

# Michigan Journal of International Law

---

Volume 26 | Issue 1

---

2004

## The Importance of Core Labor Rights in World Development

Jonathan P. Hiatt  
*AFL-CIO*

Deborah Greenfield  
*AFL-CIO*

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [International Trade Law Commons](#), and the [Labor and Employment Law Commons](#)

---

### Recommended Citation

Jonathan P. Hiatt & Deborah Greenfield, *The Importance of Core Labor Rights in World Development*, 26 MICH. J. INT'L L. 39 (2004).

Available at: <https://repository.law.umich.edu/mjil/vol26/iss1/3>

This Article is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mjil.repository@umich.edu](mailto:mjil.repository@umich.edu).

# THE IMPORTANCE OF CORE LABOR RIGHTS IN WORLD DEVELOPMENT

*Jonathan P. Hiatt\**  
*Deborah Greenfield\*\**

|  |    |
|--|----|
| I. INTRODUCTION.....   | 39 |
| II. CORE LABOR STANDARDS—THEIR DEFINITION<br>AND IMPORTANCE..... | 42 |
| III. THE ARGUMENT FOR TRADE-LABOR LINKAGE.....                   | 46 |
| IV. U.S. LEGISLATION ON TRADE-LABOR LINKAGE.....                 | 52 |
| V. RECENT EXAMPLES OF BILATERAL TRADE-LABOR LINKAGE.....         | 55 |
| A. <i>Cambodia</i> .....   | 55 |
| B. <i>Jordan</i> .....   | 59 |
| VI. CONCLUSION.....  | 61 |

## I. INTRODUCTION

On March 25, 1911, a fire started in a rag bin at the Triangle Shirt-waist Company in New York City. Hundreds of women worked there, sewing garments ten to twelve hours a day, seven days a week. The blaze swept through the upper floors of the factory, beyond the reach of fire ladders. The exit doors were locked, leaving the workers trapped as the fire took hold. A crowd in the street below looked on in horror as hundreds of young girls, their hair and clothes burning, threw themselves from the building to escape the blaze. One hundred forty-six workers, most of them women, died.

Almost a century later, history repeated itself. In 1993, the worst industrial fire yet recorded broke out at the mammoth Kadar Industrial Toy Co. near Bangkok. Kadar's 3000 workers, who were mostly women, some as young as thirteen, made items such as Sesame Street dolls, Bart Simpsons, and Muppets that were marketed under the Fisher-Price, Hasbro, and Tyco brand-names and destined for American retailers such as Wal-Mart and Toys R Us. Again, the fire exits were blocked. Again, desperate women jumped from the upper stories as their hair and clothes caught fire. The death toll was 188, with another 469 seriously injured.

Despite their wide separation in time and distance, the root causes of these disasters are all too similar. The Triangle fire took place in a U.S. economy undergoing a profound transition from agriculture to industry,

---

\* General Counsel, AFL-CIO.

\*\* Associate General Counsel, AFL-CIO. The authors are indebted to Mark Barenberg, George Faraday, Jason Judd, Anne Knipper, Thea Lee, Fay Lyle, and Barbara Shailor for sharing their knowledge, assistance, and support.

from local to national markets, from household enterprises to giant corporations. The economic transformation created vast fortunes alongside widespread urban poverty. Frenetic growth alternated with savage recession. Calls for reform and regulation were rejected in the name of *laissez faire* orthodoxy. The courts zealously protected the rights of property owners, while outlawing worker attempts to form unions, and striking down state attempts to set minimum standards for wages, health, and safety as illegal restraints on trade, or a taking of property. Ultimately, however, workers organized, muckrakers exposed the sweatshops, populist movements erupted, social reformers demanded change, and a Republican, Teddy Roosevelt, advised by enlightened corporate leaders, laid out a reform agenda that eventually led to the enactment of legal and regulatory protections for workers, consumers, and the environment. Moreover, contrary to the dire warnings from the National Association of Manufacturers, the banks, and big business, these reforms fostered not only economic equity, but also a faster-growing, more stable economy; one in which workers could afford to buy the products they made and companies competed with one another by innovating rather than exploiting their workforce.

The economic transformation occurring on the international level today is in important ways analogous to that which took place domestically in the United States in the early part of the last century. The contemporary process of globalization has generated vast fortunes for multinational corporations—as of three years ago, *forty-nine out of the hundred largest economies in the world were multinationals*. Yet little of this wealth has reached the workers of the world's new sweatshops. Economic growth is failing to deliver “human development”—that is, tangible improvements in the welfare and dignity of the majority of developing-country populations.

Indeed, according to the United Nations' most recent report on human welfare, standards of living are deteriorating in many countries of the world:<sup>1</sup>

[H]uman development is proceeding too slowly. For many countries the 1990s were a decade of despair. Some 54 countries are poorer now than in 1990. In 21 a larger proportion of people is going hungry. In 14, more children are dying before age five. In 12, primary school enrolments are shrinking. In 34, life expectancy has fallen. Such reversals in survival were previously rare.<sup>2</sup>

---

1. UNDP, SUMMARY: HUMAN DEVELOPMENT REPORT 2003 5 (2003), available at <http://hdr.undp.org/reports/global/2003/pdf/hdr03-summary.pdf>.

2. *Id.* at 2.

These trends demonstrate that in the world today, no less than in early-20th century America, economic development creates only the *potential* for real improvements in the lives of working people. As the International Labor Organization (ILO) states, “. . . growth can be ruthless or it can be poverty reducing—depending on its pattern, on structural aspects of the economy, and on public policies.”<sup>3</sup> Unfortunately, the mode of international regulation currently dominant has produced an exploitative and unstable economic system all-too similar to that of pre-reform United States International law and trading regimes protect property but not people. The World Trade Organization (WTO) enforces copyright but ignores worker rights.

In the absence of effective labor regulation at the international level, multinational corporations have every incentive to base their operations in countries where labor is cheapest, most docile, and least protected. Governments are driven into a regulatory “race to the bottom” as they seek to provide the most attractive environment to international capital. While much of the discussion of this phenomenon has centered on the adverse effects endured by developed nations, developing countries are not insulated from such detriments.<sup>4</sup> For example, it is all too common for multinationals to outsource from an already cheap labor market in a developing nation to another even cheaper one, regardless of whether slight wage increases or a regulatory shift in workers rights has occurred. And typically, in countries that lack even the most basic human rights standards, the social safety nets in place are far from equipped to handle such perpetual economic erosion. In other words, it is becoming apparent that the race to the bottom is being carried out in a “bottomless” vacancy. Moreover, the downward pressure on wages produced by this system minimizes the potential economic benefits of foreign investment to its host countries by suppressing domestic demand and forcing continuing dependence on export markets.<sup>5</sup>

---

3. Press Release, International Labour Organization, Global unemployment remains at record levels in 2003 but annual ILO jobs report sees signs of recovery (Jan. 22, 2004) *available at* [www.ilo.org/public/english/bureau/inf/pr/2004/1.htm](http://www.ilo.org/public/english/bureau/inf/pr/2004/1.htm). *See also*, SANDRA POLASKI, TRADE AND LABOR STANDARDS: A STRATEGY FOR DEVELOPING COUNTRIES 10 (2003), *available at* [http://www.ceip.org/files/pdf/Polaski\\_Trade\\_English.pdf](http://www.ceip.org/files/pdf/Polaski_Trade_English.pdf).

