
Labor Standards in the TPP

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The debate over the Trans-Pacific Partnership (TPP) has focused largely on its steps to liberalize trade and investment barriers in the 12 participating countries. But a crucial element of the accord, which may determine whether it gains enough votes for approval in Congress, aims to protect the rights of workers to organize and improve their working conditions in countries not particularly known for high labor standards. Ever since labor protection provisions were attached to the North American Free Trade Agreement (NAFTA), which entered into force in 1994, US trade agreements have included labor standards on the negotiating agenda, with recent pacts improving on the NAFTA precedents. Advocates for the labor movement are motivated by two principal goals: ensuring fair treatment of workers, so that they share in the benefits of a liberalized economy, and making it more difficult for producers in other countries to undercut and outcompete the United States through poor standards.

Many free trade agreements (FTAs) contain provisions that protect worker rights, unions, and worker safety. The quality of these commitments and their enforceability vary widely, however. The TPP includes the most ambitious set of labor provisions of all recent FTAs. It may not address all of the concerns of critics, but it moves the labor agenda incrementally forward by expanding the terms of the bipartisan agreement of May 10, 2007. That compromise, agreed to by congressional Democrats and the George W. Bush administration, established a benchmark at the time for new expectations by Congress for US FTA labor chapters and helped pave the way for approval of FTAs with Colombia, Panama, Peru, and Korea. The May 10 Agreement contained requirements that

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national laws enforce core labor standards of the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work and that FTA labor provisions be subject to the same dispute resolution mechanisms—including trade sanctions—as the commercial obligations of the trade deal.

The TPP builds on that agreement with new provisions on issues of longstanding concern (such as working conditions in export processing zones [EPZs]¹ and trade in goods produced by forced labor) and bilateral side plans between the United States and TPP countries with weaker records on labor standards. The TPP labor provisions fall short of addressing all of the labor challenges within participating countries, but there is potential for them to improve labor practices, provided they are implemented.

The TPP labor chapter applies to all TPP members and commits them to uphold internationally recognized worker rights. It includes new provisions that obligate members to establish a minimum wage, set limits on working hours, and adopt occupational health and safety regulations. The TPP does not stipulate a baseline standard for these regulations, which are linked to labor costs and vary by a country's level of development. Instead, it leaves regulatory discretion to each country. TPP provisions call for upgraded labor protections such as enforcement of ILO labor rights in EPZs. Many EPZs concentrate in labor-intensive assembly production and have long been scrutinized for working conditions and labor compliance issues. The TPP also commits members to discourage imports of goods produced by forced labor through "initiatives considered appropriate." Supporters of the TPP note that these provisions constitute the first explicit protections on these issues in US trade pacts. Some language is vague, however, and could allow for abuses to continue. In an important omission, the TPP does not explicitly address protections for migrant labor (foreign-born workers who migrated for permanent or short-term employment), an area that is certain to be criticized because of the importance of such workers in Brunei, Malaysia, Mexico, and Peru, where they can be subject to forced labor and abusive recruiting practices.

Demand for strong labor standards has been driven by the fact that several developing countries, including Brunei, Malaysia, and Vietnam, have poor records, making critics wonder whether they will implement commitments made in the TPP. In many cases, these countries and others lack the resources, technical abilities, or political will to enforce even the labor laws that are already on their books.

To address these problems, as a parallel to the TPP's main labor chapter the United States negotiated bilateral Labor Consistency Plans with Brunei, Malaysia, and Vietnam that mandate tailored legal and institutional reforms to build capacity to comply with TPP obligations. Two features are particularly important: Specified reforms must be implemented before the TPP enters into

1. EPZs are zones with favorable regulatory regimes that aim to attract export-oriented companies and investment.

force,² and the terms of the plans are enforceable and subject to dispute settlement. Critics argue that laws may change but enforcement is not guaranteed. These will be future challenges for ensuring the TPP's success.

For US trade policy and labor rights advocates, effective enforcement has become the central issue as the United States expands its FTAs with developing countries. TPP labor standards are enforceable through dispute settlement procedures, with recourse to trade sanctions if a country fails to comply. The enforcement provisions of the TPP labor chapter are built on a combination of cooperative, consultative, and dispute resolution mechanisms. Most of these processes replicate US FTAs with Korea and Peru, but the TPP adds new mechanisms and tightens some areas in an attempt to offer better procedural certainty. Among the labor plans for Brunei, Malaysia, and Vietnam, Vietnam has the most expansive implementation and monitoring guidelines, with three tiers of oversight that should serve as a check if political will to implement reforms proves lacking. Like any treaty, the strength of TPP labor commitments relies heavily on their implementation.

The Obama administration has branded the TPP an upgrade of NAFTA. By that metric the labor chapter is a significant improvement. US FTAs have evolved from commitments to simply enforce a country's own domestic labor laws to commitments to also uphold internationally recognized labor rights, from limited remedies for inadequate enforcement to fully enforceable through dispute settlement procedures. The diverse economic conditions of the 12 members of the TPP guaranteed that the labor provisions would be tough for negotiators to resolve. But for many countries, including Malaysia and Vietnam, the TPP labor commitments could potentially improve their weaker standards. Overall the labor provisions of US trade agreements have improved incrementally over time; future trade deals can be expected to build on the progress made in the TPP.

Labor Standards and Trade Rules

Labor standards are not a subject of World Trade Organization (WTO) rules and disciplines, because no multilateral consensus could be reached on this controversial issue.³ During the first WTO ministerial, in 1996, developing-country members rejected the idea of putting labor on the negotiating agenda, fearing that such standards would undermine their economic development or be used by other countries to protect labor-intensive, import-competing industries (see VanGrasstek 2013). As a result, trade ministers agreed to renew their commitment to observe internationally recognized core labor standards

2. There is one exception, related to Vietnam, discussed in a later section.

3. The only General Agreement on Tariffs and Trade (GATT)/WTO labor-related provision relates to restricting trade in goods made from prison labor. See "Trade and Labour Standards: Subject of Intense Debate," www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/18lab_e.htm (accessed on September 21, 2015).

but reaffirmed the ILO as the competent body to deal with labor issues.⁴ The ministerial declaration also denounced the “use of labour standards for protectionist purposes” and acknowledged “that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question.” Other efforts to negotiate labor standards met similar resistance. The consensus to not take up a labor agenda and leave labor standards under the purview of the ILO was not matched with efforts to strengthen the ILO’s enforcement role (Elliott 2000).

Concerns over labor practices led countries to other avenues. The United States and the European Union include conditional labor clauses in their unilateral trade preference schemes (programs that offer market access to specified goods imports from least developed countries). Since 1984 the US Generalized System of Preferences (GSP) has conditioned qualification for the program for its 120 beneficiary countries on whether a country has “taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.”⁵ Many US region-specific preference programs followed suit.

Limited progress on the multilateral level also led countries to add reciprocal labor commitments in bilateral and regional FTAs. The United States was a pioneer in this regard: NAFTA (signed in 1992) was the first FTA to include labor obligations, albeit as a side agreement. The ILO (2013) reports that by 2013, 58 trade agreements included some kind of labor provision, up from 21 in 2005 and 4 in 1994 (for context, 250 agreements have been notified to the WTO).⁶

The incidence of labor provisions in FTAs varies by region. Nearly all countries in the Americas but less than half in the Asia-Pacific are covered by one or more trade deals with labor provisions. The majority of provisions are not enforceable, however. Rather than linking compliance with economic consequences, they provide a framework for dialogue, capacity building, and monitoring, as in EU FTAs. The use of trade sanctions is the exception rather than the norm.

