

ARTICLES

A NEW LEADER IN ASIAN FREE TRADE AGREEMENTS? Chinese Style Global Trade: New Rules, No Labor Protections*

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In 2017, after the election of Donald Trump and his subsequent language and actions surrounding global trade, Chinese President Xi Jinping took the world stage at the World Economic Forum's Annual Meeting in a moment that led many to say he assumed the mantle of world leader on globalism and global trade, particularly in Asia. Previously, President Obama noted that the TPP presented an opportunity for the U.S., along with its partners, to write the rules of international trade with Asia-Pacific countries. At the same time, China has been working to negotiate another trade agreement in the Asia-Pacific Region, the Regional Comprehensive Economic Partnership (RCEP). The RCEP aims to be the largest free-trade bloc in the world, comprising all ten ASEAN nations (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam) and the six other countries with which ASEAN already has free-trade agreements (FTAs)—China, India, Japan, South Korea, Australia, and New Zealand.

With China ascending in global leadership on Asian trade at the same time the U.S. descends, a looming question arises—what is to be expected in terms of trade rules and labor protections? There is a history on both issues that is explored in this paper and which reveals there may be difficulties ahead for those looking for an even playing field in trade and attention to labor protections. To many, it will seem like RCEP is a green light for MNCs to further invest in their labor supply chains in the developing countries in Asia, much to the consternation of labor unions in the U.S. and the detriment to American and Asian workers. Further, there are outstanding questions as to the efficacy of any labor protections that arise in future agreements. The Asia-Pacific Region is one of the largest markets in the world, so answering these questions is critical. To arrive at a fair

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estimate of what to expect in terms of real labor law protections and their enforcement in Asian countries under the Chinese-influenced FTAs, this paper examines the social dimension provisions of the Chinese free trade agreements (FTAs) in Asia relating to labor.

The paper is structured as follows: Part I introduces the new reality and implications of China's rising global leadership in free trade agreements in Asia; Part II deals with the landscape of current Chinese FTAs in Asia, including the very few with any labor provisions; Part III analyzes the Chinese and U.S. approaches, discusses expectations, and explores alternatives for those interested in expanding labor protections in the Asian Region; Part IV concludes.

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I. INTRODUCTION

A. *New Global Leadership in China's Free Trade Agreements in Asia*

“If anyone were to say China is playing a leadership role in the world I would say it's not China rushing to the front but rather the front runners have stepped back leaving the place to China.”¹

1. Ben Blanchard, *As Trump Stresses 'America First', China Plays the World Leader*, REUTERS (Jan. 24, 2017, 11:27 PM), <https://www.reuters.com/article/us-usa-trump-china-analysis/as-trump-stresses-america-first-china-plays-the-world-leader-idUSKBN1590KJ> [<https://perma.cc/TX55-42KF>] (quoting Zhang Jun, director general of the Chinese Foreign Ministry's international economics department).

The International Monetary Fund (IMF), the most prestigious international financial institution in the world, has rated China's ranking to number one economic superpower in the world—surpassing those [sic] of the United States based upon the purchasing power parity of GDP in-

Following the election of Donald Trump, Chinese President Xi Jinping took the world stage at the 2017 World Economic Forum's Annual Meeting. In doing so, many said he assumed the mantle of world leader for globalism and global trade, particularly in Asia.² President Trump had previously abdicated this role,³ pulling the U.S. back from its commitment to the Trans Pacific Partnership (TPP) and announcing: "We will no longer surrender this country, or its people, to the false song of globalism."⁴ He also pulled out of commitments to the Paris Climate Accord

icator (gross domestic product). IMF has asserted that China produced 17% of the world gross domestic product (GDP) in 2014 exceeding U.S.A.'s [sic] GDP of world's [sic] 16%.

Nake M. Kamrany & Frank Jiang, *China's Rise to Global Economic Superpower*, HUFFPOST: THE WORLD POST, http://www.huffingtonpost.com/nake-m-kamrany/chinas-rise-to-global-eco_b_6544924.html [<https://perma.cc/29LF-XF35>].

2. President Xi announced:

[I]t is true that economic globalization has created new problems, but this is no justification to write economic globalization off completely. Rather, we should adapt to and guide economic globalization, cushion its negative impact, and deliver its benefits to all countries and all nations.

. . . China also had doubts about economic globalization, and was not sure whether it should join the World Trade Organization. But we came to the conclusion that integration into the global economy is a historical trend. To grow its economy, China must have the courage to swim in the vast ocean of the global market

Whether you like it or not, the global economy is the big ocean that you cannot escape from. Any attempt to cut off the flow of capital, technologies, products, industries and people between economies, and channel the waters in the ocean back into isolated lakes and creeks is simply not possible. Indeed, it runs counter to the historical trend.

President Xi's Speech to Davos in Full, WORLD ECONOMIC FORUM (Jan. 17, 2017), <https://www.weforum.org/agenda/2017/01/full-text-of-xi-jinping-keynote-at-the-world-economic-forum> [<https://perma.cc/VSY2-BZUV>]; see Enda Curran, *Xi, Unlikely Champion for Business Elites, Takes Davos Spotlight*, BLOOMBERG: POLITICS (Jan. 16, 2017, 1:03 AM), <https://www.bloomberg.com/news/articles/2017-01-16/xi-unlikely-champion-for-business-elites-takes-davos-spotlight> [<https://perma.cc/XUV2-ZNUD>].

3. Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement, 82 Fed. Reg. 8497 (Jan. 5, 2016), <https://www.federalregister.gov/documents/2017/01/25/2017-01845/withdrawal-of-the-united-states-from-the-trans--pacific-partnership-negotiations-and-agreement>.

4. Ishaan Tharoor, *After Clinton, Trump's Real Enemy Is 'Globalism'*, WASH. POST: WORLDVIEWS (Nov. 3, 2016), https://www.washingtonpost.com/news/world-views/wp/2016/10/28/how-globalism-became-the-boogeyman-of-2016/?utm_term=.fee82ad6566 [<https://perma.cc/2VB3-MLCL>]. President Trump in his public statements has claimed that "[t]he TPP is [a] horrible deal It's a deal that was designed for China to come in, as they always do, through the back door and totally take advantage of everyone." Clayton Youngman, *Trump Says China Gets an Advantage from the Trans-Pacific Partnership*, POLITIFACT (Nov. 12, 2015, 2:39 PM), <http://www.politifact.com/truth-o-meter/statements/2015/nov/12/donald-trump/trump-says-china-will-take-advantage-trans-pacific/> [<https://perma.cc/9YAE-6EN9>]. However, Youngman explains that:

We asked experts if there was any way China could possibly take advantage of the TPP. The experts all agreed: The trade deal will most likely negatively impact China.

and has threatened the same with the Korea-U.S. Free Trade Agreement (KORUS) and the North American Free Trade Agreement (NAFTA).⁵

Before Trump's withdrawal, President Obama noted that the TPP presented an opportunity for the U.S. and its partners to write the rules of international trade with Asia-Pacific countries.⁶ The TPP was an attempt by the U.S. to participate in the growing expansion of FTAs in the Asia-Pacific Region.⁷ It has been reported that in May 2017, Japanese Prime Minister Shinzo Abe recently declared that while he hoped for America's return to the TPP, Japan was willing to take the lead in bringing the deal to fruition. New Zealand has joined Japan in announcing they will seek an agreement with other signatories by November 2017 to move the TPP forward.⁸ On November 11, 2017, at a side meeting during an APEC meeting in Vietnam, members of the TPP agreed to

Joel P. Trachtman, an international law professor at the Fletcher School of Law and Diplomacy, said the deal "would mean there would be zero tariffs on goods coming to the United States from places that compete with China."

Id. The dichotomy between the approaches of the two leaders was confirmed at an APEC meeting in Vietnam on November 11, 2017.

At a speech in Danang, Trump set out a strong message making clear he was only interested in bilateral deals in Asia that would never put the United States at a disadvantage.

China's President Xi Jinping, meanwhile, used the same forum to stress multilateralism and said globalization was an irreversible trend.

Kiyoshi Takenaka & Matthew Tostevin, *TPP Countries Salvage Agreement to Keep Trade Deal Alive*, CNBC (Nov. 10, 2017, 2:08 PM), <https://www.cnbc.com/2017/11/10/reuters-america-tpp-countries-salvage-agreement-to-keep-trade-deal-alive.html?view=story> [<https://perma.cc/3BUP-KR22>].

5. Philip Rucker, *Trump: 'We May Terminate' U.S.-South Korea Trade Agreement*, WASH. POST (Apr. 28, 2017), https://www.washingtonpost.com/politics/trump-we-may-terminate-us-south-korea-trade-agreement/2017/04/27/75ad1218-2bad-11e7-a616-d7c8a68c1a66_story.html?utm_term=.506185b54e92 [<https://perma.cc/G6S6-H2UA>]; Michael D. Shear, *Trump Will Withdraw U.S. From Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html> [<https://perma.cc/77S7-6CLS>].

6. Jeff Okun-Kozlowicki & Gabe Horwitz, *The TPP: Who Will Set the Trade Rules for Asia?*, THIRD WAY (Mar. 10, 2014), <http://www.thirdway.org/report/the-tpp-who-will-set-the-trade-rules-for-asia> [<https://perma.cc/AFJ6-CPEV>]. The TPP countries are Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. See Ronald C. Brown, *FTAs In Asia-Pacific: "Next Generation" of Social Dimension Provisions on Labor?* 26 *IND. INT'L & COMP. L. REV.* 69 (2016).

7. See Brown, *supra* note 6, at 79. Now, even after the U.S. exit, Japan hopes to go forward with the TPP. Japan's Finance Minister made the announcement on April 25, 2017. Robbie Gramer, *Japan Wants to Revive the Trans Pacific Partnership Even Without the U.S.*, FOREIGN POL'Y (Apr. 24, 2017, 3:16 PM), <http://foreignpolicy.com/2017/04/24/japan-wants-to-revive-trans-pacific-partnership-even-without-united-states-asia-trade-agreements/> [<https://perma.cc/ZX79-23MJ>].

8. Koichi Hamada, *The Rebirth of the TPP*, PROJECT SYNDICATE (June 29, 2017), <https://www.project-syndicate.org/commentary/tpp-revival-japan-us-by-koichi-hamada-2017-06> [<https://perma.cc/XWL9-ZCM3>]. Mr. Hamada is Professor Emeritus at Yale University and a special adviser to Japanese Prime Minister Shinzo Abe. *Id.*

continue working on the proposed trade deal. According to a draft due to be released on Saturday, November 11, 2017 in Vietnam, “the 11 countries committed to ‘the core elements’ of a deal while making clear more work remains.”⁹

At the same time, China has been involved in negotiations on another trade agreement in the Asia-Pacific Region, the Regional Comprehensive Economic Partnership (RCEP).¹⁰ The RCEP aims to be the largest free-trade bloc in the world, comprising all ten Association of Southeast Asian Nations (ASEAN) (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam) and the six countries with which ASEAN already has FTAs (China, India, Japan, South Korea, Australia, and New Zealand).¹¹

While China, as the largest player in the region, is taking the initiative and ascending to global leadership of Asian trade, the U.S. has begun descending from prominent involvement. This phenomenon presents a looming question: what is to be expected in terms of trade rules and labor protections?

This paper explores the history of trade rules and labor protections, and it ultimately reveals that the future presents an uneven playing field regarding trade and labor protections. Without labor obligations in its FTAs, the RCEP seems to encourage multinational corporations (MNCs) to further invest in labor supply chains in developing Asian countries. This will likely worry labor unions in the U.S. and disadvantage American and Asian workers.¹²

9. Takenaka & Tostevin, *supra* note 4. The 11 TPP partners, without the U.S., have agreed to core elements of the TPP and are scheduled for final signing in March 2018. Louise Yaxley, *TPP Resurrected: Here's What's in the Latest Trans-Pacific Partnership Trade Deal and What It Means for You*, AUSTL. BROAD. CORP. (Jan. 24, 2018, 10:33 PM), <http://www.abc.net.au/news/2018-01-24/what-is-the-new-tpp-and-what-does-it-mean-for-australia/9357020> [<https://perma.cc/Z5Q8-9KUL>].

10. See Brown, *supra* note 6, at 79.

11. Murray Hiebert, *ASEAN and Partners Launch Regional Comprehensive Economic Partnership*, CTR. FOR STRATEGIC INT'L STUD. (Dec. 7, 2012), <https://www.csis.org/analysis/asean-and-partners-launch-regional-comprehensive-economic-partnership> [<https://perma.cc/PZ4Y-436U>].

Southeast Asian countries will prioritize creating an Asia-focused trade pact this year that includes China, India and Japan, while trade issues with the United States will be put on the back burner, the Philippine trade minister said.

The U.S. withdrawal from the Trans-Pacific Partnership (TPP) and policy uncertainties cast by President Donald Trump's protectionist leanings, have spurred Asian countries to push ahead with the Regional Comprehensive Economic Partnership (RCEP), Trade and Industry Secretary Ramon Lopez told Reuters late on Tuesday.

