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U.S. Trade Law and FTAs: A Survey of Labor Requirements

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Abstract

This journal article is a primer of the new labor legislation. It catalogs the standards set out in each agreement and any new pre- or post-FTA labor legislation initiated by U.S. trading partner countries. The article cites evidence for progress towards the rights of the labor force, new mechanisms for dialogue, and an emerging greater transparency in the enforcement of labor law worldwide.

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Introduction

Recent discussion of trade agreements in the U.S. Congress and the public media has focused on the rights of the international labor force. In fact, this discussion is not new----U.S. trade policy has a long history of concern for the rights of labor at home and in our trading partner countries. This journal article is a primer of the labor components of U.S. trade legislation. It catalogs the standards set out in each agreement and any new pre-- or post--FTA labor legislation initiated by U.S. trading partner countries. The article cites evidence for progress towards the rights of the labor force, new mechanisms for dialogue, and an emerging greater transparency in the enforcement of labor law worldwide.

The Problem With Trade Liberalization

Trade liberalization is seldom easy, even as economists almost universally acknowledge the benefits of opening markets to international trade. The liberalization process is especially difficult in an open, democratic system because inevitably some investors and firms will gain and others will lose, at least in the short-term. It is the struggle between the gainers an d losers that is so hard to balance in the political process.

Less competitive industries and less efficient firms will lose. Although their loss does matter the core political problem is the effect of the new competition on workers, wages, and income.[2] The AFL-CIO has commented—

> "Free trade agreements like the North American Free Trade Agreement (NAFTA) and the agreements of the World Trade Organization (WTO) are hurting U.S. workers. These agreements allow imports made under inhumane conditions to

[2] Even the agriculture issues in Doha are labor related. Developed countries are concerned with "small" farmers staying on the farm. Developing countries face the reality of tens of millions of small and subsistence farmers driven from the land by unbridled first world corporate agricultural production. The prospect of hundreds of millions of displaced farmers across the globe desperately willing to take on any jobs to scratch out an income for their families creates an unnerving prospect for more protected workers in developed countries.

> flood our markets, undercutting U.S. jobs and wages. They encourage U.S. companies to scour the world looking for the lowest wages, the weakest labor laws and the most vulnerable workers."

Ineluctably it seems, the forces of globalization push governments toward more liberalization. As globalized agriculture issues have blocked the Doha negotiations, debate has re-focused itself on less globalized regional agreements. The most intense discussions have centered on worker gains and losses, both in the United States and abroad. Trade agreements and trade promotion authority hang precariously on (1) the inclusion of labor rights in future negotiations and on (2) the question whether workers would be better off with more or with fewer trade agreements.

This article has four specific goals: (1) To summarize the impact of U.S. trade laws and policy on the labor standards of our trading partners, (2) To review what has been required for labor standards in established free trade agreements (FTAs), (3) To summarize the legal and regulatory changes to labor standards and practices that have been formally instituted in these trading partners in line with the FTAs, and (4) To identify some remaining areas of concern. These sections are intended to be descriptive. The merits of the provisions are neither weighed nor compared; the purpose is simply to lay out what has occurred. The critical area not covered is the enforcement of laws and regulations by FTA partners. That effort requires ongoing monitoring, which is beyond the scope of this paper.

Labor Standards and U.S. Trade Law

Imposing labor standards on trade with the United States is nota new practice. The McKinley Act of 1890 first linked trade to foreign labor conditions, restricting imports produced by prison labor. The Tariff Act of 1930 prohibited convict-made goods. The Article XX(e) of the General Agreement on Tariffs and Trade (GATT) acknowledged the right of nations to restrict items produced by forced labor. Since then, labor standards have been incorporated intovirtually every part of U.S. trade law: the Tariff Act of 1930; the Generalized System of Preferences (GSP) in 1974; Section 301 of the Trade Act of 1974; the Caribbean Basin Economic Recovery Act (CBERA) in 1983; the Andean Trade Preference Act (ATPA) in 1992; the Overseas Private Investment Corporation (OPIC), the Multilateral Investment Guarantee Agency (MIGA); the North American Free Trade Act (NAFTA) in 1994; and the Trade Act of 2002. In particular, the NAFTA lists 11 specific worker rights, including the core labor standards covered by the

GSP program, with additional protections concerning employment discrimination on the basis of race, sex, religion and age; equal pay for men and women; compensation for occupational injuries; and protections for migrant workers.

GSP and Workers Rights

The Trade Act of 1974 created the Generalized System of Preferences (GSP) program to promote growth in developing countries. With GSP benefits, 137 developing countrie sex port approximately 3,450 different products duty-free to the United States each year. Least developed countries (LDCs) are eligible to export an additional 1,400 products duty-free. In the first 11 months of 2005, nearly $25 billion worth of duty-free GSP imports entered the United States. This number excludes textile and apparel products, almost all of which are ineligible for duty-free treatment under the GSP program.

