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(Mis)Managing Diversity: Worker Rights and US Trade Policy*

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Abstract. The metaphor of the two-level game has been used to describe the process whereby political leaders find themselves negotiating simultaneously at the domestic and international tables when trying to reach international cooperative agreements. This article examines the role of domestic politics in the US debate over trade policy in recent years. Specifically, the article analyzes the bargaining between the Clinton administration and the US Congress over the appropriate role for labor (and environmental) issues in trade negotiations in the context of the debate over so-called "fast-track" negotiating authority. The article then goes on to analyze how the domestic politics of this issue could affect an international negotiation over worker rights in the World Trade Organization.

Keywords: two-level games, trade negotiations, fast-track, worker rights, World Trade Organization

> It's very difficult to convince Republicans to go along with anything on labor and the environment [in trade agreements], and Democrats say they have to have something on labor and the environment. I think the Administration is flexible, but they're in the middle between two groups that are fairly inflexible.
>
> *An unidentified US congressional aide, June 1994*[1]

More than five years later, the stalemate over trade negotiating authority for President William Jefferson Clinton continued with no end in sight. Disagreements over the mandate and terms of that authority repeatedly blocked passage of so-called "fast-track" legislation, which would authorize the president to negotiate international trade agreements and compel Congress to ratify them expeditiously and without amendment. Many in the Democratic Party believe that trade agreements should address the rights of workers, as well as those of capital and intellectual property owners. They want to

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see labor issues addressed by the World Trade Organization (WTO), but are willing to give the President some flexibility on how. The Republican Party position has been that labor standards have little if any impact on trade and, therefore, no place in trade agreements. They want to preclude the President negotiating "social" issues in the WTO.

Because of the domestic deadlock, President Clinton and his negotiating team went to the WTO ministerial meeting in Seattle in late 1999 with very little leeway in negotiating an agenda for a new "round" of multilateral trade negotiations. In order to avoid controversial issues that could deepen the impasse, the Clinton administration opted for a narrow, modest agenda for Seattle. To add to the administration's difficulties, tens thousands of demonstrators, many of them union members, filled the streets of Seattle to protest continued trade liberalization without protections for worker rights and the environment.

Bowing to a key constituency, the administration's agenda for the negotiations included a proposal for the WTO to study and report on potential trade-labor linkages. The idea was strongly opposed by developing country delegates, some of whom threatened to "explode the meeting" if the US insisted on including labor issues (*New York Times*, December 3, 1999, A1). At the end of the day, the WTO meeting failed to reach agreement on an agenda for further trade liberalization but it collapsed primarily over traditionally difficult issues, such as agriculture, US antidumping laws, and textile and apparel barriers. Had those conflicts been soluble, US negotiators would have faced an even more difficult dilemma trying to find a compromise on the worker rights issue acceptable to both developing countries and American unions.

The fast-track debate and the failure in Seattle are, thus, striking examples of the need to understand the interaction between domestic politics and international bargaining. The article begins by reviewing key lessons from the recent literature exploring this interaction through the lens of "two-level games." It then summarizes the obstacles to international cooperation on trade arising from the US system of government and goes on to analyze the recent stalemate over trade negotiating authority, focusing in particular on the labor standards issue.[2] Assuming that some compromise on this issue is found after a new president is inaugurated in 2001, the article concludes with an examination of how US domestic political disagreements affect the chances for breaking the international deadlock on the trade-labor linkage.

Building on the Two-Level Game Metaphor

The two-level game metaphor, originally developed in Putnam (1988 and 1993), highlights the interactive and potentially synergistic process that occurs when a national leader finds himself negotiating international agreements simultaneously at home and abroad. Researchers interested in elaborating the metaphor reject the unitary actor assumption and remain dissatisfied with previous attempts to deal with domestic politics in the context of international relations. Moravcsik (1993), for example, rejects the "residual variance" approach – that is, attributing to domestic politics outcomes that depart from what system-level theories would suggest. He also points to the weakness of considering domestic politics when defining the national interest but then treating it as a static variable thereafter (Moravcsik 1993: 14–15).

Putnam (1993) analyzes how the preferences and relative influence of various domestic groups determine the size of a country's "win-set" in international negotiations. A "win-set" is the set of negotiated outcomes that a country would be willing to accept. The overlap of two or more countries' win-sets represents the "zone of potential agreement." Thus, the relative size of different countries' win-sets affects both the probability of reaching agreement and the terms of any agreement reached. This leads to the paradox noted by Putnam that, while a larger win-set increases the chances for cooperation, it can also result in a relatively less favorable outcome for the country with the larger win-set. Thus, Putnam argues that a negotiator has an unambiguous interest in trying to expand his negotiating partner's win-set, but has mixed incentives with respect to his own (Putnam 1993: 441–442; 450–451).

Putnam and the contributors to Evans et al. (1993) analyzed a variety of strategies and tactics that a negotiator may use to manipulate the size of his own or his counterpart's win-set in order to increase the odds of reaching agreement or to shift the terms of the agreement closer to his own preferred outcome. Of particular interest for the case discussed below are the findings regarding the relative utility of strategies that either tie the hands of the negotiator or cut him slack. Going back to Schelling (1960), bargaining theorists have hypothesized that negotiators might be able to tilt the balance of an agreement in their favor by either tying their own hands in some fashion or perhaps pretending that powerful domestic constituencies have done so. Evans (1993: 399), however, finds little evidence to suggest that negotiators attempt this strategy very often or that they are successful when they do. To the contrary, the use of side payments to try and expand the US win-set by expanding domestic support for international cooperation is a prominent element of the fast-track case.

Putnam (1993: 445–446) also suggests that transnational alliances may increase the opportunities for international cooperation in cases involving

factional conflict such as in this one. He notes that constituency groups in favor of cooperation who are unable to put together a large enough coalition in support of a particular agreement, may be able to tilt the balance in favor of cooperation by finding allies on the other side of the international table. If those allies have influence and lobby their government in favor of agreement, they may enlarge the other country's win-set and increase the probability of agreement. Evans (1993: 400), however, finds no clear relationship between the presence of transnational alliances and the probability of cooperation. The case studied here supports agnosticism since the (implicit) alliance between the US business community and governments in developing countries has thus far blocked discussion of worker rights issues in the GATT or WTO.

Milner (1997) focuses more narrowly on one side of the table with the goal of developing a more formal theory of domestic politics and international relations. Her central argument is that the more preferences differ between the executive and legislative branches, the more power is shared between them, and the more asymmetric the distribution of information is, the less likely international cooperation is. An important caveat to the last hypothesis regarding asymmetric information is that interest groups can serve as "endorsers" who increase the probability of cooperation if they have private information that they share with legislators in order to sway them in favor of an agreement. Support for these hypotheses is particularly prominent in the case studied here.

Finally, Milner and Putnam and his collaborators all emphasize the importance of ratification rules in two-level games. They point out that international agreements must be ratified domestically, even when a formal legislative process is not required, and that the rules governing ratification have important effects on the size of the win-set. On informal ratification, Putnam (1993: 438–439) offers the example of a labor union in a less developed country that rejects an austerity agreement negotiated with the International Monetary Fund and renders it unenforceable through strikes or other actions. Even dictators must rely on support from the military, police, or other key allies in order to remain in power; if those constituencies withhold support, cooperation is unlikely to occur or to be implemented if agreement is reached.

Of particular interest in analyzing the fast-track case, Milner (1997: 125–126) notes that, because ratification rules are so important in determining whether international cooperation will occur, and on what terms, they "should be a major element of the domestic game." She goes on to argue that, "When an issue is contentious – that is, when the legislature, executive, and/or interest groups have very divergent preferences – one would expect an intensified struggle over the procedures used to ratify it." Fast-track is

the ratification procedure developed in the United States to deal with problems of divided government, shared decision-making power, and asymmetric information in order to increase the prospects for international cooperation on trade. In recent years, however, the broad but shallow consensus that traditionally supported a liberal trade policy in the United States has frayed and the fast-track procedure itself has become an issue of fierce contention.

