

**Statement of Catherine Feingold  
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**on the TPP Labor Chapter  
to the U.S. House of Representatives Committee on Ways and Means Democrats  
January 26, 2015**

Representative Levin, Members of the Committee, good morning. I appreciate the opportunity to present my views on the likely impact of the TPP on worker rights.

Although the AFL-CIO strongly supports the Administration's attempt to improve the labor chapter to create greater equity of benefits for workers and corporations, we do not believe that the proposed agreement will achieve this goal.

While we submitted recommendations for many of the proposed TPP chapters, we also sent specific recommendations on how to best strengthen the May 10<sup>th</sup> labor chapter and note that very few of these proposals are in the final text--and those that are have been changed in ways that undermine their effectiveness. These recommendations and a more in-depth analysis of the labor chapter and consistency plans can be found in the Labor Advisory Committee's submission on the TPP.<sup>1</sup>

And since labor chapters are not stand-alone agreements, no matter how good the language, they cannot counter the other provisions in TPP that will provide special rights for corporations, often at the expense of those of working families.

The proposed changes in the consistency plans appear to be a step forward, but as long as determining compliance with these plans remains completely within the discretion of the next administration, after Congress has voted to approve the TPP, there will be little pressure on countries to make changes and effectively enforce them.

The plans almost completely lack well-specified criteria for compliance and mechanisms for ongoing monitoring and effective enforcement of commitments. The AFL-CIO's extensive experience in attempting to use the labor provisions in trade agreements, from NAFTA to Colombia has shown that the discretionary nature of enforcement has resulted in delays and limited access to remedies for workers.

As documented in GAO reports from 2009<sup>2</sup> and 2014,<sup>3</sup> the U.S. government's commitment to monitoring and enforcement of the labor chapter has been weak. There

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<sup>1</sup> Submission of Labor Advisory Committee on the TPP , December 2, 2015, <https://ustr.gov/sites/default/files/Labor-Advisory-Committee-for-Trade-Negotiations-and-Trade-Policy.pdf>

<sup>2</sup> *Four Free Trade Agreements GAO Reviewed Have Resulted in Commercial Benefits, but Challenges on Labor and Environment Remain*, GAO-09-439: Published: Jul 10, 2009. Publicly Released: Aug 10, 2009 <http://www.gao.gov/products/GAO-09-439>

has been very little proactive engagement by governments on this issue without submissions from unions and civil society organizations.

This June, it will have been eight years since the U.S. government accepted the Guatemala case and we continue to wait for the first ever arbitral panel to make a decision. No worker whose rights have been violated should have to wait this long.

This April marks five years since the Colombian Labor Action Plan was implemented. Much of the positive changes outlined in the plan were never fully implemented--a pattern we expect to see again in the TPP consistency plans. The American people were promised that the Colombia trade agreement would not enter into force until the plan was fulfilled, but given the lack of any independent evaluation; the commercial pressure to enter into force outweighed the political will to make sure that the plan was fulfilled. Because its terms were not incorporated into the trade agreement there was no way of measuring sustained and meaningful enforcement of the commitments.

So for the TPP labor chapter and consistency plans to have an impact, we would need more specific criteria, benchmarks for fulfillment, proactive ongoing monitoring and enforcement by governments, employers and workers and incentives based on application of the criteria.

I would like to highlight some of the country-specific concerns we have regarding worker rights in TPP partner countries.

## **Mexico**

Mexico remains far from compliant with fundamental, international labor rights including freedom of association and collective bargaining after 20 years of commitments. It is unacceptable that there is no consistency plan to address what are ongoing issues of impunity around worker rights violations.

Currently, workers on the Mexican side of the border working for Lexmark and other multinational corporation are protesting that they were fired for trying to form an independent union. The workers make about 112 pesos, or roughly six U.S. dollars, a day for shifts that are over nine and a half hours. This wage, about 39 cents an hour, is legal under Mexican law but contributes to the deepening of the impoverished working poor along the border. Minimum wage laws such as these have not been addressed in the TPP as well as the violation of worker rights such as freedom of association. Both are currently part of the NAFTA side agreement and remain unenforced.

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<sup>3</sup> *U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed*, GAO-15-16: November 2014, <http://www.gao.gov/assets/670/666787.pdf>

The changes we proposed include:

- Enact constitutional reforms that eliminate the Conciliation and Arbitration Boards at the state and federal level, replacing them with labor judges who are independent from the executive powers.

