



**Labor Provisions in U.S.  
Free Trade Agreements  
Case Study of Mexico, Chile,  
Costa Rica, El Salvador and  
Peru**

Andrew Samet

**Inter-American  
Development Bank**

Integration and Trade  
Section

**POLICY BRIEF**

No. IDB-PB-172

January, 2011

# **Labor Provisions in U.S. Free Trade Agreements**

**Case Study of Mexico, Chile, Costa Rica, El Salvador and Peru**

Andrew Samet



**Inter-American Development Bank**

**2011**

© Inter-American Development Bank, 2011  
[www.iadb.org](http://www.iadb.org)

The Inter-American Development Bank Policy Briefs present a particular policy issue and outline courses of action, including specific policy recommendations. The information and opinions presented in these publications are entirely those of the author(s), and no endorsement by the Inter-American Development Bank, its Board of Executive Directors, or the countries they represent is expressed or implied.

This paper may be freely reproduced provided credit is given to the Inter-American Development Bank.

## Table of Contents

<b>I.</b>	<b>Introduction: Labor Chapters and U.S. Free Trade Agreements .....</b>	<b>1</b>
<b>II.</b>	<b>The Labor Provisions of the Agreements .....</b>	<b>2</b>
	<b>The Labor Chapter Texts.....</b>	<b>3</b>
	<b>Obligations on labor laws .....</b>	<b>4</b>
	<b>Scope of labor law coverage. National and International .....</b>	<b>4</b>
	<b>Enforcement of labor law .....</b>	<b>5</b>
	<b>Procedural guarantees and public awareness .....</b>	<b>6</b>
	<b>Institutional Arrangements, Cooperation and Capacity Building, Public Submission and Consultation Mechanisms .....</b>	<b>7</b>
	<b>Dispute settlement and labor obligations.....</b>	<b>8</b>
<b>III.</b>	<b>The North American Agreement on Labor Cooperation.....</b>	<b>17</b>
	<b>Labor Obligations under the NAALC .....</b>	<b>17</b>
	<b>NAALC Institutions.....</b>	<b>19</b>
	<b>Labor Law Developments in Mexico.....</b>	<b>34</b>
	<b>Reforms to the Ministry of Labor .....</b>	<b>37</b>
	<b>Reforms to the labor Justice System .....</b>	<b>38</b>
	<b>International Support for Legal and Institutional Reforms .....</b>	<b>38</b>
<b>IV.</b>	<b>The Chile-United States Free Trade Agreement.....</b>	<b>40</b>
	<b>Labor Obligations under the Chile FTA.....</b>	<b>40</b>
	<b>Chile’s Labor Law Framework .....</b>	<b>41</b>
	<b>Labor Law Developments in Chile .....</b>	<b>42</b>
	<b>Reforms to the Ministry of Labor .....</b>	<b>46</b>
	<b>Reforms to the Labor Justice System.....</b>	<b>47</b>
	<b>International Support for Legal and Institutional Reforms .....</b>	<b>47</b>
<b>V.</b>	<b>The United States-Central American &amp; Dominican Republic Free Trade Agreement 50</b>	
	<b>Labor Obligations under the CAFTA-DR.....</b>	<b>50</b>
<b>A.</b>	<b>Costa Rica .....</b>	<b>52</b>
	<b>Labor Law Developments in Costa Rica .....</b>	<b>52</b>
	<b>Reforms to the Ministry of Labor .....</b>	<b>55</b>

Reforms to the Labor Justice System.....	58
Developments on Gender and Discrimination .....	59
Developments on Child Labor .....	59
Other Developments .....	61
<b>B. El Salvador .....</b>	<b>61</b>
Labor Law Developments in El Salvador .....	61
Reforms to the Ministry of Labor .....	65
Reforms to the Labor Justice System.....	66
Developments on Gender and Employment Discrimination .....	67
Developments on Child Labor .....	68
Other Developments .....	69
International Support for legal and Institutional Reforms .....	70
<b>VI. The United States-Peru Trade Promotion Agreement .....</b>	<b>73</b>
<b>Labor Obligations under the Peru TPA .....</b>	<b>73</b>
<b>Labor Law Developments in Peru .....</b>	<b>78</b>
<b>Reforms to the Ministry of Labor .....</b>	<b>80</b>
<b>Reforms to the Labor Justice System.....</b>	<b>81</b>
<b>International Support for Legal and Institutional Reforms .....</b>	<b>82</b>

## **I. Introduction: Labor Chapters and U.S. Free Trade Agreements**

It is now conventional wisdom that any free trade agreement signed by the United States will necessarily include a labor chapter. Indeed, some free trade agreements between other countries not involving the United States now also include labor provisions. It is not that long ago, however, that the idea was considered controversial and met with skepticism from trade negotiators. The skepticism may remain, but there is now almost two decades of experience in the drafting of such labor commitments in trade agreements, and in their implementation.

This document will review one free standing labor cooperation agreement related to a free trade agreement (Mexico), and the labor obligations of three free trade agreements (involving four countries; Chile, El Salvador, Costa Rica and Peru) with the United States:

- North American Agreement on Labor Cooperation (NAALC) which was negotiated as a side agreement to the North American Free Trade Agreement (NAFTA) (entered into force January 1, 1994).
- United States-Chile Free Trade Agreement (Chile FTA) (entered into force January 1, 2004).
- Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR) (Entered into force for El Salvador March 1, 2006 and for Costa Rica on January 1, 2009).
- United States-Peru-Trade Promotion Agreement (Peru TPA) (entered into force February 1, 2009).

Since the North American Agreement on Labor Cooperation (NAALC) is not a part of the NAFTA itself, and because of the nature of its obligations and procedures, it has not been considered a precedent for future labor provisions in free trade agreement negotiations. On the other hand, much of the language of the NAALC has been carried forward into the subsequent labor chapters of the U.S. free trade agreements examined here.

This document is divided into two components. First, it provides a comparison of the obligations contained under these four agreements and presents the evolution in the language and commitments in them for the 15 year period between 1993 and 2008 during which they were negotiated.

Second, it reviews the developments in each country during the relevant period with regard to changes in labor laws and regulations, and also in the strengthening of labor institutions

relevant for labor law enforcement, specifically the ministries of labor and the labor justice systems.

This document cannot assess whether the negotiation or implementation of labor chapters in free trade agreements were the cause for any changes made within a country; the document can only report the changes made with regard to the labor framework of a country during the process of negotiations and the subsequent periods during which the agreements have been in place.

## **II. The Labor Provisions of the Agreements**

The labor provisions of the North American Agreement on Labor Cooperation and the labor chapters of the three free trade agreements being examined (Chile FTA, CAFTA-DR and Peru TPA) have many common elements. But there are some important differences that also need to be highlighted.

The North American Agreement on Labor Cooperation (NAALC) is not integrated as part of the free trade agreement itself with which it is associated – the North American Free Trade Agreement (NAFTA), involving Mexico, the United States and Canada. The NAALC was negotiated after the free trade agreement text was completed, as a result of a campaign commitment made by President William Clinton that he would only submit the NAFTA, which had been negotiated by his predecessor, President George H.W. Bush, for Congressional approval after he first negotiated supplemental agreements on labor and the environment.

The NAALC has been criticized since it was negotiated for not being a part of the trade agreement itself and not treating all labor standards covered by the NAALC obligations the same for dispute settlement purposes. It is also seen as being highly complex and having a long dispute settlement process, with the primary potential sanction being a fine to remedy enforcement deficiencies.

These concerns resulted in significant changes in the labor provisions that would be included in the Chile FTA nearly a decade later (the Singapore FTA was negotiated at about the same time as Chile and includes the same type of labor provisions). The most important changes are the inclusion of the labor obligations as a chapter of the free trade agreement itself and also explicit reference to the obligations of membership in the International Labor Organization

(ILO).<sup>1</sup> Likewise, the agreement provides that labor commitments are subject to dispute settlement obligations that are similar if still not identical to those applicable to other commercial disputes under the FTA. Despite the differences, much of the language included in the labor chapters of all subsequent U.S free trade agreements first appeared in the NAALC, which has largely remained the template for these labor provisions.

The labor obligations and provisions of the Chile FTA were largely repeated in the CAFTA-DR, as applicable for El Salvador and Costa Rica.

There were, however, some substantive changes that were negotiated as part of the Peru Trade Promotion Agreement. These changes were insisted upon by the United States as part of a political accommodation between the Bush Administration and the Congress that had moved to Democratic control in 2007. These changes are known as the “May 10, 2007 Agreement,” and will be discussed in more detail below.

## **The Labor Chapter Texts**

In general, the labor obligations in free trade agreements establish a set of commitments between Parties regarding domestic labor laws, with reference to international standards, and the enforcement of those laws. Each Party retains the right to establish and enforce its own domestic labor laws and no Party is granted any authority to enforce the labor laws in the territory of another Party. The commitments, however, are binding obligations that are enforceable under dispute settlement procedures and in certain circumstances can lead to a fine to remediate failures of labor law enforcement or the suspension of commercial benefits granted by the trade agreement.

Additionally, the labor chapters establish a government-to-government process for cooperation and consultation. The scope and mechanisms for such cooperation have evolved in each agreement. These mechanisms allow for Parties to collaborate between Labor Ministries with the objective being improvements in labor law compliance and the functioning of mechanisms to manage any concerns between the Parties with regard to the obligations and implementation of the labor chapter.

---

<sup>1</sup> The first time labor obligations were included in the text of a free trade accord was within the U.S-Jordan Free Trade Area Agreement (entered into force December 17, 2001). See Article 6. This is a relatively brief text on labor, as is the text of the overall agreement. The Jordan FTA includes for the first time references to International Labor Organization obligations, and subjects labor to the same dispute settlement procedures as the other obligations in the trade agreement. Both issues that would be controversial and evolve further in subsequent free trade texts.



## **Obligations on labor laws**

The most important obligations in the labor agreements relate to (i) the enforcement of labor laws and (ii) the institutional guarantees to enforce the laws. The agreements make clear that the fundamental obligation is the enforcement of domestic labor laws rather than international labor standards, and the Parties have the right to modify national labor laws, within certain parameters, discussed in more detail below, to establish a “soft floor” under national labor laws.

### **Scope of labor law coverage. National and International**

Under the NAALC the Parties recognize the right of each Party to establish its own labor laws, but commit to ensure that its labor laws provide for “high labor standards.” There is essentially no reference to any international obligations. Labor laws are defined around 11 areas: (a) freedom of association and the protection of the right to organize; (b) the right to bargain collectively; (c) the right to strike; (d) prohibition of forced labor; (e) labor protections for children and young person’s; (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective bargaining agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex, or other grounds as determined by each Party’s domestic law; (h) equal pay for men and women; (i) prevention of occupational injuries and illnesses; (j) compensation in cases of occupational injuries and illnesses; and (k) protection of migrant workers.

The nature of the labor law obligation evolved significantly with the Chile FTA which introduced a “soft obligation” with regard to ILO standards that was carried forward in subsequent labor chapters. The language has the Parties affirming their obligations as members of the ILO and their commitments under the 1998 ILO Declaration on Fundamental Principles and Rights at Work and it’s Follow-Up. The provision still recognizes that each Party has the right to establish its own domestic labor laws, but in that context also provides that Parties “shall strive to ensure” their laws protect “internationally recognized labor rights” defined to include (a) the right of association, (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form or forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

There is an anomaly between the obligations of the ILO Declaration and the obligations as listed in these five elements. The ILO Declaration includes elements (a) - (d) as well as discrimination in employment, and element; (e) conditions of work, is not included in the declaration. Discrimination in employment was absent from the relevant FTA definitions until it was included in the Peru TPA labor chapter pursuant to the May 10, 2007 U.S. Agreement between the Congress and the Bush Administration. At the same time these five elements represent a significant change from the 11 labor law standards defined under the NAALC – which again was developed before the 1998 ILO Declaration and without any reference to ILO obligations.

The “Shared Commitment” of the Chile FTA provision makes it clear that each Party has the right to establish its own labor laws and to modify them, but a Party “shall strive” for consistency with the list of international labor rights contained in elements (a) - (e) and “shall strive to improve standards in that light.” So while the obligation to comply with any international standard is soft, and subject to debate on enforceability, there are some parameters included that suggest there is a floor obligation, e.g. the national law of a Party cannot be amended to substantially restrict the right of association.

## **Enforcement of labor law**

The labor chapters also include an obligation to enforce the labor laws that the Party already has in place. However this obligation is subject to certain caveats that limit the instances of non-enforcement that might go to dispute settlement.

The obligation of enforcement is actually a negative obligation: “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.

Thus there must be more than one instance of non-enforcement and it must affect trade between the Parties to be considered a violation of a labor chapter. One violation would not be enough to bring forward dispute proceedings. Also, a trade nexus is arguably a well-founded requirement for a labor obligation embedded in a trade agreement – albeit it remains unclear if it is a difficult threshold to meet such a trade requirement since the proposition has not been tested in any cases under these provisions.

The scope of what would be considered a violation of these obligations is further limited by the explicit recognition in the FTA texts that “a 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 and a Party is in compliance where a course of action or inaction reflects a reasonable exercise of discretion, or results from a bona fide decision regarding the allocation of resources.”

This arguably provides a very large escape clause to claim that an issue of non-enforcement in one area is necessitated to focus limited enforcement resources on a higher priority area – but the discretion permitted by the FTA language must be “reasonable” and “bona fide.”

On the other side of the equation, the enforcement articles include the soft obligation that a “Party shall strive to ensure that it does not waive or otherwise derogate from” laws in a manner that weakens adherence to the recognized labor rights listed in elements (a) - (e) (above) as an encouragement for trade or investment. Here again, the concept suggests a Party cannot try to waive its labor laws to encourage investors in a free trade zone for example, but the firmness of the obligation is questionable.

## **Procedural guarantees and public awareness**

Additional substantive obligations under the labor chapters of the NAALC and the FTAs are reflected in articles that describe requirements for procedural guarantees and public awareness. Such obligations found in significant detail in the NAALC, were more abbreviated in the Chile FTA, but were then expanded upon again in CAFTA-DR and the Peru TPA.

These obligations require a Party to provide access to labor justice mechanisms and due process for labor matters that come before tribunals or courts that are fair and impartial. The obligations generally require that proceedings be transparent, subject to review, and that there are remedies for violations of the labor laws. In addition, the Parties are obligated to promote public awareness of their labor laws.

An important clarifying caveat in these obligations is that the decisions of a Party’s administrative or judicial bodies are not subject to revision or reopening under the labor obligations of the FTAs.

## **Institutional Arrangements, Cooperation and Capacity Building, Public Submission and Consultation Mechanisms**

Each agreement contains obligations to establish institutional mechanisms to implement the FTA obligations and articles that provide for cooperative programs and capacity building, and consultations on submissions received from the public. Public submissions are generally related to the relevant dispute settlement process of each agreement. The NAALC has the most elaborate institutional framework for cooperative programs. This requires each Party to establish a National Administrative Office and the three countries to support a Commission for Labor Cooperation (CLC) with a tri-national secretariat.

Initially, the NAALC secretariat was opened in Dallas, but was eventually moved to Washington. The effectiveness of the activities of the Secretariat has been subject to question since its program of work requires consensus of the three NAALC parties, which has been difficult to obtain. There has been no effort to establish a similar secretariat under any subsequent FTA.

Each FTA establishes a Labor Affairs Council (Ministers or their designees), and each Party is generally obligated to identify a point of contact in its Ministry of Labor responsible for the communications with other Parties and the public. The Council is designated under the FTA chapters to meet within the first year of the agreement, and thereafter as determined necessary. The provisions of the labor chapters also allow a Party to appoint a public advisory council to provide views about the operations of the labor chapter.

Some of the key functions under the Council and the national points of contact are the handling of cooperative and capacity building programs under the FTAs. In addition, both the NAALC and the FTAs generally provide for public submissions -- whereby interested members of the public can file a complaint about whether another Party is in violation of its labor obligations. These submissions can potentially attract significant public interest and create controversy between the Parties.

Thus far, even though the NAALC is considered to have weaker obligations than the later FTAs, almost all of the public submissions have come under the NAALC. The only exceptions are two submissions that have been filed under CAFTA-DR. No such submission has been filed under the Chile FTA or Peru TPA.

Each FTA also has articles that provide for cooperative programs and annexes that specify the topics for such cooperative activities. In the case of the CAFTA-DR these provisions also include language referring to “capacity building.” These articles are generally considered to be the basis upon which FTA partner countries can expect the United States to develop technical assistance programs to strengthen the labor law institutions in the FTA partner countries. In the case of the CAFTA-DR, the United States provided substantial levels of funding – unlike under the NAALC or the other FTAs.

## **Dispute settlement and labor obligations**

A key area of focus of the labor obligations under these FTAs has been the applicable dispute settlement regime. The NAALC has long been criticized as having an unworkable dispute settlement mechanism – with many believing it was intentionally designed that way. Under the NAALC, if Ministerial consultations do not resolve an issue of concern, a Party may request the establishment of an Evaluation Committee of Experts (ECE) which is designed as an independent tribunal that will assess and make recommendations with regard to the issue of concern. However, matters involving trade union rights or the right to strike cannot be referred under the terms of the NAALC to an ECE – such matters can only be addressed through Ministerial Consultations without further recourse.

Moreover, based upon the ECE report, a Party can only request a potential arbitral panel if the matter involves occupational safety and health, child labor or enforcement of the minimum wage. There is no definable rationale for this reverse cascade of scope of issues under the steps of dispute settlement, and it is not surprising that this differentiation was not repeated in subsequent labor chapters under U.S. FTAs. For there to be a violation to be found by an arbitral panel, the matter must meet the criteria of being trade-related, covered by mutually-recognize labor laws, and manifest a persistent pattern of a failure to effectively enforce the relevant law.

For any such violation determined by an arbitral panel, the NAALC provides that the Parties should agree on a remediation plan based on the recommendations of the panel of experts. If the Parties cannot do so, the arbitral panel can be asked to do so, and can assess a monetary fee to be dedicated to the remediation up to a formula limit (0.007 of total trade in goods) – and only if the Party fails to dedicate the defined funding towards the recommended remediation plan can the other Party withdraw trade benefits also up to a defined limit. Needless

to say, the time lines and procedures involved are highly complex, and no NAALC submission or complaint has ever gone beyond the level of ministerial consultations (the first phase). Ironically, however, almost all of the public submissions to date have been filed under the NAALC, with no submissions under Chile or Peru, and just two under the CAFTA-DR.

The subsequent FTAs significantly modified the applicable dispute settlement mechanisms for the labor chapters, and made them parallel to the mechanisms for disputes involving other obligations of the FTAs. First, the limitations on the subject of the labor laws that could be subject to dispute settlement was eliminated – although at the same time the scope of the labor laws covered by the labor chapters was narrowed somewhat to the ILO Declaration standards and the GSP labor law obligations. Second, the process was streamlined and the steps involved followed those applicable under the rest of the trade agreement.

In the Chile and CAFTA-DR FTAs there remained a difference in the remedy structure for labor and environment obligations compared to other types of disputes – with the initial remedy being a fine (capped at a limit of \$15 million) to be allocated by the Party in violation to remedy the violation. Only if payment was not made could the complaining Party withdraw trade concessions to an equivalent level (\$15 million maximum). This fine first, trade concession second, mechanism did not apply to other disputes under the FTAs – and this remained an issue of controversy until the May 10, 2007 agreement between the Congress and the Bush Administration committed to eliminate this differential in future FTAs – which is what was done under the Peru TPA.

