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Michael Hecker

University at Buffalo School of Law (Student)

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**A LESSON FROM THE EAST:
INTERNATIONAL LABOR RIGHTS AND THE
U.S.-CAMBODIA TRADE AGREEMENT OF 1999**

MICHAEL HECKER¹

I. INTRODUCTION

“[T]he powerful exact what they can, and the weak grant what they must.”²

This phrase, written by Thucydides in the 5th century B.C., was meant to demonstrate the power structure in negotiations between Athens and Melos at the onset of the Peloponnesian War.³ Centuries later, these words accurately depict the current power structure of the newly emerging international labor rights regime where the larger, more developed nations, along with their multinational corporations, dominate the world economy and force the weaker economic states into subservience. As this leveraged power structure has developed into the *status quo*, underdeveloped states have begun to utilize one of their greatest comparative economic advantages in order to solidify a place in the world economy—cheap labor.⁴

The continuation of the *status quo* has led to an increase in the number of labor violations that have gone relatively unchecked, with regulatory efforts by states being more of an illusion than fact. As the problem continued to grow, it morphed from a series of

¹ The author graduated with a Bachelor in Arts in 2005 from SUNY Geneseo and is currently a second year law student at the University at Buffalo Law School, SUNY (Juris Doctor expected May 2009). The author greatly acknowledges Professor James Ateleson for his guidance and help in constructing this article.

² THUCYDIDES, THE PELOPONNESIAN WARS 181 (Benjamin Jowett trans., Washington Square Press 1963) (431B.C.), *available at* 89 <http://classic.persuasion.org/pw/thucydides/jthucbk5rv2.htm>.

³ *See id.*

⁴ *See* Don Wells, “Best Practice” in the Regulation of International Labor Standards: Lessons of the U.S.-Cambodia Textile Agreement, 27 COMP. LAB. L. & POL’Y J. 357 (2006).

individual violations into something much more substantial; known today as the “race to the bottom.”⁵ The goal of the postwar trade and financial markets of the past fifty years was to avoid a trend towards this “race to the bottom.”⁶ However, it seems that both emerging and developed economies have helped this system proliferate and flourish way beyond expectation.

When the idea of including labor provisions into trade agreements first arose, many states questioned if that was the best idea.⁷ These opponents argue that the forced imposition of these sanctions “would result in a negative sum game, since there would be more losers than winners.”⁸ They argued that the market, not individual activist states, is the most effective entity to raise labor standards. For instance, between 1993 and 1994, 30,000 children in Bangladesh were released from their textile related jobs due to pressure by suppliers.⁹ It was shown that the majority of these children turned to prostitution, or other more dangerous professions.¹⁰ As horrific as something like child labor sounds to a Western economy, many underdeveloped states have accepted these labor violations as a legitimate means of protecting their citizens’ ability to subsist. However, even with these cultural differences, as many NGOs and anti-globalization proponents have taken a stronger, more vocal stance in their calls for a set of

⁵ See, e.g., Anita Chan, *A “Race To The Bottom”: Globalisation and China’s labour standards*, 46 CHINA PERSP. 41 (2003), available at <http://rspas.anu.edu.au/~anita/pdf/AChanp461.pdf> (explaining that the race to the bottom causes harmful effects, such as reduced wages, in already low-wage industries).

⁶ See generally Jose E. Alvarez & Robert Howse, *From Politics to Technocracy—and Back Again: The Fate of the Multilateral Trading Regime*, 96 AM. J. INT’L L. 94 (2002).

⁷ See Yeomin Yoon & Robert W. McGee, *Incorporating Labor Standards into Trade Agreements: An Ethical Analysis*, Presentation at the Korea Labor Institute - Korea America Economic Association Joint Conference (July 9-10, 2003), available at <http://ssrn.com/abstract=410362>.

⁸ *Id.* at 15.

⁹ *Id.* at 2.

¹⁰ *Id.*

homogenous international labor reforms, states have begun to at least acknowledge the need for more international compliance.¹¹

Increasingly, states have begun including labor provisions against certain enumerated labor rights, such as child and forced labor restrictions, within their bi-lateral and multi-lateral trade agreements.¹² However, these provisions often go ignored, or un-enforced, by state parties. States often view these provisions more as a way of avoiding negative publicity than accomplishing actual reform. For example, both the U.S.-Chile Free Trade Agreement and the U.S.-Singapore Free Trade Agreement lack a process to enforce the minimal obligation of complying with the International Labor Organization's (ILO) Fundamental Conventions.¹³ For this reason, the U.S. Labor Advisory Committee for Trade Negotiations and Trade Policy stated in a report to the U.S. President, Congress, and the U.S. Trade Representative that these labor provisions were unlikely to "protect the core rights of workers in any of the countries involved."¹⁴

Many anti-globalization proponents argue that the worsening international labor scene is due primarily to the developed Western states that plead ignorance to the problem. They point to states hiding behind their signatures to international conventions, such as ILO conventions 87 and 98, as being tell-tale signs of their true hypocrisy. These strong economic states—most notably the U.S.—have arguably been the catalyst for the evolution of a failed international labor rights regime.¹⁵

¹¹ *Id.* at 3.

¹² Wells, *supra* note 4, at 358 (listing the North American Free Trade Agreement as an example of a regional trade agreement).

¹³ *Id.*

¹⁴ *Id.* at 358-59 (quoting the U.S.-Singapore Free Trade Agreement, Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy 1 (2003), available at http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/Reports/asset_upload_file77_3220.pdf).

¹⁵ *See id.*

II. U.S. ROLE IN THE INTERNATIONAL LABOR RIGHTS REGIME

Since 1993, the U.S. has been incorporating labor rights into trade agreements with many of its trading partners.¹⁶ However, the lack of a true hard power enforcement standard in many of these agreements has made these provisions quite ineffective.¹⁷ One can speculate many different reasons why the U.S. has included labor provisions within its bi-lateral agreements without setting up a legitimate and sound enforcement mechanism. Generally, it seems that these aims have been targeted at reaching political goals, rather than substantive. However, one goal seems to be the most significant with respect to labor rights: the U.S.'s lack of involvement in the international labor rights regime, and more specifically, the ILO.

As of March 8th, 2008, of the 177 ILO member states, only five states have ratified fewer Fundamental Conventions than the U.S.: the Democratic Republic of Timor-Leste, Brunei Darussalam, Samoa, the Solomon Islands, and the Marshall Islands.¹⁸ With the ineffectiveness of the U.S.'s trade provisions and its perceived lack of commitment to the international labor rights regime, something needed to give. Under the Clinton administration, the U.S. finally began to try and write a more pro-active narrative for itself as being an advocate for working people globally.

Following this change in policy, the U.S. began toying with ideas on how to more effectively link trade privileges with support

¹⁶ See, e.g., Sandra Polaski, *Protecting Labor Rights Through Trade Agreements*, 10 U.C. Davis J. Int'l L. & Pol'y 13 (2003) (discussing freedom of association, collective bargaining, and prohibitions against forced labor and child labor).

¹⁷ Wells Wells, *supra* note 4, at 359 (demonstrating the lack of procedural process for enforcing labor provisions).

