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Worker Rights Provisions and U.S. Trade Policy

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SUMMARY

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Worker Rights Provisions and U.S. Trade Policy

Worker rights provisions are a prominent and often contentious issue in debates over U.S. trade negotiations, agreements and programs. Congress has input into and oversight over the design and implementation of U.S. trade agreements and policies, and interest in monitoring their impact on U.S. industries and workers. Broadly, Congress also has an interest in the U.S. role in setting labor standards and promoting fair competition in the global trading system. Multilateral trade rules under the World Trade Organization (WTO) do not cover labor issues, which has in part limited global alignment and enforcement of trade-related labor issues, and spurred unilateral, bilateral and regional approaches within trade policies. WTO members deferred to the International Labor Organization (ILO) as the competent body to deal with core labor standards, and trade agreements with labor provisions typically refer to ILO obligations.

Various U.S. trade statutes address the treatment of worker rights and labor standards. Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. § 1307) prohibits U.S. imports of products mined, produced, or manufactured wholly or in part by forced labor; in 2015, Congress strengthened the prohibition by removing a broad exception. In recent years, the U.S. Customs and Border Protection (CBP) has increasingly taken action under Section 307 to block U.S. imports produced by forced labor. Since 1984, Congress has included respect for internationally recognized worker rights as part of eligibility criteria for developing countries to qualify for duty-free benefits under unilateral trade preferences programs, including the Generalized System of Preferences (GSP). Following eligibility reviews, the United States has rescinded unilateral trade preferences of some beneficiary developing countries over worker rights criteria.

Since 1988, Congress has also included worker rights as a U.S. principal trade negotiating objective within trade promotion authority (TPA) legislation, which has evolved significantly with subsequent reauthorizations—the last TPA (P.L. 114-26) expired on July 1, 2021. The issue became elevated within reciprocal trade agreement negotiations with the pursuit of the 1994 North American Free Trade Agreement (NAFTA)—the first U.S. trade agreement with a developing country (Mexico). U.S. administrations have been at the forefront internationally of using free trade agreements (FTAs) to promote core worker rights. Labor provisions have evolved significantly since NAFTA, moving from a side agreement to integral chapters within U.S. FTAs, with additional provisions subject to enforcement. The most recent U.S. FTA, the 2020 U.S.-Mexico-Canada Agreement (USMCA) replaced NAFTA and made several changes to recent U.S. practice. Like several past FTAs, worker rights and enforcement issues were sticking points for some Members of Congress, and USMCA implementing legislation (P.L. 116-113) dedicated resources and enhanced interagency cooperation toward these issues. Several labor disputes initiated under USMCA are ongoing. Alongside trade agreements, trade capacity building and technical assistance for developing countries have also expanded as mechanisms for improving labor standards and compliance with obligations.

Some U.S. stakeholders and labor rights advocates view worker rights provisions and effective enforcement as important to strengthening worker rights abroad, preventing a potential "race to the bottom" in lowering standards, and protecting workers from perceived unfair competition. Developing countries and other stakeholders have raised concerns that advanced economies may promote labor standards as a form of disguised trade protectionism to undermine other countries' comparative advantage. Some policymakers and experts contend that FTAs and trade liberalization support economic development and over time raise labor standards and wages in lower income countries. In this view, the promotion of global labor standards with trade liberalization can encourage the spread of the benefits of globalization, discourage the worst labor abuses, and increase support for trade agreements. Others question whether trade agreements are an appropriate and effective vehicle for addressing labor issues, and view expanded labor clauses and trade enforcement as potentially infringing national sovereignty. How to ensure effective enforcement of labor provisions has become a perennial concern for some stakeholders in the debate.

"Putting workers at the center" is a priority of the Biden Administration's trade policy. The Administration pledged to review past trade policies for impacts on workers and to enforce labor obligations under U.S. trade agreements. It also emphasized using the full range of trade tools to ensure products of forced labor are not imported, and to challenge other unfair labor practices.

This report provides background and analysis on key U.S. trade policies addressing worker rights abroad. It contextualizes the U.S. approach with key debates and comparison with global approaches. Several issues may be of interest to Congress, including the role of U.S. trade agreements and programs as vehicles for improving labor rights; the role of multilateral institutions; compliance with labor commitments and approaches to enforcement; and debates over capacity building efforts.

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Introduction

Worker rights provisions are a prominent and often contentious issue in debates over U.S. trade policy. Congress has input into and oversight over the design and implementation of U.S. trade agreements and policies, and interest in monitoring their impact on U.S. industries and workers. Broadly, Congress also has an interest in the U.S. role in enhancing core worker rights globally and promoting fair competition in the global trading system. Some Members may also see worker rights provisions as a means of promoting human rights in U.S. foreign policy. Multilateral trade rules under the World Trade Organization (WTO) do not cover specific obligations on worker rights, due to differences among members regarding the best forum for addressing them, among other issues. This has in part limited global alignment and enforcement of trade-related labor issues, and spurred unilateral, bilateral, and regional approaches within trade policies.

"Putting workers at the center" is a priority of the Biden Administration's trade policy.[1] The Administration pledged to review past trade policies to assess their impacts on workers, and to fully enforce labor obligations under U.S. trade agreements. It aims to use the full range of trade tools, including domestic laws, to ensure products made by forced labor are not imported, and to challenge other unfair labor practices.

Various U.S. trade statutes address worker rights and labor standards, and have evolved over time. Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. §1307), prohibits U.S. imports of products of forced labor.[2] Since 1984, Congress has included respect for internationally recognized worker rights as part of the eligibility criteria for developing countries to qualify for duty-free benefits under unilateral trade preferences programs, including the Generalized System of Preferences (GSP). Since 1988, Congress has also included worker rights as a principal trade negotiating objective within trade promotion authority (TPA) legislation (previously known as "fast track" authority), which has evolved significantly with subsequent reauthorizations—the last TPA (P.L. 114-26) expired on July 1, 2021. The issue became elevated and more contentious within reciprocal trade agreement negotiations during the pursuit of the 1994 North American Free Trade Agreement (NAFTA)—the first U.S. FTA with a developing country (Mexico). Notably, NAFTA was the first of any FTA, both in the United States and globally, to address labor issues. Alongside trade agreements and programs, trade capacity building and technical assistance for developing countries have also expanded as mechanisms for promoting worker rights.

U.S. administrations have been at the forefront internationally of using trade agreements to promote core worker rights, though the adequacy of enforcement has been a longstanding point of contention. Labor provisions have evolved significantly since NAFTA, and have moved from being a side agreement to comprising integral chapters within subsequent U.S. FTA texts, with additional provisions subject to enforcement. The most recent U.S. FTA, the 2020 U.S.-Mexico-Canada Agreement (USMCA) updated NAFTA and made several changes to past U.S. FTA practice. As in several past U.S. FTAs, worker rights and enforcement issues were sticking points for some Members of Congress during congressional approval of USMCA, and implementing legislation (P.L. 116-113) dedicated resources and enhanced interagency cooperation toward these issues. The Office of the U.S. Trade Representative (USTR) committed to pursuing labor dispute cases, and in May 2021, self-initiated its first USMCA labor complaint. Both U.S. and Mexican labor groups have also already filed their own cases. Key issues for Congress in oversight of

[1] USTR, *2021 Trade Policy Agenda and 2020 Annual Report*, March 2021.

[2] In 2015, Congress strengthened the prohibition by removing a broad exception.

USMCA implementation include how the new "rapid response" dispute mechanism will work, and whether USMCA labor obligations should be the template for future U.S. FTAs.

Some U.S. stakeholders and labor rights advocates broadly view worker rights provisions and effective enforcement as important to strengthening worker rights abroad, arguing that they help prevent a potential "race to the bottom" in lowering labor standards to gain advantages and may protect workers from perceived unfair competition. Developing countries and other stakeholders have raised concerns that advanced economies may promote labor standards as disguised trade protectionism to undermine other countries' comparative advantages of abundant labor and lower labor costs, or to impede national sovereignty. Some policymakers and experts contend that FTAs and trade liberalization support economic development and, over time, help raise labor standards and wages in lower income countries. In this vein, some experts view that the promotion of global labor standards with trade liberalization can encourage the spread of the benefits of globalization, discourage the worst labor abuses, and increase public support for trade agreements.[3] At the same time, others question whether FTAs are an appropriate and effective vehicle for addressing labor issues.

How to ensure effective enforcement of labor provisions has become a perennial concern. Some Members and stakeholders have raised concerns over U.S. trading partners' compliance with commitments and view U.S. enforcement of FTA provisions as falling short. They call for more monitoring and oversight of labor practices. Some foreign governments and labor groups also have expressed concerns regarding U.S. practices and lack of adherence to labor commitments, such as Mexican concerns over U.S. protections for migrant workers. Experts stress cooperative efforts and trade capacity building as critical factors to improving standards globally and incentivizing compliance, and many generally view trade sanctions as a measure of last resort.[4]

This report provides background and analysis on the evolution of key U.S. trade policies with labor provisions, with a focus on trade programs, negotiations, and agreements. It contextualizes the U.S. approach with key debates and comparison with global approaches. Several issues of interest to Congress may include the role of trade policy tools as vehicles for improving labor rights globally; the role of multilateral institutions; trading partner compliance with labor commitments and approaches to enforcement; and debates over capacity building efforts. Issues related to the distributional impact of globalization, trade liberalization, and trade policies on U.S. and foreign workers and on the labor market are beyond the scope of this report.

Overview: Trade Rules and Labor Commitments

Lack of Multilateral Rules in the World Trade Organization

Labor issues are not subject to multilateral trade rules under the WTO, due to past contentious debate and a lack of consensus among members over whether and how the global trade agenda should address trade and labor linkages.[5] The issue surfaced repeatedly in debates during both the drafting of the 1947 General Agreement on Tariffs and Trade (GATT) and establishment of the

[3] Kimberly Ann Elliott, "Labor Standards," in *Preferential Trade Agreement Policies for Development: A Handbook*, ed. Jean-Pierre Chauffour and Jean-Christophe Maur (Washington, DC: The World Bank, 2011), p. 428.

[4] E.g., Sandra Polaski, "Protecting Labor Rights through Trade Agreements: An Analytical Guide," *Journal of International Law and Policy*, vol. 10, no. 13 (July 2004): 13-25.

[5] For the history of the debate over linking trade and international competitiveness to labor standards, see Virginia A. Leary, "Workers' Rights and International Trade: The Social Clause, (GATT, ILO, NAFTA, U.S. Laws)," in *Fair Trade and Harmonization*, ed. Jagdish Bhagwati and Robert E. Hudec (Cambridge, MA: MIT Press, 1996).

WTO in 1995, which encompassed and succeeded the GATT. Proposals to consider a "social clause" linking trade concessions to the observation of worker rights, or to create a working group to study the issue, failed to garner majority support. WTO members ultimately confined treatment of the issue to a broad statement, deferring to the International Labor Organization (ILO) as the competent body to deal with core labor standards (see below).

Discussions of a social clause in the context of a multilateral trade agreement date back to the 1948 Havana Charter of the proposed International Trade Organization (ITO)—signed but never ratified—which included a section on labor standards recognizing that "unfair labour conditions, particularly in production for export, create difficulties for international trade."[6] The proposed ITO provided the premise for later debates over reforms to the GATT, which parties conceived more narrowly to focus initially on tariff liberalization.[7] The United States sought to introduce a labor clause in subsequent GATT negotiations, in particular during the Tokyo Round (1973-1979) of multilateral trade talks, though ultimately abandoned such efforts.[8] U.S. trade officials proposed work programs to examine "minimum international labor standards," and how "internationally recognized" standards relate to trade and GATT objectives.

While the GATT does not explicitly address labor issues, Article XX, its general exceptions article, includes one provision that permits restrictions on trade in goods made from prison labor (Article XX(e)).[9] Advocates of incorporating a broader trade-related labor provision in the GATT view certain GATT articles as potentially justifying trade measures based on social policies and violations of core labor rights, or offering avenues for expanding their scope through explicit language on such rights.[10] GATT Article XX, for example, allows member governments to adopt certain trade restrictions necessary to protect "public morals" and "human life or health." Experts have also cited provisions on antidumping (Article VI), subsidies (Article XVI), and safeguards (Article XIX), as well as the nonviolation nullification or impairment clause (Article XXIII), as potentially applicable tools that could be adapted to provide for labor enforcement. For example, some analysts contend worker rights suppression could in effect constitute "social dumping" or subsidization and warrant coverage.[11] Experts have debated the practical and legal feasibility and

[6] ITO's Havana Charter Pt. II, Article VII: "Members recognize that measure related to employment must take fully into account the rights of workers under inter-governmental declarations, conventions and agreements. They recognize that all countries have common interest in the achievement and maintenance of labour standards related to productivity, and thus in the improvement of wages and working conditions as productivity may permit…unfair labour conditions, particularly in production for export, creates difficulties in international trade, and, accordingly each Member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory."

[7] Legal scholars argue that attempts to incorporate labor standards into the GATT/WTO were shaped by an evolving understanding of what constitutes "fair labor standards," with legal and institutional implications for how and whether labor provisions could be incorporated into trade rules today. Debates over the GATT were driven by the conception of labor standards largely based on wages, i.e., concerns over the impact of low wages, as perpetuated by lower labor standards, on exports to other members; there was minimal discussion of social concerns that have become central to modern human rights concepts of labor rights. See Elissa Alben, "GATT and the Fair Wage: A Historical Perspective on the Labor-Trade Link," *Columbia Law Review*, vol. 101, no. 6 (October 2001): 1410-1447.

[8] Peter Watson, "The Framework for the New Trade Agenda," *Law and Policy in International Business*, vol. 25 (1994): 1237-1253.

[9] See https://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXX.

[10] For an overview, see Kimberly Ann Elliott, *Developing a More Inclusive US Trade Policy at Home and Abroad*, CGD Policy Paper 146, Center for Global Development, June 2019.

[11] Dani Rodrik, *Towards a More Inclusive Globalization: An Anti-Social Dumping Scheme*, Economists for Inclusive Prosperity, December 2018; Gregory Shaffer, "Retooling Trade Agreements for Social Inclusion," *University of Illinois Law Review*, vol. 2019, no. 1 (2019): 1-44.

shortcomings of various approaches.[12] While some advocate for addressing worker rights issues, others maintain that incorporating enforceable labor standards in the WTO would be misguided and risks overloading the WTO with issues it was not designed to deal with.[13]

The creation of the WTO following the Uruguay Round (1986-1994) renewed debate over labor standards. At the WTO's first Ministerial Conference in Singapore in 1996, the issue was the most controversial in the proposed agenda.[14] Norway and the United States were the primary proponents and advocated for a work program to reach understanding among members on "how to reinforce the mutually supporting nature of increased trade and improving labor standards."[15] Congress expressed interest in such a working group in the 1994 Uruguay Round Agreements Act (P.L. 103-465)—the statutory basis for U.S. WTO membership (see **Text Box**). The proposals, however, gained little traction. Developing and some developed countries, such as Australia and the United Kingdom (UK), viewed the WTO as an inappropriate forum to address labor and "non-trade" issues, and some members threatened to boycott the meeting over the proposals.

WTO and Labor: Congressional Directives in Uruguay Round Agreements Act

The 1994 Uruguay Round Agreements Act (P.L. 103-465) established congressional interest in exploring linkages between trade and labor. Section 131 directs the President to seek the establishment in the WTO of "a working party to examine the relationship of internationally recognized worker rights … to the articles, objectives and related instruments of the GATT 1947 and the WTO." Objectives included

1. explore the linkage between international trade and internationally recognized worker rights, taking into account differences in countries' level of development;
2. examine the effects on international trade of the systematic denial of such rights;
3. consider ways to address such effects; and
4. develop methods to coordinate the work program of the working party with the ILO.

Developing country members feared such rules would undermine economic development or be used by developed countries as disguised barriers to trade to protect labor-intensive, import-competing industries.[16] A more complex legal question in contention was the potential relationship in linking ILO standards and WTO agreements, i.e., whether or how labor standards could be applied in a way that was consistent with WTO rules.[17] Due to these divisions, at the 1996 Singapore Ministerial, WTO members agreed to renew their commitment to observe

[12] Ibid. Also see Simon Lester, "Responding to 'Social Dumping' with Tariffs," International Economic Law and Policy Blog, February 25, 2019, at https://ielp.worldtradelaw.net/2019/02/responding-to-social-dumping-with-tariffs.html; Guillermo de la Dehesa, "Are developing countries engaging in "social dumping"? VoxEU, May 24, 2007, at https://voxeu.org/article/social-dumping-misconceptions; and Alben, "GATT and the Fair Wage."

[13] See e.g., T.N. Srinivasan, *Developing Countries and the Multilateral Trading System: From the GATT to the Uruguay Round and the Future* (New York: Routledge, 1998), pp. 71-79; Keith Maskus, *Should Core Labor Standards be Imposed Through International Trade Policy?* World Bank Policy Research Working Paper No. 1817, August 1997; José Manuel Salazar-Xirinachs and Jorge Mario Martinez-Piva, "Trade, Labour Standards and Global Governance: A Perspective from the Americas," in ed. Stefan Griller, *International Economic Governance and Non-Economic Concerns: New Challenges for the International Legal Order* (Vienna/New York: Springer, 2003).

[14] Craig VanGrasstek, *The History and Future of the World Trade Organization* (Geneva: WTO Publications, 2013), p. 380. The Ministerial Conference is the WTO's topmost decision-making body, and usually convenes every two years. It is comprised of political representatives from each member, and can take decisions on all matters under any of the WTO's multilateral trade agreements.

[15] Ibid., p. 378.

[16] Ibid.

[17] WTO, "Labour standards: consensus, coherence and controversy," at https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm.

"internationally recognized core labor standards," while reaffirming the ILO as the competent body to deal with labor issues and denouncing the "use of labor standards for protectionist purposes" (see **Text Box**).[18]

WTO Singapore Ministerial Declaration, December 1996

"We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put in question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration."

