



Labour Rights versus State Sovereignty

Assessing US Generalized System of Preferences Petitions as a Strategy for Advancing Labour Rights Internationally

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Assessing US Generalized System of Preferences Petitions as a Strategy for Advancing
Labour Rights Internationally***

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Abstract: International efforts to promote collective-action labour rights in developing countries frequently encounter strong resistance from national political authorities framed in terms of state sovereignty. Actions in most rights-promotion arenas (transnational union-to-union solidarity, corporate social responsibility campaigns, International Labour Organization initiatives) generally pose only oblique challenges to state resistance to rights enforcement. However, US and European Union generalized system of preferences (GSP) schemes directly engage sovereignty by making countries' enhanced access to these national and regional markets conditional upon compliance with specified labour norms. This paper assesses the efficacy of US GSP petitions against 15 developing countries, focusing on the rights to organize and bargain collectively. It finds that petitioners' success in mobilizing political support in target countries significantly increases the effectiveness of external pressures, demonstrating how sovereignty can be leveraged to promote reforms and contributing to broader debates regarding international human rights promotion, including through labour-conditionality provisions in free-trade agreements.

Key words: workers' rights, trade, international labour standards

Debates regarding the legitimate scope of labour rights and the means for their enforcement are now broadly international. Yet despite a strengthening consensus over time in favour of an expanding range of worker protections, international efforts to defend labour rights frequently encounter strong resistance because these actions often confront state sovereignty. This is a field in which, as Donnelly so trenchantly observes about the enforcement of most international human rights norms, "... sovereignty still ultimately trumps human rights" (2007: 289).

National political authorities' resistance to international labour rights norms—both to adopting them as law and to implementing them in practice—has historically been strongest in

the case of collective-action rights. There is greater consensus in favour of individual worker rights closely associated with the welfare of the human person (those addressing forced or compulsory labour, child labour, discrimination in employment, workplace health and safety, minimum wages and employment conditions, and so forth) than collective-action labour rights (the rights to organize, bargain collectively and strike) because the latter generally pose more direct challenges to employer interests and the established domestic political and economic order.¹ Collective-action rights are typically invoked in the context of worker-employer conflict and struggles over the organization of economic production that closely link the public and private spheres. In some cases, union ties to opposition political forces—or even the mere existence of independent organized groups—may also pose a threat to those in power. As a consequence, collective-action rights cut to the heart of state sovereignty in the classic Weberian meaning of the term: “the ability of public authorities to exercise effective control within the borders of their own polity” (Krasner 1999: 4).²

International acceptance of collective-action rights arguably reached a new level with the International Labour Organization’s (ILO) promulgation of its Declaration on Fundamental Principles and Rights at Work (1998). The Declaration listed “freedom of association and the right to collective bargaining” as the first two of eight core principles and rights, and the ILO

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¹ In some developing countries, violations of individual labour rights (for example, egregious abuse of child labour in textile and garment export industries) may be so important to national economic performance that they are in practice as important as violations of the rights to organize and bargain collectively.

² See also Max Weber’s definition of “the state” and his discussion of domestic political sovereignty in Weber 1978: vol. 1, chap. 17, esp. p. 54.

The right to organize is, strictly speaking, also an individual right in the sense that it involves actions undertaken by individuals. The International Covenant on Civil and Political Rights (Art. 22) and the International Covenant on Economic, Social and Cultural Rights (Art. 8) recognize the right to organize as a core right, but they do not award special status to the collective worker organizations that are the product of such actions.

followed up with an accelerated, generally successful campaign to encourage member states to adopt its conventions No. 87 and No. 98.³ Nevertheless, formal adoption of these conventions does not necessarily guarantee that collective-action rights are either fully incorporated into national law or observed in practice.

If sovereign resistance poses a substantial obstacle to the international enforcement of collective-action rights, then logically the most powerful strategies available to rights promoters in an international system of states would be those that leverage sovereignty to positive effect—that is, strategies that bring one (generally more powerful) state’s sovereign rights to bear against another (generally weaker) state. Yet actions in most rights-promotion arenas generally pose only oblique challenges to state resistance to rights enforcement. Transnational union-to-union solidarity efforts and corporate social responsibility campaigns are usually most effective when they address violations of individual rights (for instance, the assassination or forced disappearance of trade union activists) or workplace practices in specific companies or industries. Although they may sometimes succeed in pressuring a government to amend particular labour policies, they rarely (if ever) compel a national government to alter its overall approach regarding collective-action rights. Even when rights activists manage to mobilize their own governments’ support in the form of diplomatic protests and/or financial pressure, these governments are generally active only at the margins of such efforts. The ILO, the principal international advocate of labour rights, has long given high priority to advancing the rights to organize and bargain collectively. But despite the legitimacy conferred on the organization by the unique tripartite structure of its chief decision-making bodies (with government, employer and labour representatives) and the consensual process through which it adopts labour standards

³ The eight conventions on which the Declaration was based are Nos. 29, 87, 98, 100, 105, 111, 138, 182 (www.ilo.org/dyn/normlex.en).

(conventions), its positions do not frontally challenge state sovereignty because, exercising no binding international authority, the ILO must principally rely upon moral suasion to enforce the policies it promotes.

In contrast, the labour rights provisions embedded in the generalized system of preferences (GSP) legislation adopted by the United States (1984) and the European Union (1994) directly engage state sovereignty by making a developing country's enhanced access to these national and regional markets conditional upon their compliance with specified labour norms. The exercise of sovereignty in this form (denial of market access) constitutes the most powerful leverage that international defenders of labour rights can normally bring to bear on countries that, on the basis of their own sovereignty considerations, decline to embrace internationally espoused labour norms in law or in practice.⁴

This paper examines the effectiveness of this rights-promotion strategy by employing process-tracing methodology (supported by statistical tests) to analyze the impact of US GSP petition reviews on labour practices in 15 countries between 1985 and 1995, focusing particularly on efforts to promote and enforce the rights to organize and bargain collectively.⁵ This research addresses two main questions. First, to what extent, and under what conditions, can labour-rights activists employ the sovereignty leverage available via GSP legislation to advance collective-action rights in developing countries? Second, in what ways can the GSP experience inform contemporary debates regarding the effectiveness of rights protections included in US free-trade agreements and the broader challenges of defending labour rights internationally?

⁴ No labour-rights advocate has suggested international humanitarian intervention by military means (which is restricted to the extreme case of genocide) to prevent a national government's suppression of such rights as freedom of association.

The argument advanced here parallels that made by Hafner-Burton (2005) regarding the potential impact of "hard" human rights provisions in preferential trade agreements. See also Hafner-Burton 2013: chap. 8 on the role of states in promoting human rights.

⁵ On process-tracing as a research methodology, see Bennett and Checkel 2015.

Defending Labour Rights Internationally through US Generalized System of Preferences Petitions

The GSP programmes established by the United States and the European Union (EU) are the only ones that contain labour rights-conditionality provisions.⁶ Far more labour-rights complaints have been filed under the US GSP scheme than under either the EU's GSP programme or US free-trade agreements with developing countries.⁷ A close examination of these cases is, therefore, the best available test of the extent to, and the conditions under, which rights advocates can deploy sovereignty leverage in this from to advance collective-action rights in developing countries.

Labour Rights in the US Generalized System of Preferences

The US Trade and Tariff Act of 1984 (USTTA) was the first comprehensive national legislation linking market access to the observance of labour rights. Its adoption constituted a signal political victory for US labour organizations, which had since the mid-1940s lobbied unsuccessfully to include “fair labour standards” provisions in multilateral trade agreements. The

⁶ The United States and the EU could establish these conditions without violating the most-favored-nation principle of the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) because participation in these programmes is voluntary. The General Agreement on Tariffs and Trade (GATT) recognized the GSP concept in 1965. In 1971, it adopted a ten-year waiver of its underpinning “most-favored-nation” principle (Art. 1), and in 1979 it approved an enabling clause that made the exception permanent (Jones 2015: 3-5). In 2019, the World Trade Organization (WTO) listed 31 preferential trade agreements of different kinds; it classified 12 of these as GSP programmes (<http://ptadb.wto.org/ptaList.aspx>, accessed 1 Aug. 2019).

⁷ There were only six labour-rights complaints filed under the EU's GSP programme between 1995 and 2018. Two countries were suspended from the programme specifically for labour-rights violations: Myanmar in 1997 (forced labour) and Belarus in 2007 (freedom of association). Myanmar was reinstated in 2013. See Kryvoi 2008: 230-35; Portela and Orbie 2014: 67-68; Simpson 2015: 90.

