

ASEAN: Harmonizing Labor Standards for Global Integration

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Images for AEC 2015

I. INTRODUCTION: ASEAN ECONOMIC COMMUNITY 2015 (AEC)

A. *AEC Blueprint and Its Challenges for Labor*

Toward the goal of fully integrating the Association of Southeast Asian Nations (ASEAN) and its member states into the global economy, the ASEAN leaders adopted the ASEAN Economic Blueprint in 2007 to serve as a coherent master plan guiding the establishment of the “ASEAN Economic Community (AEC) 2015.”¹ The AEC is seen as the “realization of the end goal of regional economic integration” by ASEAN’s 10 member economies, comprising Brunei, Cambodia, Laos, Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam, encompassing more than 620 million people.²

1. See *ASEAN Economic Community Blueprint*, ASEAN, <http://www.asean.org/archive/5187-10.pdf> (last visited May 11, 2015) [hereinafter *ASEAN Economic Blueprint*]; *ASEAN Economic Community*, ASEAN, <http://www.asean.org/communities/asean-economic-community> (last visited May 11, 2015) [hereinafter *ASEAN Economic Community*]. Yet after first being proposed in 2007 as part of the ASEAN Vision 2020, the deadline for the AEC was moved from January 1, 2015 to December 31, 2015, with observers now reportedly eyeing a “post-2015 agenda,” despite official reassurances. Anthony Fenson, *AEC Dream’s Failure ‘Still a Success,’* THE DIPLOMAT MAG. (Mar. 28, 2015), <http://thediplomat.com/2015/03/aec-dreams-failure-still-a-success/>. The ASEAN Free Trade Area (AFTA) is instituted by various intergovernmental agreements between ASEAN countries, all with the goal of promoting economic development and increasing foreign direct investment. The ASEAN Free Trade Area (AFTA) is a trade bloc agreement by the Association of Southeast Asian Nations supporting local manufacturing in all ASEAN countries. The AFTA agreement was signed in Singapore on January 28, 1992. The main agreements between the ASEAN countries, such as the Common Effective Preferential Tariff (CEPT) Scheme and its various amending protocols and supplementary annexes, *do not make specific references to any social dimension provisions*. They mostly focus on economic development and detailed provisions on tariff schedules and which goods fall under the CEPT scheme. For complete list of AFTA agreements, see *ASEAN Economic Community*, ASEAN (May 11, 2015), <http://www.asean.org/communities/asean-economic-community/category/asean-trade-in-goods-agreement>.

2. Fenson, *supra* note 1.

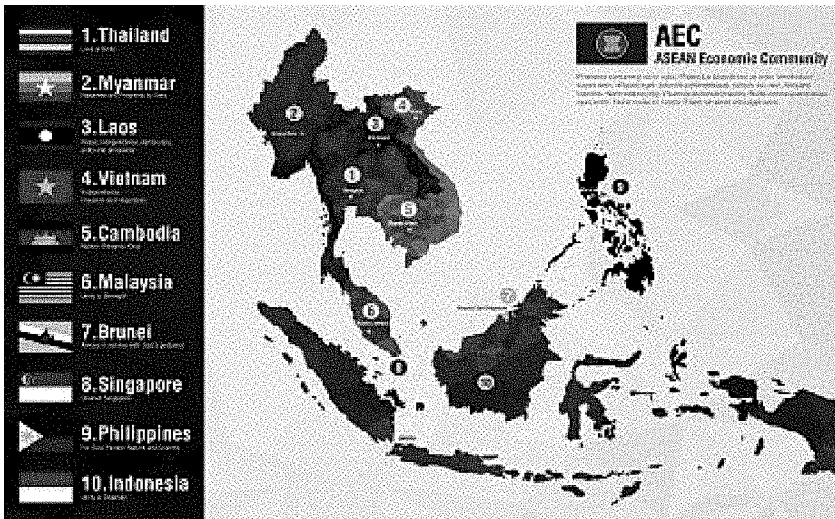


Image Credit: AEC via Shutterstock.com³

The AEC has a milestone goal of regional economic integration by 2015. The AEC aims to transform ASEAN into a region with “free movement of goods, services, investment, skilled labor and freer flow of capital,” based on four key pillars: 1. a single market and production base; 2. a highly competitive economic region; 3. equitable economic development; and 4. full integration into the global economy.⁴ According to the lead economist at the Asian Development Bank,

“... the fourth pillar of full integration into the global economy has seen the greatest strides, which has enabled a thriving ‘Factory ASEAN.’ Progress to date underlines how liberalisation has been driven more by market forces and unilateral actions than by regional agreements.”⁵

He goes on to caution, “Accommodating AEC accords will not be easy when they require changes to domestic laws or even the national constitution. The flexibility that characterizes ASEAN cooperation, the

3. *See id.*

4. *ASEAN Economic Blueprint*, *supra* note 1. “Other areas of cooperation are also to be incorporated such as human resources development and capacity building; recognition of professional qualifications.” *Id.* It is suggested that as “ASEAN designs its post-2015 agenda with a view to strengthening its role as a hub of Asian dynamism, its members need to adopt an appropriate policy mix including deep domestic structural reforms and bold actions to further deepen regional integration—transforming the AEC into a truly borderless economic community.” Giovanni Cappanelli, *The ASEAN Economy in the Regional Context: Opportunities, Challenges and Policy Options*, ASIAN DEV. BANK (Dec. 2014), <http://www.adb.org/publications/asean-economy-regional-context-opportunities-challenges-and-policy-options>.

5. Jayant Menon, *Moving Too Slowly Towards an ASEAN Economic Community*, EAST ASIA FORUM (Oct. 14, 2014), <http://www.eastasiaforum.org/2014/10/14/moving-too-slowly-towards-an-asean-economic-community/>.

celebrated ‘ASEAN way,’ may hand member states a convenient pretext for non-compliance.”⁶

ASEAN is an emerging entity that has the potential to be one of the largest economies and markets in the world. It is reported⁷ that “if ASEAN were one economy, it would be seventh largest in the world with a combined gross domestic product (GDP) of \$2.4 trillion in 2013. It could be fourth largest by 2050 if growth trends continue.⁸ With over 600 million people, ASEAN’s potential market is larger than the European Union or North America, next to China and India.⁹ ASEAN is one of the most open economic regions in the world, with total merchandise exports of over \$1.2 trillion – nearly 54% of total ASEAN GDP and 7% of global exports.”¹⁰ Its population and labor force participation is found in Table 1, below, which provides a perspective on the relative size of each member state.¹¹

Examining the ASEAN goal of becoming a region fully integrated into the global economy, this paper looks at what steps have already been taken by ASEAN and its member states to integrate into the global community through ratification of ILO labor standards, participation in Free Trade Agreements (FTAs), and domestic implementation of

6. *Id.*

7. *ASEAN Economic Community: 12 Things to Know*, ASIAN DEV. BANK (Aug. 18, 2014), <http://www.adb.org/features/asean-economic-community-12-things-know>.

8. Stephen P. Groff, ASEAN Integration and the Private Sector, Keynote Speech at the German-Business Association AEC: Integration, Connectivity and Financing: What Does Regional Integration in Southeast Asia Mean for the German Business Community? (Jun. 23, 2014), <http://www.adb.org/news/speeches/keynote-speech-asean-integration-and-private-sector-stephen-p-groff>.

In a March 4 [2015] presentation, BMI Research’s head of Asia research, Cedric Chehab said ASEAN’s collective gross domestic product (GDP) would grow from \$2.4 trillion in 2013 to more than \$6.2 trillion by 2023, expanding at a compound annual growth rate of more than 10 percent. ASEAN’s share of global GDP is expected to increase from 3.2 percent to 4.7 percent by 2023, with its share of world trade rising from 5 to 6 percent. Fenson, *supra* note 1.

9. Groff, *supra* note 8.

10. ASEAN 2030: TOWARD A BORDERLESS ECONOMIC COMMUNITY (Asian Dev. Bank, 2014), <http://www.adb.org/sites/default/files/publication/42795/asean-2030-toward-borderless-economic-community.pdf>. Its population and labor force participation is 64 percent in Brunei Darussalam; 83 percent in Cambodia; 68 percent in Indonesia; 78 percent in Lao PDR; 60 percent in Malaysia; 84 percent in Myanmar; 65 percent in Philippines; 68 percent in Singapore; 72 percent in Thailand; and 77 percent in Viet Nam which provides a perspective on the relative size of each member state. *Id.* at 160.

11. For labor force participation rate, see *Labor Force Participation Rate, Total*, THE WORLD BANK, <http://data.worldbank.org/indicator/SL.TLF.CACT.ZS>. Note, the labor force participation rate is the proportion of the population ages 15 and older that is economically active who supply labor for the production of goods and services during a specified period. Melissa Serrano et al., *Labour Laws and Practices in ASEAN: A Comparative Study on Gender Equality, Employment of Persons with Disabilities, Youth Employment and Social Dialogue*, ASEAN SERVICES EMPLOYEES TRADE UNIONS COUNCIL (ASETUC) 19 (2013), <http://library.fes.de/pdf-files/bueros/singapur/10627.pdf>.

international labor standards. In search of a platform for harmonizing the labor policies of ASEAN in coordination with international labor standards, this paper will examine the guiding documents of ASEAN, its commitments to ILO labor standards, and the progress of ASEAN's expressed goals of achieving higher labor standards within the region. Also discussed are possible models for harmonization and steps to be taken toward that end.

B. *Labor and Industrial Relations Priorities and Challenges*

The ASEAN "marching orders" for addressing the AEC 2015's labor issues were released in a Joint Communiqué of the 21st ASEAN Labour Ministers (ALM) Meeting in 2010 under its *Work Program*:¹²

16. The Ministers adopted the ASEAN Labour Ministers' Work Programme (2010-2015) which will serve as a guideline for the labour cooperation to support the realisation of the ASEAN Community by 2015 and the vision of the ASEAN Labour Ministers of a better quality of life, productive employment, and adequate social protection for ASEAN peoples. The new ALM's [ASEAN Labor Ministers] Work Programme consists of four specific strategic priorities, namely (i) legal foundation (ii) institutional capacities, (iii) social partnership, and (iv) labour markets and workforce development, taking into account the unique circumstances of each Member State. The new Work Programme sets strategies for Member States, either collectively or individually, to develop policies and mechanisms, allowing labour cooperation activities which will be undertaken over the next five years to remain effective and responsive to the various ASEAN challenges.¹³

The ALM Work Program lists intermediate and long term goals centered on the four aforementioned strategic priorities.¹⁴

12. *Joint Communiqué of the 21st ASEAN Labour Ministers Meeting*, ASEAN (May 24, 2010), <http://www.asean.org/communities/asean-socio-cultural-community/item/joint-communication-of-the-21st-asean-labour-ministers-meeting> [hereinafter *Joint Communiqué*].

13. "The Ministers noted the completion of a number of activities which have been implemented with support from the ILO in various areas/fields such as industrial relations, OSH, social protection, labour standards, labour market statistics and child labour. The Ministers further tasked the Senior Labour Officials to identify other areas of cooperation with the ILO in support of the implementation of the ALM's Work Programme 2010-2015." *Id.*

14. *ASEAN Labour Ministers' Work Programme, 2010-2015*, ASIA PAC. INDUS. REL. NETWORK 2 (2013), <http://apirnet.ilo.org/resources/asean-labour-ministers2019-work-programme-201020102015-1> [hereinafter *ASEAN Work Programme*].

ASEAN Roadmap, Community Blueprints, and Labour

| ASEAN Community | Labour Sector Actions in Community Blueprints |
|---------------------------|---|
| Political-Security | <ul style="list-style-type: none"> • Strengthen criminal justice responses to trafficking in persons • Protect victims of trafficking |
| Economic | <ul style="list-style-type: none"> • Facilitate movement through issuance of visas and employment passes of business persons and skilled labour • Work toward recognition of professional qualifications • Complete negotiations of, develop new, and implement mutual recognition arrangements • Strengthen human resource development and capacity building in the area of services • Develop core competencies and qualifications in priority services occupations • Strengthen active labour market program capacities in Member States |
| Socio-Cultural | <ul style="list-style-type: none"> • Invest in human resource development • Promote decent work • Strengthen entrepreneurship skills • Provide social welfare and protection against possible negative effects of globalisation • Protect and promote rights of migrant workers |

Source: Roadmap for an ASEAN Community (2009-2015)

In 2015, ASEAN will pilot a new free regional labor market, paralleling the European Union. Certain skilled workers and professionals have been chosen to take part in this initiative, including those in medicine, dentistry, nursing, engineering, architecture and accounting. These people will be able to move freely between countries to work.¹⁵

One might assume or hope this is only the beginning step, as most current AEC migrants are *low-skilled* (and undocumented), and the majority of new migrants are likely to be low-skilled. Government policies will need to address this reality and deal with the cross-border movements of low-skilled labor.¹⁶ Currently, intergovernmental mutu-

15. For discussion of which skills are needed in which countries and how countries can strengthen their skills and training systems to benefit from emerging opportunities of integration and boost competitiveness, and also examination of the challenge of skills mismatch and skilled labor shortages in the ASEAN region, see Monika Aring, *ASEAN Economic Community 2015: Enhancing Competitiveness and Employability Through Skill Development*, INT'L LABOUR ORG. [ILO] (Feb. 2015), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_344796.pdf.

16. For workers in the ASEAN nations, the highly skilled laborers (who are,

al recognition agreements (MRAs) are being established to deal with immigration issues, promote the movement of professionals, and regulate the recruitment and employment of migrant workers to ensure that migrant and local workers are treated equally.¹⁷

Tables 2 and 3 in the Appendix of this paper list more detailed ALM priorities and recommended actions, which provide some guidance on the AEC's future direction on its labor law and policy developments.¹⁸ Briefly summarized, these priorities and recommendations are intended to protect labor rights and conditions of work, with enforcement procedures, taking "into account ILO core labour standards and international benchmarks, where appropriate;" also, strategies for labor include establishing and promoting labor inspections, occupational safety and health, social security, labor mobility, employment services, and tripartite cooperation.¹⁹

The ASEAN 2010 Labour Ministers' meeting (ALM) also focused on industrial relations and it thereafter issued the *ASEAN Guidelines on Good Industrial Relations (IR) Practices* in November 2012.²⁰ ALM stated that the IR program priorities include the following:

for the most part, legal migrant workers) tend to move to the more developed economies such as Singapore, Malaysia, and Thailand. At the same time, this means that the less-developed nations are losing their already limited highly skilled workforce, making it even more difficult for these developing nations to grow their economy and improve the living standard. The economic pull factor is obvious. For example, Singapore's per capita income is over sixty times greater than Myanmar. Martin Russell, *ASEAN: Building an Economic Community*, EUROPEAN PARLIAMENT (Dec. 2014), http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/542171/EPRS_ATA%282014%29542171_REV1_EN.pdf. Studies show that the low and semi-skilled workers, regular or illegal, make significant contribution to the economic growth of both the receiving and sending country. Personal remittances from these migrant workers make up a significant portion of the economy for labor sending countries such as the Philippines, where it has consistently contributed to approximately ten percent of the country's Gross Domestic Product (GDP) each year. *Personal Remittances Received (% of GDP)*, WORLD BANK, <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS> (last visited May 11, 2015). See Philip Martin & Manolo Abella, *Reaping the Economic and Social Benefits of Labour Mobility: ASEAN 2015*, INT'L LABOUR ORG. [ILO] (Nov. 19, 2014), http://ilo.org/asia/whatwedo/publications/WCMS_321003/lang--en/index.htm. "Demographic and economic realities suggest international labour migration within the AEC will increase making the implementation of the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers imperative, to ensure that labour migration promotes cooperation rather than conflict between AEC Member States." *Id.*

17. Panthip Pruksacholavit, *Advancing the Right to Freedom of Movement in the ASEAN Economic Community (AEC) Framework: What the AEC Can Learn from the EU*, 1 INDO. J. INT'L & COMP. L. (IJICL) 474 (2014).

18. *ASEAN Work Programme*, *supra* note 14, at 12. The Work Programme also lists progress and actions taken. *Id.*

19. See *infra* Tables 2 and 3 in Appendix at the end of the article. Other areas of cooperation are also to be incorporated, such as human resources development, capacity building, and recognition of professional qualifications. See *ASEAN Economic Blueprint*, *supra* note 1; *ASEAN Economic Community*, *supra* note 1.

20. *ASEAN Guidelines on Good Industrial Relations Practices*, THE ASEAN

- promotion of best practices in labor policy and laws;
- protection and promotion of labor rights, including migrant workers' rights;
- capacity building in the enforcement of labor rights and labor laws;
- capacity building in workplace dispute resolution and administration of labor justice; and
- strengthening of tripartite cooperation.

The key principles of an ideal or stable IR system in ASEAN were offered in a report by the ASEAN-ILO/Japan Industrial Relations Project, as follows:²¹

- A sound legal framework guaranteeing the basic rights of employers to manage their business and of workers to just and decent working conditions;
- Fundamental rights of employers and workers;
- Genuine bipartite cooperation and collaboration;
- Tripartite partnership and social dialogue; and
- Labor dispute settlement mechanisms that are effective and provide for conciliation, mediation, arbitration, and adjudication that are fair, affordable and acceptable to all the parties.