Martin Petty & Karen Lema, *Interview: Southeast Asia Prioritizes Trade Pact Including China as U.S. Rethinks Policy*, REUTERS (Apr. 26, 2017, 1:42 AM), <http://in.mobile.reuters.com/article/ousivMolt/idINKBN17S0T2> [<https://perma.cc/7BJS-P4W8>].

12. U.S. labor unions often point to the negative impacts of FTAs on American workers and their jobs. Jeff Faux, *NAFTA's Impact on U.S. Workers*, ECON. POL'Y INST.: WORKING ECON. BLOG (Dec. 9, 2013, 4:00 PM), <http://www.epi.org/blog/naftas-impact-workers> [<https://perma.cc/NT9P-VA8A>]; see also Mi Park, *Trade Liberalization*

B. *Implications and Roadmap*

The replacement of U.S. presence by Chinese leadership will implicate three aspects of global trade practices: the authorship of trade rules, the absence of labor protections, and the contrasts in expected trade practices evidenced by past practices. A primary difference between the TPP and RCEP is that U.S. trade agreements always contain labor protections based on ILO core labor standards, whereas Chinese trade agreements do not.¹³ U.S. withdrawal opens the door to RCEP trade rules, which will impact U.S. and Asian workers by omitting protections of International Labor Organization (ILO) core labor standards and enforcement obligations of the governing state parties. While it is true that FTAs are a disputed means of raising labor standards, they are effective in providing global labor standards that compliant nations must strive to adhere to. However, a complication could arise when existing members of the RCEP already have labor protection obligations with the U.S. or other countries that are independent of their membership in RCEP.

The Asia-Pacific Region is a large market with a combined GDP of almost \$21 trillion (about 30 percent of world GDP) and \$4.4 trillion in exports of goods and services (about a fifth of total world exports).¹⁴ In 2017, it was reported that prospective RCEP member states had a population of about 3.4 billion people with a total GDP of \$49.5 trillion (approximately 39 percent of the world's GDP).¹⁵

and Organized Labour in the Asia-Pacific Region: Barriers to Labour Internationalism, 11 *GLOBALIZATIONS* 71, 76-77 (2014) <http://www.tandfonline.com/doi/pdf/10.1080/14747731.2014.860799> [<https://perma.cc/T4BE-JBL9>]; *Labor Unions Remain Steadfastly Opposed To Trans-Pacific Trade Measure* (NPR radio broadcast June 16, 2015), <http://www.npr.org/2015/06/16/414831901/labor-unions-remain-steadfastly-opposed-to-trans-pacific-trade-measure> [<https://perma.cc/K3H5-MDDZ>]; Ronald C. Brown, *FTAs in Asia-Pacific: 'Next Generation' of Social Dimension Provisions on Labor?*, 26 *IND. INT'L & COMP. L. REV.* 69 (2016) [hereinafter Brown, *FTAs in Asia-Pacific*]; Ronald C. Brown, *Mega-Regionalism: TPP Labor Provisions: A Game Changer?* 10-12 (May 10, 2016), <http://www.eastwestcenter.org/sites/default/files/filemanager/pubs/pdfs/7-5Brown.pdf> [<https://perma.cc/AEA3-KVMN>] [hereinafter Brown, *Mega-Regionalism*] (presented at the NSF Workshop on Mega-Regionalism: New Challenges for Trade and Innovation (MCTI) at the East-West Center, Honolulu, Hawaii, on January 20–21, 2016).

13. See Brown, *Mega-Regionalism*, *supra* note 12 at 6; *Trans-Pacific Partnership Agreement*, Feb. 4, 2016, Office of the U.S. Trade Representative, <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text> [<https://perma.cc/8467-7NPQ>]; see also Ronald C. Brown, *Asian and US Perspectives on Labor Rights under International Trade Agreements Compared*, in *PROTECTING LABOR RIGHTS IN A GLOBALIZING WORLD* 83 (Axel Marx et al., eds., 2015) [hereinafter Brown, *Asian and US Perspectives*]. China does have labor cooperation provisions in a few of its FTAs or side MOUs, but they appear unenforceable, as discussed in section II B of this paper.

14. Barbara Kotschwar & Jeffrey J. Schott, *The Next Big Thing? The Trans-Pacific Partnership & Latin America*, AM. Q., Spring 2013, <http://www.americasquarterly.org/next-big-thing-trans-pacific-partnership> [<https://perma.cc/PT22-BZ8X>].

15. Stefani Ribka & Linda Yulisman, *RCEP Talks Speed Up Amid TPP Failure*, *JAKARTA POST* (Dec. 7, 2016, 7:36 AM), <http://www.thejakartapost.com/news/2016/12/07/>

Since 2000, China has entered into thirteen trade agreements. Eight have no labor provisions, while five have watered-down provisions with general goals, such as cooperative workshops and general labor cooperation. Several of the agreements have these provisions only in an accompanying Memorandum of Understanding (MOU). Further, most of these watered-down provisions are arguably not written to be enforceable except through mutual consultation and agreement.¹⁶ It has been argued that China's trade practices are characterized by three elements: exclusion, favoritism, and lower standards for labor and corruption. This leads some to conclude that "if China sets the rules for Asia, governments across the region could reverse years of progress toward openness and transparency."¹⁷

This paper examines the social dimension provisions of Chinese FTAs relating to labor, some of the ILO's core labor protections. Its purpose is to estimate how Chinese-influenced FTAs may affect implementation of real labor law protections in Asian countries. This analysis is divided into four component parts: Part I introduces the new reality and implications of China's rising global leadership in FTAs in Asia; Part II deals with the landscape of current Chinese FTAs in Asia, including those with labor provisions; Part III analyzes Chinese and U.S. approaches, discusses expectations, and explores alternatives for those interested in expanding labor protections in the Asian Region; and finally, Part IV shares the conclusions of this analysis.

II. LANDSCAPE OF FTAS AND TRADE PRACTICES IN ASIA AND CHINA

A. *FTAs in Asia*

While trade liberalization and economic integration in the Asia-Pacific region have proliferated,¹⁸ a recent ADB-sponsored study reports

rcp-talks-speed-up-amid-tpp-failure.html [https://perma.cc/E82Y-MUHT].

16. Jay Chittooran, *What Do Chinese Rules Mean for Worker Rights?*, THIRD WAY (Apr. 14, 2015), <http://www.thirdway.org/report/what-do-chinese-rules-mean-for-worker-rights> [https://perma.cc/EJD3-32RA].

17. Okun-Kozłowski & Horwitz, *supra* note 6.

18. See ASIAN DEV. BANK, REGIONAL COOPERATION AND INTEGRATION IN A CHANGING WORLD 17–26 (2013), <https://www.adb.org/sites/default/files/publication/30224/regional-cooperation-changing-world.pdf> [https://perma.cc/E9VV-2EDW] [hereinafter REGIONAL COOPERATION AND INTEGRATION]; Masahiro Kawai & Ganeshan Wignaraja, *Asian FTAs: Trends, Prospects, and Challenges* 5 (Asian Dev. Bank, ADB Econ. Working Paper Series, Paper No. 226, 2010), <https://www.adb.org/sites/default/files/publication/28273/economics-wp226.pdf> [https://perma.cc/W8RN-PKUP]. Masahiro Kawai is Dean of the Asian Development Bank Institute, Tokyo and Ganeshan Wignaraja is Principal Economist in the Office of Regional Economic Cooperation, Asian Development Bank. Asian FTAs are under scrutiny for their scope, such as their inclusion of new issues that go beyond the World Trade Organization framework. *Id.* at 17. "Two leading participants in Asian FTAs—Japan and Singapore—strongly favor a WTO-plus approach to FTAs. All of Japan's agreements and most of Singapore's are WTO-plus. Likewise, Brunei Darussalam, Indonesia, the Republic of Korea, Malaysia, the Philippines, and Viet Nam largely follow a WTO-plus format." *Id.* at 19.

that the use of FTAs, a newer phenomenon to the region, has been distorted, with excessive exclusions and deferential treatment to certain countries and partners.¹⁹ The ILO states that trade agreements incorporating labor protection provisions have steadily increased (from four in 1995 to 21 in 2005, and then to 70 in 2013).²⁰ Of the roughly 190 countries with trade agreements, about 120 are partners to trade agreements that include labor provisions.²¹

A recent article categorized Asian bilateral and mega-regional FTAs into three types: *Asian* (documenting the great proliferation by Asian states), *U.S.-Asian* (that include social dimension provisions with labor standard protections), and *Inter-Asian* (that generally did *not* include social dimension provisions with labor standard protections).²² When the U.S. or other developed, western nations, such as those in the EU, are parties to the FTA, there was typically a social dimension provision with labor standard protections, whereas by contrast, *Inter-Asian* FTAs did not include these provisions. Leading the way in FTA volume are the 10 members of the Association of Southeast Asian Nations (ASEAN) and their trade partners: Australia, the People's Republic of China, India, Japan, the Republic of Korea, and New Zealand. Together, these FTAs have increased from 27 in 2002 to 179 by January 2013, a 600 percent increase.²³

Singapore's primary issues were found to be newer additions to the scope of an FTA agreement, and included investment, competition, intellectual property, and public procurement ("the four Singapore issues"). *Id.* at 2. These go beyond the scope of the WTO requirements and thus are sometimes incorporated to FTAs and characterized as "WTO-plus." These newer issues were economically focused, *without inclusion of a social dimension provision.* *Id.* at 17.

19. Kawai & Wignaraja, *supra* note 18, at 5.

20. JORDI AGUSTÍ-PANAREDA ET AL., INT'L LABOUR ORG., LABOUR PROVISIONS IN FREE TRADE AGREEMENTS: FOSTERING THEIR CONSISTENCY WITH THE ILO STANDARDS SYSTEM 7-8 (2014), http://www.ilo.org/inst/projects/labour-standards-in-trade-and-investment-arrangements/WCMS_237940/lang-en/index.htm [<https://perma.cc/HYJ7-BCHN>].

21. FRANZ EBERT, INT'L LABOUR ORG., SOCIAL DIMENSIONS OF FREE TRADE AGREEMENTS 5 (2015), http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_228965.pdf [<https://perma.cc/4S2A-F5NP>]. This publication states the number of FTAs with labor provisions in 2013 was 58, an increase from 21 in 2005. *Id.*

22. Brown, *Asian and US Perspectives*, *supra* note 13, at 96-112.

23. REGIONAL COOPERATION AND INTEGRATION, *supra* note 18, at 18; *see also* Brown, *Asian and US Perspectives*, *supra* note 13, at 96-112.

Mega-regional trade deals have recently become more popular.²⁴ The RCEP is one example of such a deal.²⁵ ASEAN is leading negotiations with its six partners to establish the RCEP.²⁶

Asia's own mega-regional trade deal—the Regional Comprehensive Economic Partnership (RCEP)—was launched in 2012 and could create the world's largest trading bloc and have significant implications for the world economy. The objective is to “achieve a modern, comprehensive, high-quality and mutually beneficial economic partnership agreement among the ASEAN Member States and ASEAN's FTA Partners.” At the same time, a “key purpose is to reconcile two long-standing proposals into a large region-wide trade agreement: The East Asian Free Trade Agreement, which included ASEAN, China, Japan and South Korea, and the Regional Comprehensive Economic Partnership, which added Australia, India and New Zealand. The RCEP bridges the two proposals by adopting an open accession scheme.”²⁷

24. Brown, *Mega-Regionalism*, *supra* note 12, at 2–3.

Because the RCEP will contain three of the largest economies in the world—China, India and Japan—it is globally important. The bloc represents 49 per cent of the world's population and accounts for 30 per cent of world GDP. It also makes up 29 per cent of world trade and 26 per cent of world FDI inflows. Conservative estimates using various computable general equilibrium models suggest that if the RCEP were implemented it would bring large income gains to the world economy of between US\$260–644 billion in a decade or so.

Ganeshan Wignaraja, *Why the RCEP Matters for Asia and the World*, E. ASIA FORUM (May 15, 2013), <http://www.eastasiaforum.org/2013/05/15/why-the-rcep-matters-for-asia-and-the-world/> [<https://perma.cc/8FGJ-3DN3>]; see also REGIONAL COOPERATION AND INTEGRATION, *supra* note 18, at 18. Other regional developments are also moving forward. In March 2014, China, Japan, and South Korea held their fourth round of negotiations over a trilateral free trade agreement (China-Japan-South Korea FTA). *Id.* A critique on the trajectory of the RCEP and its relationship with regional FTAs in East Asia is found in a recent ADB report. See generally Yoshifumi Fukunaga & Ikumo Isono, *Taking ASEAN+1 FTAs Towards the RCEP: A Mapping Study* (Econ. Research Inst. For ASEAN & E. Asia, Discussion Paper No. 2013-02, 2013), <http://www.eria.org/ERIA-DP-2013-02.pdf> [<https://perma.cc/PB6C-96H5>].

