Why "Non-Efficiency Enhancing"
Labor-Side Agreements?

Global Governance and Labor Markets:
The EU, NAFTA and the ILO

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I. Introduction: Globalization and Governance

Economies around the world are becoming increasingly integrated as globalization promotes trade and capital mobility, reducing the barriers to economic exchange. In the European Union, regional integration has also led to the removal of obstacles to labor mobility. This paper examines the impact of integration on the governance of labor markets. The regulation of labor markets has been a fundamental part of domestic politics, and most governments have incentives to retain political control. Yet, nations agree to cooperate on labor standards. Why do nations agree to "non-efficiency enhancing" labor-side agreements, and has globalization had an effect on patterns of political authority?

Many of the debates over globalization's effects on governance hinge on the distinction between transferred and delegated authority. When nations design a social or labor-side agreement, for instance, are they delegating authority to a new institutional entity, allowing it to act on their behalf only so long as decisions are compatible with their interests, or are they transferring previously sovereign authority to an entity that can now act and enforce compliance? If globalization leads to a delegation of authority to international entities, but nations retain political control, we can conclude that the nations will remain dominant in the regulation of labor markets. If globalization leads to real transfers of authority to international and regional units, we can then confirm a fundamental shift toward the supranational regulation of labor markets.

This paper offers an explanation of *why* governments agree to labor side-agreements and *how* the delegation or transfer of regulatory authority varies across two regional agreements — the European Union (EU/Social Protocol), North America (NAFTA/NAALC), and the international system (ILO/WTO). I argue that nations agree to a social dimension or a labor side-agreement because cooperation presents a solution to domestic political problem in advanced industrialized nations.[1]

My argument is that governments must seek ways to maximize the economic efficiency gains from free trade and to minimize domestic political opposition. Thus, they strategically delegate or transfer limited authority to an alternative institution in an effort to respond to domestic differences within countries and managed the anticipated distributional conflict between nations, accepting one set of rules in one agreement and another set of rules in the others.

Globalization *may* account for changes in governance, but its specific impact varies over time, across policy area, and across agreements. The EU, NAFTA, and the ILO offer evidence about why nations design labor side-agreements and how the scope and nature of delegated or transferred regulatory authority varies significantly across the cases. The three agreements vary significantly in their transfer of previously sovereign powers on labor market issues, depending on the preferences of the member states, the formal institutional and decision rules, the collective action problems of cooperation between many governments, and level of economic integration at which they aim or have reached.

II. Why Supranational Governance?

Explanations that link changes in governance to globalization can be grouped into two categories, one based on efficiency or functionalism, and one that emphasizes more explicitly political variables (Kahler and Lake 2000). An obvious place to begin developing a positive theory of governance is with the economic factors that encourage or discourage shifting patterns of political authority. Economic theory begins from a normative perspective, identifying the most efficient level of governance for activities with particular characteristics. The normative literature can easily become a source of positive hypothesis, if one makes the assumption that institutional change responds to demands of economic efficiency.

The major functionalist argument concludes that international institutions alleviate problems of market failure, and thus facilitate the resolution of international coordination and collaboration problems. A primary justification for supranational regulation is the internalization of externalities: thus, the centralization of political authority should increase with externalities.

Cross-border spillovers, which economists call "negative externalities," occur when economic activities in one nation produce consequences that spill over across borders and affect other nations. Spillovers can have unwanted consequences, and governments may need to cooperate to promote mutual economic interests. International coordination eliminates the negative externalities generated by countries that fail to observe humane conditions of labor (Lee 1997).

Trade and economic integration is assumed to increase efficiency by allowing nations to specialize in the production of goods in which they have a comparative advantage. Economic theory confirms that nations can profit from international differences in comparative advantage due to varying endowments of technology, capital, skilled labor, unskilled labor, and other inputs. The more different are nations, the more they stand to gain from trading with one another.

If a common set of labor standards were imposed on nations, the net gains from trade would be reduced. Thus, to transfer regulatory authority over labor markets could raise labor costs and reduce the comparative advantage of nations with relatively large supplies of unskilled labor. Prices of good produced by labor-intensive technologies will rise if standards raise the cost of labor. The positive hypothesis is that efficiency gains for both nations come with no credible commitment on labor standards. That is, neither more developed nor less developed nations have an economic incentive to agree to a labor-side agreement.

In theory, the efficiency gains predict the nation state as the optimal level of governance. However, in the political economy of regulation, and the real world of domestic politics, the absence or presence of a negative externality is highly contested. One preference is that, given the diversity of labor market regimes in a regional or the international system, competition is superior and optimal: nations should be free to react individually to changes in their respective economic environments. Supranational regulation is distortionary, impeding the efficient functioning of labor markets and causing inferior outcomes in terms of growth, employment, and income distribution. The most efficiency-improving outcome is to allow nations' labor market regimes to compete with one another and engage in mutual adjustment.[2]

Empirical evidence suggests more developed nations are likely to have compensating advantages over developing nations, such as a more skilled workforce, better infrastructure, and perhaps productivity high enough to offset the disadvantage of higher labor costs. Aside from differences in labor costs for producers, the competitiveness of similar products made in different nations varies greatly, because firms establish different mixes among infrastructure, skills, training, and technology to remain competitive (Mosley 1990; Lange 1992).

The other preference is that market pressure will foster dysfunctional competition among economic agents and national rules, leading to social dumping, regime shopping, and competitive deregulation.[3] Social dumping refers to outcomes disadvantageous to the existing system of labor market protection that could result from the operation of a single market or free trade zone encompassing wide differences in labor costs and labor market protections (Erickson and Kuruvilla 1994).[4] The process of social dumping could take place in three ways: through the displacement of high-cost producers by low-cost producers from nations in which wages and direct (indirect) costs entailed by labor market regulation are lower; increasing pressure on firms in high labor-cost nations to relocate their operations, strengthen their bargaining power, and exert downward pressure on wages and working conditions; and the temptation for nations to pursue low-wage and anti-union strategies as part of their efforts to catch up economically (Mosley 1990).

In summary, the conflicting view is that international competition increases the pressures to cut costs, including labor costs, and to achieve greater flexibility in the production process. Divergent regulatory arrangements produce different labor costs and distort competition between firms residing in different nations; therefore, the alternative hypothesis suggests that regulatory authority must be transferred upwards to achieve a level playing field.

If we assume that institutional change responds only to demands of economic efficiency, economic theories of optimal governance would predicted no supranational authority. If spillover effects are low, we should see few pressures for international-level governance. However, this is not the case, empirically. The cases discussed in this paper suggest that economic theories provide only partial explanatory leverage. While under general conditions a reduction in trade barriers will produce a gain to the winners that exceeds the loss to the losers, the losers must be accounted for in any positive theory of regulation.[5] The anticipated distribution of gains and losses from integration has obvious political implications. That domestic group and politics affects the behavior of nations when they decide to cooperate should not be surprising.

III. The Political Economy of Labor-Side Agreements

Political explanations of variation in governance thus emphasize other factors. Globalization, no matter how much in the aggregate national interest, inevitably has differential effects on various domestic groups. Although political scientists approach the politics of regulation in different ways, nearly all agree that elected officials control regulatory policy making for political ends.

Existing theory suggests that delegation and pooling of political authority are most likely to arise in policy areas where joint economic gains are high and distributional conflicts are low (Moravcsik 1998). However, in policy areas where economic gains and distributional conflicts are high, governments should have incentive to maximize the former and minimize the latter by entering into social and labor side-agreements.

