THE AUSTRALIA–UNITED STATES FREE TRADE AGREEMENT AND THE RATCHETING-UP OF LABOUR STANDARDS: A PRECEDENT SET AND AN OPPORTUNITY MISSED

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The Australian government signed a free trade agreement with the USA in 2004. There has been much commentary on the agreement most of which has focused on the effect of the agreement on the Pharmaceutical Benefits Scheme, agricultural and manufacturing products and Australia's culture through regulation of film and television content. Most analysts have missed the significance of labour rights in the agreement the inclusion of which adds a new dimension to the trade–labour linkage debate in Australia, a linkage long demanded by the unions and long rejected by the major political parties. We look at the implications of the inclusion of labour rights in the agreement in terms of future union strategies and within the context of the government's pursuit of a free trade agreement with China.

INTRODUCTION

In 2003, the Federal Coalition Government dismissed claims that a labour rights clause should be written into trade agreements on the grounds that there was no evidence that trade liberalisation lowers 'standards of environmental protection, health and safety or labour rights' (DFAT 2003a: 33). This perspective was also that of the Australian Labor Party (ALP; Cook 2000), but in March 2003, both Australian political groupings were compelled to begin reconsidering their views following the arrival of a team of US trade representatives who had come to negotiate an Australia–United States Free Trade Agreement (AUSFTA) and who included Labor Department officials charged with assessing Australia's labour laws and with ensuring any agreement includes a labour rights chapter. That the agreement had to include labour provisions was conveyed directly to Tony Abbot, the then Minister for Employment and Workplace Relations, by the US negotiators, in reply Abbot declared that Australia would have no difficulty meeting this demand (Moorhead 2003). The spontaneity of the response suggests one of

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three possibilities: that there was little awareness on the part of the Minister of the role of labour standards in current US trade debates, that he was deflecting an issue for which he was unprepared, or the government believed that they could negotiate the removal of a labour chapter. That the latter was the case is supported by a comment in Department of Foreign Affairs and Trade's (DFAT) submission to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into the General Agreement on Trade in Services and the AUSFTA 2003, which stated that:

> We note that the 'fast track' authority also requires the US to consider the impact on environment and labour standards. This has been especially important in US FTA negotiations with developing countries, and it may involve a different kind of discussion in the context of an FTA with Australia. (DFAT 2003b: 50)

This comment suggests that DFAT officials believed a developed country such as Australia would be able to negotiate an agreement that did not include a chapter on labour rights. Indeed it appears that the Australian government was partially successful in that it was able to negotiate away one labour requirement normally insisted upon by the USA. Unlike Chile and Singapore, Australia was not required to ratify International Labour Organisation (ILO) Convention 182, *Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, on the grounds that Australia's various federal, state and territory laws that regulate age levels for compulsory education suffice to excuse Australia from ratification of Convention 182 (AUSFTA footnote to Article 18.7), even though it is a requirement under s. 2102 of the US President's Trade Promotion Authority (TPA). Despite this concession by the US negotiators, the Coalition found that it did have to endorse a labour chapter and by February 2004, when the agreement was signed the ALP had changed its official position to enable it to do likewise (see AUSFTA 2004).

The significance of the AUSFTA labour chapter initially bypassed Australian analysts. When the draft agreement was made public, commentary focused on its likely effect on employment, pharmaceutical prices, and the agriculture, manufacturing and entertainment industries. This is despite the fact that the inclusion of a labour chapter in an Australian trade agreement is without precedent and constitutes an important step forward for Australian labour. Included among those who initially accorded little attention to the chapter was the Australian trade union movement. However, this omission was rectified once the unions began to appreciate that the precedent; makes it difficult for Australian governments to continue denying workers' rights are a trade issue; strengthens the capacity of unions to convince the ALP to support these provisions; and establishes a new minima that will need to be preserved in the looming debate over the proposed Australia–China Free Trade Agreement (ACFTA). In this paper, we seek to further heighten appreciation of this precedent by tracing the evolution of the AUSFTA debate in Australia and the USA, detailing the AUSFTA's labour provisions, and by making some observations regarding what lessons Australian unions might draw from the AUSFTA experience.