The debate over the role of labor—“social clauses” in trade agreements—is not new. It featured prominently in the broader debate on the tradeoffs of globalization (for an overview, see Elliott 2011 and Salem and Rozental 2012).⁷ An extensive body of literature focuses on various aspects of the debate, including

4. Singapore Ministerial Declaration, WT/MIN(96)/DEC, adopted 13 December 1996, www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm (accessed on September 21, 2015).

5. “Internationally recognized worker rights” are based on the ILO Declaration, except for “acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.”

6. The ILO (2013) reports that 60 percent of FTA labor provisions are “promotional” (i.e., focus on capacity building or supervision) and 40 percent are “conditional” (i.e., involve compliance incentives or are backed by possible use of sanctions).

7. An extensive body of literature also assesses the distributional impact of trade liberalization on labor markets, for example, see Jansen, Peters, and Salazar-Xirinachs (2011). For such analysis on the TPP, see chapter 2 of this volume.

the impact of labor standards on trade and investment flows and the merits of including labor standards in trade agreements at all (see Bhagwati 1995, Rodrik 1996, Maskus 1997, and Brown 2000). Other studies evaluate evidence of a race to the bottom in standards or the flip side of concerns, the protectionist use of labor standards; a review of the literature finds a lack of compelling evidence of either (Salazar-Xirinachs and Martínez-Piva 2003, Elliott and Freeman 2003, Stern 2003). Elliott (2011, 428) concludes that standards and globalization can be complements: “Promoting global labor standards simultaneously with trade could spread the benefits of globalization more broadly, discourage the worst abuses of workers, and increase public support for trade agreements.”

Several studies attempt to measure the impact of FTA provisions on working conditions. Doing so is difficult, because of the challenge of measuring the practical application of labor standards across countries (ratification of ILO conventions and the passage of new laws do not capture enforcement) (Ebert and Posthuma 2011). Many analyses use a case study approach and focus on narrower indicators, such as child labor.

Studies find that certain conditions increase the likelihood that labor obligations have a positive impact. They include enforceability by sanctions, positive incentives such as trade benefits or capacity-building assistance, and certain market or sectoral factors (Elliott and Freeman 2003, Polaski 2003, Berik and van der Meulen Rodgers 2010, Salem and Rozental 2012). Elliott and Freeman (2003) find that US GSP petitions had greater success in changing labor conditions in cases where human rights groups were involved, the targeted country was more politically open, and less politically sensitive labor standards were at dispute. The ILO (2013) emphasizes the political will of the countries involved and advocacy of civil society as the most crucial factors. Most studies agree that the “stick” of a possible suspension of trade benefits for labor violations is much more effective when coupled with “carrots” of technical assistance.

Evolution of Labor Provisions in US FTAs

The TPP has been branded an “upgrade of NAFTA”; by that metric the labor chapter is a significant improvement. A brief overview of past US practice is instructive. Labor provisions are not included in the core text of NAFTA; they appear instead as a side agreement that established the North American Agreement on Labor Cooperation (NAALC).⁸ NAALC was motivated by concerns over enforcement of national labor laws in Mexico, the first developing country among US FTA partners (Hufbauer and Schott 1993).

NAALC labor disputes are subject to different enforcement procedures than the main trade agreement. Complaints can be submitted to one of three national administrative offices (NAOs) (the United States’ NAO is the Department of Labor’s Office of Trade and Labor Affairs). If consultations fail to

8. The Clinton administration delayed formal ratification of NAFTA, reopening negotiations in early 1993 to address labor (and environment) issues.

resolve the dispute it can be referred to a government-to-government dispute mechanism, but only for certain issues. Issues such as freedom of association, collective bargaining, and the right to strike are limited to NAO review and ministerial oversight, with no recourse to arbitration or penalties for noncompliance. Disputes over these issues account for the majority of labor submissions filed against Mexico.⁹ The one fully enforceable provision of NAALC is “to effectively enforce occupational safety and health, child labor, or minimum wage technical standards.”

In promoting consultation and cooperation on labor issues, NAALC represented a step forward. But it was criticized for being limited in scope. In a 10-year review, Hufbauer and Schott (2005, 128) concluded that by design it had limited impact on labor conditions: “The sheer size and complexity of the North American labor market are daunting, sovereignty concerns are overriding, and very little can be done to overcome enforcement shortcomings on an annual budget under \$2 million.”

Subsequent US FTAs—with Australia, Bahrain, Chile, Jordan, Morocco, Oman, Singapore, and the six Central American (CAFTA-DR) countries—improved on the NAFTA model by including labor chapters in the core agreements, but (with the exception of Jordan) the only enforceable obligation is to enforce a country’s own domestic laws (see Elliott 2011 and Bolle 2014 for overviews). CAFTA-DR represented the first time the United States included explicit measures for labor capacity building.¹⁰ Any penalty invoked for failing to implement or enforce labor standards was capped at \$15 million and put into a fund for the purpose of increasing capacity.

The May 10 Agreement: A Baseline for the TPP

The lack of robust labor provisions in past FTAs meant wavering support for a new wave of trade agreements under negotiation with countries like Peru and Panama. To restore support in Congress, in 2007 the Bush administration and congressional Democrats negotiated the so-called May 10 Agreement, deemed a “historic bipartisan breakthrough” (for details, see Destler 2007). In addition to labor provisions, the deal covered environment, intellectual property, and other issues, providing template language for negotiating objectives in US FTAs. For labor the deal mandates that national laws enforce core labor standards of the ILO Declaration on Fundamental Principles and Rights at Work and that labor provisions be subject to the same dispute resolution mechanisms, including trade sanctions, as commercial obligations of the trade deal. In addition, a country cannot fail to enforce its labor laws on the basis of

9. The track record of enforcement is discussed in more detail below.

10. Between 2005 and 2010, some \$142 million was designated to improve labor institutions, compliance, and measures against child labor. See “CAFTA-DR Labor Capacity Building,” USTR Factsheet, May 2011, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2011/may/cafta-dr-labor-capacity-building> (accessed on November 15, 2015).

limited resources or decisions to prioritize other enforcement issues. These requirements were incorporated into then-pending FTAs with Peru, Colombia, Panama, and Korea, and served as the benchmark for expectations for the TPP.

The TPP labor chapter obliges all parties to ensure that national laws conform to the rights and principles of the ILO Declaration (box 15.1):

- 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, and
- elimination of discrimination in respect of employment and occupation.

The TPP could have gone one step further by adding the commitment to implement the eight fundamental conventions (treaties voluntarily ratified by ILO members) that correspond to the ILO Declaration (the European Union's approach to labor in FTAs).¹¹ Doing so has been a key ask of the AFL-CIO. But US FTAs, including the TPP (Article 19.3.1), make explicit reference only to the declaration, in part because the United States itself has ratified only two of the eight conventions, out of concerns that ratifying others would conflict with US statutes and require contentious changes in domestic law.¹²

The ILO Declaration calls on members to respect the four areas of rights whether or not they have ratified conventions; however, countries are legally bound to comply only with ratified conventions. To be sure, ratification of ILO conventions is not necessarily a proxy for enforcement, and US law arguably complies with the rights and principles of the declaration itself. But experts disagree about whether US practice conforms with technical details of some of the ILO conventions—indeed, if otherwise the United States would probably have ratified more.¹³ For the time being it seems unlikely that the United States will depart from its practice of basing common labor standards in trade agreements on the declaration.

11. In the EU-Vietnam FTA, concluded in December 2015, both sides commit to “make continued and sustained efforts towards ratifying, to the extent it has not yet done so, the fundamental ILO conventions” but also to “consider the ratification of other conventions that are classified as up to date by the ILO.”