Subsequent efforts to elevate labor standards as part of the global trade agenda met similar resistance. At the Seattle Ministerial Conference in 1999, a working group was set up to decide whether the Ministerial declaration should create a formal working party within the WTO, or a body operated jointly by international organizations, such as the ILO.[19] U.S. trade officials warned that lack of recognition of the link between trade and labor could damage credibility and support for the global trading system.[20] President Clinton's remarks on the issue, in particular the suggestion that trade sanctions could be used to enforce labor rights, created added controversy.[21] Developing country members viewed U.S. insistence on raising the issue as counterproductive, and efforts to compromise on other issues stalled as WTO members promised to block consensus necessary to adopt them.[22] Then WTO Director-General Mike Moore decried the "bitterness and divisiveness" of the trade and labor debate, and gave his view that "unacceptable working conditions" must be met by expanding trade and not by imposing sanctions.[23] Ultimately, efforts failed with the collapse of the Seattle talks. In the subsequent 2001 Doha Round, members reaffirmed the Singapore Declaration, taking no further action. To date, the WTO and ILO secretariats primarily cooperate through collaborative studies.[24]

[18] As one former ILO Deputy Director-General reflected on the outcome at Singapore, "It was far from clear whether all of the WTO Ministers wanted to move the issue of the relationship between trade and labour standards to the ILO so that something meaningful would happen. Some wanted to get rid of it, not only in the WTO but in the ILO as well. This had been the thrust of the unsuccessful proposal in 1994 for a Conference resolution banning further discussion on the social clause in the ILO." Kari Tapiola, *The Teeth of the ILO: The Impact of the 1998 ILO Declaration on Fundamental Principles and Rights at Work*, International Labour Office, ILO, 2018, p. 29.

[19] VanGrasstek, *The History and Future of the World Trade Organization*, pp. 390-391.

[20] In 1999, then-USTR Charlene Barshefsky said, "The WTO does not recognize the link between trade and labor…. That is intellectually indefensible, and over time, it will weaken public support for global trade." Kimberly Ann Elliott and Richard B. Freeman, *Can Labor Standards Improve Under Globalization*? (Washington: Peterson Institute for International Economics, 2003), p. 73.

[21] Clyde Summers, "The Battle in Seattle: Free Trade, Labor Rights, and Societal Values," *University of Pennsylvania Journal of International Law*, vol. 22 (Spring 2001), p. 61.

[22] U.S. Government Accountability Office (GAO), *World Trade Organization: Seattle Ministerial: Outcomes and Lessons Learned*, Statement of Susan S. Westin, Associate Director, February 10, 2000; Steven Greenhouse and Joseph Kahn, "U.S. Effort to Add Labor Standards to Agenda Fails," *New York Times*, December 3, 1999.

[23] WTO, "Labour Issue is 'False Debate', Obscures Underlying Consensus, WTO Chief Mike Moore Tells Unions," Press release, November 28, 1999.

[24] WTO, "The WTO and International Labour Organization," at https://www.wto.org/english/thewto_e/coher_e/wto_ilo_e.htm.

Role of the International Labor Organization (ILO)

The ILO, established in 1919, is the multilateral organization with primary responsibility for promoting international labor standards and "decent work" through conventions and principles.[25] When founded, its *raison d'être* was to achieve social justice to advance global peace. A specialized agency of the United Nations, the ILO has a tripartite structure composed of representatives from governments, employers, and worker organizations from 187 member states, including the United States.[26] The Department of Labor's (DOL) Bureau of International Labor Affairs (ILAB) represents the United States at the ILO, and U.S. government agencies often collaborate with ILO programs and are a key source of funding for technical assistance.[27]

WTO discussions over a possible "social clause" and the Singapore declaration pressured the ILO to contribute to the debate over linking labor standards and trade practices.[28] As in the WTO, discussions were marked by divergent views among ILO member states and stakeholders.[29] A central concern was that countries engaged in social and labor reforms should not end up disadvantaged in international competition. Then ILO Director-General Michel Hansenne reflected on the core issues at the heart of the debate:[30]

> The crucial question is whether, given the voluntary acceptance of obligations arising from its standards, the ILO can maintain the spirit of "emulation" towards social progress in spite of the countervailing influence exerted by the globalization of the economy and the growth of international competition. I am referring … to the issue of "social clauses", or the guarantees that a growing number of advocates wish to incorporate in international trade agreements to ensure that the gradual liberalization of markets is accompanied by improvements in conditions of work, or at least by the elimination of the most flagrant abuses and forms of exploitation. Through the social clauses, either the access of exporting countries to international markets is made conditional on compliance with certain basic ILO standards, or - more concretely - a link is established between the lowering of barriers to trade and compliance with certain labour and social protection standards.

A 1994 working party in the ILO Governing Body on the Social Dimensions of the Liberalization of International Trade debated how the ILO should protect and promote core labor standards, but ultimately avoided linking them explicitly with international trade. Among the most divisive issues was the potential use of the WTO to enforce ILO commitments. While ILO procedures provide for the possibility of stronger action against countries found not to meet ILO obligations, in practice, the ILO has relied on peer and political pressure, rather than punitive measures. This preference is based on the premise that the ILO "should rely on cooperation rather than coercion in its efforts to promote social progress."[31] As one WTO scholar described a common criticism

[25] For more on the Decent Work agenda, see https://www.ilo.org/global/topics/decent-work/lang—en/index.htm.

[26] ILO, "The US: A Leading role in the ILO," at https://www.ilo.org/washington/ilo-and-the-united-states/the-usa-leading-role-in-the-ilo/lang—en/index.htm.

[27] See "Trade Capacity Building." The United States is a member of the ILO Governing Body, which is the ILO's executive body. See ILO, *The United States: ILO Cooperation*, October 2019; Partner Classification: United States in 2020, ILO Development Cooperation Dashboard, at https://www.ilo.org/DevelopmentCooperationDashboard/#a1hsnnd.

[28] Leary, "Workers' Rights and International Trade."

[29] For discussion, see Tapiola, *The Teeth of the ILO*, pp. 11-37.

[30] *Defending Values, Promoting Change: Social Justice in a Global Economy: An ILO Agenda*, Report of the Director-General (Part 1), International Labour Conference, 81st session, Geneva, 1994, p. 57. Hansenne outlined concrete options for dealing with trade and labor standards, which members ultimately did not take up, see pp. 56-63.

[31] Ibid.

that emerged, "In the ILO, there are labour standards without 'teeth,' while the WTO has teeth but almost no standards related to labour."[32] Some contest this view, however, and maintain that the ILO's less confrontational approach may be more pragmatic and conducive to cooperation.[33]

ILO Core Labor Standards and Principles

Trade agreements with labor provisions typically require adherence or otherwise refer to ILO obligations and instruments. The ILO has adopted 190 conventions and six protocols. Of these instruments, eight "fundamental conventions" relate to core labor standards that are considered "universal" and applicable to all member states, regardless of level of economic development (see **Figure 1**). The 1998 Declaration on the Fundamental Principles and Rights at Work and its follow-up incorporate these core principles and rights, in which countries commit "to respect, to promote and to realize" whether or not signatories to the underlying fundamental conventions (see **Text Box**).[34] Reflecting concurrent debates at the WTO, the 1998 Declaration also stresses language similar to the WTO Singapore Declaration—e.g., that labor standards "should not be used for protectionist trade purposes" and "comparative advantage of any country should in no way be called into question by this Declaration and its follow-up."

Underlying the ILO's approach to advancing labor standards and principles globally is the recognition that differences in labor conditions and levels of protection are linked to differences in levels of development. As a former ILO Director-General reflected, the ILO's aim is not "to achieve uniformity in the level of social protection in order to ensure a proper international competition," but the "universal recognition of certain basic rights" and "respect of certain common rules of the game."[35] More pointedly, "All the partners in the multilateral trade system must guarantee certain fundamental rights, without which workers cannot be assured of receiving their fair share of the fruits of economic progress generated by the liberalization of trade."[36]

[32] VanGrasstek, *The History and Future of the World Trade Organization*, p. 169. The idea of "juxtapose[ing] international right law's normative content with trade law's economic and enforcement entitlements or 'teeth'" is not unique to labor standards, but has been central in discussions of human rights and trade more broadly. See Desirée LeClercq, "The Disparate Treatment of Rights in U.S. Trade," *Fordham Law Review*, forthcoming March 2021.

[33] Salazar-Xirinachs and Martinez-Piva, "Trade, Labour Standards and Global Governance," pp. 332-335.

[34] ILO, "About the Declaration," at https://www.ilo.org/declaration/thedeclaration/lang—en/index.htm.

[35] *Standard Setting and Globalization*, Report of the Director-General, International Labour Conference, 85th Session, Geneva, 1997.

[36] Ibid.

ILO Declaration on Fundamental Principles and Rights at Work: Concepts and Meaning

The 1998 ILO Declaration declares that all members, even if they have not ratified the eight fundamental conventions, have an obligation to promote and realize the principles concerning the fundamental rights which are the subject of those conventions, including the following:

(a) Freedom of association and the effective recognition of 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 organizations without interference from the state or one another. This includes the right to freely run their own activities, e.g., independently determine how best to promote and defend their interests, including recourse to strike.
- 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.
- To realize these rights in practice requires a legal basis that guarantees such rights are enforced, an enabling institutional framework, and absence of discrimination against individuals exercising such rights.

(b) Elimination of all forms of forced or compulsory labor:

- Forced labor occurs where work or service is extracted by the state or others with power to threaten workers with severe deprivations, e.g., withholding wages, abuse, and restricting people's movements.
- Debt bondage and labor trafficking are practices where workers become dependent on an intermediary and labors in slave-like conditions, possibly subject to confiscated identity papers and other intimidation.

(c) Effective abolition of child labor:

- Children have rights to protection from economic exploitation and from dangerous work.
- Effective abolition of child labor is based on ensuring children have the opportunity to develop physically and mentally to their full potential by eliminating work that jeopardizes education and development.
- To achieve abolition, a minimum age at which children can enter work should be enforced, in general not less than the age of completing compulsory schooling or 15 years.
- Certain work performed by children (i.e., under age 18) categorized as "worst forms of child labor" are to be prohibited and eliminated as a matter of urgency, e.g., slavery in all its forms (trafficking, debt bondage, forced military recruitment), prostitution and all forms of commercial sexual exploitation, and use of children in illicit activities, such as drug trafficking.

(d) Elimination of discrimination in respect of employment and occupation:

- Discrimination can occur on the basis of sex, age, race, skin color, social origin, religion, political opinion, disability or HIV status. It denies opportunities and deprives societies of what workers could contribute.
- Equality at work means all individuals are afforded opportunities to fully develop knowledge, skills and competencies related to economic activities they wish to pursue.
- Eliminating discrimination entails dismantling barriers to ensuring equal access to training, education, and resource use and ownership. It also involves the conditions for setting up enterprises, and the policies related to hiring, work conditions, pay and benefits, promotions and employment termination.

Source: ILO, *Declaration Overview*, May 2004.

Supervisory and Enforcement Measures

While there is scope for enforcement measures, historically the ILO has encouraged compliance with labor standards through its supervisory and technical assistance systems. At its core, the ILO plays a "sunshine" monitoring function through a supervisory and reporting system to monitor the application of ratified conventions. The 1998 Declaration Follow-up requires countries that have not ratified conventions to report annually on the status of the relevant rights and principles, impediments to ratification, and areas requiring technical assistance. The ILO also reports on global efforts toward implementing standards. In addition, through technical assistance (e.g.,

research, capacity building, and field-based projects) the ILO helps countries address problems in developing and implementing legislation and undertaking other actions to meet their obligations.

ILO representation (Articles 24-25 of ILO Constitution) and complaint procedures (Article 26) permit industrial associations of workers/employers and member states, respectively, to raise concerns over a country's alleged noncompliance with ratified conventions.[37] There is a special Committee within the ILO Governing Body with distinct procedures for addressing violations of freedom of association rights.[38] Upon receipt of a general complaint, the Governing Body may establish a Commission of Inquiry, the ILO's highest-level investigative procedure, which is generally pursued when a country is accused of persistent and serious violations. If a country refuses to meet a Commission's recommendations, the ILO Governing Body can take action under authority in Article 33 of the ILO Constitution, and recommend "action as it may deem wise and expedient to secure compliance therewith," including possibly punitive action.[39] Such authority has been rarely invoked, however—the ILO invoked Article 33 once in 2000 to compel Burma to take action after it failed to implement recommendations of an investigation that found "widespread and systematic" forced labor.[40] Some observers have advocated for more effective use of the ILO forum to pressure the Chinese government to address state-sponsored forced labor in the Xinjiang Uyghur Autonomous Region (see "Section 307 of Tariff Act of 1930 and Forced Labor").[41]

ILO and FTA Provisions

Most FTAs with labor provisions refer to ILO commitments, generally through broad affirmations of ILO obligations and political commitment to the 1998 Declaration, and/or reference to ILO instruments to define the scope of certain labor provisions. According to the ILO, nearly three-quarters of trade-related labor provisions refer to the ILO, with most legally binding commitments in respect of "core internationally recognized labor standards."[42] With the growth in trade agreements that refer to the ILO (see "United States and ILO Fundamental Conventions" countries have increasingly sought ILO support to help meet FTA commitments.[43]

Some experts view expansion of such provisions as strengthening the potential enforcement of labor standards; on the other hand, some view such a decentralized approach and lack of uniformity in definitions of standards or their application as having potential to weaken ILO

[37] To date, there have been 35 Article 26 complaints, and 14 resulted in Commissions of Inquiry reports. The Committee on Freedom of Association has received more than 3,400 complaints, 44 involving the United States. There have been more than 250 Article 24 representations. See https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/lang—en/index.htm.

[38] The Committee may hear a complaint about a government's violation of freedom of association regardless of whether the government has ratified Convention No. 87.

[39] Changes to the ILO Constitution in the 1940s removed explicit references to *economic measures*, in large part to avoid discouraging least developed countries from joining the institution. This was also driven by the broader view that weak labor standards were primarily driven by gaps in national enforcement, reinforcing the importance of international action to develop capacity. See Elliott and Freeman, *Can Labor Standards Improve Under Globalization*? p. 106. For discussion of the origin and debate over the ILO's use (or disuse) of trade sanctions, see Steve Charnovitz, *The Lost History of the ILO's Trade Sanctions*, GWU Law School Public Law Research Paper No. 2019-74, 2019.

[40] ILO, "ILO Governing Body opens the way for unprecedented action against forced labour in Myanmar," Press release, November 17, 2000.

[41] For example, Andrew Samet,"Will the ILO Defend China's Uyghurs?" *The Diplomat*, August 18, 2020, and Janice Bellace and George Dragnich, "A Path for Business out of the China Forced Labor Dilemma," *The Hill*, May 10, 2021.

[42] ILO, *Handbook on Assessment of Labour Provisions in Trade and Investment Arrangements*, 2017, p. 5.

[43] Ibid., p. 23.

attempts to develop a consistent approach.[44] While a more uniform manner of referencing ILO obligations in trade agreements could mitigate such concerns, the majority refer primarily to the 1998 Declaration, which some contend gives rise to legal uncertainty due to its broad scope.[45] Some observers maintain that FTA language that refers to conventions provides for greater clarity and concrete obligations.[46]

In its most recent FTAs, the United States includes an enforceable commitment to maintain and uphold the rights and principles of the ILO Declaration in domestic laws. U.S. FTAs do not include commitments to enforce the fundamental conventions themselves, in large part because the United States has ratified only two of the eight conventions: forced labor (No. 105), and worst forms of child labor (No. 182) (see below).[47] Most U.S. FTA partners have ratified all eight, with some exceptions (**Figure 1**).

[44] Jordi Agustí-Panareda, Franz Christian Ebert, and Desirée LeClercq, "ILO Labor Standards and Trade Agreements: A Case for Consistency," *Comparative Labor Law & Policy Journal*, vol. 36 (2015), p. 348.

[45] Ibid.

[46] E.g., AFL-CIO, *NAFTA at 20*, March 2014, p. 19. Moreover, implementation of ratified conventions is subject to ongoing ILO supervision. Agustí-Panareda, Ebert, and LeClercq, "ILO Labor Standards and Trade Agreements."

[47] ILO, "Ratifications for United States of America," at https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871.

Figure 1. ILO Fundamental Conventions Ratified by U.S. FTA Partners

✓ = ratified ✗ = not ratified

U.S. FTA PARTNER	GDP (per capita, 2020 or latest avail.)	Freedom of association and right to collective bargaining		Forced Labor		Child Labor		Discrimination	
		C087	C098	C029	C105	C138	C182	C100	C111
Australia	51,812	✓	✓	✓	✓	✗	✓	✓	✓
Bahrain	23,443	✗	✗	✓	✓	✓	✓	✗	✓
Canada	43,242	✓	✓	✓	✓	✓	✓	✓	✓
Chile	13,232	✓	✓	✓	✓	✓	✓	✓	✓
Colombia	5,333	✓	✓	✓	✓	✓	✓	✓	✓
Costa Rica	12,077	✓	✓	✓	✓	✓	✓	✓	✓
Dominican Rep.	7,268	✓	✓	✓	✓	✓	✓	✓	✓
El Salvador	3,799	✓	✓	✓	✓	✓	✓	✓	✓
Guatemala	4,603	✓	✓	✓	✓	✓	✓	✓	✓
Honduras	2,406	✓	✓	✓	✓	✓	✓	✓	✓
Israel	43,611	✓	✓	✓	✓	✓	✓	✓	✓
Jordan	4,283	✗	✓	✓	✓	✓	✓	✓	✓
Mexico	8,347	✓	✓	✓	✓	✓	✓	✓	✓
Morocco	3,009	✗	✓	✓	✓	✓	✓	✓	✓
Nicaragua	1,905	✓	✓	✓	✓	✓	✓	✓	✓
Oman	15,343	✗	✗	✓	✓	✓	✓	✗	✗
Panama	12,269	✓	✓	✓	✓	✓	✓	✓	✓
Peru	6,127	✓	✓	✓	✓	✓	✓	✓	✓
Singapore	59,798	✗	✓	✓	✗	✓	✓	✓	✗
South Korea	31,489	✓	✓	✓	✗	✓	✓	✓	✓
PARTIAL FTA									
Japan	40,113	✓	✓	✓	✗	✓	✓	✓	✗
United States	63,544	✗	✗	✗	✓	✗	✓	✗	✗

Initially ratified, later denounced.

Source: Created by CRS. Data from World Bank, World Development Indicators database, at https://databank.worldbank.org/, and ILO, "Ratifications of fundamental Conventions by country," as of July 2021.

Note: The U.S.-Japan trade agreements cover limited tariff cuts and rules on digital trade.

United States and ILO Fundamental Conventions

While the United States arguably has achieved many labor standards, it has not ratified most ILO conventions in large part due to inconsistencies between domestic legislation, including certain state laws, and the conventions. The President's Committee on the ILO—established by Executive Order in 1980, and chaired by the Secretary of Labor—declared "there is no intention to change State law and practice by Federal action through ratification of ILO conventions."[48]

In its 2007 assessment, the Committee's U.S. Tripartite Advisory Panel on International Labor Standards (TAPILS) asserted that five of the eight core conventions "directly conflict with U.S. law and practice and would require significant and widespread changes to U.S. state and federal law" if ratified.[49] These include freedom of association (No. 87); right to organize/collective

[48] U.S. Council for International Business, *U.S. Ratification of ILO Core Labor Standards*, April 2007.