4. *See generally*, AMERICAN CTR. FOR INT’L LABOR SOLIDARITY/AFL-CIO, JUSTICE FOR ALL: A GUIDE TO WORKER RIGHTS IN THE GLOBAL ECONOMY 249–52 (2003) [hereinafter JUSTICE FOR ALL].

5. *See*, Thomas Palley, *The Economic Case for International Labor Standards: Theory and Some Evidence*, AFL-CIO PUB. POLICY DEP’T (2004); Thomas Palley, *Labor Standards, Economic Governance, and Income Distribution: The Cross-Country Evidence*, AFL-CIO PUB. POLICY DEP’T (2004); TOKE AIDT & ZAFIRIS TZANNATOS, WORLD BANK, UNIONS AND COLLECTIVE BARGAINING: ECONOMIC EFFECTS IN A GLOBAL ENVIRONMENT (2002).

In the early-twentieth-century United States, the race-to-the-bottom problem was ultimately addressed by effective action from the legislature and judiciary at the national level.<sup>6</sup> If conditions are to improve for the workers of the new industrializing nations of the South, national-level responses are not enough. The premise of this paper—and a fundamental goal of free labor movements in both the developed and developing world—is that promotion of, and adherence to, the core labor standards defined by the ILO must accompany economic growth if real human development is to be achieved. Developing countries “badly need access to rich markets for their products, and basic labor rights will promote more equitable, broad-based development and greater distribution of the gains from trade to the poor.”<sup>7</sup> Ultimately, these standards must be incorporated into the WTO’s global trading regime. In the meantime, adherence to these rights must become a condition of trade relationships between the U.S. and its trading partners.

Below we discuss the meaning and significance of core labor standards and the importance of linking them to trade agreements. We explain why the “protectionist” label often attributed to such linkage efforts by their detractors is misleading, as the example of China illustrates, repression of labor rights constitutes a form of unfair competition which undermines efforts to create a more just and stable world economy.

Finally, we discuss measures taken by the United States to encourage its trading partners to respect basic labor rights. For example, the recent experience in Cambodia demonstrates how such linkage can, in fact, promote democracy and development. We also consider the recently negotiated U.S.-Jordan Free Trade Agreement, comparing the model of trade-labor linkage therein to the inadequacy of those provisions contained in subsequently enacted bilateral trade agreements.

## II. CORE LABOR STANDARDS—THEIR DEFINITION AND IMPORTANCE

In May 1998, President Clinton addressed the WTO on the need to build a global trading system that delivers real benefits to ordinary people. He called on the WTO to work with the ILO to ensure that core labor standards are incorporated into the rules of international trade, arguing that

---

6. *United States v. Darby*, 312 U.S. 100 (1941).

7. *POLASKI*, *supra* note 3, at 5.

these standards “are essential not only to workers rights, but to human rights everywhere.”<sup>8</sup>

Just one month after his address, the ILO’s 177 member countries unanimously ratified a landmark Declaration on Fundamental Rights at Work (Declaration).<sup>9</sup> The Declaration identifies four universally accepted workplace human rights as core labor rights, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labor;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.<sup>10</sup>

The core labor standards identified by the Declaration have their origin in eight ILO conventions approved by the Organization over the past fifty years.<sup>11</sup> Yet, the Declaration was born out of the frustration that after nearly half a century, little progress had been made in achieving universal adoption of these conventions in both developed and developing countries. The United States, for example, has to date ratified only two of the eight ILO Conventions that relate to these core rights.<sup>12</sup>

The Declaration represents a breakthrough for the world community, not only because it has largely ended controversy as to which particular worker rights constitute the internationally recognized set of “core” worker rights, but also because it expressed its member countries’ assent to the principle that they were bound to respect and promote these rights,

---

8. President William J. Clinton, Address at the Second Ministerial Conference of the World Trade Organization (May 18, 1998), in *50TH ANNIVERSARY OF THE MULTILATERAL TRADING SYSTEM* 16, 17 (1998).

9. *ILO, ILO Declaration on Fundamental Principles and Rights at Work*, in 2 INTERNATIONAL LABOUR CONFERENCE 86TH SESSION RECORD OF PROCEEDINGS 20 (1998), available at <http://www.ilo.org/dyn/declaris/DECLARATIONWEB.INDEXPAGE>.

10. *Id.* at 20.

11. Freedom of Association and Protection of the Right to Organise Convention, July 9, 1948, C87; Right to Organise and Collectively Bargain Convention, July 1, 1949, C98; Forced Labour Convention, June 28, 1930, C29; Abolition of Forced Labour Convention, June 25, 1957, C105; Equal Remuneration Convention, June 19, 1951, C100; Discrimination (Employment and Occupation) Convention, June 25, 1958, C111; Minimum Age Convention, June 26, 1973, C138; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, June 17, 1999; all available at <http://ilo.org/ilolex/english>.

12. The U.S. has ratified Convention Nos. 105 and 182. Two other ILO member States—Myanmar and Oman—have ratified only two core conventions. In contrast, 31 of the ILO’s 177 member States have ratified 7 core conventions, and 102 have ratified all 8 of them.

regardless of whether they had formally adopted the relevant ILO instruments. The Declaration states:

All [ILO] Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions . . .<sup>13</sup>

The fact that the Declaration was adopted unanimously offers an effective answer to the argument that the countries of the South should not be obliged to respect labor rights because these rights reflect the cultural values of developed countries. The first two principles (regarding freedom of association and collective bargaining, and elimination of forced labor) guarantee human autonomy at the workplace and ensure that people have the means to achieve whatever substantive goals they choose, while the second two principles (regarding child labor and discrimination in employment) represent minimal conditions to achieving a life of dignity and self-sufficiency. These are the rights that people must have “regardless of economic development, because they inhere in human beings.”<sup>14</sup> In response to the charge that these rights are “supposedly selective,”<sup>15</sup> the International Confederation of Free Trade Unions (ICFTU),<sup>16</sup> recognized as the world’s largest and most significant global federation of trade union centers, has stated that, “th[e]se particular standards have been endorsed universally precisely because they do constitute what is globally agreed to be a basic minimum set of basic workers’ rights that can and must be protected.”<sup>17</sup>

Nor can these four principles be dismissed as economically infeasible for poor countries seeking to capitalize on their comparative advantage in labor costs. They do not require countries to establish particular standards for working conditions and levels of compensation, but merely to create conditions that enable workers to bargain, individually

13. See *supra* note 9.

14. Polaski, *supra* note 3, at 20.

15. See, e.g., CUTS, *Third World Intellectuals and NGOs’ Statement Against Linkage (TWIN-SAL)*, at [www.cuts.org](http://www.cuts.org) (1999).

