



## China's Legal Countermeasures to CPTPP Labour Provisions

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**Abstract:** Developed countries have continued to promote international labour standards in FTAs, resulting in a rapid increase in the number of agreements covering labour provisions in the past 20 years. The US was the first to specify labour issues in NAALC, a supplemental agreement to NAFTA, forming a typical first-generation high-standard FTA, and the CPTPP, with its specific provisions on labour clauses in a single chapter, can be regarded as a model of second-generation high-standard FTA. This paper compares the labour provisions of CPTPP and NAALC to find the more stringent provisions in the labour provisions of CPTPP compared with NAALC, in order to find the legal measures for China to deal with the labour provisions of CPTPP.

**Keywords:** CPTPP, Labour Provisions, Legal Measures

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### Overview of International Labour Standards

At present, there is no unified definition of the concept of "international labour standards" in the international arena. According to Lin Yanling (2007), international labour standards generally refer to the provisions of principles and rules on the protection of labour rights and interests and the handling of labour relations established by the national labour legislation adopted by the International Labour Organization (ILO). The sources include the ILO Constitution, international labour conventions and recommendations, ILO resolutions, interpretations and jurisprudence, as well as documents of the United Nations and regional organizations. From the existing bilateral, multilateral and international treaties alone, labour standards basically include both political and economic dimensions, i.e., ethical and moral and economic benefits. According to the spirit of the Singapore Ministerial Conference held by WTO in 1996, countries have reached a certain consensus on the issue of labour standards, which includes the following two aspects: whether labour standards are included in trade agreements is essentially a trade and human rights issue; labour standards have the role of trade barriers and should not oppose the comparative advantage of countries, and should not be used to reduce protection to the detriment of workers' rights and interests thus gaining a competitive advantage.

The North American Agreement on Labour Cooperation (NAALC), which first entered into force in January 1994, is one of the two supplemental agreements to the North American Free Trade Agreement (NAFTA) and contains specific provisions on labour issues.

The Organization for Economic Cooperation and Development (OECD) was the first to formally mention "core labour standards" in the report "Trade, Employment and Labour Standards" released in 1996, which follows the two principles that core labour standards are the framework conditions for basic human rights and other labour standards, specifically including the abolition of forced labour, freedom of association, the right to organize and collective bargaining, the elimination of exploitative child labour, and the elimination of employment discrimination.

ILO in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up Measures (ILO Declaration), adopted on June 18, 1998, reaffirmed the "fundamental rights of workers" of the Programme of Action adopted at the World Summit for Social Development in Copenhagen in 1995. These four areas are reflected in eight international labour conventions, which are also known as core labour conventions. In addition, the ILO has set four priority conventions for ratification, including the Labour Inspection Convention, and has adopted 190 technical conventions on a range of systems such as working hours, wage standards, and leave.

The provisions of the Trans-Pacific Partnership Agreement (TPP) on labour issues, which was established in October 2015, are mainly found in Chapter 19, with 15 articles, mainly covering labour rights, non-derogation rules and dispute settlement mechanisms. At the end of 2017, Japan became the leading country of the TPP and renamed the TPP as the Comprehensive



and Progressive Trans-Pacific Partnership (CPTPP), and the provisions of the CPTPP on labour issues basically follow the provisions of the TPP.

### NAALC, CPTPP Labour Provisions Comparison

The provisions of NAALC, CPTPP on labour provisions are listed below.