Between 1994 and 2018 there were 29 complaints filed against Mexico under the 1994 North American Agreement on Labor Cooperation, the “side agreement” attached to the North American Free Trade Agreement. Between 2006 and 2018, there were eight labour-rights complaints filed against parties to other US free-trade agreements: Jordan (2006), Guatemala (2008), Costa Rica (2010), Bahrain (2011), Dominican Republic (2011), Honduras (2012), Peru (2015), Colombia (2016). Vogt 2015: 842-43; www.dol.gov/agencies/ilab/, accessed 3 Dec. 2018.

act, whose provisions were subsequently included in other US trade and investment-protection legislation (Pérez-López 1990: 226-27; Compa and Vogt 2001: 205-6), made respect for “internationally recognized worker rights” (freedom of association, the right to organize and bargain collectively, a prohibition on any form of forced or compulsory labour, the establishment of a minimum age for the employment of children, and the delineation of acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health) a mandatory criterion in US government decisions whether to extend trade preferences to developing countries under the GSP programme. Under such programmes, industrialized countries offer nonreciprocal duty-free or reduced-tariff access to their markets for specified products from designated developing countries.⁸

Regulations governing the Office of the United States Trade Representative (USTR) offer interested parties (including labour and human rights organizations) an annual opportunity to petition for the review of labour practices in any country that is a recipient of GSP benefits.⁹ The GSP Subcommittee of the USTR’s Trade Policy Staff Committee (comprised of representatives of 20 different federal departments and agencies) examines the petition and decides whether it merits formal review.¹⁰ If it agrees to conduct a review, the USTR may draw upon Department of State and Department of Labor country reports and any other source of information it deems

⁸ In October 2015 the US programme included more than 3,500 products (but excluded textile, apparel, footwear, leather products, watches, ceramics, and import-sensitive electronic, glass and steel products), 105 independent countries, and 17 non-independent countries and territories (USTR 2015: 3, 18-19; Blanchard and Hakobyan 2015; Mosley and Tello nd: 2 n1). In 2016, US imports under the GSP programme (US\$18.95 billion) accounted for six per cent of imports from GSP-eligible countries and one per cent of total imports (Hafner-Burton, Mosley and Galantucci 2018: 3).

⁹ US Code of Federal Regulations [hereinafter US CFR], Title 15, Subtitle C, Chap. XX, Pt. 2007. Petition requirements are straightforward in formal terms. Petitioners are required to give their name, identify the country that would be subject to review, indicate the specific worker rights criteria that warrant review, state why the beneficiary country’s status should be reviewed, and provide supporting information (ibid., Pt. 2007.0(b)).

¹⁰ The USTR has the authority to initiate such a review of its own volition. However, apart from the 1985-1986 general review of labour practices in all GSP beneficiary countries that was mandated by the 1984 USTTA, it has with few exceptions acted in response to petitions.

appropriate. In addition, it holds public hearings and a public consultation on the matter before reaching a final determination, which in principle occurs within a year after the petition was filed. If the USTR finds that a country's labour practices violate US law where "internationally recognized worker rights" and prohibitions against the worst forms of child labour are concerned (regardless of whether such practices have a direct impact on the US economy or employment),¹¹ it may then recommend to the President one of several possible actions. These range from dismissing the petition on the grounds that a country is already "taking steps toward ensuring internationally recognized worker rights," to extending the review while compliance negotiations with the beneficiary country proceed, to suspending or terminating some or all GSP benefits for the target country.¹² Although the country involved has the opportunity to defend its position during the USTR review, it cannot appeal the final US decision. It can, however, later petition for the restoration of GSP benefits.

The GSP review process embodies (and has often been criticized for) broad executive-branch discretion. This discretion derives in part from the USTTA's failure to invoke specific ILO conventions in its definition of "internationally recognized worker rights," the absence of clear criteria by which the USTR is to judge what constitute acceptable variations in minimum labour standards and the severity of rights violations in different countries, and the ambiguity of the "taking steps..." determination (Ballon 1987: 113; Lyle 1991: 9). Executive discretion informs USTR decisions regarding which petitions to accept for formal review and especially the President's decision whether to suspend or terminate a particular country's GSP eligibility.

¹¹ US Code Title 19 (Customs Duties), Chap. 12(V), Sec. 2462(b)(2)(G, H) and Sec. 2467.

¹² The statute permits "the duty-free treatment accorded to eligible articles under the GSP to be withdrawn, suspended or limited" (US CFR, Title 15, Subtitle C, Chap. XX, Pt. 2007.2(h)(2), but petitioners generally seek the full withdrawal of a country's eligibility, without further specifics (author's electronic communication with Lewis Karesh, Assistant US Trade Representative for Labor Affairs, 26 Nov. 2018). In 1995, however, the US government suspended benefits for Pakistan's handknotted carpets, sports equipment and surgical instruments industries because of child-labour abuses (Elliott 1998).

Indeed, the relevant legislation permits the executive branch to waive labour-conditionality requirements altogether when the President determines it is in the national interest to do so. The President must report all final decisions to the Congress, but decisions cannot be appealed (US Public Law No. 98-573, Sect. 505-6). The multiagency composition of the USTR's Trade Policy Staff Committee virtually guarantees that the decision to undertake a labour-rights review or to suspend or terminate a country's GSP eligibility is framed by broader US foreign policy considerations.

Between 1985 and 2011, the USTR received at least 188 petitions concerning alleged labour-rights violations in 54 different GSP beneficiary countries; it accepted 91 petitions (48.4 per cent) for review.¹³ The petitioners included major US labour organizations—particularly the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO, the largest and most politically prominent US labour organization), but also several industrial unions—and nongovernmental organizations (NGOs) focusing on labour and human rights issues.¹⁴ The focus of these petitions (many of which cited more than one issue) ranged from generally repressive political conditions to specific violations of individual and collective-action rights.¹⁵ The incidence of filings was greatest during the 1980s and 1990s, tailing off in the early 2000s. Analysts attribute this decline to “complainant fatigue” with USTR procedures (aggravated by

¹³ Author's calculation based on information in USTR 2005 and Mosley and Tello nd (data set). The author primarily employs this latter source to establish an historical context for the analysis that follows.

A significant number of the 1985-2011 petitions were multiple filings centred on the same country. For example, over this period the USTR received at least 20 petitions concerning Guatemala and 16 petitions regarding El Salvador (author's calculation based on sources listed in Table 1).

¹⁴ These groups included International Labor Rights Education and Research Fund (ILRERF), Human Rights Watch and its regional affiliates, Lawyer's Committee on Human Rights, and U.S. Labor Education in the Americas Project (USLEAP). The ILRERF was renamed the International Labor Rights Fund in 1998.

¹⁵ Mosley and Tello (nd) do not include a substantive classification of the issues raised in the petitions they examine. However, Nolan García (2011: 10) finds that 67.8 per cent of the 87 petitions filed against Latin American countries between 1987 and 2005 alleged violations of freedom of association and other collective rights (either separately or in combination with other issues), 31.0 per cent addressed minimum standards of employment, 19.5 per cent referenced child labour, and 16.1 per cent alleged forced-labour violations.

lapses and short-term renewals of the GSP programme in the mid-1990s, which made it difficult to predict the USTR's review schedule), labour activists' shift toward other modes of action (particularly corporate social responsibility campaigns), and the growing number of US free-trade agreements with developing countries (which generally make participating countries ineligible for GSP benefits) (Athreya 2011: 50-51; Mosley and Tello nd: 15-16).

Although the USTR reviewed 91 of the labour-rights petitions it received between 1985 and 2011, in only 14 instances did the United States suspend or terminate a country's GSP eligibility. The countries affected were: Bangladesh (2013), Belarus (2000), Burma/Myanmar (1989), Central African Republic (1989), Chile (1988), Liberia (1990), Maldives (1995), Mauritania (1993), Nicaragua (1987), Pakistan (1996), Paraguay (1987), Romania (1987), Sudan (1991) and Syria (1992).¹⁶ It was far more common for the US government to use the review process as a forum for bilateral negotiations over labour-rights practices in the target country.

An Analysis of US GSP Labour-Rights Petitions, 1985-1995

Several analysts have examined the motivations behind US GSP filings (whether, for example, trade union petitioners typically seek to block competing imports from developing countries) and the factors shaping USTR decisions to accept or reject them for review (Elliott 1998; Nolan-

¹⁶ Author's review of US presidential proclamations published in the US *Federal Register*, various years. The effective date of GSP suspension or termination was sixty days following publication of the proclamation.