16. The ICFTU represents 233 affiliated organizations from 152 countries that collectively represent 148 million workers. See ICFTU, *What It Is, What It Does . . .*, at <http://icftu.org/displaydocument.asp?DocType=Overview&Index=990916422&Language=EN>. The ICFTU “unites workers in free and democratic trade unions and provides them with a means of consultation and collaboration to further their individual and collective aims.” 1 INTERNATIONAL LABOR AND EMPLOYMENT LAWS 43–7 (William L. Keller et al. eds., 2d ed. 2003).

17. ICFTU, *Enough Exploitation is Enough: A Response to the Third World Intellectuals and NGO’s Statement Against Linkage (TWIN-SAL)* ¶ 6 (1999), at <http://www.hartford-hwp.com/archives/25a/022.html>.

and collectively on their own behalf. Freedom of association and the right to collectively bargain, for instance, while clearly not determinative of any particular substantive terms of employment, presume an independent voice at work and an opportunity for workers to exercise more influence over the distribution of economic gains and other conditions of employment. As one commentator states:

Core labour standards are considered enabling human rights; they set standards concerning processes (e.g., freedom of association). They seek to realise the conditions reflected in the very strong assumptions underlying neo-classical economic models, namely freedom of choice, equal bargaining power, and full information. . . . Hence, unlike substantive labour standards, core labour standards do not bear on production costs (with the exception of forced labour and slavery). They do not impair a country's relative comparative advantages.<sup>18</sup>

On a broader level the core labor standards are enabling rights that support the development of democracy. Empirical literature offers strong support that there is a nexus between respect for labor standards and the development of democratic institutions. Harvard's Dani Rodrik, for example, has found "quite persuasive evidence that the enhancement of democratic institutions is associated with higher wages for workers."<sup>19</sup> Rodrik concludes that "democratic institutions tend to shift the functional distribution of income in manufacturing from profits to wages . . . [while] authoritarian regimes transfer income from labor to employers."<sup>20</sup>

Moreover, free trade union movements that develop as a result of adherence to core labor standards are themselves democratic institutions that allow workers to participate in and gain control over a fundamental aspect of their lives. They strengthen, and in turn are strengthened by, the larger political institutions alongside which they develop. As Rodrik states:

Democracy serves to raise wages in part through other channels than the freedom of association and collective bargaining. Competition among political parties and access by workers to political institutions can shape a whole range of legislation and institutions that determine labor-market outcomes. Rules on arbitration and

---

18. MARYKE DESSING, ICTSO RESOURCE PAPER NO. 1, *THE SOCIAL CLAUSE AND SUSTAINABLE DEVELOPMENT* (2001), available at <http://www.icstd.org/pubs/series.htm>.

19. Dani Rodrik, *Democracies Pay Higher Wages*, 114 Q. J. ECON. 707, 721 (1999); See also, Dani Rodrik, *Democracy and Economic Performance* 11 (1997) (unpublished paper, 1997, available at <http://ksghome.harvard.edu/~drodrik/demoecon.pdf>).

20. Rodrik, *Democracies Pay Higher Wages*, *supra* note 19, at 725–26.



on the hiring and firing of workers, minimum wages, provisions on social insurance and other benefits, the generosity of public-sector wages, and a myriad of other public policies have a bearing on the general level of wages in a country because they affect the bargaining strength of labor and the value of outside options available to workers and employers.<sup>21</sup>

In short, respect for core labor standards fosters the growth of democratic institutions, both within the labor movement and political life as a whole, which in turn encourages the more equitable distribution of wealth.

### III. THE ARGUMENT FOR TRADE-LABOR LINKAGE

As noted above, the ILO's 1998 Declaration on Core Labor Standards responds to a growing sense that the current international trade regime has failed to answer the needs of working people. Even the international institutions that have most enthusiastically propagated trade liberalization have agreed, at least theoretically, that labor rights should be respected. Thus, in its 1996 Singapore Declaration, the WTO ministerial conference stated that "[we] renew our commitment to the observance of internationally recognized labour standards."<sup>22</sup> Even the World Bank, which has frequently required recipients of its structural adjustment programs to take actions inimical to labor interests, has recognized in a recent report that "[s]ound industrial relations between employers and employees can lead to a stable economy." The same report argues that "developing labor standards needs to go hand in hand with building institutional capacity and trust between workers, employers, and the government."<sup>23</sup>

Nevertheless, the WTO has continued to reject all efforts to develop or even consider a trading system that would treat the enforcement of worker rights in the global economy as either a moral imperative or an economic necessity. The WTO Ministerial meetings in Seattle in 1999 failed to agree to convene a working group that would merely *discuss* the relationship of trade to worker rights. The following WTO Ministerial in Qatar in 2001 not only again refused to initiate such a process, but insisted on softening a statement that would have "welcomed" the ILO's work on labor standards to one that simply "took note" of it. The WTO's justification for its position, in so far as it has deigned to offer one, appears to be that

---

21. *Id.* at 21.

22. JUSTICE FOR ALL, *supra* note 4, at 175.

23. TOKE AIDT & ZAFIRIS TZANNATOS, *supra* note 5.

incorporating labor standards into the global trade regime would allow rich countries to take “protectionist” measures against the developing nations that would prevent the latter from legitimately exploiting their comparative wage advantage to attract export industry and ultimately improve their standard of living.<sup>24</sup>

This argument suffers from two major flaws: first, as a matter of principle, the WTO’s refusal to take action against countries that violate internationally agreed upon core labor standards is inconsistent with its efforts to prevent other forms of “unfair competition.” Second, as a practical matter, the WTO’s apparent faith that exploitation of comparative advantage inevitably benefits the working people of low-wage countries is misplaced if workers are unable to capture a significant share of the wealth they generate.

Regarding the first issue; the WTO’s global trading regime aims to create a rules-based system that permits Member States to compete against each other in the world market under defined parameters. The many agreements negotiated and enforced by the WTO embody collective decisions that certain practices cannot be tolerated and may be subjected to countermeasures, because they are an inefficient or unfair means of securing competitive advantage. By virtue of these agreements, members of the global trading community accept certain trade obligations and understand that they may face retaliatory trade measures if they violate those obligations.