[49] Ibid.

bargaining (No. 98); forced labor (No. 29); minimum age for employment (No. 138); and equal remuneration (No. 100). In particular, ratification of No. 87 and No. 98 would require "drastic changes" to U.S. law.[50] To take one example, the Panel determined that No. 29 on forced labor cannot be ratified namely due to "the trend of states to subcontract the operation of prison facilities to the private sector in the United States conflicted with the requirements … relating to circumstances under which the private sector may profit from prison labor."

In the view of U.S. government officials, "although an improved record ratification [is] an important objective towards which to strive … in practice United States law [meets] or [exceeds], in almost every case," standards set out in the ILO conventions.[51] However, some experts point to what they perceive as lower levels of U.S. coverage and protection for workers in key respects than required by ILO standards.[52] Moreover, some observers, including some Members of Congress, view the relatively low U.S. ratification of ILO conventions (14 out of 190), and particularly the fundamental conventions (2 out of 8), as potentially disadvantaging the United States through "reputational cost" within the ILO, and undermining U.S. credibility in its efforts to use trade policy to promote respect for core labor rights.[53] In particular, some observers view the United States as well positioned to ratify convention No. 111 concerning discrimination in employment.[54] In practice, limited ratification also generally prevents the United States from raising ILO complaints against other countries for failure to observe ratified conventions. At the same time, some observers question the efficacy of ILO conventions and point to limitations of ratification as an indicator of higher labor standards, given evidence that despite ratification, there can be lack of implementation and adherence by some countries. Some empirical studies suggest countries often merely comply with those conventions that already fit their national legislation, while others emphasize other determinants of ratification and some positive outcomes.[55]

Global Trends in Labor Provisions in Trade Agreements

The lack of multilateral trade rules on and prevailing concerns over labor practices led to the proliferation of other trade arrangements with labor provisions. The United States and European

[50] President Harry S. Truman sent convention No. 87 to the Senate for advice and consent in 1949. Steve Charnovitz, "The ILO Convention on Freedom of Association and Its Future in the United States," *American Journal of International Law*, vol. 102, Issue 1 (2008): 90-107.

[51] Quoted in Alston, "Labor Rights Provisions in U.S. Trade Law," p. 31.

[52] David Weissbrodt and Matthew Mason, "Compliance of the United States with International Labor Law," *Minnesota Law Review*, vol. 84 (2014): 1842-1878.

[53] E.g., former Senator Orrin Hatch reflected in 1985: "our dismal nonratification record undercuts our credibility at the ILO." Ibid. One legal scholar contended: "the United States would be acting on much stronger and certainly more persuasive grounds if it were itself a party to the relevant international conventions and if those were the standards being applied. Instead, what emerges is a major discrepancy between the United States' refusal to submit itself to multilateral accountability (through the ILO), and its preparedness to subject others to a form of accountability in which the United States acts as the sole legislator, judge, jury, and enforcement author." Philip Alston, "Labor Rights Provisions in U.S. Trade Law: 'Aggressive Uniliateralism?'" *Human Rights Quarterly*, vol. 15 (1993), p. 32.

[54] President Clinton submitted the convention in May 1998 to the Senate for advice and consent to ratify. At the time, TAPILS determined there was no legal impediment in U.S. law to ratification, and that existing legislation brings the United States into compliance. *Message from the President of the United States Transmitting ILO Convention (No. 111) Concerning Discrimination (Employment and Occupation), Adopted by the International Labor Conference at its 42nd Session in Geneva on June 25, 1958*, 115th Cong., 2nd sess., Treaty Doc 105—45 (Washington, DC: GPO, 1998).

[55] For discussion, see Laurence R. Helfer, "Understanding Change in International Organizations: Globalization and Innovation in the ILO," *Vanderbilt Law Review*, vol. 59, no. 3 (2006): 649-726, and Nancy H. Chau and S. M. Ravi Kanbur, "The Adoption of International Labor Standards Conventions: Who, When and Why?" *Brookings Trade Forum*, vol. 1 (January 2001): 113-156.

Union (EU) were among the first to include conditional labor clauses within unilateral trade preference programs, which offer duty-free market access to eligible imports from less-developed countries. In addition, reciprocal labor commitments increasingly have become a feature of bilateral and regional FTAs, especially over the past decade. Per its latest survey, the ILO reported that as of 2019, nearly 90 bilateral or plurilateral trade agreements included labor provisions—about a third of agreements then in force globally.[56] This compares to nearly 60 trade agreements in 2013, 20 in 2005, and four in 1995.[57] Such agreements involve those between advanced and developing economies, as well as increasingly between developing and emerging economies. Of the surveyed FTAs, more than half include at least one G-7 trading partner (Canada, France, Germany, Italy, Japan, the UK, and the United States).[58] Given the lack of multilateral trade rules on labor, some officials viewed past U.S.-EU attempts at negotiating an FTA as offering an opportunity for possibly aligning approaches on using trade policy to promote social sustainability[59] and labor protections (see **Text Box**).[60]

Recent agreements include dedicated labor commitments within FTA chapters, varying both in substance and enforcement mechanisms. Common features include references to domestic and international standards per the ILO that address labor rights and working conditions; mechanisms for monitoring or promoting compliance; and frameworks for cooperation.[61] Some create new institutional mechanisms to carry out cooperation activities and to engage in technical assistance. The majority of provisions commit trade partners to observe certain minimum labor standards and/or to enforce and not weaken domestic labor laws to attract trade and investment.

Implementation and enforcement mechanisms vary among agreements. Most provide a framework for dialogue and monitoring, and many provisions are subject to limited or no FTA dispute settlement procedures. Key distinguishing features include the nature of penalties for failure to abide by labor obligations, establishment of incentives for compliance, and the extent of capacity-building assistance.[62] Many agreements, such as those of the EU, New Zealand, and Chile, focus on cooperation and dialogue activities, as well as consultations to resolve disputes, with the support of an expert body. U.S. and Canadian agreements generally provide for enforcement mechanisms with recourse to trade sanctions for at least some labor provisions. To date, the vast majority of labor complaints submitted under trade agreements involve U.S. FTAs. Two labor disputes have been adjudicated through dispute settlement procedures resulting in panel decisions: the U.S.-Guatemala dispute under the Dominican Republic-Central America FTA (CAFTA-DR) in 2017; and the EU-Korea dispute under their bilateral FTA in 2021.

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[56] ILO, *Labour Provisions in G7 Trade Agreements: A Comparative Perspective*, 2019. ILO analysis is based on the WTO Regional Trade Agreements database, and considers agreements with labor references and obligations that go beyond aspirational preamble statements. For context, according to the WTO, as of January 2021, of nearly 350 trade agreements in force, 110 agreements are categorized as containing labor provisions based on broader metric: "This category includes provisions on 'labour measures' which are typically found in the services or/and investment chapter or in the economic cooperation or sustainable development chapters. This includes best endeavour provisions and rendezvous clauses." See WTO, Regional Trade Agreements Database, and *RTA Provisions Glossary*.

[57] ILO, *Handbook on Assessment of Labour Provisions*, 2017 and *Social Dimensions of Free Trade Agreements*, 2015.

[58] ILO, *Labour Provisions in G7 Trade Agreements*. The G-7 agreements treat EU-wide agreements as those of the relevant G-7 countries, as the EU has exclusive competence to negotiate and conclude FTAs.

[59] See e.g., National Board of Trade Sweden, *Trade and Social Sustainability: An Overview and Analysis*, 2017.

[60] European Parliament, Policy Department A, Economic and Scientific Policy, *TTIP and Labour Standards*, 2016. EU officials framed its TTIP proposal as providing the opportunity to negotiate "the most comprehensive set of fundamental international standards of labour rights […] ever contained in a trade agreement." Cecilia Malmström, Commissioner for Trade, "TTIP: What consumers have to gain," European Commission – Speech, January 26, 2016.

[61] ILO, *Handbook on Assessment of Labour Provisions*, p. 1.

[62] Polaski, "Protecting Labor Rights through Trade Agreements: An Analytical Guide."

Labor Provisions in EU FTAs Compared to U.S. Approaches

Recent EU FTAs typically contain a "Trade and Sustainable Development" (TSD) chapter that includes labor provisions. The EU approach to such provisions has similarities and differences to U.S. approaches. Like U.S. FTAs, EU labor provisions commit parties to effectively enforce their labor laws, and not to derogate from, or fail to enforce such laws to encourage trade or investment. Both U.S. and EU FTAs generally commit to uphold the fundamental principles and rights of the ILO 1998 Declaration. EU FTAs also typically refer to additional instruments, such as the ILO's Decent Work Agenda and 2008 Declaration on Social Justice for a Fair Globalization. They commit to implementing ratified ILO conventions and to "make continued and sustained efforts" toward ratifying all fundamental conventions—the EU has ratified all eight, compared to two by the U.S. In the case of the EU-Vietnam FTA (entered into force in 2020), to advance this commitment, before FTA ratification, Vietnam reformed its labor code, ratified two ILO conventions (collective bargaining and forced labor), and adopted a "road map" for ratifying the freedom of association convention.[63]

In terms of enforcement, both U.S. and EU FTAs emphasize cooperation and dialogue mechanisms for initially resolving labor compliance concerns and disputes. Unlike the United States, EU FTAs generally do not include recourse to trade sanctions and may have distinct dispute settlement mechanisms, such as use of a Panel of Experts. In its first labor dispute under a modern FTA, the EU challenged South Korean compliance, requesting a panel in 2019.[64] The EU posited that South Korea had failed to uphold commitments of "respecting, promoting and realizing" in laws and practices ILO principles, namely related to freedom of association and collective bargaining, and to make "continued and sustained efforts" towards ratification of core conventions. Some experts argue that the outcome could have implications for the interpretation of FTA labor provisions in the adjudication of future disputes.[65]

In its 2021 trade strategy, the European Commission emphasized efforts to ensure effective implementation and enforcement of FTA TSD chapters "to level-up social, labour and environmental standards globally" and pledged to review the scope of TSD commitments, monitoring mechanisms, and possibility of sanctions as a remedy.[66]

Debate over Role and Impact of Labor Provisions

Debate over the role of labor provisions, or "social clauses," in trade agreements is longstanding, and has featured prominently in broader debate over the tradeoffs of globalization.[67] An extensive body of literature focuses on various aspects of the debate, including the impact of labor standards on trade and investment flows, the merits and impact of linking labor standards to trade agreements, and effects of trade policies on labor rights and labor markets. Overall, studies find a lack of robust evidence of either a "race to the bottom" in standards—as some labor advocates allege, or of protectionist use of labor standards—a prevailing concern in developing countries and among other stakeholders.[68] Some analyses find evidence that lower labor standards tend to

[63] Some have also criticized EU approaches in the proposed EU-China Comprehensive Agreement on Investment (CAI) for lacking binding, enforceable language committing China to ratify ILO conventions on forced labor. Shannon Tiezzi, "China-EU Investment Deal Sparks Backlash Over Rights Concerns," *The Diplomat*, January 13, 2021.

[64] *Panel of Experts Proceeding Constituted Under Article 13.15 of the EU-Korea Free Trade Agreement*, Report of Panel of Experts, January 20, 2021.

[65] For example, Desirée LeClercq, "The Panel Report under the EU-Korea Trade Agreement Concerning Labor Practices," International Economic Law and Policy Blog, February 8, 2021.

[66] European Commission, *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy*, February 18, 2021. A formal review of its 15-point action plan on implementation and enforcement of TSD chapters is expected in 2021.

[67] See Leary, "Workers' Rights and International Trade;" Jagdish Bhagwati, Trade Liberalization and 'Fair Trade' Demands: Addressing the Environmental and Labour Standards Issues, *World Economy*, vol. 18 (1995): 745-759; Maskus, *Should Core Labor Standards be Imposed Through International Trade Policy?*; Drusilla Brown, *International Trade and Core Labour Standards: A Survey of the Recent Literature*, Labour Market and Social Policy Occasional Papers Nº 43, OECD, October 2000; Samira Salem and Faina Rozental, *Labor Standards and Trade: A Review of Recent Empirical Evidence*, U.S. International Trade Commission, 2012; and Elliott, "Labor Standards."

[68] Salazar-Xirinachs and Martinez-Piva, "Trade, Labour Standards and Global Governance"; Elliott and Freeman, *Can Labor Standards Improve Under Globalization*?; and Robert Stern, *Labor Standards and Trade Agreements*,

reduce competitiveness, rather than bolster export performance or attract investment.[69] One study finds that while labor clauses in FTAs do not have a significant impact on bilateral trade flows on average, they have benefited exports of low-income countries.[70] Such effects were amplified by provisions that facilitated deeper cooperation, such as technical assistance and capacity building, and establishment of committees for monitoring implementation of labor commitments.

Conclusions vary as to the effectiveness of labor provisions in trade agreements.[71] Several studies attempt to measure the impact of FTA provisions on labor standards and working conditions, which can be difficult to assess due to the lack of comparable cross-country data and challenges measuring the application of labor standards—e.g., ratification of ILO conventions and passage of laws often do not effectively measure enforcement.[72] Empirical analysis of the impact of U.S. FTAs with Latin American and Caribbean countries finds overall significant improvement in labor law enforcement through more inspection resources and activities (with the exception of inconclusive findings in Mexico).[73] The findings reinforce other qualitative studies documenting positive effects of U.S. FTAs in Latin America, such as through increased fiscal resource allocations to inspection agencies and labor inspector training.[74] One study finds that U.S. FTAs more often led to *ex-ante* improvement of labor rights in partner countries (i.e. countries improved labor standards before signing) rather than ex-post enforcement of labor provisions after FTAs enter into effect.[75] The ILO also contends that U.S. FTAs with pre-ratification conditionality—i.e., requirements to address deficiencies in domestic labor standards prior to FTA ratification—led to more comprehensive and significant changes in labor legislation.[76]

Some studies find certain conditions may increase the likelihood that labor obligations have a positive impact. These include the threat of enforcement through trade sanctions, positive incentives such as trade benefits or capacity-building assistance, and certain market or sectoral factors.[77] The ILO emphasizes that the political will of countries involved and advocacy of civil society are crucial factors.[78] Some analyses use a case study approach and focus on specific indicators, such as child labor. For example, civil society engagement coupled with potential trade restrictions were credited with helping to mitigate use of child labor or advance labor protections

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Discussion Paper No. 496, University of Michigan, 2003.

[69] Will Martin and Keith E. Maskus, "Core Labour Standards and Competitiveness: Implications for Global Trade Policy," *Review of International Economics*, vol. 9, no. 2 (2001); OECD, *International Trade and Core Labour Standards*, 2000, and *Trade, Employment and Labour Standards*, 1996.

[70] Céline Carrère, Marcelo Olarreaga, Damian Raess, *Labor Clauses in Trade Agreements: Worker Protection or Protectionism?* August 2017.

[71] Salem and Rozental, *Labor Standards and Trade: A Review of Recent Empirical Evidence*.

[72] Anne Posthuma and Franz Christian Ebert, *Labour Provisions in Trade Arrangements: Current Trends and Perspectives*, ILO International Institute for Labour Studies Discussion Paper, July 2010.

[73] Sabina Dewan and Lucas Ronconi, *U.S. Free Trade Agreements and Enforcement of Labor Law in Latin America*, IDB Working Paper Series No. IDB-WP-543, Inter-American Development Bank, November 2014.

[74] Ibid., p. 8.

[75] Moonhawk Kim, "Ex Ante Due Diligence: Formation of PTAs and Protection of Labor Rights," *International Studies Quarterly*, vol. 56, no. 4 (2012): 704-719.

[76] ILO, *Social Dimensions of Free Trade Agreements*, International Institute for Labour Studies, 2013, pp. 29-41.

[77] Elliott and Freeman, *Can Labor Standard Improve Under Globalization?*; Polaski, "Protecting Labor Rights through Trade Agreements"; Salem and Rozental, "Labor Standards and Trade: A Review of Recent Empirical Evidence," pp. 1-36; and Gunseli Berik and Yana Rodgers, "Options for Enforcing Labour Standards: Lessons from Bangladesh and Cambodia," *Journal of International Development*, vol. 22, no. 1 (January 2010): 56-85.

[78] ILO, *Social Dimensions of Free Trade Agreements*.

in the cases of Bangladesh's garment sector, Pakistan's manufacturing, and Cambodia's textiles industries.[79]

The role and effectiveness of trade sanctions are debated, with punitive action generally viewed as a measure of last resort, given the underlying development objectives of labor clauses, the potential harm to foreign workers, and limited resources governments have to carry out labor law enforcement.[80] Many analysts contend that the "stick" of suspension of trade benefits for labor violations is more effective when coupled with "carrots" of technical assistance. Some argue that a trade sanctions approach may be less effective in mitigating labor issues, in particular those that occurring in less prominent export sectors and driven by lower development and other conditions; for example, in the case of child labor which often occurs in nontradable sectors.[81]

Labor Provisions in Selected U.S. Trade Policy Tools

Section 307 of Tariff Act of 1930 and Forced Labor[82]

The persistence of forced labor in some global supply chains has become an elevated issue for the trade enforcement priorities of the Biden Administration and for some Members of Congress. Since the late 19th century, the United States has prohibited imports produced by prison labor. Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. §1307), expanded this prohibition to ban U.S. imports of any product mined, produced, or manufactured, wholly or in part, by forced labor, including forced or indentured child labor.[83] An individual may submit a petition under Section 307 alleging goods produced by forced labor are being imported, and CBP may investigate, issue a withhold release order (WRO) to block entry into the United States, and potentially seize the merchandise.[84] Various other U.S. government measures may inform the issuance of WROs under Section 307 and seek to address labor trafficking more broadly.[85]

The ILO estimated that, in 2016, 25 million people were engaged in forced labor, with approximately 16 million of those in the private sector.[86] Sizing up the volume of trade flows tied to forced labor is difficult, due to the complexity of supply chains, the magnitude of global trade,

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[79] Elliott and Freeman, *Can Labor Standard Improve Under Globalization?* pp. 111-119.

[80] As one expert reflects: "the goal of potential penalties is not to utilize them per se, but rather to establish a disincentive or punishment that is adequate to deter a party from failing to carry out its obligations, and thus to encourage voluntary compliance…. Because the ultimate victim of a party's non-compliance is the working population of that country and not the government or employers, care must be taken to ensure that the penalty will help and not harm those workers. A fine that is used directly to address the labor problem may be more effective than a withdrawal of trade benefits in correcting the underlying violation." Polaski, pp. 20-21.

