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HEARING ON

“THE TRANS-PACIFIC PARTNERSHIP: PROSPECTS FOR GREATER U.S. TRADE”

TESTIMONY OF

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Distinguished members of the Foreign Affairs Subcommittee on Asia and the Pacific, it is an honor to testify on the Trans-Pacific Partnership and prospects for greater trade on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), its affiliate unions, and nearly 13 million working men and women in all fifty states. The AFL-CIO has long recognized that workers everywhere live in a global economic environment. Trade and globalization are not a temporary trend; they are an economic reality. The key question is how to shape these forces so that they help build shared prosperity and sustainable growth. It is critical that the U.S. approach couples expansion and enforcement of labor rights globally with necessary reforms in trade and domestic economic policy, as well as market opening measures.

America's working families have good reason to be suspicious of our current trade regime, which has contributed to the closure of 60,000 factories, record trade deficits, net job losses in the millions, and stagnating and even falling wages. Current U.S. trade deals, which began with NAFTA and continued with the Korea and Colombia agreements, among others, undermine shared prosperity by encouraging employers to pit one group of workers against another—both within and between countries. Under this model, our trade deficit has increased dramatically—from \$70 billion in 1993, the year before NAFTA went into effect, to more than \$505 billion today (in nominal terms). It has also contributed to the decoupling of wages and productivity, meaning as U.S. workers are more productive, they fail to reap the gains of that productivity in their wages.

The rules first enshrined in NAFTA accelerate and reward outsourcing by providing extraordinary protections for foreign investors and intellectual property rights and locking in market access, while leaving workers' rights and environmental protections vulnerable. While there have been some improvements in the trade template in the decades since NAFTA, unfortunately they have been inadequate to reverse this dynamic. Taken together, our trade agreements continue to promote a race to the bottom, undermining the legal and regulatory framework that made the American economy the envy of the world, including in terms of workers' rights, wages, pensions, and working conditions.

We need an entirely new framework, not mere tinkering around the edges, to ensure that these trade deals contribute to good jobs, sustainable growth, and a healthy environment. Unfortunately, too many advocates for the TPP present the choices facing America's future in unhelpful ways. For instance, the choice is not the TPP as currently conceived versus no international trade at all. Neither is it America versus China. The correct frame for these choices is "How do we structure international trade rules so that they promote good, family-wage jobs, sustainable growth, dynamic economies, smart natural resource conservation, and the realization of human rights and dignity globally?"

These are weighty and complicated choices facing us as a society—and they are unlikely to be best resolved by limiting Congressional oversight, input, and debate into trade policies that last, potentially, forever. The debate is not advanced by posing the question in nationalist terms, nor by simplistic black-and-white scenarios, nor by setting up artificial walls between consideration of domestic and international economic policies. America's workers will not reap a fair share of the benefits of trade if we fail to ensure we have broad economic policies that support workers and businesses alike. These include, for instance,

- Enacting currency legislation that ensures the administration can treat currency manipulation as a countervailable duty;
- Enacting expanded and enhanced skills training for all workers, not just those whose jobs have been displaced by trade;
- Increasing federal funding to upgrade and rebuild ports, airports, railroads, roads, schools, water systems and other critical public infrastructure so that the United States does not lose private investment due to old and crumbling public facilities;
- Strengthening trade enforcement and remedies;
- Ensuring that the Export-Import Bank and other export support programs do what they are supposed to do: support U.S. exports and jobs;
- Strengthening “Buy America” and “Buy American” laws; and
- Strengthening domestic laws that protect the fundamental human rights to associate freely and engage in collective bargaining.

The AFL-CIO urges Congress to consider and pass legislation addressing these important issues *before* considering new trade agreements such as the Trans-Pacific Partnership. Only when appropriate domestic policies are in place will the American economy be able to take full advantage of any growth opportunities created by expanded trade.

We are concerned that if Congress and the administration embark on a “TPP first” path instead of a “jobs first” path, the opportunities for workers—both in the U.S. and globally—will be squandered. The effects of failing to put in place proper domestic economic policies, of course, will be exacerbated by a TPP that enables global firms to use the United States as a flag of convenience. It simply is not the case that the national interest is entirely coincident with the interest of such firms, many of which have increased profits by pitting countries against one another in the quest to attract foreign investment by reducing costs related to maintaining labor, environmental and social standards. This is fundamentally at odds with the economic interests of the United States and its citizens, and in many cases also at odds with the interests of our trading partners, who seek rising living standards in their own countries.

