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The Cordell Hull Institute held a one-day Trade Policy Roundtable on December 4, 2001 to discuss strengthening the ILO's role in promoting core labor standards.

The meeting was held at Arnold & Porter, attorneys-at-law in Washington, DC. Pictured above is the well of the firms building.



The meeting was chaired by **William D. Rogers** (above). Reproduced here is his response following the meeting.

About the Author

William D. Rogers is the Acting Chairman of the Cordell Hull Institute and he is a senior partner at Arnold & Porter, attorneys-at-law, Washington, DC.

Hon Rogers is a former U.S. Under Secretary of

CHAIRMAN'S STATEMENT...

Mounting a Global Dialogue on the Trade-and-Labor Issue

William D. Rogers

AFTER the World Trade Organization launched, at its Ministerial Conference in Doha last November, a new round of multilateral negotiations, the focus of the trade-policy debate in the United States shifted back to the terms of the President's trade-negotiating mandate. In the U.S. Congress, the principal bone of contention has been enforceable labor standards in trade agreements, but as that fight on Capitol Hill continues the international debate is moving to a new stage.

While the WTO's highest decision-making body was meeting in Doha, the Inter-national Labor Organization's governing body was meeting in Geneva, where it approved a proposal to sponsor a World Commission on the Social Dimension of Globalization,¹ which among a wide range of other subjects will address the trade-and-labor issue. The ILO's Director-General, Juan Somavia, was authorized to proceed with establishing the Commission, but was also asked to consult further on its parameters, terms of reference and membership.

On December 4, 2001, the Cordell Hull Institute held a roundtable meeting in Washington to review "trade and labor standards after Doha", the state of public discussion on the issue and the ILO's decision to proceed with the World Commission.

Composition of the World Commission

In both developed and developing countries there are legitimate public concerns about the developmental and social effects of a rapidly integrating world economy, what is meant these days by the catchword "globalization". Acknowledging their existence is not to support or condone some or all of the remedies that have been proposed. For the trade-and-labor issue to be put in perspective, however, a better-informed public debate is needed, internationally and domestically, on the wide array of issues posed

State for Economic Affairs. He has served as special counsel to the U.S. Department of State, and he was the first president of the Center for Inter-American Relations of New York.

He is also vice chairman of the New York-based international consulting firm Kissinger Associates Inc.

About the Meeting

In November 2001, the International Labor Organization approved the establishment of a World Commission on the Social Dimension of Globalization, but its Director-General was requested to consult further on the Commission's parameters, terms of reference and membership.

To discuss the trade-related aspects of the ILO initiative, the Cordell Hull Institute convened in Washington on December 4 a roundtable meeting of specialists on trade, labor and development. Thirty five participated in the meeting where several presentations were made on the question of enforceable labor standards in trade agreements.

Other Speakers

In addition to Hon Rogers, other speakers included: **Daniel W. Drezner**, assistant professor of political science, University of Chicago, Illinois; **Jagdish Bhagwati**, Columbia University and Council on Foreign Relations, New York, NY; **Jeffrey Lang**, Partner, Wilmer Cutler & Pickering, Washington, DC, former Deputy U.S. Trade Representative; **Herwig Schlogl**, Deputy Secretary-General of the OECD, Paris, France.

Other speakers were

by the process of globalization. Moreover, in responding to public concerns, governments ought to be able to draw on balanced and objective analyses, which in turn need to be the product of an inclusive and broadly supported process of public enquiry. For the World Commission, as proposed by the ILO, to be effective it must be credible from a variety of standpoints.

The ILO envisages the World Commission being independent and balanced, com-posed of eighteen "eminent individuals", participating in their personal capacities, and reflecting its tripartite structure of government, business management and organized labor. The idea is for the Commission to work for one year, hold two formal sessions and submit a report in March 2003. The Commission is to be supported by the ILO secretariat. Other institutions in the multilateral system have been invited to second expertise.²

During the last two and a half years the Cordell Hull Institute has sponsored an international study group on the problems to be overcome in restoring momentum in the WTO system. Early in 2001, the study group discussed an independent commission on the trade-and-labor issue, as proposed by the Commission of the European Union and others. Accordingly, at the Institute's meeting in December, five points were made.

First, it was suggested that the membership of the World Commission include *former* high-level officials of other multilateral institutions such as the WTO, the International Monetary Fund (IMF) and the World Bank, key labor leaders from the United States, the European Union and major developing countries, prominent (perhaps recently retired) business leaders from different parts of the world and, last but not least, independent scholars of distinction who are conversant with the issues to be addressed.

Second, it was stressed that, in order to engage and hold public attention, the World Commission should be chaired by an authoritative political figure, one with a distinguished background in both labor-related and trade-related fields.

