO filed and the United States Trade Representative (USTR) became involved. There was no other alternative. What was the practical effect on the 118,000 workers in textile and apparel shops who worked for American companies in Belarus? They all lost their jobs. Were they a real threat to United States

textile and apparel workers in the United States? I do not think so. As a result there are 118,000 Bella Russians who will never join a trade union. I suggest that maybe American labor had a great motive, but bad tactics.

These are the kinds of issues that flow around trade and labor, trade and human rights, trade and religious freedom, and trade and environment. I will not give you a legal presentation. I would like to talk a little bit about the new international economy and what it means for business, labor, the environmentalists, and those in the legal profession. The world has changed considerably from ten years ago.

Today's *Washington Post* said that global trade expanded this year at its fastest rate in more than three decades, pushing economic growth in developing countries to above five percent this year and probably next year. Further, the 120 low and middle-income countries in Asia, Latin American, Africa, and Eastern Europe will see their economies grow at their most rapid pace in more than twenty years. This is up from an average of 3.4 percent annual gross domestic product (GDP) growth to over five percent. The World Bank's global economic prospects released this information yesterday afternoon.

Today I will briefly discuss these several topics. It is my view that there is a new relationship between the public and the private sectors. I want to take a look at the challenges and opportunities that are confronting business, because after all, I do represent business. I want to talk about the rise of small business. I would take issue with the fact that trade is predominantly for the large, multi-nationals, and I will speak to that. I want to talk about our allies who are also our competitors. I want to talk about the hunt for investment, which everybody is doing, including the United States. Finally, I will take you on a very quick tour of the world.

Let us examine the new public/private relationship. We have a completely free market basically in capital, both in terms of bucks and technology. Capitol has grown incredibly rapidly over the past twenty-five years, particularly since President Nixon let the United States dollar float in 1972 or 1973, and basically put the International Monetary Fund (IMF) out of business. The IMF was established to stabilize currency rates. If there is a floating currency rate, then there is no need for the IMF. Consequently, the IMF has been searching for twenty-six years for a new mission, and they have found a number of missions, but that is another story.

To give you an idea of the difference between the public and the private sector, the second bullet is instructive. Chase Manhattan, in eleven minutes, will process international financial transactions that exceed the annual foreign aid budgets of Europe, Japan, and the United States. That is eleven minutes versus

twelve months. The Chase Manhattan Bank is not the largest money center bank. Another factor about this new relationship between the public and the private sector is the reality that if you screw up in this new economy, you are instantly punished. However, if you make corrections, the turnaround time for recovery has dramatically improved. Let me share some specific examples.

In 1982, Mexico had a peso and financial crisis that devalued the peso. This crisis spread throughout Latin America. Throughout the 1980s all of Latin America was in a deep recession. As a matter of fact, the Latin Americans referred to this recession as the "lost decade." Finally, around 1991 and 1992, the Latin American economy began to turn around. However, in 1995, Mexico had another peso and financial crisis. Mexico stuck with the commitments they had made under the North American Free Trade Agreement (NAFTA) and implemented some new improvements. Within nineteen months, Mexico went from a negative GDP to a positive GDP, as opposed to the twelve years it took Mexico to recover in the 1980s.

In 1997, Thailand, Indonesia, Malaysia and South Korea had financial crises. Of the four, the two that quickly instituted broad and tough economic reforms, generated a positive GDP growth within twenty-one months, as opposed to the twelve years in the case of Latin America in the 1980s.

In August of 1998, the Russians had their financial crisis. Prime Minister Primakov stuck with the few good economic policies that had been put in place, but more importantly, he did not do anything destructive. The Russian economy returned to positive GDP growth in twenty-two months. Thus, even in the Russian example where the government essentially was almost dysfunctional, there was a rapid turnaround. What does that mean for business and what does it mean for the public sector or governments?

Businesses by and large do not understand why this is happening, but because they have to make business decisions on a daily and hourly basis, all businesses must create a model that works for them. Governments are still debating about what to do about this contraction of the time. We in business do not have the luxury of holding hearings and conducting studies to determine what we are going to do as a matter of public policy. By the time you go through that cycle, the nineteen to twenty-two month window of opportunity is gone. This is a challenge to government. It is a challenge to business. It is also a challenge to many of the other shareholders in this economy.

I want to talk a little bit about the rest of the world. Much has been said on this matter. The reality is that ninety-six percent of the people of the world live outside the United States.

