
Labor Standards

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Beginning with the Trade Act of 1974, the US Congress included language on worker rights as an objective in legislation authorizing international trade negotiations. US negotiators never succeeded in getting the issue on the multilateral trade agenda in the General Agreement on Tariffs and Trade (GATT) or World Trade Organization (WTO). But “taking steps” to improve implementation of “internationally-recognized worker rights” was made a condition of unilateral US trade preference programs in 1984.¹ And worker rights became a divisive and partisan issue in the free trade negotiations with Mexico in the early 1990s.

In the years following approval of the North American Free Trade Agreement (NAFTA) in 1993, US policymakers debated vigorously whether and how to incorporate labor (and environmental) standards in trade agreements. In the 1990s, the Clinton administration and congressional Democrats, supported by labor unions and human rights organizations, generally favored including standards in trade agreements. The Republican party and business community representatives generally opposed it. These differences remained unresolved when George W. Bush took office in 2001.

In August 2002, a carefully crafted compromise on labor (and environmental) standards permitted congressional approval of new Trade Promotion Authority that defines what Congress wants to see in trade agreements and commits the body to vote them up or down, without amendment (as

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1. See Section 502(b)(7)g Title V of the Trade Act of 1974, as amended by the Tariff and Trade Act of 1984.

long as the president follows certain procedures). In the past, the principal negotiating objectives included in trade legislation were generally regarded as advisory but not necessarily binding and, until the 2002 Trade Act, the language on worker rights was not pursued vigorously. But increasing partisanship in the Congress and the hard-fought battle over the 2002 act—the House sent the initial bill to the Senate by one vote and ultimately approved the final amended bill by just a three-vote margin—have contributed to the prominent role that labor standards now play in congressional trade politics.

While the six US bilateral trade agreements ratified from 2001 to 2005 include a labor chapter that closely mimics the Trade Act's language, these provisions were regarded by Democrats as unacceptably weak in the case of the agreement with Central America and the Dominican Republic (referred to as CAFTA-DR). The implementing legislation for this agreement passed the House in late July 2005 by just two votes. While there are important differences between Colombia and Central America, there are enough similarities, including perceptions of serious worker rights problems, that the trade agreement with Colombia is drawing opposition from similar sources.

Core Labor Standards and Development

Developing countries often resist including labor standards in trade agreements because they fear they will be misused for protectionist purposes.² In 1998, in part to fend off pressures to incorporate labor standards in WTO rules, members of the International Labor Organization (ILO) approved a "Declaration on Fundamental Rights and Principles at Work" that identified certain labor standards that should be respected and promoted by all countries, regardless of their level of development or whether they have ratified the associated legal conventions. The follow-up mechanism for promoting these "core standards" emphasized transparency and cooperation and warned against using them as an excuse for trade protection.

The core standards (with the associated ILO convention numbers in parentheses) are freedom of association and the right to organize and bargain collectively (87, 98); abolition of forced labor (29, 105); elimination of child labor, beginning with its worst forms (138, 182); and nondiscrimination in employment (100, 111). These standards are also often called "framework" or "enabling" standards because they support an environment in which workers are able to negotiate with management about other conditions of work, including wages, hours, and health and safety conditions.

Despite arguments frequently heard to the contrary, the global application of these standards does not force developing countries to adopt

2. See Elliott and Freeman (2003, chapter 1) for a more detailed discussion of labor standards and globalization.

developed-country standards. Rather, these standards relate to freedom of choice for workers and are an essential element of well-functioning markets and strong democracies. Even the legally binding ILO conventions that define the core standards in some detail leave substantial room for national differences (for example, in designing industrial relations institutions). Moreover, there is broad acceptance of the legitimacy of three of the four standards—ending forced labor, child labor (as the ILO defines it), and discrimination.³

The fourth standard—freedom of association and the right to collective bargaining—is more controversial. Governments and employers often resist this standard because freedom to form unions and negotiate over working conditions increases the power of workers relative to managers and the state. In Colombia and other countries where political violence is a problem, unions are often suspected of being sympathetic to or allied with leftist guerrilla movements. This politicizes freedom of association in ways that can be extremely difficult to overcome even when peace finally comes, as in parts of Central America today.