While we know that market opening can be beneficial, we also know that the TPP, and the kind of privileges it appears set to provide to global firms, in many cases have little to do with market opening. Instead, many of these policies are about providing extraordinary legal privileges to foreign-invested firms, granting additional monopoly rights to makers of life-saving medicines, creating tools designed to undermine differences in consumer protection policies, and the like. The AFL-CIO recommends that Congress and the American people engage in a full and frank discussion of these issues, rather than glossing over them by declaring the TPP simply a market opening measure.

Key among the questions for Congress in its evaluation of the benefits for the TPP for the American and global economy are the following:

Currency: Addressing currency misalignment is probably the single action the U.S. can take that will have the biggest impact on jobs. The fact that currency provisions continue to be absent from the TPP is disturbing on two fronts: it is a both glaring policy omission and a procedural

concern. In the absence of existing Fast Track legislation, one trade-related issue on which bipartisan majorities of the House and Senate have spoken while the TPP has been under negotiation is currency.

Misaligned currency is an important contributing factor to the U.S. trade imbalance with China and other Asian nations. The Peterson Institute for International Economics cited Japan, Malaysia, and Singapore as “egregious” currency manipulators in 2012.¹ The Economic Policy Institute estimates the U.S. could add as many as 5.8 million jobs by eliminating such currency manipulation.²

Without effective currency disciplines, a TPP country could freely undermine the price-reduction effects of tariff elimination overnight by manipulating its currency, making its goods artificially less expensive than ours and exacerbating our \$500 billion trade deficit. The justification for the administration’s omission (that our own monetary policy practices could be challenged) is a distraction: central banks engaging in monetary policy are not the problem, sustained interventions in currency markets in order to create and maintain trade surpluses are.³ Various workable proposals have been put forward to address this concern, including using guidelines already established by the International Monetary Fund (IMF). American automobile producers have also put forth a proposal.⁴

The failure to include mandatory currency manipulation provisions subject to dispute settlement in the TPP leaves working families behind. Moreover, it undercuts the argument that the TPP will allow the U.S., rather than China, to “write the rules” of trade for the Pacific region. Continuing the current approach to currency market intervention allows China, and the U.S. firms that export from there, to continue to “write the rules” in ways detrimental to U.S.-based producers and their employees. Congress should examine whether omitting enforceable currency rules from the TPP is the correct approach, and whether the TPP will live up to its promises given this conspicuous omission.

Investment: To ensure that the TPP achieves shared prosperity, it should provide better balance in its investment provisions. Dozens of labor, environmental organizations, faith groups, business groups, farm groups, consumer groups, and poverty reduction groups have called for the elimination of the special legal rules and private tribunals for foreign investors known as investor-to-state dispute settlement (ISDS). ISDS is a key tool in undermining democratic

¹ See, e.g., Joseph E. Gagnon, “Combating Widespread Currency Manipulation,” PIIIE Policy Brief No. PB12-19, July 2012, available at: <http://www.piie.com/publications/pb/pb12-19.pdf>.

² See Robert E. Scott, “Stop Currency Manipulation and Create Millions of Jobs,” Economic Policy Institute, February 26, 2014, available at: <http://www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/>.

³ Rep. Sander Levin, TPP in Focus: The need to address currency manipulation in TPP, and why U.S. monetary policy is not at risk, Ways and Means Committee Democrats website, Feb. 6, 2015, available here: <http://democrats.waysandmeans.house.gov/blog/tpp-focus-need-address-currency-manipulation-tpp-and-why-us-monetary-policy-not-risk>.

⁴ The proposal can be found here: <http://www.americanautocouncil.org/tpp>.

control over corporate excesses, and is currently being used to attack public health policies in Australia and Uruguay, environmental policies in Canada and Peru, and labor provisions in Egypt.

Rather than challenge actual takings or discriminatory policies, global firms use ISDS to seek compensation for “regulatory takings,” a discredited concept not applicable under U.S. law. Instead of promoting a global regulatory takings regime that privatizes the gains of foreign investment while socializing its losses, the TPP can achieve reasonable protections for investors through state-to-state dispute settlement as well as development assistance targeted toward building and maintaining rule of law in our trading partner countries. Firms seeking additional protections should buy political risk insurance policies.⁵ The option to negotiate alternative dispute provisions in investment contracts with host governments presents yet another opportunity for firms seeking to minimize risk.