The Changing Politics of Trade

The US Constitution deliberately divides power among the executive, legislative, and judicial branches of government in order to prevent any individual or group becoming too powerful. It makes the president commander-in-chief and vests in him the authority to negotiate international treaties, but it gives to Congress the power to lay duties and to regulate commerce with foreign nations. Through the first part of the twentieth century, the impact of this division of foreign affairs powers on American trade policy was limited because the tariff was used for primarily domestic purposes – to raise revenues and for infant-industries and protectionist purposes.

In 1930, however, Congress passed the Smoot-Hawley bill, which raised the average US tariff to nearly 50 percent. Although analyses differ as to the economic effects of Smoot-Hawley, it was widely blamed at the time for sharply reducing trade, exacerbating the Great Depression, triggering retaliatory moves by trading partners, and increasing international political tensions (Irwin 1996: 5; Irwin 1997: 14–15). The process of horse-trading and log-rolling that produced the longest and most complex tariff bill to that time was also widely criticized. To this day, the specter of Smoot-Hawley is invoked whenever protectionist measures are introduced in Congress.

Just four years after passing the Smoot-Hawley tariff, Congress reversed course and passed the Reciprocal Trade Agreements Act (RTAA), which authorized the president to negotiate *and implement* reciprocal tariff reductions within specified limits and for a limited time, with no further congressional action required. The impetus for the change in procedure, as well as direction, was two-fold: to undo the damage done by Smoot-Hawley; and to prevent it from happening again. Because the increase in US tariffs under Smoot-Hawley had triggered similar protectionist actions in other countries, negotiated tariff reductions were a logical means of beginning to unwind these beggar-thy-neighbor policies. At the same time, shifting the focus to international negotiations, where the executive had constitutional authority, allowed Congress to shift primary responsibility for trade policy to the executive and thereby insulate itself from the log-rolling that resulted in Smoot-Hawley and prior protectionist tariff bills.

Under the RTAA, as long as the tariff reductions were within the limits set by Congress, the president could implement them by proclamation and there was no need for formal ratification. But negotiators knew that if they strayed too far from congressional preferences, Congress might refuse to renew the authority or place additional limits on it the next time it came up for a vote. The story of the bargain that facilitated and sustained this transfer of power is told compellingly and in detail in Destler (1995).[3] What is of most interest here, however, is the erosion of that bargain as the substance and context of trade policy changed.

Nontariff Barriers and the Need for a New Ratification Rule

The General Agreements on Tariffs and Trade (GATT) was concluded in 1948 to serve as the third leg of the international economic system established after World War II to promote prosperity and to avoid the mistakes of the Great Depression. GATT served as the forum for multilateral trade negotiation for the next 45 years, until it was replaced by the World Trade Organization, and it was remarkably successful in reducing tariffs and making trade barriers more transparent. As a result, nontariff barriers (NTBs), such as subsidies and domestic regulation, became both more visible and relatively more important in their effects on trade.

It did not take long for the need for new ratification rules to address NTBs to manifest itself. During the 1960s Kennedy Round of GATT negotiations, the United States acquiesced to pressure from its trading partners to eliminate the American selling price mechanism, which effectively increased the ad valorem tariff rate on certain goods. Implementation required congressional ratification, however, and, when that was not forthcoming, American negotiators found themselves "involuntarily defecting" from an international agreement because they had misjudged what could be ratified at home (Putnam 1993: 440; Destler 1997: 6). US trade negotiators realized that a new mechanism was needed to smooth ratification of agreements on NTBs so that foreign negotiators would have some assurance that the United States would not renege on its commitments.

The process ultimately agreed upon in the Trade Act of 1974, which authorized President Gerald Ford to negotiate in the Tokyo Round, was the so-called "fast-track." The key element of the new approach prevented Congress from amending a trade agreement once it was submitted for approval and required the two houses to act expeditiously. In return for giving up the power to amend or delay the agreement, the president was required to specify in his request for trade-negotiating authority what types of agreements it would be used for and what his negotiating objectives would be. There were also procedures for consultations with Congress during the course of negotiations

and on the drafting of implementing legislation at the end. Finally, Congress set a deadline by which the negotiations had to be completed if fast-track procedures were to apply.[4]

Thus, fast-track was another adaptation intended to overcome problems of divided power and asymmetric information in the trade policy area. From the beginning, there were concerns on the part of some that Congress was giving up too much power with fast-track but the procedure attracted relatively little attention in its first decade and a half (Destler 1997: 6–9). As predicted by Milner (1997: 125–126), it was only as the debate over the direction and scope of trade policy heated up that the ratification rules became a serious issue of contention.

The Fraying of the Post-War Consensus

There are at least four trends associated with economic globalization that have contributed to erosion of the American consensus in favor of a liberal trade policy and raised the profile of labor and environmental issues:

1. increasing trade, which increases adjustment costs and makes trade more visible;
2. the changing policy agenda and pressures for deeper integration;
3. increased integration of low-wage developing countries; and
4. increased mobility of capital.

The successes of the trading system can be seen, not just in lower tariffs, but in strong trade growth (Whalley 1996: 12–22). This increase in the volume of trade has meant that greater numbers of people benefit from trade, but also that greater numbers are dislocated by trade. Moreover, as trade has become more important in the American economy, its effects have also become more visible. Unfortunately for the maintenance of a liberal trade policy, the costs of trade tend to be both more tangible and more concentrated on particular groups of workers than the benefits, which are diffused widely among consumers and the population as a whole. Thus, the opponents of trade are easier to organize for lobbying purposes than the beneficiaries.

The success of the GATT system in lowering or eliminating border measures – tariffs, quotas, and export subsidies – also meant that the negotiating agenda and the international rules disciplining government policies as they affect trade moved increasingly toward "behind-the-border" measures, including regulation of services, such as banking and telecommunications; laws protecting intellectual property rights; tax policy, including on liquor and tobacco products; health and safety, and environmental regulations. As the trade agenda encroaches more and more on what had previously been regarded as wholly domestic issues, concerns about sovereignty and national policy autonomy become more prevalent.

A third trend is increased economic integration on the part of low-wage developing countries. Inspired by the success of the Asian "tigers," many developing countries discarded the import-substitution industrialization model and turned to export-led growth strategies. US imports from (non-OPEC) developing countries increased rapidly in the 1970s and 1980s, from 23 percent of the total in 1973 to 38 percent of a much larger total in 1996 (*Economic Report of the President* 1981: 347, 1998: 401). Increased integration with labor-abundant developing countries put downward pressure on wages and also raised questions among some domestic groups as to whether lower standards of protection for workers and the environment might constitute an unfair trade advantage. A related concern for unions and environmentalists is that multinational corporations will move operations to countries with lower standards in order to reduce costs and increase profits, putting pressure on countries with higher standards to lower them in order to compete and thereby stimulating a "race to the bottom."

Finally, increased capital mobility raised other concerns. Environmentalists fear that even if high standard countries do not join a race to the bottom, the movement of investment to low standard countries will increase the global supply of environmental problems, some with spillovers affecting high standard countries. For organized labor, increased capital mobility weakens their bargaining power even if formal laws and institutions governing industrial relations remain unchanged. They point to numerous instances in the last 20 years of unions being told they must accept reductions in wages or other compensation or face losing their jobs because the company will move abroad.

Liberal trade supporters point out that trade increases income at home and abroad, which in turn increases the demand for US exports. They also argue that MNCs typically have better technologies and equipment, pay higher wages, and abide by higher standards in their foreign operations than do local firms. Nevertheless, concerns about decreased job security, downward pressure on wages, and restricted sovereignty and policy autonomy have been linked in the minds of many to globalization and have made free trade a harder sell.

