

“BEST PRACTICE” IN THE REGULATION OF INTERNATIONAL LABOR STANDARDS: LESSONS OF THE U.S.-CAMBODIA TEXTILE AGREEMENT

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Cambodia’s competitive edge is our good labor practices.

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The US trade agreement with Cambodia was more beneficial to workers than any anti-sweatshop campaign.

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I. INTRODUCTION

It is widely argued that international economic liberalization through the growing number of regional and bilateral trade agreements is conducive to weaker international labor standards: employers use lower labor standards as a source of comparative advantage, and transnational corporations use geographic mobility as a “continual threat to workers everywhere, changing the power

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1. Kantha Phavi Ing, UNDP/World Bank Panel on Gender and MDGs, 49th Sess. of the Commission on the Status of Women, New York, Feb. 28–Mar. 11, 2005.

2. Jason Judd, US Union Perspective, Conference on Promoting Cambodia’s Competitiveness in a Post-MFA World, Washington, D.C. Carnegie Endowment for International Peace, July 22, 2005, available at <http://www.carnegieendowment.org/events/index.cfm?fa=print&id=810>.

relations at the bargaining table.”³ On the other hand, it is increasingly common for U.S. trade agreements to include provisions that *support* various labor standards. Typically, as a minimum, the labor rights and standards in regional and bilateral trade agreements include freedom of association and collective bargaining, and prohibitions against forced labor and child labor. Since 1993, for example, the United States has included these and other labor standards in almost every bilateral and regional trade agreement to which it has been party.⁴ This apparent paradox is largely resolved by distinguishing between the inclusion of labor standards in trade agreements and their enforcement. In most agreements, provisions regarding labor rights and standards are more “aspirational” than enforceable. For example, the North American Agreement on Labor Cooperation (NAALC), attached to the North American Free Trade Agreement (NAFTA), has had limited effectiveness, particularly in relation to labor standards in Mexico.⁵ Prominent examples of agreements between the United States and countries in the South that have been widely criticized for ineffective application of protections for labor rights and standards include the U.S.-Chile Free Trade Agreement⁶ and the U.S.-Singapore Free Trade Agreement. In neither agreement is there is a process to enforce even the weak obligation that the countries take steps to comply with the International Labor Organization’s (ILO) fundamental (or core) international labor rights.⁷ In its report to the U.S. President, Congress, and the U.S. Trade Representative, the U.S. Labor Advisory Committee for Trade Negotiations and Trade Policy warned that the labor provisions in neither agreement would “protect the core

3. Ajit Singh & Ann Zammit, *The Global Labor Standards Controversy: Critical Issues for Developing Countries* 77 (South Centre pub., Oct. 2000), available at <http://www.southcentre.org/publications/labour/toc.htm>.

4. Sandra Polaski, *Protecting Labor Rights Through Trade Agreements*, 10 J. INT’L L. & POL’Y 13, 13–25 (2003). Exceptionally, the 2000 U.S.-Vietnam Bilateral Trade Agreement does not include labor rights provisions.

5. Monica Schurtman, *Los “Jonkeados” and the NAALC: The Autotrim/Customtrim Case and its Implications for Submissions Under the NAFTA Labor Side Agreement*, 22 ARIZ. J. INT’L & COMP. L. 291–378 (2005); Linda Delp et al., UCLA Ctr. for Lab. Res. & Educ., *NAFTA’s Labor Side Agreement: Fading Into Oblivion?* (2004), available at <http://www.labor.ucla.edu/publications/nafta.pdf>.

6. DIEGO LOPEZ, *LABOR RIGHTS IN THE FREE TRADE AGREEMENT BETWEEN CHILE AND THE UNITED STATES* (2004).

7. According to the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, eight ILO Conventions constitute the core labor standards: freedom of association and protection of the right to organize and collective bargaining (Nos. 87, 98); prohibition of forced labor (Nos. 29, 105); minimum age of employment of children and abolition of the worst forms of child labor (Nos. 138, 182); equal remuneration for men and women for work of equal value (No. 100); and non-discrimination in employment and occupation (No. 111).

rights of workers in any of the countries involved.”⁸ Similarly, the U.S.-Jordan Free Trade Agreement, which has stronger labor provisions than most other trade agreements, requires states to “strive to ensure” enforcement of the International Labor Organization’s core labor rights. This requirement may be “more than hortatory,”⁹ but lacks any binding obligation.¹⁰

Similar criticisms have been made concerning the enforceability of the labor rights attached to the United States’ Generalized System of Preferences (GSP),¹¹ the main policy in U.S. trade law that promotes labor standards. The GSP provides tariff preferences to some 140 countries and territories, giving them greater access to the U.S. market. These benefits are conditional on the beneficiary country “taking steps” to achieve internationally recognized worker rights, including freedom of association and the right to organize and bargain collectively, and prohibition of forced and child labor.¹² While several countries have had their GSP beneficiary status suspended on the grounds of labor rights violations, and some of these have adopted labor reforms in order to retain or regain GSP benefits, suspension of GSP benefits is often a product of U.S. economic and political interests instead of labor rights concerns.¹³ While the United States has occasionally threatened trade sanctions against violators of GSP labor standards provisions, often the United States has “been willing to construe even the most serious violations of workers’ rights to be ‘taking steps’ to remedy the situation.”¹⁴ While noting that the workers’ rights clause in the U.S. GSP has had “positive results for workers in many instances,” a recent study highlights the “near consistent failure of the US to suspend preferences to countries that conduct substantial trade with the US, regardless of their observance of international workers’ rights.” The study concludes that

8. Labor Advisory Committee for Trade Negotiations and Trade Policy, Report to the President, the Congress and the U.S. Trade Representative on the U.S.-Chile and U.S.-Singapore Free Trade Agreements (Feb. 28, 2003), available at http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Singapore_FTA/Reports/asset_upload_file222_3246.pdf, at 1.