**Table II.1 Comparative Chart of Labor Obligations**

Agreement	Legal Standards	Definition of labor laws
NAALC	Article 2. Ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light	Article 49 “labor law” means laws and regulations, or provision thereof, that are directly related to: (a) freedom of association and protection of the right to organize; (b) the right to bargain collectively; (c) the right to strike; (d) prohibition of forced labor; (e) labor protections for children and young persons; (f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements; (g) elimination of employment discrimination on the basis of grounds such as race, religion, age sex, or other ground as determined by each Party’s domestic laws; (h) equal pay for men and women; (i) prevention of occupational injuries and illnesses; (j) compensation in cases of occupational injuries and illnesses; (k) protection of migrant workers.
Chile-FTA	Article 18.1.1. The Parties reaffirm their obligations as members of the <i>International Labor Organization</i> (ILO) and their commitments under the <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up</i> (1998). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 18.8 are recognized and protected by its domestic law.	Article 18.8 labor laws means a Party’s statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
CAFTA-DR	Article 16.1.1. The Parties reaffirm their obligations as members of the International Labor Organization (ILO) and their commitments under the <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up</i> (1998)(ILO Declaration). Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 16.8 are recognized and protected by its law.	Article 16.8 labor laws means a Party’s statutes or regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) the right of association; (b) the right to organize and bargain collectively; (c) a prohibition on the use of any form of forced or compulsory labor; (d) a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Peru-TPA	<p>Article 17.2.1 Each Party shall adopt and maintain in its statutes and regulations, and practices thereunder, the following rights, as stated in the <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998)</i> (ILO Declaration):</p> <ul style="list-style-type: none"> <li>a) freedom of association;</li> <li>b) the effective recognition of the right to collective bargaining;</li> <li>c) the elimination of all forms of compulsory or forced labor;</li> <li>d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and</li> <li>e) the elimination of discrimination in respect of employment and occupation.</li> </ul>	<p>Article 17.8 labor laws means a Party's statutes and regulations, or provision thereof, that are directly related to the following internationally recognized labor rights: (a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of forced or compulsory labor; (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors; (e) the elimination of discrimination in respect of employment and occupation; and (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.</p>
<b>Agreement</b>	<b>Enforce Requirements</b>	<b>Access to tribunals and the requirements thereof</b>
NAALC	<p>Article 3. Each Party shall promote compliance with and effectively enforce its labor law through appropriate government action.</p>	<p>Article 4.1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of the Party's labor law.</p> <p>Such tribunals must be fair, equitable, transparent; final decisions are to be in writing, made available without delay, based on presented evidence; have the right of review and correction of the final decision; provide for remedies such as orders, compliance agreements, fines, penalties, imprisonment, injunctions or emergency workplace closures.</p>
Chile-FTA	<p>Article 18.2.1. (a) A Party shall not fail to effectively enforce its labor laws, through 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.</p>	<p>Article 18.3.1. Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to judicial tribunals of general, labor or other specific jurisdiction, quasi-judicial tribunals, or administrative tribunals, as appropriate for the enforcement of the Party's labor laws.</p> <p>Such tribunals must be fair, equitable, transparent, and provide for remedies.</p>



CAFTA-DR	Article 16.2.1. (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.	Article 16.3.1 Each Party shall ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's domestic law. Such tribunals must be fair, equitable, transparent; provide for due process; open to the public; allow for parties to support or defend their positions; are not unduly lengthy; decisions are to be in writing, made available without delay, and based on the evidence presented; right of review and correction of final decisions; availability of remedies such as orders, fines, penalties, or temporary workplace closures, as provided in the Party's laws.
Peru-TPA	Article 17.3.1. (a) A party shall not fail to effectively enforce its labor laws, including those it adopts or maintains in accordance with Article 17.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the parties, after the date of entry into force of this Agreement.	Article 17.4.1. Each Party shall ensure that persons with a legally recognized interest in a particular matter have appropriate access to tribunals for the enforcement of the Party's labor laws. Such tribunals may include administrative, quasi-judicial, judicial, or labor tribunals, as provided in the Party's law. Such tribunals are to be fair, equitable, transparent; provide for due process; open to the public; allow for parties to support or defend their positions; are not unduly lengthy; decisions must be in writing, made available without delay, based on evidence presented; right of review and correction of final decisions; availability of remedies such as orders, fines, penalties, or temporary workplace closures.
<b>Agreement</b>	<b>Promotion of Public Awareness</b>	<b>Labor Council</b>
NAALC	Article 7 Each party shall promote public awareness of its labor law, including by (a) ensuring that public information is available related to its labor law and enforcement and compliance procedures; and (b) promoting public education regarding its labor law.	Article 8.1. Establishes the Commission for Labor cooperation consisting of a council and secretariat. Article 10.1 The Council shall be the governing body of the Commission and shall (a) oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall within four years after the date of entry into force of this Agreement review its operation and effectiveness in the light of experience; The Council is to meet once a year, direct the work of the Secretariat, establish priorities for cooperative action and develop technical assistance programs.

FTA	Article 18.3.5 Each Party shall promote public awareness of its labor laws.	Article 18.4.1 The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the Parties, or their designees. 2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor Cooperation Mechanism established under Article 18.5, and to pursue the labor objectives of this Agreement.
CAFTA-DR	Article 16.3.7. Each Party shall promote public awareness of its labor laws, including by: (a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and (b) encouraging education of the public regarding its labor laws.	Article 16.4.1 The Parties hereby establish a Labor Affairs Council, comprising cabinet-level or equivalent representatives of the parties, or their designees. 2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary to oversee the implementation of and review progress under this Chapter, including the activities of the Labor cooperation and Capacity Building Mechanism established under Article 16.5, and to pursue the labor objectives of this Agreement. 3...the Council shall develop general guidelines for considering such communications. 6. The Council may prepare reports on matters related to the implementation of this Chapter.
Peru-TPA	Article 17.4.7. Each Party shall promote public awareness of its labor laws, including by: (a) ensuring the availability of public information related to its labor laws and enforcement and compliance procedures; and (b) encouraging education of the public regarding its labor laws.	Article 17.5.1. The parties hereby establish a Labor Affairs Council (Council) comprising cabinet-level or equivalent representatives of the Parties, who may be represented on the Council by their deputies or high-level designees. 2. The Council shall meet within the first year after the date of entry into force of this Agreement and thereafter as often as it considers necessary. The Council will oversee the implementation and review of the Chapter; activities of the Labor Cooperation and Capacity Building Mechanism; develop guidelines for communications between Parties; prepare reports related to the implementation of the Chapter; resolve matters arising under the Chapter; and any other agreed upon activities.
<b>Agreement</b>	<b>Labor Cooperation Mechanism</b>	<b>Point of Contact</b>
NAALC	Article 11.1 The Council shall promote cooperative activities between the Parties as appropriate. Article 13.1 The Secretariat shall assist the Council in exercising its functions and shall provide such other support as the Council may direct.	Article 15.1. Each party shall establish a National Administrative Office (NAO) at the federal government level. Article 16.1 Each NAO shall serve as a point of contact with: (a) governmental agencies of that party; (b) NAOs of the other Parties; and (c) the Secretariat. 2. Each NAO shall promptly provide publicly available information as requested by the Secretariat, another Party's NAO, and/or an ECE. The NAO also serves to prepare and make available public communications on issues arising under the chapter.

Chile-FTA	<p>Article 18.5 Establishes a Labor Cooperation Mechanism for the purpose of promoting respect for the principles of the ILO Declaration and other common commitments.</p>	<p>Article 18.4.3. Each party shall designate an office within its labor ministry that shall serve as a point of contact with the other Party, and with the public, for purposes of carrying out the work of the Council.</p> <p>Article 18.4.7. Each Party's point of contact shall provide for the submission, receipt, and consideration of public communications on matters related to this Chapter, and shall make such communication available to the other Party and the public.</p>
CAFTA-DR	<p>Article 16.5.1 Establishes a Labor Cooperation and Capacity Building Mechanism for the purpose of improving labor standards and advancing common commitments regarding labor matters.</p> <p>17.5.2 While endeavoring to strengthen each Party's institutional capacity to fulfill the common goals of the Agreement, the Parties shall strive to ensure that the objectives of the Labor Cooperation and Capacity Building Mechanism, and the activities undertaken through that Mechanism:</p> <ul style="list-style-type: none"> <li>a) are consistent with each party's national programs, development strategies, and priorities;</li> <li>b) provide opportunities for public participation in the development and implementation of such objectives and activities; and</li> <li>c) Take into account each Party's economy, culture, and legal system.</li> </ul>	<p>Article 16.4.3. Each Party shall designate an office within its labor ministry that shall serve as a contact point with the other Parties, and with the public, for purposes of carrying out the work of the Council, including coordination of the Labor Cooperation and Capacity Building Mechanism. Each Party's contact point shall provide for the submission, receipt, and consideration of communications from persons of a Party on matters related to the provisions of this Chapter, and shall make such communications available to the other Parties and, as appropriate, to the public.</p>
Peru-TPA	<p>Article 17.6.1 Establishes a Labor Cooperation and Capacity Building Mechanism for the purpose of improving labor standards and advancing common commitments regarding labor matters.</p> <p>17.6.2 The Parties shall strive to ensure that the activities undertaken through that Mechanism:</p> <ul style="list-style-type: none"> <li>a) are consistent with each Party's national programs, development strategies, and priorities;</li> <li>b) provide opportunities for public participation in the development and implementation of</li> <li>c) such activities; and</li> <li>d) Take into account each Party's economy, culture, and legal system.</li> </ul>	<p>Article 17.5.5. Each Party shall designate an office within its labor ministry or equivalent entity that shall serve as a contact point with the other Parties and with the public. The contact points of each Party shall meet as often as they consider necessary or at the request of the Council. The contact point will serve to assist in the Council's work, including coordinating of the Labor Cooperation and Capacity Building Mechanism; provide for the submission, receipt and consideration of communications from the other Party on matters arising under the Chapter; provide for the receipt of cooperative consultations; and coordinate with the other Party's point of contact as well as the relevant government organizations and agencies to:</p> <p>Article 17.5.5.(b)</p> <ul style="list-style-type: none"> <li>i. establish priorities, with a particular emphasis on the issues identified in paragraph 2 of Annex 17.6, regarding cooperative activities on labor matters,</li> <li>ii. develop specific cooperative and capacity-building activities according to such priorities</li> <li>iii. exchange information on the labor laws and practices of each</li> </ul>

					iv. Party, including best practices and ways to improve them, and seek support, as appropriate, from international organizations such as the ILO, the Inter-American Development Bank, the World Bank, and the Organization of American States, to advance common commitments regarding labor matters.			
Agreement	Dispute Settlement							
NAALC	Article 21: Consultations between NAOs  Used for clarification of issues of a “Party’s labor law, its administration, or labor market conditions in its territory”	Article 22: Ministerial Consultations  Allowed for any matter under the scope of the agreement	Article 23-26: Evaluation Committee of Experts (ECE)  Review by the ECE for issues relevant to enforcement of occupation safety and health or other technical labor standards	Article 27: Consultations  Bi-lateral consultations on issues of enforcement of occupational safety and health, child labor or minimum wage technical standards	Article 28: Invitation of Procedures  Review by a special session of the Council	Article 29: Arbitral Panel  For issues relating to trade and covered by mutually recognized labor laws	Article 38: Implementatio n of Final Report	Article 39.5 “Where a panel has been reconvened under paragraph 1(b), it shall determine either that: (b) the Party complained against is not fully implementing the action plan, in which case the panel shall impose a monetary enforcement assessment in accordance with Annex 39” Annex 39 provides that monetary enforcement shall be no greater than .007 percent of total trade in goods between the Parties.
Chile-FTA	Article 18.6.1 Bilateral Consultations	Article 18.6.4-5 Review by the Council	Article 18.6.6-8 For matters arising under failure to enforce [Article 18.2. (1)(a)] recourse can be sought under the dispute settlement ch. 22	Article 22.16.1-2 In the case of lack of enforcement of labor laws, when an agreement has not been reached within 45 days, or a Party has failed to meet the terms of the settlement agreement, a monetary assessment can be made against the aggravating Party. This assessment may not exceed \$15 million annually, as adjusted for inflation.			Article 22.16.5 If the monetary assessment is not paid, tariff benefits under the Agreement may be suspended as necessary to collect the assessment.	
CAFTA-DR	Article 16.6.1-3 Bilateral	Article 16.6.4-5 Review by the	Article 16.6.6-8 For matters arising	Article 20.17.1-2 In the case of a lack of enforcement of labor laws, when an agreement has not been reached			Article 20.17.5 If the monetary assessment	

	Consultations	Council	under failure to enforce [Article 16.2.(1)(a)] recourse can be sought under the dispute settlement ch. 20	within 45 days, or a Party has failed to meet the terms of the settlement agreement, a monetary assessment can be made against the aggravating Party. This assessment may not exceed \$15 million annually, as adjusted for inflation.	is not paid, tariff benefits under the Agreement may be suspended as necessary to collect the assessment.
Peru-TPA	Article 17.7.1-3 Bilateral Consultations	Article 17.7.4-5 Review by the Council	Article 17.7.6 Recourse under dispute settlement ch. 21	Article 21.16.1 If after 45 days of an arbitral panel final report an agreement is not reached, the Parties shall enter into negotiations to develop a mutually acceptable compensation agreement.	Article 21.16.2 If a compensation amount has not been settled in 30 days or the aggravating Party has not fully complied with the compensation agreement; the Complaining Party may then suspend the application of benefits under the Agreement to equivalent effect of the compensation agreement.

### **III. The North American Agreement on Labor Cooperation**

#### **Labor Obligations under the NAALC**

The North American Agreement on Labor Cooperation (NAALC) was signed September 14, 1993 and took effect on January 1, 1994 on the same date as the North American Free Trade Agreement (NAFTA). The NAFTA itself had been signed on December 17, 1992, but it became an issue in the U.S. Presidential election campaign of 1992, with then incoming President William Clinton committing to negotiate labor and environment agreements to accompany the NAFTA before he would support its approval by the U.S. Congress. The result of this commitment was the NAALC and a related environmental agreement.

As discussed above the NAALC structure has not been utilized in the context of any subsequent free trade agreements, however, the language and concepts of the NAALC have shaped much of the labor chapters of subsequent FTAs. The NAALC has been both criticized for its dispute settlement provisions that are considered procedurally unworkable, while at the same time cited as having other more positive elements – such as covering a broader scope of labor laws, including protections for migrant workers.

The stated obligation of the NAALC, as to levels of protection, is that each Party “shall ensure that its labor laws and regulations provide for high labor standards, consistent with high quality and productivity workplaces, and shall continue to strive to improve those standards in that light”.

Parties are obligated to promote compliance through effective enforcement of labor laws. The obligations also require that a Party provide for legal mechanisms for a private party to seek enforcement of labor laws, and that there be procedural protections under such mechanisms. These elements along with other transparency provisions reflected a U.S. concern that Mexico’s rule of law had clear inadequacies and that the NAALC should address those. Mexico’s focus in the development of the document was to assure that it maintained sovereignty over the development and application of its own labor laws.

In that regard, there was no reference to ILO or international standards in the NAALC. This also served U.S. and Canadian interests, because as federal states both countries had an uneven and problematic constitutional structure when it comes to ILO conventions and obligations. But subsequent FTA labor chapters, with U.S. support, would include reference to

the elements of the ILO's 1998 Declaration on Fundamental Principles and Rights, which even eventually became floor obligations under such labor chapters.

The NAALC provides, under Article 49, that the obligations of the agreement go to eleven areas of labor law. The most notable area for obligations which is not included in the later FTA labor chapters is the area of protection of migrant workers, an obvious area of concern for Mexico. The eleven areas are as follows:

- a) freedom of association and protection of the right to organize;
- b) the right to bargain collectively;
- c) the right to strike;
- d) prohibition of forced labor;
- e) labor protections for children and young person's;
- f) minimum employment standards, such as minimum wages and overtime pay, covering wage earners, including those not covered by collective agreements;
- g) elimination of employment discrimination on the basis of grounds such as race, religion, age, sex or other grounds as determined by each Party's domestic laws;
- h) equal pay for men and women;
- i) prevention of occupational injuries and illnesses;
- j) compensation in cases of occupational injuries and illnesses;
- k) Protection of migrant workers.

Despite the overall commitment to enforce those laws relevant to the above standards, only issues presenting a persistent failure to enforce laws relating to occupational safety and health, child labor or the minimum wage that have been determined to affect trade between the Parties can be brought before an arbitral panel and result in sanctions under dispute settlement proceedings. As the NAALC exists separately from the NAFTA, it contains its own dispute settlement provisions system. In the instance that a case is taken through all stages of the dispute process and there has been a failure to implement the agreed upon remedy plan, a monetary assessment (to be no greater than .007 percent of total trade in goods between parties) can be levied. Suspension of trade benefits under NAFTA can take place if the monetary assessment is not paid and only to the amount which is owed.

## **NAALC Institutions**

The Commission for Labor Cooperation (CLC) consists of a Ministerial Council and a Secretariat. The Ministerial Council serves to “oversee the implementation and develop recommendations on the further elaboration” of the NAALC. The Council also acts as the governing body and directs cooperative activities between Parties.

The NAALC stipulates that the Council will consist of the Labor Ministers of the Parties, or their designees, and meet at least once a year. The Agreement requires that “all decisions and recommendations of the Council shall be taken by consensus” except as may be otherwise agreed.

Acting under the direction of the Council is the Secretariat. Its purpose is to assist the Council in its operations, prepare annual reports of activities and background reports on related topics. The Secretariat is overseen by an Executive Director who serves a three year term and is rotated consecutively between nationals of the member Parties. Each year the Secretariat is to report to the Council of its annual activities as well as submit a plan of activities and a budget to the Council for approval.

The primary function of the Secretariat is to produce reports and studies. Background reports are to cover:

- a) labor law and administrative procedures;
- b) trends and administrative strategies related to the implementation and enforcement of labor law;
- c) Labor market conditions such as employment rates, average wages and labor productivity; and human resource development issues such as training and adjustment programs.

The Secretariat also is to conduct studies as directed by the Council. Any reports or studies must be submitted to the Council for review and approval prior to being made public, which must take place 45 days after approval by the Council. The Secretariat has published eighteen such reports and studies since its initiation. See Table 3.1. Some reports, such as on North American Labor markets, are continuing projects with multiple releases. After a fairly steady process of releasing publications between 1997 and 2007, nothing has been published in the last three years. It is notable that the Secretariat has not released an annual report since the four year review conducted for 2004-2007.



The budget of the Secretariat was funded by the three NAALC nations at a robust level of almost \$2 million per year allowing for a staff of 15 persons. Initially located in Dallas, the Secretariat was relocated to Washington, D.C. Because of financial and professional mismanagement and declining perceived value, the Secretariat office was actually closed in August 2010. The three countries releases a statement about the closure suggesting it is temporary and that the three countries would work on restructuring its operations. See Box III.1

**Box III.1 Statement of the Council on the Secretariat of the Commission for Labor Cooperation of the North American Agreement on Labor Cooperation**

Effective August 20, 2010, the office of the Secretariat of the Commission for Labor Cooperation in Washington, D.C., will be closed temporarily as part of broader discussions among the Parties to improve the implementation of the North American Agreement on Labor Cooperation (NAALC). These discussions derive from the Joint Statement from the 2009 North American Leaders' Summit, which seeks "to promote respect for labor rights and protection of the environment with a continuing dialogue to address the functioning of the Labor and Environmental side agreements."