[81] Salazar-Xirinachs and Martinez-Piva, "Trade, Labour Standards and Global Governance."

[82] For more detail and analysis, see CRS Report R46631, *Section 307 and U.S. Imports of Products of Forced Labor: Overview and Issues for Congress*, coordinated by Cathleen D. Cimino-Isaacs.

[83] The act defines forced labor as work or service "exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily." Labor trafficking that is linked to forced labor is considered one of the severe forms of trafficking in persons, defined by the Trafficking Victims Protection Act of 2000 (22 U.S.C. §7102).

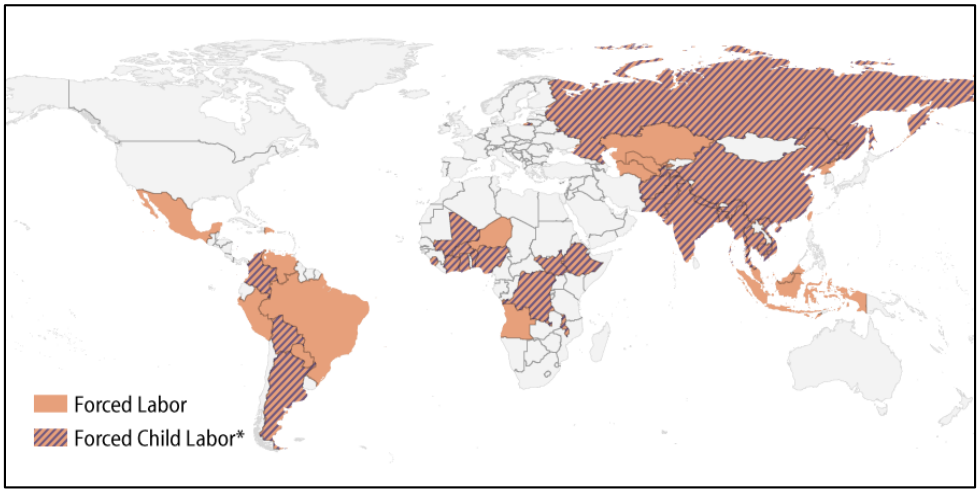
[84] CBP may issue a WRO when information reasonably, but not conclusively, indicates that merchandise produced with forced labor is being, or likely to be, imported into the United States. Pursuant to WROs, CBP may detain shipments at U.S. ports of entry, unless an importer provides sufficient evidence that it was not made with forced labor.

[85] For discussion, see CRS Report R46631, *Section 307 and U.S. Imports of Products of Forced Labor*.

[86] ILO, "Forced labour, modern slavery and human trafficking," at https://www.ilo.org/global/topics/forced-labour/lang—en/index.htm.

and challenges to tracing, given widespread subcontracting and at times ineffective auditing. U.S. data are also limited, as CBP does not disclose the value of shipments produced by forced labor that are imported, detained, or seized. Congressionally-mandated reports by DOL's Bureau of International Labor Affairs (ILAB) provide broad insights on countries and sectors at high risk for forced labor. ILAB's latest list specifies 63 categories of goods in at least 41 countries with known production by forced labor (including 26 with forced child labor) (**Figure 2**).[87]

Figure 2. Countries with Production by Forced Labor and/or Forced Child Labor



Source: U.S. DOL, Bureau of International Labor Affairs, *2020 List of Goods Produced by Child Labor or Forced Labor* and *2019 List of Products Produced by Forced or Indentured Child Labor*.

Notes: * Categories may overlap; some countries with forced child labor also have incidence of non-child forced labor.

Since the Tariff Act's enactment, CBP has issued around 50 WROs to restrict imports under Section 307. None were issued between 2000 and 2016, and nearly 30 have been issued since 2016.[88] The limited enforcement of Section 307 prior to 2016 was in large part due to the "consumptive demand" clause, which allowed forced labor imports if U.S. production of those goods was not sufficient to meet the U.S. consumptive demand. Congress removed this exception in 2015.[89] While WROs have typically been limited to specific manufacturers and producers, CBP recently has issued broader industry- and country-wide orders, covering entire product lines.

A regional enforcement approach has gained traction recently in particular for responding to forced labor practices in China, given deepening concerns over the arguably systemic state-sponsored forced labor of ethnic Uyghurs and other Turkic Muslims in the Xinjiang Uyghur Autonomous Region, and China's central role in global manufacturing.[90] Since 2019, the majority of CBP's Section 307 actions have targeted products involving Xinjiang-related forced labor, with nearly a dozen WROs against Xinjiang goods. In January 2021, CBP issued its first region-wide WRO against Xinjiang, blocking all imports of cotton and tomatoes grown in the region, as

[87] U.S. DOL, ILAB, 2020 *List of Goods Produced by Child Labor or Forced* Labor and 2019 *List of Products Produced by Forced or Indentured Child Labor*, at https://www.dol.gov/agencies/ilab/resources/reports/child-labor.

[88] U.S. CBP, "Withhold Release Orders and Findings," at https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings.

[89] Per the Trade Facilitation and Trade Enforcement Act, P.L. 114-125.

[90] See CRS In Focus IF10281, *China Primer: Uyghurs*, by Thomas Lum and Michael A. Weber.

well as downstream products.[91] The CBP orders effectively require U.S. importers of apparel and textiles to demonstrate that their imports do not contain material from Xinjiang, necessitating a more robust system for traceability and verification.[92] The U.S. government's updated "Xinjiang Supply Chain Business Advisory," issued in July 2021, identified several high-risk sectors and warned businesses of significant reputational, economic, and legal risks of involvement with entities engaged in human rights abuses and forced labor.[93] It noted that "businesses and individuals that do not exit supply chains, ventures, and/or investments connected to Xinjiang could run a high risk of violating U.S. law."

The effectiveness of Section 307 in deterring forced labor imports and practices remains subject to debate. Some labor groups and government agencies recommend improving transparency in CBP decisions and requirements, such as clarifying evidentiary standards, and improving collaboration with other anti-trafficking initiatives.[94] Other stakeholders argue that companies should improve supply chain due diligence (see **Text Box**), and advocate for greater enforcement actions against an entire industry, region, or country.[95] The private sector has cautioned about potential spillover effects of expanded enforcement, such as disrupting legitimate supply chains, and raised concerns about practical challenges, such as tracing difficulties in supply chains.[96]

[91] U.S. CBP, "CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang," Press release, January 13, 2021.

[92] For example, see Amy K. Lehr, *New Approaches to Supply Chain Traceability*, Center for Strategic and International Studies, November 2020.

[93] U.S. Departments of State, the Treasury, Commerce, and Homeland Security, "Xinjiang Supply Chain Business Advisory," updated July 13, 2021, at https://www.state.gov/xinjiang-supply-chain-business-advisory/.

[94] For example, International Labor Rights Forum (ILRF), *Combatting Forced Labor and Enforcing Workers' Rights Using the Tariff Act*, Briefing Paper, February 2020; and U.S. GAO, *Forced Labor – Better Communication Could Improve Trade Enforcement Efforts Related to Seafood*, GAO-20-441, June 2020.

[95] ILRF, *Combatting Forced Labor*.

[96] Commercial Customs Operations Advisory Committee (COAC), *Report of the Intelligent Enforcement Subcommittee Forced Labor Working Group*, July 15, 2020; Testimony by Stephen Lamar, President and CEO, American Apparel & Footwear Association, U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

Multinationals, Codes of Conduct, and Supply Chain Due Diligence

Increasing consumer and multinational company demand for goods produced under decent labor conditions has shaped the development of global trade rules and measures on worker rights. In particular, in the 1990s, consumer backlash rose against sweatshop labor, spurred by media accounts and incidents involving high profile companies, such as Nike, and global apparel and footwear manufacturing. To assist in navigating third-party suppliers and markets abroad, multinational companies developed codes of conduct, social audits, risk management and due diligence measures, often in concert with civil society and international organizations, such as the Organization for Economic Co-operation and Development (OECD),[97] and in response to various national legislation on labor-related disclosure requirements.[98] Multi-stakeholder codes of conduct on worker rights, such as of the Fair Labor Association (FLA) and Worker Rights Consortium (WRC), generally contain provisions on monitoring, verification, certification of supplier factories, enforcement mechanisms, and transparency.[99]

With respect to forced labor, U.S. importers have an obligation to exercise "reasonable care" when importing into the United States, which includes the responsibility to take reliable measures to ensure goods are not produced wholly or in part with forced labor. Many U.S. companies have issued public commitments to eliminate forced labor in supply chains and emphasize a zero tolerance approach. In general, companies tend to be more advanced in developing supply chain commitments and monitoring labor conditions of their first-tier suppliers with whom they have direct relationships. While efforts have made important strides in certain sectors, forced labor in some supply chains persists, and some argue for greater accountability and transparency measures. To this end, some bills in the 117th Congress aim to improve disclosure and transparency of companies (e.g., H.R. 2072). There have been similar efforts in the past, but no bill has passed at the federal level, with the exception of due diligence requirements related to conflict minerals.[100]

Some Members of Congress have expressed interest in ensuring CBP actively applies Section 307, and have proposed various legislation to address enforcement issues. For example, the Uyghur Forced Labor Prevention Act (H.R. 1155/S. 65) would create a rebuttable presumption provision that all goods produced or manufactured in Xinjiang are made with forced labor, and are thus prohibited under Section 307. This and other bills also aim to improve disclosure and transparency from companies. Provisions of the Trade Act of 2021 (Division G of S. 1260) direct CBP to prioritize certain forced labor investigations, and to prevent imports of seafood harvested or produced with forced labor. Congress also used passage of USMCA (P.L. 116-113) to bolster enforcement efforts related to Section 307 and interagency coordination, through creation of the new Forced Labor Enforcement Task Force, chaired by the Secretary of Homeland Security.

Eligibility Criteria in U.S. Trade Preference Programs

U.S. unilateral trade preference programs, such as the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), offer duty-free market access to certain imports from less developed countries, with the receipt of benefits conditioned on eligibility criteria including related to worker rights. Country specific programs, such as for Haiti, may also

[97] For example, OECD, *Due Diligence Guidance for Responsible Business Conduct*, 2018 and *Update of the OECD Guidelines for Multinational Enterprises*, 2011. Per the OECD, "risk-based due diligence refers to the steps companies should take to identify and address actual or potential risks in order to prevent or mitigate adverse impacts associated with their activities or sourcing decisions."

[98] Nicola Phillips, Genevieve LeBaron, and Sara Wallin, *Mapping and Measuring the Effectiveness of Labour-related Disclosure Requirements for Global Supply Chains*, Working Paper No. 32, ILO, June 2018.

[99] For discussion, see Lance Compa, *Corporate Social Responsibility and Workers' Rights*, 2008.

[100] Section 1502 of Title XV of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) requires publicly-traded companies to report if and where they purchased "conflict minerals" mined in or sourced from the Democratic Republic of the Congo (DRC) or adjoining countries, and engage in due diligence reporting. See CRS Report R42618, *Conflict Minerals in Central Africa: U.S. and International Responses*, by Nicolas Cook.

include labor-related criteria.[101] The United States has also engaged some beneficiary countries in supplemental programs and sectoral trade agreements that focus on strengthening labor standards (see **Text Box**).

Some observers view GSP, the largest and longest running program, as expanding more broadly into U.S. trade law and policy "both the principle of a labor rights-trade linkage and the practice of applying it."[102] GSP was created in 1974 and involved 119 beneficiary developing countries and territories when it expired in December 2020.[103] Some Members have proposed reauthorization legislation. When designating beneficiary countries, the President is directed to consider certain mandatory and discretionary criteria. As part of GSP reauthorization in 1984 (P.L. 98-573), Congress expanded eligibility criteria to include whether that country is "taking steps to afford internationally recognized worker rights to workers."[104] The Trade and Development Act of 2000 (P.L. 106-200) expanded criteria to include implementation of commitments to eliminate the "worst forms of child labor." The latest version of the statute defines "internationally recognized worker rights" as: (a) the right of association; (b) right to organize and bargain collectively; (c) prohibition on the use of forced or compulsory labor; (d) minimum age for the employment of children, and prohibition on the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety.[105]

The interagency GSP Subcommittee of the Trade Policy Staff Committee (TPSC), chaired by USTR, conducts annual reviews of compliance with eligibility requirements, and makes recommendations to the President to remove, suspend, or limit GSP status or benefits (at both the country or product level). USTR may self-initiate eligibility reviews or interested parties may file a petition requesting review, including in cases where countries are not upholding worker rights. DOL's ILAB informs such decisions through annual findings on beneficiary country implementation of commitments to eliminate the worst forms of child labor.

AGOA (P.L. 106-200) extends duty-free treatment to imports of certain products from eligible sub-Saharan African countries, with similar criteria of whether a country has "established, or is making continual progress toward establishing … protection of internationally recognized worker rights."[106] To remain eligible, sub-Saharan African countries must meet eligibility requirements for both GSP and AGOA programs. USTR with other TPSC members also conducts annual AGOA eligibility reviews and make recommendations to the President. USTR's congressionally mandated biennial AGOA reports include an assessment of AGOA beneficiaries' eligibility status.

[101] See ILAB, "Laws and Regulations," at https://www.dol.gov/agencies/ilab/about/laws.

[102] Lance A. Compa and Jeffrey S. Vogt, "Labor Rights in the Generalized System of Preferences: A 20-Year Review," *Comparative Labor Law and Policy Journal*, vol. 22 (2001), pp. 204-205.

[103] Title V of the Trade Act of 1974 (19 U.S.C. §§2461 – 2467), as amended. See CRS Report RL33663, *Generalized System of Preferences (GSP): Overview and Issues for Congress*, by Vivian C. Jones and Liana Wong.

[104] 19 U.S.C. §2462(b)(G). In considering GSP renewal Members emphasized: "It is not the expectation of the Committee that developing countries come up to the prevailing labor standards in the United States and other highly-industrialized developed countries. It is recognized that acceptable minimum standards may vary from country to country." U.S. Congress, House Committee on Ways and Means, Generalized System of Preferences Renewal Act of 1984, report on H.R. 6023, 98th Cong., 2nd sess., H.Rept. 98-1090 (Washington, DC: GPO, 1984).

[105] 19 U.S.C. §2467(4).

[106] See CRS In Focus IF10149, *African Growth and Opportunity Act (AGOA)*, by Brock R. Williams. 19 U.S.C §3703.

Sectoral Approaches: U.S.-Cambodia Textile Agreement

The U.S.-Cambodia Textile Agreement, signed in January 1999 and renewed through 2004,[107] was notable for tying positive market access incentives to Cambodia's improved enforcement of labor laws and protection of ILO core standards in the textile and apparel sector.[108] The agreement set U.S. import quotas that increased annually for 12 categories of textile and apparel exports from Cambodia. A program carried out by the ILO facilitated compliance through factory level monitoring of labor rights.[109] While the agreement was in force, Cambodia's apparel exports quintupled to $2 billion.

Many observers viewed the agreement as successful in facilitating improvements in wages for garment workers in Cambodia, working conditions, and respect for workers' rights.[110] Some considered the agreement as offering "best practices" of improving factory compliance with labor standards.[111] Experts attributed success to various factors, including the close connection between firm behavior and incentives for the Cambodian government, as well as conditioning the quotas on sector-wide performance, ensuring peer pressure on noncompliant firms. In particular, the combination of positive incentives and improved information about factory conditions was seen as incentivizing wider compliance than the potential threat of punishment for noncompliance. Observers also emphasized ILO monitoring as a key factor. Following the end of the agreement, the Cambodian government continued to seek a monitoring program that would provide a stronger certification of compliance, and Better Factories Cambodia (backed by the ILO and World Bank's International Finance Corporation) remains active.

The United States pursued sectoral agreements with some other countries, including a textile agreement with Vietnam in 2003. On labor rights, the agreement called for Vietnam to reaffirm its commitments to and cooperate with the ILO, and to continue its bilateral programs with the U.S. DOL. Some criticized the less comprehensive provisions compared to the Cambodia labor provisions.[112]

Following the addition of GSP labor criteria, more than 100 petitions to review eligibility were filed in the first decade, usually by labor unions such as the AFL-CIO and nongovernmental organizations.[113] From 1984 to 2000, various U.S. administrations suspended GSP status for 13 countries.[114] More recently, in one notable instance, the Obama Administration suspended Bangladesh's GSP benefits in June 2013 due to worker rights and workplace safety issues uncovered in the wake of the Rana Plaza building collapse and Tazreen Fashion factory fire incidents, which spurred an ongoing multi-stakeholder effort to resolve concerns.[115] Recent enforcement actions included President Trump's decisions to suspend one-third of Thailand's GSP benefits in April 2020, and terminate Mauritania's AGOA eligibility over forced labor in January 2019.

[107] The agreement expired in 2005 with the end of the WTO Multifibre Arrangement, at https://www.wto.org/english/tratop_e/texti_e/texintro_e.htm#MFA.

[108] Text at https://photos.state.gov/libraries/cambodia/231771/PDFs/uskh_texttile.pdf; USTR, "U.S.-Cambodian Textile Agreement Links Increasing Trade with Improving Workers' Rights," Press release, January 7, 2002.

[109] Kevin Kolben, *Trade, Monitoring, and the ILO: Working To Improve Conditions in Cambodia's Garment Factories,* Yale Law School Legal Scholarship Repository, 2004.

[110] Polaski, "Protecting Labor Rights through Trade Agreements," p. 21.

[111] Don Wells, "'Best practice' in the Regulation of International Labor Standards: Lessons of the U.S.-Cambodia Textile Agreement," *Comparative Labor Law & Policy Journal,* vol. 27 (2006): 357-376.

[112] CRS Report RL31470, *The Vietnam-U.S. Textile Agreement,* by Mark E. Manyin and Amanda Douglas.

[113] Elliott and Freeman, *Can Labor Standards Improve Under Globalization*? p. 75.

[114] Compa and Vogt, "Labor Rights in the Generalized System of Preferences," p. 209.

[115] Proclamation 8997, "To Modify Duty-Free Treatment Under the Generalized System of Preferences, and for Other Purposes," 78 *Federal Register* 39949, July 2, 2013. USTR, "United States and Bangladesh Hold 4th Trade and Investment Cooperation Forum Agreement Council Meeting," press release, September 2018. ILO, "The Rana Plaza Accident and its aftermath," at https://www.ilo.org/global/topics/geip/WCMS_ 614394/lang—en/index.htm.

