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**TRADE AGREEMENTS, LABOR STANDARDS AND ECONOMIC
DEVELOPMENT**

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Trade Agreements and Labor Standards: The Impact of Trade Negotiations on
Country Adoption of Freedom of Association and Collective Bargaining

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Labor Standards and Trade Agreements: The Impact of Trade Negotiations on Country Adoption of Freedom of Association and Collective Bargaining¹

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1. Introduction

The idea of international labor standards was first introduced with the formation of the International Labor Organization (ILO) in 1919 and there has been debate about the nature and form of such standards ever since. In the 1990s, policymakers and trade unionists debated whether or not to include labor standards in trade agreements. Although the WTO does not include a “social clause” in the negotiation of multilateral trading rules, increasingly, bilateral and some multilateral trade agreements include some language about labor standards. The debate has shifted from *if* labor standards should be included, to *how* they should be included and *which* standards are appropriate. The inclusion of labor standards in bilateral agreements raises a number of questions. What process of negotiation leads countries to strengthen domestic labor rights? What language is most likely to be implemented and enforced? What incentives exist for countries to improve working conditions? Do such labor rights have an impact on improving wages?

In the past several decades, individual countries and international institutions have made great advances in improving conditions for workers engaged in areas affected by international trade. According to Aaronson and Rioux (2008), over 160 countries and regions have adopted some form of labor standards attached to trade agreements, trade promotion agreements, or international investment framework agreements. The United States has also adopted labor standards in various forms, including some attached to Generalized System of Preferences in the U.S. Trade Act, labor side agreements in the North American Free Trade Agreement (NAFTA), a garment trade preference program in Cambodia, agreements negotiated under the Bipartisan Trade Promotion Authority Act of 2002, and agreements negotiated under the May 10, 2007 Bipartisan Agreement on Trade Policy.

Despite the proliferation of labor standards-related language in trade agreements, there is little research on the impacts of these provisions and the negotiations surrounding them.

This report examines the relationship between free trade agreement (FTA) negotiations and labor standards, particularly the fundamental labor principles or internationally recognized rights. We attempt to answer the following research question: To what extent do the labor standards-related requirements of U.S. trade agreements encourage potential trade partners to improve labor standards in their countries prior to pursuing a trade agreement with the United States or during the negotiation and implementation process?

¹ We thank David Kucera for sharing his database with us. We also thank Joan Sherer, Senior Reference Librarian at the State Department and Sylvie De Ryck at the International Trade Union Confederation for providing us annual reports for 1981-1995; and Quinn Kepes at Vérité for providing data from their labor standards index. David Wemhoener, Elvis Mendez and Andy Santos provided research assistance.

Section 2 provides a literature review on scholarship related to the question at hand. In Section 3, we provide a conceptual framework for our study, proposing an approach to examining changes in labor standards in countries that have signed FTAs with the United States. We examine standards in a broad sense, including laws, regulations, executive orders and court rulings. Next, Section 4 describes our data and methodology employed to construct an annual index of labor standards. We provide results in Section 5. This includes a quantitative analysis of our index, as we attempt to discern patterns in labor standards over time in relation to trade agreement negotiations. From there, we examine four countries in-depth in Section 6.

Given the results presented in Sections 5 and 6, we discuss their relevance for trade policy in Section 7, and then conclude with caveats and limitations of the work. We provide some thoughts on directions for future research based on these last two sections.

2. Literature Review

There are a growing number of trade agreements that include language requiring countries to adhere to eight ILO core Conventions and their related standards, but there is little agreement about how to measure compliance. Scholars have noted the complexities of quantifying labor standards, which includes many dimensions, such as labor law, regulations and decrees; legal decisions; institutional capacity to monitor and enforce; and penalties for non-compliance. As Compa (2005) notes, true measures of labor standards must also consider both the positive and negative application of labor rights. Positive application of labor standards includes the state passing laws and regulations that provide expansive access to these rights, as well as providing real protections to workers exercising those rights. The negative aspect examines the ways in which the state and/or employers may interfere with workers who attempt to exercise their rights.

In addition, measurement of standards must be able to take into account the history of each country. Some aspects of labor standards might be measured by absolute measures, but in other cases, they are best understood as changes relative to the past. Each aspect of labor standards is couched in a long history within a country. This means that any measure would ideally be comparable across countries but also within country, over time.

To date, most measurement efforts have focused on one particular area of labor standards - freedom of association and collective bargaining (FA/CB), child labor, forced labor, or discrimination.² The Committee on Monitoring International Labor Standards at the National Research Council convened a workshop in 2002 on the best practices for evaluating these aspects of international labor standards and published the findings in a volume in 2004 (National Research Council 2004). Another volume, edited in 2007 by ILO researcher David Kucera, summarizes findings from a 2004 meeting of experts to discuss measurement of labor standards

² A few organizations (such as Social Accountability International) have focused on ways to monitor and measure labor standards with a company or factory as the unit of analysis. We are focusing here on evaluations with a country as the unit of analysis.

(Kucera 2007). These findings are discussed here, along with other scholarship that has examined compliance with labor standards.

We first provide a detailed discussion on efforts to measure FA/CB, then a cursory review of efforts to measure the other areas.

2.1 Freedom of Association/Collective Bargaining

Two of the core ILO Conventions address freedom of association and the right to collective bargaining. As labor law scholar Lance Compa notes, it is not enough just to observe whether a country has ratified an ILO convention or passed a domestic law (Compa 2002; Hilton 2003). A better measure would first include the following four dimensions:

- 1) freedom of association in general (including the freedom of workers to form and join any kind of association);
- 2) the right to organize unions;
- 3) the right to engage in collective bargaining; and
- 4) the right to strike.

In addition, Compa argues that the best index would include direct and indirect measures. Direct measures would be specific laws and regulations, and would be evaluated based on fieldwork and reading of legal texts. Indirect measures try to capture rights by looking at associated factors, such as number of strikes, number of union activists arrested, or union density. Indirect measures are usually easier to access and are more likely consistent between countries, but they cannot replace direct measures. The ideal measure would also use consistent methods to place the findings in a “real-world context” (Compa 2005).

The Committee on Monitoring International Labor Standards at the National Research Council has concluded that the best approach to measuring compliance with FA/CB is through three dimensions:

- the legal framework (at all levels of government),
- the government's performance (at all levels of government) in implementation, and
- the overall outcomes.

After extensive study, the Committee chose the ILO recommendations of at least 21 specific indicators to measure legal framework; 13 indicators to measure government performance; and 4 indicators to measure overall outcomes.³ This list of indicators would provide a comprehensive baseline assessment of a country's compliance with FA/CB. However, there are serious data limitations that prevent scholars from collecting consistent information for each of these indicators. This means that researchers must develop alternative measures to capture as much of these indicators as possible.

³ See the WebMILS page for more detail: <http://webapps.dol.gov/webmils/assessing-compliance.aspx>

Kuruvilla, Hossain and Berger (2010) state that there are at least 28 different measures of FA/CB in use today.⁴ They group these into measures based on available quantitative data (such as union density); measures based on labor law; measures of collective bargaining rights; and those that focus on the role of government. They note that there is no consensus on which measure to use, and there is often a trade-off between in-depth quality information on the one hand, and transparent information from uniform sources on the other.

Some of these measures rely on simple proxy measures of FA/CB. One option is to use union density in a country, assuming that density is a proxy for the FA/CB rights. This can be problematic for several reasons. First, union density is not available for every country or for every year. Countries measure union membership in different ways, making it hard to compare across countries. Finally, density may be a poor proxy for rights, depending on the institutional and legal framework in a country. For example, there may be relatively high union membership in a country like China, where workers do not actually enjoy FA/CB rights.

Another index used as a proxy by a number of scholars to measure FA is the Freedom House political rights and civil liberties index. Freedom House is an independent organization which tracks political rights and civil liberties in countries around the world. Since 1972, Freedom House has compiled a measure of political rights and civil liberties by country. Although it does not specifically measure freedom of association and rights to collective bargaining, some scholars have used some of the categories as a proxy for measuring freedom of association (e.g. Bivens, Hersh and Weller and 2005). The advantage of this source is that is available on an annual basis, and now available for most countries. The disadvantage is that it was not designed to capture FA/CB rights.

There have been several attempts to develop a comprehensive index to measure freedom of association/right to collective bargaining across countries. Three of the early measures were developed by the OECD, Verite, and David Kucera. Each index uses a different number of indicators and a slightly different approach. All rely on three key sources of information: ICFTU/ITUC Annual Survey of Trade Union violations; U.S. State Department Human Rights reports; and ILO supervisory reports.

Each of the three sources has strengths and weaknesses. As noted by others, the ILO reports are heavily lopsided by region. Approximately half of all Freedom of Association cases filed with the ILO relate to Latin American countries (National Research Council 2004). Filing ILO complaints takes capacity and it is much less likely that countries with little capacity, or few labor rights, would have many complaints filed. As Compa (2005) has noted, the U.S. State Department Reports are very detailed in some years, but then appear to be repetitive in other years, depending on the number of field staff available to update reports. The ICFTU reports also vary in quality, with some years and regions containing much more detail than others. We discuss some of the specific weaknesses of these sources in Section 8.

Kuruvilla, Hossain and Berger (2010) propose an alternative to existing comprehensive measures of FA/CB based on the evaluations of national experts, utilizing a combination of

⁴ A number of these methods are discussed in Kucera 2007.

qualitative and quantitative sources. While their proposal would address some of the weaknesses of other measures, it would be difficult to construct, particularly without the cooperation of a pool of experts. As of now, remains a proposal rather than an actual index.

The most comprehensive measure of FA/CB is the Kucera index, which includes 37 indicators and was compiled for 169 countries (Kucera 2007). These 37 indicators are organized around six categories or arenas:

- freedom of association/collective bargaining civil rights
- right to establish and join unions and worker organizations
- other union activities
- right to bargain collectively
- right to strike
- FA/CB in export processing zones.

Kucera's index was compiled for the 1990s, but is not available on an annual basis. Ideally, to measure the impact of FTA negotiations or implementation, we would need an annual measure to compare how a country changes over time.

There are a few other weaknesses of the Kucera method. Even though there are more criteria in the index, giving the index more depth, the components are all measured as indicator variables. Indicator variables (coded as a one or zero) cannot establish rank order or differentiate between matters of degree. This means that a country with one or two cases of state interference with union demonstrations would be scored the same as a country with regular, consistent interference. The measures don't allow for variation in laws or regulations within a country (such as by state, within the U.S.).

Even with 37 indicators, there are a number of additional criteria that might be useful to include for a measure of FA/CB, such as:

- number of government officials charged with enforcing FA/CB rights or inspecting violations
- typical duration for court system processing CB/FA complaints
- number and strength of legal protections for workers who file complaints (existence and strength of "whistleblower" protections for workers who file complaints)
- union organizers access to company property so they can talk to workers about their right to join a union
- legal sanctions for employers who breach collective bargaining agreements

However, the more criteria added the more difficult it is to collect consistent data by year and across countries. Kucera is currently working on an expanded index which includes 168 indicators (Kucera 2010).

Some commentators have noted other concerns with Kucera's method. Compa (2002) critiques the subjective nature of the coding and argues that "No purely quantifiable system for assessing countries' compliance with freedom of association standards is possible" (as cited in

Kucera 2007, footnote 9). Teitelbaum (2010) raises other concerns about Kucera's method, suggesting that scores will vary based on the level of activity of trade unions by country, thereby raising possible endogeneity problems. Countries with more activity will likely show up with more violations, but this does not necessarily mean the countries with little activity have more rights or better standards.

2.2 Child labor

Child labor has received substantial attention from domestic and international agencies concerned with labor rights. As with FA/CB it is important to look at legislation as well as regulations and government enforcement, direct and indirect measures, and positive and negative applications of rights.

Child labor as measured in the ILO core standards refers to the ILO Minimum Age Convention, 1973 (No. 138) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). Convention 138 requires countries to establish a law establishing the minimum age of work. But Convention 182 defines "child" as anyone under age 18. The Worst Forms of Child Labour includes all forms of slavery or forced labor; use of children in prostitution or pornography; use of children for illicit activities such as drug trafficking; and hazardous work. The ILO provides information on complaints by Convention, by Country, as well as information on changes to laws and regulations. In 2008, the International Conference of Labour Statisticians adopted a resolution regarding the measurement of child labor, setting forth guidelines regarding various aspects such as minimum age of work worst forms of child labor. The guidelines provide a methodology recommended for a standardized measure in each country.

The ILO has experimented with household survey methodologies designed to capture information on child labor. According to Ritualo, Castro and Gromley: "Based on their findings, ILO concluded that the household-based sample survey, supplemented by surveys of employers and street children, was the most appropriate methodology for inquiring about children's work and educational activities" (Ritualo, Casto and Gromley 2002-2003). The Statistical Information and Monitoring Program on Child Labour within the ILO was created in 1998 and works with countries to conduct household surveys to collect data on child labor. These surveys are a useful source of data because they are designed specifically to capture information on child labor. However, the content and questions can vary from country to country, and not all indicators are comparable across countries.

Another source of data on child labor is the Living Standards Measurement Survey (LSMS), conducted by the World Bank since 1980. The LSMS is also a household survey, conducted in a few dozen countries—many over repeated years—and some surveys include questions on child labor. This can be a useful source but the data is not available for every country, and the surveys were not designed to capture information on child labor. In some cases sample sizes are too small, and data on child labor is not detailed.

Similarly, UNICEF conducts Multiple Indicator Cluster Surveys in various countries. This survey is intended to measure children's rights, and child labor is only a subsection of that. Sample sizes are larger but the data is not very detailed.

In addition, the U.S. Department of Labor collects data on the worst forms of child labor and publishes an annual report. This is part of the requirements for the Trade and Development Act of 2000. This data is collected from a variety of sources for all countries where the U.S. has some form of trade relationship. These reports are available from 2001 to the present.

In the 2004 NRC volume, Ritualo is noted as suggesting that child labor measurement should include the following components:

- 1) number and proportion of economically active children;
- 2) number and proportion of children who are child laborers;
- 3) ratio of children not in school;
- 4) proportion of children involved in household chores in their own homes, organized by ranges of hours worked;
- 5) proportion of children working in industry sectors (agriculture, mining, construction, transportation, etc.);
- 6) proportion of children working by range of hours worked; and
- 7) other indicators that help put child labor within the national context.

The Committee on Monitoring International Labor Standards made similar conclusions regarding measuring child labor as with FA/CB. Compliance should include indicators for legal framework, government performance, and outcomes. The Committee recommends a minimum of 11 indicators for legal framework and another 11 for government performance, and seven for outcomes.

As with the FA/CB measures, there is still no one source of reliable data, or one index for cross-country comparative data on child labor, but researchers are making advances in developing shared definitions and preferred methodologies.

2.3 Forced/Compulsory Labor

The ILO uses two elements to define forced labor. First, the work or service performed “is exacted under the menace of a penalty.” Second, the work or service is done involuntarily. Based on this definition, the ILO have developed different categorizations to measure forced labor. In some reports it notes that there are five main forms of forced labor in effect today: slavery and abduction, misuse of public and prison works, forced recruitment, debt bondage and domestic workers under forced labor situations, and internal or international trafficking.

Given that much of this type of work is illegal in many countries it is particularly difficult to measure. While many policymakers note that it would be impossible to develop a completely accurate measure of forced labor some scholars have attempted to develop methodologies to improve our understanding of the scope of the problem. Ruwanpura and Rai (2004) have attempted to advance the methodologies for measuring forced labor, starting with a clearer definition of the concept. They note that forced labor is a legal concept but also an economic one, as it is closely related to poverty. However, poverty alone is not a sufficient condition for forced labor. Bales (2000) declared that there were approximately 27 million people working in forced labor but acknowledged that this number was only a rough estimate. In a 2005 report the

ILO claimed 12.3 million people working in forced labor but notes the challenges in collecting data, particularly given that the terms are still difficult to define.

The ILO produces a factsheet on forced labor but does not collect systematic data on the prevalence of forced labor by country. However, the ILO does compile records on legal and regulatory changes that countries make regarding forced labor, made available through the *Annual Review*. This information is not necessarily complete but provides one source of consistent data at the country level.

In addition to the ILO, the International Organization for Migration provides information on forced labor: in particular, on trafficking in persons. The organization has been working to develop a database for policy and research purposes. Data is collected through individual cases, and so the tool seems less effective for measuring progress by country as countries with more cases may simply reflect better reporting or monitoring (*Counter-Trafficking Database, 78 Countries, 1999-2006*).

The U.S. State Department also collects data on forced and compulsory labor, including trafficking in persons, in its annual Human Rights reports. It also produces Trafficking in Persons Reports. Recently, the UN launched a Global Initiative to Fight Human Trafficking (UN GIFT). The UN has provided some data on human trafficking by country, although it is only available for 2009.

The Committee on Monitoring International Labor Standards recommends four criteria for the legal framework for forced labor, eight for government performance and four for outcomes.

2.4 Non-Discrimination and Equal Pay

The final two ILO core standards are the Equal Remuneration Convention, 1951 (Convention 100) and Discrimination (Employment and Occupation) Convention, 1958 (Convention 111). These may be the most difficult to measure, given the broad scope and data challenges. The ILO states that Convention 100 applies to all private and public sectors workers, and establishes principles for establishing national policy that strives to attain equal pay for equal work for men and women.

Adequate measures of pay differentials by gender and race must take account factors such as industry, occupation, job training, skill level and local labor market. Economists debate whether the remaining gaps are due to discrimination or due to unobservable abilities, risk of exiting the labor market for childbearing, or other factors not explained in most models. There is no consensus for a universal methodology for measuring the gender or racial wage gap. Further complicating the challenge is that many countries do not collect data on race. Those that do don't share the same definitions and categories.

Similarly, there is no consensus on how to measure discrimination in employment relationships, which could refer to hiring, firing, discipline, and promotions. In addition, Convention 111 lists seven types of discrimination, including race, color, sex, religion, political

opinion, national extraction or social origin. Even more than agreement on methodology, scholarship is hindered by the challenges of consistent data collection.

Furthermore, in many countries the majority of women work as self-employed in the informal sector and don't have formal wage data to report. Most studies of discrimination focus primarily on wage differentials, and this would exclude these women from consideration. A strong measure would have to find a way to include self-employed informal sector workers and raise larger questions about structural bias or institutional discrimination rather than individual acts of discrimination.

Due to these challenges, there are no consistent and comprehensive indices available to measure compliance with Conventions 100 and 111 on a global scale. However, some information on these dimensions is available. The main datasources include the U.S. State Department Human Rights reports and the ILO Committee of Experts on the Application of Conventions and Recommendations.

Constance Thomas of the ILO noted that the ILO considers these three indicators as key steps towards compliance with the non-discrimination convention:

1. the country recognizes the problem (in reports to the ILO);
2. the country does research to identify where discrimination exists and how it is manifested; and
3. the country allows an NGO to study the problem. (Hilton 2003).

The ILO relies on various country reports, as well as country reports submitted to the UN's Committee on the Elimination of Discrimination against Women, established in 1979. Some countries sometimes provide more comprehensive and accurate information on discrimination in their UN CEDAW reports than they do in their ILO reports (Hilton 2003).

