

Core labour standards under the Administration of George W. Bush

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Abstract. *Outside of the International Labour Organization, the United States uses two main channels to promote labour standards internationally: bilateral or regional trade agreements and “labour diplomacy”. Examining developments in these areas between 2001 and 2008, the author argues that the Bush Administration weakened the United States’ capacity to uphold internationally recognized core labour standards. Although it concluded an unprecedented number of free trade agreements, their labour clauses are largely devoid of meaningful enforcement mechanisms – suggesting a closer connection with general foreign policy objectives than with concern for workers’ rights. Furthermore, the work of the Federal Advisory Committee on Labor Diplomacy was eventually suspended.*

This essay examines the direction in which the administration of George W. Bush (2001–2009) has taken the United States’ long-standing commitment to the promotion of internationally recognized core labour standards. Since September 2001, headlines and public discussions in the United States have been dominated by the “war on terror”, the war in Iraq, and other “national security” issues. While the media and public attention were thus focused on the Administration’s initiatives to promote the security of the State, the Bush Administration quietly undermined the ability of the United States

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Government to protect the economic security of American workers. The Administration negotiated “free trade” agreements with five times as many governments as had all previous administrations combined.¹ Each of these agreements includes a chapter on labour, but effectively strips the United States Government of the ability to enforce internationally recognized core labour standards.

The essay focuses on promotion of core labour standards through two government channels, namely: trade agreements, which are negotiated by the United States Trade Representative (USTR) and ratified by the United States Congress, and labour diplomacy, pursued by the United States Department of State. Specifically, the essay considers the impact of the Trade Act of 2002 on the promotion of core labour standards and examines the Administration’s use of the Federal Advisory Committee on Labor Diplomacy, the central body for the coordination of labour diplomacy activities.

The Administration of George W. Bush, supported by key pro-trade Democrats, weakened the ability of the United States Government to protect core labour standards at home and to promote them abroad.² Under previous administrations, trade sanctions (or threat of sanctions) had been used unilaterally and inequitably, but also effectively. Trade agreements negotiated under the Bush Administration include language on labour but no provision for effective enforcement mechanisms. Additionally, the Bush Administration blocked the work of the Department of State in advancing core labour standards.

Core labour standards

Since the middle of the nineteenth century, and with greater clarity since the founding of the International Labour Organization (ILO) in 1919, governments, typically prompted by workers’ representatives, have advocated basic and uniform standards for terms of employment and conditions of work. The business, labour and government constituencies of the ILO have negotiated and adopted more than 180 Conventions, eight of which are now internationally recognized as embodying core labour standards that protect four fundamental rights, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation (see table 1). These four fundamental rights are enshrined in the 1998 Declaration on Fundamental Principles and Rights at Work, which commits all member States of the ILO “to

¹ These agreements are not well described as “free trade” agreements; they impose a single set of rules and entail cost; further, they are not merely about trade; they establish rules in non-traded sectors as well.

² This essay does not make a case for incorporating labour standards in trade agreements. For economic arguments for incorporating labour standards in trade agreements, see Marshall (2005), Palley (2004) and Polaski (2003).

Table 1. Fundamental rights at work and internationally recognized core labour standards

Fundamental rights	ILO Conventions	Basis
1. Freedom from forced labour	Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105)	Freedom of will
2. Freedom to form unions and to bargain collectively	Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	Freedom of association
3. Freedom from discrimination	Equal Remuneration Convention, 1951 (No. 100), and Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	Equality of individuals
4. Freedom from child labour	Minimum Age Convention, 1973 (No. 138), and Worst Forms of Child Labour Convention, 1999 (No. 182)	Freedom of will

respect, to promote and to realize” them, whether or not their governments have ratified the specific Conventions that define them.³

The foundation of internationally recognized core labour standards is freedom from forced labour. The principle that no human being should be made to work against his or her will – i.e. that forced labour is inhumane – is indeed the basis of the other core labour standards on freedom of association, freedom to bargain collectively for terms of employment and conditions of work, freedom from discrimination in employment and at work, and freedom from child labour. These international labour standards effectively embody fundamental human rights at the workplace: they are based on the right to control one’s own body, the right to associate freely, and the right to equal treatment under the law.

Critics of the inclusion of internationally recognized core labour standards in trade agreements occasionally claim that such standards include a mandatory universal minimum wage, which would be prejudicial to employment in low-income countries. Accordingly, it is worth stressing that there is no ILO core standard for a global minimum wage.