25. Wignaraja, *supra* note 24.

26. *Regional Comprehensive Economic Partnership (RCEP)*, ASS'N OF SE. ASIAN NATIONS (Oct. 3, 2016), http://asean.org/?static_post=rcep-regional-comprehensive-economic-partnership [<https://perma.cc/4CAV-SATH>]; JAMES WALLAR, NAT'L BUREAU OF ASIAN RESEARCH, *ACHIEVING THE PROMISE OF THE ASEAN ECONOMIC COMMUNITY: LESS THAN YOU IMAGINE, MORE THAN YOU KNOW 20* (July 2014), http://www.nbr.org/downloads/pdfs/ETA/wallar_paper_072814.pdf [<https://perma.cc/FTT6-9M8B>]. Originally it was to be completed by 2015, the deadline ASEAN set to achieve the ASEAN Economic Community, which envisages a highly competitive single market and production base that is fully integrated into the global economy. ASIAN DEV. BANK, *ASIAN DEVELOPMENT OUTLOOK (ADO) 2013: ASIA'S ENERGY CHALLENGE 13* (2013), <https://www.adb.org/publications/asian-development-outlook-2013-asias-energy-challenge> [<https://perma.cc/NVN2-VKPS>]; *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership*, AUSTR. DEPT. OF FOREIGN AFFAIRS & TRADE (2012), <http://dfat.gov.au/trade/agreements/rcep/Documents/guiding-principles-rcep.pdf> [<https://perma.cc/TLP5-BZST>]

27. Brown, *Asian and US Perspectives*, *supra* note 13, at 99 (citations omitted).

Chart 1, below, draws attention to the 16 RCEP members' dramatically wide variances in relative economic development and their likely level of sophistication in current domestic labor law protections. Since the RCEP FTA does not include international labor standard obligations, the agreement could potentially encourage MNCs in more developed member countries with higher labor standards to go offshore and utilize their global labor chains in lesser-developed RCEP member countries to take advantage of these lower standards.

Chart 1: Members of RCEP, ASEAN Economic Community (AEC) and TPP

RCEP	CPTPP March 8, 2018	Higher Risk re Labor Protections
ASEAN members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam; and Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Laos, Myanmar, Cambodia, China, Japan, South Korea, India, Australia, and New Zealand.	Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam	Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Thailand, Indonesia, Philippines, Singapore, Thailand, Brunei, Laos, Myanmar, Cambodia, China, South Korea, and India.

Another source of labor protections can be found in ILO core labor conventions. These protections have been ratified by the member states below and have empowered the ILO to assist and monitor labor conditions, even with an absence of FTA parallel ILO protections and their additional enforcement mechanisms. RCEP members also have wide variances in the numbers of ILO core labor conventions they have ratified; see Chart 2 below.

Chart 2: ILO Core Labor Conventions Ratified

RCEP States	Freedom of Association and Collective Bargaining		Elimination of Forced and Compulsory Labor		Elimination of Discrimination In Respect of Employment and Occupation		Abolition of Child Labor	
	No. 87	No. 98	No. 29	No. 105	No. 100	No. 111	No. 138	No. 182
Brunei							6/17/11	6/9/08
Cambodia	8/23/99	8/23/99	2/24/69	8/23/99	8/23/99	8/23/99	8/23/99	3/14/06
Indonesia	6/9/98	7/15/57	6/12/50	6/7/99	8/11/58	6/7/99	6/7/99	3/28/00
Laos			1/23/64		6/13/08	6/13/08	6/13/05	6/13/05

See Brown, *Mega-Regionalism*, *supra* note 12, at 3. Negotiations among the 16 parties began in early 2013 but are not yet concluded. The 19th Round of Negotiations for Regional Comprehensive Economic Partnership (RCEP) was held in India, from July 18–28, 2017. Press Release, Ministry of Foreign Affairs of Japan, 19th Round of Negotiations for Regional Comprehensive Economic Partnership (RCEP) (July 14, 2017), http://www.mofa.go.jp/press/release/press4e_001666.html [<https://perma.cc/2QVN-U653>]. RCEP includes the following countries: Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Burma, Cambodia, China, Japan, South Korea, India, Australia, and New Zealand.

RCEP States	Freedom of Association and Collective Bargaining		Elimination of Forced and Compulsory Labor		Elimination of Discrimination In Respect of Employment and Occupation		Abolition of Child Labor	
Malaysia		6/5/61	11/11/57	10/13/58*	9/9/97		9/9/97	11/10/00
Myanmar	3/4/55		3/4/55					12/18/14
Philippines	12/29/53	12/29/53	7/15/05	11/17/60	12/29/53	11/17/60	6/4/98	11/28/00
Singapore		10/25/65	10/25/65	10/25/65*	5/30/02		11/7/05	6/14/01
Thailand			2/26/69	12/2/69	2/8/99	6/13/17	5/11/04	6/16/01
Vietnam			3/5/07		10/7/97	10/7/97	6/24/03	12/19/00
Australia	2/28/73	2/28/73	1/2/32	6/7/60	12/10/74	6/15/73		12/19/06
China					11/2/90	1/12/06	4/28/99	8/8/02
India			11/30/54	5/18/00	9/25/58	6/3/60	6/13/17	6/13/17
Japan	6/14/65	10/20/53	11/21/32		8/24/67		6/5/00	6/18/01
South Korea					12/8/97	12/4/98	1/28/99	3/29/01
New Zealand		6/9/03	3/29/38	6/14/68	6/3/83	6/3/83		6/14/01

As confirmed in Chart 3 of the Appendices at the end of the text, inter-Asian FTAs with social dimension (SD) provisions on labor protections are anomalous within RCEP countries, suggesting that social dimension provisions are generally scarce in the RCEP at large. Only South Korea, Australia, Japan, New Zealand, and Korea have labor provisions, and these provisions are with non-Asian developed countries, such as the U.S. Interestingly, Japan's FTAs (called EPAs), mention labor, but usually only state that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws.²⁸

Chinese leaders may see the establishment of RCEP as laying the foundations for a broader Free Trade Area of Asia Pacific (FTAAP), which could be a set of regional rules and norms inspired, at least in part, by Chinese leadership. It is reported that:

FTAAP gains would be some eight times that of the twelve-nation TPP—close to \$2 trillion by 2025—and three times that of the RCEP being negotiated among the Southeast Asian (ASEAN) nations, which also includes China, India, Japan, Korea and Australia/New Zealand (known as the Regional Comprehensive Economic Partnership or RCEP).²⁹

28. See, e.g., *Japan Country Commercial Guide*, U.S. DEPT. OF COMMERCE, INT'L TRADE ADMIN. (Sept. 25, 2017), <https://www.export.gov/article?id=Japan-Trade-Agreements> [<https://perma.cc/F749-K62Y>]; Free Trade Agreement (FTA) and Economic Partnership Agreement (EPA), MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Oct. 12, 2017), <http://www.mofa.go.jp/policy/economy/fta/> [<https://perma.cc/9S3M-EHEM>].

29. Hugh Stephens, *TPP or FTAAP: What It Means for US and the Asia-Pacific Region*, CHINA-US FOCUS (Nov. 25, 2014), <http://www.chinausfocus.com/finance-economy/tpp-or-ftaap-what-it-means-for-us-and-the-asia-pacific-region/> [<https://perma.cc/3EE4-3J83>]. "These gains, however, are predicated on an FTAAP model that bridges the TPP and RCEP templates. China—which is not among the TPP negotiating countries—has now become a leading advocate for the FTAAP." *Id.*

As the following analysis of Chinese FTAs will show, there is no basis to conclude that the RCEP would include a substantive labor provision. One could also speculate that pressures from China and other Asian countries will exist to make the FTAAP mirror that absence, though its impact would fall over a much larger swath of countries and regions and set a tone contrary to protecting the labor rights of workers.

Three RCEP members, Australia, Korea, and Singapore, each have FTAs with the U.S. that include labor protection provisions.³⁰ Singapore and Vietnam³¹ have bilateral FTAs with the European Union (EU), neither of which includes provisions for protection of international labor standards.³² This tends to underscore the reluctance of Asian countries to include labor protection provisions in their FTAs in these cases, even when dealing with major western states who most often include them.

Also in effect is the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) entered into force in January 2010.³³ Parties to the Agreement, in addition to Australia and New Zealand, are the countries of ASEAN—Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam.³⁴ This FTA has no labor protections, but only

30. Their FTAs are found in Article 18 of the 2004 US-Australia FTA, Article 19 and Annex 19-A of the 2007 US-Korea FTA, and Article 17 of the 2003 US-Singapore FTA. United States–Australia Free Trade Agreement, U.S.-Austl. art. 18, May 18, 2004, Office of the U.S. Trade Representative, https://ustr.gov/sites/default/files/uploads/agreements/fta/australia/asset_upload_file148_5168.pdf [<https://perma.cc/EW5A-R5MM>]; United States – Korea Free Trade Agreement, U.S.-S. Kor. art. 19, Annex 19-A, June 30, 2007, <https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text> [<https://perma.cc/V2M7-6KTT>]; United States - Singapore Free Trade Agreement, U.S.- Sing. art. 17, May 6, 2003, Office of the U.S. Trade Representative, https://ustr.gov/sites/default/files/uploads/agreements/fta/singapore/asset_upload_file708_4036.pdf [<https://perma.cc/6N5P-39WC>].

31. See *Southeast Asia & Pacific: Vietnam*, OFFICE OF THE U.S. TRADE REPRESENTATIVE, <https://ustr.gov/countries-regions/southeast-asia-pacific/Vietnam> [<https://perma.cc/8RP5-RHNM>].

Vietnam has bilateral and regional FTAs with many countries across the Asia Pacific, including China, Japan, Korea, Australia, New Zealand, India, Chile, and ASEAN, among others. Vietnam also is participating in the . . . 16-member Regional Comprehensive Economic Partnership negotiations. It concluded an FTA with the EU in December 2015, but the agreement has not yet entered into force.

Id.

32. See Agreement Between the United States of America and the Socialist Republic of Vietnam on Trade Relations, U.S.-Viet., July 13, 2000, Office of the U.S. Trade Representative, <https://ustr.gov/sites/default/files/US-VietNam-BilateralTradeAgreement.pdf> [<https://perma.cc/VZN5-TTRW>]; see also *CETA Chapter by Chapter*, EUR. COMM'N, <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/> [<https://perma.cc/2RG4-VFQM>].

33. Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, Feb. 27, 2009, ASS'N OF SE. ASIAN NATIONS, <http://www.asean.org/storage/images/2013/economic/afta/AANZFTA/Agreement%20Establishing%20the%20AANZFTA.pdf> [<https://perma.cc/QC5W-FA45>].

34. *Id.*

includes the minor provision dealing with labor mobility in trade services, which is necessary for trading representatives to travel freely.³⁵

As mentioned above, Japan has FTAs, called Comprehensive Economic Partnership Agreements (EPAs), with RCEP members India, Brunei, Indonesia, Philippines, Mongolia, and Singapore.³⁶ It also has an FTA with ASEAN.³⁷ Japan does not usually include full labor protection provisions, nor are these labor provisions included in these agreements in Asia, except to facilitate movement of natural persons to assist in trade, and for the Philippines, to agree not to lower labor standards to encourage trade and investment.³⁸ Korea also has an FTA with ASEAN, but there is no labor protection provision included.³⁹

Accordingly, while inter-Asian business grows and FTAs flourish within Asia, the inclusion of social dimension provisions in FTAs or

35. *See id.* at 132.

36. *Japan-Trade Agreements*, U.S. DEPT. OF COMMERCE, INT'L TRADE ADMIN. (Sept. 25, 2017), <https://www.export.gov/article?id=Japan-Trade-Agreements> [<https://perma.cc/7BY9-987G>]; *Free Trade Agreement (FTA) and Economic Partnership Agreement (EPA)*, *supra* note 28.

37. Free Trade Agreement (FTA) and Economic Partnership Agreement (EPA), *supra* note 28.

38. Article 103 of the Japan-Philippines Economic Agreement states:

1. The Parties recognize that it is inappropriate to encourage investment by weakening or reducing the protections afforded in domestic labor laws. Accordingly, each Party shall strive to ensure that it does not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such laws in a manner that weakens or reduces adherence to the internationally recognized labor rights referred to in paragraph 2 below as an encouragement for the establishment, acquisition, expansion or retention of an investment in its Area. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the Parties shall consult with a view to avoiding any such encouragement.
2. For purposes of this Article, "labor laws" means each Party's laws or regulations that are directly related to the following internationally recognized labor rights:
 - (a) the right of association;
 - (b) the right to organize and bargain collectively;
 - (c) a prohibition on the use of any form of forced or compulsory labor;
 - (d) labor protections for children and young people, including a minimumage for the employment of children and the prohibition and elimination of the worst forms of child labor; and
 - (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Agreement Between Japan and the Republic of the Philippines for an Economic Partnership, Japan-Phil. Art. 103, Sept. 9, 2006, Ministry of Foreign Affairs of Japan, <http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/main.pdf> [<https://perma.cc/ZDH4-LHFV>].