Name of the Treaty	NAALC	CPTPP
<b>Effect of Time</b>	1 January 1994	30 December 2018
<b>Member/Contracting Party</b>	America, Canada, Mexico	Japan, Canada, Australia, Chile, New Zealand, Singapore, Brunei, Malaysia, Vietnam, Mexico, Peru
<b>Main Content</b>	<ol style="list-style-type: none"> <li>1. Objectives and obligations of member States;</li> <li>2. The organization necessary to achieve the objectives of the Agreement;</li> <li>3. Dispute resolution mechanism.</li> </ol>	<ol style="list-style-type: none"> <li>1. Definition of Labour;</li> <li>2. Statement of Joint Commitment;</li> <li>3. Labour rights;</li> <li>4. There shall be no derogation;</li> <li>5. Enforcement of Labour laws;</li> <li>6. Forced or compulsory Labour;</li> <li>7. Corporate social responsibility;</li> <li>8. Public awareness and procedural assurance;</li> <li>9. Public opinion;</li> <li>10. Cooperation;</li> <li>11. Cooperative Labour Dialogue;</li> <li>12. Labour Council;</li> <li>13. Focal point.</li> <li>14. Public participation;</li> <li>15. Labour negotiations.</li> </ol>
<b>Target</b>	<p>Through various forms of mutually beneficial cooperation and information exchange, countries are encouraged to improve the working conditions and living standards of their workers on the basis of increasing production efficiency and ensure the effective implementation of laws and regulations concerning workers' rights.</p>	<p>Protect and enforce Labour rights, improve working conditions and living standards, and enhance cooperation and the capacity of parties on Labour issues.</p>
<b>Labour Rights</b>	<ol style="list-style-type: none"> <li>1. Freedom of association and right to organize;</li> <li>2. Collective bargaining rights;</li> <li>3. The right to strike;</li> <li>4. Prohibition of forced Labour;</li> <li>5. Protection of child Labour and youth workers;</li> <li>6. Minimum employment standards (e.g., minimum wage, overtime pay);</li> <li>7. Eliminate discrimination in employment based on race, religion, age and sex;</li> <li>8. Equal pay for equal work for men and women;</li> <li>9. Prevention of occupational injuries and diseases;</li> <li>10. Compensation for occupational injuries and illnesses;</li> <li>11. Protect migrant workers.</li> </ol>	<ol style="list-style-type: none"> <li>1. Freedom of association and effective recognition of collective bargaining rights;</li> <li>2. Eliminate all forms of forced or compulsory Labour;</li> <li>3. Effectively abolish child Labour and prohibit the most harmful forms of child Labour;</li> <li>4. Eliminating discrimination in employment and occupation;</li> <li>5. Acceptable working conditions relating to minimum wage, working hours, occupational safety and health.</li> </ol>
<b>Obligations of Member States/Parties</b>	<p>Confirm fully respect each member's constitution, admitted that countries have to develop its Labour standards or on the basis of its labour laws, regulations, adopt or modify their own the right of labour standards, each member shall ensure that its labour laws, regulations, and adapt to its high quality and high productivity and high labour standards, and should be according to the development of productivity and improve standards.</p>	<ol style="list-style-type: none"> <li>1. Requiring parties to protect physical Labour rights;</li> <li>2. Parties are required to implement procedural mechanisms to safeguard Labour rights.</li> </ol>

<b>The Organization</b>	<ol style="list-style-type: none"> <li>1. At the highest level, members jointly form Labour cooperation committees;</li> <li>2. Executive body: The Council of Ministers -- composed of national Labour ministers who oversee the implementation of the agreement and have broad decision-making power on matters related to the agreement;</li> <li>3. National management offices have been set up in each country, and national advisory committees and governmental committees have been set up to assist the work of national management offices.</li> </ol>	<ol style="list-style-type: none"> <li>1. Parties establish Labour councils composed of senior government representatives at ministerial or other levels designated by each Party;</li> <li>2. The Contracting Party designates an agency or official within its Ministry of Labour or a similar agency as the point of contact.</li> </ol>
<b>Dispute Resolution Mechanism</b>	<p>The end resolution measures are divided into three levels, each of which is interlinked. Only when the measures of the first level cannot solve the problem can the parties seek the latter solution. The order of the three levels is as follows:</p> <ol style="list-style-type: none"> <li>1. National Management Office review and ministerial consultation;</li> <li>2. Expert Review Committee;</li> <li>3. Special meetings of the Council and expert group procedures.</li> </ol>	<ol style="list-style-type: none"> <li>1. Labour consultations: one Party may at any time submit a written request for any matter under this Chapter to the contact point of the other Party;</li> <li>2. May resort to such procedures as good offices, mediation or conciliation;</li> <li>3. Finally, the dispute settlement provisions under chapter 28 (Dispute Settlement) of this Agreement may be invoked.</li> </ol>