Some of these countries were later reinstated in the programme: Burma/Myanmar (2016), Central African Republic (1991), Chile (1991), Liberia (2006), Maldives (2010), Mauritania (1999), Pakistan (2005), Paraguay (1991) and Romania (1994). Nicaragua was not reinstated in the GSP programme, but in 1990 President George H.W. Bush (1989-1993) acted "in the national security interest of the United States" to waive labour-conditionality requirements and admit it to the Caribbean Basin Initiative preferential-trade agreement (*Federal Register* 55 [230]: 49499).

The available indices of collective labour-rights practices support somewhat different conclusions regarding the impact of GSP suspension or termination. At the time of GSP restoration, Mosley 2011 (column C, "collective rights overall") records substantial, consistent improvements in Chile, Liberia, Nicaragua, Paraguay, Romania and possibly Pakistan. In contrast, Cingranelli, Richards and Clay 2014 (accessed 18 July 2017) indicate that only in the Maldives, Nicaragua and Romania were there minor improvements in labour practices in the period between suspension or termination and the later restoration of GSP eligibility.

García 2011: 13, Mosley and Tello nd: 32-35; Hafner-Burton, Mosley and Galantucci 2018: 3, 13, 16).¹⁷ However, no previous study has systematically assessed the actual impact of USTR reviews on labour-rights practices in targeted countries.¹⁸ Analyzing review impact in all the countries targeted since 1985 would constitute a most daunting task. There is, though, a substantial body of qualitative research available on petition processes and evolving labour-rights conditions in a subset of these countries. Drawing on this material, this paper assesses causal links (Goertz and Mahoney 2012: 90, 96) between USTR pressures, target governments' responses, and collective-rights outcomes in 15 countries between 1985 and 1995: Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Indonesia, Malaysia, Nicaragua, Pakistan, Panama, Paraguay and Peru.

The selection criterion employed in compiling this original data set was the ready availability of sufficient information for an in-depth assessment of the impact of GSP petitions and US government efforts to promote collective-action rights (the rights to organize and bargain collectively) in a target country. Because of the particular interests of the authors whose research constitutes the basis for this analysis, Latin American and Caribbean countries comprise a disproportionate share of this subset (12 of 15 countries).¹⁹ Nevertheless, the petitions filed against these 15 countries ($N = 64$) comprise 52.5 per cent of the 122 labour-rights petitions filed

¹⁷ Based on her quantitative analysis of the 87 petitions filed against Latin American countries between 1987 and 2005, Nolan García (2011: 13-15) concludes that the USTR was significantly less likely to review countries that were regional allies (those that received greater amounts of US economic and military assistance), and that the level of labour-rights violations was not a statistically significant predictor of the USTR's decision to review a particular petition. She finds that the USTR was more likely to review labour practices in countries with a high export dependency on the United States.

¹⁸ Elliott (1998: table 7) offers only a binary assessment of petition impact (whether GSP petitions did or did not have a positive impact on labour rights in the targeted country). She identifies 32 cases in which the threat of losing GSP benefits might have plausibly produced improvements in labour rights and concludes that only 15 of these could be judged "successes." She does not specify the criteria on which she bases this judgment.

¹⁹ The geographic distribution of all 122 petitions filed between 1985 and 1995 was: Latin America and the Caribbean (33.3 per cent), Asia (26.7 per cent), Africa (22.2 per cent), the Middle East (11.1 per cent), and Other (Fiji, Romania, Turkey) (6.7 per cent). Author's calculation based on information in USTR 2005.

between 1985 and 1995, the period of most intense GSP petitioning. Equally important, these country cases offer a significant range of variation in the independent variables that might determine the efficacy of the petition process in advancing collective-action rights in the countries involved: the number of trade unions and labour-rights organizations filing petitions; the extent of political support that US-based petitioners were able to mobilize among trade unions and/or labour-rights groups in the target country; the target country's export sensitivity to potential GSP sanction; whether there was a change of political regime in the targeted country during the course of the USTR review; and whether GSP eligibility was suspended or terminated as a consequence of the USTR review. The GSP petitions alleged a broad range of labour-rights violations, but collective-action rights in the private and/or public sectors were central issues in all the countries targeted.

The outcomes that the GSP petition process produced in the target country (the dependent variable) also varied considerably.²⁰ Outcomes were coded on a five-point scale ranging from 0 (no observed changes regarding rights to association and collective bargaining, even if there were improvements in other labour-rights areas during the USTR review) to 4 (evidence that by the end of the USTR review there was generally effective implementation in practice of the rights to association and collective bargaining, including in the public sector and any export-processing zones).²¹ Employing this original coding scheme permits a more fine-grained, contextual assessment of changes in collective-action rights resulting from USTR reviews than

²⁰ There is no evidence that petitioners selected target countries principally on the basis of their anticipated success, which would bias conclusions regarding GSP effectiveness.

²¹ See Table 1 for the complete coding scheme. The focus here is on the extension of collective-action rights in law and practice as a consequence of USTR reviews, without regard to baseline conditions in target countries at the outset. Specific attention to collective-action rights in the public sector and any export-processing zones (EPZs) reflects the practical importance of these issues in the GSP cases examined here. Attention to developments in these areas does not introduce sectoral bias to the coding scheme, nor did variation in the importance of EPZs in different countries affect how observed outcomes were scored. Table 1 reports detailed source materials in order to enhance transparency in the author's coding decisions.

what would be possible using the worker rights data compiled by Mosley (2011) and by Cingranelli, Richards and Clay (2014), although the outcome results reported in Table 1 were cross-checked against both these datasets.²² Distinguishing between collective-rights outcomes resulting from USTR reviews and those occurring as part of broader processes of sociopolitical change in the target countries is sometimes difficult; as a partial control, the outcomes recorded were those evident within three years after the USTR initiated its review process (or, in the case of multiple petition acceptances, within three years after the final petition acceptance).

The AFL-CIO was by far the most active petitioner. Acting either on its own ($N = 29$) or in alliance with other unions or NGOs ($N = 8$), it was involved in 37 (57.8 per cent) of the 64 petitions filed between 1985 and 1995 (see Table 1). Indeed, the AFL-CIO participated in GSP procedures involving all the countries listed in Table 1, and in the Indonesian case it filed five solo petitions alleging violations of GSP labour-rights conditionality. The two most active NGOs were the International Labor Rights Education and Research Fund (ILRERF) and America's Watch (a division of Human Rights Watch), although in some filings—particularly those involving El Salvador and Guatemala—several other labour-rights groups also appeared as co-petitioners. In several instances there was close cooperation and mutual support among trade unions and human/labour-rights NGOs, but in only four country cases (Colombia, El Salvador, Guatemala, Pakistan) did they appear as co-petitioners.

²² Compared to the changes reported by Mosley (2011), the “observed outcomes” reported in Table 1 differ in the cases of Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Malaysia, Nicaragua and Peru; compared to changes reported by Cingranelli, Richards, and Clay (2014), Table 1 results differ in the cases of Dominican Republic, El Salvador, Honduras and Paraguay.

**Table 1:
Selected US Generalized System of Preferences Labour Rights Petitions, 1985-1995**

<u>Country</u>	<u>Petitions filed by:</u>			<u>Petitioners per filing</u>	<u>Political Support in Target Country</u>	<u>USTR Response:</u>		<u>Export Sensitivity of Target Country</u>	<u>Regime Change</u>	<u>Observed Outcome</u>
	<u>Unions</u>	<u>NGOs</u>	<u>Both</u>			<u>Accept</u>	<u>Reject</u>			
Chile	3	0	0	1.3	Weak	2	1	1.2 / 1.2	No	0
Colombia	0	1	2	2.0	Weak	0	3	3.6 / 3.6	No	0
Costa Rica	1	0	0	1.0	Moderate	1	0	3.0 / 17.8	No	1
Dominican Republic	2	3	0	1.0	Strong	4	1	8.6 / 22.4	No	3
El Salvador	4	4	3	2.2	Strong	8	3	1.4 / 6.2	Yes	2
Guatemala	5	2	5	3.0	Strong	4	8	4.3 / 9.9	Yes	3
Haiti	6	0	0	2.0	Weak	4	2	16.0 / 75.6	Yes	0
Honduras	1	1	0	1.0	Moderate	1	1	1.8 / 9.8	No	1
Indonesia	5	3	0	1.3	Weak	4	4	0.7 / 0.7	No	0
Malaysia	2	2	0	1.0	Weak	1	3	3.0 / 3.0	No	1
Nicaragua	1	0	0	1.0	Weak	1	0	1.4 / 1.4	No	0
Pakistan	0	0	1	3.0	Weak	1	0	1.5 / 1.5	No	0
Panama	2	0	0	1.0	Strong	2	0	9.2 / 14.1	No	2
Paraguay	3	0	0	1.0	Weak	3	0	1.0 / 1.0	Yes	2
Peru	2	0	0	1.0	Weak	1	1	6.4 / 6.8	No	0