Externally induced changes and exposure to integration, in nations and regions with different factor endowments, will have distributional consequences. Aggregate benefits of globalization, in turn, will be distributed across groups within countries in predictable ways, creating relatively clear lines of cleavage within societies (Frieden and Rogowski 1996). For example, Rogowski's (1989) well-known simple model predicts: 1) beneficiaries of changing trade exposure have incentives to maintain or accelerate change, whereas the losers have incentives to impede or reverse change; and 2) economic interests who receive (or perceive) a sudden increase in wealth or income will have greater political influence.[6] These demands, in turn, may be reflected in the movement of governance functions to the regional or global level.

Globalization thus poses not only opportunities for gains from trade but also the danger of political risk. A range of literature suggests that governments pursue different strategies in response, including protectionism. Another strategy is to provide credible guarantee of compensation (i.e., transfer payments). Reliable mechanisms of compensation, and political institutions that further and sustain them, become more important for domestic stability as exposure to international trade expands (Rogowski 1989).[7] Thus, the reasonable prediction is that scarce-factor (labor) in more developed countries will seek ways to either reverse (i.e., protectionism) or to minimize (compensation) their anticipated losses while beneficiaries will attempt to maintain or accelerate change.

Governments must strategically maintain domestic support for market integration, and channel anticipated distributional conflict to an alternative arena. A "weak" labor side agreement, one that transfers narrow regulatory authority or facilitates minimum cooperation, maximizes the efficiency gains from trade but also achieves a specific domestic political objective. Governments in more developed nations have political incentives to deal with political risk; that is, to respond to the demand of domestic groups within their countries and to manage anticipated distributional conflict between countries. Thus, labor side agreements allow governments to maximize the economic efficiency gains from trade as well as the political benefits from minimizing domestic opposition.

IV. The European Union and A Social Dimension over Time

Under the terms of the Treaty of the European Union, the member states committed themselves to fostering increased economic and social cohesion. Even though trade, internally and externally, would raise the aggregate return to the EU, there were likely to be substantial differences in the distribution of gains across regions. Negative integration raised fears among core nations and European unions that market integration would lead to the erosion of workers' existing benefits and weaken labor's position in domestic industrial-relations institutions.

In the years before the 1957 Treaty of Rome, there was some concern in the European Community about regime competition and the distributive consequences of a newly integrated economic area. At that time, the six original member states (Belgium, France, Germany, Italy, Luxembourg, and the Netherlands) had achieved broadly similar levels of economic development. To gauge whether a common market would intensify competitive pressures, the ILO convened the 1965 Ohlin Group to assess the relationship between market integration and labor market/social protection. The consensus was that only minimalist measures were required for the customs union: member states had only to agree to encourage the mobility of labor (Teague and Grahl 1990).

Much of the early cooperation between member states thus focused on "making the market through deregulation," that is, removing non-tariff barriers to the free movement of labor rooted in national labor market regimes and harmonizing education and training of workers among member states. The Treaty of Rome had as its goals raising the living standards and the promoting improved employment conditions in member states. It's most important labor market provisions were focused on issues of mobility (articles 48, 52, and 59), training (article 128), and equal opportunity for men and women (article 119).

The Treaty also created a European Social Fund (articles 123-128) to make the employment of workers easier, increasing their geographical and occupational mobility within the Community (Teague and Grahl 1989). In none of these areas was there any indication how and when "harmonization and cooperation" should be achieved, rendering any supranational authority very difficult to interpret.

Since the late 1960s, the Commission, an actor in its own right, had pushed for a social dimension to give the EC a "human face." Denmark, Ireland, and the UK joined in 1973, and with the addition of Greece (1981), and Spain and Portugal (1986), there was much greater heterogeneity in labor market regimes and costs. At the 1972 Paris Summit, member states declared a commitment to a social dimension (Teague and Grahl 1989). As a result, the EC launched the 1974 Social Action Program, with three broad goals: full and better employment, improved working and living conditions, and greater participation of workers in the economic and social decisions of the Community (Teague and Grahl 1989). With limited redistributive capacity, the EU was motivated to enact labor market regulations, the political and administrative costs of which would be borne by the regulated (firms and individuals) rather than by the member state governments themselves (Majone 1993). While regulation is a direct tax on firms, the actual cost is hidden and is often indirectly shifted to either workers or consumers.

V. Why a EU Labor-Side Agreement?

In theory, "negative" integration was not challenged by any nation, as all member states signed the treaties, all their national parliaments ratified them, and all committed to creating a common market.[8] Member states have transferred broad authority when necessary to further develop the single market; this has been enforced against any remaining national restraints on trade and any distortions of free competition, not only by the European Commission (EC) and the European Court of Justice (ECJ) but also by national courts in ordinary administrative and civil proceedings (Scharpf 1998).[9] The Commission and the Court can conduct investigations and impose fines if they judge that a violation has occurred. Across many policy areas, member states have transferred regulatory and enforcement authority and rely on a combination of the Commission, national courts, and the ECJ to monitor and ensure compliance. A member state can be declared in violation of the EU Treaty, which has the effect of forcing a change in a member state's domestic law.

The European Union is far more than a free trade zone: it possesses characteristics of a supranational entity, including extensive bureaucratic competence, overriding judicial control, and significant authority to modify member state law.[10] Since the 1957 Treaty of Rome established the European Economic Community (EEC), member states have transferred *broad* authority, most notably through the Single European Act, signed in February 1986 and effective in July 1987, which served as a basis for completing the internal market; and the Maastricht Treaty, concluded in 1992, which laid out plans for economic and monetary union. Over time, legal and administrative restrictions on the free movement of goods and capital have been removed; restrictions on free competition among service providers are rapidly being eliminated; and legal restrictions on the mobility of workers have been removed.

The transfer of authority over labor market and social protection ("positive integration") has been more difficult, as it depends on the agreement of member states in the Council of Ministers and has been subject to all the collective action problems of intergovernmental decision making (Majone 1993).[11] According to some, the result has been a wide gap in the transfer of 'market-making' and 'market-correcting' authority in the political economy of an integrated Europe (Streeck 1998).[12]

Beyond those labor market issues that can be accounted for with a functional spillover explanation (i.e. labor mobility; health and safety), why did member states agree to transfer authority in a policy area (labor markets) remove from the core of the integration process? Was supranational regulation an effort to prevent competition and downward leveling of labor market protections or necessary strategic effort to retain support of workers and their representatives for the integration process? Fearful that the distributional conflict within the EC could stall creation of the single goods-and-services market, member states have sought to agree on policies and rules that could sufficiently allay the concerns of potential losers in order to gain their consent for market integration (Lange 1992).

Within the EU, the choice to transfer regulatory authority is the result of a dynamic between interest groups, member states, and Community institutions within the context of existing decision rules. The Parliament has aggressively pressed for more authority to act; in the Council of Ministers and the European Council, member states have been divided according to the preferences of their existing governments (Lange 1992). The combinations of national preferences and EU decision rules *at particular points in time* determine whether and when member states agreed to transfer regulatory authority on labor market issues. The positions taken by national governments in the Council of Ministers and the European Council are strongly effected by domestic labor and business interests as well as EU level association, European Trade Union Confederation (ETUC) and Union of Industrial and Employers' Confederations of Europe (UNICE).

National governments have had to balance which domestic interests to accommodate and which to resist. Within the EU, member states' preferences on the transfer of regulatory authority over labor markets have been divided. The preference of UK and Portugal, supported by the European employers' association (UNICE) and national employer associations, has been that the transfer of authority and harmonization, especially leveling up of labor market protections, would prevent or delay the adjustment process necessary for improving individual national economic performance (Rhodes 1991).