That is a market that we in business should not forego. There are two ways to look at these three statistics. They are either a problem or an opportunity or both. Being in business, we tend to look at them as a problem that is also an opportunity. These are pretty standard statistics.

Everybody wants to talk about e-mail and the Internet. It is hard to do business on the Internet if you do not have a phone. It is also hard to do business on the Internet if you cannot read. Fifty percent of the world's people have never made a phone call. They do not have access to the vaunted telecommunications system. The bulk of these people live south of the equator. Half the people of the world do not have access to electricity on a daily basis. It is hard to operate your computer if you have no electricity. Eleven percent of the people in the world have never owned a car, bus, truck, or motor scooter. These people are in areas that need improvements in telecommunications, power generation, and auto manufacturing – sectors in which American business is very competitive. We see this reality as an enormous opportunity, and we want access to those markets.

Small business also plays a critical role in the world market. Everybody assumes that the United States Chamber of Commerce represents only big business. Of course the Chamber of Commerce represents the Fortune 1,000 companies. However, we also have 129,000 other companies who are members, and ninety-six percent of them are small businesses that employ less than 100 workers. Sixty percent of them are small businesses that employ less than ten workers. Thus, our view is skewed heavily not by the multi-nationals, but by our small business paying members. Within the United States, there are the Fortune 500 or the Fortune 1,000, and then there are the 18,999,000 other companies who are not the Fortune 1,000. Between 1992 and 1997 we have seen a doubling of small businesses directly related to exports. This does not say anything about those who are involved in imports or who are involved in secondary functions related to trade. The trade statistics demonstrate that of the roughly half trillion dollars in exports that we did last year, about one third of the dollars were done by small companies. That is also where the jobs are created. The Fortune 1,000 companies have been losing jobs steadily for the past twenty-five years, and that trend will continue. In fact, there are more people employed by small women owned businesses than are employed by the Fortune 500. That is where the employment generation is, and these are not hamburger flipping jobs. These are high paying, high wage jobs. The jobs are being generated in small business, not the Fortune 1,000.

Let us take a look at our friends and neighbors. We have to look at the European Union (EU). The EU's GDP is larger than the GDP of the United States even if we add Canada. The EU has

a plan called Project Europe. It preceded the European Coal and Steel Community, which was formed by five members in 1955, I think, and eventually grew to the current fifteen members. They have arrangements that they call association arrangements with seven countries in Eastern Europe. They have five accession agreements where they will be joining the fifteen countries in the core union. But they are not limiting themselves to Europe or Eurasia. They have negotiated a free trade agreement with Mexico. They are negotiating a framework agreement with the Mercasur countries, including Brazil, which accounts for sixty percent of the GDP of all of South America. They are also trying to include themselves in the Pacific in some of the various trade forums there. They are looking beyond the Eurasia land mass. Whereas, the United States has essentially done nothing since NAFTA went into effect in 1994. The United States is almost seven years behind the line in terms of looking at what the Europeans are doing.

The EU is not shy about picking fights with the United States, and you must know that politically, we have to pay attention to them. The only piece of legislation that Congress has passed since the election, other than continuing resolutions, is a rewrite of the Foreign Sales Corporation Act. This is because the EU took the United States to the World Trade Organization (WTO) and got a judgment that the Foreign Sales Corporation (FSC) tax scheme was an illegal export subsidy, so the United States had to change it. That is the only thing the United States Congress has done in terms of legislation since our election on November 7, 2001. There is a reason for that. The EU has a right to impose tariffs on over four billion dollars worth of our goods that enter the EU. Hence, the relationship is a robust, mature relationship between equals, with the EU a little more equal than the United States.

Japan has the second largest national economy in the world and will for the next ten years. Then, China will overtake it. Japan is a very strong competitor with the United States. The Japanese have the technological lead in seven of the nineteen critical technologies that the United States Defense Department has identified. They are no slouches. They have been in a ten-year recession, but even at that, they are formidable competitors. Japanese business is beginning to say, "to hell with you, Japanese government, we are going to do what is in the best interests of our stockholders." This is a novel concept in Japan. The Asian "Tigers." Korea has also made a remarkable turnaround, as has Thailand. Taiwan is the largest investor in mainland China and Hong Kong and continues to have a vibrant economy. It is a major trading partner and competitor of the United States.