The Parties have agreed to work together directly on labor issues of mutual interest through exchanges, cooperative activities, and other mechanisms envisioned in the NAALC. These efforts will be coordinated through the National Administrative Offices (NAOs) in Canada, Mexico, and the United States, who will act jointly in the role of the Executive Directorate of the Secretariat. Furthermore, the NAOs will ensure that all relevant information on the implementation of the NAALC remains available to the public through the Secretariat's web site, which shall continue to be on-line and updated on a regular basis.

The consultations on the Secretariat will take place over the next six months, with the goal of establishing a consensus approach to improving the functioning of the Secretariat as well as to ensure that the organization can more effectively and efficiently fulfill its obligations under the NAALC. The Council has directed the three NAOs to provide a report not later than February 21, 2011 with recommendations as to the form and nature of the operations of the Secretariat.

**Table III.1 NAALC Publications**

<b>Year Published</b>	<b>Study</b>
1997	Comparative Labor Market Study
1997	Plant Closing and Labor Rights
2000	Labor Relations Law in North America
2000	Standard and Advanced Practices in the Garment Industry
2000	Income Security Programs
2002	North American Labor Markets: Main Changes since NAFTA
2002	Protection of Migrant Agricultural Workers in Canada, Mexico and the United States
2003	The Rights of Nonstandard Workers: A North American Guide
2004	Guide to Labor and Employment Laws for Migrant Workers in North America
2004	North American Labor Markets: A Graphical Portrait
2004	Benefits in North America
2004	Workplace Injuries and Illnesses in North America
2004	Labor Force Educational Attainment in North America
2004	Employment Rates and Demographic Trends in North America
2006	Violence at Work in North America
2007	High Performance Work Systems in North America
2007	North American Labor Markets, Third Edition
2007	Workplace Anti-Discrimination and Equal Pay Laws

Source: NAALC Four Year Review and Annual Reports 1999-2007

With the direction of the Council, 88 cooperative activities have been conducted under the auspices of the NAALC. Many of these activities happened in the early years of the agreement and have since tapered off in frequency, with only five taking place since 2005. This pattern reflected the declining professional role of the Secretariat which led to its closure in August 2010. The locations and topics vary widely and some, such as the National Occupational Safety and Health Week, occur regularly. Thirty-seven of these activities have addressed occupational safety and health issues.

**Table III.2 NAALC Cooperative Activities**

<b>Date</b>	<b>Activity</b>	<b>Location</b>
<b>February 1994</b>	Training course on Sampling and Laboratory Analysis of Airborne Contaminants	Mexico City
<b>February 1994</b>	Course on Principles of Ergonomics	Mexicali, Mexico
<b>March 1994</b>	Training course on The use of Synthetic Fibers in the Workplace	
<b>April 1994</b>	Training course on Air Sampling Equipment	Mexico City
<b>June 1994</b>	Technical seminar on Microenterprises and the Informal Sector	Mexico City
<b>June 1994</b>	Technical Seminar on Safety and Health in the Electronics Industry	Albuquerque, New Mexico
<b>June 1994</b>	Course on Biohazards	Mexico City
<b>June 1994</b>	Workshop on Labor Law and Practice	San Diego, CA
<b>August 1994</b>	Training session on Safety and Health in the Construction Industry	Monterrey, Nuevo Leon
<b>August 1994</b>	Training course on Industrial Hygiene	Guadalajara, Mexico
<b>September 1994</b>	Seminar on Occupational Safety and Health Statistics	Mexico City
<b>September 1994</b>	Training course on Accident Inspections	Monterrey, Nuevo Leon
<b>September 1994</b>	Training course on Hazard Recognition for Industrial Hygienists	Guadalajara, Mexico
<b>September 1994</b>	Technical Seminar on Safety and Health in the Construction Industry	Mexico City
<b>September 1994</b>	Conference on Labor Law and Industrial Relations	Washington, D.C.
<b>October 1994</b>	Workshop on Productivity Trends and Indicators	Mexico City
<b>November 1994</b>	Technical Seminar on Safety and Health in the Petrochemical Industry	Edmonton, Canada
<b>March 1995</b>	Government-to-government workshop on Labor Law and Freedom of Association	Washington, D.C.
<b>June 1995</b>	Annual Meeting of Senior occupation Safety and Health Officials in Canada	Vancouver, Canada
<b>June 1995</b>	Workshop on Equality Issues in the Workplace	Mexico City
<b>July 1995</b>	Familiarization Seminar on OSH	Mexico City
<b>September 1995</b>	Follow-up workshop on The Right to Organize and Freedom of Association	Washington, D.C.
<b>November 1995</b>	Construction Study Tour	Dallas, Texas
<b>March 1996</b>	“Occupational Safety and Health Planning Session”	Mexico City
<b>March 1996</b>	Canada-USA-Mexico tripartite conference on Industrial Relations for the 21 <sup>st</sup> Century	Montreal, Canada
<b>April 1996</b>	Workshop on Continuous Learning and Development in the Workplace	Dallas, Texas
<b>July 1996</b>	Government-to-Government Planning Session on: Child Labor Conference in Agriculture and Garment Industries	Washington, D.C.
<b>October 1996</b>	Workshop on Income Security Programs	Ottawa, Canada
<b>October 1996</b>	NAALC Petrochemical Study Tour on Preventing Catastrophic Explosions in the Petrochemical Industry in North America	Orlando, Florida
<b>November 1996</b>	Tripartite seminar on Responding to the Growth of Non-Standard Work and Changing Work Time Patterns and Practices	Ottawa, Canada

Date	Activity	Location
<b>February 1997</b>	International conference on Improving Children's Lives: Child and Youth Labor in North America	San Diego, CA
<b>February 1997</b>	1997 North American Seminar on Incomes and Productivity (Secretariat)	Dallas, Texas
<b>April 1997</b>	Tri-national conference on Women and Work in the 21 <sup>st</sup> Century	Queretaro, Mexico
<b>June 1997</b>	1997 North American OSH Week	
<b>October 1997</b>	Follow-up conference on Protecting Working Children in North America: A Shared Responsibility	Ottawa, Canada
<b>February 1998</b>	1998 North American Seminar on Incomes and Productivity (Secretariat)	Dallas, Texas
<b>April 1998</b>	Seminar on Labor Market Trends and the Role of Governments	Guadalajara, Mexico
<b>May 1998</b>	1998 North American OSH Week	
<b>October 1998</b>	International Conference on Labor-Management Relations in North American Multinationals: Legal, Cultural and Economic Environments	Washington, D.C.
<b>December 1998</b>	Labor management conference on Contracting Out, Outsourcing: new Forms of Work, New Employment Relationships	Canada
<b>March 1999</b>	Tri-national Conference on Protecting the Labor Rights of Working Women	Merida, Yucatan
<b>May 1999</b>	1999 North American OSH Week	
<b>May 1999</b>	International Conference on Safety and Health on the Job	Monterrey, Nuevo Leon
<b>June 1999</b>	International Conference on Safety and Health in the Bottling Industry	Mexico City
<b>August 1999</b>	Outreach Session: Women in the Workplace: Know Your Rights!	McAllen, Texas and Reynosa, Tamaulipas
<b>September 1999</b>	International Conference on the Future Culture of Mining Safety and Health in North America	Winnipeg, Manitoba
<b>February 2000</b>	International Conference on Agricultural Migrant Labor in North America	Los Angeles, California
<b>May 2000</b>	2000 North American OSH Week	
<b>May 2000</b>	Outreach Session on the Protection of the Labor Rights of Women in North America	Puebla, Puebla
<b>June 2000</b>	International Seminar on Freedom of Association in Mexico	Tijuana, Baja California
<b>July 2000</b>	Outreach Session: Women Farm Workers, Know Your Rights!	Yakima, Washington
<b>February 2001</b>	Workshop on the Right to Organize and Bargain Collectively in Canada and the United States	Toronto, Canada
<b>May 2001</b>	2001 North American OSH Week	Mexico City
<b>May 2001</b>	The Application of U.S. Labor Law to Migrant Agricultural Worker Issues	Washington, D.C. and Mexico City
<b>August 2001</b>	Public Forum on Promoting Dialogue among Migrant Agriculture Workers, Growers and Government Officials	Yakima, Washington
<b>October 2001</b>	Symposium on Industrial Safety and Health	Mexico City
<b>November 2001</b>	Tri-national Conference on Violence as a Workplace Risk	Montreal, Canada
<b>February 2002</b>	Program of Technical cooperation on Workforce Development	Several U.S. cities
<b>June 2002</b>	Migrant and Immigrant Worker Forum	Augusta, Maine
<b>June 2002</b>	Program of Technical Cooperation on Workforce Development	Mexico City
<b>July 2002</b>	Tri-national Working Group on Occupational Safety and Health	Mexico City
<b>October 2002</b>	Tri-national Working Group on Occupational Safety and Health	San Diego, California
<b>March 2003</b>	Technical Workshop on Safety and Health Management Systems and Voluntary Protection	Ciudad Juárez, Chihuahua and El

Date	Activity	Location
	Programs	Paso, Texas
<b>March 2003</b>	Trilateral Seminar on Labor Boards in North America	Monterrey, Nuevo Leon
<b>May 2003</b>	2003 North American OSH Week	
<b>June 2003</b>	Technical Seminar on Safety and Health in the Manufacturing Industry	Mexico City
<b>June 2003</b>	Workshop on the Standard Occupational Classification of the United States	Mexico City
<b>August 2003</b>	OSHA Training Workshop	Mexico City
<b>August 2003</b>	Seminar on Linking Job Skills and Education in North America	Mexico City
<b>August 2003</b>	Third Meeting of the Tri-national Occupational Safety and Health Working Group	Mexico City
<b>August 2003</b>	Workshop on U.S.-Mexico Cooperation Regarding the Labor Rights of Migrant Workers	Mexico City
<b>August 2003</b>	Workshop on Chemical Hazard Awareness	Mexico City
<b>August 2003</b>	Seminar on Best Practices in the Construction Industry	Mexico City
<b>February 2004</b>	Seminar on Incomes and Productivity in North America	
<b>April 2004</b>	Fourth Meeting of the Tri-National Working Group of Government Experts on Occupational Safety and Health	Toronto, Canada
<b>August 2004</b>	Training Courses for Technical Assistance Staff and Inspectors	Mexico
<b>September 2004</b>	Tri-national Workshop for the Recognition Program of Excellence in Occupational Safety & health	Mexico
<b>September 2004</b>	Fifth Meeting of the Tri-national Working Group of Government Experts on Workplace Safety and Health	New Orleans, Louisiana
<b>September 2004</b>	Supporting Economic Growth Through Effective Employment Services	Cancun, Mexico
<b>July 2004</b>	Meeting of Officials of the U.S. Bureau of Labor Statistics and the Office of Employment and Labor Policy of the Ministry of Labor and Social Welfare of Mexico	Mexico City
<b>October 2004</b>	Fourth Seminar on Incomes and Productivity in North America	Washington, D.C.
<b>November 2004</b>	Seminar on Workplace Discrimination and the Law in North America	Washington, D.C.
<b>December 2004</b>	NAALC Conference on Trafficking in Persons in North America	Washington, D.C.
<b>March 2005</b>	Tri-national Conference on the Labor Dimensions of Corporate Social Responsibility in North America	Ottawa, Canada
<b>September 2005</b>	Sixth Meeting of Tri-national Working Group of Government Experts in Security, Health and Labor Environment	Orlando, Florida
<b>November 2006</b>	Labor Market Interdependence in North America: Challenges and Opportunities of an Aging Population	Mexico City
<b>October 2007</b>	Tri-national Government Experts Workshop on the Role of Labor Ministries in the Effective Promotion of Mine Safety and Health in North America	Guadalajara, Mexico
<b>December 2008</b>	Youth Employment Seminar	Mexico City

Source: NAALC Four Year Review and Annual Reports 1999-2007

Since 1994, thirty-seven cases have been brought to the Parties pursuant to the public submission process under Article 16 of the NAALC. Of these, ten were not accepted for review and four were withdrawn. Fifteen cases were referred for ministerial consultations, both bi- and tri-lateral. See Table III.3

Most of the cases, some 26, raised the issue of freedom of association and the right to organize. Approximately two-thirds of the Submissions were brought during the early years of the NAALCs operations, between 1994 and 2000. One-third of the Submissions were filed during the past decade. No Submission has been filed in the United States or Mexico since 2006, and the last one in Canada was 2008.

With regard to the disposition of the submissions, of the cases considered during the 1990s some 15 resulted in Ministerial Consultation agreements. For the Submissions filed during the last decade there were only two Ministerial Consultation Agreements and it appears that some of the most recent cases may not have been formally resolved.

**Table III.3 NAALC Publications and Results, 1994-2008**

<b>Recipient NAO and Case Number</b>	<b>About</b>	<b>Issue/ Principle</b>	<b>NAO's Decision</b>	<b>Current Status</b>	<b>Follow-up Activities</b>
NAO 1994-01	Mexico	Freedom of association	Accepted for review	File closed at step 2	Ministerial consultations not recommended Seminar (same as US NAO 1994-01 below).
U.S. NAO 1994-02	Mexico	Freedom of association	Accepted for review	File closed at step 2	Ministerial consultations not recommended Seminar.
U.S. NAO 1994-03	Mexico	Freedom of association	Accepted for review	Ministerial consultations led to an Agreement on Implementation.  File closed at step 3.	Three public seminars on union registration Officials met with private parties involved. Study by Mexican experts.
U.S. NAO 1994-04	Mexico	Freedom of association	Accepted for review	Submission withdrawn before completion of the review to protest against the alleged "inefficiency of the NAALC procedures". File closed at step 1.	
Mexican NAO 1995-01	U.S.	Freedom of association	Accepted for review	Ministerial Consultations led to an Agreement on Implementation.  File closed at Step 3	Public Forum. Secretariat special study.  Information by U.S. Labor Secretary on the case before domestic authorities.
U.S. NAO 1996-01	Mexico	Freedom of association	Accepted for review	Ministerial consultations led to an Agreement on Implementation.  File closed at step 3.	Public seminar on International Treaties and Labor Law.  Exchange of public information and labor legislation between the NAOs.
U.S. NAO 1996-02	Mexico	Freedom of association	Accepted for review	Subsequently withdrawn  File closed at step 1	

Recipient NAO and Case Number	About	Issue/ Principle	NAO's Decision	Current Status	Follow-up Activities
U.S. NAO 1997-01	Mexico	Elimination of employment discrimination	Accepted for review	Ministerial consultations led to an Agreement on Implementation.  File closed at step 3.	Government to government meeting (Nov. 1998). Conference on the Rights of Working Women in North America (Mar. 1999). Four Outreach sessions on Rights of women workers (Aug. 1999 & May 2000). Secretariat Report.
U.S. NAO 1997-02	Mexico	Freedom of association and prevention of occupational injuries/illnesses	Accepted for review	Ministerial consultations led to a Joint Declaration  File closed at step 3.	Mexican government to promote registration of collective agreements, eligible voter lists and secret ballot elections. Public seminar to promote the principles of freedom of association and the right to bargain collectively (June 2000). Working Group of Government Experts on Occupational Health and Safety Trilateral Seminar on Labor Boards (Mar. 2003). U.S.-Mexico cooperation on health and safety information.
U.S. NAO 1997-03	Mexico	Freedom of association, right to bargain collectively, and prevention of occupational injuries/illnesses	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3?	Mexican government to promote registration of collective agreements, eligible voter lists and secret ballot elections. Public seminar to promote the principles of freedom of association and the right to bargain collectively (June 2000). Working Group of Government Experts on Occupational Health and Safety Trilateral seminar on labor boards (Mar 2003). U.S.-Mexico cooperation on health and safety information.
U.S. NAO 1998-01	Mexico	Right to strike	Not accepted for review	File closed at step 1	
U.S. NAO 1998-02	Mexico	Labor protections for children/youth	Not accepted for review	File closed at step 1	



<b>Recipient NAO and Case Number</b>	<b>About</b>	<b>Issue/ Principle</b>	<b>NAO's Decision</b>	<b>Current Status</b>	<b>Follow-up Activities</b>
U.S. NAO 1998-03	Canada	Freedom of association and right to bargain collectively	Accepted for review	Subsequently withdrawn.  File closed at step 2	Officials from Quebec and the U.S. met with union representatives.
U.S. NAO 1998-04	Canada	Freedom of association, right to bargain collectively, elimination of employment discrimination, prevention of occupational injuries/illnesses, and compensation in cases of occupational injuries/illnesses	Not accepted for review	File closed at step 1.	
Mexican NAO 1998-01	U.S.	Freedom of association, right to bargain collectively, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries/illnesses, and compensation in cases of occupational injuries/illnesses	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3?	Government to government meetings (May 2001).  Public outreach sessions organized by DOL to address the topic of agricultural migrant workers (Public forum Aug. 2001, Meeting June 2002) Secretariat guide
Mexican NAO 1998-02	U.S.	Freedom of association, right to bargain collectively, minimum employment standards, prevention of occupational injuries/illnesses, and protection of migrant workers	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3?	Government to government meetings (May 2001). Public outreach sessions organized by DOL (Public forum Aug. 2001, Meeting June 2002). Public forums on migrant agricultural workers in the U.S. Secretariat guide.

Recipient NAO and Case Number	About	Issue/ Principle	NAO's Decision	Current Status	Follow-up Activities
Mexican NAO 1998-03	U.S.	Minimum employment standards, elimination of employment discrimination, prevention of occupational injuries/illnesses, compensation in cases of occupational injuries/illnesses, protection of migrant workers	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3?	Public forums on migrant workers in the U.S. (Aug. 2001).  Secretariat guide Government to government meetings (May 2001).  Public outreach sessions organized by DOL (Meeting June 2002).
Mexican NAO 1998-04	U.S.	Minimum employment standards and protection of migrant workers	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3.	Commitment by U.S. to produce Spanish-language educational material for workers U.S.-Mexico commitment to collaborate on protection of migrant workers' rights in U.S. Working Group of Government Experts on Occupational Health and Safety (July 2002).
Canadian NAO 1998-01	Mexico	Freedom of association and prevention of occupational injuries/illnesses	Accepted for review	Ministerial consultations concluded.  File closed at step 3.	Canada to participate in the Working Group of Government Experts on Occupational Safety and Health.
Canadian NAO 1998-02	U.S.	Minimum employment standards and protection of migrant workers	Not accepted for review	File closed at step 1.	New Memorandum of Understanding between INS and DOL issued.
U.S. NAO 1999-01	Mexico	Freedom of association, right to bargain collectively, minimum employment standards, and prevention of occupational injuries/illnesses	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3?	Bilateral working group of Government experts on workplace health and safety (July 2002). Government to government exchange of information about unions and rights of association and organization (Mar 2003) Trilateral seminar (Mar 2003).
Canadian NAO 1999-01	U.S.	Freedom of association	Not accepted for review	File closed at step 1	

<b>Recipient NAO and Case Number</b>	<b>About</b>	<b>Issue/ Principle</b>	<b>NAO's Decision</b>	<b>Current Status</b>	<b>Follow-up Activities</b>
U.S. NAO 2000-01	Mexico	Prevention of occupational injuries/illnesses and compensation in cases of occupational injuries/illnesses,	Accepted for review	Ministerial consultations led to a Joint Declaration.  File closed at step 3?	Bilateral working group of Government experts on workplace health and safety (July 2002).
U.S. NAO 2001-01	Mexico	Freedom of association and right to bargain collectively	Not accepted for review	File closed at step 1.	
Mexican NAO 2001-01	U.S.	Prevention of occupational injuries/illnesses, compensation in cases of occupational injuries/illnesses, and protection of migrant workers	Accepted for review	File closed at step 2?	First report of review (2002) recommended more NAO consultations, second report of review (2004) recommended ministerial consultations. Mexico formally requested ministerial consultations (2004). U.S. DOL recommended that consultations remain on NAO or CD level given that New York State authorities had undertaken initiatives to remedy the problems.
U.S. NAO 2003-01	Mexico	Freedom of association and right to bargain collectively, minimum employment standards, and prevention of occupational injuries/illnesses	Accepted for review	Trilateral ministerial consultations.  File closed at step 3?	Trilateral government to government sessions held in Puebla, MX (Dec. 2008). Seminar held with other relevant parties to share information from trilateral sessions (Dec. 2008). Fed-State Seminar pending to be held in 2009. Publication on labor laws, rules and procedures of freedom of association and collective bargaining, as well as implementation strategies, pending.