For example, the Anti-Dumping Agreement reflects a judgment that enterprises ought not to charge less for their goods in foreign markets than their cost of production or selling price in domestic markets. Similarly, the Agreement on Subsidies and Countervailing Measures disciplines the use of subsidies and authorizes countries to charge countervailing duties under certain circumstances. The Technical Barriers to Trade Agreement seeks to ensure that member countries’ domestic regulations, standards, testing, and certification procedures do not create unnecessary obstacles to trade. Under the Agreement on Trade Related Aspects of Intellectual Property Rights, governments must provide minimum levels of protection to the intellectual property of fellow members. Disputes under these agreements are resolved by recourse to the WTO’s dispute settlement procedures. If a violation is found, aggrieved parties are permitted to impose countervailing tariffs against the violator. Such tariffs are not treated as “protectionist” but rather as legitimate retaliation aimed at deterring

---

24. See JUSTICE FOR ALL, *supra* note 4, at 175. “We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.” *Id.*

parties from competing with each other through “unfair”—that is, collectively destructive—trading practices.

Against this background, the exclusion of labor (and environmental) standards from the global trading regime makes little sense. A government that solicits or permits practices that prevent workers from using their economic power to improve their compensation and conditions of employment is engaged in a form of competition that undermines internationally agreed norms of fairness as is a government that subsidizes exports or turns a blind eye to intellectual piracy. While the decision may be rational for individual countries in the short-term (at least from the point of view of national political and economic elites), its overall effect is to reward countries that repress and impoverish their labor force, depressing global economic demand and fostering social instability.

This omission could be remedied by requiring WTO members to adhere to internationally accepted core labor rights and allowing importing countries to impose countervailing duties on goods from countries in violation of their commitments following a decision under the WTO’s dispute settlement procedures. These tariffs would allow importers to raise the price of incoming goods to the level they would have cost had the exporting country been in compliance with core labor standards. Such a system would be no more “protectionist” than the WTO’s current rules against other forms of unfair competition.

The second problem with the WTO’s refusal to accept the principle of trade-labor conditionality is that the implicit assumption that poor-country workers will benefit from the comparative wage advantage of their national economies only applies if workers are able to capture the economic benefits of their labor. Normatively speaking, according to orthodox economic theory, living standards will inevitably improve in the low-wage countries that attract foreign investment as labor moves from subsistence agriculture into waged industrial work. Over time, wages should track productivity gains, generating a virtuous cycle of increased demand and further investment.

The essential difficulty with this argument is that it assumes that workers will capture a significant share of their increased productivity through the natural operation of the labor market. In practice, however, because employers rarely pay workers more than they are obliged to, workers can only capture this share if they are able to exert some bargaining power in the labor market. Workers represented by independent unions are best able to secure wage increases through the collective bargaining process. Even in the absence of collective bargaining, workers can nevertheless improve their wages (albeit to a lesser extent) if their labor is in short supply *and* they are able to choose their employment

freely. The first of the ILO's core labor standards, the freedom of labor association and recognition of the right to collective bargaining, clearly envisages that workers should be able to improve their lot through union organizing. The latter three—the prohibitions on child labor, forced labor and on discrimination in employment—create the minimum conditions for the functioning of a free labor market.

In the absence of these rights, therefore, workers can improve their pay and conditions neither collectively nor, as individuals, by choosing their occupation and employer. Current labor practices in China, as depicted in the AFL-CIO's petition filed on March 16, 2004 with the U.S. Trade Representative calling for trade sanctions under Section 301 of the 1974 Trade Act (Petition), dramatically illustrate this proposition.<sup>25</sup> The petition's carefully documented analysis of labor conditions in China belies any contention that China's trade advantage flows simply from its "natural advantages" of a vast untapped labor force and historically low standard of living.

The petition does not target "free trade" or China's "comparative advantage." Rather, it "challenges the *artificial* and *severe* reduction of China's labor costs below the baseline of comparative advantage defined by standard trade theory"<sup>26</sup> through "a system of government-engineered labor exploitation on a scale that is unmatched in the present global economy."<sup>27</sup>

For example, with reference to China's longstanding policies governing the country's vast pool of rural labor, the petition finds that:

Each year, millions of Chinese citizens travel from impoverished inland villages to take their first industrial jobs in China's export factories. Young and mostly female, they are sent by their parents in search of wages to supplement their families' income. They join an enormous submerged caste of temporary factory workers who are stripped of civil and political rights by China's system of internal passport controls.

They enter the factory system, and often step into a nightmare of twelve-hour to eighteen-hour work days with no day of rest,

---

25. For information on the AFL-CIO Petition, see AFL-CIO, *When China Represses Workers' Rights, U.S. Workers Lose Jobs* (2004), available at <http://www.aflcio.org/issuespolitics/globaleconomy/ns03162004.cfm> [hereinafter Petition]. Barely a month after its filing, the Bush Administration rejected the petition as counterproductive. U.S. Trade Representative Robert Zoelick stated: "[W]e do not need to conduct a year-long investigation to know that there are serious concerns with labor rights and working conditions in China." Statement of U.S. Trade Representative Robert Zoelick on U.S. China Trades Rights, April 28, 2004 p. 3 at [http://www.ustr.gov/Documents\\_Library/Press\\_Releases/2004/April](http://www.ustr.gov/Documents_Library/Press_Releases/2004/April).

26. See Petition, *supra* note 25, at 3.

27. *Id.*

earning meager wages that may be withheld or unpaid altogether. . . . They live in cramped cement-block dormitories, up to twenty to a room, without privacy. They face militaristic regimentation, surveillance, and physical abuse by supervisors during their long day of work and by private police forces during their short night of recuperation in the dormitories.

They are not permitted to seek better-paying jobs reserved for privileged urban residents. If they assert their rights, they are sent back to the countryside, or worse. Attempts to organize unions or to strike are met with summary detention . . . .<sup>28</sup>

The petition concludes that this common suppression of worker rights has had the effect of lowering wages by between forty-seven and eighty-five percent, and consequently diverting millions of manufacturing jobs from countries where labor rights are not so comprehensively denied. Unemployment and poverty among workers in developed and developing countries have increased as a direct result.<sup>29</sup>

In essence, China's labor regime suppresses any attempt at collective bargaining by free trade unions, while subjecting rural—mostly female—migrant workers to a system within which they have no bargaining power as individuals.<sup>30</sup> The Petition also demonstrates that China's denial of worker rights provides a significant cost advantage to China-based producers. If labor rights were enforced, it estimates that manufacturing costs would rise between ten percent and seventy-seven percent.<sup>31</sup>

The Chinese case is of more than illustrative significance. Already, China dwarfs other developing nations in the scale of its industrial growth and its receipt of foreign investments, while its vast rural popula-

---

28. *Id.* at 2–3 (footnotes omitted) (emphasis added). The petition demands that the USTR and the President take three actions: 1) impose immediate trade remedies that are commensurate with the cost advantage caused by China's denial of worker rights; 2) while the trade remedies are in effect, negotiate a binding agreement with China providing that the U.S. will reduce the trade remedies incrementally if China meets specific and verifiable benchmarks of enforcement of workers' rights, and will increase the remedies if China backslides from these benchmarks; and 3) negotiate no new WTO-related trade agreements unless the WTO requires members to enforce core labor rights.