39. *ASEAN-Korea Free Trade Area*, ASS'N OF SE. ASIAN NATIONS, <http://www.asean.org/storage/images/2015/October/outreach-document/Edited%20AKFTA.pdf> [<https://perma.cc/8PGM-G5A2>].

bilateral investment treaties (BITs)⁴⁰ is practically non-existent, unless there is a Western party to the FTA, such as in FTAs with South Korea and with Singapore.⁴¹

B. *China's FTAs and Labor Provisions*

A survey of Chinese FTAs catalogues that in mid-2015 “there were 13 FTAs.”⁴² Eight had no labor protection provisions (ASEAN, Asia-Pacific, Costa Rica, Hong Kong, Macau, Pakistan, Singapore, and Taiwan) and five included relatively minor labor protection standards (Chile, Iceland, New Zealand, Peru, and Switzerland).⁴³

40. See Ronald C. Brown, *China–U.S. Implementation of ILO Standards by BITs and Pieces (FTAs)*, in *FUNDAMENTAL LABOUR RIGHTS IN CHINA—LEGAL IMPLEMENTATION AND CULTURAL LOGIC* 169 (Ulla Liukkunen et al. eds., 2016).

Asian countries, particularly those in ASEAN, also conclude Bilateral Investment Treaties (BITs), though none have Social Dimension Provisions covering labor standards. The U.S. is currently in negotiations with China on a BIT which does contain a Social Dimension Provision on labor, which would be the first BIT with such a provision for China, if concluded.

Id.

41. The parties reaffirm their ILO obligations and agree not to fail to effectively enforce its labor laws. See United States-Singapore Free Trade Agreement, *supra* note 30.

42. See Chittooran, *supra* note 16. Arguably, there are 16 FTAs, as China had three other FTAs negotiated and in effect (Taipei; China; South Korea; and Thailand) [see Chart 3 in Appendices], but they have not yet been notified to the WTO. One of these three contain a Social Dimension provision with labor protections. See also *Free Trade Agreements (China)*, ASIAN REG'L INTEGRATION CTR., <https://aric.adb.org/fta-country> [<https://perma.cc/L6DM-A62Z>]. The agreement with Taipei is an Economic Cooperation Agreement. See People's Republic of China-Taipei, China Economic Cooperation Framework Agreement, China-Taiwan, Sept. 12, 2010, Asia Reg'l Integration Ctr., https://aric.adb.org/fta/peoples_republic_of_china-taipeichina_economic_cooperation_framework_agreement [<https://perma.cc/84WF-47RG>] (signed and in effect, not yet notified to WTO); People's Republic of China-Thailand Free Trade Agreement, China-Thai., Oct. 2003, Asia Reg'l Integration Ctr., <https://aric.adb.org/fta/peoples-republic-of-china-thailand-free-trade-agreement> [<https://perma.cc/KGE4-G5RH>] (signed and in effect but not yet notified to the WTO); People's Republic of China-Republic of Korea Free Trade Agreement, China-S. Kor., Dec. 20, 2015, Asia Reg'l Integration Ctr., <https://aric.adb.org/fta/peoples-republic-of-china-korea-free-trade-agreement> [<https://perma.cc/JJ9T-LC7X>] (signed and in effect but not yet notified to the WTO); Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Korea, China-S. Kor., Jan. 6, 2015, United Nations Conference on Trade & Dev., <http://investmentpolicyhub.unctad.org/Download/TreatyFile/3461> [<https://perma.cc/EL58-KJJM>].

43. The 13 agreements are: Asia-Pacific, Hong Kong, Macau, ASEAN, Chile, Costa Rica, New Zealand, Pakistan, Singapore, Peru, Taiwan, Iceland, and Switzerland. Asia-Pacific Trade Agreement, Nov. 2, 2005, Ministry of Commerce of the People's Republic of China, http://fta.mofcom.gov.cn/yatai/xieyiwenben_en.pdf [<https://perma.cc/Y82T-9M2Y>]; Mainland and Hong Kong Closer Economic and Partnership Arrangement, China-H.K., June 29, 2003, World Bank Grp., <https://wits.worldbank.org/GP-TAD/PDF/archive/China-HongKong.pdf> [<https://perma.cc/NE24-STKS>]; Mainland and Macao Closer Economic Partnership Arrangement, China-Mac., Dec. 18, 2014, Gov't of the Mac. Special Admin. Region Econ. Servs., <http://www.economia.gov.mo/>

Of the five FTAs that have references to labor issues, three have references in MOUs instead of the FTAs (Chile, Peru, and Switzerland). These references are of dubious enforceability and merely call for or encourage labor cooperation, such as through workshops. The FTAs that reference labor protections are watered down and do not provide grounds for enforcement. For example, in its Agreement with China, Iceland agrees to enhanced labor communication and cooperation.⁴⁴ The China-Chile FTA has a labor provision for cooperation referring to a MOU.⁴⁵ The New Zealand-China Agreement does reaffirm the parties' obligations under the ILO, and it recognizes that it is inappropriate both

public/docs/CEPA_ACBLCS/index/en/main_text.pdf [https://perma.cc/5QJB-G2F3]; 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, Jan. 14, 2007, Ministry of Commerce of the People's Republic of China, <http://fta.mofcom.gov.cn/dongmeng/annex/xieyi2004en.pdf> [https://perma.cc/QHG8-BQ95]; Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Chile, Chile-China art. 108, Nov. 18, 2005, Ministry of Commerce of the People's Republic of China, <http://fta.mofcom.gov.cn/chile/xieyi/freetradexieding2.pdf> [https://perma.cc/E9LR-ASZ2]; People's Republic of China-Costa Rica Free Trade Agreement, China-Costa Rica, Apr. 8, 2010, Org. of Am. States Foreign Trade Info. Sys., http://www.sice.oas.org/Trade/CRI_CHN_FTA/Texts_Apr2010_e/CRI_CHN_Core_text_en.pdf?bcsi_scan_7823D-FCE46415F3E=0&bcsi_scan_filename=CRI_CHN_Core_text_en.pdf [https://perma.cc/2JGD-4JAY]; Free Trade Agreement Between the Government of the People's Republic of China and the Government of New Zealand, China-N.Z., Apr. 7, 2008, N.Z. Ministry of Foreign Affairs & Trade, <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/China-FTA/NZ-ChinaFTA-Agreement-text.pdf> [https://perma.cc/Q8JL-GBP6]; Free Trade Agreement Between the Government of the Islamic Republic of Pakistan and the Government of the People's Republic of China, China-Pak., Nov. 24, 2006, United Nations Conference on Trade & Dev., <http://investmentpolicyhub.unctad.org/Download/TreatyFile/2738> [https://perma.cc/8MEX-D6V3]; Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Singapore Trade Agreement, China-Sing., Oct. 28, 2008, Ministry of Commerce of the People's Republic of China, <http://fta.mofcom.gov.cn/topic/ensingapore.shtml> [https://perma.cc/S6EP-6SAQ]; Free Trade Agreement Between the Government of the People's Republic of China and the Government of Peru, China-Peru art. 161, Apr. 28, 2009, Ministry of Commerce of the People's Republic of China http://fta.mofcom.gov.cn/bilu/annex/bilu_xdwb_en.pdf [https://perma.cc/X3PC-A244]; Cross-Straits Economic Cooperation Framework Agreement, China-Taiwan, June 29, 2010, World Treaty Org. Reg'l Trade Agreements Info. Sys., <http://rtais.wto.org/rtadocs/713/TOA/English/Combined%20ECFA%20Text.pdf> [https://perma.cc/G6ZD-VLLB]; Free Trade Agreement Between the Government of the People's Republic of China and the Government of Iceland, China-Ice. art. 96, Apr. 15, 2013, Ministry of Commerce of the People's Republic of China, <http://fta.mofcom.gov.cn/iceland/xieyi/2013-4-17-en.pdf> [https://perma.cc/PY5F-35DA]; Free Trade Agreement Between the People's Republic of China and the Swiss Confederation, China-Switz., July 6, 2013, Ministry of Commerce of the People's Republic of China, <http://fta.mofcom.gov.cn/topic/enswiss.shtml> [https://perma.cc/2J4R-3YPC].

44. See Free Trade Agreement Between the Government of the People's Republic of China and the Government of Iceland, *supra* note 43.

45. See Free Trade Agreement Between the Government of the People's Republic of China and the Government of the Republic of Chile, *supra* note 43.

to encourage trade or investment by weakening or failing to enforce labor laws and also to set or use labor laws, regulations, policies and practices for trade protectionist purposes. However, despite this rhetoric, there is no enforcement mechanism.⁴⁶ Thus, the Parties essentially agreed to two courses of action: they ratified some ILO conventions, and they agreed to cooperate and consult upon disagreement. However, these agreements lack an enforcement mechanism. This type of provision is comparable with “soft law” approaches of CSR and codes of conduct where the

46. See Free Trade Agreement Between the Government of New Zealand and the Government of the People’s Republic of China, *supra* note 43, at art. 177 (“The Parties shall enhance their communication and cooperation on labour and environment matters through both the *Memorandum of Understanding on Labour Cooperation* and the *Environment Cooperation Agreement* between the Parties.”). See also Memorandum of Understanding on Labour Cooperation, China-N.Z., Apr. 7, 2008, N.Z. Ministry of Foreign Affairs & Trade, <https://www.mfat.govt.nz/assets/FTAs-agreements-in-force/China-FTA/NZ-China-FTA-Labour-MOU.pdf> [<https://perma.cc/L6DJ-5J3P>]. The MOU on Labor states in part:

Considering the objectives of the International Labour Organisation of which the Parties are members

Article 1 – General Provisions

1. The Parties reaffirm their obligations as members of the ILO, including their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.
2. The Parties respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labour laws and regulations.
3. The Parties recognise that it is inappropriate to set or use their labour laws, regulations, policies and practices for trade protectionist purposes.

. . . .

Article 2 – Scope and Means of Cooperation

1. Taking account of their national priorities and available resources, the Parties agree to cooperate on labour matters of mutual interest and benefit. The Parties shall jointly decide specific labour cooperative activities.
2. Cooperative activities may be in areas including but not limited to:
 - (a) labour laws, policies and practices, including social dialogue, and raising the awareness of the legal rights and obligations of employers and employees, to realise decent work;
 - (b) compliance and enforcement systems and labour inspection;
 - (c) sound labour relations, including labour management consultation, cooperation and labour dispute settlement;
 - (d) working conditions;
 - (e) human capital development, training and employability;
 - (f) promotion and protection of the employment rights and obligations of migrant workers.

. . . .

Article 4 – Consultations Should any issue arise over the interpretation or application of this Memorandum of Understanding, a Party may request consultation with the other Party, through the coordinator. The Parties will make every effort to reach a consensus on the matter through cooperation, consultation and dialogue.

Id.

parties are bound by rhetorical standards calling for cooperation, but are not bound by real legal obligations.

C. *China's Trade Practices*

Competition between the U.S. and China over the Asian market has mounted in recent years, as the U.S. pushed to adopt the TPP and as China has pushed for the RCEP. Leading up to and during 2016, the “\$10-trillion Asian market [was] the most obvious prize [and] the economic benefits for the rest of the world could be staggering, but it depends on who writes the rules for trade.”⁴⁷ Given U.S. withdrawal, it appears China will write the rules. Supporters of the TPP would identify two shortcomings in having China, rather than the U.S., write the trade rules: the reliability of the rules⁴⁸ and the absence of labor protections.

Regarding reliability, critics argue that China's past trade practices reveal three key elements of China's domestic economic system: “exclusion; favoritism; and lower standards for labor and corruption.”⁴⁹ The 2017 U.S. National Trade Estimate Report on Foreign Trade Barriers catalogues a myriad of concerns that support assertions of favoritism and industrial practices⁵⁰ in U.S.-China trade, and it raises substantive

47. Okun-Kozłowski & Horwitz, *supra* note 6 (“[I]f the U.S. were to reclaim its historical share of these Asian markets, it would increase U.S. exports by almost \$600 billion in 2020 alone—supporting over 3 million jobs. Is this possible? It all depends on the rules for trade.”).

48. OFFICE OF THE U.S. TRADE REPRESENTATIVE, 2017 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 77–95 (2017), <https://ustr.gov/sites/default/files/files/reports/2017/NTE/2017%20NTE.pdf> [<https://perma.cc/3LTD-8WZH>]. The USTR Report to Congress on China's WTO Compliance provides comprehensive information on the status of the trade and investment commitments that China has made through the United States-China Joint Commission on Commerce and Trade (JCCT) and the United States-China Strategic and Economic Dialogue (S&ED). See OFFICE OF THE U.S. TRADE REPRESENTATIVE, 2016 REPORT TO CONGRESS ON CHINA'S WTO COMPLIANCE (2016), <https://ustr.gov/sites/default/files/2016-China-Report-to-Congress.pdf> [<https://perma.cc/AMM9-35WT>].