Given the goals and aspirations stated above, what is the current situation regarding the adoption and implementation of labor standards under ASEAN and member states' legal regimes? Which ILO core labor standards, if any, have been ratified, accepted, or implemented by ASEAN or member states, under either ASEAN authority or by FTA's social dimension provisions on labor, or under the domestic laws of members? What domestic labor laws of member states, if any, address the ebb and flow of undocumented workers flowing across borders, provide legislative eligibility for mobile workers' injuries that arise, mandate the sufficiency and payment of wages, authorize the right to organize unions, provide for the right to be free from discrimination, child and compulsory labor, and provide access to forums for the resolution of labor disputes?²²

SECRETARIAT, <http://www.scribd.com/doc/113196162/ASEAN-Guidelines-on-Good-Industrial-Relations-Practices> (last visited May 11, 2015). For an analysis, see BUILDING BETTER INDUSTRIAL RELATIONS IN AN INTEGRATING ASEAN, INT'L LABOUR ORG. [ILO] (2012), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_185838.pdf.

21. *Id.* This publication is a synthesis of the major IR issues, practices, research findings, and recommendations discussed in the three regional seminars/workshops.

22. It is suggested that "as ASEAN designs its post-2015 agenda with a view to strengthening its role as a hub of Asian dynamism, its members need to adopt an appropriate policy mix including deep domestic structural reforms and bold actions to further deepen regional integration—transforming the AEC into a truly borderless economic community." Capannelli, *supra* note 4.

II. GLOBAL LABOR STANDARDS

A. *Ratification of ILO Conventions by ASEAN and Members*

The ILO has eight core conventions as a part of the primary labor standards that include: “freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labor; the effective abolition of child labor; and the elimination of discrimination in respect of employment and occupation.”²³ The eight conventions include: the 1930 Forced Labour Convention (No. 29), 1984 Freedom of Association and Protection of the Right to Organize Convention (No. 87), 1949 Right to Organize and Collective Bargaining Convention (No. 98), 1951 Equal Remuneration Convention (No. 100), 1957 Abolition of Forced Labour Convention (No. 105), 1958 Discrimination (Employment and Occupation) Convention (No. 111), 1973 Minimum Age Convention (No. 138), and the 1999 Worst Forms of Child Labour Convention (No. 182).²⁴

Identifying the current status of ASEAN members’ acceptance of ILO convention standards can assist in setting a realistic agenda for domestic and regional labor law coordination, if not harmonization, within ASEAN. The ten ASEAN countries have ratified some but not all of the eight core conventions on varying dates.

Ratifications of Core ILO Conventions by Country²⁵

| | 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 | | | | | | | 6/11/11 | 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 |

23. *Conventions and Recommendations*, INT’L LABOUR ORG. [ILO], <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (last visited May 11, 2015).

24. *Id.* Further, specific ILO standards on labor mobility, include: Migration for Employment Convention (Revised), 1949 (No. 97); Migration for Employment Recommendation (Revised), 1949 (No. 86); Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Migrant Workers Recommendation, 1975 (No. 151).

25. The table reflects a compilation of information available through the International Labor Organization that provided data for ratification by country. Information can be obtained by entering each country profile and locating the date of entry into force for each instrument of the ILO’s core labor provisions. *Ratifications by Country*, INT’L LABOUR ORG. [ILO], <http://www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO::> (last visited Jun. 11, 2014).

| | 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 | 11/1/57 | 10/13/58 ²⁶ | 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 | 4/6/98 | 11/28/00 |
| Singapore | | 10/25/65 | 10/25/65 | 10/25/65 ²⁷ | 5/30/02 | | 11/7/05 | 6/14/01 |
| Thailand | | | 2/26/69 | 12/2/69 | 2/8/99 | | 5/11/04 | 6/16/01 |
| Vietnam | | | 3/5/07 | | 10/7/97 | 10/7/97 | 6/24/03 | 12/19/00 |

As shown above, Brunei has only ratified the conventions discussing abolition of child labor and appears, at the moment, to be the most reluctant ASEAN member country to ratify ILO Conventions. Cambodia, Indonesia, and the Philippines have ratified all of the eight labor conventions from the ILO. For a list of each member country's complete ratification of all ILO Conventions, see footnote.²⁸

26. Denounced on January 10, 1990. *Ratifications for Malaysia*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960 (last visited Jun. 11, 2014).

27. Denounced on April 19, 1979. *Ratifications for Singapore*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103163 (last visited Jun. 11, 2014).

28. Brunei Darussalam (2 Conventions; Fundamental Conventions: 2 of 8), *Ratifications for Brunei Darussalam*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103308 (last visited May 11, 2015); Cambodia (13 Conventions ; Fundamental Conventions: 8 of 8), *Ratifications for Cambodia*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103055 (last visited May 11, 2015); Indonesia (18 Conventions; Fundamental Conventions: 8 of 8) *Ratifications for Indonesia*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102938 (last visited May 11, 2015); Laos PDR (9 Conventions; Fundamental Conventions: 5 of 8), *Ratifications for Laos People's Democratic Republic*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103060 (last visited May 11, 2015); Malaysia, (17 Conventions; Fundamental Conventions: 6 of 8), *Ratifications for Malaysia*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102960 (last visited May 11, 2015); Myanmar (22 Conventions; Fundamental Conventions: 3 of 8), *Ratifications for Myanmar*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103159 (last visited May 11, 2015); Philippines (37 Conventions; Fundamental Conventions: 8 of 8), *Ratifications for Philippines*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970 (last visited May 11, 2015); Singapore (27 Conventions; Fundamental Conventions: 6 of 8), *Ratifications for Singapore*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102970

The above chart illustrates which conventions ASEAN countries are prioritizing. Currently, the abolition of child labor, ILO Convention No. 182, is the only convention ratified by all ten countries. The next most common core labor provision is elimination of forced and compulsory labor, ratified by all countries through either convention No. 29 or No. 105, except for Brunei, which has ratified neither convention. The ILO labor standard calling for elimination of discrimination in respect of employment and occupation is the third most commonly ratified provision, although Brunei and Myanmar have yet to ratify this standard through either convention No. 100 or No. 111, while Malaysia, Singapore, and Thailand have ratified No. 100, but not No. 111. Finally, freedom of association and collective bargaining is the least ratified standard of the four general areas, and conventions No. 87 has been ratified by only Cambodia, Indonesia, Myanmar, and the Philippines. Convention No. 98 has been ratified by Cambodia, Indonesia, Malaysia, the Philippines, and Singapore.

Ratification of ILO Convention 19, Equality of Treatment (Accident Compensation) and laws for workers' compensation is at nearly 60 percent.²⁹ This raises possible issues not only for local workers in those countries with no pertinent labor law, but also for the newly mobile skilled and professional workers who will be traveling cross-border under the AEC's migrant labor policy. Even if there are laws, these "foreign" workers may or may not be covered under interpretations of existing laws, not to mention the large number of undocumented, unskilled workers flowing across borders throughout ASEAN.³⁰

www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103163 (last visited May 11, 2015); Thailand (15 Conventions); Fundamental Conventions: 8 of 8), *Ratifications for Thailand*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102843 (last visited May 11, 2015); Vietnam (21 Conventions; Fundamental Conventions: 5 of 8), *Ratifications for Vietnam*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103004 (last visited May 11, 2015).

29. Six of ASEAN's 10 member countries have ratified ILO Convention No. 19. *See infra* note 29. However, not all regions in Malaysia have ratified the technical convention. Only Peninsular Malaysia and Sarawak have signed Convention No. 19 into force, while Sabah, the other state within Malaysia, has not. *See Ratifications for Malaysia – Peninsular*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103594 (last visited May 12, 2015); *Ratifications for Malaysia – Sarawak*, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:103590 (last visited May 12, 2015).

30. *See Ratifications of C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)*, INT'L LABOUR ORG. [ILO], <http://www.ilo.org/dyn/normlex/en/f?p=1000:12001:0::NO:::> ILO Convention No. 19 is in force in Indonesia, Malaysia - Peninsular, Malaysia - Sarawak, Myanmar, Philippines, Singapore, and Thailand. *Id.*

B. ASEAN and Members' Commitments Under FTAs³¹

An Asian Development Bank (ADB) report stated that not only has there been a blossoming of trade liberalization initiatives in the last decade, but also a resulting 'convoluted noodle bowl' of overlapping free trade agreements.³² As of January 2013, the number of ratified FTAs involving at least one country from the Asian region is 109. This is more than triple the number in 2002. There are another 148 FTAs at various stages of development, bringing the total to 257.³³ Nearly three-quarters of the FTAs, or 189 out of a total of 257, were bilateral (i.e., involving two countries); only 68 were multi-lateral.³⁴

Leading the way in numbers are the FTAs involving the 10 members of ASEAN and their six trade partners: Australia, China, India, Japan, South Korea, and New Zealand. FTAs involving these countries have increased from 27 in 2002 to 179 by January 2013, a 600 percent increase.³⁵

31. Portions of this section were initially discussed in Ronald C. Brown, *Asian and U.S. Perspectives on Labor Rights under International Trade Agreements Compared*, in PROTECTING LABOR RIGHTS IN A GLOBALIZING WORLD 83 (Axel Marx et al. eds., 2015).

32. See discussion in *Regional Cooperation and Integration in a Changing World*, ASIAN DEV. BANK 17-26 (2013), <http://www10.iadb.org/intal/intalcdi/PE/2013/11842.pdf> [hereinafter *Regional Cooperation*]. See *id.* at 21; see also *Bilateral FTAs by Geographic Area, WTO Notification and Status 2000 and 2015*, ASIA REG'L INTEGRATION CTR., <http://aric.adb.org/fta> (last visited Aug. 16, 2014) [hereinafter *Bilateral FTAs*]. The potential for negative effects of FTAs because of the complexity and inconsistency of some regulations has been described as the "noodle bowl" (or "spaghetti bowl") effect arising from different rules of origin (ROOs). Yunling Zhang & Minghui Shen, *The Status of East Asian Free Trade Agreements*, ASIAN DEV. BANK 3 (2011), <http://www.econstor.eu/handle/10419/53698>. See summary at *Asian Free Trade Agreements: Untangling the Noodle Bowl*, ASIAN DEV. BANK (Aug. 8, 2013), <http://www.adb.org/features/free-trade-untangling-asia-s-noodle-bowl>. Two proposals have been advanced to disentangle the Asian free trade noodle bowl: consolidation - which creates a regional FTA to harmonize bilateral FTAs; and multi-lateralization - which grants non-discriminatory preferences to nonmembers, eliminating preference discrepancies. *Asian Economic Integration Monitor - March 2013*, ASIAN DEV. BANK, <http://www.adb.org/publications/asian-economic-integration-monitor-march-2013> (last visited Aug. 16, 2014).

33. *Regional Cooperation*, *supra* note 31, at 17,21; see also, *Bilateral FTAs*, *supra* note 31.

34. Masahiro Kawai & Ganeshan Wignaraja, *Asian FTAs: Trends, Prospects, and Challenges* 1, 18 (Asian Dev. Bank, Working Paper No. 226, 2010), http://www.un.org/esa/ffd/msc/regionalcooperation/ADB_WPs.pdf. "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 Vietnam largely follow a WTO-plus format." *Id.* at 19. Singapore's primary issues were found to be the 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. *Id.* at 4.

35. *Id.* A recent ADB-sponsored study stated, "[f]our main factors underlie the

The ADB report states that ASEAN is leading negotiations with its six partners to establish the Regional Comprehensive Economic Partnership (RCEP) by 2015, the deadline ASEAN set to achieve the ASEAN Economic Community.³⁶ This will have a market size of 3.4 billion people and a combined GDP of \$21.4 trillion or about 30% of world GDP.³⁷ Currently, the ASEAN+6 countries account for 70% of the total FTAs in Asia.³⁸

More recently, *mega-regional* trade deals have become in vogue, so called because of the number of countries involved or the size of the geography covered.³⁹ Asia's own mega-regional trade deal — the RCEP — launched in 2012. This trade deal could create the world's largest trading bloc and have significant implications for the world economy.⁴⁰ 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,”⁴¹ and envisage a highly competitive single market and production base that is fully integrated into the global economy. At the same time, a key purpose is to reconcile two long-standing proposals into a large region-wide trade agreement: the East Asian

recent spread of FTA initiatives in Asia: (i) deepening market-driven economic integration in Asia, (ii) European and North American economic integration, (iii) the 1997–1998 Asian financial crisis, and (iv) slow progress in the WTO Doha negotiations.” The authors provide a critical analysis of the emerging trend of FTAs in Asia based on three developing issues: 1) Asia's growth and development in production across regional borders; 2) Asia's growing number of FTAs, with ASEAN emerging as the hub of policy development in international and inter-regional trade; 3) emerging literature on the economic effects of Asian FTAs showing that the use of FTAs, a newer phenomenon to the region, is distorted, with excessive exclusions and deferential treatment to certain countries and partners. *Id.*

36. *Asian Development Outlook 2013: Asia's Energy Challenge*, ASIAN DEV. BANK 13 (2013), http://www.adb.org/sites/default/files/publication/30205/ado2013_1.pdf [hereinafter *ADO*].

37. *ADO*, *supra* note 35, at 14.

38. *Regional Cooperation*, *supra* note 31, at 18. Negotiations on RCEP, an initiative involving the 10 ASEAN members and its partners - Australia, China, India, Japan, New Zealand and South Korea, started in 2013 seeks an economic partnership which would form the world's largest economic bloc, *Asean Plus Six Likely to Form World's Largest Economic Bloc*, ASEAN AFF. (Nov. 17, 2012), http://www.aseanaffairs.com/asean_news/trade/asean_plus_six_likely_to_form_world_s_largest_economic_bloc.

39. Ganeshan Wignaraja, *Why the RCEP Matters for Asia and the World*, EAST ASIA FORUM (May 15, 2013), <http://www.eastasiaforum.org/2013/05/15/why-the-rcep-matters-for-asia-and-the-world/>.

40. *Id.*; James Wallar, *Achieving the Promise of the ASEAN Economic Community: Less than You Imagine, More than You Know*, NAT'L BUREAU OF ASIAN RESEARCH 20 (2014), http://www.nbr.org/downloads/pdfs/ETA/wallar_paper_072814.pdf.

41. *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership*, ASEAN (Aug. 30, 2012), <http://www.asean.org/images/2012/documents/Guiding%20Principles%20and%20Objectives%20for%20Negotiating%20the%20Regional%20Comprehensive%20Economic%20Partnership.pdf>; James Wallar, *Achieving the Promise of the ASEAN Economic Community: Less than You Imagine, More than You Know*, NAT'L BUREAU ASIAN RESEARCH, 20 n.43 (2014), http://www.nbr.org/downloads/pdfs/ETA/wallar_paper_072814.pdf.

Free Trade Agreement,⁴² which includes ASEAN, China, Japan and South Korea, as well as the Regional Comprehensive Economic Partnership, which added Australia, India and New Zealand. The RCEP bridges the two proposals by adopting an open accession scheme, meaning that the RCEP permits external countries to join later and does not prohibit members from acceding to other free-trade groupings, such as the Trans-Pacific Partnership (TPP).⁴³ Negotiations among the 16 parties began in early 2013 and are scheduled to conclude by the end of 2015.⁴⁴

The relatively recent evolution of FTAs emanating from the East Asia Region and the significance of ASEAN in that growth is described below in a recent ADB-issued Report.⁴⁵

42. *East Asia Free Trade Area (ASEAN+3)*, ASIA REG'L INTEGRATION CTR., <http://aric.adb.org/fta/east-asia-free-trade-area-%28asean3%29> (last visited May 11, 2015).

43. Murray Hiebert & Liam Hanlon, *ASEAN and Partners Launch Regional Comprehensive Economic Partnership*, CTR. FOR STRATEGIC AND INT'L STUD. (Dec. 7, 2012), <http://csis.org/publication/asean-and-partners-launch-regional-comprehensive-economic-partnership>.

44. Wignaraja, *supra* note 38. "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." *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. RES. INST. FOR ASEAN EAST ASIA (Jan. 2013), <http://www.eria.org/ERIA-DP-2013-02.pdf>. Talks appear to be advancing. India, backed by South Korea and China, has made a two-tier proposal at the Regional Comprehensive Economic Partnership (RCEP), offering wider duty eliminations to the 10 ASEAN countries in the trade bloc and a lower market access to the five non-ASEAN members. The exact categories that will be given duty-free status will be decided in further deliberations in April, with an end 2015 deadline to conclude negotiations. Dilasha Seth, *India Offers Wider Duty Cuts at Regional Comprehensive Economic Partnership*, THE ECONOMIC TIMES (Feb. 18, 2015, 4:32 AM), http://articles.economictimes.indiatimes.com/2015-02-18/news/59268923_1_regional-comprehensive-economic-partnership-asean-rcep. 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). Shannon Tiezzi, *China-Japan-South Korea Hold FTA Talks Despite Political Tension*, THE DIPLOMAT (Mar. 5, 2014), <http://thediplomat.com/2014/03/china-japan-south-korea-hold-fta-talks-despite-political-tension/>.

