FTA Labor and Environment Chapters & the Indo-Pacific Region

October 25, 2022
Two emerging paths
Evolution of labor and environmental provisions

NAFTA (NAALC and NAAEC)
Preamble
aspirational language

Binding, enforceable commitments with commercial-styled remedies

Binding but non-enforceable commitments in the agreement

Binding and enforceable commitments with unique remedies

Side agreement with binding commitments
How it started

How it’s going
Evolution of labor and environmental provisions: A U.S.-centric tale
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.
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.
• 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.
Three milestones

1. May 10 Agreement

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. ?
Success?
Three milestones

1. May 10 Agreement
2. U.S.-Guatemala case
3. Trump + Dems = RRM
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.
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
Rapid Response Mechanism
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?
Firms

Worker

Enforcement

Supply Chain
Discussion

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