29. *Id.* at 3.

30. There are some emerging signs that suggest that certain aspects of this migrant worker system are changing in some locations. *See*, for example, Congressional Executive Commission on China (CECC) Annual Report 64 (2004), at <http://www.cecc.gov/pages/annualRpt/annualRpt04/CECCannRpt2004.pdf>. As with many of China's labor laws that in substance appear to offer important protections but too often are lacking in their application or enforcement, *see*, e.g., *Survey of the Implementation of "The Law of Protection of Women's Rights,"* at <http://www.china.org.ca/chinese/zhuanti/241695.htm>, here, too, much will depend on whether these new legal protections will be effectively implemented.

31. *See* Petition, *supra* note 25.

tion provides an almost limitless pool of exploitable migrant labor. Its systematic practice of labor repression not only threatens jobs in the industrialized north,<sup>32</sup> it is also siphoning jobs and investment away from other developing countries where conditions are less dire.

Indeed, as Sandra Polaski, former Special Representative for International Labor Affairs at the U.S. Department of State, argues, China's success may be forcing other developing countries to rethink their traditional hostility to trade-labor conditionality: "China now enjoys most favored nation status and, with its vast pool of low-wage labor, will be able to undercut virtually all other developing countries in labor-intensive products. . . . Increasingly, a low-wage, low-standard strategy will not work for other developing countries because Chinese wages are lower still."<sup>33</sup> Thus, developing countries may decide that it is in their interest to enter into agreements that link trade and labor standards to gain greater access to the rich markets they need.<sup>34</sup>

Developing country labor movements are also expressing increased willingness to incorporate core labor rights into international trade agreements. A recent study by Gerard Griffin, Chris Nyland, and Anne O'Rourke<sup>35</sup> found that while there is evidence that some developing country unions have in the past opposed linkage or offered only conditional support, these unions increasingly now "hold similar views to those of their Northern counterparts, that is, they support the linkage demand."<sup>36</sup> The authors surveyed the views of two Global Union Federations (GUFs), the International Metalworkers Federation (IMF), a worldwide organization representing 24.8 million workers in all sectors of the metals and manufacturing industry, and Education International (EI), representing 24.5 million members in the educational fields worldwide, as well as the largest international trade union federation, the International Confederation of Free Trade Unions (ICFTU), about whether they favored incorporating core labor standards<sup>37</sup> into international trade agreements. The authors concluded:

---

32. Using four different economic models, including one created by the U.S. International Trade Commission, itself, the AFL-CIO petition shows that China's unfair cost advantage displaces—in a conservative estimate—approximately 727,000 jobs in the United States. See Petition *supra* note 25, at 67.

33. *Id.*

34. *See id.*

35. Gerard Griffin et al., *Trade Unions and the Trade-Labour Rights Lind: A North-South Union Divide?*, 19 INT'L J. COMP. LAB. L. & INDUS. REL. 469-94 (2003).

36. *See id.*

37. The core labor standards referred to in the survey were the four standards enunciated in the Declaration. *Id.* at 482-83. In fact, one of the things that made this survey possible is the fact that there is now a set of human rights to which the world can point as the "universally accepted core labor standards."

Our data are unequivocal: an overwhelming majority of respondents, ninety-five per cent of GUF respondents and ninety-seven per cent of ICFTU respondents, held the view that trade-labour provisions are needed in trade agreements to protect core labour standards. Further, of the remaining respondents, most were unsure rather than opposed. . . . The "lowest" level [of support] came from IMF Southern respondents; even among this sub-group, however, 92 per cent of respondents favoured incorporation of labour standards into trade agreements. . . . Turning to the future, 80 per cent of GUF respondents held the view that trade standards could be an effective mechanism for ensuring that core labour standards were not undermined. . . . Respondents perceived very strong levels of support for such incorporation among both their fellow union officials and also, crucially, among their union members. This level of support was found across both EI and IMF groupings and Northern and Southern respondents.<sup>38</sup>

These findings suggest that developing countries' trade unions are increasingly receptive to the benefits and value that trade-labor linkage would bring to their own countries.

#### IV. U.S. LEGISLATION ON TRADE-LABOR LINKAGE

Although the WTO has so far blocked moves toward effective trade-labor linkage at the multilateral level, for two decades the U.S. Congress has embraced the principle that access to the American market must be conditioned on adherence to labor rights. In 1984, Congress required that developing countries comply with internationally recognized labor rights as a precondition to receiving special trade benefits under the Generalized System of Preferences (GSP).<sup>39</sup> The following year, Congress required such compliance as a precondition to providing insurance to U.S. investors in foreign countries under the Overseas Private Investment Corporation Amendment Act of 1985.<sup>40</sup> In the Omnibus Trade and Competitiveness Act of 1988,<sup>41</sup> Congress amended Section 301 of the Trade Act of 1974 to allow the U.S. Trade Representative to take retaliatory action against any U.S. trading partners that displayed a:

---

38. *Id.* at 483.

39. 19 U.S.C. § 2462 (2000). (§ 2461 is beginning of Subchapter V on Generalized System of Preferences).

40. 22 U.S.C. § 2191 (2000).

41. Omnibus Trade and Competitiveness Act of 1988, Pub.L. No. 100-418, § 1301, 102 Stat. 1107, 1164-76 (1988).

persistent pattern of conduct that—

- (I) denies workers the right of association,
- (II) denies workers the right to organize and bargain collectively,
- (III) permits any form of forced or compulsory labor,
- (IV) fails to provide a minimum age for the employment of children, or
- (V) fails to provide standards for minimum wages, hours of work, and occupational safety and health of workers.<sup>42</sup>

Through this amendment, Congress placed persistent denials of worker rights on par with other “unreasonable acts” that burden U.S. commerce—such as denying “fair and equitable . . . provision of . . . protection of intellectual property rights”<sup>43</sup> and “market opportunities, including the toleration by a foreign government of systematic anticompetitive activities by enterprises . . . in the foreign country.”<sup>44</sup> Moreover, in Section 301 Congress not only acknowledged the importance of core labor rights to fair trade; it also recognized, in subsection V, the significance of minimum wage and hour standards, as well as safety and health protections. The remedies under Section 301 are fully consistent with that vision. They authorize the President not only to take trade action to improve a partner’s immediate labor rights practices, but also to take any action within the foreign affairs power to change the rules of trade and finance that encourage those violations.<sup>45</sup>

One of Congress’ explicit goals in tying trade rights to respect for labor rights was to further implement the United Nations Universal Declaration of Human Rights by recognizing the importance of viewing the right to organize and to adequate wages as fundamental human rights.<sup>46</sup> Congress *also* recognized that the denial of workers’ fundamental rights distributes the benefits of economic growth to “narrow privileged elites,”<sup>47</sup> thereby “retarding economic development.”<sup>48</sup>

42. 19 U.S.C. § 2411(d)(3)(B)(iii) (2000).