TRADE AGREEMENTS AND LABOUR RIGHTS

The trade–labour rights debate in the USA has reached the stage where the issue is no longer whether such provisions should be included in trade agreements but what should be their content (Fishman 2002). That the Coalition and Labor did not fully appreciate this reality in 2003 suggests they did not understand the extent to which the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and civil society groups that support a labour rights link have been able to influence Congress on trade issues. As a consequence of this success, both the Democratic and Republican parties now accept all US trade agreements must include a workers' rights chapter. How the US unions and their allies achieved this relative success we have discussed elsewhere (Griffin *et al.* 2004). Central to our argument is that US unions operate in an environment in which there is greater popular concern with trade issues than exists in Australia; there remains an influential body of US investors who are overtly protectionist; and the notion of human rights is much more part of the cultural and political mindset in the USA than it is in Australia. Furthermore, the US unions adopted a multifaceted strategy that involved direct lobbying of the Democratic Party, intensive grassroots activism as well as the development of strategic alliances with church groups and social movement groups or NGOs such as Ralph Nader's Public Citizen, the Sierra Club, the National Farmer's Union and Friends of the Earth (Griffin *et al.* 2004) that kept the issue on the public agenda. The decentralised party structure in the USA and voluntary voting has also played a significant role in the US unions' ability to influence trade policy. Cabinet solidarity is not a feature of US politics, unions and interest groups are able to target and contribute much needed financial and human resources to an individual candidate's campaign which can result in that candidate voting against party policy on free trade as some Democrats did when Clinton was seeking fast-track authority. In addition, the union movements' ability to turn out voters is particularly important to the Democratic Party. In the 1998 Congressional elections, the turnout among union voters was 49%, compared to 33% in non-union households, and of these union voters 71% supported Democratic candidates (Dark 2000 quoted in Griffin *et al.* 2004: 99). Thus, despite their smaller union membership and lack of formal affiliation with the Democrats, the US unions are able to exercise far more influence over the Democratic Party than the Australian union movement can exert over the ALP.

Together, the foregoing factors have enabled the AFL-CIO to induce both Republican and Democratic administrations to support legislative instruments that link trade and labour rights. These include *The Trade Act of 1974*, *Caribbean Basin Economic Recovery Act of 1983*, *Trade and Tariff Act of 1984*, the *Generalised System of Preferences Renewal Act of 1984* (GSP), and the *Omnibus Trade and Competitiveness Act of 1988* (Tsogas 2001: 86). In practice, these instruments have been rendered ineffective by a lack of commitment on the part of politicians. For example, the GSP included a provision that listed the rights of workers among its criteria for use in determining the level of assistance to beneficiary countries, however, it also allowed for waiver by the President if this was deemed to be in the national

economic interest (Perez-Lopez 1988: 261). Both Presidents Reagan and Bush Snr took advantage of the escape clause and 'chose to veto any move to seriously apply the Act's provisions' (Lambert & Caspersz 1995: 574). In addition, the provisions have been used to further foreign policy objectives rather than as an instrument to ensure compliance with labour standards. Tsogas (2000: 358) illustrates the problem by pointing out:

> From 1987 to 1990, petitions against El Salvador (at the highest point of civil strife and the activities of death squads) were denied for review, while Nicaragua under the Sandinista government was one of the first countries removed from the GSP programme by the Reagan administration, even though a US trade embargo was in full force. In 1987, the USTR refused to accept for review the GSP status of El Salvador, relying on State Department sources that classified trade union members as antigovernment guerillas 'subject to mistreatment for security reasons'.