Table 1. Recent GSP Eligibility Reviews Involving Worker Rights

Beneficiary	Basis for petition	Petitioner	Status/Action Taken
Azerbaijan	Worker Rights	USTR	Ongoing
Eritrea	Worker Rights	USTR	Ongoing
Kazakhstan	Worker Rights & Child Labor	AFL-CIO	Ongoing
Zimbabwe	Worker Rights	USTR	Ongoing
Bolivia	Worker Rights & Child Labor	USTR	Closed October 2019, no loss of benefits
Iraq	Worker Rights	AFL-CIO	Closed October 2019, no loss of benefits
Thailand	Worker Rights	AFL-CIO	Proclamation (October 25, 2019) removed certain tariff lines from GSP eligibility, in effect April 2020
Georgia	Worker Rights	AFL-CIO	Closed October 2020, no loss of benefits
Uzbekistan	Worker Rights & Child Labor	ILRF	Closed October 2020, no loss of benefits

Source: USTR, "Ongoing Country Reviews," at https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/ongoing-country.

Notes: AFL-CIO = American Federation of Labor and Congress of Industrial Organizations; ILRF = International Labor Rights Forum

Some experts view the GSP labor rights clause as an important instrument that set a precedent for other U.S. trade policy tools (see **Text Box**). In this view, the "willingness of the United States to act unilaterally, most pointedly in the GSP context, has driven a process of bilateral, regional, and multilateral action to promote workers' rights in trade that goes far beyond the GSP program."[116] At the same time, other observers criticized the unilateral approach of GSP in placing conditions on countries, and for shortcomings in design and implementation.[117] Some experts questioned the invocation of "internationally recognized worker rights" in U.S. trade statutes without reference to ILO conventions or other precepts, arguing this may undermine efforts to create consistent international norms.[118] For example, the GSP statute's definition excludes nondiscrimination, long recognized as a core labor standard,[119] while including working conditions, such as minimum wages, and health and safety that lie outside of the core ILO conventions. Other observers cite concerns over lack of clarity in GSP eligibility decisions over worker rights issues, and the President's discretion to inject strategic and political considerations into such decisions.[120]

A 2018 study assessing GSP actions from 1986-2013 examined the influence of domestic political interests in the application of the program's labor provisions to assess whether interests of import-competing firms and industries drive eligibility decisions.[121] The authors found that the U.S.

[116] Compa and Vogt, "Labor Rights in the Generalized System of Preferences."

[117] Alston, "Labor Rights Provisions in U.S. Trade Law: 'Aggressive Unilateralism?'"; George Tsogas, "Labour Standards in the Generalized Systems of Preferences of the European Union and the United States," *European Journal of Industrial Relations*, vol. 6, no. 3 (December 2011): 349–370.

[118] Alston, "Labor Rights Provisions in U.S. Trade Law," p. 32.

[119] Some Members in the 117th Congress have introduced legislation to add elimination of discrimination; "Wyden introduces trade preference bill with new GSP conditions," *Inside U.S. Trade*, May 18, 2021. In the 2002 debate to reauthorize TPA, a Senate amendment also proposed adding nondiscrimination to GSP to make it "consistent with the concept as defined by the ILO." U.S. Congress, House of Representatives, Trade Act of 2002, conference report to accompany H.R. 3009, 107th Cong., 2nd sess., H.Rept. 107-624 (Washington, DC: GPO, 2002), pp. 188-189.

[120] Compa and Vogt, "Labor Rights in the Generalized System of Preferences."

[121] Emilie M. Hafner-Burton, Layna Mosley, and Robert Galantucci, "Protecting Workers Abroad and Industries at

government generally took country-level actions against beneficiaries who most severely violate labor rights, thus undermining perceptions that such actions are a vehicle for "disguised trade protectionism." At the same time, the study noted that worker rights were not systematically taken into consideration at the country-product level (i.e., a particular product produced in a specific country), where GSP decisions can have greater material value.

Labor Conditionality in Other U.S. Trade Policy Tools

- In 1985, Congress added a labor rights clause governing the Overseas Private Investment Corporation (OPIC), which provided political risk insurance, financing and other support for U.S. companies investing overseas. Projects could be implemented only in countries that have, or are taking steps to adopt and implement, laws that uphold internationally recognized worker rights, as defined in the GSP statute (22 U.S.C. §2191a(a)). Congress extended similar requirements to the U.S. International Development Finance Corporation (DFC), created per P.L. 115-254, which assumed OPIC's functions. The DFC also must include language in all contracts for supporting worker rights and combatting forced or child labor.
- The Omnibus Trade Act of 1988 (P.L. 100-418) amended Section 301 of the Trade Act of 1974 and authorized the USTR to investigate and potentially impose trade sanctions for violations of worker rights by trading partners as actions that are "unjustifiable" or "unreasonable" and burden U.S. commerce (19 U.S.C. §2411(d)(3)(B)(iii)). In the 1998 Omnibus Trade Act, Congress also added protection of labor rights to the principal negotiating objectives of TPA—see "Congressional Requirements in Trade Promotion Authority."
- The Trade and Development Act of 2000 (P.L. 106-200) amended Section 307 of the Tariff Act of 1930 to include "forced or indentured child labor" in its definition, reflecting a similar amendment to GSP.

Sources: Compa and Vogt, "Labor Rights in the Generalized System of Preferences," pp. 205-206; CRS In Focus IF11436, *U.S. International Development Finance Corporation (DFC)*, by Shayerah I. Akhtar and Nick M. Brown; and CRS Report R46604, *Section 301 of the Trade Act of 1974: Origin, Evolution, and Use*, by Andres B. Schwarzenberg.

Analyses of the impact of GSP conditionality on improving labor practices find certain factors may correspond with higher rates of success. One study of early GSP petitions concluded that cases were more likely to lead to improvements depending on factors such as the involvement of human rights groups in the process; the degree of democracy in recipient country; the category of worker rights contested; and the extent of the target country's reliance on U.S. trade.[122] The authors found the impact of trade sanctions to be inconsistent in producing improvements—often, weaknesses in local enforcement prevented compliance, especially absent technical and financial assistance. The impact of the potential loss of trade preferences on labor outcomes and workers remains a key issue. In the view of one expert "serious violations of human or worker rights should be addressed," however, "strict enforcement of all [GSP] conditions would likely mean that very few countries remain eligible … and it's not clear [that] would improve the underlying conditions of concern. Yet, withdrawing preferences would cost poor workers in the beneficiary country their jobs."[123] In this vein, another expert emphasizes the "overall aim of social clauses in trade should be to further the economic and social progress of developing countries."[124]

Congressional Requirements in Trade Promotion Authority

Trade Promotion Authority (TPA) is the key legislative vehicle by which Congress establishes U.S. negotiating objectives and priorities for trade agreements, as well as expedited procedures

Home: Rights-based Conditionality in Trade Preference Programs," *Journal of Conflict Resolution*, vol. 63, issue 5 (2019): 1253-1282.

[122] Elliott and Freeman, *Can Labor Standards Improve Under Globalization?* pp. 75-79.

[123] Elliott, *Developing a More Inclusive US Trade Policy*, p. 7.

[124] Tsogas, "Labour Standards in the Generalized Systems of Preferences," p. 366.

for considering FTA implementing legislation.[125] The last authorization of TPA expired on July 1, 2021; a request by the Biden Administration for reauthorization could spur renewed congressional debate over objectives with respect to labor. Since 1988, Congress has included promoting core worker rights as a principal trade-negotiating objective in TPA. Such provisions have evolved, illustrating changing congressional priorities and compromises. Members have often contested language defining objectives, and differences over labor provisions have featured prominently in some reauthorization debates—including rare instances of revocation of TPA.[126]

Labor provisions were not included in negotiating objectives in the original grant of TPA in the Trade Act of 1974 (P.L. 93-618)—enacted during the Tokyo Round of multilateral trade negotiations—but they were specified in the context of GATT reform. The 1974 Act directed the President to bring trade agreements "into conformity with principles promoting the development of an open, nondiscriminatory, and fair world economic system," including through "adoption of international fair labor standards and of public petition and confrontation procedures in the GATT."[127]

Congress subsequently specified principal negotiating objectives on labor in the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418). These included to promote respect for worker rights; secure a review of the relationship of worker rights to the GATT with a view to ensuring the trading system benefits all workers; and adopt the GATT principle that denial of worker rights should not be a means for countries or industries to gain competitive advantage.[128] This language shifted from advocating for an explicit GATT provision, to a review of labor and trade linkages, perhaps in recognition of the limitations of ongoing multilateral efforts and shifting priorities. Of note, the section did not specifically refer to "internationally recognized" worker rights.

Disagreements over labor-related trade objectives were one factor in the instance of failed TPA reauthorization in 1998. Although Republican congressional leadership and the Clinton Administration supported TPA, the two sides could not agree on negotiating objectives for labor, among other issues, and the bill did not garner enough support to pass.[129]

The Trade Act of 2002 (P.L. 107-210) expanded the language on labor. It specified *overall* trade negotiating objectives "to promote respect for worker rights and the rights of children consistent with core labor standards of the ILO … and an understanding of the relationship between trade and worker rights," and promote universal ratification and compliance with ILO Convention No. 182 on the worst forms of child labor.[130] It expanded on *principal* negotiating objectives, including to ensure a party does not "fail to effectively enforce" its labor laws through a "sustained or recurring course of action or inaction, in a manner affecting trade and investment;" and to strengthen trading partners' capacity to respect "core labor standards."[131] It also directed

[125] CRS Report R43491, *Trade Promotion Authority (TPA): Frequently Asked Questions*, by Ian F. Fergusson and Christopher M. Davis.

[126] For example, see Senate debate, *Congressional Record*, vol. 148, no. 62 (May 15, 2002), pp. S4343-S4345.

[127] P.L. 93-618 (January 03, 1975), §121(a)(4); 88 Stat. Codified at 19 U.S.C. §2131. In reflecting on the provision, the Senate Finance Committee emphasized, "international fair labor standards and procedures to enforce them should be established," and "additional steps are need which would lead to the elimination of unfair labor conditions which substantially disrupt or distort trade." U.S. Congress, Senate Committee on Finance, Trade Reform Act of 1974, report, together with additional views, on H.R. 10710, 93rd Cong., 2nd sess., S.Rept. 93-1208 (Washington, DC: GPO, 1974).

[128] P.L. 100-418 (August 23, 1988), §1101(b)(14); 102 Stat. 1122.

[129] CRS Report RL33743, *Trade Promotion Authority (TPA) and the Role of Congress in Trade Policy*, by Ian F. Fergusson.

[130] P.L. 107-210 (August 6, 2002), §2102(a)(6), 116 Stat. 994, codified at 19 U.S.C. §3802.

[131] 19 U.S.C. §3802(b)(11)(A-G).

the President to "seek greater cooperation between the WTO and ILO," and to establish consultative mechanisms to strengthen capacity of trading partners to promote respect for core labor standards, in order to maintain U.S. competitiveness.[132] The act directed the Secretary of Labor to consult with any country seeking an FTA about its labor laws and to provide technical assistance, if needed.

Under the Trade Act of 2002, Congress also approved a procedure for the Executive branch to seek expedited approval and implementing legislation for the majority of U.S. FTAs (11 of 14) now in force.[133] Dissatisfied with FTA outcomes, some Members sought to strengthen labor (and other) provisions in agreements already negotiated with Peru, Colombia, Panama, and South Korea. These efforts resulted in the bipartisan "May 10th Agreement" of 2007 between congressional leadership and the George W. Bush Administration,[134] which included elements proposed by House Democrats during the 2002 TPA renewal debate. Such changes subsequently were codified within TPA in 2015 (see below).

In the case of the Colombia FTA, some Members initially opposed passage, amid concerns over worker rights and violence against unions.[135] After the Bush Administration pushed consideration of implementing legislation in 2008, without resolving congressional concerns, the House approved a resolution withdrawing it from TPA treatment. The FTA was ultimately approved under the Obama Administration in 2011, after the signing of an Action Plan Related to Labor Rights.

The last TPA authorization, the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (P.L. 114-26) was in effect through June 30, 2021. Objectives on labor largely reflect the May 10th Agreement, which required that parties not only enforce their domestic labor laws, but also that those statutes uphold the ILO Declaration. Key objectives include

- to ensure a party does not waive or otherwise derogate from statutes or regulations implementing internationally recognized core labor standards in a manner affecting trade or investment;
- to ensure that decisions regarding the distribution of labor enforcement resources are not used as a reason for breaching labor obligations;
- to strengthen capacity of trading partners to promote respect for core standards;
- to ensure that labor obligations are subject to the same dispute settlement and remedies as other enforceable obligations under the FTA;
- to ensure that an FTA is not construed to empower a party's authorities to undertake labor law enforcement activities in the territory of the United States.

Key U.S. FTA Commitments

Recent U.S. FTAs largely reflect the evolving negotiating objectives under TPA statutes; at the same time, some FTAs also influenced subsequent versions of TPA. U.S. FTA labor provisions generally represented a balance between policymakers and stakeholders advocating for more substantive commitments and those skeptical of FTAs as an appropriate vehicle for addressing

[132] 19 U.S.C. §3802(c)(1-2).

[133] For a visual depiction of U.S. FTAs considered under TPA, see CRS Infographic IG10001, *Trade Promotion Authority (TPA) and U.S. Trade Agreements*, by Brock R. Williams.

[134] Text available at https://waysandmeans.house.gov/media-center/tpp-focus.

[135] E.g., "Pelosi, Hoyer, Rangel, and Levin Statement on Trade," Press release, June 29, 2007.

labor and trade issues. Some experts characterized early U.S. FTAs as "largely concerned with finding politically acceptable trade-labor mechanisms that permit trade agreements to proceed, while doing little to ensure that labor standards improve."[136]

Approaches under NAFTA provided the baseline for this evolution. The original NAFTA did not include labor provisions, leading President Clinton to negotiate a side agreement, the North American Agreement on Labor Cooperation (NAALC). The NAALC contained 11 "guiding principles" on worker rights.[137] It laid out an extensive list of issues and means for cooperation and capacity building activities, and set up a labor cooperation mechanism, with regular meetings. NAALC aimed to settle labor complaints primarily via dialogue and consultations. Thus most commitments were subject to dispute procedures separate from those applicable to NAFTA's main commercial obligations. More formal dispute procedures, including an arbitral panel and monetary penalties, applied to allegations involving a "persistent pattern of failure" to enforce "occupational safety and health, child labor or minimum wage technical labor standards," where the matter was trade-related. Other key issues, such as freedom of association and the right to organize, were limited to ministerial consultations.[138]

Following NAFTA, most U.S. FTAs signed in the 2000s, beginning with Jordan, included an obligation not to fail to effectively enforce domestic labor laws in a manner affecting trade between the parties. While there are differences in the agreements' provisions, some observers have coined these as essentially "first generation" U.S. FTAs.[139] "Labor laws" reflect the worker rights as specified in the GSP statute, and parties commit to "*strive to ensure* that such [ILO] labor principles and the internationally recognized labor rights … are recognized and protected by its law [emphasis added]." The FTAs establish institutional and labor cooperation mechanisms to oversee review and implementation of obligations, and generally limit enforcement measures for labor disputes to imposition of monetary fines. In the exceptional case of the U.S.-Jordan FTA, labor and commercial provisions were subject to the same dispute resolution procedures; however, amid concerns of some Members of Congress, the parties informally agreed to seek to resolve any disputes without resorting to trade sanctions.[140] Importantly, CAFTA-DR was the first U.S. FTA to include measures in support of labor capacity building (see "Trade Capacity Building").

Many observers view the May 10th Agreement of 2007 as ushering in a "second generation" of labor provisions in U.S. FTAs, through the obligation to "adopt and maintain" ILO fundamental rights and principles, and no limits on recourse to dispute settlement.[141] U.S. FTAs with Colombia, Panama, Peru, and South Korea were the first to reflect this structure. Some Members and stakeholders viewed these agreements as breaking new ground in strengthening labor

[136] Elliot and Freeman, *Can Labor Standard Improve Under Globalization*? p. 89. Also see I. M. (Mac) Destler, *American Trade Politics in 2007: Building Bipartisan Compromise*, Policy Brief 07-5, Peterson Institute, May 2007.

[137] NAALC, art. 1.2, Annex 1.

[138] USMCA, which entered into force in 2020, supersedes NAALC for future disputes involving the three partners.

[139] Steve Charnovitz, *The Expanding Labor Dimension of US-Negotiated Regional Trade Agreements: TPP and USMCA*, GW Law, March 2021.

[140] Before Congress considered implementing legislation in 2001, then USTR Robert Zoellick and Jordanian Ambassador Marwan Muasher stated their intent in an exchange of letters that each party "would not expect or intend to apply the Agreement's dispute settlement enforcement procedures…in a manner that results in blocking trade." "Jordan Free Trade Agreement Approved by Finance and Ways and Means," *Inside U.S. Trade*, July 27, 2001.

[141] For more on FTA dispute settlement procedures, see CRS In Focus IF10645, *Dispute Settlement in the WTO and U.S. Trade Agreements*, by Ian F. Fergusson.

provisions; others criticized them for not going far enough.[142] At the same time, Members also raised concerns about potential ramifications of expanded labor provisions for the United States. During congressional consideration of the U.S.-Peru FTA, one Member saw the labor chapter as creating, "an unacceptable risk that the United States will be required to change important provisions of U.S. Federal and state labor law or be subject to trade sanctions."[143] In this view, Congress' implementation of such FTAs should provide "explicit safe harbor for U.S. labor law."

While recent U.S. FTAs subject the labor chapter to the same dispute settlement procedures as commercial obligations, some Members and stakeholders remain concerned about compliance with and enforcement of labor provisions, both in terms of U.S. trading partners fulfilling FTA obligations and U.S. administrations pursuing enforcement (see "Enforcement Mechanisms and Labor Disputes"). Efforts to address such concerns as related to the Colombian government's implementation led to a negotiated labor action plan in April 2011, which outlined several issue areas to be addressed before Congress would consider the FTA.[144] Issues addressed in the plan included Colombian government commitments to protect unionists from perceived systemic violence against them, to bring perpetrators to justice, and to increase the protection of worker rights. This provided the basis for the first U.S. FTA associated with a separate plan requiring labor reforms and setting specific benchmarks.