12. The declaration's “follow-up” procedure requires members who have not ratified core conventions to report annually on related labor rights. Regarding the status of US ratification, the latest ILO report was neutral if not upbeat, noting that while in the past the United States reported no plan to ratify other fundamental conventions, it is “intensifying its work of reviewing the legal feasibility” of ratifying five conventions and “speeding up the ratification” of No. 111 (on discrimination in employment and occupation). As for No. 111, there is reason to be skeptical about US ratification, as the convention was sent to the Senate for consideration in 1998 and there has been little movement since. For a summary, see USCIB (2007).

13. For example, Weissbrodt and Mason (2014, 1878) argue that the United States “tends to provide lower levels of coverage and protection for employees than required by ILO standards...especially visible in the right to strike, treatment of public employees, and rights of noncitizen workers.”

Box 15.1 Summary of 1998 ILO Declaration on Fundamental Principles and Rights at Work

a) Freedom of association and the right to collective bargaining

* All workers and employers have the right to freely form and join groups that support and advance their occupational interests.

* Freedom of association means workers can set up, join, and run their own organization without interference from the state. This includes the right to run their own activities, i.e., independently determine how best to promote and defend their interests, including recourse to strike, and independently affiliate with international organizations.

* Collective bargaining is a process through which employers and trade unions or representatives of workers discuss and negotiate their relations and the terms and conditions of work.

b) Elimination of all forms of forced or compulsory labor

* Forced labor occurs where work or service is exacted by the state or others with power to threaten workers with severe deprivations, such as withholding wages, physical violence or sexual abuse, and restricting people's movements.

* Labor trafficking and debt bondage are widespread practices behind forced labor, whereby the worker becomes dependent on an intermediary and labors in slave-like conditions.

c) Effective abolition of child labor

* The effective abolition of child labor is based on protection from economic exploitation, ensuring that children have the opportunity to develop physically and mentally to their full potential by eliminating work that jeopardizes education and development.

* To achieve effective abolition, a minimum age at which children can enter work should be enforced, typically not less than the age of completing compulsory schooling or 15 years. Certain types of work categorized as "worst forms of child labor" are to be fully prohibited for children under age 18, including slavery, trafficking, debt bondage, prostitution, and forced military recruitment.

d) Elimination of discrimination in respect of employment and occupation

* Discrimination at work denies opportunities and deprives societies of what workers can and could contribute. It can occur on the basis of sex, age, race, skin color, social origin, religion, political opinions, disability, or HIV status.

* Equality at work means all individuals are afforded opportunities to fully develop knowledge, skills, and competencies related to the economic activities they wish to pursue.

* Eliminating discrimination entails dismantling barriers and ensuring equal access to training, education and resource use and ownership. It also involves the conditions for setting up and running enterprises and the policies related to hiring, work conditions, pay and benefits, promotions, and employment termination.

Source: ILO, "Overview of the ILO Declaration on Fundamental Principles and Rights at Work," May 2014, www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_095898.pdf (accessed on August 17, 2015).

The United States' convention record is an exception: Most TPP countries have ratified six or more fundamental conventions; Chile and Peru have ratified all eight (table 15A.1). Brunei is the only other country to have ratified just two.

Even after ratification, the track record of implementing labor standards varies. Table 15A.2 summarizes the status of worker rights in selected TPP developing countries at the lower GDP spectrum, based on the latest State Department reports. Countries across the board suffer from inadequate standards in agricultural, informal, and migrant labor sectors. Brunei, Malaysia, and Vietnam stand out for major gaps with several ILO standards. These concerns prompted special attention in the TPP.

Innovations in the TPP

US participation in the TPP significantly upgraded the labor agenda. The original TPP template designed by the P4 (Brunei, Chile, New Zealand, and Singapore) was just a memorandum of understanding that exhorted but did not obligate countries to uphold labor standards and improve compatibility with international standards and to avoid using labor standards as protectionist tools or lowering them to attract investment (Schott, Kotschwar, and Muir 2012).

The TPP upholds precedents set by the May 10 Agreement. In this regard it reflects US pacts with Colombia, Korea, Peru, and Panama. But it also upgrades this template. The following sections highlight the innovations (summarized in table 15A.3).

Requirement of Laws on Acceptable Conditions of Work

In addition to implementing ILO core labor standards, the TPP obliges members to adopt and maintain laws and practices governing “acceptable conditions of work” in three areas: minimum wages, hours of work, and occupational safety and health regulations (Article 19.3.2). This is the first time the provisions have been explicitly stated as labor rights.¹⁴ The TPP does not stipulate a baseline standard for these regulations (often called “cash standards”), which are directly linked to labor costs and necessarily vary by country and level of development (Elliott and Freeman 2003). Instead, regulatory discretion is left to each country.

Critics contend that to be meaningful, “conditions of work” need to be more specific. That said, to take wages as an example, even in the United States there is no consensus on the “right” minimum wage. Moreover, only three TPP countries are party to the ILO Minimum Wage Fixing Convention (Charnovitz 2016). Most TPP countries have established minimum wages—except

14. Previous US FTAs do, however, note “acceptable conditions” within the definition of domestic labor laws.

for Brunei and Singapore—and limits on working hours. Implementation of safety and health regulations often suffers from inadequate resources and systemic violations.

Strengthening Labor Protections in EPZs

Article 19.4(b) obligates members to enforce both ILO labor rights and acceptable conditions of work in special trade or customs areas, including EPZs. The Asia-Pacific region was a forerunner in the use of EPZs, which have supported the region’s rapid development since the 1970s. The World Bank (2008) estimates that 3,000 such zones exist across 135 countries—including Malaysia, Mexico, Singapore, and Vietnam in the TPP—directly employing 70 million workers (the majority in China). By nature, EPZs are strongly identified with trade and investment promotion and have long been scrutinized for working conditions and labor compliance issues (Elliott and Freeman 2003). Many EPZs concentrate in labor-intensive assembly production, such as textiles, apparel, and electronics. Some countries, such as Malaysia, have used lax labor standards as incentives, limiting the application of labor laws or restricting unions and freedom of association (Milberg and Amengual 2008). EPZs can also have positive spillover effects, however, developing skills and raising wages.

This TPP innovation refocuses attention on EPZ practices and, with an eye to the future, would apply to new TPP members with EPZs as the deal expands, e.g., Indonesia, the Philippines, and China.

Discouraging Imports of Goods Produced by Forced Labor

According to TPP Article 19.6, members “shall also discourage, through initiatives Parties consider appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.” The language could have been much stronger, using “prohibit” instead of “discourage” and language that was less vague than “initiatives considered appropriate.” But the article is a step in the right direction toward limiting trade in goods produced by forced labor, and it applies to goods imported from non-TPP countries as well. According to the ILO, the Asia-Pacific has the largest number of forced laborers in the world—12 million (56 percent of the global total)—although many are not directly involved in trade and many live in non-TPP countries in South Asia.¹⁵ A few TPP countries are likely targeted by the provision, particularly Malaysia, where forced labor is regularly used in electronics, its top export (Verité 2014). The US Department of Labor (2014) has flagged forced and child labor in Malaysia

15. “21 Million People Are Now Victims of Forced Labour, ILO Says,” ILO News, June 1, 2012, www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang-en/index.htm (accessed on November 19, 2015).

(palm oil and garment production); Mexico (sugarcane, tobacco, coffee); Peru (nuts, cocoa, bricks, gold, timber); and Vietnam (bricks, garments).

Protecting Migrant Labor

One area the TPP does not address explicitly is protection for migrant labor.¹⁶ While all workers, domestic and foreign, in a TPP country are technically covered by the labor provisions, the omission seems a lost opportunity for augmenting the labor chapter in general and the forced labor provision in particular.