China is at the top of the list of future competitors. They are

going to be competing in labor, where they have a comparative advantage. I do not expect to be buying a Chinese car any time soon. However, I do expect to continue buying footwear, tee shirts and low cost consumer electronics from China, because that is where their comparative advantage is.

India is a sleeper and has basically kept itself isolated from the world. The United States is India's largest trading partner, and last year we exported billion. Comparatively, the United States also exports Three billion a year to El Salvador. We give three billion in foreign aid to Israel. India is coming out of its self-imposed import substitution approach to trade. They also have 1.1 billion people. They have a middle class with purchasing power comparable to the United States middle class of about 135 million people. The Indian middle class in absolute numbers and purchasing power is the same size as the American middle class even though it only represents a small percentage of the overall population of India.

An analysis of South America is not complete without a discussion of Brazil. Brazil will be a difficult trading partner. The United States has a lot of disputes with Brazil, and Brazil is not anxious to open up their markets.

There are 170 million Russians. In many areas, they are still ahead of the United States. If you are going to launch a satellite and the launch vehicle that is going to put up the satellite is made by Lockheed Martin but it has Russian G4 rocket engines in it, you get a twenty percent discount on your launch insurance. To put that in realistic business terms, American business is already collaborating and working with the Russians. This relationship has enormous potential. If you have not been to Russia, you ought to go. The people are wonderful.

The hunt for investment! Everybody likes to talk about investment. Half of the American private sector is involved in foreign direct investment. This information is coming not only from American companies but also from pension funds in the EU. Forty-five percent of all EU foreign direct investment is in the United States. The challenge when we pick a fight with the Europeans is to make sure that we are not fighting with ourselves, and the same is incumbent on the Europeans. I can tell you that this recent spat of trade disputes with the European Commission (which I believe the technicians and technocrats in Brussels have cooked up to get some leverage in other negotiations with the United States) has European business in a tizzy. You see, European businesses are going to suffer because of the foreign sales corporation spat as much as an American company, because their American subsidiary can no longer use that tax scheme. In some sense, they are us and we are them. We have been extraordinarily successful at attracting foreign direction

investment from the EU. This is partly because the United States is perceived as the safe haven. Also, the Europeans look at the investment opportunities and the business regime in the EU, and they do not perceive it to be business friendly.

Recently, a German automotive company told me that they had no plans to either invest in new or expand existing German auto plants in Germany proper for the next twenty years. They found the business environment in France better. Of course, the United States would be their prime location. It is no accident that you have seen German auto companies coming to the United States over the past five to ten years, because the return on investment, the safety of the investment, and the way investment is treated in this country is the envy of the world. The United States needs to attract this kind of investment, because we are running a horrendous trade deficit. During the Asian financial crisis, everybody was concerned about being inundated with cheap Asian imports. Actually, the United States was inundated with expensive, European luxury goods. Everybody went out and bought Mercedes and BMWs. It always pays to look a little closer to these figures.

Next, I am going to talk about when a company is making a decision to invest, and I am not talking about speculation and portfolio investments. The Chamber of Commerce has put together what we call the twelve commandments of foreign direct investment. These are rules that all companies use, American, Latin American, Asian, and European when deciding to make an investment. Labor and raw materials are only one of the twelve criteria. I am just going to discuss the short titles. This is not anything that a finance professor in business school would base a course on, but it is very simple.

Countries will look at the size of the internal market where they are going to make their investment. Is it a big market or little market? What are the opportunities to export into adjacent markets? What is the freedom of access to the market? Can they get in the market? Are there restrictions? Are there licensing requirements on investment?

Countries will look at the labor force and raw materials. If their business activity requires raw materials, are they available and what do they cost? If they need a skilled work force, is it available? If they need a low skilled work force, what is it and how much does it cost?

Four, they look for protection from currency devaluation. That makes sense. You invest \$100 million, build a plant, and the next day your currency is devalued by fifty percent. You have lost half your investment overnight.

They look for the ability to remit dividends, interest, royalties, and technical assistance payments. Basically, if you put

your money in, can you get your money out?

Countries look at property rights production, not only intellectual property rights but real property rights. If there are people confiscating plants, houses, equipment, as well as CDs and software, you probably would not want to invest in that country.

They look at the export potential. If a country builds a plant there, can it not only service the market but can it export back to its home market to service the production needs there?

They look at the regulatory burdens, and that in and of itself can sour many companies from investing any place in the world.