NAFTA and Deepening Divisions

The North American Free Trade Agreement crystallized these concerns because it involved deep integration and increased capital mobility between the United States (and Canada) and Mexico, a lower-wage developing country. The way negotiations came about also highlighted the fast-track procedure itself and caused many in Congress to view it in a new and unfavorable light.

When the Uruguay Round of multilateral trade negotiations could not be completed as scheduled in 1990, President George Bush had to seek what probably would have been a routine extension of fast-track authority had Mexican President Carlos Salinas de Gortari not decided to seek a bilateral free trade agreement with the United States.[5] The 1988 Omnibus Trade and Competitiveness Act had reauthorized fast-track for an initial period of three years and provided for a two-year extension, to be granted automatically upon presidential notification unless either house of Congress voted against it. Because of the way the provision was written, the extension could be applied to the proposed North American Free Trade Area, as well as the completion of the Uruguay Round, meaning that a vote against the former would also kill the latter.

In response to the concerns expressed by labor supporters and environmentalists about the proposed NAFTA agreement, the leadership of the Democratic majority in Congress sent letters to President Bush seeking assurances that these issues would be addressed in the negotiations. Bush responded with a letter on May 1 laying out the arguments in favor of NAFTA, including more and better jobs as a result of increased exports to Mexico and improved environmental protection in Mexico as a result of positive growth effects there. Bush did not stop there, but also promised to complement the trade agreement with trade adjustment assistance for those dislocated by increased trade and to seek "joint environmental initiatives" with Mexico. While unions remained adamantly opposed to any NAFTA agreement, some environmentalists withdrew their opposition, viewing Bush's commitments as an opportunity to address environmental problems in Mexico and along the border (Destler 1995: 98–103).

Some in Congress who were still uncomfortable with the NAFTA proposal protested having to act on both trade initiatives in a single vote and some indicated they would be forced to vote against an Uruguay Round negotiation they favored because of their opposition to NAFTA. Nevertheless, resolutions to disapprove fast-track extension failed in both houses, by a 231–192 vote in the House and 59–36 in the Senate. By contrast, the vote on the 1988 trade act originally authorizing fast-track for the UR negotiations had passed the House, 376–45, and the Senate, 85–11 (Table 1).

The NAFTA negotiation was completed in August 1992 but quickly became entangled in presidential politics. Despite being under considerable pressure to reject it, presidential candidate Bill Clinton, campaigning as a "new Democrat," endorsed the agreement. But in order to mollify NAFTA's critics, he also called it inadequate on labor and environmental issues and said that, if elected, he would negotiate "side agreements" on those issues. By August 1993, the side agreements were completed and

Table 1. Congressional votes on trade negotiating authority and trade agreements

Year	Reason for legislation	House vote	Senate vote	Party controlling: House	Senate	Presidency
1974	Authorization for Tokyo Round	272-140	77-4	D	D	R
1979	Implementation of Tokyo Round	395-7	90-4	D	D	D
1984	US-Israel FTA, miscellaneous trade	386-1	96-0	D	R	R
1988	Authorization for Uruguay Round	376-45	85-11	D	D	R
1991	Extension of authority, UR and NAFTA	231-192	59-36	D	D	R
1993	Extension of UR authority	295-126	76-16	D	D	D
1993	North American FTA	234-200	61-38	D	D	D
1994	Implementation of Uruguay Round (without fast-track extension)	288-146	76-24	D	D	D
1998	Provide fast-track negotiating authority	180-243	No vote	R	R	D

Note: D = Democratic Party; R = Republican Party.

Clinton prepared to submit implementing legislation to Congress. While the unions and their supporters were still resolutely opposed, the environmental side agreement split the environmental community, with several important groups choosing to endorse NAFTA (Destler 1995: 224). Congress ultimately approved NAFTA in November but the vote again illustrated the greater divisiveness of deep integration with developing countries compared to trade liberalization at the multilateral level. While NAFTA was ratified by a larger-than-expected, but still thin, 234-200 margin, implementing legislation for the Uruguay Round passed the following year by the far more comfortable margin of 288-146 (Table 1).

The side agreements on labor and environment, while helpful in securing NAFTA's passage, ultimately contributed to the later stalemate by solidifying positions on both sides of the trade policy debate. On the one hand, the environmental groups that endorsed NAFTA came to view the side agreement as weak and the administration's commitment to implementing it even weaker. Today, the major environmental groups are uniformly opposed to any extension of fast-track without substantial changes and, like the labor groups who always viewed the side agreements as inadequate, they now demand that their issues be included in the text of the agreement itself. Similarly in Congress, Gephardt and other supporters of labor and environmental linkages to trade insist that the NAFTA side agreements should serve as a floor and that future negotiations should have stronger provisions in the body of the main agreement. On the other hand, most Republicans and the business community accepted the side agreements only reluctantly as the price for winning the NAFTA vote and are steadfastly opposed to replicating them in any form.

The Fast-Track Stalemate

The month after the NAFTA vote, with the expiration of US fast-track authority again looming, GATT negotiators finally brought the Uruguay Round to a close. The resulting agreement may come to be viewed as the last gasp of the post-war system for managing trade politics in the United States. House Majority Leader Richard Gephardt (D-MO), a supporter of labor issues who had opposed NAFTA, endorsed the UR results soon after the negotiations were completed. Though there would obviously be some opposition and dealmaking on specifics of the implementing legislation, the vote on the Uruguay Round agreement was not expected to be nearly as controversial as the one on NAFTA. The problems began when the administration decided to include another extension of fast-track in the UR implementing legislation. Bundling it with the implementing legislation, which had broad support, was expected to ease passage relative to a stand-alone bill. And, as noted, a fast-track extension had been included in the Trade Agreements Act of 1979 and had attracted little attention.

The 1991 vote had raised the profile of the procedure, however, and NAFTA had accelerated the fraying of the consensus supporting a liberal trade policy in the United States. While the increasing scope and pace of globalization was making some workers feel less secure and environmentalists more threatened, it increased the opposition of the business community to restrictions on their ability to restructure and organize globally so as to take advantage of new opportunities. At the same time that differences over the benefits of globalization were increasing, unilateral liberalization by developing countries eager to attract foreign investment and the expansion of international trade rules in the Uruguay Round to at least partially cover agriculture, services, investment restrictions, and intellectual property meant that the business community was less willing to serve as endorser for any fast-track compromise that did not suit it.

This compounded the problem of asymmetric information, which was also greater in 1994 than previously because "deep integration" and increased involvement by developing countries had expanded the number and variety of potential issues and countries that might be included in trade negotiations. Chile had already approached the United States about acceding to NAFTA and, while that was not very controversial on its own merits, it would serve as a precedent for other potential regional negotiations where labor and environment issues would loom larger. By the end of 1994, the administration had agreed to negotiate a Free Trade Area of the Americas, as well as free trade in the Pacific basin among the members of the Asia-Pacific Economic Cooperation (APEC) forum. This was a new landscape for trade negotiations and navigation of it grew ever more difficult as the degree of trust between the

Clinton administration and the Republicans in Congress steadily eroded from 1994 onward.

The Elusive Middle Ground in 1994

Early in 1994, in an effort to mollify labor supporters who had been alienated by NAFTA, US Trade Representative Mickey Kantor pressured other GATT members to include a reference to worker rights in the political declaration to be issued by ministers at the Uruguay Round signing ceremony in Marrakesh in April. He also wanted GATT to create a working party to examine trade-labor linkages. Kantor pushed hard but his proposals attracted little support and were rebuffed by less developed countries who adamantly opposed any reference to labor issues.[6]

Despite the failure, Kantor's efforts backfired with Republicans. Just after the Marrakesh ceremony, House Republican leaders Robert Michel (R-IL), Newt Gingrich (R-GA), and Bill Archer (R-TX) sent a letter to Kantor criticizing him for pursuing the labor issue in the GATT without consulting with Congress and they warned that promotion of social issues in the trade arena could jeopardize Republican support for fast-track. Senate Republicans echoed the warning in a similar letter a few days later. In May, eight Republican members of the key Senate Finance Committee wrote to Kantor opposing inclusion of fast-track in the UR implementing legislation because of concerns about the administration's efforts to link labor and environment issues with trade. Key Democrats, including House Majority Leader Gephardt and Senate Finance Committee Chair Daniel Patrick Moynihan, also preferred debating fast-track separately, though for different reasons.

