

What Do Chinese Rules Mean for Worker Rights?



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The debate over the Trans-Pacific Partnership (TPP) is among the most heated economic discussions before Congress. Those skeptical of this vast new trade deal believe it will have a negative effect on blue-collar workers in the United States and weaken labor standards globally. For this reason, many of the nation's labor unions oppose the TPP—the proposed free trade agreement (FTA) that the United States is negotiating with 11 other Asia-Pacific countries that together comprise nearly 40% of both global GDP and global goods and services trade. ¹

Supporters believe TPP will create net new manufacturing and service-sector jobs while also raising global standards, particularly labor protections. They point to substantially improved U.S. trade balances in the blue collar goods sector for trade deals concluded since 2000. In addition, the Obama Administration has said that TPP will have the highest labor standards ever for a trade agreement. ²

President Obama also warned that unless the United States and other likeminded countries reached an agreement on creating trade rules in the Asia-Pacific, China would write those rules. ³ But, although the President has sounded the

alarm about what China's rules would mean for labor standards, there has been very little analysis. With China racing to conclude the Regional Comprehensive Economic Partnership (RCEP) by the end of 2015, **we tested what exactly Chinese rules would really mean for labor.** We studied each of the 13 Chinese trade agreements concluded since 2000 (nearly 2,000 pages) and compared them to the 17 U.S. agreements in the same time period. We found the following:

1. Chinese trade deals have either non-existent or watered down labor standards.

- Eight of China's 13 trade agreements have no labor standards whatsoever.
- Five of China's 13 trade agreements gloss over labor standards and fall short of the standards set in U.S. trade agreements.
- In 1,849 pages of Chinese trade agreements, the words "labor," "labour," or "worker" appear a total of 17 times.⁴

2. The Regional Comprehensive Economic Partnership agreement, which China is currently negotiating, is expected to have no labor standards.

- RCEP's negotiating objectives make no mention of labor standards.
- Published reports indicate that RCEP will include a "flexibility principle", a clause that will allow countries to evade any standard—labor or otherwise—should that country experience difficulty meeting it.

3. Every U.S. trade deal since 2000 has stronger labor protections, enforcement, and monitoring mechanisms than all Chinese deals.

- Labor standards in U.S. deals have generally become tougher through the years.

This analysis of Chinese and U.S. trade deals demonstrates that, in the area of worker rights, there is an immense cost to ceding trade and commerce rules to China. And with China trying to impose those standards on the rest of the world, policymakers need to be extremely concerned with the effect on American workers.

Finding 1

China's trade deals have either non-existent or watered down labor standards.

Since 2000, China's economy has been on a tear. Its GDP has grown over seven-fold, it has concluded 13 trade agreements with partners across the world, and it is presently negotiating the Regional Comprehensive Economic Partnership (RCEP), its own regional trade agreement.⁵ RCEP is roughly the same size and scope as TPP, but it has an additional goal: to undercut the U.S.-led TPP and high-standard American rules in the region. In our analysis of past agreements, we found that China's deals handle labor protections in their FTAs in two distinct ways: ignore them or water them down.

Chinese deals since 2000: Asia-Pacific (2001), Hong Kong (2003), Macau (2003), ASEAN (2005), Chile (2006), Costa Rica (2008), New Zealand (2008), Pakistan (2009), Singapore (2009), Peru (2010), Taiwan (2010), Iceland (2014), and Switzerland (2014).

In eight of the 13 FTAs (with ASEAN, Asia-Pacific, Costa Rica, Hong Kong, Macau, Pakistan, Singapore, and Taiwan), *China has completely ignored labor protections.* In each of these treaties, there is no protection for labor standards beyond vague, unenforceable, aspirational language on the need for broad cooperation on areas of commerce. In numerous

agreements, the words, “labour,” or “worker” do not appear in the agreement text at all.

ASEAN: This 13-page agreement involving all 10 ASEAN countries ⁶ does not mention any type of cooperation, including on labor protections, apart from those items related to tariff reductions. ⁷

Asia-Pacific: This 14-page agreement involving seven countries does not mention any labor protections. ⁸

Costa Rica: In this treaty, a full chapter (11 articles) of this 95-page agreement is dedicated to cooperation and further enhancement of trade relations. However, not one article mentions labor protections. Instead, it focuses on the promotion of small and medium enterprises, facilitating cooperation in innovation, science and technology, bringing cooperation in cultural and recreational activities, and other such areas. A “Committee on Cooperation” will oversee the cooperation between the countries. ⁹

Hong Kong: This 12-page agreement is focused only on developing closer economic relations and does not mention setting labor standards at all. ¹⁰

