

LINKING TRADE WITH LABOR RIGHTS: THE ILO BETTER FACTORIES CAMBODIA PROJECT

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I. INTRODUCTION

As of January 1, 2005, it is no longer allowed under international trade rules for one country to impose import quotas on textiles and garments on another country. It was widely expected that the expiration of the 1974 Multi-Fiber Arrangement (MFA), which allowed the imposition of such quotas, would lead to a drastic re-shuffling of garment production and trade patterns. Where a number of countries were previously guaranteed a share of the European and American markets for garments and textiles under quota specifications, China was slated to become the big winner and gobble up the lion's share of worldwide garment and textile production once quotas disappeared. Though China did make substantial gains in worldwide garment and textile production, these gains were not as high as expected, and many countries were able to maintain reasonable market shares.

A surprise actor in this respect is Cambodia, where a unique trade agreement with the United States, linking trade with labor rights, led to the establishment of an innovative project of the International Labour Organization (ILO) aimed at trying to make improvement of working conditions one of the cornerstones of the country's economic-growth strategy. The result has been that Cambodia has earned a unique reputation for having relatively good working conditions and has expanded its position in the global textile-production market.

II. LINKING TRADE WITH LABOR RIGHTS

Discussions concerning the establishment of a formal/legal link between international trade and labor have been around for a while. Against a backdrop of growing concerns over indications that large segments of the world's population were either unable to share in the potential benefits of globalization or were adversely affected by it, the international community increasingly felt it was necessary to underpin the forces of globalization with a set of social ground rules. However, the questions of if and how these core standards should be directly linked to the growing international free trade system remained. To this end, simultaneous discussions were taking place in the ILO and the World Trade Organization (WTO) concerning the possible inclusion of a legally binding "social clause" into the trade agreements and structures of the WTO.

One argument against linking trade integration to social standards is that labor rights are believed to undermine the competitive advantage of developing countries by increasing production costs and thus raising the prices of a country's export goods on the global market. Another argument is that requiring developing

countries to adopt “Western” labor standards is simply a protectionist ploy to prevent developing countries from making full use of their comparative advantages, which most see as lying in the availability of an abundant and cheap labor force. The argument for such a link is simply that it is a way to ensure sustainable social development.

The WTO left the issue to the ILO, declaring in 1996 on the one hand its “[c]ommitment to the observance of internationally recognised core labour standards” but on the other hand rejecting “[t]he use of labour standards for protectionist purposes,” underlining that the comparative advantage of developing countries must in no way be put into question.¹

Following intense preparatory consultations and heated debate, the ILO subsequently adopted the Declaration on Fundamental Principles and Rights at Work in June 1998.² This Declaration stipulates that all Members have an obligation, arising out of their membership, to respect, promote, and realize the principles and rights contained in ILO core conventions, namely:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labor;
- (c) the effective abolition of child labour; and
- (d) the elimination of discrimination in respect of employment and occupation.³

A promotional follow-up mechanism of regular, periodic reporting is annexed to the Declaration and is aimed at identifying areas in which the technical assistance of the ILO may help Members to implement these fundamental principles and rights.⁴ Thus, the Declaration is promotional in character and not accompanied by an enforcement mechanism.

So, while turf wars between the WTO and the ILO concerning a social clause appear to have been settled, this should perhaps be seen more as “an agreement to disagree” between their Members. Western industrial states in favor of a social clause had to settle for an instrument which does not expressly link trade with labor standards and does not have an enforcement mechanism, whereas developing countries against a social clause ensured that the instrument proclaimed that their comparative advantage should in no way be called into

1. World Trade Org. [WTO], Ministerial Declaration of 18 December 1996, ¶ 4, WT/MIN(96)/DEC, 36 I.L.M. 218 (1997), *available at* http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm [hereinafter Singapore Declaration].

2. Int'l Labour Org. [ILO], Declaration on Fundamental Principles and Rights at Work and Annex (Jun. 18, 1988), 37 I.L.M. 1233 (1998), *available at* <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm> [hereinafter ILO Declaration]. The Declaration was adopted by 273 votes in favor and none against, but with 43 abstentions.

