



"LABOR AND EMPLOYMENT RELATIONS IN 2020"

LERA International Interest Section and the US branch of the ISLSSL present

"The USMCA (the New NAFTA): Moving to Effective Enforcement of Labor Rights"

Speakers

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Webinar organized by the U.S. branch of the ISLSSL

***And* the International section of LERA of the U.S.**

**The USMCA (the new NAFTA):
Moving to Effective Enforcement of
Labor Rights**

Accepting liberalized trade: *FAIR* (free) trade

Political reality from NAFTA to the present

- **Opposition** to free trade: criticism of very low wages / unsafe working conditions / loss of U.S. jobs

Political response: Fair trade / level playing field

- **How to achieve that** → **labor clause in FTA**
- Parties to the FTA agree to abide by certain standards

What Does the FTA Labor Clause Mean?

- *Using what standard*
 - Support for general principle?
 - Meaning in an ILO convention?
 - As defined in national law or practice?
If so, which country's?

Trade and Rights at Work

- 1993 NAFTA – NAALC
- 1995 WTO established
- 1996 WTO opts out of worker rights debate → ILO
- 1998 ILO adopts a “Declaration of Fundamental Principles and Rights at Work”



Trade and Rights at Work

- 2002 TPA - labor rights w/i FTA
fast track
parties to “strive to ensure”
- 2007 May 10th agreement
parties “to adopt and maintain”
specifies all 4 fundamental rights in ILO Declaration
- 2015 Trade Priorities and Accountability Act
more comprehensive and specific statement of rights



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1998 ILO Declaration of Fundamental Principles and Rights at Work

- **freedom of association** and the right to collective bargaining
 - the elimination of all forms of **forced labour**
 - the effective abolition of **child labour**
 - the elimination of **discrimination** in employment
- ▶ U.S. FTAs also include “acceptable conditions of work” with respect to minimum wages, working hours and occupational safety and health

ILO “Core Conventions “

- Freedom of Association
 - C. 87 and C. 98
- Abolition of Forced Labour
 - C. 29 and C. 105
- Elimination of Child Labour
 - C. 138 and C. 182
- Non-discrimination in Employment
 - C. 100 and C. 111



What Does the Labor Clause in the FTA Mean?

- *Using what standard ?*
 - Support for general principle?
 - Meaning in an ILO convention?
 - As defined in national law or practice?
- *Committing to what form of enforcement / dispute resolution?*

Improving the Labor Clause

Improving on the TPP

- Set a specific reference point: not simply the 1998 ILO four fundamental principles but **also** the 8 core conventions
- ***Improving arbitral process and dispute resolution (Guatemala case)***
 - Do not erect insurmountable proof hurdles -- “in a manner affecting trade”
 - Effective and *prompt* dispute resolution

USMCA – *moving to* effective labor rights

- Expressly states all four ILO fundamental rights and links them to the eight ILO core conventions
 - parties “to adopt and maintain” laws and regulations that are consistent with these rights*
- Rebuttable presumption that violation was “in a manner affecting trade”
- Additional dispute resolution mechanism for complaints re freedom of association
 - Facility-specific Rapid Response Mechanism*