45. Zhang & Shen, *supra* note 31, at 3. It is argued that from a regional perspective, east Asian economies have been encouraged to turn to practicable bilateral or sub-regional approaches by the failure of Asia-Pacific Economic Cooperation (APEC) to realize its Bogor Goal—i.e., free trade and investment in Asia and the Pacific by 2010 for developed members and by 2020 for developing members. In 1997, APEC initiated an Early Voluntary Sector Liberalization program by selecting 15 sectors for liberalization. The program, however, failed due to its voluntary approach and the subsequent Asian financial crisis. *Id.* at 4 (citing Tubagus Feridhanusetyawan, *Preferential Trade Agreements in the Asia-Pacific Region* (Wash., DC: Int'l Monetary Fund, Int'l Monetary

ASEAN's role is unique in East Asia. On one hand, ASEAN seeks to benefit from FTAs with itself as the hub, creating a hub-spoke structure with its ASEAN+1 FTAs [FTAs between the ASEAN countries *plus one* other country]. On the other hand, as an integrated regional market, ASEAN is attractive to other regional groups, leading the latter to seek FTAs with ASEAN... The PRC's first FTA initiative was with ASEAN, and was aimed at establishing ASEAN as both a regional market and a close geographic partner. The PRC's FTA with ASEAN aroused quick responses from other countries, particularly Japan and Korea, leading to several parallel ASEAN+1 FTAs in East Asia. Few economies restricted the pursuit of FTAs to East Asia as the search for FTA partners assumed a global reach. For East Asian economies, however, FTAs had clearly become a significant new strategy... and part of a strategy against globalization and regionalism in other regions.⁴⁶

Some FTAs, notably those of Japan, resemble the EU experience of developing a hybrid form of an FTA called an Economic Partnership Agreement (EPA or CEPA for Comprehensive EPA).⁴⁷ EPAs are schemes to create a free trade area to promote trade and development. Japan has established EPAs with 12 countries and ASEAN.⁴⁸

The first FTA proposal in East Asia outside of ASEAN was a Japan-Korea FTA. Proposed in 1998, it remains stalled.⁴⁹ However, more FTA initiatives were subsequently proposed between East Asian countries, including most of the ASEAN member states. (See Tables 1 and 2, *infra*).⁵⁰

Fund Working Paper 05149, 2005)). The slow progress of APEC after the 1997 financial crisis encouraged its members to turn to other strategies centering on FTAs. *Id.* at 4.

46. *Id.*

47. FTA vs. CEPA: FTA and CEPA are terms used to describe economic pacts between countries that are aimed at reducing tariffs and improving bilateral trade. Whereas FTA stands for Free Trade Agreement, CEPA stands for Comprehensive Economic Partnership Agreement. Though both are economic pacts, there are differences between the two, which will be highlighted in this article. Unlike FTA, which is a free trade agreement, CEPA aims at lowering trade barriers instead of complete elimination. CEPA is said to be a diluted version of FTA. Olivia, *Difference Between FTA and CEPA*, DIFFERENCE BETWEEN (Apr. 16, 2011), <http://www.differencebetween.com/difference-between-fta-and-vs-cepa/>; see also *Japan's Economic Partnership Agreement (EPA)*, CUSTOMS & TARIFF BUREAU, MOF JAPAN 3 (May 30, 2008), http://www.customs.go.jp/english/epa/files/japans_epa.pdf (Apr. 16, 2011) [hereinafter *Japan's EPA*].

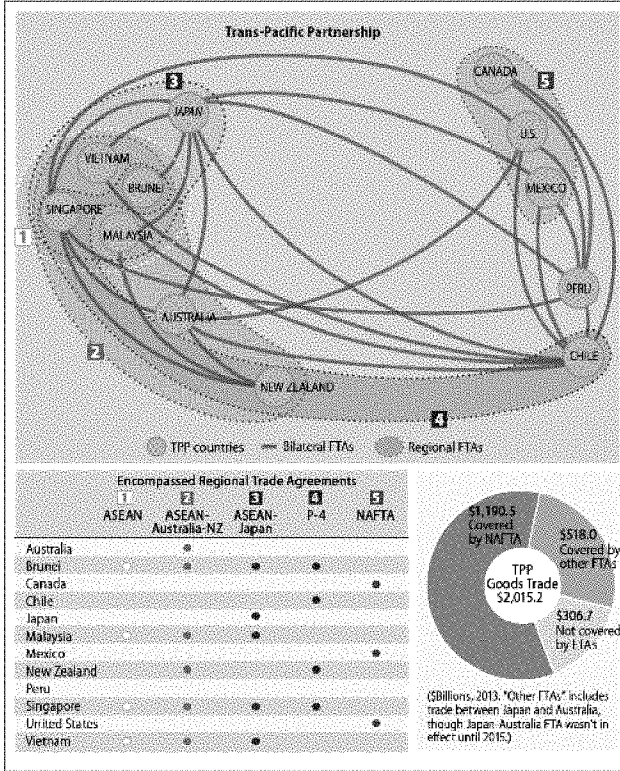
48. Japan has concluded EPAs with Singapore, Mexico, Malaysia, Chile, Thailand, Indonesia, Brunei, ASEAN, Philippines, Switzerland, Vietnam, India, and Peru. *Free Trade Agreement and Economic Partnership Agreement*, MINISTRY FOREIGN AFF. JAPAN, <http://www.mofa.go.jp/policy/economy/fta/> (last updated Oct. 19, 2015).

49. Zhang & Shen, *supra* note 31, at 5-6.

50. *Id.* at 5-8.

“The Japan-Singapore Economic Partnership Agreement (JSEPA) was considered an innovative FTA in the region when it was concluded in 2002 because it covers more than the conventional areas of liberalization. Trade, investment, and services are covered, as is a mechanism for dispute settlement, and economic and technical cooperation at various functional levels. The PRC took the lead in concluding a large-scale FTA with ASEAN... In 2003, Japan signed the ASEAN-Japan Comprehensive Economic Partnership framework agreement with ASEAN and concluded six bilateral FTAs with individual

Figure 2. Existing FTAs among TPP Countries



Source: WTO FTA database and websites of TPP countries' trade ministries. Trade data from IMF.

Notes: Aggregate TPP goods trade, both imports and exports, as reported above. ASEAN also includes countries outside the TPP: Burma (Myanmar), Cambodia, Indonesia, Laos, the Philippines, and Thailand. TPP goods trade covered by existing FTAs, as depicted above, reflects all goods trade between FTA partners. This measure slightly overstates trade covered under FTAs, as most FTAs exclude market access for at least some goods.

Source: <https://www.fas.org/sgp/crs/row/R42694.pdf>.

ASEAN countries (Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand). Negotiation of the ASEAN-Japan Comprehensive Economic Partnership (AJCEP) was concluded in 2008. Korea accelerated negotiations with ASEAN and the ASEAN-Korea Comprehensive Economic Cooperation Agreement (AKCEC), covering both goods and services, was concluded in November 2007. Including FTAs with economies in other regions, east Asian economies had concluded 50 FTAs by July 2010, with 43 more under negotiation and an additional 32 proposed. [(See *infra* Table 1 and Table 2)]. Singapore had concluded the most FTAs (35), with 10 under negotiation and 4 proposed. Korea, the PRC, and Thailand followed with 26, 25, and 24 FTA initiatives, respectively. Of these, 6 were being implemented by Korea, 10 by the PRC, and 11 by Thailand. In general, the more developed economies were more active in negotiating FTAs because they often possess stronger negotiating capacities. The less developed economies (e.g., Cambodia, the Lao People's Democratic Republic, and Myanmar) tended to rely more heavily on FTAs based on AFTA and ASEAN+1. Most (102) of the 125 FTAs concluded or initiated by east Asian economies were with countries outside of east Asia.”

Id.; see also *Free Trade Agreements (ADB), ASEAN+6, ASIA REGIONAL INTEGRATION* CTR. (2015), <http://aric.adb.org/fta-group>.

Table 1: East Asian Free Trade Agreements (ASEAN+3 Countries)

| Negotiating Body | Under Implementation | Signed | Under Negotiation | Proposed | Total | Partners | |
|-----------------------------|----------------------|-----------|-------------------|-----------|------------|-----------|------------|
| | | | | | | Inside EA | Outside EA |
| ASEAN | 6 | 0 | 1 | 2 | 9 | 5 | 4 |
| Brunei Darussalam | 8 | 0 | 2 | 4 | 14 | 6 | 8 |
| Cambodia | 6 | 0 | 1 | 2 | 9 | 5 | 4 |
| China, People's Republic of | 10 | 1 | 6 | 8 | 25 | 9 | 16 |
| Indonesia | 7 | 1 | 2 | 7 | 17 | 6 | 11 |
| Japan | 11 | 0 | 5 | 6 | 21 | 11 | 10 |
| Korea, Republic of | 6 | 1 | 9 | 10 | 26 | 8 | 18 |
| Lao People's Dem. Rep. | 8 | 0 | 1 | 2 | 11 | 6 | 5 |
| Malaysia | 8 | 2 | 6 | 3 | 19 | 7 | 12 |
| Myanmar | 6 | 1 | 2 | 2 | 10 | 5 | 5 |
| Philippines | 7 | 0 | 1 | 4 | 12 | 6 | 6 |
| Singapore | 18 | 3 | 10 | 4 | 35 | 8 | 27 |
| Thailand | 11 | 0 | 7 | 6 | 24 | 9 | 15 |
| Viet Nam | 7 | 0 | 3 | 3 | 13 | 6 | 7 |
| Total | 40 | 10 | 43 | 32 | 125 | 23 | 102 |
| Under implementation | | | | | | 16 | 24 |
| Signed | | | | | | 1 | 9 |
| Under negotiation | | | | | | 1 | 42 |
| Proposed | | | | | | 5 | 27 |

ASEAN = Association of Southeast Asian Nations, Dem. = Democratic, EA = East Asia (ASEAN+3), Rep. = Republic.

Source: *FTA Database, ASIA REG'L. INTEGRATION CTR. (2014)*.⁵¹

51. Table 1 shows ASEAN members are pursuing their individual trade agreements, though with relatively few concluded. Notes 1. ASEAN = Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam. 2. The total avoids double counting and does not correspond to the vertical sum of agreements by status. 3. Status of free trade agreements: (i) under negotiation = under negotiation with or without a signed framework agreement; (ii) proposed = involved parties are considering creating an agreement, establishing joint study groups or joint task forces, and/or conducting feasibility studies for an agreement; and (iii) Concluded = negotiations are completed and parties have signed an agreement and/or begun to implement provisions of an FTA (for example, tariff cuts have begun). See *FTA Database, ASIA REG'L. INTEGRATION CTR. (2014)*, <http://www.aric.adb.org>.

Table 2: Free Trade Agreements Involving Countries in East Asia (ASEAN+6 Countries)

| | Japan | Rep. of Korea | PRC | ASEAN | India | Australia | New Zealand |
|---------------|-------|---------------|-----|-------|-------|-----------|-------------|
| Japan | | ⊙ | | ☑ | ⊙ | ⊙ | ⊙ |
| Rep. of Korea | ⊙ | | ⊙ | ☑ | ☑ | ⊙ | ⊙ |
| PRC | | ⊙ | | ☑ | ⊙ | ⊙ | ☑ |
| ASEAN | ☑ | ☑ | ☑ | ☑ | ☑ | ☑ | ☑ |
| India | ⊙ | ☑ | ⊙ | ☑ | | | |
| Australia | ⊙ | ⊙ | ⊙ | ☑ | | | ☑ |
| New Zealand | ⊙ | ⊙ | ☑ | ☑ | | ☑ | |

ASEAN = Association of Southeast Asian Nations, PRC = People's Republic of China, Rep. = Republic.

Notes:

1. ASEAN = Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam.

2. ☑ = concluded, ⊙ = under negotiation, and ⊙ = under consideration.

Source: *FTA Database, ASIA REG'L. INTEGRATION CTR.* (2014), http://www.waseda.jp/gsaps/eai/educational_program/PDF_2/TU_PRASIRTSUK,%20Kitti_Reading2_The%20Status%20of%20East%20Asian%20Free%20Trade%20Agreements.pdf.

The United States also has a Trade and Investment Framework Arrangement (TIFA) with ASEAN. The TIFA preamble states that the parties will recognize the ILO Declaration's core labor standards and the importance of adequate and effective protection of workers' rights in accordance with each participant's own law.⁵² The U.S. and ASEAN are

52. See Trade and Investment *Framework Arrangement Between the United States of America and the Association of Southeast Asian Nations*, Aug. 25, 2006, https://ustr.gov/sites/default/files/uploads/agreements/tifa/asset_upload_file932_9760.pdf [hereinafter U.S.-ASEAN Framework]; Dean A. DeRosa, *US Free Trade Agreements with ASEAN, in FREE TRADE AGREEMENTS: US STRATEGIES & PRIORITIES 117* (Jeffrey J. Schott ed., 2004). Additionally, the U.S.-Cambodia Textile Agreement demonstrates an additional external source of labor regulation, monitored in part by the ILO, which provides a framework to monitor working conditions in garment factories as well as pave way for new laws to improve these conditions, increase worker awareness of international labor standards and rights under existing Cambodian law, and increase workers' individuals capacities to improve their working conditions to comply with national and international law. Don Wells, "Best Practice" in the Regulation of International Labor Standards: Lessons of the U.S.-Cambodia Textile Agreement, 27 *COMP. LAB. L. & POL'Y J.* 357, 357-75 (2006); see also Lejo Sibbel & Petra Borrmann, *Linking Trade with Labor Rights: The ILO Better Factories Cambodia Project*, 24 *ARIZ. J. INT'L & COMP. L.* 235 (2007); *Policy Brief: The Business Case for Quality Jobs Evidence from Better Work*, *BETTER WORK* 9 (2012), http://betterwork.org/global/wp-content/uploads/Quality-jobs-policy-brief-V2-print_1.pdf (citing Chikako Oka, *What Can Bridge Compliance Gaps? Evidence from Cambodia*, (International Labour Organization, Better Work Discussion Paper No. 5) (2012)); Daniel Adler & Michael Woolcock, *Justice*

also negotiating the Expanded Economic Engagement (E3) Initiative, which establishes a framework to expand cooperation to boost trade and investment between the United States and the ASEAN.⁵³ The U.S. State Department suggested:

By working together on E3 initiatives, many of which correspond to specific issues typically addressed in trade agreements, the United States and ASEAN are also laying the groundwork for all ASEAN countries to join high-standard trade agreements, such as the Trans-Pacific Partnership (TPP) agreement. Four ASEAN states -- Brunei, Malaysia, Singapore and Vietnam are TPP partners.⁵⁴

Commentators have noted that one of the challenges for ASEAN trade officials will be to avoid becoming distracted by the other trade initiative launched in Cambodia in November: the Regional Comprehensive Economic Partnership (RCEP).⁵⁵

While regional FTAs have taken the spotlight, even these may be marginalized by ever bigger, more inclusive FTAs encompassing an ever-expanding part of the world's GDP. In 2014, Asia-Pacific Economic

Without the Rule of Law? The Challenge of Rights-Based Industrial Relations in Contemporary Cambodia, in HUMAN RIGHTS AT WORK: PERSPECTIVES ON LAW AND REGULATION 529 (Colin Fenwick & Tonia Novitz eds. 2009). The United States reportedly is also negotiating a labor action plan (LAP) with Vietnam. This plan may be similar to the LAP negotiated in conjunction with the U.S. FTA with Colombia. That plan included benchmarks to be undertaken by the Colombian government to address perceived weaknesses in Colombian labor laws and practices within specified deadlines. IAN F. FERGUSSON ET AL., CONG. RESEARCH SERV., R42694, THE TRANS-PACIFIC PARTNERSHIP (TPP) NEGOTIATIONS AND ISSUES FOR CONGRESS 38-40 (2015).

53. *Association of Southeast Asian Nations (ASEAN)*, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/countries-regions/southeast-asia-pacific/association-south-east-asian-nations-asean> (last visited May 12, 2015); see Murray Hiebert, *The E3 Initiative: The United States and ASEAN Take a Step in the Right Direction*, CTR. STRATEGIC & INT'L STUDIES (Dec. 21, 2012), <http://csis.org/publication/e3-initiative-united-states-and-asean-take-step-right-direction>. The E3 will begin by working on four specific priorities, which include obtaining a trade facilitation agreement to simplify customs, developing and improving communications technology, addressing investment policies, and working to harmonize standards across the region. *Id.*

54. *The U.S.-ASEAN Expanded Economic Engagement (E3) Initiative*, U.S. DEPT. STATE (Oct. 9, 2013), <http://www.state.gov/r/pa/prs/ps/2013/10/215235.htm>. The economic significance of this initiative is reflected in the following.

"U.S. goods exports to the ASEAN countries in 2012 were \$75.4 billion, down 1.1% (\$822 million) from 2011, but up 80% from 2002. U.S. exports to the ASEAN countries account for 4.9% of overall U.S. exports in 2012. U.S. goods imports from the ASEAN countries totaled \$122.9 billion in 2012, up 3.9% (\$4.7 billion) from 2011, and up 57% from 2002. U.S. imports from ASEAN account for 5.4% of overall U.S. imports in 2012. The ASEAN countries, together, would rank 4th as an export market for the United States, and our 5th largest supplier of imports in 2012. U.S. foreign direct investment (FDI) in ASEAN countries (stock) was \$189.8 billion in 2012, up 16.2% from 2011, and is led by the nonbank holding companies, manufacturing, and finance/insurance sectors."

Id.

55. See Hiebert, *supra* note 52.

Cooperation (APEC) members issued the Beijing APEC Declaration calling for yet *another* new regional trade agreement, the Free Trade Area of Asia Pacific (FTAAP).⁵⁶ It was reported the income gains from the FTAAP “would be some eight times that of the 12 nation TPP—close to \$2 trillion by 2025—and three times that of [RCEP], another trade agreement that is being negotiated among the Southeast Asian (ASEAN) nations, that also includes China, India, Japan, Korea and Australia/New Zealand. . . .”⁵⁷ Some trade experts believe that the RCEP and the TPP could be harmonized under the larger umbrella organization of the FTAAP.⁵⁸ Toward that end, the APEC⁵⁹ has directed a feasibility study due at the end of 2016. As for the smaller FTAs, members have agreed that they would not be in conflict with the FTAAP and would remain in place.⁶⁰

56. *2014 Leaders' Declaration*, ASIA-PAC. ECON. COOPERATION (Nov. 11, 2014), http://www.apec.org/Meeting-Papers/Leaders-Declarations/2014/2014_aelm.aspx.