9. Polaski, *supra* note 4, at 19.

10. KIMBERLY ELLIOTT & RICHARD FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? 87 (2003).

11. GSP programs were allowed under the General Agreement on Trade and Tariffs and now under the World Trade Organization. Under these programs, the United States and the European Union linked labor standards to market access. For a review of labor rights under the GSP, see Lance Compa & Jeffrey Vogt, *Labor Rights in the Generalized System of Preferences*, 22 COMP. LAB. L. & POL’Y J. 199 (2001).

12. However, the U.S. GSP is not linked to other core ILO rights (e.g., those related to employment discrimination).

13. ELLIOTT & FREEMAN, *supra* note 10, at 76–79.

14. William Douglas et al., *An Effective Confluence of Forces in Support of Workers’ Rights*, 26 HUM. RTS. Q. 273, 277 (2004).

“[g]eopolitics and foreign policy are the chief considerations in applying the GSP labor rights clause, not the merits of a country’s compliance or non-compliance with the law.”¹⁵

Criticisms such as these have led many to abandon a focus on state-centered regulation of labor standards in the global South in favor of voluntary, non-state models of international labor regulation. Three non-state alternatives are common: corporate codes of labor conduct,¹⁶ international framework agreements between transnational firms and global unions,¹⁷ and “fair trade” labeling of internationally traded commodities such as coffee, cocoa, and tea.¹⁸ In contrast both to those who argue that international trade agreements are not capable of providing significant enforcement of international labor standards and to those who argue that these non-state models of international labor regulation are better mechanisms for promoting such standards, this paper focuses on a “best practice” alternative: the U.S.-Cambodia Textile Agreement.

In force from 1999 to the beginning of 2005 (when it expired with the end of the World Trade Organization’s Multi Fibre Agreement¹⁹), the UCTA was the first bilateral U.S. trade agreement to include a labor standards provision, and the only U.S. bilateral trade agreement to link *increased* market access to *systematically and publicly monitored* increasing compliance with labor standards. The standards include ILO fundamental labor standards and Cambodian labor law in areas including child labor, forced labor, sexual harassment, hours of work, minimum wages, freedom of association, and other standards. The UCTA is the only trade agreement to use market rewards rather than punishments (e.g., monetary fines) to motivate government and employer compliance with labor standards. Instead of a “stick” approach, the UCTA annually rewards employers with quota

15. Compa & Vogt, *supra* note 11, at 200, 234, 236.

16. Graham Knight & Don Wells, *Bringing the Local Back In: The Trajectory of Contention of the Union Struggle at Kukdong/Mexmode*, 6 SOC. MOVEMENT STUDIES (forthcoming 2007); Don Wells, *How Credible are International Corporate Labor Codes? Monitoring Global Production Chains*, in CHALLENGING THE MARKET: THE STRUGGLE TO REGULATE WORK AND INCOME 365 (Jim Stanford & Leah Vosko eds., 2004).

17. Euan Gibb, *International Framework Agreements (2005)* (M.A. thesis, Global Lab. U., U. Kassel & Berlin Sch. Econ., Berlin, Germany); Doug Miller, *Negotiating for the Long Haul: Negotiating International Framework Agreements in the Global Textile, Garment and Footwear Sector*, 4 GLOBAL SOC. POL'Y 214 (2004).

18. LAURE WARIDEL, *COFFEE WITH PLEASURE: JUST JAVA AND WORLD TRADE* (2002).

19. The MFA, signed in 1995 under the General Agreement on Tariffs and Trade, provided a ten year phase-out of trade restrictions in the textile and apparel industry so that countries such as the United States and the European Union would have a period to adapt to international competition in this sector.

increases in recognition of their continuing improvements in labor standards compliance.

Furthermore, the UCTA is unique among trade agreements in using the ILO to monitor labor standards. Prior to the UCTA, the ILO had not done factory monitoring.²⁰ By providing an alternative to private monitoring by firms and non-governmental organizations, ILO monitoring in the context of the UCTA marks a potentially important step toward a more public and state-centered regulation of labor standards. Compared to the private monitoring of corporate codes of labor conduct, either by transnational firms or by multi-stakeholder non-governmental organizations tied to such transnationals, the ILO's monitoring has much greater legitimacy, not only because of its tripartite and consensus governance (employers, unions, and governments) but also because the ILO has no direct links to the firms whose contract plants are monitored.²¹ Moreover, ILO monitoring legitimacy reflects its focus on compliance with Cambodia's own domestic labor laws and with ILO conventions Cambodia has ratified. So successful has this ILO-based monitoring been for the Cambodian government, exporters, and unions, as well as for foreign importers, that it is now being extended past the life of the UCTA itself.

Although flawed (see below), the UCTA contributed importantly to the promotion and protection of labor rights and standards in Cambodia's garment industry, and is the best example of links between enhanced trade and improvements in labor standards in the global South. It demonstrates that under certain conditions, international trade agreements are capable of creating a reasonably stable floor for a range of international labor standards. Moreover, this success has been achieved in arguably the most globalized manufacturing industry in the world, contributing over 8% of global manufacturing trade and employing some twenty-four million workers in 200 countries.²² Not least significant, this success has taken place in an industry that is highly competitive, geographically mobile, and

20. Sandra Polaski, *Cambodia Blazes a New Path to Economic Growth and Job Creation* 5 (Carnegie Endowment for International Peace, Carnegie Papers No. 51, 2004). In the mid-1990s, the ILO played a role overseeing monitoring to reduce child labor in Pakistan (soccer balls) and Bangladesh (apparel). Douglas et al., *supra* note 14, at 287; ELLIOTT & FREEMAN, *supra* note 10, at 113-14. For an analysis of program proposals concerning the role of ILO monitoring in the context of the UCTA, see Kevin Kolben, *Note from the Field: Trade, Monitoring and the ILO*, 7 YALE HUM. RTS. & DEV. L.J. 79 (2004).