The U.S. bilateral labor plans with Brunei, Malaysia, and Vietnam to supplement the labor chapter in the proposed Trans-Pacific Partnership (TPP) strengthened this approach and may inform future options. Such plans mandated specific institutional and legal reforms, as well as monitoring mechanisms and a role for the ILO, particularly in the case Vietnam.[145] The three countries were required to meet certain commitments prior to FTA ratification, and the plans were subject to FTA dispute settlement. In the bilateral plan with Vietnam, certain commitments regarding the formation of unions were also to be subject to an additional U.S. review mechanism that allowed for unilateral U.S. suspension of future scheduled tariff reductions under the FTA.[146] The terms of the proposed TPP labor chapter, but not the bilateral side agreements, were left intact for other TPP members following U.S. withdrawal from the agreement in 2017. During TPP and later USMCA negotiations, some Members also called for a labor plan for Mexico to address concerns over labor practices. The Mexican government strongly opposed such a plan.

[142] For the debate, see "United States-Peru Trade Promotion Agreement Implementation Act," remarks in the Senate, Congressional Record, daily edition, vol. 153, no. 184 (December 4, 2007), pp. S14719-S14728.

[143] Ibid., p. S14722. In this view, concerns were that the lack of definition of what ILO rights entail could leave interpretation to a dispute panel. Note that while a panel decision could lead a trading partner to retaliate against the United States for a measure in violation of the FTA, it could not compel the United States to alter its laws. DS decisions under trade agreements are not considered to be self-executing, i.e., where a federal law or regulation is in conflict and the Executive branch does not have delegated authority to act, legislation would be needed to comply. Provisions in FTA implementing legislation typically specify, "No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect." U.S.-Peru Trade Promotion Agreement Implementation Act, P.L. 110-138, §102(a), 19 U.S.C. §3805 note.

[144] For detail, see CRS Report RL34470, *The U.S.-Colombia Free Trade Agreement: Background and Issues*, by M. Angeles Villarreal and Edward Y. Gracia.

[145] Cathleen Cimino-Isaacs, "Labor Standards in the TPP," in *Assessing the Trans-Pacific Partnership: Innovations in Trading Rules*, Volume 2, PIIE Briefing 16-4, Peterson Institute for International Economics, 2016.

[146] Section VIII, at https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labor-Relations.pdf.

Innovations in the U.S.-Mexico-Canada Agreement (USMCA)

The NAALC side agreement was an innovation of its time and made important strides towards promoting North American labor cooperation.[147] At the same time, some experts and stakeholders criticized the agreement for shortcomings in coverage and implementation, spurring expanded provisions in subsequent U.S. FTAs and debate during the renegotiation of NAFTA under the Trump Administration.[148] U.S trade officials and some Members frame USMCA as the strongest of U.S. FTA labor chapters and as a possible template for future U.S. trade agreements.[149]

USMCA updates NAALC to reflect and build on the labor chapters of U.S. FTAs that follow the May 10th Agreement approach, with labor provisions included in the core of the agreement, and subject to full dispute settlement (DS) procedures (see below).[150] Reflecting Section 307 of the Tariff Act of 1930, parties commit to prohibit imports of goods "from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor" and to establish cooperation for the identification and movement of such goods.[151] Other new provisions address violence against workers exercising labor rights, protection of migrant workers under labor laws, and policies protecting against sex-based employment discrimination.[152] In addition, the labor chapter's Annex 23-A on Worker Representation in Collective Bargaining commits Mexico to specific legislative actions, as part of domestic reforms already underway.[153]

Key changes to USMCA following its signing were negotiated between House Democrats and the Trump Administration, and affect prospective implementation and enforcement of the labor chapter (see "Enforcement Mechanisms and Labor Disputes"). Changes to DS procedures include provisions to prevent an FTA party from blocking the formation of a panel in state-to-state dispute settlement, and to require the development of rules of evidence.[154] Updated language in the labor chapter obligations also seeks to remove "hurdles" to potential enforcement actions, drawing from experience in the U.S. dispute loss to Guatemala (see "Outcomes of U.S. FTA Disputes").[155] This includes creating a rebuttable presumption that alleged violations of labor obligations occur in ''a manner affecting trade or investment," unless the other party demonstrates otherwise.

A notable change in USMCA is the creation of a new mechanism that supplements state-to-state DS procedures. The "rapid-response" labor mechanism provides for the enforcement of certain

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[147] E.g., see Lance Compa, "Trump, Trade, and Trabajo: Renegotiating NAFTA's Labor Accord in a Fraught Political Climate," *Indiana Journal of Global Legal Studies*, vol. 26, no. 1 (2019): 263-304; and Gary Clyde Hufbauer and Jeffrey J. Schott, *NAFTA Revisited: Achievements and Challenges* (Washington: Institute for International Economics, 2005). For information on NAFTA, see CRS Report R42965, *The North American Free Trade Agreement (NAFTA)*, by M. Angeles Villarreal and Ian F. Fergusson.

[148] See U.S. Congress, House Ways and Means Committee, Subcommittee on Trade, *Mexico's Labor Reform: Opportunities and Challenges for an Improved NAFTA*, hearing, 116th Cong., 1st sess., June 25, 2019; and *Enforcement in the New NAFTA*, hearing, 116th Cong., 1st sess., May 22, 2019.

[149] Per USTR Tai, USMCA "includes the most comprehensive, enforceable labor and environmental standards of any U.S. trade agreement – and, I would argue, any trade agreement." *Testimony of Ambassador Katherine Tai Before the House of Ways and Means Committee Hearing on the President's Trade Agenda*, Press release, May 13, 2021.

[150] See CRS Report R46793, *USMCA: Legal Enforcement of the Labor and Environment Provisions*, by Nina M. Hart.

[151] USMCA, Article 23.6.

[152] USMCA, Articles 23.7-23.9.

[153] See CRS In Focus IF11308, *USMCA: Labor Provisions*, by M. Angeles Villarreal and Cathleen D. Cimino-Isaacs.

[154] Rules of evidence, for example, would allow disputing parties to submit anonymous testimony, redacted evidence, testimony in person or via other means.

[155] U.S. Congress, House Committee on Ways and Means, *United States-Mexico-Canada Agreement Implementation Act*, report to accompany H.R. 5430, 116th Cong., 1st sess., H.Rept. 116-358 (Washington, DC: GPO, 2019), pp. 4-6.

worker rights at individual facilities, in contrast to general DS, which covers government's failures to uphold labor obligations. A panel of independent labor experts may conduct verifications of compliance at certain facilities in response to allegations of ''denial of rights" related to freedom of association and collective bargaining. This covers facilities in the United States and Mexico that (1) are in a "priority sector," involving manufactured goods, services, or mining; and (2) produce goods or supplies services traded between the parties.[156] With respect to the United States, a claim can be brought only with respect to a covered facility under an enforced order of the National Labor Relations Board (NLRB).[157] For Mexico, a claim can be brought with respect to an alleged denial of rights under legislation that complies with Annex 23–A. The investigation could result in the imposition of tariffs or penalties on the facility, and blocked entry of imports in the case of multiple offenses. Members of Congress envisioned the mechanism to support labor reforms undertaken by Mexico, emphasizing its stated purpose was ''to ensure a remediation of a Denial of Rights … [and] not to restrict trade.''[158]

Congress also supplemented USMCA labor provisions with additional monitoring and domestic procedures established through implementing legislation. For example, an interagency committee, established in June 2020, is responsible for monitoring compliance with labor obligations, including implementation of Mexico's reforms.[159] The work of the committee is tied to enforcement, including through recommending possible dispute settlement actions to USTR. It also plays a role in the establishment and review of priority sectors under the rapid-response mechanism, and reviews petitions submitted by stakeholders to assess whether there is a "good faith" basis to request a review of denial of rights. Congress also specified reporting requirements and funding for USTR and DOL staff devoted to monitoring and enforcement, including labor attachés based in Mexico, and for trade capacity building to support Mexico's reform efforts.

Trade Capacity Building

Trade capacity building (TCB) entails a range of activities that support a country's ability to integrate into the global trading system and engage in trade. Per the USTR, TCB is considered a critical component of U.S. strategy "to enable developing countries to negotiate and implement market-opening and reform-oriented trade agreements and to improve their capacity to benefit from increased trade."[160] Within the latest TPA, Congress directed the Executive branch "to work to strengthen the capacity of United States trading partners to carry out obligations under trade agreements by consulting with any country seeking a trade agreement with the United States concerning that country's laws" including as related to labor, and "to provide technical assistance to that country if needed."[161] Congress has also played a key role by providing funding and guidance for TCB through appropriations.

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[156] There is a separate similar mechanism covering claims between Canada and Mexico. See USMCA, Annex 31-B.

[157] Specifically, there must be an enforced order where a U.S. Court of Appeals has issued a final and conclusive decree requiring compliance with an order issued by the NLRB. Some labor experts contend such conditions translate to fairly limited applicability to U.S. facilities; Desirée LeClercq, "Biden's Worker-Centered Trade Policy: Whose Workers?" International Economic Law and Policy Blog, May 16, 2021, at https://ielp.worldtradelaw.net/trade_and_labor/.

[158] U.S. Congress, Senate Committee on Finance, *United States-Mexico-Canada Agreement Implementation Act*, report to accompany H.R. 5430, 116th Cong., 2nd sess., S.Rept. 116-283 (Washington, DC: GPO, 2020), p. 8.

[159] USTR, "Interagency Labor Committee for Monitoring and Enforcement Procedural Guidelines for Petitions Pursuant to the USMCA," 85 *Federal Register* 39257, June 30, 2020.

[160] USTR, "Trade Capacity Building," at https://ustr.gov/issue-areas/trade-development/trade-capacity-building.

[161] 19 U.S.C. §4201(c).

Experts have generally urged policymakers to sustain TCB programs, arguing they are a critical mechanism for promoting better working conditions and addressing on-the-ground challenges. In this regard, considerations include whether countries have the resources and political will to hire inspectors and facilitate work site inspections; whether corruption is a problem; and whether inspectors have authority to assess penalties. In cases where labor enforcement relies on a petition process to demonstrate violations under U.S. FTAs, concerns involve whether labor groups, particularly in countries with poor freedom of association and collective bargaining records have the capacity to investigate and document violations, and adequate knowledge of the processes.

Over the past decade, funding for TCB related to labor has fluctuated—in FY2019, total labor-related activity obligations were $84 million, peaking at $239 million in FY2017 (**Table 2**).[162] In recent years, trade-related labor activities have been among the highest funded TCB categories, behind agriculture and/or infrastructure. Activities generally entail (1) improving labor and workers' rights; (2) ensuring labor equity and equal access to jobs, particularly for women and vulnerable groups; (3) building capacity of civil society and worker organizations; (4) reducing forced labor and child labor; (5) approving labor law compliance and governance; and (6) assisting with workforce or human capital development.

The U.S. Agency for International Development (USAID) is the primary source of overall TCB funding, though several agencies support TCB. The Department of Labor is the top provider, by funding and implementation for labor-related TCB (**Figure 3**). DOL's ILAB implements projects, which focus on efforts to improve labor conditions often in partnership with the ILO. In FY2020, ILAB engaged with 48 countries through technical assistance or other collaboration,[163] and monitored and reported on labor conditions in over 150 countries. Such engagement contributed to "concrete actions" taken by over 20 trading partners, including labor improvements in key export sectors, such as autos in Mexico and sugarcane in the Dominican Republic. As of April 2021, 49 ILAB-funded projects were active worldwide, collectively valued at $230 million.[164]

[162] USAID, Trade Capacity Building Database, at https://tcb.usaid.gov/.

[163] U.S. DOL, *FY2020 Annual Performance Report*, 2021, p. 35.

[164] According to CRS calculations, see https://www.dol.gov/agencies/ilab/projects.

Table 2. TCB Assistance, Trade-Related Labor Activities

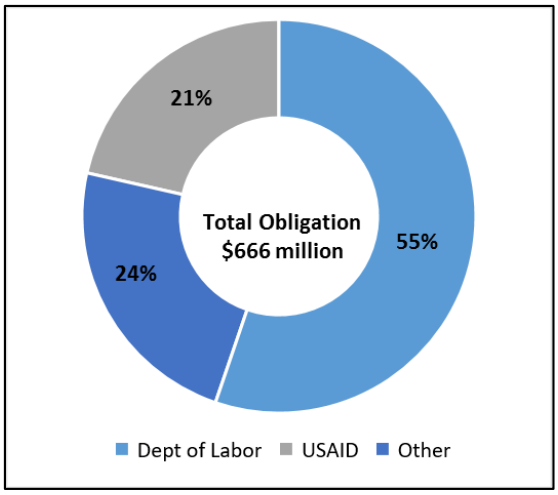
Fiscal Year	Total Obligations (US$ millions)
2009	105
2010	93
2011	91
2012	70
2013	70
2014	103
2015	86
2016	71
2017	239
2018	81
2019	84
Average (2009-19)	99

Source: USAID, Trade Capacity Building Database, at https://tcb.usaid.gov/.

Note: Reports obligations, not appropriations or disbursements, which are binding agreements that will result in outlays, immediately or in the future.

Figure 3. Trade-Related Labor Obligations by Implementing Agency, FY2014-FY2019

Percentage Share of Total



Source: USAID, Trade Capacity Building Database, at https://tcb.usaid.gov/.

Note: Implementing agencies disburse funds to the implementing partners carrying out foreign assistance.

Implementation of U.S. FTAs is one major component of TCB efforts.[165] Much of the labor-related funding has involved CAFTA-DR implementation.[166] CAFTA-DR includes a specific TCB chapter, with commitments to establish a TCB committee in recognition that "trade capacity building assistance is a catalyst for the reforms and investments necessary to foster trade-driven economic growth, poverty reduction, and adjustment to liberalized trade."[167] Committee tasks include prioritizing projects, coordinating among donors and other entities, and monitoring and assessing progress in implementing projects. U.S. FTAs with Colombia, Panama, and Peru also have dedicated TCB chapters. As discussed, capacity building in Mexico was a focus of USMCA implementing legislation (P.L. 116-113), which allocated $180 million to ILAB through 2023 for "worker-focused capacity building" and other technical assistance projects.[168] From 2018-2020, to this end, ILAB provided more than $80 million in grants to Mexico.[169]

In recent years, legislation has sought to refocus ILAB activities on research, and on administering and enforcing labor provisions in trade agreements. Several administrations and some Members of Congress have sought cuts to DOL's budget, including ILAB's technical assistance programs. For example, the Trump Administration's FY2021 budget request proposed

[165] See, e.g., "TCB Case Studies" in Scott Miller and Daniel F. Runde, *Opportunities in Strengthening Trade Assistance*, Center for Strategic and International Studies, February 2015.

[166] U.S. DOL, ILAB, Office of Trade and Labor Affairs, *Progress in Implementing Capacity-Building Provisions under the Labor Chapter of the Dominican Republic - Central America - United States Free Trade Agreement (Third Biennial)*, 2015; USTR, "CAFTA-DR Labor Capacity Building," Factsheet, May 2011.

[167] CAFTA-DR, Article 19.4.

[168] U.S. DOL, "U.S. Department of Labor to Award $20 Million in New Grants to Support USMCA Implementation, Bringing the 2020 Total to Nearly $50 million," news release, December 16, 2020, and "Labor Rights and the United States-Mexico-Canada Agreement (USMCA)," at https://www.dol.gov/agencies/ilab/our-work/trade/labor-rights-usmca.

[169] U.S. DOL, *FY2020 Annual Performance Report*, 2021, pp. 33-35.

program decreases of $67 million from the FY2020 enacted funding level ($96.125 million). The reduction was to reflect "workload decrease associated with the elimination of new grants, as well as a reduction in the intensity of other ILAB work activities," claiming that "grant funding is spent on promoting worker protection overseas" with many grants "awarded non-competitively" to the ILO.[170] The Biden Administration requested $123.751 million for ILAB for FY2022, an increase over the FY2021 enacted funding level ($96.125 million) "to support the President's trade policy agenda through both technical assistance grants and staff, as well as resources for the agency's forced labor reporting mandate."[171] The majority of the increase is intended for trade-related worker rights monitoring, enforcement, and capacity building programs.

Biden Administration Trade Policy Priorities

"Putting workers at the center" is a priority of the Biden Administration's trade policy.[172] The Administration pledged to review past trade policies for impacts on workers, and in particular, fully enforce labor obligations under existing U.S. trade agreements. Commitments include

- Self-initiating and advancing petitions under the USMCA rapid-response mechanism "to ensure workers receive relief through efficient, facility-level enforcement."
- Crafting new trade policies "to promote equitable economic growth through the inclusion in trade agreements of strong, enforceable labor standards that protect workers' rights and increase economic security."
- Ensuring trading partners are not allowed "to gain a competitive advantage by violating workers' rights and pursuing unfair trade practices."
- Engaging with allies to achieve commitments to combat forced labor and exploitative labor conditions, and increase transparency and accountability in global supply chains.
- Using full range of trade tools to ensure products of forced labor and exploitative labor are not imported into the United States, and to combat other unfair labor practices.

To facilitate these priorities, the Administration aims to create "a more inclusive process … to understand how trade affects workers," and improve worker representation in trade policy in the United States and in multilateral organizations, including the WTO.[173]

Enforcement Mechanisms and Labor Disputes

As of mid-2021, U.S.-based complaints regarding FTA labor compliance have been initiated and processed under five FTAs: NAFTA (entry into force 1994, superseded by USMCA in 2020), U.S.-Bahrain FTA (2006), CAFTA-DR (2006-2009), U.S.-Peru FTA (2009), and U.S.-Colombia FTA (2012).[174] In addition, new labor complaints have been raised under the USMCA, and some remain pending. As highlighted, the labor provisions subject to dispute settlement (DS) differ

[170] U.S. DOL, *FY2021 Congressional Budget Justification: Departmental Management*, 2020, p. DM-41.

[171] U.S. DOL, *FY2022 Budget in Brief*, May 2021, p. 47.

[172] USTR, *2021 Trade Policy Agenda and 2020 Annual Report*, March 2021, p. 2; USTR, "Remarks of Ambassador Katherine Tai Outlining the Biden-Harris Administration's 'Worker-Centered Trade Policy,'" June 10, 2021.

[173] "Remarks of Ambassador Katherine Tai," June 10, 2021.

[174] U.S. DOL, ILAB, at https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions.

among agreements, as do the relevant procedures and remedies. Trading partners most often seek to resolve disputes and issues with compliance outside of formal DS.