3. *Id.* ¶ 2.

4. *Id.* annex ¶ 2.

question through the use of labor standards for potentially protectionist trade purposes.⁵

But what did not happen within the framework of the WTO? Certain trade agreements included labor standards but lacked the required commitment to their realization. The exception is Cambodia, where the implementation of a labor clause in the trade agreement with the United States was realized by a technical assistance project of the ILO reflecting the commitment of the U.S. government at the time.

III. SETTING UP THE PROJECT – BETTER FACTORIES CAMBODIA

On January 20, 1999, the United States and Cambodia entered into a ground-breaking three-year Trade Agreement on Textile and Apparel.⁶ It was amended and extended for another three-year period on December 31, 2001. The amended Agreement set export quotas for garments from Cambodia to the United States, which Cambodia was entitled to no matter what, but also offered a possible 18% annual increase in these export entitlements, provided that the government of Cambodia supported the implementation of a program to improve working conditions.⁷

Following the signing of the Agreement, the governments of Cambodia and the United States requested that the ILO prepare a project proposal to support the implementation of the Trade Agreement. Following consultations by the ILO with all parties involved, including the Garment Manufacturers Association in Cambodia (GMAC) and the Cambodian trade-union movement, a technical cooperation project was agreed upon in May 2000 and started operations in January 2001.

The basic objective of the Better Factories Cambodia Project (initially called the ILO Garment Sector Working Conditions Improvement Project in Cambodia, hereinafter “the Project”) is to improve working conditions in Cambodia’s garment sector through:

- Establishing and operating an independent system to monitor working conditions in garment factories;
- Providing assistance in drafting new laws and regulations where necessary as a basis for improving working conditions and giving effect to the labour law,

5. *See id.* ¶ 5.

6. Agreement Relating to Trade in Cotton, Wool, Man-made Fiber, Non-Cotton Vegetable Fiber and Silk Blend Textiles and Textile Products, U.S.-Cambodia, Jan. 20, 1999.

7. *Id.* art. 10B.

- Increasing the awareness of employers and workers of core international labour standards and workers' and employers' rights under Cambodian labour law,
- Increasing the capacity of employers and workers and their respective organizations to improve working conditions in the garment sector through their own efforts,
- Building the capacity of government officials to ensure greater compliance with core labour standards and Cambodian labour laws.⁸

The execution and implementation of the Project is guided by a Project Advisory Committee (PAC), which comprises three representatives each from the government of Cambodia, the GMAC, and the Cambodian trade-union movement. The PAC meets as necessary and has no direct responsibility for Project execution or day-to-day implementation of the Project, but is expected to provide guidance and advice on implementation of activities and communication with the parties involved. Though the Project is engaged in different activities, what caught the attention of many was the establishment of the monitoring system, which has provided an unrivaled level of transparency and involvement of the parties affected.

A. Who Is Monitored?

To be able to set up the monitoring system, enterprises in the textile and apparel sector have registered with the Project. This registration is voluntary but has been "encouraged" by Prakas (Ministerial Regulation) 108 of 28 March 2001, issued by the Cambodian Ministry of Commerce, which indicates that only registered factories would be eligible to use allocated export quotas and/or buy export quotas through official bidding for the export of textiles to the United States. As of May 8, 2006, 255 garment factories had registered with the Project, which amounts to virtually the entire sector.

Registration consists of the signing of a Memorandum of Understanding (MOU) between the ILO and the participating factory outlining the duties and responsibilities of both parties, which includes, for instance, the factory duty to provide full access to ILO monitors to factory premises for announced and unannounced monitoring visits.

8. ILO, FIRST SYNTHESIS REPORT ON THE WORKING CONDITIONS SITUATION IN CAMBODIA'S GARMENT SECTOR, § 1.2 (Nov. 1, 2001), <http://www.betterfactories.org/content/documents/1/1st%20Synthesis%20Report%20-%20English.pdf> [hereinafter FIRST SYNTHESIS REPORT].