With the transfer of authority upwards, changes in the direct and indirect labor costs to firms and the rules governing how they can deal with employees would likely have an impact on competitiveness. Accordingly, member states in the "periphery" (Portugal, Greece, Ireland, and Spain) could expect to be consistent losers from supranational regulation as standards could emerge that would be above their current level or that would not reflect their national production costs structure (Lange 1993). Supranational regulation could represent increased costs for firms operating below the standards, thereby potentially reducing their competitiveness.

In contrast, the preference of Belgium, Denmark, France, and Germany has been that integration requires a transfer of regulatory authority and harmonization of labor market protections. Spain's socialist government also reflected a similar preference. These nations have been concerned that the incongruity of national labor market regimes, particularly the increased wage and non-wage cost heterogeneity of less-developed member states, would expose their labor market regimes to increased pressure as a competitive cost liability. For firms operating above the standard, they would represent advantages, as high standards become entry barriers to low-cost competitors.

Since its admission to the EC, the UK has had an uneasy relationship with the other member states because of its preference not to transfer any regulatory authority over labor markets to the Commission (Hargreaves 1997). In the 1980s, the issue of labor market flexibility was at the heart of a debate on improving the performance of labor markets and the economies of EU member states (Rhodes 1993). The British government equated its success in creating jobs with deregulation and resisted any attempts to burden employers with new and costly regulatory obligations (Rhodes 1991).

To preempt possible EU action, the UK, in conjunction with Italy and Ireland, launched the Action Program for Employment Growth, which proposed a radical redirection of Community policy toward labor market flexibility and deregulation. It has used EU decision-making, particularly the unanimity rule, to impose its deregulatory labor market preferences on the EU.

Historically, European Union decisions have been made on the basis of unanimity voting among the member states. With the 1987 Single European Act (SEA), member states agreed to “qualified majority voting" (QMV)—requiring 54 out of 76 votes in the Council—for regulatory measures aimed at establishing the single market (Article 100A)—and dealing with the working environment and the health and safety of workers (118A). There was some ambiguity on whether member states agreed to transfer authority on other aspects of "working conditions" for decision by QMV. For the most part, member states transferred limited “labor market making” authority, focusing on the cross-border mobility of workers. However, member states that wanted to enhance the scope of EU authority strategically attached their “market-braking” initiatives to the narrow core of mobility-enhancing policies.[13]

With the 1989 EC Charter on Fundamental Social Rights (Social Charter), the subsequent Action Program, and their consolidation in the 1991 Maastricht Agreement Social Protocol, the member states agreed to transfer *limited* authority on *specific* labor market issues (Baldry 1994).[14]

By joining the Protocol, Portugal, Greece, Ireland, and Spain made themselves potentially vulnerable to a transfer of regulatory authority over labor markets (and costs) that could consistently be adverse to their national competitiveness. The EU now had new authority to impose labor market rules above their existing domestic labor standards or at levels that would not reflect their national production cost structures (Lange 1993).

Why did these member states agree to rules and decisions rules that were likely to be costly to them?

Richer member states provided economic transfers (i.e., side payments) to poorer member states so they would accept costly new steps toward integration. The side payments had more political than economic logic. They provided short-term political cover for these governments who saw integration as important to long-term economic growth and more preferable than exclusion from the Community (Lange 1993).[15]

With the 1991 Social Protocol, eleven of twelve member states (Britain exercised an opt-out) agreed to make decisions by majority vote on a series of labor market rules, including health and safety, working conditions, information and consultation rights, and equality between men and women. Member states, under Article 2(6), retained political control over collective labor rights: the right to pay, the right to association, and the right to strike or impose lockouts were excluded from majority voting. Social security and social protection for workers were also excluded, along with protection of redundant workers, representation and collective defense of workers, and conditions of employment for third-country nationals from the Protocol. Thus, member states still required unanimous agreement on directives in the areas of job security, representation, and collective defense of workers' interests.[16]

Since the Maastricht Treaty retained the provisions of the Treaty of Rome and the Single European Act, the twelve member states could still cooperate, but with majority voting limited to health and safety measures. The eleven states that signed the agreement could avoid British vetoes by allowing QMV in the new labor market protection areas but British employers and workers were exempted from any measures passed under the new agreement. The British government opposed any shift in a decision rule, particularly one that might require it to accept a decision from a qualified majority. A shift from unanimity to a qualified majority (QVM) represented a potential erosion of national sovereignty and an expansion of Community competence in new areas of labor market regulation.

However, after eighteen years of Conservative Party control in Britain, the new governing Labor Party signaled an intention to join the Social Protocol and officially ended the nation's opt-out of the 1991 treaty. Before assuming control in 1997, the Blair government led the way in negotiating the 1997 Amsterdam Treaty and promised British would join. But it would oppose any labor market regulation that would place excessive burdens on British firms, thereby hampering competitiveness or imposing unacceptable rigidities on their highly deregulated labor market (Rice-Oxley 1997).

The Amsterdam Treaty was a significant agreement among all the member states to cooperate, as it expanded the scope of majority voting beyond health and safety standards to include work conditions, worker information and consultation, integration of workers excluded from the labor market, and equality between men and women with regard to treatment and opportunities in the labor market (McGlynn 1998). By the late 1990s, the transfer of regulatory authority reached an equilibrium in the European Union. Member states retain control over core features of labor market regimes, such as collective bargaining and compensation, and transfer limited authority to the EU issue directives and enforce common minimum standards in specific labor market areas.

The EU members have also been strongly committed to this principle of subsidiarity, which limits the scope of EU authority to those issues that cannot be dealt with effectively by the member states themselves, thereby preserving national autonomy and labor market regime diversity.[17] The principle of subsidiarity is of political rather than legal significance (Hepple 1999). It provides useful political cover to member governments who must combat domestic opposition to the transfer of too much authority to the EU; the members designed it as a safeguard to protect nations' sovereignty (Bridge 1997).

Commitment to subsidiarity also implied a greater role for the Social Dialogue, minimizing the Commission's role in the supranational regulatory process. Any new labor market rules were to be based on agreements emerging from a Social Dialogue between employer and labor groups rather than on Community-initiated proposals. Thus, the EU's decentralized and participatory decision-making reforms gave enhanced authority to the Social Partners. The member states thus shifted some authority over an intractable set of distributive issues to a new venue, at the very moment the Council of Ministers was adopting QMV.

Over time, deeper integration has placed pressure on member states to managed domestic difference and address potential distributional conflict between member states. In the early period, member states transferred authority only for labor mobility and issues deemed essential to coordinating the single market. Then, they agreed to lowest-common-denominator rules, reflecting the preferences of the least ambitious nation in a minimum winning coalition (i.e., Britain), and agreed to minimum common standards when there was consensus among all members. Next, member states resorted to logrolling arrangements to agree to transfer authority on other labor market issues. In exchange for cooperation, payments were offered to lessen potential political opposition in less developed nations, and thus, also allow member states to minimize the political opposition of further market integration.

VII. NAFTA: Linking Free Trade with a Labor Side Agreement?

Unlike the European Union, where member states transfer limited authority under the Treaty to supranational institutions, sovereign "trading partners" in North America agreed only to participate in a labor dispute resolution process as a supplemental part of NAFTA. The North American Agreement on Labor Cooperation (NAALC), ratified in 1993 as part of The North American Free Trade Agreement (NAFTA), represents the first labor side-agreement linked to a trade treaty.[18]

NAFTA, ratified in 1993, is unique because it intends to implement free trade among two highly developed economies and a developing one within fifteen years.[19]

Besides removing all border barriers to trade, it moves beyond the Uruguay Round of the World Trade Organization/General Agreement on Tariffs and Trade (WTO/GATT) in liberalizing trade in foreign investment, services, and intellectual property rights (Lawrence 1996).[20] The U.S. with a 1995 GDP of $9,952 billion accounted for 89.5 percent of the North American economy.