Third, it was urged that the World Commission engage expertise not only from the above institutions, central to the multilateral system of trade and payments, but from other relevant international institutions as well. The latter should include the Organization for Economic Cooperation and Development, being representative of developed countries, but increasingly engaging with non-members, and the United Nations Conference on Trade and Development, representative of developing countries. By engaging expertise from these organizations and consulting the findings of objective research, the Commission would minimize its own learning process, save a lot of time and reduce the need for travel.

Gary N. Horlick, Partner, O'Melveny & Myers, and Georgetown University, Washington, DC; **Gerard Depayre**, Deputy Head of Mission, Delegation of the European Commission, former Deputy Director-General of External Relations, European Commission; **John M. Weekes**, Chairman, Global Trade Practice, APCO Worldwide, Geneva, former Canadian Ambassador to the WTO, and Chairman of the WTO General Council.

Trade Policy Roundtable

The Cordell Hull Institute's Trade Policy Roundtable is sponsored by seven international law firms in Washington, DC: Akin Gump Strauss Hauer & Feld, Arnold & Porter, Hogan & Hartson, O'Melveny & Myers, Sidley Austin Brown & Wood, Steptoe & Johnson and Wilmer Cutler & Pickering.

Fourth, given the parlous state of public discussion of the whole subject, it will take more than a year for the World Commission to contribute effectively to a better public understanding of the complex issues posed by the rapid integration of the world economy over the last half century. When public discussion is largely left to op-ed articles, chat shows, sound bites and TV ads it is hardly surprising that political thought, leadership and institutions have failed to keep up with developments in a fast changing world economy.³ Today an extensive "catch up" effort is required. It may be politically important to produce a first report in a year, which is certainly feasible with the analytical work already out there, but the Commission should recognize at the outset the magnitude of the problem it is addressing and plan a work program that extends over two or three years.

Finally, if fostering public discussion, critical to the functioning of democracy, is part of the World Commission's underlying purpose, the process it adopts is going to be more important than the ensuing report(s). In the nature of things, reports arising from public commissions have a short shelf life, although solid ones can become sources of reference. In the course of gathering information, analyses and views, a public enquiry can attract, stimulate and focus thinking in and among the interested parties. Thought needs to be given to how the Commission's work program could be organized to provide opportunities through hearings, seminars and media functions to draw into its deliberations not only the views of sectional interests and advocacy groups, whose leaders are always helpful and available, but also those in independent centers of learning, research and analysis.

WTO Background to the Commission

After the Uruguay Round negotiations, the global momentum of trade liberalization and reform was lost, the WTO system "drifted" and governments could not get close to agreement on a new negotiating agenda. The major stumbling block occurred in the United States where President Clinton was unable to obtain from Congress the renewal of "fast track" trade-negotiating authority. Even today, with agreement finally obtained on a negotiating agenda, the Doha Round negotiations could be severely inhibited if there are continuing uncertainties about the U.S. mandate. Indeed, since the Kennedy Round negotiations, there has been a reluctance in other countries to *negotiate* with the United States until the Administration has secured fast-track authority, which entails a commitment from Congress, when negotiations conclude, to vote implementing legislation "up or down" without trying to re-negotiate the agreements reached.⁴

Securing agreement in Congress on the President's trade-negotiating authority has been thwarted four times since 1994 by members who insist on it including a requirement that the United States press for labor and environmental standards to be written

into trade agreements, with trade sanctions to enforce them – in spite of the opposition of nearly all other WTO member countries.

On the labor-standards issue, trade ministers reaffirmed at their meeting in Doha the position their predecessors adopted at the first WTO Ministerial Conference, held in Singapore in December 1996, which read as follows:

“We renew our commitment to the observance of internationally recognized core labor standards. The International Labor Organization is the competent body to set out and deal with these standards and we affirm our support for its work in promoting them. We believe that economic growth and development, fostered by increased trade and further trade liberalization, contribute to the promotion of these standards. We reject the use of labor standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put in question. In this regard, we note that the WTO and the ILO secretariats will continue their existing collaboration.”

Last May the OECD Council, meeting at ministerial level, declared that the trade-and-labor issue “must be addressed through dialogue that takes into account the expertise of all relevant international institutions, including the WTO”.⁵ Soon after, at the ILO’s International Labor Conference in June, Ambassador Somavia proposed an international commission on “the social dimension of globalization”, seeking to enhance the activities of the working party that the ILO already had on the subject.

How the Commission Came About

Approval of the World Commission came too late to play into the preparatory discussions on launching the first WTO round, but not too late to have a hearing on the debate over U.S. trade-negotiating authority. The idea for a commission grew out of the debacle in Seattle in December 1999 at the third WTO Ministerial Conference. Prior to the conference there was tentative trans-Atlantic agreement on a work program to examine the “social dimension of trade liberalization”. But agreement was killed when, for his own reasons, the President of the United States declared a preference for trade sanctions if countries did not comply with core labor standards, confirming the suspicions of developing countries that U.S. proposals were intended all along to put new limits on their trade.

