PROTECTING LABOR RIGHTS THROUGH TRADE AGREEMENTS: AN ANALYTICAL GUIDE

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This essay provides an analytical introduction to the policy and practice of including labor rights provisions in trade agreements. It surveys the main existing trade agreements that address labor issues, and deconstructs the labor rights provisions into their main component elements to give the reader a comparative analysis of the approaches taken in different agreements. The essay then discusses several policy considerations that are likely to determine the success or failure of labor-trade linkages, and offers advice to policy makers and negotiators on how to achieve optimal results.

I. INTRODUCTION

The idea of including protection for basic worker rights in trade agreements dates back at least to 1948, when labor rights commitments were included in the Havana Charter that was designed to launch the International Trade Organization (ITO).[2] The effort to launch the ITO failed and more modest multilateral trade institutions were created, beginning with the General Agreement on Tariffs and Trade (GATT)

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[2] *See* Havana Charter for an International Trade Organization, United Nations Conference on Trade & Development, Final Act and Related Documents, arts. 7, 71, U.N. Doc. E/CONF. 2/78 (1948).

and culminating in the launch of the World Trade Organization (WTO) in 1995. Neither the GATT nor the WTO include any protections for labor rights.[3]

Parallel to the multilateral trade negotiations and institutions, the United States and other countries have negotiated a series of bilateral and regional trade agreements in recent years that go beyond the scope of the multilateral GATT and WTO accords. Since 1993, the United States has included labor provisions in all bilateral and regional free trade agreements it has negotiated, as well as a bilateral textile agreement it negotiated with Cambodia. Canada and Chile have also included labor provisions in at least some of their bilateral trade agreements. Brazil, Argentina, Uruguay and Paraguay have included labor commitments and institutions as part of the architecture of the Mercosur common market. However, these countries have not directly included labor rights in their common trade agreement.

As a result of all of these initiatives, there is a growing body of experience and a growing variety of approaches on how to link labor rights with trade. This essay examines the two main components of existing labor-trade linkages: (1) the obligations that are undertaken by the parties to such agreements; and (2) the enforcement mechanisms that are created to encourage compliance and to penalize parties that fail to carry out their commitments. The essay then discusses several underlying issues that should be considered by policymakers and negotiators as they construct labor-trade linkages, because the choices made on these matters are likely to determine the efficacy of such clauses. These underlying issues include: (1) the nature of the penalties for failure to abide by the obligations; (2) the establishment of positive and negative incentives for compliance; (3) the role of the private sector under the agreement; and (4) the provision of capacity-building assistance for some or all participants in the trade agreement.

The following trade agreements are included in the review: (1) the North American Agreement on Labor Cooperation (NAALC), a side agreement to the North American Free Trade Agreement (NAFTA);[4] (2) the Canada-Chile Agreement on Labour Cooperation (CCALC), a side agreement to the Canada-Chile Free Trade Agreement;[5] (3) the U.S.-

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3 *See* Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125 (1994).

4 *See* North American Agreement on Labor Cooperation, Sept. 13, 1993, 32 I.L.M. 1499, *available at* http://www.naalc.org/english/infocentre/NAALC.htm (last visited Oct. 10, 2003).

5 *See* Agreement on Labour Cooperation, Feb. 6, 1997, Can.-Chile, 36 I.L.M 1213, *available at* http://www.dfait-maeci.gc.ca/tna-nac/bilateral-en.asp (last visited Oct. 11, 2003).

Jordan Free Trade Agreement (U.S.-Jordan FTA);[6] (4) the U.S.-Cambodia Textile Agreement;[7] (5) the U.S.-Chile Free Trade Agreement (U.S.-Chile FTA);[8] (6) the U.S.-Singapore Free Trade Agreement (U.S.-Singapore FTA);[9] and (7) Mercosur.[10] The analysis also includes references to unilateral trade preference programs that the United States extends to developing countries. These programs stipulate that recipient countries must respect labor rights as a condition of eligibility. The programs include: (1) the Generalized System of Preferences (GSP),[11] (2) the Caribbean Basin Initiative (CBI),[12] (3) the African Growth and Opportunity Act (AGOA),[13] and (4) the Andean Trade Preferences Act (ATPA),[14] among others.