One strategy for managing domestic divisions is through issues linkages. When nations negotiate, often the toughest bargaining is not between nations but within them. International agreements, no matter how much in national aggregate interest, have differential effects on domestic groups. When domestic factions differ about what they want, this can have significant effects on international bargaining (Mayer 1992).

With a great deal of market power behind it, the U.S. demand for labor side-negotiations arose out of the need to solve a domestic political problem — assembling a political coalition to win the 1992 presidential election. The Clinton administration, which supported NAFTA, had economic incentives to capture the aggregate gains of free trade but also had political incentives to minimize opposition from key constituencies (i.e., organized labor). The U.S. pushed for three supplemental accords to NAFTA — on labor, the environment, and import surges.

The U.S. bargaining position was established through internal negotiation. The outcome can be explained as a two-level bargain in which contending interests at the domestic level determine the behavior of national negotiators at the international level (Mayer 1998).[21] Within the US, organized labor (AFL-CIO, UAW) pushed for a social charter for labor — common regional rights (i.e., free association) and labor standards (health and safety, child labor, minimum wage — enforceable through domestic courts and if needed, through international sanctions. Organized business (Business Roundtable, Chamber, NAM, and U.S. Council on International Business) supported the creation of consultative commissions comprised of representatives of national governments but strongly opposed the transfer of any investigative and enforcement authority, particularly if it included authority to issue trade sanctions.

Mexico refused to renegotiate the terms of NAFTA, but did agree (unwillingly) — as they feared defeat of NAFTA in the U.S. — to negotiate a labor side-agreement only if it could maintain national autonomy over domestic labor and employment law and it would not include trade sanctions (Mayer 1998). Mexico had strong incentives to maintain the corporatist system of labor relations and organized labor leaders resisted any changes that threatened their monopoly of representation of the labor movement (Cameron and Tomlin 2000). Mexico knew that strong side agreements could erode the benefits of free trade, making firms that might invest in Mexico more reluctant. Mexico pushed for a side-payment, a North American Development fund modeled along the lines of the European social development fund, but the U.S. refused (Cameron and Tomlin).

The trading partners had conflicting preferences on whether and how to transfer investigatory and enforcement authority. The US strongly favored trade sanctions; Mexico preferred nothing or enforcement as weak as possible; and Canada supported enforcement of labor standards but was less willing than Mexico to accept trade sanctions as a mechanism for enforcement. The U.S. preference was for each trading partner to commit to enforcing its own labor and employment laws.[22] The three nations would not delegate any authority to a regional entity to set regional labor standards or to enforce them directly on pre-existing domestic law.

Mexico preferred to delegate only "consultation" authority on health and safety standards. Canada supported a commission but insisted that regulatory authority remain firmly under each nation's political control. Canada and Mexico rejected any transfer of authority to issue trade sanctions but supported the delegation of authority to issue monetary sanctions only as a punitive measure of last resort. The U.S. preferred to delegate authority to issue trade sanction as a non-enforcement penalty.

In the bargaining process, the U.S. proposed that complaints go to "national administrative offices" (NAOs) *within* each nation rather than to a regional entity. Each trading partner would retain full discretion over whether complaints had sufficient merit to require trilateral consultation or dispute resolution.[23] Mexico continued to support consultative authority only on health and safety standards, while the U.S. and Canada preferred delegation of consultative authority on labor relations, minimum wage, and child labor standards as well. In a final negotiation, Mexico accepted the U.S. proposal: fines of up to $20 million could be imposed for failure to enforce domestic law, and trade sanctions could be used only if a trading partner failed to pay the fine. Thus, Mexico could claim that trade sanctions would never be imposed for enforcement violations while the U.S. could signal to organized labor that the side-agreement did permit trade sanctions for non-enforcement. Canada opposed trade sanctions in the side-agreement.

Mexico agreed to delegate (fine/sanction) enforcement authority only for health and safety standards; disputes over enforcement of minimum wage and child labor standards would be referred to an Evaluation Committee of Experts (ECEs) for recommendation. On labor relations, Mexico agreed only to delegate authority on consultation and information sharing. The U.S. held firm that minimum wage, child labor, and labor relations enforcement of must be subject to the same procedures as the enforcement of health and safety standards.

In a final compromise to ensure NAFTA's ratification in the U.S. Congress, Mexico agreed to subject child labor and minimum wage enforcement to the same dispute resolution process as health and safety regulations. Mexico also agreed to link its minimum wage to productivity increases. The U.S. acceded to the Mexican position that labor relations be exempt from that process. In the final agreement, the trading partners agreed to create a commission that would facilitate cooperation and promote enforcement of each nation's domestic labor and employment law (Garvey 1997).

Through the NAALC, the trading partners cooperate on seven broad objectives, including improving working conditions and living standards and promoting eleven labor principles to protect, enhance, and enforce workers' basic rights. The partners agreed to six obligations that define effective enforcement of domestic law. Each holds the others accountable by using the mechanisms of consultations, evaluations, and dispute resolution. The obligations are non-voluntary (i.e., governments cannot choose the areas of law to which they will apply) and enforceable by sanctions in only three areas: child labor, health and safety, and minimum wage.

The first three principles, for which ECEs cannot be established, relate to freedom of association and the right to organize, the right to bargain collectively, and the right to strike. Cooperation among the partners was recognized as important for the provision and improvement of basic information;[24] sharing best practices; addressing transnational labor issues, such as migrant labor or the functioning of border labor markets; and the maintenance of high standards and their enforcement throughout the region in an effort to underpin domestic confidence in the trading system.

Each member state must promote compliance and effectively enforce its labor and employment law by the following mechanisms: appointing and training inspectors, monitoring compliance and investigating suspected violations, seeking assurance of voluntary compliance, requiring record keeping and reporting; encouraging the establishment of worker-management committees to address labor market regulation of the workplace, providing or encouraging mediation, conciliation, and arbitration services, and initiating proceedings to seek appropriate sanctions or violations of domestic labor law.[25]

The partners created domestic and regional entities within the NAALC. The domestic entities are the NAOs and National and Governmental Advisory Committees.[26] The Labor Commission, the regional entity, divides regional responsibility between the Ministerial Council[27] and the Secretariat.[28] The decision-making process is hierarchical, insofar as the lower-level units must respond to those above, and the Ministerial Council possesses ultimate authority. The authority delegated is narrow with respect to the subject matter that may be raised at subsequent levels of review, namely before ECE panels and Arbitral Panels.[29] Ministerial consultation may be triggered by a request from the Canadian, Mexican, or U.S. government or by a recommendation from a NAO.

The agreement does provide a course of action to address complaints not resolved at Ministerial consultations. An ECE can be called to evaluate the complaint as long as the matter is trade related, not covered by "mutually recognized laws," and not a previous ECE report.[30] The ECE must consider whether there is a pattern or practice of non-enforcement of the relevant labor standards within the three areas of jurisdiction. A member state does not fail to effectively enforce its labor laws if its action or inaction either: "reflects a reasonable exercise of the agency's or the official's discretion with respect to investigatory, prosecutorial, regulatory or compliance matters; or results from bona fide decisions to allocate resources to enforcement in respect of other labor matters determine to have higher priorities."[31]

If the parties cannot resolve the issue through ECE consultations, they may ask for a special Council session in which a vote will be taken on whether or not to send the dispute to an Arbitral Panel. The formation of such a panel requires a two-thirds majority vote.[32] If the offending partner is found to be in violation of the Final Report, the NAALC was delegated authority to suspend its NAFTA benefits or impose monetary sanctions. The sanctions can be no greater than $20 million (U.S.), and any enforcement assessment can be no greater than .007 percent of the total trade in goods among the trading partners. If a partner's benefits are suspended, it cannot exceed the tariff rate that was applicable to goods immediately prior to the date of entry into NAFTA or the MFN rate applicable to goods on the date the benefits were suspended.