For some Members and stakeholders, effective enforcement has become a key issue in the debate over U.S. FTA labor provisions. They have criticized enforcement as "slow and cumbersome," and over reliant on the political will of governments.[175] Some also call for more institutionalized monitoring and oversight of FTA implementation and country labor practices.[176] According to the U.S. Government Accountability Office (GAO), U.S. agencies have taken steps to strengthen monitoring and enforcement of FTA labor provisions, but lacked a "strategic approach to systematically assess whether partner countries' conditions and practices are inconsistent with labor provisions."[177] Challenges in trading partners, such as limited enforcement capacity and use of subcontracting, also complicate efforts. Others view the first adjudicated FTA labor dispute as an important precedent, and evidence that trade-related labor issues are prioritized by U.S. administrations.[178] At the same time, some Members have expressed concerns about opening up U.S. labor practices to potential challenges from other trading partners and infringing national sovereignty through expanded labor clauses and trade enforcement. Other countries and labor groups also criticize some U.S. practices and lack of adherence to labor commitments, which have driven complaints, such as by Mexico against the United States (see below).

U.S. Process for FTA Labor Complaints

DOL consults and coordinates with USTR and the State Department on labor monitoring, enforcement and engagement with trading partners (see **Text Box**).[179] The Office of Trade and Labor Affairs (OTLA) receives and reviews complaints ("submissions") of alleged violations of U.S. FTA labor commitments.[180] In general, allegations in a submission must meet certain criteria, raise issues relevant to the labor provisions, and illustrate a country's failure to comply with its obligations.[181] If the submission is accepted, OTLA undertakes a review and issues a public report on its findings, which may include specific recommendations to the FTA partner government and other recommended actions, including that the U.S. government request consultations. If consultations do not resolve the complaint, FTA DS procedures may be invoked in certain cases.

[175] AFL-CIO, *The Trans-Pacific Partnership: Four Countries that Don't Comply with U.S. Trade Law*, 2015, p. 1.

[176] U.S. GAO, *Trade Enforcement: Information on U.S. Agencies' Monitoring and Enforcement Resources for International Trade Agreements*, GAO-17-399, April 2017.

[177] U.S. GAO, *Free Trade Agreements: U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed*, GAO-15-160, November 2014, p. 40.

[178] USTR, "What They're Saying: U.S. Proceeds with Labor Enforcement Case Against Guatemala," September 2014.

[179] For detail on the enforcement process, see Interagency Trade Enforcement Center, *Trade Enforcement: Issues, Remedies and Roles*, at https://ustr.gov/sites/default/files/Trade-Enforcement_Issues-Remedies-and-Roles.pdf.

[180] As discussed, USMCA also has additional procedures and role for the newly-created Interagency Labor Committee for Monitoring and Enforcement.

[181] U.S. DOL, "Submissions under the Labor Provisions of Free Trade Agreements," at https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions; "Notice of Reassignment of Functions of Office of Trade Agreement Implementation to Office of Trade and Labor Affairs; Notice of Procedural Guidelines," 71 *Federal Register* 76691, December 21, 2006.

Roles of U.S. Agencies in Monitoring and Enforcing FTA Labor Provisions

USTR, DOL, and the State Department have key responsibilities in monitoring implementation of labor provisions. These roles involve both discrete and shared responsibilities, and formal and informal coordination.

Office of the U.S. Trade Representative (USTR)

- Lead negotiator of FTAs, and leads interagency efforts to monitor and enforce trade agreements.
- Coordinates and develops the administration's trade policy by identifying, monitoring, enforcing, and resolving a range of international trade issues.
- Litigates FTA disputes involving the United States.

Bureau of International Labor Affairs, Department of Labor (DOL)

- Monitors implementation of FTA labor provisions, including by reviewing and investigating public complaints, and engaging with partners to resolve questions about FTA labor commitments.
- Serves as designated point of contact for implementation of FTA labor provisions, as well as for the labor cooperation mechanisms.
- Before congressional approval of an FTA, prepares reports for Congress, in consultation with USTR and State, on FTA partner labor rights and child labor laws.
- Responsible for planning, developing, and pursuing cooperative projects related to labor, and providing trade capacity building assistance to help FTA partners meet their obligations.

Bureau of Democracy, Human Rights, and Labor, Department of State

- Coordinates with Foreign Service in-country labor officers, who carry out regular monitoring and reporting and day-to-day interaction with foreign governments on labor issues related to FTAs.
- Produces annual *Country Reports on Human Rights Practices*, with information on labor practices.
- Participates in USTR-led interagency team that negotiates FTA labor provisions, contributes input to DOL research and analysis, and provides technical assistance funding to promote worker rights.

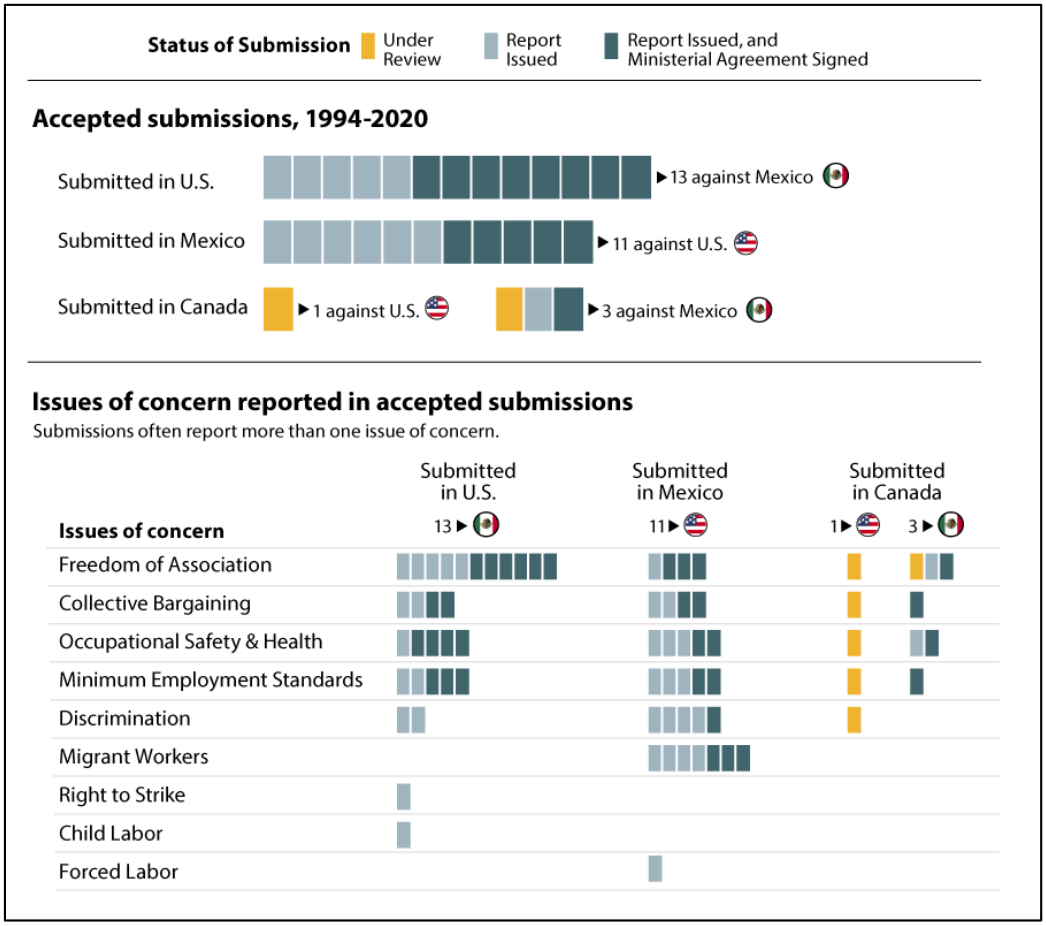
Source: U.S. GAO, 2014 and 2017.

Outcomes of U.S. FTA Disputes

USMCA superseded the NAALC for labor disputes involving the United States, Canada, and Mexico. Previously, under NAALC, private parties in the three countries submitted more than 40 petitions with labor complaints. In the United States, OTLA received more than 20 submissions; it accepted and issued reviews for 13, all involving allegations regarding Mexico's compliance (**Figure 4**).[182] Several reviews resulted in the signing of ministerial agreements. Mexico's OTLA counterpart issued reports for 11 submissions, all involving concerns over U.S. compliance. Canada's OTLA counterpart issued reports for three submissions regarding Mexico, and has two reviews ongoing (one each involving Mexico and the United States). By issue of concern, the majority of U.S. submissions against Mexico involved freedom of association, followed by occupational health and safety, and minimum employment standards. Mexican labor complaints most frequently involved U.S. protections for migrant workers. These top issues are the subjects of the first complaints filed under USMCA (see "Ongoing USMCA Labor Disputes").

[182] In one instance, one OTLA report covered two submissions. Figures reported here do not include submissions declined for review (seven submissions) or withdrawn by the submitter (four).

Figure 4. Labor Submissions under NAALC, 1994-2020



Source: Created by CRS; submissions under the North American Agreement on Labor Cooperation (NAALC), at https://www.dol.gov/agencies/ilab/submissions-under-north-american-agreement-labor-cooperation-naalc.

Notes: Submissions often include more than one issue of concern; numbers do not add up to total accepted. In the U.S. case, "accepted submissions" do not include two accepted for review, but withdrawn by submitter.

Among U.S. FTAs with labor chapters, OTLA has issued seven reviews—one each involving Bahrain, Colombia, the Dominican Republic, Guatemala, Honduras, and two involving Peru (see **Table A-1**). The dispute with Guatemala involved the first formal consultations requested by the United States and the first to complete arbitration, although other FTA complaints also resulted in ministerial or informal consultations.

The U.S.-Guatemala labor dispute set a precedent as the first to have been adjudicated through FTA dispute settlement in U.S. FTAs and globally. The AFL-CIO and six Guatemalan labor unions filed the complaint, alleging that the Guatemalan government failed to effectively enforce labor laws with respect to freedom of association, right to organize and bargain collectively, and provide for acceptable conditions of work, as documented in five separate cases.[183] Serious concerns included impunity for threats and violence against trade unions and unlawful dismissal of union leaders. The OTLA accepted the submission and, in 2009, issued a report raising several

[183] See USTR, "In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR," at https://ustr.gov/issue-areas/labor/bilateral-and-regional-trade-agreements/guatemala-submission-under-cafta-dr.

concerns and making recommendations to address prevailing issues. It noted that Guatemala had taken some initial steps toward resolving some issues and did not recommend formal bilateral consultations. Subsequently, the U.S. government requested consultations in 2010 amid concerns Guatemala had not made progress to "correct systemic failures" in labor law enforcement.[184] After failure to reach a resolution, the U.S. government requested establishment of an arbitral panel, the next step in the DS process. The panel was suspended while the two sides negotiated an 18-point labor enforcement plan in 2013; arbitration resumed after implementation of the plan fell through. In 2017, the panel issued its final decision. It found that although Guatemala failed to enforce certain labor laws, the United States did not provide sufficient evidence proving that such failure was "sustained or recurring" *and* "in a manner affecting trade."[185]

The Guatemala dispute panel provided guidance on the scope and meaning of "effective enforcement of labor laws."[186] Legal experts suggest that the case outcome revealed the difficulty of meeting rigorous evidentiary standards and legal standards set in the obligations to demonstrate a breach of FTA obligations.[187] Some U.S. stakeholders and Members of Congress contested the outcome.[188] Concerns over the dispute outcome and perceived limitations of FTA language led to specific reforms in USMCA labor and DS chapters.

Ongoing USMCA Labor Disputes

As of mid-2021, several labor complaints have been initiated under USMCA, providing the first tests of the agreement's enforcement mechanisms. Of note, similar issues were previously raised under the NAALC. In the first action, in March 2021, Mexican migrant workers and a binational group of civil society organizations led by the Centro de los Derechos del Migrante, Inc. filed a case with the Mexican government alleging sex-based discrimination in the U.S. issuance of temporary H-2 labor migration visas, in violation of the USMCA labor chapter.[189]

Two complaints have been filed under USMCA's rapid-response labor mechanism. In May 2021, the AFL-CIO with Mexican labor groups and others, filed a complaint against Tridonex, an auto parts factory located in Matamoros in the state of Tamaulipas, Mexico.[190] Following review of the petition, the Interagency Labor Committee for Monitoring and Enforcement, co-chaired by USTR and DOL, found "sufficient credible evidence of a denial of rights enabling the good faith invocation of enforcement mechanisms."[191] As the next stage of the process, it requested that the Mexican government conduct a 45-day review of the allegations. Also in May 2021, USTR self-initiated its first dispute, requesting that the Mexican government review whether workers are

[184] USTR, "United State Trade Representative Kirk Announces Labor Rights Trade Enforcement Case Against Guatemala," Press release, July 2010.

[185] Panel report, *In the Matter of Guatemala – Issues Relating to the Obligations Under Article 16.2.1(a) of the CAFTA-DR* (June 14, 2017).

[186] E.g., Tequila J. Brooks, "U.S.-Guatemala Arbitration Panel Clarifies Effective Enforcement Under Labor Provisions of Free Trade Agreement," *International Labor Rights Case Law*, vol. 4, issue 1 (March 2018): 45–51.

[187] Ibid.

[188] Richard Neal (D-MA) and Trade Subcommittee Ranking Member Bill Pascrell (D-NJ), Press release, June 26, 2017, at https://neal.house.gov/media-center/press-releases/neal-pascrell-statements-guatemala-labor-report.

[189] CDM, "Migrant Worker Women File First Complaint against the U.S. Government Under the United States-Mexico, Canada Agreement," Press release, March 23, 2021.

[190] "AFL-CIO, SEIU, SNITIS and Public Citizen Announce Filing of First USMCA 'Rapid Response Mechanism' Labor Case to Fight for Mexican Workers Denied Independent Union Representation," Press release, May 10, 2021.

[191] USTR, "United States Seeks Mexico's Review of Alleged Freedom of Association Violations at Mexican Automotive Parts Factory," June 9, 2021.

being denied their rights at a General Motors (GM) facility in Silao in the state of Guanajuato.[192] USTR emphasized the "innovative" mechanism will facilitate addressing longstanding labor issues in Mexico, and that the recent action "demonstrates that we will act when workers in certain facilities are denied their rights under laws necessary to fulfill Mexico's labor obligations."[193] On July 8, 2021, the U.S. and Mexican governments announced settlement of the dispute, through an agreed course of action to remediate denial of the rights of freedom of association and collective bargaining rights for workers at the GM facility.[194]

Issues for Congress

U.S. Trade Agreements and Programs as Vehicles for Improving Labor Rights

Labor commitments in U.S. FTAs have evolved substantially, culminating with those in the USMCA. With TPA expiring on July 1, 2021, any potential future reauthorization could provide Congress with an opportunity to revisit U.S. trade negotiating objectives with respect to labor issues, as well as how these provisions are working in practice. As discussed, debates over TPA authorization often led to key shifts and compromises in U.S. approaches to labor provisions as Congress assessed the effectiveness of approaches and potential revisions. Several Members and observers view USMCA labor provisions as a template for future FTAs, while others may seek different approaches.[195] Should TPA be renewed, Congress will likely debate and legislate on this issue in determining U.S. principal negotiating objectives on labor for future U.S. FTAs.

One area of potential debate is whether and how labor side agreements covering domestic commitments at the country level (such as related to the U.S. FTA with Colombia, labor annex with Mexico, and proposed TPP bilateral labor plans), or whether bilateral enforcement mechanisms like in USMCA (i.e., rapid-response mechanism) that target specific worker rights, in addition to core enforceable obligations in the agreement itself, may be pursued in future prevailing U.S. FTAs. Congressional examination of how these mechanisms are working will help shed light on these approaches, as well as how trading partners, such as the EU, are addressing these issues. In this regard, underlying considerations are to what extent trade agreements should address domestic regimes, as well as how detailed should Congress be in proscribing U.S. negotiating objectives. In addition, because many countries with ongoing labor concerns are not U.S. FTA partners, engagement through trade preference programs and capacity building activities will also likely continue to be a primary avenue for addressing labor concerns. Congress could examine how these approaches have worked and whether there should be additional changes to these programs or whether other tools should be pursued (see below).

Another issue subject to debate in the evolution of trade-related labor provisions is the extent of their alignment with ILO core labor standards. Some experts question whether "internationally recognized worker rights" in U.S. trade statutes align with ILO precepts, and others view trade agreements as falling short in not directly binding countries to specific ILO obligations.[196] Others

[192] USTR, "United States Seeks Mexico's Review of Alleged Worker's Rights Denial at Auto Manufacturing Facility," Press release, May 12, 2021.

[193] USTR, *Testimony of Ambassador Katherine Tai Before the House of Ways and Means Committee Hearing on the President's Trade Agenda*, Press release, May 13, 2021.

[194] U.S. DOL, "US, Mexico announce enforcement of worker protection agreement," news release, July 9, 2021.

[195] Speaker of the House, "Transcript of Speaker Pelosi Press Conference Announcing New USMCA Agreement," Press release, December 10, 2019.

[196] Alston, "Labor Rights Provisions in U.S. Trade Law: 'Aggressive Unilateralism?'"; Todd N. Tucker, *Seven*

view specific commitments based largely on the 1998 Declaration as sufficient and argue that trade agreements have made progress in binding such commitments to dispute settlement and other processes within FTAs. Despite urging from some stakeholders, affirming ILO conventions seems unlikely as a commitment in U.S. FTAs, given lack of U.S. ratification. Some legislation to reauthorize GSP in the 117th Congress proposes adding elimination of discrimination in occupation and employment to the definition of worker rights to better align with the ILO and USMCA approach.[197]

Members have increasingly focused labor provisions on discrete issues, such as child labor. In particular, the treatment of forced labor concerns in U.S. trade policy and FTAs remains an issue of longstanding congressional interest and has evolved in recent years. As evidenced in a dedicated USMCA provision to prohibit forced labor imports and enhance regional cooperation, Congress may continue to use FTA provisions and implementing legislation to align and bolster other U.S. efforts to counter trade in products made with forced labor. In addition, some Members emphasize the importance of linking trade negotiations with specific labor concerns. For example, some viewed the Trump Administration's 2020 "phase-one" trade deal with China as a missed opportunity to require the Chinese government to commit to address forced labor in Xinjiang—similar to the EU's approach in its proposed bilateral investment deal with China.[198]

In addition, Congress may consider the role of trade agreements and objectives of labor provisions in a broader policy context. Some experts have argued for redesigning trade agreements and conditions of social and developmental policy commitments to advance worker rights and social inclusivity—i.e., ensuring equitable participation in and distribution of the benefits of trade.[199] In this view, FTA labor obligations should interact with various mechanisms, such as required or voluntary private efforts to implement corporate social responsibility policies in global supply chains and intergovernmental efforts led through the ILO. Others emphasize the limitations of trade agreements and contend that other policy tools, such as domestic social policies, trade-adjustment mechanisms, and tax policies, offer broader or more appropriate avenues for addressing labor issues and the impacts of trade.[200] Some experts have argued for reversing the trend of steadily expanding the scope of trade agreements, and instead focusing more narrowly on trade-related behind the border issues, while pursuing standards harmonization in areas like labor in other fora (see below).[201] In this regard, Congress may consider the effectiveness of FTAs and to what extent trade agreements can or should effectively address worker rights provisions in relation to other mechanisms.