Nevertheless, these provisions remain important for they have established a legal foundation upon which the AFL-CIO has been able to increase its capacity to input into trade debates and 'ratchet-up' the labour rights content of trade agreements. The notion that reformers should promote the adoption of framework agreements and then campaign to ratchet up global standards has been expounded by Braithwaite and Drahos (2000). They suggest an effective ratcheting strategy should:

- exploit strategic trade thinking to divide and conquer business;
- harness the management philosophy of continuous improvement;
- link Porter's *Competitive Advantage of Nations* analysis to best available technology (BAT) and best available practice (BAP) standards;
- target enforcement on 'gatekeepers' within a web of controls—actors, with limited self-interest in rule-breaking, but on whom rule breakers are dependent; and
- take framework agreements seriously.

Central to this strategy is the notion that framework agreements are of value because they establish a minimal position from which activists can advance prepared policy proposals when opportunities arise.

By embracing this approach to trade and labour rights reform the AFL-CIO has been able to take advantage of their nation's constitutional structure to an extent not emulated by their Australian counterparts. In both countries the legislature has the capacity to shape the content of trade agreements. However, Australian law makers can only input into the making of trade agreements after a draft agreement has been signed. In contrast, US law allows for a Congressional role before the opening of trade negotiations for at this stage the legislature can decide whether or not to grant a TPA to the President and can determine the nature of this authority. Trade Promotion Authority has a general termination period usually of four years with the possibility of a two-year extension. During the Clinton administration, deep divisions 'developed within the trade policy community over the substantive scope of future trade negotiations—above all the coverage of trade-related labor and environmental issues' (IIE 1997: 2). Driving these concerns was fear that trade liberalisation would accelerate 'out-sourcing'

and endanger workers' rights within the USA (Griffin *et al.* 2004). Consequently, when President Clinton sought renewal of TPA in 1997 and again in 1998, he was rejected on both occasions. This development induced the business sector to re-evaluate the place of labour rights in trade agreements. In 1999, business was all but unanimous in its opposition to any trade–labour rights link. This was exemplified by the fact that immediately before the WTO Ministerial in Seattle the US Council for International Business, an organisation representing close to 3 million firms, publicly opposed any discussion of labour standards in the trade talks (Mortelmans 1999). Shocked by what subsequently occurred at Seattle and concerned that the USA was no longer the indispensable country on trade, business began rethinking their position and a number of major US firms such as Boeing and Caterpillar, began 'exploring the option of providing support for labor and environment in the context of a new [trade] round' (Bridges Weekly 2001; Business Round Table 2001). In 2001, the Committee for Economic Development (CED), a research and policy organisation of 250 business leaders and educators, carried this process further when it produced a report titled, *From Protest to Progress: Addressing Labor and Environmental Conditions Through Freer Trade.* This document stated that its purpose was to 'clarify the social issues that have eroded the domestic constituency for international trade' and help support the granting of TPA to the President (CED 2001: vii). The report argued that 'it is time to engage labor and the environmental communities in a real and meaningful debate', and recommended among other things, that the enforcement mechanisms of specialised international agencies such as the ILO should include positive inducements as well as disciplinary measures such as fines; that policy makers should avail themselves of opportunities presented in bilateral and multilateral negotiations to take experimental steps to resolve conflicts between trade, labour and environmental issues; and should reduce worker anxiety by adopting a modest system of temporary supplemental wage and health assistance (CED 2001: ix). This conciliatory stance by the business sector post-Seattle helped to overcome the fast-track stalemate under the Clinton administration and ultimately assisted the Bush administration's successful attempt to win fast-track approval in 2002.

The bipartisan aspect of these developments is indicated by two Bills linking labour rights and TPA presented to Congress in 2002 by the Republicans (United States House of Representatives (HR) 3005 2001) and Democrats (United States House of Representatives (HR) 3019 2001), respectively. Both stated that US trade negotiators must seek to extend respect for workers' rights. However, the Republican bill was aspirational seeking merely to *promote* respect for workers' rights while the Democrats' was designed to *enforce* respect. The Republicans' Bill was passed and the Democrats defeated. Effectively, what this means is that under the TPA granted to President Bush in 2002, all US trade agreements must include a chapter that 'promotes respect for workers' rights and the rights of children consistent with the core labor standards of the ILO' (HR 3005 s2(a)(6)). This provision is less than that called for by the AFL-CIO and by the Democrats but nevertheless is a significant advance on what the ALP and the Coalition were willing to concede Australian workers before February 2004.

