Labor Rights, Material Interests, and Moral Entrepreneurship

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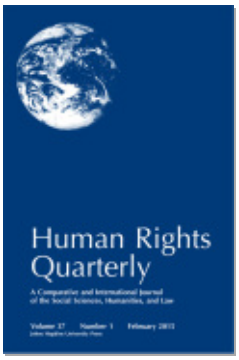

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Layna Mosley & Lindsay Tello***

ABSTRACT

This article explores the role of moral entrepreneurship—activism by normatively focused groups, often acting nationally as well as transnationally—in labor rights activism. We focus specifically on activism related to US preferential trade agreements (PTAs). We explore how labor-related provisions have made their way into these agreements and how their inclusion has changed over time. Our main focus is on the efforts of interest groups to lobby US policymakers regarding various US PTAs. We discuss whether these lobbying efforts are cast in material or moral terms. In considering several PTAs during the 1990s and 2000s, we find that most efforts are based on material claims, or on a combination of material and moral concerns. We rarely observe lobbying activities that are cast purely in terms of the normative goal of protecting workers' rights.

I. INTRODUCTION

Recent factory fires and building collapses in Bangladesh have brought to light persistent violations of workers' rights in that country's garment factories. Reactions to these tragedies came from a variety of groups, including human rights advocates, US and European labor unions, and retailers of consumer

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products. Many of these actors had long expressed concerns about working conditions and workers' rights in Bangladesh; the Rana Plaza collapse only served to cement their claims that addressing persistent abuses would require a broad-based, multi-actor effort. Indeed, the tragedy was met with two Western-based retailers' promise to conduct regular safety inspections, as well as a promise by Bangladesh's government to revise its labor laws to facilitate trade union organization and the suspension of Bangladesh's Generalized System of Preferences (GSP) access to US markets, pending improvements in labor-related outcomes.

What has motivated the strong response to events in Bangladesh? It is the view, held by many human rights advocates, that no citizen, regardless of where she lives and works, should be exposed to hazardous working conditions or subject to restrictions on the right to organize. Surely, patterns of behavior among Bangladeshi firms, as well as the Bangladeshi government, appear to violate universal human rights norms. And graphic images of factory fires and building collapses, plus firsthand testimony from apparel sector workers, can be effective tools for human and labor rights campaigners. But material motives also can be at play: If what European and US retailers really worry about is damage to their brands' reputations, their efforts may result more from financial, rather than normative, concerns. Moreover, the suspension of trade privileges—which do not apply to textiles and apparel, given the parameters of the United States GSP program—may be easier to achieve domestically when there are groups that have their own material reasons to restrict trade.

This article explores the role of moral entrepreneurship—as described, for instance, in Margaret Keck and Kathryn Sikkink's work on transnational advocacy networks—in labor rights activism.[1] We focus specifically on activism related to the inclusion of labor-related provisions in US free trade agreements, as well as activism by NGOs and other interest groups related to the enforcement of those free trade agreements. We are interested in how labor-related provisions have made their way into these agreements—a requirement under the 1984 US Trade Act, and a practice that began in 1994 with the North American Free Trade Agreement (NAFTA)—and how their inclusion has changed over time. We also note that the status accorded to labor rights varies, both across and within agreements: NAFTA, for instance, draws distinctions among types of labor rights in terms of how violations are treated, and all labor rights-related provisions are included in a side agreement, rather than in the main agreement. The Central American Free Trade Agreement (CAFTA-DR), by contrast, mentions "internationally recognized labor rights" (discussed *infra*) in the main text of the agreement; it also asks

1. Margaret E. Keck & Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics (1998).

each signatory to reaffirm its commitment to the International Labour Organization's (ILO) 1998 Declaration and to "not [] fail to effectively enforce labor laws" in a way that would distort trade.[2] We summarize the role of activists in this evolution.

Our empirical focus is on the efforts of human and labor rights groups to lobby US policymakers regarding the passage, as well as later enforcement, of various US PTAs. We discuss whether these lobbying efforts are cast in material versus moral terms. In considering several PTAs during the 1990s and 2000s, we find that most efforts are based on material claims, or on a combination of material and moral concerns. We rarely observe lobbying activities that are cast purely in terms of the normative goal of protecting workers' rights.[3]

Of course, in evaluating moral entrepreneurship in the area of labor rights, a range of other topics could be explored. For instance, when firms and industry associations adopt and implement codes of conduct,[4] why do they focus on certain types of rights and outcomes rather than on others? How has moral entrepreneurship affected the content and monitoring of such codes? How does the treatment of labor-related issues within PTAs vary across developed nations—recalling, for instance, the contrast between the US inclusion of labor-related, but the EU's inclusion of human rights-related, provisions in trade agreements?[5] Our focus here, however, is on one element of moral entrepreneurship: actions related to trade agreements. We begin

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2. Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), U.S.-Cent. Am.-Dom. Repub., art. 16.1, ¶ 1 & art. 16.2, ¶ 1(a), 43 I.L.M. 514 (2004). *See also* North American Free Trade Agreement (NAFTA), U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993). For details on the agreement, see http://www.ustr.gov/trade-agreements/free-trade-agreements/north-american-free-trade-agreement-nafta.
3. We do not, however, consider how those who lobby frame their appeals to the broader public—for instance, whether anti-CAFTA-DR advertisements are cast in terms of threat to US industries and jobs, in terms of violations of the fundamental rights of children and workers, or in both ways.
4. *See* Richard Locke, The Promise and Limits of Private Power Promoting Labor Standards in a Global Economy (2013).
5. Emilie Hafner-Burton, Forced to Be Good: Why Trade Agreements Boost Human Rights 38–40, 57, 109, 112 (2009). *See also* International Labour Organization (ILO), International Institute for Labour Studies (IILS), Social Dimensions of Free Trade Agreements 1, 5, 21, 82, 84–85, 87, 93, 97, 101, 105, 115 (2013), *available at* http://www.ilo.org/wcmsp5/groups/public/—-dgreports/—inst/documents/publication/wcms_228965.pdf [hereinafter Social Dimensions of Free Trade]. Hafner-Burton describes the use of labor-related provisions in Canada and New Zealand's free trade agreements. She also points out that the European Union prefers a more cooperative stance when dealing with labor rights issues: It attempts to cooperate with its FTA partners, sometimes offering technical assistance, to address these issues, rather than linking the violation of labor rights with the suspension of trade privileges. The EU's Cotonou Agreement (signed in 2000 between the EU and seventy-nine low income countries and replacing the Lome Convention) is unique in that, within the agreement itself, the parties reaffirm their commitments to the ILO's core labor standards. Henrik Horn, Petros C. Mavroidis & André Sapir, Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements 4 (Bruegel Blueprint Ser. Vol. 7, 2009), *available at*

by describing "workers' rights," with a focus on core labor rights. We then discuss the trend toward including labor rights conditions in trade agreements; in Section IV, we turn to an analysis of the specific ways in which "internationally recognized workers' rights" are addressed in US PTAs. We then consider, in Section V, the role of interest groups—those motivated by moral, as well as those motivated by material concerns—in this process. Section VI concludes.

II. LABOR RIGHTS: NORMS AND INTERNATIONAL CONVENTIONS

The general area of labor rights involves a variety of issues, including both the capacity of workers to act collectively—to associate freely, bargain collectively, and strike—as well as the individual conditions they experience—hours of work, protection of health and safety, nondiscrimination in hiring, and compensation. International conventions also attempt to protect the right not to labor of certain groups, including children and other targets of forced labor. Although we might certainly imagine that the practical observation of collective rights is correlated positively with individual working conditions—so that greater respect for workers' right to form unions is linked with workers' enjoyment of overtime pay and protection from dangerous chemicals—there also exists significant variation in the extent to which these rights are protected legally and respected in practice by both governments and employers.

