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Worker Rights Provisions in Free Trade Agreements (FTAs)

Worker rights have generally been a prominent issue in U.S. FTA negotiations. Some stakeholders believe worker rights provisions are key to protect U.S. workers from perceived unfair competition and to raise labor standards abroad. Others believe such rights are more appropriately addressed at the International Labor Organization (ILO) or through cooperative efforts and capacity building. Since 1988, Congress has included worker rights as a principal negotiating objective in Trade Promotion Authority (TPA) legislation. The United States has generally been in the forefront of using FTAs to promote core internationally-recognized worker rights and principles. Labor provisions have evolved significantly since the 1994 North American Free Trade Agreement (NAFTA), moving from side agreements to integral chapters within FTA texts, with more provisions subject to enforcement. Most recently, the renegotiation of NAFTA resulted in the 2020 U.S.-Mexico-Canada Agreement (USMCA), which set new precedents within its labor chapter and labor enforcement mechanisms. The Biden Administration's trade initiatives, while not envisioned as comprehensive FTAs, include labor provisions, which may reflect aspects of past U.S. practice.

International Labor Organization

Most U.S. and other FTAs with provisions on worker rights refer to commitments made in the ILO, the primary multilateral organization responsible for promoting labor standards through international conventions and principles. A specialized agency of the United Nations, the ILO comprises representatives from government, business and labor organizations. It promotes labor rights through assessment of country standards, monitoring, and technical assistance. While the ILO has complaint procedures, it has limited enforcement authority. World Trade Organization (WTO) rules do not address trade-related labor standards, as WTO members were unable to reach consensus on the issue and deferred to the ILO on such matters.

The ILO has adopted more than 190 multilateral conventions or protocols; eight are deemed “core labor standards.” The *Declaration on the Fundamental Principles and Rights at Work*, adopted in 1998 and amended in 2022, incorporates core principles from these eight fundamental conventions, to be adhered to by all countries whether or not they are signatories to the underlying conventions.

The ILO Declaration Principles and Rights

- Freedom of association and the effective recognition of the right to collective bargaining;
 - Elimination of all forms of forced or compulsory labor;
 - Effective abolition of child labor;
 - Elimination of discrimination in respect of employment and occupation; and
 - Safe and healthy working environment.
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The United States has endorsed these principles, working them into recent FTAs as enforceable provisions. It has ratified two of the core conventions on forced labor and on the worst forms of child labor. As a result, U.S. FTAs do not include commitments to abide by and enforce the ILO conventions themselves. The U.S. Tripartite Advisory Panel on International Labor Standards of the President's Committee on the ILO has found that U.S. law and practices (e.g., U.S. laws on prison labor) are at least partially inconsistent with five of the core conventions.

Labor Provisions in U.S. FTAs

Worker rights provisions in U.S. FTAs, first included in NAFTA, have evolved significantly, from requirements for parties to enforce their own labor laws, and to *strive* not to waive or derogate from such laws as an encouragement to trade, to commitments to adopt, maintain, and enforce laws that incorporate core ILO principles. Other FTA provisions address labor cooperation, capacity building, and dispute settlement (DS). The FTA term “internationally recognized worker rights” is based on language in the U.S. Generalized System of Preferences (GSP) statute and largely tracks with the ILO Declaration, but also diverges (e.g., referring to “acceptable conditions” regarding minimum wages, hours of work, and occupational safety and health). Recent U.S. FTAs have reflected negotiating objectives on labor under TPA statutes. With each reauthorization, TPA objectives have evolved and generally become more comprehensive.

NAFTA. The former North American Agreement on Labor Cooperation (NAALC), a side agreement to NAFTA, contained principles on worker rights in matters affecting trade, technical assistance and capacity building provisions, and a separate DS process, along with a labor cooperation mechanism. Full dispute procedures applied to enforcement of certain labor laws, not including the right to organize.

Jordan. The U.S.-Jordan FTA (2001) contains labor provisions that were incorporated into the agreement itself. These provisions became a template for future FTAs and negotiating objectives in the 2002 TPA authorization. While the provisions are enforceable, both countries committed to resolve disputes outside of dispute settlement.

TPA-2002. Seven U.S. FTAs were negotiated under TPA-2002. These agreements went beyond the scope of the Jordan FTA, but included one enforceable labor provision: a party shall not fail to effectively enforce its labor laws “in a manner affecting trade.” “Labor laws” were defined as rights similar to the GSP statute. Dispute procedures placed limits on monetary penalties, unlike those for commercial disputes. The FTAs also included commitments not to derogate from labor laws to encourage trade; provisions for cooperation and capacity building to improve labor standards; and creation of a labor affairs council.