The Committee on Monitoring International Labor Standards recommends 31 criteria to measure compliance with discrimination and equal pay. In addition, they recommend four associated factors that may be relevant: a country's ranking on the UN Human Development Index minus its ranking on the gender development index; fertility rates; labor force participation by various categories such as gender; and the distribution of part-time work.

2.4 Decent Work

In addition to the above areas of core ILO conventions, some researchers have also tried to measure indicators of "decent work" in countries. The ILO has developed the concept of decent work to go beyond the core conventions and promote a proactive vision of work, and has urged national and regional bodies to work towards methodologies to measure this concept. ILO staff has attempted to develop indicators that could be use to evaluate conditions in countries Anker et al (2002) select ten aspects of decent work and provide preliminary thoughts on how these might be measured. These aspects include employment opportunities, unacceptable work, adequate earnings and productive earnings, decent hours, stability and security of work, balancing work and family life, fair treatment in employment, safe work, social protection, social

dialogue and workplace protection, and the economic and social context of decent work. Each aspect would be comprised of several different indicators.

The Committee on Monitoring International Labor Standards developed indicators to measure “acceptable conditions of work.” This includes 19 criteria for the legal framework, including national law establishing a minimum wage, national laws or regulations establishing a regular workweek of 48 hours a week or less, and the adoption of several ILO conventions. The measure should also include 13 indicators of government performance and five for outcomes.

In 2008, the ILO held a Tripartite Meeting of Experts on the Measurement of Decent Work and affirmed that “Decent work indicators should capture all four dimensions of the concept of decent work, namely: (1) labour standards and fundamental principles and rights at work; (2) employment opportunities; (3) social protection; and (4) social dialogue.” In a discussion paper for the meeting the ILO reviews seven efforts to measure decent work, including some by ILO regional offices as well as some by other bodies, such as the UN measurements of progress towards meeting the Millennium Development Goals. The paper notes that there is significant overlap in the methodologies by these seven papers and concludes that the end measurement should include statistical indicators as well information on the legal rights and structures by country. The 18th International Conference of Labour Statisticians concluded that the ILO should continue work on developing indicators, working to refine measurements for pilot countries (ILO 2008).

2.5 Comprehensive Measures

Scholars acknowledge the challenges of measuring any of the labor standards individually. To date, no one has developed a comprehensive measure of all eight ILO standards together plus measures of decent work. In addition to the 151 criteria it proposes for five categories of standards, the Committee on Monitoring International Labor Standards developed a hypothetical framework for evaluating each country in terms of compliance, by using a three by three matrix that would allow analysts to place each standard within a box, for each country. One axis would assess whether there were “some problems,” “extensive problems,” or “severe problem” with a standard, and the other axis would measure whether conditions were “improving,” in a “steady state,” or “worsening.” This matrix could be used to evaluate the core ILO standards, as well as additional standards such as decent working conditions.

A team of researchers evaluated the NAS-ILAB matrix in a report for ILAB in 2009, and found that the matrix may provide a useful tool but could use revisions to improve problems in coding and measurement (Root and Verloren 2009). In particular, Root and Verloren found a good deal of variation in measures done by different evaluators. In many cases, there was little consensus between three evaluators on particular scores. This improved, but was not solved, with discussion between evaluators.

In addition to the NAS-ILAB measure, the non-profit organization Vérité has developed several methods for measuring labor standards. Their most comprehensive was developed for the California Public Employees Retirement System (CalPERS). CalPERS contracted with Vérité in

2000 to create a system to measure labor standards in 27 countries where CalPERS was investing (or considering investing) in. The Vérité index measures four components, developing a score from one to 40. The indicators include ratification of ILO core conventions; laws and legal system; institutional capacity; and implementation effectiveness. They rely on a wide range of public and private sources, ranging from ILO, UNDP and IMF reports to reviews by NGOs. Vérité also notes that they utilize information collected from their own experience conducting factory monitoring in countries around the world.

Vérité has developed scores for 27 countries for years since 2000. Of the 27 countries, six have FTAs with the US: Chile, Israel, Jordan, Mexico, Morocco and Peru. Two countries: Colombia and Korea (Republic of)⁵ - have FTAs that have been signed by the President but are not ratified by Congress.

In Table 1, we provide a summary of main data sources available to measure the eight core standards. This is not an exhaustive list, but includes major sources that would most likely be utilized in any comprehensive index.

⁵ We will use Korea as a shorthand for Republic of Korea throughout this report.

Table 1: Data Sources on ILO Core Standards

Standard	Source	Years	Countries
Freedom of association and collective bargaining	US State Department Human Rights Reports	Annual*	All
	ILO Freedom of Association Supervisory Reports	Ad hoc**	Ad hoc
	ICFTU/ITUC Annual Survey of Violations of Trade Union Rights	Annual	All
	Freedom House, Civil Liberties Index	Annual	All
Minimum age of work and Worst Forms of Child Labor	US State Department Human Rights Reports	Annual	All
	ILO, SIMPOC surveys	Varies	Over 40 countries
	ILO, Committee of Experts on the Application of Conventions and Recommendations	Ad hoc	Ad hoc
	US Department of Labor, ILAB	Annual since 2001	All countries with trade agreements with US
	World Bank, Living Standards Measurement Survey	Varies	Some developing countries
	UNICEF, Multiple Indicator Cluster Surveys	Varies. Will go to every 3 years with current round of surveys	Over 50 countries
	Forced labor and Slave Labor	US State Department Human Rights Reports	Annual
ILO <i>Annual Review</i>		Annual	Varies
ILO, Committee of Experts on the Application of Conventions and Recommendations		Ad hoc	Ad hoc
UN Global Initiative to Fight Human Trafficking		2009 (data for 2003-2007)	155
International Organization for Migration		Quarterly	
Non-discrimination and Equal Pay		US State Department Human Rights Reports (not consistent)	Some
	ILO, Committee of Experts on the Application of Conventions and Recommendations	Ad hoc	Ad hoc
	UN Committee on the Elimination of all forms of Discrimination Against Women	Periodic (irregular intervals)	Some

* Reports refer to events for the prior year. For example, the report released in 2009 refers to events for 2008.

** Cases may last for many years; multiple reports may exist for the same complaint.

3. Conceptual Framework

There are few sources for labor standards compliance that are available on an annual basis. As mentioned above, the only comprehensive measure that has been developed for more than one year is the index created by Vérité. However, this is only for a limited time frame, and does not cover all countries with FTAs. Our study attempts to construct a measure that will allow us to track changes in the presence and application of standards from year to year, to see if there were patterns related to trade agreement negotiations.

It is beyond the scope of this project to produce a measure evaluating all core labor standards and decent work. Instead, we focused on an annual measure of FA/CB. Building off of the Kucera index of trade union rights we develop an annual measure of compliance with the FA/CB core labor standards. Our measure does not contain as many indicators as Kucera's, but is collected by year, allowing us to produce a measure that lets us see changes within a country over time.

We constructed our own annual index of labor standards for countries with which the U.S. has negotiated an FTA. This is not as straightforward as it may sound as the FTA process has many stages. In many cases, the US first negotiates a Trade and Investment Framework Agreement (TIFA) before beginning to negotiate an FTA. FTA negotiations may start and stop, such as they did between the US and Chile throughout the 1990s. The parameters of the negotiations are governed in the US by US Trade Law and the existence of so-called "Fast Track Authority." When Fast-Track is in place, the US President is authorized to negotiate an agreement and present it to Congress for a yes or no vote. However, this still entails a number of steps. The President (through the US Trade Representative) announces intentions to negotiate an FTA. The countries engage in rounds of negotiations, and if successful, sign an initial agreement. That agreement is then made available to the public for comment. Formal committees, such as the Labor Advisory Committee, are required to comment within a specified time period. The agreement also goes to the Senate and House committees for hearings. The Senate and House must pass legislation to enact and implement the agreements. If this happens, the legislation goes back to the President to sign. The partner country may also have similar processes to get the final agreement implemented. The agreement may be approved but not come into force right away. This means that the entire process of negotiating an FTA may go quickly or take many years.

In this study, we attempt to examine the relationship between FTA negotiations and changes to labor standards in partner countries. Our hypothesis is that the process of negotiations may put pressure on partner countries to improve their standards. Therefore we look at trends in the annual labor standards index to observe whether standards improve during the initial rounds of negotiations; during the period after the initial agreement is signed by the US President but before the FTA is passed by Congress; and the period after the final FTA is ratified by the US.

In addition to measuring labor standards in the countries, we reviewed the reports submitted by the Labor Advisory Committee (LAC) to the USTR. These reports allow us to identify the concerns that emerge before the FTA is ratified. Of course, it is not clear that all issues raised by the LAC were then presented as stipulations of an agreement in FTA

negotiations. However this provides us with a detailed picture of labor experts' independent assessment of conditions in each country and raises potential points of concern that may be presented by members of Congress.

This index is not meant to be a fully standardized measure that would allow comparisons *between* countries. It is too difficult to develop a quantitative measure that would capture the complexities of each country's history and labor relations system. Rather, the measures are best suited to tracking changes *within* countries- to see if a country improves its labor laws and regulations over time.

4. Description of Data and Data Collection

Our index contains observations for 20 criteria, for 19 countries with which the U.S. has signed FTAs (but not necessarily ratified). We coded Canada and Mexico but have less confidence in the data for these countries as source documents from the 1980s are less complete than more recent reports.⁶ We did not include Israel for several reasons. First, one of our main data sources, the ICFTU Annual Survey, began in 1984. This means we did not have a second data source for the first three years of our observation period. Second, later reports on Israel include information on the Occupied Territories, but there is almost no information available before 1988. Due to these data restrictions we omitted Israel from our database.

Three researchers on our team reviewed State Department reports, ICFTU reports, ILO reports, and existing literature on measurement of labor standards.⁷ From this, we selected 14 variables from Kucera's 2006 index. These 14 criteria (listed in Table 2) were selected by us as the ones that were most relevant for measuring freedom of association and collective bargaining rights, and the ones that would be likely to capture the most variation in changes in labor laws and standards year by year. Some of the indicators we selected were among the most commonly found in Kucera's study (such as "arrest...for union activities"), while some were among the least common (such as "general prohibitions [on the right to collective bargaining].") We included both commonly observed and uncommon indicators to get sufficient variation between countries and over time.

⁶ The State Department Human Rights reports only began to include a full section on Worker Rights in 1988. Before that, there was limited information on freedom of association and "conditions of labor" in the reports.

⁷ The ICFTU began its Annual Survey in 1984 but it was not available on an annual basis until the late 1990s. The surveys in the 1980s do not include data on Mexico, and only a few issues contain information on Canada and Israel.

Table 2: Measures from Kucera Index Used for Labor Standards Index

<p>Freedom of Association/Collective bargaining related civil liberties</p> <p>1 Murder or disappearance of union members or organizers</p> <p>2 Other violence against union members or organizers</p> <p>3 Arrest, detention, imprisonment, or forced exile for union membership or activities</p> <p>Interference with union rights of assembly, demonstration, free opinion, free</p> <p>4 expression</p> <p>Right to establish and join unions and worker organizations</p> <p>6 General prohibitions</p> <p>15 Exclusion of tradeable/industrial sectors from union membership</p> <p>16 Exclusion of other sectors or workers from union membership</p> <p>Right to bargain collectively</p> <p>24 General prohibitions</p> <p>29 Exclusion of tradeable/industrial sectors from right to collectively bargain</p> <p>30 Exclusion of other sectors or workers from right to collectively bargain</p> <p>Right to strike</p> <p>32 General prohibitions</p> <p>34 Exclusion of tradeable/industrial sectors from right to strike</p> <p>35 Exclusion of other sectors or workers from right to strike</p> <p>Export processing zones</p> <p>37 Restricted rights in EPZs</p>
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Note: See Appendix A for more detail on these criteria

After reviewing source material, we added six additional criteria of our own. These criteria were developed to measure the potential barriers that workers face when trying to exercise their rights. These six criteria include:

- 1) employer interference with FA/CB;
- 2) government barriers to FA/CB;
- 3) employer interference with right to strike;
- 4) government barriers to right to strike;
- 5) foreign worker barriers to FA;
- 6) enforcement capacity/mechanisms for enforcement of FA/CB rights

Each of the criteria was developed based on review of the Kucera criteria as well as the Committee on Monitoring International Labor Standards (CMILS) criteria, and in some cases is an amalgam of some of these items. We included employer interference in our index because this is a frequent way in which workers are impeded from exercising their rights. The ability of employers to interfere with FA/CB is partially a function of laws and enforcement, but also the culture of labor relations within a country. We included a criteria relating to the rights of foreign workers as this is an item that came up frequently in LAC reports.

We coded these six criteria according to the guidelines presented in Appendix B. In Appendix C, we offer a table which compares our criteria to the Kucera index and the CMILS criteria for FA/CB.

We compiled the U.S. Department of State Human Rights reports for the three years before the formal negotiations began in each FTA, and then reviewed every subsequent year for 10 years. This provides some countries with as many as 11 years of data: the initial year of observation plus the following ten years. Note that we were only able to collect a full eleven year's worth of data for seven countries (ones with FTAs negotiated prior to 2003). For countries with more recent FTAs, a full 11 years worth of data is not available. For Korea, the most recent FTA partner, we have only seven years of observations.

We did the same with the ICFTU/ITUC reports, collecting data for each year in question. We read every report and used the information to code each country, for all relevant years. We then read through all Freedom of Association complaints filed with the ILO for that time period. Following Kucera, we coded them for the year he complaint was initially filed.

ICFTU Annual Surveys are available on-line from 1999. For earlier years, we received hardcopies directly from the ITUC. ICFTU began its Annual Survey in 1984, so it was not possible to get reports for the first years of our time period for Israel. State Department Human Rights reports are available on-line from 1998 to the present. Earlier reports are available electronically directly through the State Department library, or through the HeinOnline database.

We used the same guidelines as Kucera when operationalizing each criteria (see Kucera 2007 for more details). This includes using common coding definitions (such as "murder of trade unionist" includes murder of family member); as well as coding decisions. For example, when there was conflicting information within one report we took a conservative approach and did not counted that as an incident.

Unlike Kucera, we coded some items as "not applicable" (NA). For example, if a country did not allow the right to form unions, we coded "arrest of union members" as NA. Similarly, if a country does not have export processing zones we coded "restricted rights in EPZs" as NA as it is not usually possible to restrict rights that do not exist. Of course, there are cases where trade unions are not legalized and governments arrest workers who try to form unions or who go on strike. However, for the countries in our database we felt that coding items as NA allowed a more accurate measure of the FA/CB rights within a country. This is in part because we did not find any evidence of violations for the criteria in question. For example, we did not find cases of workers being murdered for trade union activity in countries where unions were not allowed.

In Kucera's index, countries such as Bahrain and Oman that had very restricted rights showed up with low total scores as they do not show up as violating laws. In our total score, we removed the items with NA from the denominator to get a more accurate measure of labor standards compliance.

Otherwise, we coded each item as a '1' if problems existed for that year, and a '0' if there were not problems. In addition, we included a '+' to each criteria to show if there were significant improvements from one year to the next, and a '-' to show if things got worse in that measure. If there was evidence that some things improved while others got worse within a criteria, we did not assign a plus or minus. This was the case in some countries where labor law reforms made have reduced some barriers to FA/CB but increased others.

We relied on a few additional sources beyond our primary sources to fill in missing information. We reviewed the NATLEX database and reports from the AFL-CIO Solidarity Center, Human Rights Watch, Congressional Research Service and newspaper articles to help fill gaps or clarify vague information from our primary sources. For example, the 2010 State Department report for Peru mentions Legislative Decree 728, which restricts the freedom of association for workers in many nontraditional export sectors, such as fishing. None of the prior State Department or ICFTU reports mention this decree. In cases like this we consulted documents available through the ILO NATLEX database, as well as a report from the AFL-CIO Solidarity Center. In the case of Peru's Decree 728 we gathered new information which allowed us to go back and recode the criteria for "Exclusion of tradeable/industrial sectors from union membership" for each year since the Decree was passed.

We note that each data source had weaknesses. For example, the NATLEX database is several years out of date for some countries so we primarily used that for historical records.⁸ The AFL-CIO Solidarity Center country reports only cover a few countries, and are not available on an annual basis.

For each country, we coded as many indicators as possible, for each year in the 11 year time frame. Then, we totaled the scores and created a composite measure by country for each year (**Total1**). Specifically, for each year a country could receive a score of 0 (no reports of problems) to 20 (reports of problems in each criteria).

To adjust for scores of "not applicable" we adjusted the Total1 score by the ratio of total to observable criteria. For example, if a country had five criteria coded as NA in a year, we multiplied Total1 by (20/15). This is provided in the **Total1-adjusted** score.

In addition to the 20 criteria, we then used the looked at whether a country had ratified the two fundamental ILO conventions relating to FA/CB: Conventions 87 and 98. We added the number of conventions not ratified at the time. A score of two indicates neither convention was ratified; a score of zero means both fundamental conventions were ratified. We coded this in a negative way (rather than a positive coding of the core conventions ratified) so that our scale was consistent with scale for the other criteria. We calculated a second total score including this information (**Total2**).⁹

Following Kucera, we then normalized the Total1-adjusted and Total2 scores to a maximum of 10 (and a minimum score of 0). We did this by taking each country score by year, dividing it by the maximum value for all countries and all years, and multiplying by ten. Normalizing allows us to standardize the scores for a common index, for easier comparison

⁸ However, we did find 2009 and 2010 information available for a handful of our countries: Australia, Canada, Chile, Costa Rica, El Salvador, Panama, Peru and Singapore. Not all of these updates were related to freedom of association but it suggests that the database is more up-to-date than it has been in the past.

⁹ We also calculated this score looking at all eight fundamental conventions, but then did not include these findings in the final report as it seems possible the index could be easily skewed by including conventions not related to FA/CB.

across countries. Although we do not believe that the index should be used to compare country versus country, using a common index makes it easier to see patterns within countries over time. Otherwise, countries that begin with much higher scores may appear to make greater changes over time than do countries that begin with low scores.

Finally, we calculated a weighted measure, giving certain criteria greater emphasis in the total index. In the first calculation, we assign a greater weight to five criteria: general prohibitions on freedom of association, right to collective bargaining, and right to strike, government barriers to FA/CB, and murder of trade unionists. These criteria are weighted at twice the value of the other 15 criteria. As some critics have noted about the Kucera index, the weights are somewhat arbitrary, as we could have assigned other weights (e.g. of 1.5 or 3). Because these weights are transparent, users can easily change the weighting scheme to develop a different index. For the weighted total, scores can now range from 0 (for a country with 0s recorded for each criteria), to 25 (for a country with all 1s for each of the 20 criteria, and double weights for 5 of those criteria). This is presented as the **Weighted1** score.

In the second calculation, we give each criterion the same base weight but we adjust the weighting based on the plus or minus coding. Each item with a positive change gets 0.5 deducted from the total score. Each item with a negative change adds 0.5 to the total. This provides a more nuanced total score for each country in each year, essentially placing value on the positive or negative trends year to year. For example, some countries have high government barriers to FA/CB, which will result in a score of 1 for a given criteria. But even within that context, conditions can worsen from one year to the next. The application of barriers may become tighter, or the number of trade union arrests may increase significantly. In these cases we score the country as a 1, but code it as a negative change, thereby giving a weighted score of 1.5 for that year. In this case, the total score can now range from -10 (for a country with all 0s and positive change in each of the 10 criteria), up to 30 (for a country with all 1s, and negative change for each criteria). This is presented as the **Weighted2** score. Again, it is possible to adjust these weights to something other than 0.5.

