

Standing Up for Workers: Promoting Labor Rights through Trade



USTR OVERVIEW

The Office of the United States Trade Representative (USTR) is responsible for developing, negotiating and coordinating U.S. international trade and investment policy.

Established in 1962, the Office of the United States Trade Representative provides trade policy leadership and negotiating expertise in areas including bilateral, regional and multilateral trade and investment issues, expansion of market access for American goods and services, negotiations affecting U.S. import policies, oversight of U.S. preference programs, trade-related intellectual property protection issues and World Trade Organization (WTO) issues.

USTR is part of the Executive Office of the President and the head of USTR, the U.S. Trade Representative, is a Cabinet member who serves as the principal trade advisor, negotiator and spokesperson on trade issues.

DOL OVERVIEW

The Bureau of International Labor Affairs (ILAB) leads the U.S. Department of Labor's efforts to ensure that workers around the world are treated fairly and are able to share in the benefits of the global economy. ILAB's mission is to improve global working conditions, raise living standards, protect workers' ability to exercise their rights and address the workplace exploitation of children and other vulnerable populations. ILAB's efforts help to ensure a fair global playing field for American workers and contribute to stronger export markets for goods made in the United States.

ILAB's Office of Trade and Labor Affairs (OTLA) engages in the drafting, negotiation, monitoring and enforcement of the labor provisions of U.S. free trade agreements; the administration of the labor eligibility criteria of U.S. trade preference programs; the development and implementation of trade- and investment-related international labor policy; and the coordination, funding and oversight of international technical assistance projects and cooperation to improve respect for workers' rights, livelihoods and labor law enforcement and compliance in U.S. trading partners.

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EXECUTIVE SUMMARY

Protecting workers' rights is a top priority for the Obama Administration, and the Office of the United States Trade Representative (USTR) and the Department of Labor (DOL) are leading the Administration's efforts to improve labor laws and working conditions with trading partners in virtually every region of the globe. These efforts are made in close coordination with other U.S. agencies and in collaboration with Congressional and other stakeholders, as well as international partners such as the International Labour Organization (ILO).

From bringing the first-ever labor dispute under a free trade agreement (FTA), to working with Burma on a new labor rights initiative, to developing roadmaps to address serious workers' rights concerns in Bangladesh and Swaziland, to seeking the highest-ever labor commitments with the Trans-Pacific Partnership (TPP) and Transatlantic Trade and Investment Partnership (T-TIP) countries, which collectively represent nearly two-thirds of the global economy, the Obama Administration is taking unprecedented actions to promote and protect fundamental labor rights and ensure acceptable conditions of work.

The stakes are high and the challenges are great. Overcoming these challenges will require sustained progress across many initiatives and the joining of efforts not only across the U.S. Government but also with other like-minded countries and stakeholders, including the international labor community. With both American values and interests at stake, the Administration is committed to maintaining the effort to ensure that the benefits of trade are broadly shared and to supporting a growing and vibrant middle class around the world.

The trade policy tools that are available to this end have evolved over time. Twenty years ago, when the United States entered into the North American Free Trade Agreement (NAFTA) with Mexico and Canada, labor provisions were not included in the core of the agreement. Rather, they were in a side agreement, virtually all of the provisions of which were not subject to any enforcement mechanism. Today, the Obama Administration is negotiating provisions that are fundamentally different from NAFTA. The Administration is seeking in TPP provisions that require parties to provide workers their fundamental rights, as stated in the ILO Declaration on Fundamental Principles and Rights at Work. The Administration is also seeking first-ever protections relating to importing goods made with forced labor, adopting laws on acceptable conditions of work and upholding labor standards in export processing zones. The Obama Administration has insisted that labor provisions be at the core of the agreement, subject to full dispute settlement and the full range of trade sanctions. Stronger tools make a difference and the new tools being negotiated by the Obama Administration in TPP will empower this Administration—and future administrations—to undertake broader and more effective action than ever before.

This report discusses the Obama Administration's efforts in a number of key countries—Guatemala, Colombia, Jordan, Bahrain, Bangladesh, Swaziland, Haiti and Burma—in which USTR and DOL have had intensive engagement on labor issues in recent years. Presenting unique opportunities and challenges, each country has required a tailored approach—from the invocation of formal dispute settlement procedures, to action under U.S. preference programs, to negotiation of specific commitments for change, to consultations and collaborative efforts to develop a path forward. Our objective, however, has been the same in each case—to make trade work better for workers.