In 1984, Congress added a requirement that GSP participation be conditional on taking steps to afford basic labor standards (19 U.S.C. 2411(d)(3)(B)(iii)). Since that time, the following GSP labor requirements have set a precedent for subsequent FTAs. Failure to take steps to afford these five rights can jeopardize a country's GSP status for some or all of its products:

1. The right of association;
2. The right to organize and to bargain collectively;
3. A prohibition on the use of any form of forced or compulsory labor;
4. A minimum age for the employment of children and a prohibition on
5. the worst forms of child labor; and
6. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Conditioning worker rights with trade benefits under the GSP has contributed to the improved treatment of workers in developing countries. Since 1984, 15 GSP beneficiaries have been sanctioned for worker rights violations. Seven have not had their status restored. Many more have corrected problems to avoid suspension. In November 2000, Swaziland modified its constitution to guarantee better protection of worker rights in order to qualify for GSP benefits. Similar efforts began around the same time in Uganda to ensure that the country's labor officials are enforcing recent legislation. Uganda has since passed and implemented new legislation, initiated a new industrial court that will address labor issues, and posted labor inspectors in each district of the country. A new legal structure has also been put in place for improved labor-management relations in the Ugandan textile sector. Additionally, the United States restored Liberia's GSP status in 2006 after the Johnson-Sirleaf

legislature repealed Charles Taylor's Presidential Decree No. 12, which banned the right to strike.

GSP petitions generally are more successful when human rights groups are involved, suggesting that they lend greater legitimacy to the demands for improved workers' rights. The degree of democracy in a country is correlated with the success of petition. Only two successful cases involved countries that the US nongovernment organization Freedom House, which assesses political freedoms around the world, judged to be "not free." By contrast, among the 17 failed petitions, nine were in countries judged "not free," with Freedom House giving its lowest possible ranking to three of those (Elliot 2003).

Imposing labor standards needs not be merely a form of protectionism. Institute of International Economics (IIE) scholar Kimberly Ann Elliot finds that—

> "The evidence further suggests that unions and other supporters of internationally enforced labor standards are concerned about foreign workers and are not just looking for an excuse to block imports from labor-intensive countries. Of course, it is also in the interest of unions to emphasize protection of union rights abroad if they believe that improves their bargaining leverage at home with relatively more mobile multinational corporations" (Elliot 2003).

Further, polls consistently show that Americans support trade liberalization when it leads to improved conditions for foreign and domestic workers.[3]

Fast-Track Authority and Labor Standards

Trade liberalization efforts were aided by the U.S. President's "fast-track" authority under which the Uruguay Round and North American Free Trade Agreement (NAFTA) were negotiated and adopted. The legislation providing this authority promoted labor-related objectives: to ensure that the benefits of

[3] "An overwhelming majority (of Americans) favored compliance with labor standards as part of international trade agreements. An overwhelming majority also felt that the United States should not allow the importation of products that have been made in conditions in violation of international labor standards." (Americans on Globalization, 2000). Confirmed recently by new World Public Opinion and Chicago Council on Global Affairs survey, *International Publics Strongly Favor Labor and Environmental Standards in Trade Agreements,* which found 93 percent of Americans (more than any other nation surveyed) believed that trade partners should maintain at least minimum standards for workers.

the trading system are available to all workers, and to ensure that the denial of workers' rights should not be a means for a country or industry to gain a competitive advantage (CRS2002). These objectives were incorporated, albeit tangentially, into the implementing language of the Uruguay Round (Brown 2000). The NAFTA was the first U.S. international trade agreement actively to include labor provisions. A labor side agreement known as the North American Agreement on Labor Cooperation (NAALC)[4] required each party to maintain high levels of labor protection without lowering standards to attract investors. It lays out seven basic objectives:

1. To improve working conditions and living standards;
2. To promote labor principles set forth in annex 1;
3. To encourage cooperation in promoting innovation and rising levels of productivity and quality;
4. To exchange information, data and studies to promote mutual understanding of laws and institutions in member countries;
5. To pursue cooperative labor-related activities of mutual benefit;
6. To promote each party's compliance with, and effective enforcement by each party, of its labor laws; and
7. To foster transparency in the administration of labor laws.

The NAALC stated principles specify 11 labor rights (NAALC, annex 1):

1. The freedom of association and protection of the right to organize;
2. The right to bargain collectively;
3. The right to strike;
4. The prohibition of forced labor;
5. Labor protections for children and young people;
6. Minimum employment standards, including minimum wage;
7. The elimination of employment discrimination;
8. Equal pay for women and men;
9. The prevention of occupational injuries and illnesses;
10. Compensation for occupational injuries and illnesses; and
11. Protection of migrant workers.

The NAFTA partners agreed to promote all 11 principles and to comply with their own labor laws and standards relating to these principles. When enforcement of the relevant rights is in question, the agreement outlined a

[4] NAALC is one of two side agreements to the NAFTA—the other concerns environmental cooperation. The NACLC established as part of the agreement, oversees the implementation of the agreement and monitor the abilities of the Parties to meet the obligations. NAFTA became effective January 1, 1994. See 9 U.S.C. §§ 3301-3473 (NAFTA) and specifically § 3471 for NAALC.

process for the parties to engage in government-to-government discussions. However, only three of these principles were made enforceable by sanctions if a country does not self-enforce: labor protections for children; minimum employment standards; and the prevention of occupational injuries and illnesses. The agreement (part II, article 3) required each party to "promote compliance and effectively enforce its labor law through appropriate government action." The NAALC further outlined procedures for consultation, the resolution of disputes and penalties for violation of the agreement.