43. 19 U.S.C. § 2411(d)(3)(B)(i)(II) (2000).

44. 19 U.S.C. § 2411(d)(3)(B)(i)(IV) (2000).

45. 19 U.S.C. § 2411(b)(2) (2000).

46. See H.R. REP. NO. 98-1090 at 12 (1984) (enacting labor rights provisions of the Generalized System of Preferences, a forerunner to the labor rights provisions of the Trade Act amendments of 1988), reprinted in 1984 U.S.C.C.A.N. 5101, 5112.

47. H.R. CONF. REP. NO. 99-428, at 12 (1985) (conference report accompanying Overseas Private Investment Corporation Amendment Act of 1985, requiring foreign countries to enforce basic labor rights as a precondition to providing U.S. governmental insurance to investors), reprinted in 1985 U.S.C.C.A.N. 2583, 2584.

48. *Id.*



Examining the United States experience under the Generalized System of Preferences (GSP), the European Union experience under its equivalent GSP, as well as other regimes, including the North American Free Trade Agreement, the U.S.–Jordan Free Trade Agreement, the Caribbean Basin Trade Partnership Act, and the Africa Growth and Opportunity Act, Sandra Polaski concludes that “cases in which claims have arisen about labor rights violations under these programs show no evidence of protectionism whatsoever—whether in the nature of the charge, in the process for investigating the problem, in the nature of the remedy, or in the final disposition of the case.”<sup>49</sup>

Similarly, economists Kimberly Ann Elliott and Richard B. Freeman reject, as a matter of both theory and practice, the proposition that there is an ineluctable link between protectionism and trade-labor linkage.<sup>50</sup> They conclude that the proponents of trade and labor linkage “have little direct protectionist motivation.” They argue that worker rights petitions under the GSP and challenges made through other bilateral and multilateral instruments also “have not followed the rationale of protectionist intent;”<sup>51</sup> the United States “has implemented trade labor-linkages in the GSP program in a non-protectionist fashion;”<sup>52</sup> and “international rules can be written to constrain the protectionist use of trade remedies” by governments who wish to move in that direction.<sup>53</sup>

Congressional action notwithstanding, the executive branch of the U.S. government has failed to prioritize trade-labor linkage in its international trade relations. Indeed, the government has had a fitful and even reluctant relationship with linkage. As a result, the U.S. labor movement, working with its national and global trade union partners, and with committed NGOs, has had to press the U.S. government to implement those commitments that exist in current law, and to broaden the reach of linkage through additional multilateral and bilateral agreements. The U.S. government is certainly not on a steady course. After some progress was achieved in the last years of the Clinton administration, the current Bush administration’s record has been most disappointing.

---

49. POLASKI, *supra* note 3, at 14.

50. KIMBERLY ANN ELLIOTT & RICHARD B. FREEMAN, INSTITUTE FOR INTERNATIONAL ECONOMICS, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? (2003).

51. *Id.* at 81.

52. *Id.*

53. *Id.*

## V. RECENT EXAMPLES OF BILATERAL TRADE-LABOR LINKAGE

The promise of international instruments that condition trade access on respect for labor rights is suggested by two recent models. First, the U.S.-Cambodia Bilateral Textile Agreement, negotiated in 1999, provides increased quota incentives for “substantial compliance” with domestic labor law and international labor standards. This “carrot” approach has proved fruitful in creating a hospitable climate for the development of democratic trade unions, which in turn has strengthened the rule of law. Second, in the absence of any meaningful discussion of labor rights at the WTO, the United States, in the last years of the Clinton administration, initiated certain efforts to include various forms of worker rights provisions in its own bilateral agreement negotiations. The Jordan Free Trade Agreement represents the first such agreement to incorporate core labor standards as defined by the Declaration; in which the labor provisions are integrated into the body of the agreement, as opposed to residing in a “labor side accord” (as, for instance, under NAFTA); and in which there is a single enforcement scheme for violations of both trade and labor rights.

### *A. Cambodia*

In 1999, the U.S. and Cambodian governments negotiated a unique worker rights trade agreement that conditioned Cambodia’s special access to the \$170 billion U.S. garment market on its labor record. The agreement’s premise is that trade incentives can be used to win better enforcement of international labor standards and spur growth. After four years, the agreement has greatly strengthened the rule of law and the formation of a democratic trade union movement, while, at the same time, stimulating the growth of Cambodia’s garment industry.

Cheap labor and a free hand in dealing with workers’ demands led investors to Cambodia’s garment industry in the mid 1990s. In 1997, Cambodia passed a labor code that contained organizing and bargaining rights but did little to enforce its provisions. In 1998, the U.S. garment workers union, UNITE!, and the AFL-CIO responded to this situation by filing a GSP complaint with the U.S. Trade Representative against the Cambodian government for violations of workers’ rights. The complaint argued that Cambodia’s new unions faced intimidation and mass firings, which gave Cambodian producers an unfair advantage over their foreign competitors.

The complaint led to trade and quota negotiations between the United States and Cambodia in 1998 and 1999. The resulting U.S.-Cambodia

textile-apparel quota agreement reflected a unique arrangement, connecting trade privileges to the Cambodian government's willingness to comply with international labor standards. Under the agreement, Cambodia could win bonus quota—up to 14% more quota each year—if its government brought garment factories into “substantial compliance” with both Cambodian labor law and international labor standards. The ILO monitors nearly all of the industry's 230 factories for compliance with Cambodian labor law and core international labor standards, and makes public reports each year that detail violations and improvements in Cambodia's garment factories.

During the first two years of the agreement the quota incentives produced another surge in investment, as the garment industry added nearly 100 new factories. This second boom in the Cambodian garment industry put the lie to claims that investment would suffer if the government threatened to push employers onto the high road. The parties renewed the trade agreement in 2001 and the United States offered an additional quota increase of up to 18% per year conditioned on Cambodia's government and industry making greater efforts to improve working conditions and protect worker rights.

The Cambodian government earned partial bonuses under the agreement, which spurred additional growth within the industry.<sup>54</sup> Major American buyers such as Gap and Nike have sought out Cambodian producers. The promise of increased quota under the textile agreement has provided the fledgling labor movement with real opportunities to make significant institutional gains and improve working conditions. Two examples make this point forcefully.

