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TPP: Labor Provisions

Overview

The Trans-Pacific Partnership (TPP) is a proposed free trade agreement (FTA) among the United States and 11 Asia-Pacific countries that would reduce and eliminate tariff and non-tariff barriers on goods, services, and agriculture, and establish trade rules and disciplines that expand on commitments at the World Trade Organization (WTO). Commitments address new “21st Century” issues, such as digital trade and state-owned enterprises. Labor provisions in FTAs have evolved since the North American Free Trade Agreement (NAFTA), which was the first U.S. FTA that addressed worker rights in a side agreement committing the parties to enforce their own labor laws and to resolve disputes. The most recent U.S. FTAs with Peru, Colombia, Panama, and South Korea incorporate stronger language by which parties must adopt, maintain, and enforce core labor principles of the International Labor Organization (ILO). The TPP includes similar provisions as these agreements, in addition to three labor consistency plans with specific commitments in regard to worker rights for Brunei, Malaysia, and Vietnam.

The scope and depth of provisions on worker rights are some of the more controversial issues surrounding the TPP. TPP proponents contend that FTAs are important policy tools that help raise labor standards by supporting economic growth and worker rights among countries with varying levels of development. They argue that FTAs influence foreign governments to respect workers’ rights, protect children, eliminate forced labor, and improve working conditions. Opponents of TPP, such as labor unions and civil rights groups, are concerned that failure to promote and implement these rights could adversely affect working conditions and wages in other countries, as well as promote the transfer of U.S. jobs overseas.

ILO Declaration on *Fundamental Principles and Rights at Work* (1998)

- Freedom of association and the effective recognition of the right to collective bargaining;
- Elimination of all forms of compulsory or forced labor;
- Effective abolition of child labor; and
- Elimination of discrimination in respect of employment and occupation.

Labor Provisions in U.S. FTAs

Worker rights provisions in U.S. trade agreements have evolved over time. The North American Agreement on Labor Cooperation (NAALC), a legally binding parallel agreement to NAFTA signed by the United States, Canada, and Mexico, contains commitments for countries to enforce their own labor laws, a consultation mechanism for addressing labor disputes, and a special labor dispute

settlement procedure. Seven subsequent U.S. FTAs included similar provisions in the main text of the agreements. More recent agreements have stronger provisions and incorporate core internationally recognized labor principles consistent with the ILO Declaration on *Fundamental Principles and Rights at Work* (1998) (ILO Declaration).

TPP Labor Chapter

The TPP contains similar worker rights provisions as those in the four most recent FTAs negotiated by the United States. These provisions are enforceable under the same dispute settlement procedures that apply to other provisions of the FTA, and violations are subject to the same potential trade sanctions. TPP parties agreed

- to adopt and maintain laws and practices consistent with the ILO Declaration;
- to adopt and maintain laws and practices governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health;
- not to waive or derogate from labor laws and practices mentioned above in a manner affecting trade or investment; and
- to effectively enforce their labor laws through a sustained or recurring course of action.

Beyond these labor rights obligations, the TPP contains additional language stating that each party shall discourage, through initiatives it considers appropriate, the importation of goods produced in full or in part by forced labor, including child labor. For the first time in a U.S. FTA, the parties also explicitly agreed to protect against degradation of fundamental worker rights or working conditions in free trade zones or export processing zones. Parties also committed to encourage businesses to voluntarily adopt corporate social responsibility initiatives on labor issues. If a party believes that another TPP country is not meeting its labor commitments, the agreement establishes a means for the public to raise concerns with TPP governments through various commitments on transparency and procedural guarantees. The agreement also provides for a mechanism for cooperation and coordination, including opportunities for stakeholder input in identifying areas of cooperation. The TPP allows each party to retain its own discretion in allocation of enforcement and prosecutorial resources and does not empower a party’s authorities to undertake labor law enforcement activities in another country.

The agreement establishes a labor dialogue mechanism that may be used to resolve labor issues expeditiously and to help parties mutually agree on a course of action. The mechanism could include action plans with specific and verifiable steps such as labor inspection, investigation, or

compliance action. Actions may also include cooperative or capacity-building programs. Regardless of whether a party uses labor dialogue provisions, the TPP dispute settlement provisions would remain available to TPP parties.