¹⁸ See Int'l Labor Org. [ILO], *Ratifications of the ILO Fundamental Conventions* (Nov.21,2003), available at <http://webfusion.ilo.org/public/db/standards/normes/appl/appl-ratif8conv.cfm?Lang=EN> (demonstrating that there are eight Fundamental Conventions that deal with four main topics: forced labor, freedom of association, discrimination, and child labor).

for basic labor rights.¹⁹ With these concerns in mind, the U.S. decided that the best, and most productive, thing to do would be to construct a new type of trade agreement that effectively answered all the previous enforcement problems. The foundation of this new agreement was a positive incentive program that would benefit states that actively changed their domestic standards to those more inline with U.S. policy. The U.S. saw this program as potentially having a two-fold benefit: (1) increasing their international reputation for upholding labor rights, and (2) acting as a test-run to determine whether a positive incentive program could be successful. The agreement that developed from this idea is the U.S.-Cambodian Trade Agreement (UCTA), which was signed in 1999.²⁰

III. CAMBODIAN LABOR REGULATION BEFORE THE UCTA

Before implementation of the UCTA, the Cambodian labor rights regime was the poster child for corruption and indifference. At that time, a government labor inspector was making the equivalent of twenty-eight dollars a month, which was barely subsistence level.²¹ In contrast, the average wage in the garment industry was forty-five dollars a month.²² This means that the few inspectors who were assigned the task of maintaining labor compliance were getting paid less than those who they were monitoring. This economic disparity, combined with a corrupt government influence, was bound to lead to inspectors who were more than willing to overlook labor violations for a small fee.²³

¹⁹ Sandra Polaski, *Cambodia Blazes a New Path to Economic Growth and Job Creation*, 51 CARNEGIE PAPERS 1, 4 (Oct. 2004).

²⁰ See Agreement on Trade in Textiles and Textile products, U.S.-Cambodia, Jan. 20, 1999, Hein's No. KAV 5781, available at http://cambodia.usembassy.gov/uploads/images/M9rzdrrzMKGi6Ajf0SluJRA/uskh_texttile.pdf.

²¹ Polaski, *supra* note 19, at 6.

²² *Id.*

²³ *Id.*

It was also quite common for most inspectors to have second and third jobs, which often led to widespread neglect of their regulatory duties.²⁴ The inspectors who actually did routinely conduct on-site inspections often took bribes from the factory owners.²⁵ Also, it was not uncommon for government officials to have economic interests in garment enterprises, whether through partial ownership or due to their ability to collect fees for necessary paperwork filing and documentation.²⁶ This led to serious conflicts of interest where many public officials used their position to ensure limited to no regulation of their factories to benefit their own bottom line. This lack of transparency and legitimacy in the Cambodian regulatory regime was far too insufficient to properly regulate the UCTA.

IV. U.S.-CAMBODIA TRADE AGREEMENT

A. Background

Cambodia is one of the least developed and poorest nations in the world with approximately thirty-five percent of its citizens living below the poverty line.²⁷ With seventy-five percent of the country's economy based on agriculture, there has been little chance for Cambodia to generate enough domestic revenue to build an infrastructure that could possibly support more high-tech jobs.²⁸ In order to spur economic growth, Cambodia decided to focus its efforts on the garment manufacturing industry.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Kevin Kolben, *Trade, Monitoring, and the ILO: Working To Improve Conditions in Cambodia's Garment Factories*, 7 YALE HUM. RTS. & DEV. L. J. 79, 86 (2004).

²⁷ CENT. INTELLIGENCE AGENCY, *Cambodia: Economy*, in THE WORLD FACTBOOK (2008), <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html#Econ>.

²⁸ *Id.*

Historically, garment manufacturing has offered economies the greatest chance of immediate growth due to the limited amount of investment and skilled workers needed.²⁹ The government's hope was that by putting their resources into this industry they could garner increased foreign investment and upgrade their other industries, as many other East Asian countries had done over the past few decades. As of today, the garment industry makes up almost 80 percent of all of Cambodia's exports and employs sixty-five percent of its manufacturing workforce.³⁰ A recent World Bank survey estimates that the livelihoods of a quarter of Cambodia's population rely on the garment industry.³¹

Until recently, the global textile manufacturing industry had been governed for over thirty years by the Multi Fibre Agreement (MFA).³² The MFA was a domestic safeguard policy instituted under the General Agreement on Tariffs and Trade (GATT) in 1974.³³ The MFA permitted developed states to establish a quota system that limited the amount of goods that could be exported by any developing state into their domestic market if they had a reasonable fear that not doing so would cause their markets to be saturated with manufactured textiles.³⁴ The MFA continued on as the standard until 1995 when, at the Uruguay Round of the World Trade Organizations's (WTO) negotiations, the Agreement on Textiles and Clothing (ATC) was concluded. Under the ATC, it was determined that the MFA would be phased

²⁹ See Polaski, *supra* note 19, at 4.

³⁰ ILO, Better Factories Cambodia, *Facts and Figures about Cambodia's Garment Industry* (Feb. 2005), available at <http://www.betterfactories.org/content/documents/Facts%20and%20Figures.pdf>.

³¹ Wells, *supra* note 4, at 368.

³² Agreement Regarding International Trade in Textiles (Multifibre Agreement), Dec. 20, 1973, 25 U.S.T. 1001 (entered into force on Apr. 1, 1974).

³³ Charlene Aprill & Ramon Certeza, *Post Multifibre Agreement: A Preliminary Assessment of Cambodia and South Africa: A Comparative Study* 1, 8 (15 Sept. 2006) (unpublished M.A. dissertation, University of Kassel, Berlin School of Economics), available at http://www.global-labour-university.org/fileadmin/Papers_Wits_conference_2007/Group_B1/april_paper.pdf.

³⁴ *Id.*

out over the following ten years in order to allow textiles to once again be regulated under traditional GATT rules.³⁵

Because Cambodia did not attempt a state-organized entrance into the textile manufacturing industry until 1991, they were not originally affected by the MFA.³⁶ As such, Cambodia saw its ability to flood foreign markets with its products as an advantage over other quota-limited countries. In the hopes of capitalizing on this advantage, Cambodia quickly began to develop its garment industry and was able to realize quick returns.³⁷

The growth of Cambodia's garment industry led to it being granted "Most Favored Nation" status in 1996 by the U.S., and special privileges under the Generalized System of Preferences in 1997.³⁸ Garment exports to the U.S. grew from almost non-existent in 1994 to being valued at \$308 million dollars in 1998; representing an increase of over 305% from the previous year.³⁹ However, due to the rapid increase in the number of Cambodian goods flooding into the U.S. market, the U.S. government decided it was time to initiate conversations with Cambodia to incorporate it into the MFA's quota system.

Meanwhile, as Cambodia's textile industry grew, so did its workforce. The rapid growth in the workforce caused workers, who are mainly female, to take the brunt of the growing pains.⁴⁰ Workers suddenly began complaining about increasingly intolerable working conditions, long hours, and unpaid, forced overtime.⁴¹ Many workers were being paid under the required Cambodian minimum wage of \$40 for a forty-eight hour work week.⁴² Workers were denied legally protected rights in violation of the Cambodian Legal Code and other international

³⁵ Kolben, *supra* note 26, at 89.

