

# The Takeaway

Policy Briefs from the Mosbacher Institute for  
Trade, Economics, and Public Policy

## Striking a Workable Balance

### Labor Provisions in the Trans-Pacific Partnership

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*Trade agreements have extended their reach far beyond simply reducing tariffs. One of the most controversial dimensions of modern trade agreements are labor standards. This brief explores the background and potential impact of labor standards in trade agreements, generally, and in the Trans-Pacific Partnership (TPP), in particular.*

George H. W. Bush proposed the North American Free Trade Agreement (NAFTA) among the United States, Canada, and Mexico in 1990. That landmark agreement was the first to join developed and developing countries in a free trade agreement.

One of the concerns about entering into a trade agreement with a developing country was that lower wages and labor standards in Mexico would put US workers at risk. As a result, a labor side agreement was added to NAFTA in 1994.



#### WHAT'S THE TAKEAWAY?

The TPP extends the labor provisions found in previous US FTAs, particularly in the area of forced labor and freedom of association.

There is some evidence that labor provisions increase government enforcement of labor laws in ways that benefit workers in developing countries.

There is no evidence that labor provisions reduce the trade-promoting effects of trade agreements.

Since the labor side agreement in NAFTA, every major US free trade agreement has included labor provisions. Subsequent European agreements also have been much more likely to contain labor provisions, and labor provisions have become increasingly common components of developing nations' bilateral and multilateral agreements. Labor provisions have become common in bilateral and multilateral trade agreements at least in part because the World Trade Organization (WTO) agreements—which are multinational in scope—do not deal with labor standards. At the 1996 Singapore conference, members agreed to recognize core labor standards, but, despite the declaration, the WTO has chosen not to include labor standards in its agreements.<sup>1</sup>

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Labor standards in trade agreements address issues on the way workers are treated, such as rights to organize and strike, health and safety conditions, minimum wages, and working hours. They can take multiple forms. The most common forms include agreements to enforce each country's own domestic labor laws, but not provisions to change the currently existing laws. Other labor provisions reference the International Labor Organization's Declarations and may

include either aspirations to comply with those declarations or enforcement mechanisms for those cases in which the Declarations are not followed.

Over time, labor provisions have expanded in their ambition and coverage. While earlier agreements were more likely to have provisions that stated aspirations to follow domestic laws, more recent agreements are more likely to both reference domestic and international standards and include provisions for remedies when these provisions are not followed.

### EFFECTS OF LABOR PROVISIONS

There are two main questions related to labor provisions in trade agreements. The first is whether or not they affect trade. The reason this question continues to be important is that developing countries often object to labor provisions on the grounds that they are “protectionism in disguise” in the sense that they may require developing countries in effect to raise their labor standards to “level the playing field” with the developed countries. Developing countries have raised these objections specifically in the WTO. Raising standards may imply rising costs, which would reduce the cost advantage enjoyed by developing countries. If the provisions reduce trade, they might actually make it more difficult for developing countries to improve conditions through economic development that might accompany the rise in trade.

Very little research empirically evaluates the hypothesis that labor provisions reduce trade. Work in progress from the International Labour Organization (ILO) suggests

that the effect of labor provisions on trade is estimated to be zero. That is, the estimated effect is very close to zero and is not statistically significant. These results suggest that the effects of labor provisions in trade agreements so far have been negligible. Labor provisions do not seem to reduce trade.

The second main question is whether or not the labor provisions improve labor conditions in developing countries. Recent research from Latin America finds that the labor provisions are associated with increased government inspections, which is considered to be an important first step in the enforcement of domestic laws.<sup>2</sup> The commitments in the agreements to increase enforcement of domestic laws seems to be followed by increased government attention. Whether or not this ultimately leads to improved working conditions in developing countries, however, requires further empirical study.

### LABOR PROVISIONS IN THE TPP

Like these earlier agreements, the Trans-Pacific Partnership (TPP) includes labor provisions. The model for the TPP labor provisions are often referred to as “Peru Plus” because they extend the labor provisions that were included in the U.S.-Peru Free Trade Agreement. Table 1 contains a comparison of the labor provisions in the U.S.-Peru agreement and the TPP. The sections of the agreement are quite similar in the sense that they address similar issues. Both include provisions about following domestic labor laws. Text in the two agreements is similar if not identical regarding labor provisions. A reason for the similarity could be

because they both seem to draw information from and cite the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up.

One of the key differences is that the TPP includes the text, “each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part

**Table 1: Labor Provisions in the TPP and the U.S.-Peru Free Trade Agreement**

TPP	U.S. – Peru Free Trade Agreement
19.1 Definitions	17.8 Definitions
19.2 Statement of Shared Commitment	17.1 Statement of Shared Commitment
19.3 Labor Rights	17.8 Definitions
19.4 Non Derogations	17.2 Section 2 (Commitment to Non Derogation)
19.5 Enforcement of Labor Laws	17.3 Enforcement of Labor Laws
19.6 Forced or Compulsory Labor	17.8 Section (Elimination of all forms of forced or compulsory labor)
19.7 Corporate Social Responsibility	Annex 17.6 Section 2 (Both parties commit to promotion of best practices with respect to corporate social responsibility among other things)
19.8 Public Awareness and Procedural Guidelines	17.4 Procedural Guidelines and Public Awareness
19.9 Public Submissions	17.5 Section 5 (Cooperation and Communication Mechanisms)
19.10 Cooperation	17.6 Labor Cooperation and Capacity Building Mechanisms
19.11 Cooperative Labor Dialogue	17.5 Section 5 (Cooperation and Communication Mechanisms)
19.12 Labor Council	17.5 Section 2 (Council Mechanisms)
19.13 Contact Points	17.5 Section 5 (Cooperation and Communication Mechanisms)
19.14 Public Engagement	17.5 Sections 6 & 7 (Communications)
19.15 Labor Consulting	17.7 Cooperative Labor Consultations

Source: The TPP and US-Peru FTA.

by forced or compulsory labour, including forced or compulsory child labour.” Comparable text was not found in the U.S.-Peru FTA. Furthermore, the TPP article on cooperation is much more expansive. The TPP also contains specific agreements for Vietnam, Malaysia, and Brunei Darussalam to strengthen their domestic labor standards, especially in the area of freedom of association. Finally, the TPP article on Labor Consulting was much more in-depth than U.S.-Peru FTA Article 17.7. As mentioned before, the TPP text has to account for not just a bilateral relationship, but a multi-party system.

### TPP LABOR EFFECTS

While some labor provisions in the TPP extend those in previous agreements, most of the provisions have been tried before with no apparent reduction in the otherwise trade-promoting effects of the agreements. It remains to be shown whether the extensions significantly increase the costs to developing country factories. On the other

hand, the provisions could increase government enforcement of domestic labor laws in ways that benefit workers in developing countries. Therefore, it is likely that the global benefits of the labor provisions will exceed their costs.

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#### Notes:

<sup>1</sup> For a discussion of labor standards and the WTO, see [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey5\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey5_e.htm)

<sup>2</sup> Dewan, S. & Ronconi, L. (2014). *U.S. Free Trade Agreements and Enforcement of Labor Law in Latin America* (Inter-American Development Bank Working Paper, No. IDB-WP-543).

## ABOUT THE MOSBACHER INSTITUTE

The Mosbacher Institute was founded in 2009 to honor Robert A. Mosbacher, Secretary of Commerce from 1989-1992 and key architect of the North American Free Trade Agreement. Through our three core programs—Integration of Global Markets, Energy in a Global Economy, and Governance and Public Services—our objective is to advance the design of policies for tomorrow’s challenges.

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