Trade Summary. The U.S. goods trade deficit with China was \$347.0 billion in 2016, a 5.5 percent decrease (\$20.1 billion) over 2015. U.S. goods exports to China were \$115.8 billion, down 0.3 percent (\$297 million) from the previous year. Corresponding U.S. imports from China were \$462.8 billion, down 4.2 percent. China was the United States' 3rd largest goods export market in 2016. U.S. exports of services to China were an estimated \$48.4 billion in 2015 (latest data available) and U.S. imports were \$15.1 billion. Sales of services in China by majority U.S.-owned affiliates were \$54.9 billion in 2014 (latest data available), while sales of services in the United States by majority China-owned firms were \$4.8 billion. U.S. foreign direct investment in China (stock) was \$74.6 billion in 2015 (latest data available), a 10.5 percent increase from 2014. U.S. direct investment in China is led by manufacturing, wholesale trade, and depository institutions.

Id.

49. Okun-Kozłowski & Horwitz, *supra* note 6.

50. China continued to pursue a wide array of industrial policies in 2016 that seek to limit market access for imported goods, foreign manufacturers and foreign

and procedural questions about Chinese trade practices.⁵¹ These issues include limitations on market access in many areas, such as barriers to services (from banking to legal services),⁵² barriers to digital trade,⁵³ barriers to agriculture (notwithstanding more than \$21 billion in U.S. agricultural exports in 2016),⁵⁴ and barriers to transparency in areas such as publication and translation of laws and regulations.⁵⁵ Finally, the report raises questions about China's legal framework itself providing barriers to fair trade.⁵⁶

service suppliers, while offering substantial government guidance, resources and regulatory support to Chinese industries. The principal beneficiaries of these constantly evolving policies are China's state-owned enterprises, as well as other favored domestic companies attempting to move up the economic value chain.

2017 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS, *supra* note 48 at 80.

51. *Id.* at 77–95.

52. As in past years, Chinese regulators continued to use discriminatory regulatory processes, informal bans on entry and expansion, overly burdensome licensing and operating requirements, and other means to frustrate the efforts of U.S. suppliers of services, including banking services, insurance services, telecommunication services, Internet-related services (including cloud services), audiovisual services, express delivery services, legal services and other services to achieve their full market potential in China. Some sectors, including electronic payment services and theatrical film distribution, have been the subject of WTO dispute settlement. While China declared an intent to further liberalize a number of services sectors in its Third Plenum Decision, no meaningful concrete steps have been taken.

Id. at 86.

53. *Id.* at 89 (“China’s Internet regulatory regime is restrictive and non-transparent, affecting a broad range of commercial services activities conducted via the Internet. In addition, China’s treatment of foreign companies seeking to participate in the development of cloud computing services, including computer data and storage services provided over the Internet, raises concerns.”).

54. Notwithstanding this success, China remains among the least transparent and predictable of the world’s major markets for agricultural products, largely because of uneven enforcement of regulations and selective intervention in the market by China’s regulatory authorities. Seemingly capricious practices by Chinese customs and quarantine agencies delay or halt shipments of agricultural products into China. Sanitary and phytosanitary (SPS) measures with questionable scientific bases or a generally opaque regulatory regime frequently have created difficulties and uncertainty for traders in agricultural commodities, who require as much certainty and transparency as possible.

Id. at 91.

55. *See id.* at 93. In 2017, the U.S. complaint in general terms was stated as follows:

One of the core principles reflected throughout China’s WTO accession agreement is transparency. China’s WTO transparency commitments in many ways required a profound historical shift in Chinese policies. Although China has made strides to improve transparency following its accession to the WTO, there remains a lot more for China to do in this area.

Id.

56. “Key areas include administrative licensing, competition policy, the treatment of non-governmental organizations (NGOs), commercial dispute resolution, labor laws and laws governing land use. Corruption among Chinese government officials, enabled in part by China’s incomplete adoption of the rule of law, is also a key

Although each country has its own unique concerns with its trading partners, there seems to be a consensus in western countries that China has yet to make its trading approaches consistently fair. In 2016, due to China's trading practices on dumping⁵⁷, the "EU Parliament members for that reason voted against the granting of market economy status (MES) to China."⁵⁸ An alliance of 30 European industrial associations, AEGIS, said the European Parliament's signal could not be clearer; "[A] fair partnership is only possible if China plays by the rules of free and fair international trade, and honours its WTO obligations."⁵⁹

Authors Gabe Horwitz and Jeff Okun-Kozlowicki, drawing on past National Trade Estimates report, argue that U.S. trade rules are preferable to China's.⁶⁰ They reduce the perceived deficiencies in China's U.S. trade policies into the three categories mentioned above: exclusion, favoritism, and lower standards for labor and corruption.⁶¹ Regarding *exclusion* (or transparency), they state that under these practices, outside businesses would be susceptible to discrimination and complete market uncertainty.

Chinese trade policy closes off markets through hidden discrimination and tricky rules. Foreign exporters, investors, and service providers are routinely kept at bay through screening mechanisms, mandatory joint ventures, requirements to transfer proprietary technologies, and outright bans. In addition, the government often administers regulations in an opaque, discriminatory manner and designs industry standards to favor Chinese companies. In contrast, the United States features transparent, open markets where all businesses know the rules.⁶²

Chinese restrictions on FDI affect trade through screening and other procedural and bureaucratic devices, and this led to a recent study by the Organization for Economic Co-operation and Development (OECD) ranking China as the second most restrictive country for FDI,

concern." *Id.* at 94.

57. See Alanna Petroff, *Europe Steps Up Its Fight Against Cheap Chinese Steel*, C.N.N. (May 12, 2017, 10:50 AM), <http://money.cnn.com/2017/05/12/news/economy/china-steel-europe-dumping/index.html> [<https://perma.cc/H3PW-4MFE>]; *China Frets Over New EU Anti-Dumping Duties on Steel*, EURACTIV.COM (Feb. 28, 2017), <https://www.euractiv.com/section/economy-jobs/news/china-frets-over-new-eu-anti-dumping-duties-on-steel/> [<https://perma.cc/2EWT-KZHH>].

58. *MEPs Vote Against Market Economy Status for China*, EUBUSINESS.COM (May 13, 2016, 2:49 PM), <http://www.eubusiness.com/news-eu/china-mes.121ag> [<https://perma.cc/KB9H-WKVX>] ("In a non-legislative resolution passed by 546 votes to 28, [EU Parliament members] said that until China fulfils [**sic**] the EU's five criteria for market economy status, its exports to the EU must be treated in a 'non-standard' way.").

59. Nick Prag, *MEPs Defend EU Industry Against China's Unfair Trade Practices*, EUBUSINESS.COM (May 12, 2016, 10:25 PM), <http://www.eubusiness.com/Members/nickprag/china-trade-mes> [<https://perma.cc/AU9R-2HDE>] (quoting AEGIS Europe Spokesman Milan Nitzschke).

60. Okun-Kozlowicki & Horwitz, *supra* note 6.

61. *Id.*

62. *Id.*

below Indonesia.⁶³ As chronicled above in the U.S. 2017 *National Trade Estimates*, China operates under opaque laws and regulations, which limits the number of available industries and adds onerous regulatory barriers to qualification and licensing requirements.

In terms of fairness and *favoritism*, it is apparent that China's limiting policies affecting trade preserve work for domestic workers and favor domestic companies. China's favoritism includes preference of local companies over foreign companies operating in China. In addition, China relies on State-Owned-Enterprises (SOEs) for set-aside pieces of the core economy (e.g., telecommunications). Government subsidies and preference afforded to these SOEs further reflects favoritism and a lack of fair trade. In 2011, "the 113 central SOEs controlled by the State-owned Assets Supervision and Administration Commission (SASAC) alone accounted for 66 percent of China's non-financial FDI outflows and 76 percent of the country's non-financial outward FDI stock."⁶⁴ As mentioned in the *National Trade Estimate* report and the U.S. State Department's *Investment Climate Statement – China*, China also reportedly uses its anti-trust laws in an inconsistent manner that works to restrict competition.⁶⁵

Current labor standards and protections in China may also affect FDI trading partners. Domestic labor laws have progressed since the implementation of China's first comprehensive labor law in 1994 and later reforms in 2007.⁶⁶ China's current labor and employment laws are modern and comprehensive; however, there are numerous problems with effective implementation and enforcement: there is only one trade union that does not allow competition; political considerations are not sufficiently separated from legal rules in "sensitive" cases; and there are vast inconsistencies across China's political-legal system, especially in enforcement, as the system permits provincial governments and courts to interpret and implement national laws. As a result, there have been numerous reports of unenforced, widespread labor violations and abuses in both domestic and foreign operated enterprises.⁶⁷ In 2015, the Interna-

63. Until 2015, OECD ranked China as the most restrictive. The FDI Regulatory Restrictiveness Index (FDI Index) measures statutory restrictions on foreign direct investment in 62 countries, including all OECD and G20 countries, and covers 22 sectors. *FDI Regulatory Restrictiveness Index*, ORG. FOR ECON. CO-OPERATION & DEV. (Mar. 27, 2017), <http://www.oecd.org/investment/fdiindex.htm> [<https://perma.cc/F6QT-8EUH>].

64. Karl P. Sauvart & Michael D. Nolan, *China's Outward FDI and International Investment Law*, 18 J. INT'L ECON. L. 893, 895 (2015).

65. U.S. DEP'T OF STATE, INVESTMENT CLIMATE STATEMENTS FOR 2017 – CHINA (2017), <https://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dliid=269807#wrapper>.

66. RONALD C. BROWN, UNDERSTANDING LABOR & EMPLOYMENT LAW IN CHINA (2010). *But see* U.S. DEP'T OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2016 – CHINA 67–75 (2016), <https://www.state.gov/documents/organization/265540.pdf> [<https://perma.cc/XV73-7K78>].

67. COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2016 – CHINA, *supra* note 66.

tional Trade Union Confederation⁶⁸ (ITUC) included China in its list of the top ten countries with the worst record for labor rights, while the U.S. was ranked in the second worst category of three groupings.⁶⁹ The survey evaluates all labor rights for all employees, including enforcement.

While it is true that China has ratified more ILO core labor standard conventions than the U.S., many observers would agree that labor standards and law enforcement function more consistently in the U.S. than in China. This perception is arguably influenced by cultural views about law. In the U.S., there is a strong belief in the “rule of law” as an important democratic tool, which operates under a constitution and is enforceable by a multi-tiered court system. China is different. Its “rule by law” operates through a political party, not under a constitution. Because of this, notions of due process are flimsy and subject to the whims of the judiciary, who may suffer from localism and corruption.⁷⁰ Much like these cultural differences in the approach to law, the U.S. makes a point to include labor protection provisions in its FTAs, while China generally does not. In addition, unlike China, the U.S. is a member of the OECD, which has labor protection requirements.

Corruption may be one of the most significant corrosive forces impeding fair trade, as it is antithetical to the concept of an even playing field. With China’s current trade practices of exclusion, favoritism, and low labor standards operating under selective enforcement, countries trading with China may find it difficult to project costs and act according to the rules and practices laid out under Chinese influence in the RCEP. Currently, one organization ranks China 79th of 176 countries in an index referencing comparisons of international perception of corruption, while the U.S. ranks 18th.⁷¹

68. The International Trade Union Confederation (ITUC) is a confederation of national trade union centers, that has 328 affiliated organization in 162 countries and territories on all five continents, with a membership of 176 million and is a partner in “Global Unions” together with the Trade Union Advisory Committee to the OECD and the Global Union Federations (GUFs) which link together national unions from a particular trade or industry at international level. The ITUC has specialized offices in many countries around the world, and has General Consultative Status with the Economic and Social Council of the United Nations. INT’L TRADE UNION CONFED., THE 2015 ITUC GLOBAL RIGHTS INDEX: THE WORLD’S WORST COUNTRIES FOR WORKERS 3 (2015).

69. *Id.* at 12–16.

70. See RONALD C. BROWN, UNDERSTANDING CHINESE COURTS AND LEGAL PROCESS: LAW WITH CHINESE CHARACTERISTICS 133–39 (1997).

71. The non-governmental organizational, Transparency International, states that “[o]ver two-thirds of the 176 countries and territories in the 2016 index fall below the midpoint of the scale of 0 (highly corrupt) to 100 (very clean).” China’s score was 40, tied with India; the U.S. score was 74. The global average score is 43, indicating endemic corruption in a country’s public sector. *Corruption Perceptions Index 2016*, TRANSPARENCY INT’L (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016 [<https://perma.cc/N7SN-SABF>]; see also COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2016 – CHINA, *supra* note 66.