The measure for Weighted2 is asymmetric, which will give more spread about the bad cases but having no impact on the good cases. The second weighting is not asymmetric in principle but in practice it may show more spread among the bad cases, since if a country is already performing very well there will not be much room for improvement. On the other hand, it is possible that countries that are performing very poorly may not be coded as moving in a negative direction.

We then normalized the Weighted1 and Weighted2 scores to 10, using the same approach as discussed above. For each country, we provide four scores, all normalized: Total1-adjusted, Total2 (with ILO conventions), Weighted1 and Weighted2.

We then calculated various measures to see changes over time. Our measures of change include the following:

- 1) absolute change in index from three years before negotiations begin to the year when the U.S. president signs an act implementing the FTA (for the three FTA that have not been approved by Congress we use 2009 as the end year)
- 2) percentage change in index over the 11 year time period

The labor standards index ranges from 0 to 10, with a high number representing more problems with the labor standards criteria. For each of the calculations, a negative number represents positive change: it shows that a country moved from more problems to fewer problems with labor standards within the time period. A positive number represents increasing problems with labor standards, and therefore an overall deterioration.

We were most interested in seeing if labor standards improved during the process of negotiation. Specifically, this covers changes made in rounds of trade negotiations as well as changes made after the FTA is signed but is not yet ratified.

We caution readers that the indices created are most useful for tracking changes within a country over time, rather than comparing countries. Due to the substantial differences in labor law, industrial relations history, and political context of each country it is difficult to capture labor standards with a single number for each criterion. Therefore a score of '1' in a cell for one country may not carry the same meaning as the same score in another country.

5. Results

First we provide the Total1-adjusted (normalized) scores for each country, sorted from highest to lowest. This is not done to suggest ranking between countries but to show which countries begin with the highest (worst) measures. Countries that begin the time period with high measures have the most room for improvement. These scores are provided in Table 3a, sorted by the index for Year1.

Oman begins the highest score (worst standards), followed by Colombia. Mexico and Canada show the lowest score (best standards), but we caution again that the data for the early years of Mexico and Canada was very weak.

Table 3a: Total1-Adjusted Index for all Countries, Sorted from High to Low for Year1

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
Oman	9.80	9.80	9.80	9.80	9.80	3.72	5.57	3.72	2.48		
Colombia	7.06	7.06	7.06	7.06	7.06	7.06	7.06	6.47	7.06		
Costa Rica	7.06	4.12	4.71	6.47	7.06	5.88	7.06	5.88	5.88	5.88	
Guatemala	7.06	7.06	7.06	7.06	7.06	6.47	6.47	6.47	6.47	7.06	
Panama	7.06	8.82	8.24	5.88	5.88	8.82	10.00	10.00	8.82		
Bahrain	6.54	8.40	2.35	3.53	4.12	4.12	4.12	5.88	5.88	5.29	
Chile	6.47	5.88	4.71	7.06	7.65	6.47	7.06	7.06	4.12	4.12	8.24
E.Salvador	6.47	4.71	5.29	5.88	6.47	5.88	5.29	6.47	4.12	3.53	
Korea	6.47	7.06	7.65	7.65	7.06	7.65	6.47				
Peru	6.47	5.29	7.65	6.47	7.06	5.88	8.24	8.24	8.24	5.88	
D.Republic	5.29	4.71	4.12	4.71	5.88	4.71	5.88	4.12	2.94	4.12	
Morocco	4.71	4.71	4.71	2.35	7.06	7.06	7.65	7.06	7.65	6.47	
Honduras	4.12	2.94	2.94	2.35	5.29	3.53	5.29	5.88	4.71	5.88	
Nicaragua	4.12	3.53	4.71	4.71	5.29	3.53	5.88	4.12	4.71	4.71	
Jordan	3.53	3.53	4.12	3.53	3.53	3.53	3.53	4.12	5.29	5.88	5.29
Australia	3.10	5.57	4.33	4.95	3.72	4.33	4.95	6.19	4.95	5.57	4.95
Singapore	3.10	3.10	3.10	3.10	3.10	3.10	3.72	4.33	4.33	4.33	4.33
Mexico	2.94	2.35	5.29	7.65	5.29	6.47	4.71	4.12	5.29	4.71	4.71
Canada	1.18	1.18	1.18	1.18	1.76	2.35	1.76	2.48	3.72	3.72	3.72

We also provide Total2, Weighted1 and Weighted2 normalized scores for the same period, sorted from highest to lowest. These are presented in Tables 3b, 3c and 3d. For the most part, the patterns are similar with a few exceptions. Korea shows up worse, and Australia better, under the Total2 index. This represents the differences based on the ILO ratifications. Panama shows a worse score in both Weighted indices. El Salvador measures with worse labor standards under Weighted2, which accounts for degree of change. Bahrain shows a negative score in Year3 for the Weighted2 index. This represents the year when the country made major changes to its labor law.

Table 3b: Total2 Index for all Countries, Sorted from High to Low for Year1

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
Oman	10.00	10.00	10.00	10.00	10.00	4.45	6.15	4.45	3.33		
Bahrain	7.02	8.72	3.21	4.29	4.82	4.82	4.82	6.43	6.43	5.89	
Chile	6.96	6.43	4.29	6.43	6.96	5.89	6.43	6.43	3.75	3.75	7.50
E.Salvador	6.96	5.36	5.89	6.43	6.96	6.43	4.82	5.89	3.75	3.21	
Korea	6.96	7.50	8.04	8.04	7.50	8.04	6.96				
Colombia	6.43	6.43	6.43	6.43	6.43	6.43	6.43	5.89	6.43		
Costa Rica	6.43	3.75	4.29	5.89	6.43	5.36	6.43	5.36	5.36	5.36	
Guatemala	6.43	6.43	6.43	6.43	6.43	5.89	5.89	5.89	5.89	6.43	
Panama	6.43	8.04	7.50	5.36	5.36	8.04	9.11	9.11	8.04		
Peru	5.89	4.82	6.96	5.89	6.43	5.36	7.50	7.50	7.50	5.36	
D.Republic	4.82	4.29	3.75	4.29	5.36	4.29	5.36	3.75	2.68	3.75	
Morocco	4.82	4.82	4.82	2.68	6.96	6.96	7.50	6.96	7.50	6.43	
Honduras	3.75	2.68	2.68	2.14	4.82	3.21	4.82	5.36	4.29	5.36	
Jordan	3.75	3.75	4.29	3.75	3.75	3.75	3.75	4.29	5.36	5.89	5.36
Nicaragua	3.75	3.21	4.29	4.29	4.82	3.21	5.36	3.75	4.29	4.29	
Mexico	3.21	2.68	5.36	7.50	5.36	6.43	4.82	4.29	5.36	4.82	4.82
Singapore	3.21	3.21	3.21	3.21	3.21	3.21	3.75	4.29	4.29	4.29	4.29
Australia	2.82	5.08	3.95	4.51	3.38	3.95	4.51	5.64	4.51	5.08	4.51
Canada	1.61	1.61	1.61	1.61	2.14	2.68	2.14	2.79	3.92	3.92	3.92

Table 3c: Weighted1 Index for all Countries, Sorted from High to Low for Year1

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
Oman	10.00	10.00	10.00	10.00	10.00	3.21	5.33	3.21	2.14		
Panama	7.63	6.61	8.14	7.63	5.08	5.08	8.14	9.66	9.66		
Bahrain	7.18	8.79	2.03	3.05	3.56	3.56	3.56	5.08	5.08	4.58	
Colombia	7.12	7.12	7.12	7.12	7.12	7.12	7.12	6.10	7.12		
Costa Rica	7.12	4.07	4.58	6.10	6.61	5.59	6.61	5.59	5.59	5.59	
Guatemala	7.12	7.12	7.12	6.61	7.12	6.61	6.10	6.61	6.61	7.12	
Chile	6.10	5.59	4.58	6.61	7.63	6.10	6.61	6.61	3.56	3.56	8.14
E.Salvador	6.10	4.58	5.08	5.59	6.61	5.59	5.08	6.61	4.07	3.05	
Peru	6.10	5.08	7.12	6.10	6.61	5.59	8.14	8.14	8.14	5.59	
Korea	5.59	6.61	7.63	7.63	6.61	7.12	6.10				
D.Republic	5.08	4.58	3.56	4.07	5.59	4.58	6.10	4.07	2.54	3.56	
Morocco	4.58	4.58	4.58	4.58	2.03	6.61	6.61	7.63	6.61	7.63	
Honduras	4.07	3.05	3.05	2.03	5.08	3.56	5.08	6.10	4.58	6.10	
Jordan	3.56	3.56	4.07	3.56	3.56	3.56	3.56	4.07	5.08	5.59	5.59
Nicaragua	3.56	3.56	4.07	4.58	5.08	3.05	5.59	4.07	4.58	4.58	
Australia	3.18	5.33	4.26	4.79	3.72	4.26	5.30	6.37	5.30	5.83	4.79
Mexico	3.05	2.54	5.08	7.63	5.08	6.10	5.08	4.07	5.08	4.58	5.08
Singapore	3.05	3.05	3.05	3.05	3.05	3.05	3.56	4.07	4.07	4.07	4.07
Canada	1.02	1.02	1.02	1.02	1.53	2.03	1.53	2.14	3.21	3.72	3.72

Table 3d: Weighted2 Index for all Countries, Sorted from High to Low for Year1

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
Oman	8.13	8.13	7.15	8.13	8.13	1.62	4.62	3.08	2.30		
Panama	6.83	5.85	7.56	7.07	4.88	4.88	7.32	10.00	8.29		
E.Salvador	6.34	4.63	5.61	6.10	6.83	5.37	4.15	5.61	2.44	2.44	
Colombia	5.85	5.85	6.59	6.83	5.85	6.10	6.34	5.12	6.10		
Costa Rica	5.85	3.41	4.15	5.12	6.10	5.37	6.59	5.85	5.85	5.12	
Guatemala	5.85	3.14	3.14	3.14	3.14	2.87	2.87	2.87	2.87	3.14	
Bahrain	5.42	6.72	-1.22	2.68	3.41	3.17	2.93	4.88	4.88	4.15	
Chile	5.37	4.63	3.90	5.61	6.34	4.88	6.10	5.61	3.17	3.41	7.56
Korea	5.37	5.85	6.34	6.34	6.10	6.59	6.59				
Peru	5.12	3.66	5.85	5.37	5.85	4.88	7.07	7.80	8.29	5.37	
D.Republic	4.39	4.15	3.17	4.15	5.37	3.17	4.88	2.68	1.95	3.90	
Morocco	3.90	6.10	5.12	3.66	1.46	6.10	6.34	6.83	6.10	5.85	
Honduras	3.41	1.95	2.68	1.46	5.61	2.20	4.39	5.12	3.41	5.37	
Nicaragua	3.41	2.68	4.39	3.66	4.63	2.20	5.61	2.68	4.15	3.90	
Jordan	2.93	2.93	3.41	2.68	2.93	2.93	2.93	3.66	4.88	5.37	4.15
Australia	2.57	4.62	3.35	3.62	3.81	4.33	4.84	5.13	4.11	4.62	3.38
Mexico	2.44	1.95	4.39	6.10	4.39	5.37	3.90	3.66	4.88	4.39	3.66
Singapore	2.44	2.44	2.44	2.44	2.44	2.20	3.41	3.90	3.41	3.41	3.41
Canada	0.98	0.98	1.22	0.73	1.71	2.68	2.20	2.30	3.57	3.08	2.35

In Table 4 we present results for 19 countries, for Total1-adjusted, Total2, Weighted1 and Weighted2, all normalized to a 1 to 10 scale. We show absolute changes in scores from three years before the start of negotiations to ratification of the FTA.

**Table 4: Changes in Indices (Normalized) for 19 countries;
Three Years before Negotiation to Ratification**

	Total1 adj.	Total2	Weighted1	Weighted2
Australia	1.24	1.13	1.07	1.76
Bahrain	-2.42	-2.20	-3.62	-2.25
Canada	1.18	1.07	1.02	1.71
Chile	0.59	-0.54	0.51	0.73
Colombia	0.00	0.00	0.00	0.24
Costa Rica	-1.18	-1.07	-1.53	-0.49
Dominican Republic	-0.59	-0.54	-0.51	-1.22
El Salvador	-0.59	-0.54	-0.51	-0.98
Guatemala	-0.59	-0.54	-0.51	-2.98
Honduras	-0.59	-0.54	-0.51	-1.22
Jordan	0.00	0.00	0.00	0.00
Korea	0.00	0.00	0.51	1.22
Mexico	1.76	1.61	2.03	1.46
Morocco	7.06	6.96	2.03	1.46
Nicaragua	-0.59	-0.54	-0.51	-1.22
Oman	-4.23	-3.85	-4.67	-3.51
Panama	1.76	1.61	2.03	1.46
Peru	1.76	1.61	2.03	2.68
Singapore	0.62	0.54	0.51	0.98

Note: Negative scores show improvement in labor standards; Positive scores show deteriorating standard

Of the 19 countries, eight countries show improvement in all four measures during the time period. Oman and Bahrain show significant improvement (This is shown by larger negative scores). In addition we see improvements in all measures for all DR-CAFTA countries (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua), although these are smaller than those in Oman and Bahrain: only in a few cases do the DR-CAFTA countries show improvement of more than one point.

We then examine changes in labor standards over the eleven year time period (Table 5). Five countries show an overall improvement in labor standards over the full time period according to all four measures. These countries are Bahrain, Costa Rica, Dominican Republic, El Salvador and Oman. Peru shows improvement in three of the four measures, although the improvements are modest. On the other end, Australia, Canada, Chile, Honduras, Jordan, Mexico, Morocco, Panama and Singapore primarily show deterioration in labor standards over this period. (We note again that data on Mexico and Canada for the early years is very weak. This may account for the low scores these countries show in the beginning period since there was little information in State Department or ICFTU reports, especially for Mexico).

We point out that for some countries there is strong variation in the different measures, suggesting the sensitivity of some methods of coding data. For example, Canada shows deteriorating conditions in every measure, but does best with Total2 and Weighted2. Guatemala has strong labor standards improvement over the time period when weighting the index by strength of changes and no change under the other three measures.

There is little difference between the Total1 and Total2 scores for most countries. In a few cases there is a slight difference which simply represents a larger denominator for Total2, so a smaller percentage change. However, for some countries the Total2 index shows much better results than Total1, such as Canada and Chile. This shows that certain countries can appear to improve labor standards simply through ratification of ILO Conventions. In reality, standards may be getting worse but the international community may assume standards are better if the country ratifies core conventions. For this reason, we argue that Total1 is a better measure of actual labor standards than Total2.

When we look at the individual trends for each country that we see some complicated patterns (see Table 6). For example, three countries made significant improvements in their labor standards just before negotiations begin, but then revert back to poor conditions - sometimes ending the period worse than they began. This includes Chile, Morocco and Panama.

**Table 6: Total1-adjusted Scores by Year, Normalized
Three Years before Negotiations Begin, up to Ten Years After**

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
Australia	3.10	5.57	4.33	4.95	3.72	4.33	4.95	6.19	4.95	5.57	4.95
Bahrain	6.54	8.40	2.35	3.53	4.12	4.12	4.12	5.88	5.88	5.29	
Canada	1.18	1.18	1.18	1.18	1.76	2.35	1.76	2.48	3.72	3.72	3.72
Chile	6.47	5.88	4.71	7.06	7.65	6.47	7.06	7.06	4.12	4.12	8.24
Colombia	7.06	7.06	7.06	7.06	7.06	7.06	7.06	6.47	7.06		
Costa Rica	7.06	4.12	4.71	6.47	7.06	5.88	7.06	5.88	5.88	5.88	
D.Republic	5.29	4.71	4.12	4.71	5.88	4.71	5.88	4.12	2.94	4.12	
El Salvador	6.47	4.71	5.29	5.88	6.47	5.88	5.29	6.47	4.12	3.53	
Guatemala	7.06	7.06	7.06	7.06	7.06	6.47	6.47	6.47	6.47	7.06	
Honduras	4.12	2.94	2.94	2.35	5.29	3.53	5.29	5.88	4.71	5.88	
Jordan	3.53	3.53	4.12	3.53	3.53	3.53	3.53	4.12	5.29	5.88	5.29
Korea	6.47	7.06	7.65	7.65	7.06	7.65	6.47				
Mexico	2.94	2.35	5.29	7.65	5.29	6.47	4.71	4.12	5.29	4.71	4.71
Morocco	4.71	4.71	4.71	2.35	7.06	7.06	7.65	7.06	7.65	6.47	
Nicaragua	4.12	3.53	4.71	4.71	5.29	3.53	5.88	4.12	4.71	4.71	
Oman	9.80	9.80	9.80	9.80	9.80	3.72	5.57	3.72	2.48		
Panama	7.06	8.82	8.24	5.88	5.88	8.82	10.00	10.00	8.82		
Peru	6.47	5.29	7.65	6.47	7.06	5.88	8.24	8.24	8.24	5.88	
Singapore	3.10	3.10	3.10	3.10	3.10	3.10	3.72	4.33	4.33	4.33	4.33

Notes:

0 represents no problems with standards; 10 represent many problems

All countries begin negotiations in Year4.

Bold highlight notes the year the FTA was signed

Underline indicates the year the FTA was ratified in the U.S.

Underline are for countries that signed and ratified in the same year

Table 7a provides the same data but is sorted into three groups: those who end the full period better off, those who end worse off, and those with no change. These countries are also sorted from high to low Year1 scores within the batches. There are six countries that end the time period with improved labor conditions: Oman, Costa Rica, Bahrain, El Salvador, Peru and Dominican Republic. The largest share of countries - ten of the 19 - end the period with worse labor standards than when it began. Finally, three countries show no change in labor standards from beginning to end.