Macau: This 13-page agreement is, like the Hong Kong deal, focused on commerce. It doesn’t mention labor standards but does touch on smaller areas for cooperation, including telecommunications and culture. ¹¹

Pakistan: In this 46-page agreement, there is no mention of labor. There are cooperative methods suggested in other areas, including dispute resolution and transparency. ¹²

Singapore: In this 76-page agreement, there is no mention of labor. There are other cooperative activities named, including tourism. ¹³

Taiwan: In this 7-page agreement, there is no mention of labor. The text calls for cooperation in a number of areas, including intellectual property rights, customs, and other areas (Chapter 3, Article 6, Section 1). ¹⁴

In five other Chinese FTAs (with Chile, Iceland, New Zealand, Peru, and Switzerland), *the agreement text glossed over labor protections or agreed to weak or watered down standards*. The agreements list a number of activities in which labor cooperation is “encouraged” or produced a separate memorandum of understanding (MOU) that supports cooperation. In one of the FTAs (Iceland), labor cooperation is included in the agreement text itself, but is not binding. Three of the FTAs (Chile, Peru, and parts of Switzerland) have MOUs, which are focused on labor cooperation issues— however, numerous questions remain about the legal status of these MOUs, with many trade experts (from the Peterson Institute to the Center for Global Development) expressing doubt that these MOUs are binding.¹⁵ And with the New Zealand and part of the Switzerland FTAs, labor protections are included, but there are no guarantees that these protections will be enforced.

Chile: This 62-page agreement, in Article 108, says that both countries “shall enhance their communication and cooperation on labor, social security...through both the Memorandum of Understanding on Labor and Social Security Cooperation...” This MOU describes cooperation in shared trainings and workshops to improve labor standards, working conditions, employment and labor policies, among other areas—but offers no guarantee that these conditions must be met or that if such meetings occur, any actions will be taken.¹⁶

Iceland: Article 96, Section 1 says that “[t]he Parties shall enhance their communication and co-operation on labour matters.” Cooperation in other areas is mentioned, but nothing more beyond this statement in this 62-page agreement is offered on labor cooperation, and there is no guarantee that these conditions will be met.¹⁷

Peru: Article 161 of this 123-page agreement says that “[t]he Parties shall enhance their communication and cooperation on labor, social, security and environment issues through Memorandum of Understanding on Labor Cooperation

between the Government of the People's Republic of China and the Government of the Republic of Peru." This MOU focuses on labor cooperative issues, but because it is not public, it is impossible to verify if it is indeed binding.¹⁸

New Zealand: China and New Zealand, in Article 177 of this 121-page agreement, reaffirmed their obligations as members of the International Labour Organization (ILO) and, in particular, under the ILO Declaration on Fundamental Principles and Rights at Work. Through the Labour MOU, which is fully binding, New Zealand and China also recognize that it is inappropriate to encourage trade or investment by weakening or failing to enforce labor laws, and that it is inappropriate to set or use labor laws, regulations, policies and practices for trade protectionist purposes.¹⁹ Both countries recognize certain protections and provide for consultations, but this agreement offers no guarantees that these protections will be enforced.

Switzerland: In this 89-page agreement, Article 13.5 says that "[t]he Parties shall enhance their cooperation on labour and employment according to the Memorandum of Understanding between the Ministry of Human Resources and Social Security of the People's Republic of China and the Federal Department of Economic Affairs of the Swiss Confederation regarding Cooperation on Labour and Employment Issues signed in Bern on 15 June 2011 and the Agreement on Labour and Employment Cooperation between the Ministry of Human Resources and Social Security of The People's Republic of China and the Federal Department of Economic Affairs, Education and Research of the Swiss Confederation signed in Beijing on 6 July 2013." Both of these agreements are not part of the FTA itself. The June 2011 MOU is not available publicly, making it impossible to verify, but the July 2013 agreement is binding.²⁰ However, similar to New Zealand, these agreements offer no guarantees that these provisions need to be met and include no penalties for violations.

It's clear that in virtually all of China's deals, labor protections are not a serious part of the Chinese game plan. Indeed, in 754 pages (1,849 pages including the annexes) of Chinese FTAs, the words "labor," "labour," or "worker" appear only 17 times, excluding those instances in which the word is used as a proper noun. Even in the more recent treaties in which there is some attention paid to labor policy, it is more often than not part of a side agreement and/or is non-binding. And there remains numerous questions about the legal validity and enforceability of MOUs.

Finding 2

RCEP, the FTA that China is currently negotiating, is expected to have no labor standards.

RCEP includes the following countries: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Burma, Cambodia, China, Japan, South Korea, India, Australia, and New Zealand.