21. See Wells, *supra* note 16.

22. Werner Stengg, *Textile and Clothing Industry in the EU: A Survey* (Enterprise Paper No. 2-2001, June 2001), available at http://ec.europa.eu/enterprise/library/enterprise-papers/pdf/enterprise_paper_02_2001.pdf.

labor-intensive, key characteristics usually associated with the “race-to-the-bottom” perspective on global supply chains and labor standards. The UCTA’s relevance lies not only in its impact on labor standards in Cambodia but also in its potential as a model that might be replicated, with appropriate modification, and extended to other countries, and perhaps to other global industries.

II. THE AGREEMENT

With an average annual per capita income for its thirteen million citizens estimated at \$321(U.S.), Cambodia is one of world’s Least Developed Countries. Over 30% of adults (over 40% of adult females) are illiterate, 75% of its labor force are in subsistence agriculture, and 85% of its labor force are in the informal sector.²³ Yet in only a few years Cambodia experienced remarkable growth in its export garment sector. Initially, in the mid 1990s, this growth was related to the fact that, since Cambodia was not a member of the World Trade Organization (WTO), its garment industry was not subject to WTO quota limits on exports under the Multi-Fibre Agreement and its sequel, the Agreement on Textiles and Clothing. As a result, garment buyers from the global North turned to Cambodia, and apparel exports and foreign investment in garment production grew quickly. Most investors were factory owners from Malaysia, China, Taiwan, and other parts of Asia, who had already reached quota limits for their garment exports to the United States and Europe. Cambodia’s garment exports were further boosted when the United States granted Cambodia “Most Favored Nation” (or “Normal Trade Relations”)²⁴ status in 1996, and boosted again in 1997 when the United States granted Cambodia special trade privileges under the GSP. However, the major takeoff of Cambodia’s export garment industry did not occur until after the UCTA was negotiated in 1999.

The origins of the UCTA lie partly in growing Cambodian labor militancy in a context in which Cambodian labor law and international labor standards were frequently violated. Such violations included debt bondage, illegally excessive and forced overtime, wage infractions, repression of union organizing and worker dissent, poor occupational health and safety conditions, and many other

23. ILO, *THE WORK OF THE ILO IN CAMBODIA* (2005).

24. This signifies that nation-state trading partners agree not to extend more favorable trading preferences to any other trading partner.

contraventions of Cambodian and international standards.²⁵ These violations worsened in the wake of the Asian financial crisis that swept Cambodia in 1997, cutting foreign direct investment flows in half and triggering a massive outflow of funds from the country's banking system. At the same time, Cambodia's garment exports increased strongly.²⁶ As the labor force grew, so did the frequency of strikes and demonstrations.²⁷ The UCTA also originated in response to international publicity, particularly to mass media revelations of child labor that discouraged sourcing by image-sensitive international buyers.²⁸ A 1998 media expose of child labor at a Nike supply factory was especially consequential. In a sharp illustration of the harmful impact that publicity about labor standards violations can have on corporate reputations, Nike withdrew from Cambodia. Not least in importance, the UCTA also had its origins in U.S. domestic politics. Under pressure from organized labor and other popular discontent related to the growing offshoring of U.S. manufacturing jobs, in particular to NAFTA, the Clinton government included labor provisions in the UCTA to demonstrate the viability of a labor standards-trade linkage.

As noted, the UCTA was designed to *increase* quotas by rewarding improved working conditions. Under the UCTA, the United States substantially increased Cambodia's garment export quotas: by 9% in 2000 and 2001, 12% in 2002, 14% in 2003, and 18% in 2004. The UCTA directly linked these increased quotas to improved enforcement of labor standards, including ILO core standards (all of which Cambodia ratified in 1999, the same year the UCTA commenced) together with standards in Cambodia's national labor code (including a minimum wage, a 48 hour work week with not more than two hours overtime per day, 90 days unpaid maternity leave, unpaid sick leave, and compensation for work-related injuries).²⁹

At the request of the U.S. and Cambodian governments, and Cambodia's labor unions and garment manufacturers' association, the ILO agreed to monitor the implementation of the labor standards through the ILO Garment Sector Working Conditions Improvement

25. John Hall, *Human Rights and the Garment Industry in Contemporary Cambodia*, 36 STAN. J. INT'L L. 119 (2000); Kolben, *supra* note 18.

26. Ngozi Okonjo-Iweala et al., *Impact of Asia's Financial Crisis on Cambodia and the Lao PDR*, 36 FIN. & DEV. 49, 49 (1999).

27. Polaski, *supra* note 20, at 4.

28. Regina Abrami, *Worker Rights and Global Trade: The US-Cambodia Bilateral Textile Trade Agreement*, 12, 15 (Harvard Bus. Sch. Case Study No. 9-703-034, 2003).

29. ILO, *Facts and Figures*, BETTER FACTORIES CAMBODIA (Geneva, 2005).

Project. Funded largely by the U.S. government,³⁰ the Project had the following main objectives:

1. to develop and maintain an independent system to monitor working conditions in garment factories;
2. to help draft new laws and regulations for improving working conditions and to make labor laws more effective;
3. to increase worker and employer awareness of core international labor standards and of their rights under Cambodian labor law; and,
4. to increase worker, employer, and government capacities to improve working conditions and to comply with national and international labor standards.

The Project was guided by a tripartite Project Advisory Committee with equal representation from the Cambodian government, the Garment Manufacturers Association of Cambodia, and the Cambodian trade union movement. The Committee evaluated the Project's monitoring and reporting system, including registration of participating factories, procedures for monitoring visits and reporting on visits, and procedures on reporting overall findings. Although factory registration was voluntary, only registered factories were eligible for export quotas. Registration entitled ILO monitors to enter factory premises during announced and unannounced visits, and to interact freely with workers and union representatives inside and outside the plants.³¹ Two kinds of reports were provided: confidential factory reports on the findings at each factory, and publicly available "synthesis reports" with overviews of monitoring results. The twice-yearly synthesis reports, based on monitoring 10–30% of the registered plants, listed factory names and locations, and specified factory compliance with each labor standard. According to the ILO, the synthesis reports played a significant role in the U.S. government's decisions about annual quota increases.³² The ILO's technical assistance in monitoring and providing compliance information, particularly in a country such as Cambodia, with its low institutional capacity for such monitoring, was crucial.