They look at taxes. Again, this is common sense. You come to Cook County to invest in Chicago, you want to know what the tax structure is and what kind of tax breaks you can get.

They look at political risk. Is Chavez going to be in Venezuela in two years? Is Venezuela going to continue to rewrite their constitution every sixteen months, as they have been?

They also look at macroeconomic management. They look at the central bank. What are they doing on interest rates? They look at the government. What is the fiscal policy? Is the government running deficits or surplus?

Finally, they look at the infrastructure support. Infrastructure is not only the legal and regulatory infrastructure. It is also the nuts and bolts.

In terms of the state of world business, we have to look at where trade is concentrated, and trade is concentrated in the Northern Hemisphere. You saw this play out in Seattle. I was in Seattle, too. I not only got tear-gassed, I got pepper sprayed. It was really an eye opening experience. I would agree that the media, while it focused on a few people breaking into Starbucks, the story was inside the conference center. There was a very clear, definitive divide between the Northern and the Southern developed and developing countries. The developing countries absolutely do not believe that we will not use either labor standards or environmental standards as protectionist devices. When President Clinton stated directly that he hoped we would be able to use trade sanctions to enforce labor and environmental agreements, the conference exploded. The delegations that were in my hotel went home. So it was not Ambassador Brashefsky's inability to get people into a meeting room. It was Bill Clinton confirming what all of these developing countries feared. I am not suggesting that their approach and their fears are rational or legitimate, but they exist and they feel strongly enough about it that they broke up what the big guys wanted, which was another multilateral trade negotiating round. They, the "little" countries, denied that to the big guys, which is basically Japan, Canada, the United States, and the EU. So we did not get what we wanted. That is something that we are going to have to deal with.

Lets talk about what the developing countries are interested in. Coincidentally, these areas happen to be the basic building block sectors for any modern economy in the new global economy.

A country must be able to feed its people, so it is interested in anything related to agribusiness. That includes everything from the seeds, the fertilizer, the farm machinery, and the food processing.

A country must have the means to get its food to the market. So transportation does not solely involve the discussion of airports. We are talking about road, rail, and waterway.

A country must be interested and involved in the telecommunications market. It must have the capacity to communicate the signals of the market and must, therefore, have a modern telecommunications system.

Further, in the modern world, a country cannot participate adequately in financial services, such as banking and insurance, unless it possesses telecommunications. Finally, a country must have the electricity to run everything. With respect to these five sectors, the United States companies are the preeminent, most competitive suppliers in the world.

I want to again reemphasize this is something that the United States does not want to watch slip away. The United States will continue to put all of this at risk if it continues to not engage in trade negotiations or global commerce.

Where do we go from here? We must continue to work within the World Trade Organization (WTO), because it is basically a creation of the United States. It is a matter of "you ask for something and, oh, my God, you got it." We want the Non-Governmental Organizations (NGOs) to be more involved in the WTO. I remind you, Don, that the United States Chamber of Commerce is an NGO so you may get what you wish for. There is a problem with the WTO that was identified in Seattle. It is a consensus based decision-making organization. Everybody agrees or nothing is agreed. That is a weakness. It was okay when the WTO had twenty members, however, now that the WTO has 138 members it has become so unwieldy that it is probably unlikely that we are going to get another big round agreed to by all 138 countries. We must find another mechanism. I am not sure what it is, but we must find it.

We still have regional rules. We could still use Section 301 against the non-WTO member countries that are predominantly in the developing world. The problem is that we just do not trade much with them so 301, which is imposing punitive tariffs on their exports into our market if they do not sell us enough, is a limited weapon.

Enforce existing arguments, is a big thing for business, and it should be for labor as well. However, the Clinton administration

claims to have negotiated over 300 trade agreements in the past eight years. They have no idea what they are. The Chamber asked for a list, and they cannot give it to us. We would like to know how the parties to those trade agreements are living up to the agreement. So at least in business, we are going to push next year to enforce the agreements that we have. The American Chamber of Japan did a study two years ago where they looked at the thirty-six United States/Japanese trade agreements both sectoral and general, and found that only twelve had been partially implemented, and the others were just basically ignored. That is not a very good track record.