Countries in bold are in the TPP

While the exact RCEP agreement is still being negotiated, labor standards are expected to be weak or non-existent. ASEAN, the chair of the negotiations, even acknowledged in the negotiations' guiding principles that the primary objective is solely trade liberalization,²¹ meaning the deal will only reduce tariffs and barriers to trade and not have any worker protections whatsoever. Multiple first-hand accounts of the RCEP negotiations confirm that the focus is on tariff reduction and nothing else.²²

As it is, RCEP countries already have poor labor standards. By joining RCEP with its non-existent labor standards, each country is not only doubling down on poor labor protections domestically, but also on the international stage, refusing to accept progress on both fronts.

RCEP is also set to include a “flexibility principle,” which will allow special treatment for less developed countries. The negotiation principles note that given “the different levels of development of the participating countries, the RCEP will include appropriate forms of flexibility including provision for special and differential treatment.”²³ This means that should a country be unable to meet any of their commitments (on anything from tariff reduction to labor standards), they can opt-out.²⁴ The United States hasn't allowed these types of clauses in its recent trade agreements and requires that all nations live up to the same, high standards.

Finding 3

Every U.S. trade deal since 2000 has stronger labor protections, enforcement, and monitoring mechanisms than all Chinese deals.

When the United States concluded the North America Free Trade Agreement (NAFTA) in 1994, there were no labor protections included in the deal itself. Instead, they were offered in a side agreement, the North American Agreement on Labor Cooperation, which only had an enforceable labor provision.²⁵ But since NAFTA, each of the 17 trade deals concluded by the United States have offered growing, wide-ranging, and enforceable labor protections. And since TPP will, in effect, supersede NAFTA, all U.S. deals will have high labor standards.

In these 17 trade deals, labor protections have tended to become stronger over the years.

U.S. trade deals since 2000: Jordan (2001), Chile, (2004), Singapore (2004), Australia (2005), Bahrain (2006), El Salvador (2006), Guatemala (2006), Honduras (2006), Morocco (2006), Nicaragua (2006), Dominican Republic (2007), Costa Rica

(2009), Oman (2009), Peru (2009), Colombia (2012), Korea (2012), and Panama (2012).



In U.S. trade agreements with Chile, Singapore, Australia, Bahrain, CAFTA-DR, Morocco, and Oman, labor provisions are in the core of the agreement (not a side deal), and the agreements stipulate that each party must effectively enforce their own labor laws pursuant to the agreed upon internationally recognized worker rights.²⁶ These agreements each had a single enforceable provision that mandated countries could not relax labor laws in a way that affected trade.

The Jordan agreement included all of the provisions listed above in the core of the agreement. But on top of this, should either Jordan or the United States violate the terms, a dispute mechanism could be used—meaning that trade sanctions, on top of monetary penalties, could be applied. Thus, the benefits of being in a free trade agreement could be undone if a country doesn't respect and protect labor rights. The labor provisions in this agreement are completely and fully enforceable.

The most recent FTAs—Peru, Colombia, Korea, and Panama—include each of the provisions listed above, plus those provisions listed under the May 10 Agreement. Under this accord, labor protections are fully enforceable. The language required all parties to adopt and maintain the rights set forth in the ILO Declaration on Fundamental Principles and Rights at Work—and prevented any country from lowering their labor standards.²⁷ This language prevented countries from using limited resources as a basis for non-compliance. Further, the May 10 Agreement allowed for fines (without a ceiling) to be used as well as the same dispute settlement mechanism that was used in the rest of the agreement.

And the United States has stuck to their word. In each of these treaties, the U.S. has regularly monitored and enforced labor standards in these existing FTAs. For example:

- In Colombia, the U.S. Trade Representative (USTR) helped institute an action plan designed to address concerns related to violence against labor leaders and protection of labor rights.
- In Jordan, USTR has helped institute a plan to address workers' rights, especially foreign workers.
- In Guatemala, USTR established the first formal dispute settlement process under an FTA after efforts for a diplomatic solution failed.²⁸

Even further, as part of the Bipartisan Trade Promotion Authority Act of 2002, the President is required to submit reports to Congress on labor rights in each U.S. FTA.²⁹ It's clear that not only have U.S. labor protections improved, but the United States has also enforced the labor protections in our existing commitments.

Conclusion

The TPP and RCEP represent a race between two countries with two different visions of trade and commerce. In the end, one country will take the lead in writing the rules in Asia—and who that author is will have profound effects on labor. The Chinese economy is built on low labor standards, and they want to export these standards to the world. Since 2000, China's free trade labor protections fall far short of the United States', including monitoring and enforcement. Without question, Chinese deals pale in comparison to the high-standard U.S. deals on labor standards and workers' rights.