Sources: USTR 2005. Chile (Dorman 1989: 13-14; Adams 1990; Frundt 1998: table 4.1, 94-95; Compa and Vogt 2001: 209-12; Morley and McGillion 2015: 253-55), Colombia (Frundt 1998: table 4.1, 98); Costa Rica (Frundt 1998: table 4.1, 228-37), Dominican Republic (Frundt 1998: table 4.1, 207-27; Douglas, Ferguson and Klett 2004: 277-81); El Salvador (Dorman 1989: 11-12; Davis 1995; Frundt 1998: table 4.1, chaps. 5-6; Douglas, Ferguson and Klett 2004: 281-84; Athreya 2011: 33-44), Guatemala (Frundt 1998: table 4.1, chap. 7; Compa and Vogt 2001: 212-22; Douglas, Ferguson and Klett 2004: 288-91), Haiti (National Labor Committee 1993; Frundt 1998: table 4.1, 99-100; Tsogas 2000: table 1; Arthur 2003), Honduras (Frundt 1998: table 4.1, 192-206; Athreya 2011: 44-54), Indonesia (Compa and Vogt 2001: 222-28; Athreya 2011: 23-33), Malaysia (Dorman 1995: 12-13; Tsogas 2000: table 1; Compa and Vogt 2001: 222-28; Athreya 2011: 15-23), Nicaragua (Frundt 1998: table 4.1, 248-52), Pakistan (Compa and Vogt 2001: 228-31; Candland 1997: 41; Athreya 2011: 63-65), Panama (Frundt 1998: table 4.1, 237-46), Paraguay (International Confederation of Free Trade Unions 1997; Frundt 1998: table 4.1, 96; Cook 2007: 55-56), Peru (Frundt 1998: table 4.1, 97; Cook 2007: 53, 120-27).

Coding scheme for political support in target country:

Weak = nominal (if any) trade union and/or labour-rights group support for a GSP petition because of government intimidation or repression, overall labour movement weakness or the absence or weakness of politically independent unions;

Moderate = trade union and/or labour rights-group public endorsement of a GSP petition, sometimes including involvement in petition design and documentation;

Strong = active trade union and/or labour-rights group engagement with the GSP petition process, with some unions publicly calling for USTR review, signing or co-signing a GSP petition, pressing for domestic legal and policy reforms, and monitoring reform implementation in coordination with the USTR.

Measures of export sensitivity of target country:

This column reports two measures (in per cent) of a target country's export sensitivity to possible GSP suspension or termination: GSP-eligible exports to the United States as a proportion of the target country's total world exports in the year that the USTR first accepted a labour-rights petition for review ("GSP"), and all exports to the United States that were subject to US labour-rights conditionality (under the GSP programme and any other preferential trade agreement) as a proportion of the target country's total world exports in that same year ("GSP +"). Author's calculations based on US import data from the Center for International Data, University of California-Davis (<http://cid.econ.ucdavis.edu/usix/html>; accessed on 26 July 2017) and World Trade Organization/World Bank export data (<http://data.worldbank.org/indicators/TX.VAL.MRCH.CD.WT>; accessed on 26 July 2017).

Coding scheme for observed outcomes:

0 = no observed changes regarding rights to association and collective bargaining, even if there were improvements in other labour-rights areas during the USTR review;

1 = modest policy change regarding unionization and collective bargaining rights;

2 = modification of labour code provisions regarding unionization and collective bargaining rights;

3 = extension of favourable formal labour code provisions to the public sector and any export-processing zones;

4 = evidence that by the end of the USTR review there was generally effective implementation in practice of the rights to association and collective bargaining, including in the public sector and any export-processing zones.

Notes: “Petitioners per filing” (author’s calculation) is the mean number of petitioners per filing. USTR acceptances include those petitions filed while a formal USTR review was already under way and which were “continued” by the USTR. “Regime change” refers to significant political and/or regime change occurring during the USTR review period.

Acronyms: NGOs = non-governmental organizations; USTR = Office of the United States Trade Representative.

The USTR accepted for review 37 (57.8 per cent) of the 64 petitions it received regarding alleged rights violations in the 15 countries under discussion here.²³ Labour organizations (particularly the AFL-CIO) were more successful in this regard than NGOs; 67.6 per cent of the petitions they filed were accepted for review, whereas the USTR accepted only 31.3 per cent of the petitions filed by NGOs. When NGOs partnered with labour organizations, their acceptance rate rose to 63.6 per cent.²⁴ Trade unions might have enjoyed greater credibility or exercised more political leverage as advocates of labour rights, or the staff of the AFL-CIO and major industrial unions might have had access to more resources or have been more proficient in preparing GSP petitions than their NGO counterparts. NGOs' petition acceptance rate might also have been lowered somewhat by the fact that groups like the ILRERF were sometimes the first to employ the GSP process against countries with poor labour (and human) rights records, sometimes under inauspicious political circumstances. For example, America's Watch, the ILRERF and allied labour-rights groups filed several petitions against El Salvador (1987-1989) during the final years of the Cold War and under Presidents Ronald Reagan (1985-1989) and George H.W. Bush (1989-1993), both Republican administrations that only moderately supported labour-rights petitions.²⁵ At the time, the USTR adopted a controversially narrow

²³ This total includes twelve instances of de facto USTR acceptance—cases in which, with a formal review of the target country already under way, USTR authorities responded to a new petition by “continuing” it. The target countries were Dominican Republic (1990, 1994), El Salvador (1991, 1992, 1993, 1994), Guatemala (1993, 1995), Haiti (1988, 1989), Indonesia (1993) and Panama (1992).

²⁴ This finding regarding labour organizations' higher petition success rate concords with those of Elliott (1998: table 4) and Mosley and Tello (nd: 16-17).

²⁵ USTR acceptance rates varied depending upon the presidential administration under which petitions were filed, ranging from 50.0 per cent under the Reagan and Bush administrations to 81.3 per cent under the Democratic administration of President William (“Bill”) Clinton (author's calculations based on the dataset compiled for this paper). One obvious explanation for this difference would be that the Clinton administration was more broadly sympathetic to labour concerns than were its Republican predecessors. (For example, labour organizations' petition success rate ranged from 53.8 per cent under Bush, to 64.3 per cent under Reagan, to 90.0 per cent under Clinton.) However, part of the difference in presidential acceptance rates might be explained by the end of the Cold War (and the inclination of some US officials to view labour-rights claims in ideologically divided countries such as El Salvador and Guatemala from an anti-Communist perspective) and evolution in decision criteria as US trade officials gained experience implementing GSP procedures.

definition of labour-rights violations, arguing that the assassination or kidnapping of trade unionists did not necessarily violate GSP conditionality requirements because the crimes were committed against individuals engaged in opposition political activities rather than in trade union work in a more limited sense (Davis 1995: 1198-99; Compa and Vogt 2001: 215-16).²⁶

The degree of pressure that GSP petitioners were able to bring to bear on target countries through the USTR review process—a combination of the number of petitions filed against a particular country, the number of petitioners involved, and the extent of political support among union and/or labour-rights groups in the target country—varied considerably, not least because mobilization by petitioners and their target-country allies did not automatically translate into equivalent pressure by the US government.²⁷ The number of petitions filed against the 15 countries under examination ranged from one (Costa Rica, Nicaragua, Pakistan) to twelve (Guatemala) (Table 1). The mean number of petitioners per filing ranged from 1.0 to 3.0; in the petitions against Guatemala in 1991 and 1992, a total of 10 union and labour-rights organizations were involved (Table 1; Frundt 1998: 146 n36, 147 n38; Compa and Vogt 2001: 217 n85).

In several cases (Chile, Haiti, Indonesia, Malaysia, Pakistan, Paraguay), persistent government repression made it impossible for US-based petitioners to mobilize any substantial political support in the targeted country.²⁸ In El Salvador (Frundt 1998: 255, 266) and Malaysia (Athreya 2011: 17), government officials and business groups argued that US labour

²⁶ The USTR responded similarly to petitions alleging violence against trade unionists in Colombia (1990, 1993, 1995) and Guatemala (1991) (USTR 2005).

²⁷ The USTR rejected 42.2 per cent of the petitions it received concerning these 15 countries between 1985 and 1995 (Table 1). Moreover, there is evidence that US embassy personnel involved in GSP reviews were at times ideologically or politically biased in their assessments of labour rights conditions in particular countries; see Dorman 1989: 11 (El Salvador), 13 n35 (Malaysia); Frundt 1998: 197-98, 205 (Honduras) and 237, 240-43, 246 (Panama); Athreya 2011: 21-22 (Malaysia).