To date, 34 complaints have been submitted through the NAALC. Twenty-one were filed with the U.S. administrative system, of which 19 involved allegations against Mexico and two against Canada. Eight were filed with the Mexican National Administrative Office (NAO) within the Labor Ministry. These eight involved allegations against the United States while another five submissions have been filed in Canada, three raising allegations against Mexico and two against the United States. Nineteen of these submissions have undergone complete review, and 14 have resulted in Ministerial-level consultation[5](Bureau of International Labor Affairs).

The Trade Act of 2002

The U.S. Congress formally established a framework for U.S. trade negotiations as part of Bipartisan Trade Promotion Authority (TPA)—renewal of fast-track authority—under the Trade Act of 2002 (19 U.S.C. §§ 3801-3813 (P.L. 107-210); signed into law August 9, 2002). The TPA includes labor provisions in both the principal and overall trade-negotiating objectives for trade agreements, including FTAs.[6]"Core labor standards," as defined by the TPA, are the same workers' rights identified in the U.S.-Jordan FTA (reviewed in the following section) and in the U.S. preferential trade programs noted above. The specific labor provisions included within the overall negotiating objectives are as follows:

1. Top romote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as defined in the TPA (§ 2113(6)), and an understanding of the relationship between trade and worker rights (19 U.S.C. 3802(a)(6)).The core ILO standards defined in the statute (19 U.S.C. 3813(6)), track the GSP program, *supra.*

[5] Further details on submissions are available through the U.S. Department of Labor, Bureau of International Labor Affairs *http://www.dol.gov/ilab/programs/nao/status.htm*

[6] Dispute settlement procedures are only available for labor provisions included within the principal negotiating objectives of the Trade Act of 2002, unless otherwise noted.

2. To seek provisions in FTAs in which the parties strive to ensure that they do not weaken or reduce the protections afforded in domestic labor laws as an encouragement for trade (§ 2102(a)(7)).

3. To promote universal ratification and full compliance with ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the worst forms of child labor (§ 2102(a)(9)).

Since the enactment of TPA legislation, the United States has negotiated and entered into FTAs containing workers' rights provisions with the following countries: Singapore (chapter 17); Chile (chapter 18); Australia (chapter 18); Morocco (chapter 16); Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua (CAFTA-DR, chapter 16); Bahrain (chapter 15); Oman (chapter 16); Peru (chapter 17); and Korea (chapter 18). Labor issues are also a component of ongoing U.S. FTA negotiations with Colombia; Ecuador; the United Arab Emirates (UAE); Thailand; Botswana, Lesotho, Namibia, South Africa, and Swaziland (SACU).[7]

Summary of Labor Provisions in FTAs

Jordan (2000)

Preceding the TPA legislation of 2002 (and thus lacking fast-track authority), the United States opened and completed the U.S.-Jordan FTA negotiations in 1994 (19 U.S.C. § 2112 note, P.L.107-043). Signed on October 24, 2000, the agreement was the third U.S. FTA, following the U.S.-Israel FTA (1985) and the NAFTA, and the first with an Arab country. It was also the first to include labor and environment provisions in the main body of the agreement. Prior to the agreement, major labor reforms in Jordan in 1996 had brought many labor laws up to international standards (specifically changing the minimum age for labor from 13 to 16 years). And in 1999, Jordan officially ratified ILO convention No.182 to eliminate the worst forms of child labor.

[7] Under the TPA legislation, the U.S. Department of Labor must submit three labor-related reports to the U.S. Congress for each new FTA. These include (1) a report assessing the potential impact of the FTA on U.S. employment, (2) a report on labor conditions in the partner country/countries, and (3) a report on the partner country/countries laws governing exploitative child labor and compliance with ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. These reports are public and are posted at the U.S. Department of Labor's website.

The labor chapter (article 6) consists of six paragraphs and asserts that each party shall“ trive to ensure ”that it slab or principles are protected by domestic law (article 6.1) and are not weakened to encourage trade (article 6.2). It recognized that each party has the right to establish its own domestic labor laws and regulations, but which must be consistent with the internationally recognized labor rights (article 6.3). Each party “shall not fail to effectively enforce its labor laws.” Each retains the right to exercise discretion over investigatory, regulatory, and compliance matters and the level of resources committed (article 6.4). Cooperation between the parties to improve labor standards is “encouraged” (article 6.5).

The agreement defined “labor laws” as statutes or regulations directly related to–(1) the right of association; (2) the right to organize and bargain collectively; (3) the prohibition on the use of any form of forced or compulsory labor; (4) minimum employment age; and (5) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health (article 6.6). All of these provisions are subject to the agreement dispute settlement process.

The United States maintains an ongoing dialogue with key actors in the labor sector in Jordan, including union leaders, ILO officials, industrial park managers, factory owners and government representatives. On several occasions U.S. officials and the Jordanian Government discussed implementation of Jordan’s international commitments to fight child labor and trafficking (Country Report on Human Rights Practices 2005).