Recipient NAO and Case Number	About	Issue/ Principle	NAO's Decision	Current Status	Follow-up Activities
Mexican NAO 2003-01	U.S.	Freedom of association, right to bargain collectively, right to strike, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries/illnesses, compensation in cases of occupational injuries/illnesses, and protection of migrant workers	Accepted for review	File closed at step 2?	No Report of Review issued. DOL and Mexico's Foreign Relations Secretariat signed Joint Declaration and two Letters of Agreement.
Canadian NAO 2003-01	Mexico	Freedom of association and right to bargain collectively, minimum employment standards, and prevention of occupational injuries/illnesses	Accepted for review	Trilateral ministerial consultations.  File closed at step 3?	Seminar to be held in 2009. Seminar held with other relevant parties to share information from trilateral sessions (Dec. 2008). Fed-State Seminar pending, to be held in 2009. Publication on labor laws, rules and procedures of freedom of association and collective bargaining, as well as implementation strategies, pending.
U.S. NAO 2004-01	Mexico	Minimum employment standards and prevention of occupational injuries/illnesses	Accepted for review	Subsequently withdrawn.  File closed	
U.S. NAO 2005-01	Mexico	Freedom of association, right to bargain collectively, and right to strike	Not accepted for review	File closed at step 1.	
U.S. NAO 2005-02	Mexico	Freedom of association and right to bargain collectively	Not accepted for review	File closed at step 1.	

Recipient NAO and Case Number	About	Issue/ Principle	NAO's Decision	Current Status	Follow-up Activities
U.S. NAO 2005-02	Mexico	Freedom of association, right to bargain collectively, right to strike, prohibition of forced labor, labor protections for children/youth, minimum employment standards, elimination of employment discrimination, prevention of occupational injuries/illnesses, and compensation in cases of occupational injuries/illnesses,	Accepted for review	Case pending at step 2?	Public Report of Review issued Aug. 2007 recommended ministerial consultations.
Mexican NAO 2005-01	U.S.	Prohibition of forced labor, minimum employment standards, elimination of employment discrimination, equal pay for men and women, prevention of occupational injuries/illnesses, compensation in cases of occupational injuries/illnesses, and protection of migrant workers	Accepted for review	Pending	Mexican NAO preparing a Public Report of Review, pending.
Canadian NAO 2005-01	Mexico	Freedom of association and right to bargain collectively	Not accepted for review	File closed at step 1.	

<b>Recipient NAO and Case Number</b>	<b>About</b>	<b>Issue/ Principle</b>	<b>NAO's Decision</b>	<b>Current Status</b>	<b>Follow-up Activities</b>
U.S. NAO 2006-01	Mexico	Freedom of association and prevention of occupational injuries/illnesses	Not accepted for review	File closed at step 1.	
Mexican NAO 2006-01	U.S.	Freedom of association, right to bargain collectively, minimum employment standards, elimination of employment discrimination, equal pay for men & women, prevention of occupational injuries/illnesses, and compensation in cases of occupational injuries/illnesses,	Accepted for review	Pending	Mexican NAO preparing a Public Report of Review, pending.
Canadian NAO 2008-01		Right to bargain collectively	Accepted for review	Pending	Canadian NAO preparing a Public Report of Review, pending.

Source: NAALC Public Communications and Results, 1994-2008. [www.naalc.org](http://www.naalc.org)

## **Labor Law Developments in Mexico**

The labor law regime in Mexico is established under the 1917 Constitution of Mexico and the 1970 Federal Labor Law.

The Secretariat of Labor and Social Welfare (STPS) oversees the management and implementation of labor laws and regulations. The main divisions of STPS are:

- The Federal Board of Conciliation and Arbitration
- The Secretariat of Labour
- The Secretariat on Employment and Labour Productivity
- The Secretariat for Inclusion
- The Administrative office

The Federal Board of Conciliation and Arbitration houses the Federal Labor Court system, with its administrative functions and budgets overseen by the Ministry of Labor. There are also State labor law authorities.

Since the signing of the NAALC, Mexico has undergone some changes to its labor law. Many of these changes have addressed areas of occupational safety and health. On the other hand, there seem to be some longstanding concerns involving the legal framework for trade union rights, including that for state employees, and the protection of women workers in export processing zones, that have remain unaddressed. There is also no record of major reforms in the labor justice system, and concerns remain that there are inadequate judicial remedies to challenge government actions, including decisions involving the registration of unions and the existence of protection contracts and exclusion clauses.

There was a 2001 amendment to Article 1 of the Constitution of Mexico that prohibits any discrimination “on grounds of ethnic or national origin, gender, age, differences in capacities, social situation, health condition, religion, opinion, preference, civil status or any other characteristic prejudicial to human dignity and which is for the purpose of nullifying or prejudicing the rights and freedoms of the individual”.

On the other hand, the issue of discrimination for pregnancy testing in export processing zones has been an issue of concern for many years. It was the topic of a public submission and a Ministerial Consultation agreement under the NAALC in 1997, and it has remained an issue before the ILO.

For many years, the ILO has noted that subjecting women to pregnancy discrimination in export processing zones was a problem with regard to Mexico's compliance with obligations under Convention 111 on anti-discrimination in employment, and the lack of effective governmental action taken to prevent it.

Notably, the Government of Mexico submitted to the ILO that measures to combat the alleged discriminatory employment practices against women in export processing zones were, inter alia, based upon the ministerial consultations agreement adopted in the framework of the NAALC in a ministerial meeting in November 1998, in a seminar held in August 1999 on "Employment Rights and the Protection of Women Workers in Mexico" and in a Trilateral Conference on "The Rights of Women Workers in North America: Protection of Women at the Workplace" in March 1999. The ILO determined that despite these developments discriminatory practices against women workers in export processing zones continues to occur up until the present time and legal reforms and effective enforcement actions have still not been taken.

By 2002, the Ministry of Labour and Social Insurance and the Chairperson of the National Council of the Maquiladora Export Industry (CNIME) signed an agreement to improve women's working conditions in the maquila industry, and amendments to the Federal Labour Act were drafted in order expressly to prohibit discrimination based on sex and maternity. In March 2006 Regulations on employment agencies had been adopted which expressly prohibited discrimination on grounds of sex, pregnancy, and ethnic origin, but the amendments to the Federal Labor Act to prohibit discrimination based on sex and maternity in recruitment and employment have still not been passed. Similarly, proposals to amend the Federal Labor Act to effectively sanction instances of illegal sexual harassment in the workplace had not been put into law.

At the same time, there has been long standing concerns reported by the ILO about trade union monopolies in government agencies pursuant to the Federal Act on State Employees, exclusion clauses providing that if workers leave a union they lose their jobs, and restrictions on the right to strike.

Although the Supreme Court issued a ruling in 2008 that secret ballot elections are required when two or more unions compete to organize workers at an enterprise, it has not been made evident that government authorities have implemented the ruling and workers must declare their vote publicly.



The Government of Mexico takes the position that freedom of association is guaranteed to State employees by article 123(X) (B), of the Constitution and that Ruling No. 43/1999 issued by the Supreme Court of Justice upholds the right of workers to resign from a union. Meanwhile, Mexico has had three legislative proposals pending that would amend the Political Constitution, the Federal Labor Act and the Federal Act on State Employees, to provide legal protection for union executives and abolish the trade union exclusion provisions.

The ILO has also observed for many years that the ban on foreign nationals being members of trade union executive bodies under the Federal Labor Act is in violation of international obligations and while amendments have been proposed to be made to the law since 2002, they have yet to be enacted.

Mexico passed a law in November 2007 to prevent and punish the trafficking of persons, and issues related regulations in February 2009. The Act establishes an Inter-Ministerial Committee to coordinate the National Program against trafficking. The members of the Inter-Ministerial Committee include the Ministers of the Interior, Communications and Transport, External Relations, Public Security, Labor and Social Security, Health and Social Development, Public Education, Tourism and Public Prosecution, and include other institutions such as the National Institute for Women and the Committee for the Development of Indigenous Peoples.

Section 6 of the Act provides for prison sentences ranging from 9 to 18 years for trafficking offenses, and under section 12(IX) of the Act, mandates the Inter-Ministerial Committee to compile statistical data on human-trafficking offences, including the number of arrests, judicial proceedings, and the number of convictions. Sentences under the law are to be increased by half if the offender is a public employee – with the complicity of state actors in trafficking being a pervasive concern in Mexico. The Act also provides for the protection and compensation of victims.

Child labor remains a concern in Mexico, particularly in the agriculture sector and with migrant and indigenous populations.

**Table III.4 Changes to Mexico's Labor Law Regime 1994-2010**

Year	Law or Decree No.	Subject of Reform
1994	NOM-019-STPS-1994	Establishment, registration, and operation of the Committees on Health and Safety in Workplaces
1995	-	Social Security Act
1996	NOM-122-STPS-1996	Occupational safety and health
1996	NOM-121-STPS-1996	Occupational safety and health
1997	-	Social Security Act
1997	DOF 28-I-1997	Federal Regulation on Safety, Hygiene & Working Environment
1998	NOM-026-STPS-1998	Occupational safety and health
1998	DOF 6-VII-1998	Regulations on inspection and penalties for labor law violations
1998	-	Law of the Mexican Institute of Youth
1999	DOF 14-XII-99	Regulations on the Federal Attorney of Labour Defense
2000	DOF 17-XI-00	Internal regulations of the Federal Board of Conciliation and Arbitration
2000	-	Law for the protection of the rights of children & adolescents
2001	-	Constitutional changes on prohibitions against discrimination
2001	-	Constitutional changes dealing with indigenous peoples
2002	DOF 20-11-2002	Reforms to the internal regulations of the Federal Board of Conciliations and Arbitration
2003	-	Bill combating the sale and trafficking of children
2003		Act on the National Commission for the Development of Indigenous Peoples
2003	DOF 11-VI-2003	Federal Act to Prevent and Eliminate Discrimination
2005	-	Establishing a voluntary system for which companies can declare their compliance with labor laws
2005		General Law on Persons with Disabilities
2006	-	Regulations on employment agencies on discrimination based on sex, pregnancy, and ethnic origin
2006	DOF 02-08-2005	Act on General Equality of Men and Women
2007		New Act on the State Workers Social Security and Services Institute
2007	-	Law to prevent and punish trafficking in persons
2007	-	Decree improving regulations against sexual exploitation of children
2008	NOM-032-STPS-2008	Underground coal mining safety
2008	DOF 14-XI-2008	Internal Regulations of the Ministry of Labour & Social Security

### Reforms to the Ministry of Labor

In 1995 Mexico approved the Regulations of the National Administrative Office (NAO) in line with its obligations under the NAALC. STPS has also made institutional changes to address areas such as discrimination and child labor and sexual exploitation.

In conjunction with the Federal Act to Prevent and Eliminate Discrimination of 2003, a National Council for the Prevention of Discrimination as established. Additionally, in 2009 a STPS developed program was adopted by the Ministry of Economy that allows for organizations

to apply and be certified as employers whose policies respect equality and non-discrimination between men and women.

Mexico has implemented numerous programs and action groups in an effort to address child labor and the commercial sexual exploitation of children. Among such groups has been the Inter-institutional Panel to Address the Prevention and Combat of Child Labor and the National Coordination Unit for the Prevention and Elimination of the Commercial Sexual Exploitation of Children, as well as numerous National Plans to implement programs on child labor and child trafficking.

In 2010 a proposal is pending in the Congress for a significant reform of the labor ministry and its associated regulations.

### **Reforms to the labor Justice System**

While changes have been made to internal regulations and the rights and obligations of the Attorney General and other such persons, no significant change has taken place in the labor justice system since the signing of the NAALC.

### **International Support for Legal and Institutional Reforms**

Much of the focus for capacity building programs under the NAALC has rested on the institutions of the CLC and the funding provided by the member nations. Despite this, the U.S. has provided some level of capacity building assistance in the area of labor. Since 2002 eight programs have been carried out and total over \$9.5 million of U.S. aid.

**Table III.5 Labor Capacity Building Projects - Mexico\***

<b>Year</b>	<b>Project Name</b>	<b>Financing**</b>	<b>Donor</b>
<b>1992-1998</b>	Labor Market & Productivity Enhancement	\$355 million	World Bank
<b>1996-2001</b>	Strengthening Latin American Worker's Organizations to enable them to Participate in Tri-partite Social Dialogue & the Socio-economic Development (20 Countries)		ILO/Spain
<b>1999-2001</b>	Characteristics & Relevance of Occupational Training & Technology Education (3 countries + Central America)		ILO/Netherlands
<b>2000-2002</b>	More & Better Jobs for Women		ILO/Spain
<b>2002</b>	Job Bank Development	\$187,209	USDOL
<b>2002</b>	National Program for the Elimination of Exploitative Child Labor in Mexico	\$1 million	ILO/USDOL
<b>2002- 2003</b>	ACILS – Workers Rights in Export Industries	\$779,549	USAID
<b>2003</b>	Workforce Development	\$95,000	USDOL
<b>2003</b>	NAALC Occupational Safety & Health Working Group	\$185,671	USDOL
<b>2000-2004</b>	Labor Markets Phase II	\$200 million	IDB
<b>2000-2005</b>	Gender Equity Project: Generosidad	\$3.07 million	World Bank
<b>2003-2005</b>	More & Better Employment for Women		ILO/Spain
<b>2004-2005</b>	Labor rights in the Global Economy –Mexico	\$91,120	USAID
<b>2005</b>	Addendum Combating Commercial Sexual Exploitation of Children in Mexico	\$1,099,902	ILO/USDOL
<b>2005</b>	Training, Internships, Exchanges and Scholarships	\$540,000	USAID
<b>2002-2006</b>	Labor Market Policy Program	\$300 million	IDB
<b>2004-2006</b>	Strengthening of Institutional Machinery for Social Dialogue (6 countries)		ILO/Spain
<b>2008</b>	Monitoring and Evaluating Public Policy-STPS	\$150,000	IDB
<b>2006-2007, 2009</b>	Global Labor Union and NGO Strengthening	\$75,000	USAID
<b>2005-2009</b>	Promotion of Youth Employment in Latin America (8 Countries)		ILO/Spain
<b>2009</b>	Combating Exploitive Child Labor-Mexico	\$4,750,000	USDOL

Sources: *USAID TCB Database; ILO Activities in the Americas 1999-2002 and 2003-2006; USDOL ILAB website*

\*The table includes projects that were funded with a specific nexus to the NAALC, such as the 2003 Occupational Safety and Health Working group, as well as those projects provided for by U.S. and international donors that are not directly related to the functioning of the NAALC but address labor related concerns such as the Global Labor Union and NGO Strengthening project. Note: due to data availability on those projects conducted by the U.S. and the ILO only covers the time period since 2000 and/or overlapping that time period.

\*\*Funding amounts provided where available

## **IV. The Chile-United States Free Trade Agreement**

### **Labor Obligations under the Chile FTA**

Chile and the United States began negotiations for a free trade agreement in early December 2000, and concluded negotiations on December 11, 2002. The FTA entered into force on November 1, 2004.

Unlike NAFTA with the NAALC side agreement on labor, the Chile FTA includes labor obligations as Chapter 18 of the trade agreement itself. The inclusion of a robust labor chapter in the Chile trade agreement set the template for all future U.S. free trade agreements with partner countries in the Hemisphere (and globally).<sup>2</sup>

There are a number of important elements within Chapter 18 which became established as reference points for the labor chapters of future U.S. free trade agreements. The Chile FTA labor chapter contains a “shared commitment” provision under article 18.1 that references the 1998 ILO Declaration and commits that the Parties “shall strive to ensure” that the Declaration’s principles are recognized and protected by domestic law – in effect establishing the obligation reflected in the ILO Declaration as a “soft floor” for national labor laws. This is a dramatic change from the NAALC which has no reference to ILO standards.

Moreover, the Chile FTA, unlike the NAALC, provides equal status to the five different areas of labor law obligations defined by the chapter for purposes of dispute settlement. The NAALC provides that only three of eleven areas of labor law can go through full dispute settlement. The five areas of labor law are defined to largely follow the standards in U.S. trade law first used in the Generalized System of Preferences program in 1984. These standards are modified slightly under the Chile FTA to include the worst forms of child labor, rather than just the minimum age for employment, which is a standard reflected in ILO Convention 182 adopted in 1999, and also ratified by the United States Senate in the same year. The defined areas of labor law diverge from those standards under the 1998 ILO Declaration by including an element on acceptable conditions of work (wages, hours, safety and health), and not including non-

---

<sup>2</sup> As noted previously, the U.S.-Jordan Free Trade Agreement concluded in October 2000 had included Article 6 on labor obligations. But as the expansive labor chapter negotiated as part of the Chile FTA and the U.S.-Singapore FTA, were negotiated on essentially the same time schedule and under the same parameters, both set the template for future labor chapters in U.S. free trade agreements.

discrimination in employment (the non-discrimination issue would be eventually addressed by the May 10, 2007 agreement, and reflected in the Peru TPA).

The five areas of labor law defined in Article 18.8 include:

- (a) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children and the prohibition and elimination of the worst of child labor, and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

The Chile FTA had to implement a new dispute settlement obligation mechanism for labor issues – which was included in the Agreement’s dispute settlement chapter, Chapter 22. The language in the Chile FTA was followed in other FTAs, including CAFTA-DR – which provides that the sanction for a violation of a labor obligation under the FTA can be through a monetary assessment (fine) paid by the country to a fund dedicated to remedy the alleged violation, and only if the fines are not paid by the Party in violation can the other Party withdraw trade concessions, only up to \$15 million, as adjusted for inflation. This was compared unfavorably to the mechanism for other non-labor disputes that allow a Party to pay a fine to the other Party equivalent to the calculated commercial impact of the violation – or accept the removal of an equivalent value of trade concessions under the FTA.

This distinction between the remedy for labor obligations and other commercial disputes would remain an issue of contention until again modified under the May 10, 2007 agreement that became reflected in the Peru PTA.

## **Chile’s Labor Law Framework**

Even before FTA negotiations began, Chile had adopted significant changes to its labor laws in the 1990s. These changes in labor law followed the end of the period of military government (1973-1990) which had curtailed trade union and other labor rights. Initial labor code reforms were made in 1995 and significant reforms again in September 2001.

Chile also undertook the ratification of some eleven ILO Conventions in 1999 and 2000, including Conventions 87 and 98 on freedom of association and collective bargaining,

Convention 105 on forced and compulsory labor, and Convention 138 on the minimum age of employment in 1999, and Convention 182 on the worst forms of child labor in 2000. Consequently, by the time FTA negotiations had begun, Chile had ratified all eight ILO conventions associated with the fundamental rights reflected in the ILO Declaration of 1998. Chile has also made a number of labor code changes during the last decade.