The diversity among "labor rights" is reflected in the ILO's 189 conventions; the eldest of these were created in 1919, while the most recent dates to 2011.[6] Some ILO conventions have been widely ratified by member governments, while others have received limited support. Even for those conventions that are widely ratified, the ILO has little in the way of direct enforcement mechanisms or material resources; rather, its efforts focus on promulgating principles related to labor rights, providing a forum to receive complaints about violations, and technical assistance for its members—sometimes in conjunction with NGOs or national business confederations.[7] Indeed, one

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http://www.bruegel.org/publications/publication-detail/publication/238-beyond-the-wto-an-anatomy-of-eu-and-us-preferential-trade-agreements/ (positing that, while EU PTAs tend to include a larger number of "WTO-extra" conditions, these conditions often are vague, and their legal enforceability is limited).

6. International Labour Organization, Normlex: Conventions, *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:12000:0::NO:::. The ILO's structure is somewhat unique among intergovernmental institutions; it includes direct representation from labor and business, as well as from governments (so that each member country has three representatives); *see also* Laurence R. Helfer, *The Future of the International Labour Organization*, 101 Am. Soc'y of Int'l L. Proc. 391, 392 (2007).

7. Edward Weisband, *Discursive Multilateralism: Global Benchmarks, Shame, and Learning in the ILO Labor Standards Monitoring Regime*, 44 Int'l Stud. Q. 643, 648, 666 (2000).

could view the ILO's main role as creating a set of principles that are then referenced by labor rights activists, corporate codes of conduct, and national governments—for instance, in their bilateral trade agreements.[8] Abbott and Snidal note that many private sector-based, labor-related standards, such as SA8000, draw extensively on ILO conventions.[9] Similarly, the United Nations Global Compact program, which encourages firms to commit to human rights, labor, environmental, and anti-corruption principles, draws on a variety of international conventions and declarations, including those of the ILO.[10]

In 1998, the ILO issued its Declaration of Fundamental Principles and Rights at Work, which identified four types of "core" labor rights. Although the ILO had considered issuing such a document for several years, it was spurred to action by activists' efforts to place labor rights on the global trade agenda in the mid-1990s (discussed *infra*). Following the WTO's statement that the ILO was the most appropriate body to address workers' rights, the organization focused on a set of rights that were procedural, rather than substantive.[11] That is, the core labor rights do not impose specific outcomes; rather, they offer workers the opportunity to achieve outcomes.[12] While some worry that focusing on a set of "core" rights will detract attention from other labor rights and ILO conventions,[13] others maintain that, via its

8. For a discussion on activists' use of ILO conventions in their petitions for suspension of US Generalized System of Preferences (GSP) privileges, see William A. Douglas, John-Paul Ferguson & Erin Klett, *An Effective Confluence of Forces in Support of Workers' Rights: ILO Standards, US Trade Laws, Unions, and NGOs*, 26 Hum. Rts. Q. 273 (2004); Jessica Green, *Private Standards in the Climate Regime: The Greenhouse Gas Protocol*, 12 Bus. & Pol. 1469 (2010) argues that this occurs with respect to international environmental law: Public agreements gain indirect influence via their use as references for private codes and standards.
9. Kenneth W. Abbott & Duncan Snidal, *Collaboration and Orchestration: Mobilizing the Private Sphere for Global Governance*, Paper presented at the Annual Meeting of the International Studies Association, Montreal (16–19 Mar. 2011); *see also* Lance A. Compa, *Corporate Social Responsibility and Workers' Rights*, 30 Comp. Lab. L. & Pol'y J. 1, 3–4 (2008).
10. Patrick Bernhagen & Neil J. Mitchell, *The Private Provision of Public Goods: Corporate Commitments and the United Nations Global Compact*, 54 Int'l Stud. Q. 1175, 1176–80, 1182–83 (2010).
11. Lucio Baccaro & Valentina Mele, *Pathology of Path Dependency? The ILO and the Challenge of New Governance*, 65 Indus. & Lab. Rel. Rev. 195, 203 (2012), *available at* http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2096&context=ilrreview.
12. *Id.* at 203–24, 207, 211–12.
13. Steve Charnovitz, *Editorial Comment: The ILO Convention on Freedom of Association and Its Future in the United States*, 102 Am. J. Int'l L. 90, 93, n.23 (2008); Lance A. Compa, *Core Labour Rights: Promise and Peril*, 9 Int'l Union Rts. 20, 21 (2002), *available at* http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1175&context=articles.

1998 Declaration, the ILO elevated rights that were previously perceived as economic to ones that were seen as fundamental human rights.[14]

The core principles include the elimination of all forms of compulsory and forced labor (ILO Conventions 29 and 105);[15] the prohibition of discrimination in employment and pay based on race, gender, ethnicity, or religion (ILO Conventions 100 and 111); the elimination of child labor (or, at least, "the worst forms of child labor;" ILO Conventions 138 and 182); and freedom of association and the right to collective bargaining (ILO Conventions 87 and 98). While some of these rights, such as child labor, are newer than others, such as forced labor and freedom of association, they all have long histories within the ILO and within international law more generally. These rights also are embodied in other treaties, such as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

This set of "core" rights also is reflected in intergovernmental efforts to affect corporate behavior. In the 1970s, both the ILO and the Organisation for Economic Co-operation and Development (OECD) issued guidelines for multinational enterprises. The OECD's Guidelines for Multinational Enterprises (1976) included a set of voluntary principles, which member governments endorsed as desirable for multinationals from their jurisdictions to adopt. These include several guidelines related to labor and human rights; with its 2000 revision, the OECD guidelines now specify the four labor rights defined in the ILO's 1998 Declaration.[16] The ILO itself released its Tripartite Declaration of Principles Concerning Multinational Enterprises in 1977; these Principles address a range of issues related to employment and industrial relations. The 2000 revision references seventeen ILO conventions specifically, including all eight conventions related to "core" labor rights.[17]

The 1998 ILO Declaration maintains that all ILO members, even those that have not ratified the specific conventions associated with each of the rights, are obligated to respect these fundamental principles.[18] The Declaration is not, however, legally binding.[19] Since its creation, the Declaration has emerged as a focal point for labor rights: The rights included represent the

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14. Judy Fudge, *The New Discourse of Labor Rights: From Social to Fundamental Rights?*, 29 Comp. Lab. L. & Pol'y J. 29, 39 (2007).
15. For a discussion of ILO conventions on forced labor, see Matthias Busse & Sebastian Braun, *Trade and Investment Effects of Forced Labour: An Empirical Assessment,* 142 Int'l Lab. Rev. 49, 53 (2003).
16. Organisation on Economic Co-operation and Development [hereinafter OECD], OECD's Guidelines for Multinational Enterprises, ¶ 21 (2008; the 2000 revision added recommendations related to forced labor and to child labor), *available at* http://www.oecd.org/investment/mne/1922428.pdf.
17. *Id.* at 43–46.
18. *ILO Declaration on Fundamental Principles and Rights at Work,* International Labour Organization (ILO), 86th Sess., ¶ 2 (1998), *available at* http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang—en/index.htm.
19. Baccaro & Mele, *supra* note 11, at 202.

most basic set of rights that governments and firms are expected to provide to workers.[20] The Declaration offers a first point of reference for activists who want to point out governments' failures to provide labor rights, as well as to firms that want to be perceived as respecting labor rights.[21] Table 1 reports information on the ratification of these core conventions. Note that, while they have been widely ratified, those related to collective labor rights have slightly less support. Note also that the United States has ratified only two of the eight core conventions.[22]

Table 1. ILO Core Conventions

Area	*Convention #*	*Convention*	*Year*	*# of Ratifications*	*US Ratified?*
Collective Labor Rights	87	Freedom of Association	1948	153	No
	98	Collective Bargaining	1949	164	No
Child Labor	138	Minimum Age	1973	167*	No
	182	Worst Forms of Child Labour	1999	179	Yes
Forced Labor	29	Forced Labour	1930	177	No
	105	Abolition of Forced Labour	1957	174	Yes
Employment Discrimination	100	Equal Remuneration	1951	171	No
	111	Discrimination	1958	172	No

*Ratifying countries specify the "minimum age" (14, 15, or 16 years) that applies in their country.