No credible evidence has been marshalled to show that ISDS provisions solve measurable real world problems or are conclusively linked to increased investment. Rather, ISDS provisions in the TPP pose a threat to democratic decision making, particularly at the state and local level. For our trading partners, some of whose GDPs are dwarfed by the annual income of the world’s largest firms, ISDS can pose an even bigger threat. At the extreme, it can interfere with the development of modern, reliable, regulatory and judicial systems—the kind that make life better and more stable for businesses, workers, and consumers.

We urge Congress to reconsider, particularly in consultation with state and local officials, the wisdom of opening the U.S. to additional challenges by Japanese, Australian, Malaysian, and other firms.

Climate: Currently, U.S. trade policy could undermine both domestic efforts to address climate and the administration’s bilateral agreement with China to cooperate on climate change and clean energy. Unless the TPP sets the bar in line with the recent bilateral agreement with China, it represents a missed opportunity.⁶

Moreover, if the U.S. were to impose strict emission standards, a broad based carbon tax, a carbon cap and trade scheme, or virtually any concrete but unilateral policy designed to reduce polluting emissions, such policies could of course induce some firms to consider moving production outside the U.S.—undermining our economic growth as well as emissions control

⁵ The Cato Institute has written convincingly about how ISDS undermines free market principles. *See, e.g.*, Simon Lester, *Responding to the White House Response on ISDS*, Feb. 27, 2015, available here: <http://www.cato.org/blog/responding-white-house-defense-investor-state-dispute-settlement>; and Daniel J. Ikenson, *A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement*, Mar. 4, 2014 available here: <http://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state>.

⁶ See FACT SHEET: U.S.-China Joint Announcement on Climate Change and Clean Energy Cooperation, available at: <http://www.whitehouse.gov/the-press-office/2014/11/11/fact-sheet-us-china-joint-announcement-climate-change-and-clean-energy-c>.

efforts. Without a border adjustment—to adjust the cost of highly polluting imports so that clean U.S. and dirty foreign goods could fairly compete—the TPP will do nothing to stop manufacturers from closing up shop in the U.S. and moving to TPP countries with no carbon reduction scheme in order to sell cheaper, dirtier goods here and around the globe, undercutting not only our workers but our efforts to slow climate change.

It is not known whether the TPP now contains effective and enforceable climate measures, a border adjustment mechanism, or related policies that would prevent undercutting of national efforts to transition to a cleaner, greener economy. It should.

While it may be true that the U.S. can unilaterally impose a border adjustment measure at any time and does not need a trade deal to do so, doing nothing in the TPP to bring other countries along as part of a just transition to a cleaner economy fails to show leadership and leaves the playing field tilted against U.S. workers and responsible climate policy. To set the stage for future action, it would be better if U.S. trade and energy policy were in harmony, so that U.S. lawmakers could have greater confidence that any conservation efforts they might consider would not harm our competitiveness. To set the 21st Century standard TPP backers have promised, the TPP must address climate threats in a responsible way and ensure that U.S. efforts to limit carbon emissions do not backfire on our own workers or on the future of the planet.

Labor: The labor movement has been clear from the outset of the TPP talks that the status quo on labor (the so-called “May 10” agreement) was not good enough. The “May 10” standards (created as bipartisan compromise between the Republican Bush Administration and Democratic leaders in the House) represented a step forward from CAFTA, but were never sufficient to truly level the playing field for workers inside and outside the U.S. or to remedy the weakness of the virtually unfettered discretion that the U.S. and trading partner nations enjoy to delay or ignore labor rights submissions indefinitely. In 2011, the AFL-CIO joined with labor federations from the majority of TPP countries to draft and submit a comprehensive labor chapter that attempted to address past shortcomings. However, given the secrecy of TPP negotiations, we cannot say whether what will emerge in the final TPP will be able to reasonably be called a meaningful improvement over “May 10.”

As the AFL-CIO has previously noted, the choice of trading partners in the TPP is cause for great concern: barring a decades-long delay between the Administration’s slated completion date for the TPP and its entry into force, we foresee virtually no possibility that Vietnam will be in compliance with even “May 10” labor commitments on day one. Despite a reported willingness to engage with the U.S. government on labor issues, it is difficult to imagine the single party Government of Vietnam instituting the legal, regulatory, and enforcement changes necessary to fully respect the right of free association necessary for the effective functioning of representative worker organizations. As recently as last September, a senior economic adviser for the general secretary of Vietnam's Communist Party indicated that labor issues remain the biggest obstacle for Vietnam. He told the Voice of America “there has been no sign that Hanoi will compromise on the issues of human rights, labor rights and independent trade unions.”⁷

⁷ “Vietnam Rights Still Obstacle to TPP Membership,” *Voice of America News*, Sept. 11, 2014, available at: <http://www.voanews.com/content/vietnam-rights-still-an-obstacle-to-tpp-membership/2446966.html>.

