



**U.S. House of Representatives
Ways and Means Committee Democrats**

The Labor Provisions in the Trans-Pacific Partnership

**Statement by Sabina Dewan
Executive Director, JustJobs Network
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Congressman Levin and honorable Democratic members of the Ways and Means Committee, thank you for inviting me to assess the labor provisions in the Trans-Pacific Partnership (TPP). I appreciate the opportunity to provide my views on the subject.

Trade is complicated. And it is anything but free – its benefits come at a cost. Increasingly open and unrestricted trade in goods and services improves productivity and contributes to economic growth.¹ Trade allows consumers to enjoy greater variety and cheaper goods. But, trade also increases competition to capture market share and it sets off restructuring of economic activity within countries that favors some sectors and industries over others. In the process, some workers gain jobs while others lose them; some workers see their wages rise while others see them stagnate or decline.

Despite the churn, countries continue to embrace greater trade openness and integration. Three quarters of the world's purchasing power resides outside the United States, and the race to capture it is on. The brokering of regional deals such as the Regional Comprehensive Economic Partnership (RCEP), and the Free Trade Area of the Asia Pacific (FTAAP) spearheaded by China, is underway. The European Union (EU) recently concluded negotiations on a Free Trade Agreement with Vietnam and is pursuing trade agreements with the United States, Japan, Malaysia, Thailand, India and Mercosur. What's more, 80 percent of global trade takes place through value chains that span across nations.² U.S. exports and the 12 million jobs³ that depend on them, rely on imports of parts from other countries and vice versa.

In this competitive race, the United States needs to capture its portion of global market share and consumers. Fundamental to this goal is brokering trade agreements with strong labor provisions that can elevate living standards in other nations, creating a fairer competitive playing field and generating new markets for American products and services. From this follow three points:

¹ Ed Gresser, "More Growth, Less Gridlock" (July 2009)

<http://www.dlc.org/documents/MoreGrowthLessGridlock.pdf>;

Mark Anner, Stopping the Race to the Bottom: Challenges for Workers' Rights Along Supply Chains in Asia (FES Conference Report, December 2015).

² UNCTAD. GVCs and Development: Investment and Value Added Trade in the Global Economy (UNCTAD, 2013)

³ http://www.trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_005406.pdf

1. Labor provisions in trade agreements are one of the few levers we have to address concerns pertaining to workers, their working conditions and rights in countries around the world. Robust provisions in trade agreements help move us toward a fairer competitive playing field.

In the absence of an international mechanism for addressing trade and labor concerns together (neither the World Trade Organization nor the International Labor Organization do this), free trade agreements and their labor provisions are a valuable tool.

Labor provisions in trade agreements are intended to hold the signatories responsible for maintaining commitments with respect to labor rights. These commitments pertain to *(a) the scope of national laws to protect labor rights and ensuring that they conform to international standards, and (b) enforcing such laws.*⁴ Strong provisions can provide the necessary incentives and accountability to encourage countries to effectively enforce stronger labor laws.

The labor provisions in the TPP and the Consistency Plans are more robust than in past agreements, but concerns about enforcement are legitimate.

2. The TPP, and the accompanying arrangements with Vietnam, Malaysia and Brunei, make progress in strengthening labor provisions in trade agreements.

TPP uses the Peru FTA as a foundation, which was at one time widely acknowledged as a substantial step forward toward a trade model that would benefit the working people of both countries. The agreement retains the “adopt and maintain” language with regards to the fundamental labor rights as recognized by the ILO Declaration (1998).

But it goes further, stipulating the following:

- TPP makes it necessary to have and enforce legislation on acceptable conditions of work, e.g. minimum wages for example, while older agreements only make countries enforce existing laws, if any. Signatories that fail to effectively enforce their labor laws “in a sustained or recurring pattern that would affect trade or investment between the TPP parties” will be in violation of the agreement.
- TPP parties must discourage importation of goods made by forced labor, including goods imported from non-TPP countries. They are not, however, required to ban such imports.
- TPP Parties cannot waive labor rights in export processing zones.
- Commitments in the labor chapter are subject to the same dispute settlement procedures available for other chapters of TPP, including the availability of trade

⁴ Sandra Polaski. 2004. “Protecting Labor Rights through Trade Agreements: An analytical guide” in Journal of International Law and Policy. Accessed on September 25, 2014.
<http://carnegieendowment.org/pdf/files/2004-07-polaski-JILP.pdf>

sanctions. The TPP goes slightly further than past trade agreements in including a provision for accepting and acting on public submissions.

The ‘Plan for the Enhancement of Trade and Labor Relations for Vietnam’ and the ‘Labor Consistency Plans’ for Malaysia and Brunei mandate specific legal and institutional reforms that are enforceable through the same dispute settlement mechanism as the rest of the TPP agreement. As such these additional arrangements are a step in the right direction from past side arrangements such as the U.S.-Colombia Labor Action Plan.

Vietnam

- Under TPP, Vietnam will allow workers to establish and join an independent union, with full autonomy to elect their leaders, adopt a constitution and rules, manage their affairs, bargain collectively, and strike -- to be accomplished prior to entry into force of the TPP agreement.
- Vietnam also commits to allowing the formation of larger workers’ organizations that are horizontally affiliated with other enterprise/industry unions, or those in different geographies within the nation, as well as affiliated vertically with federations or confederations. However, Vietnam has only committed to this within five years of the agreement’s entry into force.
- Finally, the plan establishes a review mechanism for periodic monitoring by an independent “labor expert committee” starting after two and a half years for at least ten years. United States may withhold or suspend tariff reductions if Vietnam does not comply with its commitment to provide the right to form labor unions across enterprises and vertically within five years.