²⁸ Both US labour-rights advocates and USTR officials have traditionally been careful not to press initiatives that would place local unions at greater risk (author's interview with a senior US government official, 14 June 2018, Washington, DC).

organizations sought to deprive their country of GSP benefits simply to protect their own market position against lower-cost competition, and they were initially successful in dissuading domestic labour groups from backing the USTR review. The absence of credible support in the target country was important because it sometimes undercut petitioners' position vis-à-vis the USTR by making it harder for them to document their claims in persuasive detail.²⁹

Yet in six countries (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Panama), there was moderate domestic support (trade union and/or labour-rights group public endorsement of a GSP petition, sometimes including involvement in petition design and documentation) or strong support (active trade union and/or labour-rights group engagement with the GSP petition process, with some unions and/or labour-rights groups publicly calling for USTR review, signing or co-signing a petition, pressing for domestic legal and policy reforms, and monitoring reform implementation in coordination with the USTR) for the GSP petition process (Table 1).³⁰ This was particularly impressive in El Salvador and Guatemala, countries that were at the time engulfed in violent civil conflict. In El Salvador, the Union Federation of Salvadoran Workers (Federación Sindical de Trabajadores Salvadoreños) bolstered continuing efforts by its US allies by filing its own GSP petition in 1990 (Davis 1995: 1187 n105). In Guatemala, substantial numbers of labour organizations actively backed US GSP petitions in 1986 and 1992 (documenting labour code violations and labour court failings), and in 1993 and 1994 they demanded that the USTR extend its review until the national government enacted meaningful reforms (Frundt 1998: 142, 147, 149, 154, 156). Such support, in addition to bringing

²⁹ See Frundt 1998: 98, 254 (Colombia); Athreya 2011: 25-26 (Indonesia) and 61 (Guatemala); Frundt 1998: 254 and Cook 2007: 126 (Peru).

³⁰ Because of unevenness in the available information concerning domestic support in these 15 countries, this three-level categorization is of course only an approximate measure.

some domestic pressure to bear on the target government, increased petitioners' credibility with the USTR.³¹

The data presented in Table 1 evidence a close association between petitioner pressure and observed positive changes in collective-action rights. However, the volume of petitions filed and the number of petitioners involved were not in themselves determinative in this regard. The total number of petitions filed in the five countries with outcomes coded 2 or 3 (Dominican Republic, El Salvador, Guatemala, Panama, Paraguay) ranged from two (Panama) to 11 (Guatemala); the mean number of petitioners per filing ranged from 1.0 (Dominican Republic, Panama, Paraguay) to 3.2 (Guatemala).

The data in Table 1 indicate a stronger relationship between the strength of political support mobilized in the target country and observed outcomes rated 2 or 3.³² Indeed, in four of these five cases (Dominican Republic, El Salvador, Guatemala, Panama) there was a close association between target-country domestic support for GSP action and the outcomes achieved. Only in the Dominican Republic and Panama were national labour movements comparatively strong at the time the GSP petitions were filed.³³ As noted above, the cases of El Salvador and Guatemala demonstrate that it was possible for GSP petitioners to mobilize meaningful domestic support for their initiatives even in countries without a strong labour movement or an established democratic tradition. On the basis of available information, it is not possible to determine the frequency with which US actors' decision to file a GSP petition reflected prior communications

³¹ Author's interview with a senior US government official, 14 June 2018.

³² This conclusion concurs with Frundt's (1998: 254) finding that GSP petitioners were most successful when they engaged with workers in target countries; see also Athreya 2011: 60. It also supports Murillo and Schrank (2005: 987) on the importance of transnational alliances in advancing labour rights in Latin America. However, these latter authors do not examine the relative density of these alliances.

³³ In the Dominican Republic in the early 1990s and in Panama in the late 1980s, unionized workers represented approximately 12-15 per cent and 15 per cent, respectively, of the economically active population (Frundt 1998: 207, 222, 237).

with labour unions or NGOs in the target country, or whether pre-existing binational alliances played a role in this regard. In the cases of El Salvador and Guatemala, however, it is highly likely that binational ties forged among human rights activists during civil conflicts in these countries in the 1980s and early 1990s underpinned GSP-centred collaboration.

Nonetheless, one cannot conclude that US pressures backed by substantial target-country domestic support were by themselves always sufficient to effect significant change in collective-action outcomes. In three of the five countries with outcomes coded 2 or 3 (El Salvador, Guatemala, Paraguay), democratic regime change was of equal (or greater) importance than external pressures per se in bringing about observed changes in collective-action rights.³⁴

In both El Salvador and Guatemala, US trade unions and labour-rights NGOs used GSP procedures to campaign intensively, over a sustained period, against egregious rights violations, many of which were linked to government attacks on opposition forces during prolonged civil conflicts. These initiatives received strong support from—and, in turn, bolstered—besieged labour movements in these countries, and in Guatemala they contributed to a gradual shift over time in private sector attitudes regarding the merits of consultation and negotiation with unions. However, progress on collective-action rights was closely bound up with broader efforts to negotiate national peace agreements, establish more democratic forms of governance and address pending socioeconomic demands in these war-torn societies. Indeed, the USTR extended its reviews of rights violations in El Salvador and Guatemala until peace processes were further advanced. In El Salvador, the 1992 peace accords created an Economic and Social Forum to discuss, among other topics, labour rights. Similarly in Guatemala, the Tripartite Commission

³⁴ The sources for this discussion of individual countries are listed in Table 1. Elliott (1998) concluded that in eight of 40 cases selected for USTR review, improvements in labour rights were mainly due to political opening or regime change.

that—bolstered by insistent USTR pressures—significantly advanced collective-action labour rights implementation was a product of the 1996 peace settlement.

In Paraguay, the AFL-CIO filed GSP petitions to protest rights violations under General Alfredo Stroessner’s long-lived authoritarian regime (and in 1987 the US government suspended the country’s GSP eligibility). However, government repression and the extreme weakness of the national labour movement precluded the mobilization of significant domestic political support. It was the overthrow of the Stroessner regime in 1989 that opened the way for extensive labour reforms under a new democratic government.

The core assumption underpinning GSP labour-conditionality provisions and US efforts to leverage state sovereignty to positive effect is that a target state will be willing to remedy rights violations in order to protect its access to the US marketplace.³⁵ Among the countries examined here, there was some variation in target countries’ export sensitivity to the potential suspension or termination of GSP benefits. However, in 14 of these 15 countries GSP-eligible exports to the United States in the year in which the USTR first accepted a labour-rights petition for review (or, in the case of Colombia, the year the first petition was filed) constituted less than ten per cent of the country’s total worldwide exports.³⁶ This proportion ranged from 0.7 per cent in Indonesia (1989) to 16.0 per cent in Haiti (1988) (Table 1, column 6, lefthand score). In and of itself, then, countries’ sensitivity to the potential loss of GSP benefits does not clearly explain differences in their labour-rights responses to USTR pressures.³⁷

³⁵ Blanchard and Hakobyan (2015: 400) report that developing countries that lose their GSP eligibility experience significant declines in exports.

³⁶ The trade data are for: Chile/1985, Colombia/1990, Costa Rica/1993, Dominican Republic/1989, El Salvador/1990, Guatemala/1986, Haiti/1988, Honduras/1995, Indonesia/1989, Malaysia/1988, Nicaragua/1985, Pakistan/1993, Panama/1991, Paraguay/1985 and Peru/1993.

³⁷ This conclusion differs from that reached by Tsogas (2000: 358-59), who argues that the impact of GSP pressures varies in line with the proportion of a beneficiary country’s exports destined for the US market. Tsogas does not systematically evaluate other factors that might determine the efficacy of USTR labour-rights reviews.

It is important to note, however, that eight of the countries under discussion here (Costa Rica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Panama, Peru) were also beneficiaries of other US preferential trade agreements—the Caribbean Basin Economic Recovery Act (CBERA, 1983, 1990) and the Andean Trade Preference Act of 1991—that also included labour-rights conditionality provisions.³⁸ Combined exports to the United States under the GSP and these other programmes (hereinafter “GSP+”)³⁹ as a proportion of worldwide exports varied from a low of 6.2 per cent in El Salvador (1990) to 75.6 per cent (Haiti 1988) (Table 1, column 6, righthand score). Yet of the four countries with the highest “GSP+” export sensitivity (Costa Rica, Dominican Republic, Haiti, Panama), only in the Dominican Republic and Panama (where domestic political support was strong and democratic regime change was not a factor) did USTR pressures produce an observed outcome in collective-action labour rights policy in the 2-3 range.