- End the system of protection contracts (agreements disguised as collective bargaining agreements signed between an employer and an employer-dominated union, often without the knowledge of the workers) and make regulatory changes including: requiring employers to provide each worker a hard copy of his or her collective bargaining agreement; requiring that contracts be ratified by a majority of workers; and streamlining the union election (recuento) process.

Even if these changes are enacted, oversight will be required to ensure that they are effectively implemented. And Mexican unions and labor rights advocates will need significant technical assistance to assist workers to take advantage of the new rules.

The Mexican President also sent ILO Convention 98 on the right to organize and collective bargaining to the Senate for ratification, and the Labor Secretary has announced a new inspection protocol that supposedly would verify whether workers understand their contracts. Despite these actions, workers would still not have the right to get a copy of their contract.

The recent promises by the Mexican government to send new labor law reform proposals to Congress early this year, has not included a transparent process for engaging unions and civil society to develop these proposals.

## **Vietnam**

Touted as one of the biggest achievements of the labor chapter of TPP, the consistency plan for Vietnam includes some improvements but lacks a roadmap that includes specific criteria to measure implementation and enforcement.

The commitment to allow the registration of independent unions is a significant step forward but would require a massive change in political will by the government, a commitment to halt repression of labor activists and resources to train workers. It is also not clear what penalties will be given to employers who violate the fundamental rights of workers or how workers will be able to access independent adjudication of labor rights violations.

Other concerns include:

Prohibiting discrimination, but in a way that does not comply with ILO convention 111 on discrimination because it excludes religion, political opinion and immigration status.

Providing a free pass to Vietnam to deny freedom of association above the enterprise level for *at least the first five years* after the TPP's entry into force giving away important leverage that could improve the situation *now*. This is the only provision that allows Vietnam five years to come into compliance. The U.S. government, which has a history of inadequate enforcement, will have full discretion to determine whether Vietnam has fulfilled this obligation. The pressure to find full compliance--and not to penalize Vietnam--will be immense. We have never yet seen the U.S. impose trade sanctions in an FTA as a result of labor violations. We are not confident this practice will change.

### **Malaysia**

A report funded by USDOL found that forced labor is prominent in Malaysia's electronics, garment, and palm oil sector, which also uses child labor.<sup>4</sup>

The majority of the victims of forced labor in Malaysia are among the country's 4 million migrant workers—40 percent of the overall workforce.<sup>5</sup> Given the high level of trafficking violations in Malaysia, we proposed the need for the labor chapter to establish enforceable rules for international labor recruiters.

As documented by the Guardian, just a few months ago, Malaysian police uncovered 28 suspected human trafficking camps that were linked to mass graves of migrant workers.

### **Brunei**

The human and labor rights situation in Brunei is dire. The country adheres to a strict penal code based on Sharia law, which mandates flogging, dismemberment, and death by stoning for crimes such as adultery, alcohol consumption, and homosexuality. Despite widespread calls from U.S. labor, LGBT, migrant and human rights groups to exclude Brunei, it appears that the agreement and the consistency plan allow the U.S. and Brunei governments to enter into a permanent trading relationship before ensuring that workers, including many migrant workers, can exercise their fundamental human and labor rights in Brunei.

### **Conclusion:**

Without effective enforcement of workers' rights, there is limited possibility that the TPP will lead to a model of shared prosperity that improves workers' rights, raises wages and improves the well-being of workers and their families. When workers in the U.S. and throughout the TPP countries can exercise their rights and have access to decent work,

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<sup>4</sup>DOL ILAB, "List of Goods Produced by Child Labor or Forced Labor: Malaysia," 2014. Available at: <http://www.dol.gov/ilab/reports/child-labor/list-of-goods/countries/?q=Malaysia>.

<sup>5</sup> "Immigration in Malaysia: Assessment of its Economic Effects, and a Review of the Policy and System," The World Bank: Human Development Social Protection and Labor Unit East Asia and Pacific Region, 2013. Available at: <http://psu.um.edu.my/images/psu/doc/Recommended%20Reading/Immigration%20in%20Malaysia.pdf>.

more inclusive economic growth can be enjoyed. Unfortunately, the current provisions of TPP will do little to uplift millions of workers and their families, enforce worker rights commitments and diminish income inequality.