Malaysia

- Addresses concerns related to the working conditions of migrant workers and trafficking victims – commitments are about strengthening and implementing existing laws, not new legislation.
 - Allowing trafficking victims to travel, work and reside outside government facilities while under protection orders.
 - Strengthening protections related to withholding passports, recruitment fees, and improving freedom of movement for migrant labor.
- Removes restrictions with regard to union formation and strikes.
- Creates a government-to-government review mechanism for at least seven years to oversee implementation of the commitments in the plan. The government-to-government review; legal and institutional changes are to be made before entry into force.

Brunei

- Brunei joined the ILO in 2007 and has only ratified two of the eight fundamental ILO conventions (child labor and minimum age). TPP could cast a spotlight on this economy and labor market, that has otherwise been out of the public eye, exerting pressure to improve working conditions.
- Brunei commits to limiting the discretion of the government to register or cancel a union's registration, establishing protections against interference in union activities, allowing for international affiliation of unions, providing procedures for collective bargaining and strikes, strengthening protections against child labor and forced labor, and ensuring independent review of administrative decisions.
- Brunei also commits to implementing a minimum wage for the first time and to ensuring protections against employment discrimination.

3. Where the labor provisions in TPP are stronger than in previous trade agreements, commitments to enforce the provisions where compliance is lacking are needed to supplement the labor chapter.

Commitments in the labor chapter of the TPP are subject to the same dispute settlement procedures available for other chapters of TPP, including the availability of trade sanctions. The TPP goes slightly further including a provision for accepting and acting on public submissions. But, skepticism is based on the U.S. government's poor record of enforcing labor provisions in past agreements and in following through on labor complaints.

Most notably, the continued labor and human rights violations in Mexico with the use of "protection contracts" and the widely acknowledged politically biased and corrupt Conciliation and Arbitration Boards are among issues of deep concern. Despite being a member of the North American Free Trade Agreement and party to the North American Agreement on Labor Cooperation – the side labor pact, these violations continue to persist. The TPP's lack of a Labor Consistency Plan for Mexico is a missed opportunity. The Department of Labor, United States Trade Representative's Office and the State Department are engaging in dialogue to address these concerns with their Mexican counterparts at the highest levels, but this alone is not enough.

Similarly, labor rights groups and critics of TPP have pointed out that, despite its commitments under the U.S.-Peru bilateral trade agreement, Peru has reneged on its commitment to allow freedom of association and the effective recognition of the right to collective bargaining. This calls into question whether Peru will comply with new commitments under the TPP.

Since the US-Peru Trade Promotion Agreement came into force, US and Peru officials have held two Labor Affairs Council meetings, with senior-level participation to discuss these challenges. In 2014, Peru launched a new federal inspection entity to increase inspection and enforcement capacity. The Department of Labor (DOL) is funding a two million U.S. dollar project to strengthen institutional capacity for labor inspections, and a thirteen million U.S. dollar project to combat child labor. DOL has received two public submissions,

one in 2012 during which Peru issued new legal instruments clarifying use of arbitration as part of collective bargaining, and one filed in 2015 concerning non-traditional exports that is currently under review. Again, DOL, USTR and the State Department are engaging in dialogue to address these concerns with their Peruvian counterparts at the highest levels. But the problem with such high-level consultations is that they are private and ad-hoc.

Moving forward, with the Trans-Pacific Partnership and beyond, the Administration and Congress have a responsibility to institute systematic procedures to enhance enforcement on an ongoing basis. The following are three recommendations:

- (i) Introduce a nonpartisan framework for evaluating the short- and long-term impact of trade on living standards, especially vis-à-vis employment, to ensure that a real and transparent effort is being undertaken to understand the impact of our free trade agreements on workers at home and abroad.

Do this by establishing and convening a small group of independent experts to define a set of indicators on which data is either readily available or can be developed and collected on a regular basis, to assess whether our trade agreements are having the intended positive impact on living standards.

Little is currently done to systematically measure the impact of trade on jobs, wages and workers in signatory countries. Trade is an engine of economic growth, but its effect on real livelihoods and the people affected most by it is understudied by the very institutions promoting or opposing it.

- (ii) The Labor Advisory Committee in its December 2015 report has highlighted several critical recommendations to increase compliance. I would like to highlight the following that will enhance enforcement in the long-run:
 - a. Establish a clear, universal timeline for review of and action upon labor complaints.
 - b. Establish an independent secretariat (that could consist of a small consortium of organizations) that conducts research on labor issues and reports on best practices.
- (iii) Trade Promotion Authority requires that the U.S. International Trade Commission prepare a report that estimates the economic impact of the TPP within 105 days of its signing. Such assessments, based on the data and information generated from the aforementioned recommendations, should be conducted much earlier in the process and should be a systematic and routine practice.

In conclusion, a large agreement such as the TPP -- spanning twelve members and a variety of areas from labor and environmental standards, to disciplines for State Owned Enterprises and the protection of intellectual property rights -- will inevitably demand compromise from all parties. The labor provisions in TPP, nonetheless, do make progress in ensuring that the

scope of national laws protects labor rights and that national laws conform to international standards. Yet, more work is needed to ensure that if ratified, the agreement is implemented and enforced in a way that makes the repercussions of non-compliance real.

Finally, we would be remiss not to recognize that while some developing countries are complicit in keeping wages and working conditions depressed for competitive gain, there are many other developing nations that recognize that such “race to the bottom economics” is detrimental to their own development trajectories. Trade agreements with a robust labor chapter, accompanying capacity building and technical assistance can help equip these nations, and the forces within them that want to improve working conditions, build the institutions to ensure that regular workers benefit from an expanding economic pie.

Thank you.