Moreover, as explained in a recent AFL-CIO publication,⁸ at least three other TPP partners, namely Malaysia, Brunei, and Mexico, have human rights shortcomings so serious as to require major shifts in labor policy and enforcement to come into compliance with internationally recognized labor rights on day one.

To let the TPP enter into force without full compliance with all labor commitments from all twelve countries could undermine the entire agreement. It sends that message that promises to comply—in any area—are sufficient. If the TPP is going to have beneficial effects, promises and changes on paper are not enough. Nor do they reset the playing field in ways beneficial for workers in the U.S. or globally.

The issue of labor rights compliance is critical. It creates the space necessary for workers, both in the U.S. and in our TPP partner countries, to engage in the give and take necessary to raise their pay, benefits, and conditions of work. If workers lack the basic rights to speak up about workplace conditions and to join together in common cause to improve their lot, it simply exacerbates—rather than improves—the status quo, which has been used to keep wages lower than they might otherwise be both in the U.S. and globally. This is causing a global weakness in demand that hampers growth and exacerbates inequality. The IMF even recognizes this link between a lack of unions and an increase in inequality.⁹ Trade policy that concentrates wealth in the hand of a few by failing to adequately promote workplace rights fails workers—no matter where they reside.

Without high labor and human rights standards and strong enforcement tools that cannot be weakened through delay, inaction, or the acceptance of “progress” as a substitute for real improvements, the labor chapter of the TPP will continue to erode bargaining power of workers both here and abroad, facilitating rather than combatting the race to the bottom.

State-Owned Enterprises: The AFL-CIO continues to be concerned about the ability of the TPP to adequately protect against unfair competition by state-sponsored and state-supported companies with respect to investments on American soil that would compete head-to-head with existing non-state sponsored companies here at home.

Government Procurement: The AFL-CIO has long opposed procurement chapters altogether. We believe that government procurement at the federal, state, and local level is an important job creation tool that should not be blunted by commitments to foreign firms. The AFL-CIO strongly supports the widest possible use of Buy American and Buy “State” policies as well as ensuring that bidding specifications and criteria can include good governance policies such as “clean hands” and preferences to firms with better safety and job performance records.

Rules of Origin: We remain concerned that the rules of origin for the TPP may not be effective at preventing “leakage.” When TPP advocates claim that the TPP will ensure that the U.S. “writes the rules” instead of China, Congress should ask whether China will in fact be able to

⁸ See Annex.

⁹ Florence Jaumotte and Carolina Osorio Buitron, “Power from the People,” *Finance & Development*, Vol. 52, No. 1, International Monetary Fund, March 2015, available at: <http://www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm>.

benefit greatly from the TPP without ever joining. Weak rules of origin will promote greater use of Chinese inputs, which can be made in contravention of TPP rules, into finished products that then become eligible for TPP benefits.

Public Services: To ensure that the American people retain the right to determine the quantity, quality, type, and nature of public services offered by the federal, as well as local and states governments the AFL-CIO has recommended a broad carve-out from the services commitments for important public services. At this point, there are no indications that the agreement will change the commitments from prior agreements such as the WTO and the Colombia FTA, which fail to adequately protecting the right to provide and regulate public services in a manner consistent with the desires of voters. The key question is not the straw man of forced privatization. Instead, the question is whether governments retain the right to freely—that is, without compensating foreign firms or trading partners—reverse failed privatization efforts. This question becomes even more salient as evaluators, such as the non-profit, non-partisan Project on Government Oversight, compile compelling data on privatization efforts that actually decrease the value that America’s taxpayers get for their dollar.¹⁰

Financial Services: The AFL-CIO has recommended changes to both the “prudential exception” and the restriction on capital controls (the latter consistent with the latest IMF guidance) from the terms used in prior trade agreements, to ensure countries can act, free from the deterring effect of even frivolous claims, to stabilize their economies and protect themselves from financial crises. Malaysia effectively used capital control measures in the late 1990s to protect itself from the worst of the Asian financial crisis. We recommend that Congress thoroughly and deliberately consider whether the TPP will safeguard against another global financial meltdown, or whether it will increase the likelihood of one by deterring our trading partners from acting boldly in the face of an impending crisis.