In considering moral entrepreneurship in the area of labor rights, it is useful to focus initially on these core rights—specifically on compliance with, and enforcement of, these rights. Many governments have ratified the core conventions, and many countries have domestic legislation that is consistent with these rights. Yet even these basic rights are violated frequently, particularly in less democratic and lower income countries.[23] How, then, do moral entrepreneurs—in this case, groups that advocate for the protection of workers' rights—attempt to effect change in outcomes on the ground? How do they use "core labor rights" as part of their efforts? To what extent,

20. Helfer, *supra* note 6, at 392.
21. *Id.* Helfer argues, however, that while human rights and consumer NGOs have made reference to the ILO's conventions and Declaration, the ILO has made few efforts to include civil society groups directly in its work.
22. Convention 87, addressing freedom of association, was submitted to the Senate for advice and consent in 1949. "It is the longest-pending treaty on the calendar of the Senate Committee on Foreign Relations." *See* Charnovitz, *supra* note 13, at 90–91, 94.
23. *See* Layna Mosley, Labor Rights and Multinational Production (2011).

and under what conditions, are their efforts to draw governments' attention to these rights successful? And under what conditions, and through which mechanisms, are moral entrepreneurs successful as monitors of corporate labor rights behavior, and of compliance with private sector-based corporate codes of conduct?[24] Moreover, how do their decisions about how to frame their appeals to "protect workers' rights" vary over time, as well as across countries?

III. CORE LABOR RIGHTS AND TRADE AGREEMENTS

Labor rights are, like many issue areas, characterized by a range of governance mechanisms and efforts. Some of these efforts are domestic, as governments set national labor laws and enforce these laws within their jurisdictions. Other efforts are intergovernmental in nature—directly through the ILO, for instance. International attempts to govern labor rights have a long history, dating to the first half of the nineteenth century in Europe. Those movements were driven largely by ethical considerations; they focused on working conditions, such as hours of work, exposure to hazardous materials, and child and women's labor. In the US, the McKinley Act of 1890 prohibited imports that were made by convict labor;[25] the 1930 Tariff Act expanded this to include forced labor as well.[26] Many of the concerns of these early activists are ultimately reflected in the ILO's conventions.

Another set of recent governance efforts involve industry self-regulation, private-public partnerships, and nongovernmental organizations. The role of the private sector in labor rights governance is exemplified by the rise of corporate codes of conduct, often undertaken in an effort to satisfy perceived demands for corporate social responsibility (CSR).[27] Vogel (2009) notes the existence of over 300 industry or product codes, nearly all of which address labor or environmental practices;[28] more than 3,000 global firms now issue reports on their social and environmental standards.[29]

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24. This also relates to the conditions under which activists succeed in linking moral concerns with material consequences—for instance, in convincing consumers to care about the processes by which goods are made.
25. Tariff (McKinley) Act of 1890, ch. 1244, 26 Stat. 567, 624 (1890).
26. Tariff (Smoot-Hawley) Act of 1930, § 307, 19 U.S.C. § 1307 (1930).
27. *See* Jens Hainmueller, Michael Hiscox & Sandra Sequeira, *Consumer Demand for the Fair Trade Label: Evidence from a Multi-Store Field Experiment,* Forthcoming in Rev. Econ. & Stat. (2014).
28. David Vogel, *The Private Regulation of Global Corporate Conduct, in* The Politics of Global Regulation (Walter Mattli & Ngaire Woods eds., 2009).
29. Tim Bartley, *Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions*, 113 Am. J. Soc. 297 (2007); Locke, *supra* note 4; Ernst & Young, Climate Change and Sustainability: Seven Questions CEOs and Boards Should Ask About "Triple Bottom Line" Reporting 3 (2010), *available at* http://www.ey.com/Publication/vwLUAssets/Seven_things_CEOs_boards_should_ask_about_climate_reporting/$FILE/Seven_things_CEOs_boards_should_ask_about_climate_reporting.pdf.

Moral entrepreneurs often are involved in the creation of, as well as the monitoring of compliance with, codes of conduct. Often, these codes are industry, firm, or supply-chain specific. Nike, for instance, began to apply its code of conduct to subcontractors in 1997, and the company now requires that suppliers of its inputs be located in countries that are on its list of approved production locations.[30] Particularly in countries in which labor rights laws and practices lag far behind internationally recognized standards, corporate codes of conduct can provide an alternative means of implementing individual and collective labor rights. This renders compliance with codes a central concern. In recent years, the trend has been between toward codes with monitoring via third-party auditors—which could be private firms, such as Ernst and Young, or NGOs that work on labor rights issues. Increasingly, these auditors are certified or trained by multi-stakeholder initiatives representing industry, as well as activists. Thus far, monitoring of compliance with codes has yielded a mixed record.[31]

One could view the rise of corporate codes—and moral entrepreneurs' (occasional) enthusiasm for such codes—partly as a result of frustration with efforts to govern labor rights solely at the intergovernmental level. While the ILO may provide a set of principles and some information about deviations from those principles, enforcement efforts often rest on convincing private sector firms that it is in their material interest to respect core labor rights. Activists also have focused on intergovernmental forums other than the ILO. They argue that, because cross-national trade and investment competition can generate incentives for governments to "race to the bottom," economic governance instruments should address labor rights, as well as environmental protection, directly. This is by no means a new argument: Participants in the 1927 World Economic Conference raised concerns about exports that owe their competitiveness to low labor standards in producer countries. And Article 7 of the failed International Trade Organization's (ITO) Charter (1947) acknowledged that unfair labor conditions create problems for global trade.[32]

We could think of this "race to the bottom" argument as akin to one of externalities: If minimum standards are not enforced in Country A, and if Country A is allowed access to export markets and foreign direct investment, then Countries B through Z will be under pressure to lower their standards. In the end, workers in all countries would be made worse off—even those

30. Nike, Inc. Code of Conduct (2010), *available at* http://nikeinc.com/system/assets/2806/Nike_Code_of_Conduct_original.pdf?1317156854.
31. *See* Stephanie Barrientos & Sally Smith, *Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems*, 28 Third World Q. 713 (2007); Locke, *supra* note 4, at 20; Richard M. Locke, Matthew Amengual & Akshay Mangla, *Virtue Out of Necessity? Compliance, Commitment, and the Improvement of Labor Conditions in Global Supply Chains*, 37 Pol. & Soc'y 319 (2009).
32. Steve Charnovitz, *The Influence of International Labour Standards on the World Trading Regime: A Historical Overview*, 126 Int'l Lab. Rev. 565, 566–67 (1987).

that lose the competition for global market share. Indeed, despite the lack of systematic empirical evidence of a race to the bottom, this argument continues to characterize many activist campaigns and popular press accounts of economic globalization.

The US government, spurred on by organized labor, has been a vocal proponent of linking labor with trade; this dates at least to the 1940s, when the president of the Congress of Industrial Organizations (CIO) pressed for an international treaty that would limit the exchange of goods produced in violation of standards concerning the right to organize, hours of work, minimum wage, and child labor. In the mid-1980s, the US government unsuccessfully raised the issue of workers' rights at the Preparatory Committee meeting of the General Agreement on Tariffs and Trade (GATT). Shortly thereafter, the 1988 Omnibus Trade and Competitiveness Act directed the US government to seek a review of the relationship of workers' rights to GATT articles, and to attempt to add to the GATT a principle that the denial of workers' rights should not be a means for industries or countries to gain competitive trade advantages.[33]

Some labor rights activists also attempted such a strategy as part of a broader effort to increase the WTO's attention to nontrade issues. Moral entrepreneurs had little success in this effort—perhaps because there was little consensus among them regarding the content of the "core labor standards" frame,[34] or perhaps because of divisions between developed and developing nations on this issue. Many developing countries worried that calls for labor clauses in the WTO were veiled protectionism: an effort to reduce low income countries' comparative advantages, wrapped in the guise of protecting vulnerable populations.[35] At its 1996 Singapore ministerial meeting, the WTO issued a statement suggesting that the ILO was the most appropriate forum for addressing concerns related to labor standards.[36] At the time, the WTO also pointed out that members should avoid using labor-related concerns as a justification for protectionism. Since that time, labor rights have received little attention in the WTO context.[37]