**Table 7a: Total1-adjusted Scores by Year, Normalized
Three Years before Negotiations Begin, up to Ten Years After
Sorted by Change from Year1 to Last Year Observed**

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
END PERIOD BETTER OFF											
Oman	9.80	9.80	9.80	9.80	9.80	3.72	5.57	3.72	2.48		
Costa Rica	7.06	4.12	4.71	6.47	7.06	5.88	7.06	5.88	5.88	5.88	
Bahrain	6.54	8.40	2.35	3.53	4.12	4.12	4.12	5.88	5.88	5.29	
E.Salvador	6.47	4.71	5.29	5.88	6.47	5.88	5.29	6.47	4.12	3.53	
Peru	6.47	5.29	7.65	6.47	7.06	5.88	8.24	8.24	8.24	5.88	
D.Republic	5.29	4.71	4.12	4.71	5.88	4.71	5.88	4.12	2.94	4.12	
END PERIOD WORSE OFF											
Panama	7.06	8.82	8.24	5.88	5.88	8.82	10.00	10.00	8.82		
Chile	6.47	5.88	4.71	7.06	7.65	6.47	7.06	7.06	4.12	4.12	8.24
Morocco	4.71	4.71	4.71	2.35	7.06	7.06	7.65	7.06	7.65	6.47	
Honduras	4.12	2.94	2.94	2.35	5.29	3.53	5.29	5.88	4.71	5.88	
Nicaragua	4.12	3.53	4.71	4.71	5.29	3.53	5.88	4.12	4.71	4.71	
Jordan	3.53	3.53	4.12	3.53	3.53	3.53	3.53	4.12	5.29	5.88	5.29
Australia	3.10	5.57	4.33	4.95	3.72	4.33	4.95	6.19	4.95	5.57	4.95
Singapore	3.10	3.10	3.10	3.10	3.10	3.10	3.72	4.33	4.33	4.33	4.33
Mexico	2.94	2.35	5.29	7.65	5.29	6.47	4.71	4.12	5.29	4.71	4.71
Canada	1.18	1.18	1.18	1.18	1.76	2.35	1.76	2.48	3.72	3.72	3.72
NO CHANGE											
Colombia	7.06	7.06	7.06	7.06	7.06	7.06	7.06	6.47	7.06		
Guatemala	7.06	7.06	7.06	7.06	7.06	6.47	6.47	6.47	6.47	7.06	
Korea	6.47	7.06	7.65	7.65	7.06	7.65	6.47				

The six countries that end the period better off than when they began also have relatively higher scores in Year1 than do the countries that had worsening standards. Specifically, the six countries had an average index of 6.94 in Year1. For the 10 countries that ended the period with worse standards, the average for Year1 was 4.03. This suggests that it may be easier to improve labor standards when you begin from a much worse starting point.

At the same time, countries that begin with low numbers (better standards) appear to worsen over time. If we look back at Table 3a, we can see that every country that started in Year1 with a score below 5 ended the time with a higher score (worse standards). This includes Morocco, Honduras, Nicaragua, Jordan, Australia, Singapore, Mexico and Canada. This pattern is even more pronounced under the Weighted1 and Weighted2 indices (seen in Tables 3a and 3b), with the exception of the Dominican Republic Weighted2 index.

We provide the same categorization for Weighted1 and Weighted2, in Tables 7b and 7c. Again, there is not much difference between these indices and Total1-adjusted but there are some minor differences. Weighted1, which counts some criteria as double, shows the same six countries as ending off better when then they started. The same ten countries end worse than when they started, but we now see Korea as ending worse than it started rather than “no change.” In Table 7c we see the same six countries show as ending better than when they started, but now all remaining 13 countries show as ending worse than they started. No countries finish with “no change.”

**Table 7b: Weighted1 Scores by Year, Normalized
Three Years before Negotiations Begin, up to Ten Years After
Sorted by Change from Year1 to Last Year Observed**

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
END PERIOD BETTER OFF											
Oman	10.00	10.00	10.00	10.00	10.00	3.21	5.33	3.21	2.14		
Bahrain	7.18	8.79	2.03	3.05	3.56	3.56	3.56	5.08	5.08	4.58	
Costa Rica	7.12	4.07	4.58	6.10	6.61	5.59	6.61	5.59	5.59	5.59	
E.Salvador	6.10	4.58	5.08	5.59	6.61	5.59	5.08	6.61	4.07	3.05	
Peru	6.10	5.08	7.12	6.10	6.61	5.59	8.14	8.14	8.14	5.59	
D.Republic	5.08	4.58	3.56	4.07	5.59	4.58	6.10	4.07	2.54	3.56	
END PERIOD WORSE OFF											
Panama	7.63	6.61	8.14	7.63	5.08	5.08	8.14	9.66	9.66		
Chile	6.10	5.59	4.58	6.61	7.63	6.10	6.61	6.61	3.56	3.56	8.14
Korea	5.59	6.61	7.63	7.63	6.61	7.12	6.10				
Morocco	4.58	4.58	4.58	4.58	2.03	6.61	6.61	7.63	6.61	7.63	
Honduras	4.07	3.05	3.05	2.03	5.08	3.56	5.08	6.10	4.58	6.10	
Jordan	3.56	3.56	4.07	3.56	3.56	3.56	3.56	4.07	5.08	5.59	5.59
Nicaragua	3.56	3.56	4.07	4.58	5.08	3.05	5.59	4.07	4.58	4.58	
Australia	3.18	5.33	4.26	4.79	3.72	4.26	5.30	6.37	5.30	5.83	4.79
Mexico	3.05	2.54	5.08	7.63	5.08	6.10	5.08	4.07	5.08	4.58	5.08
Singapore	3.05	3.05	3.05	3.05	3.05	3.05	3.56	4.07	4.07	4.07	4.07
Canada	1.02	1.02	1.02	1.02	1.53	2.03	1.53	2.14	3.21	3.72	3.72
NO CHANGE											
Colombia	7.12	7.12	7.12	7.12	7.12	7.12	7.12	6.10	7.12		
Guatemala	7.12	7.12	7.12	6.61	7.12	6.61	6.10	6.61	6.61	7.12	

**Table 7c: Weighted2 Scores by Year, Normalized
Three Years before Negotiations Begin, up to Ten Years After
Sorted by Change from Year1 to Last Year Observed**

	Year1	Year2	Year3	Year4	Year5	Year6	Year7	Year8	Year9	Year10	Year11
END PERIOD BETTER OFF											
Oman	8.13	8.13	7.15	8.13	8.13	1.62	4.62	3.08	2.30		
E.Salvador	6.34	4.63	5.61	6.10	6.83	5.37	4.15	5.61	2.44	2.44	
Costa Rica	5.85	3.41	4.15	5.12	6.10	5.37	6.59	5.85	5.85	5.12	
Guatemala	5.85	3.14	3.14	3.14	3.14	2.87	2.87	2.87	2.87	3.14	
Bahrain	5.42	6.72	-1.22	2.68	3.41	3.17	2.93	4.88	4.88	4.15	
D.Republic	4.39	4.15	3.17	4.15	5.37	3.17	4.88	2.68	1.95	3.90	
END PERIOD WORSE OFF											
Panama	6.83	5.85	7.56	7.07	4.88	4.88	7.32	10.00	8.29		
Colombia	5.85	5.85	6.59	6.83	5.85	6.10	6.34	5.12	6.10		
Chile	5.37	4.63	3.90	5.61	6.34	4.88	6.10	5.61	3.17	3.41	7.56
Korea	5.37	5.85	6.34	6.34	6.10	6.59	6.59				
Peru	5.12	3.66	5.85	5.37	5.85	4.88	7.07	7.80	8.29	5.37	
Morocco	3.90	6.10	5.12	3.66	1.46	6.10	6.34	6.83	6.10	5.85	
Honduras	3.41	1.95	2.68	1.46	5.61	2.20	4.39	5.12	3.41	5.37	
Nicaragua	3.41	2.68	4.39	3.66	4.63	2.20	5.61	2.68	4.15	3.90	
Jordan	2.93	2.93	3.41	2.68	2.93	2.93	2.93	3.66	4.88	5.37	4.15
Australia	2.57	4.62	3.35	3.62	3.81	4.33	4.84	5.13	4.11	4.62	3.38
Mexico	2.44	1.95	4.39	6.10	4.39	5.37	3.90	3.66	4.88	4.39	3.66
Singapore	2.44	2.44	2.44	2.44	2.44	2.20	3.41	3.90	3.41	3.41	3.41
Canada	0.98	0.98	1.22	0.73	1.71	2.68	2.20	2.30	3.57	3.08	2.35

Colombia is one of the countries that show no change from beginning to end. It is an interesting case, as it starts the period as one of the worst countries (Table 3a), suggesting poor labor standards. In Tables 4, 5 and 6 we see little change - mostly zeros. This suggests that there has been little change in Colombia over the time period - or that any positive changes were counter-balanced by negative changes. In fact, a closer look at the country shows that the Weighted2 index show more variation over the time period, reflecting in part the increases and decreases in violence and murder from year to year. This is an example of why we need qualitative analysis in addition to numeric scores to fully understand the variations in each country.

We argue that of the four indices, the two that best reflect changes in labor standards are Total1-adjusted and Weighted2. The Total2 index includes changes due to ILO Convention ratifications, and this seems to put too much emphasis on the actions of countries rather than the deeds. Weighted1 is based on Total1, but weights certain criteria more than others. This may be a useful approach but is a bit too subjective. Weighted2 is also based on Total1 but attempts to account for positive or negative change from year to year, which is something that was recommended for the NAS/ILAB matrix. This allows us to measure changes in certain criteria that otherwise would not show change. For example, El Salvador is consistently weak on labor law enforcement but they did increase the number of inspectors and engage in some efforts to

improve enforcement. This improvement was not enough to go from a '1' to a '0' on enforcement, but they do show up as making some positive change under the Weighted2 measure.

We plotted the trends in the Total1-adjusted index on graphs to see changes over time. We divided the countries into three groups: those negotiated before 2002; those negotiated under the 2002 TPA; and those currently pending. Figures 1, 2 and 3 show that some countries witness a drop in the FA/CB index (suggesting improvement) about mid-way through the observation period. This is usually around the time that the FTA is being signed or ratified. However, there is great variation in trends and no one pattern seems evident.

Figure 1: Trends in FA/CB Index, FTAs Negotiated before 2002 (Total1-adjusted index)

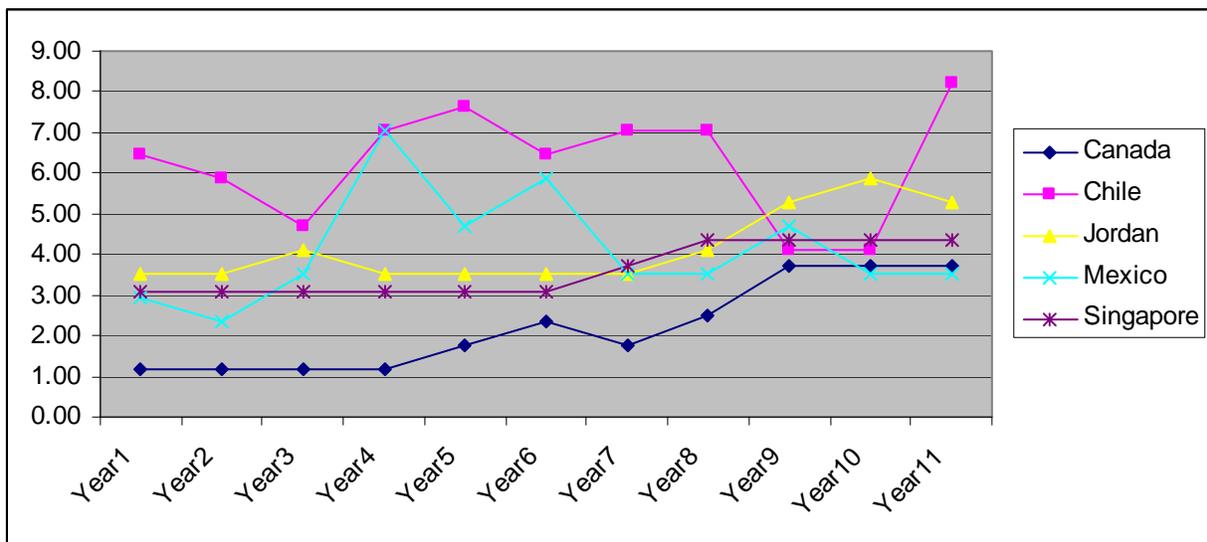


Figure 2: Trends in FA/CB Index, FTAs Negotiated under the 2002 TPA, Currently in Force (Total1-adjusted index)

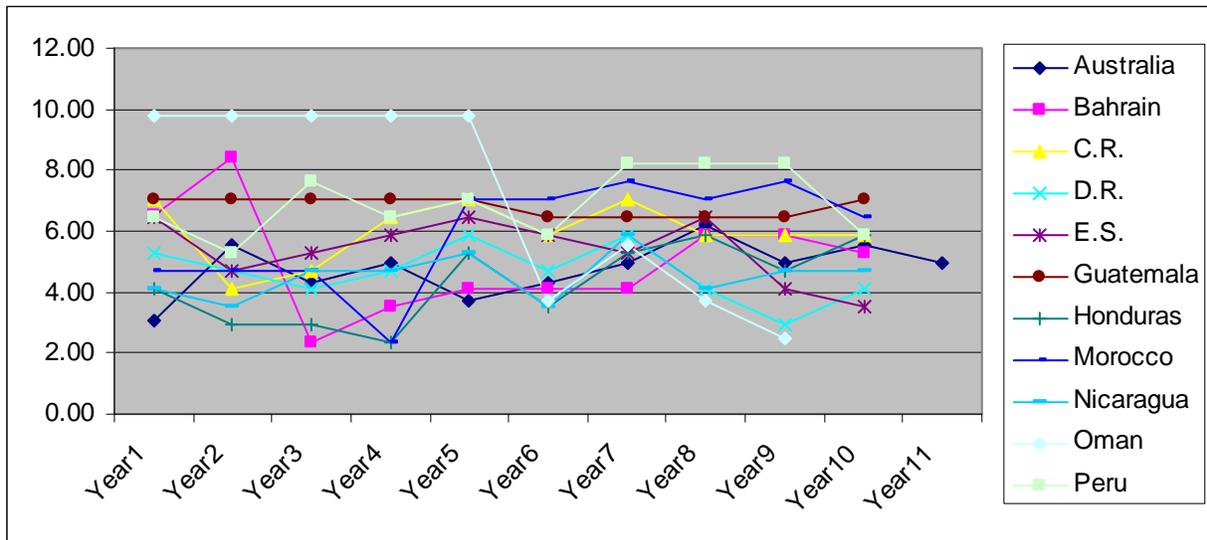
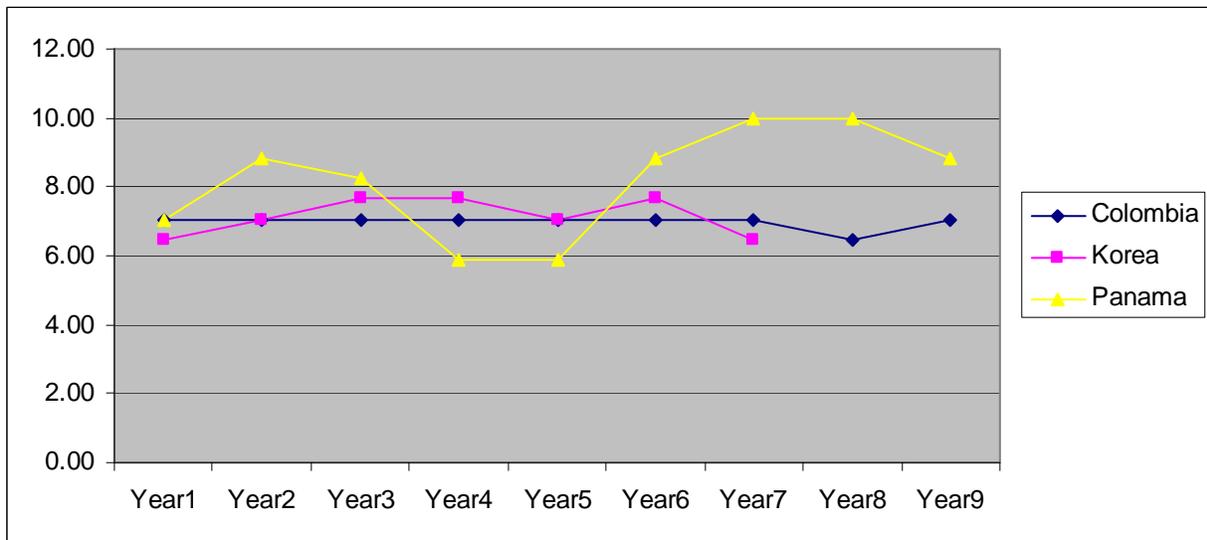


Figure 3: Trends in FA/CB Index, FTAs Currently Signed but not Ratified, (Total1-adjusted index)



The fluctuations in the indices, along with documentary evidence from annual reports, suggests the following possible pattern. Countries with very few labor rights may enact a series of reforms, legalizing trade unions and collective bargaining. This would show up as a dramatic improvement in standards. As workers begin to exercise their rights, governments and/or employers may put up some resistance, thereby reducing access to those rights. Furthermore, courts may make rulings, and governments may issue reforms or regulations that further restrict those rights.

Let us examine this hypothesis further. There are 14 countries that begin in Year1 with a Total1-adjusted score of 4 or higher, suggesting weak or poor labor standards. Three of these countries do not have a ratified FTA, and one was only ratified in 2009 (Oman). The FTA for Costa Rica was ratified in 2005 but didn't go into force until 2009. Without these five countries there are nine countries with ratified FTAs that begin the period with relatively poor standards. Of these nine, Bahrain, Honduras and Morocco reflect the pattern suggested above: strong improvement in labor standards from Year 1 until negotiations start, then a worsening of standards by the end of the 11 year observation period. Chile shows strong improvement until just before negotiations begin, then gets worse, then better, then much worse in the most recent year of observation.

With only 17 FTAs ratified, and with some only in force very recently, it is difficult to determine clear patterns. Further research is needed - perhaps by expanding the database to include FTAs between the EU and other countries. In the meantime, we offer case studies to better understand the fluctuations in indices within countries. Case studies can provide the qualitative context that allows us to understand the trends observed in FA/CB rights.

6. Case Studies

After constructing the index, we examined countries for which there was a significant improvement in labor standards during the time period of FTA negotiations. As mentioned above, the countries that appear to have made the most significant improvements from three years before negotiations until the FTA was first signed are Bahrain and Oman. We also provide case studies for two additional countries that appeared to make significant changes in their standards around the time of FTA negotiation but then reverted to lower standards: Chile and Morocco. Finally, we provide an examination of a DR-CAFTA country, as all showed improvements in labor standards in Table 4. We look at El Salvador, as it is one of the countries that shows improvement and was the first country to implement DR-CAFTA.

For each case, we provide initial background on the FTA and labor conditions in the country. We then review concerns raised by the ILO, the Labor Advisory Committee to the USTR, or other bodies about labor laws and standards in the country. The case studies then describe the trade negotiation process as it relates to labor standards reforms.

In addition to the sources used in the index, we consulted Labor Advisory Committee reports submitted to the USTR, as well as any related documents (such as responses from the USTR to the LAC report). We reviewed the labor laws and labor standards in each country,

based on documents available through the ILO NATLEX, as well as recommendations and observations from the Committee of Experts at the ILO, based on documents available through ILOLEX. We obtained documents related to the FTAs and rounds of negotiations from the SICE foreign trade information website, run by the Organization of American States (<http://www.sice.oas.org/>). Finally, we conducted searches in Lexis, Westlaw, and other electronic databases for media reports, journal articles, and congressional hearing transcripts related to the countries.

Timelines of major events in each country are presented in Appendix D.

6.1 Bahrain

The U.S. and Bahrain signed a Trade and Investment Framework Agreement in 2002. This set the stage to negotiate an FTA, which they formally announce in 2003. The negotiations were launched in January 2004, with a first round of negotiations in Bahrain. There is a second round in DC in March 2004 and an interim technical round in London. The negotiations conclude by May of the same year. The agreement is signed later in the year, ratified in 2005, and comes into force August 1, 2006 (see Appendix D for timelines). According to the USTR, the agreement would eliminate tariffs on 81 products and that the U.S. exports to Bahrain, and Bahrain would dramatically open its services markets to the U.S. Bahrain officials noted that they hoped the agreement would both open up opportunities for exports to the US, as well as attract U.S. investment that would create jobs (such as in the financial and tourism sectors in Bahrain) (Xinhua 2004).

