

U.S. LABOR ENFORCEMENT PROCESS

Monitoring

The Government Accountability Office noted in 2014 that the U.S. Trade Representative (USTR) and Department of Labor (DOL) lack a “strategic approach” to address labor concerns and that the USTR prefers not to address labor through free trade agreement (FTA) mechanisms. The U.S. government has never self-initiated a labor case and relies on stakeholder petitions for most monitoring and consultation actions.

Petition Filed

Since 1994, nearly 50 petitions alleging labor violations have been filed under U.S. trade agreements, by groups including the AFL-CIO; U.S., Canadian, Colombian, Guatemalan, Honduran, Mexican and Peruvian labor unions and federations; and labor advocacy and human rights organizations.

Case Accepted or Rejected

Under current rules, DOL has 60 days to determine whether it will accept or reject a petition. DOL can give itself an unlimited extension of time. In 2010-11, DOL took 202 days to accept a petition filed under the Peru FTA.

Report of Review

Due in 180 days if the DOL accepts a petition. DOL can grant itself an unlimited extension of time to write the report. DOL took 2 years, 294 days to write a report on Honduras, and took more than a year to write reports on the Dominican Republic, Bahrain and Peru.

Consultations

May begin at any time after the report is published. Not all types of consultations can lead to dispute settlement. CAFTA and the “May 10” deals require at least two stages of consultations to reach dispute settlement, and the minimum time that must pass before a settlement panel may be requested is 90 days. There are no timelines or performance benchmarks that require a case to proceed to dispute settlement if not resolved via consultations. The consultation step causes most delays in the current system. See chart of open cases above. No open case has entered the type of consultation that could lead to dispute settlement. *The proposed new NAFTA would reduce the minimum time to 60 days but would not add any benchmarks, penalties or incentives to proceed to panel formation.*

OPEN NON-NAFTA CASES (As of 10/26/2018)

OPEN NON-NAFTA CASES (As of 10/26/2018)	TIME SINCE PETITION FILED
Bahrain (filed 4/21/2011)	7 years, 189 days
Dominican Republic (filed 12/22/2011)	6 years, 309 days
Honduras (filed 3/26/2012)	6 years, 215 days
Peru (filed 7/23/2015)	3 years, 96 days
Colombia (filed 5/16/2016)	2 years, 164 days
The only case to ever proceed to dispute settlement in more than 24 years was U.S. v. Guatemala, under CAFTA. The panel determined that the U.S. failed to prove that Guatemala was not effectively enforcing its labor laws.	
The case took 9 years and 67 days from filing to publication of the final report.	

Dispute Settlement Panel Formation

This is a permissive step, not a required one. It has happened only once, for the Guatemala case under CAFTA. Under “May 10” deals, a panel must be formed no later than 36 days after dispute settlement is invoked (33 days under the Central America Free Trade Agreement [CAFTA]). *The proposed new NAFTA would allow a party to block panel formation by refusing to convene the Free Trade Commission.*

Settlement Panel Report

Under “May 10” and CAFTA, a final report is due to the public 165 days after panel formation.

Party Can Begin Imposing Sanctions for Noncompliance

If the party violating labor rights still has not come into compliance, the other party may, but is not required to, impose sanctions no sooner than 105 days after final report. *The proposed new NAFTA would reduce the minimum time to 30 days, with no penalty for delay, assuming a panel has formed and found a party in violation.*

Today

Twenty-four years after the first labor rules went into force in the North American Free Trade Agreement (NAFTA) side deal (i.e., NAALC), no U.S. FTA partner has come into full compliance as a result of post-FTA monitoring or enforcement of labor provisions.

1

The North American Agreement on Labor Cooperation (NAALC), the first labor provision tied to a trade deal, enters into force Jan. 1, 1994.

2

Filing date.

AFL-CIO

3

60 days. No penalty if deadline missed.

4

180 days. No penalty if deadline missed.

5

90 days minimum, but no maximum. No penalty for delay.

6

36 days maximum. No penalty for delay. Guatemala panel was formed more than 15 months after dispute settlement was invoked.

7

165 days. No penalty if deadline missed. Guatemala report was published more than 5 years and 10 months after panel formation.

8

105 days minimum. No penalty for delay. This step has never happened in practice.

9

As of Oct. 26, 2018, there has yet to be a successful labor enforcement case in a U.S. FTA.