Rather, US government efforts to link workers' rights with trade have centered on its bilateral and regional trade agreements. Moral entrepreneurs

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33. *Id.* at 574–75.
34. Rodger Payne, *Persuasion, Frames and Norm Construction*, 7 Eur. J. Int'l Rel. 37, 49–51 (2001).
35. Dani Rodrik, *Has Globalization Gone Too Far?, in* From Modernization to Globalization: Perspectives on Development and Social Change 298, 301 (J. Timmons Roberts & Amy Hite eds., 2000).
36. World Trade Organization, Singapore Ministerial Declaration of 13 Dec. 1996, WT/MIN(96)/DEC, 36 I.L.M. 218, 221, at ¶ 4 (1997).
37. *See* Lorand Bartels, *Social Issues: Labour, Environment and Human Rights, in* Bilateral and Regional Trade Agreements: Commentary, Analysis and case studies 342 (Simon Lester & Bryan Mercurio eds., 2009).

and economically based interest groups have played a key role in this process, pressing for the inclusion of labor rights in these agreements and expressing concerns about compliance with PTA commitments. The general increase worldwide in PTAs during the last decade has been accompanied by the use of provisions that go beyond issues addressed by the WTO. These include competition policy, investment rules, the environment, and labor.[38] PTAs vary in terms of how such provisions are included—for example, in the preamble, in the main text, or in a side agreement—and in terms of whether such provisions are subject to dispute settlement mechanisms.

Recent work does suggest that, at least under some conditions, these provisions can affect states' behavior.[39] Kim (2012) reports that countries that sign a PTA with the US—where all PTAs since NAFTA include some sort of labor-related provisions—experience improvements in their labor rights outcomes. He argues that the PTA negotiation process leads to anticipatory compliance: Governments that want to successfully conclude a PTA are aware that US legislation and domestic political pressures will require attention to labor rights for passage. In order to make themselves attractive PTA candidates, these governments strengthen domestic legislation and enforcement related to core labor rights, even before an agreement is formally ratified. Kim reports empirical support for this proposition.[40]

IV. THE US AND "INTERNATIONALLY RECOGNIZED WORKERS' RIGHTS"

Workers' rights have attracted attention from the US Congress for many years. Since the early 1980s, Congress has attempted to link respect for workers' rights with access to trade and investment.[41] The 1983 Caribbean Basin Economic Recovery Act (CBERA) includes among its criteria whether workers in a given country are afforded "reasonable workplace conditions," as well as the right to organize and bargain collectively.[42] In 1985, the rules

38. See Horn et al., *supra* note 5, for collected information concerning the inclusion of various provisions and their level of enforceability, for a range of EU and US preferential trade agreements.
39. Emilie Hafner-Burton, *Trading Human Rights: How Preferential Trade Agreements Influence Government Repression*, 59 Int'l Org. 593 (2005).
40. Moonhawk Kim, Ex Ante *Due Diligence: Formation of PTAs and Protection of Labor Rights*, 56 Int'l Stud. Q. 704 (2012). Kim's measure of labor rights is, however, quite limited, in that it does not distinguish among types of core labor rights, nor does it distinguish between rights in law and rights in practice. See Mosley, *supra* note 23, for a discussion of labor rights measures.
41. Drusilla K. Brown, Alan V. Deardorff & Robert M. Stern, *International Labor Standards and Trade: A Theoretical Analysis*, *in* Fair Trade and Harmonization: Economic Analysis 227, 234 (Jagdish Bhagwati & Robert E. Hudec eds., 1996).
42. Caribbean Basin Economic Recovery Act, § 212(c)(8), 19 U.S.C. § 2701 et seq. (1983).

governing the Overseas Private Investment Corporation were amended, making investment guarantees and financing conditional on a government's "taking steps to adopt and implement" basic workers' rights.[43]

During the 1980s, the clearest statement of the linkage between US markets and labor rights came with the renewal of the Generalized System of Preferences. This program offers preferential access to US markets to low income countries. In 1984, Congress passed the Tariff and Trade Act, which made GSP privileges conditional on whether a given country "has taken, or is taking, steps to afford workers in that country (including any designated zone within that country) internationally-recognized worker rights."[44] Private parties, including trade unions and NGOs, may petition the US Trade Representative to suspend or revoke GSP benefits for countries that fall short on labor rights.[45] Since 1984, the AFL-CIO, the International Labor Rights Fund, and human rights activists have petitioned the USTR to suspend GSP status in a range of cases. Observers maintain that, while the suspension—or the threat of suspension—of GSP privileges does not necessarily lead to improvements in partner countries, it sometimes is an effective means of improving labor rights abroad.[46] Indeed, while many activists criticize the GSP process for being somewhat weak, they also argue that its labor-related protections and processes are stronger than those included in PTAs.[47]

It is important to note that the 1984 Tariff and Trade Act—which became a reference point for other US labor-related legislation—defines "internationally recognized workers' rights" slightly differently than the ILO defines "core labor rights." There is no reference to the ILO or its conventions in the GSP legislation—or in US trade agreements prior to 2006.[48] Both the US and the ILO include in their definitions the freedom of association, the

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43. Overseas Private Investment Corporation Amendments Act of 1985, Pub. L. No. 99–204, 99 Stat. 1669, 1670 (1985).
44. Douglas, Ferguson & Klett, *supra* note 8, at 276.
45. Note that the definition of workers' rights in the GSP legislation, and in US trade legislation more generally, varies from that of the ILO's *Declaration*. See below.
46. Lance Compa & Jeffrey S. Vogt, *Labor Rights in the Generalized System of Preferences: A 20-Year Review*, 22 Comp. L. & Pol'y J. 199 (2001); Douglas, Ferguson & Klett, *supra* note 8. This leads to another question about moral entrepreneurship and labor rights: Under what conditions is the filing of petitions driven by material concerns—import competition—rather than by moral ones? One might consider not only who undertakes the filing (e.g. the AFL-CIO, the International Labor Rights Fund, Human Rights Watch), but also the extent to which the country (and perhaps sector) in question represents a source of import competition for US workers and industry. The European Union also has linked access to its GSP program to human and labor rights; it has withdrawn GSP (and GSP+) privileges temporarily from only three countries, Belarus, Burma and Sri Lanka.
47. Countries that sign preferential trade agreements with the US are no longer eligible for the GSP program.
48. The EU, on the other hand, references sixteen ILO and human rights conventions in its 2005 "GSP+" legislation. *See* Charnovitz, *supra* note 13, at 95.

right to organize and bargain collectively, prohibition of the use of forced or compulsory labor, and a prohibition on the worst forms of child labor, as well as a minimum age for labor generally.[49] To these rights, the ILO adds the prohibition of discrimination in employment and wages. The US, on the other hand, includes acceptable conditions of work with respect to wages, hours of work, and occupational health and safety. One could view this as a difference in emphasis or, more critically, as an indication of the contestation that surrounds the specifics of labor rights.[50] Indeed, during the 1980s, the US was reluctant to make reference to ILO conventions in its labor-related legislation; this certainly was colored by the US withdrawal from the ILO during 1977–1980, which reflected dissatisfaction with political developments in the ILO.[51]

The 1984 Tariff and Trade Act's definition of labor rights was central to US trade negotiations for the next two decades: The legislation authorizing fast track trade negotiating authority mandates that US trade negotiators include all of these labor rights. The exact way in which the rights are included, though, has varied over time. NAFTA marked the first time in which labor rights were included in a US PTA; these were discussed not in the main treaty text, however, but in the North American Agreement on Labor Cooperation (NAALC). The side agreements on labor and the environment were added in late 1992 and early 1993, after a range of activists expressed outrage that the 900-page draft agreement contained no discussion of these issues.[52]