In this regard, we decide to kick off and advance the process in a comprehensive and systematic manner towards the eventual realization of the FTAAP, and endorse the *Beijing Roadmap for APEC's Contribution to the Realization of the FTAAP (Annex A)*. Through the implementation of this Roadmap, we decide to accelerate our efforts on realizing the FTAAP on the basis of the conclusion of the ongoing pathways, and affirm our commitment to the eventual realization of the FTAAP as early as possible by building on ongoing regional undertakings, which will contribute significantly to regional economic integration, sustained growth and common prosperity in the Asia-Pacific region. We instruct Ministers and officials to undertake the specific actions and report the outcomes to track the achievements.

Id.

57. These gains are said to be predicated on an FTAAP model that bridges the TPP and RCEP templates. Hugh Stephens, *TPP or FTAAP: What It Means for U.S. and the Asia-Pacific Region*, CHINA-U.S. FOCUS (Nov. 25, 2014), <http://www.chinausfocus.com/finance-economy/tpp-or-ftaap-what-it-means-for-us-and-the-asia-pacific-region/>.

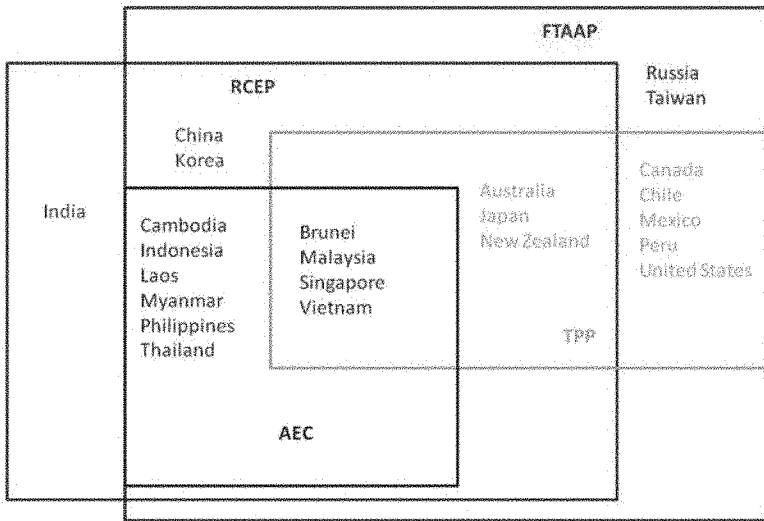
58. Jeffrey Schott, *Asia-Pacific Economic Integration: Projecting the Path Forward*, in *NEW DIRECTIONS IN ASIA-PACIFIC ECONOMIC INTEGRATION* 246–53 (Tang Guoqiang & Peter A. Petri eds., 2014); see also Ellen L. Frost, *RIVAL REGIONALISMS AND REGIONAL ORDER: A SLOW CRISIS OF LEGITIMACY* 8 (2014).

59. APEC is a forum for 21 Pacific Rim member economies that seeks to promote free trade and economic cooperation. APEC now comprises 21 member economies: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, Indonesia, Japan, Republic of South Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Republic of the Philippines, Russia, Singapore, Chinese Taipei (Taiwan), Thailand, the United States, and Vietnam. *History and Membership of APEC*, GLOBAL AFF. CAN., <http://www.international.gc.ca/apec/map-carte.aspx?lang=eng> (last modified Jun. 12, 2013).

60. HeWeiwen, *How the FTAAP Incorporates the TPP*, CHINA-US FOCUS (Nov. 18, 2014), <http://www.chinausfocus.com/finance-economy/how-the-ftaap-incorporates-the-tpp/>.

The core reason for the final unanimity was that, all the current RTAs and FTAs, including the TPP, could and should continue. The FTAAP will be the ultimate umbrella built on the basis of the former as necessary pathways. Hence, the FTAAP does not conflict with the TPP. In pursuing the FTAAP kick-off, the APEC Beijing Summit fully considered all the existing RTAs and FTAs, the different focuses and interests of various members, only to highlight the shared goals while reserving the particular concerns, thus reaching an inclusive solution through joint efforts.

2. Members of AFTA, TPP, RCEP & FTAAP



As the standards of the RCEP, with its poorer Asian countries included, will likely be lower than that of the TPP, with its wealthier countries included, it may be advantageous for some countries to join RCEP. This could be a pathway to harmonization and an eventual FTAAP.

While there is much growth in FTAs in Asia, Asian FTAs generally do not include *social dimension provisions*, as discussed below.⁶¹ However, of current interest in discussion of labor protections from an ‘*Asian Perspective*’ of FTAs are the Economic Partnership Agreements generally,⁶²

Id.

61. Labor mobility provisions sometimes do appear, especially now in view of ASEAN’s move for skilled labor mobility within ASEAN. While the ASEAN-Australia-New Zealand FTA (AANZFTA) does not specifically cite to labor provisions, New Zealand has a separate Memorandum of Agreement with the Philippines (MOA) specifically regarding labor provisions. In conjunction with the ASEAN FTA negotiations, New Zealand has also concluded bilateral Memoranda of Agreement (MOAs) with the Philippines covering labor cooperation. They are not explicitly linked with the ASEAN FTA, but they have been concluded in the context of it. “The MOAs will enhance communication and cooperation on these issues and assist in meeting the shared objectives of raising working standards and improving environmental protection in New Zealand and the Philippines. The MOAs supplement similar instruments negotiated previously with other ASEAN partners (Thailand, Brunei, Malaysia and Singapore).” *Labour and Environment*, N.Z. MINISTRY FOREIGN AFF. & TRADE, <http://www.asean.fta.govt.nz/labour-and-environment/> (last visited May 12, 2015). This article refers to The ASEAN–Australia–New Zealand Preferential Trade Agreement (PTA), signed in August 2008, contains a chapter on temporary entry. Sherry Stephenson & Gary Hufbauer, *Labor Mobility*, in *PREFERENTIAL TRADE AGREEMENT POLICIES FOR DEVELOPMENT: A HANDBOOK 284* (Jean-Pierre Chauffour & Jean-Christophe Mau eds., 2011).

62. Brown, *supra* note 30. These are familiar to the European Union (EU),

the existing Trans-Pacific Strategic Economic Partnership (commonly referred to as the Pacific Four or P-4),⁶³ and the TPP agreement specifically, both of which reference labor protection provisions, unlike most of the inter-Asian FTAs. These are discussed below.

The US-Singapore FTA has been in effect since 2004 and has already been through its fifth annual review in 2009.⁶⁴ The purpose of the ongoing review is to evaluate the implementation of the FTA and also provide an ‘opportunity for labor officials from both governments to discuss labor issues and potential areas for labor cooperation.’⁶⁵ However, unlike the US-Korea FTA, there is no creation of a Labor Affairs Council. The task of supervising the Labor Cooperation Mechanism falls to the Joint Committee instituted in Chapter 20, who then has the option to

which has been using them for some time, particularly with the lesser developed countries; however in Asia, Japan in particular also has negotiated a number of EPAs. *Economic Partnerships*, EUROPEAN COMM’N, <http://ec.europa.eu/trade/policy/countries-and-regions/development/economic-partnerships/> (last visited Aug. 16, 2014); *see also Free Trade Agreement and Economic Partnership Agreement*, MINISTRY FOREIGN AFF. JAPAN (Apr. 2014), <http://www.mofa.go.jp/policy/economy/fta/>. Under Economic Partnership Agreements (EPAs) in effect in Asia, mostly with Japan (which has concluded EPAs with 12 countries and ASEAN), there do not appear to be any Social Dimension provisions for labor. However, Japan does have a policy initiative relating to one aspect of labor – movement of natural persons. *Basic Policy on Comprehensive Economic Partnerships*, MINISTRY FOREIGN AFF. JAPAN (Nov. 6, 2010), <http://www.mofa.go.jp/policy/economy/fta/policy20101106.html>. The Government of Japan will consider measures to address the issues relating to the movement of natural persons from abroad, such as nurses and certified care workers, on the basis of its efforts to promote the “employment and human resources strategies” described in its New Growth Strategy, and it will do so with due attention to future domestic demographic trends, the possible effect of such movement on employment in Japan, requests from other countries, as well as securing Japan’s economic growth and social stabilization. An illustrative provision can be found in the Japan-Singapore Economic Partnership Agreement, Japan-Sing., Annex VI, Jan. 2007, <http://www.mofa.go.jp/region/asia-pacific/singapore/jsepa-7.pdf>. There is no labor provision, but there is a “human resources development” provision in the agreement. See the joint coordinating team report for details. For the full text, see *Japan-Philippine Economic Partnership Agreement: Joint Coordinating Team Report*, MINISTRY FOREIGN AFF. JAPAN (Dec. 2003), <http://www.mofa.go.jp/region/asia-pacific/philippine/joint0312.pdf> [hereinafter *JPEPA*]; see also Erlinda M. Medalla & Melalyn C. Mantaring, *On Free Trade Agreements (FTAs): The Philippine Perspective*, PHIL. INST. FOR DEV. STUDIES, (2009), <http://dirp3.pids.gov.ph/ris/dps/pidsdps0935.pdf>.

63. Trans-Pacific Strategic Economic Partnership Agreement, Brunei-Chile-N.Z.-Sing., May, 28, 2006, 2592 U.N.T.S. 225 [hereinafter P-4 Agreement].

64. In 2006, a Trade and Investment Framework between the United States and the Association of South East Asian Nations (TIFA) was signed, which in general terms outlined goals of future negotiations of FTAs with ASEAN countries. See U.S.-ASEAN Framework, *supra* note 51; *Singapore FTA*, OFFICE OF THE U.S. TRADE REP., <http://www.ustr.gov/trade-agreements/free-trade-agreements/singapore-fta> (last visited Aug. 17, 2014); US-Singapore Free Trade Agreement, US-Sing., art. 171 (2) & 175, May 6, 2003, <http://www.ustr.gov/trade-agreements/free-trade-agreements/singapore-fta> [hereinafter U.S.-Sing. FTA].

65. *U.S.-Sing. FTA*, art. 171.

create a subcommittee on Labor Affairs consisting of officials of the labor ministry and other appropriate agencies or ministries of each Party.⁶⁶

As noted above, the United States also negotiated a regional, Asia-Pacific trade agreement, the TPP, which has the objective of achieving a high-standard, broad-based regional pact.⁶⁷ The agreement was negotiated by the U.S. and 11 other countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam.⁶⁸ Negotiations concluded on October 4, 2015 with a signed agreement and three side agreements with Vietnam, Malaysia, and Brunei.⁶⁹

The TPP involves 4 of the 10 ASEAN countries: Brunei, Malaysia, Singapore, and Vietnam. In a report assessing the current status of TPP negotiations and the Obama Administration's trade policy goals of "rebalancing" toward Asia-Pacific and shaping the "economic architecture of the region,"⁷⁰ the author explains:

The current 12 TPP countries already form part of a growing network of Asia-Pacific FTAs (Figure 2).⁷¹ The United States has FTAs in place with six of the TPP countries: Australia, Canada, Chile, Mexico, Peru, and Singapore. In addition, the proposed TPP seeks to build on the existing Trans-Pacific Strategic Economic Partnership (P-4), a free trade area among Brunei, Chile, New Zealand, and Singapore. . . . ASEAN countries have negotiated a free trade area amongst each other as well as several external FTAs. All 12 TPP partners are also members of the 21-member APEC forum, which does not negotiate FTAs among its members, but serves as a forum for dialogue and establishes nonbinding commitments toward the goals of open and free trade and investment within the region.⁷²

66. *Id.* at art. 174.

67. The TPP will likely be evolving from the four-nation Trans Pacific Strategic Economic Partnership or more commonly referred to as the Pacific Four ("P4") that is a plurilateral agreement among Brunei Darussalam, Chile, New Zealand, and Singapore.

68. *Trans-Pacific Partnership (TPP)*, OFFICE OF THE U.S. TRADE REP., <http://www.ustr.gov/tpp> (last visited June 19, 2013).

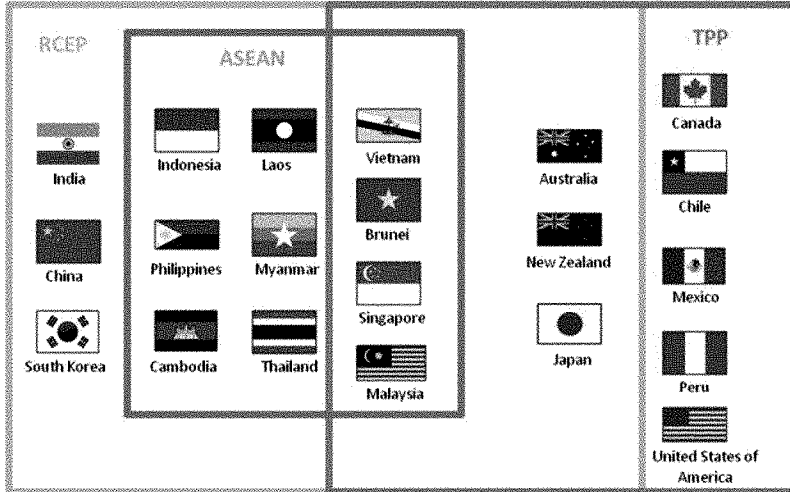
69. For the full text, see *Trans-Pacific Partnership*, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text> [hereinafter *TPP*]. The TPP has not yet passed the U.S. Senate as of January 25, 2016.

70. FERGUSSON ET AL., *supra* note 51.

71. *Id.* at 9.

72. *Id.* at 8 (chart is P. 9) (emphasis added) (internal footnotes omitted). The labor developments under the TPP are discussed in more detail in, Ronald C. Brown, *Approaches to Bridge the Gaps of FTA Labor Issues* (LLRN Conference Paper, Amsterdam, June 2015) (on file with author). Matthew Zito, *Outlook on ASEAN Investment 2015*, ASEAN BRIEFING (Oct. 14, 2014), <http://www.aseanbriefing.com/news/2014/10/14/outlook-asean-investment-2015.html>.

ASEAN's Regional Free Trade Agreement



In the TPP, the United States is pursuing provisions similar to those in the US-Korea (KORUS) FTA that committed to the core standards under the ILO *Declaration*. In October 2015, the parties signed the TPP and the U.S. trade representative stated:

TPP has the strongest protections for workers of any trade agreement in history, requiring all TPP parties to adopt and maintain in their laws and practices the fundamental labor rights as recognized by the International Labor Organization (ILO), including freedom of association and the right to collective bargaining; elimination of forced labor; abolition of child labor; and the elimination of employment discrimination. It also includes commitments, again required for all TPP parties, to have laws governing minimum wages, hours of work, and occupational safety and health. All these are fully enforceable and backed up by trade sanctions.⁷³

As part of the TPP, the United States negotiated three side agreements with Vietnam, Brunei, and Malaysia, called the Labor Consistency Plan (LCP), to address perceived weaknesses in labor laws and practices within specified deadlines.⁷⁴

This plan is somewhat similar to the agreement negotiated in conjunction with the U.S.'s FTA with Colombia.⁷⁵ That plan included

73. *USTR Executive Summary*, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/sites/default/files/TPP-Chapter-Summary-Labour-1.pdf>.

74. *TPP*, *supra* note 68, at art. 19.

75. For more information, see M. ANGELES VILLARREAL, CONG. RESEARCH SERV., RL34470, *THE U.S.-COLOMBIA FREE TRADE AGREEMENT: BACKGROUND AND ISSUES* (2014). The AFL-CIO points out that the labor rights under the Columbia agreement have not been fulfilled in practice. *Making the Columbia Action Plan Work*, AFL-CIO.

benchmarks to be undertaken by the Colombian government to address perceived weaknesses in Colombian labor laws and practices within specified deadlines.

The TPP's farthest "reach" and most dramatic break-through on labor protections is found in the side agreements that the U.S. has with Vietnam, Malaysia, and Brunei. By express terms their labor laws must be newly established, changed and improved to allow independent labor unions, strikes, proper treatment of immigrants, anti-discrimination provisions, labor inspections, and the basic labor standards affecting working conditions, *before* they are allowed to export goods duty-free to the United States and otherwise use the provisions of the TPP. The side agreements are very detailed in their obligations.⁷⁶

In the Side Agreement with Vietnam (Plan for the Enhancement of Trade and Labour Relations), Vietnam agrees to eight categories of detailed legislative labor reforms, including the rights of union organization and collective bargaining, strikes, prohibitions on forced labor, discrimination, and the creation of administrative institutions to effectively enforce these obligations.⁷⁷ Oversight, review, cooperation, and technical assistance are also provided. The Agreement states these obligations to be enacted "prior to the entry into force of the TTP Agreement between the United States and Vietnam."⁷⁸

The Side Agreement with Malaysia (Labor Consistency Plan) creates certain targeted legislative labor reforms to protect labor unions, union membership, collective bargaining and strikes, as well as access to remedies.⁷⁹ Specific provisions on prohibiting forced labor, child labor, and discrimination are included, as well as the creation of administrative institutions to effectively enforce these obligations. Oversight, review, cooperation, and technical assistance are also provided. The Agreement states these obligations to be enacted "prior to the entry into force of the TTP Agreement between the United States and Malaysia."⁸⁰

The Side Agreement with Brunei (Labor Consistency Plan) obligates Brunei to legislative labor reforms addressing specific rights and obligations under the rights of labor unions to organize, collectively bargain, strike and have meaningful tribunals to resolve labor disputes.⁸¹ It also targets forced labor, child labor, employment discrimination, and acceptable conditions of work. It obligates Brunei to have in place meaningful institutions to implement the legal reforms, including a labor

ORG (Apr. 2014), http://www.aflcio.org/content/download/123141/3414471/April2014_ColombiaReport.pdf; *see also The Colombian Action Plan Related to Labor Rights: The View Through Workers' Eyes*, AFL-CIO.ORG, <http://www.aflcio.org/content/download/38251/594971/report+version+2+no+bug.pdf> (July 2012).

76. *TPP*, *supra* note 68.