AUSFTA'S LABOUR PROVISIONS

Before the arrival of the US negotiators the Commonwealth government did not make any comments regarding the possible inclusion of a labour rights chapter in the proposed agreement. This was despite the fact that the US negotiators were required to prepare three labour-related studies: an *Employment Impact Review*, a *Labor Rights Report* and a report detailing the partner country's *Laws Governing Exploitative Child Labor*. The only Australian body that took up the issue of labour rights, before the negotiations, was the Australian Council of Trade Unions (ACTU) and union bodies such as the Australian Manufacturing Workers' Union that had long sought to influence ALP and Coalition trade policy. Once the intention to negotiate an agreement was made public in 2001, the respective Presidents of the AFL-CIO and the ACTU issued a joint statement that welcomed their governments' attempts to foster deeper integration but in so doing, vowed to oppose any agreement that failed to defend workers' rights and job security. The joint statement declared:

> Any bilateral agreement must incorporate a binding commitment to observe the core workers' rights identified by the ILO Declaration on Fundamental Principles and Rights at Work, as well as a commitment to effectively enforce domestic labor and environmental laws and any international treaty obligations undertaken in these areas. These provisions should be included in the core of any agreement and covered by the same dispute resolution provisions as the rest of the agreement. (AFL-CIO/ACTU 2001)

In accordance with this compact in September 2003, the AFL-CIO presented US trade negotiators with a submission titled *Labor Rights and Child Labor Laws in Australia* (AFL-CIO 2003). This document replicated the emphasis of the 2001 joint declaration by prioritising workers' rights and according concerns regarding jobs secondary attention. In short, the Americans highlighted the fact that Australia 'has an imbalanced, inadequate system of labor laws that fails to fully protect workers' core rights' (AFL-CIO 2003). Recognising many relevant issues are covered by state regulations, the AFL-CIO warned that if the Australian government only agreed to enforce its federal laws then basic labour rights would not be protected by the AUSFTA. Their submission also noted Australian labour laws have been criticised by the US State Department, the International Confederation of Free Trade Unions, and the ILO for failing to adequately protect freedom of association, the right to organise and bargain collectively, and that the federal government has been criticised for failing to amend rights breaches when requested to do so by the ILO. Having detailed these inadequacies, the Americans warned a failure to rectify these concerns would cause them to oppose ratification (Balogh 2003; Workers Online 2003).

The ACTU likewise prepared a submission to the Australian government in 2003. However, the nature of their submission differed markedly. Whereas the US unions stressed the importance of workers' rights, their Australian counterparts paid only marginal attention to this issue. Reference was made to rights in the 2003 submission, but the comments are couched in broad terms with as much

attention paid to the rights of the community as is paid to employment rights. A measure of the lack of attention accorded the rights issue is that in the nine page submission workers' rights are accorded less than a half page and this is done in a cursory manner. In brief, rather than focusing on workers' rights the Australian union submission centred on the impact an AUSFTA might have on jobs and on broad social issues such as the cost of the pharmaceutical benefits scheme. Although these are important issues, we hold it was mistaken of the ACTU to accord little attention to the human rights of labour. We note though it is not a surprising development given the perspective manifest in the background paper on trade prepared for the 2003 ACTU Congress. In the latter document the terms workers' rights and labour rights do not appear a situation that stands in marked contrast to *Globalisation and Labour Rights*, a document of the 2000 ACTU Congress, which stressed the importance of labour rights.