U.S. trade deals, particularly since 2000, have set new and higher labor standards. Having learned the lessons from their previous FTAs, the Obama Administration is by all accounts insisting on strong labor protections in TPP. In fact, it is widely believed that TPP will include the strongest labor protections that any U.S. trade agreement has ever had. In addition to everything in the most recent U.S. FTAs, it will also discourage importation of goods made by forced labor

and will limit weakening labor protections in export processing zones.³⁰

As President Obama has noted, not every trade deal has lived up to its promise. The most recent 17 U.S. trade deals have. They lifted exports in goods and substantially improved our trade balance in this blue collar sector. Labor standards have only improved. These are the stakes in the Asia-Pacific as two vastly different visions for commerce compete for supremacy.

Appendix

Labor Standards Report Card

Since 2000, China and the United States have entered into separate trade agreements with four of the same countries—Chile, Singapore, Costa Rica, and Peru. However, China and the U.S. took vastly different approaches in their respective agreements when dealing with labor issues. Below we outline how these four deals stack up when it comes to worker rights.

 United States (2004)	Chile Free Trade Agreement	 China (2006)
✓	Labor Protections Part of Agreement	✗
✓	Agreement Recognizes Basic Workers' Rights	✗
✓	Country Must Create or Maintain Their Own Labor Laws and Must Enforce These Laws	✗
✓	Penalties for Violations (Monetary Fines or Trade Sanctions)	✗
✓	Enforceable (Fully or Partially)	✗

 United States (2004)	Singapore Free Trade Agreement	 China (2009)
✓	Labor Protections Part of Agreement	✗
✓	Agreement Recognizes Basic Workers' Rights	✗
✓	Country Must Create or Maintain Their Own Labor Laws and Must Enforce These Laws	✗
✓	Penalties for Violations (Monetary Fines or Trade Sanctions)	✗
✓	Enforceable (Fully or Partially)	✗



Costa Rica Free Trade Agreement



United States (2009)		China (2010)
✓	Labor Protections Part of Agreement	✗
✓	Agreement Recognizes Basic Workers' Rights	✗
✓	Country Must Create or Maintain Their Own Labor Laws and Must Enforce These Laws	✗
✓	Penalties for Violations (Monetary Fines or Trade Sanctions)	✗
✓	Enforceable (Fully or Partially)	✗



Peru Free Trade Agreement



United States (2009)		China (2010)
✓	Labor Protections Part of Agreement	✗
✓	Agreement Recognizes Basic Workers' Rights	✗
✓	Country Must Create or Maintain Their Own Labor Laws and Must Enforce These Laws	✗
✓	Penalties for Violations (Monetary Fines or Trade Sanctions)	✗
✓	Enforceable (Fully or Partially)	✗

TOPICS

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END NOTES

1. Danielle Kurtzleben, "The Trans-Pacific Partnership is one of the only topics on which Obama and the GOP agreed last night," *Vox*, January 21, 2015, March 4, 2015, <http://www.vox.com/2014/11/14/7166849/tpp-trans-pacific-partnership>.

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- 4.** This number excludes uses as proper nouns. Including these instances makes the total count 29.
- 5.** Calculations based on IMF/World Bank data.
- 6.** The Association of Southeast Asian Nations (ASEAN) includes the following countries: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.
- 7.** “Agreement on Trade in Goods of the Framework Agreement on Comprehensive Economic Co-Operation Between The People’s Republic of China and The Association of Southeast Asian Nations,” Trade Agreement, China FTA Network, 2004. Accessed April 3, 2015. Available at: <http://fta.mofcom.gov.cn/topic/chinaasean.shtml>.
- 8.** “Asia-Pacific Trade Agreement,” Trade Agreement, China FTA Network, 2001. Accessed April 3, 2015. Available at: <http://fta.mofcom.gov.cn/topic/enpacific.shtml>.
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- 26.** According to the Trade Act of 1974, these rights are: the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children, and a prohibition on the worst forms of child labor; acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- 27.** According to the International Labour Organization, these rights are: freedom of association and the effective recognition of the right to collective bargaining; elimination of all forms of forced or compulsory labor; effective abolition of child labor; and elimination of discrimination in respect of employment and occupation.

- 28.** More on this can be found in United States, Executive Office of the President, Office of the United States Trade Representative, “Standing Up for Workers: Promoting Labor Rights through Trade,” Special Report, February 2015. Accessed March 1, 2015. Available at: <https://ustr.gov/sites/default/files/USTR%20DOL%20Trade%20-%20Labor%20Report%20-%20Final.pdf>.
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