



# FTA Labor and Environment Chapters & the Indo-Pacific Region

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October 25, 2022





Two emerging paths



# Evolution of labor and environmental provisions

NAFTA  
(NAALC and  
NAAEC)

Preamble  
aspirational  
language

Binding but non-  
enforceable  
commitments in the  
agreement

Binding, enforceable  
commitments with  
commercial-styled  
remedies

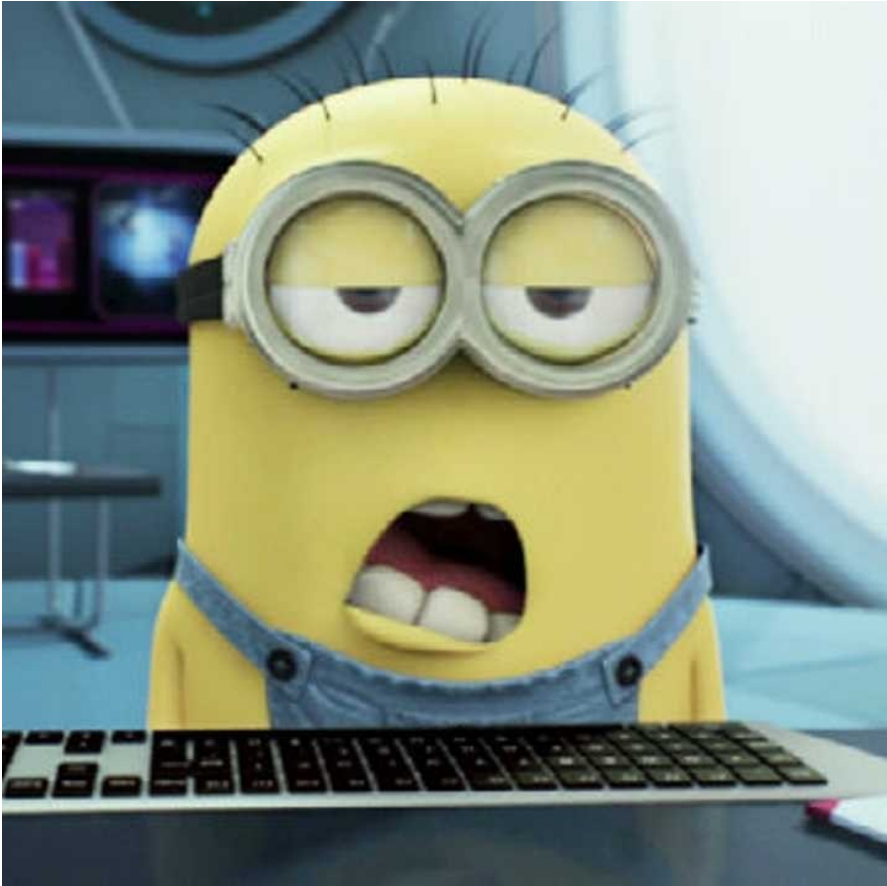


Side  
agreement  
with binding  
commitments

Binding and  
enforceable  
commitments  
with unique  
remedies



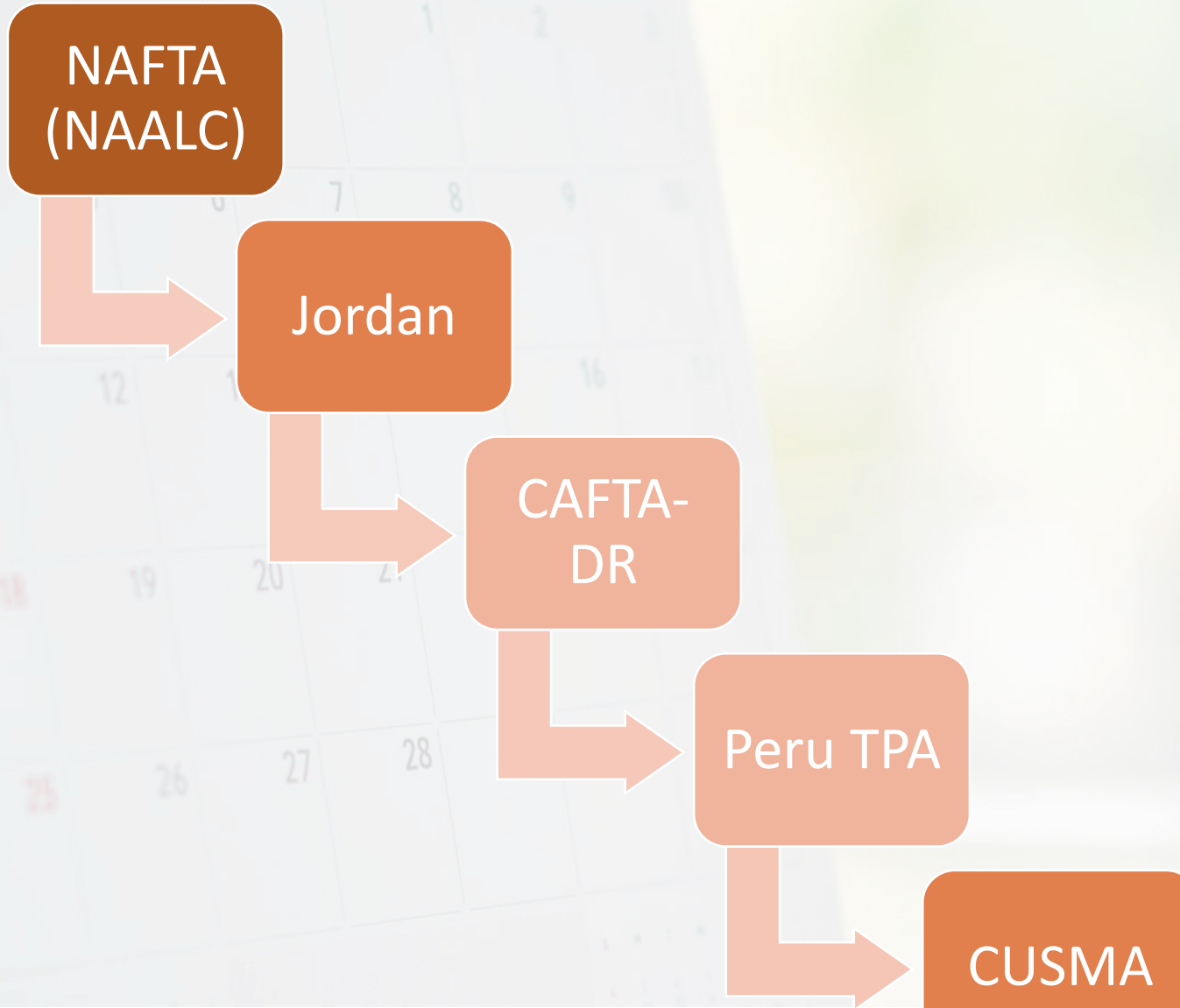
How it started



How it's going



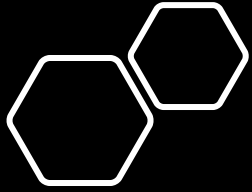
# Evolution of labor and environmental provisions: A U.S.-centric tale





# NAALC

1. If the matter has not been resolved within 60 days . . . [the Parties may] convene an arbitral panel to consider the matter where the alleged persistent pattern of failure by the Party complained against to effectively enforce its occupational safety and health, child labor or minimum wage technical labor standards is:
  - a. trade-related; and
  - b. covered by mutually recognized labor laws.



# Jordan

- ARTICLE 6: LABOR
- 1. The Parties reaffirm their obligations as members of the International Labor Organization (“ILO”) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. ...
- 4. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement. (b) The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.



# CAFTA-DR

- Article 16.2: Enforcement of Labor Laws
- 1. (a) A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement.
- (b) Each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.





1. **May 10 Agreement**

Three milestones

2. ?

3. ?