The different emphases accorded workers' rights in the ACTU and AFL-CIO contributions to the AUSFTA debate allowed the AFL-CIO to paint itself as both a protector of jobs and a defender of basic human rights. Conversely, the Australian union movement appeared as an organisation preoccupied with economic protectionism. This is ironic as through the time of the Hawke and Keating governments the ACTU was an important facilitator enabling trade liberalisation, a contribution that assisted this process to proceed at an unprecedented pace (Phillimore 2000: 558; Mansfield 2004). That the ACTU allowed itself to appear as crudely protectionist at a time when such arguments have lost much of the appeal they once enjoyed among workers, employers and the broad community, is unfortunate. This is the more so as the human rights discourse has gained ground as protectionist arguments have lost their appeal. In short, by emphasising human rights and jobs, US unions have been able to attract an audience broader than those who consider themselves directly affected by trade liberalisation and this has had the spin-off effect that the US unions have been able to make the link between trade and jobs more of a political issue than it is in Australia.

The capacity of US unions' and their allies to link human rights and job protection in the mind of the US population is evidenced by the emphasis Republicans and Democrats placed on 'contracting out' in the 2004 Presidential race (Walker 2004: 58). The strategic way in which acceptance of this link is encouraged by the US unions was exemplified in March 2004 when the AFL-CIO filed a petition under s. 301 of Trade Act of 1974 (AFL-C10 2004). This act is normally only used to settle disputes between companies and foreign governments over unusual tax concessions and subsidies that distort international markets. However, the AFL argued the law should be invoked and penalties imposed on imports from China because the scale and degree of government-engineered labour exploitation in China supposedly distorts global labour markets. In filing the petition for the AFL-CIO, Mark Barenberg, a Columbia law professor, observed: 'We're not challenging China's comparative advantage [in cheap labor] but only the added increment of cost advantage it gains by violations of core worker rights' (Business Week 2004). Noting this development, *Business Week*, observed:

> Say this for the AFL-CIO: It knows how to put George Bush on the spot. As the Presidential campaign centered on jobs and foreign competition heats up, the labor federation fired what could be a potent election-year broadside: It asked the Bush Administration on Mar. 16 to decide whether worker repression lets China price its exports below their true market value, thus unfairly taking U.S. jobs. ... Despite the politics, the AFL-CIO's 100-page brief marks a milestone of sorts in the debate over trade and labor rights. For years, labor and its allies have demanded that labor standards be included in trade pacts. But their complaints often have been dismissed as self-interested protectionism. Now, for the first time, labor's so-called fair traders have articulated a coherent intellectual position that makes a logical link between trade and labor rights. (Business Week 2004)

Although the Coalition Government and the ALP were subjected to little domestic pressure of a similar nature a labour rights chapter was included in the AUSFTA. It was included because the USA made it clear that a bilateral agreement had no chance of passing Congress without a labour chapter. As a consequence, the AUSFTA has a section on labour rights modelled on the US–Singapore and US–Chile agreements. It obliges the Parties to reaffirm their commitments under the *ILO Declaration on Fundamental Principles and Rights at Work and Its Follow-up (1998)*, and requires internationally recognised labour principles and rights be protected by domestic law (Article 18.1). There are eight Articles in the chapter covering issues relating to procedural guarantees including 'appropriate access to administrative, quasijudicial, judicial, or labour tribunals for the enforcement of labour laws' (Article 18.3.1), and public awareness of labour laws by 'ensuring that information is available to the public regarding its labour laws and enforcement and compliance procedures' (Article 18.3.4). Article 18.4 covers institutional arrangements and provides that each Party 'designate an office within its central government agency that deals with labour or workplace relations' and serves as a contact point with the other Party, and the public for the purposes of the labour chapter (Article 18.4.2). Article 18.5.1 provides that the 'Parties agree to cooperate on labour matters of mutual interest and explore ways to further advance labour standards on a bilateral, regional, and multilateral basis', and 'establish a consultative mechanism for such cooperation'.

The two main Articles in the AUSFTA labour chapter, 18.2(a) and (b), state:

(a) A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.