II. Component Elements Of Labor-Trade Linkages

A. *Obligations*

The starting point in constructing labor provisions in a trade agreement is for the countries party to the agreement to determine the kinds of obligations they will undertake with respect to labor rights. This presents two critical questions that the parties must address: the first is what types of labor rights will be covered and the second is whether

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6 *See* Agreement on the Establishment of a Free Trade Area, Oct. 24, 2000, U.S.-Jordan, 41 I.L.M. 63, *available at* http://www.ustr.gov/regions/eu-med/middleeast/text agr.pdf (last visited Oct. 10, 2003).

7 *See* Cambodia Bilateral Textile Agreement, Jan. 20, 1999, U.S.-Cambodia, *at* http://www.tcc.mac.doc. gov/cgi-bin/doit.cgi?204:64:889223583:25 (last visited Nov. 20, 2003). This agreement was extended through December 31, 2004 by the Memorandum of Understanding dated December 31, 2001; *see* Press Release, Office of the United States Trade Representative, U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers' Rights (Jan. 7, 2002), *at* http://www.ustr.gov/releases/2002/01/02-03.pdf (last visited Nov. 20, 2003).

8 *See* Free Trade Agreement, June 6, 2003, U.S.-Chile, *at* http://www.ustr.gov/new/fta/Chile/final/index.htm (last visited Oct. 10, 2003).

9 *See* Free Trade Agreement, May 6, 2003, U.S.-Sing., *at* http://www.ustr.gov/new/fta/Singapore/final.htm (last visited Oct. 10, 2003).

10 *See* Treaty Establishing a Common Market, Mar. 26, 1991, Arg.-Braz.-Para.-Uru., U.N. Doc. A/46/155 (1991), *reprinted in* 30 I.L.M. 1041(1991).

11 *See* Generalized System of Preferences, 19 U.S.C. §§ 2461-2467 (2003).

12 *See* Caribbean Basin Economic Recovery Act (also known as the Caribbean Basin Initiative), 19 U.S.C.S. §§ 2701-2707 (2003); general information regarding the Caribbean Basin Initiative *available at* http://www.ustr.gov/regions/whemisphere/camerica/cbi.shtml (last visited Oct. 11, 2003).

13 *See* African Growth and Opportunity Act, 19 U.S.C. §§ 3701-3741 (2003), *available at* http://www.agoa.gov (last visited Oct. 11, 2003).

14 *See* Andean Trade Preference Act of 1991, 19 U.S.C. § 3201 et seq. (2004) (expired Dec. 4, 2001, renewed through Dec. 31, 2006) *amended by* Andean Trade Promotion and Drug Eradication Act of 2002 in the Trade Act of 2002 §§ 3101-3108 (Pub. Law. No. 107-210) (2002).

these rights will be protected based on national or international standards.

With respect to the rights to be covered, most existing labor provisions in trade agreements provide coverage at a minimum of the following basic labor rights: freedom of association, the right to form unions and bargain collectively, limitations on child labor, and a ban on forced labor. These rights are covered by all trade agreements that include labor provisions entered into by the United States, Canada and Chile, and are also covered under Mercosur. These rights also constitute part of the list of "fundamental principles and rights at work" that have been adopted multilaterally by most countries of the world (including all countries of the Western Hemisphere) through the International Labor Organization (ILO), a specialized agency of the United Nations.[15] Beyond the basic rights listed above, both the ILO and Mercosur also include, as a fundamental right, the freedom from discrimination in employment based on race, gender, age or other characteristics. By contrast, such non-discrimination rights are not included in United States labor-trade provisions. However, the United States does include rights in three additional areas, which it describes as "acceptable conditions of work with respect to minimum wages, hours, and health and safety." The United States' list of covered rights is embedded in its trade legislation and has become a congressionally-mandated negotiating objective in all trade negotiations.[16] Some agreements go beyond these basic rights to include such matters as migrant workers' rights (included in the NAALC, the CCALC and Mercosur), and compensation for workplace injuries (included in the NAALC and the CCALC).