III. ANALYSIS

A. *Comparing the Chinese Approach to the United States: RCEP and TPP*

Considering its dubious record, China will likely continue its current practice of forgoing social dimension provisions and meaningful labor protection provisions in its FTAs. This practice may first manifest in the RCEP, which is currently being negotiated.⁷² While many analysts think China became the primary promoter of the RCEP in order to implement its own trade rules, not all agree.⁷³ Some reports suggest that China promoted the RCEP to broaden the FTAAP: “Chinese leaders see the establishment of RCEP as laying the foundation for a broader FTAAP, which could be seen as a set of regional rules and norms inspired, at least in part, by Chinese leadership.”⁷⁴ With the U.S. default on TPP, it has been suggested that “RCEP is poised to ‘set the rules of the game’ in the region.”⁷⁵ Elms suggests that in lieu of the ASEAN, China will be tagged with whatever happens in RCEP and will be viewed as the “de facto” leader of the new FTA. China should therefore be concerned with getting a strong conclusion, in the form of a final agreement, to show that they can deliver leadership on trade.⁷⁶ . With the U.S. withdrawing

72. See Jyoti Panday, *RCEP Discussions on Ecommerce: Gathering Steam in Hyderabad*, ELEC. FRONTIER FOUND. (July 24, 2017), <https://www.eff.org/deep-links/2017/07/rcep-discussions-ecommerce-gathering-steam-hyderabad> [<https://perma.cc/6KTF-3Z2U>]; see also Subhayan Chakraborty, *RCEP Negotiations May Drag on Beyond 2017*, BUS. STANDARD (May 24, 2017), http://www.business-standard.com/article/economy-policy/rcep-negotiations-may-drag-on-beyond-2017-117052400048_1.html [<https://perma.cc/4CYE-PNUH>].

73. China has been an active participant in RCEP, but it has not been driving the negotiations. ASEAN has been setting the agenda. The senior official in charge has been Indonesian. Despite press reports from the beginning that RCEP has been China-led, this has not been the case. However, with the United States backing away from trade in Asia, China now has every incentive to get an agreement in RCEP.

Deborah Elms, *RCEP: Looking Ahead to 2017*, ASIAN TRADE CTR. (Dec. 14, 2016), <http://www.asiantradecentre.org/talkingtrade/rcep-looking-ahead-to-2017> [<https://perma.cc/5KAJ-B58N>]. This could be partly based on the internal negotiating processes where it is stated that the “ten countries of ASEAN meet to determine their position in any given set of issues or chapter. Then, all 16 parties come together to talk. This multi-stage approach has helped keep ASEAN ‘in the driver’s seat’ in RCEP thus far.” *Id.*

74. BROCK R. WILLIAMS ET AL., CONG. RESEARCH SERV., *THE TRANS-PACIFIC PARTNERSHIP: STRATEGIC IMPLICATIONS* (2016), <https://www.fas.org/sgp/crs/row/R44361.pdf> [<https://perma.cc/2XFW-S4CU>].

75. Elms, *supra* note 73.

The agreement itself contains about a dozen chapters covering market access for goods, services, and investment. It includes competition, intellectual property, e-commerce, financial services, telecommunications, and customs. There are some new rules for standards, a chapter for facilitating small and medium sized enterprises, and one for assisting with capacity building and development objectives.

Id.

76. *Id.* “ASEAN would like to conclude negotiations in 2017 to coincide with

from the TPP, the RCEP is the remaining “rulebook” for lowering tariffs and facilitating growth in member states. However, some argue that the RCEP lacks some of the “lofty goals” set for the TPP, including worker protections and tools for targeting corruption. The following provisions of the TPP set up an eventual contrast with RCEP when RCEP finds its final form. Viola Zhou, in the South China Morning Post, summarizes the distinctions.⁷⁷ Regarding labor standards, “TPP countries are required to ensure a list of labor rights recognized by the International Labour Organisation.”⁷⁸ As TPP negotiations continue, it is reported there will be labor protections included in the new TPP.⁷⁹ In the realm of environmental protection, “[t]he TPP requires its member countries to enforce

the 50th anniversary of ASEAN. ASEAN member states would surely prefer to avoid a light, disappointing outcome and better live up to their own sweeping rhetoric of regional integration.” *Id.*

The Ministers from the 16 RCEP Participating Countries (RPCs) attended the 3rd RCEP Intersessional Ministerial Meeting held on 21–22 May 2017 in Ha Noi, Viet Nam to take stock of the status of RCEP negotiations including the challenges faced following the conclusion of the 18th round of negotiations held on 2–12 May 2017 in Pasay City, Philippines. The Ministers reaffirmed their commitment to meet the Leaders’ mandate for a swift conclusion of the RCEP negotiations in delivering the vision in the *Guiding Principles and Objectives for the RCEP Negotiations*.

Joint Media Statement from 16 RCEP Participating Countries on the outcome of the May 2017 RCEP Intersessional Ministerial Meeting (May 22, 2017), <http://asean.org/storage/2017/05/RCEP-3ISSL-MM-JMS-FINAL-22052017.pdf> [https://perma.cc/83QD-S83N].

77. Viola Zhou, *TPP, Unlike China’s RCEP, Has Goals on Worker Protection, Corruption, Environment*, C.N.B.C., Nov. 23, 2016, <http://www.cnbc.com/2016/11/23/tpp-unlike-chinas-rcep-has-goals-on-worker-protection-corruption-environment.html> [https://perma.cc/E5D7-NFKL].

78. *Id.* “These include working to protect collective bargaining, eliminating forced labor and abolishing child labor and employment discrimination. The signatories are also required to introduce laws governing minimum wages, hours of work and occupational safety and health.” *Id.*

Under the TPP, negotiators:

brokered side agreements with Vietnam, Malaysia and Brunei on the enforcement of labor standards. These deals would allow the U.S. to reinstate tariffs if the countries break commitments. The nations all have business climates that are generally regarded as hostile to workers: Vietnam is a communist dictatorship that bans independent unions and has minimum wages as low as roughly \$100 a month in some regions; in Malaysia, nearly 1 in 3 migrant workers was employed in a forced situation, according to an independent study released last year; Brunei’s legal code prescribes a death sentence for homosexuality, let alone allows LGBT people to serve openly on the job.

Cole Stangler, *Will the Trans-Pacific Partnership Improve Labor Standards?*, INT’L BUS. TIMES, Oct. 5, 2015, <http://www.ibtimes.com/will-trans-pacific-partnership-improve-labor-standards-2127388> [https://perma.cc/X24S-472J]; see Ronald C. Brown, *Mega-Regionalism*, *supra* note 12.

79. Takenaka & Tostevin, *supra* note 4. It is reported that, “the TPP agreement has provisions for protecting the environment, workers’ rights and intellectual property – one of the major sticking points after the departure of the United States.” *Id.*

laws to protect endangered species. . . . Under the TPP, governments must encourage companies to adopt corporate social responsibility policies that benefit the environment.”⁸⁰ Further, “[s]tate-owned companies in TPP states must make purchases and sales on the basis of commercial considerations.”⁸¹ On free information flow, “[t]he TPP’s e-commerce section includes assurances that companies and consumers can access and move data freely, in order to support the digital economy.”⁸² Finally, on the subject of anti-corruption, “TPP nations are required to classify acts of bribery and corruption as criminal offences.”⁸³

On a comparative note, RCEP, in its role as a commercial FTA, does offer some regional coherency in trade and has been described as follows:

The RCEP, however, is largely about ensuring order among the more limited and somewhat inconsistent trade rules in ASEAN’s FTAs with major regional economies. At the RCEP’s core is a goods agreement which aims to harmonize tariff schedules and rules of origin for Asia’s sophisticated global supply chains. The partnership also seeks to improve market access in services and investment as well as introduce a dispute settlement procedure.

The RCEP seems more development-friendly than the TPP. It promises special and differential treatment for developing economies which may make it easier for them to join the bloc. This implies gradual tariff liberalization and longer transition times for impoverished countries like Cambodia and Myanmar. The pact also promises

80. Zhou, *supra* note 76.

The members commit to combat illegal trade in wildlife, plants and fish as well as sharing information with other member states to investigate wildlife trafficking. Member countries will also promote the long-term conservation of species at risk, such as sharks, sea turtles, seabirds and marine mammals.

Trans-Pacific Partnership failure may be China’s gain, Asia’s loss[.] [Under the TPP . . . t]he member states would also eliminate tariffs on environmental goods and facilitate trade in environmental services. *Id.*

81. *Id.*:

TPP governments also agree to ensure that their SOEs do not discriminate against the enterprises, goods or services of other countries. Governments are forbidden from using their regulatory authorities to provide preferential treatment to their SOEs. The TPP requires that countries do not hurt the interests of other member states when they provide non-commercial assistance, such as loans or equity capital, to their SOEs.

82. *Id.* (“The U.S. government said the measures would help prevent unreasonable restrictions, such as the arbitrary blocking of websites. The trade agreement also guarantees that companies would not be required to build local data centers in every market they seek to serve.”).

83. *Id.*:

People who bribe officials or public servants who solicit bribes in trade-related matters must be punished, under the terms of the deal. The member states must work to decrease conflicts of interest between the government and private companies. The TPP also attempts to increase transparency, requiring countries to make their trade laws and regulations available to others. Member states must seek comments from other TPP members before adopting new trade regulations.

development assistance through economic and technical cooperation provisions. The TPP, meanwhile, applies the same high-standard trade rules for developed and developing countries. . . .

Manufacturing, global value chains and services are likely beneficiaries [emphasis added] while agriculture and mining may lose out. As differences exist in assumptions and model structure, these studies are indicative, rather than strictly accurate. Furthermore, these projections represent the minimum benefits as CGE models do not incorporate adequately many of the high-standard rules particularly in the TPP in sectors such as investment, intellectual property, labor and environment.⁸⁴

Following up on this comparison between the TPP and RCEP, it has been argued that “every U.S. trade deal since 2000⁸⁵ has stronger labor protections, enforcement, and monitoring mechanisms than all Chinese deals.”⁸⁶

84. Ganeshan Wignaraja, Opinion, *A Tale of Two Trade Pacts in Asia: TPP and RCEP*, NIKKEI ASIAN REV., June 2, 2016, <https://www.adb.org/news/op-ed/tale-two-trade-pacts-asia-tp-and-rcep-ganeshan-wignaraja> [<https://perma.cc/345V-MM45>] (Ganeshan Wignaraja is adviser in the economic research and regional cooperation department of the Asian Development Bank).

While both agreements will generate notable income benefits, larger gains arise from the more ambitious TPP. Projections by the Asian Development Bank, generated from a multi-country, multi-sector computable general equilibrium model, indicate that the RCEP provides global income benefits of about \$260 billion. Similar studies of the TPP project larger global income benefits of \$320 billion to \$400 billion.

Id. At any rate, the developing countries’ FDI will likely benefit from increased trade under either agreement. Tim Buthe & Helen V. Milner, *The Politics of Foreign Direct Investment into Developing Countries: Increasing FDI through International Trade Agreements?* 52 AM. J. POL. SCI. 741 (2008). CGE is Computable General Equilibrium modeling. See *Understanding a Computable General Equilibrium Model*, INTER-AM. DEV. BANK, <http://www.iadb.org/en/topics/trade/understanding-a-computable-general-equilibrium-model,1283.html> [<https://perma.cc/GL9W-UL58>].

85. U.S. trade deals since 2000 include 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). Chittooran, *supra* note 16. Early U.S. labor provisions stipulated that each party must effectively enforce their own labor laws pursuant to the agreed upon internationally recognized worker rights and each country could not relax labor laws in a way that adversely affected trade. Eventually, after the so-called May 10 agreement in 2007, all U.S. FTA labor provisions included requirements that all parties 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, prevented countries from using limited resources as a basis for non-compliance, and provided a dispute mechanism for labor or trade violations to institute trade sanctions on top of monetary penalties. *Id.*; see also Brown, *Asian and US Perspectives*, *supra* note 13. Under 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. Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. §§ 3801-3813 (2002).

86. Chittooran, *supra* note 16.

In sum, these comparisons critique China's reported trade practices relating to business and government dealings, legal issues, and lack of labor protection provisions. The RCEP, arguably, is a recipe for continued low labor standards in Asia and serves to encourage MNCs to increasingly use Asian countries as a hub for overseas labor supply chains.

B. *Expectations under China's Global Leadership and Future Alternatives?*

1. Expectations

Donald Trump's unexpected withdrawal from the TPP has created a "global halt" and paused the U.S.'s "global pivot" towards Asia. At this juncture, it is unlikely that the formerly anticipated blending of U.S. and *Asian Perspectives*, with inclusions of social dimension provisions, will occur. This "global halt" renders early, optimistic predictions for increased labor protections premature.

The "*U.S. perspective*" including labor protections does not automatically advance international labor rights "on the ground," but it does enhance their visibility and presumably their eventual advancement. The "*Asian Perspective*" would seem to be anachronistic in the face of arguable advancement in the global quest for social dialogue and decent work environments.⁸⁷

While one can hope for a recognition of the need to protect human rights and institute labor protections in this sector, there is much to suggest this will not occur. A commercial *Asian Perspective* that apparently "green-lights" MNC labor supply chains with massive FDI in countries with underdeveloped labor laws or laws with lax enforcement means that other methods will be necessary to establish and enforce labor rights. It is plausible that global withdrawal of attention from labor provisions in FTAs will effectively downgrade labor-related protections of those working in the RCEP countries.