(b) The Parties recognise that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labour matters determined to have high priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a *bone fide* decision regarding the allocation of resources.

Of the eight Articles in the chapter only 18.2(a) is enforceable. However, as shown in the above quote, 18.2(b) provides a discretion to the Parties, which

effectively undermines the enforceability of 18.2(a). In addition, Weiss (2003: 699) points out the highly problematic nature of requiring a country to 'effectively enforce' its own labour laws:

> If one merely asks a trading partner to effectively enforce domestic labour law without regard to structural defects in the labor tribunal system, prosecutorial system, procedural context, and remedies, these elements will sabotage meaningful implementation of any labour norms incorporated in domestic labour law, even if a country devotes large sums of money and immense amounts of effort to enforce its flawed regime.

Indeed, such a requirement will not even ensure a nation meets ILO obligations. In short, it is a weak requirement for it allows countries, such as Australia, whose labour laws have been found in breach of ILO standards to maintain those breaches. Nevertheless, by including the labour rights chapter a precedent has been set.

UNION AND ADVISORY COMMITTEE REPONSES

The Labor Advisory Committee (LAC) for Trade Negotiations and Trade Policy (a permanent body of trade academics, labour lawyers and union leaders), established under s. 2104(e) of the *Trade Act of 2002* (US) to advise the US government on whether trade agreements meet the labour objectives of TPA, have been highly critical of the AUSFTA's labour chapter (LAC 2004). LAC has accused the Bush administration of squandering a rare opportunity to 'reach a new gold standard on workers' rights in a trade agreement with another developed nation' and notes the labour provisions are a retreat from the US–Jordan Agreement, negotiated under Clinton, which sought to enforce respect for labour rights and is even less than the Bush Administration demanded of Chile and Singapore (LAC 2004: 3). It is also noted, that the *Workplace Relations Act* (1996) and consequent changes to Australia's domestic labour laws, have been criticised by the ILO, the State Department and the ICFTU and the concerns expressed are not likely to be rectified by AUSFTA's labour provisions (LAC 2004: 6). Commenting on Australia's non-ratification of ILO child labour conventions, the Committee noted technical discussions are continuing between the Australian federal and state governments but expressed concern that Australia had not provided a timetable for ratification of the relevant Conventions. Moreover, the Coalition 'has refused to make any commitments to ensuring effective collection, monitoring and analysis of data related to the worst forms of child labor' (LAC 2004: 8). Given the foregoing, the LAC advised the President to refuse to sign the AUSFTA in its present form (LAC 2004: 14). Similar criticisms were expressed by James Hoffa, General President of the International Brotherhood of Teamsters. In a dissenting opinion, presented as a member of the Advisory Committee for Trade Policy and Negotiations, Hoffa emphasised the failure of the AUSFTA to accord due attention to the rights of labour, the inadequacy of the Workplace Relations Act, the lack of Australian laws prohibiting forced labour and the use of child labour (Hoffa 2004: 8). On the basis of these concerns, he concluded the deficiencies in Australia's labour laws constitute a threat to the rights of all workers and hence the International Brotherhood of Teamsters would oppose ratification (Hoffa 2004: 10).

As with their submissions to the AUSFTA task force, the initial response of the Australian union movement differed from that of the AFL-CIO. A discussion of AUSFTA in the journal of the National Tertiary Education Union, for example, failed to mention that the agreement includes a workers' rights chapter (Murphy 2004). This response was replicated by the union's major intellectual ally in the trade area, the Australian Fair Trade and Investment Network, which issued a 10-point comment on the agreement that failed to note the existence of the labour chapter (AFTINET 2004). This initial response, however, was corrected by Sharan Burrow and the ACTU International Committee which recognised that while the labour chapter of the AUSFTA might be inadequate its inclusion in the agreement constitutes an important precedent that requires preservation. The ACTU's position was made clear in its April 2004 *Submission to the Joint Standing Committee on Treaties Regarding the Australia–United States of America Free Trade Agreement* (ACTU 2004). This well-crafted document acknowledges AUSFTA breaks with Australian tradition in respect of trade agreements by containing chapters on labour and the environment but rightly observes the labour provisions are below that of other US bilateral agreements. Aware that human rights are but one important element in the debate on trade and labour the submission also highlights perceived faults in the areas of services, manufacturing, investment and social policy. This response was emulated by the Australian Manufacturing Workers' Union, which has for long been the most proactive union in the trade debate (AMWU 2004). In short, from a campaign and strategy perspective the unions prepared well rounded documents that can and should serve as the basis for the ACTU's coming intervention in the proposed ACFTA.

