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Labor Provisions in Free Trade Agreements

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Session 4: Labor Provisions in Free Trade Agreements

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Overview of Labor Provisions in Trade Agreements

- A variety of models
- Evolution over time
- “Hard” and “Soft” obligations

What Types of Labor Provisions are in Trade Agreements?

- Objectives or goals
- Labor standards
- Domestic enforcement of labor laws
- Institutional mechanisms
- Engagement with the public & stakeholders
- Cooperation
- Consultations and Dispute Settlement

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Objectives & Goals

- General Affirmations
- Commitments to, and Membership in ILO
- Objectives...employment, quality jobs, improved standards of living, competitiveness, etc.

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Labor Standards

Scope of coverage

- ILO Declaration on Fundamental Principles and Rights at Work (1998) – “core” or “fundamental” labor standards
- Other labor standards: working hours (e.g. overtime), minimum wages, occupational safety and health, treatment of migrant workers, etc.

Degree of Obligation: Respect, promote, strive to, adopt & maintain

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Domestic Enforcement of Labor Laws

- Commitments to enforce and uphold domestic labor laws
- Connection to trade
- Domestic legal rights and procedures to ensure workers can realize labor rights

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Institutional Mechanisms

- Government-to-Government Councils or Committees of labor ministry and other officials
 - Points of Contact and communications
 - Cooperation
 - Consultations
- Standing institutions (e.g. Secretariats)

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Engagement with the Public & Stakeholders

- Government to public/stakeholder communications
- Public/stakeholder to Government communications
 - Input on cooperation and engagement
 - Complaints (e.g. public submissions)

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Cooperation

- Shared interest in promoting worker rights and welfare
- Subjects: wide range of labor-related issues
- Mode: exchange of technical expertise, technical assistance, joint projects, etc.
- Generally voluntary; budgetary discretion
- Stakeholder involvement

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Consultations & Dispute Settlement

- Formal request for consultations - notification of concerns
- Dialogue and cooperation (to seek resolution)
- Consultation processes/steps
- Outside experts
- Arbitral panel
- Resolution of disputes (monetary assessments, trade sanctions)

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Example: Recent U.S. FTAs' Dispute Settlement Provisions

- A Party may request cooperative labor consultations with another Party concerning any matter arising under the Chapter
- Minimum period for cooperative labor consultations is 60 days and may include a meeting of the Labor Affairs Council
- If no resolution, process moves to formal Ministerial-level (Trade Ministers) consultations under the Dispute Settlement Chapter of the Agreement (same process as commercial disputes)
- If no resolution, arbitral panel may be formed from independent experts (including with labor expertise)

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What FTA Labor Provisions Do Not Do

- Do not create or impose harmonized labor standards on the countries
- Review processes do not replace existing domestic institutions
- No supranational body with authority to enforce labor law
- Contact Points are not empowered to adjudicate individual rights
- Do not act as a barrier to trade

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