Finally, what are we at the United States Chamber doing? We work through our affiliate, the Center for International Private Enterprise, which is part of the National Endowment for Democracy (NED). The NED was created by the Republican Party, the Democratic Party, the AFL-CIO and the United States Chamber in the Amway Room at the United States Chamber Building in 1982, and was overseen by Dante Facelle and Bill Brock. As Dale Bumpers of Arkansas said, an unholy alliance of parties, big labor and big business. We promote democracy, and we work with our friends at the Solidarity Center at the AFL-CIO to do that, and we have done a lot of good work together. We also have business development initiatives initially in Thailand, for small businesses, not for the big guys. In January we will start a similar initiative in Singapore. We also have information technology and a biotech business partnering initiatives. Essentially, either the United States government, the Singapore government, or the big guys in information technology pay me money to help American small business partners with small business in Singapore, Thailand or around the world. It has worked out fairly well. And I make a little profit on it, too.

Finally, we in business must figure out how we can leverage what all of these countries want, which is basically our investment dollars. There is no substitute for substance. It is the message, not the medium. Thank you very much.

Mr. Arlook: I am here in the Non-Governmental Organization (NGO) category that Don spoke of and I want to address the original question posed in the title of this series of talks, "International Trade and Labor, Leveling Up or Leveling Down?" I am in the camp that believes that the current rules under which international trade is conducted mean that tens of millions of people laboring in factories throughout the developing world will not receive their fair share of the fruits of globalization. The data on the performance of corporate-sponsored globalization, so far, certainly supports this conclusion.²

2. Weisbrot, Baker, et. al, "The Scorecard on Globalization 1980-2000:

I am therefore in the camp of those who want enforceable rules to govern global trade that ensure that the rights of workers in China, Bangladesh, Mexico and Honduras who make apparel and footwear, toys, electronic equipment and other products for American companies like Nike, Mattel, and Alpine, are respected. The notion of enforceable rules brings up the question of what is referred to as "linkage;" that is, the enforcement of core labor rights standards through the World Trade Organization (WTO). The intense debate over this issue is often obfuscated by those who describe it as a North-South controversy, citing the opposition by many developing countries. Opponents of linkage argue that it is a protectionist measure that would benefit industries in the North at the expense of developing industries in the South. This objection is offered, at the moment, as the major obstacle to the enforcement of internationally recognized labor rights through the WTO. The argument has particular force because many accept it as broadly representative of the views of all sectors of society in the South. But there are other important Southern voices that provide a very different perspective.

Let me give you some examples. The South African Textile Workers Union addressed the issue of linkage in 1999:

As representatives of workers in the developing world in the lowest paid part of manufacturing, in the sector of the economy most exposed to globalization, we live daily with the real link between trade and labor standards. As soon as we improve wages for our members, companies move across borders to a country without labor rights. Our members work long hours often in unsafe conditions for very little wages. We see our countries becoming havens of exploitation and poor working conditions. We see our countries remaining at the bottom of the industrial value chain reinforced by governments who call on investors to exploit these conditions. We call, therefore, for the World Trade Organization to recognize the link between trade and labor rights and to ensure that all countries participating in the world trading system abide by a rules based system which include labor rules, namely compliance with the core ILO conventions. This should be a minimum requirement for countries to receive all the benefits of membership in the WTO. What could be simpler?

Just so that you don't think this is an isolated example, let me quote the General Secretary of the Malaysian Trade Union Congress:

The question of core labor standards is a question of human rights. Protectionism has nothing to do with it. If you look at neighboring Asian countries, Malaysian workers are three times cheaper than their colleagues in Singapore. But in Indonesia, workers are three

times cheaper than Malaysians. Workers in trade unions in Singapore are under heavy pressure to lower their wages or see their jobs go to Malaysia. Similarly, in Malaysia, workers risk losing their jobs to Indonesia.

Indulge me—one more quotation. The President of the Zimbabwe Confederation of Trade Unions:

No African trade unionists, no one elected by African workers to represent them, is opposed to linking labor rights with trade sanctions. I'm speaking on behalf of the poorest of the poor. Do you think they would be opposed to improvements in their working conditions? All those who speak out against our proposals for linkage are in reality speaking on behalf of their governments, not the workers.

The linkage issue would not be so urgent if it were not for the two great paradoxes of global trade. The first is that despite the creation of dazzling wealth, per capita income has been declining for the past fifteen years in over 150 countries, according to the UN. In seventy countries with a combined population of nearly a billion, consumption is lower now than it was twenty-five years ago. Consumption has declined during precisely the period in which the most explosive growth in global trade has occurred. The second paradox is that for over half a century a set of core labor rights has been recognized as a basic human right in the conventions of the International Labor Organization (ILO) and various declarations of the United Nations. These labor rights are nearly everywhere recognized but are violated routinely by the multinational corporations that trade overseas.