B. What Issues Are Monitored?

The Trade Agreement indicates that the program to improve working conditions should include “internationally recognised core labour standards.”⁹ It is assumed that this means the Fundamental Conventions of the ILO. This does not mean, however, that garment factories in Cambodia are subject to monitoring visits under which the working-conditions situation in factories is assessed against “imported” labor standards. The Project works on the assumption that the 1997 Cambodian Labor Code incorporates to a large extent the rights covered by the Fundamental Conventions of the ILO. This assumption can be made with relative certainty because the Code is based primarily on an ILO draft made available to the government in 1995.¹⁰

In undertaking factory visits, monitors are guided by an extensive checklist/audit questionnaire, which was reviewed and endorsed by the PAC. This checklist contains over 500 items, most of which relate to articles in the national Labor Code and its implementing regulations. Where regulations are not available, the ILO included requirements based on considerations of what can reasonably be expected of employers given international practice. For example, the Project requires and monitors the provision of personal protective equipment for workers, although there are no national regulations that require this. It is important to note in this respect that the PAC endorsed the checklist in its entirety, including the questions not expressly covered by Cambodian law. In other words, the parties most affected by the monitoring efforts of the ILO, notably the employers, agreed with its content.

Since it is based on the entire spectrum of issues covered by Cambodian labor law, the checklist is very extensive. Apart from the rights covered by the core conventions of the ILO, the checklist covers rights related to employment contracts, wages, hours of work, leave, safety and health, and healthcare and specific rights for women, such as maternity leave, breast-feeding, day-care centers, and sexual harassment.

C. Who Is Monitoring?

The Project has employed twelve monitors to undertake factory visits. When the Project first started and the initial group of eight monitors was recruited, the PAC indicated it wished to play a role in the recruitment process in order to ensure, although not expressed in so many words, that the group of monitors

9. *Id.* § 1.1.

10. Ninety-five percent of the Code is the same as the draft provided to the government by the ILO according to comments made in 2001 by a senior ILO official of what is now called the ILO Infocus Programme on Social Dialogue, Labour Law and Labour Administration.

recruited would include and reflect the different emphasis by the different members of the PAC on background and qualifications of the monitors. The Project decided to establish a recruitment panel of four persons consisting of the Project manager, officially called the Chief Technical Advisor (CTA), and one representative from each of the tripartite partners chosen by each group individually. Each of the four panelists went through the 300-odd applications received individually, after which assessments were combined and discussed and a short list of candidates was presented to the PAC as a whole. The PAC subsequently reviewed and endorsed the short list, and the ILO, satisfied that the recruitment process had been fair, merit-based, and balanced, in turn recruited the successful candidates.

As it was, the initial group of monitors included several former labor inspectors, a former mid-level manager in a garment factory, and several persons who had worked for U.N. agencies and non-governmental organizations. What they had in common, though, is that they all had experience in monitoring. When the Project subsequently recruited additional monitors, the PAC did not request to be involved, an indication that they were generally satisfied with the functioning of the monitors.

Upon recruitment, the first group of monitors was provided with intensive training for three months, covering subjects such as Cambodian labor law and international labor standards, interviewing techniques, and report writing. The training also included a number of training visits by monitors to different types of enterprises. Training for the second group of monitors was less extensive in that they were sent to the factories earlier, since they could learn "on the job" from the already-experienced monitors. The training was undertaken by Project staff, independent consultants, and government officials, but monitors were also briefed by representatives from GMAC and the Cambodian trade union movement on their main concerns.

D. How Is the Monitoring Undertaken?

Enterprise visits are undertaken by at least two monitors. Each visit follows a similar procedure, which includes an initial meeting with management, a tour of the enterprise, observation of the workplace, interviews with workers and their representatives both inside and outside the factory, collection of relevant documents (payroll, sample contracts, leave records, etc.), and an exit interview with management. After each monitoring visit, monitors analyze all the information gathered and prepare a report for the CTA containing their findings and suggestions for areas of improvement. The CTA checks the report to see that it has been completed in accordance with Project procedures. Once approved by the CTA, the CTA and/or the Program Assistant discusses the draft report with management in order to secure the agreement of management with the findings and suggestions in the report and gather additional information if necessary. This

stage also includes an additional visit to the factory to verify further information received. The final report prepared after this meeting is sent to management with a request to sign and return it. At this point, management can indicate points with which they do not agree. Upon request from management, the Project may offer assistance to factories in implementing the suggestions identified in the report.