AN OPPORTUNITY MISSED AND A VICTORY WON

The fact that the ACTU and the AMWU have now more fully integrated labour rights into their trade strategy is welcomed, but it is important to realise this late awareness has come at a cost. As a result of the union movement's inattention to developments in the USA that background the AUSFTA negotiations, the ALP was able to evade making significant concessions that have long been demanded by organised labour. In other words, had Australia's unions more fully appreciated that the US negotiators had no choice but to include a worker right's chapter in the AUSFTA, they would have been better able to target this aspect of the agreement and perhaps at least gain what was achieved in the Chile and Singapore agreements. Moreover, while it cannot be assumed that this targeting would have had any great impact on Coalition policy it may well have had important consequences within the ALP. This is because the Labor Party did not officially abandon its opposition to the inclusion of labour provisions in trade agreements until after the Coalition Government had already agreed to include a labour chapter in the AUSFTA and even when finally ceding this concession it was careful to offer the minimum necessary.

Only a month before the publication of the draft agreement, the ALP debated its trade policy at its National Conference. In this debate no reference was made to the fact that the Coalition had no choice, but to include a labour chapter in

the AUSFTA, the critical distinctions regarding promotion and enforcement that differentiate the positions on trade and labour of the Republican and Democratic Parties, nor the fact that if the ALP did not moderate its policy on trade and labour rights it would be compelled to oppose a reform demanded by the ACTU that the Coalition was putting into practice. These omissions from the debate meant that the unions desiring the explicit linking of trade and labour standards missed a great opportunity to promote this position. As the reality of the situation in the USA was not appreciated, the ALP Shadow Trade Minister was able to appear to be making serious concessions to the ACTU at the Party National Conference and by so doing was able to convince the Conference to accept a policy that is decidedly weaker than that supported by the Democrats and is in effect that favoured by the US Republicans.

ALP policy now demands merely that trade instruments *promote* respect for labour rights this being the position rejected as inadequate by both the US unions and the Democratic Party who insist these instruments must *enforce* respect (ALP 2004). The Democrat's Bill, HR 3019, proposed as a principal negotiating objective that the USA 'achieve a framework of enforceable multilateral rules as soon as practicable that leads to the adoption and *enforcement* of core, internationally recognized labor standards, including in the WTO and, as appropriate, other international organizations', and that provide 'WTO members with technical and legal assistance in developing and *enforcing* internationally recognized core labour standards' (s13(E)(i) and (ii)). The significance regarding the Democrat's Bill is that the labour provisions are substantive, the Bill uses mandatory rather than aspirational language and gives labour rights the same protection business enjoys in the area of intellectual property rights. Similar strong language is evidenced in the Democratic Party's (2000) National Platform, which states that the global economy must work for all and that the attainment of this goal requires that trade agreements 'enforce worker rights, human rights, and other environmental protections in those agreements' (Democratic Party 2000: 17). The Platform concludes with the statement: 'We are committed to supporting the rights of workers around the world. And we should vigorously monitor trade agreements to make sure other nations are not shirking their responsibilities' (Democratic Party 2000: 18).