Bahrain has trade agreements with countries other than the US. It negotiated an FTA with Thailand in 2002, and as a member of the Gulf Cooperation Council (GCC), entered a Cooperation Agreement with the European Union as early as 1988. This set the stage to negotiate an FTA, but those discussions have been off and on for some time. In 1999 the GCC decided to create a customs union which would come into force in January 2003. The GCC and EU resumed negotiations for an FTA in March 2002 with a broader mandate, and required a sustainability impact assessment of the proposed trade agreement.

6.1.1 Labor Standards in Bahrain

The State Department calls Bahrain a “hereditary emirate.” The Human Rights report issued in 2001 states, “The Al-Khalifa extended family has ruled Bahrain since the late 18th century and dominates all facets of its society and government.” The country adopted its first Constitution in 1973, which allowed for the election of a National Assembly. However, the Constitution was then mostly suspended in 1975.

The Constitution provided workers the freedom to join unions and associations, but when the Constitution was suspended the situation for workers rights was not clear. According to the ICFTU, “The partially suspended 1973 Constitution, recognizes the right to organize, but the 1981 Ministerial Orders make no reference to this right and only authorises the establishment of Joint Consultative Councils” (ICFTU 2001). By the year 2000, there were no independent unions

in the country. Instead, workers joined the Joint Labor-Management Committees. Employer and government intervention was strong in these committees.

In February 2002, the country passed a new Constitution. This reaffirmed the King as the head of the country, but established a legislative body and provided for elections for some positions. In September of the same year, the King passed a new labor law that gives workers the freedom to join independent trade unions and engage in collective bargaining. While foreign workers had been denied rights in the past, the new labor law allows them to join unions as well.

The labor law allows workers the right to strike but with restrictions. According to the State Department reports, the law was vague in some areas, but did require that three-quarters of members vote to approve a strike, and that the union and employer went to arbitration first before a strike was allowed. The King has since issued a series of reforms to the labor law, including Ministerial Orders issued in September 2002, August and September 2005; a Circular in February 2003; and a revision of the law in 2006. The 2006 revisions restrict the rights of workers in a number of sectors from striking, declaring them “essential services.” This included security services, civil defense, airports, ports, hospitals, transport, telecommunications, electricity and water services.

In May 2009 the government reformed the law governing foreign workers so that guestworkers would not be directly tied to their employer. Under the old sponsorship system employers could withhold workers passports and greatly restrict their freedom to change jobs or leave the country. The amendments changed the system so that the guestworkers would be tied to the government rather than the employer. However, Human Rights Watch (2010) reports that by 2010 it is not clear if the amendment has been implemented.

6.1.2 Trade Negotiations

Bahrain made significant improvements in its labor laws in 2002, and through some of the government reforms and regulations since then. The Constitution re-establishing rights in the country was passed in February 2002, before the country signed a Trade and Investment Framework Agreement (TIFA) with the U.S. a few months later. It may be possible that the U.S. pressured Bahrain to make changes to its law before it could sign onto the TIFA but we could find no evidence of this.

The labor law was changed in September 2002, just before the U.S. and Bahrain held their first TIFA Council meeting. After the Council meeting, USTR Zoellick notes the progress the country has made in terms of political rights and labor rights (USTR 2002). By the time the countries announce their intent to negotiate an FTA in May 2003, Bahrain had established that soldiers and maritime workers were not allowed to join unions. The ILO allows for countries to exempt military personnel from freedom of association, but not maritime workers. Furthermore, the laws are unclear about the rights of public sector workers to unionize. While the King issued a Circular in 2003 establishing that workers in government ministries may join unions, the country was still considering a law in 2004 that would clearly establish the right of all public sector workers to join independent trade unions.

By 2004, workers had organized unions but also begun to encounter resistance from government agencies and employers. The State Department and ICFTU reports both note cases of possible retaliation by employers for union activity in March 2004, two months before the U.S. and Bahrain conclude FTA negotiations.

The free trade agreement, negotiated under the 2002 Trade Act, mandates that the Labor Advisory Committee comment on the proposed FTA. The final text of the FTA was made available to the public in May 2004, and the LAC submitted its review in July. This report summarized concerns raised by the ILO and ICFTU, including:

- Restrictions on political activity by trade unions. This violates Article 3 of ILO Convention 87
- The country does not allow political parties, and does not allow for citizens to replace their leader, further restricting the freedom of unions to engage in political activity
- Labor law only allows one trade union federation, and one union per workplace, restricting workers' freedom of association
- Many restrictions on the right to strike
- Poor treatment of foreign workers, with some cases of indentured servitude, violating ILO Convention 29
- Domestic workers are not covered by labor law
- There is no minimum wage in Bahrain, and foreign workers in particular are subject to under-payment and non-payment of wages

It appeared that the USTR did not agree with the concerns raised, and the Bahrain made no changes to its standards in this period. The FTA was signed in the fall of 2004.

The next year the General Federation of Bahrain Trade Unions submitted Case 2433, alleging that public sector workers do not have full freedom of association because they cannot join the union of their choice. Furthermore, they allege that the government has refused to certify six public sector unions. The ILO Committee found in favor of the Trade Unions, and asked the government to assure that the labor law is amended to allow full freedom of association for public sector workers.

The FTA still had to be approved by the Senate and House. In October 2005, representatives in Congress call on Bahrain to improve its labor law. For example, Representative Cardin (D-MD), "cited a ban on workers in the same company forming more than one union, vague laws regarding penalties for anti-union discrimination, the ability of companies to withhold foreign workers' salaries for up to three months and the "onerous" restriction on unions over strikes" (*Gulf Daily News* 2005). In a November 3rd House Ways and Means Committee meeting key Democrats withheld their support for the FTA, citing concerns over labor rights (Norton 2005).

According to a letter from House Democrats to the USTR, the Minister of Finance of Bahrain promised on November 10, 2005, to push forward legislation to amend the country's labor laws (*Inside US Trade* March 31, 2006). The Minister promised to introduce two amendments to Parliament within a week, and an additional four by the end of the year, and to

press for expedited action. In a December 6th letter, the Bahrain government confirmed that it had submitted the legislation to Parliament. On the basis of these promises, the House ratified the FTA the next day, and the Senate followed a week later (*Inside US Trade* March 31, 2006).

In another letter dated February 15, 2006, Bahrain again wrote that it had submitted the legislation to Parliament, but then did not confirm whether the changes had been made. By March 29th, 2006, the Democrats wrote to the USTR expressing their concern over the matter. (*Inside US Trade* March 31, 2006). The USTR replied on April 4, assuring that the laws had been submitted to Parliament. In addition, Bahrain noted that one reform, dealing with workers fired for trade union activity, had already passed both Houses of the National Assembly (*Inside US Trade*, April 7, 2006).¹⁰ President Bush signed an implementation proclamation for the FTA in July and it came into force August 1, 2006.

In December 2006 the government passed more reforms, but this time it issued new regulations banning strikes in a large number of sectors (*Inside US Trade*, December 6, 2006). Unionists were fired in several cases, after taking part in strikes or other union activity. When Indian migrant workers struck over poor conditions in their construction jobs in 2008, the police arrested them and threatened to deport them.

In Case 2552, filed in 2007, the International Confederation of Arab Trade Unions asserts that the 2002 labor law, along with labor law revisions passed in 2006, unduly restrict the right to strike by declaring a broad range of sectors as “essential services.” Under these provisions, workers were prevented from striking in the areas of security services, civil defense, airports, ports, hospitals, medical centers and pharmacies, all means of transport of persons or goods, telecommunications, electricity and water services, bakeries, educational institutions, and oil and gas installations. The ILO found that the laws in Bahrain were in fact, overly restrictive, and called on the country to amend the law so that only actual essential services were covered. The country has not responded as of 2010.

6.1.3 Conclusion

Bahrain has made substantial improvements in its labor laws since the turn of the 21st century. In 2002 the country revised its laws to allow workers the freedom of join trade unions and engage in collective bargaining. In 2006 it made reforms allowing multiple trade union federations, and requiring that workers fired for union activity be rehired immediately. It appears that the process of engaging in negotiations for trade agreements with the U.S. led Bahrain to improve its labor standards.

However, the country did not make all the changes it promised to make. Bahrain assured the USTR that it would comply with ILO standards, but after the FTA was implemented the country extended a ban on strikes that went far beyond ILO conventions. Furthermore, since the FTA came into force labor repression has increased in the country, leading to backsliding labor

¹⁰ The ICFTU Annual Report states: “Since October 2006, a decree on employment in the private sector prohibits dismissal for trade union activities. Employers are also obliged to reinstate the sacked employees and to provide compensation if it is proved that they were discriminated against because of their union work.”

standards. The largest drop in our labor standards index is from 2001 to 2002, when the index goes from 8.4 to 2.4 (Total1-adjusted, normalized). Labor laws were changed after the countries signed a TIFA, but this pre-dates FTA negotiations. From 2002, the index slowly rises throughout the decade to 5.9 in 2008, then drops slightly to 5.3 in 2009.

One of the major areas of concern raised by the LAC and Congress was the treatment of foreign workers. Bahrain assured the USTR that it would amend its laws and practice so as to address these concerns. Yet Human Rights Watch reported that human rights conditions in general in Bahrain have been deteriorating over the past few years, particularly for migrant workers (2009). Although the government formally ended the sponsorship system for foreign workers in 2009, according to the Migrant Worker Protection Society, the practice of withholding passports is widespread (Human Rights Watch November 4, 2009). Human Rights Watch (2009) reported on cases where workers had passports and wages held by employers - some as much as four months in backpay. Despite amendments to the laws, the practice appears to be continuing as of 2010 (Hamada 2010). Furthermore, according to an article by a Parliament member, foreign workers must give three-months notice to change employment in Bahrain, making it difficult for many workers to do so (Ali 2009). Also in 2010, the Bahrain Labour Ministry decided that it would not apply a minimum wage for foreign workers in the private sector, despite the concerns raised by the LAC regarding minimum wage rates for foreign workers (Trade Arabia 2010).

6.2 Oman

The U.S. and Oman signed a Trade and Investment Framework Agreement in 2004. In November of that year, the USTR notified the Senate and House of the plans to begin negotiations for a free trade agreement under the 2002 Trade Act. In the letter, Zoellick noted that the USTR's office intended to push Oman to make further improvements to its labor laws, including better enforcement of existing laws (Zoellick 2004). The countries concluded their negotiations in October 2005, and signed the FTA January 2006. The House and Senate approved implementing language in the summer of 2006, but the Senate had to vote again to approve the House version of the bill in September 2006. The FTA came into force January 1, 2009.

6.2.1 Labor Standards in Oman

Oman is a monarchy, with a Sultan who acts as head of state and head of government. The country enacted universal suffrage for everyone over age 21 in 2003, but voters can only elect representatives to an advisory council. The government joined the ILO in 1994 and promised to reform its labor law, but did not do so until April 26, 2003. The new law made it legal for workers to join representative committees, but it did not yet provide for freedom of association. While it removed a prohibition on strikes, it did not explicitly provide the right to strike.

On July 21, 2005, the country ratified two ILO core conventions, raising their total to four out of eight of the core conventions signed. This included Convention 105 (Abolition of

Forced Labor) and 138 (Minimum Age). The country had already ratified Convention 29 (Forced labor) in 1998 and Convention 182 (Worst Forms of Child Labor) in 2001.

In 2006 the government issued a series of labor law reforms that greatly expanded worker rights. Workers now had the right to freedom of association and to join independent trade unions and not just worker committees. They were allowed to engage in collective bargaining and strikes. The law allowed more than one union at a firm, and it removed a number of barriers to union membership and functioning. For example, prior regulations stipulated that union leaders be fluent in Arabic, but this was dropped. New laws in 2007 set out clear procedures for collective bargaining.

6.2.2 Trade Negotiations

The initial FTA negotiations went fairly quickly. After the USTR announced intentions to negotiate, the countries held two formal rounds of negotiations. During this period Oman made no changes to its labor law, but did ratify two ILO Conventions. The text of the agreement went to the public for comment, and the Labor Advisory Committee submitted a report calling for the rejection of the FTA.

The Labor Advisory Committee of the USTR issued its report on the US-Oman FTA in November 2005. This was before the major reforms of 2006, and therefore the committee noted the extreme weakness of labor standards and rights in the country. The report noted the lack of FA/CB rights, as well as the restricted labor rights for foreign workers. It also highlighted the weak language regarding labor standards enforcement within the FTA. The committee highlighted concerns regarding labor language in prior FTAs, and argued that mechanisms for dispute resolution over labor issues should be as strong as mechanisms over commercial dispute issues in the agreement.

Despite these objections, the U.S. and Oman signed the agreement in early 2006. After that, the agreement went to Congress for ratification. Some news sources stated that the U.S. administration was hoping to have the FTA ratified and in place within a few months. However, as Congress debated approval of the agreement, some Representatives expressed concern about the lack of labor rights in Oman.¹¹

Oman responded by promising to amend the country's labor laws. In a series of letters in March the Minister of Labor promised the USTR that they would improve the labor law by October 31, 2006. According to the *Washington Post*, Democrats in Congress were concerned that the promised reforms did not go far enough, and appeared "to address fully only one of the 10 areas where Oman's labor laws do not comply with basic international standards" (Reuters 2006). Cardin noted that Oman only seemed to commit to adopting ILO Conventions, but not necessarily to other a stronger enforcement provision in the FTA (*Inside US Trade* March 31, 2006). Democrats were concerned that they would have to vote on the agreement before seeing the actual laws changed. Furthermore, they felt they only had vague assurances from the Oman government, and little information from the USTR office, on specific changes would be made

¹¹ Congress raised other objections to the FTA, most notably provisions around port security.

and whether these changes were already submitted to Parliament in Oman (*Inside US Trade* March 31, 2006). Representative Sander Levin noted his concern, ““We're supposed to move ahead on statements as to what a government will do, and those are vague.” (*Inside US Trade* March 31, 2006).

In addition to the LAC report issued in 2005, labor activists raised concerns about the conditions for foreign workers in Oman. The National Labor Committee (NLC) released a report in May 2006 that examined labor conditions in the Jordan garment industry. The authors estimated that foreign workers were employed in the trade zones who had their passports confiscated and were working under forced labor conditions. The report raised concerns that the Oman FTA could create similar conditions there, as the Jordanian workers were producing for many U.S. based companies. After the release of the NLC report, the Senate Finance Committee passed two amendments to the legislation that would implement the FTA. These amendments declared that products made in Oman “with slave labor (including under sweatshop conditions so egregious as to be tantamount to slave labor) or with the benefit of human trafficking,” would not be covered by the FTA (Bolle 2006; Crittenden 2006). The amendment, however, was only advisory, and the USTR responded with reasons why they did not think it was necessary or feasible to include in the final language. Meanwhile the Oman Minister of Labor made promises of more revisions to the country’s labor laws.

Despite no actual labor reforms occurring, the Senate approved the agreement on June 29, 2006. The following week, the Oman government announced Royal Decree 74 on July 8, 2006, providing workers with the right to join trade unions and engage in collective bargaining. In addition, the country outlawed forced labor (Bolle 2006).

Democrats on the House Ways and Means Committee noted several concerns with the reforms, including:

- a. Only partially addresses protection from anti-union discrimination; insufficient protections for workers fired for union activity
 - b. Does not address employers who hold onto passports from foreign workers, thereby forcing them to stay in a job
 - c. Does not provide clear procedures for strikes
 - d. Does not go far enough to eliminate government interference in union activity
- (*Inside US Trade*, July 14)

The Sultanate noted that specific details on regulations would need to be developed by the Ministry of Manpower, which would happen by the fall. The House of Representatives went forward and approved the agreement on July 20 by a vote of 221-205. Those opposed to the FTA argued that the reforms were not strong enough, and that the FTA still did not include strong enough language on enforcement.¹²

¹² Of course, some Representatives voted against the Agreement for reasons other than labor issues.

The Senate had to approve the language again in September. The measure was approved 62-32 although some Democrats took the opportunity to critique the agreement. According to CQ Weekly:

Max Baucus of Montana, the ranking Democrat on the Senate Finance Committee, criticized the administration's handling of trade negotiations — particularly its refusal to adopt a provision dealing with slave labor approved by the panel in an advisory markup — even as he declared support for the Oman accord (McGrane 2006).

With the Senate's approval, the act was ratified later that year. In late 2006 and early 2007, Oman issued a series of laws and regulations which met some of the promises: it provided workers freedom of association and right to collective bargaining, the right to strike, and increased protections for discrimination for union activities.

In this same time period, the 2002 Trade Promotion Authority was set to expire July 1, 2007. The Bush administration has been pushing for approval of not only the Oman FTA, but agreements with Panama and Peru. Some observers noted that the close vote on Oman "signaled trouble ahead" for Bush's plans for TPA renewal (Van Dongen and Higa 2006). On May 10, 2007, the USTR adopted the Bipartisan Agreement on Trade, setting up procedures to govern trade negotiations after the TPA expired. The new agreement included stronger language in a number of areas, including labor rights. In particular, the bipartisan agreement required that parties to a trade agreement adopt and enforce "the core internationally-recognized labor rights, as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work." The new protocol stated that all labor obligations "are subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other Chapters of the Agreement" (USTR 2007).

In late 2008, USTR representative Susan Schwab travelled to Oman to discuss final changes before the FTA came into force. The U.S. had outstanding concerns related to intellectual property provisions, rules of origin, access to the telecommunications market, and labor language. Oman made a number of changes, particularly around intellectual property rights and opening up the telecommunications market. On November 23, they passed Royal Decree 128 on forced labor and human trafficking. However, they took no further steps to strengthen their laws protecting union members from discrimination. Furthermore, the USTR did not push to include stronger enforcement language for labor rights in the agreement. The AFL-CIO stated that the Oman agreement violated the spirit of the agreement reached in Congress around Trade Promotion Authority renewal in May 2007 which developed a new protocol for trade agreements.

6.2.3 Conclusion

Like Bahrain, Oman made significant improvements to its labor standards since the turn of the current century. In 2006 the labor standards index for the country fell from 9.8 to 3.7, right in the midst of the Congressional voting to approve the FTA. There appears to be strong evidence that Oman changed its labor laws due to pressure from the U.S. However, the country did not address all concerns in its reforms, and in fact passed

The index for Oman increased in 2007, but then fell again, ending at 2.5 in 2009. Although critics were unhappy that the U.S.-Oman FTA did not include stronger labor standards and enforcement language, the Oman case appears to provide the strongest example of a country making changes to its labor standards in relation to concerns raised during FTA negotiations. As the agreement was only ratified in 2007, and in force since 2009, it is early to assess the trends in labor standards post- FTA negotiations.