Some skeptics do not necessarily oppose freedom of association in principle but regard unions in developing countries as elitist, corrupt, and rent-seeking institutions that reduce a country's growth prospects. But where unions fit that image, politicians and firms are also typically elitist, corrupt, and rent-seeking, because they are all operating in an environment without transparency, accountability, or competition. Even under these conditions, however, unions are sometimes a force for democracy and the protection of property rights in opposition to corrupt regimes. Since the late 1990s, for instance, Zimbabwe's trade unions have been the main opposition to the Mugabe dictatorship and its land seizures. Unions were also a leading force in the campaign against apartheid in South Africa, and the Solidarity trade union was a major force in toppling the communist leadership in Poland in the 1980s. Where unions are elitist and corrupt, the solution is the same as for firms and politicians: exposure to competition and democratic reforms to ensure accountability to members. Since increased competition and the rule of law are central goals of proponents of free trade, their goals and those of proponents of labor standards are in fact consistent and mutually reinforcing.

Nevertheless, US negotiators have been unsuccessful in convincing developing countries to accept even a study group on worker rights at the WTO, and there is to date no labor text in the draft agreement for a Free Trade Area of the Americas (FTAA). The only success in incorporating labor standards in trade agreements to date has been in bilateral negotia-

3. The ILO definition of child labor does not encompass all economic activity but only work that endangers the health of children or interferes with their ability to go to school (up to a minimum age of 15 or 16). In 1999, the ILO further delineated priorities in this area by adopting a new convention calling for immediate action against the "worst forms of child labor."

tions with much smaller trading partners, where the United States has overwhelming leverage in setting the terms of the negotiation.

Evolution of Labor Standards in US Trade Agreements

The labor chapter template developed in recent FTAs requires only that the parties to them enforce their own national labor laws, with no requirement that those laws be consistent with ILO core labor standards. This modest standard did not pose a barrier to ratification by the US Congress of agreements with Singapore, Chile, Morocco, or Bahrain (at least not after the latter submitted a letter promising to continue working with the ILO to ensure that its laws are consistent with international standards). But critics argued that the standard was not sufficient for CAFTA-DR because both the laws and enforcement in those countries were too weak, especially with respect to freedom of association and collective bargaining rights.

Similar complaints that the “enforce-your-own-laws” standard is not adequate have been raised with respect to the agreement with Colombia.⁴ This section reviews how labor standards have been incorporated in past US trade agreements. What the debate over CAFTA-DR says about prospects for a US-Colombia deal will be examined subsequently.

In general, the labor chapters in recent FTAs exhort signatories to ensure that their laws are consistent with ILO core standards, but they only provide for cooperative activities and no sanctions to promote that particular provision. Moreover, the national labor laws that can be challenged under the enforce-your-own-laws standard are based on a 20-year-old unilateral US definition rather than the international consensus reflected in the ILO declaration. The US definition of “internationally recognized worker rights” excludes nondiscrimination in employment and includes “acceptable conditions of work” with respect to wages, hours, and health and safety, which the ILO consensus does not address.⁵ Finally, the recent US trade agreements limit enforcement when disputes arise to the use of “monetary assessments” rather than the trade sanctions traditionally used in commercial disputes.

In contrast with the original NAFTA model, which addressed labor standards in a side agreement with a separate dispute settlement mecha-

4. Similar concerns with respect to the agreement with Peru have been raised by Congressman Sander Levin (D-MI), a member of the House Ways and Means Trade Subcommittee. His remarks are available at www.house.gov (accessed April 6, 2006).

5. Neither US nor Colombian negotiators revealed it publicly, but according to a letter to US Trade Representative Robert Portman from Human Rights Watch, Andean negotiators proposed including nondiscrimination in the definition of labor laws covered by the agreement. US negotiators declined to do so. See www.hrw.org (accessed September 6, 2005).

nism, recent agreements include a labor chapter in the main text.⁶ The North American Agreement on Labor Cooperation (NAALC) used essentially the same enforce-your-own laws standard, but the agreements that have followed creation of the trade promotion authority (TPA) eliminate that agreement's three-tiered treatment of labor standards, under which penalties can be applied as a last resort only for child labor and technical standards relating to minimum wages and occupational health and safety.⁷ Under NAFTA, allegations regarding forced labor, discrimination issues, and migrant labor can be the subject of a formal expert committee investigation, but there are no penalties if violations are confirmed. And allegations of violations of freedom of association and the right to organize and bargain collectively are limited to consultations and cannot even be examined by expert panels. The more recent agreements are a step forward in removing this tiered approach to standards, but they also take a step back by ignoring discrimination entirely.