Of course, even this expanded measure of export sensitivity may not fully describe a country’s economic vulnerability to GSP-related pressures. A country’s exports to the United States under the GSP programme may be concentrated in industries judged particularly important for a country’s development strategy (for example, the electronics sector in Malaysia; Dorman 1989: 12-13). In the case of Chile, the loss of GSP eligibility in 1987 affected exports valued at US\$87 million, but it also led to the loss of Overseas Private Investment Corporation insurance coverage valued at US\$750 million, affecting US\$1 billion in US-origin foreign direct investment. And in Guatemala, the national business community was greatly concerned that GSP

³⁸ Haiti benefited from enhanced CBERA trade access under item 807 of the Tariff Schedules of the United States, a provision that permits goods sent abroad for processing or assembly to be re-imported into the United States subject only to duty on the value added to the goods abroad.

³⁹ This term should not be confused with the EU’s GSP Plus Programme, which offers complete removal of tariffs to countries that comply with additional conditions of good governance and environmental protection.

sanctions would harm their country's overall international reputation. These fears were so strong that US government threats to suspend GSP eligibility mobilized strong business opposition against President Jorge Serrano's unconstitutional seizure of enhanced executive authority in May 1993, leading to his resignation and the restoration of democratic governance (Compa and Vogt 2001: 219-20). Because of such considerations, in some instances the mere threat of a GSP petition or USTR action led a government to make important policy concessions regarding labour rights.⁴⁰

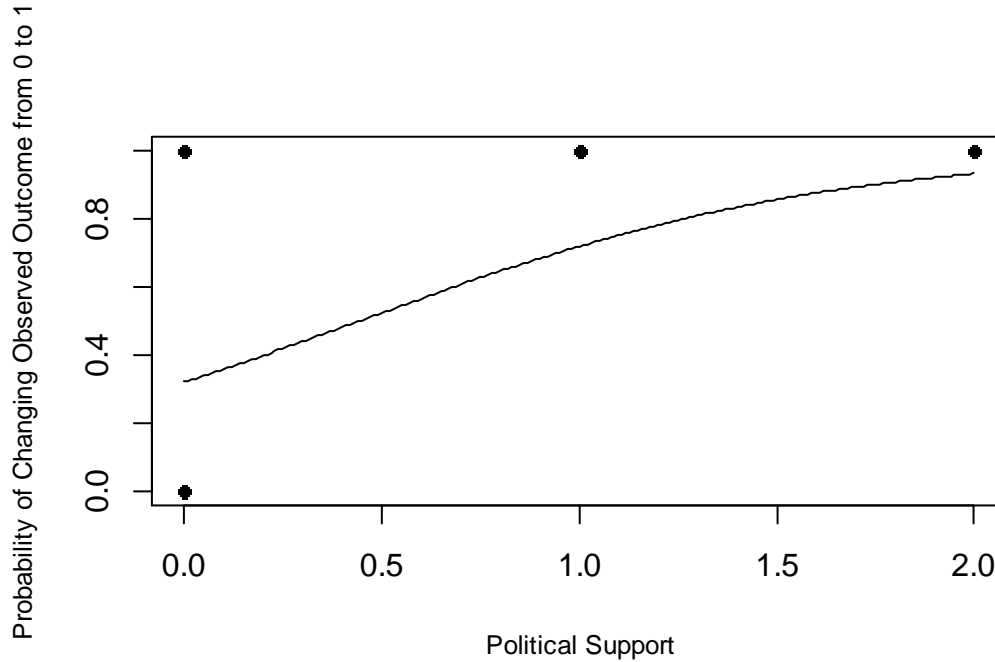
Overall, the data presented in Table 1 indicate that the extent of domestic actors' political support for USTR initiatives—and thus perhaps stronger or more sustained GSP-centred actions by the US government—was more important than export sensitivity in inducing target-country governments to respond to US pressures by adopting policy changes in the area of collective-action rights. This conclusion was confirmed through a statistical analysis employing Bayesian logit and ordered-logit regressions (see Appendix A).⁴¹ The regression results reported in Table A.1 indicate that there was consistently a statistically significant relationship (at either the $p < 0.05$ or $p < 0.01$ thresholds) between “political support” and “observed outcomes,” whereas other possible explanatory factors (the aggregate number of petitions filed against a country, the target country's export sensitivity, whether the country experienced democratizing regime change, the target country's economic size and level of socioeconomic development at the time GSP petitions were filed against it, and whether the country is in the Caribbean Basin or in the Latin American region, areas of historically strong US political and economic influence) were not

⁴⁰ See Frundt 1998: 204-5 and Athreya 2011: 48-49 on Honduras. Elliott (1998) argues that the negative public attention generated by USTR reviews may be more important in inducing policy change in a target country than the loss of GSP eligibility per se. Considerations of this kind would not be affected by any reduction over time in the difference between preferential GSP and general WTO tariff levels.

⁴¹ Kazuma Mitzukoshi performed the statistical analysis reported in Appendix A.

statistically significant. Figure 1 graphically depicts the probability that an increase in domestic political support for USTR actions will lead to a more positive observed outcome in collective-action rights.

Figure 1: Probability that Increased Political Support in the Target Country for USTR Actions Will Produce Positive Change in Collective-Action Labour Rights



Source: Table A.1 (Model 1, Dataset A)

Notes: “Political Support” values are 0 (Weak), 1 (Medium) and 2 (Strong). USTR = Office of the United States Trade Representative

A visual inspection of the data in Table 1 might suggest the presence of interaction effects among key factors. For example, six of the eight countries in which GSP-centred US pressures produced *any* observed change in collective-action rights—Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Panama—were democratic or democratizing countries⁴² (a factor partially represented by the strength of domestic political support for GSP

⁴² The mean Freedom House aggregate score (an average of the scores for political rights and civil liberties) for these six countries was 2.7. Author’s calculation based on Freedom House, *Freedom in the World* reports, various years. The Freedom House scores range from 1 (most free) to 7 (least free).

petitions) located in the Caribbean Basin (a region in which US political and economic influence has been especially strong) with comparatively small economies.⁴³ Conversely, three of the six of countries with *no* observed change in collective-action rights (Chile, Indonesia, Peru) were under authoritarian rule,⁴⁴ located outside the Caribbean Basin, and among the larger economies in this group of GSP target countries—all factors that may have somewhat increased their capacity to resist US sovereignty leverage.⁴⁵ However, perhaps because of the small number of cases ($N = 14$),⁴⁶ regression analysis identified no statistically significant interaction effects among any of the independent variables examined.

Target countries, typically invoking claims to national sovereignty, frequently resisted USTR pressures because of strenuous private sector opposition to labour reform. Although it varied in intensity and in form of expression, such opposition was a constant in all the countries under discussion here and was particularly strong where collective-action rights were concerned. This had two major consequences. First, private sector resistance significantly constrained what concessions target-country governments were prepared to make in their negotiations with US officials. There were several instances in which a government responded to USTR pressures (or the threat of a USTR review) by making limited policy changes. For example, the Guatemalan and Indonesian governments enacted increases in the minimum wage (Frundt 1998: 147, 157 and

Elliott (1998) also concluded that USTR pressures are more likely to be successful “when the target is relatively more politically open.”

⁴³ The “smaller” economies in this group of 15 countries were those with a contemporary gross domestic product (GDP) less than US\$20 billion (current US dollars); the “larger” economies (Colombia, Indonesia, Malaysia, Pakistan, Peru) had a GDP greater than US\$35 billion. See <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (accessed 26 July 2017).

⁴⁴ The mean Freedom House aggregate score for these three countries was 5.2 (author’s calculation).

⁴⁵ There was no statistically significant relationship between observed-outcome scores and a country’s level of socioeconomic development. The United Nations classified eleven of these 15 countries as “lower middle income;” Haiti, Honduras, Indonesia, and Pakistan were classified as “low income.” See <https://www.un.org/development/desa/dpad/least-developed-country-category.html> (accessed 26 July 2017).

⁴⁶ Colombia was omitted from the regression analysis because the USTR did not accept for review any of the GSP petitions alleging labour-rights violations.

Athreya 2011: 12-13, 29-31, respectively). In Colombia, the government restricted pregnancy testing as a condition of employment in high-risk jobs (Frundt 1998: 98). And in Peru, the government adopted legislation regulating hours of work and promised to provide compensation to employees who were unjustly dismissed (Cook 2007: 127). These policy changes clearly benefited workers, but they fell far short of substantial changes in law and/or in practice regarding the rights to organize and bargain collectively.