Singapore (2003)

The U.S.-Singapore FTA was the first in the series of FTAs negotiated and implemented under the authority of the Trade Act of 2002. In 2000, President Bill Clinton and Singaporean Prime Minister Goh Chok Tong announced the beginning of FTA negotiations. On May 6, 2003, President Bush signed the agreement. Implementing legislation was passed in July of that year, in tandem with the Chilean FTA. Debate in Congress centered, first, on the future use of the agreement labor and environmental provisions as a template for other FTAs and, second, on dissatisfaction with the movement of natural persons provisions of the legislation.

Growing attention to labor standards is reflected in the Singapore Agreement. Chapter 17, “Labor,” spans three-and-a-half pages (compared to six paragraphs in the Jordan FTA), including a two-page annex specifying the requirements of the U.S.-Singapore Labor Cooperation Mechanism. It is useful to cover it in depth here inasmuch as it lays the foundation for subsequent FTAs and serves as a reference point.

Chapter 17 reaffirms the parties' commitment to the ILO Declaration of Fundamental Principles and Rights at Work and to "strive to ensure" that its laws provide for labor standards consistent with internationally recognized labor rights (article 17.1). Each party guarantees "to effectively enforce its labor laws," but retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory and compliance matters, and resource commitments. Each agrees that it is inappropriate to encourage trade or investment by weakening protections (article 17.2). Each ensures that parties with a legally recognized interest "have appropriate access to administrative, quasi-judicial, judicial, or labor tribunals for the enforcement of the Party's labor laws." Proceedings must be "fair, equitable and transparent. "Remedies to ensure the enforcement of rights must be available. Parties shall promote public awareness of the laws (article 17.3).

The agreement details institutional arrangements for labor protections. The Joint Committee set up (chapter 20) to oversee Administration and Dispute Settlement was intended to include discussion of labor. The Dispute Settlement provisions limited annual damages to $15 million per violation per annum, with an inflation factor based on the U.S. inflation rate, for assessments after 2004 (article 20.7). This provision, criticized for not providing sufficient incentive for compliance, is consistent through subsequent FTAs.

The subcommittee on labor affairs, comprised officials of both parties, was to meet as deemed appropriate. Each party 'shall' designate an office within its labor ministry to serve as a point of contact with the other party and the public for the purpose of enforcing this chapter. Each party could convene a "national labor advisory committee, comprising members of its public" to advise on the implementation of this chapter. All formal decisions regarding implementation were to made public (article 17.4).

The agreement established a framework for technical assistance (article 17.5), detailed in the annex. Dispute resolution on any matter was set to commence within 30 days of a request by either party. If failing to resolve the matter, the Subcommittee on Labor Affairs was to be convened within 30 days. If a resolution were not reached, either party can pursue the issue under dispute settlement procedures under article 20.4.2(a) (article 17.6). Definitions of labor laws are clarified in article 17.7.

Recognizing the value of cooperation, the agreement established a Labor Cooperation Mechanism, set forth in annex 17A, which identifies contact points (officials of labor ministries and other agencies) for establishing priorities, developing specific cooperative activities, and for exchanging information related to related to labor-management relations, working conditions, unemployment assistance, human resource development and labor statistics. Cooperation was also encouraged through exchanges of people and

information, conferences, and collaborative research or other projects (annex 17A).

Chile (2003)

The United States and Chile announced an agreement December 11, 2002. Implementing legislation was passed the following July. The labor chapter grew to five pages, with a three-page Labor Cooperation Mechanism annex. The U.S. business community supported the agreement as a measure to help compete with Canadian firms that already enjoyed preferential treatment because of the 1997 Canada-Chile FTA. Critics challenged the FTA on the grounds that basic worker rights' obligations, such as freedom of association, the right to form unions and bargain collectively, and limitations on child labor, were not subject to as rigorous a dispute settlement process as was provided in the U.S.-Jordan FTA.

The Chilean agreement labor chapter steps beyond the Singaporean agreement. It added, "(f)or greater certainty," decisions by each party's judicial or administrative tribunals would not be subject to revision or reopening (article 18.3.4). It also elaborates on institutional arrangements. The agreement established a Labor Affairs Council (Singapore FTA left it optional) at the Cabinet level. The council shall meet in public sessions within the first year to review progress and to pursue the labor objectives of the agreement. Each party shall establish an office as a point of contact. The Council "shall establish its work program and procedures," will make decisions public, may convene national advisory committees and shall share and ensure public communications (article 18.4).

A Labor Cooperation Mechanism is defined (article 18.5) and set out in an annex. Cooperative consultations are laid out much as in the Singaporean FTA, but with an admonition for promptness and the use of the formal points of contact. A roster of labor experts is required within six months, who, upon mutual consent of the parties, will serve as panelists in disputes (including four nonparty nationals) related to labor matters. The Labor Cooperation Mechanism adds emphasis on studying social protections (including migration), problems of small and medium-size enterprises, and problems of economic integration for advancing labor objectives (annex 18.5).

Australia (2004)

In 2004, the President signed the FTA with Australia, which was then approved by Congress (House 270-156; Senate 80-16). Labor issues were not a major concern, and the related provisions of the agreement mirrored in more general terms the requirements of Chile and Singapore. An annex was not included.