In the first case, the Cambodian union movement, with assistance from the American labor movement, the U.S. government, and the ILO, was able to leverage the annual quota decision which the U.S. makes under the agreement to pressure the Cambodian Ministry of Labor into issuing a regulation that greatly expanded organizing rights. Key provisions of the regulation included:

- Recognition of employers' duty to engage in collective bargaining;
- The prohibition of termination of union leaders without the consent of the Ministry of Labor, with government-ordered reinstatement as the remedy for violations;

---

54. Under an ordinary quota regime, quota for the Cambodian industry would have grown by about 30% by 2003. Instead, Cambodia's unique bonus quota has added another 40% in the categories that count most—knit shirts and pants—and 50,000 new jobs.

- Recognition of unions through simple, democratic, non-confrontational procedures;
- Dues check-off for all registered unions; and
- Elections run by the Ministry of Labor to resolve representational challenges between unions.<sup>55</sup>

Under the new regulations, Cambodian unions have been able to win more rights for their members. In November 2003, one of Cambodia's most democratic unions, the Solidarity Workers Union at the Four Seasons garment factory in Phnom Penh, signed Cambodia's first genuine collective bargaining agreement, winning improvements in wages, health care, safety standards, work rules, and maternity leave for those it represents.

Second, in the run-up to the 2002 quota decision the Ministry of Labor created a labor arbitration council, giving effect to the so far dormant provision of the 1997 Labor Code.<sup>56</sup> Since then, arbitration awards have issued in disputes, and additional cases have gone to settlement.

The arbitration process has yielded to garment unions important victories regarding such issues as reinstatement of shop stewards terminated without permission of the Ministry of Labor,<sup>57</sup> paid maternity leave,<sup>58</sup> union dues deduction,<sup>59</sup> uniform criteria for payment of bonuses (including the setting of production standards that do not endanger worker health),<sup>60</sup> employers' responsibility to bear the cost of pre-employment physical exams,<sup>61</sup> and provision of on-site day care.<sup>62</sup> Arbitration decisions refer not

---

55. See *Prakas on Representativeness of Professional Organizations of Workers at the Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreements at that Level*, Kingdom of Cambodia Ministry of Social Affairs, Labor, Vocational Training, and Youth Rehabilitation, No. 305 MOSALVY (Nov. 11, 2001). Card-check procedures in this *Prakas* are referred to as "determining most-representativeness."

56. Cambodia Labor Code, Art. 302 (1997).

57. *Ho Hing Garment v. Cambodia Labour Union Federation*, Kingdom of Cambodia Arb. Council 17/03 & 18/03 (2003), available at [http://www.arbitrationcouncil.org/pdf\\_files/awards/a\\_1703\\_e.pdf](http://www.arbitrationcouncil.org/pdf_files/awards/a_1703_e.pdf).

58. *Id.*

59. *Top One Factory v. Workers who are members of the Solidarity Worker Union at Top One Factory*, Kingdom of Cambodia Arb. Council 05/03 (2003), available at [http://www.arbitrationcouncil.org/pdf\\_files/awards/a\\_0503\\_e.pdf](http://www.arbitrationcouncil.org/pdf_files/awards/a_0503_e.pdf).

60. *Jacqsintex Garment Co. v. Democratic Union of Jacqsintex*, Kingdom of Cambodia Arb. Council 10/03 (2003), available at [http://www.arbitrationcouncil.org/pdf\\_files/awards/a\\_1003\\_e.pdf](http://www.arbitrationcouncil.org/pdf_files/awards/a_1003_e.pdf).

61. *Loyal Cambodia Ltd. v. Khmer Youth Federation of Trade Unions*, Kingdom of Cambodia Arb. Council 21/03 (2003), available at [http://www.arbitrationcouncil.org/pdf\\_files/award\\_case\\_21.pdf](http://www.arbitrationcouncil.org/pdf_files/award_case_21.pdf).

62. Arbitral Award Nos. 17/03 & 18/03, *supra* note 57.

only to Cambodian labor law and prior panel decisions, but also to ILO standards.<sup>63</sup>

Moreover, workers in other industries have also achieved substantial victories through arbitration. In September 2003, ten new unions with 3,000 members formed Cambodia's first federation for tourism and service workers. They promptly launched and won an arbitral challenge to one of the most entrenched labor practices in the Southeast Asian tourism industry, whereby employers routinely pocket the "service charge" levied on customers' bills, despite the fact that Cambodian law provides that this service charge must be given "in full" to employees.<sup>64</sup> In September 2003, an arbitration panel ruled against the Singapore-owned Hotel Cambodian for engaging in this practice and ordered the hotel to pay approximately fifty dollars in backpay to current and former employees and "establish, in consultation with any representative unions, a clear and transparent method for the distribution of [100% of the service charge] . . . to staff each month."<sup>65</sup> The tourism worker unions then won similar awards at other top hotels, endured an industry-wide lock-out, and won an international campaign against Singapore-based Raffles Hotels to re-hire hundreds of fired workers. Decisions from the Arbitration Council were invaluable in holding the hotel companies accountable. Thus, tourism workers were able to build upon the strength of their garment worker allies to demand action from the fledgling labor arbitration system. In turn, that system may now be equipped to function as an effective legal institution.

The Cambodian experience provides a concrete example of effective linkage between trade and labor issues. It has led not only to meaningful sharing and redistribution of economic gains, but also to the burgeoning of a new, free trade union movement.

The Cambodian experience also demonstrates the link between labor activism and democratic political development, as workers led grassroots challenges to political candidates in the July, 2003 national elections. During the election campaign, fifty unions persuaded their members, including teachers, garment workers, and hotel workers, to stay away from party rallies and informational sessions and instead, to hold their own "accountability" sessions at which they testified to the poor conditions under which they live and work and grilled the candidates about their views. In Phnom Penh, where labor is strongest, the challengers doubled their seats in the national legislature.

---

63. Arbitral Award No. 10/03, *supra* note 60.

64. Cambodiana Hotel and Cambodiana Employees Union, Kingdom of Cambodia Arb. Council 11/03 (2003), available at [http://www.arbitrationcouncil.org/pdf\\_files/awards/Case%20No%2011%20award.pdf](http://www.arbitrationcouncil.org/pdf_files/awards/Case%20No%2011%20award.pdf).

65. *Id.* at 6.

The U.S.-Cambodia Agreement expired at the end of 2004 along with the WTO's Agreement on Textiles and Clothing. The trade agreement and the profound changes that followed from it have put the Cambodian industry in a position to weather the end of the quota regime. Real problems remain: forced overtime, wrong payment of wages, a corrupt labor ministry, and violence against union leaders. But producers and their U.S. and European buyers can credibly claim that Cambodian workers receive better treatment from their employers and their government than do workers in China, India, Pakistan, and other major producers. Among all the garment producing countries in Asia, only Cambodia has the wherewithal to make this claim: a lively labor movement, ILO monitoring and reporting, and a labor law written to international standards.