Second, even when US sovereignty leverage produced important legal reforms strengthening collective-action rights, private sector opposition persisted and made implementation of agreed reforms a major challenge in almost all the cases examined here. Opposition was often particularly intense to extending collective-action rights in export-processing zones (EPZs), areas frequently regarded as central to a developing country's promotion of non-traditional exports and in which low production costs are key to international economic competitiveness. In Pakistan and Panama, these areas were formally exempt from national labour law (Athreya 2011: 63 and Frundt 1998: 244-45, respectively). In the Dominican Republic (Frundt 1998: 214-15, 218-20), Guatemala (Compa and Vogt 2001: 214-16), Haiti (Kernaghan 1993), Honduras (Frundt 1998: 199, 200-1, 203) and elsewhere, employers strenuously resisted unionization efforts, government officials tolerated the illegal firing of workers attempting to form trade unions, and strikes were officially or unofficially banned. Governments often failed to enforce laws requiring employers to respect labour rights as a condition for acquiring export permits. The immense challenge of effectively enforcing collective-action rights in EPZs is a principal reason why Table 1 contains no observed outcomes rated 4.

Although the political disposition of national governments was the main factor determining the outcome of GSP petition processes, limited state capacity in target countries also constituted a major barrier to advancing collective-action rights. In almost all the cases analyzed here, problems such as governments' limited capacity to inspect workplaces throughout the national territory, judicial authorities' incapacity to resolve individual and collective labour disputes expeditiously, and corruption of administrative and judicial authorities were significant constraints on the exercise of labour rights in practice.⁴⁷ These difficulties, coupled with persistent employer opposition to the legal adoption and subsequent implementation of collective-action rights, meant that enforcement remained a key challenge both during and after USTR investigations, even where external pressures had prompted countries to adopt important legal reforms.

External actors addressed these problems in different ways. For example, at the same time that the USTR pressured El Salvador and Guatemala to adopt and implement meaningful labour reforms, the U.S. Agency for International Development (joined in the case of Guatemala by Spain, the ILO and the Organization of American States) made substantial investments in these countries' administrative and judicial capacity to regulate labour-employer relations and enforce national law, including both expanded material resources and enhanced personnel training (Frundt 1998: 110-11, 130-32, 149, 155, 164-66). The USTR's formal reviews of El Salvador and Guatemala remained open for extended periods, and in both countries it organized follow-up missions to ensure that promised labour reforms were being implemented in practice (Frundt 1998: 155, 157-58, 161; Douglas, Ferguson and Klett 2004: 289).⁴⁸ The case of

⁴⁷ Risse and Ropp (2013: 3) note the more general challenge that "weak or limited statehood" poses for human rights implementation and compliance. See also Risse 2017.

⁴⁸ In Guatemala, the USTR "benchmarked" the specific labour reforms that the government was required to enact in order to retain its GSP eligibility.

Indonesia illustrates how important such continued external supervision can be; after the USTR terminated its review in 1995, government repression of independent trade unionists resumed (Athreya 2011: 13).⁴⁹ Yet in the end, just as domestic political support was important to achieving some degree of success through the GSP petition process, it was undoubtedly the most important factor in effective long-term national enforcement of labour rights in compliance with international norms.

Conclusions

Sovereign resistance, frequently reflecting strong employer opposition, poses major obstacles to international efforts to advance collective-action labour rights. In the 15 country cases examined here, national governments were generally less opposed to the formal adoption of international norms than they were to their implementation in practice. Only four of these states (Chile, El Salvador, Indonesia, Malaysia) had failed to ratify both core ILO collective-action conventions (Nos. 87 and 98) prior to the first GSP filings against them.⁵⁰ In contrast, albeit with important differences in degree and in form, all the countries under USTR review resisted US efforts to employ GSP conditionality to ensure compliance with these norms. The resulting modal pattern was sustained bilateral negotiation over rights issues.

These cases demonstrate that the GSP petition process can, by giving labour-rights activists a fulcrum of sovereign leverage against rights violators, constitute a means of advancing

⁴⁹ Something similar occurred in Peru following the USTR's review of petitions filed by the AFL-CIO in 1992 and 1993 (Athreya 2011: 56-57).

⁵⁰ www.ilo.org/dyn/normlex/en; accessed 1 Dec. 2018. Indonesia, which had ratified No. 98 in 1957, probably anticipated adoption of the ILO's "Declaration on Fundamental Principles and Rights at Work" (18 June 1998) when it ratified No. 87 on 9 June 1998. Chile ratified both conventions in February 1999. In El Salvador, despite important reforms in labour law and policy, there was persistent resistance to ratifying conventions Nos. 87 and 98 based on the claim that they invalidated constitutional provisions regulating the rights of public employees (Frundt 1998: 111, 114). As a result, El Salvador did not ratify them until September 2006, when it did so in order to retain its European Union GSP eligibility (ILO 2015: 101). Despite the ILO's post-1998 ratification campaign and growing international consensus around its Declaration, as of 2018 Malaysia had still not ratified convention No. 87.

collective-action rights.⁵¹ In some countries, US pressures contributed both to important legal reforms and a generally heightened awareness of labour rights issues in government and employer circles. The success rate was, nevertheless, modest. None of the observed outcomes merited a rating of 4 (Table 1). In only five of the countries (Dominican Republic, El Salvador, Guatemala, Panama, Paraguay) were there observed outcomes in the 2-3 range, and in El Salvador, Guatemala and Paraguay petition-centred pressures were a contributing factor to rights advances achieved through broader democratization processes. In the cases of Costa Rica (Frundt 1998: 231-33), Dominican Republic (Frundt 1998: 212-14), El Salvador (Davis 1995: 1186 n105) and Pakistan (ILO 2005: 6, 12), US GSP petitions followed or overlapped with ILO pressures to correct serious rights violations. It is particularly noteworthy that there was a close association between the strength of political support that GSP petitioners were able to mobilize in the target country and positive changes in collective-action rights. This association was closer than that between observed outcomes and either the aggregate number of petitions filed against a target country, the number of petitioners involved or that country's export sensitivity.

These conclusions, based on cases from the 1985-1995 period, remain directly relevant to contemporary US GSP labour-rights petition processes. Neither petition procedures nor the political obstacles that labour rights advocates confront in developing countries have changed since then.⁵² The proliferation of US free-trade agreements (which generally state that the

⁵¹ At least in the cases examined here, actual suspension or termination of GSP benefits did not produce an immediate breakthrough. The removal of GSP benefits from Chile, Nicaragua and Paraguay was an element in broader US opposition to authoritarian regimes in these countries, and the US government restored eligibility following democratic regime change based more on expectations regarding future labour policy than any specific short-term actions the target states took (Morley and McGillion 2015: 309; Frundt 1998: 251; Aronson 1991: 192, respectively). The partial suspension of Pakistan's GSP benefits focused on industries in which the abuse of child labour was endemic; the action produced no substantial change in Pakistan's respect for freedom of association and the right to collective bargaining (Compa and Vogt 2001: 230-31).

⁵² Author's interviews with a senior US government official (14 June 2018) and senior US trade union representatives (20 Mar., 23 Apr. 2018), Washington, DC; author's telephone interview with a former senior US labour official (28 May 2018).

reciprocal benefits they contain replace participating countries' GSP eligibility),⁵³ the growing prominence of corporate social responsibility campaigns, the smaller size of the US labour movement and a consequent decline in the resources dedicated to international initiatives, and a shift in major US trade unions' international focus away from GSP-eligible economic activities, all mean that US unions and labour-rights activists initiate GSP petitions less frequently than they once did.⁵⁴ Nonetheless, the GSP petition process remains an important strategic option for them, and recourse to it is far more common than are labour-rights complaints filed under the provisions of US free-trade agreements.

Finally, this study offers two broader lessons regarding efforts to advance labour rights internationally. First, the finding that US GSP petitioners' success in mobilizing domestic political support in the target country significantly increased the effectiveness of external pressures sheds new light on how state sovereignty can in practice be leveraged to promote labour reforms in developing countries. This conclusion also contributes to current debates regarding how to enhance international human rights promotion more generally. Hafner-Burton, for example, advocates that international actors "localize" their strategies and strengthen within-country rights networks in order to increase the domestic legitimacy of their efforts (2013: 152, 154, 157; see also Hopgood, Snyder and Vinjamuri 2017). Some of the cases examined here validate this approach by demonstrating that, even in countries without a strong labour movement or a consolidated democratic political order, the engagement of local trade unions and/or labour-rights NGOs can heighten pressures on national governments to introduce policy and legal reforms. Evidence of local support for GSP labour-rights petitions may have been even

⁵³ The only exception is Jordan, which retained its GSP eligibility despite having signed an FTA with the United States in 2001 (Jones 2015: 11-12).