In Guatemala, we are engaged in a formal dispute settlement process under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), having exhausted consultative efforts aimed at ensuring that workers are afforded the protections they are due under Guatemalan labor law. As the first Administration to make use of such a mechanism, the Obama Administration has made clear that the objective is not punitive, but rather to ensure that Guatemala upholds the commitments it has made under the CAFTA-DR with respect to workers' rights.

In Bahrain, we have pursued formal consultations under the United States-Bahrain trade agreement to address concerns regarding targeting of union leaders in the events surrounding the 2011 Arab Spring civil unrest. The Government of Bahrain has made important progress—such as reinstating the vast majority of workers who had been dismissed in that process—but significant challenges remain and USTR and DOL are continuing to engage to try to resolve them.

In Colombia, a long and constructive engagement with the Government led to the negotiation of the extensive Colombian Action Plan Related to Labor Rights (Action Plan). This plan was designed to address longstanding concerns relating to violence against labor leaders, impunity for such acts and protection of labor rights. The two countries have worked closely on implementation of the plan, drawing on strong engagement by stakeholders in both countries. Important progress has been made but much more work remains and the United States will continue to work closely with Colombia in this process.

In Jordan, our engagement produced an Implementation Plan Related to Working and Living Conditions of Workers that is helping to address concerns about workers' rights and working conditions in Jordan's garment sector, particularly with respect to foreign workers. Jordan has issued new standards for dormitory inspections, submitted new labor legislation to its parliament and hired new labor inspectors. The ILO has also been an important partner and has ramped up its engagement in Jordan to support labor protections for foreign workers.

Bangladesh, Swaziland, & Haiti illustrate how the Administration has been using the tools in U.S. preference programs to protect labor rights. Each of these countries is eligible for benefits under different programs—Bangladesh from the Generalized System of Preferences

(GSP), Swaziland from the African Growth and Opportunity Act (AGOA) and Haiti from the Hemispheric Opportunity through Partnership Encouragement (HOPE) program. These programs, which encourage economic growth in developing countries through trade, all condition preferential market access on meeting certain “eligibility criteria,” which include criteria relating to labor rights. While the specific labor criteria in each program are unique, the Obama Administration has made use of all of them to address a range of serious problems: from lack of worker voice, to building and fire safety concerns, to acts of violence and intimidation towards union organizers, to employment-related sexual harassment. Addressing these issues is not only critical to protecting workers’ rights, it is necessary for strengthening developing countries’ growth strategies.

In Burma, we are developing new tools suited to the particular economic conditions in that country. We have announced a joint *Initiative to Promote Fundamental Labor Rights and Practices in Myanmar*, which aims to establish a partnership to advance labor rights and protections for workers in Burma. With recent changes in its posture towards the outside world, Burma is at an early and pivotal stage in its economic growth. The Initiative helps Burma lay the right foundation for ensuring that economic growth and development proceed on a basis that is inclusive and sustainable.

Finally, this report discusses the labor rights commitments that the United States is negotiating as part of the landmark **Trans-Pacific Partnership (TPP)** agreement with 11 Asia-Pacific countries and the **Transatlantic Trade and Investment Partnership (T-TIP)** agreement with the 28 European Union member states. These agreements present an opportunity to lock in and build on the progress that we have made in ensuring that protection of labor rights is a core component of U.S. trade policy and helping to create new global norms for protecting workers’ rights in the context of trade.

TIMELINE

KEY OBAMA ADMINISTRATION ENGAGEMENT







KEY EXPORTS TO THE UNITED STATES:

Bananas & plantains, unroasted coffee, fresh fruit, processed fruit and vegetables

LABOR FORCE:

6,036,000 workers

RELEVANT TRADE POLICY TOOLS:

Dominican Republic-Central America-United States Free Trade Agreement and 2013 Enforcement Plan

