

Broken Promises

Decades of Failure to Enforce Labor Standards in Free Trade Agreements



Prepared by the Staff of Sen. Elizabeth Warren

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Executive Summary

The Senate will soon vote on the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 – also known as “Fast Track.” President Obama has requested Fast Track authority from Congress to ease the passage of the Trans-Pacific Partnership (TPP), a massive trade agreement with 12 countries that account for nearly 40% of the global economy. President Obama has repeatedly stated that the TPP is “the most progressive trade bill in history” because it has high labor, environmental, and human rights standards. The President claims the TPP will have “higher labor standards, higher environmental standards,” and “new tools to hold countries accountable.”

But proponents of almost every free trade agreement (FTA) in the last 20 years have made virtually identical claims:

- In 1993, President Clinton claimed that “the North American Free Trade Agreement [NAFTA] is the first agreement that ever really got any teeth in environmental standards, any teeth in what another country had to do with its own workers and its own labor standards... There’s never been anything like this before.”
- In 2005, U.S. Trade Representative Rob Portman claimed, “[t]he [Central American Free Trade Agreement] has the strongest labor and environmental provisions of any trade agreement ever negotiated by the United States.”
- In 2007, U.S. Trade Representative Susan Schwab claimed that the Peru, Colombia, and Panama trade agreements contained “unprecedented protections for labor rights and environmental standards.”
- In 2010, President Obama said that the South Korea agreement included “groundbreaking protections for workers’ rights.”
- In 2011, the White House insisted that the Colombia trade agreement “include[d] strong protections for workers’ rights, based on the May 10, 2007, bipartisan Congressional-Executive agreement to incorporate high labor standards into America’s trade agreements.” President Obama said in 2012 that “this agreement is a win for our workers and the environment because of the strong protections it has for both – commitments we are going to fulfill.”
- A few months later, the White House made nearly identical claims about the Panama Free Trade Agreements.

However, the history of these agreements betrays a harsh truth: that the actual enforcement of labor provisions of past U.S. FTAs lags far behind the promises. This analysis by the staff of Sen. Warren reveals that despite decades of nearly identical promises, the United States repeatedly fails to enforce or adopts unenforceable labor standards in free trade agreements.

Again and again, proponents of free trade agreements claim that this time, a new trade agreement has strong and meaningful protections; again and again, those protections prove unable to stop the worst abuses. Lack of enforcement by both Democratic and Republican presidents and other flaws with the treaties have allowed countries with weaker laws and standards and widespread labor and environment abuses to undermine treaty provisions, leaving U.S. workers and other interested parties with no recourse. This analysis finds:

- The United States does not enforce the labor protections in its trade agreements. A series of reports by the non-partisan Government Accountability Office (GAO), as well as reports by the Department of Labor (DOL) and the Department of State, document significant and persistent problems with labor abuses in countries with which we have FTAs. While GAO acknowledged progress by partners in implementing commitments and by agencies in tracking progress and engaging on problems, their analysis concluded that the USTR and DOL “do not systemically monitor and enforce compliance with FTA labor provisions,” and that the U.S. agencies generally have not been “identifying compliance problems, developing and implementing responses, and taking enforcement actions.”

- The U.S. pursues very few enforcement actions. Prior to 2008, the Department of Labor had not accepted a single formal complaint about labor abuses in free trade agreements. Since then, the Obama administration has conducted in-depth investigations into complaints and issued fact-finding reports and recommendations. However, DOL has accepted only five claims against countries for violating their labor commitments, and it only agreed to restart the first ever labor enforcement case under any free trade agreement in 2014, six years after the initial claim was filed. This reveals both the cumbersome nature of complaint process and the overall enforcement problems with these agreements.
- Widespread labor-related human rights violations. The United States has 14 free trade agreements with 20 countries. While some of these countries have made progress in improving labor conditions, problems with labor rights and other abuses are widespread. U.S. agencies or other investigators have identified significant problems with use of child labor or other labor-related human rights abuses in 11 of the 20 countries.
- Failure to curb even the worst abuses. Case studies of several countries that have signed U.S. free trade agreements reveal continuing horrific labor abuses. Guatemala was named “the most dangerous country in the world for trade unionists” five years after entering a trade agreement with the U.S. In Colombia, despite the existence of a special “Labor Action Plan” put in place to address long-standing problems and secure passage of the Colombia FTA, 105 union activists have been murdered and 1,337 death threats have been issued since the Labor Action Plan was finalized four years ago.