Another difference between the more recent FTAs and the NAALC relates to the dispute settlement mechanism. The dispute resolution process in the new FTAs is largely the same as that used for commercial disputes and is, in theory, more streamlined than that in the NAALC. For those standards subject to formal dispute adjudication, the NAFTA side agreement requires lengthy consultations and expert review before reaching the enforcement phase, a point not reached in any case to date.

The NAALC and the more recent agreements are similar, however, in restricting the enforcement mechanism to the use of monetary assessments rather than trade sanctions. Both agreements permit the revocation of tariff reductions if the fines are not paid, but only to the extent necessary to collect the fine. The value of the fines is capped in all the agreements and the revenues are supposed to be returned to the defendant country and devoted to remedying the problem identified as a violation. Fines are also an enforcement option in commercial disputes, but the revenues remain in the complaining country. Implicitly, therefore, the assumption is that violations of labor standards are a problem of capacity, while commercial disputes arise from failures of political will. It is not clear how returning the fine revenue to a government that lacks the political will to enforce its laws will help, or what else might be done in such a case.

Regardless of whether the post-2002 Trade Act agreements are improvements relative to the NAALC, critics view them as a step back from the US-Jordan FTA ratified in the fall of 2001. That agreement not only included labor in the main text, subject to the same dispute settlement procedures

6. See Charnovitz (2004) for a more detailed comparison of labor standards in various international trade agreements.

7. See Hufbauer and Schott (2005, chapter 2) for a more detailed description and assessment of the NAFTA side agreement.

as the rest of the agreement, but it also made no distinction with respect to remedies.⁸ Moreover, the language calling on the parties to “strive to ensure” that domestic laws are consistent with international norms and that they not be weakened to encourage trade or investment is not explicitly excluded from dispute settlement as it is in the other agreements. Proponents of the “Jordan standard” argue that, while it would be difficult, this leaves an opening to challenge departures from the core standards.

Overall, however, the labor standards language in all these agreements, including the FTA with Jordan, is so filled with caveats that it seems unlikely any dispute will get as far as considering sanctions. The only “shall” in these agreements refers to the obligation of the party to “not fail to effectively enforce its laws” on a sustained basis in a way that affects trade. But other paragraphs in that section preserve the discretion of governments to adopt, modify, and enforce labor laws and regulations so that a party will be in compliance with its labor obligations under the agreement if, as stated in section 4(b) of Article 6, “a course of action or inaction [in enforcing labor laws] reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.”

The key criticism of this approach is the failure to include adherence to core labor standards as an enforceable obligation of these agreements. But, in fact, the gap between developing-country labor laws and the core ILO conventions is often not that great on paper, at least in countries that are nominally democratic. There is a problem with perverse incentives, however, since a standard based on enforcing one’s own laws gives countries a reason not to improve existing laws, and the failure to authorize sanctions for weakening or waiving one’s labor laws to promote trade or investment sends the wrong signal. But even where effective labor law enforcement is the primary problem, as in Colombia and many other countries, it is not clear that the US government would enforce the labor chapters in these agreements vigorously enough to provide a meaningful incentive to improve labor conditions.

Status of and Policies Toward Labor Standards in Colombia

Colombia has ratified 60 ILO conventions and all eight of the core conventions. By contrast, the United States has ratified just 14 conventions and only two of the core conventions, one on forced labor and the recent convention on the worst forms of child labor. ILO expert analysis also suggests that Colombia’s labor laws are not far from international norms.

8. However, US Trade Representative Robert Zoellick exchanged letters with Jordan’s ambassador to the United States in which each stated that they did not anticipate using trade sanctions to enforce the agreement’s labor rights provisions.