A joint proposal by the TPP labor confederations offered guidance: “Parties shall provide migrant workers of another Party with the same rights and remedies under its labour laws as they relate to the core labour rights as well as wages, hours of work, occupational safety and health and workers compensation” (ITUC 2012). Migrant workers are often subject to forced labor, trafficking, and abusive recruitment practices. Migrant labor is widespread in nontradable sectors and domestic work but also increasingly used in supply chains across sectors. They are a major concern in Malaysian agriculture and electronics and Mexican agriculture and food-processing sectors, among others (Verité 2015). Protecting foreign workers could have helped mollify US concerns about TPP countries on the State Department’s Tier 2 list for human trafficking (e.g., Brunei, Mexico, and Peru); countries that do not fully uphold minimum protections but are improving compliance; and most importantly Malaysia, which remains on the Tier 2 Watch List because of the significant number of trafficking victims there.¹⁷ However, the bilateral labor plans for Brunei and Malaysia (discussed later) do include some specific provisions on migrant labor protections.

Bilateral Labor Plans

The participation of several developing countries with weak labor standards refocused attention on how these countries could meaningfully commit to implementing TPP labor terms. To this end, the United States negotiated bi-

16. The “areas of cooperation” among TPP parties include “promotion of equality and elimination of discrimination in respect of employment and occupation for migrant workers” and “protection of vulnerable workers, including migrant workers” but these are not binding obligations (Article 19.10.6(n)).

17. Malaysia was recently upgraded from the lowest designation (Tier 3, countries that fail to combat human trafficking). The move was politically controversial because of the timing with the TPP and an explicit provision in the Trade Promotion Authority legislation that would negate fast-track protections for trade deals with Tier 3 countries. See “State Trafficking Report Upgrades Malaysia, Removing Roadblock for TPP,” *Inside U.S. Trade*, July 30, 2015, www.insidetrade.com (accessed on November 19, 2015).

lateral Labor Consistency Plans with Brunei,¹⁸ Malaysia, and Vietnam. These plans lay out concrete legal and institutional reforms to help build capacity and political initiative.¹⁹ Two features make these plans more credible: The reforms must be implemented before the TPP enters into force (with one exception), and the plans are enforceable and subject to dispute settlement. The exception relates to Vietnam and involves a five-year transition period for permitting the cross-affiliation of unions. The United States can suspend future tariff phaseouts if Vietnam is found not to comply.

The United States has negotiated labor plans in the past. Critics contend that the plan negotiated with Colombia—the Colombian Action Plan Related to Labor Rights—has led to few meaningful changes on the ground and argue that the TPP labor plans will lead to similar outcomes (AFL-CIO 2014). It is clear that the Colombian labor plan did result in some improvements but also that the United States and Colombia have fallen short in completely fulfilling the goals of the action plan.²⁰

The Colombia case is a reminder of the challenges of achieving sweeping labor reforms. But a few distinctions are worth mentioning. The Colombia plan was not formally attached to the FTA but negotiated separately in 2011—as the AFL-CIO pointed out, the plan “was made even more ineffective because its terms were not incorporated into the trade agreement itself.” By contrast, TPP labor plans were negotiated alongside the agreement and, unlike the Colombia plan, are tied to its dispute settlement system. Moreover, the legal and institutional reforms outlined in the TPP plans are more specific and targeted.

A concern voiced in the United States is that although laws may change, enforcement of the plans is not guaranteed. Enforcement will be a challenge and the test of the TPP’s success. Resources and political will on both sides will be prerequisites. The plans build in mechanisms to monitor implementation, but independent oversight (discussed below) could be stronger. A basic feature is a standing committee made up of senior officials who must meet each year to assess compliance (for 7 years in Brunei and Malaysia and 10 years in Vietnam).

Brunei. Brunei has ratified only two fundamental conventions, and there are significant gaps between existing laws and ILO standards. The labor plan seeks to address systemic violations of rights to collective bargaining and freedom of

18. Brunei accounts for less than 1 percent of US imports from the TPP-12. Compared with countries like Vietnam, it has therefore provoked fewer concerns related to expanded trade in import-competing industries. Vietnam accounts for 62 percent of US imports of apparel and clothing accessories from TPP countries and 86 percent of footwear imports.

19. For the texts of the plans, see <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>.

20. For details on the progress according to USTR, see “The Colombian Labor Action Plan at Four Years: Progress and Continuing Challenges,” Tradewinds, April 2015, <https://ustr.gov/about-us/policy-offices/press-office/blog/2015/april/colombian-labor-action-plan-four-years-progress> (accessed on February 19, 2016).

association and severe restrictions on strikes. It mandates greater autonomy of union activity, protection against antiunion discrimination, and international affiliation of unions. Reforms also address forced and child labor, employment discrimination, and acceptable conditions of work, explicitly mandating a minimum wage as well as improved labor inspection procedures and remedies for labor violations. The plan specifies that Brunei “may request cooperation, advice and technical assistance” from the United States, TPP parties, or international organizations.

Malaysia. Forced labor practices and human trafficking are widespread in Malaysia, and protection of migrant workers is weak. To address these problems, the labor plan mandates reforms to prohibit the withholding of passports and rein in deviant recruitment practices, as well as new measures within antitrafficking legislation. Malaysian law systemically undermines the right to freedom of association and collective bargaining. The plan seeks to redress these regulations by limiting state discretion on union formation and reforming strike permissions and the right to judicial review. An explicit provision seeks to redress the use of subcontracting to circumvent the rights of association or collective bargaining. The plan commits both sides to “endeavor to secure funding for technical assistance” to aid implementation, but Malaysia is required to work with the ILO.

Vietnam. The reforms mandated for Vietnam are extensive. Current Vietnamese law recognizes only labor unions affiliated with the Vietnam General Confederation of Labour (VGCL), and union activity is highly regulated. Reforms would permit the independent formation of unions, allow strikes, and significantly increase the autonomy of union activity. Reforms also center on strategies that supplement Vietnamese efforts to rein in forced and child labor. Vietnam is required to comply with transparency requirements, ranging from public disclosure of draft laws to union registrations and the number of applications denied to statistics on inspections—all important soft checks to supplement the monitoring of implementation. The plan commits both sides to “endeavor to secure funding for technical assistance” to aid implementation, but Vietnam is required to establish a comprehensive program with the ILO, the most involvement of all three plans.

Mexico. One criticism of the TPP is that there is no bilateral plan for Mexico, which resisted supplemental commitments throughout the TPP talks.²¹ Mexican practices of concern hold over from the NAFTA era and include the prevalence of employer-dominated unions, the use of “protection contracts” (collective bargaining agreements signed with little direct input from workers), and corruption of conciliation and arbitration boards. Two-thirds of NAALC

21. “U.S., Mexico Continue Discussing Labor Reforms after TPP Conclusion,” *Inside U.S. Trade*, October 8, 2015, www.insidetrade.com (accessed on November 9, 2015).

disputes involve collective bargaining and association issues but are not subject to the full spectrum of dispute settlement, including arbitration or penalties. The United States and Mexico are discussing parallel reforms, but it is unclear what will emerge from the talks. Mexican president Peña Nieto signaled some political will to address the concerns, pointing to proposed legislation to ratify the ILO convention banning protection contracts and plans to reform labor boards, but without specifying much detail.²² Labor groups remain skeptical of a major overhaul of existing practices.

The absence of a plan notwithstanding, the TPP upgrades NAFTA. Under the agreement Mexico could face increased scrutiny or possibly be challenged should the status quo continue.²³ Moreover, the absence of a plan should not detract from the progress made with other countries in the TPP.

