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Labor

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

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.

This is vitally important in a part of the world where workers continue to face significant challenges, from inability to organize and join unions of their own choosing, to forced labor and child labor, and poor working conditions. These practices not only hurt workers in the countries with which we trade, but they also have significant impacts here in America, as a competition with workers who do not have the most basic of labor rights is fundamentally unfair, and creates incentives for a race to the bottom. TPP will create a fairer and more level playing field for American businesses and American workers by raising labor standards across the Asia-Pacific.

CHAPTER OVERVIEW

Labor rights

The Labor chapter establishes broad commitments that require all TPP Parties to adopt and maintain in their laws and practices the fundamental labor rights as recognized by the 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.

Implementation and enforcement of labor laws

The Labor chapter bars TPP Parties from waiving or derogating from laws implementing fundamental labor rights in a manner affecting trade or investment. In addition, for export processing zones, which present heightened concerns, it includes additional commitments not to waive or derogate from laws governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. The chapter also includes commitments by TPP Parties not to fail to effectively enforce their labor laws in a sustained or recurring pattern that would affect trade or investment between the TPP Parties.

Dispute Settlement

Commitments in the Labor chapter are subject to the same dispute settlement procedures available for other chapters of TPP, including the availability of trade sanctions.

Forced labor

In addition to commitments by Parties to eliminate forced labor in their own countries, the Labor chapter includes commitments to discourage importation of goods that are produced by forced labor or that contain inputs produced by forced labor, regardless of whether the source country is a TPP country.

Transparency

The Labor chapter includes expansive commitments on transparency related to its own implementation and enforcement. These include commitments by TPP countries to ensure access to fair, equitable and transparent administrative and judicial proceedings, as guaranteed in U.S. law; and to provide remedies for violations of TPP countries' labor laws. It also includes commitments related to public participation in its implementation, with TPP countries establishing mechanisms to obtain public input and to accommodate requests for information.

Cooperation Mechanisms and Capacity-Building

Recognizing the importance of cooperation to achieve our goals, the Labor chapter establishes a mechanism for cooperation and coordination on labor issues, including opportunities for stakeholder input in identifying areas of cooperation and participation, as appropriate, in cooperative activities. Areas of cooperation will be determined by the TPP countries jointly, with the range of issues including job creation and promotion of entrepreneurship; promotion of productivity, including in small- and medium-sized enterprises; awareness of and respect for ILO fundamental labor rights; eliminating discrimination, including against migrant workers, women and other workers; and other areas.

Labor Dialogue

To promote the rapid resolution of labor issues between TPP countries, the

Labor chapter establishes a labor dialogue mechanism that countries can use to try to resolve any labor issue between them. This dialogue will allow for expeditious consideration of matters and help TPP countries to agree mutually to a course of action to address issues, such as through action plans, cooperative programs or capacity building. Whether or not TPP countries use the dialogue route, dispute settlement would always remain available to them.

NEW FEATURES

To date, only four trade agreements in the world provide for strong, fully-enforceable requirements to adopt and maintain fundamental ILO labor rights and to effectively enforce labor laws—the U.S. Free Trade Agreements (FTAs) with Peru, Panama, Colombia, and Korea. TPP’s Labor chapter extends these requirements to 10 new countries, more than quadrupling the number of people around the world covered by enforceable labor rights. TPP is also the first-ever trade agreement to include the following:

- Commitments to discourage trade in goods produced by forced labor, including forced child labor.
- Commitments on adoption and maintenance of laws on acceptable working conditions, including minimum wage, hours of work, and occupational safety and health.
- Commitments to require countries not to weaken labor protections in export processing zones.

In addition, the United States has concluded bilateral implementation plans with several individual TPP countries to ensure that their laws and practices are consistent with international standards, including through reforms of laws, regulations, institutions, and practice. The commitments in the implementation plans are subject to TPP dispute settlement procedures, meaning they are fully enforceable and backed up by trade sanctions. The implementation plans also establish bilateral mechanisms beyond those in the labor chapter to ensure ongoing engagement, monitoring, and reporting on the implementation of those commitments. They include:

- **Vietnam**

The Vietnam implementation plan includes historic commitments on the part of Vietnam to allow workers the autonomy to form and operate

unions of their own choosing. Currently, all trade unions must be affiliated with the government-connected trade union confederation. 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. This comprehensive implementation plan includes legal, regulatory and institutional changes that strengthen the protection of all fundamental labor rights. These include protections against employer interference in union activity, protections for peaceful union activity, removal of certain restrictions on strikes, strengthened penalties against forced labor and protections against forced labor in drug rehabilitation centers, and increased protections against employment discrimination. Vietnam also commits to build the capacity of its institutions to enforce these laws, including the labor inspectorate. To ensure the continued implementation of these reforms over time, the plan establishes a review mechanism, including an independent labor expert committee that will monitor implementation and identify any challenges that may arise for at least the first ten years. The review mechanism includes a provision whereby the United States may withhold or suspend tariff reductions for Vietnam if Vietnam does not comply with its commitment to provide the right to form labor unions across enterprises and at higher levels within five years.