Bahrain (2004)

The U.S. FTA with Bahrain was signed September 14, 2004, and approved by Congress in 2005 (House 327-95 with 10 not voting; Senate: voice vote approving).[8]The labor chapter followed the Singapore/Chile language but included extra detail under Procedural Guarantees and Public Awareness. It specified that tribunals enforcing labor laws "comply with due process of law" be public, parties be entitled to defend their positions with information or evidence, and "proceedings do not entail unreasonable charges or time limits or unwarranted delays." Final decisions are based on the merits of the case (evidence heard publicly) and must state in writing the reasoning behind the decision. Parties in such proceedings shall have a right to seek review of the decisions. Tribunals shall be impartial and have no substantial interest in the outcome of the matter (article 15.3).

A subcommittee of labor affairs may be established to discuss matters related to labor relations between the two countries (article 15.4). A Labor Cooperation Mechanism was not set up explicitly.

Morocco (2004)

The Morocco FTA is an integral part of President Bush's strategy to create a Middle East Free Trade Area by 2013. The agreement was approved by Congress in July 2004 (House 323-99; Senate 85-13) and support was broad.[9] However, the Labor Advisory Committee expressed concerns, echoed by several Democratic members of the Ways and Means Committee at the July 7, 2004,hearing, that the trade agreement does not go far enough in encouraging Morocco to meet basic international labor standards (CRS report on the US-Morocco FTA).

Extra steps were taken in the Morocco agreement to surpass the Singapore/Chile provisions; official contacts in the respective labor ministries were required (article 16.4) and a Labor Cooperation Mechanism was set out (annex 16A). Labor consultations were placed back on a 30-day schedule for convening a subcommittee to discuss problems. In addition, two side letters were included. The first establishes an agreement between parties that

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[8] Bahrain has diversified its economy away from dependence on petroleum and has created a services hub for information technology, telecommunications and health care. U.S. merchandise trade with Bahrain totaled $802.6 million in 2002. Imports of $395.1 million included apparel, textiles, fertilizers, chemicals and aluminum and exports of $407.5 million were led by aircraft and aircraft parts, military equipment, passenger vehicles, machinery and not surprisingly, air conditioning equipment (CRS, 2004 "Trade Negotiations in the 108th Congress").

[9] By July 2003, a Moroccan Caucus had been formed in the House of Representatives.

nonnationals are provided all the rights and benefits of citizens under the respective labor laws (Zoellick letter, June 15, 2004). The second letter confirms the understanding that if a dispute arises related to a party's implementation of the labor provisions (and for environmental provisions) of the agreement, panelists hearing the dispute "other than those chosen by lot from the reserved list shall have expertise or experience relevant to the subject matter that is under dispute" (Zoellick letter, June 15, 2004).

CAFTA-DR (2005)

On August 5, 2004, the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic signed the CAFTA-DR.[10] In July 2005, the agreement was approved by Congress (House 217-215; Senate 54-45). At the time of this writing ,all signatories but Costa Rica have ratified the agreement.[11]Criticism arose from those supporting agriculture (primarily sugar), environment and labor interests, including strong opposition from organized labor.[12]

Chapter 16 (Labor) of the CAFTA quotes some of the language of the Bahrain agreement for procedural guarantees, specifically calling for due process (article 16.3). It calls for a Labor Affairs Council to meet within a year and lists one purpose, to create a "Labor Cooperation and Capacity-Building Mechanism." The Council will develop guidelines for considering communications among the official contacts. Decisions of the Council will be by consensus and made public (unless otherwise decided). A labor roster is called for with up to 28 names of individuals willing to handle disputes on labor issues (article 16.7).

The Capacity-Building Mechanism (article 16.5) adds tothe listof laborissues to be considered, including "employment opportunities," "gender," and

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[10] U.S. trade with the region totaled $34.9 billion in 2005. The United States imported $18.1 billion (primarily apparel items, bananas, coffee and integrated circuits) and exported $16.8 billion (led by apparel,textiles, electrical generating equipment and electrical components for assembly).

[11] "The United States is implementing the CAFTA-DR on a rolling basis as countries make sufficient progress to complete their commitments under the agreement. The agreement first entered into force between the United States and El Salvador on March 1, 2006, followed by Honduras and Nicaragua on April 1, 2006, and Guatemala on July 1, 2006. The U.S. Government continues to work with the remaining two CAFTA-DR partners (Costa Rica and the Dominican Republic) to ensure timely and full implementation of the Agreement" (Export.gov).

[12] See for example, John Sweeney, "CAFTA, More False Promises," at *http://www.aflcio.org/aboutus/thisistheaflcio/outfront/cafta.cfm*

"technical" issues, the latter of which includes productivity improvement, best labor practices and the effective use of technologies (annex 16.5)

Oman (2006)

The U.S. FTA with Oman was signed January 19, 2006, and approved by Congress that June (House 221-205-7 abstentions; Senate 60-34).[13]Supporters of the agreement typically cite political and economic reasons. Opponents typically point to labor and human rights issues (CR-Oman 2006). Support came from 24 of the 27 U.S. trade advisory committees representing business labor, environment, state and local government, agriculture, various industries and functional areas. Criticism came from the remaining three trade groups: environment, intergovernmental affairs and labor (CRS Oman 2006). Labor groups, the most vocal critics, concentrated on two basic issues: weaknesses in the proposed agreement, and weaknesses in Omani laws and enforcement, for which the proposed agreement does not adequately compensate.