Trade agreements

In most economies, including in the United States, most workers serve or produce for the domestic market. Why, then, is there such concern over labour

³ The Government of the United States has signed only two of the eight ILO Conventions underpinning the four fundamental rights. However, it was an “enthusiastic supporter” of the 1998 Declaration (see Marshall, 2005, p. 6). For the full text of the Declaration, see *International Labour Review*, Vol. 137 (1998), No. 2, pp. 253–257.

standards in trade agreements? Standards are inherent in all economic behaviour. Standards are found in environmental practices, intellectual property protection, levels of hygiene and sanitation, methods for dispute settlement, and any other field where there are measures and norms for quality and behaviour. Accordingly, every trade agreement concluded by the United States contains several chapters, each specifying the standards that will be followed in a particular area (e.g. how inputs define a good's country of origin). Whether or not they explicitly spell out specific standards, trade agreements do imply standards because an exchange of goods and services is also an exchange of the terms on which such goods and services are produced and provided. Trade is not merely the exchange of goods and services; trade is also the normalization of the standards – environmental, hygienic, labour, etc. – to which those goods and services are produced and provided.

There is a long history of “aggressive unilateralism” on the part of the United States in protecting labour standards domestically and in prompting core labour standards internationally, especially in the immediate aftermath of the First World War and in the years immediately following the Second World War.⁴ Over the past two decades, the United States has promoted internationally recognized core labour standards through five trade laws, namely, the Generalized System of Preferences Renewal Act of 1984, the Overseas Private Investment Corporation Renewal Act of 1985, the Caribbean Basin Economic Recovery Act of 1986, the Omnibus Trade and Competitiveness Act of 1988, and the Trade Act of 2002.

Standards that are enforced through trade sanctions or through the threat of trade sanctions are coercive, unilateral, and applied unevenly and unfairly. Understandably, they are not widely supported by governments that might be targets of such action.⁵ The pursuit of core labour standards through trade agreements has therefore been criticized as aggressively unilateral and thus contrary to principles of international law. According to Philip Alston, “the form in which the standards are stated is so bald and inadequate as to have the effect of providing a *carte blanche* to the relevant US government agencies, thereby enabling them to opt for whatever standards they choose to set in any given situation” (Alston, 1993, pp. 7–8).

Since the labour rights provisions of United States trade laws require a finding by the executive branch, such provisions are likely to be used for foreign policy objectives rather than principled promotion of core labour standards.

⁴ Alston borrows the phrase “aggressive unilateralism” from Jagdish Bhagwati and Hugh Patrick's discussion of section 301 of the Omnibus Trade Act of 1988. Alston argues that it also applies to the labour standards provisions of United States trade laws (see Alston, 1993; Bhagwati and Patrick, 1990). On the vagaries of United States support for human rights, including human rights at the workplace, see Sikkink (2005).

⁵ Much of the debate between advocates and opponents of the inclusion of core labour standards in trade agreements has focused on whether such standards distort economic outcomes and serve to protect the economic advantage of advanced capitalist economies. As a result, much of the debate on the inclusion of core labour standards in trade agreements misses the central issue, namely: who decides whom is to be sanctioned for alleged violations?

Indeed, the first countries to lose United States Generalized System of Preferences status, in 1987, for alleged neglect of core labour standards were Paraguay, Nicaragua and Romania. These were not the countries with the world's worst records on labour standards at the time. Rather they were countries that were targeted by the Reagan Administration for foreign policy reasons. More recently, banana plantations in Guatemala, where core labour standards are higher than in neighbouring Ecuador, were threatened in 2002 with Generalized System of Preferences sanctions by the Bush Administration's USTR.

Yet trade sanctions and the threat of sanctions are often effective. For example, when the United Mine Workers of America and the State of Alabama pressured the United States Government to ban the import of South African coal in 1974 as "it was produced by indentured labour under penal sanctions", the Government of South Africa "repealed several penal provisions from its labour legislation" (Charnovitz, 1987, p. 570). More recently, the Governments of Guatemala, India, Indonesia, Pakistan and Sri Lanka have responded to the United States' allegations of core labour standard violations by passing new labour legislation, improving existing labour legislation or increasing inspection and enforcement.⁶ Even the implicit threat of loss of United States market access is effective. It was partly in response to the visit to India by then United States Commerce Secretary Ron Brown that India's National Commission for the Protection of Child Rights was established. Similarly, Senator Harkin's Child Labor Deterrence and Child Labor Free Consumer Information Bills have not been passed into law, but these bills have helped to remove hundreds of thousands of children from factory work.