Table 6.1 Labor standards in Colombia in comparative perspective, 2000–2002

Country/ region	Percent of children aged 10–14 in the labor force, 2002	Adult illiteracy rate, 2000 (percent)	Difference in female/male illiteracy rates, 2000 (percent)	Union membership as percent of nonagricultural labor force ^a	Gross national income per capita, 2002 (in dollars; Atlas method)
Colombia	6.0 ^b	8.4	0	7.0	1,880
Latin America and Caribbean	8.0	11.6	1.8	15.9	3,560
Middle East and North Africa	4.0	35.2	20.7	20.7 ^d	2,000
East Asia and Pacific ^c	6.0	14.5	8.4	10.1 ^e	900
Sub-Saharan Africa	28.0	38.5	15.7	13.8	470
South Asia	14.0	45.2	22.5	5.1	450
<i>Addendum:</i>					
Ecuador	4.0	8.4	3.3	9.8	1,400
Peru	2.0	10.1	9.4	7.5	2,320
Bolivia	10.0	14.6	12.8	16.4	870

- a. Data are most recent available from late 1980s and mid-1990s; regional averages are unweighted.
b. According to the US State Department's *Human Rights Report*, the Colombian National Department of Statistics reports that 15 percent of children were employed, but the age range is not specified.
c. Excludes developed countries and South Korea and Taiwan.
d. Egypt, Jordan, and Morocco only; most of the undemocratic oil-exporting regimes restrict or ban unions.
e. Excludes China's misleading 55 percent; includes Indonesia, Malaysia, the Philippines, and Thailand.

Source: World Bank, *World Development Indicators* database.

But ratification of conventions does not ensure compliance, and nearly two decades of critical scrutiny by the Committee on Freedom of Association point to significant problems with union rights, especially the high level of violence against trade union organizers and members.⁹

Table 6.1 presents basic data on various labor standards in Colombia and also shows averages for Latin America and other developing regions

9. The ILO's Committee of Experts on the Application of Conventions and Recommendations reviews member country reports on the application of ratified conventions and identifies discrepancies between national law and practice and convention provisions. These "observations" are available in the ILO's Application of International Labor Standards (APPLIS) database (www.ilo.org). Because of the importance of freedom of association in the ILO framework, the special Committee on Freedom of Association was created several decades ago to hear complaints that a government is violating these core rights. For this standard only, a country need not have ratified the associated conventions (87, 98) in order to have its practices scrutinized.

for comparison. These data must be interpreted carefully because of cross-country differences in definitions and weaknesses in data collection. To the extent that the data at least reflect broad patterns across countries, however, they suggest that Colombia is not doing badly on child labor for a country at its income level and is doing better than most developing countries in reducing illiteracy and ensuring that women are not left behind. Recent analysis by the Colombian National Department of Planning found relatively modest gender-based wage gaps: 8 percent for the lowest (less than high school) and 10 percent for the highest (college degree or higher) educated workers. There was virtually no gap between men and women with moderate levels of education (high school degree or some college or postsecondary technical training) (Angel-Urdinola and Wodon 2003).

The 2004 human rights report by the US State Department finds child labor mainly in the informal sector, including on small family farms. There are no data on forced labor, but the 2004 report of the Committee of Experts on the Application of Conventions and Recommendations lists Colombia as one of 28 “cases of progress” because of changes to its penal laws that bring them into compliance with Convention No. 29 on forced labor in prisons.

With respect to the legal basis for freedom of association, the ILO’s Conference Committee on the Application of Conventions and Recommendations noted in 2001 that 10 of 13 discrepancies between Colombian law and ILO conventions had been addressed in a legal reform adopted the previous year. The remaining three discrepancies all relate to the right to strike, mainly in the public sector. Although it is not explicitly mentioned in either Convention 87 or 98, ILO experts have concluded that the right to strike is essential to effective exercise of the right to collective bargaining. But the experts also note that this right is more conditioned than others related to freedom of association, and the precise definition of the conditions under which it can be restricted remains one of the more controversial areas of international labor law. For example, representatives of the ILO Employers’ Group noted in a discussion of Colombia’s situation at the 2004 International Labor Conference that their group disagrees with the Committee of Experts’ interpretation of Convention 87 as covering the right to strike.

Another controversial area relates to the public sector, where the ILO recognizes that the need to provide “essential” public services may override the right of some public sector workers to strike. But the experts are constantly battling with member governments over the scope of essential services. The Colombian government has come under repeated criticism, as have other governments with state-owned petroleum sectors, for defining activities related to the production and processing of petroleum as essential and therefore restricting the right to strike.