The NAALC process reflects the parties' intent to solve labor disputes through cooperative efforts instead of litigation (Friedenzohn 1996.) The trading partners intended that distributive conflicts between trading partners could be addressed and settled through dialogue and cooperative consultations, initially at the NAO level and later at the ministerial level. The dispute resolution process ensures trading partner national autonomy and encourages early settlement of distributive conflict.

The NAALC was designed to ensure the trading partners' sovereignty in the regulation of domestic labor markets. The trading partners' obligations under the NAALC are combined with domestic legislation in a way that establishes an international support for the rule of law in labor and employment while preserving full respect for domestic legislative autonomy and authority over the governance of labor markets. With the NAALC, the trading partners commit to cooperate, but only a labor market issues are subject to stronger methods of oversight and enforcement.

VIII. The International System and the ILO over Time

The International Labor Organization (ILO) was created in 1919 under the Treaty of Versailles as an independent entity associated with the League of Nations. [33] Organized labor (AFL) in the U.S. was active participants in designing its tripartite structure that includes representatives from governments, unions, and employer groups. During the 1919 Paris Peace Conference, a Commission on International Labor Legislation explored the necessity of an international organization and issued a declaration of guiding principles on labor standards.[34] The Treaty of Versailles included the Commission's report and required all League of Nations members to join the ILO (Schlossberg 1989). The Treaty also included a "Labor Charter" setting forth nine principles to guide the policy of all member nations.[35]

An agreement defining the relationship between the ILO and the United Nations was approved in 1946, and the ILO became the first specialized agency associated with the UN.[36] The original 1919 institutional design of the ILO remains unchanged.[37] All the international labor standards it sets are subject to direct approval by the 174 voluntary members, including the U.S. and the EU member states.[38] The ILO's authority takes three forms: 1) defining rights through national adoption of ILO conventions and recommendations; 2) enforcing rights by means of international monitoring and supervision but not by trade sanctions; and 3) assisting in implementing measures through technical cooperation and advisory services. The ILO formulates international labor standards in the form of Conventions and Recommendations setting minimum standards of basic labor rights.[39]

In the 1950s and 1960s, the majority of UN and ILO members shifted from Europe to developing countries, mainly from Africa and Asia. Many of the new member nations were confronting economic and social problems in dismantling colonialism, and the ILO shifted its agenda from standard setting to technical assistance, concentrating on broad human rights and economic development objectives (Rubio 1998). Similar to EU structural funds, technical assistance has been characterized as compensation to less developed nations, an instrument to facilitate their adoption of higher labor standards without sacrificing further economic growth and efficiency gains.

In the 1970s, both more and less developed nations struggled with domestic problems of inflation, unemployment, and slow economic growth. Political conflict emerged within the tripartite delegations (governments, employer groups, and worker groups) as well as among the ILO voluntary member nations themselves. The political and economic incentive of ILO labor delegates was to enact labor standards. This led to a major oversupply of international conventions, representing the demands of organized labor rather than of the nations themselves, and many member nations refused to ratify them. They viewed the ILO's uniform standards as unresponsive to changing global and economic conditions. The proliferation of ILO standards, despite the heterogeneity of social and economic development among member nations, rendered their adoption impractical for many nations. The ILO made few changes to its process during the 1970 and '80s, and members began to denounce the existing instruments as unworkable (Johnson 1998).

In 1977, the ILO Governing Body adopted the Tripartite Declaration, detailing principles in the fields of employment, training, working conditions, and industrial relations. These recommendations were to be *voluntarily* observed by governments, employers, and labor groups as well as multinational firms. Under a procedure adopted in 1986, the declaration created a Committee on Multinational Enterprises that could issue interpretations of principles to resolve disputes.

In the 1990s, the ILO began to address the overproduction of inflexible and uniform international labor standards. In 1997, its Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy set forth a *voluntary* code of conduct to guide governments, employers' and workers' organizations, and multinationals in the fields of employment training, conditions of work and life, and industrial relations (Coxson 1999). The declaration contains no transfer of enforcement authority to enact sanctions against non-compliant members. The ILO can enforce its code only by "discreet persuasion."

In a 1997 declaration, the ILO announced that it would return to its founding mission of protecting fundamental labor rights and leaves other issues under the jurisdiction of sovereign governments. The ILO noted: it is highly likely that mass publics "will continue to believe widely that globalization inevitably implies a downward leveling of pay for jobs of equal (low) skills in a market in which goods and capital can freely circulate ... this liberalization carries the risk that international competition, by inhibiting the will of certain member nations to introduce progress, might be 'an obstacle in the way of other member nations which desire to improve the conditions in their own countries.'" [40]

The 1998 ILO Declaration on Fundamental Principles and Rights at Work obligates the U.S. and other 173 member nations to adhere to four fundamental principles of labor and employment law (Coxson 1999). With the adoption of the Declaration, many member nations strategically highlighted that the ILO could reduce pressure on the WTO and other international organizations to adopt trade sanctions as a mechanism to improve working conditions and enhance workers' rights.

Under the 1998 Declaration, ILO member nations agreed to adhere to four principles: freedom of association and effective recognition of the right of collective bargaining, the elimination of all forms of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination on the basis of employment and occupation. These rights are non-binding, unlike the existing conventions underlying them. However, if members have not ratified these basic conventions, they are subject to new reporting obligations on labor conditions. Under the declaration, the ILO still lacks the any authority to impose sanctions against employers or governments.

IX. The WTO's Labor-Side Agreement: The ILO?

The World Trade Organization succeeded the General Agreement on Tariffs and Trade (GATT), which become effective in January 1948. Member nations are required to negotiate the reduction of tariffs, eliminate nontarrif barriers, and refrain from discriminatory treatment, and the WTO is the primary institutional arena for negotiating and settling disputes on trade matters. Most of the 135 WTO member governments are also ILO members. Currently, labor standards are not subject to WTO rules and disciplines.

In the 1990s, the issue of trade and core labor standards led to intense domestic conflict within and between some WTO member governments. Since the conclusion of the 1994 Uruguay Round of the World Trade Organization General Agreement on Tariffs and Trade (WTO/GATT), there have been demands from some developed countries (and organized labor within them) for "social clauses" in trade agreements, linking trade sanctions and internationally recognized labor standards.[41] At the signing of the treaty that formed the WTO, at the Ministerial Conference of the 1994 Marrakesh General Agreement on Tariffs and Trade, nearly all the ministers expressed a national preference on the issue. The Conference Chairman reported there were no agreement among member governments at the time, and thus no basis for cooperation on core labor standards.

However, all of the WTO member nations agreed to the 1996 Singapore Declaration, which committed them to core labor standards,[42] supported the ILO, affirmed that trade helps promote higher labor standards, opposed the use of labor standards for protectionist purposes, and agreed that the comparative advantage of countries—particularly low-wage developing countries—must in no way be put into question. The Ministers concluded, "We renew our commitment to the observance of internationally recognized core labor standards. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. In this regard, we note that the WTO and ILO will continue their existing collaboration."[43]

The EU and United States argued that the WTO must address core labor standards. At the WTO's General Council session which preceded that Seattle Ministerial Conference, the U.S. proposed the establishment of a WTO Working Group on Trade and Labor with the group reporting back before the Fourth Ministerial Conference. The EU pushed for a joint WTO/ILO Standing Working Forum on trade, globalization and labor issues (WP/SDL 2000). Canada proposed a WTO working group to report to the next Ministerial Conference on the relationships between appropriate trade, developmental, social and environmental policy choices faced by WTO members in adjusting to globalization (WP/SDL 2000).