30. From 1999–2004 the U.S. government invested about \$2 million, or approximately \$3.50 per worker, per year. Polaski, *supra* note 20, at 25.

31. Abrami, *supra* note 28, at 11; Ros Harvey, Operation of Better Factories Cambodia, at the Carnegie Endowment for Int'l Peace Conference on Promoting Cambodia's Competitiveness in a Post-MFA World (July 21, 2005).

32. Decisions are made by the Committee on the Implementation of Textile Agreements, an interagency group comprised of representatives from the U.S. Departments of State, Labor, Commerce, and Treasury, and the Office of the U.S. Trade Representative.

III. CONCERNS AND NEGATIVE IMPACTS

While (as argued below) the UCTA was a major factor in promoting higher labor standards in Cambodia and constitutes current “best practice” as a way to foster higher international labor standards in the global South, the UCTA was also a key part of Cambodia’s costly insertion into a liberalized global trading system. Prior to the UCTA, the Cambodian government, in conjunction with the World Bank and the International Monetary Fund, implemented a structural adjustment program that required, among other things, major tariff cuts.³³ A key goal of the program was to transform state-owned textile and apparel plants with negligible exports into a foreign-owned, export-oriented industry. The foreign investment required for this privatization was facilitated by significant tax inducements and other incentives. To an important degree, the UCTA was built on this neoliberal restructuring and, in its turn, required further concessions from Cambodia. In return for UCTA quotas, Cambodia agreed, among other concessions, to reduce tariffs on its apparel and textile imports, and not to exercise non-tariff restrictions, such as import licensing. Given the asymmetrical power relation between the United States as garment importer and Cambodia as garment exporter, the United States was able to set most of the terms of the agreement.

While quota increases under the UCTA were contingent on “substantial compliance” with Cambodian and international labor standards, and the ILO was given a major role in providing evidence related to this compliance, the UCTA did not define “substantial compliance.” As a result, the United States enjoyed much latitude in deciding quota increases.³⁴ The process for deciding on the ILO monitoring was also one-sided. Cambodian non-governmental organizations and labor unions were excluded from the negotiations, and although Cambodia’s government and garment manufacturers

33. Economic shock linked to the sharp tariff reductions and other liberalizing reforms arguably helped undermine Cambodia’s bargaining position in its negotiations for WTO accession in 2004. OXFAM Int’l, *Cambodia’s Accession to the WTO: How the Law of the Jungle is Applied to One of the World’s Poorest Countries* (Policy Paper, 2003). Cambodia made onerous “WTO plus” concessions in “highly mercantilistic” negotiations. Pierre Sauve, *Economic Impact and Social Adjustment Costs of Accession to the World Trade Organization: Cambodia and Nepal*, 1 ASIA-PAC. TRADE & INVESTMENT REV. 46, 46 (2005). Key concessions, including an accelerated schedule for halting the use of cheaper, generic medicines, forfeiture of the right to introduce agricultural export subsidies, and lower agricultural tariffs, were greater than those required of other WTO members. OXFAM, *id.*; Sauve, *id.*

34. On the lack of clear consensus in multilateral jurisprudence to guide adjudication of compliance with ILO core standards, see Theodore Moran, *Trade Agreements and Labor Standards* (Brookings Inst. Policy Brief No. 33, 2004).

were represented, the negotiations were essentially between the United States and the ILO.³⁵

Another concern is the ILO's limited effectiveness in ensuring compliance with labor standards once violations have been found. The ILO has no power to force factories to comply with the UCTA labor standards, and less than a third of the ILO recommendations have been fully implemented in the monitored plants. Moreover, under the UCTA, bonus quotas were provided to the Cambodian government, rather than to individual factories registered under the ILO Garment Sector Working Conditions Improvement Project. Since each *individual* factory was provided with only indirect, *collective* incentives to improve labor standards compliance, there is a built-in "free rider" problem. Furthermore, each synthesis report is based on monitoring a small proportion of the registered garment plants in any one monitoring period. Thus the extent of labor standards violations in most of the plants at any particular point in time is unknown.³⁶ In addition, there was no requirement that production further down the export supply chain be monitored.³⁷

With about \$2 billion in annual exports, Cambodia's garment industry provides over 80% of its legal exports³⁸ and over 12% of its GDP.³⁹ Under the UCTA Cambodia became perhaps the most dependent country in the world on this highly competitive industry with its high rate of bankruptcies and rapidly changing consumer markets. The United States alone accounts for 71% of Cambodia's garment exports. In sum, the UCTA reflects and reinforces a highly asymmetrical power relationship between a small, poor country in the South and a large, rich country in the North.

The developmental advantages of this kind of dependency are mixed. Most factories are owned by foreigners (from Taiwan, Hong Kong, Korea, Singapore, and Malaysia) who tend to employ home country managerial and technical personnel.⁴⁰ Backward and forward linkages from the garment assembly plants to other parts of

35. Kolben, *supra* note 20.

36. Over time, as *different* plants are monitored each year, the proportion of monitored plants has expanded systematically.

37. Foreign Investment Advisory Service, *Aide Memoire: Labor Standards Monitoring, Reporting and Remediation in the Cambodian Garment Sector* (Jan. 12, 2005), available at [http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/Cambodia+FIAS+Aide+Memoire/\\$FILE/Cambodia+FIAS+Aide+Memoire.pdf](http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/Cambodia+FIAS+Aide+Memoire/$FILE/Cambodia+FIAS+Aide+Memoire.pdf).

38. Illegal exports of timber also constitute a major source of Cambodia's foreign exchange.

39. ILO, *supra* note 29.

40. AccountAbility Institute of Social & Ethical Accountability, *Mapping the End of the MFA 50* (n.d.), available at <http://www.accountability.org.uk/uploadstore/cms/docs/New%20Mapping%20the%20EndCRX.pdf>.