1. Introduction: Obama Administration Claims that the TPP Will be the Most Progressive Trade Agreement in History

The Senate will soon vote on the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 – also known as “Fast Track.” President Obama has requested Fast Track authority from Congress to ease the passage of the TPP, a massive trade agreement among 12 countries that account for nearly 40% of the global economy. On numerous occasions, President Obama has made claims that the final pact will be “the most progressive trade agreement in history” with regard to labor, environment, and human rights.¹ For example, last month the President declared:²

“Here’s what I’m confident about: This will end up being the most progressive trade bill in history. It will have the kinds of labor and environmental and human rights protections that have been absent in previous agreements.

Fact Sheets from the White House echo the President’s promise:³

“Through the Trans-Pacific Partnership we are renegotiating NAFTA and instituting stronger, fully enforceable labor and environmental standards. These high standards will not only bring hundreds of millions of people under enforceable labor standards and protect endangered wildlife in one of the fastest growing regions of the world—they will also help level the playing field for workers and businesses here at home by ensuring our trade partners are playing by the rules.

The White House calls TPP the “greenest trade agreement in history -- protecting oceans and combating wildlife trafficking, illegal fishing, and illegal logging across a vast swath of the globe,”⁴ and claims that TPP will “raise labor standards” with “enforceable requirements on minimum wages, hours of work, and occupational safety and health.”⁵

According to USTR, the President “has always made clear that he will only support trade agreements that include fully enforceable labor standards,” and that the final agreement “will offer new tools to fight exploitative child labor and forced labor, deter employment discrimination, and will embed fundamental labor standards in our trade agreement with Mexico and Canada.”⁶

Again and again, key Administration officials make similar claims. According to the White House, the “high standards” in this agreement “will not only bring hundreds of millions of people under enforceable labor standards and protect endangered wildlife in one of the fastest growing regions of the world—they will also help level the playing field for workers and businesses here at home by ensuring our trade partners are playing by the rules.”⁷

2. Promises about Previous Trade Agreements

The promises that the Obama Administration is making about the TPP are not new. For over two decades, American Presidents from both political parties have promised that the trade agreements negotiated by their Administration would put American workers first. From NAFTA and CAFTA to the recent deals with Peru, Colombia, Panama and South Korea, proponents of these trade agreements have – again, and again, and again - made nearly identical promises.

A. NAFTA Agreement under President Clinton

In 1993, President Clinton declared that:

“In all of trade history, [NAFTA] is the first agreement that ever really got any teeth in environmental standards, any teeth in what another country had to do with its own workers and its own labor standards... There’s never been anything like this before.”⁸

U.S. Trade Representative Mickey Kantor echoed the President, saying that NAFTA “will serve as a model,” for future trade agreements and pointing out that a trade agreement covered workers’ rights and the environment “for the first time.”⁹

And at his remarks on the signing of the agreement in 1993, President Clinton said: “The environmental and labor side agreements negotiated by our administration will make this agreement a force for social progress as well as economic growth.”¹⁰

B. CAFTA-DR Agreement under President George W. Bush

Twelve years after NAFTA was negotiated, President George W. Bush made the Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) a central pillar of his trade policy. An agreement between the U.S. and several smaller developing economies (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua), CAFTA-DR was portrayed by President Bush as “transforming our hemisphere into a powerful free trade area,” to “promote democratic governance, human rights, and economic liberty for everyone.”¹¹

U.S. Trade Representative Portman stated that “The CAFTA has the strongest labor and environmental provisions of any trade agreement ever negotiated by the United States. CAFTA is light years ahead of NAFTA, more practical and effective than current law, and is far stronger than earlier agreements.”¹² Ambassador Portman claimed that CAFTA-DR contained “cutting-edge, practical and effective” labor and environmental protections.¹³