In principle, follow-up visits were to be undertaken within six months. However, in practice, workload and logistics did not always allow compliance with this timeframe. Follow-up visits are also undertaken by at least two monitors, whereby at least one of the monitors is part of the team that undertook the first visit. Follow-up visits focus on progress made in the implementation of the suggestions. In addition, monitors look into changes with regard to fundamental issues such as freedom of association and child labor, as well as major changes with regard to issues for which factories were found in compliance with the law after the first monitoring visit. Reports on follow-up visits are sent to management with a request to sign and return them. At this point, management again can indicate points with which they do not agree. They are also informed that they can contact the Project at all times to discuss the report or provide additional information if they so desire.

E. How Are the Findings Reported Publicly?

Every three to six months, the Project publishes so-called synthesis reports, which provide an overview of the operation and findings of the monitoring system for a certain period. The synthesis reports cover a certain number of factories for which a monitoring visit was undertaken. A unique feature of these reports is that while the factories remain anonymous the first time information on a group of factories is included in a report, factory names are disclosed the second time information on the same group of factories is included, i.e., after a follow-up visit has been undertaken to assess how far progress has been made in implementing suggestions made by the ILO. The idea is that factories are given a certain grace period during which they can make improvements and prove they have good will. After this period they can basically no longer claim ignorance about any problems that may exist.

The synthesis reports are presented to the PAC, which discusses each one. The PAC's comments, which take the form of joint statements, are recorded and attached to the ILO report upon publication. The ILO report and the comments of the PAC are made available in both English and Khmer and are freely distributed to interested parties, including the parties to the U.S.-Cambodia Textile and Trade Agreement. The reports are also posted on the Project website.¹¹ As of July 16, 2006, a total of sixteen reports had been published.

11. See Better Factories Cambodia, <http://www.betterfactories.org>.

F. The Main Findings

Analysis of the synthesis reports published so far provides a clear overview of the working conditions in Cambodia's garment sector. It should be underlined here that, except for newly established factories, all registered factories have been reported on at least once, so a complete picture can indeed be distilled from the findings. The reports show that when it comes to the issues covered by the Fundamental Conventions of the ILO, Cambodia is doing well. There is no forced labor, and only some child labor and sex-discrimination was found.¹² Freedom of association, for which the reports indicate harassment and dismissal of union leaders/members, as well as efforts to hamper the establishment of unions and occasional violence, remains a serious issue.

The main problems, though, are in the areas of payment of wages and the frequency, duration, and non-voluntary nature of overtime. With regard to the payment of wages, the reports indicate that these problems relate not so much to irregularities concerning the payment of minimum wages, with the exception of minimum wage payments to casual/short-term workers, but mostly relate to other payments, such as overtime, bonuses, or leave entitlements. The reports are straightforward when it comes to overtime. Workers are often forced to work overtime, and they work overtime too often and too long.

IV. MEASUREMENTS OF SUCCESS

A. Improved Working Conditions

As described above, one of the features of the system is that it has a built-in system of assessing progress made through the follow-up visits undertaken. Because of the transparent public reporting system, progress can easily be tracked. The conclusion from the reports can only be that overall progress in improving working conditions is substantial and has been so right from the beginning. For instance, the relevant findings for a group of twenty-eight factories which were first to be monitored are contained in synthesis reports, which cover a first visit and two follow-up visits.¹³ After the first follow-up visit, the average rate of

12. The child labor identified is reportedly always due to workers falsifying age-related records in order to get a job, rather than a deliberate act on the part of the employer, who might be negligent nonetheless in verifying age-related documents. The children working are treated the same as all other workers in terms of wages and working hours. A system is in place to remove and provide vocational training/education and replacement income for child laborers found. Sex discrimination reportedly exists in the form of a limited number of sexual harassment incidents.