This condition prevails because, as Dean Vause observed earlier, the globalization of production gives corporations enormous leverage not only over workers but also over governments. Even the strongest promoters and proponents of free trade acknowledge this situation. Tom Friedman of the *NEW YORK TIMES* notes in his most recent book on the subject, *THE LEXUS AND THE OLIVE TREE*, that leaders of most major countries are like governors of many American States. They have to attract investors and they will take whatever measures are necessary to do that. What so frequently happens is that they offer up a low wage and an unorganized work force as their competitive advantage. This is what critics of corporate globalization call the "race to the bottom," pitting workers all over the world against one another in a competition for jobs where the ostensible winners are those willing to accept the lowest wages, the fewest benefits, the longest hours, the harshest supervisors the most hazardous workplaces, and the most miserable living conditions. Governments that should be protecting their workers' rights instead use exploited and defenseless workers as bait.

This violates every internationally recognized law but

continues unabated because there are no effective enforcement mechanisms to protect the rights of workers in the global economy. Hundreds of pages of international trade agreements as well as the rules of the WTO are devoted to protecting property rights, not a word speaks to the protection of workers' rights. The familiar argument against including such protections is that they will interfere with the operation and expansion of free trade. As if, for example, it were inappropriate or inefficient for workers to organize themselves into unions in order to balance the organized power of capital embodied in multinational corporations and their trade associations.

The rules under which international trade is presently conducted leave corporations quite unfettered, but a fair minded person looking at the conditions under which so many workers in the developing world toil would find it difficult to use the word "free" to describe them.

I would like to devote the rest of my time today, therefore, to examples of situations faced by workers engaged in production for global trade, with two ends in mind: first, to indicate just how serious the routine violations of internationally-recognized labor rights are; and second, to demonstrate how difficult it is and will continue to be, in the face of common corporate practice often supported by governmental policies in both developed and developing countries, for workers to secure their rights without strong international enforcement mechanisms to protect them.

First, I will discuss the case of Nicaraguan workers at the Chentex plant in the Las Mercedes Free Trade Zone in Managua. Chentex is owned by the Taiwanese firm Nien Hsing, the world's largest manufacturer of blue jeans with other plants in Mexico, Lesotho and Taiwan. It is a major supplier to American retailers including Wal-Mart, K-Mart, JC Penney, and Kohl's Department Stores. In 2000, Chentex paid its workers eighteen cents for each pair of blue jeans they sewed. Kohl's sells the jeans in the United States for twenty-five to thirty dollars per pair. The conservative estimate of an independent, not-for-profit, Nicaraguan economic research institute is that this wage is woefully inadequate to meet even the basic physical needs of the workers themselves, much less provide for their children, adequate shelter, health care and education.

So, the workers formed a union and began negotiating with Chentex management over wages and working conditions. Management agreed to some improvements in working conditions but asked that the issue of a pay increase be deferred for a year. The union agreed and waited. After a year, negotiations for a second contract began and the workers asked for an eight-cent per pair pay increase. Chentex responded by firing the entire union leadership and all those it identified as union activists—hundreds

of workers.

The ensuing conflict drew several delegations of observers from the United States, including Congressman Sherrod Brown, religious leaders, and labor rights advocates. I had a chance to travel twice to Nicaragua and to talk with many Chentex workers in their homes, some fired, some still working. Nothing that anyone told me, nor anything that I read before going, prepared me for what I and the other visitors saw. Nicaraguan workers who made blue jeans sold by some of the largest, best-known, and most profitable companies in America lived in eight by eight foot hovels on dirt floors with walls made of plastic garbage bags and cardboard. Their pay stubs showed that they were required to work fifty-five to seventy hours a week.

Congressman Sherrod Brown was so appalled by what he saw that upon his return he wrote a letter, signed by sixty-seven of his House colleagues, to President Clinton demanding swift action to remedy the situation. Shortly thereafter, the Undersecretary of Labor for International Affairs traveled to Nicaragua to take a look. One month after that, the United States Trade Representative wrote an unusually stern letter to the Nicaraguan Minister of Foreign Affairs calling on him to resolve the situation at Chentex with due respect for the workers' rights lest he jeopardize Nicaragua's enhanced trade benefits from the United States.