### B. Jordan

The Jordan Free Trade Agreement (FTA) of 2001 also represents a breakthrough in implementing effective labor-trade linkage. This was the first U.S. bilateral trade agreement in which the signatories reaffirmed their commitment to, and agreed to uphold, the core labor rights articulated in the ILO Declaration on Fundamental Principles and Rights at Work.<sup>66</sup> Further, the dispute resolution procedures for violations of the agreement's labor commitments are the same as for violations of commercial commitments.<sup>67</sup> Additionally, both parties agreed to support discussions on workers' rights at the WTO.<sup>68</sup>

The Jordan FTA enforces these commitments through a simple and straightforward dispute resolution mechanism. A process beginning with consultations provides four separate opportunities for the parties to reach a mutually agreeable resolution to the dispute. If, at the end of that process, the matter is still not resolved, then "the affected Party shall be entitled to take any appropriate and commensurate measure."<sup>69</sup> Although the FTA does not define such a measure, in the case of a dispute over labor rights, an "appropriate measure" might be the dispatch of an ILO delegation, a training program for workplace inspectors, a monetary fine, or the withdrawal of trade benefits under the agreement.

This agreement embodies minimal labor and trade linkage provisions appropriate for countries that already have relatively well-developed labor

---

66. Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, Sept. 28, 2001 U.S.-Jordan, Art. 6, § 1, 115 Stat. 243 [hereinafter U.S.-Jordan Free Trade Agreement].

67. *Id.*, Art. 17.

68. U.S.-Jordan Joint Statement on World Trade Organization Issues, para. 4 (Oct. 24, 2004), available at <http://www.jordanusfta.com/documents/WTOstmt.pdf>.

69. U.S.-Jordan Free Trade Agreement, *supra* note 66, Art. 17, Sec. 2(b).

law systems in place: respect for domestic labor law as well as the core labor rights, a transparent and relatively swift dispute resolution process drawn from the main body of the agreement, and effective remedies. Trade benefits are thus conditioned on the *continued* development of democratic trade union institutions and meaningful resolution of labor disputes.

The commitments embodied in the Jordan FTA, although significant, are likely to be effective only with trading partners, like Jordan, whose laws already are in relative conformity with ILO standards. Agreements with countries whose labor laws—including enforcement—are inadequate, must incorporate much more elaborate mechanisms to ensure that domestic laws are improved to meet international standards on a clear timetable, that core labor rights are meaningfully protected, and that a climate exists in which a free trade union movement can take root. Thus, as AFL-CIO President John J. Sweeney has stated, the Jordan FTA represents “only a small step toward our ultimate goal of making workers’ rights and environmental protections an integral part of universally applied international trade rules.”<sup>70</sup> The practical impact of the Jordan FTA may only become fully apparent if and when one of the signatories uses it to challenge its partner’s labor practices.

Unfortunately, the current U.S. administration has betrayed the promise of the Jordan agreement by diluting its worker rights protections in subsequent FTAs. Unlike the Jordan agreement, those adopted or being negotiated by this administration (to date, with Chile, Singapore, Central America, Australia, and Morocco) do not contain an enforceable commitment to respect ILO core labor standards, nor do they place labor rights violations under the same dispute resolution mechanism as that used for violations of the commercial provisions. Instead, these FTAs contain only one enforceable labor commitment: to enforce domestic labor laws. Moreover, they do not even require countries to have labor laws, and they contain no enforceable provisions to prevent the weakening of labor laws. These provisions reflect not only a major regression from the Jordan FTA, but also from the linkage standards contained in current GSPs and other unilateral preference programs.

In addition, not all the countries with which the U.S. negotiates have labor laws that meet ILO standards. Yet the new FTAs, such as Chile’s and Singapore’s, contain no concrete timetables for improving labor laws. The failure to negotiate meaningful protection of core labor standards in these agreements signals America’s trading partners that at

---

70. John J. Sweeney, Testimony Before the Senate Finance Committee on the Jordan Free Trade Agreement 5 (Mar. 20, 2001), available at <http://www.senate.gov/~finance/032001;stest.pdf>.

most, they need simply to “strive”—in their own time, and by whatever means they choose—to achieve these standards.<sup>71</sup>

## VI. CONCLUSION

The campaign to achieve global adherence to core labor rights faces enormous, ongoing challenges. Nonetheless, as the United Nations unambiguously proclaimed more than a half century ago, worker rights are human rights. Attaining and protecting them is therefore a moral imperative.

Moreover, as we have discussed in this paper, creating and sustaining democratic worker institutions and an international legal regime which will promote a more equitable distribution of wealth are necessary conditions if economic growth is to result in genuine human development. Of course, they are not the only conditions. Universal education, sound fiscal policy, decent and affordable health care, anti-corruption measures, and a wide range of other initiatives and institutions also play an essential role. What distinguishes worker rights protection from these other measures, however, is its more direct connection to global trade. The absence of worker protections—whether the result of active suppression as in China or, as is the case in most countries, through governmental failure to act—makes fair trade impossible and inefficiently distorts market relationships. Global rules that promote worker rights are as necessary and appropriate as rules governing subsidies, anti-dumping, intellectual property protections, and other trade practices that also provide artificial and unacceptable comparative advantages.

As America experienced in the early decades of the twentieth century with respect to competition between the States, in the absence of such rules, governments are given incentives to allow the exploitation and abuse of their workers. As President Clinton suggested in his speech to the WTO, the seeds of new disruptions, new instabilities, new inequalities, and new threats to the global economy will inevitable take root.

---

71. While this model, for the reasons discussed, is inadequate for Chile and Singapore, the Administration's insistence on replicating it in the proposed Central America Free Trade Agreement (CAFTA) with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua betrays its indifference to the need to promote core labor rights internationally. In Central America, trade unionists routinely risk their lives for promoting freedom of association. Meanwhile, the ILO, and even the U.S. State Department, have repeatedly criticized the violation of worker rights in these countries, where there is no political will to bring labor laws into compliance with international standards, punish violators, or actively enforce those laws that do exist.



Unilateral measures that promote worker rights, such as the GSP system and Section 301 of the Trade Act, provide important tools for creating a level playing field. Effective bilateral or multilateral agreements represent better mechanisms because of the consensus they reflect among the trading partners involved about the need to adhere to core labor rights. Ultimately, however, the development of laws and democratic institutions that promote and protect worker rights must form an integral aspect of the trading system employed by all the nations within the global economy. Until this is achieved, those countries dominating the system, and the multi-national corporations who may be benefiting in the short-term from the "race to the bottom," will fail to garner the public support and political stability necessary to sustain a growing and equitable world economy.