The danger that United States trade law will be used as a weapon of foreign policy stems from the manner in which findings of labour standard violations are made by the executive branch, rather than the attachment of labour standards to trade law per se. As with other human rights provisions of United States law, the legal mechanisms for promoting international labour standards are activated by elected politicians and unelected officials.

The "aggressive unilateralism" of governments in net-import industrialized countries is neither consensual nor equitable. However, it does encourage governments in export-oriented industrializing countries to improve their compliance with core labour standards. Government officials in industrializing countries that are likely targets sometimes protest that their values are different from those of the United States.⁷ Nevertheless, while protesting, targeted governments also strengthen their labour laws.

⁶ The International Labor Rights Fund petitioned the Office of the USTR to review labour problems in Guatemala, India, Indonesia, Pakistan and Sri Lanka. The Office of the USTR authorized a review. In response, the Governments of these countries amended the offending parts of their labour law.

⁷ In response to the allegation that core labour standards are based on United States rather than international values, Marshall notes that the ILO Conventions that define core labour standards were developed by governments, business associations and trade union organizations over generations, often without the support of the United States representatives to the ILO (Marshall, 2005, p. 15).

In the United States, the promotion of core labour standards in trade agreements is not as much a partisan issue as it is often portrayed to be. Some Republicans have been supportive of effective mechanisms for promoting core labour standards, while some Democrats have been opposed to such mechanisms. For example, the Omnibus Trade Act of 1983 provides organized labour with more leverage on core labour standards than any other piece of multilateral trade legislation enacted in the United States: yet, it was signed into law by President Reagan, a Republican. Conversely, the House Democratic leadership advocated for the New Trade Policy Template Act of 2007, which weakens the enforcement mechanisms for protecting and promoting core labour standards.

Core labour standards in Bush Administration trade agreements

The Administration of George W. Bush was not expected to take initiatives to promote core labour standards. It was outspoken against such “restrictions”, backing the United States Chamber of Commerce, which had vowed to secure the removal of the standards established in the free trade agreement negotiated between the United States and Jordan under the second Clinton Administration. However, neither the Bush Administration nor Republican Senators amended this agreement. Unanimously approved in September 2001, it was the first United States trade agreement to include core labour standards in the text of the agreement itself.⁸ “In the wake of the 11 September attacks, the US clearly moved this bill forward to demonstrate support for a key Middle Eastern ally overcoming the previous contentious battle over the inclusion of labour and environmental provisions” (Business Alert, 2001). This was the United States’ second bilateral free trade agreement – the first having been concluded with Israel.

The Trade Act of 2002 was passed by one vote in the United States House of Representatives on 6 December 2001, and by the United States Senate on 23 May 2002. This legislation gave the President “trade promotion authority”, whereby the President was empowered by the Congress in ways that the authors of the Constitution of the United States had apparently not contemplated.⁹ Under the terms of such trade promotion authority, the Congress limits its authority to voting on negotiated treaties in whole, without amendment.

Included in the Trade Act of 2002 are “overall trade negotiating objectives”, i.e. negotiating guidelines for the USTR, which were supposed, among other things, to “promote respect for worker rights and the rights of children

⁸ The North American Free Trade Agreement includes core labour rights language in “side agreements”.

⁹ Article 1, Section 8 of the Constitution establishes that “[T]he Congress shall have power ... to regulate commerce with foreign nations.” Nowhere in the Constitution is the Congress given the authority to cede its trade authority to the President.

consistent with core labor standards of the ILO” and to “seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic ... labor laws as an encouragement for trade” (Section 2102). However, the dispute settlement and enforcement mechanisms are so weak that they have yet to be used.