The second aspect of determining what kinds of labor obligations should be included in a trade agreement is the decision as to whether existing national laws or international standards will be used to establish the level of protection for workers' rights under the pact. In most trade agreements that include labor provisions, the parties obligate themselves to enforce their own national labor laws which address the rights covered in the agreement. For example, in the U.S.-Singapore FTA, the two countries pledged to enforce their existing labor laws on five covered categories of rights.

In some agreements international standards are referenced. International standards are the province of the ILO, which comprises

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15 ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 86th Session, Geneva, June 18, 1998, *available at* http://www.ilo.org/public/english/standards/decl/declaration/text/index.htm (last visited Oct. 11, 2003).

16 The rights are as follows: freedom of association; the right to form unions and bargain collectively; limitations on child labor; a ban on forced labor; and acceptable conditions of work with respect to minimum wages, hours, and health and safety.

almost all of the world's governments, as well as representatives of employers and trade unions worldwide. The ILO sets international standards by negotiating conventions on specific labor topics. It appoints expert committees that review the labor laws of member countries and determine whether the laws and practices measure up to the internationally agreed standards. For most areas of labor rights, a member country is only obligated to observe the ILO standard if it has actually ratified the particular convention. However, when it comes to the rights identified by the ILO in 1998 as "fundamental rights" of all people, each member country must observe those rights, regardless of whether its government has ratified the relevant conventions. The ILO reviews each member country's laws and practices on a regular basis for compliance with such rights. Those "fundamental rights," as noted earlier, are freedom of association, the right to organize and bargain collectively, non-discrimination in employment, freedom from forced labor, a minimum age of employment for children, and an end to the worst forms of child labor.

When international standards have been included in trade agreements, it has often been as aspirational standards to be achieved rather than actual commitments to be enforced (e.g., the U.S.-Chile FTA and Mercosur). This point is discussed further below. By contrast, the unilateral trade preference programs operated by the United States require recipient countries to comply with a standard defined as "internationally recognized labor rights." In practice, United States officials who oversee compliance often look to ILO evaluations of recipient countries' labor laws to determine whether the international standards have been met.

B. Enforcement

In all existing labor-trade agreements, each party enforces the commitment to protect the agreed-upon labor rights in its own territory in the first instance. None of the agreements referenced in this essay creates a right of enforcement by one country within another country's territory. However many of the existing labor-trade linkages do create some capacity for supranational review if a country is alleged to have failed to carry out its commitment to enforce its labor laws or other agreed labor rights. This constitutes the second key component in constructing a labor-trade linkage: determining to what degree labor commitments will be subject to supranational enforcement under the trade agreement. Such enforcement can include recourse to dispute settlement procedures, such as neutral fact-finding or arbitration, and penalties if a party fails to carry out its commitments.

It is in this context that the possibility of supranational or cross-border protection of labor rights arises. The agreements that are most rigorous in this respect, such as the U.S.-Jordan FTA, create a right for a country that is party to the agreement to challenge an alleged failure by another party to protect its citizens' labor rights. Such challenges are resolved by referring the matter to a neutral, international dispute settlement panel, which determines whether the alleged failure did occur. If the panel finds a failure, the charging party may withdraw trade benefits from the delinquent party or take other appropriate measures until the delinquent party comes into compliance with its labor commitments, normally by improving the enforcement of its labor laws.[17] The withdrawal of negotiated trade benefits is sometimes referred to as "sanctions." Less rigorous versions of supranational enforcement have also been created in agreements such as the NAALC, the U.S.-Chile FTA, and the U.S.-Singapore FTA. Under these agreements, if a dispute settlement panel finds that a party failed to protect its citizens' labor rights, the panel may impose a fine on the offending party. The fine is then spent in the territory of the delinquent party, under the supervision of either the international panel or the parties, to remedy the deficient protection of labor rights. In the event that a delinquent party refuses to pay the fine, the complaining party may "collect" it by reinstating tariffs in the amount necessary to recover the fine. By contrast, under Mercosur a party's failure to protect labor rights may be reviewed by a regional, supranational Commission on Social and Labor Matters, but no trade or other penalties may be imposed.