Figure 1. Evolution of Labor Commitments in FTAs

NAFTA (1994): Side agreement • Shall enforce own laws • Separate dispute resolution
Trade Act of 2002 FTAs: Body of agreement • Shall not fail to enforce own laws in a manner affecting trade/investment • Separate dispute settlement
TPA-2015: Body of agreement • Adopt, maintain and do not fail to effectively enforce laws consistent with ILO fundamental principles • Shall not derogate from laws to attract trade/investment • Integral dispute settlement
USMCA (future template?): TPA-2015 plus: Statutes on acceptable conditions of work • Coverage to include EPZs • Prohibits imports produced by forced labor • Commitments on violence against workers, migrant workers, and discrimination • Rapid-response dispute mechanism

Source: CRS.

TPA-2015. TPA-2015, which expired in 2021, enhanced the negotiating objectives on labor, with guidance from a May 2007 bipartisan agreement, which laid out new congressional objectives for FTAs. TPA-2015 called for

- including the same dispute settlement mechanisms and penalties for labor as for other FTA chapters;
- requiring the maintenance in laws and practice of principles stated in the ILO Declaration;
- prohibiting the diminution of labor standards to attract trade and investment; and
- limiting prosecutorial and enforcement discretion, as grounds for defending a failure to enforce labor laws.

USMCA. The most recent U.S. FTA includes several new features on labor in addition to core provisions from TPA. Some observers view USMCA as a possible template for future U.S. FTAs. Provisions include, for example

- extension of the principle of nonderogation of rights to export processing zones (EPZs);
- prohibiting imports produced by forced labor, and cooperation over identifying such goods;
- commitments on violence against workers, migrant worker protections, and workplace discrimination; and
- alternatives to formal labor consultations.

Some Members of Congress called for additional USMCA obligations for Mexico to address persistent concerns over worker rights. A labor chapter annex commits Mexico to enact reforms related to collective bargaining that had been underway since 2017. In addition, separate from the labor chapter, auto rules of origin have wage requirements for the first time in a U.S. FTA. Strengthening labor enforcement was also a major priority for some Members. USMCA's new rapid-response mechanism provides for an independent panel investigation of covered facilities that are denying worker rights of free association and collective bargaining. Several disputes have been resolved under the mechanism. Other changes to overall DS procedures include preventing a party from blocking formation of a dispute panel, and a presumption that failure to comply with labor commitments is "in a manner affecting trade or investment." For more, see CRS In Focus IF11308, *USMCA: Labor Provisions*.

Labor Disputes under U.S. FTAs

The Department of Labor, in coordination with the U.S. Trade Representative (USTR), is responsible for reviewing complaints on alleged violations of enforceable labor commitments in U.S. FTAs. One state-state FTA labor dispute, involving Guatemala, proceeded past consultations through the entire DS procedure. In 2017, an arbitral panel ruled against the United States. It found while Guatemala had failed to effectively enforce certain labor laws, the evidence did not prove it was "sustained or recurring" and "in a manner affecting trade." U.S. stakeholders contested the outcome, which spurred some reforms in USMCA. Other stakeholder concerns have included procedural delays in processing labor complaints and compliance issues of trading partners. See CRS In Focus IF10972, *Labor Enforcement Issues in U.S. FTAs*.

Biden Administration Trade Initiatives

The Administration is not negotiating comprehensive FTAs, and instead is seeking trade deals with targeted agendas, including in the Indo-Pacific and Americas. The U.S.-led Indo-Pacific Economic Framework for Prosperity (IPEF), involving 13 partners, includes a "trade pillar" with labor as a core component. USTR framed inclusion of labor issues as helping to "promote inclusive economic prosperity" and part of a "broader strategy to make trade a race to the top." The 2022 IPEF ministerial statement on trade lays out potential labor provisions that largely reflect U.S. FTAs. Separately, the IPEF supply chain agreement, provisionally reached in May 2023, would establish a new labor rights advisory board to support promotion of labor rights in supply chains, and a mechanism to address labor rights inconsistencies at subject facilities. Key questions remain regarding to what extent labor provisions will be binding, how any enforcement mechanisms would work in practice, and prospects for outcomes in the trade pillar.

Issues for Congress

In considering ongoing and future U.S. trade negotiations, as well as objectives in any future TPA legislation, Congress may wish to examine the application of worker rights provisions in U.S. FTAs. This debate could include

- the effectiveness of FTAs as a vehicle for improving worker rights and labor standards in other countries;
- the extent to which FTA partners are complying with labor obligations and whether dispute settlement provisions have been applied effectively;
- whether USMCA labor provisions serve as a new template for future U.S. trade agreements, or whether new initiatives like IPEF may present a new model;
- the effectiveness of FTAs in providing technical assistance and trade capacity building; and
- the role of businesses in promoting U.S. labor practices abroad and conducting supply chain due diligence.

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