Cambodia's economy are few and weak. For the most part, inputs in the garment production process such as sewing machines and textiles come from outside Cambodia. Such import dependency is a major contributor to Cambodia's trade deficits.⁴¹ Cambodian factories produce basic apparel although there is limited incipient diversification into higher value-added sweaters and men's suits.⁴² Cambodia is, moreover, generally excluded from the global value chain once the clothing leaves its shores, and as a result does not participate in the marketing and sales stages of the global apparel production chains where much of the profit is made by large retailers in the global North.

IV. POSITIVE IMPACTS

There is substantial evidence that the UCTA has benefited Cambodia's garment workers. Research in 1999, before the UCTA came into effect, disclosed that labor standards were "largely unchecked" and "[l]ack of enforcement, rather than inadequacy of existing legislation, pose[d] the greatest obstacle to guaranteeing basic rights to workers in the garment industry in Cambodia."⁴³ Among other things, there was evidence of collusion between employers and the Cambodian government in the election of shop stewards, systematic repression of labor disputes and unions by police, illegal preemployment fees, poor health and safety in the plants, unequal treatment, excessive and forced overtime, and very low wages. By contrast, after several years of UCTA quota incentives and ILO monitoring, a World Bank survey of international buyers found that Cambodia's labor standards compliance ranked ahead of all its regional competitors.⁴⁴

The UCTA's main benefits to Cambodian workers include increased employment, higher wages, and improvements in key labor standards. Under the UCTA, employment in the industry tripled from about 79,000 in 1998 before the agreement, to about 270,000 direct employees in 2004, and thousands more in contributing sectors

41. ASIAN DEVELOPMENT BANK, ASIAN DEVELOPMENT OUTLOOK 2005 27-77 (2005), available at <http://www.adb.org/Documents/Books/ADO/2005/ado2005.pdf>.

42. AccountAbility Institute, *supra* note 40, at 49.

43. Hall, *supra* note 25, at 126.

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

(e.g., packaging, etc.).⁴⁵ Based on one calculation, the quota bonus for 2002 created an additional 13,000 jobs that contributed earnings of \$9.5 million (U.S.).⁴⁶ ILO monitoring was another factor in attracting foreign investment. Nike, for example, which had left Cambodia in 1999 after exposure of child labor in one of its Cambodia plants, returned “after the International Labor Organization began the labor monitoring program and government and contractors promised greater labor compliance,” according to Nike’s Director of Government Affairs.⁴⁷ Similarly, after having left Cambodia over labor rights abuses in 1996, Disney also decided to source from ILO-monitored plants.⁴⁸ Today the garment industry accounts for about two-thirds of Cambodia’s industrial workforce. According to a World Bank estimate, the livelihoods of a quarter of Cambodia’s population depend directly or indirectly on the garment industry.⁴⁹ Since 85–90% of the workers in the garment industry are young women, the contribution these jobs make to greater gender equality in Cambodia’s highly patriarchal society are particularly significant.

During the UCTA years, from 1999 to 2005, Cambodia’s apparel exports quintupled to \$1.9 billion (U.S.). About two-thirds of these apparel exports go to U.S. markets, mostly under UCTA quotas.⁵⁰ As noted, the UCTA quota bonuses were substantial and grew over time. Since the value of the quota increases vastly exceeded the costs to Cambodian employers of improving the standards,⁵¹ the quotas improved the ability of employers to, among other things, pay higher wages. Although average wages in Cambodia’s garment industry remain among the world’s lowest,⁵² garment workers are considered the best-paid group of workers in the country.⁵³ Garment factory

45. Council for Development of Cambodia, Ministry of Commerce, *Economic Significance of the Garment Sector in Cambodia* (2005), available at http://phnompenh.usembassy.gov/uploads/images/Ta4hwMRNmySG3i7Kd3Ffxw/Trade_Performance_of_the_Garment_Industry_-_Dec_20051.pdf; ILO, *supra* note 29.

46. Sandra Polaski, *Cambodia Blazes a New Path to Economic Growth and Job Creation* 14 (Carnegie Endowment for International Peace, Carnegie Papers No. 51, 2004).

47. Brad Figel, Remarks at the Carnegie Endowment for Int’l Peace Conference on Promoting Cambodia’s Competitiveness in a Post-MFA World (July 21, 2005).

48. ILO Better Factories Cambodia, *Disney Supports Pilot Sourcing Project in Cambodia*, 2 BETTER FACTORIES CAMBODIA Q. NEWSL. 2 (Aug. 2005), available at [http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.2%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/Better%20Factories%20Newsletter%20No.2%20(en).pdf).

49. Kantha Phavi Ing, UNDP/World Bank Panel on Gender & MDGs, at the 49th Session of the Commission on the Status of Women, New York (Feb. 28, 2005–Mar. 11, 2005).

50. Council for Development of Cambodia, *supra* note 45.

51. ELLIOTT & FREEMAN, *supra* note 10, at 117.

52. ASIAN DEVELOPMENT BANK, *supra* note 41; Elizabeth Becker, *Cambodia’s Garment Makers Hold Off a Vast Challenge*, N.Y. TIMES, May 12, 2005, at C1.

53. Raghwan Raghwan, *Uncomfortable but Taking Part—Cambodia’s Unions and the PRSP*, in 1–2 LAB. EDUC. 57 (2004) (Trade Unions and Poverty Reduction Strategies issue).