Consequently, in recent years there have been relatively few concerns raised about Chilean labor law within the ILO's supervisory bodies. The concerns that continue to be raised relate to the scope of trade union rights in the public sector, and the broad interpretation under the Labor Code of the "essential" services that are prohibited from striking. Additionally, the ILO has also expressed some continuing concerns about the parameters under which employers are able to hire replacement workers during a strike and about the prohibition against agriculture workers striking during harvest time.

The changes in Chilean laws and reforms to the labor ministry and labor justice system have all occurred with almost no U.S. technical assistance or capacity building support, and with little apparent nexus to the FTA, or its labor cooperation mechanism established under Article 18.4 and its annex.

The FTA establishes a Labor Affairs Council to meet at the Cabinet level or at the level of designees, and under Article 18.4 was to meet within the first year of the FTA coming into force, and as often as appropriate thereafter for the effective implementation of the obligations under Chapter 18. The responsibility of the Council includes setting the work program under the labor cooperation mechanism of Article 18.5 and its annex. It appears that although the FTA has been in force since 2004, the Labor Affairs Council has not ever met. The Environmental Affairs Council, a similar group established under the environmental chapter, meanwhile, has met five times.

## **Labor Law Developments in Chile**

The Ministry of Labor and Social Welfare (MINTRAB) was established in 1959, and has two main components, a Labor Bureau and a Social Welfare Bureau. Under the Labor Bureau is the Labor Directorate that is responsible for compliance and enforcement with trade union laws and other workplace standards. The labor inspectorate, trade union regulation, and mediation and conciliation responsibilities are under this office.

Since 2000 there have been a large number of statutory and regulatory changes to labor laws. See Table IV.1.

Notably, in 2001, Law No. 19 759, developed with technical input from the ILO, provided for extensive reforms to the Labor Code, including measures to strengthen protections for trade union members, such as reinstatement for wrongful dismissals, and provided enhanced penalties for workers wrongfully dismissed for other reasons. The law also increased the obligations on employers to provide financial information during collective bargaining and modified the requirements to be followed to hire replacement workers during a strike. The law also included various other provisions ranging from working hours to labor contracts.

The Labor Code was also amended to prohibit child labor under the age of 15, provide restrictions on the employment of children aged 15 to 18, and prohibit hazardous work by children under 18.

Other reforms have addressed gender discrimination in employment, occupational health and safety, labor protections for domestic workers, and penalties for violations of the labor code. A large number of reforms have also been made to laws governing social security and employment benefits.



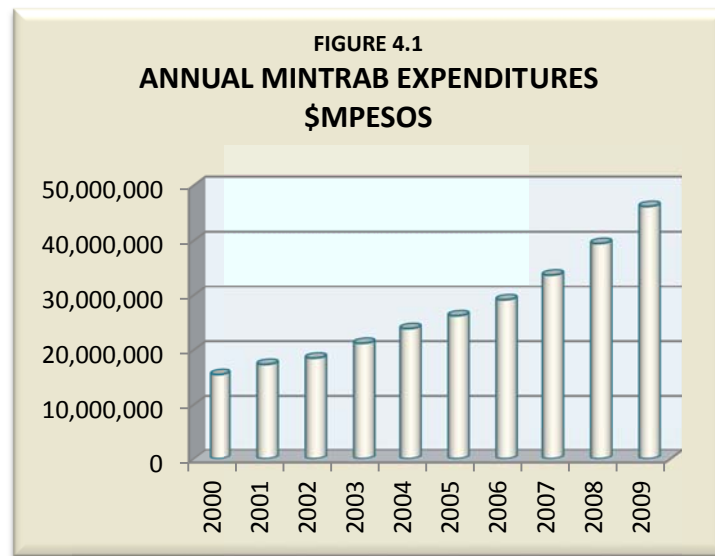
**Table IV.1 Changes to Chile's Labor Law Regime 2000-2010**

<b>Year</b>	<b>Law or Decree No.</b>	<b>Subject of Reform</b>
<b>2000</b>	19 684	Amending the Labor Code to make changes to child labor laws
<b>2001</b>	19 759	Amending the Labor Code to improve protections against dismissal for trade union activities, increase penalties for illegal dismissals, and provide for reinstatement for illegal dismissals for trade union activities; reform provisions on hiring of replacement workers during a strike; prohibit discrimination in employment based on age and marital status, modify working hours and labor contract provisions
<b>2002</b>	19 812	Providing protection against employment discrimination on the grounds of previous debts, with the exception of those positions which would provide authority over funds
<b>2002</b>	19 824	Amending the Labor Code, to require nurseries for certain industrial and service sector enterprises
<b>2003</b>	19 844	Amending the Labor Code provisions on employment contracts
<b>2003</b>	19 889	Regulating the working conditions and employment relationship of certain workers in the arts and entertainment sector
<b>2003</b> <b>2004</b>	19 920 19945	Amending the Labor Code to protect the right of certain employees to weekly rest days and holidays
<b>2004</b>	19 988	Amending the Labor Code on overtime wages and protections for temporary agriculture workers
<b>2005</b>	20 005	Providing penalties for sexual harassment in the workplace
<b>2005</b>	20 022	Creating additional labor courts
<b>2005</b>	20 023	Amending various laws to create a new oral procedure for labor court cases
<b>2005</b>	20 047	Allowing for four days of parental leave after the birth of a child without loss of employment, provide the same parental employment protections for single or widowed men or women who adopt a child
<b>2005</b>	20 057	Amending the Labor Code to protect the assets of unions
<b>2005</b>	20 058	Amending the labor setting the number of working day holidays
<b>2005</b>	20 069	Amending Labor Code to strengthen child labor law enforcement
<b>2005</b>	20 087	Amending the Labor Code to increase penalties for illegal anti-union practices, and for other violations of labor and social security laws and regulations
<b>2005</b>	Decree No. 84	Adoption of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
<b>2006</b>	20 087	Making further reforms on legal procedures for labor court cases
<b>2006</b>	20 101	Changing law on occupational safety and health
<b>2006</b>	20 123	Modifying work contract requirements and regulating other operations of temporary service firms

<b>Year</b>	<b>Law or Decree No.</b>	<b>Subject of Reform</b>
<b>2006</b>	Decree No. 76	Provide for the application of safety and health laws at workplace regardless of the employment relationship
<b>2007</b>	20 189	Prohibiting the employment of children under 15 and modifying conditions for employing children between 15 and 18
<b>2007</b>	Supreme Decree No. 50	Approving regulations for implementation of Labor Code provisions on hazardous work by children
<b>2008</b>	20 308	Amending the Labor Code protections for workers exposed to pesticides.
<b>2008</b>	20 271	Amending the Labor Code concerning the working day of drivers and auxiliary staff of passenger transports, also establishing mandatory rest periods
<b>2008</b>	20 281	Amending the Labor Code regarding wage rates
<b>2009</b>	20 367	Amending the Labor Code to provide for maternity leave in the case of adoption
<b>2009</b>	20 336	Amending the Labor Code to extend the right to a weekly rest period for domestic workers
<b>2009</b>	20 341	Amending the Labor Code to protect the right to equal pay for men and women who perform the same work
<b>2010</b>	20 425	Amending the Labor Code to prevent improper wage deductions

## Reforms to the Ministry of Labor

As is evident from Figure 4.1, the annual budget of the Chilean Ministry of Labor (MINTRAB) has been steadily increasing, from some 15 million pesos in 2000 to just over 46 million pesos in 2009. Some fraction of these additional expenditures has been allocated to the core labor enforcement and compliance functions of MINTRAB.



Personnel in MINTRAB have also been increased, as evident on Figure 4.2. Ministry employment climbed from 1,444 in 2000 to 2,119 in 2009. A significant portion of this staff increase was in the area of labor inspectorate positions, which grew from 685 in 2000 to 1,074 in 2009. In fact, of the 675 new positions created between 2000 and 2009, 389, or more than half,



were for new inspectors.

Some other institutional changes have also been made in MINTRAB. For example, in 2004, a Social Dialogue Unit was established to promote improved tripartite consultations.

Chile has adopted a goal to eliminate the worst forms of child labor by 2015. MINTRAB coordinates the National Advisory Committee on the Prevention and Elimination of Child Labor which was established to coordinate policies and programs to meet Chile's child labor elimination objectives, and the national plans adopted every five years. According to the child labor reports of the U.S. Department of Labor, Chile has been dedicating significant resources to its efforts against child labor, including through its Ministry of Labor inspections, conducting over 5,000 child labor inspections and imposing 111 fines for child labor in 2008.

## **Reforms to the Labor Justice System**

The most important reform for the Chilean labor justice system was moving from a written procedure to an oral procedure. The laws to do this were adopted in 2004 and 2005, based on the work of a consultative body in Chile and with technical support from the ILO. This change was designed to eliminate the large backlog in cases and to improve transparency and accountability in the labor justice process. Judges had backlogs of 6,000-8,000 cases annually, with most being claims involving the failure of employers to make required social security contributions. Cases now are resolved in six months, rather than four or five years.

Chile has essentially completed its labor justice modernization program known as La Nueva Justicia Laboral. The reforms not only instituted the oral procedure but also increased the number of judges, officials and specialized labor courts, and expanded their presence throughout the country. The reforms also make available legal assistance for those with insufficient resources, and provide for faster and more transparent court procedures.

Under the reform, the number of specialized labor judges rose from 20 to 84, labor courts increased from 20 to 26, and public lawyers for labor cases went from zero to 138. There are now 33 labor law support offices around the country, with a total of 494 officials.

## **International Support for Legal and Institutional Reforms**

In the context of the U.S.-Chile FTA, there is a relatively modest record of either U.S. or other international donor support for labor law reforms and labor institutional support. Since the

negotiations were launched in 2000, it appears that U.S. Agency for International Development (USAID) committed \$1.35 million in 2002-2003 for improving labor law compliance and strengthening labor justice. During the period 2004-2007, the U.S. Department of Labor worked in coordination with the ILO on a regional child labor program that included Chile, Paraguay, Peru and Colombia, and focused on children in domestic service and the commercial sexual exploitation of children.

In addition, during the last decade the ILO in conjunction with other international donors, principally the Government of Spain, has conducted other child labor programs in Latin America which have included the participation of Chile.

Meanwhile, the Inter-American Development Bank funded three programs addressing issues of labor concern. Two of these programs handled gender issues and one for the promotion of social dialogue.

**Table IV.2 Labor Capacity Building Projects - Chile\***

<b>Year</b>	<b>Project Name</b>	<b>Financing**</b>	<b>Donor</b>
<b>2002-2003</b>	Supporting the Chile Free Trade Agreement	\$1,350,000	USDOL
<b>1996-2001</b>	Strengthening Latin American worker's Organizations to Enable them to Participate in Tripartite Social Dialogue & the Socio-economic Development of the Region (20 countries)		ILO/Spain
<b>1999-2004</b>	Elimination of the Commercial Sexual Exploitation of Children (5 countries)		ILO/Spain
<b>2002-2004</b>	Global Contribution to the Statistical Information & Monitoring Program on Child Labour (SIMPOC) in Chile		ILO/Canada
<b>2002-2004</b>	Prevention and Elimination of Commercial Sexual Exploitation		ILO/Canada
<b>2002-2004</b>	Trade Unions and Decent Work in the area of Globalization in Latin America (7 countries)		ILO/Spain
<b>2002-2005</b>	Promotion of Occupational Safety & Health in Construction (7 countries)		ILO/Spain
<b>2002-2005</b>	Project for the Prevention and Elimination of the Commercial Sexual Exploitation of Children		ILO/Canada
<b>2002-2005</b>	Trade Unions and Decent Work in the area of globalization in Latin America (9 countries)		ILO/Spain
<b>2003-2005</b>	Development of a Model for the Financial Projection of Pension Schemes		ILO/Chile
<b>2005</b>	Prevention and Elimination of Commercial Sexual Exploitation of Boys & Girls (Phase II)		ILO/Canada
<b>2002-2006</b>	IPEC Sub-regional Coordination in South America (Phase II) (9 countries)		ILO/Spain
<b>2004-2006</b>	Strengthening of Institutional Machinery for Social Dialogue (6 countries)		ILO/Spain
<b>2006</b>	Integration of Gender Perspective in the Pension Reform System of Chile	\$12,000	IDB
<b>2004-2007</b>	Prevention and Elimination of Domestic Child Labour & the Commercial Sexual Exploitation of Children (4 countries)	\$5.5 million	ILO/U.S.
<b>2006-2007</b>	Program of Support to the Social Dialogue in Chile (not labor specific)	\$145,594	IDB
<b>2005-2009</b>	Promotion of Youth Employment in Latin America (8 countries)		ILO/Spain
<b>2007-2009</b>	Chile Country Gender Assessment Dissemination	\$30,000	IDB

Sources: *USAID TCB Database; ILO Activities in the Americas 1999-2002 and 2003-2006; USDOL ILAB website*

\*The table includes projects that were funded with a specific nexus to the free trade agreement between the United States and Chile, such as the USDOL program in 2002-2003, but also includes all projects that could be identified that might have a labor component but were not necessarily related to the negotiation or implementation of the free trade agreement, such as the projects funded by the IDB on gender and social dialogue.

\*\*Funding amounts provided where available

## **V. The United States-Central American & Dominican Republic Free Trade Agreement**

### **Labor Obligations under the CAFTA-DR**

The negotiation of what became the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) began on January 8, 2003 and was completed on December 17, 2003 with El Salvador, Honduras, Guatemala and Nicaragua, on January 25, 2004 with Costa Rica, and on March 15, 2004 with the Dominican Republic. The CAFTA-DR was signed by the Parties on August 5, 2004. It was a somewhat complex process as the Dominican Republic joined the negotiations after they began with the Central American countries, and the process of implementation and coming into force between various countries was staggered.

El Salvador was the first country to approve the agreement through its Congress on December 17, 2004 and Costa Rica the last to receive domestic approval on November 14, 2008. The U.S. implementing legislation was signed into law on August 2, 2005, but not actually implemented until February 28, 2006. The agreement entered into force with El Salvador on March 1, 2006 and then finally on January 1, 2009 for Costa Rica – the last of the six countries covered by the agreement.

The labor obligations under CAFTA-DR for El Salvador and Costa Rica are found in Chapter 16 of the agreement. The obligations and dispute settlement elements of the CAFTA-DR are substantially the same as the Chile FTA, with only modest changes. There is more of an emphasis in the text of Article 16.5 and in the labor cooperation annex on “capacity building”.

Since the issue of implementing the CAFTA-DR was highly controversial in the U.S. Congress, and since much of the controversy related to both the criticisms of the labor chapter, and also about the weaknesses in labor law compliance and labor institutions in the countries of the region, a lot of work was done in the period before the vote in the U.S. Congress on assessing the labor laws and institutions of the CAFTA-DR countries, and by the governments of the region in making their own commitments for reforms of their labor regimes.

This assessment and reform agenda was memorialized in a report prepared by the Vice Ministers of Labor and Trade of the countries of the region and submitted and adopted by the Ministers of Labor and Trade. This effort, which was supported by the Inter-American Development Bank and became known as the “White Paper,” produced the report titled “The

Labor Dimension in Central America and the Dominican Republic, Building on Progress; Strengthening Compliance and Enhancing Capacity.” The final report was adopted in April 2005.

Two of the important features of the White Paper process are first, it committed to a verification and follow-up to be reported each six months by the International Labor Organization, and second, that the U.S. Government committed substantial resources – a total of \$180 million to support the implementation of the White Paper labor obligations over five years - ending with the Bush Administration’s last year, U.S. fiscal year 2009. It is notable that the Obama Administration has not continued with any such funding commitments with regard to the labor agenda for the CAFTA-DR countries.

A number of steps were taken by the countries during the process of the FTA negotiations to provide a clear baseline on the labor law regimes of the countries with regard to the core labor standards reflected in the 1998 ILO Declaration. The countries of the region had already asked the ILO to do an assessment of their conformity with the obligations reflected in the 1998 Declaration.

The ILO studies published in 2003 and 2004 largely verified that the laws and constitutions of the countries were in conformity with fundamental ILO obligations - and most had ratified into domestic law the core ILO Conventions. The far larger challenge was the issue of effective implementation. In that regard the Ministers of the region began the White Paper process in July 2004 to establish the baseline for those issues of implementation and capacity building that required further efforts, to adopt a work plan to make the required changes, and to establish a transparent verification process of the results.

The White Paper looked at six key components of compliance, including (i) legal reforms in terms of trade union rights and inspection and compliance; (ii) the personnel and budgets of labor ministries; (iii) reforms to the labor justice system; (iv) strengthening the mechanisms to address discrimination in the workplace; (v) programs to address the worst forms of child labor; and (vi) other efforts to improve the culture of compliance with labor laws. It is difficult to draw any conclusions as to causation between the implementation of the free trade agreements and any demonstrable changes in these six indicators identified in the White Paper.



It is possible that even absent the labor obligations of the FTAs and the White Paper process, that most if not all of the same changes with regard to labor law compliance would have occurred. But it seems at least arguable that the scrutiny represented by these labor chapters had some real impact in terms of supporting or encouraging those changes. It may also be argued that the most intense period of scrutiny occurs when the U.S. Congress focuses on the implementation of such free trade agreements and undertakes a detailed – even an intrusive – assessment of the labor law regime and compliance profile of FTA partner countries. Indeed, since the CAFTA-DR FTA, the pre-conditions on labor obligations have been amplified even further - with increasing reference to resolving ILO supervisory observations and findings.

## **A. Costa Rica**

### **Labor Law Developments in Costa Rica**

As is the case in most countries of the hemisphere, Costa Rica has a robust Constitutional and statutory framework protecting core labor standards. Costa Rica has ratified all eight core ILO Conventions which under national law are accorded a status equal to the Political Constitution and superior if the Convention is more protective than the language of the Constitution itself.

Nevertheless, there remain some issue of labor law compliance with ILO standards, and a number of additional reforms have been made since 2005. A lingering source of tension between Costa Rican norms and international standards is the legal framework for the Solidarismo movement in Costa Rica, which some unions consider to be designed to undermine more traditional trade union organizations.

Among the legal changes made in 2005 was the lowering of the percentage of workers in an enterprise needing to support a strike for it to be legal from 60 percent to 40 percent. The ILO had long observed that the requirement for 60 percent of workers was excessive and beyond regional norms. Certain restrictions on the right of public sector employees to strike were also reduced as part of the 2005 reform.

A benefit from the White Paper verification process is that the information is available on the record of CAFTA-DR countries in terms of their labor law and institutional changes on an on-going basis – every six months. This allows progress on legal changes, labor inspection personnel and budgets, and the labor justice system to be readily verified.

For the last number of years, Costa Rica has also had an active political dialogue and debate about further labor law reforms, many developed with technical assistance from the ILO. Among the pending draft laws that have not yet been passed by the Legislative Assembly is No. 13475, which would reform several articles of the labor code to further enhance union protections.

Meanwhile, the new Government of Costa Rica which came to office in May 2010 has now submitted to the Legislative Assembly draft law No. 15990, on Labor Procedure Reform, which involves a reform to more than 300 articles of the Labor Code, and would represent a major change in the overall approach to labor law and administration and in industrial relations in Costa Rica. The bill also addresses collective bargaining in the public sector and restriction on foreigners from participating on trade union boards. This proposed reform has been developed with the full participation of the representatives of workers and employers on the Supreme Labor Council.