Access to Medicines: The AFL-CIO has recommended that the U.S. exclude TRIPS-plus provisions from the TPP, and barring that, we recommended that the U.S. preserve the “May 10” provisions on medicines. We also recommended the omission of provisions modeled after those in the U.S.-Korea-FTA that can interfere with efforts to keep government spending on drugs and devices in check. Quality, affordable, accessible healthcare is not only a human right—it enhances worker attendance and productivity. Trade policy should not interfere with public choices about how best to make healthcare available to a nation’s residents, nor should it impinge on development and humanitarian assistance by artificially making such assistance more expensive. Congress, therefore, should consider carefully whether the rules of the TPP promote or impede domestic healthcare policy as well as global human development efforts.

Indeed, the TPP may be too complex to stake out a position “for” or “against” without careful consideration of its voluminous text, a careful study of the impacts of prior, similarly structured

¹⁰ In 2011, the Project on Government Oversight (POGO) compared the costs of federal employees and contractors in a seminal study entitled *Bad Business: Billions of Taxpayer Dollars Wasted on Hiring Contractors*, the first to compare service contractor billing rates to the salaries and benefits of federal employees. POGO determined that “on average, contractors charge the government almost twice as much as the annual compensation of comparable federal employees. Of the 35 types of jobs that POGO looked at in its new report, it was cheaper to hire federal workers in all but just 2 cases.” The report is available for download here: <http://www.pogo.org/our-work/reports/2011/co-gp-20110913.html>.

agreements, and broad consultations with legal experts from a variety of points of view who have also had an opportunity to study the texts. Such discussion, study, and thorough evaluation seems unlikely given the current level of secrecy surrounding the texts. Moreover, it seems even less likely to occur should Congress accede to Fast Track authority, which will severely limit the time that Congress and outside experts may study the text before a simple up-or-down vote is required. Finally, should Congress decide that, while the TPP contains some beneficial provisions, on balance it presents a risk to the firms, families, and communities of the 435 Congressional districts, Congress may already have lost much of its leverage to force improvements in the deal if it has previously committed itself to an up or down vote on the TPP, sight unseen.

In sum, to get the TPP right, Congress faces consequential choices that, for the good of the country, should not be constrained by the misguided secrecy, speed, and unaccountability of Fast Track. To best safeguard the authority over trade policy enshrined in Congress by the Constitution, the AFL-CIO recommends that you reject the outdated and undemocratic process known as Fast Track and develop instead a new trade negotiating authority for the 21st Century.¹¹

¹¹ See *Time for a New Track: Time for a New Track: What Labor Unions Mean When We Say Trade Policy Must Ensure That Negotiations Are Transparent, Democratic, and Participatory*, available at: http://www.aflcio.org/content/download/132311/3551971/TTPFastTrack_TimeForANewTrack.pdf.

Annex

(also available for download at:

<http://www.aflcio.org/content/download/150491/3811471/file/TPPreport-NO+BUG.pdf>)

The Trans-Pacific Partnership: Four Countries That Don't Comply With U.S. Trade Law



THE CURRENT MODEL for U.S. free trade agreements (FTAs) is deeply flawed. Since the North American Free Trade Agreement (NAFTA), FTAs have perpetuated a global race to the bottom, as many countries seek to remain competitive in the global market and maintain low labor costs to attract business by ignoring, or in some cases actively interfering with, fundamental labor rights. Although FTAs contain labor chapters, enforcement of labor laws in partner countries has not been a priority for the U.S. government. The highest labor standards the United States has embedded in FTAs require parties to adopt and implement laws that protect the rights enshrined in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, including freedom of association and collective bargaining.¹ This language was a step forward, despite lacking the specificity and enforceability

of incorporating actual ILO conventions into FTAs. However, the enforcement of these standards has been slow and cumbersome, and relies totally on the political will of governments. Labor provisions, whatever they may be, require active monitoring, investigation and oversight in order to be effective and provide the necessary impetus to comply.

Now the Obama administration wants to Fast Track the largest FTA in history, the Trans-Pacific Partnership (TPP), covering more than 40% of world GDP and about a third of world trade. The TPP would cover the United States and 11 Pacific Rim nations—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. While the specific language of the agreement being negotiated is kept secret, U.S. Trade Representative Michael Froman has promised “groundbreaking” new rules that will bring “new market access for

Made-in-America goods and services, [and] strong and enforceable labor standards and environmental commitments.”²

The TPP should lead to the creation of decent work and protect the ILO’s core labor standards in partner trading countries with effective penalties for violations. However, as at least four of the major countries included in the agreement would be out of compliance on the first day of the TPP, such an outcome appears unlikely.³ In Mexico, Malaysia, Vietnam and Brunei, workers face ongoing and systemic abuse with either the complicity or direct involvement of the state.