³⁶ See Polaski, *supra* note 19, at 1.

³⁷ *Id.* at 4 (explaining that a significant amount of the outside investment came from Taiwan, China, and South Korea).

³⁸ Wells, *supra* note 4, at 362.

³⁹ Kolben, *supra* note 26, at 82.

⁴⁰ *Id.* at 82.

⁴¹ *Id.* at 83.

⁴² *Id.* at 84.

conventions.⁴³ The workers, tired of these constant abuses, reached out to American labor unions in search of help.⁴⁴

In June of 1998, supportive U.S. labor groups petitioned the Clinton administration to review workers' rights violations in Cambodia.⁴⁵ This put the administration in a dilemma: either ignore the obvious labor right violations or take a pro-active stance. The U.S. responded by negotiating the UCTA's positive incentive program as a means of giving in to the domestic labor pressures, and perhaps, as a way of keeping China's domestic garment industry from even greater growth.

B. Provisions of the UCTA

The UCTA was originally negotiated for a three year span between 1999 and 2001 and called for quota limitations on the twelve largest categories of exports.⁴⁶ However, if it was found that Cambodian factories achieved significant compliance with national and international labor standards, the quotas for all twelve categories would be increased on an annual basis to a possible cap of 18%.⁴⁷ This meant that by taking action to enforce labor compliance within their domestic borders, Cambodia could realize increased economic benefits. For example, because of Cambodia's success in complying with the agreement's requirements, their country's garment export quotas with the U.S. were increased substantially over the first five years of the agreement's course: 9% in 2000 and 2001, 12% in 2002, 14% in 2003, and 18% in 2004.⁴⁸

Also, in a revolutionary move, both parties agreed to a regulatory compliance regime to be handled by a non-interested

⁴³ *Id.*; see also Labor Code Ch. XI (1997) (Cambodia) (outlining the rights to freedom of association and organize).

⁴⁴ Kolben, *supra* note 26, at 84.

⁴⁵ Polaski, *supra* note 19, at 4.

⁴⁶ *Id.*

⁴⁷ See Lejo Sibbel & Petra Borrmann, *Linking Trade with Labor Rights: The ILO Better Factories Cambodia Project*, 24 *Ariz J. Int'l & Comp. L.* 235, 237 (2007).

⁴⁸ Wells, *supra* note 4, at 363.

third party.⁴⁹ It was determined that domestic efforts had proven to be too ineffective and that outside inspection would be too costly. After a long discussion, the two states decided that the best organization capable of taking on such a role would be the ILO.⁵⁰ The ILO offered something most regulatory schemes cannot, and something deemed to be crucial to the success of the program: a neutral, non-profit third party who could enforce regulations without tainting results.⁵¹

The ILO, which was created in 1919 after the First World War, had never, in its almost 90 year history, been responsible for supervisory, on-ground regulatory functions.⁵² Up until this point, the ILO had acted as a non-governmental legislative branch negotiating and constructing international labor conventions.⁵³ However, the reaffirmation at the Doha Ministerial Conference in 2001 by the WTO that the ILO was the “competent” body to deal with core labor standards had placed it in the difficult position of needing to take a more proactive hands-on role in the international labor rights regime.⁵⁴ The ILO needed to demonstrate its ability to be more than a soft power intermediary between the developed and underdeveloped nations. This is where the UCTA came in.

After a great deal of debate, and the contemplation of many different proposals, the ILO’s Director-General, Juan Somavia, finally agreed to undertake regulatory compliance.⁵⁵ On May 4th, 2000, the ILO signed an agreement to handle regulatory compliance of all registered Cambodian textile factories.⁵⁶ This move

⁴⁹ See Polaski, *supra* note 19, at 5.

⁵⁰ See *id.*

⁵¹ See Kolben, *supra* note 26, at 81.

⁵² See EBERE OSIEKE, CONSTITUTIONAL LAW AND PRACTICE IN THE INTERNATIONAL LABOUR ORGANIZATION 3-5 (Martinus Nijhoff 1985) (demonstrating the founding of the ILO and its original role).

⁵³ *Id.*

⁵⁴ See Robert E. Baldwin, *Key Challenges Facing the WTO, in DOHA AND BEYOND: THE FUTURE OF THE MULTILATERAL TRADING SYSTEM* 46, 55 (Mike Moore ed., 2004).

⁵⁵ See Kolben, *supra* note 26, at 100.

⁵⁶ Polaski, *supra* note 19, at 6.

acted as a catalyst for the organization, which soon found itself moving into a broader range of international regulatory functions.⁵⁷ Suddenly, the ILO was the major player on the international labor rights enforcement and regulatory scene that many had always hoped.

C. Regulatory Compliance

The regulatory compliance program was established under the title of the ILO Garment Sector Working Conditions Improvement Project (“project”); in 2001 the project would change its name to Better Factories Cambodia (BFC), which it still holds today.⁵⁸ The project was funded largely by the U.S. government from the years 1999 to 2004, with expenditures of nearly \$2 million dollars, or approximately \$3.50 a worker per year.⁵⁹ It had four main objectives: (1) develop and maintain an independent monitoring system; (2) draft new legislation and regulations to ensure labor rights protections; (3) increase worker and employer knowledge of core international labor rights; and, (4) increase cooperation between workers, employers, and the government to continue movement towards complying with national and international labor standards.⁶⁰

In order to facilitate the program, the trade agreement stated that the ILO regulatory program should include “internationally recognised core labour standards,” which has been interpreted by the ILO to mean all of their Fundamental

⁵⁷ See, e.g., Kimberly Ann Elliot, *The ILO and Enforcement of Core Labor Standards*, 00-6 INT’L ECON. POL’Y BRIEFS 1, 6 (July 2000) (showing that the same year the UCTA was signed the ILO undertook an enforcement action against Burma for using forced labor by relying upon a provision of its charter, Article 33, which allowed penalties to be enforced by member states when ILO conventions are violated), available at <http://www.iie.com/publications/pb/pb00-6.pdf>.

⁵⁸ Wells, *supra* note 4, at 364, 373.

⁵⁹ Polaski, *supra* note 16, at 25.

⁶⁰ Wells, *supra* note 4, at 364.

Conventions as well as Cambodian domestic regulations.⁶¹ So when instituting the regulatory compliance plan, the ILO drafted an extensive checklist questionnaire (containing over 500 issues) to be used by auditors when conducting on-site observations of factories.⁶² The items on this checklist are used more as go-bys than as absolute requirements, as the ILO does not have enforcement power within another state's sovereign territory. Due to the fact that they are merely acting as a regulatory scheme coordinator, the ILO's enforcement abilities are limited to published reports. However, being that these reports are to be used to determine whether or not increased quota rights would be offered to the Cambodian garment industry, the ILO still wields a great deal of power over the garment industry.