Under the Trade Act of 2002, for each of the free trade agreements negotiated by the Bush Administration, the Administration is required to report on the impact of the agreement on labour standards in the United States and in the foreign country with which the free trade agreement is negotiated. Furthermore, the Trade Act of 2002 also requires the Administration to verify to Congress that the governments enjoying free trade agreements do not lower their labour standards in an attempt to improve their trade advantage. Another requirement of the Trade Act is that the Administration produce reports on labour trends in the United States and in the countries with which the United States Government negotiates free trade agreements. And lastly, the Act also requires the President to produce three reports, namely: (1) a report on labour rights in the countries with which the USTR negotiates any agreement; (2) a report on the impact that any agreement will have on employment and labour markets in the United States, produced “sufficiently early in the negotiating process to inform the development of negotiating positions”;¹⁰ and (3) a report on the law governing child labour in the countries with which the USTR is negotiating. This reporting was demanded by Congressional Democrats for their support of the Trade Act. The Administration, however, failed to produce these reports early enough in the negotiating process for the Congress to consider them, in violation of the law. Moreover, the reports that were produced were not meaningful: they were compilations of existing laws without any consideration of their adequacy or attention to whether they were being enforced. Meaningless reporting, however, might be what the Trade Act intended, as violations of labour standards under the Act are defined only in terms of a weakening of existing law to gain a trade advantage. The adequacy and application of the law are not relevant under the Trade Act. In fact, the USTR’s own Labor Advisory Committee reported that

the agreements [negotiated under the Trade Act] actually step backwards from existing labor rights provisions in the U.S. ... only one single labor rights obligation – the obligation for a country to enforce its own labor laws – is actually enforceable ... All of the other obligations contained in the labor chapters, many of which are drawn from Congressional negotiating objectives, are explicitly not covered by the dispute settlement system and thus completely unenforceable (Labor Advisory Committee for Trade Negotiations and Trade Policy, 2003, pp. 5–6).

The Trade Act of 2002 and its 2005 renewal thus seriously weakened the ability of the United States Government to promote core labour standards – and

¹⁰ Executive Order 13141 of 16 November 1999 – Environmental Review of Trade Agreements, in *Federal Register*, Part 5, Vol. 64, No. 222, 18 November 1999, Presidential Documents, p. 63170.

members of the Democratic Party and their staff have been complicit in this. It was indeed Democratic Party staff who proposed that penalties be lowered from sanctions to fines, to be held in escrow pending dispute resolution. The United States Government has not initiated a single dispute with any of the 14 trade partners with which George W. Bush's Administration signed free trade agreements, despite violations of core labour standards in many of these countries. For example, the Administration negotiated an agreement with the Government of Colombia, where some 70 trade unionists were murdered in 2005 in what the ICFTU described as "an appalling indictment of the authorities' failure to tackle the problem" (ICFTU, 2006, pp. 93 and 110–118).

United States labour diplomacy and the role of the federal Advisory Committee

Labour diplomacy

Trade agreements are not the only means by which the United States Government attempts to promote core labour standards. "Labour diplomacy" is a phrase coined by officials in the Department of State to refer to the promotion of independent trade unions. The United States Government has been involved in such labour diplomacy for decades: the labour attaché programme was initiated in 1943 (Fizman, 1965). The Department of State (through its Bureau of Democracy, Human Rights, and Labor) and the Department of Labor (through its Bureau of International Labor Affairs) have a long-standing cooperative relationship in the field of international labour affairs: 50 foreign-service officers hold labour portfolios.

Throughout most of the history of United States labour diplomacy, the work of American trade unions overseas suited the Government's professed aims. Both the executive and the legislative branches had authority over labour diplomacy activities. The executive branch, however, improved its purchase on American unions from the early 1960s to the late 1980s. But the character of United States labour diplomacy then changed because of John Sweeney's election in 1995 as President of the American Federation of Labor – Congress of Industrial Organizations (AFL-CIO). The AFL-CIO no longer took its position on international issues from the Government. The AFL-CIO's International Affairs Department and its regional Free Labor Institutes – African-American Labor Center, the American Institute for Free Labor Development, the Asian-American Free Labor Institute, and the Free Trade Union Institute (for Europe) – were reorganized as American Centers for International Labor Solidarity.

The Advisory Committee on Labor Diplomacy

Hundreds of advisory committees serve the federal Government. More than 40,000 individuals have volunteered for this work, a remarkable feature of democracy in the United States. Such committees may be established by the President, by the secretary or director of a federal department or agency, or by

the Congress. The Federal Advisory Committee Act of 1972 specifies procedures for advisory committees. The Act requires that all committees operate in the public. Meetings must be open to the public and announced in the *Federal Register* at least 15 days in advance. The General Services Administration monitors advisory committee activities.