Then in June, when it released its first formal bid for fast-track authority, the administration made two strategic errors that further eroded the already shaky support for fast-track. The first mistake was in asking Congress to cut the President extraordinary slack while providing little information on what he planned to do with it and also proposing to reduce Congress' role in the ratification phase. The second mistake, which to some degree was unavoidable, was in the crafting of the language on labor and the environment.

The President initially requested broad authority for a relatively lengthy period of seven years without specifying for what negotiations it would be used. He also proposed reducing the amount of time Congress would have to consider and vote on implementing legislation. These provisions and the lack of specificity with respect to objectives raised hackles across party lines and added to the concerns of those who questioned the constitutional legitimacy of the whole procedure. The proposal also underscored the concerns of Senate Finance Committee Chair Moynihan and others who were uncomfortable with the idea of voting on new fast-track authority under fast-track procedures

(*Inside U.S. Trade*, July 22, 1994, p. 1; August 5, 1994, 22). Because fast-track limited Congress' usual legislative role and gave unusual control over the development of implementing legislation to the two trade committees – Senate Finance and House Ways and Means – inclusion of fast-track renewal in the Uruguay Round bill would preclude full and open congressional debate on the future of trade policy.

While many of the procedural objections could have been easily addressed, labor and the environment would prove more problematic. The administration viewed its proposal on these issues as being "neutral." It included labor and environment issues as objectives of trade negotiations but it did not require that progress on those issues be made in order for an agreement to be approved under fast-track. Although broadly similar to language on worker rights as a negotiating objective in the 1988 Trade Act, the administration's proposal was criticized by Republicans and the business community as breaking "substantial new ground" on labor (and the environment) (*Inside U.S. Trade*, July 8, 1994). Shortly after the proposal was released, all 44 Republicans in the Senate wrote to Clinton informing him that they would not support a broad fast-track extension and that including it in the UR implementing legislation could threaten the timely passage of the bill. House Minority Leader Gingrich followed suit, predicting that "100 percent of the House Party . . . [including] the most intense free traders" would vote against fast-track language that included labor and environment conditions. Business groups such as the Chamber of Commerce and the National Foreign Trade Council, also expressed opposition to the language on labor and the environment.

The administration might have avoided significant grief had it consulted with the business community about their concerns *before* unveiling the language (Destler 1995: 245). Not having done that, departing even a jot from the 1988 language opened them up to accusations of wanting to go beyond what had been acceptable in the past. A side-by-side examination of the worker rights language from 1988 and 1994 (Table 2) suggests that the critics may have been inspired more by their distrust of Clinton than by changes in the proposed text. (The failure earlier in the year to get agreement on a GATT working party seems as plausible an explanation for dropping the references to GATT as concluding that it signaled something new and more threatening.[7]) But even language identical to that in 1988 would have been problematic because, as Destler (1997: 18) notes, "[I]t was one thing . . . for congressional Democrats to highlight these issues for a Republican administration. It was quite another to provide such a license to a Democratic regime that had already shown a tendency to push these issues at risk to traditional trade liberalization objectives."

Table 2. Comparing fast-track language on worker rights

Omnibus Trade and Competitiveness Act of 1988	President Clinton's June 1994 Fast-Track Proposal
WORKER RIGHTS – The principal negotiating objectives of the United States regarding worker rights are – (A) to promote respect for worker rights; (B) ***to secure a review of the relationship of worker rights to GATT articles, objectives, and related instruments with a view to*** ensuring that the benefits of the trading system are available to all workers; and (C) ***to adopt, as a principle of the GATT***, that the denial of worker rights should not be a means for a country or its industries to gain competitive advantage in international trade.	**LABOR STANDARDS** – The principal negotiating objectives of the United States regarding ***internationally recognized labor standards*** are – (A) to promote respect for ***internationally recognized labor standards***; (B) to ensure that the benefits of the trading system are available to all workers and that the denial of ***such standards is*** not a means for a country or its industries to gain competitive advantage in international trade.

NB: Key differences in the two texts are highlighted in bold italic.

Although language on worker rights had been included in fast-track bills going back to the original in 1974, having a Democrat in the Oval Office increased the uncertainty about how such language would be used.[8] Moreover, many congressional Republicans simply distrusted Clinton, as well as Trade Representative Kantor, and were unwilling to accept at face value the administration's assurances about the modesty of their objectives in this area. Thus, even the vaguest hortatory, and nonbinding language on worker rights was no longer acceptable without a strong endorsement from the business community.

In July, recognizing the strength of the Republican opposition, Majority Leader Gephardt dropped his demand that the language on labor and environment be strengthened to include those issues as a condition of acceptable trade agreements under fast-track. Noting that "bipartisan support for the GATT bill is important to ensure its passage," he focused on reducing the period of authority from seven years to three and strengthening the provisions for congressional consultation. Republicans and their business community constituents remained suspicious of the President, however, and demanded that he go further. The Republicans wanted labor and the environment dropped as negotiating objectives and they wanted language that would tie the President's hands on two issues. They did not want fast-track procedures used to change US labor or environmental laws, nor would they accept any agreement that authorized the use of trade sanctions to punish any other country for inadequate labor or environmental standards. In other words, they wanted to prevent the extension of NAFTA-like side agreements in any future trade agreement.

In early August, following negotiations with the business community and House Republicans, the Clinton administration unveiled new fast-track language that dropped labor and environmental issues as negotiating objectives and explicitly excluded the possibility of using fast-track to change US laws in these areas. In an accompanying "statement of administrative action," which expanded on how the authority would be used, the administration reiterated the importance of the labor and environmental issues but noted the lack of consensus, "either internationally or within the U.S., about how best to address these important linkages." The statement goes on to say that the administration "believes these issues are appropriate to be included as part of future negotiations with prospective trading partners, but believes that an approach should be worked out with Congress and the representatives of the private sector on a case by case basis" in the context of particular negotiations. The statement also notes the "depth of concern about the use of trade sanctions in the areas of environment and labor," and pledges that, "In the absence of bipartisan Congressional support, the Administration would not negotiate agreements under this title which authorize resort to trade sanctions as a way of responding to environmental or labor practices by our trading partners that we find deficient" (*Inside U.S. Trade*, August 12, 1994, S-7). Finally, in a bid to avoid the complete alienation of labor supporters, the statement reiterated the administration's support for creation of a WTO working party to examine potential trade-labor linkages (ibid., S-8).

But Ways and Means ranking minority member Bill Archer (R-TX) objected to the language on trade sanctions, arguing that it was not what had been agreed to and that the administration was backtracking on its commitments. This further deepened the distrust between the two sides and made negotiations even more difficult. Nevertheless, most business groups welcomed the new language as "a real step forward," but did not endorse it enthusiastically and some expressed lingering concerns that the administration had not completely ruled out the possibility of using trade sanctions for labor and environmental objectives. Reiterating the trust issue, one business community source noted that "The only thing that's not reassuring is that the Administration did not propose this up front but had to be dragged to it kicking and screaming" (ibid., S-2).

A week later, after additional negotiations with Archer, the House Ways and Means Committee approved language with additional restrictions on the use of trade sanctions and on what could be voted on under fast-track. The Ways and Means language required that provisions in the implementing legislation be "substantially related to the principal trade negotiating objectives," which, of course, no longer included labor or the environment (*Inside U.S. Trade*, August 19, 1994, S-3). The Ways and Means Committee also included

language calling on the WTO to establish a working party on trade-labor issues and added a provision calling for coordination with the International Labor Organization.