Enforcement Mechanisms and Track Record of Enforcement

As in any treaty, the strength of TPP labor commitments relies heavily on their implementation. Enforcement of past FTA labor provisions has been scrutinized. The AFL-CIO acknowledges that US FTAs have made measured (though incomplete) progress toward higher standards but notes that enforcement “has been slow and cumbersome, and relies totally on the political will of governments” (AFL-CIO 2015, 1). Moreover, labor provisions require “active monitoring, investigation and oversight in order to be effective and provide the necessary impetus to comply.”

Before turning to the TPP approach, it is useful to consider the US track record of enforcing labor provisions. Critics contend that the limited number of labor petitions accepted by the Department of Labor, coupled with the fact that only one case is in dispute settlement, signal a shortcoming of US practice. The Obama administration sees the dispute settlement precedent with Guatemala as evidence that the US government is taking the issue seriously.

The precedent for enforcing labor provisions was set under the US GSP program, which includes a mechanism for filing complaints against beneficiary countries for labor violations, with the option to suspend GSP benefits based on a final determination by USTR (Athreya 2011). Though trade sanctions are advocated as a “stick” for compliance, the actual removal of trade preferences is often viewed as a last resort.²⁴ This rationale partly explains the

22. “Pena Nieto Pushes Labor Reforms, but Unions Still See Shortcomings,” *Inside U.S. Trade*, December 15, 2015, www.insidetrade.com (accessed on December 16, 2015).

23. Article 1.2 (Relation to Other Agreements) addresses whether TPP obligations supersede existing FTAs, in this case NAFTA/NAALC. The language is somewhat vague and leaves the answer to be determined on a case-by-case basis. However, if a party brings a complaint citing TPP obligations, the decision will be based on those obligations. Whether Mexico may try to invoke NAALC is unclear.

24. As the International Labor Rights Forum (ILRF) puts it, petitions are viewed as a means to “bring labor rights abuses to the attention of the U.S. government, and... pressure recipient

low level of GSP suspensions and trade sanctions. By 2000, 32 GSP petitions related to labor conditionality had been accepted for review, and nearly half had been successful in influencing changes in the targeted country (Elliott and Freeman 2003). Before GSP was reauthorized, in June 2015, the United States was reviewing labor petitions against Georgia, Niger, the Philippines, Uzbekistan, Thailand, and other countries. One high-profile case of punitive action was the decision to suspend the GSP for Bangladesh, which had long been under investigation for its labor practices. The decision came after a global outcry in April 2013, following the collapse of a garment factory that had had aberrant safety regulations, resulting in the death of more than 1,000 people.²⁵

Among US FTAs, none has processed as many labor complaints as NAFTA. Unions and international workers' rights groups in all three NAFTA countries have filed complaints. Of the 38 complaints, 22 were filed with the US NAO, of which half were dismissed or withdrawn. All but two were directed at alleged abuses in Mexico. Two-thirds of the 38 cases related to freedom of association and collective bargaining rights. These cases cannot be subject to formal arbitration or trade penalties. Even though complaints under NAALC have limited enforcement consequences, some resulted in joint action at the ministerial level.

Taking all US FTAs into account (not counting past cases already resolved under NAALC), the Department of Labor is currently processing seven formal complaints of alleged violations of labor provisions (table 15A.4). Two cases (against Peru and Mexico) are under review; three (against the Dominican Republic, Honduras, and Peru) have been processed, with a formal report issued by the Department of Labor and a monitoring plan under way for Honduras; one (against Bahrain) has resulted in formal bilateral consultations; and one (against Guatemala) is in formal dispute settlement. The case against Guatemala is the only one to have proceeded beyond consultations. The AFL-CIO and several Guatemalan worker organizations filed the original petition in 2008, alleging that the government had systematically failed to enforce its labor laws in several areas, including the rights to collective bargaining and freedom of association, and that violence against unions was unrelenting. The Department of Labor findings substantiated the claim in 2009. The United States requested consultations in mid-2010 and an arbitral panel in 2011. In August 2013 both sides agreed to an 18-point enforcement plan. Dispute set-

governments to review and respond to the labor situations in their countries," but "by filing GSP petitions, [we do] not seek to devastate local economies or affect the job security of poor workers." See "GSP," ILRF, <http://old.laborrights.org/creating-a-sweatfree-world/changing-global-trade-rules/gsp> (accessed on February 2, 2016).

25. The GSP has not been reinstated for Bangladesh. In early 2015 USTR stated that "further progress is needed, including to address serious worker rights issues, before reinstatement." See "GSP Review of Bangladesh Recognizes Progress, Urges That More Be Done on Worker Safety and Rights," January 2015, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/january/gsp-review-bangladesh-recognizes> (accessed on September 30, 2015).

tlement resumed after Guatemala failed to implement the terms of that plan. The arbitral panel recently set a new deadline of June 22, 2016, for issuing its initial ruling.

In a review of enforcement of labor provisions, the US Government Accountability Office (GAO 2014) concluded that US trade partners had indeed taken steps to improve labor rights pursuant to FTA obligations, backed by technical assistance from the United States. But the report also found continuing gaps in labor protections, as a result of a lack of capacity in partner countries to enforce labor laws, limited public awareness about the petition processes, and procedural shortcomings at the Department of Labor.²⁶ The GAO's recommendations included more proactive monitoring and a more coordinated approach between the US Trade Representative and the Department of Labor. The TPP seems to have heeded some of this critique by increasing ILO involvement and independent oversight, at least in the case of Vietnam.

The TPP Approach

TPP Article 19.5.1 sets the baseline for the agreement's enforcement: "No Party shall fail to effectively enforce its labour laws through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the Parties after the date of entry into force of this Agreement."²⁷ Enforcement of the TPP labor chapter is built on a combination of cooperative, consultative, and dispute mechanisms. The framework provides for consultations at the ministerial level, a national contact point for each country, and a standing labor council to facilitate a cooperation agenda. This framework is not new; most processes replicate the Korea-US FTA. The TPP tightens several areas in

26. The GAO (2014) reports that for each labor submission, the Department of Labor exceeded its six-month time frame for investigations by an average of about nine months and that delays resolving submissions "may have contributed to the persistence of conditions that affect workers and are allegedly inconsistent with the FTAs."

27. One criticism by labor advocates involves use of the language "sustained or recurring," which they allege prevents workers from addressing single egregious labor violations as they occur (LAC 2015). This condition remains the standard of past US FTAs including the May 10 Agreement and is maintained in the language of Trade Promotion Authority. The question of the exact meaning of "sustained or recurring" was clarified somewhat in the dispute case against Guatemala. In the US submission, Guatemala's interpretation of the clause was rebutted, and the United States provided important clarifications that suggest the clause is not intended to be interpreted narrowly. The United States reiterated the meaning as "continuing or repeated in conduct" and noted that by design, either condition can be satisfied. It is not required that the infraction occur "over a prolonged period of time," such as multiple years, as Guatemala contended. Rather, "a course of action or inaction could be 'sustained' over the course of any segment of time—e.g., a few months, a year, or more—while an action or inaction may likewise 'recur' merely twice." See "In the Matter of Guatemala—Issues Relating to the Obligations under Article 16.2.1(1) of the CAFTA-DR," US Rebuttal Submission, March 16, 2015, https://ustr.gov/sites/default/files/US%20sub1.fin_.pdf (accessed on February 3, 2016).

an attempt to offer better procedural certainty. It also builds review mechanisms into its labor consistency plans. TPP highlights include the following:

- *Labor cooperation*: The lengthy section on areas for cooperation is founded on capacity building and transparency. It includes a nonexhaustive list of 20 areas, including job creation, labor productivity, occupational safety and health, labor inspections, and collection of labor statistics. The list is ambitious but voluntary, meaning it may not result in measurable progress.
- *Cooperative labor dialogue*: This mechanism is new and intended as an outlet for engagement outside of formal dispute settlement, which can be cost- and time-intensive. Use of the mechanism does not prevent a country from requesting consultations. There is no mandated outcome, but suggested resolutions include an action plan, independent verification of compliance (e.g., by the ILO), and a cooperative program.
- *Labor council*: Like other US FTAs, the TPP establishes a labor council of senior officials at the ministerial level to guide cooperative activities and work programs. The council will meet within one year after the TPP's entry into force and every two years thereafter. In the fifth year the council must conduct an implementation review. Previous US FTAs were nonspecific, with the council meeting "as often as it considers necessary."
- *Public engagement*: Unlike past FTAs, the TPP mandates that countries establish and consult a national labor advisory body made up of stakeholders on labor issues.
- *Public submissions*: This new section provides broad guidelines for processing labor complaints. The United States already has such procedures, but several countries do not. The TPP could have provided more explicit guidance on the timeline for processing submissions.
- *Labor consultations*: In post-2007 US FTAs, requirements for replying to requests and commencing consultations are guided by the broad language "shall commence promptly." The TPP narrows the scope for delays with timelines. Requests for consultations must be replied to within 7 days, consultations must begin within 30 days, and the labor council must convene within 30 days of a request. Similar to past practice, if a dispute is not resolved within 60 days, an arbitral panel under government-to-government dispute settlement can be requested (for details, see chapter 12 of this volume). The AFL-CIO would welcome the right to initiate labor petitions directly with governments, as a parallel to investor-state dispute settlement procedures. That right would probably go a long way to alleviate concerns over weak labor enforcement, but the proposal has so far garnered little support.
- *Bilateral labor plans*: The TPP labor plans include implementation and review guidelines. Of the three plans, Vietnam's has the most expansive oversight. The mechanisms to assess that plan's implementation are es-

established in three tiers, which should serve as a check if political will to implement reforms proves lacking in the future:

1. *Government oversight:* A standing committee composed of senior US and Vietnamese officials will monitor and ensure rapid response to compliance concerns. Ministerial review of the plan's implementation will occur at regular intervals (the 3rd, 5th, and 10th years following entry into force).
2. *ILO assistance:* Vietnam will establish a technical program with the ILO to support implementation of proposed reforms, and the ILO will issue a public report two years after entry into force, with biannual meetings thereafter for eight years.
3. *Independent monitoring:* A three-member labor expert committee made up of independent nongovernment experts (such as the ILO) will provide reports of the progress toward reforms, with recommendations to the senior officials committee two and half years after entry into force and every two years thereafter (after eight and a half years, reports can continue every five years).

Conclusion

Early US FTAs like NAFTA did not address labor issues in a robust way. Elliott and Freeman (2003, 89) put the shortfall another way: Those FTAs were “largely concerned with finding politically acceptable trade-labor mechanisms that permit trade agreements to proceed, while doing little to ensure that labor standards improve.” Over time US FTAs have attempted to narrow the gap by improving labor obligations as well as by supporting the efforts of developing-country FTA partners to implement commitments to international labor standards. These goals remain a major challenge, and the US track record has had its rough patches.

But the rough patches should not detract from the achievements made by the TPP. Although the TPP does not address all the concerns of labor rights advocates, it represents an important step forward. The bilateral plans negotiated alongside the TPP are a major innovative component, targeted to address the substandard labor conditions of most concern. Implementation of the mandated reforms would deliver significant improvements in Brunei, Malaysia, and Vietnam. The monitoring mechanisms attached to Vietnam's plan in particular seem more proactive than past US efforts.

Overall, the labor provisions of US trade agreements have improved incrementally over time. Future agreements can be expected to build on the new TPP benchmark.

Appendix 15A

Table 15A.1 ILO fundamental worker rights conventions in force in TPP countries as of December 2014

TPP member	Per capita GDP, 2014 (US dollars)	Freedom of association, right to organize and bargain collectively		Freedom from forced labor		Nondiscrimination in employment		Effective abolition of child labor and its worst forms	
		C87	C98	C29	C105	C100	C111	C138	C182
Australia	61,887	O	O	O	O	O	O	X	O
Brunei	41,344	X	X	X	X	X	X	O	O
Canada	50,271	O	X	O	O	O	O	X	O
Chile	14,528	O	O	O	O	O	O	O	O
Japan	36,194	O	O	O	X	O	X	O	O
Malaysia	10,934	X	O	O	O	O	X ^a	O	O
Mexico	10,230	O	X	O	O	O	O	X	X
New Zealand	42,409	X	O	O	O	O	O	X	O
Peru	6,551	O	O	O	O	O	O	O	O
Singapore	56,287	X	O	O	O	O	X ^a	O	O
United States	54,629	X	X	X	O	X	X	X	O
Vietnam	2,052	X	X	O	X	O	O	O	O

ILO = International Labor Organization, C = Convention, O = treaty in force, X = treaty not in force.

a. Malaysia and Singapore were original signatories to the convention but denounced it in 1990 and 1979, respectively.

Sources: World Bank's *World Development Indicators* database and ILO (2015).

Table 15A.2 Status of worker rights in selected TPP member countries

Country	Freedom of association and right to collective bargaining	Prohibition of forced and compulsory labor	Prohibition of child labor	Employment discrimination	Acceptable conditions of work
Brunei	<p>* Law permits workers to form and join unions but restricts collective bargaining and prohibits strikes.</p> <p>* Employers are prohibited from discriminating against workers because of union activities, but reinstatement is not required for dismissals.</p> <p>* Trade unions are permitted, but affiliation with international labor organizations requires state consent.</p> <p>* Unions must be registered with the government; the only registered union is the union of Brunei Shell Petroleum workers.</p>	<p>* Law prohibits forced or compulsory labor, with penalties of up to BND 1 million (\$75,000) and imprisonment.</p> <p>* Violations, in particular of forced labor involving migrant workers, are reported.</p>	<p>* Laws prohibit child employment under age 16.</p> <p>* Permission to work can be granted for children under 18 based on parental and state consent.</p>	<p>* Law does not explicitly prohibit discrimination with respect to employment and occupation.</p>	<p>* No minimum wage is mandated; wages are set via contract between employee and employer.</p> <p>* Occupational health and safety standards are generally enforced, but laxer enforcement is reported in sectors employing low-skilled labor, such as construction and maintenance.</p>

Peru	<ul style="list-style-type: none"> * Laws provide for freedom of association, the right to strike, and collective bargaining, subject to certain limitations. * Employer intimidation and anti-union discrimination is prohibited and the reinstatement of workers fired due to union activity is required by law. * Workers are permitted to form and join unions without seeking prior authorization. 	<ul style="list-style-type: none"> * Law prohibits forced or compulsory labor, but enforcement remains ineffective because of inadequate resources, inspections, and remediation. * Workers are subject to forced labor in mining, forestry, agriculture, and brick making sectors. 	<ul style="list-style-type: none"> * Legal minimum age for employment is 14; certain work hours allowed for children 12 to 14 and 15 to 17 with special permission. * Work permits required for children under 18. * Violations are reported in informal sectors. 	<ul style="list-style-type: none"> * Law prohibits discrimination based on race, gender, disability, language, or social status. * Violations occur but are often unreported because of lack of confidence in the legal system. 	<ul style="list-style-type: none"> * Since 2012, the statutory monthly minimum wage is set at 750 new soles (\$268). * Law provides for 48-hour work week and requires overtime pay. Certain rights and benefits are guaranteed for adult domestic workers (8-hour work day, paid vacation, bonuses). * Occupational health and safety standards exist, but resources and expertise are insufficient to fully implement them. * Concerns remain over high threshold for employer accountability for workplace injuries and lax penalties for health and safety violations.
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(table continues)