But the current international trade regime provides many channels by which companies can protect themselves from pressure and many ways by which governments can allow companies to circumvent inconvenient rules or ignore mere verbal admonitions. In this case, it was later discovered, Chentex was fulfilling large orders for blue jeans from a quasi-independent entity subsidized by the United States Defense Department and otherwise funded by retail sales—the Army and Air Force Exchange Service (AAFES). AAFES supplies merchandise sold at a discount to members of the United States armed services and their families on United States military bases all over the world. The Pentagon exercises no oversight, nor does any other arm of the United States government.

Chentex, a Taiwanese company, was also insulated from official, if indirect and ambiguous, United States pressure, because the Taiwanese government provides economic assistance to the government of Nicaragua, the hemisphere's second poorest country. Taiwan sees Nicaragua as a valuable export platform for many of its companies whose profitability depends on their penetration of the United States market. The government of Taiwan paid for the recent refurbishing of the Nicaraguan Palacio Nacional, the rehabilitation of the National Assembly building, the construction of new buildings for the Ministries of Labor and

Foreign Affairs, and a new presidential palace in Managua.

Other Taiwanese companies, the largest ones in Managua's free trade zone, also made it very clear to the Nicaraguan government that unless Chentex/Nien Hsing were free to handle the dispute with its workers without interference—that is, be allowed to fire workers illegally for their union activity or sympathy—they would pull out of Las Mercedes Free Trade Zone and shelve plans to build another free trade zone.

Without new, enforceable rules to protect the rights of workers involved in international trade what hope is there that workers like those at Chentex can ever defend themselves against such a powerful and multi-layered system so heavily stacked against them?

A second example involves the world's largest manufacturer of footwear, the Pao Chen Company of Taiwan, supplier to many of the largest and best-known brand names and retailers of sports shoes in the United States, including Nike. An American researcher with long experience in East Asia discovered that Pao Chen used contract labor from Thailand at some of its factories in Taiwan. Taiwanese companies do this through a system of job brokering in Thailand. Predominantly young Thai women from very poor rural villages borrow money, using their families' farms as collateral, to pay job brokers' fees in order to get jobs at Pao Chen in Taiwan at wage rates that are substantially higher than are paid in Thailand.

Sounds like a great deal. What happens, however, is that often it takes two or three years to pay back the loans. During that time, the women remain at work in Taiwan at the will of the employer and under Taiwanese law, they can be sent home to Thailand for virtually any reason. They are required to undergo pregnancy tests periodically and if they are found to be pregnant, they are sent home. If they are recalcitrant in any way, they are sent home. The independent monitoring organizations that some companies have hired to look at this situation, as well as various human rights organizations, refer to the practice as debt bondage. It is indentured servitude and eyewitnesses to the process—Thais who have returned from Pao Chen in Taiwan to Thailand—say that from forty to fifty percent of the Thai women workers end up being used as concubines by the line supervisors and plant managers. The women fear that if they refuse sexual advances they risk being returned to Thailand before they have been able to pay back their loans. The consequence is that they will have their mortgages foreclosed and they and their families will be plunged into even deeper poverty. This is not a condition that is unknown to American companies. It's been in papers all over the world, including the *LOS ANGELES TIMES*, the *BANGKOK POST*, and several newspapers in Taiwan. There are no enforceable international

rules to deal with this practice.

A third and final example is Wal-Mart in China. Among other examples that human and labor rights advocates have uncovered is the example of the Qin Si Enterprise handbag factory in South China. The company made Kathie Lee Gifford handbags sold at Wal-Mart. The conditions at Qin Si were the subject of a four-minute exclusive on the *NBC TV Nightly News with Tom Brokaw* last April. The conditions brought to light by anti-sweatshop watchdog Charles Kernaghan of the National Labor Committee for Human Rights included extraordinarily low pay compounded by the fact that young women, sixteen to twenty-four years old, were forced to work fourteen hour shifts, seven days a week, thirty days a month, and to live in cramped dormitories, with their every movement controlled. Factory managers made deductions from the workers' already low pay for food and lodging in the extremely overcrowded barracks. Workers were locked into the factory. Guards routinely punched and kicked them for talking back to the managers or walking too fast. This is a total and utter violation of Wal-Mart's code of conduct that it requires all of its suppliers to sign.