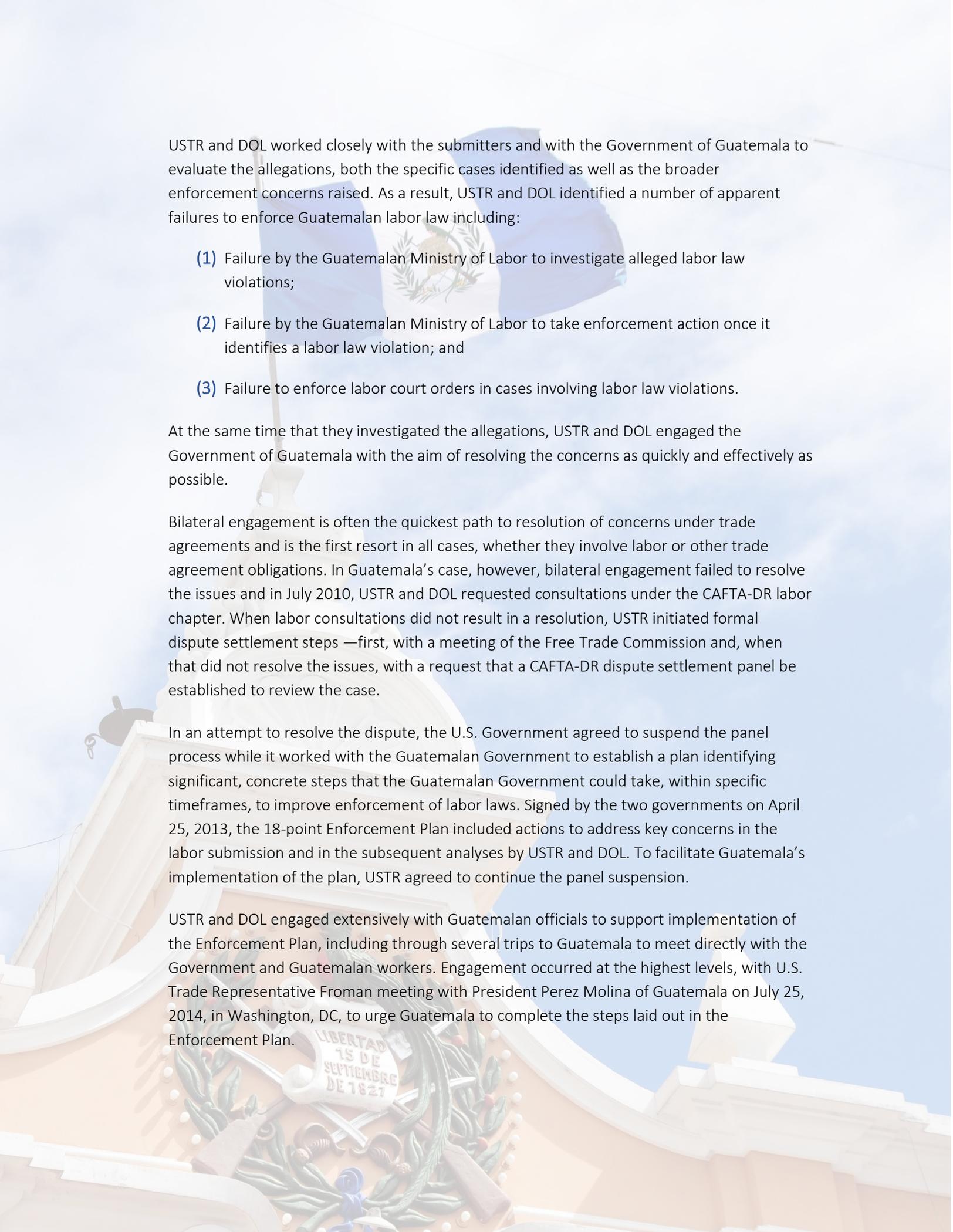
GUATEMALA

OVERVIEW

Guatemala and the United States are both parties to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR). That agreement—which was signed in 2004 and also includes the Dominican Republic, El Salvador, Costa Rica, Honduras, and Nicaragua—requires that parties effectively enforce their labor laws. If a country does not comply with that obligation, it can be taken before a dispute settlement panel. And if the panel finds against the country, it can be subjected to an annual “monetary assessment” (i.e., a fine) until that country comes into compliance.

On August 9, 2011, the United States requested the establishment of a dispute settlement panel, asserting that Guatemala was not effectively enforcing labor laws relating to the right of association, the right to organize and bargain collectively, and acceptable conditions of work. In so doing, the Obama Administration became the first in history to bring a labor case under a free trade agreement—not just under a U.S. trade agreement, but any trade agreement ever negotiated.