77. *Id.* at art. 19 U.S.-VN Plan for Enhancement of Trade and Labor Relations.

78. *Id.* at art. 7-1.

79. *Id.* at art. 19 U.S.-MY Labor Consistency Plan.

80. *Id.* at 7-1.

81. *Id.* at art. 19 U.S.-BN Labor Consistency Plan.

inspectorate. Oversight, review, cooperation, and technical assistance are also provided. The Agreement states these obligations to be enacted “prior to the entry into force of the TTP Agreement between the United States and Brunei.”⁸²

The international union, International Trade Union Confederation (ITUC), released its list of labor issues it advocates are unaddressed or are under-addressed by the labor provisions in the TPP.⁸³ The critique does not address the three TPP-side agreements with Vietnam, Malaysia, and Brunei, but only the TPP. More specifically, it raises issues about continued ambiguities in the TPP provisions. It cites as examples, the vagueness of obligations, such as using the Declaration, rather than Conventions; allowing as “acceptable conditions of work,” where minimum standards of the laws are met even though conditions are not acceptable; the lack of more specificity as to when a labor violation “affects trade” so as to trigger remedial action; and continued inaccessibility of non-state parties to trigger the ISDS. Some progress was noted regarding treatment of migrants and of forced labor.

The Korean FTAs with other Asian countries may also be relevant. Whereas Korea has social dimension provisions with the US, EU, Australia, and Canada, it has no such labor provisions in its FTAs with Singapore or India.⁸⁴ By contrast, EPAs between Japan and Singapore, Malaysia, Thailand, Indonesia, Brunei, ASEAN, Philippines, Vietnam and India⁸⁵ include a general labor provision entitled ‘Investment and Labour’⁸⁶ that reiterates the ILO core labor rights and states that investment cannot be encouraged at the expense of weaker labor laws and their enforcement.⁸⁷

The P-4 is also in effect. Currently, its labor provisions may be thought of by some as relevant as the precursor of the eventual TPP. It is a plurilateral agreement among Brunei, Chile, New Zealand and Singapore.⁸⁸ It also includes mechanisms for ongoing cooperation and dialogue

82. *Id.* at art. 7-1.

83. *Trans Pacific Partnership Labour Chapter Scorecard Fundamental Issues Remain Unaddressed*, INTERNATIONAL TRADE UNION CONFEDERATION, http://www.ituc-csi.org/IMG/pdf/trans_pacific.pdf (last visited January 25, 2015).

84. *See Asia-Pacific*, MINISTRY FOREIGN AFF. REPUBLIC KOREA, http://www.mofat.go.kr/ENG/policy/bilateral/asiapacific/index.jsp?menu=m_20_140_10 (last visited May 12, 2015).

85. Olivia, *supra* note 46; *see also Japan's EPA*, *supra* note 47, at 3.

86. *See, e.g., Free Trade Agreements (FTAs) and Economic Partnership Agreements (EPA)*, MINISTRY FOREIGN AFF. JAPAN (Apr. 2014), <http://www.mofa.go.jp/policy/economy/fta/>. The Japan-Philippines Economic Partnership Agreements (EPAs) is the exception and has no investment and labor provision. Agreement Between Japan and the Republic of the Philippines for an Economic Partnership, Japan-Phil., art. 103, Sept. 9, 2006, <http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/main.pdf>.

87. Indonesia has an EPA with Japan that has no labor standards but does have chapter 7 that deals with movement of natural persons pertaining only to visas. Agreement Between Japan and the Republic of Indonesia for an Economic Partnership, Japan-Indon., ch. 7, Aug. 20, 2007, <http://www.mofa.go.jp/region/asia-paci/indonesia/epa0708/agreement.pdf>.

88. *Brunei Darussalam's FTA Policy*, MINISTRY FOREIGN AFF. TRADE

on labor and environment issues. As indicated above, the P-4 partners are currently negotiating with Australia, Malaysia, Peru, the US and Vietnam, to expand the P-4, and, upon its conclusion, it will be referred to as the Trans-Pacific Partnership (TPP).⁸⁹

The P-4 has an important side agreement on labor presently in effect, namely the Labour Cooperation Memorandum of Understanding (MOU) that reflects a shared desire to encourage and promote sound labor practices.⁹⁰ This MOU has the *promise* of improved labor provisions, placing some obligations on the parties (including two ASEAN members), as described in the labor section below.⁹¹

Memorandum of Understanding on Labour Cooperation among
the Parties to the Trans-Pacific Strategic Economic Partnership
Agreement

Article 2: Key Elements/Commitments

1. Parties that are members of the ILO reaffirm their obligations as such.
2. The Parties affirm their commitment to the principles of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).
3. Each Party shall work to ensure that its labor laws, regulations, policies and practices are in harmony with their international labor commitments.
4. The Parties respect their sovereign rights to set their own policies and national priorities and to set, administer and enforce their own labor laws and regulations.

BRUNEI, <http://www.mofat.gov.bn/index.php/free-trade-agreements-ftas/brunei-darussalam-s-fta-policy> (last visited Aug. 17, 2014).

89. The TPP began in 2005 as the Trans-Pacific Strategic Partnership Agreement (TPSEP or P4). See P-4 Agreement, *supra* note 62. The P-4 Memorandum aims to improve understanding and encourage dialogue on labor matters, as well as promoting sound labor policies and practices. According to the text, article 20.4 states that the original 4 members would come into effect on January 1, 2006, once the signatories have deposited “instruments of ratification.” See Memorandum of Understanding on Labour Cooperation Among the Parties to the Trans-Pacific Strategic Economic Partnership Agreement, Brunei-Chile-N.Z.-Sing., Jun. 19, 1998, http://www.fta.gov.sg/tpfta/p3_authentic_labour_mou_text_english_v1.pdf [hereinafter MOU].

90. See P-4 Agreement, *supra* note 62; see also *Trans-Pacific Strategic Economic Partnership Agreement (P4) Chile-Brunei Darussalam-New Zealand-Singapore*, FOREIGN TRADE INFO. SYS. OAS SEDI DESD, http://www.sice.oas.org/TPD/CHL_Asia/CHL_Asia_e.asp (last visited Aug. 17, 2014). Article 6 of the MOU states the MOU is in effect between those countries that have ratified. See MOU, *supra* note 88, art. 6. The parties are engaged in labor educational and training activities under the MOU. See generally INT’L LABOR OFFICE, SKILLS AND EMPLOYABILITY DEP’T, REPORT ON THE TRAINING AND UP-SKILLING OF VULNERABLE GROUPS IN TPSEP COUNTRIES: BRUNEI DARUSSALAM, CHILE, NEW ZEALAND AND SINGAPORE (2009) [hereinafter REPORT ON TRAINING AND UP-SKILLING].

91. See MOU, *supra* note 88, arts. 2-3.

5. The Parties recognize that it is inappropriate to set or use their labor laws, regulations, policies and practices for trade protectionist purposes.

6. The Parties recognize that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labor laws.

7. Each Party shall promote public awareness of its labor laws and regulations domestically.

Implementation of the TPP will determine how this P-4 Memo may relate to the TPP and future ASEAN obligations.

The next inquiry is whether and to what extent ASEAN and its members have implemented the ILO's core labor standards into domestic law.

III. HARMONIZING LABOR STANDARDS FOR GLOBAL INTEGRATION

A. *Member States' Domestic Labor Laws*

A very brief introduction to labor and employment laws in the ASEAN countries is provided below to show some highlights of the current state of legislative development of its labor laws. It is left for another project to comprehensively cover the practical and substantive aspects of the labor laws of each country, including the ebb and flow of migrant laborers – skilled and unskilled, documented and undocumented. As this section will show, most ASEAN countries have much yet to do to have their laws meet ILO core labor standards. This task will be addressed by the individual countries, AEC, ILO, and the monitoring bodies of FTAs. This paper addresses the possibility of using innovative tools under FTAs to assist in their development.

Brunei's general labor law is governed by the Constitution of Brunei Darussalam Employment Order 2009 ("Employment Order"),⁹² which repealed the previous labor regulations under Brunei's Labour Act, Chapter 93 ("Labor Act").⁹³ The Employment Order contains provisions for contracts of service and apprenticeship, wages and hours of work, employment of women and children, and regulations for the employment of migrant workers.⁹⁴ Brunei also has old laws on its books directly relating to the core ILO standards regarding freedom of association,⁹⁵

92. Labour Law 1954, ch. 1, § 2 (as amended 2002) (Brunei).

93. Employment Order 2009 (Brunei).

94. *Id.* at § 153.

95. Trade Unions Act 1961, ch. 128 (Brunei), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/78241/102051/F798030527/BRN78241.pdf> (regulating trade unions' composition, rules, registration, funding, etc.). Foreign workers are excluded from this legislation, and the law forbids affiliation with international labor organizations without consent from the minister of home affairs and the Department of Labor. *Human Rights and Labor, Country Reports on Human Rights Practices for 2013: Brunei*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY (2014), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220181&sthash.Fu0KcrsH.dpuf>.

elimination of forced labor,⁹⁶ and elimination of child labor,⁹⁷ but workers have no right to form trade unions, participate in collective bargaining, or strike.⁹⁸ Brunei also does not have a law on point for elimination of employment discrimination.

Cambodia's Royal Kram promulgating the Labor Law is the primary source of law in employment regulation.⁹⁹ Cambodia also regulates freedom of association,¹⁰⁰ elimination of forced labor,¹⁰¹ elimination of child labor,¹⁰² and prohibits discrimination against those with HIV/

96. See Women and Girls Protection Act 1984, ch. 120 (Brunei), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/78243/86019/F1412097071/BRN78243.pdf> (providing protection for the trafficking and prostitution of women and girls).

97. See Children and Young Persons Act 2012, ch. 219 (Brunei), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/73344/115574/F-1341495003/BRN73344%20.pdf> (establishing juvenile courts, protection for trafficking of children and young persons, and temporary custody, medical treatment, and a list of offences related to the health and welfare of children and young persons). Parental consent and approval by the Labor Commission are required before children under 18 are permitted to work. *Human Rights and Labor, Brunei 2013 Human Rights Report*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY (2013), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220181#sthash.Fu0KcrsH.dpuf>.

98. Nadia Gire, *The Trans-Pacific Partnership Agreement: A Revival in United States Trade Policy Reform*, 20 CURRENTS INT'L TRADE L.J. 60, 67 (2012).

99. See generally Kram on the Labor Law 1997 (Cambodia), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/46560/89368/F135012943/KHM46560.pdf>. The law excludes Judges of the Judiciary, persons appointed to a permanent post in public service, personnel in the Army, Military Police, and Police who are governed by a separate state, those serving in maritime transportation, and "domestics or household servants, unless otherwise expressly specified under this law." *Id.* at ch. 1, § 1, art. 1. Domestic and household servants are "entitled to apply the provisions on freedom of union under this law" as opposed to the general application of the Cambodian Labor Law. *Id.*

100. For collective bargaining laws, see Prakas No. 305 of 2001 Regarding the Representativeness of Professional Organizations of Workers at Enterprise or Establishment Level and the Right to Collective Bargaining for the Conclusion of Collective Agreements at that Level, November 22, 2001 (Cambodia) http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=61277&p_country=KHM&p_count=175&p_classification=02&p_classcount=11; Prakas No. 005 on the Right to Strike, March 6, 2000 (Cambodia), http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=82031&p_country=KHM&p_classification=02. There are, however, limitations to collective bargaining, such as an absence of clear or reasonable criteria for determining representative organizations, restrictions on who may be a union leader, and cumbersome procedures to be fulfilled before unions may strike. *Survey of Violations of Trade Union Rights: Cambodia*, ITUC (Mar. 3, 2010), <http://survey.ituc-csi.org/Cambodia.html#tabs-2>.

101. Law on Suppression of Kidnapping, Trafficking, and Exploitation of Human Persons, January 16, 1996 (Cambodia), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/59890/60877/F655666645/KHM59890%20English.pdf>. Although forbidden by law, there were still reports of forced labor through domestic service in the informal sector. *Human Rights and Labor, Country Reports on Human Rights Practices for 2013: Cambodia*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY (2013), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dclid=220185#sthash.Q9QoWOBa.dpuf> (last visited May 1, 2015) [hereinafter *Cambodia Country Report*].

102. The National Plan of Action on the Worst Forms of Child Labor

AIDS.¹⁰³ However, in May 2015, The International Trade Union Confederation (ITUC) reported Cambodia was poised to revise and weaken its labor laws.¹⁰⁴ This is noteworthy since it is one of three ASEAN countries that have ratified all the ILO Conventions relating to the eight core labor conventions.¹⁰⁵ The U.S.-Cambodia Textile Agreement has been an additional external source of labor regulation, monitored in part by the ILO, which provides a framework to monitor working conditions in garment factories as well as pave way for new laws to improve these conditions, increase worker awareness of international labor standards and rights under existing Cambodian law, and increase workers' individual capacities to improve their working conditions to comply with national and international law.¹⁰⁶

(NPA-WFCL) ended in 2012. The Department of Child Labor, with technical assistance from the ILO, is incorporating information from the 2013 Child Labor Survey into the development of a new plan. The National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labor, and Sexual Exploitation (NPA-STSLs) and MOSAVY's First Occupational Safety and Health Master Plan ended in 2013. The NC/STSLs announced that the Second NPA-STSLs, covering years 2014 – 2018, has been drafted and was launched in February 2015. *Cambodia, 2014 Findings on the Worst Forms of Child Labor*, U.S. DEP'T LAB., <http://www.dol.gov/ilab/reports/child-labor/cambodia.htm> (last visited Feb. 5, 2016). Fifteen is the minimum age for employment and eighteen is the minimum age for hazardous work; children between ages 12 and 15 may engage in "light work" (non-hazardous) as long as it does not affect school attendance and work is restricted to no more than four hours on school days and seven hours on non-school days. *Cambodia Country Report*, *supra* note 100.

103. Royal Kram on the Prevention and of HIV/AIDS 2002, ch. VIII (Cambodia); Royal Decree (Preah Reach Kret) on the Creation of a National Council for Women 2001 (Cambodia).

104. ITUC reports,

Cambodia's plans to further reduce its weak labour protections have come under attack from the ITUC and Global Union Federations. A series of new measures, being developed behind the scenes by the government, would further restrict rights for the country's impoverished workforce. The new legislation would exclude large segments of the workforce from labour law protection, set unreasonably high membership thresholds for union registration, give the government sweeping powers to suspend unions, undermine collective bargaining rights and allow government officials to ban strikes or lock-outs without proper recourse to the courts.

Cambodian Government Set to Further Weaken Labour Rights and Export Workers to Qatar, ITUC (May 22, 2015), <http://www.ituc-csi.org/cambodian-government-set-to>.

105. The ILO has eight core provisions as a part of the labor standards: the 1930 Forced Labour Convention (No. 29), 1984 Freedom of Association and Protection of the Right to Organize Convention (No. 87), 1949 Right to Organize and Collective Bargaining Convention (No. 98), 1951 Equal Remuneration Convention (No. 100), 1957 Abolition of Forced Labour Convention (No. 105), 1958 Discrimination (Employment and Occupation) Convention (No. 111), 1973 Minimum Age Convention (No. 138), and the 1999 Worst Forms of Child Labour Convention (No. 182). *Conventions and Recommendations*, INT'L LABOUR ORG. [ILO], <http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> (last visited Apr. 26, 2014).

106. Wells, *supra* note 51, at 357-75; *see also* Sibbel & Borrmann, *supra* note 51; Oka, *supra* note 51; Adler & Woolcock, *supra* note 51.

Indonesia's Law No. 13/2003 Concerning Manpower ("Manpower Act") covers labor relations and basic principles of labor and employment.¹⁰⁷ It also contemplates the core ILO labor standards, and it has separate chapters specifically regulating employment discrimination,¹⁰⁸ and promoting the elimination of child labor¹⁰⁹ and forced labor,¹¹⁰ and freedom of association and collective bargaining.¹¹¹ Indonesia was the first Asian country to ratify all eight of the core labor conventions and is reported to have fulfilled its obligation to improve its labor laws with the promulgation of the Trade Union Act (2000), the Manpower Act (2003), and the Settlement of Industrial Disputes Act (2006).¹¹² Despite provisions for workers' rights, Indonesian unions still face difficulties in effective collective bargaining, freedom of association, and strikes.¹¹³

Laos has seen three versions of its labor code, with the most recent promulgation in 2013 titled Labour Law, 2013.¹¹⁴ The Labour Law encompasses the eight core ILO standards, although Laos has not ratified the conventions relating to freedom of association and collective bargaining. Nonetheless, Section XIV, chapters 3 and 4 of the Labour Law specifically provides for 'Agencies Representing Employees' and 'Bargaining and Collective Labor Contracts'.¹¹⁵ This law still does not permit Laotian workers the right to strike, and workers may only form unions if they operate within the framework of the officially sanctioned Lao Federation of Trade Unions.¹¹⁶ Forced labor and child labor are covered in Section VI, while anti-discrimination is defined at the outset under Article 3 'Inter-

107. 13 Concerning Manpower Act 2003 (Indon.).

108. *Id.* at ch. 3.

109. *Id.* at ch. 10, arts. 69-75.

110. *Id.* at ch. 10, arts. 77-86.

111. *Id.* at ch. 11.

112. Susanna Palmer, *Freedom of Association and Collective Bargaining: Indonesian Experience 2003-2008* (Int'l. Labour Org., Working Paper, 2009), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_116126.pdf.