# Brave New Deal? Assessing the May 10th U.S. Bipartisan Compact on Free Trade Agreements

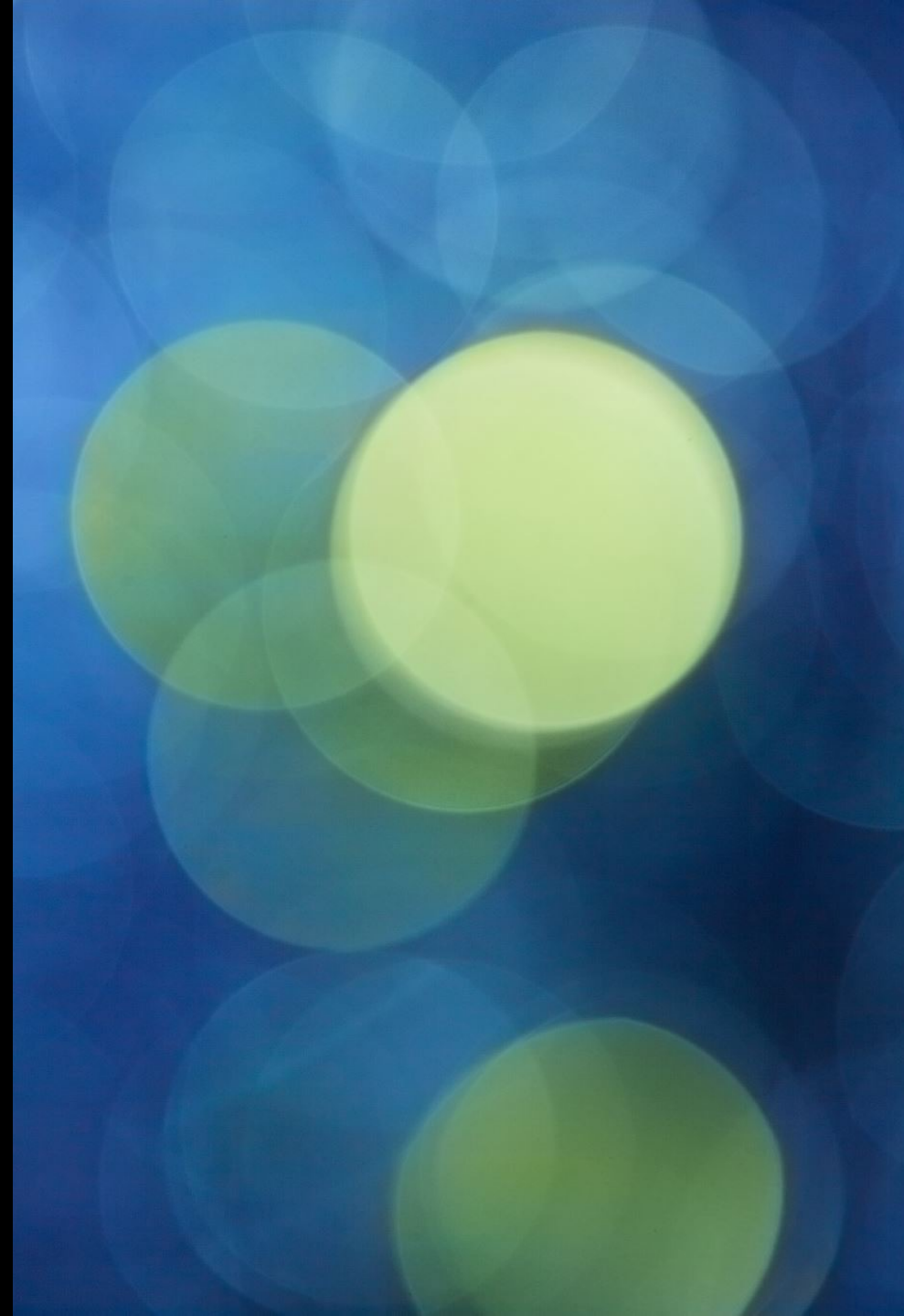
By Aaron Cosbey on August 16, 2007

On May 10 2007, House Speaker Nancy Pelosi and Ways and Means Committee Chairman Charles Rangel, powerful members of the newly-ascendant U.S. Democratic Party, announced that they had negotiated a compromise agreement with the Bush Administration and leading Congressional Republicans on critical changes to pending free trade agreements with Peru and Panama. Until that time, there had seemed to be slim hope that either agreement would win approval from a Congress dominated by Democrats, many of whom had been elected on promises to rein in what their constituents saw as a harmful proliferation of flawed trade deals.

# TPA 2015

To promote respect for worker rights and the rights of children consistent with core labor standards of the ILO (as set out in section 11(7)) and an understanding of the relationship between trade and worker rights;

To seek provisions in trade agreements under which parties to those agreements ensure that they do not weaken or reduce the protections afforded in domestic environmental and labor laws as an encouragement for trade;







# Three milestones

1. **May 10 Agreement**
2. **U.S.-Guatemala case**
3. **?**



# Timeline

## *Pre-Panel*

**April 2008**

AFL-CIO and 6  
Guatemalan labour  
unions file  
submission with  
Office of Trade and  
Labour Affairs  
(OTLA)