In contrast, the 2004 changes to ALP trade policy improve only marginally the former position of the Party. The policy now proposes that 'Labor will play an active role to ensure the activities of the WTO respect core International Labour Organisation (ILO) labour standards' and declares economic growth and prosperity arising from international trade places a responsibility on governments to promote higher labour standards (ALP 2004: 2). It is also noted that 'labor believes a rules based system underpinned by core labour standards provides a framework for fairness and equity and is the most effective means to ensure governments do not resort to unsustainable protectionism', and adds that APEC should act a vehicle within the region for widening the dialogue on the issue of core labour standards (ALP 2004: 2–3). At its best, this policy matches that of the US Republicans. In brief, it is an aspirational policy singularly lacking in any reference to enforcement and leaves unclear whether the ALP has committed itself to the

incorporation of labour standards into trade future agreements or merely to promoting dialogue and studies around this issue.

CONCLUSION

The labour conditions included in the TPA given to George Bush in 2002 created a significant problem for the Australian Government. Over the previous six years the Coalition had made it clear that two of its overriding objectives were a stronger alliance with the USA and a weaker trade union movement. However, in 2003, it found that if it wanted a free trade deal with the USA it had to accept the inclusion of a labour rights chapter in the agreement that strengthens the legal position of labour. As a consequence, a conservative government has signed the first ever Australian trade agreement that includes provisions protecting workers rights and the ALP has been compelled to fall in behind the Coalition. Assuming the agreement is ratified, the implications of the fact that the AUSFTA includes a workers' rights chapter will need to be accorded serious consideration by organised labour and business, industrial relations analysts, lawyers, and state and national governments. This will be necessary because there will be a heightened need for all industrial relations actors to collaborate with their US counterparts in monitoring the agreement.

To strengthen its ability to fulfil this role the ACTU should strengthen its capacity to access ongoing knowledge of the changing nature of the international trade and investment environment. Its Trade Committee might also consider the wisdom of calling on the ALP and the Coalition to establish a body similar to the Labor Advisory Committee in the USA. Had such an organisation existed, when the AUSFTA was being negotiated, it is likely all parties would have had a greater awareness of the state of the debate in the USA and hence of the real source of the pressures that were motivating the US government, the Coalition and the ALP leadership when considering the labour contents of the AUSFTA. More specifically, if the ACTU had been able to access knowledge of the labour conditions attached to TPA it could have used the opportunity provided by the coincidence of the signing of the AUSFTA and the holding of the ALP Conference to insist the labour provisions in the ALP's trade policy at least match the policies accepted by the Democratic Party.

But though this was an opportunity missed by those who advocate the linking of trade and labour rights, what should now not be missed by the ACTU and by individual unions is that a precedent has been established with the signing of the AUSFTA. Labour provisions have been written into a major trade agreement signed by an Australian government. This is a precedent of importance for it renders inoperable, within the Australian debate, the claim that labour rights are not a trade issue. The precedent having been established, the goal for the union movement must be to ensure that all new trade agreements include a labour rights chapter and that the AUSFTA provisions are deemed a minima that needs to be ratcheted-up over time. This is a goal that will not be easy to attain given trade and labour rights do not elicit a level of concern in Australia similar to that manifest among the US population. In the very near future, however, Australian unions will be given an opportunity to attempt to change this situation that they

cannot afford to ignore. In a 2004 Press Club address, Mark Vaile, the Minister for Trade, made public the fact that the Federal Government intends to fast-track a trade agreement with China. This development places on the ACTU an onus to ensure that the labour standards provisions in the AUSFTA are replicated, if not strengthened, in any agreement signed with Beijing. Given China's appalling treatment of the human rights of workers this should be a demand that can be successfully promoted to the Australian community. That this is not likely to be easy is indicated by the current situation in New Zealand where the Labour Government is arguing that though party policy states that labour rights provisions must be included in trade agreements it is unreasonable to expect this should be done in relation to China for 'New Zealand by itself can't effect changes in China's labour and environmental policies' (Donald 2004). However, this is a perspective that must be deemed unacceptable by New Zealanders, Australians and by the workers of China.

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