Table 6.2 Murders of trade unionists in Colombia, 1998–2004

Year	Government figures		ICFTU	ICFTU global total
	Total	Teachers		
1998	n.a.	n.a.	98	123
1999	n.a.	n.a.	69	140
2000	155	69	135	209
2001	205	82	185	223
2002	196	97	184	213
2003	101	54	90	129
2004	89	47	n.a.	n.a.

ICFTU = International Confederation of Free Trade Unions

n.a. = not available

Sources: International Labor Organization, *Report to the Governing Body of the Committee on Freedom of Association*, November 2004; International Confederation of Free Trade Unions, *Annual Survey of Trade Union Rights*, various issues; Embassy of Colombia, Washington.

More broadly, while cross-country data on union membership is particularly difficult to interpret because of differences in how it is collected and reported, Colombia appears to be below other Latin American countries in the proportion of workers organized in unions (table 6.1). The table reports figures for the proportion of union members in the nonagricultural labor force because it is available for more countries. The figure for union members as a share of formal sector wage earners in Colombia is more than two times higher (17 percent), but the pattern across countries is similar and, whichever measure of union density is used, Colombia has among the lowest ratios in Latin America. Moreover, ILO data show that trade union density dropped by more than a third from 1985 to 1995, though this is actually a smaller decline than in many other countries in the region (ILO 1997).

The most serious problem in Colombia, and the one that garners the most attention, is the high level of violence against trade union organizers and members. The International Confederation of Free Trade Unions (ICFTU) reports that of the more than 1,000 trade union members murdered worldwide from 1998 through 2003, 70 percent were Colombian. Disaggregated data from the Colombian government shows that many of the murdered unionists were teachers and many others worked in other public services (table 6.2). Thus, in contrast to Central America, where problems organizing in export processing zones attracted much attention,

the most serious problems in Colombia are primarily in the public sector and not linked to trade.

The level of concern over the violence against trade union members is reflected in the fact that Colombia has been the subject of repeated ILO investigations and discussions. The Colombian government has responded to ILO criticisms with labor law reforms and other programs to protect unionists, but the scrutiny continues. As an indication of the seriousness with which the ILO regards the problem, an Article 26 complaint—a procedure reserved for the gravest violations—was accepted for formal investigation in 1998. When serious problems are confirmed, an Article 26 investigation can lead to appointment of a Commission of Inquiry, which, if it upholds the findings of serious and unremediated violations, can recommend that the ILO Governing Body take action against the recalcitrant member. To date, the ILO has appointed a “direct contacts mission” and a special envoy from the director-general to work with Colombia to improve its performance, but it has repeatedly declined to create a Commission of Inquiry.

Opponents of pursuing a more aggressive stance against Colombia note that this case fits the pattern of others where allegations of egregious violations are rooted in political and ideological conflict. In the 1970s, when the human rights situation deteriorated in a number of Latin American countries, often under military governments, Argentina, Bolivia, Chile, and Uruguay were all the subject of Article 26 investigations involving conventions 87 and 98.¹⁰ ILO attention to Colombia increased as the conflict there worsened in the late 1980s and when, according to the Freedom House ratings, it slipped from being a “free” to only a “partly free” nation.

In such cases, protecting freedom of association ultimately depends on a resolution of the broader conflict in which the violence against union organizers is embedded. But even then, recent experiences in El Salvador and Guatemala illustrate the difficulty in getting employers and government officials to view unions as legitimate social actors in the economic sphere if they are perceived, rightly or wrongly, as having supported leftist, antigovernment factions during civil conflict. Critics argue that these attitudes contribute to a climate of impunity in which the perpetrators are not punished and the violence against legitimate unionists continues.

In Colombia, officials note that the number of unionists murdered declined by roughly half in 2003, and by another 10 percent in 2004 (table 6.2). They also argue that most of the murders of union members are for political reasons and are not tied to their union activities. Officials point to the election of a former union leader as mayor of Bogotá and of a for-

10. Peru has actually been the most frequent target of freedom of association complaints in the region over the past decade or so. Most of the charges involve issues related to anti-union discrimination and restrictions on collect bargaining or the right to strike, and without the levels of violence seen in Colombia.

mer labor minister and union confederation leader as a provincial governor as evidence that there is more political space for union activists in Colombia than in Central America.¹¹

At the ILO's 92nd International Labor Conference in June 2004, worker representatives from various countries welcomed the decline in murders but lamented that the numbers are still much too high. Some also argued that the decline has more to do with a ceasefire declared by paramilitaries in 2002 than action by the government.¹² The worker representative from the United States also noted that the culture of impunity remains a problem, citing an admission from Colombia's own National Prosecutorial Unit on Human Rights that only 5 of 3,000 murders of trade unionists between August 1986 and April 2002 had resulted in convictions. Finally, the worker representative from Chile pointed to cases where threats and acts of violence had allegedly been used to interfere with the exercising of union rights by workers. Worker representatives at the 2005 ILO Conference also noted the overall low and declining union density rate in Colombia and attributed it to government hostility to unions.