To oversee the project, a tripartite Project Advisory Committee (PAC) was formed, with an equal representation of 3 agents from the Cambodian government, the Garment Manufacturers Association of Cambodia, and the Cambodian trade unions.⁶³ The PAC does not meet regularly, and has no direct responsibility for the day-to-day activities of BFC, but is expected to provide support and guidance in certain specific areas: evaluation of the ILO monitoring system and its reports, registration of factories into the program, the implementation of new procedures for ILO factory visits, and maintaining an open dialogue between the employers and the unions.⁶⁴

In order to truly gauge the successes and failures of the project, factory involvement and cooperation is essential. The ILO

⁶¹ Sibbel & Borrmann, *supra* note 47, at 239 (quoting ILO, *First Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector*, § 1.1 (Nov. 1, 1001)); *see also* Kolben, *supra* note 26, at 93.

⁶² *See* Sibbel & Borrmann, *supra* note 47, at 239 (discussing questionnaires primarily made up of factors from the ILO Fundamental Conventions and the 1997 Cambodia Labor Law Code).

⁶³ ILO, *Better Factories Cambodia: Sixteenth Synthesis Report on Working Conditions in Cambodia's Garment Sector 3* (Mar. 2006), available at [http://www.betterfactories.org/content/documents/1/16th%20Synthesis%20Report%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/16th%20Synthesis%20Report%20(en).pdf) (Mar. 2006).

⁶⁴ *See id.*; Sibbel & Borrmann, *supra* note 47, at 238.

believed that unless factories were involved with the project of their own accord, and not due to strict government regulation, results might be tainted and unreliable. Therefore, it was determined that factory registration in the program would be voluntary.⁶⁵ However, being that the quota system was based on the overall performance of the whole country, many worried that a large portion of non-participants would skew the results and represent a threat to all producers.⁶⁶ In addition, this fact worried many that a free rider problem would develop where a small group of unregulated factories would benefit from the good faith efforts of the majority.⁶⁷

Realizing how problematic these issues could be, the Cambodian Ministry of Commerce responded by enacting Prakas (Ministerial Regulation) 108 on March 28th, 2001 which limited the availability of export quotas to the U.S. by any non-participating factory.⁶⁸ This quickly resulted in complete participation by all factories, as all factory owners wanted to have increased access to the U.S. markets. By not directly mandating involvement, but still facilitating an incentive for participating in the program, the Cambodian government felt they had found a happy medium that would quell the free rider concerns.

BFC utilizes a small group of eight carefully selected locals to undertake all domestic monitoring of the factories.⁶⁹ These monitors are paid very well by Cambodian standards to avoid the likelihood of bribery and have been specially trained by the ILO to ensure that their monitoring practices meet international standards and norms.⁷⁰ By utilizing local monitors, the ILO has avoided any problems with the monitors not speaking the local language (Khmer) and not being able to meet with workers and unions away

⁶⁵ Polaski, *supra* note 19, at 7.

⁶⁶ *Id.*

⁶⁷ *See id.* (explaining that under the free rider problem factories who did not participate would have an economic advantage over those who did).

⁶⁸ Sibbel & Borrmann, *supra* note 47, at 238.

⁶⁹ *See* Polaski, *supra* note 19, at 15.

⁷⁰ *Id.*

from the workplace.⁷¹ The monitors have been very successful in properly administering the program and have been praised by all parties involved.⁷²

In order to facilitate and analyze all the results gathered from the monitors, the ILO produces two types of reports: confidential factory reports and publicly available “synthesis reports.”⁷³ The confidential factory reports are written after initial visits to participating factories and are used solely for internal monitoring purposes and are not made public.⁷⁴ The synthesis reports are shared publicly and detail the ILO’s findings on secondary visits to groups of factories and give a description of overall compliance results, while also specifically mentioning non-compliant factories by name.⁷⁵

The reasoning behind the two report system is simple: by sparing factories the shame of being publicly named as labor violators initially, but posing the threat of being publicly outed in the Synthesis Reports, factory owners would be scared into quick and dramatic change. The availability and specificity of the synthesis reports have been very positive and the ILO has said they have played a significant role in the U.S. agreeing to annual quota increases.⁷⁶ Also, the availability of the names of non-compliant factories has been seen as a way of aiding potential corporate buyers when deciding whether or not to contract with certain factories.

The project is still on-going in Cambodia under the BFC despite the end of the MFA. It uses an interactive website to publicly release its quarterly newsletters, Synthesis Reports, and update any changes on its policy.⁷⁷ It has been seen as a major

⁷¹ *Id.* at 16.

⁷² *See id.* at 15.

⁷³ Wells, *supra* note 4, at 364.

⁷⁴ *See id.*

⁷⁵ *See id.*; *see also* ILO, *supra* note 63, at 4.

⁷⁶ Wells, *supra* note 4, at 364.

⁷⁷ *See*, ILO, Better Factories Cambodia, *available at* www.betterfactories.org (showing the status of the BFC program today).

coup for all parties involved and has acted as a case study for many state's future inclusion of labor provisions within trade agreements with developing countries.

D. Positive Results of the UCTA

Cambodia saw some amazing results during the UCTA. It became the first underdeveloped state in the world to achieve over \$1 billion in yearly exports, with the garment industry representing eighty percent of that total.⁷⁸ During the first six years of the UCTA, Cambodia's apparel exports quintupled to \$1.9 billion dollars, with employment levels nearly tripling from 79,000 to 270,000 workers.⁷⁹ During this same span, Cambodia saw an influx of foreign investment. Companies, such as Disney, which had once left Cambodia due to labor rights concerns, returned after an eight year absence from the Cambodian market due to the ILO regulatory project.⁸⁰ This rise in production output and foreign investment helped the minimum monthly wage in the apparel sector (\$45) rise above the average monthly household income in rural areas (\$40).⁸¹ A World Bank survey of international buyers demonstrated that Cambodia's labor standards compliance placed them ahead of all of their regional competitors.⁸² By nearly all outside accounts, BFC had been more successful than anticipated.

The first twenty-eight factories to be monitored under this system showed that 32.5% of ILO suggestions were implemented after the first visit, with 43.5% being implemented after a second visit; similar average rates of implementation have been noted

⁷⁸ Polaski, *supra* note 19, at 15.

⁷⁹ See Wells, *supra* note 4, at 367-68.

⁸⁰ See *id.*

⁸¹ Polaski, *supra* note 19, at 11.

⁸² Foreign Investment Advisory Service [FIAS], *Cambodia: Corporate Social Responsibility and the Apparel Sector Buyer Survey Results*, available at [http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/Cambodia+Buyer+Survey+Report+Final/\\$FILE/Cambodia+Buyer+Survey+Report+Final.pdf](http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/Cambodia+Buyer+Survey+Report+Final/$FILE/Cambodia+Buyer+Survey+Report+Final.pdf) (Dec. 2004).

since these initial findings.⁸³ It should be mentioned though, that these numbers represent averages, and thus, do not accurately represent a specific factory-to-factory analysis. Nonetheless, these figures still demonstrate an upward improvement of labor standards within the industry.