In certain agreements, the commitment to protect some labor rights is binding and subject to penalties, while commitments to protect other listed rights are merely hortatory. This two-tiered system exists in the NAALC and the CCALC, both of which provide the possibility of dispute settlement and fines for failure to protect three of eleven labor rights covered in those agreements. Commitments to enforce laws on child labor, minimum wage, and health and safety can be enforced through the dispute settlement mechanisms of the agreement, and violations of such laws can result in fines. However, freedom of association, non-discrimination, forced labor, rights of migrant workers, and other rights cannot be similarly enforced.

Another variation in enforcement arises from the distinction as to whether national laws or international standards will be used to establish the level of protection for workers' rights that each country will be obligated to provide. International standards, as noted above, are set multilaterally through the ILO. The U.S.-Jordan FTA, which is generally

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[17] Only trade benefits that were granted under the agreement may be withdrawn, as distinguished from trade benefits granted under other regimes, such as the WTO.

considered to have the most rigorous labor provisions of any trade agreement, includes both national and international standards among its obligations. The U.S.-Jordan FTA binds both parties to enforce their own existing national laws on labor rights covered in the agreement. This obligation is subject to dispute settlement and disciplines, including possible withdrawal of trade benefits under the agreement. But the agreement also creates obligations that can be seen as intermediate (somewhere between binding and hortatory in effect) for other labor rights. It does this by including a commitment by the parties to "strive to ensure" that their laws recognize and provide protection for the ILO-determined fundamental rights. That commitment has a force that is more than hortatory, since it would be difficult—but not impossible—to prove to a dispute settlement panel that a country had failed to "strive" to achieve that goal. For example, a country's repeal of ILO-compliant labor laws and their replacement by non-compliant laws might be found by a panel to constitute a failure by the party to "strive to ensure" that fundamental ILO labor rights are protected. In contrast to the U.S.-Jordan FTA, the recently concluded U.S.-Chile and U.S.-Singapore FTAs transform a similar commitment by the parties to "strive to ensure" that their laws protect the fundamental ILO rights into a purely hortatory exercise. This is done by explicitly excluding the possibility of dispute settlement proceedings if a party fails in that commitment.

Thus, the enforceability of labor provisions in trade agreements can be arrayed along a continuum. At one end of the continuum are fully enforceable labor obligations that enjoy the same status as commercial and other obligations of the relevant trade agreement. In the middle are binding commitments but less rigorous mechanisms—such as fines—for failure by a party to comply with its labor obligations. On the opposite end of the continuum are hortatory commitments that call on the parties to protect labor rights, but provide no enforcement mechanism through the trade agreement if a party should fail to honor that commitment.

Critics opposed to including labor provisions in trade agreements have claimed that rigorous enforcement mechanisms could be abused for protectionist purposes. This claim does not stand up to scrutiny because the mechanisms that are used for enforcing labor rights are subject to the same constraints on abuse that apply to enforcement of commercial rights. For example, in the United States' bilateral agreements discussed above, neutral dispute settlement panels make the determination as to whether there has been a violation of labor obligations under the same rules and with the same safeguards that apply to other trade disputes. As a result, even if a party were motivated by protectionism, that party could not withdraw trade benefits unless its protectionist impulse happened to coincide with an objective failure by the other party to protect the labor rights of its citizens—as determined by neutral experts.