13. See FIRST SYNTHESIS REPORT, *supra* note 8; ILO, THIRD SYNTHESIS REPORT ON THE WORKING CONDITIONS SITUATION IN CAMBODIA'S GARMENT SECTOR (June 3, 2002), <http://www.betterfactories.org/content/documents/1/3rd%20Synthesis%20Report%20-%20>

implementation of suggestions made stood at approximately 32.5%.¹⁴ After the second follow-up visit, the factories had made further improvements, though at an average implementation rate of approximately 43.5%.¹⁵ Similar average rates of implementation of suggestions can be found in other synthesis reports. It must be underlined here, though, that these are averages and that progress varies widely between factories. Nevertheless, the fact remains that every implemented suggestion means a tangible improvement in working conditions for workers, whether that means they take home more money, are no longer forced to work overtime, or get clean drinking water or maternity leave.

While the figures alone are a strong indication of progress made, they need to be put in the correct context to fully appreciate their meaning. First, the ILO monitors have no law enforcement powers. Second, while the ILO monitors do have an advisory role in improving working conditions, this was in the initial three years of the project, and in most instances, was limited to providing clarifications as to the content and requirements of the law while undertaking a monitoring visit. Financial and human constraints prevented the Project from providing much structural and technical advice with regard to improving working conditions. Nor was it able to develop fully capacity-building and information activities for employers and workers. With the monitoring system firmly established, however, this has changed, and an impressive range of information and training services have been developed and implemented by the Project over the past years, allowing for a firm focus on continuous improvement of working conditions. These services and tools include a modular training package for individual factories in which they can learn, together with their workers, how to practically improve working conditions and productivity; single-issue training seminars on issues such as first-aid training and workplace cooperation; an induction training kit aimed at assisting factory-level trainers, or human resource managers, to train and orient new employees about their rights and responsibilities in the workplace; and a soap opera airing on national television aimed at educating workers on ways of solving disputes and their rights and responsibilities in conducting legal strikes.¹⁶

English.pdf [hereinafter THIRD SYNTHESIS REPORT]; ILO, SIXTH SYNTHESIS REPORT ON THE WORKING CONDITIONS SITUATION IN CAMBODIA'S GARMENT SECTOR (June 6, 2003), <http://www.betterfactories.org/content/documents/1/6th%20Synthesis%20Report%20-%20English.pdf> [hereinafter SIXTH SYNTHESIS REPORT].

14. THIRD SYNTHESIS REPORT, *supra* note 13, at 53-56.

15. SIXTH SYNTHESIS REPORT, *supra* note 13, at 50-53; *see also* Lejo Sibbel, Linking Trade with Labour Rights: The ILO Garment Sector Working Conditions Improvement Project in Cambodia 48 (April 2004, masters thesis, Raoul Wallenberg Inst. of Human Rights & Humanitarian Law, Lund Univ., Swed.).

16. For more information, see Better Factories Cambodia, <http://www.betterfactories.org>.

B. Export Growth and Costs vs. Cost Savings

The progress made in improving working conditions in Cambodia has also been recognized by the United States in its decisions to provide a bonus quota for every year for which the Trade Agreement was in force. For the years 1999 to 2002, the United States provided a 9% bonus quota; for 2003, it provided a 12% bonus quota; and for 2004, it provided an unprecedented 14% out of the possible 18%. In addition to this, Cambodia's improved reputation in the area of working conditions has attracted more orders from existing buyers as well as new buyers, though it is impossible to put a number on this. While many factors play a role in the overall growth rate of the garment sector in Cambodia, including the safeguard action taken by the United States and the European Union in May 2005 against Chinese imports, the fact remains that the expected onslaught following the expiration of the MFA did not occur. In fact, in June 2005, the International Monetary Fund (IMF) revised Cambodia's predicted GDP growth from 2.3% to 6% based on the strength of the garment industry post quota, where the IMF had initially expected zero growth for the sector.¹⁷ Also, data for 2005 showed that, where the United States was the main market for Cambodian garment exports, accounting for just over 71%, the quantity of these imports (in pieces) increased by just over 10% and the value (in U.S. dollars) of those same garments grew by nearly 20%. From January 1, 2005 until April 30, 2006, nearly 30,000 new jobs were created in Cambodia's garment industry, bringing the total in April to 293,600.¹⁸ Its reputation for having good working conditions no doubt played a role in these developments.