Mexico

The human and labor rights situation in Mexico is deteriorating rapidly. The root causes of the crisis in Mexico are many and complex, including growing economic inequality, unemployment and the absence of decent work, rural displacement since NAFTA, public corruption and the absence of the rule of law. The recent disappearance of 43 students, now declared dead, from the teachers’ college in Ayotzinapa, Guerrero, fostered by local police and criminal gangs, is a horrific example of violence, corruption and dissolution of the rule of law. More than 22,000 people have been disappeared since 2007; more than 5,000 vanished in 2014 alone.⁴

These crimes are rarely investigated and almost never prosecuted, allowing public security forces to operate with impunity. Corruption, abuse and impunity also are root causes of the near absence of genuine industrial relations in Mexico, which artificially depresses wages and limits economic growth. Many workers are covered by collective agreements (“protection contracts”) they have never seen or ratified through a vote.

Workers who attempt to form independent unions face violence from employers and employer-dominated unions, often in collusion with local authorities. This situation presents itself at the worksites of many multinational companies, including Atento, Excellon, Honda, PKC and Teksid. The persistence of employer-dominated unions is due in part to a system of corrupt labor boards that lack accountability. The ILO has raised serious concerns about the impact of protection contracts on freedom

of association. Independent unions and labor experts have proposed mechanisms to address these key problems, including procedures to allow workers to vote on their contracts and the transfer of labor board functions to an independent authority.

In the agricultural sector, violations of fundamental rights occur, as well as widespread displacement. Child labor, forced labor and inhumane working conditions exist on farms that export fresh produce into the United States, which then is sold at major retailers, including Walmart and Safeway.⁵ Flawed trade policy that has failed to lift wages or create jobs has driven the displacement of a significant number of rural workers. Mexican workers seeking a better life often are forced to migrate to the United States, where they face further exploitation and criminalization.

These shortcomings are also well documented in the public reports of the U.S. Department of State (DOS) and the International Labor Organization. The problem is not just the weak NAFTA mechanism. It is also the lack of political will to use the weak tools available. The case of Mexico demonstrates the need for broader commitments regarding decent work, labor inspections and constant monitoring of labor conditions to address issues in a timely fashion. It seems unlikely that the TPP will include the high level of commitment needed to address these systemic issues.

Malaysia

Malaysia has grave problems with forced labor and human trafficking. The U.S. Department of Labor (DOL) reports that forced labor is prominent in the electronics, garment and palm oil sectors, which also contain child labor.⁶ The majority of the victims of forced labor in Malaysia are among the country’s 4 million migrant workers—40% of the overall workforce. Migrants to Malaysia face a range of abuses related to their recruitment and placement, and often are threatened with deportation for speaking out.⁷

Migrant workers in Malaysia generally come from other Asian countries in search of greater opportunities. Often, they encounter forced labor or debt bondage at the hands of their employers, staffing agents or labor recruiters. Migrant workers in the agriculture,

construction, textile, electronics and domestic work areas throughout Malaysia are subjected to restrictions on movement, deceit and fraud in wages, document confiscation, and unconscionable debts by recruitment agents or employers. Malaysia currently has the lowest possible ranking—tier 3—on the U.S. Department of State annual Trafficking in Persons report, meaning Malaysia “does not fully comply with the minimum standards [to prevent trafficking] and is not making significant efforts to do so.”⁸ Migrants also are limited in their ability to improve these conditions, as they are prohibited from engaging in organizing or collective bargaining.

Because of this pervasive exploitation, virtually everyone who regularly uses electronics in the United States has come in contact with forced labor. Some of the most recognizable electronics brands source components from Malaysia, and a recent report from Verité that relied on interviews with more than 500 workers found that approximately 28% of electronics workers toiled in conditions of forced labor. Additionally, 73% of workers reported violations that put them at risk for forced labor, such as outsourcing, debt from recruitment fees, constrained movement, isolation and document retention.⁹

The right to freedom of association and collective bargaining also is regularly violated in Malaysia, contributing to the overall level of exploitation and depressing wages. Collective bargaining is restricted in companies in “pioneer” industries, such as the electronics industry, a highly traded sector, and in the public sector. In eligible industries, the Ministry of Human Resources can refuse to register a trade union without giving any reason and has the power to unilaterally dissolve, suspend or deregister trade union organizations. Freedom of association is strictly limited, as there are many legal restrictions on industrial action, and police permission is required for public gatherings of more than five people.