Table 15A.2 Status of worker rights in selected TPP member countries (*continued*)

Country	Freedom of association and right to collective bargaining	Prohibition of forced and compulsory labor	Prohibition of child labor	Employment discrimination	Acceptable conditions of work
Malaysia	<ul style="list-style-type: none"> * Law provides for limited freedom of association and allows some workers to form trade unions, subject to restrictions by sector (e.g., limits in high-tech and public sectors). * Employers are prohibited from interfering with union activities and must reinstate workers fired for such activity, but law is not effectively enforced. * Private sector strikes are permitted, but general strikes are prohibited. * In practice few protections are given to workers whose freedom of association is violated. 	<ul style="list-style-type: none"> * Law prohibits forced or compulsory labor but is not effectively enforced. * Forced labor persists in plantation agriculture, fishing, electronics, garments, construction, and food sectors, as well as among domestic workers. * Debt bondage and passport confiscation of migrant workers are prevalent. 	<ul style="list-style-type: none"> * Law prohibits employment of children under 14, with some exceptions. * Work limited to six hours a day. * Child labor is common in informal sectors of the economy. 	<ul style="list-style-type: none"> * Law does not prohibit discrimination with respect to employment. * Discrimination is reported in employment of migrant workers, women, minorities, and people with disabilities. 	<ul style="list-style-type: none"> * Minimum wage is set at RM 800 (\$245) a month in states of Sabah and Sarawak and RM900 (\$275) in peninsular Malaysia. Wage increases to RM920 and RM1,000 are planned for July 2016. * Law provides for caps on working hours, overtime pay, public holidays, and annual and maternity leave. * Occupational health and safety regulations exist but are violated and exclude maritime and armed forces. * Penalties are imposed for minimum wage violations, failure to insure migrants, and unreported accidents, but monitoring mechanisms are inadequate. * Migrant workers face poor working conditions and long delays in court proceedings over disputes.

Mexico	<ul style="list-style-type: none"> * Law provides for right to form unions, bargain collectively, and strike in both public and private sectors. * Protection contracts—collective bargaining agreements in which company creates an unrepresentative union in exchange for concessions—are prevalent and have prevented workers from exercising labor rights. * Workers report intimidation. 	<ul style="list-style-type: none"> * Law prohibits forced or compulsory labor. * Forced labor persists in some agricultural, industrial, and informal sectors, with migrant workers most vulnerable. 	<ul style="list-style-type: none"> * Law prohibits employment of children under 15. Work by children 15 to 17 permitted under certain conditions. * Enforcement effective in several small and medium-sized enterprises but inadequate in smaller companies in agriculture, construction, and the informal sector. * Cooperation agreement signed with ILO to address child labor in agricultural industry in Veracruz. 	<ul style="list-style-type: none"> * Law prohibits discrimination based on ethnic origin, gender, age, disability, health, social and migratory conditions, religion, opinion, sexual orientation, or social status. 	<ul style="list-style-type: none"> * Effective October 2015, a nationwide minimum wage was set at Mex\$70.10 a day (\$4.19 a day); previously the minimum wage was divided between Zone A (major cities and ports) and Zone B (all other municipalities). * Law provides for working hours, overtime pay, holidays, and paid annual leave. * Occupational safety and health regulations must be enforced, and workers are permitted to remove themselves from situations based on health or safety risk without losing their jobs. * Concerns over violations in agricultural sectors in certain states, treatment of temporary migrant workers, and working conditions in <i>maquiladoras</i>.
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(table continues)

Table 15A.2 Status of worker rights in selected TPP member countries *(continued)*

Country	Freedom of association and right to collective bargaining	Prohibition of forced and compulsory labor	Prohibition of child labor	Employment discrimination	Acceptable conditions of work
Vietnam	<p>* Laws do not allow workers to organize or join independent unions, which they can join only under the purview of the Vietnam General Confederation of Labour (VGCL), the country's sole trade union, controlled by the state.</p> <p>* VGCL-affiliated unions may bargain collectively, but strikes are highly restricted; they are not permitted in "rights-based" disputes or at the sector or industry level, and all strikes must first abide by consultation and arbitration procedures.</p>	<p>* Law prohibits forced or compulsory labor, with 3–10 years of imprisonment for violations.</p> <p>* Forced labor remains in practice at education and detention centers for drug offenders.</p>	<p>* Law defines underage employees as under 18 years and restricts child work in dangerous sectors.</p> <p>* Employment of people 15–18 (with limits on work hours) and 13–15 (limited to "light jobs") is permitted.</p> <p>* ILO survey reports 1.8 million child laborers (63 percent of economically active children).</p> <p>* ILO project on reducing child labor was announced in December 2014, with financial backing by the Vietnamese and US governments.</p>	<p>* Law prohibits discrimination based on sex, race, disability, social class, marital status, religion, and HIV/AIDS status.</p> <p>* Discriminatory hiring practices have been reported related to gender, age, and marital status.</p>	<p>* Minimum wage ranges from VND 2.15 million (\$96) to VND 3.1 million (\$138) a month. A 12.4 percent wage increase is planned for 2016.</p> <p>* Law sets work hours, mandatory breaks, annual leave, overtime pay, and related thresholds.</p> <p>* Regulations covering worker safety are broad; workers are not permitted to remove themselves from situations that endanger health or safety without losing their jobs.</p> <p>* Enforcement is inadequate because of limited funding and shortage of trained personnel.</p>

* Strikes are prohibited in businesses serving the public and those “essential to the national economy and defense”; the prime minister may suspend strikes based on these premises.

* Concerns have been raised that overtime thresholds are exceeded, migrant workers are mistreated, and workers face injuries as a result of unsafe conditions.

* New law was approved in June 2015 that extends occupational safety and health protections to Vietnam’s informal economy, which employs 60 percent of the labor force.

Sources: US State Department, *Country Reports on Human Rights Practices for 2014*, www.state.gov/j/drl/rls/hrrpt/humanrightsreport/ (accessed on August 11, 2015); “Viet Nam Enters a New Phase in Occupational Safety and Health,” June 25, 2015, ILO News, www.ilo.org/hanoi/Informationresources/Publicinformation/newsitems/WCMS_379007/lang--en/index.htm (accessed on August 11, 2015); “Higher minimum wage reduces Malaysia’s dependence on foreign workers, says minister Liow,” *Straits Times*, October 25, 2015, www.straitstimes.com/asia/se-asia/higher-minimum-wage-reduces-malysias-dependence-on-foreign-workers-says-minister-liow (accessed on February 26, 2016); “Vietnam’s Minimum Wages to Increase in 2016,” Vietnam Briefing, September 14, 2015, www.vietnam-briefing.com/news/vietnam-minimum-wages-increase.html/ (accessed on February 26, 2016); “United States and Viet Nam Launch Joint Programme with ILO to Combat Child Labour,” March 2, 2015, ILO press release, www.ilo.org/pardev/donors/WCMS_329351/lang--en/index.htm (accessed on August 11, 2015).