Even with the improvements there were incidents of violations of workers rights, particularly among foreign workers. For example, when guestworkers from India and Nepal went on strike against poor pay and working conditions in 2007, police used force to break the strike. Twelve workers were held for three weeks without charges and then deported (ICFTU Annual Report 2008; U.S. State Department Human Rights Report 2007). Some government control of trade union activities remained, as did some barriers to exercising certain rights (such as restrictions on strikes).

6.3 Chile

The U.S.-Chile Joint Commission on Trade and Investment was created in 1998 to develop a framework for negotiations on an FTA between the two nations. The U.S. approved its Trade Promotion Authority in 2000, renewing “fast track,” and Chile and the U.S. began negotiating a US-Chile FTA on December 6, 2000. The countries signed an agreement on June 6, 2003 and the FTA went into effect January 1, 2004. Chile is one of the most active countries in the world in pursuing trade agreements. As of early 2010, Chile has signed onto 56 free trade agreements.

6.3.1 Labor Standards in Chile

After a military coup in 1973, the country was put under an intensive market liberalization program. From 1973 to 1979 strikes were illegal, and workers were not allowed to engage in collective bargaining. In 1979 and in the early 1980s a series of reforms were passed and became known as the Labor Plan, and were then solidified in 1987 as the Labor Code. These reforms related to laws about indexing wages to inflation and regulations on union activity. For the most part, the reforms were designed to make the labor law system more flexible for employers – for example, union membership became voluntary, and employers were allowed to negotiate with individual employees rather than the union. The Constitution established collective bargaining as a system based at the firm level, and the Labor Plan intensified that framework by giving employers even more power at the firm level. Employers were allowed to replace workers during a strike, and allowed to dismiss workers without just cause.

With the move to democratic rule in 1988-1990, pressure grew for Chile to grant labor rights to workers. However, by this time, union density was only about 10 percent and labor markets were highly flexible (for employers), with a high rate of turnover (Haagh 2002). Furthermore, the neoliberal economic policy and ideology had come to permeate much of the political system making it difficult for advocates to push for stronger union rights. While the new government undertook a series of labor law reforms in 1990-91, the changes were minor (Haagh

2002). A new package of reforms was comprised in 1994 but not ratified by Congress throughout the 1990s.

In 1999 and 2000 Chile ratified a number of ILO conventions, and by 2000 it had ratified all eight of the fundamental conventions.

In September 2001, alongside trade negotiations, major labor reforms were finally passed after a contentious vote (Economist Intelligence Unit (EIU) 2001). The package, which went into effect November 1, 2001 included some measures that were not popular with labor - for example, it reduced the mandatory severance pay that employers were required to provide when laying off workers (Pulido 2001). However, it included a long list of improvements for workers and unions, including:

- “Significantly improved workers’ rights to organize” (GAO 2009)
- Reduced official workweek from 48 to 45 hours per week
- Stronger overtime pay regulations
- Improved safety standards
- Reduces requirements to form unions
- Outlaws employers from firing union leaders
- Outlaws certain employer anti-union activities
- Improves the power of labor inspectors
- Increases the fines that the Ministry of Labor can impose on employers

In their 2002 country report meeting, the ILO wrote of Chile and ILO Convention 87: “the National Congress has amended the Labour Code to provide improved application of the Convention. Specifically, through the amendments made to the Labour Code, the scope of application of the right to organize has broadened, the number of persons required in order to establish trade unions has decreased, certain conditions for trade union leadership eligibility have been abolished and the power of the authorities to interfere in trade union organizations has been reduced” (ILO 2002). The ILO has found other points of concern, however, and in a 2007 Committee Report encouraged the government to pursue a set of labor reforms on strike language in current law.

6.3.2 Trade Negotiations

As early as 1992, then-president George H.W. Bush noted that the U.S. would begin negotiations with Chile for a Free Trade Agreement. Chile was interested in becoming a fourth partner to the NAFTA agreement, but in the end was not part of that agreement (Veloza 2006). Still, Chile pursued bilateral agreements such as the FTAs it signed with Canada in 1996 and Mexico in 1998. The country also negotiated and signed a Chile-Mercosur and a Chile-Central America FTA around the same time.

The US-Chile Joint Commission on Trade and Investment was created in 1998 to create a framework for negotiations. At the time, President Clinton did not have “fast track” authority, meaning that the President would have less freedom in negotiating a trade agreement. Chile and the U.S. began negotiating a US-Chile FTA on December 6, 2000.

Environmental and labor standards were already a concern regarding the potential FTA, given that these had been hot-button issues in the NAFTA debate and in related discussions concerning Chile's inclusion. The Chile-Canada agreement signed in 1996 included a labor side agreement similar to that included in NAFTA, but Chile still had very restricted labor rights. In fact, in June 2001 the Trade Union International of Workers of the Energy, Metal, Chemistry, Oil and Related Industries of Chile files a complaint with the ILO Committee on Freedom of Association regarding a company hiring replacement workers during a strike (ILO Freedom of Association Case 2141, Report 327). The complaint also notes that a worker was killed, and another seriously injured, when a truck driver drove through the picket line.

Despite concerns about labor law, the U.S. and Chile quickly began almost monthly negotiations to move the process forward with frequent rounds of negotiations in 2001. As mentioned above, in September 2001 Chile passed labor reform. This took place in the midst of FTA negotiations but there is no evidence that it was a direct result of pressure from the US.

In 2002 the ILO Committee on Freedom of Association issued a judgment in the replacement worker case and concluded that the Chilean labor law was currently at odds with ILO conventions in allowing replacement workers for strikes not deemed essential. The Committee called on the Chilean government to amend its Labor Code regarding this issue, echoing earlier similar requests from the Committee of Experts. The Committee also issued an interim report on Case 2172, filed by the Trade Union of Pilots and Technicians of (the airline) Lan Chile, alleging wide ranging anti-union tactics by the airline in late 2001. The Committee notes that while it has not yet heard from the airline, available information from the government appears to back-up the claims.

During this period, President George W. Bush was working to renew "fast track" authority. President Clinton was not able to win a renewal of fast track throughout his two terms, after it had expired in 1994. Democrats made it clear that they were concerned about labor standards in relation to trade agreements. However, on December 6, the House passed the Trade Promotion Authority Act of 2001 by a vote of 215-214. This vote was seen as a victory for President Bush, and possibly a signal that a FTA can pass without strong labor rights. The Senate passed a version of trade authority in May 2002, and a Conference Committee developed a compromise bill in July 2002. That bill, H.R. 3009: The Trade Act of 2002, was passed in another close vote a few days later.

A few days after that, on July 31, 2002, Chile formalized changes to its Labor Code, consolidating various elements into five chapters. This included sections on individual contracts of employment; worker protection; trade unions; collective bargaining; and an employment tribunal (NATLEX *Diario Oficial*, 2003-01-16, núm. 37460, págs. 5-45).

Meanwhile, FTA negotiations progressed. There were five more rounds of negotiations in 2002, ending with the 14th round. On December 11, 2002 the countries announce the conclusion of FTA negotiations. On January 29, 2003, the U.S. formally declares its intent to enter into a FTA with Chile.

The Labor Advisory Committee (along with other committees) submits its report on the potential impact of the proposed FTA. In a report dated February 28, the LAC concluded that “the labor provisions of the Chile and Singapore FTAs will not protect the core rights of workers in any of the countries involved, and represent a big step backwards from the Jordan FTA and our unilateral trade preference programs.” The LAC argued that the FTA should include language requiring countries to meet ILO core labor standards, and to include real mechanisms for enforcing those laws. In particular, the dispute settlement mechanism in the FTA applied only to commercial violations and not labor violations.

The LAC also noted that the FTA would eliminate Chile from Generalized System of Protections (GSP) status with the U.S. That would mean that the GSP petition process would no longer be available as a tool to enforce labor rights in Chile. The AFL-CIO and other unions, working with Chilean NGOs and labor rights groups, filed a GSP petition against Chile in 1986 because of worker rights violations at the time. After a long review, the U.S. suspended Chile from the list of GSP beneficiaries in 1988. The benefits were not reinstated until Pinochet’s rule was ended and democratic rule restored in the country (Compa and Vogt 2001). Under the FTA, a country found to be not effectively enforcing its own labor laws will at worst suffer a fine which will effectively go back into its own budget. The LAC argued that this was not an adequate penalty for non-compliance, and that it would be a significant step back from the withdrawal of trade benefits which occurred under the GSP. Furthermore, because the FTA only required countries to enforce their own domestic labor laws, the LAC report noted that countries could have an incentive to eliminate a law altogether if they had trouble enforcing it.

The USTR responded to the LAC report but did not agree with its conclusions. The FTA was signed on June 6, 2003. Under the guidelines of the Trade Act of 2002, the U.S. Department of Labor submitted a report on labor rights in Chile (done in consultation with the Department of State and the United States Trade Representative) to Congress on July 8, 2003. That report acknowledged that Chile had made significant improvements in labor rights and noted that in 2001 the country established a new system to process labor disputes (Department of Labor 2003).

On July 16, 2003, John Sweeney, President of the AFL-CIO called on Congress to reject the proposed FTA (along with the proposed agreement with Singapore). Sweeney notes the weak framework of the 2002 Trade Promotion Authority, and argues that it doesn’t provide adequate measures to protect workers rights (Sweeney 2003). Despite these objections, the House of Representatives passes the agreement on July 24, 2003, and by the Senate on July 31, 2003. The FTA became law in the U.S. on September 3, 2003. The Chilean Congress then approved the agreement and the FTA entered into force on January 1, 2004.

6.2.3 Conclusion

Since the FTA came into effect, Chile has made some additional progress on its labor standards. For example, it passed protections against sexual harassment in 2005, and protections for subcontracted workers in 2006.

At the same time, labor conditions appear to have become worse in other areas.¹³ There have been 19 cases filed with the ILO Freedom of Association Committee since the FTA went into effect. These allege a range of anti-union activity, including firings, arrests, use of police force during demonstrations, and illegal bans on strikes. Large numbers of subcontracted workers in several sectors demonstrated for greater rights. In 2007, a forestry worker was killed after police shot him three times during a strike (ITUC Chile report 2008). That same year a national trade union demonstration was “brutally suppressed by security forces using smoke bombs, tear gas, batons and water canons. Over 260 demonstrators were arrested” (ITUC 2008).

In the midst of this, the country’s new subcontracting law went into effect 2007. The law states that employers can only hire subcontracted workers under special circumstances or for “extraordinary events” (Rosado Marzon 2010). Otherwise, subcontracted workers would be considered regular employees. The law gave the Department of Labor (DT) the power to enforce the law.

The DT found that the state-owned copper mine, Codelco, had illegally hired 5,000 workers under subcontracting when they should have been regular employees. The DT ordered Codelco to absorb the subcontracted workers into the permanent workforce and pay a fine. Codelco challenged the ruling, and the Supreme Court eventually ruled in their favor, stating that the DT had no jurisdiction over employers. The Court ruled that the DT had violated the employers’ Constitutional rights, including “the right of persons to be judged by a court..., the right to freely make labor contracts, the right to right to engage in legal economic activities and the right to private property” (Rosado Marzon).

According to law professor Cesar Rosado-Marzon, at this point, the law appears to be unenforceable. This means that the growing workforce of subcontracted workers do not enjoy the same rights as regular employees, leaving a large segment of workers out of the labor law reforms of 2001/2002.

In 2009 the Governmental Accounting Office released a study which concluded that Chile has made some progress in reforming the law and improving the inspection process leading up to and since the 2004 FTA. However, there are still a number of problems. Chilean labor officials noted that they have not received the funding or support from the U.S. agencies that they had hoped for and need. In 2003, ILAB provided a \$1.4 million grant to Chile for training labor inspectors and working to improve the labor law courts. However, it seems that the project did not meet its goals as it was “overly ambitious, given its resources.” In addition, funding for the project was cut in 2005 due to budget cuts for ILAB. Chile remains eager to receive technical assistance from the US.

Our index of labor standards reflects the complex pattern discussed here. Chile went from 6.5 in 1997 to 4.7 in 1999, then jumped up to 7.1 in 2000. The index stayed high until it dropped again to 4.1 in 2005 and 2006 but then doubles to 8.2 in 2007. The variations in the index reflect some changes to laws but also changes in employer and government interference with labor

¹³ As mentioned earlier, this is possibly an endogeneity problem. If unions get stronger they may be more active in asserting their rights, and in filing more grievances or charges.

union activity. In terms of trade negotiations, the first periods when the index dropped significantly took place just before the U.S. and Chile entered formal negotiations in 2000 (this was also when Chile ratified ILO Conventions 87 and 98), but then standards worsened once negotiations started. The second large drop in the index took place two years after the FTA was ratified.

6.4 Morocco

The U.S. and Morocco began negotiations in early 2003 and the agreement was finalized in early 2004 after eight rounds of negotiations (EIU 2008: 15). The agreement came into effect on January 1st, 2006 (EIU 2008: 15). Immediately, 95 percent of trade between the two nations became duty free. (Ways and Means Committee, House of Representatives, July 7 2004) The Moroccan government has strongly supported the FTA, believing that the agreement will stimulate demand for Morocco's exports, including textiles and food, while potentially transferring U.S. technology and knowledge in sectors such as financial services, telecoms and information technology (EIU 2008: 50).

6.4.1 Labor Standards in Morocco

According to the Economist (2008), Morocco is a constitutional monarchy in which the king possesses far more power than parliament. Labor rights are firmly enshrined in Moroccan law. Article 9 of Morocco's constitution guarantees freedom of association (Morocco: The Constitution, 2002). The Moroccan Constitution also guarantees citizens the right to freely choose work, equality in gaining employment, and the right to strike (DOL 2004a: 4).

In July 2003, the Moroccan Parliament approved a new labor code which took effect June 8, 2004 (DOL 2004a: 4). The labor code had been in development for many years, and in 2000 a general strike was only halted by a government agreement to revise the draft version of the code and raise wages (EIU 2003: 5). Among other things, the final version of the labor code formalized the right to trade union representation, (EIU 2007: 30) changed regulations concerning lay-offs and reinforced the right to negotiation (Trade Unions of the World 2005: 224). The law does not cover workers in private homes or many informal businesses such as corner shops and garages (Trade Unions of the World 2005: 224). Both employers and unions have criticized the new labor code, with employers claiming it doesn't afford them sufficient flexibility and unions claiming it removes workers' rights (EIU 2008: 31). Additional legislation regarding workers' right to strike is still awaited (EIU 2008: 31). Although constitutionally guaranteed, the right to strike is currently legally restricted. (DOL 2004a).

Morocco has not ratified Convention No. 87 (Freedom of Association and Protection of the Right to Organize) (ILO 2009: 4). Portions of the convention are found in the new labor code, but there are limitations on trade union rights for certain types of workers (ILO 2006: 6). Civil servants can be punished for taking part in “coordinated work stoppages or collective acts of indiscipline” (DOL 2004a: 10).

Government monitoring of work conditions, and thus the government's ability to enforce labor law, has consistently suffered from problems over the eleven year span which this report

covers. In April 2008, approximately 55 people died in a mattress factory fire in Casablanca after “inspectors had identified safety violations that weren't corrected.” (GAO 2009) The State Department’s Human Rights Reports have noted numerous shortcomings in enforcement of labor law in Morocco over the years before and after the FTA’s signing. A 2008 State Department reports notes that “Labor inspectors attempted to monitor working conditions and investigate accidents, but they were too few in number and lacked sufficient resources.”

6.4.2 Trade Negotiations

Negotiations between the two countries on a free trade agreement began in early 2003 (EIU 2008: 15). In July 2003, the Moroccan Parliament approved the new labor code which took effect June 8, 2004 (DOL 2004a: 4). The labor code had been in development for roughly two decades prior to its approval. In a Hearing before the House Ways and Means committee on July 7, U.S. ambassador to Morocco, Peter Allgeier implied that the FTA negotiations put pressure on the Moroccan government to pass the stalled reforms: “What I would particularly like to emphasize in this regard is that this process has spurred significant labor law reform in Morocco, which entered into force a month ago and prior to this process had been stymied for several years” (Ways and Means Committee, House of Representatives, July 7, 2004).¹⁴

The agreement was finalized in early 2004 (EIU 2008: 15). The Labor Advisory Committee (LAC) report on the U.S.-Morocco FTA was fairly scathing. The report criticizes recent labor law reforms in Morocco as inadequate and the labor provisions in the FTA as weak (LAC 2004). Among the specific shortcomings of Moroccan labor law targeted in the report was the failure of the then-new labor code to adequately protect the right of workers to strike (LAC 2004: 4-5). The report also notes that the rules of origin allow for duty free benefits even if only 35 percent of the value of the product is created in the FTA agreement countries. The LAC argued that this could result in corporations doing most of the manufacturing in other nations before bringing the goods into Morocco for export to the U.S., which would mean fewer jobs for both Moroccan and U.S. workers (LAC 2004: 8).

The LAC noted that “the agreement’s enforcement procedures completely exclude obligations for governments to meet international standards on workers’ rights.” (LAC 2004: 1) In fact, “only one single labor rights obligation – the obligation for a government to enforce its own labor laws – is actually enforceable through dispute settlement.” (LAC 2004: 4) The consequences of a violation of the labor section of the FTA are mild compared to the consequences of violating the commercial section. Among other issues, fines are not paid to the injured party, but essentially go back to the government of the offending nation. (LAC 2004: 6)

Several members of the House expressed concern that ILO standards were not integrated into the agreement. Congressmen Levin and Becerra in particular critiqued the inclusion of strong intellectual property language while labor language was so weak, arguing that it was made little sense to infringe upon a nation's sovereignty in one way but not the other. It is important to note that the agreement does reference the *ILO Declaration on Fundamental Principles and*

¹⁴ Congressman Crane noted that Morocco’s minimum wage was set to increase by ten percent as of July 1, 2004, and that Morocco “did this to make itself a more attractive FTA partner” (Congressional Record July 22, 2004).

Rights at Work and its Follow up, however, it only obliges the parties to “strive” to meet the standards therein. Other congressmen praised the agreement's labor section and Morocco’s recent passage of labor reforms. Congressman Houghton argued that the enforcement section would encourage Morocco to carry out its newly reformed labor law (Ways and Means Committee, House of Representatives, July 7 2004).

Despite the concerns of some members of Congress, the Senate and House approved implementing language and the bill in July 2004. The president signed the bill into law on August 3, 2004. Morocco then took some time before ratifying the bill so it did not go into force until January 1st, 2006 (EIU 2008: 15).

The final text of the agreement contained a side letter with language for the creation of a variety of subcommittees to help Morocco and the U.S. carry out their agreement. Although several opponents raised concerns about the minimum wage in Morocco, the final U.S.-Moroccan FTA contains clear language stating that “nothing in this Agreement shall be construed to impose obligations on either Party with regard to establishing the level of minimum wages” (U.S.-Morocco Free Trade Agreement: 16-4).

6.4.3 Conclusion

Morocco is cited as an example of a country that has made positive changes in labor standards due to FTA negotiations with the U.S. (e.g. Karesh 2008). Our labor standards index suggests that this is partially true. The index dropped from 4.7 in 2002 to 2.4 in 2003, in the midst of FTA negotiations. The drop reflected a change to labor laws which had been languishing for many years, and which formalized the right to join trade unions. However in the next year, the government put forward a law on the right to strike which contained many restrictions. According to the ICFTU Annual Survey, “certain articles make it impossible to exercise the right to strike and violate several international conventions ratified by Morocco.” At the same time, intervention in trade union activity by government and employers increased. The labor standards index went up to 7.1 in 2004 and remained in that range for the rest of the decade.

