

Principles for labour chapters in trade agreements

The following principles should be included, as a minimum, in labour chapters in all free trade agreements.

Commitments

1. Parties commit to adopt and maintain in their national laws and regulations, including those issued by sub-national structures, the following fundamental labour rights conventions developed by the International Labour Organisation:
 - No. 87, on Freedom of Association and Protection of the Right to Organise
 - No. 98, on the Right to Organise and Collective Bargaining
 - No. 100, on Equal Remuneration
 - No. 111, on Discrimination (Employment and Occupation)
 - No. 138, the Minimum Age Convention
 - No. 182, on the Worst Forms of Child Labour
 - No. 29, the Forced Labour Convention
 - No. 105, the Abolition of Forced Labour
2. In order to effectively maintain and guarantee fundamental labour rights parties commit to maintain in their national laws and regulations, including those issued by sub-national structures, adherence with the following governance conventions developed by the International Labour Organisation:
 - No. 81 Labour Inspection Convention
 - No. 122 Employment Policy Convention
 - No. 129 Labour Inspection (Agriculture) Convention
 - No 144 Tripartite Consultation (International Labour Standards) Convention
3. Parties commit to acceptable conditions of work with respect to wages (including minimum wages, overtime, and legally or contractually required bonuses), hours of work, occupational safety and health, workers representatives, termination of employment, compensation in cases of occupational injuries and illnesses, and social security and retirement. Commitments on acceptable conditions of work have regard to ILO Conventions and Recommendations.
4. The chapter includes non-derogation provisions which prevent parties from weakening or waiving from core labour standards and acceptable conditions of work in labour laws.
5. The chapter establishes a system of identifying and preventing the importation of products made with forced labour and child labour in its worst forms.

Labour Dispute Settlement

6. Labour disputes are pursued through the agreement's general dispute settlement mechanism, taking into account the following principles:
 - Clearly defined stages of procedure including timeframes
 - A submission process open to any person of any party to the agreement, including foreign governments, against a government or sub-national entities that violates the labour standards outlined in the agreement
 - Established review and investigation procedures with the participation of trade unions that include public hearings and fact finding missions
 - Cooperative consultations to develop action plans to address violations but in case of failure, arbitration with binding decisions
 - Suspension of benefits not monetary assessments

APPENDIX 2 TO ACTU SUBMISSION

7. Sanctions must cause an effective suspension of trade benefits in the form of countervailing duties. In addition to sanctions, a decision may require an action plan that could include legislative and/or regulatory reform:
- Sanctions sufficiently stringent and commensurate to those duties prescribed for commercial abuses
 - To this end, a sanction floor must be agreed in the form of a pre-agreed minimum countervailing tariff that increases with the severity of the violation:
 - Factors of aggravation (non-exhaustive) to be considered should include:
 - the *nature and extent of the conduct* which led to the breaches;
 - the *nature and extent of loss* or damage sustained as a result of the breaches;
 - whether the *breaches were deliberate*;
 - whether the *breaches formed part of a sustained or recurring course of action or inaction* on the part of the State;
 - any *measures undertaken* by the non-compliant party to address the violation
 - Benefits suspension should first be targeted at the tariffs lines corresponding to the sector in which the violation(s) occurred, if in the case that the initial sanctions against the relevant tariff lines are not effective, sanctions should be broadened to include the tariff lines of related sectors. In case sanctions against related sectors are still not dissuasive (e.g. due to small trade volume or for violations in the public sector), sanctions should target other sectors of the economy in addition to the sector where the violation occurred
 - The violating party must refrain from all industrial subsidies and other measures aiming at nullifying the countermeasures
 - The sanction should increase by 50% for every year of non-compliance
8. Labour violations are actionable down the supply chain.

Institutions for Cooperation on Labour

9. The chapter includes institutions that guarantee government cooperation and that continuous to improve labour standards, including:
- A Labour Affairs Council consisting of cabinet-level officials from each country that meets regularly to oversee the implementation of the chapter and discuss regional labour issues
 - A forum for the social partners that produces research and regular, independent reports on compliance with labour standards and identifies patterns of labour violations and recommendations for priority areas of cooperation
 - Transnational Labour Councils where employers and workers of the same enterprise with a supply chain across trading parties address labour relations
 - Labour Cooperation and Capacity Building framework that identifies and supports the implementation of technical assistance programs, officials' meetings, exchange of information on standards and regulations, joint development of research, joint conferences, exchanges on technology issues on – among others - fundamental rights at work and their effective application, labour administration and inspectorates, occupational safety and health
 - In identifying areas for labour cooperation and capacity building and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as the views of other members of the public
10. In general the labour institutions should:
- Be appropriately resourced with regard to international benchmarks
 - Include genuine tripartite governance and consultation structures
 - Coordinate, where appropriate, with the ILO