In NAFTA's labor side agreement, the parties agreed to enforce their domestic labor laws, and to work to improve domestic standards.[53] The agreement does not ask any of the parties to adopt new laws, or to ratify or conform to international standards. Rather, it specifies eleven types of labor principles, arrayed into three tiers.[54] These principles encompass all of the ILO's core labor rights, as well as the US-defined internationally recognized workers' rights; to this, they add workers' compensation and migrant worker protection. Group I rights, which include freedom of association, the right to organize and bargain collectively, and the right to strike, have access to only the weakest set of enforcement mechanisms. Group II rights, which deal

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49. Trade and Tariff Act of 1984, Pub. L. No. 98–573, § 503(a)(4), 98 Stat. 2948, 3019 (1984); *see also* International Labour Organization, Freedom of Association and Development (2011) *available at* http://www.ilo.org/public/english/dialogue/actemp/downloads/publications/freedom_association.pdf.
50. *See* Payne, *supra* note 34, at 52–53.
51. Charnovitz, *supra* note 13, at 100. *See also* Jacques Bourgeois, Kamala Dawar & Simon J. Evenett, DG Trade, A Comparative Analysis of Selected Provisions in Free Trade Agreements 36 (2007), *available at* http://trade.ec.europa.eu/doclib/html/138103.htm.
52. Tamara Kay, NAFTA and the Politics of Labor Transnationalism 74, 103–110 (2011).
53. Horn et al., *supra* note 5, at 56–57.
54. Mary Jane Bolle, Cong. Research Serv., 97–861E, NAFTA Labor Side Agreement: Lessons for the Worker Rights and Fast-Track Debate, Summary (2001). Subsequent Canadian FTAs with Chile and Costa Rica use the NAALC definition of labor rights.

with forced labor, overtime pay, employment discrimination, compensation for workplace injuries, and protection of migrant workers, add an additional tier of enforcement—evaluation by a NAALC Evaluation Committee of Experts. Only Group III rights, which include child labor, minimum wages, and occupational health and safety, allow for sanctions as an enforcement tool after other mechanisms are exhausted.[55]

Not surprisingly, many activists argued that the agreement did not accord nearly enough protection to workers or capacity to sanction violations.[56] Observers suggest that, in pressing for the inclusion of various conditions, US activists—even within organized labor—were motivated by both protecting US jobs from foreign competition, and by protecting the basic human rights of vulnerable populations.[57]

The period immediately following NAFTA was one in which the US executive branch did not have fast track trade negotiating authority. During the 1994–2002 period, the US concluded only one FTA, with Jordan. The US-Jordan FTA (signed 2000, ratified 2001) places labor-related concerns in the main text of the agreement, rather than in a side agreement, and it subjects these to the same dispute settlement procedures as the rest of the agreement.[58] But, perhaps most importantly, the US-Jordan FTA does not require either party to adopt specific labor-related laws based on international principles.[59] Rather, it obligates both parties to enforce their domestic laws. As such, emphasis is placed less on compliance with international commitments and more on implementation of existing domestic legislation.

With the passage of the Trade Promotion Authority Act of 2002, which granted fast track negotiation authority for five years, the pace of US PTAs accelerated. The 2002 Act, however, was marked by partisan debate, some of which centered on labor-related issues. The initial House bill passed by a single vote; the final bill, amended by the Senate, passed the House with a three vote margin.[60] The US signed PTAs with Singapore (2003/2004);[61]

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55. One difference between the NAALC and other US PTAs is that non state actors—rather than only government parties—may bring forward complaints to each party's National Administrative Office. *Id.* at 7.
56. *See* Kim, *supra* note 40.
57. Bolle, *supra* note 54, at 2.
58. Bourgeois, Dawar & Evenett, *supra* note 51, at 78.
59. The agreement does make reference to the ILO's 1998 declaration (Article 6.1), and then specifies the rights defined by the US as "internationally recognized" (Article 6.6).
60. Kimberly Ann Elliott, *Labor Standards, in* Trade Relations between Colombia and the United States 130 (Jeffrey J. Schott ed., 2006).
61. United States-Singapore Free Trade Agreement, U.S.-Sing., 6 May 2003, 42 I.L.M. 1026 (2004), *available at* http://www.ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf.

Chile (2003/2004);[62] Australia (2004/2005);[63] Morocco (2004/2006);[64] Bahrain (2005/2006);[65] Oman (2006/2009);[66] and Peru (2006/2009).[67] This period was also marked by the passage of the CAFTA-DR (2004/2006), involving Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua.[68] Trade agreements have also been signed with Colombia (2006), Korea (2007), and Panama (2007); all of these were ratified in 2011.[69]

The 2002 Act directs that agreements include attention to "internationally-recognized workers' rights," as previously defined. The Act—which passed the US House with a vote of 215–212, with twenty-five Democrats voting in favor—also required that future agreements include a clause obligating the parties not to fail to enforce their labor regulations in a way that would affect trade; signatory governments are required to "not weaken or reduce" labor-related protections.[70] These agreements create a separate dispute settlement process—one that may generate fines, but that does not generate trade retaliation (sanctions)—for labor issues. This dispute settlement mechanism addresses one labor-related commitment: the promise to enforce domestic laws effectively—rather than also including the promise to work toward the improvement of labor conditions. Some activists complain, therefore, that social issues are given a lower status in these FTAs than are economic ones and that this contradicts the spirit, if not the letter, of the 2002 Act.[71] Others point out, however, that these agreements provide for greater technical assistance than NAFTA or US-Jordan and, therefore, may be more effective at improving labor rights outcomes.[72]

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62. United States-Chile Free Trade Agreement, U.S.-Chile, 6 June 2003, 42 I.LM. 1026 (2004) *available at* http://www.ustr.gov/trade-agreements/free-trade-agreements/chile-fta.
63. United States-Australia Free Trade Agreement, U.S.-Austl., 18 May 2004, 43 I.L.M. 1248 (2005) *available at* http://ustr.gov/Trade_Agreement/Bilateral/Australia_FTA/Final_Text/Section_Index.html.
64. United States-Morocco Free Trade Agreement, U.S.-Morocco, 15 June 2004, 44 I.L.M. 544 (2006), *available at* http://www.ustr.gov/Trade_Agreements/Bilateral/Morocco_FTA/Final_Text/Section_Index.html
65. Agreement between the Government of the United States and the Government of the Kingdom of Bahrain on the Establishment of a Free Trade Agreement, U.S.-Bahr., 14 Sept. 2004 44 I.L.M. 544 (2006), *available at* http://www.ustr.gov/Trade_Agreements/Bilateral/Bahrain_FTA/Final_Text/Section_Index.html.
66. U.S.-Oman Free Trade Agreement, U.S.-Oman, 18 Jan. 2006 (2009), *available at* http://ustr.gov/Trade_Agreements/Bilateral/Oman_FTA/Final_Text/Section_Index.html.
67. United States-Peru Trade Promotion Agreement, U.S.-Peru, 12 Apr. 2006 (2009), *available at* http://www.ustr.gov/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/Section_Index.html.
68. CAFTA-DR, *supra* note 2.
69. United States-Colombia Trade Promotion Agreement, U.S.-Colom., 22 Nov. 2006 (2012), *available at* http://www.ustr.gov/Trade_Agreements/Bilateral/Colombia_FTA/Final_Text/Section_Index.html; United States-Korea Free Trade Agreement, U.S.-Kor., 30 June 2007, 46 I.L.M. 642 (2012), *available at* http://www.ustr.gov/Trade_Agreements/Bilateral/Republic_of_Korea_FTA/Final_Text/Section_Index.html; United States-Panama Free Trade Agreement, U.S.-Pan., 28 June 2007 (2012), *available at* http://www.ustr.gov/Trade_Agreements/Bilateral/Panama_FTA/Final_Text/Section_Index.html.
70. Trade Act of 2002, H.R. 3009, 107th Cong., § 2102(a)(7) (2002) (enacted).
71. Social Dimensions of Free Trade, *supra* note 5, Epilogue.
72. Bourgeois, Dawar & Evenett, *supra* note 51, at 37.