The official agenda of the 1999 WTO Ministerial Conference did not include labor standards, but this became one of the principle conflicts between more and less developed nations and dominated the discussion. The U.S. pushed for the establishment of a WTO Working Committee on Trade and Labor, while the EU proposed that the ILO and WTO organize a joint Standing Working Forum on trade, globalization, and social issues.[44] For example, the U.S. noted, "to remain viable the WTO must reflect the various constituencies involved in world trade." The U.S. did not propose an agreement on minimum wages, or changes that would take away the comparative advantage of low-wage producers, or use of protectionist measures to enforce labor standards. However, U.S. declared: trade liberalization can occur only with domestic support; that support, and support for the WTO, will surely erode if we cannot address the concerns of working people and demonstrate that trade is a path to tangible prosperity. "[45]

In contrast, many WTO developing member nations saw the linking of trade and labor standards as a disguised instrument of protectionism. Developing nations have argued that efforts to bring labor standards into the WTO creates market distortions and represents a strategy for undermining the comparative advantage of low-wage developing countries. They argue that better working conditions and improved labor rights arise only through economic growth and development. If core labor standards became enforceable under WTO rules, any sanctions imposed against countries with lower labor standards would merely perpetuate poverty and delay improvements in labor conditions.

Many of the developing countries, such as Hong Kong (China), Morocco, Malaysia, Nigeria, Botswana, Panama, Nicaragua and Zimbabwe, opposed linking trade negotiations to core labor standards, and a number of developing countries, including Singapore, Pakistan, and Mexico, expressed their opposition to the "ulterior protectionist motives" of those members that supported such a linkage (WP/SDL 2000). China supported a new round of multilateral trade negotiations that focus on discussing issues related to trade but those issues that are not related to the functioning of WTO such as labor standards should not be incorporated into the agenda (WP/SDL 2000)

The ILO Director-General, addressing the WTO on the social dimension of globalization, warned, "unless questions of fairness and inequality are addressed by the global community, the process of international integration itself may be rejected by increasing numbers of nations."[46] By keeping labor standards off the WTO agenda, member nations actually strategically shifted potential conflict to an existing alterative arena, which could be viewed as a "weak" labor side agreement. Currently, the ILO, and not the WTO, remains the principal institutional arena for resolution of the distributive consequences of globalization.

Currently, labor market issues may be identified and brought to the attention of the ILO by organized labor, governments, employers, the ILO, ILO Industrial Committees, or nongovernmental organizations. The Governing Body places issues on the agenda of the Conference.[47] The ILO adopts standards with a two-thirds vote of the delegates attending. Delegates are obligated to bring an adopted convention or recommendation before their national legislative authority for action within one year. Ratifying member nations agree to modify their standards to comply with the provisions of the convention and are required to report annually on changes. The ILO requires members that have not ratified conventions to report on "the degree to which national rules conform to the obligations of adopted conventions" and the "progress in and impediments" to the ratification process (Schlossberg 1989). Once adopted by a voluntary member, conventions have the status of international treaties.

A member may bring charges against another for violation of ILO principles, but the ILO has no enforcement authority or ability to apply punitive measures. It cannot enact any sanctions against members, as ratification is on a voluntary basis and a government may opt out of compliance by denouncing a convention (Schlossberg 1989). The ILO has two principal enforcement mechanisms: the examination of obligatory governmental reports and the consideration of complaints (Landy 1980).[48] The ability of the Conference to formally adopt and publish the Committee's report is the ILO's lone enforcement tool—the use of moral suasion to encourage compliance.[49]

X. Conclusion

This paper has addressed two puzzles: why nations design labor side-agreements and how the scope of the authority transferred or delegated varies significantly across three agreements. First, I conclude that nations agree to labor side-agreements because regional or international rules present solutions to a domestic political problem in developed nations. Governments have devised ways to maximize the efficiency (economic) gains from trade and to minimize the domestic political costs of globalization. Second, the three agreements vary significantly in their transfer of previously sovereign powers on labor market issues, depending on the level of integration at which they aim or have reached, the preferences of the member states, and the formal institutional and decision rules, and the collective action problems of cooperation.

In summary, with the EU, temporary coalitions of governments transfer limited authority over specific labor market issues while control of the rest, including wage setting, is left to national or sub national governments or to collective bargaining. Under NAFTA, the trading partners delegate narrow enforcement authority, and for the most part, each trading partner commits to enforcing its existing domestic labor and employment laws. In the ILO, voluntary member nations agree to common minimum standards. With collective action problems and divergent preference of WTO members, there has been no agreement to link trade and labor with the WTO framework.

EU member states' preferences vary according to the governments that exist within them at different points in time (Lange 1993). To prevent losers from withdrawing political support for market integration, and thereby depriving the EU of a source of additional economic welfare, member states have responded to the distributional consequences—or, more important, the rational expectation of distributional conflict with a social dimension.[50]

Under the NAALC, each trading partner retains political control to establish or modify the nature and level of its domestic labor and employment standards. The trading partners designed the agreement as a mechanism for cooperation on a wide range of labor market objectives and to ensure the enforcement of domestic labor and employment law without interfering with national autonomy and different labor market regimes. The trilateral NAALC does not prevent the partners from lowering their national rules by legislative action and, conversely, does nothing to require each member nation to agree to any minimum or uniform regional standards.

In the ILO, the two-step decision process, adoption of the instrument and ratification at the national level, has contributed to an oversupply of labor standards. Because ratification is voluntary, entirely dependent on each member nation, labor delegates have strong political incentives to enact higher standards. Less developed nation often vote "not to be laggards," but strategically recognize that their governments will never make the binding national choices (Cordova 1993). National ratification rates are low, and even when conventions are ratified, member noncompliance remains very high. Most all less developed member nations believe the issue of core labor standards does not belong in the WTO, and should remain in the ILO.

Despite new forms of global governance, there is limited evidence of convergence in form of governance or policy across nations and regions. Each nation has institutionalized rules that establish labor market regimes and structure collective bargaining institutions. For the most part, existing labor market regimes are locked in by diverse national economic and political institutions, which have made explicit convergence difficult and harmonization unworkable. Empirical evidence suggests that compensation costs along do not determine international competitiveness. In a number of sectors, cross-national differences in labor costs are apparently compensated for by differences in the systems by which these costs are paid, and in the productivity arising from different skill levels and the quality of technology; thus, per-unit cost of production does not reflect differences in labor costs and is often similar across nations (Commission of European Communities).

Nations have increasingly come to see labor market relations and regimes as a strategic factor in strengthening national competitiveness and product innovation; as differences in national capabilities vary tremendously, they have little reason to risk this vital policy instrument in a multinational arena. What has made minimum harmonization attractive as a model for international regulatory cooperation is its capacity to liberalize trade without suppressing justifiable initiatives taken to deal with some labor market problems. Community-wide norms and information sharing have become important as a means of coordinating channeling the interactions among labor markets (Adnet 1993).

Differences in standard of living and real wages between developed and developing nations provide much of the potential aggregate gain from increased economic integration but may also limit globalization. As Williamson (1998) warns, "if a globalization backlash can be found in our past, it may reappear in the future." Domestic politics may allow the benefits from trade and factor mobility to be fully achieved *only* if member states at different stages of development confront the distributive consequences of globalization. Governments, motivated to act in their long-term interest, have strategically provided an arena in which to confront the political and distributive consequences (within and between nations) of globalization.

