



FALL 2020 WEBINAR SERIES BEGINS 9/17

# "LABOR AND EMPLOYMENT RELATIONS IN 2020"

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

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

# **Speakers**

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#### **Moderator**

Rick Bales, Ohio Northern University and Chair of the US ISLSSL

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

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

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

### Accepting liberalized trade: FAIR (free) trade

#### Political reality from NAFTA to the present

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

Political response: Fair trade / level playing field

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



#### What Does the FTA Labor Clause Mean?

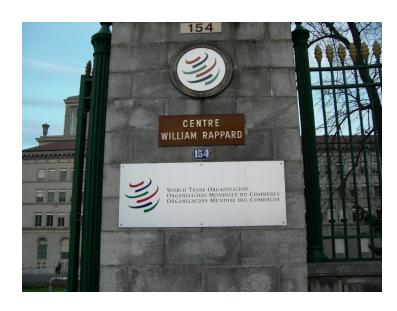
- Using <u>what</u> standard
  - Support for general principle?
  - Meaning in an ILO convention?
  - As defined in national law or practice?

If so, which country's?



# **Trade and Rights at Work**

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





## **Trade and Rights at Work**

- 2002 TPA labor rights w/i FTA fast track parties to "strive to ensure"
- 2007 May 10<sup>th</sup> agreement

  parties "to adopt and maintain"

  specifies all 4 fundamental rights in ILO Declaration



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 2015 Trade Priorities and Accountability Act more comprehensive and specific statement of rights



# 1998 ILO Declaration of Fundamental Principles and Rights at Work

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



#### **ILO "Core Conventions "**

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





#### What Does the Labor Clause in the FTA Mean?

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



### Improving the Labor Clause

#### Improving on the TPP

 Set a specific reference point: not simply the 1998 ILO four fundamental principles but <u>also</u> the 8 core conventions

- Improving arbitral process and dispute resolution (Guatemala case)
  - Do not erect insurmountable proof hurdles -- "in a manner affecting trade"
  - Effective and *prompt* dispute resolution



## **USMCA** – *moving to* effective labor rights

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