Members of these committees provide a public service. They are not paid. They volunteer their time and expertise because they believe that their advice might positively influence government policy. The bureaus to which advisory committees report typically hold these committees in high regard, seeing them as critical both to the formulation of policy and to its legitimacy. The secretary or director of a department or agency to which a federal advisory committee reports might ask the committee to suggest policy initiatives, to make policy proposals, or to recommend administrative or staffing changes.

More than a dozen advisory committees serve the Department of State. The first of these was the Advisory Commission on Public Diplomacy, established by the United States Congress in 1948. More recently appointed advisory committees include the Advisory Committee on Democracy Promotion and the Advisory Committee on Transformational Diplomacy, both established by Secretary Rice in 2006. The establishment of advisory committees and the work with which they are tasked reflect the priorities of the Administration or Congress under which they are appointed.

Secretary of State Madeleine Albright created the Advisory Committee on Labor Diplomacy in May 1999 to advise the President and the Secretary of State on international labour affairs. The Committee's creation was largely an attempt by the Clinton Administration to repair relations with organized labour after the President's promotion of the North American Free Trade Agreement over the objections of the trade unions (see Stigliani, 2000, pp. 181–183). The Committee is a group of individuals from the American unions, "prominent persons with expertise in the area of international labor policy and labor diplomacy" (ACLD, 1999). Secretary Albright chose Thomas Donahue to chair the Committee. Donahue was a President and long-time treasurer of the AFL-CIO.¹¹

The Committee delivered its first report to President Clinton and Secretary Albright in 2000. The report, *A world of decent work: Labor diplomacy for the new century*, argued that independent unions and workers' rights are a necessary foundation for the promotion of democracy worldwide, a professed foreign policy goal of the United States (ACLD, 2000). It also made a number of policy and staffing recommendations to the President and Secretary of State, many of which were implemented.

¹¹ Other members of the Committee include Linda Chavez-Thompson, Executive Vice President of the AFL-CIO; Frank Doyle, former Executive President of the General Electric Company; Anthony Freeman, then Director of the International Labour Organization's Washington, DC Office; John Joyce, President of the International Union of Bricklayers and Allied Craftworkers; William Lucy, Secretary-Treasurer of the American Federation of State, County and Municipal Employees; Ray Marshall, former Secretary of Labor and Professor of Economic and Public Policy at the University of Texas, Austin; and John Sweeney, President of the AFL-CIO.

Secretary of State Colin Powell, who succeeded Secretary Albright, was supportive of the work of the Advisory Committee and renewed its charter in 2001. The Committee delivered its second report to President Bush and Secretary Powell in December 2001. This report, *Labor diplomacy: In the service of democracy and security*, made the argument that independent unions and workers' rights would advance democracy and thereby promote security (ACLD, 2001). It also made a number of recommendations to the President and Secretary of State, some of which were adopted and implemented.

The Committee prepared a third report, at Secretary Powell's request, *A labor diplomacy strategy for the Muslim world* (ACLD, 2004). A final draft of this report was to be issued and discussed by the Committee in April 2004. The public was notified and invited to participate through a notification in the *Federal Register*, in accordance with the Federal Advisory Committee Act of 1972. The report suggested ways in which the Government's overseas work and international policy could improve adherence to law and improve labour trends in the United States and abroad. The main concerns of the report were promoting freedom of association, generating employment, empowering female workers, and protecting migrant workers.

The draft report included analysis of trends in employment, unemployment and underemployment; schooling, literacy and education; observance and monitoring of core labour standards; and other issues of significance to United States labour diplomacy in 83 countries. Sources for the report included labour officers' cables for the workers' rights sections of the Department of State's annual *Country reports on human rights practices*; responses by labour officers to specific requests for information; conversations with labour officers; and the ICFTU's annual reports on *Violations of trade union rights*. The Committee also solicited and considered comments from government intelligence analysts and academics.

Days before the Committee was scheduled to release the draft of its third report, which had been announced publicly in accordance with public access laws, the White House informed the Committee that it would not be permitted to meet until a review of the credentials of members was conducted. The White House made no further contact with the Committee, although preventing a federal advisory committee from performing its duties appeared to go against the provisions of the Federal Advisory Committee Act of 1972.