Lastly, it is interesting to note that the most recent set of US agreements—those with Colombia, Panama, Peru, and South Korea—makes direct reference to ILO core labor rights. All four agreements directly reference the 1998 Declaration[73]—although not the underlying conventions, six of which the US has not ratified. The agreements also include a commitment by the parties to enforce fundamental labor rights, as well as wage and hour and occupational safety and health laws, the latter of which is consistent with the US definition of workers' rights.[74] The addition of reference to ILO core standards reflects the frustration among many members of Congress, from both political parties, that the "enforce one's own laws" model was insufficient.[75] Mentioning "basic ILO standards" was a means of committing parties to a minimal level of workers' rights.[76] This, combined with concerns about environmental, intellectual property, and investment provisions, led to a renegotiation of these agreements.

V. THE EVOLUTION OF LABOR RIGHTS PROVISIONS IN US TRADE AGREEMENTS

Since NAFTA was negotiated and approved, various interest groups have lobbied the US government regarding its proposed trade agreements.[77] In many cases, these groups raise concerns about the treatment of workers in the partner country—for instance, about the murder and disappearance of trade unionists in Colombia, or about the working conditions experienced by employees in Mexican *maquilas*. Although these lobbying efforts have not led to the death of US PTAs, they certainly have led to delays in their passage and changes in their content. In some instances, such as the US-Oman agreement, the concerns raised contributed to *ex ante* changes to Oman's domestic labor law. Activists worried that, if Oman was promising

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73. Charnovitz, *supra* note 13, at 96–98.
74. *Id. See also, supra* notes 67 and 69; 19 U.S.C. § 3813(6) (2010).
75. Elliott, *supra* note 60, at 132–34.
76. Charnovitz, *supra* note 13, at 97 (*quoting* House Comm. on Ways and Means, Peru FTA Contains Unprecedented Tools to Enforce Strong New Labor and Environmental Standards (n.d.), the opinion of which can be found at H.R. Rep. No. 110–421 (2008) (Comm. Rep. 69–006), *available at* https://www.congress.gov/110/crpt/hrpt421/CRPT-110hrpt421.pdf). *See also* Social Dimensions of Free Trade, *supra* note 5, at 31, 116.
77. We do not consider efforts to lobby other governments regarding the passage of FTAs with the US. Mark Anner describes how labor unions in Latin America have responded to economic globalization; he posits that unions' strategies vary across types of global commodity chains and with the ideological orientation of the union. He argues that leftist unions in buyer-driven chains (like apparel) pursue a short-term strategy of participating in transnational activist campaigns, whereas leftist unions in producer-driven chains (like automobiles) create longer-term ties with transnational labor networks. Mark S. Anner, Solidarity Transformed: Labor Responses to Globalization and Crisis in Latin America (2011).

only to enforce its own labor laws, but such laws were largely absent, the agreement would be toothless.[78]

Therefore, the linkage of trade access with labor rights is a strategy that has been employed with some success by moral entrepreneurs, as well as those with material interests. Of course, once the agreements are in place, the issue of compliance looms large: To what extent are violations of labor rights adjudicated through the agreement's dispute settlement provisions—if the agreement allows this for labor-related issues—and to what extent does the dispute settlement process generate changes in behavior?

At the negotiation stage, however, we can consider the role of material and moral considerations in motivating lobbying about, and demands for changes in, US PTAs. Material motivations would involve the use of rights-related arguments as a form of veiled protectionism—the behavior that many developing nations worried about in the WTO context in the mid-1990s. If lobbying is driven by material interests, then we ought to observe more pronounced lobbying efforts for agreements that are expected to generate large volumes of US imports, and with partner countries that have comparative advantages in sectors that would compete with domestic US producers. We also would expect that the groups expressing opposition to the agreement would have strong ties with organized labor—for example, the AFL-CIO or industry-specific unions—or with specific industries.

If, on the other hand, lobbying on US trade agreements is the result of ethical concerns—driven by moral, rather than material, effects—then we should observe a different pattern. Concerns about the welfare of workers, including children, should be expressed by groups regardless of the agreement's consequences for US imports. Moreover, we are more likely to observe human rights advocates, rather than organized labor or industry groups, engaging in morally motivated action. Of course, we may well observe coalitions of "bootleggers and Baptists"—that is, materially and morally motivated groups joining efforts to lobby against an agreement, or to lobby for stronger labor-related protections, even though their underlying motives vary.

One caveat, however: It is also possible that materially motivated groups will engage in lobbying even when a specific agreement has few anticipated material effects. If such groups worry that a failure to enact and enforce labor standards in any developing country will intensify "race to the bottom" pressures on standards worldwide, they may be inclined to lobby against every agreement. Put differently, if groups assume that trade agreements without conditions create an externality—downward pressure on labor standards regionally or globally, generating a widespread fall in the cost of labor and in the price of foreign-produced goods —then they

78. Mary Jane Bolle, Cong. Research Serv., RL33328, U.S.-Oman Free Trade Agreement (2006).

will have material reasons to oppose that agreement, such as protecting their jobs, wages, and benefits. Hence, we may not want to conclude that any lobbying on agreements with very small economic consequences, as in US-Oman, is morally motivated.

Table 2 summarizes lobbying activities on US PTAs, covering those signed between 1992 and 2004. The groups listed are those that made direct lobbying efforts—sending written comments, participating in hearings—to Congress, as well as those that conducted public campaigns through other outlets—for instance, releasing reports on their websites. The general pattern that emerges is one in which labor unions and industry groups sometimes form coalitions with human or labor rights activists to oppose a given FTA. Often, their claims center on the negative effect of a given FTA on workers—in terms of job loss in the US, usually—and on the difficulties associated with enforcing labor-related provisions in a given FTA. While these efforts generally do not prevent passage of the agreements,[79] they may lead to changes in the way in which they treat labor issues. Many House Democrats oppose all trade agreements, as do a few isolationist Republicans. And other Republicans from districts with strong representation from sugar, textiles, or other import-competing industries are under pressure to oppose agreements. Therefore, the close vote margins that are anticipated for many PTAs gives leverage to moderate Democrats, as well as to material and moral activists. We also observe that the larger FTAs—NAFTA and CAFTA-DR—attract greater attention from all types of groups.

In Table 2, we categorize each of the groups involved as either material or moral in their motivations. Material-based groups often ally with normative organizations; morally focused groups use these collaborations to attract additional attention and resources to their campaign. When these coalitions lobby to oppose an FTA, their discussions of workers' rights are often general—that is, they do not focus solely on child labor or on working conditions, but on the general climate for workers; their focus often has been on the difficulties associated with enforcing the labor rights provisions contained in a given agreement. Along with these rights-based appeals, such groups often point to the effect on US workers, in terms of job loss, of a given FTA.

Activism on NAFTA and the related NAALC involved the formation of a transnational coalition among union activists.[80] In the early 1990s, many activists in Mexico and the US sought the help of the AFL-CIO in their effort to add labor rights to NAFTA. After largely ignoring the implications of the US-Canada FTA (1988), the AFL-CIO saw this as an opportunity to protect

79. Note that a vote on the Colombia agreement, where concerns about violence against trade unionists are particularly pronounced, has long been delayed. *See* Elliott, *supra* note 60.