A 2009 GAO report noted that “U.S. and Moroccan officials told us the subcommittee on labor affairs had never been convened. Meetings are not required, and Labor has not sought to convene one. Moroccan Ministry of Labor officials with whom we met were not aware that such a body could be formed.” (23) On May 18th of 2010, the Subcommittee on Labor Affairs was finally convened.

Two Freedom of Association cases were filed with the ILO related to events since the new labor code took effect in 2004. Case number 2455, filed by Aircraft Engineers International (AEI), on behalf of its affiliate, the Moroccan Union of Aviation Technicians (STAM) alleges that that the Royal Air Maroc (RAM) company refuses to recognize and negotiate with STAM and that the company engaged in anti-union harassment against the officials and members of STAM. By the time the ILO issued its findings the union and company appeared to have resolved their differences, but the ILO recommended to the government that it ensures that RAM

recognizes STAM and “it negotiates with STAM's representatives, being the most representative trade union, who must not be subjected to anti-union discrimination or harassment” (ILO 2006).

In case number 2461, the Moroccan Labour Union (UMT) alleges that the local authorities of the town of Bouznika used force to intervene following a protest strike held by a local trade union in 2005. The union was protesting the suspension of its general secretary, who had been suspended without prior notice and in violation of existing procedure shortly after the union had been established. The police intervention resulted in several people being injured and the arrest of nine union officials. The ILO found that the arrest of union members for engaging in union activity is a breach of freedom of association, and that the workers were engaged in a legitimate strike. It called on the Moroccan government to investigate the matter further, and to ensure that the government did not use a section of the penal code regarding “obstructing the freedom to work” in a way that conflicted with freedom of association.

6.5 El Salvador

The US and El Salvador signed a free trade agreement as part of the Central American Free Trade Agreement (CAFTA). After NAFTA was signed in 1994, the US began pursuing a Free Trade Area of the Americas (FTAA) agreement with the intent of bringing most of the countries in Americas into one agreement. It became clear that there was considerable opposition to the FTAA by the late 1990s and early 2000s. In the fall of 2001, leaders from five countries (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) met with the US to discuss a smaller scale agreement. In January 2002 President Bush announced plans to pursue a Central American trade agreement. After TPA was secured that summer, the US formally announced its intent to begin negotiations. CAFTA negotiations took place in nine rounds during 2003. The US reached an agreement with four of the countries by December 2003, but needed one more round of negotiations with Costa Rica January 19-25, 2004. The US completed negotiations with the Dominican Republic and initially signed the DR-CAFTA in 2004. The Senate and House passed the DR-CAFTA in 2005.

The Act then needed approval in the partner countries. El Salvador approved the measure in 2004 and the FTA went into force with that country in 2006.¹⁵

6.5.1 Labor Standards in El Salvador

El Salvador became an independent republic in 1838. Its current Constitution was passed in 1983 and amended in 2003. The country erupted into a bloody Civil War from 1980 to 1992 but has been relatively stable since then. The labor laws were established in the Constitution, as well as a Labor Code enacted in 1972 and amended in 1994. The 1994 revisions were seen by some analysts as the most extensive in Latin America (Anner 2010). These provide workers freedom of association, and the right collective bargaining and striking, but excludes public sector workers on the grounds that they provide essential services.

¹⁵ Costa Rica put the measure to a public referendum in October 2007. There was strong opposition to CAFTA but the measure passed and the Costa Rica piece of CAFTA-DR went into force later than in the other countries.

At the time that CAFTA negotiations began in 2003, the ICFTU noted that despite some legal protections, labor standards were weak in El Salvador and the country had not yet ratified ILO Conventions 87 and 98 claiming that doing so would violate their Constitution which prohibits public sector workers from unionizing. Furthermore, the laws required prior authorization to form a union (in violation of Convention 87), and high thresholds for striking. Workers illegally fired for union activity do not have any rights for reinstatement. Workers must be citizens of the country in order to hold union office. There are several complaints filed to the ILO Freedom of Association committee per year. There were 22 cases filed from 2000 to 2008; many of these deal with anti-union discrimination.

Observers note that labor rights in export processing zones are particularly weak. In 2001, the National Labor Committee made public a study conducted by the country's Ministry of Labor documenting abuses in EPZs. The report, which had been suppressed by the government, documented wide-spread anti-union behaviors and noted that none of the 229 factories in the four largest EPZs had a union contract.

In 2006, El Salvador ratified four ILO Conventions, including core Conventions 87 and 98. The European Union adopted a Generalized System of Preferences Plus (GSP+) policy in 2005 and required any country that wanted access to ratify 23 international standards including the eight Core ILO Conventions. El Salvador was granted temporary access to the program but that was set to expire at the end of December 2006 if it did not comply with the Conventions. In August 2006 the El Salvador Congress amended its Constitution to extend freedom of association to "employees of autonomous public institutions, officials and civil servants and municipal employees" (NATLEX, *Diario Oficial*, 2006-09-01, núm. 162, págs. 4-5). They also amend the language in the Constitution, extending the right to strike but also giving employers the right to lockout employees (*Diario Oficial*, 2006-09-01, núm. 162, pág. 5). Congress then ratified the ILO Conventions and therefore guaranteeing continued participation in the EU GSP+ program.

Despite this change, the new reforms were found to be unconstitutional by a Constitutional Court in 2007. In addition, the 2006 reforms introduced further restrictions on public sector workers by widening the kinds of workers prohibiting from unionizing. That same year, the country passed an Anti-Terrorism law which was used against trade unionists organizing a demonstration.

A new government was elected in 2009 and took office June 1. They passed reforms extending freedom of association to some public sector employees. In the first months they also established a trade union education center within the Labor Ministry. The goal was to provide education on labor rights.

Over the past decade much attention has focused on the issue of child labor in El Salvador. The government announced in 2000 that it would focus on reducing child labor, and the US Department of Labor has assisted that effort. In July 2010 Department of Labor Secretary Hilda Solis announced that the U.S. would give \$10 million towards a new ILO child labor program to be administered in cooperation with the government of El Salvador.

6.5.2 Trade Negotiations

El Salvador played a leading role in the CAFTA negotiations. President Francisco Guillermo Flores Perez of the ARENA party was elected in 1999 and made it a goal to strengthen relations with the U.S. Flores implemented economic reforms and pushed an export-oriented strategy. Despite some challenges to their power, the ARENA party won the 2004 presidency again, with the election of Elias Antonio Saca, who continued with the CAFTA negotiations and pushed further trade agreements with other countries.

The CAFTA negotiations were announced in 2002 despite much attention given to the poor working conditions in Central American factories. A 2001 New York Times story profiled the anti-sweatshop movement and efforts to organize workers in El Salvador, noting some success at a factory producing for Gap, but acknowledging the low wages and long overtime hours in most factories (Kaufman and Gonzalez 2001). The National Labor Committee applied consistent pressure on factories in El Salvador through the media and in workplaces. In November 2002 the union UNITE published a report highlighting continued abuses in Gap factories around the world, including El Salvador. Around the same time, various NGO representatives testified before the Trade Policy Committee expressing concerns about the upcoming CAFTA negotiations relating to a number of issues including labor rights.

The US began formal CAFTA negotiations in January 2003, and continued throughout the year. The Central American countries also pursued negotiations with Canada at the same time. According to news sources, the US lagged on introducing labor language into the negotiations. On April 10, Senator Max Baucus called for a report on labor rights in CAFTA “at the earliest point possible during the negotiations but no later than when President Bush notifies Congress of his intent to enter into a trade pact with the five Central American countries” (*Inside US Trade* April 11, 2003). Also in April, 63 NGOs submitted a formal letter to the USTR regarding those concerns (*Inside US Trade* May 16, 2003a).

The U.S. finally tabled a proposal on labor language at the fourth round of negotiations in mid-May. Nine House Democrats submitted a letter to the USTR expressing dissatisfaction with the proposal, citing that it was not strong enough as it did not require countries to comply with the ILO Core Conventions and did not include enforcement mechanisms, among other things (*Inside US Trade* May 16, 2003b). On May 19, Representative Sander Levin said that the CAFTA would not likely pass without better labor language. The ILO released a report on labor laws in the CAFTA countries and found a number of areas in El Salvador law that were not in compliance with ILO standards.

The USTR defended its approach to labor standards in June. At a June 10, 2003 House Committee on Ways and Means hearing, USTR Representative Peter Allgeier said U.S. negotiators are aware that labor markets in Central America are very different from those in Chile and Singapore and have made clear to their Central American counterparts that labor will be one of the issues addressed during the CAFTA negotiations. He said that they would work with the Central American countries to get their labor standards and labor rights enforcement up to a certain level before they were considered acceptable. Allgeier also claimed that El Salvador

(and Guatemala) had made recent efforts to improve their labor laws. The U.S. committed \$15.2 million over three years (Fiscal Years 2003, 2004 and 2005) towards the Cumple y Gana system to improve enforcement. This project would pursue a variety of strategies to work with governments, employers and workers on capacity building, monitoring systems and training.¹⁶

Later that summer Congress voted on the Chile and Singapore FTAs. Some key Democrats voted in favor of the FTAs but noted that they would not likely vote in favor of CAFTA without revisions on labor language. In July Robert Zoellick stated that the USTR's concern was not with the labor laws on the books in Central America, but the enforcement of laws. To that end, the U.S. strategy was to work with the Central American governments and international organizations on better implementation (*Inside US Trade*, July 11, 2003).

In November 2003 members of Congress wrote to the USTR office to outline their objections to CAFTA's labor language. In December 2003, just before the final round of negotiations, Human Rights Watch released a report detailing labor abuses in factories in the country. The report went into detail on various violations in a number of industries. It argued that the country not only failed to pass laws meeting international standards, but also did a poor job enforcing the laws it does have, in part due to the lack of labor inspectors (only 37 labor inspectors for workforce of approximately 2.6 million). Shortly afterwards, a group of Senators issued a letter to the USTR calling for better standards in CAFTA.

At a February 25, 2004 meeting Assistant U.S. Trade Representative for the Americas Regina Vargo indicated that the U.S. would not make changes to the labor standards in CAFTA. Instead, she reiterated that the U.S. was not concerned about the labor laws in the countries but their enforcement (*Inside US Trade*, February 27, 2004).

Peter Allgeier underscored the administration's commitment to passing CAFTA in a May 17, 2005 House Committee on Ways and Means hearing: "the rejection of DR-CAFTA would send a terrible signal worldwide about U.S. leadership in opening markets and using trade as a mechanism for lifting people out of poverty. It would be even more disastrous with respect to this hemisphere."

Throughout this period, the government of El Salvador continued to push hard for the passage of DR-CAFTA and insisted its labor laws were adequate. Vice minister of foreign affairs Roberto Interiano said that the country was in compliance with ILO standards and that the media reports of labor law violations were likely "isolated cases" (Hau 2004). At other times President Vaca noted that it wasn't a priority to improve labor law as long as there were not jobs in the country. Not all in El Salvador agreed. According to a *New York Times* story Antonio Aguilar Martinez, employed by an independent government watchdog agency, said the labor standards must be stronger as "CAFTA protects the fundamental rights of businesses but not the labor rights of the citizens" (Becker 2004).

Still, El Salvador made small reforms. In February 2004 the El Salvador Congress added a paragraph to its Labor Code which prohibits employers requiring pregnancy tests from women

¹⁶ Additional funding was approved later for subsequent years.

applying for jobs (*Diario Oficial, 2004-03-17, núm. 53, pág. 68*). They also passed laws increasing penalties for employers found guilty of stealing worker contributions for social security or union dues. In April 2004 El Salvador established a tripartite commission aimed at reforming the Labor Law so that it could be in compliance with ILO Conventions. This commission was also charged with examining ways to increase employment in the country.

In July 2004 the Vice Ministers of Trade and Labor in each of the DR-CAFTA countries met under the auspices of the Inter-American Development Bank (IDB), to develop recommendations on improving labor laws and enforcement in the country. They released a report with their findings in April 2005, noted that the IDB would provide some financial support for meeting these goals. For the most part, the recommendations for addressing concerns with labor laws included holding public forums and increasing education. However, the report does call for some legal reforms as well as implementing structural changes, such as establishing a permanent capacity-building program for judges, lawyers and government officials.

According to Mark Anner (2008), the U.S. government also pressured El Salvador to increase the share of its total budget spent on labor law enforcement. The country complied but only made a small increase, and the Ministry of Labor still has a total budget that amounts to less than one quarter of one percent of the federal budget. The amount in 2008, even after being increased, was less than the budget share in 2002. However, the country did hire 69 more labor inspectors, more than doubling their staff (Anner 2010).

On November 5, 2004 an organizer with the Teamsters union was murdered in El Salvador. Gilberto Soto was working to build a network of port workers throughout Central America when he was murdered. The police charged his mother-in-law but she was later acquitted, and the government did not pursue a further investigation. Furthermore, according to some reports the country's Human Rights Ombudsman was hindered in her own investigation into the murder and received death threats. This incident highlighted some of the reasons for concern about the situation for trade unionists in the country. Labor unions and NGOs continued to raise objections to DR-CAFTA. Still, El Salvador made no moves to change its laws.

On April 4, 2005, four members of the Committee on Ways and Means submitted a letter to Peter Allgeier stating their continued concerns with CAFTA labor language. They noted that their letter from November 2003 received no response at all, either from the office of the USTR or from the governments of the countries in question. CAFTA proponents continued to argue that the problem in Central America wasn't the laws themselves but only the enforcement of laws. In the letter, the Congressmen listed specific areas in which the countries fell below international standards. For El Salvador they listed the weak remedies for workers fired for union activity (a violation of Convention 87), and high barriers to form an industrial union (also a violation of Convention 87) (Cardin, Rangel, Becerra and Levin 2005).

Two months later the U.S. Senate voted 54-45 to approve CAFTA-DR. The House of Representatives approved the measure by a very close vote (217-215 with two abstentions), amid some controversy over the way voting was conducted and the pressure placed on some members to change their votes. The Senate took a second vote, as required by law, and approved the measure again on July 28. President Bush signed implementing legislation on August 2, 2005.

Despite an intensive campaign by advocates and some members of Congress the labor language was not changed and El Salvador made no major reforms to its labor laws during this period.

6.5.3 Conclusion

Our indices show that El Salvador ended the 10 year observation period better than when it started. One might conclude that CAFTA trade negotiations or subsequent trade with the U.S. helped the country to improve labor standards. However, a closer look reveals more complex patterns.

In the year 2000, El Salvador has a relatively high score of 6.47 for Total1-Normalized. This drops to 4.71 in 2001, primarily due to a drop in violence against unionists. However, the score climbs over the next three years, from 2002 to 2004, coinciding with the period of CAFTA negotiations. During this period unionists experience increasing repression from the government and employers. The index then is relatively stable (it decreases and increases somewhat) over the next few years as CAFTA is approved and comes into force.

It is not until 2008 and 2009 that we see another significant change, as the index drops twice, ending at 3.53 in 2009. What accounts for these latter drops? In 2008 there are no reported cases of arrests, murders, violence against unionists. Employers do not interfere with strikes, but this may be a result of less strike activity in the time of the global economic recession. In 2009, a new government comes into office and passes new reforms that extend freedom of association to some public sector workers.

Our index only goes through 2009 but reports suggest that conditions for workers and labor leaders are still serious. On January 15, 2010, the general secretary of a Municipal Employees union (SITRAMSA) was murdered. He had been receiving death threats but continued his union activities, and was killed on his way to a union meeting (ITUC 2010). This suggests that the latter drop in the index for El Salvador may only be temporary. It might also be that scores were higher in years when there is more media attention on El Salvador. In 2003 through 2005 the country was under intense scrutiny as CAFTA negotiations took place. Cases of violence against unionists were well-documented. It may be possible that the scores for El Salvador dropped in later years partially because there was less media attention highlighting abuses.

The variations in the El Salvador index also suggest that improvements had less to do with U.S. government pressure during CAFTA negotiations, or CAFTA implementation. The country made its most significant reforms in 2006 while negotiating with the EU for coverage under their GSP+ program, and again in 2009 when a new government more friendly to labor and less friendly to the U.S. government came into power. The U.S. has put considerable resources into the *Cumple y Gana* project to improve labor law enforcement in Central America. More research is needed to document the impact of these programs in El Salvador.¹⁷ However,

¹⁷ Reports from the U.S. State Department and the ITUC, as well as from the ILO, Washington Office on Latin America, International Labor Rights Forum all note continued problems with labor law enforcement in the country since CAFTA was passed. A 2008 USAID report summarizes outcomes from capacity building and training

Professor Mark Anner makes the case that enforcement of existing laws is not adequate. In countries that have a history of serious labor union repression and violence, additional laws may be needed to help workers overcome their fear of organizing in order for workers to truly experience freedom of association (Anner 2008).

6.6 Case Study Conclusion

Case studies allow us to see the changes in country indices within a context. Based only on the indices it appears that Oman and Bahrain made great progress in their labor standards. The case study approach allows us to see that the progress is in part because they began at such a poor level. Morocco and Chile have been held up as examples of how FTA negotiations can help push countries to adopt labor legislation. While it is true that both countries did improve their labor laws within the approximate time range of FTA negotiations, the case studies show that the situation in each country was more complex than just a clear improvement in labor standards. Finally, the El Salvador case highlights the challenges of evaluating some of the DR-CAFTA countries, where the legal standards were relatively stronger but where implementation is weak and trade union repression is high.

We argue that further research is needed to develop case study material on each of the 20 countries with FTAs. This is the best way to understand changes in the countries and how those intersect with FTA negotiations and implementation.

7. Policy Implications

The data presented above has several policy implications. First, we underscore the conclusions other analysts have reached, which is that trying to quantify labor standards is challenging and subjective. It is very difficult to get consistent, reliable, objective annual information for a wide range of countries. Many concepts associated with labor standards are not easily measured and scholars must simplify nuanced circumstances and concepts in order to translate events into a number or score. This suggests that no measure of labor standards will be perfect, and no number or score can stand alone without qualitative contextual analyses. Therefore, we caution readers to draw policy conclusions only from those countries that have case study analysis in addition to a quantitative score. This suggests that future research is needed to develop case studies for all countries with FTAs. This is particularly true for Canada and Mexico as the State Department and ICFTU reports used for these indices were much less comprehensive than more recent reports.

The data also shows that few countries have clear unidirectional patterns when it comes to labor standards. Most countries show some improvement and some deterioration over an eleven year period. For example, as countries pass labor laws giving workers the freedom to join unions, unions are likely encounter growing resistance and interference from employers and/or

programs in Central America. That report states that employer resistance to multi-stakeholder initiatives involving unions was highest in El Salvador, there was a high risk of the project “making little progress.” The team was only able to complete one factory training (Salem 2008).

governments. This suggests that attaching trade agreements to labor standards cannot be done from a snapshot in time. If the goal is to use trade negotiations or trade relations to raise labor standards, labor standards must be regularly evaluated during negotiations and after an agreement is signed and ratified.