2006] THE U.S.-CAMBODIA TEXTILE AGREEMENT 369

wages have grown to an average \$70(U.S.) per month (by comparison, for example, with an average \$28(U.S.) per month for Cambodia's civil servants).⁵⁴

In addition, the ILO synthesis reports provide evidence of significant improvement in compliance with several labor standards, most notably freedom of association and collective bargaining. Before the UCTA, there were three independent unions in Cambodia's garment sector;⁵⁵ by 2004 there were fourteen national labor federations and 499 registered factory level unions.⁵⁶ Whereas only 4% of Cambodia's total labor force is unionized, over 90% of its garment workers are unionized.⁵⁷ In addition to the UCTA, this increased union density has been fostered by external forces: the U.S. central labor body, the AFL-CIO, an important supporter of the UCTA, has provided Cambodian unions with training in organizing and collective bargaining.⁵⁸ The ILO has also provided education about labor rights, and about union representation and administration to workers, employers, and their organizations.⁵⁹ Ancillary to ILO monitoring and in cooperation with the U.S. government and the ILO, the Cambodian government made several important procedural and institutional improvements (e.g., labor regulations for arbitration of labor disputes and for unions to gain representation and bargaining functions⁶⁰). These and other industrial relations improvements notwithstanding, significant labor standards violations have continued. Workers and unions contesting violations have been violently suppressed, and union leaders have been murdered.⁶¹ Indeed, the ILO's Committee on Freedom of Association regards protection of union leaders and members as an "urgent concern" in Cambodia.⁶² While the synthesis reports do not provide evidence of a significant number of employers violating workers' right to organize or discriminating against workers for union activities, they do report a

54. ILO, *supra* note 29.

55. Hall, *supra* note 25, at 145.

56. Raghwan, *supra* note 53, at 55.

57. Roland Eng, Cambodian Ambassador-at-Large for Development, Contributions of Better Factories Cambodia to the Apparel Sector, at the Carnegie Endowment for Int'l Peace Conference on Promoting Cambodia's Competitiveness in a Post-MFA World (July 21, 2005).

58. Polaski, *supra* note 20, at 10.

59. ILO, *supra* note 23, at 15.

60. Polaski, *supra* note 20; ILO, *supra* note 23, at 4, 15.

61. Int'l Confederation of Free Trade Unions [ICFTU], *Cambodia: Annual Survey of Violations of Trade Union Rights* (2005), available at <http://www.icftu.org/displaydocument.asp?Index=991222323&Language=EN>; Patrick Falby, Cambodia's Garment Workers Clash with Police, VOICE OF AMER. NEWS (Nov. 19, 2003), audio available at <http://www.voanews.com/English/archive/2003-11/a-2003-11-19-47-Cambodia-s.cfm>.

62. ILO, *supra* note 23, at iii.

significant proportion of monitored plants where there has been a failure to ensure that shop steward elections comply with the required procedures. There have also been a significant number of cases where employers failed to provide shop stewards with the required time and other resources to do their jobs. This evidence suggests many employers are interfering with union representation in the plants.

Under the UCTA, gains were made in other key areas. Consider the differences between the labor standards findings of the fourth synthesis report in 2002 and the eighth, ninth, and tenth reports in 2004–05. Although the Project Advisory Committee claimed in the fourth report that the UCTA had generally “led to improved working conditions and greater respect for the rights of workers,” the evidence is consistent with a more mixed conclusion. While monitors found no evidence of forced or child labor, they did find sexual discrimination, incorrect payment of wages, involuntary overtime, and illegally excessive overtime. Contrary to Cambodian labor law, several employers did not consult worker representatives about regulations specifying conditions and terms of work, and many had outdated regulations in areas such as minimum wage, maternity leave, overtime, and attendance bonuses. Many failed to post employment regulations. Few factories had health and safety policies. Inconsistent with national labor law, most factories did not have collective agreements. There were indications of union discrimination, including the firing and physical abuse of union activists, and dismissal of union leaders for organizing strikes and other union activities. Even after ILO plant monitoring, there was only marginal improvement in many of these areas.⁶³ By 2004, however, the eighth synthesis report found that while a few factories made little progress, most plants had improved in several areas. While there was still evidence of sex discrimination and child labor,⁶⁴ there was no evidence of forced labor and there were important improvements with respect to overtime limits, freedom of association,⁶⁵ and other key standards.⁶⁶

63. ILO, *Fourth Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector* (Sept. 2002), available at <http://www.ilo.org/public/English/dialogue/ifpdial/publ/cambodia4.htm>.

64. Remediation of child labor violations requires not only that children stop working in the plants, but also that managers agree to place them in sewing courses and that they pay for these courses, as well as additional allowances. Managers agree to offer the children employment opportunities when they reach legal age. ILO, *Eighth Synthesis Report on the Working Conditions Situation in Cambodia's Garment Sector* (Apr. 2004), available at <http://www.ilo.org/public/English/dialogue/ifpdial/publ/cambodia8.htm>.

65. Employer anti-unionism remains a powerful force in Cambodia, however. For example, in 2004 a senior Cambodian union leader was murdered. It is widely thought that this murder was due to his union activities. A few months later, another senior union leader was also

While noting “that a number of factories appear to have made limited efforts,” the report concluded that “in all the factories progress has been made in improving working conditions.”⁶⁷

Subsequent reports provided similarly positive overall assessments. The ninth report (July 2004) provided a comparative assessment of fifty-two plants that had been monitored in the seventh report (October 2003), and is thus especially helpful as an indicator of longitudinal improvements. Particular improvements were noted over time in the area of sexual harassment (no reported incidents). An end to the firing of pregnant workers was also achieved (although it was reported that a few factories “adversely alter[ed] the employment status of women upon their return from maternity leave”). In addition, the report documented improvements in correct payment of wages; improvement in ensuring that overtime was voluntary and legal; and in freedom of association, including protection against anti-union discrimination.⁶⁸ In two areas—ensuring that strikes are organized legally, and health and safety—no improvement was evident since the seventh report. On the whole, while a few factories made “little effort to improve,” “in most factories progress has been made in improving working conditions.” Over a third of the ILO’s almost 2500 suggestions for improvements were implemented, in whole or in part.⁶⁹

The tenth report (March 2005) also provides comparative longitudinal evaluation of improvements. It covers twenty-six plants that were assessed in the second (April 2002) and the fifth (June 2003) reports. Among the key findings were: no evidence of forced labor; no reports of discrimination; no confirmed instances of child labor; most factories made improvements to ensure overtime is voluntary and legal; and “[e]very factory that had problems ensuring freedom of association, including protection against anti union discrimination, made some progress in addressing these issues.”⁷⁰ However, among other continuing areas of non-compliance, the report cites continuing

murdered. Becker, *supra* note 52. In another incident, some three hundred garment workers, who were protesting forced overtime and improper pay, were beaten by police. Falby, *supra* note 61.