A year later, after the dust had settled on the Seattle debacle, the European Commission proposed, as mentioned, that labor standards be discussed in a forum outside the WTO system and in the context of “social development”. At the World Economic Forum gathering in Davos in February 2001, three former

directors-general of the multilateral trading system suggested that an independent commission, involving the heads of the ILO, the World Bank and the WTO, address the issue in a "developmental and social context".⁶

On the eve of the OECD's annual ministerial meeting last May, the Cordell Hull Institute held at Gressy-en-France, near Paris, an international roundtable meeting of senior trade officials and independent experts on restoring momentum in the WTO system, based on the draft report of its study group. At the Gressy meeting there was support for creating an international commission involving the ILO, the WTO, the World Bank and other relevant international institutions. The draft report argued that such a commission should aim mainly to produce for public discussion a clarification of issues, facts and arguments.⁷

Purpose of the World Commission

The ILO Governing Body agreed in November that the World Commission on the Social Dimension of Globalization should address public-policy issues in the context of five broad headings:⁸

- First, more systematic statistics and other information on the globalization process and its principal characteristics;
- Second, a clearer understanding of the wide range of perceptions of globalization;
- Third, a better analysis of how different aspects of globalization affect economic and social progress and have diverse impacts on workers and enterprises;
- Fourth, the growing need for policy consistency in the multilateral system; and
- Fifth, the "integrated thinking" that is essential in generating the comprehensive and coherent policies required to resolve global problems.

It was stressed that the Commission's report should take into account the ILO and WTO positions that labor standards should not be used for protectionist purposes and that the comparative advantage of developing countries should in no way be called into question.⁹

In highlighting specific issues, it was added that the World Commission's report should (i) take full account of the developmental and equity aspects of globalization, (ii) consider the impact of international trade, foreign direct investment and other aspects of globalization on employment and poverty reduction, (iii) examine the structure and functioning of the international economic system in the light of its impact on poverty reduction,

labor conditions and employment, including the impact of the financial system's volatility on social stability and developmental goals, and (iv) study questions of domestic infrastructure, the transfer of technology, official development assistance, developing-country debt and human resources as factors that affect the capacity of economies and enterprises to take advantage of the opportunities of globalization.

The report should also (v) take into account the ILO Declaration on Fundamental Principles and Rights at Work, the UN Secretary-General's Global Compact and the contribution of social dialogue; and (vi) explore how to strengthen the capacity of developing countries to integrate fully into the global economy, including a better understanding of the consequences of economic integration and non-integration.¹⁰

Why the Commission is a Good Idea

Why is a global dialogue a good idea? The arguments behind demands for labor standards date back to the ILO's earliest days, after World War I, and tend to be promoted at a high level of generality, but the difficulty (the devil) is in the details. There has evolved in the multilateral trading system an effective dispute-settlement process, which some would like to exploit to enforce labor standards, believing it to be based on the threat of retaliation. But the WTO dispute-settlement process is effective for more subtle reasons. Indeed, retaliation *per se* has not been effective in inducing compliance with WTO rules, which is why alternative trade remedies, such as a requirement to provide trade compensation, are now being discussed in the trade law and trade policy communities.

That issue aside, and without getting into details, anti-globalization activists assert two sweeping reasons for wanting trade sanctions to enforce labor standards.

1. Trade sanctions, they say, are an effective tool in forcing countries to make concessions on these issues. Experts on economic sanctions have shown, though, that this view is at best incomplete and at worst wrong. Economic coercion has some value when applied against close allies. Sanctions are of little use, however, when imposed against adversaries. Since countries that ignore or neglect labor standards, such as Myanmar or Sudan, tend to fall into the latter category, sanctions will never be the magic bullet to improve labor standards.

2. Increased trade, they further say, *causes* the violation of labor standards. According to this reasoning, countries that race to the bottom in labor standards and repress wages to below-market values do so in order to expand trade and, therefore, the solution is to deny them market access. But there is no systematic or credible evidence to support this assertion.¹¹



The mockingbird is the state bird of Tennessee.

Cordell Hull represented a district of Tennessee in the Congress of the United States, and was elected a senator from there, before becoming U.S. Secretary of State (1933-44).