Another element that should be taken into account is that of cost. The monitoring system costs three U.S. dollars per worker per year, which, in the grand scheme of things, is a pittance. However, this cost is more than evened out because of savings made throughout the industry, considering that increasingly buyers sourcing from Cambodia do not undertake their own monitoring of factories anymore, but instead rely on the monitoring done by the Project. Given that factories almost always produce for more than one buyer, they may be subjected to multiple—sometimes dozens of such—monitoring visits per year. By only being monitored by the Project, factories save money by not having to pay monitoring fees, and save even more money by eliminating the time and management requirements needed to deal with all these of different monitoring visits.

17. Better Factories Cambodia, *The End of Quotas: Impact on Cambodia's Export Garment Industry*, July 2005, <http://www.betterfactories.org>.

18. Better Factories Cambodia, *Cambodian Garment Industry: One Year Later*, May 2006, [http://www.betterfactories.org/content/documents/One%20year%20later%20-%20May%2006%20\(en\).pdf](http://www.betterfactories.org/content/documents/One%20year%20later%20-%20May%2006%20(en).pdf) [hereinafter *One Year Later*].

C. Embrace of the Project

Where the industry initially suffered from a severe case of the jitters with regard to the Project, especially due to its transparency concerning situations in individual factories, attitudes changed relatively quickly. In 2002, the President of GMAC stated that “[o]nce we started talking to buyers, [and] looked at American consumer habits, we realized that we had a comparative advantage. Moreover, our only chance to survive in Cambodia was to build on the image of safe sourcing. Otherwise, we’d lose to price competition.”¹⁹ The system also carries the clear support of the Cambodian government, the workers/unions, and the buyers.²⁰

Attitudes have changed to such a degree that the parties are actively working towards the “nationalization” of the project by January 1, 2009, meaning that it will be self-supporting in terms of funding and will have been transformed into a Cambodian body. The cornerstone of this “nationalization” is a unique information system already in place, which, by largely replacing paper with electronic data in three languages (English, Chinese, and Khmer), streamlines the information flow from the monitoring, giving factories, *inter alia*, quicker access to their factory monitoring reports and enabling them to authorize buyers’ access to a database in which these reports can be found. The system makes it easier for buyers wishing to rely on Project monitoring since the system can be accessed online. Disney, Sears, Kmart, and Wal-Mart have already ceased undertaking their own monitoring activities in Cambodia.

Given that the “carrot” of the bonus quota is no longer available with the expiration of the MFA, the embrace of the Project is rather remarkable. It means that all parties involved recognized that Better Factories Cambodia has been of vital importance for the continued survival and growth of Cambodia’s garment sector, and that its continued operation is important for the future. Given that the very reason why the Project came into being, namely the U.S.-Cambodia Trade Agreement and its bonus quota system, is no longer in place, this embrace shows that the parties involved recognize that the transparent monitoring combined with capacity-building activities as undertaken by Better Factories Cambodia has its own benefits.

19. Regina Abrami, *Worker Rights and Global Trade: The U.S. – Cambodia Bilateral Textile Agreement* 12, Harv. Bus. Sch. Case 703-034 (2003).

20. See generally James Brooke, *A Year of Worry for Cambodia’s Garment Makers*, N.Y. TIMES, Jan. 24, 2004; Kay Kimsong, *Chinese Competition Looms over WTO Entry*, CAMBODIA DAILY, May 14, 2003; Paul Magnusson et al., *Where Free Trade Hurts*, BUS. WK. (Asian Ed.), Dec. 15, 2003; ILO, *Cambodian Monitoring Reveals Progress and Problems*, ILO FOCUS, Winter 2003, at 14-15; Foreign Investment Advisory Service, *Cambodia: Corporate Social Responsibility & the Apparel Sector Buyer Survey Results*, FIAS (World Bank Group), Dec. 2004.