Similarly, if such a failure is found and the complaining party imposes trade penalties that are manifestly inappropriate, the delinquent party can seek review by either the same panel or a different panel. Thus, the risk of protectionist abuse is no greater with labor obligations than it is with commercial or any other obligations of a trade agreement, and the same constraints can be built in to prevent it. The neutral determination of whether there has been a violation of labor commitments also helps to address concerns about asymmetry of power in trade relationships. Since decisions are made by neutral panelists, equality under the agreement is established at the pivotal points when violations are determined and the right of retaliation is decided.

III. Underlying Policy Issues

A. Penalties

As already noted, under existing labor provisions in trade agreements, a party's failure to carry out its labor commitments can precipitate a withdrawal of trade benefits in some agreements or can lead to a fine in others. In constructing labor-trade linkages, this is a key policy element to be addressed. It should be approached by negotiators using well-known and understood principles for the determination of penalties. A key principle is the recognition that the goal of potential penalties is 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. Another established principle relating to the relationship between penalties and voluntary compliance is that of proportionality: if a penalty is imposed, it should be commensurate with the infraction. Third, the penalty should contribute to an amelioration of the problem if that is possible. While deterrence is the foremost objective since it is designed to prevent abuse in the first instance, any penalty should also be evaluated against these secondary objectives of fairness and amelioration of the problem.

Using these standard objectives for determining penalties, the benefits and drawbacks of existing approaches can be more readily evaluated. From the perspective of achieving deterrence, it is evident that the potential withdrawal of trade benefits is likely to be most effective, since it could negate some or all benefits of the trade agreement. Fines may constitute an effective deterrent, but only if they are set at a level that imposes sufficiently negative consequences for the offender. On the other hand, if deterrence fails and a country refuses to comply with its labor obligations, the penalties take on a different coloration. Because the ultimate victim of a party's non-compliance is the working population of that country and not the government or

employers, care must be taken to ensure that the penalty will help and not harm those workers. A fine that is used directly to address the labor problem may be more effective than a withdrawal of trade benefits in correcting the underlying violation of labor rights. A withdrawal of trade benefits could in some cases result in a diminution of employment that would harm the workers (the victims of the original non-compliance) as much or more than the employers (the perpetrators of labor law violations) and government (which tolerated the violations).

One additional consideration to be taken into account in establishing penalties is any asymmetry of power and wealth between the parties. A withdrawal of benefits may hurt a small or more open economy more than a large or less open one. Of course, this asymmetry is not limited to labor obligations; it is equally applicable to penalties for commercial disputes. By contrast, fines could be structured in such a way as to equalize the relative impact of penalties. However existing agreements do not make use of this potential, as they impose caps on fines that are the same for all parties, regardless of differences in the size of their economies and traded sectors. For example, the U.S.-Chile and U.S.-Singapore FTAs both establish a maximum fine of $15 million for a party's failure to enforce its labor laws, despite the very different impact that a fine of that magnitude would have on the budget of the United States government compared to that of Chile or Singapore.

B. Positive And Negative Incentives

Enforcement mechanisms in most trade agreements have relied on penalties, or negative incentives, for deterrence in the first instance and punishment as a last resort. This is true of both labor and commercial provisions of such agreements. But it is also possible to elicit compliance with labor commitments through positive incentives. The only current trade agreement that utilizes this approach is the U.S.-Cambodia Textile Agreement. Under that agreement, which sets quotas for textile and apparel exports from Cambodia to the United States, the quotas can be increased if Cambodia meets obligations it undertook to improve enforcement of its own labor laws and to protect internationally recognized worker rights in the textile and apparel sector. Quotas were increased by nine percent during each year of the first three-year agreement between the parties; by twelve percent during 2002 and 2003, under the second three-year agreement; and by fourteen percent for 2004. This approach has been seen as very successful by both the American and Cambodian governments and by the firms and workers in the apparel sector in Cambodia, where there have been significant and widespread improvements in wages, working conditions and respect for workers' rights.