66. ILO, *supra* note 64.

67. *Id.*

68. ILO, *Ninth Synthesis Report on the Working Conditions Situation in Cambodia’s Garment Sector* 5, 6 (July 2004), available at <http://www.ilo.org/public/English/dialogue/ifpdial/publ/cambodia9.pdf>.

69. *Id.* at 63.

70. ILO, *Tenth Synthesis Report on the Working Conditions Situation in Cambodia’s Garment Sector* 4 (Mar. 2005), available at <http://www.ilo.org/public/English/dialogue/ifpdial/publ/cambodia10.pdf>.

health and safety problems at several factories; two factories where collective agreements were not fully compliant with the law; several factories where overtime was involuntary and/or illegal; several factories where shop steward elections did not conform to regulations; and continuing problems with correct payment of wages. About 43% of the ILO's recommendations for improvements were fully or partly implemented.⁷¹ A tabulation of ILO remediation requirements in relation to selected labor standards in the third, fifth, and eighth synthesis reports found that whereas almost 95% of the monitored plants adopted all or some recommendations with respect to wages and health and safety, only 41% were in full compliance with hours of work and overtime requirements and 24% failed to correct any of the violations of freedom of association.⁷²

Finally, the thirteenth report (August 2005) also provides a longitudinal comparison of findings in sixty factories that were covered in the fourth report (September 2002) and the eighth report (February 2004). Monitors found no evidence of forced labor, discrimination, or child labor. Although about half the plants exceed overtime limits, two-thirds ensured that overtime was voluntary. With one exception, all plants that did not previously require employees to provide proof-of-age documents now do so.⁷³ Six factories failed to ensure the right of freedom to organize a union and/or freedom from anti-union discrimination, but seven factories made improvements in these areas. About half of the ILO's recommendations for improvements were implemented. The report concludes that despite some continuing problems, in most factories "significant progress" has been made in improving working conditions.⁷⁴

Based on evidence provided in these reports from 2001 to 2005, it appears that while there is a considerable distance to go in achieving full compliance with international and Cambodian labor standards, the UCTA with its ILO plant monitoring led to significant improvement in many important labor standard areas. According to a former U.S. international trade negotiator, the UCTA "generated an impressive record of progress for workers in Cambodia."⁷⁵ This conclusion is consistent with reports from labor activists in Cambodia

71. *Id.* at 35.

72. Polaski, *supra* note 20, at 13.

73. ILO, *Thirteenth Synthesis Report on Working Conditions in Cambodia's Garment Sector* 28 (2005), available at <http://www.ilo.org/public/English/dialogue/ifpdial/publ/cambodia13.pdf>.

74. *Id.* at 58.

75. Polaski, *supra* note 20, at 25.

and from labor NGOs in Cambodia.⁷⁶ Furthermore, these gains were achieved at modest average annual monitoring cost in 2000–2003 of about \$3.46(U.S.) per garment worker or about \$3,5000(U.S.) per factory, in large measure because the monitors were hired and trained locally and paid salaries that were attractive inside Cambodia but less than those paid to monitors from Northern countries.⁷⁷

V. TOWARD A MORE EFFECTIVE GLOBAL SYSTEM OF INTERNATIONAL LABOR STANDARDS ENFORCEMENT

Despite the end of the UCTA at the close of 2004, many of these benefits continue. With funding from Cambodia's main garment buyers, as well as the World Bank and Agence France de Developpement, Cambodia's ILO factory monitoring project (which changed its name to Better Factories Cambodia in 2001) will continue until 2009, after which Cambodia is to fund and support it. Monitoring results from three synthesis reports published in 2005 and 2006 indicate that factory compliance levels since the end of the UCTA remain commensurate with those during the preceding years. These reports indicate continuing significant levels of non-compliance in areas such as employer failure to ensure workers' rights to organize and/or freedom from anti-union discrimination, failure to meet minimum wage requirements (especially for casual workers), and violation of overtime limits and voluntary overtime requirements. Nevertheless, overall compliance levels are similar to those reported in previous synthesis reports,⁷⁸ and compliance with ILO suggestions for improvements in working conditions roughly approximates those of the UCTA years.⁷⁹

Contrary to predictions of a major decline in Cambodia's export apparel industry with the end of the UCTA and the Multi Fibre

76. Letter from Michael Posner, Executive Director, Lawyers Committee for Human Rights to Ambassador Robert Zoellick, Office of the U.S. Trade Representative, Washington, D.C., Nov. 26, 2001.

77. Polaski, *supra* note 20, at 15.

78. Better Factories Cambodia, *supra* note 48; Better Factories Cambodia & ILO, *Fifteenth Synthesis Report on Working Conditions in Cambodia's Garment Sector* (Oct. 2005), available at [http://www.betterfactories.org/content/documents/1/15th%20Synthesis%20Report%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/15th%20Synthesis%20Report%20(en).pdf); ILO & Better Factories Cambodia, *Fourteenth Synthesis Report on Working Conditions in Cambodia's Garment Sector* (Oct. 2005), available at [http://www.betterfactories.org/content/documents/1/14th%20Synthesis%20Report%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/14th%20Synthesis%20Report%20(en).pdf).

79. The ratio of the implemented and partly implemented ILO suggestions to ILO suggestions that were not implemented has varied among synthesis reports. However, overall, the UCTA and post-UCTA ratios are not divergent. The ratios based on data from the 8th, 9th, and 10th synthesis reports during 2003–04 were 87%, 61%, and 76% respectively; ratios based on data from the 12th, 13th, 14th, 15th, and 16th synthesis reports during 2005–06 were 77%, 98%, 76%, 49%, and 67% respectively (author's calculations).