The proposed law includes changes that would better protect fundamental trade union rights in cases of illegal anti-union actions. It would also transform the judicial process by moving to an oral system for labor cases, which would expedite cases in the labor courts.

On August 17, 2010, the Permanent Commission of Legal Affairs of the Legislative Assembly approved the draft law by a unanimous vote during an extraordinary session requested by the Presidency for the consideration of this legislation which has been identified as a priority by the Government. This development is the result of many years of effort with the participation of the tripartite Supreme Labor Council.

Indeed, as a further step to expand social dialogue and further promote positive industrial relations in Costa Rica, on August 24 the President and the Minister of Labor and Social Security publicly signed an Executive Decree that modernizes the mandate and procedures of the Supreme Labor Council.

Among the other important changes made in Costa Rica labor laws was the passage of a law in July 2009 that provides domestic workers the right to organize and join trade unions. These workers are also now protected under this law in terms of the right to a work contract, an eight hour work day, minimum wages and other social security benefits.

Most recently, Costa Rica passed a law in March 2010 that expanded the rights of migrant workers to organize and join trade unions and also extends other workplace protections to them. Many of these migrant workers are found in the agricultural sector.

**Table V.1 Changes to Costa Rica's Labor Law Regime 2003-2010**

Year	Law No.	Subject of Reform
2003	Guideline No. 1-2003	Relating to the transition period following reform of Article 29 of the Labour Code allowing for recognition of employment contracts
2003	MTSS Decree No. 30 983	Creates an Implementation Unit to handle petitions of those employees exposed to pesticides
2003	MTSS Decree No. 31 461	Establishing the permanent National Steering Committee for the Prevention and Progressive Elimination of Child Labor and Protection of Juvenile Workers
2005	Act 8442	Amending article 148 of the Labor Code in relation to public holidays
2005	Act 8466	Addressing among other issues, the crime of trafficking
2005	Decree No. 32 824-G	Establishing the National Coalition Against the Smuggling of Migrants and Trafficking
2006	Act 8520	Amending articles 304, 602, and 607 of the Labor Code
2006	MTSS Decree No. 33 080	Established the General Pension System under the National Budget as well as regulates the management, control, and payment of pensions
2006	MTSS Decree No. 33 507	Established regulations on working conditions and occupational health for those exposed to agriculture chemicals
2007	Act 8604	Reform to Article 148 of the Labor Code in relations to payment of public holidays
2007	Act 8590	Strengthening the Program against Sexual Exploitation of Children & Adolescents
2007	MTSS Decree No. 34 776	Amending the regulations with regard to the registration of worker associations
2008	MTSS Decree No. 34 423	Provides for the Interagency Coordination Protocol for the Care of Working Minors
2008	MTSS Decree No. 34 936	Creates the national system of mediation, counseling, and employment information
2009	Act 8720	Reform to the Penal Code, includes the crime of trafficking
2009	Act 8726	Extending benefits, such as hours of rest and social security, to domestic workers
2009	Act 8753	Amends Article 148 of the Labor Code in regard to the payment of holidays
2009	Act 8764	Migration Law, provides for the protection and support of trafficking victims
2009	MTSS Decree No. 35 124	Strengthening regulations in relation to the working day and environment of those exposed to agriculture chemicals
2009	MTSS Decree No. 35 144-MG	Establishing the Immediate Response Team for the care of trafficking victims
2009	Labor Inspectorate	Allowing reduction in working days, hours or wages for up to six

Year	Law No.	Subject of Reform
	Directive No. 004-2009	months
2010	Act 8805	Providing protections against sexual harassment in employment and education
2010	MTSS Decree No. 35 730	Providing for the Negotiating Committee on Public Sector Wages
2010	Executive Decree	For the modernization of the Supreme Labor Council
2010		Allows for the rights of Migrant workers to form and join unions

## Reforms to the Ministry of Labor

The Ministry of Labor and Social Security (MTSS) has been working to upgrade the function of the Labor Inspectorate Directorate, with support from the U.S. Government, and recently adopted a strategic plan for the years 2010-2015.

Given the existence of the ILO Verification reports, information is relatively accessible as to what steps have been taken or not to strengthen the operations of the Ministry of Labor and Social Security. In recent years, Costa Rica has increased the budget and personnel of the MTSS for labor law enforcement and the implementation of labor laws. Total personnel engaged on inspection and conciliation increased from 172 to 199 in 2010. There was no recorded increase in such personnel between 2005 and 2008. The number of inspectors as of January 2010 was 99, and the number of conciliation and mediation personnel 45. According to the 2007-2010 implementation plan for the White Paper adopted by MTSS there should be 117 inspectors and 64 conciliators at the Ministry by December 2010.

The budget increases recorded for enforcement of labor laws grew significantly between 2005 and 2008, from 1,512 million colones to 2,110 million colones. This budget grew rapidly since 2008 to a level of 4,298 million colones in 2010. These increases are far greater than the level of personnel increases might suggest, thus there is some anomaly here that could be further explored.

**Table V.2 MTSS Budget for the Application of Labor Law 2005-2010**

Year	Initial Budget			Modified Budget			Executed Budget		
	Million Colones	% Annual increase*		Million Colones	% Annual increase*		Million Colones	% Annual increase*	
		Current	Real		Current	Real		Current	Real
2005	1,512	-	-	1,495	-	-	1,429	-	-
2006	1,651	9.2	-2.0	1,647	10.2	-1.2	1,601	12.1	0.5
2007	1,942	17.6	7.5	1,965	19.3	9.1	1,794	12.1	2.5
2008	2,110	8.7	-4.2	2,264	15.2	1.6	2,127	18.6	4.5
2009	3,437	62.9	51.0	3,380	49.3	38.4	3,017	41.8	31.5
2010	4,298	25.1	n.d.	4,298	n.d.	n.d.	569**	n.d.	n.d.

*Source: ILO Verification Report Aug. 2009-Jan. 2010, pg. 88*

\*To calculate this increase, the inflation measured by the Consumer Price Index (base July 2005) is subtracted, using the average annual index for each year

\*\* The figure for the 2010 executed budget corresponds to expenditures to February 22, 2010.

The ILO verification report also reviews whether the inspection operations have received improved computer and transport equipment to carry out their functions. The MTSS reports that some 28 of the 31 regional, provincial and municipal offices are now linked by internet. The total number of computers increased from 108 in 2007 to approximately 170 in 2010. These serve the 199 inspection and conciliation staff. The total number of vehicles for the MTSS did increase from 22 in 2007, with 10 dedicated for the use of the labor inspectorate, to a total number of 33 in 2010, with 13 dedicated for the use of the labor inspectorate.

The MTSS Alternative Dispute Resolution Center has continued to receive between 2,000 and 3,400 requests per year between 2005 and 2009, with successful conciliations being reached in about 70% of the cases that make it through the process.

The ILO Verification Report found that the 800-Trabajo Call Center launched in 2008 established to take communications from the public, operated with only two officials from 8:00am-4:00pm, and that at the end of 2009 call flows began to decline because of inadequate personnel and equipment breakdowns.

Efforts to implement an automated case management system were begun at the end of 2009 with support of the Cumple y Gana technical assistance program. This program has also supported various training programs for inspectors and conciliators; the design and implementation of strategic communication programs, the revamping of the labor inspection

manuals and protocols, and assistance in the development of targeted enforcement campaigns. Since 2008 a targeted and multi-agency enforcement initiative has been implemented for the construction and agriculture sectors known as the Joint Inter-institutional Intervention Program, to ensure both workplace standards are met and that social security contributions are made for such workers. A national enforcement campaign to ensure compliance with the minimum wage law was launched in July 2010 for a one-year period.

The ILO White Paper verification report for the period August 2009-January 2010 made a number of recommendations with regard to continued actions to improve the operations of the Ministry of Labor and Social Security. See Box V.1

**Box V.1      White Paper Recommendations to Impact Labor Ministry  
Spending *ILO Verification Report, August 2009- January 2010, pg. 74***

- Finish filling the vacant positions for the functions of inspection and conciliation and urge the Ministry of Finance to authorize sufficient financial resources for the posts established in the White Paper Implementation
- Improve inspection and conciliation services by separating the two functions and by implementing effective notification mechanisms for those covered by these services.
  - Increase the number and quality of training actions and on-going training activities for inspection and conciliation personnel, incorporating them into a specific institutional program linked to the DNI strategic planning.
- Continue implementing the automated inspection case management system in all MTSS regional offices.
- Increase inspection coverage, both the number of inspections and the diversity of sectors inspected, especially in the informal economy, as suggested in the previous report.
- Design a strategy for unifying the systems of administrative conciliation, which includes the regional offices, as suggested in the previous report. Also, promote the dissemination and uses of conciliation services by employers and workers.
  - Prepare periodic statistics on conciliation cases handled by the MTSS regional offices.
- Make the necessary efforts to continue providing equipment, infrastructure and vehicles to the regional offices and to all the inspection and conciliation services.
  - Improve the Call Center's operation, providing it with adequate staff and equipment.
- Continue measures and efforts to obtain an increased institutional budget that permits the functions of inspection and conciliation to be separated, and allocation of resources for infrastructure and equipment and hiring the necessary personnel.
- Continue the MTSS and the DNI strategic planning process, ensuring its implementation and the development of the relevant training activities.

## Reforms to the Labor Justice System

Some of the key concerns about the effective administration of labor justice in Costa Rica would be addressed by the passage of pending draft law No. 15,990 which institutes an oral procedure for labor cases. In the meantime, other actions to reduce backlogs and improve the administration of labor justice have been taken in Costa Rica.

The number of specialized labor judges has increased from 37 in 2005 to 57 in 2010, and support personnel for these labor judges has also increased by some 33 positions between 2005 and 2009. A new Social Security Court was established in June 2009. New procedures were implemented in the Second Labor Court to improve the processing of cases, an assessment was made of the Puntarenas Labor Court towards reducing its case load, and a pilot program was implemented in the Cartago Labor Court to improve its operations. In 2010, an additional court of first instance was established, bringing to 112 the number of courts with labor jurisdiction.

At the same time, the amount of resources dedicated to the labor judiciary function has increased significantly, from \$3.8 million in 2006 to some \$11 million in 2010. The percentage of the judiciary budget that goes towards the labor function has also increased from 10.5 percent, to over 13.5 percent during the same time period. See Table V.3.

**Table V.3 Budget Executed by the Judiciary for the Labor Jurisdiction 2006-2010**

Year	Total Executed Budget of the Jurisdictional area	Executed budget in the Labor Jurisdiction		Percentage in relation to the budget of the Jurisdictional Area in millions of dollars
	In million colones	In million dollars	In million colones	
2006	36,295	3,796	-	10.46
2007	42,118	4,590	20.9	10.90
2008	57,734	6,466	40.9	11.20
2009	71,448	8,845	36.8	12.38
2010	81,366	11,033	24.7	13.56

Source: *ILO Verification Report Aug. 2009- Jan. 2010*, pg. 99

While there has been some reduction in the labor case backlog in recent years, it appears that it continued to grow again in 2009, underscoring the importance of enactment of the oral

procedure law. The Judiciary's Conciliation Center achieves successful results in a majority of its cases, but it handles only a small fraction of total cases.

The ILO's most recent verification report for the period August 2009-January 2010, made the following recommendations for further action related to the successful implementation of the White Paper commitments for labor justice:

- a. Achieve passage of the draft bill to implement the oral labor procedure to reduce labor case backlogs;
- b. Increase the training of judges on labor matters;
- c. Reinforce the trend towards specialization of courts in labor matters, and
- d. Promote the use of the Judiciary's Conciliation Center for labor cases.

## **Developments on Gender and Discrimination**

One of the important issues covered under the White Paper for Costa Rica was to reinforce policies against pregnancy testing and against gender discrimination in the workplace.

A number of steps have been taken to advance these objectives in Costa Rica. It has already been noted above that important legislation was passed in July 2009 protecting the rights of domestic workers. A further important development was the official roll out in December 2009 of the MTSS Institutional Gender Policy. The development of the policy had been initiated in 2008 by the MTSS Gender Unit, and an action plan to implement the policy has been the subject of further work. A new Management System for Gender Equity (SIGEG) was established in November 2009 by the National Institute for Women.

Although a regional center for employment equity as originally promoted in the White Paper has not been established, according to the ILO verification report several programs of coordination at the regional level have occurred.

In addition, the Ministry of Labor has a unit on employment opportunities for people with disabilities. The Unit has worked with the ILO, the private sector and other partners on a job training program for people with disabilities.

## **Developments on Child Labor**

The White Paper process made both national and regional commitments on child labor, including an ambitious goal to eliminate the worst forms of child labor in the CAFTA-DR region by 2010.



In 2005, Costa Rica launched its second national plan for the prevention and elimination of child labor and the special protection of minors covering the period 2005-2010. This plan was further revised in 2007 to come in-line with its national development strategy, and a revised plan adopted for the period 2008-2010. A national Steering Committee for the Prevention and Elimination of Child labor and the Protection of Adolescent Workers oversees the implementation of the national plans. In 2009 another plan, the National Policy for Children and Adolescents, Costa Rica, 2009-2021 was adopted which has a section on the prevention and elimination of exploitive child labor.

In 2009, the Costa Rican government proposed two bills relating to the promotion of education (No 17,405) and occupational safety and hazards protections for adolescents (17,507, 17,504). The latter bill is the same bill that had previously been presented but ended without consideration for four years and thus expired in June 2009 and had to be reintroduced. These bills are still pending for approval.

For the most recent period verified by the ILO covering August 2009-January 2010, a number of activities were reported. These included support assistance for 388 working children and their families, and targeted programs for farmer's markets, the fishing sector, and 70 other focused outreach programs in particular communities.

The White Paper verification also records that Costa Rica has taken additional actions to combat the sexual exploitation of children, including establishing six local networks in high-risk areas, and the establishment of inter-institutional coordination mechanisms that have worked with some 55 preventive projects and various awareness raising, including in coordination with the ministry of Public Education. However, the number of staff committed in the MTSS' Child Labor Unit declined from 12 in 2005 to 8 in 2009.

A Migration Law passed in August 2009, Law No. 8764, provides enhanced legal protections for victims of trafficking. Various awareness raising and training courses have followed the passage of the law, including with police and judicial officials, as well as civil society groups. In October 2009 a public campaign against trafficking was launched, including through the use of television, and a new directorate on trafficking was established within the Ministry of the Interior. An additional bill to increase criminal penalties for trafficking was submitted on November 13, 2009, No. 17594.

## **Other Developments**

The White Paper also involved countries making commitments to improving the cultural of labor compliance in each country. In the case of Costa Rica, particular emphasis was given to public awareness raising on labor rights, corporate social responsibility initiatives, and enhancing the effectiveness of the Superior Labor Council.

The ILO Verification report lists a number of training programs, seminars and publications that are listed as improving compliance efforts in Costa Rica, including some initiatives to improve both labor and environmental standards in the melon, pineapple and mahi mahi sectors, supported by USAID's Program for Labor and Environmental Excellence.

## **B. El Salvador**

### **Labor Law Developments in El Salvador**

In the years since the implementation of the CAFTA-DR, El Salvador has taken a number of steps that advance the labor law framework of the country. On the other hand, a number of the commitments made in the White Paper have appeared to have not yet been implemented.

Among the major steps taken are the ratification in 2006 of ILO Conventions 87 and 98 the two fundamental ILO Conventions on freedom of association and the right to organize and collective bargaining. El Salvador also ratified at the same time Convention 135 on worker representatives and Convention 151 on labor relations in the public sector.

Conversely, in a decision of the Constitutional Chamber of the Supreme Court on October 31, 2007, the Chamber ruled that the extension of freedom of association and collective bargaining to public employees was in violation of articles 47 and 48 of the Constitution, and establishing that the ruling legal regime was in conflict with ILO Conventions 87 and 98.

In response to that decision, in May 2009 El Salvador completed the process of amending articles 47 and 48 of the Constitution by Decree No. 33 establishing that workers and employers in the private sector have the right of association without distinction as to the nature of their work, and the same right to form unions or associations and to collectively bargain is provided to workers of autonomous state institutions, public officials and employees, and municipal employees. This was a major change in the legal framework for public sector workers' trade union rights which had last been modified in August 2006 by Legislative Decree No. 78

amending the Civil Service Act – but which still excluded from trade union rights certain public service workers. The additional constitutional modification cancelled those restrictions, and brought El Salvador’s Constitution in line with the obligations of Convention 87.

Although there remain some categories of public employees that are still exempted from trade union rights – such as the judiciary – where the ILO has raised questions. The ILO has also asked El Salvador to clarify that private security guards have trade union rights protected by law.

Meanwhile, El Salvador has not yet enacted amendments to reform Article 211 of the Labor Code and section 76 of the Civil Service Act to reduce the minimum number of workers from 35 to 25 to form a trade union, as requested by the ILO. Nor has Article 248 of the Labor Code been amended to reduce the six month time period required before resubmitting a union registration application with the MTPS if an initial application has been declined for not meeting the required legal criteria. Moreover, there have been stated concerns that the operation of the registration process can put workers that join unions at risk of retaliation (e.g., the names of founding members are provided to the employer for verification purposes, rather than MTPS asking the employer for a list of all employees to conduct a verification). To address these types of allegations, during the White Paper process the Government of El Salvador committed to request an audit by the ILO of its registration procedures and to consider any recommendations for changes from such audit, but that audit has not yet been requested. Meanwhile, to improve operations the MTPS reports having increased the personnel handling the union registration function from 6 to 20 in June 2009.

The ILO has also observed that Section 204 of the Labor Code prohibits membership in more than one union – although the Government has said this bar does not apply to public sector workers covered by the Civil Service Act. In any case, the ILO observes that workers may have more than one job, and should be able to join more than one union. Similarly, they observe that article 47 of the Constitution, section 225 of the Labor Code and section 90 of the Civil Service Act still require that an individual be a native born citizen of El Salvador to be an officer of a union board, which is inconsistent with Convention 87.

Under section 270 of the Labor Code a union must have 50 percent of the workers of an enterprise to initiate collective bargaining. But the ILO considers that if no union represents

more than 50 percent of the work force, other unions should be given the right to bargain collectively on behalf of their members.

The ILO also considers that the decision of the Director General of Labor not to register a collective bargaining agreement under section 279 should be appealable to the judiciary, as no such right of appeal is currently granted.

In addition, the ILO has made a number of findings of concern about limitations on the right to strike in El Salvador. The suggestion has been made to modify section 529 of the Labor Code to provide that rather than an absolute majority of workers at an enterprise being required to vote in favor to legally authorize a strike, that only a majority of those voting, with a reasonable quorum level, should be the requirement. Likewise, the ILO has suggested that section 553(f) of the Labor Code should be abolished or amended as it permits the Ministry of Labor to declare a strike illegal if striking workers don't represent at least 51 percent of the workers at an enterprise – even though a union has a legal right to strike if it represents 30 percent of the workers of an enterprise.

The ILO has also found article 221 of the Constitution which prohibits strikes by public and municipal employees to be inconsistent with ILO interpretations that strikes can only be banned for public servants that exercise authority in the name of the State. The ILO has also indicated that El Salvador should clarify that the law permits unions of public sector workers to join federations and confederations, including those with private sector unions as members.

Most recently, in January, 2010, El Salvador's Legislative Assembly passed the general Law on Risk Prevention in the Workplace - a major overhaul of the law on occupational health and safety.