The Guatemala case was initiated pursuant to a submission by the AFL-CIO and six Guatemalan labor organizations to the U.S. Government under the CAFTA-DR labor chapter. The submission outlined concerns, including regarding Guatemala’s enforcement of its labor laws in key sectors—apparel, bananas, processed fruits and vegetables and ports—and argued that these cases illustrated a broader failure to enforce labor laws.



USTR and DOL worked closely with the submitters and with the Government of Guatemala to evaluate the allegations, both the specific cases identified as well as the broader enforcement concerns raised. As a result, USTR and DOL identified a number of apparent failures to enforce Guatemalan labor law including:

- (1) Failure by the Guatemalan Ministry of Labor to investigate alleged labor law violations;
- (2) Failure by the Guatemalan Ministry of Labor to take enforcement action once it identifies a labor law violation; and
- (3) Failure to enforce labor court orders in cases involving labor law violations.

At the same time that they investigated the allegations, USTR and DOL engaged the Government of Guatemala with the aim of resolving the concerns as quickly and effectively as possible.

Bilateral engagement is often the quickest path to resolution of concerns under trade agreements and is the first resort in all cases, whether they involve labor or other trade agreement obligations. In Guatemala's case, however, bilateral engagement failed to resolve the issues and in July 2010, USTR and DOL requested consultations under the CAFTA-DR labor chapter. When labor consultations did not result in a resolution, USTR initiated formal dispute settlement steps —first, with a meeting of the Free Trade Commission and, when that did not resolve the issues, with a request that a CAFTA-DR dispute settlement panel be established to review the case.

In an attempt to resolve the dispute, the U.S. Government agreed to suspend the panel process while it worked with the Guatemalan Government to establish a plan identifying significant, concrete steps that the Guatemalan Government could take, within specific timeframes, to improve enforcement of labor laws. Signed by the two governments on April 25, 2013, the 18-point Enforcement Plan included actions to address key concerns in the labor submission and in the subsequent analyses by USTR and DOL. To facilitate Guatemala's implementation of the plan, USTR agreed to continue the panel suspension.

USTR and DOL engaged extensively with Guatemalan officials to support implementation of the Enforcement Plan, including through several trips to Guatemala to meet directly with the Government and Guatemalan workers. Engagement occurred at the highest levels, with U.S. Trade Representative Froman meeting with President Perez Molina of Guatemala on July 25, 2014, in Washington, DC, to urge Guatemala to complete the steps laid out in the Enforcement Plan.

On July 31, 2014, at the request of the Guatemalan President, Ambassador Froman travelled to Guatemala to deliver the same message to a wide range of stakeholders, which included Guatemalan congressional leaders from across the political spectrum, the Ministers of Labor, Economy, and Foreign Affairs and Guatemalan labor and business groups. Ambassador Froman also met with the International Labor Organization and the United Nations to discuss coordination of efforts in pushing Guatemala to implement needed changes.



PROGRESS

Since the signing of the Enforcement Plan in April 2013, Guatemala has taken important steps to implement the Enforcement Plan. To enhance the Ministry of Labor's enforcement of labor laws, Guatemala:

- **Hired 100 new inspectors.**
- **Issued a number of legal instruments to ensure police assistance** to facilitate labor inspector access to worksites.

To strengthen the enforcement of labor court orders, Guatemala:

- **Created a new "Verification Unit"** within the judiciary with standardized procedures and criteria for verifying employer compliance with labor court orders.
- **Conducted a review of labor courts** in an effort to hold accountable judges who fail to take the measures required by law to enforce court orders.

To better incentivize export companies to comply with labor laws, Guatemala published Ministerial Accords that:

- **Establish a public comment process** as part of the review of applications by export companies for certain tax benefits and require rejection of applications from companies that are found to have violated labor laws.
- **Establish a streamlined process to revoke the tax benefits** for existing beneficiaries that violate labor laws and publish the names of companies whose benefits are withdrawn.
- **Require the Ministry of Labor to conduct annual inspections** of all enterprises receiving the special tax benefits.

To address the closure of enterprises without payment to workers of salaries and other benefits due under Guatemalan labor laws, Guatemala:

- **Issued Ministerial Accords requiring the intervention of the Labor Ministry** when it receives information of a potential enterprise closure and directing the Ministry to take the steps necessary to secure payment to workers if the enterprise closes, including by petitioning relevant labor courts to embargo or seize assets.