Internally, BFC hailed the project as a success. In its Sixteenth Synthesis report, BFC found some very positive results: forced labor in factories was found to be virtually non-existent, pregnant workers were no longer summarily dismissed, employment of underage workers had been largely vanquished, eighty-four percent of factories paid workers at the mandatory minimum wage, over half of the factories did not instill mandatory overtime, and nearly half of the factories had provided some sort of personal protective equipment to workers.⁸⁴ While these changes are still quite small in comparison to most developed states standards, they do show a distinct improvement from factory conditions before the UCTA. Individual workers rights are beginning to gain respect, workplace standards have risen considerably, and there is a greater deal of dialogue between management and unions. Even with this noticeable improvement, the ILO still recognized the need for an even greater and more sustained growth for the project to truly be considered a success.

V. AFTER THE UCTA

A. Initial Concerns

With the end of the UCTA in 2004, a great deal of speculation arose as to how the Cambodian garment industry would fare. The threat of increased competition by large-scale manufacturing states, such as China and India, posed a major danger to Cambodia's continued economic growth.⁸⁵ Many of these quota-

⁸³ Sibbel & Borrmann, *supra* note 47, at 242-43.

⁸⁴ ILO, *supra* note 63, at 6-7.

⁸⁵ See generally, Polaski, *supra* note 19, at 9.

limited states had not implemented similar labor protections within their own borders and did not enforce already existing labor standards, and for these reasons, would be able to offer lower prices. Cambodia was relying on their good faith efforts to reform its county's labor standards, and the promise of many corporations to continue their business, to help them maintain their relevant position in the world market. As the president of the Garment Manufacturers Association of Cambodia said in 2002, "[o]nce we started talking to buyers, [and] looked at American consumer habits, we realized that we had a comparative advantage. Moreover, our only chance to survive in Cambodia was to build on the image of safe sourcing. Otherwise, we'd lose to price competition."⁸⁶

With the new market pressures sure to cause immediate effects on the manufacturing industry, the Cambodian government sought to maintain the one comparative advantage its factories still held over competitors: fair labor standards. The Cambodian factories offered corporate and state buyers increased savings on expensive outside inspectors and a renewed positive public image. In the age of Corporate Codes of Conduct and international goodwill, Cambodian factories were offering a premium that many of their competitors could not. In order to sustain the program, the Cambodian government reached out to many different corporations and international organizations for funding.⁸⁷ Through considerable effort, Cambodia was able to shore up investment by many private corporations, including the World Bank and Agence France de Developpement, in order to extend BFC until 2009.⁸⁸

Currently, the Cambodian government, along with the domestic labor unions and employers, are working towards nationalizing the project into a Cambodian domestic institution by

⁸⁶ Sibbel & Borrmann, *supra* note 19, at 245 (citing Regina Abrami, *Worker Rights and Global Trade: The U.S.-Cambodia Bilateral Textile Agreement* 12, HARV. BUS. SCH. CASE 703-34 (2003)).

⁸⁷ See Wells, *supra* note 4, at 373.

⁸⁸ *Id.* If Cambodia wished to keep BFC after 2009, it was decided that it would be up to Cambodia to fund all of BFC's practices.

January 1, 2009.⁸⁹ The plan is to use BFC as a way for Cambodia to flaunt its domestic factories compliance records in hope of garnering more foreign contracts. Cambodia believes that by putting greater emphasis on electronic media, and more specifically, the uploading of factory specific reports online, the industry will realize greater domestic revenue from corporate buyers who will be more comfortable dealing with Cambodian factories.⁹⁰ As the Cambodian Minister of Commerce has said, “We are extending our labor standards beyond the end of the quotas because we know that is why we continue to have buyers. If we didn’t respect the unions and the labor standards, we would be killing the goose that lays the golden eggs.”⁹¹

B. Cambodian Output Following the UCTA

The increased level of foreign competition following the end of the MFA agreement has not seemed to significantly alter factory compliance levels within Cambodia.⁹² Thus far, the overall conclusion from the synthesis reports reflects a marked improvement in the working standards for the Cambodian textile industry.⁹³ However, the reports do show a noteworthy level of non-compliance in certain areas: ensuring workers rights, freedom from anti-union discrimination, minimum wage requirements, and voluntary overtime restrictions.⁹⁴ To date, “over a third of the ILO’s almost 2500 suggestions have been implemented, in whole or in part.”⁹⁵ This level of compliance is still well below the levels that many hoped the project would achieve and shows the need for continued efforts in improvement.

⁸⁹ Sibbel & Borrmann, *supra* note 47, at 245.

⁹⁰ *Id.*

⁹¹ Elizabeth Becker, *Cambodia’s Garment Makers Hold Off a Vast Chinese Challenge*, N.Y. TIMES, May 12, 2005, at C1.

⁹² *See id.*

⁹³ Sibbel & Borrmann, *supra* note 47, at 242.

⁹⁴ *Id.*

⁹⁵ Wells, *supra* note 4, at 371.

While the overall change in Cambodia from the pre-UCTA years to its current state is quite remarkable, there is still a great deal of change that needs to be done. However, it is important to remember that factory compliance levels have seemed to remain stable even with the end of the MFA. Being that standards have remained relatively constant, one can assume BFC is still having some success in ensuring a minimum level of factory compliance. The thought is that with a continuation of the program past 2009, compliance with core labor rights will only continue to grow.

Also significant to note is that since 2004 all major economic categories tied to Cambodian garment exports have either increased or stayed relatively stable.⁹⁶ In the year 2005, the garment industry saw its exports to the U.S. and the European Union (EU) increase, employment levels rise, and wages remain relatively stable; with economic projections showing these gains to either increase or remain constant for the near future.⁹⁷

One major reason for these sustained increases is due to the U.S. and the EU adopting safeguard protections against Chinese imports.⁹⁸ Under China's 2001 accession agreement to the WTO, member states, under certain circumstances, have the right to enact safeguard measures to limit Chinese textile imports until 2008.⁹⁹ To avoid the inconvenience of integrating comprehensive safeguard measures, the U.S. and EU reached separate bi-lateral agreements with China in 2005 that limited its textile importation in a manner similar to the MFA, but restricted less products and allowed larger quotas.¹⁰⁰ Currently, over forty percent of Cambodia's exports are in import categories in which there are

⁹⁶ See ILO, Better Factories Cambodia, *The End of Quotas: Impact on Cambodia's Export Garment Industry* (July 2006), available at [http://www.betterfactories.org/content/documents/The%20End%20of%20Quotas%20-%20Jul%2005%20\(En\).pdf](http://www.betterfactories.org/content/documents/The%20End%20of%20Quotas%20-%20Jul%2005%20(En).pdf).

⁹⁷ See *id.*

⁹⁸ See U.S. Dep't of Agric., *The World Bids Farewell to the Multifiber Agreement*, AMBER WAVES, Feb. 2006, available at <http://www.ers.usda.gov/amberwaves/february06/features/feature2.htm>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

import limits for the Chinese.¹⁰¹ This fact demonstrates how Cambodia's strong effort in establishing, and maintaining, BFC has helped to foster a close and beneficial relationship with the U.S.