In addition, an organic labor law authorization reform bill remains under consideration -- the draft Law on the Organization and Functions of the Labor and Social Welfare Sector ("LOFT").

**Table V.4 Changes to El Salvador's Labor Law Regime 2003-2010**

<b>Year</b>	<b>Law No.</b>	<b>Subject of Reform</b>
<b>2003</b>	Decree No. 19	Regulations on payment of pensions
<b>2003</b>	Decree No. 210	Amends the Penal Code to strengthen regulations on the sexual exploitation of children
<b>2003</b>	Decree No. 1130	Reforming the Wages Act relating to the Education Sector
<b>2004</b>	Decree No. 275	Reforming the Labor Code such that pregnancy tests and medical certificates cannot be required to attain employment
<b>2004</b>	Decree No. 53	Relating to minimum pensions
<b>2004</b>	Decree No. 333	Relating to reform of the Pension Savings System
<b>2004</b>	Decree No. 336	Relating to reform of the Pension Savings System
<b>2004</b>	Decree No. 457	Amending the Penal Code in regard to trafficking violations
<b>2004</b>	Decree No. 458	Reform of the Criminal Procedure Code in regards to the trial of those charged with trafficking
<b>2005</b>	Decree No. 20	Establishing the National Commission on Education Modernization (CONAMOL), a tri-partite discussion on labor issues
<b>2005</b>	Decree No. 66	Establishing the National Committee to Eradicate the Worst Forms of Child Labor
<b>2005</b>	Decree No. 101	Promotion of ethical standards in public service
<b>2005</b>	Decree No. 347	Relating to the Pension Savings System payout date
<b>2005</b>	Decree No. 599	Relating to return to work and pension contributions
<b>2005</b>	Decree No. 611	Providing protections against discrimination against those with HIV/AIDS
<b>2005</b>	Decree No. 891	Providing for social security coverage for Salvadorans living abroad
<b>2006</b>		Ratification of ILO Conventions 87, 89, 135 and 151 on Freedom of Association and Collective Bargaining
<b>2006</b>	Legislative Decree No. 78	Civil Service Act, standardizing regulations on freedom of Association & Collective Bargaining in the public sector
<b>2006</b>	Agreement No. 93	Enacting a National Policy on Occupational Safety and Health
<b>2007</b>	Decree No. 9	Extending the National Commission on Education Modernization (CONAMOL)
<b>2007</b>	Decree No. 277	Reform of the Pension Savings System for those who have returned to work
<b>2009</b>	Decree No. 33	Amendment to Article 47 of the Constitution protecting the right to associate in the public sector
<b>2009</b>	Legislative Decree No. 839	Protection Act of Childhood & Adolescence, which among other child labor protections sets the minimum age of employment at 14 years
<b>2010</b>	Legislative Decree No. 254	General Law on Prevention of Risks in the Workplace

## Reforms to the Ministry of Labor

In recent years, El Salvador has taken steps to add additional resources to the Ministry of Labor and Social Welfare (MTPS) and improve its ability to carry-out its mission. The MTPS received new facilities in November 2007, which has improved its operating capacity.

In July 2009 the MTPS inaugurated a Labor Training Center with three primary objectives: (i) improve the training and skills of MTPS personnel; (ii) improve social dialogue towards the goal of enhanced labor law compliance; and (iii) improve coordination of training efforts to make better use of the available resources.

In 2005, the total budget for the MTPS was approximately \$7 million, with about \$4 million committed to the application and enforcement of labor laws as defined in the White Paper process. As Table IV.6 shows, that budget grew sharply in 2006 to a total of \$8.5 million, with \$6.5 million devoted for labor law functions. The budget grew again significantly in 2009 to a total of \$10.4 million and \$7.6 million on compliance, and grew again once more in 2010 to \$11.7 million with almost \$9 million devoted to labor law compliance – more than twice the figure of 2005. The portion of the budget just committed to labor law enforcement, grew even more robustly, from \$1.5 million in 2005 to \$4.3 million in 2010.

**Table V.5 MTPS Initial Budget (U.S. Dollars) 2005-2010**

	2005	2006	2007	2008	2009	2010
<b>Total MTPS Initial Budget</b>	7,025,245	8,585,245	8,930,135	8,950,585	10,365,620	11,734,740
<b>Total Effect of Verification Programs</b>	4,010,415	6,510,415	6,727,880	6,743,720	7,579,405	8,955,230
<b>Labor Law Enforcement</b>	1,458,120	1,575,755	3,209,055	3,230,685	3,497,910	4,276,710

Source: ILO Verification Report Aug. 2009-Jan. 2010, Pg. 170 & 172

Along with the budgetary increases each year, the number of labor inspectors has continually climbed. During 2005 an additional \$2 million was committed for the hiring of additional compliance personnel, more than doubling its existing capacity. The number of inspectors went from 64 in 2006 to 159 in 2007 where it has since remained. The number of occupational health and safety inspectors climbed from 28 in 2006 to 63 in 2007 and then to 66 in 2009, while the number of conciliators rose from 31 in 2008 to 70 in 2009.

With the added capacity, the number of inspections nearly doubled from 12,524 in 2006 to 21,588 in 2009, and the number of workplace fines jumped from 545 in 2006 to some 2,088 in 2009. The total fines assessed were \$135 thousand in 2006 and grew to some \$617 thousand in 2009.

An assessment of the labor inspection situation was conducted by the ILO related to a project on the strengthening of civil service systems in the Ministries of Labor of Honduras and El Salvador. As part of the effort to assure that labor inspectors have stability of employment and are independent of changes of government and of improper external influences, El Salvador also initiated a program with international support to integrate labor inspectors into the administrative career system.

The ILO has observed for an extended period that there is not a clear legal basis for the right of inspectors to have access to workplaces at night. The ILO similarly has expressed concerns that El Salvador's law requires that inspections be carried out with the participation of the employer and the workers or their representatives, which can compromise the freedom of investigation of inspectors. The ILO has also continued to urge that the penalty structure be increased as to be a sufficient deterrent from taking any action that violates the Labor Code.

## **Reforms to the Labor Justice System**

One of the key areas of focus has been enhancing the capacity of the labor justice system in El Salvador. Recently, in 2009, an assessment study supported by the ILO to assess the training needs of the labor justice system was completed. The recommendations included a permanent training program for labor court personnel, implementation of automated case management systems, creation of additional specialized labor courts in more jurisdictions, and other resource and modernization initiatives.

The Supreme Court of Justice has taken certain actions to move the recommendations forward. The budget for 2010 included funding for one additional specialized labor court and the reorganization of a second labor court.

In the meantime, the Supreme Court of Justice has already prepared an initial training module for the country's labor court officials with support from a World Bank funded project on judicial modernization, and other training programs for the labor justice system have been held. And efforts have been undertaken to improve the statistics of the labor court system.

Until these most recent actions, the number of labor courts had remained the same since 2005, with 43 courts with first instance jurisdiction in labor matters – nine labor courts (although only the five in San Salvador are actually exclusively devoted to labor cases), 21 courts of first instance, and 13 civil courts. At the appeal level there are two specialized labor chambers and three appeal courts with labor included as part of their jurisdiction. There are five specialized labor judges for each of the five courts in San Salvador, and four in specialized chambers of appeal for a total of nine specialized labor judges in the country.

It is estimated that only about one percent of the budget for the Judiciary goes to the courts with exclusive jurisdiction for labor matters – less than \$2 million annually. See Table V.6.

**Table V.6 Budget for the Labor Justice System 2005-2009 (IN US\$)**

Year	Budget of the Judiciary	Cost for labor cases (courts with single jurisdiction)	Percentage
2005	135,808,850	1,682,870	1.24%
2006	160,968,735	1,711,912	1.06%
2007	170,111,065	1,851,071	1.09%
2008	182,220,000	1,863,184	1.02%
2009	204,308,048	n.d.	n.d.

Source: ILO Verification Report Aug. 2009-Jan. 2010, pg. 189

## Developments on Gender and Employment Discrimination

One of the areas in which El Salvador committed to take additional actions under the White Paper was gender discrimination and pregnancy testing. The Ministry of Labor has established a Special Unit for Gender Issues and the Prevention of Employment-Related Discrimination. The unit has also addressed a number of cases involving dismissals for pregnancy and in some was able to secure reinstatement of the worker.

The Unit also addresses dismissals for anti-union discrimination. For the period 2005-2009, the MTPS reports an average of about 80 complaints brought per year. For 2009, the Unit reports acting on some 70 out of 87 such complaints, with reinstatements in most and fines being imposed in 26 such cases.



In 2010 the Unit staffing was 12 officials, four less than in 2009. A strategic plan for the Unit developed in 2008 with USAID support has apparently not been implemented.

## **Developments on Child Labor**

A Road Map to make El Salvador child labor free was rolled out to the public in December 2009. The Road Map received support from international donors, and has now established as a goal the elimination of the worst forms of child labor by 2015 and all child labor by 2010. This effort is coordinated by the National Committee for the Elimination of the Worst Forms of Child Labor.

Previously under the White Paper, El Salvador, as all of the CAFTA-DR countries, committed to eliminate the worst forms of child labor by 2010. As part of this effort, El Salvador adopted phase II of its Time-Bound Program (“TBP”) beginning in October 2006 and ending in September 2009. The results of the Plan completed in 2009 have been subject to an evaluation to be completed in 2010.

Under the TBP, the Government of El Salvador reported that over 5000 children had been assisted between October 2006 and August 2008, and that 400 of these were potential victims of sexual exploitation. According to a September 2008 ILO/IPEC report, El Salvador’s Institute for the Development of Children and Young Persons (ISNA) is responsible for assisting victims of trafficking, and the Center for the Immediate Protection of Children (CIPI) is dedicated to assisting children vulnerable to commercial sexual exploitation. El Salvador has undertaken various public information and awareness campaigns about such exploitation of children. The ILO has also expressed concern that the abuse of child domestic workers be given more attention in El Salvador.

The MTPS reports that the number of inspections related to child labor issues significantly increased from 14 in 2006 to 595 in 2008. The funding for the MTPS child labor unit in 2009 was approximately \$180,000.

These efforts built upon El Salvador already having being one of the first three countries to agree to undertake a Time-Bound Program (TBP) with the ILO’s International Program on the Elimination of Child Labor (IPEC) beginning in 2000. Some of the earliest sectors that IPEC focused on to eliminate child labor were shell fish, coffee and public markets. Other key sectors targeted have been sugar cane, fireworks and rubbish dumps. During the first part of the decade

the programs reportedly assisted over 40,000 children related to these sectors and some 80,000 children and over 5,000 parents have received services under the El Salvador child labor efforts.

There has been some decline in Child labor numbers in El Salvador during the decade. The statistical survey of child labor published by the ILO in 2003 reported 225,475 children between 5 and 17 working in 2001, of which 109,000 were between 5 and 14 years of age. According to updated data from a household survey in 2005, working children between 5 and 14 had dropped to 207,460.

The Government of El Salvador reported to the ILO that during the period August 2006-December 2007, a total of 136 investigations of trafficking were investigated by the police, with 35 convictions holding prison terms of up to 26 years for those convicted of trafficking children for sexual exploitation. El Salvador also participated in regional programs of the ILO focused on the elimination of child sexual exploitation, which had resulted in the adoption of a national plan against trafficking in August 2008.

To combat child sexual exploitation, the Ministry of Labor has been partnering with IPEC. Building on that project, the government developed with the ILO a strategic plan to eliminate the worst forms of child labor by 2015 and child labor in its entirety by 2020.

El Salvador has taken steps to improve the legal record with regard to prosecutions for trafficking in persons. El Salvador notified the ILO of eleven criminal sentences of three to nine years in prison for trafficking covering the period of October 2006 – March 2008. El Salvador's National Committee against Trafficking in Persons also adopted a strategic plan for the years 2008-2012.

## **Other Developments**

In the context of the White Paper, El Salvador committed to undertake a number of initiatives to enhance the culture of compliance in the country. The record on these commitments is mixed.

Special attention to explain the labor rights regime to workers and employers in the free zone areas of the country has received some attention, but not a comprehensive strategy. In 2009, the Alternative Dispute Resolution Coordination Group reportedly provided fourteen training sessions for 156 people about labor laws in the zones. But there has been no targeted inspection or enforcement plan or public information campaign on the compliance efforts of MTPS for the zones.

Similarly, while the Superior Labor Council has been reorganized and re-launched, its record of engagement on moving key initiatives is unclear.

On the other hand, the MTPS has recently organized important training programs on labor rights through its new Labor Training Center – and participants have included workers from maquila unions. In 2007 and 2008 the MTPS reported undertaking significant efforts to support dialogue committees in companies and some 275 trainings covering almost 3700 workers and employers for those two years. Such activities fell to only 31 trainings covering 320 participants in 2009.

It is important to note that there is a National Committee to follow up on the White Paper Recommendations which can act as a catalyst for broadening the social commitment to implement the commitments in the document. It would also be notable if the National Committee had a more regular series of meetings for that purpose.

### **International Support for legal and Institutional Reforms**

In comparison to the other FTAs of the region, the United States made significant contributions for projects in support of labor issues and associated directly with the CAFTA-DR labor provisions to the relevant countries. Overall, the U.S. has funded 39 labor related projects in the region, totaling nearly \$200 million since 2003.

**Table V.8 Labor Capacity Building Projects - CAFTA-DR\***

<b>Year</b>	<b>Project Name</b>	<b>Financing**</b>	<b>Donor</b>
<b>2003</b>	Regional Occupational Safety and Health (Central America)	\$2.5 million	USDOL
<b>2003</b>	Strengthening Labor Systems (5 Countries)	\$6.75 million	USDOL
<b>2003</b>	ACILS – Workers Rights in Regional Economic Integration (Central America)	\$63,728	USAID
<b>2003-2004</b>	More Equitable and Efficient Labor markets (Central America)	\$772,451	USAID
<b>2004</b>	Continuous Improvement in the Workplace (Central America)	\$1,652,444	USAID
<b>1999-2005</b>	Elimination of Child Labour in the Coffee Industry (6 Countries)	\$6,112,187	ILO/U.S.
<b>1999-2005</b>	Statistical Information & Monitoring Programme on Child Labour (SIMPOC) (7 Countries)	\$2,210,713	ILO/U.S.
<b>2002-2005</b>	Contribution to the Prevention & Elimination of the Commercial Sexual Exploitation of Children (7 Countries)	\$8,762,002	ILO/U.S.
<b>2005</b>	Labor Support for Dominican Republic-Central American Free Trade Agreement (Central America)	\$14,130,000	USDOS
<b>2005</b>	Economic Prosperity (Central America)	\$365,000	USAID
<b>2003-2006</b>	Prevention & Progressive Elimination of Child Labor in Agriculture (8 Countries)	\$3,000,174	ILO/U.S.
<b>2002-2006</b>	Contribution to the Prevention & Elimination of Commercial Sexual Exploitation of Children (8 countries)	\$3,795,285	ILO/U.S.
<b>2006</b>	Strengthening Labor Justice Ministries of Labor (CAFTA-DR Countries)	\$9,850,000	USAID
<b>2006</b>	Promoting a Culture of Compliance with Labor Laws (Central America)	\$6 million	USDOS
<b>2006</b>	Eliminate Gender and Other Discrimination (Central America)	\$4 million	USDOS
<b>2006</b>	Modernize Labor Justice (Central America)	\$2 million	USDOS
<b>2006</b>	Strengthen Labor Ministries (Central America)	\$6.1 million	USDOS
<b>2006</b>	Strengthening Labor Systems: Cumple y Gana (Central America)***	\$6,490,000	USDOL
<b>2006</b>	Labor Justice Training (CAFTA-DR Countries)	\$2 million	USDOS
<b>2006-2007</b>	Benchmarking Verification (Central America)	\$6 million	ILO/U.S.
<b>2007</b>	Labor Law Compliance –Comply and Win III (Central America)***	\$4.2 million	USAID
<b>2007</b>	Labor: Promote Tripartite Social Dialogue (CAFTA-DR Countries)	\$2,625,000	USDOS
<b>2007</b>	Labor: Engage Workers in the Informal Economy (CAFTA-DR Countries)	\$875,000	USDOS
<b>2007</b>	Worker Rights Centers (Central America)	\$4,595,000	USAID
<b>2007-2010</b>	Professionalizing Labor Inspectorates (Central America)	\$1,193,000	USAID
<b>2004-2009</b>	Combating Child Labor Through Education (6 Countries)	\$6,539,030	USDOL
<b>2005-2009</b>	Addendum Combating Commercial Sexual Exploitation of Children (8 Countries)	\$4,966,817	ILO/U.S.

Year	Project Name	Financing**	Donor
2008-2009	Support Implementation Labor Chapter Requirements (CAFTA-DR Countries)	\$9,288,600	USAID
2007-2011	Working Together: Labor Rights for All (Central America & Dominican Republic)	\$6,795,000	USDOL
<b>COSTA RICA</b>			
2002-2005	Preparatory Activities for the Elimination of the Worst Forms of Child Labour, Time Bound Programme		ILO/Canada
2003-2005	Strengthening Governance in Labour Administration (FOALCO, Phase I)		ILO/Canada
2003-2005	Combating the Worst Forms of Child Labour, Time Bound Programme (Phase II)		ILO/Canada
2006	Strengthening of Labour Administration (FOALCO, Phase II)		ILO/Canada
2006-2007	Labor Market: Analysis of Dynamics of Gender & Minority Groups	\$18,628	IDB
2008	Labor Law Compliance – Comply and Win III	\$772,877****	USAID
2008	Benchmarking Verification	\$465,000****	ILO/U.S.
2008-2010	Provide Job Training for People with Disabilities	\$470,000	USAID
<b>EL SALVADOR</b>			
2000-2005	Elimination of Child Labour in the Fireworks Industry	\$1,008,327	ILO/U.S.
2001-2005	Support for the Combating the Worst Forms of Child Labour, Time Bound Program	\$4,034,351	ILO/U.S.
2002-2006	Combating the Worst Forms of Child Labour, Time Bound Programme	\$3,380,000	ILO/U.S.
2002-2007	Education Project in Support of the Time Bound Programme	\$3,930,141	ILO/U.S.
2007	El Salvador Compact: Human Development, Education, & Training Activities	\$32,800,000	MCC
2006-2008	Workforce & Local Economic Development (5 Countries)	\$2,000,000	USDOL
2008	Labor Law Compliance – Comply and Win III	\$772,877****	USAID
2008	Benchmarking Verification	\$465,000****	ILO/U.S.
2008-2009	Workforce Development	\$1,736,000	USAID
2008-2011	Ensuring Benefits in the Formal Sector	\$940,000	USAID

Sources: USAID TCB Database; ILO Activities in the Americas 1999-2002 and 2003-2006; USDOL ILAB website

\*The table has been broken down by those projects that encompassed the whole of the CAFTA-DR region and then those specific to each country not included in the combined listing. The table includes those projects with a particular nexus of the CAFTA-DR Agreement, such as the Support Implementation of Labor Chapter Requirements. Also internationally funded programs are listed that while not directly related to the CAFTA-DR, do affect labor obligations, such as the ILO Time Bound Programme on Child Labor.

\*\*Funding amounts provided where available

\*\*\*From 2007 to 2008, the U.S. government changed the name under which this project was reported from the Spanish title (*Cumple y Gana*) to its English translation (Comply and Win).

\*\*\*\*In 2008 the U.S. government changed the manner in which they reported the funding for these two projects from the full project (including all CAFTA-DR countries) as had been done previously, to the amount particular to each country.