The future of United States support for core labour standards

Before George W. Bush occupied the White House, the United States had one bilateral free trade agreement – with Israel – and one regional free trade agreement: the North American Free Trade Agreement. Eight years later, the Government had concluded bilateral free trade agreements with an additional 15 countries, namely, Singapore, Australia, Chile, Bahrain, Morocco, Peru,

Columbia, Panama and the Republic of Korea (in order of signing of agreements).¹² The Administration notified the Congress, as required by the Trade Act of 2002, of the negotiation of free trade agreements with the Governments of Malaysia, Thailand and the United Arab Emirates. It also negotiated a Central American regional agreement – with Costa Rica, Ecuador, El Salvador, Guatemala, Nicaragua and the Dominican Republic¹³ – and attempted to negotiate a free trade agreement with the Southern Africa Customs Union (Botswana, Lesotho, Namibia and South Africa).¹⁴ The Governments of the Southern Africa Customs Union, however, withdrew from the negotiations in April 2006 because the United States Government insisted on including its standard template of chapters, covering agriculture, expropriation, intellectual property, investment, sanitation, services, taxation, telecommunications and other issues, rather than accepting to negotiate an agreement covering only trade.

The passage of the Central American Free Trade Agreement (CAFTA), in July 2005, was controversial. After the vote had been concluded, with the defeat of the CAFTA, the vote was reopened. One Republican legislator claimed that he had voted against passage, though his vote was counted in favour. The Agreement passed by a single vote (after being defeated). Nancy Pelosi, Democratic Party Leader, referred to the manner in which the CAFTA was passed as “an abuse of power, an unethical way of passing legislation” (Democracy Now, 2005).

On 10 May 2007, a month before the President’s “trade promotion authority” was due to expire, Congressional leaders and the President agreed on a “new trade policy template”. This template was said to provide for improved labour clauses in future trade agreements, including those then being negotiated with Colombia, Peru, Panama and the Republic of Korea. The proponents of the template touted their agreement as bipartisan, despite opposition from most Democrats. The support of key pro-trade Democrats in the House Committee on Ways and Means, however, allowed the Administration to continue to weaken economic and social standards abroad and in the United States. In response to the weaknesses of the template, other members of Congress proposed on 4 June 2008 the Trade Reform, Accountability, Development, and Employment (TRADE) Act.

¹² Negotiations with the Government of Chile preceded negotiations with the Governments of Singapore and Australia. The USTR slowed its negotiations with the Government of Chile after it failed to support the Bush Administration’s invasion of Iraq, while advancing its negotiations with the Governments of Singapore and Australia as a reward for supporting the invasion.

¹³ The Government of the Dominican Republic, the largest trading partner of the United States in the Caribbean, persuaded the USTR that it should be included in the Central American Free Trade Agreement so as not to be disadvantaged by the market access of the Central American signatories.

¹⁴ Former USTR (now President of the World Bank) Robert Zoellick referred to his strategy of negotiating multiple bilateral trade agreements, rather than focusing on a global trade agreement, as “competitive liberalization”. Critics of this approach argued that a patchwork of bilateral and regional free trade agreements would make it more difficult to establish an open global trade regime.

The “new trade policy template” of 2007 is ambiguous. It appears to restore the Government’s concern with core labour standards evident prior to the Trade Act of 2002. However, the template incorporates the weak dispute settlement and enforcement of the Trade Act. For example, according to both the Trade Act and the template, a violation of labour standards must involve a consistent pattern of abuse and have a demonstrable positive effect on a foreign government’s trade with or investment in the United States. A single abuse, no matter how serious, does not constitute grounds for a dispute. Nor does a consistent pattern of abuse constitute sufficient grounds for a dispute: abuses must be designed to advantage a foreign government’s investment in and trade with the United States. The Organisation for Economic Co-operation and Development’s influential study on the issue finds that economies with low regard for core labour standards do not gain any trade advantage from this (OECD, 1996).¹⁵ The Office of the USTR, in its press release on the new template, assured United States exporters that the template will not be enforced (USTR, 2007). It reassured United States exporters that only governments, not businesses or unions, are authorized to initiate disputes and clarifies that no decisions on a dispute are binding. A government found in violation of a labour standard, the USTR clarifies, may choose to ignore any proposed settlement.

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¹⁵ For similar findings, see Hasnat (2002).

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