113. *Survey of Violations of Trade Union Rights: Indonesia*, ITUC (Feb. 18, 2014), <http://survey.ituc-csi.org/Indonesia.html#tabs-2>. Unions can still be refused official registry on arbitrary grounds and must deal with formalities that excessively delay the free establishment of organizations. *Id.* Collective bargaining rights are also impaired through Article 119 of the Manpower Act, requiring 50% support from its union in order to bargain collectively, and face compulsory conciliation and/or binding arbitration procedures in the event of collective bargaining. *Id.* Further, the right to strike is limited to specific issues, workers can be fined for non-authorized strike actions, and certain sectors follow varying and more stringent regulations on strikes. *Id.*

114. Labor Law No. 43 2013 (Laos), <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/96369/113864/F1488869173/LAO96369%20Eng.pdf> [hereinafter Laos Labor Law]; *The Basic Rules of Employment in Laos: Updates to the Lao Labor Law*, JCLAO.COM (Dec. 16, 2014), <http://jclao.com/the-basic-rules-of-employment-in-laos/>.

115. Laos Labor Law, *supra* note 113, section XIV, ch. 3-4.

116. *Country Reports on Human Rights Practices for 2013: Laos*, U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR (2013), <http://www.state.gov/j/drl/rls/hrrpt/2013humanrightsreport/index.htm#wrapper> (last visited May 1, 2015) [hereinafter *Laos Country Report*].

pretation of terms' and covered again under Section XII 'Prohibitions'.¹¹⁷ The law prohibits all forms of compulsory labor except in time of war or national disaster.¹¹⁸

Malaysia has ratified six of the eight fundamental ILO labor rights, but has not yet ratified Conventions 87 and 111, freedom of association and prohibition on discrimination, respectively.¹¹⁹ Its general labor laws are found in the Employment Act 1955 amended in 2012, the Trade Unions Act 1959, The Industrial Relations Act 1967, The Children and Young Persons Act 1966, and a handful of other laws relating to worker safety, worker's compensation, wages, and social security.¹²⁰ The two primary laws governing the employer and employee relationship in Malaysia are the Industrial Relations Act 1967 (IRA) and the Employment Act 1955 (EA).¹²¹ Both are federal laws under the Ministry of Human Resources; however IRA and EA differ in scope and administrative instruments.¹²² The IRA regulates the relationship between the employers, employees, and their trade unions, and provides for the prevention or settlement of disputes that may arise between them.¹²³ The EA regulates the relationship between employers and employees and sets out various terms and conditions of employment establishing the base requirements that every employer must provide—and to which each employee is enti-

117. Laos Labor Law, *supra* note 113, section XII, art. 141.

118. It is reported that with limited personnel investigating incidents of forced labor, the implementation of the law has been less than effective. The agriculture industry reportedly subjected some adults and children to forced labor, and laborers finding employment through local brokers suffer potential harms such as nonpayment, intimidation, and compulsory seasonal hours in harsh conditions. *Laos Country Report*, *supra* note 115.

119. Malaysia has omitted Convention No. 87 and No.111. *Ratifications for Malaysia*, INT'L. LABOUR ORG. [ILO], http://www.ilo.org/dyn/normlex/en/f?p=NORML-EXPUB:11200:0::NO::P11200_COUNTRY_ID:102960 (last visited May 1, 2015).

120. Other key statutory regulations include the Workmen's Compensation Act 1952 (Act 273/2006) (Malay.), Factory and Machinery Act 1967 (Act 139/2006) (Malay.), National Wages Consultative Council Act 2011 (Malay.), and Employees Social Security Act 1969 (Act 4/2006) (Malay.); Alice Wang, *Your Global Workforce in Asia*, CROSS BORDER EMPLOYER (Mar. 8, 2012, 6:32 AM), <http://www.crossborderemployer.com/post/2013/03/08/Your-Global-Workforce-in-Malaysia.aspx>.

121. DUNSTON AYADURAI, *INDUSTRIAL RELATIONS IN MALAYSIA: LAW AND PRACTICE* 4-5 (1992).

122. The Industrial Relations Act 1967 (IRA) is administered by the Department of Industrial Relations, while the Employment Act 1955 (EA) is administered by Department of Labour Peninsular Malaysia. The Industrial Relations Act 1955 differs significantly from the Employment Act 1955 in that 1) the IRA applies throughout Malaysia whereas the EA only applies to Peninsular Malaysia; 2) the IRA applies to both the public and private sectors whereas the EA only applies to the private sector; and 3) the IRA applies to employers and employees as well as their trade unions, whereas the EA only applies to employers and employees regardless of unionization. *Id.* at 4.

123. *See generally* Industrial Relations Act 1967 (Act 177/2006) (Malay.), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48066/99440/F1841123767/MYS48066.pdf>.

tled, whether unionized or not.¹²⁴ Trade Union Rights are also controlled by the Trade Union Act, which provides certain privileges and limitations to Malaysian workers' rights.¹²⁵ Unions are allowed but not adequately protected by legislation and suffer challenges in terms of discrimination, freedom to form and choose their own organization, the right to recognize and choose their bargaining agents, and limitations on lawful strike actions.¹²⁶

Myanmar does not have a single form of legislation regulating labor;¹²⁷ rather it draws from several different laws.¹²⁸ The major laws still in force are those concerning working hours,¹²⁹ wages and benefits,¹³⁰ trade unions,¹³¹ and social security.¹³² Of the eight core ILO labor standards, Myanmar has ratified three, including No. 87, No. 29, and No. 182 which cover freedom of association and collective bargaining, elimination of forced and compulsory labor, and abolition of child labor, respectively. Like many other ASEAN countries, trade unions face difficulties in the assertion and protection of their workers' rights. Some of the issues include stringent regulations on the establishment of union organizations, fixed and unreasonable procedural requirements on collective bargaining, and bans and limitations on the right to strike.¹³³

In the Philippines, The Labor Code of the Philippines, Presidential Decree No. 442 (Decree No. 442) ("Labor Code") created the general provisions of Filipino labor policy, delegating power to the Department of Labor and other government agencies in the administration and

124. See generally Employment Act 1955 (Act 265/2006) (Malay.), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/48055/99040/F759714105/MYS48055.pdf>.

125. Trade Unions Act 1959 (Act 262/2006) (Malay.).

126. *Survey of Violations of Trade Union Rights: Malaysia*, ITUC (Mar. 3, 2010), <http://survey.ituc-csi.org/Malaysia.html#tabs-2>.

127. The Revolutionary Council Law No. 6 of 1964 first set out the framework for labor and employment in The Law Defining the Fundamental Rights and Responsibilities of the People's Workers (Law No. 6) in the former Union of Burma. See Law Defining the Fundamental Rights and Responsibilities of the People's Workers 1964 (Myan.). In 2011, President Thein Sein signed into effect the 2011 Pyidaungsu Hluttaw Law No. 12 on November 21, revoking the 1964 law. See The Law Revoking the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers 2011 (Myan.).

128. Eric Rose & Nina Dunn, *Inside: Investing in Myanmar and Diving into a New Labor Pool*, MYAN. BUS. TODAY (Feb. 17, 2014), <http://mmbiztoday.com/articles/inside-investing-myanmar-and-diving-new-labour-pool>.

129. The Leave and Holidays Act relates to the hours and regulations that involve taking leave and holidays in Myanmar. The Leave and Holidays Act 1951 (Myan.).

130. The Minimum Wages Act of 2013 sets the floor for pay and the rights of workers relating to minimum wages. The Minimum Wages Act 2013 (Myan.).

131. The Labor Organization Law provides workers with negotiation and union rights in order to facilitate worker-employer disputes. Labour Organization Law 2011 (Myan.).

132. This law provides wages and medical payment for covered injuries sustained in the workplace. The Social Security Law 2012 (Myan.).

133. *Survey of Violations of Trade Union Rights: Myanmar*, ITUC (Feb. 18, 2014), <http://survey.ituc-csi.org/Burma.html#tabs-2>.

enforcement of the labor code, and applying all the rights and benefits to workers, whether agricultural or non-agricultural.¹³⁴ The Labor Code also provides workers the right to strike and form unions,¹³⁵ abolishes child labor,¹³⁶ and eliminates employment discrimination.¹³⁷ Other major laws include workers compensation,¹³⁸ healthcare,¹³⁹ anti-trafficking,¹⁴⁰ and anti-discrimination laws.¹⁴¹ Trade unions must also deal with administrative difficulties in establishing union organization, as well as restrictions on their right to control elections of union representatives.¹⁴² While collective bargaining is permitted, it requires authorization and majority support from the bargaining unit (union) according to the Labor Code, Art. 231. Furthermore, strikes are limited to specific issues by Art. 263, and workers face civil or penal sanctions for non-authorized strike actions.¹⁴³

Singapore follows the Employment Act as its major body of employment law.¹⁴⁴ The Employment Act largely sets out the framework for labor, and includes contracts of service, part-time employee terms, wages, hours of work, employment of children and young persons, domestic workers, and procedures and regulations for any workplace grievances.¹⁴⁵ Singapore also has laws relating to industrial relations and trade unions,¹⁴⁶ and workplace and occupational safety.¹⁴⁷ Singapore has ratified six of the

134. Labor Code of the Philippines 2002 (Phil.), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/15242/102473/F204947657/PHL15242.pdf> [hereinafter Philippine Labor Code No. 442].

135. *Id.* at title VIII, ch. 1.

136. *Id.* at title III, ch. 2.

137. *Id.* at title III, ch. 1, art. 135 (women); *Id.* at title III, ch. 2, art. 140 (age).

138. Amended Rules on Employees' Compensation 1987 (Phil.), http://www.chanrobles.com/amendedrulesonemployeescompensation.htm#Uw_IYBZCg6U.

139. National Health Insurance Act of 1995 (Phil.).

140. Anti-Trafficking in Persons Act of 2003 (Phil.).

141. Women and employees with HIV/AIDS are protected from employment discrimination under several forms of legislation. *See, e.g.*, The Magna Carta of Women 2009 (Phil.); Philippine AIDS Prevention and Control Act of 1998.

142. *Survey of Violations of Trade Union Rights: Philippines*, ITUC (Feb. 18, 2014), <http://survey.ituc-csi.org/Philippines.html#tabs-2>.

143. *Id.*

144. Pradeep Pillai & Stephanie Wee, *Employment and Employee Benefits in Singapore: Overview*, PRACTICAL LAW (Aug. 1, 2012), <http://us.practicallaw.com/5-521-2216#a959361>.

145. *See generally* Employment Act 1968, ch. 91 (as amended 2014) (Sing.).

146. *See* Industrial Relations Act 1960, ch. 136 (as amended 2011) (Sing.), which sets out regulations and procedure for industrial relations and arbitration courts; Trade Unions Act 1941, ch. 129 (as amended 1993) (Sing.), regulating the activities of trade unions and union affairs and establishing safe custody of funds and election of union officers; Trade Disputes Act 1941, ch. 331 (as amended 1981) (Sing.), providing regulations, procedures, and penalties for union strikes.

147. The Work Injury Compensation Act (Chapter 354) (Singapore WCA) determines the definitions, offices, employer liability, computation of benefits, payments schedule, and insurance provisions of providing compensation for work-related injuries. *See* Work Injury Compensation Act 1975, ch. 354, part I, sec. 2(1) (as amended 2008) (Sing.), http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=SGP&p_classification=15.03&p_origin=COUNTRY&p_sortby=SORBTBY_COUNTRY.

eight fundamental ILO labor standards, but it has not yet ratified Convention No. 87 (freedom of association) and No. 111 (elimination of discrimination in respect of employment and occupation), and on April 19, 1979 it denounced its ratification of Convention No. 105 (elimination of forced and compulsory behavior) and thus is not in force.¹⁴⁸ Singapore's trade unions require authorization before being given the right to organize their administration, and civil servants, public employees, migrant workers, and some others are prohibited from forming unions altogether.¹⁴⁹ Collective bargaining is limited in its scope, while the right to strike requires 50% plus one of the trade union's members to vote in favor of it, and there is no specific legislation prohibiting retaliation against strikers.¹⁵⁰

In Thailand, The Labour Protection Act, B.E. 2541 (1998) provides the primary source of employment regulation for all documented and undocumented workers.¹⁵¹ The Act covers minimum wages, maximum working hours, occupational health and safety, and establishes the Department of Labour Protection and Welfare to conduct inspections and enforce sanctions against violators of the law.¹⁵² The 1975 Labour Relations Act¹⁵³ and the 1998 Labour Protection Act provide Thai workers the right to organize so long as at least ten workers in the same factory or industry form a trade union.¹⁵⁴ Thailand also has laws to prevent human trafficking¹⁵⁵ and eliminate child labor for those under the age of fifteen (thirteen in work involving non-hazardous agricultural work).¹⁵⁶

148. *Ratifications for Singapore*, INT'L. LABOUR ORG. [ILO], http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103163 (last visited May 1, 2015).

149. *Survey of Violations of Trade Union Rights: Singapore*, ITUC (Mar. 3, 2010), <http://survey.ituc-csi.org/Singapore.html#tabs-2>.

150. *Id.*

151. Labour Protection Act B.E. 2541, 1998 (Thai.). This Act exempts workers in the fishing sector. Asian Research Ctr. for Migration, Inst. of Asian Studies, Chulalongkorn Univ., *Employment Practices and Working Conditions in Thailand's Fishing Sector*, at 17, INT'L LABOUR ORG. [ILO] (Feb. 24, 2014), http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_220596.pdf [hereinafter *Thailand Employment Practices*].

152. *Id.*

153. Labour Relations Act B.E. 2518, 1975 (amended 2001) (Thai.) provides regulations for labor relations, including labor dispute settlement mechanisms, unions, terms and restrictions on lock-outs and strikes, and penalties for violations of the law.

154. *Internationally Recognised Core Labour Standards in Thailand*, ITUC 2 (2011), http://www.ituc-csi.org/IMG/pdf/tpr_thailand_final.pdf [hereinafter *Thailand Labor Standards*]. However, non-nationals may not form a union but can join existing trade unions, and cannot hold union leadership posts. *Id.* Incidentally most migrant workers only work amongst other migrant workers, and industries comprised of other non-nationals, thereby making it nearly impossible to organize in any way. *Id.*

155. The Anti-Trafficking in Persons Act B.E. 2551, 2008 (Thai.) prohibits all forms of trafficking and provides strict penal sanctions against offenders. *Id.*

156. Although employment protection for children is included in the Labor Code and bolstered by Ministerial Regulation No. 6 (1998) (Thai.) (forbidding types of work for persons under 18 years of age that are excessively hazardous), the Child

Anti-discrimination regulations are in the Labour Protection Act under Section 11/1, as provided by the Labour Protection Act amendment in 2008, B.E. 2551 (Act No. 2).¹⁵⁷

In Vietnam, the 2013 Labor Code is the framework of the labor and employment system.¹⁵⁸ It provides a minimum salary level during the probation period, a minimum salary level in case of a change or re-allocation of duties, increased official holiday leave, increased maternity leave, and increased rest time.¹⁵⁹ The Labor Code has recent amendments with respect to contract terms, overtime work, special treatment for some particular types of workers, and collective labor agreements.¹⁶⁰ Vietnam also has laws providing social insurance,¹⁶¹ elimination of forced labor,¹⁶² and anti-discrimination for employees with HIV/AIDS.¹⁶³ Vietnam has been a member of the ILO since 1992 and has ratified five of the eight core labor conventions.¹⁶⁴ Vietnam's 2013 Labor Code reflects its transition from a planned economy approach to one of privatization¹⁶⁵ and

Protection Act B.E. 2546, 2003 (Thai.) also regulates children's rights in terms of treatment, social welfare, protection, and provides penalties for violations of the law. The Labour Protection Act applies to child protection, however it does not apply to child domestic workers, and there is no regulation of their minimum age of working conditions. *Thailand Labor Standards, supra* note 153, at 2.

157. The amendment states that: "[t]he entrepreneur shall provide contract employees, who perform work in the same manner as employees under the employment contract, to enjoy fair benefits and welfare without discrimination." Labour Protection Act B.E. 2551, 2008 [Amendment] (Thai.). Women continue to face discrimination in employment, despite these protections, and tend to hold jobs in low skilled and low paid positions. *Thailand Labor Standards, supra* note 153, at 6. According to the Ministry of Social Development and Human Security, in 2007 women held 22 percent of managerial positions in publically listed companies and 35 percent in commercial companies. *Id.*

158. LABOR CODE OF THE SOCIALIST REPUBLIC OF VIETNAM (Viet.), <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91650/106402/F-1475261172/VNM91650%20Eng.pdf>.

159. TERRENCE F. MACLAREN, 7 ECKSTROM'S LICENSING: JOINT VENTURES § 25:21 (2015).

160. *Id.* It is also reported that a number of existing labor regulations will also be incorporated into the 2013 Labor Code to make it comprehensive. *Id.*

161. The Vietnam WCA created specific provisions for social insurance and policies, as well as the rights and obligations of employers and employees to social insurance. NATLEX, INT'L LABOUR ORG. [ILO], http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=VNM&p_classification=15&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY (last visited Apr. 25, 2014).