The administration of President Alvaro Uribe argues that its efforts to protect unionists and other groups targeted by guerrillas and paramilitaries have had an impact. Government figures reported to the ILO Committee on Freedom of Association show that expenditures for protection of vulnerable groups increased from roughly 4 billion pesos (around \$2 million) a year over 1999–2000 to 37 billion pesos in 2003 (\$13 million), with 5 billion pesos of that from the US Agency for International Development. The figures also show that more than half the total was spent on protection for trade unions and that, since 1999, nearly 4,500 individuals affiliated with unions received some protection, compared with 3,000 from nongovernmental organizations, 2,300 local government officials, and more than 300 journalists.¹³

In addition, the Uribe government argues that it is addressing the climate of impunity through systematic reform of the criminal justice system. The Colombian legislature passed a bill in June 2004 intended to speed up trials, in part by replacing the requirement for every part of the proceeding to be in writing, with provisions for oral hearings. The reforms are being implemented in four major cities and will be extended to the rest of the country by 2008. With \$80 million in assistance from the US Department of Justice, Colombia is also developing a human rights unit under the attorney general and training thousands of prosecutors, police

11. See BBC News online, January 1, 2004, www.bbc.co.uk; and Colombia Week online, September 6, 2004, www.colombiaweek.org.

12. See Report of the Conference Committee on the Application of Conventions and Recommendations to the 92nd International Labor Conference, June 2004.

13. See Report of the Committee on Freedom of Association to the ILO Governing Body, November 2004.

investigators, and judges to improve the capacity for prosecuting human rights cases.

While choosing not to appoint a commission of inquiry, the ILO did create a special program of technical assistance for Colombia, including training for judges on international labor standards. Responding to an invitation from the Colombian government representative at the 2005 ILO Conference, the ILO also agreed that a tripartite delegation, composed of the chair of the Committee on Freedom of Association and spokespersons for employers' and workers' groups, should visit Colombia and report back on the law and practice relating to freedom of association, as well as on the technical cooperation program.

Progress is being made in reducing levels of violence in general and against trade union members. But the levels remain high, and regardless of the reasons why unionists are targeted, there can be no question that high levels of violence create a climate of fear that interferes with the ability of workers to fully exercise their association and bargaining rights. This problem will no doubt be an issue in the congressional debate over ratifying the US-Colombia FTA.

Similarities and Differences with CAFTA-DR

More than a year after the February 2004 notification to Congress that a trade agreement with Central America and the Dominican Republic had been reached, CAFTA-DR was finally ratified by a two-vote margin in the US House of Representatives. The 10-vote margin in the US Senate was also the closest in decades. What, if anything, does this portend for congressional approval of the agreement with Colombia?

The content of the agreement with Colombia (as well as the one with Peru) suggests that the principal lesson US negotiators took from the CAFTA-DR experience was the need to minimize opposition from sensitive constituencies that are disproportionately represented by Republicans in Congress. US negotiators insisted on, and Colombian negotiators accepted, only minor increases in access for Colombian sugar and apparel exports, in the latter case because of strict rules of origin requiring the use of local or US inputs. The labor chapter, however, is quite similar to those in previous agreements, including CAFTA-DR. At the time of this writing, and in contrast to CAFTA-DR, there was no accompanying statement or side letter to the US-Colombia FTA specifying funds that might be allocated for capacity-building on labor rights in Colombia, nor were there any specifics on projects that might be undertaken.