D. Impact on Governance Structures

The 1997 Labor Code was largely based on the advice provided by the ILO and was meant to provide a framework for the development of a free-market economy. The Code only covers the private economy (private businesses and the industrial sector) but not the civil service and informal sector. Up to now, however, the Cambodian government has not managed to establish the judicial system envisioned by the Code.

The main problems in this respect are the weak institutional structures of the government overall, the Ministry of Labor in particular, and lack of political will. For instance, there is weak law enforcement and control of the application of the provisions of the Labor Code by the Labor Inspectorate, which is underfunded and staffed by inspectors who are under-trained and known to be corrupt. The average civil servant in Cambodia makes around thirty U.S. dollars a month (while the minimum wage in the garment sector is forty-five U.S. dollars). A survey undertaken into the production costs in the garment industry revealed that "bureaucracy costs" accounted for about 7% of sales, or about \$70 million, in 2000.²¹ These "bureaucracy costs" include fees paid for licenses to set up and operate garment enterprises, import raw materials, and export final products, as well as payments to labor inspectors.²²

The monitoring and capacity-building of the Project designed for the garment sector certainly had a positive effect on the developments of an institutional framework. The potential of the Project to affect regulation in other economic and social sectors has not been used to the fullest, since its application remains limited to the garment sector. Nevertheless, attempts have been made to ensure that structural changes are brought about to sustain the gains made in the garment sector and implement change in other sectors. For instance, within the framework of an ILO Project aimed at bringing about structural change in dispute resolution, an Arbitration Council (AC) has been set up to deal with labor disputes.²³ This tripartite body mostly has been hearing cases from the garment sector, but has also heard cases from the tourism and construction sectors. The independent and impartial functioning of the AC is generally considered an exception within a weak judicial system rife with corruption. Stakeholders as well as independent researchers and organizations have considered it a model for judicial reform.²⁴

21. Cambodia Dev. Resource Inst., *The Cambodian Garment Industry*, CAMBODIA DEV. REV., July-Sept. 2001, at 3.

22. *Id.*

23. For more information, see Cambodia's Arbitration Council, <http://www.arbitrationcouncil.org>.

24. Lejo Sibbel, Arbitration Council Review, ILO Labour Dispute Resolution Project, Phnom Penh 15-16 (June 2005).

E. Social Implications

Export industrialization of Asian neighbour states points to a trend whereby the labor force in the textile production sector has certain common characteristics. In general, the labor force is young, unskilled, and predominantly female. Export industrialization of developing countries was often accompanied by a feminization of the labor force and the establishment of formal labor markets for women. This preference for women is based on multiple social and cultural practices, from which it is assumed that women are pre-destined to work in textile production. Because of their “nimble fingers” and “submissiveness,” women are considered a cheaper and easier-to-exploit workforce—a competitive advantage, not only for women against men, but also as the basis for a national export strategy.²⁵ Reflected in the macro-economic strategy of Cambodia as contained in the 2003 Poverty Reduction Strategy Paper, the Cambodian government underlines this aspect: “The promotion of labour intensive manufacturing will continue to focus on the textile and garment sub-sector, where the ready supply of mostly female labour underpins cost-competitiveness.”²⁶

With rising exports, the workforce participation rate in the garment sector has risen from just over 100,000 in the year 2000 to almost 300,000 in 2006.²⁷ The share of female participation is about 90%.²⁸ With a minimum wage of forty-five dollars and an average wage of seventy-two dollars, taking into account bonuses and overtime, wages are among the highest, if not the highest, in the country, for unskilled labor.²⁹ Before export industrialization, the opportunities for women in a formal labor market were limited. Now, a labor market has developed that not only gives preferential employment to women, but also offers them the advantage of benefiting from certain institutional and social guarantees and standards, the implementation of which is supported by the Project. These include certain gender-specific standards such as maternity leave and breast-feeding breaks.