162. MEMORANDUM OF UNDERSTANDING ON COOPERATION AGAINST TRAFFICKING IN THE GREATER MEKONG SUB-REGION 2004 (Viet.).

163. LAW ON HIV/AIDS PREVENTION AND CONTROL (Viet.).

164. Vietnam has ratified Conventions 100 and 111 on discrimination, Conventions 138 and 182 on child labor, and Convention 29 on forced labor. MACLAREN, *supra* note 158. Convention 105 dealing with forced labor as a means of political coercion and discrimination and Conventions No. 87 and No. 98 on freedom of association and collective bargaining, have not been ratified, but Vietnam is considering doing so. *Id.*

165. *See generally Economic Renovation: Doi Moi*, EMBASSY VIET. (2011), http://www.vietnam.co.za/index.php?option=com_content&view=article&id=114:economic-renovation-doi-moi&catid=45:history-of-vietnam&Itemid=114. In 1986, the

globalization of work. This is reflected in its Law on Trade Unions, which clarifies the law regarding collective bargaining and trade unions.¹⁶⁶ Although it improves past legislation, the Trade Union Law limits workers' rights to form and join organizations of their choosing, excludes certain categories of workers from holding union office, and strictly regulates the activities of trade unions.¹⁶⁷ Vietnam has a complicated history of labor strikes ever since it obtained independence from the French in 1954, and the ability to strike and bargain collectively is considered a fundamental part of workers' labor rights.¹⁶⁸

B. *Domestic Gaps and Global Standards*

ASEAN central authorities traditionally have been reluctant to share or cede sovereignty to authorities from other ASEAN member states. Unlike the EU, central ASEAN authorities are not regularly used for inspecting and ensuring compliance and investigating most issues, trade or labor. Instead, ASEAN authorities must rely on the review and analysis of the ASEAN members' national authorities to determine standards and compliance. Disagreements and diversity may result among the national authorities. Though the ASEAN Secretariat may help mediate a dispute, issues of legal authority and enforcement arise in resolving such issues.¹⁶⁹

government launched the *Doi Moi* (the all-around renovation process) in order to gradually globalize and regionalize Vietnam with the modern world. *Id.* In 1986, when *Doi Moi* was introduced, Vietnam's state-owned enterprises represented the backbone of the country's economy. Sung-Hoon Park & Andrew Elek, *Review of the 2008 Individual Action Plan of Vietnam*, APEC (June 2009), http://mddb.apec.org/Documents/2009/SOM/SOM2/09_som2_015anx2.pdf; NGUYEN THI ANH VAN, TOWARD A WELL FUNCTIONING SECURITIES MARKET IN VIETNAM 8 (2004).

166. TRADE UNIONS LAW (Viet.). This law became effective on January 1, 2013 and confirms the right of employees to establish and join trade unions and to participate in trade union activities, covers the functions and responsibilities of trade unions and trade union members, outlines their responsibilities owed to the State, State agencies, organizations, individuals and enterprises employing employees, guarantees trade union activities, covers dispute resolutions, and deals with breaches of the laws covering trade unions. MACLAREN, *supra* note 158.

167. *Survey of Violations of Trade Union Rights: Vietnam*, ITUC (Feb. 18, 2014), <http://survey.ituc-csi.org/Vietnam.html#tabs-2>.

168. Tran Si Vy & Brady Coleman, *Strikes and Resolutions to Strikes Under Vietnamese Labor Law*, 18 SUM CURRENTS: INT'L TRADE L.J. 49 (2010) (citing Comm. on Foreign Relations, 90th Cong., Background Information Relating to Southeast Asia and Vietnam 50-62 (Comm. Print 1967)). Once it obtained its independence from France in 1954, Vietnam recognized strikes as a fundamental labor right and officially acknowledged it through Article 174 of Decree No. 29/SL, dated March 12, 1947. *Id.* It stated that workers have the right to assemble and strike, but pertinent language required that "a subsequent decree shall define the scope of exercise of these rights as well as mode of conciliation and arbitration." *Id.* (citing Decree, 1947, 29/SL, art.174 (Viet.)). Due to war between Vietnam and France, a subsequent decree was never issued and Decree No. 29/SL was never enforced. *Id.*

169. See ADBInstitute, *Giovanni Capanneli Speech at Launch of ASEAN 2030 – Toward a Borderless Economic Community*, YOUTUBE (Aug. 19, 2014), https://www.youtube.com/watch?v=Rs_M3WNUW1U (17:00-18:00).

The need at this time, perhaps as a catalyst for ASEAN and member state protection for labor rights, is for pressures and obligations to come from *external* institutions. This is apparent from the current under-regulation in many of the member states and the lack of social dimension provisions on labor in existing FTAs. Additionally, the very structure of ASEAN can be inhibiting; its individual member autonomy, which requires negotiation and domestic political considerations, would seem to inhibit broad-based and uniform labor standard protections and attainment of stated goals looking toward reforms. Without unanimous consent by member states, acceptance of proposals at the ASEAN level is unlikely, absent an external agreement and pressure from an FTA, like the TPP. Thus, ASEAN and its members can take a measureable step toward an umbrella protection of labor rights by acceding to an FTA with meaningful social dimension provisions on labor incorporating the ILO core labor standards, along with meaningful enforcement standards.

C. *Harmonizing and Action Agenda*

1. Searching for the Umbrella Under Which to Develop and Harmonize Labor Standards While Maintaining Diversity

Can ASEAN raise an umbrella of protection for the workers within its domain? Can harmonious labor laws arise from diversity and be harmonized while maintaining diversity? Even though its members are very diverse – economically, politically, and socially – ASEAN is becoming an increasingly desirable destination for foreign direct investment and commerce. However, at this time underdeveloped labor laws and inadequate protection of workers in many member states prevent facilitation of this economic development. Currently in accomplishing the tasks required in commerce, there is much ebb and flow of legal and illegal workers among member states (usually between undeveloped and developed countries). While ASEAN is addressing the labor mobility issue by credentialing skilled and professional workers,¹⁷⁰ there is still great need to clarify these

170. See Pruksacholavit, *supra* note 17, at 488.

The ASEAN Agreement on the Movement of Natural Persons was signed on November 19, 2012. This agreement allows temporary movement of skilled workers such as executives and professionals across companies within member regions. This agreement also does not facilitate permanent skilled labor movement among the ASEAN members. In order to facilitate the movement of business persons and skilled labor, three agreements were signed: the ASEAN Framework Agreement on Services (AFAS), the ASEAN Agreement on the Movement of Natural Persons, and the Mutual Recognition Arrangements (MRAs). AFAS was signed in 1995 by ASEAN member countries to liberalize trade in services by expanding the scope and depth of liberalization beyond those undertaken by Member Countries under GATs. AFAS adopts the same four modes of supply as used in GATs, including cross-border supply, consumption abroad, commercial presence, and presence of natural persons. However, AFAS only facilitates the liberalization of the temporary entry of foreign providers of services. It does not facilitate persons who are seeking permanent residence status or permanent employment.

Id. at 477-78 (citations omitted).

workers' legal eligibility under the other areas of workplace regulation typically addressed by labor standards legislation. This looming problem is even larger for those millions of unskilled and undocumented workers crossing borders for work.

External obligations on a number of ASEAN members arising from FTAs, such as from the TPP, place additional pressures on these countries to ratify ILO Conventions and upgrade their workers' domestic labor protections. Observers note that wide geographic and economic diversity place additional challenges to finding commonalities:

The 12 countries involved in the negotiation of the TPP are a highly diverse group by any measure. Unlike other plurilateral cooperation agreements, the TPP is widely dispersed geographically, with members from four of the world's seven continents. It is just as economically diverse. Australia's per capita income is 40 times that of Vietnam. The U.S. economy is 1,000 times the size of Brunei. Finding commonality amid such diversity cannot be easy.¹⁷¹

As discussed above, there are many FTAs and related international instruments coming into focus that will obligate ASEAN and its members to raise labor standards for their workers. These include the TPP, the RCEP, the FTAAP, the current P-4,¹⁷² the U.S.-ASEAN TIFA, and the E3 Initiative that obligate the parties to accept the ILO Declaration's core labor standards, all of which must be accommodated with adequate and effective protection of workers' rights in accordance with each participant's own law.¹⁷³ There is also the United States' three side agreements with Vietnam, Malaysia, and Brunei that is part of the TPP to address perceived weaknesses in labor laws and practices within specified deadlines and includes numerous commitments to protect union members

171. Jayant Menon, *TPPing into Irrelevance*, ASIAN DEV. BANK (Jul. 2, 2014), <http://www.adb.org/news/op-ed/tpping-irrelevance-jayant-menon>.

172. The P4 has an important side agreement on labor presently in effect, namely the Labour Cooperation Memorandum of Understanding (MOU) that reflects a shared desire to encourage and promote sound labor practices. *See* MOU, *supra* note 88; *see also* P-4 Agreement, *supra* note 62. The parties are engaged in labor educational and training activities under the MOU. *See generally*, REPORT ON TRAINING AND UP-SKILLING, *supra* note 89.

173. *See* U.S.-ASEAN Framework, *supra* note 51; *see also* Dean A. DeRosa, *U.S. Free Trade Agreements with ASEAN*, in FREE TRADE AGREEMENTS: U.S. STRATEGIES AND PRIORITIES (Jeffrey J. Schott ed., 2004). The U.S. and ASEAN are also negotiating the Expanded Economic Engagement (E3) Initiative, which establishes a framework to expand cooperation to boost trade and investment between the United States and the ASEAN. *See* Murray Hiebert, *The E3 Initiative: The United States and ASEAN Take a Step in the Right Direction*, CTR. STRATEGIC & INT'L STUDIES (Dec. 21, 2012), <http://csis.org/publication/e3-initiative-united-states-and-asean-take-step-right-direction>. The E3 will begin by working on four specific priorities: Its initiatives include obtaining a trade facilitation agreement to simplify customs, develop and improve communications technology, address investment policies, and work to harmonize standards across the region. *Id.*

and improve worker rights.¹⁷⁴ Finally, some ASEAN members have EPAs with Japan that touch on labor protection standards.¹⁷⁵

When considering the international external pressures and obligations on ASEAN and member countries to develop and upgrade labor law protections, it would seem a prudent decision for ASEAN and its members to step forward to develop guidelines and avenues of cooperation and coordination toward that end. But how?

2. Identifying Model Approaches

Models do exist, such as a political model in the European Union with use of directives; or a legislative model, such as a federal-state legislative approach with guidelines and financial incentives from the former; or a social dimension provision for labor protections contained in a FTA; or a cooperation-coordination provision that facilitates implementation of agreed-upon obligations, such as those existing in many FTAs; as well as other innovations. The political and legislative models mainly keep the oversight within the regional entity, whereas the use of FTAs and ratifications of ILO conventions invites external inspection, review, pressures, and determinations, which may act as a catalyst for change.

Borrowing other regional models of governance is fraught with difficulties due to the inevitable differences in cultural homogeneity, geography, and history, to name but a few factors. It has been observed on this issue that while comparisons can be made between the decision-making structures in ASEAN and the EU, given the unique circumstances of each region, “analogies between the two may be counter-productive.”¹⁷⁶ Others have noted, “EU is in a level of supra-national co-operation while ASEAN is in a level of inter-national co-operation.”¹⁷⁷ At the heart of the current political difference is the ability of EU through its directives to compel a result as contrasted to ASEAN’s authority to use only its persuasion to seek consensus.

Another model to consider is a “federal”-“state” legislative model wherein a central entity sets up labor standard guidelines for states to

174. FERGUSSON ET AL., *supra* note 51, at 38-40.

175. There is discussion, pre-signing of the TPP, in Japan, which has EPAs with Singapore, Malaysia, Thailand, Indonesia, Brunei, ASEAN, Philippines, Vietnam, and India. *Free Trade Agreement (FTA) and Economic Partnership Agreement (EPA)*, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Oct. 19, 2015), <http://www.mofa.go.jp/policy/economy/fta/index.html>. The Japan-Philippines Economic Partnership Agreements (EPAs), for example, contain Article 103, declaring that the parties shall strive to ensure that they do not derogate from or weaken the protections afforded in domestic labor laws. Japan-Philippines Free Trade Agreement, Japan-Phil., art. 103, Sept. 9, 2006, <http://www.mofa.go.jp/region/asia-paci/philippine/epa0609/main.pdf>.

176. Edward Moxon-Browne & Philomena Murray, *The EU as a Template for ASEAN?*, EAST ASIA FORUM (May 3, 2013), <http://www.eastasiaforum.org/2013/05/03/the-eu-as-a-template-for-asean/>; see also NGUYEN ANH THU & NGUYEN THI MAI ANH, ASEAN AND EU ECONOMIC INTEGRATION: A COMPARATIVE ANALYSIS (Asian Dev. Bank, May 2009).

177. Pruksacholavit, *supra* note 17, at 487-495.

consider and implement with funding incentives to implement and administer the program. This is the approach used in the U.S. to implement its unemployment program, but it could be used for a variety of labor standard programs.¹⁷⁸ Because it is tied to taxes and credits for states opting in and ASEAN does not have taxing authority over its members, this model cannot be duplicated at this time, but perhaps with some innovation an analogous system of guidelines and funding assistance could be envisioned.

A likely choice of a model is to embrace a FTA with social dimension labor protections. Setting aside political considerations, an easily available first step would be for ASEAN and its member states to become parties to a FTA that involves a social dimension provision with labor protections and an administrative cooperation and coordination provision to deal with trade and labor disputes.¹⁷⁹ Examples of such arrangements can be found in the KORUS Agreement between the U.S. and Korea and CETA, the E.U.-Canadian FTA.¹⁸⁰ Certainly ASEAN or its members could add a social dimension provision on labor to its existing FTAs, or more likely, as the TPP, RCEP, and the FTAAP move forward as an ever-developing reality, they will become parties to these obligations. As that occurs, future emphasis will be on how to implement and enforce the labor obligations so they work in practice.¹⁸¹

178. The UC program is a federal-state partnership based upon federal law, but administered by state employees under state law. It is almost totally funded by employer taxes; either federal or state law defines certain requirements for the program and sets forth broad coverage provisions, some benefit provisions, the federal tax base and rate, and administrative requirements. The major functions of the federal government are to: ensure conformity and substantial compliance of state law, regulations, rules, and operations with federal law; determine administrative fund requirements and provide money to states for proper and efficient administration; set broad overall policy for administration of the program, monitor state performance, and provide technical assistance as necessary; and hold and invest all money in the unemployment trust fund until drawn down by states for the payment of compensation. Each state designs its own UC program within the framework of the federal requirements. The state statute sets forth the benefit structure (e.g., eligibility/disqualification provisions, benefit amount) and the state tax structure (e.g., state taxable wage base and tax rates). The primary functions of the state are to: determine operation methods and directly administer the program, take claims from individuals, determine eligibility, insure timely payment of benefits to workers, determine employer liability, and assess and collect contributions. U.S. DEP'T. OF LABOR, OFFICE OF UNEMPLOYMENT INS., UNEMPLOYMENT COMPENSATION: FEDERAL-STATE PARTNERSHIP (Apr. 2015).

179. For more information, see VILLARREAL, *supra* note 74; *The North American Agreement on Labor Cooperation*, THE NAALC, <http://www.naalc.org/> (last visited May 12, 2015).

180. Detailed discussion of the rights and obligations of the U.S. FTAs can be found in Brown, *supra* note 30. See also, Mary Jane Bolle, CONG. RESEARCH SERV., RS22823, OVERVIEW OF LABOR ENFORCEMENT ISSUES IN FREE TRADE AGREEMENTS (2014).

181. Ronald C. Brown, *FTAs that Also Protect Workers: Expanding the Reach of Social Dimension Provisions on Labor to Promote, Compel, and Implement ILO Core Labor Standards*, in PROCEEDINGS EMPLOYMENT RELATIONS AND TRANSFORMATION

3. Next Step: Identifying Labor Issues in ASEAN

As ASEAN moves toward becoming parties to FTAs that include social dimension provisions on labor standards and protections, stock should be taken on not only how to advance, but also what areas of labor laws to advance.¹⁸² Some of this may be underway, but awaiting completion, as the ASEAN Labor Ministers' Work Program 2010-2015 earlier laid out goals for labor law development including, (1) promotion of best practices in labor policy and laws, and (2) protection and promotion of migrant workers' rights.¹⁸³ It also identified social security and health insurance as important and commissioned an EU study on the issues.¹⁸⁴ One step underway is the authorization of labor mobility of skilled and professional workers and the negotiation of MRA agreements to credential them.¹⁸⁵

OF THE ENTERPRISE IN THE GLOBAL ECONOMY 123 (Eduardo Ales, Francesco Basenghi, William Bromwich, & Iacopo Senatori eds., 2016); Ronald C. Brown, *The Efficacy of the Emergent US Model Trade and Investment Frameworks to Advance International Labor Standards in Bangladesh*, INT'L LAB. REV. (forthcoming) [hereinafter Brown, *Model Frameworks*]; Ronald C. Brown, *China: Implementing ILO Standards by BITS and Pieces (Within FTAs)*, in ILO LABOR RIGHTS IN CHINA: LEGAL IMPLEMENTATION & CULTURAL LOGIC (forthcoming Wolters Kluwer 2015) (presented at Seminar on ILO Labor Rights in China: Legal Implementation and Cultural Logic, University of Helsinki Finnish Center of Chinese Law and Chinese Culture), for further discussion. The U.S. has tried side agreements under NAFTA to deal with labor issues, but there are issues raised about its effectiveness. See Adam Brower, *Rethinking NAFTA's NAALC Provision: The Effectiveness of Its Dispute Resolution System on the Protection of Mexican Migrant Workers in the United States*, 18 IND. INT'L & COMP. L. REV. 153 (2014).

182. Arguably, this step of prioritizing was taken by the ASEAN Labor Ministers' in earlier years before some of the pending FTA negotiations had ripened. See *ASEAN Work Programme*, *supra* note 14, at appendix. For a complete report, see generally *ASEAN Work Programme*, *supra* note 14.