Fact sheets from USTR said that CAFTA-DR would go further than previous agreements on labor and environmental rights, stating that CAFTA-DR would “create a three-part strategy on worker rights that will ensure effective enforcement of domestic labor laws, establish a cooperative program to improve labor laws and enforcement, and build the capacity of Central American nations to monitor and enforce labor rights.” The environmental chapter would be similarly innovative and “ensure that views of civil society are appropriately considered, and for benchmarking of environmental cooperation activities and input from international organizations.”¹⁴

C. Peru FTA under President Bush

Two years after the CAFTA-DR agreement, President George W. Bush in 2007 finalized the US-Peru Free Trade Agreement (PFTA). Pres. Bush lauded the “enforceable” new rules in this agreement:¹⁵

“Today’s action by the Senate also marks the approval of the first free trade agreement that fulfills the May 10 bipartisan trade agreement with Congress by incorporating enforceable labor and environmental standards.

U.S. Trade Representative Susan Schwab declared that the protections in the Peru FTA were “unprecedented”:

“For nearly ten months the Bush administration has worked with House and Senate leaders from both parties on a path forward for these four free trade agreements. The bipartisan view we reached in May will pull into these FTAs unprecedented protections for labor rights and environmental standards.”¹⁶

And, speaking before the House Committee on Small Business, Deputy U.S. Trade Representative John Veroneau praised the “cutting edge” labor and environmental standards, declaring that the rules “level the playing field” for American workers:¹⁷

“[E]ach of these FTA partners agreed to incorporate stronger enforceable labor and environmental standards into the trade agreements, putting them at the cutting edge of efforts to improve labor and environmental conditions through trade....[T]hese agreements not only level the playing field for American farmers, ranchers, manufacturers and service providers, they also strengthen intellectual property rights; promote transparency and the rule of law; and safeguard labor and environmental standards.

D. South Korea, Colombia, and Panama Agreements under President Obama

FTAs with Colombia, Panama, and South Korea were signed during the Bush Administration and passed by Congress during the Obama Administration. President Obama and his Administration insisted that these agreements set a new bar for labor and environmental standards.

In 2010, President Obama said that the South Korea agreement included “groundbreaking” protections for workers and the environment:¹⁸

“I’m especially pleased that this agreement includes groundbreaking protections for workers’ rights and for the environment. In this sense, it’s an example of the kind of fair trade agreement that I will continue to work for as President, in Asia and around the world.

In 2011, U.S. Trade Representative Ron Kirk echoed the President, and said that the South Korea FTA had the “highest standards” for environmental and labor protections, and invoked the “level playing field” that a South Korean FTA would provide for American producers.¹⁹

“[T]he U.S.-Korea trade agreement has the highest standards for the protection of labor rights and the environment. It contains mechanisms for the effective enforcement of labor and environmental laws, combined with strong remedies for non-compliance. As a result, the U.S.-Korea trade agreement will provide a level playing field for American producers by upholding strong labor and environmental protections in Korea.

Six months later, the White House claimed that the Colombian FTA met and exceeded the high standards set by President Obama:²⁰

“The [U.S.-Colombia FTA] includes strong protections for workers’ rights... In addition, President Obama insisted that a number of serious and immediate labor concerns be addressed before he would be willing to send the Agreement to Congress...As a result, the U.S. and Colombian governments announced, on April 7, 2011, an ambitious and comprehensive Labor Action Plan that included major, swift and concrete steps for the Colombian government to take...[S]uccessful implementation of key elements of the Action Plan will be a precondition for the Agreement to enter into force.

In May 2012, President Obama certified that the FTA would enter into force, as Colombia had taken steps to “ensure the protection of labor rights.” The President said that:²¹

“[W]e approved an action plan to ensure the protection of labor rights. We all know that more work still needs to be done, but we’ve made significant progress. And as a result, and given the actions taken by President Santos and the Colombian legislature, I can announce that the U.S.-Colombia Free Trade Agreement will enter into force next month on May 15th...this agreement is a win for our workers and the environment because of the strong protections it has for both – commitments we are going to fulfill.