Table 1: NAALC and CPTPP labour provisions comparison

In terms of the time of entry into force, the NAALC predates the CPTPP; in terms of member states/contracting parties, the CPTPP has more contracting parties; in terms of the objectives set, the objectives of the two agreements are basically the same; in terms of the labour rights set forth, the labour rights set forth in both agreements include the four basic rights of workers of the ILO Declaration, the NAALC provides 11 labour rights, and explicitly provides for the protection of those who suffer occupational In terms of the obligations of member countries/parties, both agreements require member countries/parties to guarantee the basic rights of labour, but the CPTPP has more complete procedural provisions for guaranteeing labour rights; in terms of organizational structure In terms of organizational structure, both agreements establish a council and domestic offices composed of member countries/contracting parties, but the organizational structure of NAALC has three tiers while that of CPTPP has two tiers; in terms of dispute resolution mechanism, both agreements adopt three tiers of escalating dispute resolution, but CPTPP can invoke the dispute resolution provisions of the agreements to resolve labour disputes in a bottom-up manner.

### **Commenting on the Main Contents of CPTPP Labour Provisions**

CPTPP Chapter 19 labour Provisions, with 15 articles, provides a special chapter on labour standards, covering labour rights, non-derogable required labour rights, enforcement of labour laws, forced or compulsory labour, corporate social responsibility, public awareness and procedural guarantees, public opinion, cooperation, cooperative labour dialogue, labour councils, focal points, public participation, and labour consultation, which can be broadly divided into two aspects: substantive commitments and requirements, and procedural implementation mechanisms.

#### ***Basic Labour Rights and Protection***

The CPTPP agreement incorporates the four core labour standards of the ILO Declaration rather than the obligations under the ILO core conventions, thus avoiding the phenomenon of indirect application of ILO core conventions that have not been ratified by the contracting parties as a result of the ratification of the CPTPP agreement. For the first four basic labour rights of the CPTPP, although the CPTPP emphasizes the scope of the rights of each state party to the core labour standards of the ILO Declaration, it does not require the implementation of uniform standards, leaving room for adjustment by each state party according to its national development process and relevant labour legislation plans. However, the CPTPP stipulates that this right is limited to the acceptable level of the contracting parties themselves, and the provision does not propose the implementation of a uniform level of protection for all contracting parties, which exacerbates the different and fragmented degree of application in each country, resulting in a certain deviation in the actual operation of the provision.

#### ***Enforcement Mechanism of Labour Standards***

To guarantee the implementation and enforcement of the above rights, the CPTPP imposes procedural requirements on contracting parties such as labour law enforcement, cooperation and cooperative labour dialogue, public opinion and public participation, organizational structure, and dispute resolution.

### ***Enforcement of Labour Laws***

In order to harmonize trade practices and labour legislation enforcement, CPTPP has put forward the requirement of "prohibited acts". The prohibited acts include both acts and omissions, but the scope of the acts is not defined, only "affecting trade or investment between contracting parties" is the limit, and it is not mentioned whether it is a direct or indirect effect, which has a strong possibility of subjective interpretation and is easy to generate disputes in the process of implementation; at the same time, the prohibited acts have a certain degree of negative consequences. At the same time, the prohibited act has a certain degree of negative consequences, that is, the act leads to the labour law of the State Party cannot be effectively implemented, and there is also a large room for interpretation on whether the law implementation is effective and the scope of the implementation of the subject.