Patterns of transfer and delegation of limited authority are the products of coalitions of governments responding to domestic interest pressures and political calculations. For the most part, globalization has not led nations to delegate or transfer *broad* authority, and changes in patterns of governance and convergence of labor market standards have not posed major threats to national autonomy. Exogenous influences, filtered through and mediated by domestic politics and institution, produce different outcomes across nations.

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[1] For efforts to show how domestic institutions can be used for domestic political purposes see Richards 1999; Goldstein 1996; and Oatley 1997.

[2] Import competing and exporting-firms in the high-standards nation may respond by undertaking capital-labor substitution or depending on their market power, by depressing wages. Exporting firms may decide to relocate some of their production to foreign locations with lower standards. See, Brown, Deardorff, and Stern 1996.

[3] More generally, regulators may deliberately set out to provide a more favorable environment in order to promote the competitiveness of domestic industries or to attack more business activity (Gatsios and Holmes 1999). Regulatory competition occurs when goods, services, or factors move easily, if not totally freely, within different geographical areas, and regulation is selected according to its the relative attractiveness for investors and residents. It is one mechanism by which member states create a comparative advantage for themselves (Gatsios and Holmes 1999).

[4] These labor market protections can defined as restrictions on the ability of economic agents (employers and/or workers) to enter, and exit, formal, contractual employment relationships.

[5] Understanding how political processes work and resource allocation interact is at the core of the study of the political economy of regulation.

[6] The Rogowski model has some limitations. First, it is a speculation about political cleavages not outcomes. Second, winners and losers cannot always be distinguished in advance of liberalization. The ex-ante specification of costs and benefits do not reveal why policy is enacted and what form it may take. Third, as Midford (1993) argues, while the three-factor model has explanatory power for the political economy of less-developed economies, it is often confounded by the complex division of labor found in more developed countries. When an economy becomes more complex, "the division of labor becomes finer and large aggregate groups such as labor, land, and capital lose much of their meaning." Thus, labor cannot be conceived as homogenous, and changing exposure to trade will affect the position of some types of labor differently than others.

[7] Bates, Brock, and Tiefenthaler (1991) report that the greater the social insurance program mounted by a nation, the less likely the government is to block free trade. In contrast, developing countries may remain protectionist because they lack the resources for internal programs of transfer payment to cope with risk from international markets.
[8] "Negative" integration refers to those policies eliminating restraints on trade and distortions of competition.

[9] Most scholars of European integration view the EU *either* as a well-developed international regime controlled by sovereign states and used by them to facilitate coordination (see, Moravcsik 1991, 1993, 1998; Garrett 1992; Garrett and Weingast 1993), or as a unique, supranational, "multi-level" polity, which surrounds and enmeshes its member states (see, Marks, Hooghe, Blank 1996; Kohler-Koch 1996; Grande 1996; Pierson 1996). The EU also can use its delegated authority to pursue its own interests, and early choices may produce unintended and undesired consequences (see, Pollack 1996; Pierson 1996).

[10] EU decision-making can be summarized: the Commission proposes legislation and the Council of Ministers disposes it. The European Parliament has a consultative role. With measures that require unanimity, the Commission formulates legislation that it then submits simultaneously to the Council and the Parliament. The Parliament debates the proposal and will typically propose amendments via an opinion transmitted to the Commission. The Commission may accept the recommendation before passing it on to the Council. The Council, free to adopt or further amend the legislation, must pass it by unanimous vote—giving a single member veto authority. In principle, if a member fails to incorporate a directive into its domestic law by the implementation deadline, individuals can seek enforcement against the member

through the ECJ. The Commission is required to monitor the performance of members and may initiate enforcement proceedings. See, http://eur-op.eu.int

[11] "Positive" integration refers to those policies that shape the conditions under which markets operate.

[12] Some EU scholars argue that member states have transferred authority to EU's market-enforcing institutions to allow for economic governance and enforcement of a joint competition regime. The result has been called a multi-level political economy, where politics is decentralized in national institutions located and constrained by integrated competitive markets, and where supranational institutions are transferred authority to implement and maintain those markets (see, Streeck 1998; Scharpf 1988; Marks 1996).

[13] The UK, with the support of employers, fought for national sovereignty and demanded a strict interpretation of treaty law; in contrast, the Commission, backed by organized labor and a majority of the member states, sought ways to evade constraints and to exercise more authority through an expansive interpretation of treaty law (Streeck 1995; Rhodes 1995).

[14] Originating in a proposal made during the 1987 Belgian presidency, the Social Charter became entangled in member state conflict about flexibility versus rigidity of the European labor market (Baldry 1994). To promote consensus among member states, President Jacques Delors pushed a plan for member states to cooperate on common *minimum* norms and conventions. Members would transfer limited authority on specific labor market issues and the EU would "influence national collective bargaining and employee relations practices without resorting to uniform harmonization or direct supranational regulation of European labor markets" (Teague and Grahl 1989). This represented a move toward cooperation on *convergence of goals* rather than harmonization of labor market regimes (Teague and Grahl 1989). For most "core" nation, with the exception of the highly de-regulated Britain, the compromise proposal did not represent higher labor standards but rather the re-regulation of existing domestic labor market protections at the supranational level (Teague 1999).

[15] Delors specifically won over the LDN's with promises of more structural funding, and in the case of Spain, with direct appeals to the socialist government for solidarity. See, Moravcsik 1998.

[16] While the EU has not attempted to legislate in the area of collective bargaining, the first directive issued under the Social Dialogue provided for the establishment of European Work Council (EWC's). These workplace organizations were established for consultation and sharing of information rather than for providing worker representation. See, Falkner 1995.

[17] Member states also retained significant political control over the form and method of implementation. The member states agreed that new labor market directives would be implemented through collective bargaining agreements as well as through statutory or administrative regulation, to allow flexibility in implementation in member states with diverse labor market regimes, They have used their control over the legal mechanisms through which EU directives are incorporated into national law to limit their impact.

[18] With the agreement, each trading partner committed to ensure that its labor laws provide for high standards and to improve them; to promote compliance with and effectively enforce them; to require that employees have access to administrative, quasi-judicial, judicial, or labor tribunals for enforcement of its labor law and that enforcement proceedings are fair, equitable, and transparent; to ensure that its labor laws are made available to the public, and to promote public awareness of its labor law. See, http://www.naalc.org/index.htm.

[19] NAFTA was negotiated in two installments: the commercial negotiations (June 1991 to August 1992), and then the supplemental negotiations (February to August 1993). The Canada-U.S. Free Trade Agreement came first, and it laid the foundation for the trilateral agreement.

[20] NAFTA itself contains only one provision for standards (in Chapter Eleven, on Investment); it discourages trading partners from reducing environmental or health and safety standards in order to attract investment.

[21] Organized labor in the U.S. preferred uniform standards enforceable through domestic courts and trade sanctions for noncompliance. Each trading partner would delegate authority to enforce rights such as freedom of association and the right to organize and bargain collectively, and to harmonize health and safety, child labor, and minimum wage standards (see, Mayer 1998). In contrast, organized business supported a strictly "consultative" and "information-sharing" commission; it opposed any delegation of investigative and enforcement authority to an entity with independent powers, particularly over trade sanctions. Business opposed a labor side-agreement, as the only "'internationally–recognized' labor principles are the ILO's conventions" (see, Okin 1996).

[22] Labor and employment law was defined to include freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labor; labor protections for children and young persons; minimum employment standards, such as minimum wage and overtime pay; elimination of employment discrimination; equal pay for men and women; prevention of occupational injuries and illnesses; compensation for occupational injuries and illnesses; and protection of migrant workers. See, http://www.naalc.org/index.htm

[23] The U.S. National Advisory Committee was established in 1995 to provide advice to the U.S. NAO. The Committee is comprised of twelve members, four labor reps., four business reps, two experts, and two reps. from the public. See, http://www.naalc.org/index.htm.