To establish a violation of a labor rights obligation, a party must demonstrate that another party has failed to adopt, or maintain a related statute, regulation or practice in a manner affecting trade or investment between the parties. TPP dispute settlement procedures include the option for consultation, arbitration, and the availability of trade sanctions. Penalties include monetary compensation or a suspension of benefits.

Labor Consistency Plans

The United States negotiated separate labor consistency agreements with Brunei, Malaysia, and Vietnam, countries of concern in terms of labor protection. The plans include commitments for specific legal, regulatory, and institutional reforms. The plans are part of the TPP agreement and subject to labor consultations and dispute settlement provisions. Most commitments must be met before the agreement enters into force. Each plan creates a bilateral review mechanism to allow for review and assessment of each plan's implementation over periods of up to 10 years. The TPP is the first U.S. FTA that contains labor action plans as part of the agreement.

Brunei

The Brunei implementation plan commits Brunei to legal, regulatory, and institutional reforms for the protection of all fundamental worker rights, particularly in regard to union activity. Workers in Brunei are currently denied the right to strike, and the government has a record for not recognizing trade unions. The plan commits Brunei to undertake further reform of its trade union act to limit government discretion to register or cancel a union's registration, establish protection for union activity, allow for international affiliation, provide procedures for collective bargaining and strikes, and strengthen protection against child labor and forced labor. Brunei also committed to implementing a minimum wage for the first time and to ensure protection against employment discrimination.

Malaysia

The Malaysia implementation plan commits Malaysia to significant legal, regulatory, and institutional reforms in regard to worker rights, in particular in the areas of forced labor and human trafficking. Malaysia currently places significant restrictions on the freedom of association, thereby limiting workers' ability to form unions and on the right to strike. In addition, Malaysia's record on human trafficking is a problem of particular concern to some policymakers. Malaysia specifically agreed to amend its trade union law to reduce government discretion regarding the formation, registration, suspension, cancellation, and internal administration of trade unions; remove restrictions on the right of collective bargaining and the right to strike; provide protections to foreign workers; and implement a law to protect and empower trafficking victims. Other commitments include increasing labor inspections and implementing labor inspection training programs.

Vietnam

The Vietnam implementation plan includes commitments for legal, regulatory, and institutional changes for the protection of all fundamental labor rights, particularly in regard to union activity. Currently, Vietnamese workers have the right to join a labor union, but that union must become a member of the Vietnam General Confederation of Labor (VGCL), which is heavily influenced by the Vietnamese Communist Party. In addition, Vietnamese workers have limited rights for forming trade unions and organizing strikes. The plan commits Vietnam to enact laws to permit workers to form an independent grassroots labor union without prior government authorization. Such unions must register with the government and have the right to elect their own representatives, adopt constitution and rules, organize their administration, and organize and lead strikes. The Vietnamese government is to ensure that unions are able to administer their affairs with autonomy. Vietnam also committed to other actions in areas such as forced labor and employment discrimination.

Five years after the agreement's entry into force, the United States is to review Vietnam's commitments to protect the right to form or join labor unions. The plan includes procedures in the event the United States finds that Vietnam failed to comply with its commitments. If the two countries fail to agree on whether Vietnam's commitments have been met, the United States may withhold or suspend any tariff reductions scheduled to come into effect thereafter. Vietnam would have recourse to TPP dispute settlement.

Issues for Congress

Proponents contend that a TPP would help poorer countries build their capacity to support labor protections, enhance economic growth, and support high-paying U.S. jobs, particularly in the high-tech and electronics sectors. Labor groups are concerned that TPP labor provisions are weak and that the agreement would encourage businesses to move U.S. jobs to other countries. Some Members of Congress are particularly concerned about whether countries such as Brunei, Malaysia, or Mexico would be able to meet TPP labor obligations or make significant reforms to their labor laws and practices. The Obama Administration asserts that the TPP includes the strongest labor standards of any existing U.S. FTA and that it would allow the United States to "write the rules of the road in the 21st century" in the Asia-Pacific region. Congress may take an interest in oversight of the agreement's implementation.

For more information, see CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams, and CRS Report R41550, *U.S.-Vietnam Economic and Trade Relations: Issues for the 114th Congress*, by Michael F. Martin.

M. Angeles Villarreal, Specialist in International Trade and Finance

Ian F. Fergusson, Specialist in International Trade and Finance

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