- **Malaysia**

The Malaysia implementation plan commits Malaysia to significant legal and institutional reforms, in particular in the areas of forced labor and freedom of association. Related to forced labor, Malaysia commits to fully implement the recently passed amendments to the Anti-Trafficking law to allow trafficking victims to travel, work, and reside outside government facilities, including while under protection orders. Malaysia also commits to increasing protections related to the withholding of workers' passports, recruitment fees and practices, contract substitution, decent housing and freedom of movement, and increase cooperation with sending countries to improve recruitment practices. Related to freedom of association and the right to bargain collectively, Malaysia commits to remove restrictions on union formation and strikes that have been in place for decades; to limit governmental discretion in registering and canceling a trade union; to allow foreign workers to assume leadership positions in unions (after working in the country for a period of time); and to remove restrictions on the subjects on which workers can collectively bargain with their employers. Malaysia also commits to address concerns that

outsourcing or subcontracting may be used to undermine freedom of association or collective bargaining rights. The bilateral implementation plan creates a government-to-government review mechanism for at least seven years to oversee implementation of the commitments in the plan. This comprehensive package of reforms will help address the risks of exploitation that foreign workers face when migrating to another country to work.

- **Brunei Darussalam**

Brunei only recently joined the ILO and had labor laws that lacked certain protections and guarantees that a modern labor-relations system would normally provide. Thanks in large part to pressure from TPP, Brunei recently passed legislation amending its labor laws to remove broad discretion of the government to register or cancel a trade union's registration, prohibit anti-union practices, remove certain restrictions on union operations, and strengthen certain child labor protections. The Brunei implementation plan commits Brunei to additional reform of its trade union act and employment order that further limits the discretion of the government to register or cancel a union's registration, establishes protections against interference in union activities, allows for international affiliation, provides procedures for collective bargaining and strikes, strengthens protections against child labor and forced labor, and ensures independent review of administrative decisions. Brunei also commits to implementing a minimum wage for the first time and to ensuring protections against employment discrimination. The implementation plan creates a government-to-government review mechanism for at least seven years to oversee implementation of the commitments in the plan.

In addition, Mexico is in the process of developing parallel reforms, including concerning its system for protecting collective bargaining and union representation rights.

IMPACT

The rapid development of the Asia-Pacific clearly produces great benefits for American consumers, and great opportunities for American exporters as the Asian middle class grows. But it also creates great pressure on American workers, who need and deserve confidence that international competition rests on productivity and creativity, and labor laws that respect and protect workers' rights, and not on exploitation, denial of rights, dangerous

factories and child labor. Likewise, when workers' rights are not respected development is ultimately slowed, and the gains of trade are spread unevenly.

TPP is a chance to address these issues on a scale never before attempted. Several of our 11 TPP partners are countries, such as Vietnam and Malaysia, with which we have no trade and labor agreements at all. In other cases, the Labor chapters and side-agreements of existing agreements with TPP partners— i.e. the North American Free Trade Agreement (NAFTA) of 1993, and the U.S.-Chile and U.S.-Singapore agreements of 2003, and the U.S.-Australia agreement of 2004—are weak in comparison to TPP and their substantive labor commitments are less enforceable than their obligations in other areas. Labor rights were in fact not included at all in the body of NAFTA. Rather, they were incorporated, after the fact, into a side agreement called the “North American Agreement on Labor Cooperation” under which a single provision—countries' requirement to enforce their own labor laws related to child labor, occupational health and safety and minimum wage—was enforceable, but through the levy of a capped “monetary assessment.” NAFTA's dispute settlement procedures did not apply. It was not until the groundbreaking “May 10, 2007” Congressional-Executive Agreement that countries were required to adopt and maintain the fundamental ILO rights in their laws and that all labor obligations were subject to full dispute settlement and trade sanctions.

TPP is therefore a unique opportunity to create the first enforceable standards for our new partners; to reform and modernize several of our existing agreements; and, ultimately, to set the foundations of a region-wide commitment to labor practices which meet international standards, ensure a level playing field for competition, and share the benefits of trade fairly.

To address these issues, TPP will require all signatory countries to afford their workers the rights that have been recognized as “fundamental” by the ILO: (1) freedom of association; (2) the right to bargain collectively; (3) freedom from forced labor; (4) freedom from child labor; and (5) freedom from discrimination in employment. The ILO has recognized these as “enabling” rights—rights that all others build upon and that make it possible to promote and realize decent and dignified work.

In addition, TPP signatories commit to take on a number of first-ever commitments:

- A commitment to discourage imports made with forced labor, no matter what the origin of the goods. This addresses a growing global problem that, according to the ILO, currently affects 21 million men, women, and children and in industrial sectors generates about \$43 billion in illegal

profits worldwide annually. The United States has strong laws prohibiting trade in goods produced by forced labor, but in many other countries, more needs to be done to address this global challenge.

- A commitment to put in place laws on acceptable working conditions, including a minimum wage, limits on hours of work, and occupational safety and health, which are well established in the United States, but less so in many other countries around the world.
- Special commitments to protect labor standards in export processing zones (EPZs). These “EPZs” are special zones in which governments offer businesses special benefits to establish operations in the zones, such as exemptions from certain taxes or regulations. In some cases, governments also lower or provide exemptions from labor laws to attract investment, leading to poor and deteriorating labor standards. As the number of export processing zones has grown, the concern about workers’ rights and working conditions in these zones has also increased.

Together, these provisions not only set the high-water mark for labor protections in a trade agreement, but mark a sea-change from early U.S. FTAs. TPP provides an opportunity to lock in those gains for nearly 40 percent of the global economy, bringing us closer to establishing a new global norm for labor rights in trade agreements. In particular, applying these standards to Mexico and Canada delivers on the President’s promise to renegotiate NAFTA.