There are three key reasons why the approach has been successful. First, the potential quota increase is determined on a yearly basis, so there is a close temporal connection between the behavior of the firms and government and the rewards that flow from good behavior. Second, the incentives for the private sector are closely aligned with those for the Cambodian government. Because individual firms will benefit from the quota increase, they are more likely to comply voluntarily with labor laws and accord labor rights to their workers. Further, the quota increase depends upon sector-wide performance. Significant non-compliance with labor laws and worker rights by any firm puts benefits for all firms at risk. Non-compliant firms therefore face peer pressure from the rest of the industry, as well as from government and workers. The third key reason for the success of this approach is that information about firms' behavior was greatly improved through a factory monitoring program that was initiated in conjunction with the textile agreement. The monitoring is carried out by the ILO, which reports its findings to factory managers and subsequently to all interested parties and the public through its website. This improvement in the availability of information has been a key factor in the determination of quota increases. Another benefit of better information is that it has allowed buyers (often multinational apparel firms that are concerned about their reputations) to direct orders to firms that have complied with labor laws and away from firms who have violated them.

Overall, the burden on the Cambodian government to enforce labor laws was reduced because the rate of voluntary compliance increased. It is important to remember that even wealthy countries must rely to a significant extent on voluntary compliance with labor laws by employers because the costs of inspection and enforcement would otherwise be economically burdensome. This is true to an even greater degree for resource-strapped developing countries. In those countries where workplace rule of law has not been firmly established, as is the case in many developing countries, the combination of positive incentives and improved information about factory conditions is likely to produce swifter and wider compliance than the threat of punishment for non-compliance. The reason that threats of punishment are not as effective is that their success depends too greatly on the government's capacity to inspect workplaces and its political will to prosecute violators.

C. Role Of The Private Sector

Guaranteeing respect for labor rights necessarily entails roles for both governments and private sector employers, as illustrated in the example above. While trade agreements impose binding obligations on governments, it is private sector employers who determine, in the first

instance, whether labor rights are a reality in the private sector workplace. Therefore it is important to take both of these actors into account in fashioning labor-trade linkages. Positive incentives or penalties should affect both government and employers. Optimally, these incentives or penalties should be structured to align important economic interests of government and employers with the interests of the workers who are the intended beneficiaries of this linkage.

In the case of positive incentives, this alignment of interests can be constructed in a fairly direct manner, as the Cambodian example above demonstrates. With penalties, the alignment of interests becomes more complicated. For example, fines may be preferable to the withdrawal of trade benefits in order to avoid harming workers, but at the same time, fines paid by offending governments relieve employers of any negative consequences for their non-compliance with labor laws. As a result, if fines are the chosen penalty in a labor-trade agreement, this may actually lead to less voluntary compliance by employers than the possibility of trade sanctions. Given the constraints on resources and lack of political will of governments in many developing countries, this may significantly reduce the intended positive effect on labor rights and working conditions. One possible approach to address this shortcoming would be to create a pass-through mechanism whereby non-compliant firms would be fined to raise the revenue for the government's fine. Another approach to remedy this non-alignment of firm and government incentives could include denying trade-related benefits to non-compliant exporting firms. For example, many governments require that exporting firms obtain export licenses. Some governments offer tax breaks in their export processing zones. These benefits could be withheld from firms that violate labor laws. These mechanisms could be established through trade agreements, or could be enacted unilaterally by individual governments that are party to agreements that include protections for labor rights.

D. Technical Assistance And Capacity-Building

Virtually all trade agreements with labor provisions envisage cooperation between the parties on labor matters. Some create new institutional mechanisms to carry out such activities and to engage in technical assistance (e.g., the NAALC and the U.S.-Chile FTA). In practice, the cooperation has not been very extensive or sustained. Under the NAALC, the oldest such arrangement, there was a burst of activity in the first few years of the agreement, but there has been very limited activity in recent years. Even during the most active period, cooperation tended to consist of one-time discussions involving actors who otherwise were not engaged in implementing the agreement. As a

result, little was achieved in terms of capacity-building or sustained improvement in labor law enforcement.