183. See Appendix below.

184. *ASEAN Work Programme*, *supra* note 14, ¶ 29. "Social security and protection systems cover workers' risks of ill health, disability, and old age. Some social protection systems also cover risks of unemployment. A study by the European Union on good social protection practices has been completed and presented to the SLOM. The SLOM-WG [Senior Labor Officials Meeting Working Group on Progressive Labor Practices to Enhance the Competitiveness of ASEAN] has also convened a meeting at which Member States' practices with regard to provision of health and/or disability insurance and/or pensions were shared, learned from experts from Germany, Malaysia, European Commission, and the ILO. The meeting also discussed and identified capacity building needs. SLOM-WG has assigned the ASEAN Secretariat to compile country profiles on social protection. Eventually, ASEAN will develop national and regional follow-up plans on social security/protection systems. Consideration will be given to how to extend some form of social insurance to those who are self or informally employed." *Id.* For further discussion, see Pruksacholavit, *supra* note 17, at 482; Giovanni Capannelli, Special Advisor to the Dean, Asian Dev. Bank, *Key Issues of Labor Mobility in ASEAN*, presented at the 3rd Roundtable on Labor Migration in Asia, Bangkok (Jan. 23, 2013), <http://www.adbi.org/files/2013.01.23.cpp.sess2.1.capannelli.labor.mobility.asean.pdf>.

185. Comparing with the EU approach, "in 2004, a new comprehensive Directive, 2004/38/EC, was adopted which was "designed to encourage Union citizens to exercise their right to move and reside freely within Member States. The Directive

A next useful step might be for ASEAN to evaluate the labor legislation of each member state against the levels of obligations under international standards, including those from pending FTA social dimension provisions. In addition to any existing domestic laws relating to the ILO core labor standards, inquiry should be made regarding labor protections for wages, health and safety in the work place, workers compensation, pensions, healthcare, and the availability/accessibility of these laws to member state citizens and non-citizens – legal and undocumented.¹⁸⁶ Once identified, the challenge is how to propel and fund the development of infrastructures necessary to provide higher labor standards with meaningful enforcement and to set goals and timetables to measure successful progress.¹⁸⁷

IV. CONCLUSION

It is clear ASEAN is a large and emerging global player. Its newly developed and announced AEC has goals for developing labor protection laws and practices as it aspires for global integration. At the same time, regional FTAs continue to embrace ASEAN and its member states, including some labor obligations. As of this time, few domestic or global labor standards have been enacted by all ASEAN member states. However, in early October 2015, the 12 countries of the TPP signed the agreement that in the U.S. yet awaiting Congressional approval as of January 24, 2016. The labor provisions add new provisions and important side agreements with three ASEAN countries.¹⁸⁸

The next steps for ASEAN are to identify the gaps between domestic laws and international standards, harmonize them, and implement them to meet the AEC goal of integration into the global economy. There are models for progress if there is but a political will.¹⁸⁹

also encourages Member States to cut back administrative formalities to the bare essentials, provide a better definition of the status of family members and limit the scope for refusing entry or terminating.” Pruksacholavit, *supra* note 17, at 489.

186. *Id.*; see also discussion at 489-495.

187. The importance of enforcement is obvious, but is illustrated by the disaster at Rena Plaza in Bangladesh where over 1000 workers were killed due to substandard working conditions even though Bangladesh had ratified ILO conventions and had labor laws in place but lacked effective enforcement. See Brown, *Model Frameworks*, *supra* note 180. As of 2012, the ASEAN Secretariat had about 300 staff members, about one-tenth of the staff at the European Commission, and though the EU has 28 nations, ASEAN has over 100 million more in population. Joshua Kurlantzick, *ASEAN's Future and Asian Integration*, COUNCIL ON FOREIGN RELATIONS (NOV. 2012), www.cfr.org/asia-and-pacific/aseans-future-asian-integration/p29247.

188. Jessica Glenza, *TPP Deal: US and 11 Other Countries Reach Landmark Pacific Trade Pact*, THE GUARDIAN (Oct. 5, 2015, 8:47 AM), <http://www.theguardian.com/business/2015/oct/05/trans-pacific-partnership-deal-reached-pacific-countries-international-trade>.

189. The three countries with side agreements may well be steps ahead of other ASEAN countries in raising the levels of labor law protections. U.S. Trade Representative, *The Trans-Pacific Partnership*, MEDIUM.COM, <https://medium.com/the-trans-pacific-partnership/labour-66e8e6f4e8d5#.s8i5c2i6a>.

On a broader analysis beyond labor issues, ASEAN is well regarded on its initiatives to create political, legal, institutional, and technical frameworks that govern regional economic integration. However, “its actual implementation is said to lag significantly behind the timelines of stated objectives.”¹⁹⁰

In late 2014 an independent assessment by the Asian Development Bank Institute concluded that the December 2015 deadline for realizing all four pillars of the AEC will be missed due to an “overly ambitious timeline and too many ill-thought-out initiatives.”¹⁹¹ “According to World Bank data, several ASEAN states (Cambodia, Malaysia, and the Philippines) have ‘virtually closed’ or ‘completely closed’ (Thailand) their borders to professional services (accounting, auditing, and legal services) from other member states.”¹⁹² In short, some experts conclude, the main obstacle in implementing the AEC “is the mismatch between political ambitions and the capabilities and, often, political will—or, maybe better: political autonomy—of several member states to walk the talk.”¹⁹³

190. Jörn Dosch, *The ASEAN Economic Community: What Stands in the Way?*, EAST-WEST CTR. (Sep. 2015), <http://www.eastwestcenter.org/system/tdf/private/api119.pdf?file=1&type=no>.

191. Jenny D. Balboa and Ganeshan Wignaraja, *ASEAN Economic Community 2015: What Is Next?*, ASIAN PATHWAYS: A BLOG OF THE ASIAN DEV. BANK INST. (Dec. 12, 2014), <http://www.asiapathways-adbi.org/2014/12/asean-economic-community-2015-what-is-next/>.

192. Dosch, *supra* note 189, at 3 (citing *Services Trade Restrictions Database*, WORLD BANK: DEV. ECON. RES. GROUP, <http://iresearch.worldbank.org/servicetrade/>). See also ASEAN AND REGIONAL FREE TRADE AGREEMENTS Appendix 5.1 (Christopher Findlay ed., 2015), https://books.google.com/books?id=YvcsCgAAQBAJ&pg=PT175&lp-g=PT175&dq=WTO++Services+Trade+Restrictions+Database,+http://iresearch.world+bank.org/servicetrade/&source=bl&ots=x4_oLriF4N&sig=mzyEqSfFA8n-85If0B7ZO22b6ru8&hl=en&sa=X&ved=0ahUKEwjqb2Z6obKAhVW2WM-KHeAPC4cQ6AEIRTAG#v=onepage&q=WTO%20%20Services%20Trade%20Restrictions%20Database%2C%20http%3A%2F%2Firesearch.world%20bank.org%2Fservicetrade%2F&f=false.

193. *Id.*

APPENDIX

The ALM goals stated below beg for an answer to the question whether and when there will be measurable progress on these goals? This question may be getting more urgent as ASEAN members begin falling under the umbrella of FTA social dimension protections and certainly under the pressures of the new obligations of the TPP and the side agreements.

I. TABLES 2 AND 3: ALM GOALS AND RECOMMENDED ACTION

Table 2
ASEAN Labour Ministers' Work Programme: Objectives, Priorities, and Intermediate Goals

| Overall Objective | To duly towards the vision of a better quality of life, productive employment competitiveness, creating a harmonious and progressive | | and adequate social protection for ASEAN people through enhancing workers' workplace and promotion of decent work for all. | |
|----------------------|--|---|---|--|
| Strategic Priorities | <p>1. Legal Foundation</p> <p>Labour rights and conditions of work are provided in law and its application.</p> | <p>2. Institutional Capacity</p> <p>Government bodies have the capacities to enforce/enforcement of labour laws and regulations.</p> | <p>3. Social Partners</p> <p>Informed social dialogue takes place among labour sector partners at the national and regional level.</p> | <p>4. Labour Markets & Workforce Development</p> <p>Labour markets generate decent employment opportunities, and the workforce development system contributes to the creation of a competitive workforce.</p> |
| Intermediate Goals | <p>1. ALMs protect and promote labour rights, including those of migrant workers, in the region.</p> <p>2. Member States' labour laws take into account the ILO core labour standards and international benchmarks, where appropriate.</p> | <p>1. ALMs promote regional best practices with respect to Labour Ministers' inspections oversight of workplace compliance with labour laws and referencing to the ILO inspection standards, where appropriate.</p> <p>2. Member States effectively regulate occupational safety and health to ensure safe working conditions for ASEAN workers.</p> <p>3. Member States' labour justice systems effectively resolve workplace disputes.</p> <p>4. Member States work to improve national social protection systems to cover risks faced by workers of all health, disability, and old age.</p> <p>5. Member States provide employment services to job seekers/employers and effectively regulate the private employment agencies.</p> <p>6. Member States to facilitate policy dialogue and information sharing on good practices and strategic action on issues related to HIV/AIDS in the workplace.</p> | <p>1. Workers, private sector or employer groups, and government representatives meet at national and regional levels, where appropriate, to discuss issues of common interest.</p> <p>2. Industrial relations at the firm-level in Member States encourage progressive labour practices.</p> <p>3. Cooperation by Member States with external labour sector partners (e.g., ILO, bilateral labour sector partners, and international labour NGOs, and trade unions) is enhanced.</p> | <p>1. Systems are in place that will promote the mobility of skilled labour within ASEAN.</p> <p>2. Employment wage, working conditions, skills demand, and other aspects of state liberalization and of global economic challenges are anticipated, analyzed, monitored, and communicated to labour sector stakeholders and the public.</p> <p>3. Progressive labour practices with regard to workforce development, skills training, and standards, labour productivity, and labour law continue to be promoted to enhance the competitiveness of firms and workforces, and thus of the ASEAN Member States and the region overall.</p> <p>4. Labour market information is generated, regularly updated, and effectively disseminated.</p> |
| Actions Needed | see text below | | see text below | |

* Employment services cover a range of activities from information services to job placement. The employment services provided by each

Member State to different groups of workers should be in accordance with respective laws and policies.

Table 3: ASEAN Labour Ministers' Work Programme: Recommended Actions and Indicative Calendar

| Strategic Priorities | Thematic Areas | Recommended Actions | Responsible ASEAN bodies under ALMM | Indicative Calendar | Potential Collaborators | |
|----------------------|---|---|--|---|--|--|
| Legal Foundation | Promotion of best practices in labour policy and laws ⁴ | Finalize survey & identify legal and regulatory updates | SLOM-WG | 2010 - 2011 | | |
| | | Protection and promotion of labour rights, including migrant workers' rights ⁴ | <p>Migrant Workers' rights</p> <p>Continue to conduct annually the ASEAN Forum on Migrant Labour</p> <p>Continue to put on-going effort to develop an ASEAN instrument on migrant workers' rights</p> <p>Prepare pre-departure information for ASEAN migrant workers</p> <p>Collaboration with relevant international organizations on "Safe Migration" campaign and pre-departure literature to migrants</p> <p>ACMW regional meetings to continue</p> <p>Strengthen the dialogues between ACMW and those working on human smuggling and trafficking</p> <p>Child labour</p> <p>Study the development of regional guidelines with respect to eliminating the worst forms of child labour</p> <p>The ALMs will task SLOM to coordinate, as the need arises, with the ASEAN Inter-Governmental Commission on Human Rights (AICHR) and other relevant ASEAN bodies in protecting and promoting labour rights, including migrant workers' rights.</p> | <p>ACMW</p> <p>ACMW</p> <p>ACMW</p> <p>ACMW</p> <p>ACMW</p> <p>SLOM</p> <p>SLOM</p> | <p>2010 - 2015</p> <p>2010 - 2015</p> <p>2010 - 2015</p> <p>2011 - 2012</p> <p>2011 - 2015</p> <p>2010 - 2015</p> <p>2010 - 2015</p> | <p>ILO and IOM</p> <p>IOM</p> <p>SOMTC</p> <p>AICHR, ACW, and ILO</p> <p>AICHR</p> |
| | Building capacity in labour inspections for compliance ⁴ | ASEAN conferences/workshops on labour inspections | SLOM-WG | 2010 - 2015 | ILO | |
| | | Identify capacity building needs of labour inspectors | SLOM-WG | 2011 | ILO | |
| | | Carry out training programme for ASEAN labour inspectors | SLOM-WG | 2011 - 2015 | ILO | |
| | | Strengthening occupational safety and health (OSH) capacities and standards ^{4*} | ASEAN-OSHNET to compile and publish national OSH records | ASEAN-OSHNET | 2010 - 2015 | ILO |
| | | | ASEAN-OSHNET to continue public education on OSH | ASEAN-OSHNET | 2010 - 2015 | ILO |
| | | | ASEAN-OSHNET to continue capacity building for government officials on OSH inspection and policy | ASEAN-OSHNET | 2010 - 2015 | Japan ILO |
| | | | Expand use of OSHNET website for information sharing | ASEAN-OSHNET | 2010 - 2012 | |

| Strategic Priorities | Thematic Areas | Recommended Actions | Responsible ASEAN bodies under ALMM | Indicative Calendar | Potential Collaborators |
|----------------------|--|--|-------------------------------------|---------------------|-------------------------|
| | | Adopt the ASEAN OSHIMS guidance for small and medium enterprises | ASEAN-OSHNET | 2011 | Japan and ILO |
| | | Conduct a forum to discuss and adopt a new blueprint that will revitalize ASEAN-OSHNET | ASEAN-OSHNET | 2011 | |
| | Building capacity in workplace disputes and labour sector justice ¹ | ASEAN conference on labour justice systems, labour courts, arbitration councils, mediation & conciliation | SLOM | 2012 | ILO |
| | Strengthening social security and protection ² | Develop national and regional plans on social security/protection systems | SLOM-WG | 2012 | GTZ, Japan, and China |
| | | Conduct workshop to share experience on how to extend social insurance to the self- or informally employed | SLOM-WG | 2012-2015 | ILO |
| | | Conduct seminars on unemployment insurance for interested countries | SLOM-WG | 2011-2014 | Japan |
| | Promoting employment services ³ | Conduct regional workshops to share good practices on employment services | SLOM-WG | 2010-2015 | |
| | HIV prevention and control in the workplace ⁴ | Further the development of the ASEAN guidelines on essential workplace action for enterprises on the prevention and management of HIV and AIDS | SLOM-WG-HIV | 2011-2015 | AIFDA, ILO, and UNAIDS |
| | | SLOM-WG-HIV to facilitate policy dialogue and information sharing among Member States on good practices and strategic actions on issues and areas related to HIV/AIDS in the Workplace | SLOM-WG-HIV | 2011-2015 | AIFDA, ILO, and UNAIDS |
| | | SLOM-WG-HIV to identify ways forward, including enhancing regional collaboration among ASEAN on HIV/AIDS in the Workplace. | SLOM-WG-HIV | 2011 | AIFDA, ILO, and UNAIDS |
| Social Partners | Strengthening tripartite cooperation ⁵ | Conduct the 3 rd regional seminar of the ASEAN/ILO-Japan Industrial Relations Project | SLOM | 2010 | Japan and ILO |
| | | Conduct national and regional social dialogue meetings to exchange ideas and information on areas of mutual concern | SLOM SLOM-WG | 2011-2015 | Japan, ILO, FES, and EC |
| | | Compile and publish 10 good practices in the region | SLOM | 2011-2015 | Japan and ILO |
| | | Develop a toolkit on good practices for use at enterprise level | SLOM | 2011 | Japan and ILO |

| Strategic Priorities | Thematic Areas | Recommended Actions | Responsible ASEAN bodies under ALMM | Indicative Calendar | Potential Collaborators |
|--|---|--|-------------------------------------|---------------------|-------------------------|
| | | Improve and regularly update the East Asia Industrial Relations Net | SLOM | 2011-2015 | ILO |
| | | Adopt the ASEAN guidelines on good IR practices | ALMM | 2010 | ILO (for follow-up) |
| | Promoting corporate social responsibility (CSR) ⁶ | Define labour-related CSR goals in ASEAN | SLOM-WG | 2010/2011 | |
| | | Develop an agenda for promoting labour related CSR issues in the region | SLOM-WG | 2011-2015 | ILO |
| Labour Markets and Workforce Development | Addressing employment ⁷ impacts of trade liberalisation and recovery from global economic crisis | Labour trends of the post-economic crisis recovery period to be assessed at Member States' levels, synthesized, and reported to the community | SLOM | 2011 | ILO |
| | | ASEAN Member States will also embark on capacity building programme to measure the impact of trade liberalisation on labour market | SLOM | 2011-2015 | ILO |
| | Promoting Progressive labour practices ⁸ | Continue holding the ASEAN HR Conference | SLOM-WG | 2010-2015 | ILO |
| | | Conduct ASEAN Skills Competition regularly | SLOM | 2010-2015 | |
| | | Study the development of programme to improve the labour condition, training and social protection in the informal sector | SLOM | 2011-2015 | ILO |
| | | Complete ASEAN-Japan Collaborative Programme to strengthen basis of HR development in CEMV, phase II | SLOM | 2010-2011 | Japan |
| | Enhancing labour mobility ⁹ | Improve the national skills frameworks in preparation for discussing a regional skills recognition framework | SLOM-WG | 2011-2015 | ILO |
| | | Conduct a research project and regional workshops to improve overseas employment administration | ACLPW | 2010-2015 | ICM |
| | Enhancing labour market monitoring ¹⁰ | Develop an ASEAN report on labour market performance based on an agreed set of labour sector variables. | SLOM | 2011-2015 | |
| | | Creation of ASEAN ALM web portal with labour sector information | SLOM-WG | 2011-2015 | |
| | | Establish knowledge sharing networks and platforms to provide venue for interactive discussions towards strengthening capability for better labour market information and analysis between and among Member States | SLOM-WG | 2011-2015 | ILO |
| | | Develop a Handbook on Labour Market Analysis to facilitate capacity building and promote analysis and wider use of labour market information. | SLOM-WG | 2011 | |

Notes: ¹ Original work program priority, 2001, ² Added in 2004, ³ Emerging work priority, ⁴ Suggested new priority area, ⁵ Priority of an ALM subsidiary body