The Obama Administration portrayed the Columbian FTA as consistent with America’s “core values” and echoed prior calls for “a level playing field” for American workers:²²

“The Obama Administration is pursuing an ambitious trade agenda that will help our economy grow and support more and better jobs for American workers. At the same time, the President has made clear that our trade agreements must be consistent with our core values and interests, including effectively protecting workers’ rights, and enable American workers and businesses to compete on a level playing field. To achieve these twin objectives, we must ensure that our trading partners meet basic labor standards and protect basic labor rights.

The Panama Free Trade Agreement would go into effect a few months after the Colombia agreement. Again, the Obama Administration insisted, the agreement would contain equally strong protections for workers’ rights, and the Administration praised the steps taken by the government of that country to improve labor laws:²³

“The U.S.-Panama Trade Promotion Agreement...includes strong protections for workers’ rights, based on the May 10, 2007 bipartisan Congressional-Executive agreement to incorporate high labor standards into America’s trade agreements.

USTR’s fact sheet on the Panama agreement was similarly laudatory, highlighting that the agreement will “[p]rotect [l]abor rights and the [e]nvironment.”²⁴

“Both Parties are also required to effectively enforce – and may not waive – labor laws related to fundamental labor rights. Both Parties also commit to effectively enforce their own domestic environmental laws and adopt, maintain, and implement laws, regulations, and all other measures to fulfill their obligations under covered multilateral environmental agreements.

3. Broken Promises: Failure to Adequately Enforce Free Trade Agreements

A series of reports by government auditors and other experts - combined with case-by-case analyses of labor, environment, and human rights problems in countries that are partners in free trade agreements with the United States - reveals that despite promises made by Presidents from both parties, free trade agreements have often failed to resolve or prevent abuses in countries that are parties to the agreements.

A. GAO Findings

In 2014, the GAO conducted a thorough assessment of U.S. implementation of key labor provisions in our existing free trade agreements. Although GAO noted that some conditions had improved in the countries that were subject to free trade agreements, the investigators found widespread and persistent problems. According to the study:²⁵

“U.S. agencies reported, and GAO found, persistent challenges to labor rights, such as limited enforcement capacity, the use of subcontracting to avoid direct employment, and, in Colombia and Guatemala, violence against union leaders.

Even when DOL receives formal complaints alleging that free trade agreements have been violated, action is slow and ineffective. Prior to 2008, DOL had not accepted a single formal complaint. DOL has since conducted in-depth investigations into each of the complaints and issued fact-finding reports and associated recommendations. However, GAO found that DOL since 2008 has only resolved one of five submitted complaints, that DOL is unable to meet key deadlines, and that many stakeholders are not even aware of the process for submitting complaints. According to GAO:²⁶

“Since 2008, the Department of Labor (DOL) has accepted five formal complaints. ... about possible violations of FTA labor provisions and has resolved one ... for each submission, DOL has exceeded by an average of almost 9 months its 6-month time frame for investigating FTA-related labor submissions and issuing public reports, showing the time frame to be unrealistic. Also, union representatives and other stakeholders GAO interviewed in partner countries often did not understand the submission process, possibly limiting the number of submissions filed. Further, stakeholders expressed concerns that delays in resolving the submissions, resulting in part from DOL’s exceeding its review time frames, may have contributed to the persistence of conditions that affect workers and are allegedly inconsistent with the FTAs.