## **VI. The United States-Peru Trade Promotion Agreement**

### **Labor Obligations under the Peru TPA**

Free trade negotiations between the United States and Peru began on May 18, 2004 and were finalized in December of 2005. The U.S.-Peru Trade Promotion Agreement (Peru-TPA) was originally signed on April 12, 2006. Peru initially ratified the agreement in June of 2006.

The United States, however, requested some modifications to the TPA after the Bush Administration and Congressional Democrats reached an understanding known as the “May 10 Agreement,” which required modifications to U.S. free trade agreements with regard to labor and environmental provisions and some other elements. These changes were negotiated into the Peru TPA in June 2007, and Peru ratified the agreement again that same month. After further clarifications on a number of elements between the Congress and the Bush Administration, the Congress passed the implementing legislation in December 2007.

The Agreement entered into force on February 1, 2009, just as President Bush was leaving office and despite objections again from Congressional Democrats – again over the commitments related to the labor and environmental provisions.

The TPA largely reflects the same labor chapter as contained in the CAFTA-DR with some important differences that were the basis of the internal U.S. negotiation and then agreed to by Peru.

Under the May 10, 2007 Agreement, the first modification from the prior labor chapter obligations is that the applicable labor law obligations must require FTA Parties “to adopt, maintain and enforce in their own laws and in practice the five basic internationally-recognized labor standards, as stated in the 1998 ILO Declaration”

This change was significant in that it modified the “soft obligation” in prior FTAs and makes it a “hard obligation” of the Parties and makes these fundamental labor rights a “floor” for a Party’s labor laws. In addition, for the first time the ILO Declaration standard on the obligation on the elimination of discrimination in respect of employment is included in a labor chapter of an FTA. Previously, since the discrimination standard is absent in other U.S. trade laws that address worker rights (including the Generalized System of Preferences) – it has been left out of the definitions of the labor laws that Parties are obligated to enforce. The May 10, 2007 Agreement changed this and the discrimination standard was included in the subsequent

revision to the U.S. FTA labor chapters for Peru, as well as Panama, Colombia, and South Korea. In the Peru TPA this obligation is incorporated into Article 17.2.1 on Fundamental Labor Rights.

The scope of the labor laws now defined to be subject to the obligations of the PTA is defined in Article 17.8 to include:

- a. freedom of association;
- b. the effective recognition of the right to collective bargaining;
- c. the elimination of all forms of forced or compulsory labor;
- d. the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors;
- e. the elimination of discrimination in respect of employment and occupation; and
- f. Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Article 17.2.1 also clarifies that a Party cannot waive or derogate from the obligation to apply such fundamental labor rights in a manner affecting trade or investment between the Parties. Similarly, an effort was made in the final version of the Chapter to address the concern that the “discretion” provision in prior labor chapters provided to a party to allocate enforcement resources meant that it would be harder to show a violation of the obligation to “effectively enforce” labor laws and was thus constrained by new language in Article 17.3.b that subjects the test of discretion to the other obligations within the Chapter, including effectively providing the fundamental labor rights as defined by the ILO core conventions.

Another primary objective and criticism of the prior FTA provisions on labor were also addressed by the May 10, 2007 agreement – which included an understanding that labor and environment dispute settlement procedures would be identical to the dispute settlement mechanisms otherwise applicable to the other provisions of the FTA. Thus there is no distinction in the remedy or procedures applicable to violations of the labor obligations under the Peru TPA.

## BOX VI.1 May 10, 2007 Agreement - Peru & Panama FTA Chances

### I. Provisions on Basic Labor Standards

#### **A. Enforceable Obligation as to ILO Standards**

Countries would be required to adopt, maintain and enforce in their own laws and in practice the five basic internationally-recognized labor standards, as stated in the 1998 ILO Declaration:

1. Freedom of association;
2. The effective recognition of the right to collective bargaining;
3. The elimination of all forms of forced or compulsory labor;
4. The effective abolition of child labor and a prohibition on the worst forms of child labor; and
5. The elimination of discrimination in respect of employment and occupation

The obligations of this agreement, as they relate to the ILO, refer only to the 1998 ILO *Declaration on the Fundamental Principles and Rights at Work*.

#### **B. Enforcement of Law**

A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable **exercise of discretion and to bona fide decisions with regard to the allocation of resources between** labor enforcement activities among the internationally recognized labor rights, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.

There would be a requirement to show that no enforcement of law occurred “in a manner affecting trade or investment between the parties” and “through a sustained or recurring course of action or inaction.”

#### **C. Enforceable Non-Derogation Provision**

Parties cannot derogate from this obligation in a manner affecting trade or investment.

#### **D. Full Parity in Dispute Settlement**

Labor obligations subject to same dispute settlement, same enforcement mechanisms (remedies), and same criteria for selection of enforcement mechanisms (remedies) as all other FTA obligations.

As mentioned the May 10, 2007 agreement resulted in the re-negotiation of certain provisions of the Peru-TPA, including the labor chapter. As shown in the table below, there are nine substantive differences between the original draft and the final agreement, some of which are technical in nature and some of which are far more significant. See table V.1.

With regard to the obligations under the labor chapter for a Labor Affairs Council to meet within the first year of the agreement's entry into force, this was actually done at a meeting in Lima on January 28, 2010. The meeting included a public session. The statement after the



meeting was held did not provide any specifics as to what was discussed or agreed upon, and it is not clear that there are any active bilateral cooperative labor programs under the FTA.

**Table VI.1 Changes in the Peru TPA Following the May 10, 2007 Agreement**

	January 2006 Draft	Final Agreement
1.	Article 17.1 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 (1998) (ILO Declaration. Each Party shall strive to ensure that such labor principles and the internationally recognized labor rights set forth in Article 17.7 are Recognized and protected by its law	Article 17.1 The parties reaffirm their obligations as members of the International Labor Organization (ILO)  Article 17.2.1 Each Party shall adopt and maintain in its statutes and regulations, and practices there under, the following rights, as stated in the <i>ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998)</i> (ILO Declaration)  (a) Freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of compulsory or forced labor; (d) the effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and (e) the elimination of discrimination in respect of employment and occupation.
2.	Article 17.2.1(a) A Party shall not fail to effectively enforce its labor laws, through...	Article 17.3.1(a) A Party shall not fail to effectively enforce its labor laws, [added] including those it adopts or maintains in accordance with Article 17.2.1, through...
3.	Article 17.2.1(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 of inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.	Article 17.3.1(b) A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to <i>bona fide</i> decisions with regard to the allocation of resources between labor enforcement activities among the fundamental labor rights enumerated in Article 17.2.1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.
4.	Article 17.3.6 ...Such remedies may include measures such as orders, fines, penalties, and temporary workplace closures, as provided in	Article 17.4.6 ...Such remedies may include measures such as orders, fines, penalties, or temporary workplace closures.

	January 2006 Draft	Final Agreement
	the Party's laws.	
5.	Article 17.4.2 d) Consider and endeavor to resolve matters referred to it under Article 17.6.4	Article 17.5.2(d) endeavor to resolve matters referred to it under Article 17.7.4; and  [added] (e) perform any other functions as the Parties may agree.
6.	Article 17.6.7. No Party may have recourse to dispute settlement under this Agreement for any matter arising under any provision of this Chapter other than Article 12.2.1 (a).	[Not included]
7.	Article 17.6.8. No Party may have recourse to dispute settlement under this Agreement for a matter arising under Article 17.2.1(a) without first seeking to resolve the matter in accordance with this Article.	Article 17.7.7. No Party may have recourse to dispute settlement under this Agreement for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.
8.	Article 17.7 Labor laws means... a) the right of association; b) the right to organize and bargain collectively; c) a prohibition on the use of any form of forced or compulsory labor; d) labor protections for children and minors, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health	Article 17.8 labor laws means... (a) freedom of association (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of forced or compulsory labor; (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors; [added] (e) the elimination of discrimination in respect of employment and occupation; and (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
9.	Article 17.7 <b>statutes or regulations</b> means: for the United States, acts of Congress or regulations promulgated pursuant to an act of Congress that are enforceable by action of the federal government.	Article 17.8 <b>statutes and regulations</b> and <b>statutes or regulations</b> means: for the United States, acts of Congress or regulations promulgated pursuant to acts of Congress that are enforceable by action of the central level of government and, for purposes of this Chapter, includes the Constitution of the United States.

## **Labor Law Developments in Peru**

The Ministerio de Trabajo y Promoción del Empleo (MINTRA) oversees the administration of labor law in Peru, and provides conciliation and mediation services. Peru also has a labor courts system.

Prior to the opening of negotiations, Peru had ratified all eight of the ILO Core Conventions. Peru's labor law is reflected in Articles 23-28 of the Constitution and five pieces of legislation (Law of Productivity and Labor Competitiveness; Procedural Labor Law; Law on Collective Labor Relations; Law on Days of Work, Hours, and Overtime; and Regulations on Safety and Health in the Workplace). These legislative pieces were adopted in 1997, 1996, 2003, 2002, and 2005 respectively.

Peru has made numerous changes to its labor law and regulatory structure since the opening of negotiations with the United States in 2004. Two of the most significant areas of reform include freedom of association and the reform of the labor inspectorate. Some of these reforms reflected the very intensive three-way negotiations between the U.S. Administration, the U.S. Congress and the Peruvian Government.

Supreme Decree Nos. 013 and 019 of 2006, as modified by Supreme Decree 019-2007 revoked the ability of employers to unilaterally change portions of a collective bargaining agreement, and provided that interference in the freedom of association or anti-union discrimination are subject to significant monetary penalties and defined as a serious offense. A draft General Labor Act, prepared with the technical support of the ILO, has been pending for a number of years, and would further strengthen the legal regime for anti-union acts and provide for expedited proceedings to address such offenses.

At the same time, the ILO has issued a number of observations indicating that concerns remain about a lack of effective penalties for acts of employer interference in trade union activities, and a lack of effective judicial remedies with regard to such anti-union actions.

In 2007, Peru implemented new regulations to better regulate temporary employment agencies and labor contracting. As in a number of countries, allegations were being made that employers in Peru increasingly used temporary employees and labor contracting to avoid permanent labor contracts and the costs associated with such employment relationships, with the result also being a lessening of the ability of workers to organize a union.

Further reforms have addressed issues of child labor, human trafficking, pension issues, and regulations on the use of and penalties for violations of the laws on temporary employment contracting and job placement agencies.

**Table VI.2 Changes to Peru's Labor Law Regime 2004-2010**

Year	Law or Decree No.	Subject of Reform
2004	Supreme Decree No. 003-2004-TR	Creation of the Register of Trade Union Organizations for Public Servants
2004	Supreme Decree No. 009-2004-MTC	Establishing drive time restrictions for drivers of transport service vehicles
2004	Act. No 28292	Amending the General Law on Labour Inspection and Defense of the Worker regarding inspector powers and procedures
2004	Supreme Decree No. 020-2001-TR	Regulation of the general law of labor inspection and protection of the work force
2005	Supreme Decree No. 009-2005-TR	Occupational Safety and Health Regulations
2005	Act No. 28518	Labour Training
2006	General Act No. 28806	Elevating the labor inspectorate department to the level of National Directorate, establishes a career-track for labor inspectors with professional standards
2006	Decree No. 019-2006-TR	Issuing regulations under the General Act on the Labor Inspectorate
2006	Directoral Decision No. 011-2006-APN/DIR	Use of personal protective equipment in docks and dock installations
2006	Supreme Decree No. 013-2006-TR	Prohibitions of employers to unilaterally change any portion of a settled collective bargaining agreement or require renegotiation of such an agreement. Also establishes that trade unions may declare a strike when at least two-thirds of the membership is present at the time of voting.
2006	Supreme Decree No. 019-2006-TR	Subjects interference by an the employer in the freedom of association of a worker or anti-union discrimination as an offence subject to monetary penalties
2006	Supreme Decree No. 007-2006-MINDES	Provides a list of prohibited work by children aged 12 to 18 based on hazardous or harmful nature to the physical or moral health of the worker
2007	Ministerial Decision No. 0080-2007-ED	Establishing a national register of teachers to be used as replacements during a strike
2007	Decision No. 010-2007-APN/DIR	Handling national standards of occupational safety and health regulations in dock work
2007	DS No. 195-2007-TR	Handling the establishment of holidays
2007	Supreme Decree No. 001-2007-TR, of 13 January 2007	Establishing the National Commission to Combat Forced Labor
2007	Supreme Decree No. 002-2007-TR	Providing additional measures to strengthen the labour inspection system nationwide
2007	Supreme Decree No. 003-2007-PRODUCE	Requiring fishing vessels to produce a certificate that they have made social security contribution payments prior to leaving port
2007	Supreme Decree No. 007-2005-TR	Amendments to occupational safety and health regulations
2007	Supreme Decree 019-2007-	Requirements of large fishing vessels to pay contributions

Year	Law or Decree No.	Subject of Reform
	PRODUCE	prior to permission being granted for departure
2007	Supreme Decree No. 024-2007-TR	Replaces Article 62 of the Rules of the Law on Collective Labour Relations concerning the decision to strike by a union
2007	Law No. 28950	Further defining human trafficking as in violation of the law, ensuring protection for victims and witnesses and strengthening sentencing guidelines
2007	Act. No. 28983	Law of Equality of Opportunity for Men and Women
2007	Act. No. 28991	Establishes minimum pension levels for those qualifying under private pension funds
2007	Act No. 28992	Prohibiting those under 18 years of age from employment in the mining sector
2008	DL No. 1086	Handling micro-enterprises pension insurance and provision of health care
2008	Act 29245	Regulates the requirements, rights, obligations, and penalties for companies who engage in employment contracting
2009	Act 29358 & 29346	Amending Act 28806 on the Labour Inspectorate
2009	Law No. 29344	Establishing universal health-care insurance
2010	Act No. 29497	New Labour Procedure Act

## Reforms to the Ministry of Labor

Peru began reforms of its Labor Inspectorate in 2006. The status of the labor inspection department was elevated to a national directorate level. In addition, various procedural reforms were implemented, including that an inspection be completed within 30 days from the time it is initiated, the process for levying fines was modified to increase the potential effectiveness of such processes, and a professional civil service track for labor inspectors was established. This reform created professional standards for employment, pay and working conditions, and annual training for all labor inspectors. The number of inspectors has reportedly increased by 100 to be over 300 in early 2007, with plans to hire an additional 250 by the end of 2007.

In 2001 the National Council for Promotion of Labor and Employment was established. This Council brings together government, employer, and labor groups for the promotion of social dialogue and contributes on issues of labor, employment, training and social security. This Council also oversees the setting of the minimum wage, reviews draft labor legislation, and responds to ILO procedures. In May of 2010 four significant trade union confederations (CGTP, CUT, CTP and TACP) returned to the Council promoting its continued work. Another notable institutional change has been the establishment of 12 regional committees across the country to

promote tripartite dialogue since 2004 (there was only one regional committee in place prior to that time).

In 2007 Peru established the National Commission to Combat Forced Labor and approved the National Plan to Combat Forced Labor. These institutions aim to build and strengthen structures at the national and regional levels to address forced labor concerns. The ILO has been making observations for many years about concern with regard to forced labor practices (debt bondage) involving certain indigenous communities in the agriculture, mining, fishing, domestic service and logging sectors. The National Plan called for the adoption of national laws to effectively criminalize and punish such forced labor practices, improve training and enforcement capacity, and undertake a public education campaign. It is not clear to what extent these commitments have been implemented.

Regulations for the National Steering Committee for the Prevention and Elimination of Child Labor (CPETI) were approved in July of 2007. These regulations not only govern the make-up of the committee but provide its aim to evaluate and monitor efforts and formulate policy proposals on child labor. A National Plan for the Prevention and Elimination of Child Labor adopted for the period 2005-2010 has had a particular focus on the hazardous work done by children in artisanal gold mines in Peru and also child domestic workers.

## **Reforms to the Labor Justice System**

In January of 2010, Peru approved Act. No. 29497, the New Labour Procedure Act. This act addresses the labor justice system of Peru and provides numerous changes with the goal of modernization, effectiveness, and timeliness. The new law puts forth guidelines on proceedings and courts of jurisdiction, including an expanded role for the Supreme Court to hear certain labor related cases on appeal. The process has been streamlined to resolve cases within six months, improving processes that used to take years. This new law also promotes the use of alternative dispute resolution mechanisms and establishes the Computer System of Law and Precedent in Labor Matters, an electronic database for public access to labor rights and law as well as serves as a tool for judges and labor courts. This Act took effect on July 15, 2010.

## International Support for Legal and Institutional Reforms

International funding has supported programs in Peru addressing labor related issues, including child labor and social dialogue. Significant funding has come from the United States -- including programs to combat child labor in Peru. Over \$17 million has been committed for child labor programs since 2001. However, funding from U.S. or other donors has not generally been directly related to implementing the Peru TPA labor obligations.

**Table VI.3 Labor Capacity Building Projects-Peru\***

Year	Project Name	Financing**	Donor
2004	Creating Conditions for Economic Revitalization (CRECER)	\$240,000	USAID
1998-2005	Promotion of Labour-intensive Technologies in Public Investment (3 countries)		ILO/Denmark
2001-2005	Prevention & Elimination of Domestic Child Labour in South America (4 countries)	\$4,672,104	ILO/U.S.
2002-2005	Prevention & Progressive Elimination of Child Labour in Traditional Artisanal Mining in South America (Phase II) (3 countries)	\$4,476,293	ILO/U.S.
2002-2005	Incorporation of the Gender Dimension into Anti-poverty & Employment Generation Policies in Latin America (6 countries)		ILO/Netherlands
2002-2005	Trade Unions & Decent Work in the area of Globalization in Latin America (9 countries)		ILO/Spain
2004-2005	Support to Social Sector Reforms (including a MINTRA element)	\$7.57 million	IDB
2002-2006	IPEC Sub regional Coordination in South America (Phase II) (9 countries)		ILO/Spain
2004	Combating Child Labor in Commercial Agriculture through Education in Peru	\$3 million	USDOL
2006	Combating Child Labor through Education in Peru	\$5 million	USDOL
2004-2006	Regional Sustainable Employment Programme (PRES, Phase II) (4 countries)		ILO/Netherlands
2004-2006	Strengthening of Institutional Machinery for Social Dialogue (6 countries)		ILO/Spain
2004-2006	Strengthening of Labour Administrative Services (3 countries)		ILO/Spain
2004-2007	Prevention and Elimination of Domestic Child Labour & the Commercial Sexual Exploitation of Children (4 countries)	\$5.5 million	ILO/U.S.
2005-2009	Promotion of Youth Employment in Latin America (8 countries)		ILO/Spain
2006-2008	Reduce Child Labor in Artisanal Gold-mining Communities in Puno	\$165,000	IDB
2008	Information System for Evaluating & Monitoring Opportunities for Women & Men	\$150,000	IDB
2009	Andean Trade Capacity Building Program	\$220,000	USAID
2009	Technical & Operational Foundation of the	\$539,000	IDB

	National Job Service in Peru –SENEP		
<b>2004-2010</b>	Justice Services Improvement (not labor specific)	\$15.2 million	World Bank

Sources: *USAID TCB Database; ILO Activities in the Americas 1999-2002 and 2003-2006; USDOL ILAB website*

\* This table includes those programs that were funded through U.S. and international sources that provided assistance to labor related areas.

Some programs, such as the World Bank's Justice Services Improvement program, carry no direct link to labor issues, yet would have an indirect link to the labor justice system.

\*\*Funding amounts provided where available.