### ***Collaborative and Cooperative Labour Dialogue***

With regard to cooperation mechanisms, the CPTPP provides for seven aspects: first, it emphasizes the need for labour cooperation; second, it stresses seven basic principles that should be followed in conducting labour cooperation; third, it clarifies the importance of the views of workers and employers in labour cooperation and encourages multilateral participation and cooperation; fourth, it mentions that the financing of cooperation should be based on the "case-specific decision" principle; fifth, it emphasizes that each State Party should use its membership in regional or multilateral forums, as appropriate, to promote the cause of labour protection. Fifth, it emphasizes that each State Party should make use of its membership in regional or multilateral forums, as appropriate, to promote the cause of labour protection; sixth, it sets out 20 specific areas of cooperation between States Parties, with a bottom-up clause; and seventh, it sets out the ways and means of cooperation between States Parties.

Regarding the cooperative labour dialogue mechanism, the CPTPP provides for three procedural aspects from the initiation of the dialogue to the conclusion of the dialogue, firstly, on the initiation of the labour dialogue, secondly, on the concrete development of the dialogue, and finally, on the results of the labour dialogue.

While the cooperative labour mechanism is mostly guided by principles, the cooperative labour dialogue provides for specific procedures and steps, which makes the implementation of the cooperative labour mechanism more feasible and operable.

### ***Public Opinion and Public Participation***

The CPTPP pays special attention to the degree of public participation and the expression of opinions of relevant people, therefore, the CPTPP constructs the mechanism of public expression through two aspects of public opinions and public participation.

In terms of public participation, the CPTPP provides different ways of participation for two different types of public subjects: labour rights stakeholders, the broader general labour group and business representatives. However, the CPTPP only makes general requirements for the participation of the two types of public subjects, without further stipulating the specific procedures for participation. As for the public opinion, the contact point, as a public opinion receiving organization, is responsible for serving as a communication channel for domestic people internally and receiving opinions from the contact points of other parties and other subjects externally, while the public opinion stipulates specific contents such as how to submit opinions to the contact point and how the contact point handles and feeds back opinions.

### ***Organization***

The CPTPP pays special attention to the degree of public participation and the expression of opinions of relevant people, In order to facilitate labour cooperation and dispute resolution among the parties, the CPTPP has set up two levels of organization: a labour council among the parties, and a "focal point" within each party. The CPTPP requires each country to establish a physical office or official as a focal point, and specifies the time limit for the establishment of the focal point, the responsibilities of the focal point, the cooperation activities among the focal points, and the forms of communication among the focal points.

The CPTPP's setup of the Council and focal points is basically consistent with the consistent practice of other agreements, but compared with other agreements, both the institutional functions and the operation of the institutions have been optimized, and the relevant provisions are more detailed.

### ***Dispute Resolution Mechanism***

For disputes in the labour field, the CPTPP provides for two stages of consultation and dispute settlement procedures, and the former is a precursor to the latter.

### ***Consultation Procedure***

The last article of the labour section of the CPTPP provides for the consultation procedure, which is divided into four sections: the beginning stage of consultation, the middle stage of consultation, the end stage of consultation, and the relationship between the consultation procedure and other procedures. On the whole, the provisions on consultation stage in CPTPP are the most basic labour provisions in inheriting the general procedural framework formed by the U.S. FTA. Specific performance in the following aspects: First, on the requirements of the time limit, CPTPP specifically increased the time limit for defense, the deadline for third-party requests to participate in consultations consultation formal launch and the Council to intervene in the convening of the meeting period, greatly enhancing the efficiency of the consultation; second, the creative

inclusion of the provisions of interested third-party requests to participate in consultations, giving the other countries that are considered to have a significant impact on the interests of the labour matters at issue. Secondly, the provision for interested third parties to request participation in the consultation has been creatively incorporated, giving other countries that are considered to have significant interests in the labour matters involved the opportunity to defend their own interests. Third, while emphasizing the confidentiality of the consultation process, the CPTPP provides for the public nature of the consultation results; fourth, in order to ensure the effectiveness of the labour consultation process, the CPTPP has set up a series of arrangements at specific points to facilitate the expression of opinions and mediation by the parties. Therefore, the CPTPP provides for more specific and clearer consultation procedures, which greatly enhances the substantive effectiveness of the parties' use of consultation to resolve labour disputes, and also maintains the operability and sustainability of the agreement.