As an indication of how tight the vote on the US-Colombia FTA might be in the current environment, table 6.3 shows the vote tallies in the US House of Representatives for recent trade legislation. While substantial

Table 6.3 Recent trade votes in the US House of Representatives

Legislation and date of passage	Final vote totals	Party distribution in that session of Congress	Democrats voting in favor
Trade Act of 2002, August 2002	215 to 212	221 Republicans 212 Democrats 2 Independents	25
US-Singapore FTA, July 2003	272 to 155	229 Republicans 204 Democrats 1 Independent	75
US-Chile FTA, July 2003	270 to 156	229 Republicans 204 Democrats 1 Independent	75
US-Morocco FTA, July 2004	323 to 99	229 Republicans 204 Democrats 1 Independent	120
CAFTA-DR, August 2005	217 to 215	231 Republicans 202 Democrats 1 Independent	15

CAFTA-DR = Central American Free Trade Agreement–Dominican Republic

numbers of Democrats voted for the Singapore and Chile FTAs and a majority voted for the Morocco trade agreement, only 25 voted for the Trade Act of 2002, and it passed in the House by three votes. Although the Republican party tripled the size of its majority in the last two elections, the margin is still relatively narrow, and the House vote on CAFTA-DR was even narrower than the final vote on trade promotion authority, with only 15 Democrats voting in favor.

The dilemma for the Republican majority, and what gives the Democrats leverage on the labor issue, is that a handful of isolationists refuse to vote for trade agreements under almost any circumstances, and other Republicans representing sugar, textile, and other sensitive import-competing constituencies find it difficult to vote for agreements that increase access for those products. Thus, a certain number of minority party votes are needed and Democrats have made labor standards a litmus test for trade agreements they will support. On the first three trade votes after the 2002 Trade Act, labor standards was not an issue—Singapore is a high-wage country and Chile and Morocco both passed labor law reforms prior to completion of negotiations. With respect to Central America and Colombia, however, violations of at least some of the core labor standards are both frequent and serious, and many Democrats argue that the lan-

guage used in the other agreements is not strong enough in these and similar cases.¹⁴

In the case of CAFTA-DR, US Trade Representative Robert Portman made a belated effort to address concerns about labor standards raised by Senator Jeff Bingaman (D-NM) just before the Senate Finance Committee vote on CAFTA-DR implementing legislation in July 2005. As a result of discussions between Portman and Bingaman, the Bush administration agreed to support several years of US funding for capacity-building on the enforcement of labor standards, provide funding for the ILO to monitor labor conditions in the region, and seek multilateral and bilateral funding for adjustment programs for Central American farmers displaced as a result of liberalization. The deal appears to have brought on board few if any Democrats, other than Bingaman, in either the House or Senate. A similar agreement with Colombia, albeit with different priorities and monitoring provisions given differences in the situation there, could be helpful and more credible if it is not done at the last moment.

But the Central American countries and Colombia also differ in important ways, and the administration's approach to both agreements suggests that additional efforts on labor standards will only be undertaken if needed to gain ratification of the Colombia FTA. As shown in table 6.4, more than 50 percent of Central American and Dominican Republic exports are in the most import-sensitive sectors, while only 10 percent of Colombia's exports are in these categories. However, Colombia's sugar exports are sharply restricted by the US tariff-rate quota. Colombia is actually a larger global sugar exporter than any of the Central American countries except Guatemala and would be expected to sharply increase exports to the US market if the quota were eliminated. Given the strident opposition of the sugar industry to CAFTA-DR, it is not surprising that US negotiators offered only modest increases in the amount of sugar that Colombia can export under the agreement and that they refused to phase out the overquota tariff. US negotiators also forced Colombia to accept stringent rules of origin on its textile and apparel exports, providing even less flexibility to source fabrics from third countries than was provided in CAFTA-DR. Those concessions by Colombia should make it easier to get the needed votes.

In addition, the source of the worker rights problems in Colombia could also affect the tenor of a congressional debate. The anti-union violence there is mostly against teachers and others in public service, sectors that are generally not related to trade. By contrast, allegations of core labor violations are widespread in many of the apparel export processing zones in Central America. There were labor disputes in Colombia in the petroleum and banana sectors in 2004, which are major exports to the US mar-

14. In the first half of 2006, leading House Democrats raised questions about the adequacy of the labor provisions following the signing of agreements with Oman and Peru.