**January 2009**

OTLA issues  
findings and  
recommendations

**July 2010**

U.S. requests  
consultations

## *Panel Proceedings*

**August 2011**

U.S. requests  
establishment  
of a panel  
under Article  
20.6.1

**November  
2012**

Panel  
established

**April 2013 -  
September 2014**

Multiple  
successive  
suspensions

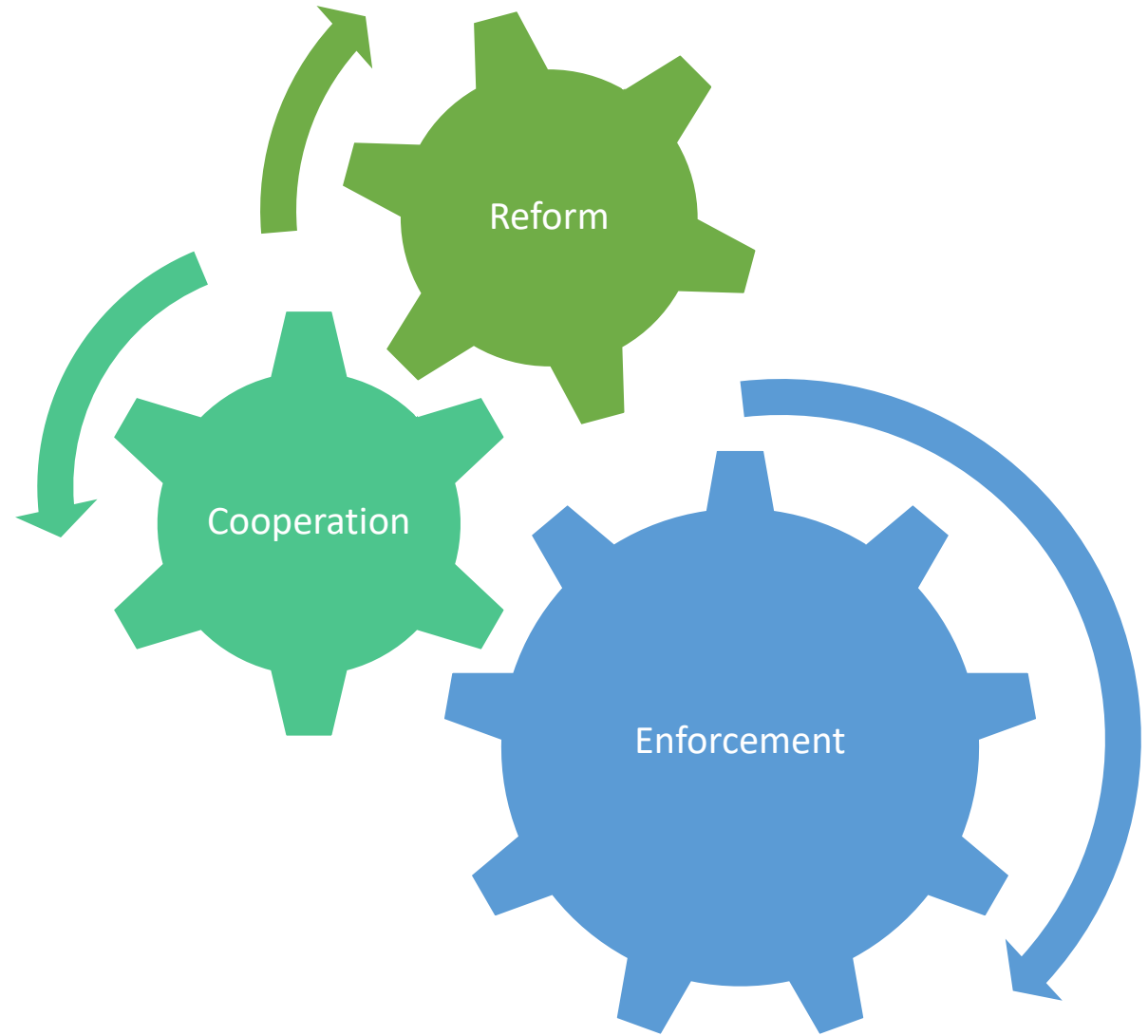
**November  
2015**

Proceedings  
suspended

**July 2017**

Publication  
of panel  
report

# Success?







# Three milestones

1. **May 10 Agreement**
2. **U.S.-Guatemala case**
3. **Trump + Dems = RRM**



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*What is different?*

*Is it “enough”?*

## Southern California Dirt Bike Certification Workshop

Photo gallery from the first Southern California regional certification workshop for Dirt Bike Level 100.

[Click Here](#)



# A New Trade Pact Offers Mexico an Opportunity — at a Cost

The new treaty could be an important lever for long-awaited modernization.