The labor chapter follows the FTA with Bahrain for due process and procedural guarantees. It includes in labor laws, "a Sultani Decree or Decision," and all Ministerial or local decisions promulgated pursuant to it (article. 16.7).

[13] The U.S.-Oman FTA is the fifth U.S. bilateral FTA with a country in the proposed Middle East Free Trade Area (MEFTA). MEFTA would consist of 16 countries in the Middle East and four in North Africa. Other U.S. FTAs in the Middle East are with Israel, Jordan, Morocco, and Bahrain. A sixth is being negotiated with the United Arab Emirates. The proposed FTA with Oman is similar to other MEFTA FTAs and has three basic parts: new tariff schedules, broad commitments to open markets and provisions to support those commitments, and protections for labor and the environment. It would provide immediate duty-free access to the U.S. for almost all consumer and industrial goods, with special provisions for agriculture, textiles and apparel.

Development of Labor Laws and Standards in FTA Partners

Jordan

In 2006, the U.S. National Labor Committee, a U.S. worker advocacy group, released a report detailing labor rights violations in the Jordanian Qualified Industrial Zone (QIZ) factories. QIZ factories are certified to sell under a special arrangement through the U.S.-Israel FTA. Of approximately 54,000 workers in QIZ plants, 66 percent are foreign. Companies outside Jordan owned more than 80 percent of QIZ investments (AmCham Report 2006).

Although Jordan's labor laws fulfilled the FTA requirement for enforcement of core ILO standards, Jordan's 1996 Labor Code excludes noncitizens, along with civil servants, domestic workers, gardeners, cooks and agricultural workers (mostly foreign). Substantial abuses were found, including excessive hours and abuse of overtime pay, poor housing conditions and sanitation, and noncompliance with health and safety regulation. Nearly 200 penalties were imposed by the government and at least two establishments were closed. Measures continue to be applied to prevent further abuses (Jordan Ministry of Labor Report 2006).

Singapore

The Government of Singapore ratified ILO Convention No. 182 in 2001. Beginning in 2003, education became compulsory for all children born after January 1, 1996. The Children and Young Persons Act (2001) and Women's Charter prohibits trafficking in children, and violators are subject to imprisonment for up to five years and a fine not to exceed S$10,000 (US$5,587). Singapore has ratified four ILO core labor standards, one (out of two) in each of the four larger categories: freedom of association and collective bargaining, elimination of forced labor, elimination of employment discrimination, and abolition of child labor. It has denounced Convention105 on forced labor. Nor has the United States ratified convention 105. Singaporean laws cover all five of the worker rights identified for U.S. FTAs.

Chile

Beginning in 1995, Chile began revising its labor code to bring it into compliance with international standards and to address many of the outstanding concerns and complaints of workers. Chilean labor law had been criticized for its weak deterrence of anti-union activities, particularly the use by employers of a "needs-of-the-company" claused esigned to allow companies

to dismiss workers for economic reasons. Unions argued that this had been used primarily to dismiss union members. Workers were unable to appeal their dismissal on the grounds of anti-union bias, and the labor law did not allow reinstatement for unfair dismissals, except in cases of *fuero sindical* (protection of union officials). Employers also were seen to have an advantage during collective bargaining as they were not required to disclose corporate information unless it was relevant to the workers' proposal (ILAB 2003).

With the ratification of ILO Convention No. 182 in July 2000, Chile has ratified all eight ILO core conventions. The revision of the national labor code in 2001 by the Chilean National Congress improved Chile's legislation on freedom of association and the right to organize, while retaining key elements of labor market flexibility (ILAB 2003). In January 1999, Chile ratified ILO Conventions No. 87 on freedom of association and protection of the right to organize and No. 98 on the right to organize and bargain collectively. In September 2001, after six years of discussion and debate, Chile's Senate enacted significant reforms to the labor code, which had been drafted with technical assistance from the ILO. The reforms expanded protection against dismissal of union officials (*fuerosindical*), substantially increased penalties for unfair dismissals, provided for the reinstatement of trade unionists dismissed unjustly and strengthened the laws governing disclosure of corporate information (ILAB 2003). Chile has laws covering all five U.S. internationally recognized workers' rights.

Australia

In 2001 and 2003, the Australian states of Victoria and New South Wales enacted laws to strengthen protections for children in the workplace and, in Victoria, increased fines for child labor abuses. Imposing conditions amounting to slavery carries a penalty of up to 25 years imprisonment under the Criminal Code Amendment (Slavery and Sexual Servitude Act of 1999).

Bahrain

Bahrain enacted significant labor law reforms in 1993 and again in 2002, when the Trade Union Law was promulgated. The 2002 reformed labor law permits independent labor unions for the first time since the early 1970s: Domestic and foreign workers are allowed to form and join trade unions under the new law. The 2002 constitution recognizes freedom of association, and there are now about 40 private-sector unions representing 10,700 workers, and six public-sector unions, representing approximately 6,000 civil servants, operating in Bahrain. The General-Secretary of the International Confederation of Free Trade Unions (ICFTU) in Brussels has publicly hailed Bahrain as showing the way for the region.