If China is to be the global leader of trade in Asia, its prior lack of commitment on labor issues in Asia suggests that it will not promote labor and human rights protections in FTAs. However, dynamic leadership may bring a new sense of responsibility. China is capable of changing and promoting a decent work place for Chinese and Asian workers by means already at its disposal, including legal reforms and labor protections in FTAs.⁸⁸

87. Brown, *Asian and US Perspectives*, *supra* note 13, at 116–17. Perhaps thereafter there could be some liaison with EU expanding the RCEP to an even more global undertaking. "The EU and APEC do certainly have important differences. The former is based on the obligations of member states and is partly governed by various supranational institutions such as the European Commission, while the latter is a group of 21 economies that voluntarily cooperate." George N. Tzogopoulos, *EU and APEC Well Set to Work Together*, GLOBAL TIMES, Nov. 5, 2014, www.globaltimes.cn/content/890217.shtml [<https://perma.cc/N69T-GZTM>].

88. China does have an FTA with New Zealand that has a labor provision; perhaps that weakened version could be used by China as a start toward providing labor

Because the U.S. President has abdicated global leadership and stated that he is “putting America first” while threatening a pullback for global economic expansion, alternative labor protections are needed for Asian workers in this new reality. Perhaps the TPP will be revived and implemented. According to Australian Trade Minister Steven Ciobo, a TPP without America’s involvement could be resurrected with only a minor tweak.⁸⁹ Australian Trade Minister Ciobo is negotiating the continuation of TPP with Japan and others and speaks strongly of the need to go forward, also noting this may cause some concern in China.

[T]he Chinese Communist Party will not be pleased with any of this. After America withdrew from the TPP, conventional wisdom was that the Regional Comprehensive Economic Partnership (RCEP)—China’s signature Regional FTA—would increase China’s economic influence and bring its trading partners more tightly into Beijing’s orbit. But the revival of the TPP could undermine the influence of the RCEP—something Japan is working hard to achieve. Not only is the RCEP seen as a policy tool to promote Beijing’s geopolitical agenda, it lacks the depth and quality of the TPP. Besides being full-fledged members of the TPP, New Zealand, Australia, Singapore and others, are also members of the RCEP. As elements of the RCEP are still being negotiated, Beijing may be forced to accept higher, more demanding trade standards, with the revived TPP serving as a benchmark.⁹⁰

2. Future Alternatives

Some alternatives are obvious and easy. First, the parties to the TPP could go ahead with the treaty without U.S. participation, just as the world has done with the Paris Climate Accord after the U.S. President withdrew the U.S. from it. The TPP could counterbalance the RCEP and, as opined by Australia Trade Minister Ciobo, could bring a blending of higher standards, since there is an overlapping of members in each FTA. The TPP could then be blended with RCEP as a basis for creating a multi-regional mega-FTA, the FTAAP, using labor provisions from the TPP as a floor of minimum standards and permitting a possible blending of East-West approaches on FTA protection of labor rights. In addition to Australia and Canada, mentioned above, Japan is also quite interested in moving forward with the TPP.⁹¹ It has been reported that in May 2017:

protections? See Brown, *FTAs In Asia-Pacific*, *supra* note 12.

89. Patricia Ranald, *The TPP is an Even Worse Deal Without the US and Should be Abandoned, DON'T TRADE OUR LIVES AWAY* (May 4, 2017), <https://donttradeourlivesaway.wordpress.com/2017/05/04/the-tpp-is-an-even-worse-deal-without-the-us-and-should-be-abandoned>.

90. Alex Capri, *The TPP Moves Forward Without Trump's America*, FORBES (May 22, 2017, 1:30 PM), <https://www.forbes.com/sites/alexcapri/2017/05/22/the-tpp-moves-forward-without-trumps-america/#dc51f124fed0> [<https://perma.cc/W568-JVB9>].

91. Since the January 23rd announcement, the group of TPP-11 nations have continued to explore options on if and how the TPP agreement could be moved forward. On March 16, 2017, TPP-11 officials met in Chile and issued a call supporting an expansion of trade between Asia and the Americas. In April, Canada . . . [hosted] a meeting of the Chief Negotiators from the TPP-11 nations. In May, on the sidelines

Japanese Prime Minister Shinzo Abe was declaring that, though he still hoped-for America's return to the TPP, Japan was willing to take the lead in bringing the deal to fruition. Soon after, Japan and New Zealand announced that they would seek an agreement with other signatories by November 2017 to move the TPP forward.⁹²

Japan's discussions about reviving the TPP talks started in July 2017, without the U.S.:

Countries that signed up to the Trans-Pacific Partnership (TPP) have sent representatives to Japan to work on an agreement this week—without the United States. They're hoping to have a proposal ready for trade ministers at November's [2017] APEC meeting in Vietnam. One of the points of opposition to the TPP was giving concessions to the US.⁹³

It was reported that on November 11, 2017, the 11 members of TPP absent the U.S. agreed to continue working on the proposed deal.⁹⁴ The final signing of the TPP Agreement-in-Principle was temporarily postponed on November 10, 2017, due to Canadian Prime Minister Trudeau's desire to continue talks on Canada's auto industry issue. Talks are to be continued to finalize the agreement, now called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.⁹⁵

[Negotiators] agreed on some basics of what they called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Partly to counter China's growing dominance in Asia, Japan had been lobbying hard for the TPP pact Canada, which has the second biggest economy among remaining TPP countries after Japan, had said it wanted to ensure an agreement that would protect jobs. As well as the cuts to tariffs, the TPP agreement has

of the APEC Trade Ministers meeting, Vietnam . . . [hosted] a meeting of the Trade Ministers from the TPP-11 nations."

Strategic Interests of Participating US and Southeast Asian Economies, US-ASEAN BUS. COUNCIL, INC. (June 5, 2017), <https://www.usasean.org/regions/tpp/strategic-interests> [https://perma.cc/VKD8-GZ27]. The U.S.-ASEAN Business Council Report continued with discussions of the possible continuing interests of Malaysia, Singapore, Vietnam, and Brunei. *Id.* By contrast, Jusuf Kalla, Indonesian Vice President, says Indonesia "lost interest" in TPP without the US, but President Joko Widodo in 2015 told then-U.S. President Barack Obama that his government intended to join once the members ratified and implemented the deal. "[T]he vice president said Indonesia remains supportive of the Regional Comprehensive Economic Partnership, or RCEP." Shotaro Tani, *Indonesia has 'Lost Interest' in TPP Without US*, *Vice President Says*, NIKKEI ASIAN REV., June 5, 2017, <http://asia.nikkei.com/Spotlight/The-Future-of-Asia-2017/Indonesia-has-lost-interest-in-TPP-without-US-vice-president-says> [https://perma.cc/5B7A-YSF3].

92. Hamada, *supra* note 8.

93. Pete George, *Talks on TPP Minus USA*, YOUR NZ (July 3, 2017), <https://yournz.org/2017/07/03/talks-on-tpp-minus-usa/> [https://perma.cc/63YE-LX5N].

94. Takenaka & Tostevin, *supra* note 4.

95. Andy Blatchford, *Canada's Decision to Decline TPP Agreement Shouldn't Have Been Surprise: Trudeau*, CTV NEWS (Nov. 11, 2017, 9:21 AM), <http://www.ctvnews.ca/business/canada-s-decision-to-decline-tpp-agreement-shouldn-t-have-been-surprise-trudeau-1.3673545>.

provisions for protecting the environment, workers' rights and intellectual property—one of the major sticking points after the departure of the United States.⁹⁶

With continuing uncertainty over U.S. trade policy under the Trump administration, there's rising interest in how a regional trade deal could also increase security.⁹⁷ Japan and the EU just completed the Japan-EU Economic Partnership Agreement (JEEPA) with the ratification processes yet to be accomplished as of August 2017.⁹⁸ Although this is an Asian-Western trade agreement, with labor provisions⁹⁹ included in the unofficial text, it raises significant political challenges.

The economics of the deal speaks for itself—Japan is the EU's second biggest trading partner in Asia after China. Together the EU and Japan account for more than a third of the world's GDP. JEEPA also illustrates the two parties' commitment to advance global trade liberalization without the United States if needed. In so doing, they are also sending a clear message to Washington: get on board or risk getting left behind. It might also provide momentum for TPP implementation without U.S. participation, and it helps set a high bar for Japan's talks in the Asia-Pacific region on the Regional Comprehensive Economic Partnership (RCEP). Tokyo might also hope that a trade deal with the EU will put pressure to bring the Trump administration back to the TPP negotiation table, although that seems to be a remote possibility.¹⁰⁰

96. Takenaka & Tostevin, *supra* note 4.

97. *See generally* Hamada, *supra* note 8.

What Trump fails to recognize is that, while a small country may feel intimidated by the US at the negotiating table, it can still stand up and walk away. More importantly, even if the US can use its weight to secure more favorable provisions in a bilateral negotiating context, the benefits do not necessarily outweigh those of larger-scale agreements. That is certainly the case with the TPP, which contained some provisions that were highly beneficial for the US economy. Specifically, the agreement would have given US businesses access to markets that had long been largely closed. The provisions on intellectual property rights, accounting, and conflict resolution were so favorable to Wall Street and US lawyers that they have been criticized for being unfair to the other parties. They were agreed on, however, because of the expectation that China would eventually have to adhere to those standards.

Id.

98. Preliminary Text of E.U.-Japan Economic Partnership Agreement on Sustainable Development, Eur. Union-Japan, Eur. Comm'n, http://trade.ec.europa.eu/doclib/docs/2017/july/tradoc_155726.pdf [<https://perma.cc/J56G-ZMTP>].

99. This draft version affirms ILO obligations and agrees to non-derogation of labor rights to facilitate trade, among other similar provisions. *See id.* at 1.

100. Erik Brattberg & James L. Schoff, *Can the EU-Japan Deal Prompt a U.S. Recalibration on Trade?*, DIPLOMAT, July 12, 2017, <http://thediplomat.com/2017/07/can-the-eu-japan-deal-prompt-a-us-recalibration-on-trade/> [<https://perma.cc/K8CR-MAPP>].

[T]he agreement between the EU and Japan is nevertheless a significant milestone. It raises the question of whether global trade liberalization is possible in the absence of leadership from Washington. In particular, is it possible to form an enhanced strategic partnership between the EU and Japan on the one hand, joined by like-minded states on the other, as either a substitute for U.S. leadership in the areas of trade and global-

Other approaches are available. The ILO is capable of helping to coordinate the labor provisions of FTAs, when they exist, by incorporating the lessons it has learned in balancing tri-partite interests.¹⁰¹ The ILO is also experienced in establishing pools of funds and programs that will compensate victims when labor standards are not met and calamities happen, such as in Rana Plaza in Bangladesh.¹⁰² In the interim, the ILO can proceed by monitoring compliance of its core labor standards that have already been ratified by RCEP member countries. It is even possible that there could be future EU involvement, by using APEC to increase economic integration and by drawing on the lessons presented by the RCEP.¹⁰³

The OECD's involvement with businesses and the MNCs involved in FDI and trade and the labor standards it promotes, could be a useful extra-governmental standards-body to supplement FTA requirements in individual MNC cases with those MNCs based in OECD member countries. Current OECD members who are prospective RCEP members include Australia, Japan, New Zealand, and South Korea.¹⁰⁴ Being developed countries, these OECD members will be more likely to have MNCs that use labor in China and in the underdeveloped countries that have underdeveloped labor law protections.

Over the past few decades, MNCs have engaged in self-regulation using "soft law," such as voluntary codes of conduct and corporate social responsibility provisions. More recently, however, there is an evolving interest in "hard law" legislation to increase the legal responsibility of MNCs and their subcontractors for the wellbeing of foreign workers on the labor supply chain.¹⁰⁵ For example, in France, there is domestic legislation that uses "hard law" to place legal responsibilities on MNCs for failing due diligence (vigilance) obligations.¹⁰⁶ Much like French MNCs

ization or perhaps a prod to get America back among the vanguard for shaping an open rules-based order?

Id.

101. Perhaps the ILO could work with China under its FTA with New Zealand.

102. In this situation, a building collapsed and killed over 1,000 people working for foreign MNCs. See generally RANA PLAZA DONORS TRUST FUND, <http://rana-plaza-arrangement.org/fund> [<https://perma.cc/3WKH-59MU>] (establishing a victim's fund through the efforts of the ILO and others); Ronald C. Brown, *Fostering Labor Rights in a Global Economy: The Efficacy of the Emergent US Model Trade and Investment Frameworks to Advance International Labor Standards in Bangladesh*, 155 INT'L LABOUR REV. 50 (2016); *The Complaints Procedure*, INT'L LABOUR ORG., http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/complaints/WCMS_088451/lang-en/index.htm [<https://perma.cc/2F3A-TBMV>].

103. See Tzogopoulos, *supra* note 87.

104. *List of OECD Member Countries*, ORG. FOR ECON. CO-OPERATION & DEV. (2017), <http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm> [<https://perma.cc/HN4U-EWUL>].