#### ***Dispute Settlement Procedures***

If a labour dispute is not resolved through labour consultation within the specified period, the CPTPP allows the parties to resort to the dispute settlement procedure under the agreement.

Dispute Settlement Procedures to promote labour dispute settlement through compulsory means. Under the provisions of the general dispute settlement procedure of the CPTPP, a panel of experts is established through the appointment or designation of a total of three experts to consider the dispute or disputes and form a preliminary report and a final report. The implementation of the final report is ensured through the provision of interim sanctions such as compensation, suspension of benefit entitlements, and monetary assessment. The above-mentioned sanctions promote the effective resolution of labour dispute matters and serve as a strong backing to ensure the enforceability of substantive rights protection under the agreement.

#### **Major Obstacles to China's Acceptance of CPTPP Labour Provisions**

Internationally, the trend of incorporating labour provisions in FTAs is inevitable, and although Chinese legislation has made great progress in improving labour standards so far, there is still room for improvement, both in terms of domestic legislation on labour standards and enforcement, and in terms of the status of China's FTA signings. On September 16, 2021, Chinese Minister of Commerce Wang Wentao submitted a written letter to CPTPP depositary New Zealand's Minister of Trade and Export Growth O'Connor submitted a written letter of China's formal application to join the CPTPP. If China joins the CPTPP, it should accept the two categories of labour rights it contains, but there are still obstacles to China's acceptance of the CPTPP labour provisions compared to China's domestic legislation.

#### ***Forced Labour, Freedom of Association and the Right to Collective Bargaining Are Not Yet Provided for in Chinese Domestic Law***

The first category of basic labour rights that the CPTPP requires contracting parties to incorporate actually involves the ratification of its eight corresponding basic labour conventions. China's acceptance of the first four labour rights of the CPTPP depends on China's ratification of the relevant fundamental labour conventions. To date, China has ratified the labour conventions related to the effective abolition of child labour and the elimination of discrimination in employment and occupation. However, China has still not ratified the Forced Labour Convention of 1930 and the Abolition of Forced Labour Convention of 1957, the Freedom of Association and Protection of the Right to Organize Convention of 1948, and the Right to Organize and Collective Bargaining Convention of 1949, which correspond to forced labour, freedom of association, and the right to collective bargaining, respectively. Therefore, it is a great challenge to accept the CPTPP provisions on forced labour, freedom of association, and the right to collective bargaining when China does not yet have domestic laws that explicitly provide for their inclusion in China's FTA.

#### ***China's Enforcement of Labour Standards Favors Soft Law Cooperation***

In terms of international scope, the inclusion of labour provisions is the development trend of FTA, and the international legislative practice of FTA on labour issues has gradually formed a tough model represented by the U.S. with mandatory punitive measures as the driving force, and a cooperative model represented by the EU with consultation and cooperation to promote the implementation of labour standards. China prefers to promote the improvement of labour standards through "soft law cooperation", i.e. the use of "memoranda" to avoid the practice of linking labour issues with trade dispute settlement procedures and trade sanctions.

#### **China's Legal Measures to Deal With CPTPP Labour Provisions**

Pacific International Journal "PIJ" is an international, nonprofit, open access, online, and double-blind peer-reviewed journal that has been published since 2018. This journal's main objective is to serve as an intellectual and scientific platform to develop and promote the multidisciplinary studies and research of the international scholars in the field described in more detail below.