Finally, our data suggest that FTAs may not always be a policy vehicle for addressing labor standards. We find no one clear pattern in our FA/CB measure over time for the majority of countries, either during the negotiation process or over a longer time period. There may be relationships between FTA negotiations and labor standards, but it will take more analysis and case studies to determine the patterns. In particular, we suggest that future research is needed to add more case study analysis for each of the FTA partner countries. The research should include in-depth interviews with US Congressional representatives and government officials to understand trade relationships. It should also examine the role of different presidential Administrations, including the role of the Office of the USTR and Department of Labor. It is likely that monitoring and enforcement of FTA labor language varies depending on the priorities of a particular Administration.

Further research should also explore whether other policies have more direct impacts, such as an enhanced trade program like the U.S. textile program with Cambodia; GSP programs; or targeted capacity-building programs done in conjunction with the ILO.

8. Caveats and Limitations

The measure we created has several weaknesses. As others have noted, there are many challenges to coding labor standards. The ideal index would capture changes in labor laws (legal reforms); changes in labor standards (regulatory changes); and changes in enforcement. Each of these dimensions occurs in different branches of government, and sometimes those branches may even be in conflict with one another. Furthermore, there can be a lot of variation within a country (such as between states in the U.S.), making it difficult to come up with one measure for the whole country.

As noted above, the quality of information available on labor standards varies by country and over time. The limits of our source material have been discussed extensively in other places (e.g, Compa 2005; Kucera 2007). Evaluators are subject to bias when coding each indicator. The source material is subject to bias, based on the agency and person collecting the information and writing the report. The quality of the State Department and ICFTU reports changes depending on the total staff available for investigating and writing about countries. Reports also rely on the information available in the media, which is not consistent.

Some countries have inconsistencies in reporting from year to year. For example, State Department Human Rights reports from Mexico in late 1980s claim that workers have freedom of association and there is little government intervention. Later reports note that there is heavy government and party intervention, as well as many company unions. Also, those early reports say public sector workers are not allowed to strike. In 1992, the reports say public sector workers

do have the right to strike but strikes are rare. There is no discussion of why the change in the reports, but it is not due to a change in law or regulation, rather a new interpretation of the law.

We coded our indicators as 1/0 measures, whereas a rank-order measure may account for greater variation. For example, a country that had one trade unionist arrested in a year would get a 1 for ‘arrests,’ as would a country that had systematic arrests. Some criteria seem better suited to a 1/0 score, such as “general prohibition on right to strike” or “rights restricted in EPZs,” whereas criteria such as “interference with union rights of assembly” might benefit with rank-order scaling.

Often the line between trade union rights and broader political rights is blurred. In some cases, union members were arrested or punished for taking part in broader demonstrations, such as against the coup in Honduras. If reports specifically mentioned union activists or leaders taking part in the demonstrations, we treated this as part of union activity (e.g., if a union leader was arrested during a demonstration against a dictator, privatization, or trade agreements, we coded this as “arrest for union activities.”

The “enforcement” indicator was difficult to measure. Few countries would ever be able to achieve a ‘0’ for enforcement. Instead, we tried to measure the concept relatively. This meant considering the enforcement capacity and structures relative to other countries, but also relative to what might be possible within the country. Here, the +/- measure is perhaps the most important, as it indicates where a country is improving or getting worse. (The NAS/ILAB matrix approach of measuring change may be the best approach). Ideally, an enforcement criteria might be based on the number of inspectors in the country relative to the ILO prescribed number of inspectors. In addition, enforcement measures should account for the capacity of the legal system to process complaints; resources available for training inspectors, employers and employees about labor standards; and some measure of the strength of penalties for non-compliance. Initially we hoped to use more criteria to capture enforcement, based on several proposed by CMILS for government performance. In practice the data sources we used had very little information on enforcement and we had to collapse various criteria into one.

Due to these concerns, our measure is not necessarily solid as a comparative measure, but better for measuring progress (or retreat) within a country over time.

In addition to measurement limitations in the index, we also note that there are possible problems with measuring the process of trade negotiations. In our study, we track changes three years prior to the announcement of formal negotiations around an FTA with a country. However, in a number of cases the U.S. had already been engaging in negotiations over other kinds of agreements, such as a Trade and Investment Framework Agreement. For example, the U.S. signed a Bilateral Investment Treaty (BIT) with Bahrain in 1999, and a TIFA in 2002. Then in 2003, Bahrain and the U.S. announce their intent to negotiate an FTA. A more in-depth analysis should go back further and analyze the impact of the BIT and TIFA negotiations on Bahrain.

Similarly, we might include negotiations with other countries in our analysis. Chile negotiated and signed an FTA with Canada before it signed an agreement with the US. The Chile-Canada FTA includes labor standards language, and therefore any changes in Chilean

labor law due to trade agreement negotiations may be due to pressure from the Canadian government. El Salvador ratified ILO Core Conventions 87 and 98 after CAFTA was in force. The ratifications seem clearly a result of demands placed by the EU in relation to their GSP program.

Finally, we note that it may be possible that there are certain exogenous factors at play. Many countries show an improvement in labor standards in the early 2000s. At this time there was increased global attention on labor standards and international trade, in the context of global protests and growing critiques of the World Trade Organization. The ILO did not adopt its fundamental eight core labor conventions until 1998, and there was strong pressure for countries to ratify Conventions 87 and 98 in the late 1990s and early 2000s. Countries that show declining labor standards in 2001-2003 may have been lowering standards in response to the global economic recession that hit in that time period. Future research might examine how the trends in the labor standards index correlates with global political movements, as well as global economic conditions.

9. Future Research

We have suggested a few areas for future research. First, we strongly advise that case studies be conducted for all 20 countries with FTAs to provide the appropriate contextual background.

Second, we note that researchers could look for discernible patterns in indices by adding other FTAs to the database. Many of the countries that have FTAs with the US also have agreements with Canada and the EU. It is likely that the changes in labor standards of partner countries has as much to do with US FTA negotiations as with these other negotiations. Also, the indices can be updated to add another year of observations (for 2010) in a few months. Increasing the data points may enable researchers to see more clear patterns, such as: what do countries that have improving standards have in common? Does the timing of negotiations matter? Does the majority of improvement come during negotiation or after the FTA goes into force?

Finally, we argue that further research should consider other factors that may be relevant in explaining changes in labor laws, monitoring and enforcement, and court rulings. These include political regime changes and election cycles, economic recession, government stability and government budgets. It could also consider the impact of developments with international organizations such as WTO meetings and ILO programs.

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Appendices

APPENDIX A. KUCERA'S CODING RULES FOR THE CRITERIA USED IN OUR INDEX

Freedom of association/collective bargaining-related civil liberties

1–5 As defined in chapter 2 on “Trade Union Rights and Civil Liberties” of *Freedom of Association: Digests of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (1996).

- 1 Murder or disappearance of union members or organizers
 - Includes violence to family members.
- 2 Other violence against union members or organizers
 - Includes violence to family members.
 - Includes coercion under threat of force (other than for **3** regarding forced exile or flight from country under threat) but not threats themselves or unspecified harassment. Does not include use of tear gas unless this results in injury.
 - Double counts with **1** in cases of murder or disappearance but not other violence.
- 3 Arrest, detention, imprisonment or forced exile for union membership or activities
 - Includes prosecution and flight from country under threat.
 - Includes laws that indicate sanctions for participating in union activities that may be illegal but that should not be illegal according to ILO Conventions.
- 4 Interference with union rights of assembly, demonstration, free opinion and free expression
 - Includes interference with freedom of movement, except as regards **5**, and also includes surveillance.
 - Includes problems with “access of trade union representatives to workplaces” (CFA 295th Report, p. 141).
 - Includes search or entry without warrant and search or entry with warrant unless the latter is for illegal non-union related activities;
 - Search or entry with warrant for illegal union related activities are also included for activities that should not be illegal according to ILO Conventions.
 - Includes interference with general, protest and solidarity strikes when these involve assembly or demonstrations (otherwise included under **36**, with doublecounting allowed between **4** and **36**, for such strikes involving assembly and demonstrations).

Right to establish and join unions and worker organizations

6–23 As defined in articles 2 to 7 of Convention No. 87, with unions broadly defined to include all independent workers' organisations, as per Article 10 of Convention No. 87.

6 General prohibitions

- 15 Exclusion of tradeable/industrial sectors from union membership
 - Refers to when sectors/workers are generally excluded, not to other more incidental problems involving these sectors/workers.
 - Tradeable/industrial sectors defined to include manufacturing, mining, construction, utilities (industrial sectors) and agriculture, forestry, and fishing (additional tradeable sector).
- 16 Exclusion of other sectors or workers from union membership
 - Refers to when sectors/workers are generally excluded, not to other more incidental problems involving these sectors/workers. Except regarding armed forces and police.
 - “Essential services” not specifically defined are included. If evidence of excluded sectors does not allow one to distinguish between “tradeable/industrial” and “other” sectors, it is included in “other” sectors.

Right to bargain collectively

24–31 As defined in chapter 14 of *Freedom of Association* (1996).

24 General prohibitions

- As defined in chapter 14 of *Freedom of Association* (1996).

29 Exclusion of tradeable/industrial sectors from right to collectively bargain

- Refers to when sectors/workers are generally excluded, not to other more incidental problems involving these sectors/workers.
- Tradeable/industrial sectors defined to include manufacturing, mining, construction, utilities (industrial sectors) and agriculture, forestry, and fishing (additional tradeable sector).

30 Exclusion of other sectors or workers from right to collectively bargain

- Refers to when sectors/workers are generally excluded, not to other more incidental problems involving these sectors/workers. Except regarding armed forces and police.
- “Essential services” not specifically defined are included. If evidence of excluded sectors does not allow one to distinguish between “tradeable/industrial” and “other” sectors, it is included in “other” sectors.

Right to Strike

32–37 As defined in chapter 9 of *Freedom of Association* (1996).

33 General prohibitions

34 Exclusion of tradeable/industrial sectors from right to strike

- Refers to when sectors/workers are generally excluded, not to other more incidental problems involving these sectors/workers.
- Tradeable/industrial sectors defined to include manufacturing, mining, construction, utilities (industrial sectors) and agriculture, forestry, and fishing (additional tradeable sector).

35 Exclusion of other sectors or workers from right to strike

- Refers to when sectors/workers are generally excluded, not to other more incidental problems involving these sectors/workers. Except regarding armed forces and police.
- “Essential services” not specifically defined are included. If evidence of excluded sectors does not allow one to distinguish between “tradeable/industrial” and “other” sectors, it is included in “other” sectors.

Export processing zones

37 Restricted rights in EPZs

APPENDIX B: CODING RULES FOR OUR ADDITIONAL CRITERIA

Employer interference with FA/CB

- refusing to negotiate a contract
- firing or disciplining workers who engage in union activity
- firing or disciplining workers who refuse to accept concessions
- firing or disciplining workers who enquire about their rights
- we only relied on reports of specific incidents, such as a specific firing. We did not include general comments from reports such as “there have been reports that workers are harassed.”)
- In the case of public sector workers, direct interference from the employer (government) is coded as employer interference

Government barriers to FA/CB:

- heavy government intervention in union affairs or elections
- government requirements on union membership, such as nationality or literacy requirements
- high thresholds of numbers for establishing unions
- lengthy procedures to register a union

Employer interference with right to strike

- Calling in private security to break up strike
- Employing replacement workers
- Lockouts
- In the case of public sector workers, direct interference from the employer (government) is coded as employer interference

Government barriers to right to strike:

- excessive requirements to strike, such as written notice far in advance
- excessive government ability to declare strikes illegal
- strikes only allowed in rare circumstances
- strikes require high percentage of membership vote

Foreign workers restricted rights to FA

- foreign workers cannot join trade unions
- foreign workers cannot be elected to union office
- foreign workers cannot be employed by a union

Enforcement

- improvements (or deterioration) in government capacity
- number of inspectors
- legal apparatus
- training for inspectors

APPENDIX C: COMPARISON OF LABOR STANDARDS INDEX TO KUCERA AND CMILS INDICATORS

Criteria from Labor Standards Index	Criteria from Other Measures	
	Kucera	CMILS
1 General prohibitions on FA Exclusion of tradeable/industrial sectors from union membership	6, 13	A-2
2 membership	15	A-4
3 Exclusion of other sectors or workers from union membership	16	A-3
4 Foreign workers: restricted rights on FA	16	A-5
5 General prohibitions on CB Exclusion of tradeable/industrial sectors from right to collectively bargain	24	A-10
6 collectively bargain Exclusion of other sectors or workers from right to collectively bargain	29	A-13
7 bargain	30	A-12
8 Employer interference with FA/CB	10, 11, 28	
9 Government barriers right to FA/CB	12, 17, 27, 31	A-6, A-7, A-11, B-5
10 General prohibitions on right to strike	32	A-14
11 Exclusion of tradeable/industrial sectors from right to strike	34	
12 Exclusion of other sectors or workers from right to strike	25	
13 Employer interference with right to strike	4	
14 Government barriers right to strike	33, 36	A-15
15 Restricted rights in EPZs	37	A-4
16 Murder of disappearance of union members or organizers	1	B-1
17 Other violence against union members or organizers	2	B-1
18 Arrest, detention, imprisonment, or forced exile for union membership or activities	3	B-1
19 Interference with union rights of assembly, demonstration, free opinion, free expression	4	B-1
20 Enforcement		B-3, B-8, B-9, B-10, B-11

APPENDIX D: CASE STUDY TIMELINES

Bahrain

March 2002	EU and GCC relaunch negotiations for an FTA
June 18, 2002	US and Bahrain sign TIFA
Sept. 24, 2002	Bahrain implements Worker Trade Union Law
May 21, 2003	US and Bahrain announce intent to negotiate FTA
June 15, 2004	US and Bahrain announce intent to sign FTA
September 14, 2004	US and Bahrain sign FTA
May 9, 2005	Ministerial order gives unions more rights
November 10, 2005	Finance Minister of Bahrain promises more reforms
December 7, 2005	US-Bahrain FTA ratified by House
December 13, 2005	US-Bahrain FTA ratified by Senate
January 11, 2006	Act to implement FTA comes into law
March 29, 2006	House Democrats raise concerns that reforms have not passed
April 4, 2006	USTR confirms changes have been made
July 27, 2006	Proclamation to implement FTA
August 1, 2006	FTA comes into force
October 2006	Royal Decree is passed banning dismissals for union activity; Bans strikes in many sectors
February 2007	Unions submit complaint to ILO about Trade Union law reforms banning strikes

Oman

April 26, 2003	Oman passes initial labor law reform
July 7, 2004	US-Oman sign TIFA
November 15, 2004	USTR announces intent to negotiate FTA with Oman
July 21, 2005	Oman ratifies two core ILO Conventions

October 3, 2005	US and Oman conclude FTA negotiations
October 17, 2005	USTR notifies Congress of intent to sign FTA
November 15, 2006	Labor Advisory Committee submits report on FTA
January 19, 2006	US and Oman sign FTA
March 06, 2006	Senate Finance Subcommittee on International Trade <ul style="list-style-type: none"> • Thea Lee, AFL-CIO raises concerns
March 31, 2006	House Ways and Means Committee releases letters from Oman government, pledging labor law reform
April 5, 2006	House Ways and Means Committee hearing <ul style="list-style-type: none"> • Some House Democrats raise concerns about labor issues, withhold support
May 10, 2006	House Ways and Means Committee approved draft implementing language
June 26, 2006	President Bush submits implementing language to Congress
June 29, 2006	Senate approves implementing language for FTA
July 8, 2006	Oman issues Royal Decree, greatly expanding labor rights
July 20, 2006	House of Representatives approves FTA
September 19 2006	Senate reapproves FTA
September 26, 2006	U.S. passes implementing language
December 29, 2006	U.S. President signs proclamation to implement FTA
February 4, 2007	Ministerial Decree establishing guidelines for a minimum wage
May 10, 2007	Agreement between Bush Administration & Congress on implementing the FTA
September 1, 2008	Ministerial Decree provides equal employment conditions for all members of GCC states
Oct. 25, 2008	USTR rep travels to Oman to discuss final concerns
November 23, 2008	Oman passes Royal Decree 128 on Forced Labor/Human Trafficking
January 1, 2009	FTA goes into force

Chile Timeline

1994 Major labor reforms initiated but not ratified

July 5, 1997	Chile-Canada FTA goes into effect
November 29, 2000	Clinton announces intent to start trade negotiations with Chile
December 6, 2000	Chile and US begin negotiations
June 18, 2001	Trade Union International of Workers of the Energy, Metal, Chemistry, Oil and Related Industries of Chile files a complaint with the ILO
September 2001	Chile passes labor law reform
December 6, 2001	U.S. House passes Trade Promotion Act of 2001
May 2002	Senate passes Trade Promotion Act
July 2002	The Trade Act of 2002 is passed
December 2, 2002	14 th round of negotiations
December 11, 2002	US and Chile announce FTA negotiations are done
June 6, 2003	US and Chile sign the FTA
July 24, 2003	House of Representatives pass FTA
July 31, 2003	Senate passes FTA
September 3, 2003	FTA becomes law
January 1, 2004	FTA goes into effect

Morocco Timeline

January 2000	Morocco ratifies ILO Convention No. 138 (Minimum Age)
March 2000	Association Accord with the European Union comes into effect (EIU, 2003)
January 2001	Morocco ratifies ILO Convention No. 182 (Worst Forms of Child Labor)
2001	Moroccan government agrees to set up an Arab-Mediterranean free-trade zone with Tunisia, Egypt and Jordan (EIU, 2004)
January 2003	Morocco and the United States enter into negotiations on a Free Trade Agreement (DOA, 2006)
July 2003	The Moroccan Parliament approves a new labor code (DOL, 2004a)
March 2004	Negotiations conclude; US announces intent to enter into an FTA with Morocco

April 2004	Labor Advisory Committee submits report to USTR
June 2004	Free Trade Agreement signed with United States (EIU, 2008)
June 2004	New labor code comes into effect (DOL, 2004a)
January 2006	Free Trade Agreement with United States comes into effect (EIU, 2008)

El Salvador Timeline

January 16, 2002	Bush announces intent to negotiate FTA with CAFTA countries
August 2002	TPA approved
Oct 1, 2002	Administration notifies Congress of intent to start CAFTA negotiations
Jan 2003	Negotiations begin; 9 rounds take place throughout the year
Dec 3, 2003	CAFTA negotiations enter final round
Dec 17, 2003	Negotiations reach agreement with four countries
Jan 19-25, 2004	US and Costa Rica hold another round of negotiations
March 15, 2004	US and Dominican Republic conclude negotiations
March 19, 2004	Labor Advisory Committee to USTR submits report on CAFTA
August 5, 2004	US signs CAFTA-DR
December 17, 2004	El Salvador passes the agreement in Congress
January 25, 2005	El Salvador ratifies the agreement
June 23, 2005	US Senate approves CAFTA-DR
July 28, 2005	House approves CAFTA-DR
August 2, 2005	CAFTA-DR Implementation Act is passed in US
February 28, 2006	Proclamation 7987 to implement CAFTA-DR is passed in US
March 1, 2006	CAFTA enters into force in El Salvador
August 24, 2006	El Salvador amends its Constitution to extend freedom of association to public sector employees
August 29, 2006	El Salvador ratifies four ILO Conventions