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# Worker Rights Provisions in Free Trade Agreements (FTAs)

## Overview

Worker rights have generally been a prominent issue in U.S. FTA negotiations. Some stakeholders believe worker rights provisions are key to protect U.S. workers from perceived unfair competition and to raise labor standards abroad. Others believe such rights are more appropriately addressed at the International Labor Organization (ILO) or through cooperative efforts and capacity building. Since 1988, Congress has included worker rights as a principal negotiating objective in Trade Promotion Authority (TPA) legislation. The United States has been in the forefront of using FTAs to promote core internationally recognized worker rights. Labor provisions have evolved significantly since the 1994 North American Free Trade Agreement (NAFTA), moving from side agreements to integral chapters within FTA texts, with more provisions subject to enforcement. Most recently, the renegotiation of NAFTA resulted in the U.S.-Mexico-Canada Agreement (USMCA), which entered into force in 2020 and set new precedents within its labor chapter and labor enforcement mechanism.

## International Labor Organization

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

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

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### The ILO Declaration Principles and Rights

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- Freedom of association and the effective recognition of the right to collective bargaining;
  - Elimination of all forms of forced or compulsory labor;
  - Effective abolition of child labor;
  - Elimination of discrimination in respect of employment and occupation; and
  - Safe and healthy working environment.
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The United States has endorsed these principles, incorporating them in recent FTAs as enforceable

provisions. It has ratified two of the core ILO conventions: abolition of forced labor, and prohibition and elimination of the worst forms of child labor. As a result, U.S. FTAs do not include commitments to abide by and enforce the conventions themselves. The U.S. Tripartite Advisory Panel on International Labor Standards of the President’s Committee on the ILO has found that U.S. law and practices are at least partially inconsistent with five of the core conventions. For example, U.S. laws on prison labor may conflict with the forced labor convention.

## Labor Provisions in U.S. FTAs

Worker rights provisions in U.S. FTAs, first included in the 1994 NAFTA, have evolved significantly, from requirements for parties to enforce their own labor laws, and to *strive* not to waive or derogate from its laws as an encouragement to trade, to commitments to adopt, maintain, and enforce laws that incorporate core ILO principles. Other FTA provisions address labor cooperation, capacity building, and dispute settlement. U.S. FTA use of the term “internationally recognized worker rights” is based on language in the U.S. Generalized System of Preferences (GSP) statute and largely tracks the ILO Declaration, but also diverges, e.g., referring to “acceptable conditions” regarding minimum wages, hours of work, and occupational safety and health. Recent U.S. FTAs have reflected the negotiating objectives under TPA statutes. These objectives have evolved and generally become more comprehensive over time.

**NAFTA.** The North American Agreement on Labor Cooperation (NAALC), a side agreement to NAFTA, contained 11 “guiding principles” on worker rights in matters affecting trade, technical assistance and capacity building provisions, and a separate dispute settlement process, along with a labor cooperation mechanism. Full dispute procedures applied to failure to enforce a country’s laws regarding child labor, minimum wage, and occupational safety and health. Other issues, such as the right to organize were limited to ministerial consultations.

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

**TPA-2002.** Seven U.S. FTAs were negotiated under TPA-2002. These agreements went beyond the scope of the Jordan FTA, but included one enforceable labor provision: a party shall not fail to effectively enforce its labor laws “in a manner affecting trade.” “Labor laws” were defined as rights similar to the GSP statute. Dispute procedures placed limits on monetary penalties, unlike those for commercial

disputes. The FTAs also included commitments not to derogate from labor laws to encourage trade; provisions for cooperation and capacity building to improve labor standards; and creation of a labor affairs council.

**Figure 1. Evolution of Labor Commitments in FTAs**

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

Source: CRS.

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

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

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

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

Some Members of Congress called for additional USMCA obligations for Mexico to address persistent concerns over worker rights protections. A labor chapter annex commits Mexico to enact reforms related to collective bargaining that had been underway since 2017. In addition, separate from the labor chapter, USMCA auto rules of origin have certain wage requirements for the first time in a U.S. FTA. Strengthening labor enforcement was also a major priority for some Members. A new rapid-response mechanism in USMCA provides for an independent panel investigation of covered facilities if suspected of denying workers the right of free association and collective bargaining. Several disputes have been resolved under the mechanism. Other

changes to overall dispute settlement procedures include preventing a party from blocking the formation of a dispute panel, and a presumption that failure to comply with labor commitments is “in a manner affecting trade or investment” unless a party demonstrates otherwise. For more, see CRS In Focus IF11308, *USMCA: Labor Provisions*.

## Labor Disputes under U.S. FTAs

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

## Biden Administration Trade Initiatives

The Biden Administration is not pursuing comprehensive FTAs, and instead is negotiating trade initiatives with more targeted agendas, including in the Indo-Pacific and in the Americas. The U.S.-led Indo-Pacific Economic Framework for Prosperity (IPEF), involving 13 partners, includes a “trade pillar” with labor as a core component. The Administration framed IPEF’s inclusion of labor issues as helping to “promote inclusive economic prosperity” and part of a “broader strategy to make trade a race to the top.” The September 2022 IPEF ministerial statement on trade lays out potential labor provisions that largely reflect recent U.S. FTAs. Key questions include whether IPEF will reflect or build on USMCA approaches, in particular the rapid-response labor mechanism, and potentially involve any country-specific provisions on worker rights.

## Issues for Congress

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

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

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