These problems were not new -- many were identified in 2009 in a similar GAO report, and at the time key Administration officials vowed to take action.²⁷ GAO closely tracked agency actions for four years and documented some improvement. The 2014 report acknowledged progress by partners in implementing commitments and by agencies in tracking progress and engaging on problems, but still identified significant problems with these efforts. GAO concluded that USTR and DOL “do not systemically monitor and enforce compliance with FTA labor provisions,”²⁸ and that the U.S. agencies generally have not been “identifying compliance problems, developing and implementing responses, and taking enforcement actions.”²⁹

B. Department of Labor and Department of State Reports on Child Labor, Trafficked Persons, and Human Rights.

Every year, DOL publishes a report to Congress on goods produced by child labor and forced labor, and the Department of State publishes human rights reports on every country in the world. These reports show significant problems with many countries that have U.S. FTAs in effect, despite promises from leaders that these agreements would protect workers and create “a level playing field.”

For example, the DOL reports identify ten countries with which the U.S. has existing free trade agreements - Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Nicaragua, Panama, and Peru - that continue to produce goods with child labor or forced labor in violation of international law.³⁰ The report further shows that Colombia produces eight different products – clay bricks, coal, coca, coffee, emeralds, gold, pornography, and sugarcane - using child or forced labor. Guatemala produces broccoli, coffee, corn, fireworks, gravel, and sugarcane with child labor. Mexico produces eleven different products with child labor.

Similarly, the Department of State publishes annual human rights reports on every country in the world.³¹ These reports include information on workers’ rights. In 17 countries with which the U.S. has free trade agreements in effect, the reports identified human rights violations directly related to labor rights and the conditions of workers. In 10 of these countries - Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, and Panama - the reports identified problems related to workers’ rights and impunity for those responsible for human rights violations.

For example, the report identified “exploitation of child labor” in Mexico;³² and in Honduras the Department of State reported that serious problems included the ineffective enforcement of labor laws; and child labor,” and “institutional weakness of the judicial system leading to widespread impunity.”³³ In Jordan, the report stated that “The government restricted labor rights, and local and international human rights organizations reported high levels of abuse of foreign domestic workers,” and that “Impunity remained widespread, and the government did not take sufficiently strong steps to investigate, prosecute, or punish officials who committed abuses.”³⁴

C. Detailed Examples of Failed Free Trade Agreement Enforcement

I. PERU FREE TRADE AGREEMENT BROKEN PROMISES

The U.S. Free Trade Agreement with Peru entered into force in 2009. This agreement, the United States-Peru Trade Promotion Agreement (PTPA), includes what USTR describes as “groundbreaking provisions concerning the protection of the environment and labor rights.”³⁵ But since the PTPA entered into force in 2009, Peru has reportedly used child labor and forced labor in a wide array of industries; Peru continues to export illegal timber from the Amazon; and in 2014, Peru undertook a massive rollback of its environmental protections and health and safety regulations for workers to induce foreign investment.

According to DOL, significant numbers of bricks, coca, fireworks and fish products exported from Peru are produced by children, Brazil nuts and timber products are produced by forced labor, including trafficked persons, and gold products are produced by both children and forced labor.³⁶

Similarly, numerous sources have tracked the boom in illegal logging and oil concessions in Peru since the PTPA. A 2012 report from the Environmental Investigation Agency identified 100 shipments of illegal logs from Peru to the United States in the two and a half years following congressional passage of the PTPA.³⁷ A 2014 study found that despite PTPA's provisions against illegal logging, nearly 70 percent of all logging concessions in Peru are currently suspected of serious violations.³⁸ This study concluded:

“[T]he U.S.–Peru Trade Promotion Agreement (TPA), which entered into force in February 2009, contained an important annex aimed at strengthening Peru’s forest sector governance and sustainable management of forest resources. Despite these efforts, it is increasingly clear that sustainable forestry has yet to be attained and illegal logging continues to plague the Peruvian Amazon... after entry into force of the U.S.–Peru TPA.”³⁹

In July 2014, Peru enacted a package of laws that rolls back occupational health and safety standards, removes key enforcement powers from Peru’s environment ministry and weakens environmental assessment requirements in the name of promoting investment.⁴⁰ The law limits penalties that can be placed on companies for health, safety, and environmental violations.⁴¹ Labor, environmental and other civil society groups have criticized the rollbacks, stating that they constitute clear violations of PTPA.⁴² These groups also asked USTR to try to use the PTPA’s enforcement provisions to halt the rollbacks. Indeed, these rollbacks came after Peru had already been called out for lack of compliance with the 2009 standards.⁴³ Nonetheless, the only action taken by USTR has been to “monitor” the situation.⁴⁴