80. Kay, *supra* note 52.

American jobs. In collaboration with auto and steel workers in the US and the Authentic Workers' Front (FAT) in Mexico, the AFL-CIO mounted an extensive campaign against NAFTA. The inclusion of labor rights was the centerpiece of its efforts; after strong pressure from the AFL-CIO-led coalition, the Clinton administration pressed for inclusion of the labor side agreement in NAFTA in 1993.[81]

In the period after NAFTA, disappointment with the NAALC—particularly with regard to concerns about unfair labor practices in Mexico (AFL-CIO 2003)—led to a change in FTA opponents' strategy. Rather than argue that FTAs should include labor rights, and rather than focus their appeals on specific types of labor rights, they focused on the effectiveness of the labor rights provisions that were included.[82] US unions, particularly the AFL-CIO, and US industries often argued that compliance with labor provisions, rather than the actual content of the provisions, was the most important issue. The US-Jordan FTA, signed in 2000, contained labor, as well as environmental, provisions in the main text of the agreement.[83] This change reflected, to some extent, the AFL-CIO's lobbying efforts. Jordan had undertaken some reforms to its labor laws prior to the agreement. In 1996, it raised the minimum age for labor from thirteen to sixteen years;[84] and in 1999, it ratified ILO Convention 182 on eliminating the worst forms of child labor.[85]

As Table 2 indicates, US activism on the US-Jordan FTA came largely from the apparel, textile, and retail sectors. These groups strongly endorsed the FTA; many of them had made, or hoped to make, investments in the qualifying industrial zones (QIZs) identified in the agreement. The AFL-CIO, however, remained critical of the FTA, citing concerns about Jordan's compliance with its international and FTA-based commitments. Given support from the textile and retail industries, which were expected to experience the main material effects of the FTA, this FTA passed easily.

The FTAs with Chile and Singapore, signed in 2003, reduced—relative to the Jordan FTA—the extent to which labor-related issues could generate trade sanctions; sanctions were permitted only for "sustained failure to enforce

81. Edward J. Williams, *Discord in U.S.-Mexican Labor Relations and the North American Agreement on Labor Cooperation, in* Bridging the Border: Transforming Mexico-U.S. Relations 161, 171 (Rodolfo O. de la Garza & Jesús Velasco eds., 1997).
82. Indeed, the 2002 Trade Act mandated their inclusion, so the issue became one of how—not whether—they were included.
83. Agreement between the United States and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, U.S.-Jordan, 24 Oct. 2000, 41 I.L.M. 63 (2001), *available at* http://www.ustr.gov/sites/default/files/Jordan%20FTA.pdf.
84. Labour Code, Law No. 8 of 1996, ch. 8, § 73 (Jordan).
85. International Labour Organization, NORMLEX: Ratifications for Jordan, *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103201.

one's own labor laws in a manner affecting trade."[86] On material grounds, these agreements did not appear particularly threatening to US industrial and agricultural producers, who were supportive of these two FTAs. Additionally, and consistent with Kim's anticipatory compliance account, Chile passed labor law reforms prior to the completion of PTA negotiations.[87] No specific industries or firms aligned themselves with normative-focused groups or with the AFL-CIO. Both agreements passed by wide margins (272–155 for Singapore and 270–156 for Chile, with seventy-five Democrats voting in favor in both cases).

Similarly, the 2004 FTA with Australia generated little opposition—beyond that of the AFL-CIO—in the United States. Australia's high level of political and economic development limited concerns from labor groups.[88] Only one member of the Advisory Committee for Trade and Policy Negotiations, which endorsed the agreement with no reference to workers' rights, listed concerns about Australia's labor laws. Some US industries, particularly beef and wheat producers, expressed worries about the competitive pressures generated by Australian exports. But, in contrast to the strategy frequently used by materially motivated groups that opposed other FTAs, these industries did not link their arguments with labor-related issues.

The lack of opposition to the US-Morocco FTA, also signed in 2004, likewise may be attributed to the low level of import competition generated by the agreement. To the extent that US industries, such as agriculture, mobilized regarding this agreement, they did so positively and in anticipation of expanded economic opportunities abroad. The AFL-CIO, however, maintained its opposition to FTAs. In the case of the Morocco agreement, the federation pointed out that most of the labor-related provisions in the agreement were—unlike the Jordan agreement—not subject to the dispute settlement mechanism.[89] Yet without support from industry groups, and given the fact that Morocco had reformed its labor laws during the negotiation phase, the AFL-CIO and its normatively based allies had little success in their campaign. The agreement passed the US House by a 323–99 margin, with 120 Democrats voting to approve.

The final agreement included in Table 2 is perhaps the most strongly contested: the Central American Free Trade Agreement (CAFTA-DR). The CAFTA-DR process generated both material and normative concerns: Sugar

86. J.F. Hornbeck, Cong. Research Serv., RL31144, The U.S.-Chile Free Trade Agreement: Economic and Trade Policy Issues (2003); Dick Nanto, Cong. Research Serv., RL34315, The U.S.-Singapore Free Trade Agreement: Effects After Five Years (2010); Mary Jane Bolle, Cong. Research Serv., RS21560, Free Trade Agreements with Singapore and Chile: Labor Issues 6 (2003).
87. *See* Kim, *supra* note 40.
88. William Cooper, Cong. Research Serv., RL32375, The U.S.-Australia Free Trade Agreement: Provisions and Implications 16 (2005).
89. Raymond Ahearn, Cong. Research Serv., RS21464, Morocco-U.S. Free Trade Agreement 6 (2005).

and textiles, major exports from CAFTA-DR countries, accounted for nearly 57 percent of those countries' exports to the US in 2004.[90] Indeed, some of the main campaigners against CAFTA-DR were the AFL-CIO, as well as the sugar and textile industries. These actors funded a US media campaign that emphasized the negative economic consequences for Americans of CAFTA-DR, and they made significant contributions to various US political action committees. The AFL-CIO also argued, as part of its appeals, that the agreement did not sufficiently protect the labor rights of Central American workers.

The AFL-CIO also worked transnationally with other opponents of CAFTA-DR, many of whom were motivated by normative concerns regarding labor rights, labor solidarity, and economic development more generally. Despite the AFL-CIO's mixed history in the Latin American region—through the 1980s, it allied with, and provided support for, business-oriented unions, thereby generating much skepticism from left-leaning worker organizations—in this case, Central American activists viewed it as a valuable coalition partner.[91] Part of the AFL-CIO's value, of course, was the monetary resources it was willing to contribute to the anti-CAFTA campaign.

In particular, the STOP CAFTA transnational coalition, which was comprised primarily of normatively focused labor advocates based in Central America,[92] was particularly successful at forming coalitions with US-based, materially motivated actors, such as the shrimp, sugar, and textile industries.[93] The coalition ran advertisements in a variety of Central American media outlets, highlighting the perceived negative consequences of CAFTA-DR for workers and their rights. Overall, STOP CAFTA had a different objective than its US allies: Its position was that the agreement was not salvageable. US industries and organized labor, on other hand, conceded that the agreement could be made acceptable if it were revised to address various deficiencies. These deficiencies included a worry that the "enforce your own laws" standard was insufficient for CAFTA-DR because both the laws and their enforcement in those countries were weak, especially for freedom of association and collective bargaining.[94] US-based, materially motivated activists also called

90. Elliott, *supra* note 60, at 143.
91. On the changes in the AFL-CIO's international strategy, as well as its leadership's views on workers in Latin America—as competitors versus as allies—see Anner, *supra* note 77; Joe Bandy, *Paradoxes of Transnational Civil Societies under Neoliberalism: The Coalition for Justice in the Maquiladoras*, 51 Soc. Prob. 410 (2004); Kay, *supra* note 52.
92. Mary Finley-Brook & Katherine Hoyt, *CAFTA Opposition: Divergent Networks, Uneasy Solidarities* 36 Latin Am. Persp. 27, 33 (2009).
93. *Id.* It is important to note that many of these solidarity organizations stationed in Central America were working on other human rights issues related to CAFTA. The solidarity organizations had joined forces with religious groups during the 1980s to oppose US interventions in Central American civil wars and radical changes in Central American governments. They viewed CAFTA as an opportunity to highlight other concerns and regain media attention. *Id.* at 33–34.
94. Elliott, *supra* note 60, at 132.

for greater protection for those displaced by CAFTA-DR competition. Given the many proponents of CAFTA-DR in the US, this strategy—accepting the agreement, but seeking modifications—was perhaps more realistic politically.