Cambodia's economy is surpassing forecasters' expectations following the end of the MFA. Based on current market figures, the International Monetary Fund (IMF) revised its prediction on Cambodia's gross domestic product from 2.3% to 6% due to continued success in the garment industry and limited Chinese interference.¹⁰² Also, the Economic institute of Cambodia said that a growth of ten to twenty percent in 2005 for the garment industry was a very realistic figure if current standards and trends hold true.¹⁰³

Overall, the economic position of the Cambodian textile market has seemed to remain fluid due to its ability to provide legitimate labor standards statistics to corporate and state purchasers. Many factories have flaunted this advantage by allowing buyers the ability to access their monitoring reports online from the ILO. They have focused on the transparent and legitimate environment the BFC has brought to the Cambodian garment industry. While one cannot be sure of what will happen in 2009 when China is no longer affected by the U.S. and EU safeguards, it seems likely that the close bonds made between Cambodia and these two trading powerhouses will have entrenched Cambodia in their markets.

VI. LESSONS FROM THE UCTA

There are many useful lessons that can be taken away from the implementation of the UCTA. Its revolutionary nature, combined with its success, has established a framework by which other similar agreements can be structured. However, like any new and innovative design, it is still a work in process. In order to learn

¹⁰¹ See ILO, Better Factories Cambodia, *supra* note 96, at 1.

¹⁰² *Id.*

¹⁰³ *Id.*

from both the successes and failures of the UCTA, states need to closely examine the results of the agreement. For the purposes of this article, we will focus on three of the most important lessons from the agreement.

A. Positive Incentives

The first important lesson from the UCTA was its ability to successfully link trade privileges to labor rights through a positive incentive program. Up until the UCTA, all labor provisions in U.S. trade agreements had operated under negative incentive programs which linked decreased labor standards to negative economic consequences.¹⁰⁴ The goal of these negative incentive provisions was not “to utilize them per se, but rather to establish a disincentive or punishment that is adequate to deter a party from failing to carry out its obligations, and thus to encourage voluntary compliance.”¹⁰⁵ After watching the results of these provisions for some time, the U.S. realized this type of incentive program did not foster the kind of change that it was seeking. Rather than motivating states to improve their labor standards directly, it led them to merely maintain their standards so that they would not face any further decreases. The U.S. saw the UCTA as a means of testing to see if tying in positive incentives would produce greater results.¹⁰⁶

The UCTA’s positive incentive program was successful because of its structure. It offered additional market access, via the quota increase, to the Cambodian garment industry for demonstrating it had reached certain levels of compliance with national and international labor standards.¹⁰⁷ This provided an incentive to both the Cambodian government, and factory owners, to take a proactive effort in improving standards rather than following the *status quo*. This made the improvement of labor conditions and

¹⁰⁴ Polaski, *supra* note 19, at 5, 17.

¹⁰⁵ Polaski, *supra* note 16, at 20.

¹⁰⁶ *Id.* at 16.

¹⁰⁷ *See id.* at 21.

standards more politically appealing to Cambodian government officials and factory owners, and thus, more likely to be implemented and sustainable. Rather than seeing resistance, the Cambodian garment industry actually saw change evolve quickly. Cambodian officials developed an open dialogue with labor unions, and convinced factory owners of the overall benefits to their industry if they adhered more strictly to international labor regulations. After demonstrating initial financial benefits throughout the first year of BFC, the officials gained wide-spread factory owner support as well.¹⁰⁸ This meant that prolonged change became a staple of the UCTA because of the fear of losing access to the American market.

Positive incentive programs are a strategy that many scholars, like Sandra Polaski of the Carnegie Institute, have publicly promoted.¹⁰⁹ The basic mantra behind this theory is that by compelling states to act on their own accord, one will see more significant and immediate changes occur within that state. One of the many complaints against negative incentive provisions has been that it leads many states into maintaining the *status quo*. The *status quo* is seen as a safe haven where states can reside with little risk just by maintaining the same ineffective policies. In a positive incentive program, states that are serious about gaining economic advantages must encourage domestic change in order to benefit.

The process of instituting positive incentives into trade agreements is not difficult. States can easily add positive incentive labor rights provisions into trade agreements without causing any real disruption within the global market.¹¹⁰ The UCTA is a roadmap of how states can utilize positive incentive provisions in a way that both benefits their own domestic workers, while also helping the international system shift towards a more compliant international labor rights regime.

¹⁰⁸ Int'l Confederation of Free Trade Unions, *Cambodia: Increasing Pressure on Trade Union Rights*, TRADE UNION WORLD REPORT, April 2005, at 5, available at <http://www.icftu.org/www/PDF/LMSrappportCambodiaEN.pdf>.

¹⁰⁹ See, e.g., Polaski, *supra* note 19.

¹¹⁰ See *id.* at 22-23.

The key, however, will primarily rely on a consensus among all states that the “occasional short-term costs [of instituting a similar program] are outweighed by long-term gains, that the deferred gratification will exceed the immediate.”¹¹¹ Smaller underdeveloped states will need to see how the positive aspects of increased labor standards can offset the initial and immediate costs to their industries. This will require an increased effort by the global community against comparative advantage and its consequences. It is only through this type of international cooperation and involvement that labor rights will ever be adequately protected.

B. ILO Success

The ILO’s results in Cambodia have had many lasting effects on its garment industry. First, it helped to reestablish multinational corporations’ faith in Cambodia’s ability to regulate their garment industry.¹¹² Branded multi-national corporations are very concerned about their corporate image. In today’s marketplace, a company’s good will is something that cannot be ignored. Whether its protestors, politicians, or consumer advocates, there is always someone waiting to tell consumers why they should not buy from a certain corporation.¹¹³ This fear has led many large corporations to establish Corporate Codes of Conduct to demonstrate to the public that they are conscious of how their actions affect workers’ rights.¹¹⁴ However, these codes effectiveness are limited to the

¹¹¹ David E. Skaggs, *How Can Parliamentary Participation in WTO-Rule-Making and Democratic Control be Made More Effective in the WTO? A United States Congressional Perspective*, in REFORMING THE WORLD TRADING SYSTEM 411 (Ernst-Ulrich Petersmann ed., 2005).

¹¹² Int’l Confederation of Free Trade Unions, *supra* note 108, at 5.

¹¹³ *Id.* (explaining how 86% of a 2004 World Bank survey of the 15 largest textile purchasers from Cambodia felt consumer’s views of labor standards as important as prices, quality, and delivery times).

¹¹⁴ Adelle Blackett, *Codes of Corporate Conduct and the Labour Regulatory State in Developing Countries*, in HARD CHOICES, SOFT LAW: VOLUNTARY

corporation's influence on, and oversight of, their various contracted factories; which very often is minimal at best.¹¹⁵

In order to prove their adherence to these codes, many corporations have set up regulatory schemes in which they send private inspectors into factories to observe their compliance with core labor standards.¹¹⁶ However, even with these efforts, these inspectors have proved generally ineffective.¹¹⁷ This ineffectiveness can be tied to a combination of many reasons: the inspectors not understanding the local languages, the factory visits occurring on a pre-determined, announced date, and the fact that inspectors usually do not conduct worker interviews away from the factory or factory management.¹¹⁸ All of these factors limit the likelihood that these inspections are representing accurate and truthful results.