II. COLOMBIAN FREE TRADE AGREEMENT BROKEN PROMISES

When Congress passed the Colombia FTA in 2011, President Obama said that the agreement would “protect labor rights, the environment, and intellectual property.”⁴⁵ The Administration also touted a separate “Labor Action Plan” which detailed a series of steps that the Colombian government agreed to take in order to address the Administration’s concerns regarding “violence against Colombian labor union members; inadequate efforts to bring perpetrators of murders of such persons to justice; and insufficient protection of workers’ rights in Colombia.”⁴⁶

But neither the FTA nor the Labor Action Plan have resulted in significant advances in labor rights. Last year, Freedom House noted that the Plan “called for enhanced investigations of rights violations and stepped-up enforcement regarding abusive labor practices, but it has resulted in only minor improvements.”⁴⁷ According to Colombia’s National Union School, the group recognized in the LAP as an authoritative source of monitoring data, 105 union activists have been murdered and 1,337 death threats have been issued against unionists since the LAP was finalized four years ago,⁴⁸ and the State Department found that as of 2013, “the pace of investigations and convictions [for unionist killings] remained slow and high rates of impunity continued.”⁴⁹

USTR and DOL acknowledge that “significant challenges” remain in Colombia’s efforts to enforce its labor laws – of the 110 labor-related homicides reported by the Colombian government since 2011, there have been only four convictions, and while the number of threats against labor leaders and activists has actually increased in the last four years, no threat case has been successfully resolved.⁵⁰ The State Department also noted that “fines assessed by the government did little to dissuade violators, since fines were often not collected, and many companies chose to appeal rather than pay the fines.”⁵¹

The AFL-CIO concluded that, “Fines levied serve more as public relations successes for the Ministry of Labor than acts of enforcement capable of exerting pressure to change the fraudulent behavior of employers” and that the hiring practices for labor inspectors “severely [affect] ...autonomy and technical capacity.”⁵²

Child labor also appears to be an ongoing problem in Colombia. In 2013, the State Department reported “significant incidences” of child labor occurring in the production of clay bricks, coal, emeralds, gold, coca, and pornography. The State Department’s report also noted that prohibitions against children working in mining and construction “were largely ignored.”⁵³

III. BROKEN PROMISES IN GUATEMALA (CAFTA SIGNATORY)

CAFTA-DR went into effect with Guatemala in 2006. Seven years later, Guatemala was named by the International Trade Union Confederation (ITUC) as “the most dangerous country in the world for trade unionists.”⁵⁴ According to ITUC, since 2007, “at least 53 union leaders and representatives have been killed, and there have been numerous acts of attempted murder, torture, kidnapping, break-ins and death threats, which have created a culture of fear and violence where the exercise of trade union rights becomes impossible.”⁵⁵

In 2008, under then-President Bush, the AFL-CIO and six Guatemalan labor organizations filed a submission to DOL alleging that the Guatemalan government was failing to effectively enforce its labor laws and comply with ILO standards. In January 2009, days before President Obama’s inauguration, DOL issued a report in response to the submission and identified

a number of troubling issues, including the inability of the Guatemalan Ministry of Labor to conduct inspections or sanction employers for labor rights violations and “serious problems with respect to the enforcement of court orders.”⁵⁶

In 2010, DOL deemed Guatemala’s actions over the previous 18 months as “insufficient to address the concerns raised in the report” and the Obama administration initiated an enforcement case against Guatemala, the first such case under any free trade agreement.⁵⁷ But after multiple suspensions, the case remains open five years later.