Vietnam

Vietnam has an authoritarian government that tightly controls political rights, freedom of speech and other civil liberties. The U.S. Department of State reports there is corruption in the judicial system and widespread abuse committed by police and other security forces, including arbitrary killings.¹⁰ The government maintains a prohibition on independent human rights organizations and other civil society groups. Further, the Vietnamese government restricts union activity outside the official unions affiliated



with the Communist Party's Vietnam General Confederation of Labor (VGCL), which actually controls the union registration process.

Wildcat strikes and other industrial actions outside VGCL unions have led to government retaliation where workers have been prosecuted and jailed. Workplace-level VGCL unions generally have management serving in leadership positions, and when that is not the case, workers cannot hold a union meeting without management present.¹¹ The government blocks access to politically sensitive websites and monitors the internet for the organization of unauthorized demonstrations.¹²

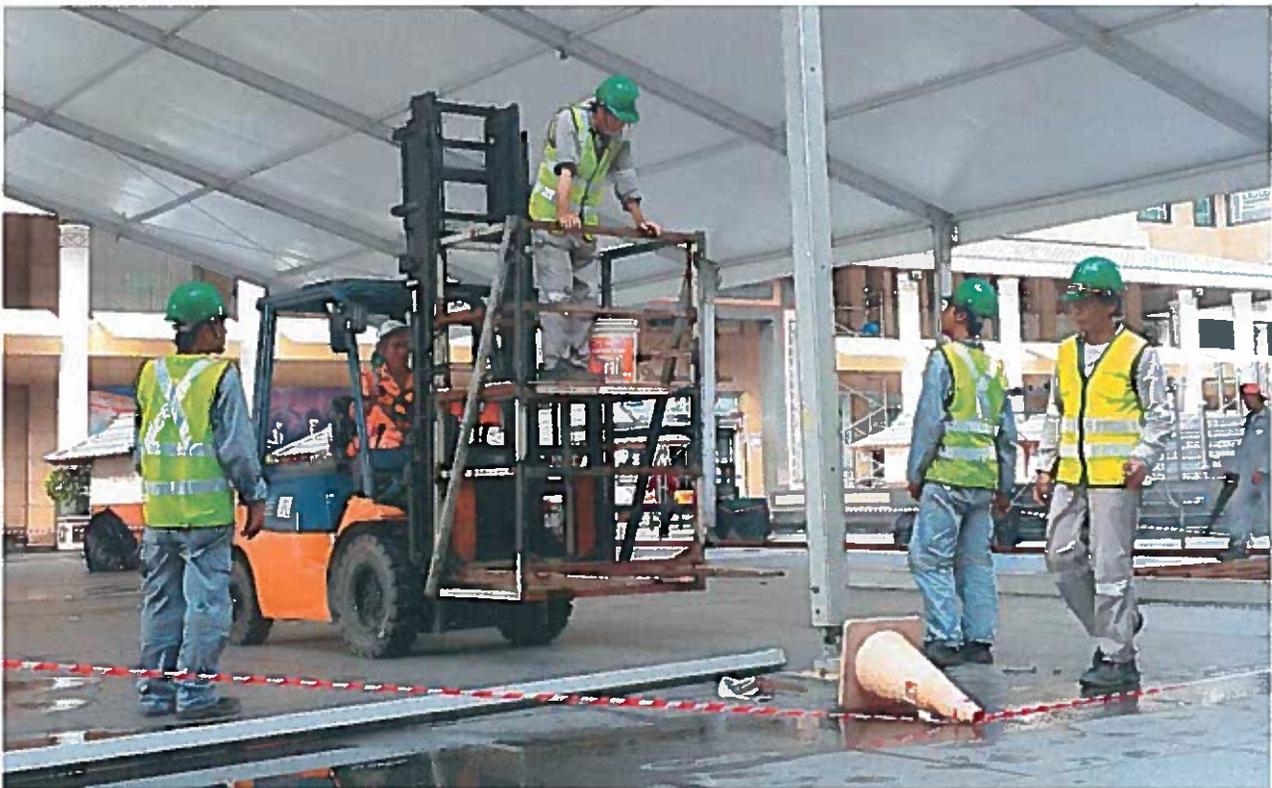
Vietnam has significant problems with forced labor and child labor. The U.S. Department of Labor finds that child labor is prevalent in the production of brick and garments, an industry that also is rife with forced labor.¹³ Vietnam is the second-largest source of apparel and textile imports to the United States, estimated to total \$7.9 billion in value; the industry employs more than 2 million workers.¹⁴ Many of the clothes contain textiles produced in small workshops subcontracted to larger factories. These workshops

frequently use child labor, including forced labor involving the trafficking of children from rural areas into cities.¹⁵