The Bahraini legislature is considering additional labor law amendments, including the introduction of an unemployment insurance system. The Bahrain Ministry of Labor has increased the number of inspectors and upgraded their standards and training. Efforts are also under way to better educate workers, including expatriates, about their rights in the workplace. The Ministry has also created a more responsive system to complaints, including a 24-hour hotline that workers can call for advice.

Morocco

The prospect of a FTA with the United States helped to forge a domestic consensus for labor law reform in Morocco, spurring reform efforts that had been stymied for more than 20 years. The U.S. Government, through the Department of Labor, has an assistance program (nearly $9.5 million) designed to improve industrial relations, promote activities to combat child labor and enforcement of the new labor code. A comprehensive new labor law went into effect on June 8, 2004. The law—

1. Increased the minimum employment age (from 12 to 15 years) to combat child labor;
2. Reduced the work week from 48 to 44 hours with overtime rates payable for additional hours;
3. Called for periodic review of the Moroccan minimum wage (effective July1, 2004, the minimum wage will increase by 10 percent);
4. Improved worker health and safety regulations, addressed gender equity in the workplace, and promoted employment of the disabled; and
5. Guaranteed rights of association and collective bargaining and prohibited employers from taking actions against workers because they are union members.

Morocco has ratified seven of the eight ILO core conventions and is considering ratification of the final one.

CAFTA-DR

All six CAFTA-DR signatory countries invited the ILO to perform an assessment of their labor laws in 2003 and 2004, and again asked for the assistance of the ILO in a white paper on labor issued in 2005. Moreover, these countries requested that the ILO review the extent to which their labor laws implemented the ILO core conventions and internationally recognized labor rights.

In their study entitled "Fundamental Principles and Rights at Work: A Labour Law Study, "the ILO found that labor laws on the book sin Central Americaa nd the Dominican Republic were generally in line with the ILO core labor

standards. Indeed, labor laws in effect throughout the region were broadly similartothelaborlawsofscrutinizedintheMorocco-FTAand,insomeareas (such as child labor) were stronger.

Costa Rica

The Costa Rican Government passed new regulations that clarified legal protections given to trade unions and specified limitations on the role of solidarity associations. The government issued administrative guidelines to guarantee the speedy implementation of procedures dealing with allegations of anti-union practices—proceedings must be concluded within 2 months. Having appointed 37 new labor court judges, the government has tried to cut the backlog of labor cases in the judicial system. The government created a Dispute Resolution Center (RAC) within the Ministry of Labor to address mediation and conciliation issues. In 2003, it reported handling 2,462 cases, reaching agreement in nearly 80% of them. Finally, the Ministry of Labor budget increased by 25 percent from 2002 to 2005, strengthening enforcement and labor official training efforts (Working Group 2005).

El Salvador

The El Salvadoran Government has strengthened inspections and enforcement of labor laws. The government raised the Labor Ministry budget through large supplementals for the past two fiscal years; increased the number of labor inspectors from 40 in 2002 to the current 62; implemented a zero tolerance policy against corruption, and dismissed inspectors for this conduct; and decreased the average time to hear a complaint from 3 or 4 weeks to 1 or 2 weeks. The government also increased civil money penalties on anti-union violations to a fine of 10 to 50 times the monthly minimum wage (depending on severity).

To respond to concerns about maquiladoras in free trade zones (FTZ), the Labor Ministry has opened new permanent field offices in the three largest FTZs. In addition, the Free Zones and Commercialization Law was amended and tax benefits and export licenses can now be withheld if firms fail to abide by labor law provisions.

Procedures to register and legally recognize new trade unions were streamlined; the Labor Ministry now provides free legal assistance to workers on how to file a union registration form. Lawyers from the Office of the Attorney General are now based in the Ministry of Labor and provide freelegal assistance to workers filing complaints or initiating judicial proceedings.

In February 2004, the Legislative Assembly approved an amendment to the labor code to prohibit employers from requiring pregnancy tests for women

seeking employment. The new law prohibits this practice as it relates to hiring, dismissals, or any employment condition.

El Salvador was the first country in Central America to ratify ILO Convention 182 on child labor, and the first to commit to a "time-bound" program to eliminate the incidences of these conditions by a fixed date. El Salvador has removed or prevented 15,880 children from exploitative child labor in fireworks production, fishing, sugarcane harvesting, commercial sexual exploitation, and garbage-dump scavenging.

Guatemala

Progress on labor issues in Guatemala has been part of an effort to overcome the legacy of civil war and violence that lasted until 1996. Labor organizations and the private sector were at the center of this conflict, complicating their current relationship. The government has increased efforts to ease these tensions by preventing forms of worker right violations and ending violence against trade unions. During 2003 and 2004, there was a marked decease in reported violence against trade leaders (Working Group, 2005).

Efforts have been made to reform the judicial system for labor. In 2003, the Supreme Court decentralized the court system outside of Guatemala City to improve access to the courts. At the same time, accountability and professionalism of judges and courts throughout the country has been targeted (Working Group 2005).