Also, there is often a lack of consistency in how these factories are audited. The entire field of social auditing is still in its infancy and an industry leader, or widely accepted methodology, has yet to be discovered.¹¹⁹ These factors have caused private monitoring programs to remain, at best, inconsistent. Without a proven and accepted method of conducting these on-site inspections, corporations certainly can not expect the type of honest and forthcoming results that are required to determine if a factory is labor compliant. These obvious weaknesses in the private inspection industry have helped Cambodia separate itself from other low-cost textile manufacturing states due to its already existent and reliable regulatory compliance scheme.

By utilizing the ILO for factory inspections, corporate entities have been able to save a great deal of money by not having to pay costly foreign auditing firms to regulate their contracted

STANDARDS IN GLOBAL TRADE, ENVIRONMENT AND SOCIAL GOVERNANCE 125 (John J. Kirton & Michael J. Trebilcock eds., 2004).

¹¹⁵ See Frederick B. Jonassen, *A Baby-Step to Global Labor Reform: Corporate Codes of Conduct and the Child*, 17 MINN. J. INT'L L. 7, 47 (2008).

¹¹⁶ Polaksi, *supra* note 19, at 6.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 15-16.

factories; this financial benefit has helped many corporations accept the higher costs per product. Some corporations—like Sears, Kmart, and Wal-Mart—have ceased their own monitoring programs in Cambodia and rely strictly on BFC.¹²⁰ The ILO offers corporate buyers a level of reliability and certainty that the private auditors never could. Now, the likelihood of any of these contracted factories facing any major labor abuse scandals is less likely. Also, even if a scandal was to happen, it would be the ILO that would take the brunt of the blame, not the corporations. Corporate executives can feel secure in the ILO's ability to regulate their contracted factories and allow the corporations to do what they do best: watch their own bottom line.

Second, the ILO regulatory regime has demonstrated a greater level of transparency and legitimacy that could never be found through any domestic regulatory scheme. The ILO is the most respected organization in the realm of labor rights. Through its creation and adherence to its Fundamental Conventions, the ILO has gained an unsullied reputation that offered a “form of reputation risk insurance to global apparel retailers....”¹²¹ It is this reputation that gives Cambodia's domestic reform efforts a sense of legitimacy that otherwise would not be present. Individuals can look to the ILO's involvement and know that the actions being undertaken are not merely skin-deep. Positive results will not be seen as motive driven and can be applauded without concern.

Also, before the UCTA, states and private corporations would never allow the results of their labor audits to be public because of concern that the results may cause public outrage. At least in this instance, positive or negative, results will be shared with the public.

¹²⁰ Sibbel & Borrmann, *supra* note 47, at 245.

¹²¹ Polaski, *supra* note 19, at 9.

VII. SUGGESTIONS FOR BUILDING UPON THE UCTA MODEL

The UCTA, while quite successful, is still a work-in-progress. While hailed as a success, there have been a number of complaints about specific aspects of the agreement. In order to alleviate these problems in the future, there are many possible improvements that could be undertaken.. Among the many possibilities, three suggestions seem the most obvious: (1) requiring states to implement domestic legislation to force all affected factories to be part of the compliance project; (2) allowing the ILO to release complete factory results of ILO inspections to workers and labor unions; and, (3) tagging product exports as ILO compliant in order to attract more mid-level corporate buyers.

A. Domestic Legislation

Under the UCTA, Cambodian factories were not required to register and take part in the ILO compliance regime.¹²² Realizing this as a potential problem, the Cambodian government passed Prakas 108 to guarantee full compliance by all factories.¹²³ The voluntary feature in the factory compliance program could have been a much larger problem than it was since the quota incentives were tied to state-wide compliance, not on a factory-by-factory basis.¹²⁴ In future agreements, it seems unlikely that a similar program would be implemented on a factory-by-factory basis due to the major costs and administrative problems that would occur from doing so. Therefore, one would still have concern over the possibility of a free rider problem. That is why if the program is not going to be instituted on an individual basis, it is important that participating states pass domestic legislation to ensure full compliance.

¹²² *See id.* at 7.

¹²³ Sibbel & Borrmann, *supra* note 47, at 238.

¹²⁴ Polaski, *supra* note 16, at 7.

In many states, especially those with corrupt and unstable governments, it seems likely that it would be difficult to enforce compliance. Without mandatory compliance in these states, many factories would refuse to comply in order to gain an advantage over their domestic competitors. Those who did comply would be constantly worried about the non-compliant factories and the sacrifice to their bottom line. In turn, the compliant factories would begin to realize losses to their business and would begin removing themselves from the program; reinstating the race to the bottom. This overall effect is the antithesis of what the trade agreement is trying to instill and would only drain its effectiveness.

While these provisions would certainly bring about sovereignty issues, as there would be larger, powerful states affecting the domestic politics of smaller states, it would still be in the best interest of both. By passing this legislation, the smaller state can show that they are committed to enforcing the provision of the trade agreement and receiving the positive incentives, and the larger state will feel more secure. This process will foster a more symbiotic relationship between the two states and help make the transition to similar future agreements easier. States concerned about sovereignty issues can simply refuse to sign onto trade agreements that utilize these provisions, and thus, avoid any concerns they may have.

B. Administrative Policies

Certain administrative actions have been undertaken in the management of BFC that do not necessarily reflect full transparency. The Chief Technical Advisor (CTA), the head of BFC, is in charge of developing and maintaining the ILO inspection checklist.¹²⁵ Further, the CTA is responsible for compiling and publishing all synthesis reports.¹²⁶ As such, the CTA has discretion on how and when results will be disseminated. It is this discretion

¹²⁵ See Kolben, *supra* note 26, at 101-03.

¹²⁶ *Id.* at 102-03.

that has led to a very questionable administrative policy limiting disclosure of compliance results to labor unions and workers.

BFC required that “once the [CTA] has approved the report, the monitors will discuss it with the employer and workers in an attempt to conciliate and reach agreement.”¹²⁷ However, at the beginning of the project, the CTA decided that it would not share the results of the factory visits with workers due to a fear that they might use the information to strike and cause unrest throughout the garment industry.¹²⁸ The CTA justified its decision by stating that strikes would cause irreparable harm to the project and its goals. Whether these strikes would actually occur, or if the results could lead to increased negotiation between the unions and employers, never seemed to be considered by the CTA. The CTA’s refusal to completely share factory audit results frustrated many workers and their union representatives who began to publicly complain about the decision. Eventually, the CTA decided that it would allow partial disclosure to the workers, but still withhold certain key results.¹²⁹

It is not uncommon for a certain level of discretion to be allowed for any controlling executive. However, when one individual is allowed a high level of discretion in the implementation of key parts of a project, it leaves open the possibility of unwanted and unforeseen outcomes. While no one is accusing the CTA of improperly doing their job, one could argue that it was being too cautious with its decisions; with this caution possibly jeopardizing the legitimacy of the project. In order for this project to garner complete support, labor organizers need to feel that they are being properly included. If workers’ perceive that the project is siding too heavily with the employers, a great distrust could occur that would completely disenfranchise the workers.

There is no doubt that leaders’ need a certain level of discretion, but that discretion needs to be limited to those things that would not alter the purpose of the project. Under the UCTA,

¹²⁷ *Id.* at 104.