On the other hand, some quasi-enforcement activities that occurred under the NAALC did produce some marginal improvements. These activities arose under a public right to petition for enforcement that was created by the agreement. A variety of complaints were raised by trade unions and non-governmental organizations (NGOs) claiming that individual governments were not complying with specific labor obligations of the agreement. These petitions and their investigation provided de facto opportunities for information exchange and technical assistance. For example, Mexican and American NGOs complained to the American government that female workers in Mexican export assembly plants were subjected to mandatory pregnancy testing and dismissal if they became pregnant. These complaints led to a series of cross-border workshops to discuss the issue and possible remedies. Subsequently, the Mexican government eliminated this practice for female public employees, although it continues in some parts of the private sector. In other instances, complaints about health and safety conditions in Mexican factories and the treatment of migrant workers in Washington State apple orchards led to public hearings or seminars on these topics involving governments, employers and workers. The sessions may have played a role in ameliorating some of the problems in some cases.

The experience with the NAALC suggests a potentially important lesson about cooperation and capacity-building. Discussions (whether through hearings, workshops or other fora) that are linked to allegations of existing problems—and that could lead to adverse consequences such as sanctions—appear to elicit more attention from key actors and are more likely to change their behavior than activities that are seen as purely informative. A parallel dynamic may also occur with positive incentives. Arguably, Cambodian factory managers were more likely to adopt the technical advice of ILO monitors and others as to how to correct violations of labor law because a failure to heed this advice would lead to diminished orders or foregone quota increases. Combining technical assistance and capacity-building with economically meaningful positive or negative consequences is likely to produce better results, in terms of faster and sustained improvement, than implementing technical assistance in isolation.

A final point about technical assistance must be considered. The actual amount of capacity-building needed by many developing countries is sobering, even in those cases where the political will to improve labor rights is present. If cooperative capacity-building and technical assistance are to be seen as a meaningful complement to direct trade incentives or penalties, financial resources must be committed on a

higher order of magnitude than current efforts. An analogy can be made to the European social cohesion funds that were instrumental in improving enforcement of laws, working conditions and social safety nets in poorer European countries as they integrated into the European Union over recent decades.

The positive example of the U.S.-Cambodia Textile Agreement points the way to achieving the greatest possible efficacy with available funds. The alignment of public and private interests and the promise of tangible and immediate incentives commanded the attention and effort of both government officials and firm managers. Under those propitious conditions, a United States investment of $2 million over five years was instrumental in promoting, verifying and sustaining progress toward full compliance with labor laws. The Cambodian government and apparel firms also made smaller contributions. The actual cost per worker in the apparel sector in Cambodia was about $3.50 per year, making that program arguably the best investment the United States has ever made in promoting international labor rights. This suggests that carefully designed programs that combine trade opportunities (with incentives for compliance with labor rights or penalties for non-compliance) and targeted technical assistance carry the greatest promise for swift progress on workers' rights.

IV. Conclusion

In the ten years since labor rights provisions were first included in a trade agreement (i.e., the NAFTA-linked NAALC), significant experimentation has taken place and experience has accumulated. It is now possible to examine the different tacks that have been taken and to begin to draw some early conclusions about the likely efficacy of various approaches. No one model has yet emerged as a single template for future agreements, but some approaches stand out for their achievements or compelling logic. The U.S.-Cambodia Textile Agreement has generated an impressive record of progress for workers in Cambodia. The U.S.-Jordan FTA has several provisions that set a benchmark for the level of ambition of the parties in addressing labor rights. At the same time, there are many useful positive and negative lessons to be learned from other trade agreements that take different approaches. In coming years, trading countries have the opportunity to learn these lessons and apply them in new and more successful combinations.