The consultations requested by the U.S. to resolve the case dragged on for a year before the U.S. requested an arbitral panel. That panel was suspended to allow the parties to negotiate a new plan, which they completed in 2013. At the time, USTR’s fact sheet called it “an ambitious and comprehensive enforcement plan that includes significant, concrete actions that the Guatemalan government will implement within specified time frames to improve enforcement of labor laws.”⁵⁸

According to the 2013 State Department Human Rights Report, “[t]he government did not effectively enforce legislation on freedom of association, collective bargaining, or antiunion discrimination. Due to a combination of inadequate allocation of budget resources and inefficient legal and administrative processes, the relevant government institutions did not effectively investigate, prosecute, and punish employers who violated freedom of association and collective bargaining laws or reinstate workers illegally dismissed for engaging in union activities.”⁵⁹

In September 2014, after another year and a half of working with Guatemala to help it comply with its CAFTA-DR obligations and six years after the initial submission by AFL-CIO and Guatemalan organizations, the Obama administration finally announced that it would restart a labor enforcement case against Guatemala.⁶⁰ There will be a nine-month gap between this announcement and the first hearing, which will be held in June 2015.⁶¹

IV. BROKEN PROMISES IN EL SALVADOR (CAFTA SIGNATORY)

Another signatory of CAFTA-DR, El Salvador, has experienced less violent but still serious obstacles to compliance with CAFTA labor standards. According to the 2013 State Department Human Rights Report, the El Salvadorian government “did not effectively enforce the laws on freedom of association and the right to collective bargaining in all cases, and remedies and penalties remained ineffective. Judicial procedures were subject to lengthy delays and appeals.”⁶² Furthermore, there were “reports of antiunion discrimination, including threats against labor union members, dismissals of workers attempting to unionize, and blacklisting.”⁶³ The GAO found that although the government has increased the budget of its Ministry of Labor and hired more inspectors, U.S. officials believe these steps “have not improved the ministry’s effectiveness,” and that court orders are often unenforced.⁶⁴

A report by the Center for Global Workers’ Rights and the Worker’s Rights Consortium found that:⁶⁵

“Employers collude with and make pay-offs to labor organizations, and, in particular, the labor federation Fenestras to preempt or quell independent worker organizing. ... Finally, there is a disturbing trend of the apparent use of gang members to threaten and intimidate union activists. By preventing independent worker organizing and authentic collective bargaining, whether through inducements, coercion or threats, employers not only violate fundamental rights as recognized by codes of conduct, domestic law and international conventions, but also, by doing so, artificially suppress both wages and working conditions in the industry.

The State Department report also found that child labor in El Salvador is “a serious and widespread problem,” with the “worst forms of child labor [occurring] in coffee and sugarcane cultivation, fishing, mollusk shucking, and fireworks production.” The report also notes that the Ministry of Labor enforced relevant laws with only “limited effectiveness.”⁶⁶

4. Conclusion

The TPP is being hailed as the strongest free trade agreement yet. But this is not the first time this claim has been made. Proponents of previous trade agreements have made similar claims about every free trade agreement signed in the last 20 years, from the NAFTA agreement in 1993 to the more recent agreements with Colombia and Panama.

By now, we have two decades of experience with free trade agreements under both Democratic and Republican Presidents. Supporters of these agreements have always promised that they contain tough standards to protect workers.

But this analysis reveals that the rhetoric has not matched the reality. There have been widespread enforcement problems and flaws that prevent enforcement of the labor provisions of these free trade agreements. GAO concluded that USTR and DOL

“do not systemically monitor and enforce compliance with FTA labor provisions,”⁶⁷ and that the U.S. agencies generally have not been “identifying compliance problems, developing and implementing responses, and taking enforcement actions.”⁶⁸ Reports by the State Department and the Department of Labor reveal persistent problems with child labor and labor rights in countries that have signed free trade agreements with the United States

And case studies of several countries that have signed U.S. free trade agreements reveal continuing horrific labor abuses: Guatemala was named ‘the most dangerous country in the world for trade unionists’ five years after entering a trade agreement with the U.S.; in Colombia, despite the existence of a special Labor Action Plan put in place to address long-standing problems, 105 union activists have been murdered and 1,337 death threats have been issued since the U.S. Free Trade Agreement was finalized.

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