While most major business groups supported the Ways and Means Committee language, the Chamber of Commerce and some Senate Republicans rejected it as not going far enough in tying the President's hands on trade sanctions (*Inside U.S. Trade*, August 19, 1994, 18). Opposition was also growing on the other side of the aisle. Unions and their supporters lobbied for the removal of fast-track from the UR bill and threatened to step up the opposition if it remained. When it became clear that the Ways and Means language would not be softened, environmental groups joined labor in opposing fast-track's inclusion in the UR implementing bill.

With opposition growing on all sides and Senate Finance Committee Chair Moynihan still adamantly opposed to including fast-track in the implementing bill, the provision was finally dropped in the "nonconference" that worked out differences between the House and Senate versions of the implementing legislation.[9] After additional delays for other reasons, the Uruguay Round Agreements Act (URAA) was finally passed by a lame-duck session of Congress at the beginning of December. In the interim, the Republican Party had decisively defeated the Democrats in mid-term elections, taking control of both houses of Congress.

Trade Policy as Partisan Politics After 1995

If compromise was elusive with Democrats in control of both the executive and legislative branches of government, it was impossible after 1994 with divided government and, especially, after the impeachment proceedings of President Clinton in late 1998. Further exacerbating the divisions on trade, the Mexican peso collapsed at the end of 1994, leading to a debt crisis in February that required a large US-led bail-out to prevent a Mexican default. Although the crisis was tangentially, if at all, related to NAFTA, the agreement was nevertheless blamed by opponents for contributing to the crisis and the large trade deficit with Mexico that followed in its wake. These events, combined with disillusionment with the NAFTA labor and environment side agreements, hardened the opposition of those groups to further integration with developing countries, unless the agreements included binding commitments on labor and the environment.

Given the growing opposition within his own party and no urgent need for negotiating authority, the President declined to submit language on fast-track to Congress in 1995. House Republicans took the lead and, in September, the House Ways and Means Committee approved language crafted entirely by the Republicans on the Committee that excluded labor and environment as

negotiating objectives and restricted the application of fast-track procedures to provisions of agreements "directly related" to the principal negotiating objectives specified in the legislation. Even pro-trade Democrats on the Committee, such as Sam Gibbons (D-FL), ranking minority member on the full committee, and Robert Matsui (D-CA), ranking minority member on the trade subcommittee, denounced the bill and the process that produced it as partisan and a departure from how the committee had traditionally operated in the past. When Senate Majority Leader Robert Dole (R-KS), who was planning a run for the Republican presidential nomination in 1996, announced in November that he was opposed to renewal of fast-track authority "at this time," the issue was effectively dead until 1997.

The 1996 election maintained divided government, with Clinton reelected as President and the Republicans retaining their congressional majorities, though by smaller margins in the House after both the 1996 and 1998 elections. In 1997, the President submitted fast-track legislation that included language on worker rights that, again, echoed the 1988 Trade Act. Clinton also added, however, language that tied his own hands, listing as a negotiating objective only labor and environment issues that are "directly related to trade and decrease market opportunities for United States exports or distort United States trade" (*Inside U.S. Trade*, September 17, 1997, S-2). Minority Leader Gephardt immediately rejected this as a step back from the fast-track that Presidents Reagan and Bush had been granted because it restricted what might be achieved in international negotiations on these issues.

Ways and Means Committee Chair Bill Archer proposed his own version of fast-track that tied Clinton's hands even more tightly but the President, increasingly concerned about the lack of negotiating authority, decided he could live with it. In order to attract fence-sitting members in the House of Representatives he offered a number of side deals and, just before the scheduled vote, he announced last minute initiatives on the environment (mainly symbolic) and labor, including beefed-up border and community adjustment assistance. Most House Democrats could not accept the restrictive Archer language, however, and the bill was pulled from the floor in early November. Although some believed that, if forced to go on the record for or against international trade negotiations, a majority would have voted in favor, the President and Republican congressional leadership agreed that an explicit no vote would be damaging to US credibility abroad and would make it harder to reintroduce fast-track in the future.

In 1998, US trade policy fell victim to the even nastier political atmosphere generated by the Monica Lewinsky scandal and the impeachment debate. In an attempt to attract Democratic votes, Archer made modest changes, largely symbolic, to his 1997 fast-track language on labor and the

environment. But congressional Democrats did not want to vote on a provision that would force them to confront their union supporters just before the mid-term election and the President agreed, opposing consideration of a fast-track bill at that time.

In the highly-charged political atmosphere of Fall 1998, however, Speaker Gingrich and the House Republican leadership decided to force a vote in hopes of using it against Democrats in the election. They brought the amended Archer bill to the floor and, as expected, it was defeated, 180–243, with only 29 Democrats voting for and 71 Republicans voting against. Even Robert Matsui (D-CA), who had served as the President's point-man rounding up Democratic votes for the 1997 fast-track, denounced the move as unacceptably partisan and voted against it.

Why Did Fast-Track Fail and Can it be Revived?

The debate over US trade policy in recent years underscores the importance of Milner's (1997) argument that differing domestic preferences, divided power, and asymmetric information (without endorsers) can impede international cooperation. It is also evidence for the hypothesis that the sunk costs of coalition-building may at times block cooperation opportunities that might be negotiable if adjustments to one's political base were feasible (Putnam 1993). Fast-track foundered because the parties in Congress had sharply divergent preferences, the President could not abandon his party's labor constituency without imperiling his domestic agenda, and neither Republicans or labor Democrats trusted the President's promises to accommodate their priorities.

In the face of these obstacles, the opportunities for breaking the deadlock are few and carry their own costs. Narrow, targeted side payments have not been sufficient in the past, but a broader view of issue-linkage and side payments might broaden the coalition in support of trade negotiations by enough to ensure passage of fast-track. A second option is to narrow the scope of fast-track authority so as to reduce the degree of divergence among key constituencies while still addressing their main priorities.

The Preferences of Potential Endorsers

While President Clinton demonstrated considerable willingness to compromise on fast-track language on several occasions, the two key domestic constituencies and their supporters in Congress were never able to find common ground. Future progress on trade depends on whether the existing distribution of preferences is likely to change and how.

Multinational corporations (MNCs) strongly supported NAFTA and the Uruguay Round, but, in general, they just as strongly oppose anything that would lead to increased regulation of their operations, either at home or abroad. They were also concerned about the possibility of trade sanctions that could increase uncertainty and risk and disrupt their increasingly global operations. For business groups and Republicans, Clinton's decision to seek labor and environmental side agreements to NAFTA, as well as Kantor's efforts to introduce worker rights into the Marrakesh declaration and WTO work program, raised questions about the depth of the administration's commitment to free trade and its willingness to trade off liberalization goals for labor and the environment. Without either trust in Clinton's motives or complete information about how US negotiators would address this trade off in future trade agreements, business groups wanted to tie the administration's hands as much as possible in these areas.

The level of distrust was such that the only compromise acceptable to business in 1994 was unacceptable to key Democrats and their core constituencies. At the time, the need for fast-track was not urgent, but in subsequent years the lack of negotiating authority increasingly impinged on Clinton's efforts to liberalize trade in Latin America and Asia – initiatives that the business community strongly supported. Yet, business remained distrustful of Clinton, leery of compromise, and, as of late 1999, had not mounted an all-out effort to get fast-track passed.

The degree of opposition in this area is puzzling since it is not at all clear that if the business community expanded its win-set, by permitting a compromise on labor and environment issues domestically, that this would have much impact on the international negotiation. The win-sets of the developing countries are so constrained on this issue that a significant international agreement is almost inconceivable for the foreseeable future. In other words, if an *international* consensus on worker rights is as distant as it appears, MNCs would in fact be giving up very little if they compromised on this issue because the Clinton administration (or its successor) is unlikely to be unable to negotiate anything significant.