Multilateral Trade Rules at the WTO and the Role of the ILO

Lack of multilateral trade rules on labor issues has in part limited global alignment on approaches within trade agreements. Some experts contend there are options for incorporating some rules at the WTO, but debate continues over the legal, economic and procedural feasibility of various

Strategies to Rebuild Worker Power for the 21st Century Global Economy, The Roosevelt Institute, 2018.

[197] "Wyden introduces trade preference bill with new GSP conditions," *Inside U.S. Trade*, May 18, 2021.

[198] U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020; House debate, *Congressional Record*, daily edition, vol. 166, no. 164 (September 22, 2020), p. H4663.

[199] Shaffer, "Retooling Trade Agreements for Social Inclusion."

[200] See Gordon H. Hanson, "Can Trade Work for Workers?: The Right Way to Redress Harms and Redistribute Gains," *Foreign Affairs*, May/June 2021. USTR Katherine Tai also has reflected on the role of domestic and other policies in ensuring "economic security for workers here at home." "Remarks of Ambassador Katherine Tai," June 10, 2021.

[201] Elliott, *Developing a More Inclusive US Trade Policy*.

approaches. Given historical resistance, such issues may not gain traction in the WTO in the near term; more broadly, the WTO has suffered from lack of political will among members to reach consensus and advance new issues on the global trade agenda.[202] Some experts contend rather than expanding labor provisions in trade agreements, a narrower approach that allows for targeted actions to be taken against the most egregious, trade-related violations of core labor standards may be more viable to global cooperation, including among skeptical developing countries.[203] Such an approach could leave promotion and enforcement of standards more broadly to other fora like the ILO. In one approach, USTR recently submitted a proposal to address forced labor in ongoing WTO multilateral negotiations to prohibit harmful fisheries subsidies.[204] One option might be for Congress to increase its role in building support for such provisions through legislative resolutions to encourage successful conclusion of these negotiations.[205]

Given WTO members' deference to the ILO, Congress might consider assessing the ILO's role in promoting core labor standards and principles, as well as how to enhance U.S. support for the ILO's work and strengthen its enforcement mechanisms. Some observers have called for an enhanced role of the ILO, for example, to more effectively pressure China to mitigate use of state-sponsored forced labor.[206] At the March 2021 meeting of the ILO Governing Body, the United States, Canada, New Zealand, and UK faulted the ILO's latest annual report as reflecting "information on persistent or systemic labor rights deficits globally," and called on the ILO to prioritize elimination of forced labor.[207] Congress could also encourage the Administration to elevate forced labor or other labor issues as part of trade discussions in other international fora, such as the G-7/G-20 and OECD. At the June 2021 G-7 summit, leaders directed trade ministers "to identify areas for strengthened cooperation and collective efforts" towards eradicating forced labor in global supply chains.[208] Another option is seeking greater harmonization in labor provisions in bilateral and regional trade agreements among the United States and its allies and partners, determining which models may work most effectively. More broadly, given perceived shortcomings of trade agreements and the ILO, some experts have called for consideration of new multilateral approaches to advance worker rights issues, such as an agreement modeled on the Paris Agreement.[209]

Trading Partner Compliance and U.S. Approaches to Enforcement

Implementation and enforcement of labor provisions of trade agreements and programs remains a focus for some Members. In this regard, a key issue for Congress is how USTR and DOL assess compliance with labor provisions and take monitoring and enforcement actions.[210] Other

[202] See CRS Report R45417, *World Trade Organization: Overview and Future Direction*, coordinated by Cathleen D. Cimino-Isaacs.

[203] Elliott, *Developing a More Inclusive US Trade Policy*, p. 23.

[204] USTR, "United States Urges WTO Members to Address Forced Labor on Fishing Vessels in Ongoing Fisheries Subsidies Negotiations," Press release, May 26, 2021.

[205] E.g., H.Res. 382 and S.Res. 101.

[206] Andrew Samet, "Will the ILO Defend China's Uyghurs?" *The Diplomat*, August 18, 2020; Janice Bellace and George Dragnich, "A Path for Business out of the China Forced Labor Dilemma," *The Hill*, May 10, 2021.

[207] *Joint Statement on Prioritizing the ILO Forced Labor Response*, April 9, 2021, at https://geneva.usmission.gov/2021/04/15/joint-statement-on-prioritizing-the-ilo-forced-labor-response/.

[208] *Carbis Bay G7 Summit Communiqué: Our Shared Agenda for Global Action to Build Back Better*, June 13, 2021.

[209] For more detail, see Tucker, *Seven Strategies to Rebuild Worker Power for the 21st Century Global Economy*. In the view of the author, such an agreement could for example, include specific targets for higher unionization rates.

[210] ILAB has for example, taken steps to improve stakeholder understanding of the FTA labor submission process,

questions relate to the necessary conditions for effective enforcement of labor provisions. The National Advisory Committee for Labor Provisions of U.S. Free Trade Agreements, which provides advice to ILAB, reflected on several factors in the context of the CAFTA-DR, such as fostering domestic agency and political will in trading partners; ensuring sustainability of capacity building programs; and strengthening U.S. government coordination in allocating funds (see below).[211]

Congress may also consider to what extent GSP trade sanctions have been effective, and whether GSP review actions balance the broader policy aim of furthering economic growth and development of developing country partners with respect for their national sovereignty. In this regard, a question for Congress is whether U.S. trade policy should pursue greater supplementary "carrot" approaches based on past success of the sectoral model with Cambodia. For example, one option Congress could consider is expanding GSP benefits to beneficiary countries that demonstrate significant progress in advancing core worker rights, rather than potentially rescinding GSP benefits.

Some in Congress have expressed interest in the effectiveness of NAFTA labor dispute resolution in particular,[212] which led to the changes in USMCA DS procedures. The operation of the new rapid-response mechanism provides a test case for future U.S. approaches. The Biden Administration has committed to a more proactive enforcement approach, including self-initiating labor complaints, as evidenced by action taken in May 2021. The head of ILAB characterized this action as potentially a "harbinger of future, more proactive actions to come," noting that "the U.S. wants to be more engaged, more proactive, more strategic about how we monitor and enforce the labor commitments in trade agreements."[213] Related issues for Congress include assessing future priorities for disputes pursued by USTR, how the revised DS mechanisms are implemented, and whether they prove effective in resolving labor disputes. Some Members and stakeholders have also expressed concerns about the new mechanism, contending that facilities and companies under investigation are not adequately informed by the U.S. government on the allegations of complaints.[214] Depending on outcomes, Congress may consider encouraging USTR to modify the mechanisms, or seek changes to the underlying labor obligations within future TPA legislation.

More broadly, the Biden Administration has emphasized resorting to the "full range of trade tools" for labor enforcement. Reflecting the Administration's commitment to fully enforce labor obligations, the requested FY2022 budget increase for ILAB is largely intended for "trade-related worker rights monitoring, enforcement and trade capacity building programs to match the scope and ambition of the President's trade agenda."[215] A key question for Congress is whether this may entail pursuing new enforcement approaches that depart from past practice,[216] such as use of

developed intra-agency standard operating procedures, which emphasize the value of monitoring trips to FTA partners, and streamlined processes for handling petitions. See, U.S. GAO, "Recommendations for Executive Action," at https://www.gao.gov/products/gao-15-160.

[211] *Recommendations on how the U.S. Government Can Facilitate Implementation of the CAFTA-DR White Paper*, October 13, 2011, at https://www.dol.gov/agencies/ilab/trade/agreements/nac.

[212] For example, see H.Res. 132.

[213] Rebecca Rainey, Doug Palmer, and Eleanor Mueller, "Q&A: Thea Lee of the Bureau of International Labor Affairs," *Politico Pro*, July 1, 2021.

[214] "Deputy USTR nominee: Labor, environment 'sidelined' in trade for too long," *Inside U.S. Trade*, June 25, 2021; Chamber of Commerce, *Subject: USMCA Labor Council Meeting*, letter to USTR and U.S. DOL, June 23, 2021.

[215] U.S. DOL, *FY2022 Budget in Brief*, p. 47.

[216] For example, the Biden Administration in June 2021 announced a new "trade strike force" to combat unfair trade practices that have eroded critical supply chains. See https://go.usa.gov/x6Kgm.

Section 301 of the Trade Act of 1974, proposed by some labor groups.[217] The issue of forced labor in particular has been an increased focus of congressional debates over trade enforcement, and has been emphasized by the Administration as a major priority. Members have engaged on these issues through hearings on Section 307 implementation, requests for investigations into forced labor imports, and proposed legislation.[218] Congress may consider how to address ongoing challenges, such as the adequacy of CBP processes, resources, and interagency coordination for achieving expanded enforcement.[219] In addition, a key issue is how these efforts can complement multilateral approaches, for example, Congress may examine ways to translate the recent G-7 statement on forced labor into concrete action, or pursue an enhanced role for the ILO. Other considerations include prospects and impact of greater regional or industry-wide enforcement actions, including as a tool for mitigating forced labor in Xinjiang, as proposed by legislation (H.R. 1155/S. 65). Debate over Section 307 enforcement has also brought attention to U.S. importers' compliance and supplier relationships, prompting legislation (e.g., H.R. 1155, H.R. 2072) that mandates disclosure and transparency of supply chains.

Labor-Related Trade Capacity Building and Interagency Coordination

Experts and policymakers have increasingly supported trade capacity building activities as a supplement to trade agreements and trade preference programs, as well as an important "carrot" to improving compliance with labor obligations. Many experts view institutional deficiencies, lack of resources, and under-development as primary obstacles to improving labor standards, and thus consider cooperation through technical assistance and capacity building as first-best instruments. The USMCA implementing legislation highlights this approach to complement FTA labor provisions with funding and mechanisms for implementing reforms in Mexico. Oversight of the implementation and outcomes of such funding will be a key near-term issue for Congress.

Congress has also made strengthening trading partner capacity a priority in TPA legislation and through funding. Several issues confront Congress in debates over TCB, often marked by disagreements over allocating funds, policy coordination of U.S. agencies, and evaluation of projects. Past appropriations debates (and proposed budget cuts) centered on questions of how ILAB distributes grants across countries and purposes. Some Members have requested reviews of ILAB's international technical assistance and advocated for greater systematic evaluation of outcomes.[220] Others have raised concerns about the allocation of funds to specific labor issues, such as promotion of union rights abroad.[221] Congress may be interested in how ILAB continues to learn from past grants through impact evaluations to better direct funds towards effective

[217] In 2004, the AFL-CIO submitted the first petition brought on behalf of labor under Section 301 to challenge worker rights in China. Albert B. Crenshaw, "AFL-CIO Goes After China on Labor," *Washington Post*, March 17, 2004.

[218] "Wyden, Brown Call on Department of Homeland Security to Fully Enforce the Law, Crack Down on Imported Cocoa Produced With Child Labor," Press release, July 19, 2019; U.S. Congress, House Ways and Means Committee, *Enforcing the Ban on Imports Produced by Forced Labor in Xinjiang*, hearing, 116th Cong., 2nd sess., September 17, 2020.

[219] For discussion, see U.S. GAO, *Forced Labor Imports: DHS Increased Resources and Enforcement Efforts, but Needs to Improve Workforce Planning and Monitoring*, GAO-21-106, October 27, 2020.

[220] Per congressional requests, the September 2014 GAO report, *International Labor Grants: DOL's Use of Financial and Performance Monitoring Tools Needs to Be Strengthened*, examines how ILAB: (1) ensures financial accountability of its technical assistance funds, (2) monitors performance of projects, and (3) evaluates projects and uses the results of evaluations. The May 2014 GAO report, *International Labor Grants: Labor Should Improve Management of Key Award Documentation*, examines how ILAB develops projects and selects funding recipients.

[221] E.g., Senate Finance Committee, "Republican Senators Hatch and Alexander Demand Answers on Use of Taxpayer Dollars to Fund Foreign Labor Unions," April 2015.

approaches to technical assistance. More broadly, Congress may consider to what extent improvements have been made in coordinating TCB activities across U.S. agencies and what further reforms may be needed. Some analysts have encouraged reforms to enhance the effectiveness and efficiency of U.S. efforts, including creation of a formal interagency process, and Members have proposed legislation in previous sessions aimed at achieving such results.[222]

[222] Miller and Runde, *Opportunities in Strengthening Trade Assistance*. Past proposals include, for example, S. 2201 (114th Congress), and H.R. 2067 (116th Congress).

Appendix A. Past U.S. Submissions Under Labor Chapters of U.S. FTAs

Table A-1. U.S. Submissions under Labor Chapters of U.S. FTAs

Date Filed	Submission	Submitting Party	Description	Actions Taken
4-23-2008	U.S. Submission 2008-01 (Guatemala)	AFL-CIO and six Guatemalan labor unions	Concerns over enforcement of labor laws by the Guatemalan government, including with regard to freedom of association, right to organize and bargain collectively, and acceptable conditions of work in five separate cases. Allegations included impunity for threats and violence against trade unions, unlawful dismissal of union leaders, and failure to protect rights in cases of changed ownership in an enterprise.	06-12-2008 – Submission accepted for review. 01-16-2009 – Public report of review issued, raising concerns but noting Guatemala's steps toward resolving some issues. 07-30-2010 – U.S. government requested consultations with Guatemala after its actions did not address concerns raised in the report. Consultations held in late 2010, with subsequent meeting of the Free Trade Commission in 2011. 08-09-2011 – U.S. requested establishment of an arbitral panel; panel suspended during negotiations over labor plan. 04-11-2013 – Agreed to 18-point labor enforcement plan. 09-18-2014 – Panel process resumed. 06-26-2017 – Arbitral panel issued decision finding the evidence did not prove an FTA violation.
12-29-2010	U.S. Submission 2010-03 (Peru)	Peruvian National Union of Tax Administration Workers (SINAUT)	Concerns that the employer, the National Superintendent of Tax Administration (SUNAT)—executive branch agency that oversees customs and tax administration—failed to effectively recognize union's right to collective bargaining.	07-19-2011 – Submission accepted for review. 08-30-2012 – Report issued, finding Peruvian government fulfilled its duties, while SUNAT failed to comply with the law in some respects. Legal ambiguity prevented finding that SUNAT or the government failed to comply with or enforce labor laws. Formal consultations not recommended.
4-21-2011	US Submission 2011-01 (Bahrain)	AFL-CIO	Concerns regarding the right to freedom of association and discrimination, in particular related to dismissals and discrimination against trade unionists that organized and participated in a general strike in 2011.	06-10-2011 – Submission accepted for review. 12-20-2012 – Public report of review issued, finding some evidence that supported the allegations. Cooperative labor consultations recommended. 05-06-2013 – U.S. government requested consultations. 07-15 to 7-16-2013 – Consultations began. 06-22 to 6-23-2014 – Second round held. Dialogue ongoing.

Date Filed	Submission	Submitting Party	Description	Actions Taken
12-22-2011	U.S. Submission 2011-03 (Dominican Republic)	Father Christopher Hartley	Concerns regarding the Dominican Republic's (DR) government failure to enforce labor laws within the Dominican sugar industry, in particular regarding the right of association, right to organize and bargain collectively, forced and child labor, and acceptable conditions of work.	02-22-2012 – Submission accepted for review. 09-27-2013 – Public report of review issued, finding some evidence to support allegations, with recommendations to address concerns. 04-2014 to 05-2018 – U.S. government engaged at senior and technical levels with DR to address concerns. Six reviews issued on implementation of recommendations.
03-26-2012	U.S. Submission 2012-01 (Honduras)	AFL-CIO and 26 Honduran unions and civil society organizations	Concerns regarding the Honduras government failure to enforce labor laws with respect to right to freedom of association and collective bargaining, child labor, and acceptable conditions of work, within apparel and auto parts manufacturing sectors, agricultural sector, and enterprises at the Port of Cortés.	05-14-2012 – Submission accepted for review. 02-27-2015 – Public report of review issued, finding some evidence supporting the allegations, with seven recommendations to address the concerns. Consultations recommended through the contact points designated in FTA labor chapter to develop a labor action plan. 03-2015 to 10-2015 – Series of bilateral meetings and tripartite meetings held with business/labor groups. 12-09-2015 – Both sides signed monitoring and action plan. Agreed to hold bimonthly technical meetings to discuss implementation and an annual senior officials meeting. 03-14-2016 – Review issued of progress toward plan's benchmarks, with U.S. commitment to continue monitoring.
07-23-2015	U.S. Submission 2015-01 (Peru)	International Labor Rights Forum, Perú Equidad, and seven Peruvian worker's organizations	Concerns regarding failure to effectively enforce labor laws in nontraditional export and agricultural sectors related to rights to freedom of association and collective bargaining. Specific concerns included permitting unlimited consecutive renewal of short-term contracts.	09-21-2015 – Submission accepted for review. 03-18-2016 – Public report of review issued, with evidence that supported allegations and six recommendations. 12-16-2016 – Review issued for first periodic review of Peru's progress toward addressing concerns. 04-20-2018 – Second periodic review issued; U.S. commits to continue to monitor and assess progress by Peru.

Date Filed	Submission	Submitting Party	Description	Actions Taken
05-16-2016	U.S. Submission 2016-02 (Colombia)	AFL-CIO and five Colombian workers' organizations	Concerns regarding failure to effectively enforce labor laws related to the rights to freedom of association and collective bargaining, and to adopt and maintain these rights in statutes, regulations, and practices, as well as failure to comply with procedural guarantees as outlined in the labor chapter, in particular within the petroleum and sugar sectors. Specific concerns included sub-contracting arrangements that evade labor protections and failure to pursue employers for rights violations.	07-15-2016 – Submission accepted for review. 01-11-2017 – Public report of review issued, finding evidence that supported the allegations, with 19 recommendations to address concerns raised. Consultations recommended through designated contact points. 04-2017 to 09-2017 – Three meetings held between contact points to discuss issues identified in the report. 01-08-2018 – Report issued for first periodic review of progress toward implementing report recommendations, with U.S. commitment to monitor and assess progress by Colombia toward addressing concerns over 2019.

Source: U.S. Department of Labor, "Submissions under Labor Provisions of Free Trade Agreements," at https://www.dol.gov/agencies/ilab/our-work/trade/fta-submissions.

Note: Does not include labor disputes involving the United States and Mexico under the NAALC (see **Figure 4**) and ongoing USMCA disputes.

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