Despite a strong lobbying effort by the opponents of CAFTA-DR, the agreement won passage in the US Congress by a single vote in the House, and by 10 votes—the smallest margin for a trade agreement vote in many years—in the Senate. The success of CAFTA-DR in the Senate Finance Committee was facilitated by a last-minute deal between the Bush administration and Senator Jeff Bingamann (D-NM). The Bush Administration agreed to support several years of US funding for capacity building on enforcing labor standards in member countries; to provide funding to allow the ILO to monitor the implementation of labor laws in CAFTA-DR countries; and to seek funding for farmers displaced as a result of trade liberalization[95]—a deal that encompasses material, as well as moral, objectives. Activists also had success in delaying the agreement in Costa Rica, where it did not—because of domestic opposition—take effect until 2009. In the case of CAFTA-DR, therefore, we observe a coalition between materially and morally motivated groups, active in the US and throughout the region, and sometimes with a "Baptist and bootlegger" element—for instance, the Louisiana Shrimpers' Association expressing concern not only about their own jobs, but about the property and human rights of Honduran shrimp farmers.[96] The coalition had some success in making labor-related issues—albeit with an economic, rather than normative, frame—some of those that were central to legislative debate regarding CAFTA, and in winning some concessions, in terms of technical assistance in the area of workers' rights.

VI. CONCLUSION

This article examines one element of social activism on labor rights—that related to trade agreements and, specifically, to US PTAs. Our examination of the patterns of mobilization on these agreements, at least with respect to lobbying efforts directed toward the US government—suggests that much labor-related activism is motivated by material, rather than normative, concerns. It is difficult, however, to disentangle entirely these motivations: Organized labor groups, for instance, may be motivated by both the desire to ensure that workers worldwide enjoy a minimum level of rights, as well as by a desire to limit competition from developing country imports—and from developing country investment locations. We do, however, generally observe less activism on labor rights surrounding agreements for which the

95. *See id.*
96. Finley-Brook & Hoyt, *supra* note 92, at 37–38.

gap between US and partner country labor practices is smaller, as well as agreements that have fewer material consequences in terms of import competition for US industries and workers. A possible exception to this pattern is Colombia, which is not analyzed above; the direct impact of exports covered by its FTA on US industries is likely to be small,[97] yet concerns about labor rights—specifically, about the murder and disappearance of trade unionists—held up passage of the agreement for several years.

97. Colombia's exports of sugar and textiles, for instance, accounted for less than 10 percent of its total exports to the US in 2004. Colombia's main exports to the US are bananas and petroleum. *See* Elliot, *supra* note 60, at 143.

Table 2. Lobbying Activity on US FTAs, 1994–2005

Free Trade Agreement	*Organization*	*Motivation*	*Position on FTA*	*Organization Description*
NAFTA[98] 1994	AFL-CIO	Material	Strongly opposed; include labor rights provisions in agreement	Voluntary federation of American unions, representing more than 13 million people nationwide
	Authentic Workers' Front (FAT)	Normative	Opposed; no enforceable mechanism of protection of workers' rights	Independent confederation of labor unions in Mexico
	Citizens Trade Campaign	Normative	Opposed	Organization focused on labor and social issues associated with free trade policies
	Human Rights Watch	Normative	Strongly opposed; should create better enforcement mechanisms	NGO conducts advocacy on human rights issues
	United Steel Workers of America	Material	Opposed; does not include enforceable labor provisions	Largest industrial labor union in North America.
	United Auto Workers (UAW)	Material	Opposed; no enforceable labor provisions	US-based labor union.
US- Jordan 2002	American Textile Manufacturers Institute	Material	Adopt NAFTA model for rules of origin, customs procedures, and safeguards on textiles	National trade association representing 562,000 workers
	AFL-CIO	Material	FTA should include enforceable provisions protecting core labor & environmental standards	

98. *See* Joel Solomon, Human Rights Watch, Canada/Mexico/United States—Trading Away Rights: The Unfulfilled Promise of NAFTA's Labor Side Agreement, at v, 1 (Joanne Mariner & José Miguel Vivanco eds., 2001), *available at* http://www.hrw.org/reports/2001/nafta/nafta0401.pdf; Joel Stillerman, *Transnational Activist Networks and the Emergence of Labor Internationalism in the NAFTA Countries*, 27 Soc. Sci. Hist. 577, 577–79, 591 (2003).

American Apparel Manufacturers Association (AAMA)	Material	"Strongly" supports FTA; FTA should preserve the advantages of QIZs (industrial zones) and adopt U.S.-Israel FTA rules of origin	Central trade association for US companies that produce clothing; some members have shifted production to the QIZs
BCTC Corporation	Material	"Wholeheartedly" in support, especially on free trade in apparel	US importer of apparel; establishing a manufacturing facility in the Irbid QIZ.
National Retail Federation	Material	"Strongly supports" FTA & immediate duty free treatment of consumer goods; FTA should incorporate US-Israel FTA rules of origin on textiles & apparel	World's largest retail trade association, represents ~ 1.4 million US retail establishments
United States Association of Importers of Textiles & Apparel (USA-ITA)	Material	FTA should be compatible w/ QIZs, lead to immediate reciprocal elimination of duties on textiles & apparel, and have minimum customs formalities	Represents more than 200 importers, exporters, manufacturers,distributors, & retailers
Women's EDGE	Normative	FTA should not undermine universal access to water or food security and should include international labor standards; a social and gender impact study should be conducted	Coalition of international development & US women's organizations that advocate policiesthat empower women & improve their living conditions

Table 2. Continued

Free Trade Agreement	*Organization*	*Motivation*	*Position on FTA*	*Organization Description*
US-Singapore[99] 2003	AFL-CIO	Material	Strongly Opposes; FTA needs enforceable provisions protecting core labor & environmental standards	
US- Chile[100] 2003	AFL-CIO	Material	Strongly Opposes; FTA should include enforceable provisions protecting core labor rights	
	United Auto Workers	Material	Opposes	
US-Australia[101] 2004	AFL-CIO	Material	Strongly Opposes FTA should include enforceable provisions protecting core labor & environmental standards	
	National Association of Manufacturers	Material	Support	Advocacy group representing small and large manufacturers in US

99. Joint Statement of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and the Singapore National Trade Unions Congress (SNTUC) on a Singapore-U.S. Free Trade Agreement (n.d.), *available at* http://www.gurn.info/en/topics/bilateral-and-regional-trade-agreements/bilateral-and-regional-trade-agreements-1/trade-union-comments/afl-cio-sntuc-usa-singapore-free-trade-agreement.
100. Statement by AFL-CIO President John Sweeney on Chile and Singapore Trade Agreements (16 July 2003), *available at* http://www.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-John-J.-Sweeney-on152.
101. Citizens Trade Campaign, *U.S.-Australia Free Trade Agreement* (n.d.), *available at* http://www.citizenstrade.org/ctc/trade-policies/existing-trade-agreements/other-bilateral-trade-agreements/u-s-australia-free-trade-agreement/.

US- Morocco[102] 2004	AFL-CIO	Material	Strongly Opposes FTA should include enforceable provisions protecting core labor rights.	
CAFTA[103] 2005	AFL-CIO	Material	Strongly Opposes FTA should include enforceable provisions protecting core labor	
	Human Rights Watch	Normative	Strongly opposed; No enforceable measures	NGO that conducts advocacy on human rights issues
	US-based Shrimpers	Material	Opposes	Unions of workers in the shrimp sector
	Textile Industries	Material	Opposes	Variety of trade unions related to textile industries
	Sugar Industry	Material	Opposes	Variety of workers in the sugar industries in the US
	STOP CAFTA Coalition	Normative	Strongly Opposes; no enforceable measures against labor rights	Conglomerate of labor organizations based in Central America

102. Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC), *The U.S.-Morocco Free Trade Agreement* 2, 9 (2004), *available at* http://www.ustr.gov/archive/assets/Trade_Agreements/Bilateral/Morocco_FTA/Reports/asset_upload_file809_3122.pdf.
103. *See* Finley-Brook & Hoyt, *supra* note 92.