Jan. 29, 2020



An aerial photograph of a large container ship sailing on a dark green ocean. The ship is loaded with many colorful shipping containers in shades of blue, red, and white. A white wake is visible behind the ship. In the background, dark, jagged mountains rise from the water's edge. The text "Rapid Response Mechanism" is overlaid in white, centered over the ship.

# Rapid Response Mechanism

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An aerial photograph of a large, densely packed parking lot. The cars are arranged in neat rows, filling the frame. The colors of the cars vary, including red, blue, white, and black. In the center of the image, the text "Uses of the RRM" is overlaid in a large, white, sans-serif font. The text is centered horizontally and vertically, with a white rectangular border around it.

# Uses of the RRM







# Worker-centric trade policy:

## *Workers abroad*

- Agreements with labor provisions
  - Evolving enforcement mechanisms
- Work plans
- Preference programs
- Cooperation

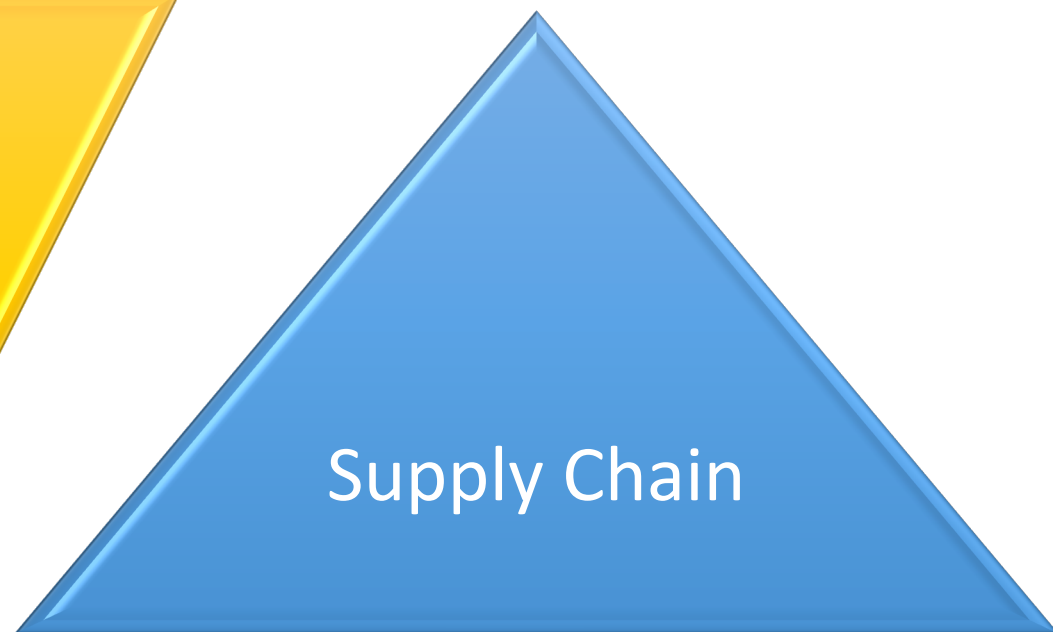
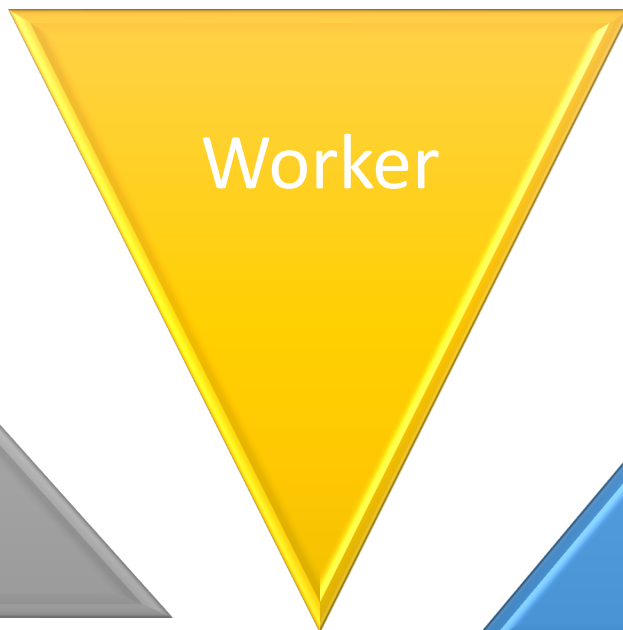




The future: What's in it for  
them?







# Discussion

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