Agreement (which also came to an end at the close of 2004), the industry has defied the odds: the value and quantity of garment exports to the United States and the EU increased in 2005, wages remained stable, and employment levels increased.⁸⁰ There is evidence that Cambodia's reputation for high labor standards remains a crucial factor in its continuing export competitiveness.⁸¹ With Germany now the second largest buyer of Cambodian clothing, Germany's ambassador to Cambodia noted that labor standards were "of the utmost importance for the image of trading partners in Europe."⁸² In light of importers' concerns about their brand images, unforeseen private incentives have been a source of added inducements for garment buyers. Since individual factories have been able to reveal ILO compliance level findings to buyers,⁸³ more compliant factories have used the monitors' findings to gain contracts.⁸⁴ According to a recent World Bank survey of firms that buy garments from Cambodia, compliant factories have been more successful in finding non-quota buyers who value high labor standard production. The buyers in the survey, most of whom report intentions to maintain or increase their levels of sourcing from Cambodia, ranked labor standards the first of twelve sourcing criteria. Many reported that they are continuing to source from Cambodia in order to supply their "conscience consumers" in Northern markets. Almost two-thirds reported that labor standards compliance was equal to or more important than price, quality, and lead times in their sourcing decisions. Buyers also stated that although improved labor standards were a source of price increases, they also contributed to a range of positive results including

80. Better Factories Cambodia, *The End of Quotas: Impact on Cambodia's Export Garment Industry* (2005).

81. Other factors contributing to Cambodia's post-UCTA garment export competitiveness are: a) 40% of Cambodian garment exports are in categories for which the United States has imposed safeguards on exports from Cambodia's competitor, China; and, b) major increases in the size of Cambodian garment factories in a context where buyers are consolidating their supply chains around fewer, larger suppliers. *Id.*

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

83. Where factories approve, Better Factories Cambodia allows buyers Web site access to its factory monitoring reports. Better Factories Cambodia & ILO, *Sixteenth Synthesis Report on Working Conditions in Cambodia's Garment Sector* (Mar. 2006), available at [http://www.betterfactories.org/content/documents/1/16th%20Synthesis%20Report%20\(en\).pdf](http://www.betterfactories.org/content/documents/1/16th%20Synthesis%20Report%20(en).pdf). Under the UCTA, factory owners wishing to share monitoring results with buyers could do so directly. All synthesis reports since the fifth have included the names of factories that have had an opportunity to improve working conditions, i.e., after the monitors have made follow-up visits to verify compliance.

84. Foreign Investment Advisory Service, *supra* note 37.

higher productivity and quality, and lower rates of accidents, turnover, and absenteeism.⁸⁵

Consistent with these survey findings, many Cambodia suppliers have reported that they are retaining their higher labor standards in order to make their factories more competitive. According to the Cambodian Minister of Commerce: “We are extending our labor standards beyond the end of the quotas because we know that is why we continue to have buyers. If we didn’t respect the unions and the labor standards, we would be killing the goose that lays the golden eggs.”⁸⁶ These survey results are also consistent with Cambodia’s three-fold increase in non-quota exports of garments to the United States between 1999 and 2002. According to a U.S. government international trade and labor specialist:

This pattern indicates that buyers were attracted to place orders with factories that were seen to be compliant with labor norms even when they were making decisions on items that were not restricted by quota and thus would not benefit from the quota increases. . . . In 1999, only 19 percent of exports were of non quota items, whereas by 2002, 53 percent were not under quotas.⁸⁷

In conformity with these findings, the goal of the Better Factories Cambodia program is for the “value of monitoring to be so transparent to factories and buyers alike that [the program] will become self-financing by 2009.”⁸⁸

Thus, instead of pursuing a post-UCTA, post-Multi Fibre Agreement competitiveness strategy based on lower labor standards, the Cambodian government is now seeking a stronger monitoring program that would provide a stronger certification of labor standards compliance. Under the Garment Sector Working Conditions Improvement Project and now under its successor, the Better Factories Cambodia program, the ILO does not certify garments are manufactured in compliance with international and Cambodian labor standards. As noted earlier, UCTA quota bonuses were based on undefined, non-benchmarked “substantial compliance” with international labor standards. Thus, Cambodia’s government is looking for another labor standards validation system, perhaps along the lines of the independent third party certification that now applies to such globally traded commodities as “fair trade” coffee, “dolphin

85. Foreign Investment Advisory Service, *supra* note 44.

86. Becker, *supra* note 52.

87. Polaski, *supra* note 20, at 8.

88. ILO, *supra* note 23, at 14.

safe” tuna, and “sustainably harvested” lumber.⁸⁹ This could be a further development of the basic UCTA-ILO approach to strengthening international labor standards.

As has been shown, the UCTA and its ILO monitoring system were created through the confluence of unique political conditions in both the United States and Cambodia. Moreover, Cambodia’s garment industry is a small fraction of the world’s \$350 billion textile and garment industry. Yet the UCTA has broader potential significance. The evaluation presented here of the UCTA with its “carrot” of positive trade incentives and ILO monitoring programs (both its original Project under UCTA and the current Better Factories Cambodia program, with their credibility, relatively low cost, and considerable expertise) suggests that this model could be useful to improve labor standards in other low labor standard regimes.⁹⁰ This “best practice” model of improving factory compliance with national and international labor standards thus merits consideration as a direction for global governance that is committed to the promotion of higher labor standards.

89. James Brooke, *A Year of Worry for Cambodia's Garment Makers*, N.Y. TIMES, Jan. 24, 2004, at C1. Cambodia is not alone in this. For example, in neighboring Thailand, the Ministry of Labor has developed its own system of labor certification, similar to the well-known ISO certification process, to promote exports in conscience-consumer markets. Philip Robertson & S. Plaiyoowong, *The Struggle of the Gina Workers in Thailand* 24 (Southeast Asia Res. Ctr., City Univ. of Hong Kong, Working Paper No. 75, 2004).

90. For its part, the ILO has stated publicly (on the Better Factories Cambodia Web site) that it would “actively consider” similar monitoring projects in other countries if such projects were based on an agreement among employers, unions, and government, and if adequate sources were made available.