While Vietnamese law bans forced labor and the mistreatment of workers, the government of Vietnam actively imposes compulsory labor on drug offenders. In these work centers, detainees are harassed and physically abused when they do not meet their daily factory quotas in so-called "labor therapy." An estimated 309,000 people were detained in Vietnam's drug detention centers from 2000 to 2010. The detainees receive little or no pay for their work.¹⁶

Brunei

The human rights situation in Brunei is dire. Last year, the sultan of Brunei, whose family has ruled Brunei for more than six centuries, imposed a strict penal code based on Sharia law. The Islamic criminal law includes punishments such as flogging, dismemberment and death by stoning for crimes such as adultery, alcohol consumption and homosexuality. Under emergency measures in place for 65 years, freedom of speech is severely limited,



and the country's legislature has a limited role.¹⁷ Individuals have even been locked away for 10 years for wearing a Santa hat!¹⁸

Many of the 85,000 migrant workers in Brunei also face labor exploitation and trafficking, related to debt bondage from labor recruitment fees, wage theft, passport confiscation, abuse and confinement. Domestic workers especially are prone to this kind of abuse. Immigration law allows for prison sentences and caning for workers who overstay their visas, fall into irregular status, or work or change employers without a permit.¹⁹

The government prohibits strikes, and the law makes no explicit provision for the right to collective bargaining. The law does not provide for reinstatement for dismissal related to union activity. There is only one active union in the country, the Brunei Oilfield Workers Union (BOWU), representing workers at Shell Petroleum. Government permission is required for holding a public meeting involving more than 10 people, and the police can break up any unofficial meeting of more than five people if they regard it as liable to disturb the peace.²⁰

Conclusion

The U.S. government is seeking to grant increased trading privileges to countries with deeply troubling records of human and labor rights violations. There is little reason to believe the global community can push these countries to respect rights if they are to be rewarded with greater trading privileges without having to first undertake fundamental reforms. By not requiring fundamental changes first, the TPP gives away leverage. If workers do not have the legal freedoms to act collectively, they will not be able to exert the power needed to raise wages, increase worker protections or gain the social policies necessary for the creation of a middle class—something both labor and global corporations want. Without protection of core labor standards, including workers' right to organize unions and bargain collectively to improve wages and working conditions, global trade will continue a race to

the bottom in wages and working conditions, while its benefits will continue to go to a very small percentage of the elite and multinational corporations.

There currently is a lack of political will to enforce core labor standards and give workers bargaining power. A recent Government Accountability Office (GAO) report maintains that, in general, the USTR and the DOL have not systematically implemented all key elements of monitoring and enforcement with regard to FTA labor provisions.²¹ This dynamic will not change with a labor chapter that does not make it mandatory to move labor cases quickly to their conclusion. If the TPP keeps the excessive discretion inherent in the current model, it will not improve the lives of TPP workers. The United States needs to reorient its trade policies. On labor, it must incorporate the ability to investigate and monitor labor rights abuses quickly and thoroughly. It must remove political obstacles to acting to protect what are recognized as fundamental human rights. Labor rights are essential to creating and growing an inclusive society with shared prosperity for all.

Successful trade policies must promote the fundamental labor rights included in the ILO core conventions; the preservation and expansion of public services; the creation of high-wage, high benefit jobs; the protection of democracy and allow public policies that regulate in the public interest. Global corporations are working to create a trading system which takes the power to regulate their behavior away from voters and national governments, and puts it at the international level, where there are no voters. This market fundamentalist approach does not and cannot work for workers. Successful trade policies must have at their core not simply "open markets" but improved lives for workers.

U.S. workers, and workers everywhere, need a 21st-century trade agreement that raises wages, enforces labor standards, creates decent work and helps ethical businesses export goods—not an agreement crafted to meet the whims of the largest corporations.

Endnotes

1 In a letter to the House of Representatives in October 2007, the AFL-CIO made clear that the May 2007 language was a first step: "We hope these new labor provisions will provide a starting point for future efforts to strengthen and effectively enforce protections for workers in the global economy. The new provisions will not solve all the problems workers face, but they will provide another important and useful tool to pressure governments and corporations to respect workers' fundamental human rights. But beyond the labor and environmental provisions of the Peru FTA, several issues of concern to working families, particularly with respect to investment, procurement and services, were not adequately addressed."

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3 Other TPP countries also have a troubling record of labor rights violations that needs to be addressed; however, these four stand out in their severity.

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