Table 15A.3 Coverage of labor provisions in US free trade agreements

Provision	NAFTA (1992)	US-Jordan FTA (2000)	FTAs with Chile (2003), Singapore (2003), Australia (2004), Bahrain (2004), Morocco (2004), Oman (2006)	CAFTA-DR (2004)	FTAs with Colombia, Korea, Peru, and Panama (2006–07)	TPP (2016)
Labor chapter in main text	X	O	O	O	O	O
Parties shall adopt and maintain fundamental international labor rights and shall not waive or derogate from laws implementing such rights (ILO Declaration) ^a	X	X	X	X	O	O
Parties shall adopt and maintain statutes and regulations governing “acceptable conditions of work” with respect to minimum wages, hours of work, and occupational safety and health	X	X	X	X	X	O
Parties shall discourage imports of goods made by forced or compulsory labor, including forced child labor	X	X	X	X	X	O

Parties shall not waive or derogate from agreed labor rights in special trade or customs areas, including export processing zones	X	X	X	X	X	O
Parties must effectively enforce their own labor laws	O	O	O	O	O	O
Normal dispute settlement procedures apply to all labor provisions	X	O	X	X	O	O
Sanctions and the suspension of trade benefits shall apply to labor provisions as all other enforce-able commercial obligations	X	O	X	X	O	O

CAFTA-DR = Central American Free Trade Agreement–Dominican Republic, ILO = International Labor Organization, NAFTA = North American Free Trade Agreement, TPP = Trans-Pacific Partnership, O = provision included, X = provision not included.

a. The ILO Declaration covers four fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of compulsory or forced labor; effective abolition of child labor and its worst forms; and the elimination of discrimination in respect of employment and occupation.

Note: Year in parentheses indicates year agreement was signed.

Sources: Bolle (2014), USTR (2015), FTA texts (available at <https://ustr.gov/trade-agreements/free-trade-agreements>).

Table 15A.4 Labor complaint submissions against US trading partners under review by the US Department of Labor

Submission number	Date filed	Date accepted for review	Claimant	Defendant	Claim	Status
<i>Cases currently under review</i>						
US Submission 2011-02	11/14/2011	1/13/2012	Mexican Union of Electrical Workers (SME) and more than 90 labor organizations, including the AFL-CIO	Mexico	The government failed to uphold and enforce labor standards with respect to the rights to freely associate, organize and bargain collectively, and strike and it failed to prevent occupational injuries and illnesses. It forcibly removed SME members from workplaces and unilaterally terminated the state-owned electrical power company (Central Light and Power) along with the employment of unionized workers through a presidential decree, replacing the company with a nonunionized state-owned enterprise.	Department of Labor filed a review extension in June 2012 following a supplemental submission from the claimants with new allegations.

US Submission 2015–n.a.	7/23/2015	9/21/2015	International Labor Rights Forum, Peru Equidad, and seven Peruvian workers’ organizations	Peru	The government failed to adopt and maintain the rights of freedom of association and collective bargaining in labor laws by permitting the unlimited consecutive renewal of short-term contracts, which are alleged to deter union activity. In particular, it failed to effectively enforce labor laws in nontraditional export and agricultural sectors with respect to freedom of association, the right to collective bargaining, and acceptable conditions of work.	Under review for 180-day period; report expected in March 2016.
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(table continues)

Table 15A.4 Labor complaint submissions against US trading partners under review by the US Department of Labor
(continued)

Submission number	Date filed	Date accepted for review	Claimant	Defendant	Claim	Status
<i>Cases reviewed with public report submitted</i>						
US Submission 2011-03	12/22/2011	2/22/2012	Father Christopher Hartley	Dominican Republic	The government failed to enforce labor laws related to the sugar industry with respect to (a) the right of association and the right to organize and bargain collectively; (b) the prohibition of forced or compulsory labor; (c) a minimum age for child employment and prohibition of the worst forms of child labor; and (d) acceptable conditions of work. Alleged labor abuses included forced and child labor, unsanitary living conditions, denial of benefits, hazardous working conditions, refusal to issue written contracts, and retaliatory firing for union affiliation.	A Department of Labor report issued in September 2013 found evidence of apparent and potential violations of labor laws, supporting the alleged claims. Additional concerns were raised about procedural shortcomings in labor inspections and the failure to follow guidelines. The Office of Trade and Labor Affairs (OTLA) made several recommendations to address the violations and engaged in joint efforts with the Dominican government to develop an implementation plan. Reviews of the implementation of report recommendations are ongoing at six-month intervals, with related reports submitted in April 2014, October 2014, and April 2015.

US Submission 2012-01	3/26/2012	2012	AFL-CIO and 26 Honduran unions and civil society organizations	Honduras	The government failed to enforce labor laws with respect to (a) the right of association and the right to organize and bargain collectively; (b) the minimum age for employment and elimination of the worst forms of child labor; and (c) acceptable conditions of work, in the automobile and agricultural sectors.	A Department of Labor report issued in February 2015 found violations of labor rights supporting the alleged claims. The OTLA recommended bilateral consultations pursuant to Article 16.4 of CAFTA-DR and a meeting by the Labor Affairs Council to develop a monitoring and action plan based on the report's recommendations. A monitoring and action plan was agreed to and signed on December 2015.
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(table continues)

Table 15A.4 Labor complaint submissions against US trading partners under review by the US Department of Labor
(continued)

Submission number	Date filed	Date accepted for review	Claimant	Defendant	Claim	Status
<i>Cases reviewed with public report submitted (continued)</i>						
US Submission 2010-03	12/30/2010	7/19/2011	Peruvian National Union of Tax Administration Workers	Peru	The government failed to comply with labor laws related to collective bargaining.	A Department of Labor report issued in August 2012 found that the Peruvian Ministry of Labor and Promotion of Employment fulfilled its duties during the collective bargaining processes but that the agency employing the workers failed to comply with some parts of Peru's collective bargaining law. Given the government's willingness to resolve the concerns raised, bilateral consultations were not recommended. Implementation monitoring by the Department of Labor is under way, with six-month interim reviews.

Cases in consultation

US Submission 2011-01	4/21/2011	6/10/2011	AFL-CIO	Bahrain	The government failed to uphold freedom of association, dismissed workers who organized or participated in strikes, and discriminated against workers based on political opinion and religious affiliation.	A Department of Labor report issued in December 2012 found evidence of violations of labor rights, supporting the alleged claims. The OTLA issued nine recommendations to Bahrain and recommended bilateral labor consultations pursuant to Article 15.6.1 of the FTA. In May 2013 the United States officially requested consultations; two rounds were held, in May 2013 and June 2014.
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(table continues)

Table 15A.4 Labor complaint submissions against US trading partners under review by the US Department of Labor
(continued)

Submission number	Date filed	Date accepted for review	Claimant	Defendant	Claim	Status
<i>Cases in dispute settlement</i>						
US Submission 2008–01	4/23/2008	6/12/2008	AFL-CIO and six Guatemalan workers' organizations	Guatemala	The government failed to effectively enforce labor laws with regard to freedom of association, the right to organize and bargain collectively, and acceptable conditions of work, including enforcement of severance payments and other legal provisions.	A Department of Labor report issued in January 2009 found that Guatemala's actions violated its labor laws. Given the willingness of the government to discuss and attempt to resolve the violations, bilateral consultations were not recommended, and the Department of Labor continued interim evaluations. In July 2010 the United States requested consultations; after failure to resolve its concerns, an arbitral panel was convened in 2011.

The two parties negotiated an 18-point enforcement plan in August 2013. After Guatemala failed to implement it, the United States resumed dispute settlement procedures. A decision is expected in June 2016.

CAFTA-DR = Central American Free Trade Agreement–Dominican Republic, FTA = free trade agreement

Sources: GAO (2014); US Department of Labor, “Submissions under the Labor Provision of Free Trade Agreements,” www.dol.gov/ilab/trade/agreements/fta-sub.html (accessed on May 18, 2015); “Submissions under the North American Agreement on Labor Cooperation (NAALC),” www.dol.gov/ilab/trade/agreements/naalc.html (accessed on May 18, 2015); and various Department of Labor reports, available at www.dol.gov/ilab/reports/.

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