For women, working in the textile industry remains critical in some ways. Cambodia’s social, cultural, and traditional framework is in conflict with the implications of obtaining employment in the garment sector. In most cases, young and unskilled women have to leave their homes in agricultural areas to look

25. Diane Elson & Ruth Pearson, *The Subordination of Women and the Internationalization of Factory Production*, in *THE WOMEN AND DEVELOPMENT READER 191-202* (Lynn Duggan, Laurie Nisonoff & Nan Wiegersma eds., 1997).

26. COUNCIL OF SOCIAL DEV., *POVERTY REDUCTION STRATEGY REPORT 2003-2005*, at 83 (Phnom Penh 2002).

27. One Year Later, *supra* note 18.

28. Marwaan Macan-Markar, *Cambodia: Women Stitch an Economy with Garment Exports*, INTER PRESS SERVICE, June 16, 2006, available at <http://ipsnews.net/news.asp?idnews=33651>.

29. One Year Later, *supra* note 18.

for work in urban areas. Their wages may provide financial independence, but also their whole families are usually lifted out of poverty through their income. Nevertheless, these women face social stigmatization and exclusion because patriarchal and traditional values dictate certain gender roles where a woman's status is controlled by the family. The negative perceptions associated with women living independently by themselves in an urban setting are gradually disappearing. Women are now considered the main beneficiaries of export industrialization as illustrated by a U.N. Development Programme study on Economic Processing Zones (EPZ) asking the local population about the expected socio-economic outcome of the establishment of an EPZ.³⁰ Daughters are now believed to be a potential major source of income for their families instead of a burden. The independence that comes with this income gives women an opportunity to challenge traditional gender roles and patriarchic family structures. In this respect, female garment-sector workers have been credited with having developed a new identity in society by being more open, understanding their own rights, and not being reluctant to oppose those who are violating their rights.³¹

V. CONCLUSION

What has happened in Cambodia as described above would not have been possible without the U.S.-Cambodia Trade Agreement. It was the positive incentive of possible bonus quotas available under the Trade Agreement that initially made the parties involved accept the establishment of the monitoring system under the ILO Better Factories Cambodia Project. The Agreement gave the Project the time necessary to prove that its functioning was of benefit to all parties involved even past the expiration of the Trade Agreement. Working conditions have improved markedly, more orders have been placed either by buyers already sourcing from Cambodia or by new buyers attracted to Cambodia by the system, cost-savings are being made in cutting out multiple monitoring systems, the parties involved are increasingly in better positions to solve their own problems, and ultimately it is envisaged that a national organization will be fully responsible for the delivery of the services developed. The Project has also affected the institutional and social composition of the country by improving governance structure and supporting ongoing challenges of traditional gender roles.

In any case, what has happened in Cambodia proves that linking trade with labor, when accompanied by sufficient technical assistance, can have

30. U.N. Dev. Programme [UNDP], *Social Impact Assessment of Koh Kong Industrial Export Processing Zone Project* 47-54, 141 (Mar. 2005), available at http://www.un.org.kh/undp/resources/publications/poverty/sia_2005_en.pdf.

31. *Garment Industry Employment Alters Social Context*, BUS. PRESS (Phnom Penh), June 5-11, 2006, at 6.

tangible, long-term benefits and lead to a win-win situation for all involved. The lessons learned from the Cambodia model, namely the effect of providing positive incentives in trade agreements, the benefits of transparency of monitoring, the need to back up monitoring with capacity-building activities in order to tackle structural problems, and the need to work together with the parties directly involved (employers, workers, government, and buyers) could be applied elsewhere.

To be clear, much remains to be done in Cambodia when it comes to improving working conditions and creating an environment where labor relations are free from political interference and violence, but the former U.S. Trade Representative Robert Zoellick was right when he called the Cambodia agreement “[a]n excellent example of the way trade agreements lead to economic growth and promote a greater respect for workers’ rights.”³² The question remaining is why this example has not been used elsewhere.



32. NICOLE J. SAYRES, REPORT FOR CONGRESS, THE VIETNAM-U.S. TEXTILE AGREEMENT DEBATE: TRADE PATTERNS, INTERESTS, AND LABOR RIGHTS 15 (2002), available at <http://www.usvtc.org/info/crs/CRStextileagreement21jun02.pdf>.