A satisfactory explanation requires looking beyond the downside risks of potential agreements linking trade with labor and environmental issues. Other changes in the international environment may have affected how much large MNCs value international trade negotiations and therefore, how willing they are to compromise. MNCs may see diminishing positive returns to international trade negotiations after the Uruguay Round, which extended international rules to intellectual property, services, and some of the most egregious restrictions on foreign investment. At the same time, developing countries are increasingly abandoning the import-substitution industrialization model

and compete vigorously for foreign investment, meaning that many of them are liberalizing unilaterally. During the 1994 debate, for example, some firms interested in expanding in Latin America reportedly told the administration that "it would be easier to pursue business opportunities in Latin America without new free-trade agreements than to accept the [June] Administration fast-track proposal" (*Inside U.S. Trade*, July 8, 1994). Finally, even to the extent that the business community remains interested in negotiated trade liberalization, they may feel that the relatively friendlier environment they face means they can afford to wait until after the 2000 election with the hope that Republicans would capture the White House as well as hold their majorities in Congress.

After the 1998 fast-track failure and with the Seattle ministerial drawing nearer, however, there were signs of rethinking on this issue. National Association of Manufacturers President Jerry Jasinowski said in December 1998 that "his groups supports 'realistic adjustments' to fast track to make it more attractive in Congress, such as provisions for worker training . . . But collective bargaining language or environmental qualifications may be going too far" (*International Trade Reporter*, December 9, 1998, 2049). Other business sources have gone further, noting that some services sectors would be little affected by labor or environment standards and, therefore, might support compromise in these areas. Or, as one source put it, "You don't really lose anything by giving ground on these issues" (*Inside U.S. Trade*, November 6, 1998, 22).

On the other side, the unions have even less incentive to compromise in the short-run. Relatively highly-paid unionized workers in import-competing industries are obviously vulnerable to increased imports from low-wage developing countries. When displaced, whether by trade, technology, or some other cause, they frequently take jobs at lower pay or retire before they are ready. Some union members work in export industries that benefit from trade liberalization abroad, but even in those sectors unions lose bargaining leverage if trade agreements reduce barriers to capital mobility. The stated position of the AFL-CIO is that it would support the *right fast-track*, one that protects the rights of workers and the environment.[10] But the language that would be acceptable to them would be acceptable to few or no Republicans. With the *right package* (see below), however, the AFL-CIO might lessen the ferocity of its opposition and allow a fast-track bill to pass unendorsed.

Hopes for a compromise rose in September 1999, when the President's Export Council (PEC), which includes union as well as business representatives, wrote to President Clinton conveying their recommendations for the Seattle meeting. The letter called for analysis of potential linkages between trade and labor and progress on trade "in parallel with efforts to ensure respect

for core labor standards." Although the letter also called for "consideration of specific institutional links" with the ILO, it was vague on the role of the WTO and of trade agreements with respect to labor standards. Nevertheless, it was regarded as a breakthrough because it was the first formal statement in which the business community appeared to concede the possibility of a trade-labor link and it was also endorsed by PEC member and United Steel Workers President George Becker.

Optimism faded, however, when other efforts appeared to stall or backfire. Both the Chamber of Commerce and the AFL-CIO signed off on a letter to the President from the USTR's Advisory Committee on Trade Policy and Negotiations (ACTPN) endorsing the administration's agenda for Seattle, including a WTO working group on trade and labor issues. Shortly after, the administration released its long-awaited proposal on worker rights for the Seattle ministerial draft communiqué but US Trade Representative Charlene Barshefsky appeared to undercut AFL-CIO President Sweeney, who had already come under severe criticism from some member unions for signing the ACTPN letter, by playing down the importance of the proposed working group. And, as noted, AFL members were the largest contingent protesting in Seattle, with John Sweeney at their head.

Options for Breaking the Stalemate

When fast-track returns to the agenda in a serious way, probably after the 2000 election, success will require the return to the liberal trade coalition of the traditional pro-trade Democrats who defected in 1998. But that did not make for a broad enough coalition in 1997 so passage will also require bringing on board some of the fence-sitters from that debate who accept the inevitability of globalization but who are concerned that not enough is being done for the losers. Moreover, this will be true regardless of the political alignment after the elections because the majorities are likely to be slim in both houses.

The fence-sitting Democrats sympathize with labor but would also probably be willing to compromise on fast-track for the right price. They support worker rights for moral reasons but they recognize that an international agreement on labor standards would do little to help American workers. Their main objective is more assistance for those displaced by the forces of globalization and a more equitable distribution of income at home. In the words of Congressman Barney Frank (D-MA), "We're willing to hold globalization hostage to equity" (*Washington Post*, November 14, 1997, A27). As paraphrased by *Washington Post* columnist E. J. Dionne, Frank went on to say that "The task of labor and House Democrats is to put together a plausible package of policies (on health care, education, unemployment protection) that

provide a buffer for those hurt by economic transformation" (ibid.). Given the fierceness of the budget debates in 1999, however, the prospects for a package deal that links fast-track to increased spending for domestic programs looks dim. Current political alignments could change with the 2000 election, but if they do not, business groups will have to strongly endorse such a package for it to have any chance of passing.

If such issue linkage is not feasible, another possibility for passing fast-track would be to narrow the scope of the authority in an attempt to narrow the differences among the key constituencies. This could mean addressing the issue that frightens the unions and their supporters the most: increased integration with developing countries. This sort of compromise would entail limiting the scope of fast-track to multilateral negotiations. Some Democrats might also seek to limit the subject matter to some version of the "built-in" WTO agenda, which calls for renewed negotiations on agriculture and services, and a review of the agreement on intellectual property. Some have suggested that industrial tariffs and a few other areas could be added, but expanding the agenda to competition policy and investment would provoke strong opposition from a variety of groups, including labor and environmentalists.

There were statements from key Democrats and labor supporters suggesting a compromise such as this might be acceptable. Just before the 1997 fast-track nonvote, for example, Representative Sander Levin (D-MI) issued a press release criticizing the Archer proposal as going in the wrong direction while indicating that he could accept a fast-track on two sets of objectives: "(1) the completion of WTO talks on government procurement, intellectual property, agriculture and services; and (2) a further Information Technology Agreement and market opening in chemicals, energy, environment equipment and services." Levin went on to note that, "It is the third stated trade goal of the Administration which ignites the firestorm because it focuses on our economic relations with nations with far lower wage and salary levels and centrally controlled labor markets."[11] AFL-CIO President John Sweeney, while welcoming the decision to pull the fast-track bill, also noted that this was not the end of trade policy and that among "steps we can take right now . . . [w]e should continue our efforts to negotiate broad multilateral tariff reduction agreements that open up agricultural and information technology trade" (*Inside U.S. Trade*, November 11, 1997, S-8).

After the 1998 defeat of fast-track, Senate Finance Committee Chair William Roth (R-DE) also indicated that he might try to develop a narrow fast-track proposal that would "allow us to move forward . . . on upcoming [WTO] negotiations in agriculture, information technology and other sectors critical to our own interests" (*Inside U.S. Trade*, November 11, 1997, S-1).

But both the Clinton administration and the business community have large sunk costs invested in regional trade initiatives in the Americas and APEC and, as of Fall 1999, this option had not been pursued.