105. See Ronald C. Brown, *Up and Down the Multinational Corporations' Global Labor Supply Chain: Making Remedies that Work in China*, 34 UCLA PAC. BASIN L.J. 103 (2017).

106. See audio tape: Due Diligence "Hard Law" Remedies for MNC Labor

having FDI in Cambodia and Vietnam, the utility of this law could be tested within RCEP countries and could cause the U.S. reenter the global trade market with labor protections in its FTAs.

Though it seems unlikely with current rhetoric, the U.S. could in fact reconsider stepping away from global participation and reenter the TPP. Additionally, it could negotiate bilateral FTAs with individual countries in Asia that contain social dimension provisions with labor protection provisions.

In the alternative, China could take a new approach. China might act under the pressure that its new global trade leadership responsibility comes with obligations, and it could urge inclusion of ILO core labor standards in the RCEP. It has already ratified many ILO Conventions and will fare no less well than the U.S., who has agreed to FTA labor provisions without ratifying all the ILO core labor provisions.¹⁰⁷ This approach would at least present a standard for RCEP countries and push domestic labor legislation to follow suit.

IV. CONCLUSION

Will the TPP survive and provide a counter-position for labor protection provisions in FTAs in Asia? Neither China nor the RCEP embrace these protections, and this paper suggests that the RCEP will further enhance the availability of under-regulated Asian labor for the benefit of MNC labor supply chains. Because U.S. withdrawal from the TPP has destabilized labor protection standards, China will likely impart its trade practices as it rises to leadership of global trade. Research suggests that China's leadership of the RCEP will spur lower labor standards and fewer human rights protections within global supply chains, at least lower standards than those enforced under the TPP and U.S. leadership. It is important to recall that FTAs are only one of many possible methods of preventing lower labor standards. Other approaches are available and must continue to be examined.¹⁰⁸

Chain Workers, presentation by Ronald C. Brown at Labor Law Research Network Conference in Toronto, Can. (June 27, 2017) (on file with author); *see also* Brown, *supra* note 105 (discussing remedies being used in different countries, including joint liability, bonds, disclosures, etc.).

107. *See* Ronald C. Brown, *ASEAN: Harmonizing Labor Standards for Global Integration*, 33 UCLA PAC. BASIN L.J. 27 (2016).

108. *See, e.g.*, Brown, *supra* note 105; Brown, *FTAs in Asia-Pacific*, *supra* note 12.

APPENDIX A: CHART 3 FTAs OF RCEP MEMBERS

RCEP Nations	Have an FTA with EU or US?	Does any of their other FTAs contain a labor provision?	Notes, Citations, Etc.
Brunei	None	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO Brunei-Japan Economic Cooperation Partnership Agreement (BJEPA) >>NO Trans-Pacific Strategic Economic Partnership Agreement (TPSEP/P4) >>NO	Brunei trade agreement: http://mofat.gov.bn/Pages/Free-Trade-Agreements.aspx
Cambodia	None	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO	Cambodia Trade Agreements: http://moe.gov.kh/en-us/trade-agreements
Indonesia	None	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO Japan-Indonesia Economic Partnership Agreement >>NO	Indonesia Trade Agreements: http://aric.abd.org/fta-country
Laos	None	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO Laos-Thailand Preferential Trading Arrangement >>NO	Laos Trade Agreement: http://aric.abd.org/fta-country

RCEP Nations	Have an FTA with EU or US?	Does any of their other FTAs contain a labor provision?	Notes, Citations, Etc.
Malaysia	None	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO Japan-Malaysia Economic Partnership Agreement >>NO Malaysia Australia Free Trade Agreement >>NO Malaysia-Chile Free Trade Agreement >>NO Malaysia-India Comprehensive Economic Cooperation Agreement >>NO Malaysia-New Zealand Free Trade Agreement >>NO Malaysia-Pakistan Closer Economic Partnership Agreement >>NO Malaysia-Turkey Free Trade Agreement >>NO Preferential Tariff Arrangement-Group of Eight Developing Countries >>NO	Malaysia Trade Agreement: http://aric.adh.org/fta-country
Singapore	United States-Singapore Free Trade Agreement (USSFTA) >>YES>> Chapter 17 Singapore-EU Free Trade Agreement (Oct 2014 Agreement finalized but not yet applied)	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO European Free Trade Association-Singapore Free Trade Agreement >>NO Gulf Cooperation Council-Singapore Free Trade Agreement (GSFTA) >>NO India-Singapore Comprehensive Economic Cooperation >>NO Japan-Singapore Economic Agreement for a New-Age Partnership >>NO New Zealand Singapore Economic Partnership >>NO People's Republic of China-Singapore Free Trade Agreement >>NO Singapore-Australia Free Trade Agreement >>NO Singapore-Costa Rica Free Trade Agreement >>NO Singapore-Panama Free Trade Agreement >>NO Singapore-Peru Free Trade Agreement >>NO Singapore-Taipei, China FTA >>NO Trans-Pacific Strategic Economic Partnership Agreement >>NO [Republic of] Korea-Singapore Free Trade Agreement >>NO	

RCEP Nations	Have an FTA with EU or US?	Does any of their other FTAs contain a labor provision?	Notes, Citations, Etc.
Thailand	None	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO Japan-Thailand Economic Partnership Agreement >>NO Laos-Thailand Preferential Trade Agreement >>NO People's Republic of China-Thailand Free Trade Agreement >>NO Thailand-Australia Free Trade Agreement >>NO Thailand-Chile Free Trade Agreement >>NO Thailand-New Zealand Closer Economic Partnership Agreement >>NO Thailand-Peru Free Trade Agreement >>NO	Thailand Trade Agreement: http://aric.adb.org/fta-country
Vietnam	Vietnam-European Union Free Trade Agreement (Negotiations concluded: 2 Dec 2015, not put into effect)	ASEAN Free Trade Area (AFTA) >>NO ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) >>NO ASEAN-China Free Trade Area (ACFTA) >>NO ASEAN-India Free Trade Agreement (AFTA) >>NO ASEAN-Japan Comprehensive Economic Partnership (AJCEP) >>NO ASEAN-Korea Free Trade Agreement (AKFTA) >>NO Chile Vietnam Free Trade Agreement >>NO Japan-Vietnam Economic Partnership Agreement >>NO Vietnam-Eurasian Economic Union Free Trade Agreement >>NO [Republic of] Korea-Vietnam Free Trade Agreement >>NO	EU-Vietnam: http://trade.ec.europa.eu/doclitpress/index.cfm?id=1437 Vietnam Trade Agreements: http://aric.adb.org/fta-country
India	None	ASEAN-India Comprehensive Economic Cooperation Agreement >>NO Asia-Pacific Trade Agreement >>NO India-Afghanistan Preferential Trading Agreement >>NO India-Bhutan Trade Agreement >>NO India-Chile Preferential Trading Agreement >>NO India-MERCOSURE Preferential Trade Agreement >>NO India-Singapore Comprehensive Economic Cooperation Agreement >>NO India-Sri Lanka Free Trade Agreement >>NO India-Nepal Treaty of Trade >> NO Japan-India Comprehensive Economic Partnership Agreement >>NO Malaysia-India Comprehensive Economic Cooperation Agreement >>NO South Asian Free Trade Area >>NO	India Trade Agreements: http://aric.adb.org/fta-country

RCEP Nations	Have an FTA with EU or US?	Does any of their other FTAs contain a labor provision?	Notes, Citations, Etc.
Australia	United States-Australia Free Trade Agreement>>Yes>> Article 18 (2004)	ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)>>NO Australia-Chile Free Trade Agreement>>NO Australia New Zealand Closer Economic Relations Trade Agreement>>NO Australia-[Republic of] Korea Free Trade Agreement>>NO Japan-Australia Economic Partnership Agreement>>NO Malaysia-Australia Free Trade Agreement>>NO Papua New Guinea-Australia Trade and Commercial Region >>NO People's Republic of China-Australia Free Trade Agreement>>NO Singapore-Australia Free Trade Agreement>>NO South Pacific Regional trade and Economic Cooperation Agreement>>NO Thailand-Australia Free Trade Agreement>>NO	US- Australia https://ustr.gov/sites/default/files/australia_FTA_Labor.pdf Australia Trade Agreements https://aric.adb.org/fta-country
China	None	ASEAN-People's Republic of China Comprehensive Economic Cooperation Agreement>>NO Asia-Pacific Trade Agreement>>NO New Zealand-People's Republic of China Free Trade Agreement >>YES, per MOU People's Republic of China-Australia Free Trade Agreement>>NO People's Republic of China-Chile Free Trade Agreement >>YES, MINOR People's Republic of China-Costa Rica Free Trade Agreement >>NO People's Republic of China-Hong Kong, China Closer Economic Partnership Arrangement >>NO People's Republic of China-Iceland Free Trade Agreement >> YES, MINOR People's Republic of China-Macao Closer Economic Partnership Arrangement >>NO People's Republic of China-Pakistan Free Trade Agreement >>NO People's Republic of China-Peru Free Trade Agreement >> YES, MINOR People's Republic of China-Singapore Free Trade Agreement >>NO People's Republic of China-Switzerland Free Trade Agreement >> YES, MINOR People's Republic of China-Taipei, China Economic Cooperation Framework Agreement >>NO People's Republic of China-Thailand Free Trade Agreement >>NO People's Republic of China-[Republic of] Korea Free Trade Agreement >>NO	China Trade Agreements: https://aric.adb.org/fta-country

RCEP Nations	Have an FTA with EU or US?	Does any of their other FTAs contain a labor provision?	Notes, Citations, Etc.
Japan	None	ASEAN-Japan Comprehensive Economic Partnership >>NO Japan-Australia Economic Partnership Agreement >>NO Japan-Brunei Free Trade Agreement >>NO Japan-Chile Economic Partnership Agreement >>NO Japan-India Comprehensive Economic Partnership Agreement >>NO Japan-Indonesia Economic Partnership Agreement >>NO Japan-Malaysia Economic Partnership Agreement >>NO Japan-Mexico Economic Partnership Agreement >>NO Japan-Mongolia Economic Partnership Agreement >>YES >>Article 10.17 Japan-Peru Free Trade Agreement >>NO Japan-Philippines Economic Partnership Agreement >>YES >> Article 103 Japan-Singapore Economic Agreement for a New-Age Partnership >>NO Japan-Switzerland Economic Partnership Agreement >>NO Japan-Thailand Economic Partnership Agreement >>NO Japan-Viet Nam Economic Partnership Agreement >> NO	Japan Trade Agreements: http://aric.adb.org/fta-country Japan-Mongolia Economic Partnership Agreement: http://www.mofa.go.jp/fles/000067716.pdf
South Korea	[Republic of Korea-United States Free Trade Agreement >>YES >>Art 19, Annex 19-A (2007) [Republic of] Korea-European Union Free Trade Agreement >>NO	ASEAN- [Republic of] Korea Comprehensive Economic Cooperation Agreement >>NO Asia-Pacific Trade Agreement >>NO Australia- [Republic of] Korea Free Trade Agreement >>NO India- [Republic of] Korea Comprehensive Economic Partnership Agreement >>No New Zealand- [Republic of] Korea Closer Economic Partnership >>NO People's Republic of China- [Republic of] Korea Free Trade Agreement >>NO [Republic of] Korea- Canada Free Trade Agreement >>NO [Republic of] Korea- Chile Free Trade Agreement >>NO [Republic of] Korea- Colombia Free Trade Agreement >>NO [Republic of] Korea- European Free Trade Association Free Trade Agreement >>NO [Republic of] Korea- Peru FTA >>NO [Republic of] Korea- Singapore Free Trade Agreement >>NO [Republic of] Korea- Turkey Free Trade Agreement >>NO [Republic of] Korea- Viet Nam Free Trade Agreement >>NO	[Republic of] Korea-United States Free Trade Agreement: http://ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text EU-South Korea: http://eur-lex.europa.eu/legal-content/en/ALL/?uri=OJ:L:2015:307:TOC Korea Free Trade Agreements: http://www.customs.go.kr/ke-shome/main/content/ContentView.do?contentID=CONTENT_ID_000002349&layoutMenuNo=23227

RCEP Nations	Have an FTA with EU or US?	Does any of their other FTAs contain a labor provision?	Notes, Citations, Etc.
New Zealand	None	ASEAN-Australia and New Zealand Free Trade Agreement >>NO Australia-New Zealand Closer Economic Relations Trade Agreement >>NO Malaysia-New Zealand Free Trade Agreement >>NO New Zealand-Hong Kong, China Closer Economic Partnership Agreement >>NO New Zealand-People's Republic of China Free Trade Agreement >>NO New Zealand-Singapore Closer Economic Partnership >>NO New Zealand-Taipei, China Economic Cooperation Agreement >>NO New Zealand-[Republic of] Korea Closer Economic Partnership >>No South Pacific Regional Trade and Economic Cooperation Agreement >>NO Thailand-New Zealand Closer Economic Partnership Agreement >>NO Trans-Pacific Strategic Economic Partnership Agreement >>NO	New Zealand Trade Agreement: http://aric.adb.org/fta-country