Table 6.4 Exports of sensitive products to the United States, 2004

	Sugar	Textiles and apparel (millions of dollars)	Total exports to United States	Sugar and textiles as share of total (percent)
CAFTA-DR	258	9,753	17,663	56.7
Colombia	69	644	7,361	9.7

CAFTA-DR = Central American Free Trade Agreement–Dominican Republic

Source: US International Trade Commission trade database, docs.lib.duke.edu/maps/guides/usitc.html (accessed May 22, 2006).

ket, and restrictions on strikes in the publicly owned petroleum sector have been the subject of repeated criticism by the ILO.¹⁵ But these products currently enter the US market under low or no tariffs and do not trigger allegations of unfair competition with US workers. Moreover, both labor disputes in 2004 were settled on terms regarded as favorable by international union federations.¹⁶

Conclusions

The near defeat of CAFTA-DR illustrates the continuing divisions over trade and worker rights issues in the United States and highlights the political sensitivities that could make the congressional debate over an FTA with Colombia nearly as contentious. Were it not for the high levels of violence against union members and leaders in Colombia, the debate over a US-Colombia agreement might look more like that over Chile, because Colombia's exports are more diversified than Central America's and less concentrated in sensitive sectors, and because worker rights problems are more concentrated in the public sector than in export processing zones. The decline in murders shown in table 6.2 demonstrates important progress in reducing the level of violence against union members. But, to be persuasive, this must be accompanied by continued and even accelerated judicial reforms and punishment of the perpetrators, which would address the climate of impunity and ensure that the improvement is not temporary.

15. The ILO takes a restrictive approach to defining "essential public services" in which it is acceptable to limit the right to strike in the public sector. It is often at odds with governments, including Colombia's, over this issue.

16. International Federation of Chemical, Energy, Mine, and General Workers' Unions, "Colombia Oil Strike Ends in Victory: Government Will Not Privatise State-Owned Ecopetrol," *ICEM Update*, May 29, 2004; International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, "Colombia Banana Strike Ends in Union Victory," *IUF News*, June 14, 2004.

Concerns about labor standards in Colombia could also be ameliorated by adapting the Environmental Cooperation Agreement announced in the spring of 2005 by US, Central American, and Dominican Republic officials, and by including provisions for funding capacity-building similar to those agreed upon with Senator Bingaman for CAFTA-DR. This cooperation agreement, a version of which was also adopted in the recent agreements with Colombia and Peru, calls for the creation of benchmarks for measuring improvements in environmental standards, independent monitoring of progress, and the setting of priorities for technical cooperation in meeting these goals. These agreements could have served as a template for similar agreements on labor issues, but that has not been done in any of these recent FTAs. Such agreements on the labor side could also provide a framework for institutionalizing funding commitments, monitoring, and cooperation priorities as outlined in the ad hoc agreement with Senator Bingaman for Central America.¹⁷

As of late spring 2006, however, the Bush administration had made no announcements regarding plans or funding for capacity-building on labor issues in Colombia. Moreover, the labor chapter text in the Colombia FTA appears slightly weaker than what was included in CAFTA-DR. It does not require identification of a special roster of labor experts for disputes under that chapter, though the dispute settlement chapter does call for some of those on the regular roster to have expertise in the labor area. Neither does the article on capacity-building include the language in the CAFTA-DR text that speaks of “endeavoring to strengthen each party’s institutional capacity to fulfill the common goals of the Agreement.” The annex on cooperation and capacity-building is also less detailed than the one in CAFTA-DR.

It is possible that concrete plans for cooperation to improve labor standards in Colombia will emerge at a later date. USTR Portman reached out to Democrats to address their concerns over inadequate labor laws in Bahrain and Oman, as well as in Central America, and his successor, Susan Schwab, may well do so when the Colombian agreement is submitted to Congress. But any such efforts will be less credible and persuasive if they are seen simply as bribes to buy Democratic votes. And, since opposition from the sugar and textile constituencies has been more muted than during the debate over CAFTA-DR, the administration may conclude that outreach to Democrats is optional, especially since the deal with Senator Bingaman attracted few if any additional Democratic votes in favor of that earlier agreement.

17. President George W. Bush’s proposed budget for fiscal 2007, as in previous years, calls for eliminating all funding for technical assistance programs by the Department of Labor’s International Affairs Bureau, arguing that these activities duplicate similar programs in the State Department and US Agency for International Development. The CAFTA-DR deal negotiated with Senator Bingaman does not reverse the broader decision ending specific budget support for promotion of labor standards in general.