Wal-Mart officials denied having any business relationship whatever with Qin Si when the NBC producer confronted them with these facts.³ They accused Kernaghan of having made it up. The next day when Kernaghan held a press conference to present his evidence, Wal-Mart sent a representative to hand out a release flatly denying that Wal-Mart had any relationship to Qin Si. Two months ago, however, in *BUSINESS WEEK* magazine (Oct. 2, 2000), a Wal-Mart vice-president admitted that his company had lied about the relationship with the Chinese factory because Wal-Mart felt "defensive" about sweatshops. This is routine.

We do not have enough time, and you do not have enough patience, to have me list the number of extraordinarily well-documented cases that have been uncovered by labor rights researchers—cases that, particularly in China, are difficult to uncover because of workers' fear of repression. But sweatshop conditions and the threat of repression for workers who speak out are significant all over the developing world, from El Salvador and Honduras to Bangladesh. As long as there are no enforceable standards there will be no change. United States companies will continue to spend considerable resources on public relations efforts to deflect or allay concerns raised by activists. They will tout their codes of conduct and the monitoring organizations they hire to check on the enforcement of those codes, monitors that frequently miss. According to *BUSINESS WEEK*, many if not all of the most serious violations are missed. This privatized form of labor rights

3. *NBC Nightly News with Tom Brokaw*, May 9, 2000.

enforcement has and will continue to fail the workers it is ostensibly aimed at protecting.

Conditions cry out for enforceable global rules. This is especially so if we take retailers' claims at face value, that they too are trapped in the global competitive system, that even giants like Wal-Mart or Nike would become uncompetitive if they were to step out of line and require their contractors to pay higher wages, recognize independent unions, and bargain collectively.

Trade sanctions have been proposed as a remedy because they impose economic costs sufficient to attract the attention of national governments. Penalties that apply to specific companies that violate international laws would be preferable. To continue to have labor rights—considered basic human rights in international treaties and covenants as well as the laws of most nations from China to Nicaragua—remain un-enforced is simply intolerable. Quibbling over the proper forum for labor rights enforcement should no longer be permitted to obfuscate long overdue action.

Let me conclude by saying that, in my view, there will be no change in the fate of tens and perhaps hundreds of millions of the world's people if a trade regime like the present one continues. If it is true that individual corporations, acting alone, cannot reverse the race to the bottom, then it behooves those companies to seek a general solution that applies to all. The companies must seek a solution that puts a floor under wages based on living standards in each country, that recognizes the rights to freedom of association and collective bargaining, and that provides swift and severe penalties for violators. Barring that, it seems to me, the only other route we have is even more difficult. It requires continued efforts by private organizations, human and labor rights NGOs and labor unions, to mobilize consumers in the developed world to press Nike, Wal-Mart and others to respect the rights of their contract workers abroad or face public embarrassment that could damage their sales.

My view is that labels like Nike can afford to do more than they have done so far. For a long time, Nike resisted demands by students on college campuses that the company disclose the names and locations of the factories it used to supply college-logo apparel. Nike claimed it could not remain competitive if it gave away the trade secrets that provided it with an edge on Adidas and Reebok. Charles Kernaghan and "United Students Against Sweatshops" had already discovered that Nike, Adidas, Reebok and others used many of the same factories to produce apparel and footwear. The only people who did not know the locations of these plants were consumers. The same is true with the jeans retailers: Wal-Mart, K-Mart, JC Penney, and Target contract with many of the same factories all over the world. They know exactly where their competitors are producing.

In Nike's case, when university administrators, under pressure from student activists, threatened not to renew their contracts with the company, Nike made a full disclosure of factory names and locations.

NGOs and unions will have to create a situation where an industry leader is trapped because the public is so upset with its behavior that the company's marketing people begin warning the CEO that if consumers remain disaffected for too long, the company will lose a key portion of its market. At that point, if a company has to pay better wages, end long hours of forced overtime and observe health and safety standards in order to restore its reputation with consumers, it wants to be sure that its competitors cannot undercut it by continuing to violate workers' rights. It will want global rules to protect it against its competitors much in the way that 100 years ago, big American companies that were worried about what they called "cutthroat competition" began to press for national standards.

One way or another, the decency of most Americans will force companies to respect the rights of the workers who make the products we buy. There will be far less confrontation and far less suffering for the workers involved if some major companies will step forward soon and join the movement for enforceable global rules that protect workers as well as the rules now protect property. Thank you.