#### ***Breaking Down the Dilemma of Basic Labour Rights***

When China joins the CPTPP, it will have to consider reforming China's relevant legal system, either by making adjustments or adaptations to China's labour laws through the signing of subsidiary agreements when it joins the CPTPP, or by accelerating the process of ratification in China to bring it into line with international labour standards, or by enacting separate domestic legislation that explicitly provides for China's acceptance of the CPTPP's provisions on the abolition of forced labour, freedom

of association and collective bargaining. freedom of association and the right to collective bargaining. It is worth noting that in the CPTPP, Canada and Vietnam have agreed on the relationship between Chapter 19 (labour Chapter) and Chapter 28 (Dispute Settlement) through the signing of a subsidiary document. Thus, for the CPTPP parties, the existing precedents can provide operational convenience for the negotiation of the agreement. Therefore, China can adopt the subsidiary agreement to make exception arrangements for labour matters when joining the CPTPP, and make adjustments or adaptations to China's relevant legal system by signing the subsidiary agreement, but the feasibility of this option is still subject to negotiation between China and the CPTPP parties. In the absence of ratification of the basic labour conventions on forced labour, freedom of association and the right to collective bargaining, China may consider providing a domestic law basis for China's accession to the CPTPP by enacting separate legislation that explicitly provides for China's acceptance of the relevant provisions of the CPTPP.

#### ***Building Labour Cooperation Mechanisms***

Although there are provisions for labour cooperation mechanisms in the MOUs and cooperation agreements currently signed by China, the corresponding institutional framework is still immature and the specific arrangements of the cooperation mechanisms are rather sketchy, therefore, China needs to further refine the relevant arrangements in the labour cooperation mechanisms.

#### ***Improving Labour Dialogue Mechanisms***

According to the provisions of China's Memorandum of Understanding on labour Cooperation, labour issues can only be agreed upon in the form of dialogue, but there are no institutional arrangements or procedural provisions for this mechanism. The improvement of the labour dialogue mechanism in the labour provisions and ensuring that procedures are followed can facilitate the resolution of differences between the parties through dialogue. Although the settlement of labour differences can also be resolved through the dispute settlement mechanism, the dispute settlement mechanism is relatively more judicial in nature, and the corresponding institutional set-up reflects a certain degree of independence and neutrality, while the solutions and measures are also compulsory, which should be the last resort for resolving the differences arising between the contracting parties after the unsuccessful negotiations. Therefore, issues that can be resolved within the scope of consultation and do not require immediate recourse to compulsory dispute settlement procedures need to be dealt with in the dialogue mechanism. In addition to resolving differences and reducing disputes, the labour dialogue mechanism can also simultaneously promote cooperation and capacity building in the field of labour among States parties.

#### ***Sound Labour Dispute Resolution Mechanism***

The issue of labour standards in free trade has been controversial internationally for a long time, especially whether it is justiciable in the event of labour disputes, whether the dispute settlement mechanism is applicable and the corresponding punitive trade sanctions. Under the strong impetus of the U.S., the EU, Canada and other countries tend to adopt a softer approach to solve labour disputes. Although there is no unanimous practice in the international arena, there is a greater acceptance of non-contentious dispute consultation procedures. With the development of China's "One Belt, One Road" initiative, the construction of free trade zones and free trade ports, and the "Go Global" strategy, China's import and export and internal and external investment have been growing, and its international status in the trade and investment fields is gradually increasing. China needs to strengthen the litigability of labour provisions, and gradually make labour issues available for inclusion in dispute settlement procedures in FTA agreements. Since China insists on not promoting the development of labour standards through coercive means at this stage, coercive measures such as suspension of welfare benefits should be excluded in any case at present. Therefore, in the process of constructing a labour dispute settlement mechanism, a more cautious position needs to be maintained in this regard.

### **Results and Discussion**

Meeting the labour rights standards necessary for China to join the CPTPP is fundamentally conducive to reducing the human resource costs of enterprises and to realizing and protecting the legitimate rights and interests of workers, eliminating negative social sentiments in the context of "internalization," promoting sustainable population development, modernizing the country's governance system and capacity, and enhancing its international image. In order to meet the labour rights standards necessary for China to join the CPTPP, the legislature should enact laws and regulations to match, the judiciary should establish special labour courts, the people's congresses at all levels in China should routinely inspect the implementation of labour-related laws and regulations, and government departments at all levels in China should strengthen labour administrative enforcement

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