⁵⁴ This conclusion is based in part on the author's interviews with senior US trade union representatives, 20 Mar., 23 Apr. 2018.

more important to enhancing the perceived validity of these claims in the eyes of US government officials and thereby galvanizing their political will to act upon them.

Second, lessons from the US GSP petition process are highly relevant to contemporary debates regarding the efficacy of advancing labour rights through provisions in US free-trade agreements (FTAs). The United States, the principal advocate of labour-conditionality provisions in FTAs (that is, provisions linking compliance with labour standards to economic consequences such as fines or trade sanctions), has sought to strengthen so-called second-generation (post-2006) agreements by making ILO “Fundamental Principles” the compliance standard and by submitting allegations of labour-rights violations to the same general dispute settlement procedures employed to resolve conflicts over commercial practices or intellectual property rights. However, the only US FTA case that has ever proceeded through the entire dispute resolution process (Guatemala, 2008-2017) ended in a defeat for rights advocates when the arbitration panel ruled that plaintiffs had failed to demonstrate that labour violations had conferred a material competitive advantage in bilateral trade (Polaski 2017: 3).⁵⁵

A full comparative assessment of US GSP and US FTA procedures as means of advancing collective-action rights in developing countries is beyond the scope of this paper. The GSP process does, however, hold significant advantages over FTA labour-rights procedures. In contrast to the GSP experience, the US government has never levied economic sanctions against an FTA partner country for labour rights violations. Since 2006, it has sought to replicate the sovereignty leverage available through GSP processes by pressuring prospective developing

⁵⁵ The United States-Mexico-Canada FTA signed in 2018 addressed this issue (and presumably altered the terms of future US FTA labour-conditionality provisions) by specifying that a failure to enforce international labour standards “in a manner affecting trade” refers broadly to violations involving a person or industry that produces traded goods and services (Chap. 23.3.1; www.ustr.gov/trade-agreements, accessed 3 Dec. 2018).

country FTA partners to undertake necessary changes in labour policy and law prior to ratifying the agreement, in effect making domestic reform a condition of FTA membership and market access. This approach has found some success (ILO 2015: 30, 36-40, 56, 100; Vogt 2015: 837-42; Luce 2010). Nevertheless, external leverage declines substantially once the FTA takes effect, and the USTR lacks resources for long-term monitoring of compliance with agreed labour standards (Vogt 2015: 843). Moreover, the broader foreign policy considerations that sometimes influence the USTR's handling of GSP labour-rights petitions are almost certainly more constraining under the institutionalized bilateral relationships characteristic of FTAs; no developing country has ever been expelled from a free-trade agreement. GSP procedures generally constitute, then, a more effective means of bringing state sovereignty directly to bear in the struggle to advance labour rights internationally. They merit renewed attention both as a distinct, proven rights-promotion strategy and as a source of highly relevant lessons in on-going debates regarding how to strengthen FTA labour-rights enforcement mechanisms.

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Appendix A: Statistical Analysis

This appendix reports the results of Bayesian logit and ordered-logit regression analyses of the observed outcomes of US Generalized System of Preferences (GSP) labour-rights petitions between 1985 and 1995. Bayesian techniques were employed to overcome the problem of separation encountered in attempting estimations with frequentist logit and ordered-logit regressions. The Bayesian approach assumes a weakly informative prior distribution of values even when working with a limited number of observations, which makes it particularly appropriate for this study. The principal difference between the Bayesian theorem and frequentist statistics is its approach to probability; it investigates whether the probability of an event (for instance, the outcome observed in collective-action labour rights) can be accurately predicted by a particular independent variable (for example, the strength of political support in the target country), compared to the probability of an event without the presence of a particular predictor variable. The Bayesian theorem thus relaxes frequentist assumptions about the probabilistic distribution of values in the dataset under examination.

Because the number of cases for examination is small ($N = 14$; Colombia is omitted from this analysis because the Office of the United States Trade Representative did not accept for review any of the GSP petitions alleging labour-rights violations), the observed outcomes reported in the final column of Table 1 were grouped in three different ways in order to maximize variation on the dependent variable: Dataset A (0 = observed outcome 0; 1 = observed outcomes 1, 2 or 3), Dataset B (0 = outcome 0; 1 = outcomes 1 or 2; 2 = outcome 3), and Dataset C, in which outcomes ranged from 0 to 3. The analysis then tested the impact of a range of independent variables: the aggregate number of petitions filed against a country, the extent of political support in the target country (“political support”), the two measures of the target country’s export sensitivity reported in Table 1, column 6 (“GSP” and “GSP +”), whether the country experienced democratic regime change (“regime change”), the target country’s economic size and level of socioeconomic development at the time GSP petitions were filed against it, and dummy variables indicating whether the country is (or is not) located in the Caribbean Basin or in the larger Latin American region.

Preliminary analysis found that there was no statistically significant relationship between many of these variables and observed outcomes. Similarly, the analysis identified no statistically significant impact of interaction effects among different independent variables. Results for three models featuring potential explanatory variables of particular interest, tested in each of the three datasets described above, are reported in Table A.1 below. These models are:

Model 1: $Outcome = f(Political\ Support, GSP + Exports)$

Model 2: $Outcome = f(Political\ Support, Regime\ Change)$

Model 3: $Outcome = f(Political\ Support, GSP + Exports, Regime\ Change)$

Variable	Mean	Standard Deviation	Minimum value	Maximum value
Political Support	0.714	0.914	0	2
GSP + Exports	0.122	0.195	0.007	0.756
Regime Change	0.286	0.469	0	1

Table A.1: Analysis of Observed Outcomes of US Generalized System of Preferences Labour Rights Petitions, 1985-1995

	Model 1			Model 2			Model 3		
	Dataset A	Dataset B	Dataset C	Dataset A	Dataset B	Dataset C	Dataset A	Dataset B	Dataset C
Intercept	-0.75 (0.76)			-1.00 (0.82)			-0.88 (0.84)		
Political Support	2.30* (1.13)	2.39* (1.04)	2.41** (0.88)	2.37* (1.18)	2.36* (1.05)	2.36** (0.89)	2.54* (1.25)	2.37* (1.05)	2.37** (0.89)
GSP + Exports	-0.61 (1.88)	-0.29 (1.57)	-0.38 (1.60)				-2.35 (3.17)	-0.40 (1.59)	-0.65 (1.66)
Regime Change				0.70 (1.27)	0.49 (1.03)	1.02 (1.11)	1.20 (1.47)	0.53 (1.05)	1.11 (1.15)
AIC	15.94	33.12	42.26	15.62	32.93	41.42	16.45	37.16	45.55
BIC	17.86	35.68	45.46	17.54	35.49	44.62	19.01	40.35	49.38
DIC	9.94	25.12	32.26	9.62	24.93	31.42	8.45	24.93	33.55
Chi-square	9.47**	7.68**	9.37**	8.80*	7.23**	8.69**	9.54**	7.25**	8.76**
Number of observations	14	14	14	14	14	14	14	14	14

** p < 0.01; * p < 0.05.

Notes: The table reports estimated coefficients (median point estimates) for each independent variable in Models 1, 2 and 3; standard deviations from the means of coefficients appear in parentheses below each estimate. The p-value of regression estimates was calculated from Z tests in which an alternative hypothesis is that the mean of the posterior distribution given parameters is different from zero (no effect). The Akaike information criterion (AIC) is an estimator of the relative quality of a statistical model for a given dataset. The Bayesian information criterion (BIC) is a criterion for model selection among a finite set of models; the model with the lowest value is preferred. The deviance information criterion (DIC) is a hierarchical modeling generalization of the AIC and BIC.

The reported coefficients represent the mean of the distribution of the “observed outcome” variable after adding each explanatory variable. These results indicate that there is consistently a statistically significant relationship between “political support” and “observed outcomes,” regardless of how the dependent variable is ordered in the three datasets. The DIC values indicate that the three models employed best fit the distribution of data in Dataset A.

Figure A.1 visually depicts the regression estimates reported in Table A.1. The dot at the centre of each vertical bar represents the estimated mean coefficient of each independent variable, while the thin lines show the posterior densities of each explanatory variable within a 95% confidence interval. Only the “political support” variable is statistically significant in all models (that is, both the dots and the vertical space defined by the thin lines are above 0) across all datasets.

Figure A.1: Visual Representation of Bayesian Regression Estimates of Models 1, 2 and 3