The obstacles to finding a compromise on fast-track also highlight the role of sunk costs in coalition-building as an impediment to international cooperation (Putnam 1993). In 1994, Clinton was willing to go quite far toward Republican preferences but he could not afford to ignore labor entirely if he hoped to get enough votes for passage and to have Democratic support for other parts of his agenda. In the end, fast-track was pulled from the Uruguay Round implementing legislation because Republican and business community support was tepid, key Democratic constituencies were strongly opposed, and the key Democrat in the Senate – Finance Chair Moynihan – would not budge in his opposition. The 1994 election exacerbated the problem, especially for congressional Democrats. With the Democrats in the majority, business constituencies split their contributions between the two parties, focusing on key committees and those in leadership posts. With the Republicans in control of both houses, however, the business community has shifted its support, giving more heavily to that side of the aisle. That left congressional Democrats relatively more dependent on the unions as a source of campaign funds and grassroots organizing, and relatively less amenable to voting for legislation that the unions strongly oppose (*National Journal*, March 25, 1995, 744).

Prospects for an International Agreement: Intellectual Property Rights as a Model?

Assuming that a compromise can be reached domestically that allows trade negotiations to proceed, what are the prospects that the resulting agreement will address linkages between trade and worker rights? From the above it seems clear that any feasible compromise in the short-to-medium run will represent at best a shallow and quite narrow consensus, which will constrain the ability of American negotiators to make either credible threats or promises to promote worker rights. Given the strong opposition of developing countries to any discussion of a trade-labor linkage, and the limited tools that US negotiators have at their disposal to expand the very restricted win-set of those countries on this issue, the potential for progress is limited.

This situation is in stark contrast to the US bargaining position on intellectual property rights in the Uruguay Round, which resulted in a far-reaching agreement on trade-related intellectual property issues commonly referred to as TRIPs. Bringing intellectual property standards and enforcement issues into the trade system was strongly opposed by many developing countries

at the beginning of the last round, just as labor standards are today. Yet US negotiators pursued the issue vigorously in the Uruguay Round, using a combination of carrots and sticks to induce developing countries to go along with many US demands.

Proponents of worker rights argue that the TRIPs example could be replicated if only American negotiators had a similar level of commitment to this issue. A comparative analysis of the two issues suggests there is some truth in this view, mainly that, despite business community concerns, the administration is clearly not as strongly committed to the worker rights issue as it is to the intellectual property issue. But it also ignores important changes in the negotiating context. In particular, developing countries appear less likely to compromise on worker rights in the Millenium Round than they were on TRIPs in the Uruguay Round. On the other side of the table, there are many more constraints on the carrots and sticks that US negotiators have available today than there were on TRIPs.

Similarities in the Demands for Intellectual Property and Worker Rights

The most obvious parallels between the drive to promote "rights" for intellectual property owners and for workers are:

1. expansion of the trade negotiating agenda using the rhetoric of unfair practices; and
2. the strident opposition of developing countries, who in each case,
   a. oppose the harmonization of standards, arguing they should reflect a country's level of development, and
   b. point to the existence of a specialized international organization to buttress arguments that these issues should not be covered by GATT or the WTO.

Neither intellectual property laws nor labor standards *directly* affect trade and both have to do with how a product is made, rather than qualities inherent in the product itself: a pirated drug will be identical to the legitimate version, except that no royalties are paid to the developer.[12] As part of its core nondiscrimination principles, the GATT requires that "like products" be treated the same by the importing country and distinctions based on "production processes or methods" (PPMs) are generally prohibited. Weak IP laws do not explicitly discriminate against legitimate imports, but they implicitly favor domestically-produced pirate goods because they can be produced more cheaply. Thus, pushing a broad intellectual property rights agenda in the GATT was a significant departure from the past and opened the door for other groups, including worker rights supporters and environmentalists, to argue that how a product is manufactured is a legitimate issue for consideration under the trade rules. The rhetoric used to garner support for strengthened

IP rights was also similar to that used today to promote a worker rights-trade linkage. In both cases, the emphasis is on the unfairness of the practice in question, rather than the efficiency effects. Where proponents of stronger IPRs emphasize the illegitimacy of *piracy* and *theft* of intellectual property, worker rights supporters talk about the unacceptability of *exploitation* of children, *repression* of workers, and *discrimination*.

The developing countries, in both cases, have argued that the level of standards they are expected to meet must take into account their level of development and income. In the IP case, they argued that higher standards would increase prices for drugs, other important chemicals (such as fertilizers), textbooks, and software, and thereby impede their development. They argued that, because most poor countries do not have IP industries themselves, the beneficiaries would most often be foreign MNCs and that improved IP protection would therefore constitute a transfer of income from poor countries to rich ones.[13] Their arguments with respect to worker rights are similar – that higher standards would raise labor costs, thereby undermining their comparative advantage, reducing exports and, again, impeding growth and development. Indeed, developing countries believe that reduced imports from low-wage countries is the true objective of many worker rights proponents in industrialized countries.

The second major argument made by developing countries against negotiating IPRs or worker rights in the trade arena is that specialized international organizations already exist to address these issues – the World Intellectual Property Organization (WIPO) for IP and the International Labor Organization (ILO) for labor standards. Supporters of doing something in the GATT/WTO argue that these institutions are weak and that the strengthened dispute settlement system of the WTO is needed to make standards effective.

Differences in Substance and the Negotiating Environment

There are several differences in the substance of the issues and in the environment in which trade negotiations occur that cause the potential parallels between protecting intellectual property rights and protecting worker rights to diverge. Among the most obvious are:

1. the quantifiability of the trade impact of the allegedly unfair practices;
2. the nature of the information needed to engage in the debate and the learning that occurred among LDC negotiators during the Uruguay Round;
3. the political divisions within the United States, which mean that
   a. there is an important domestic constituency that, at least implicitly, has allied with and supports the arguments of the developing countries, and

   b. that opposes trade sanctions to enforce worker rights and thereby undermines the credibility of US threats; and,

4. the new WTO Dispute Settlement Understanding, which disciplines the use of trade threats.

Michael Ryan (1998) notes the crucial role that the efforts to quantify lost sales played in garnering support from US negotiators for the position of the intellectual property industries in the Uruguay Round. Since 1985, the International Intellectual Property Alliance, representing mainly copyright industries, has submitted an annual report to the US Trade Representative's office calculating, country-by-country, their losses due to piracy. According to Ryan (1998: 71–72), the numbers, which were in the billions of dollars, "staggered policymakers . . . and packed a political punch because of the magnitude of the losses. . . . Countable indicators had turned a policy condition into a problem that policymakers believed merited being solved." These efforts were later emulated by other IP industries, including the Pharmaceutical Research and Manufacturers of America.[14]

This is in stark contrast to the worker rights issue, where efforts to estimate the impact of labor standards on trade have proved extremely difficult. There is, in fact, little reason to think that improved enforcement of the "core" labor standards that have been at the center of the debate – freedom of association, right to organize and bargain collectively, freedom from forced labor, nondiscrimination, and elimination of exploitative child labor – would have much impact on developing countries' comparative advantage (therefore also little benefit for developed country workers) (Elliott 1998: 168). Even the vociferous opposition of the developing countries appears to have more to do with concerns about the impact of potential sanctions against their exports than the costs of higher standards.

A second key difference is the information required for negotiators to do their job effectively. The arguments being made by American industries were new in the trade context and the substance of the IP negotiations in the Uruguay Round was complex. International discussion of the potential linkages between labor standards and trade goes back more than a century (Charnovitz 1987) and the issues involved, while difficult to quantify, were easily grasped. In addition, the Uruguay Round of multilateral trade negotiations was the first in which developing countries played a substantial role and they learned important strategic lessons about how to negotiate effectively. Finally, low labor costs are at the core of the comparative advantage of many developing countries and, thus, labor standards – and trade sanctions to enforce them – are viewed as more of a threat to growth than TRIPs.

There are other ways in which the experience of the Uruguay Round is likely to make developing countries less willing to compromise on labor

standards than they were on TRIPs. First, they are skeptical that the trade-off between developing country acceptance of new obligations on IPRs and services, and developed country liberalization of agricultural and textile and apparel imports, will be honored by the developed country importers. Already the degree of market-opening in these areas has been a major disappointment. Second, developing country expectations that acceptance of multilateral rules on IPRs would prevent the United States from using unilateral pressure have also not been met. Instead, the US has continued to use the "special 301" process and threats to revoke trade preferences to push countries to do more and faster on IPRs, though certainly with more restraint than before. All of this taken together is likely to make the developing countries even more intransigent in compromising on an issue such as worker rights that they do not believe serves their interests.