¹²⁸ *Id.*

¹²⁹ *See id.*

PACs were formed in order to guarantee a more cooperative atmosphere between the government, employees, and employers.¹³⁰ However, it is obvious that this decision by the CTA overwhelmingly benefited the employers over the employees. In this respect, it is obvious that the CTA's decision was contrary to one of the key underlying motives of the UCTA, and as such, contrary to the entire essence of the agreement as well. Also, the fact that there was no dispute resolution mechanism present makes this situation that much more problematic.

Generally, in most trade agreements there exists some type of dispute resolution mechanism where individuals can lodge official complaints and have their concerns heard.¹³¹ In this case, there was no such mechanism for the union workers to invoke in order to complain about the CTA's decision. Therefore, it seems necessary for future drafts to include a dispute resolution mechanism or body to hear any problems that might arise. The actual mechanism that would best fit this type of agreement is hard to initially ascertain, but could be similar to the WTO's current panel structure. Under its panel structure, a panel of member states hears complaints and levies a decision which can be appealed.¹³² In this situation, instead of using member states, the panel could be represented by PAC members who could come to either a final, binding conclusion or an appealable decision that could be heard by the Director General of the ILO for a final decision.

Even if this exact dispute mechanism was not used, any other variation would still be a welcomed addition to the current structure. As it currently stands, the lack of a legitimate dispute resolution mechanism may jeopardize future uses of the UCTA structure.

¹³⁰ See ILO, *supra* note 63, at 3.

¹³¹ Claus-Dieter Ehlermann & Lothar Ehring, *Can the WTO Dispute Settlement System Deal with Competition Disputes?*, in REFORMING THE WORLD TRADING SYSTEM 535, 544 (Ernst-Ulrich Petersmann ed., 2005).

¹³² *Id.*

C. Tagging

An additional factor that could be incorporated into future trade agreements would be the addition of tags to all products produced at ILO compliant factories. The UCTA was initially successful because it helped Cambodia gain an advantage over other states who were constrained by the MFA. With the dissolution of the MFA, and the likelihood of a more saturated market, states implementing UCTA type of agreements need some other types of incentives to guarantee future success.

Following the end of the MFA, it has been shown in many instances that the transparency involved in Cambodia's factories has helped to entice corporate buyers to either maintain contracts with, or to move contracts to Cambodian factories even when their products might be more costly.¹³³ However, these entities that have chosen to affect their bottom line are generally the larger multinational corporations who represent a smaller percentage of the entire international market.¹³⁴ In order to help attract smaller mid-level corporations to utilize factories that are labor compliant, new enticements need to be included.

One possible suggestion would be for the ILO to institute a program where compliant factories could include a tag with every product demonstrating its compliance with ILO standards. Doing this would represent a minor cost, maybe pennies on the dollar, but offer smaller corporate buyers a greater premium than a small per item discount. The tags produced for these products could possibly even be subsidized by the contracting state parties, which would make the concept even more advantageous for factory owners. It would allow the ILO to further tie itself to the international labor regime, while guaranteeing a greater level of legitimacy for all factories involved.

¹³³ See Polaski, *supra* note 16, at 22.

¹³⁴ See Wells, *supra* note 4, at 368 (demonstrating that it is larger corporations who are entering the Cambodian garment market due to an increased labor standards reputation).

The International Organization for Standardization (ISO) has implemented a system of standards for running a business known as ISO 9001.¹³⁵ Under ISO 9001, any factory that received an ISO audit and certification can publicly advertise itself as being ISO certified.¹³⁶ This process has helped many companies add business because of the security that comes from the knowledge that they are dealing with a entity that has a stable organizational structure in place. Using this model, garment factories could easily agree to become verified as labor compliant to guarantee certification. Once certified, these factories could begin to actively advertise and market themselves as being “ILO certified” in order to be more competitive within the international market.

Similarly, the Rugmark Foundation has been innovative in its use of tagging to demonstrate the legitimacy of carpets produced at looms that it has independently audited.¹³⁷ Every loom attaches a label to each carpet it produces in order to show that child labor has not been used in their production process.¹³⁸ In order to further guarantee the legitimacy of the products, and to avoid counterfeit labels, each label is numbered so its origin can be traced back to the loom at which it was produced.¹³⁹

The ILO could use the Rugmark example as a way of further promoting the international labor rights movement by requiring all ILO inspected factories to tag their products with some sort of mark that indicates it as ILO compliant. This would help internationalize the cause by making consumers more aware of international labor standards. This effort would open these factories to a wider breath of markets and could possibly lead to a greater surge of support for these types of factories and the corporations that contract them. As the German ambassador to

¹³⁵ See International Organization of Standardization, About ISO, <http://www.iso.org/iso/about.htm>.

¹³⁶ See *id.*

¹³⁷ See Rugmark Foundation, Child-Labor-Free Certification, www.rugmark.org (last visited April 12, 2008).

¹³⁸ See *id.*

¹³⁹ See *id.*

Cambodia noted, labor standards are now of “the utmost importance for the image of trading partners...”¹⁴⁰

By flaunting their ILO compliance, states can strengthen their garment industries’ attractiveness to Western purchasers. In a time when many consumer organizations have established boycotts of corporations like Wal-Mart, other businesses can point to ILO compliance to show that their products are not being produced in violation of international labor standards.¹⁴¹ This is one of the few ways to ensure that the race to the bottom does not further denigrate developing markets and their workers.

VIII. CONCLUSION

The UCTA represents a revolutionary way for states to deal with labor issues within the international market. It forces developing states to emphasize responsibility and accountability within their domestic labor codes, while still offering a positive incentive to become compliant. Even though the UCTA represents a very small sample of the \$350 billion dollar garment industry, it does demonstrate a broader degree of potential importance.¹⁴² It shows that these types of agreements can be successful for both developing and developed states without negatively affecting labor standards. It also demonstrates that this type of trade structure would not be limited directly to textile manufacturing, but could be spread to other industries.

Further, the UCTA has shown that the ILO is ready to take on a more hands-on, global role in the regulatory compliance and enforcement of international labor standards. With a more active ILO involved, global governance of labor rights is sure to take on a more important role within the international system in the future.

¹⁴⁰ See ILO, *Strong Growth in 2005*, 4 BETTER FACTORIES CAMBODIA Q. NEWSL. 1 (Mar. 2006), available at [http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.4%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.4%20(en).pdf).

¹⁴¹ See, e.g., 1 world Communication, Boycott International, <http://www.1worldcommunication.org/Walmart.htm> (last visited April 12, 2008).

¹⁴² Wells, *supra* note 4, at 376.

States will no longer remain ambivalent and cautious towards labor laws and will be forced to take more pro-active measures to guarantee that domestic codes conform to the international standards.

Based on the analysis presented herein, it is obvious that enactment of a similar UCTA model can have long-term, meaningful effects. In the future, one can expect to see states beginning to diversify and expand the UCTA structure to different industries and to see an increased use of positive incentive provisions in trade agreements. Also, one can expect new and innovative ideas to be added to these provisions in order to overcome states concerns with keeping industry prices competitive. With ILO support, and international pressure, it would be of no shock if these new agreements eventually became the new *status quo* for the international labor regime.