Finally, the government threatened to revoke export licenses for firms in the EPZ that were noncompliant with labor laws. Shortly after, two maquila factories agreed to the first-ever collective bargaining agreement with EPZ trade unions. A new unit was also created in the Ministry of Labor to verify labor law compliance in the maquila sector. The Ministry now provides free legal advice to trade unions and workers seeking to form new unions (CAFTA Facts, 2005).

Honduras

In response to the ILO labor law study, the Honduran Government convened a high-level tripartite (labor, management, government) consultation group to analyze the report and recommend a significant revision of the labor code. (The other CAFTA signatories undertook labor law reforms within the last decade, with assistance from the ILO.) Action was taken to address several issues.

The judicial system has expedited the backlog of labor cases, some of which dated to the mid-1990s. By 2005, the duration of a labor case was cut in half, ranging from eight to 22 months (The Labor Dimension in Central America and the Dominican Republic, 2005). In 2003 the government issued a regulation

specifying the obligation of employers to grant access to labor inspectors and fining noncompliant employers. The government also opened more regional offices to make ministry services more accessible, including a labor inspections office dedicated to working conditions in enterprise zones (EPZs) (CAFTA Facts, 2005).

Nicaragua

Despite severe resource constraints, the Nicaraguan Government has undertaken several efforts to improve the protection of labor standards. In response to the ILO labor law study of 2003, the government amended the regulations on trade union organizations and removed the requirement that elected union leaders be Nicaraguan citizens. As part of this reform, Decree No. 93-2004 was issued to allow unions to establish in their bylaws the causes for dismissal of union members. This decree also allowed federations and confederations to participate in any procedures to resolve labor disputes, including strikes.

The government reformed civil service protections for labor inspectors inJune 2004; their tenures were no longer jeopardized by political changes in administrations. Experienced inspectors can now build on expertise as they assist those with less experience. A new special labor prosecutor also was established to provide legal representation to the Labor Ministry when pursuing labor code violations. The ministry now has authority to ensure compliance with fines, previously flouted with impunity. Additionally, the courts issued an important ruling that protects union leaders from dismissal. When a court ordered reinstatement, previously employers could instead pay back wages and severance. The court has ruled that this option cannot be applied to union leaders, who must be reinstated with back pay.

In 2004, the World Bank approved a $70 million Poverty Reduction Support Credit, "in recognition of the Nicaraguan administration's significant accomplishments in the fight against corruption, the restoration of economic discipline, and commitment to poverty reduction" (CAFTA Facts 2005).

Dominican Republic

The Dominican Department of Labor established a joint protocol among the union federations, employer federations, and the Association of Free Trade Zones, in which all parties commit to improve the enforcement of labor rights inFTZs. Aseriesof lawswas passedto addresstrafficking inpeople andunfair practices against the most vulnerable workers. These include: the Law against Trafficking in Persons and Alien Smuggling, which establishes penalties of 15-20 years imprisonment and a fine of 175 times the minimum wage for convictions; and the new Code for the Protection of Children and Adolescents, which criminalizes child prostitution and child pornography. Also, special prosecutors were appointed throughout the country to eliminate the child trafficking. New regulations were issued updating hazardous work orders for children younger than 18 years. A work permit program was instituted that allows Haitian laborers to work without risk of deportation and protects the payment of fair wages. The Dominican Association of Free Zones and the Government of Spain conducted an awareness campaign for workers and employers on the issue of pregnancy testing as a condition for employment. This included six workshops and informational materials (Working Group 2005).

Oman

On July 9, 2006, Oman issued a Royal Decree covering many of the commitments it made. According to its government, this decree canceled or superseded all provisions of the labor law that contravene or contradict its provisions. Among these important reforms are changes to the terms of reference for workers' organizations to "unions" (formerly "representative committee") and "federations" (formerly "main representative committee"). The decree—

1. Directs the Minister of Labor to issue regulations to allow for collective bargaining;
2. Prohibits dismissal of workers for union activity;
3. Allows for more than one union per workplace;
4. Prohibits dismissal for union activity and established tougher penaltiesf for employers who engaged in anti-union activity;
5. Guarantees the right to strike;
6. Guaranteesunionsandfederationstherightstopracticetheiractivitiesfreely and without interference from outside parties;
7. Prohibits dismissal for union activity and established penalties, including fines and imprisonment for depriving workers of their rights to carry out lawful union activities, and

8. Increases penalties, including fines and imprisonment, for child labor violations.

Conclusions

U.S. trade policy has a long history of incorporating labor concerns. Special trade preferences programs and regional agreements have been especially proactive in requiring U.S. trading partners to upgrade their labor laws and standards. They have also created mechanisms for dialogue, increased transparency, and open avenues for more effective enforcement and dispute resolution by parties inside and outside the countries.

GSP alone reaches approximately 140 countries. These measures are helpful only if there is implementation and application. As the Jordan case highlights, this is an evolutionary process that depends heavily on determined monitoring. Trade agreements setting forth measures to improve workers conditions have not answered all concerns. More research is needed to gauge real progress. At this point, it can be said only that measures that could lead to real labor reforms in partner countries are being promulgated.

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