In order to overcome such strong developing country opposition, US negotiators would have to offer either positive or negative incentives that change the perceived balance of benefits facing them. The strong opposition of many in Congress and the US business community to any trade-worker rights linkage makes it difficult, however, for US negotiators to find positive incentives to offer developing countries in exchange for compromise on this issue. A major problem is that the areas of most interest to the developing countries – high tariffs on textiles and apparel and agricultural products, anti-dumping – will attract the most vehement opposition from many of the same constituencies promoting worker rights (hence the suspicions among developing countries) and will not be regarded as an acceptable trade-off. Domestic opponents of a trade-labor linkage will not want to pay anything at all for something that has no value to them and both they and US negotiators have other priorities – in services (non-tropical) agriculture, industrial tariffs, and intellectual property – on which they prefer to concentrate their negotiating capital.

The use of trade threats and sanctions, which were important in inducing developing country concessions on the intellectual property issue, is also more problematic today. First, as long as the Republicans maintain a majority in Congress, a Democratic president pushing hard to promote worker rights would find himself positioned as a "hawk" vis-a-vis the key domestic constituency needed to ratify any international agreement. As discussed in Odell (1993) and Evans (1993), this distribution of preferences would make it difficult for American negotiators to convince their foreign counterparts that threats to impose trade sanctions are credible. In the IPR case, there was little or no opposition to industry arguments and the administration, acting as an agent for domestic constituencies, rather than a hawk, successfully used

a "bully" strategy to bring developing countries to the table on TRIPs in the Uruguay Round.[15]

More important, the use of trade sanctions is far more constrained today than it was during the Uruguay Round because of the new dispute settlement understanding adopted in that negotiation. Unilateral sanctions in commercial disputes can now be challenged as violating WTO rules and the complainant would be likely to win. The primary area of leverage remaining to US negotiators is the Generalized System of Preferences, but that program excludes many products of interest to developing countries and is of declining utility as normal tariff rates come down, thus shrinking the margin of preference. Thus, the United States has few carrots it is willing to offer for concessions on worker rights and even fewer sticks.

Conclusions

The stalemate over fast-track trade negotiating authority in the United States and the failure to reach agreement on a negotiating agenda in Seattle vividly illustrate the importance of integrating domestic politics in analyses of international cooperation. The impasse in this case reflects both a long-term trend of increasing concerns about the effects of globalization and a more recent increase, overall, in partisanship in policymaking at the federal level. The former has opened fissures in the shallow but broad consensus that supported a liberal trade policy in the United States for many decades. The latter reflects a deep-seated distrust by Republicans of the Clinton administration that makes it more difficult to find a way to bridge the differences over trade policy. These divisions and distrust domestically have seriously impeded the ability of US negotiators to pursue international cooperative agreements on trade policy in recent years.

Thus, this case provides further evidence in support of the hypotheses that the more preferences differ and the more power is divided between the executive and legislative branches, the less likely international cooperation is. It also suggests, however, that Milner's model needs to be refined to reflect the importance of differing patterns of preferences within branches of government and within political parties. It is true that the prospects for international cooperation decreased after the Republicans took control of Congress in 1995. Nevertheless, a less divided government in 1994 was also unable to produce domestic agreement on the need for international cooperation on trade because of differences *within* the Democratic Party and the consequent need for bipartisan support. Given the increase in partisanship, passage of fast-track would only have been possible after the Republicans took control of the Hill if the business community gave it a strong push. So this case also

provides support for Milner's hypothesis regarding the role of "endorsers" in overcoming problems of asymmetric information. Because they were equally uncertain with respect to the administration's true motivations regarding the labor and environment issues, however, business was unwilling to provide the needed endorsement.

Whether the stalemate is broken depends on the outcome of the 2000 elections. Given the depth of the disagreement over the appropriate role of worker rights in the trade system, however, divisions are likely to be papered over in the short run, not resolved. Under those conditions, without the unified domestic political support that it had on the IPR issue and with the stronger WTO restrictions on unilaterally-imposed trade sanctions, US negotiators are constrained in what they can do to change the minds of the developing countries on the worker rights issue. Since progress is therefore likely to be limited at the international table, the question becomes whether a trade agreement without worker rights provisions will be ratifiable at home, or whether the unions and their supporters will be able to maintain a domestic veto.

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Notes

1. *Inside U.S. Trade*, June 24, 1994.
2. Environmental issues have also been prominent in the debate, but they are not analyzed in detail, both because their relationship to trade is more complicated and because of the central role that unions and labor supporters have played in the debate.
3. Also see Irwin (1997).
4. Destler (1997) provides both a detailed history of fast-track and proposals, mainly procedural, for breaking the stalemate; Destler and Balint (1999) focus on the political sources of the stalemate and make additional proposals for dealing with the labor and environmental issues that have blocked agreement.
5. Canada was lukewarm toward the idea but later sought inclusion in the negotiations because they wanted to guard against dilution of the benefits they had gained in the 1988 Canada–US FTA (Hufbauer and Scott 1992: 19–21).
6. Although Clinton and his advisers frequently mention the need to "put a human face on the global economy" and to promote stronger enforcement of core labor standards, exactly what they want to accomplish on this issue in the trade arena has never been clearly spelled out. For recommendations on what a worker rights agenda in the WTO might look like, see Elliott (1998); on the environment, see Uimonen (1998).

7. Concerns about the environment language were more justified since this issue was absent from the 1988 Trade Act.
8. The language in the Trade Act of 1974 is radical by today's standards, implying that the Congress wanted the President to negotiate a "social clause" in the GATT. Under "steps to be taken toward GATT revision . . . ", the Act directs the President to seek "the adoption of international fair labor standards and of *public petition and confrontation procedures in the GATT* . . . " (emphasis added). Public Law 93-618, 93rd Congress, H.R. 10710, January 3, 1975.
9. The "markups" of implementing legislation by the House Ways and Means and Senate Finance Committees and the final conference between the two bodies were not official proceedings because of the special procedures created to deal with fast-track implementing legislation. These sessions were the only opportunities, however, for Congress to have input into the drafting process since they would not be able to amend the bill once the administration formally submitted it to the Hill. See Destler (1997) for details on the "nonmarkups" and the "nonconference."
10. See, for example, the speeches by President John Sweeney before the Council on Foreign Relations and the Economic Strategy Institute in Spring 1998, both available on the AFL-CIO webpage at http://www.aflcio.org/publ/speech98/.
11. The press release may be found at http://www.house.gov/levin/pr_100897.htm.
12. One argument made in favor of stricter IP laws is that pirated products are more likely to be of lower quality or even blatantly fraudulent. That aside, they would be "like products."
13. This generalization ignores the fact that some developing countries have important IP sectors, such as software development in India, and that there is evidence of striking gains from strengthened IP protection in some emerging markets, such as Korea. See Watal (forthcoming).
14. The numbers in these reports have been criticized because they typically present the industries' estimate of the value of pirated products and then count 100 percent of that as losses for the US industry. This likely overstates lost sales because the higher price of the legitimate product would be expected to cause a drop in demand. Apparently, no attempt is made to adjust for the price-quantity trade-off.
15. See Ryan (1998: 108) for a discussion of US strategy on intellectual property. Ryan notes that there were differences between the patent and copyright industries with regard to the best strategy for promoting IPR – bilateral pressure or multilateral negotiations – but no disagreement about the objective of strengthening intellectual property protection. On the linkages between the American use of trade threats and the negotiation of the TRIPs agreement, see also Watal (forthcoming: ch. 2).

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