"The mockingbird is known for fighting for the protection of his home – falling, if need be, in its defense. Mockingbirds are not intimidated by animals larger than themselves and have been known to attack eagles"

– Diana Wells, *100 Birds and How They Got Their Names* (Chapel Hill, NC: Algonquin, 2002)

Trade Policy Analyses

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First of all, then, the World Commission could help to explode the myth of a race to the bottom in wages and regulatory standards. No single inter-governmental organization can claim authority over the relationship between trade and labor issues. As a general rule, inter-governmental organizations do not include non-governmental organizations, but the ILO is an exception. If the Commission involves official experts, and reviews the positions of advocacy groups, it would be in a position to separate myths from realities in a rapidly integrating world economy. The ILO's unique tripartite structure has made it an appropriate organization to take the lead.

Second, the World Commission could help to improve adherence to labor standards by governments and private enterprises. There is much anecdotal evidence about how some governments and enterprises exploit impressed labor or prevent workers from unionizing. The relationship between these violations and trade liberalization is often alleged, but is hard to prove. The Commission could be a clearing house for information of this kind and help to determine when abuses are linked to globalization. It could be the pulpit necessary to identify and shame firms willing to violate labor standards in order to increase profits.

Third, the World Commission should provide an incentive for labor advocates to engage, rather than spurn, the globalization process. The race-to-the-bottom metaphor has been good for anti-globalization activists, for it has given them a bogeyman with which to boost morale, make headlines, raise contributions and scare the public. To relinquish this rhetorical weapon, those activists and labor advocates must be convinced that the rewards of participation outweigh the rewards of protest. By addressing labor's genuine concerns, the Commission could be a major step in the right direction.

Finally, the World Commission could focus the energies of governments, the most powerful parties to this issue. Little progress has been made on the enforcement of labor standards in part because different countries have different preferences. For instance, many in the United States want to see the enforcement of labor standards, but the authorities are ambivalent about the use of sanctions. Some governments in the European Union want, explicitly, to link trade and labor standards. Developing countries such as India and China see the pursuit of labor standards as a stalking horse for protectionism.

With such different preferences, governments have engaged in "forum shopping" to advance their preferences. Apart from the ILO, the United Nations, the IMF, the World Bank, the OECD and the WTO have addressed the issue. As long as governments believe they can move from one forum to another, in order to advance their preferences, no understanding or compromise is going to be reached. The creation of the World Commission, which could draw on the activities of each of these forums, should help to

shift the energies of governments towards the politics of dialogue rather than the politics of stalemate.

¹ The proposal was set out in "Enhancing the Action of the Working Party on the Social Dimension of Globalization: Next Steps", GB.282WP/SDG/1 (hereafter cited as the "ILO Director-General's Paper"), for discussion at the session of the ILO Governing Body, Geneva, on 1-16 November 2001.

² ILO Director-General's Paper, *op. cit.*, paras 5-8.

³ Three decades ago, the last presidential commission in the United States on developments in the world economy had the following to say: "The core of our present difficulty is the fact that government policies and practices, and international arrangements for collective decision-making, have not kept abreast of the high degree of international economic integration that has been achieved since World War II." *Vide* the Commission on International Trade and Investment Policy, *United States International Economic Policy in an Interdependent World*, Report of the Williams Commission (Washington, DC: Executive Office of the President, 1971), p. 6.

⁴ On the thinking behind "fast track" trade-negotiating authority, introduced in the Trade Act of 1974, see Robert C. Cassidy, Jr, "Negotiations on Negotiations: the Geneva Multilateral Trade Negotiations", in Thomas Frank (ed.), *The Tethered Presidency* (New York: New York University Press, 1981), p. 16 *et seq.*

⁵ *Communiqué* of the OECD Council meeting at ministerial level, Paris, 17 May 2001.

⁶ Arthur Dunkel, Peter Sutherland and Renato Ruggiero, "Trade Initiative: the Future of the Multi-lateral Trading System", a statement issued at the World Economic Forum, Davos, February 2001.

⁷ Chairman's Statement, by Harald B. Malmgren, on the informal roundtable meeting on "Moving Ahead in the WTO Trading System", convened by the Cordell Hull Institute at Gressy-en-France, near Paris, on 11-13 May 2001. A revised draft of the study group's report, *Facing the Challenge in the World Trading System*, was discussed at a second informal roundtable meeting, held in Gotemba on 6-8 September, hosted by the Government of Japan. The study group, chaired by Ambassador Malmgren, is being finalized in the light of the Doha ministerial meeting.

⁸ ILO Director-General's Memorandum, *op. cit.*, para. 9.

⁹ Besides the declarations at the first and fourth WTO ministerial conferences, see the ILO Declaration on Fundamental Principles and Rights at Work, issued at the International Labour Conference, Geneva, in June 1998.

¹⁰ *Ibid.*, para. 10.

¹¹ See the review of literature on the subject in Drusilla K. Brown, *International Trade and Core Labour Standards: a Survey of Recent Literature* (Paris: OECD Secretariat, 2000).