[24] The NAALC contains substantial references to improving the availability of information (see, for example, Articles 1, 6, 7, 10, 11, 14, 21). The information requirements of "transparency" and "sunshine" are considered important features of the Agreement, and one that the trading partners claim will lead to real improvements in labor laws in North America. See, http://www.dol.gov/dol/ilab/public/programs/nao/main.htm

[25] See, http://www.naalc.org/index.htm.

[26] The NAOs can consult with each other and exchange information on labor matters, and each trading partner has autonomy to determine the functions and powers of its NAO. The agreement provides a mechanism for initial consultations to take place at this level, and any issue within the scope of the agreement may also be subject to consultations at the Ministerial level.

[27] The top labor ministers compose the Council, the main obligation of which is to implement the NAALC. See, http://www.naalc.org/index.htm.

[28] The Secretariat assists the Council in the compilation of information. The Secretariat reports periodically to the Council on a wide range of labor issues. See, http://www.naalc.org/index.htm.

[29] A common criticism of the NAALC is that the ECE process is not applicable to the first three Labor Principles (freedom of association and protection of the right to organize, the right to bargain collectively, and the right to strike). However, others argue that the ECE process should not be extended to include labor relations, as it might interfere with national autonomy. The claim is that by delegating authority to ECEs, it would permit free trade opponents to use the process for protectionist purposes. However, trading partners designed the ECE process so as not allow for trade sanctions; this process is reserved only for the dispute resolution. Moreover, groups who may be opposed to free trade cannot initiate an ECE; only national governments can do so.

[30] Critics argue that the definitions and qualifications attached to the governing process are too restrictive: labor matters must be "trade-related" and "mutually recognized" in order to become the subjects of ECEs or dispute resolution processes. The trade-related requirement refers to the fact that the NAALC is a

companion to the NAFTA and its intervention in domestic affairs is justified on the basis of a special trade relationship. The mutual recognition qualification is intended to prevent a trading partner with higher labor standards from being "penalized" by having higher obligations than the others.

[31] See, http://www.naalc.org.

[32] The Arbitral Panel is delegated narrow authority to determine "whether a party has persistently failed to effectively enforce its health and safety, child-labor, or minimum-wage standards" (Pomeroy 1996). After deliberation, the panel presents an Initial Report, then reviews it and decides whether or not to incorporate its recommendations into the Final Report, on which no further appeal is allowed and with which all parties must comply. If the violating nation disregards the Final Report's recommendations, the disputing parties may ask for a review of implementation.

[33] The ILO's formal objectives are promoting democracy and human rights, and equality and adequate protection for workers; and fighting unemployment and poverty. ILO formulates international policies and programs to improve working and living conditions; sets international labor standards to serve as guidelines for member nations; and offer technical assistance to help members implement standards. See, http://www.ilo.org/.

[34] The Commission consisted of two representatives from the U.S. Great Britain, France, Italy, Japan, and Belgium, and one representative from Cuba, Czechoslovakia, and Poland.

[35] Theses principles were labor as a non-commodity, abolition of child labor, payment to ensure a reasonable standard of living, equal pay for equal work, at least 24 hours of weekly rest, equitable treatment of all workers within a country, and establishment of a supervisory system to ensure compliance with labor standards. See, http://www.ilo.org/.

[36] Within the U.N. system, ILO coordinates with UNDP, the International Maritime Organization, UNESCO, UNICEF, and the U.N. Industrial Development Organization.

[37] The ILO consists of three entities: the International Labor Conference (ILC), the Governing Body, and the International Labor Office (ILO). The ILO's policy-making and legislative body is the ILC, which is composed of the entire membership. The Conference, the supreme authority, is concerned with legislative matters, establishing and adopting labor standards. The ILO's executive board is the Governing Body (GB), which is composed of 56 members (28 government delegates, 14 worker delegates, and 14 employer delegates). The GB usually makes decisions on a consensus basis, and no member nation has veto power. Each member sends a tripartite delegation to the Conference — two government reps, one business rep., and one labor rep. The U.S. is represented by Labor and State, the AFL-CIO, and the U.S. Council for International Business at the ILO.

[38] Membership in the ILO is closely associated with that of the UN. Under the ILO Constitution, the U.S. is one of ten nations of "chief industrial importance" with permanent representation on the GB . The U.S. withdrew its membership in 1978, and rejoined the ILO in 1980. See, ILO 1997.

[39] The U.S. did not join the ILO until 1934.

[40] See, ILO 1997.

[41] For a brief history of efforts to incorporate minimum labor standards into international trade agreements, see, Beutler 1998.

[42] World Trade Organization, Singapore Ministerial Declaration, Doc. WT/MN (96)/Dec. (1996).

[43] The 1995 UN World Summit for Social Development also recognized the ILO as the appropriate institution to address the distributive consequences of trade liberalization. In addition, ILO coordinates with

the World Bank, and the International Monetary Fund (IMF). In April 1996, ILO circulated a memorandum announcing a new agreement between IMF and ILO to foster collaboration on a systematic basis. See, http://www.ilo.org/.

[44] See, http://www.ilo.org/, "Working Party on the Social Dimension of the Liberalization of International Trade, "Developments in Other Organizations."

[45] Statement by Charlene Barshefsky, Acting U.S. Trade Representative, Ministerial Conference, Singapore, December 9-13, 1996, World Trade WT/MIN (96)/ST/5, December 9, 1996 (96-5176).

[46] See, http://ilo.org.public/english/bureau/inf.pr/199/39.htm.

[47] The ILO prepares a comparative law and practice report for submission to member nations on an issue. Member nations that have ratified the 1976 Tripartite Consultation Convention are obligated to consult with worker and employer groups. On the basis of these comments, the ILC discusses the subject and adopts a report that the ILO returns to the members for amendments. The ILO then prepares a revised draft of the convention or recommendation; the Conference has a second and final discussion on the proposed instrument, and with a two-thirds majority, adopts the instrument. See, http://www.ilo.org/.

[48] The ILO supervises member nations' noncompliance with conventions they have ratified. Complaints may be brought the Governing Body by a member nation that has ratified the same convention, by an ILC delegate, or by the Governing Body itself. Labor and business groups may, also make claims that governments have failed to implement ratified conventions. Upon receipt of a complaint, the Governing Body decides if it will appoint a Commission of Inquiry (COI) or, in the case of a freedom of association, refer it to the Committee on Freedom of Association (CFA). The COI conducts an investigation, and then publishes its findings and recommendations for corrective procedures in a report to the GB. A member nation may dispute the findings and refer the case to the International Court of Justice (ICJ), the judicial body of the UN. See, Landy 1980.

[49] The ILO has adopted an "information-sharing" approach: when reviewing reports, the Committee of Experts makes observations on members that have not met their obligations and suggests measures for compliance. In cases of serious violations, the Committee may request that members supply detailed information directly to the Conference.

[50] In sum, one view presents a minimalist interpretation: national sovereignty, in simple terms, is alive and well. The supranational regulation of labor market regimes has not been easy, and has proceeded only through a complex process of intergovernmental bargaining in which the EU has been a critical actor, promoting alliances with and among member states and exploiting to the limit its own legal powers allowed by the treaties. In contrast, another view suggests that the process of integration has eroded both the sovereignty and the autonomy of member states. A supranational labor market regime is being constructed, with important implications for national sovereignty (which will be gradually surrendered), traditional organized interest activity (which will assume a more supranational dimension), and labor market protection (which is steadily being "Europeanized"). See, Rhodes 1995.