REMAINING CHALLENGES

Critical Enforcement Plan commitments by the Guatemalan Government remain outstanding. These include, for example:

- **Enacting legislation to expedite the sanctioning of employers** that violate labor laws.
- **Issuing and publicizing standardized timeframes** for labor inspections and criteria for determining when “employer substitution” has occurred (e.g., where a company purports to go out of business but re-establishes under a different name).
- **Demonstrating that the reforms that Guatemala has adopted have been implemented** and that they are leading to sufficient concrete improvements with respect to workers’ rights and working conditions on the ground.

As a result, on September 18, 2014, the Obama Administration decided to lift the suspension of the panel process and proceed with the case against Guatemala. An outcome in the Guatemala case is expected in 2015.

LOOKING AHEAD

Even as the dispute process moves ahead, the United States will continue to press Guatemala to undertake the efforts needed to come into compliance with its obligations under the CAFTA-DR. Our hope remains that there can be continued progress and the outstanding concerns in the case can be resolved collaboratively and expeditiously.







KEY EXPORTS TO THE UNITED STATES:

Aluminum, woven apparel, mineral oil, fertilizers

LABOR FORCE:

741,700 workers

RELEVANT TRADE POLICY TOOLS:

U.S.-Bahrain Free Trade Agreement

BAHRAIN

OVERVIEW

The United States and Bahrain entered into a free trade agreement on September 14, 2004. On labor, the agreement committed the two parties to enforce their own labor laws and to strive to ensure that internationally recognized labor rights are recognized and protected by their laws. These provisions could be the subject of formal consultations under the agreement, but only the provision regarding enforcement of labor laws could be the subject of dispute settlement.

In April 2011, DOL received a submission from the AFL-CIO on behalf of the General Federation of Bahrain Trade Unions. The submission alleged that Bahrain's actions against trade unionists in response to civil unrest and national strikes in early 2011 violated the unionists' rights to freedom of association and nondiscrimination in employment. According to the submission, these actions violated Bahrain's commitments under the labor chapter of the free trade agreement.

On June 10, 2011, DOL accepted the AFL-CIO submission for review. As part of its review, DOL considered detailed and voluminous information received from the Government of Bahrain and Bahraini workers, amendments to the Bahraini Trade Union Law, and labor-related developments in international fora regarding Bahrain, in particular at the ILO. In addition, two DOL delegations visited Bahrain in October 2011 and February 2012 for fact-finding, as well as consultations with the Government of Bahrain.

In December 2012, after completing its review, DOL issued a public report finding that trade unionists were targeted for dismissal, and in some cases prosecuted, for their role in organizing and participating in the March 2011 general strike. The report also found that Shia workers and political critics of the Bahraini administration faced discrimination. In addition, the report raised concerns about violations of freedom of association and political and religious (sectarian) discrimination against Shia workers in the reinstatement process. The report made specific recommendations for the Government of Bahrain to address the issues identified and to facilitate compliance with commitments under the labor chapter.

On May 6, 2013, the United States formally requested labor consultations with Bahrain under the labor chapter of the trade agreement. Beginning in July 2013, the United States held two rounds of consultations with Bahrain in an effort to develop initiatives to address identified concerns about employment discrimination and freedom of association.



PROGRESS

Over the course of USTR and DOL's engagement, the Government of Bahrain made progress in the following areas:

- **Reinstatement of dismissed workers.** The Government of Bahrain worked with private businesses, state-owned companies and workers' organizations to re-instate more than 95 percent of workers who were dismissed during the period of civil unrest in early 2011.
- **Tripartite agreement to address issues of concern.** The Government of Bahrain signed an agreement in 2014 with workers' and employers' organizations to address many of the issues, including employment discrimination, stemming from the 2011 dismissals. This agreement led to the successful closing of a complaint filed by Bahrain's unions with the ILO.
- **Labor reforms.** In 2014, the Government of Bahrain submitted labor reforms to Bahrain's parliament to remove restrictions on multiple-sector labor federations and to clarify the process for selecting worker representatives in international bodies and national-level collective bargaining.

REMAINING CHALLENGES

USTR and DOL are continuing with the process of consultations to encourage and assist the Government of Bahrain to make progress on the remaining challenges, including:

- **Compliance with labor laws** related to anti-union harassment and intimidation, union dues deduction and collective bargaining, particularly in the context of recent reforms that allow for multiple unions in the workplace.
- **Review and amendment of Bahraini labor law** in furtherance of the commitment to strive to ensure that international labor standards with respect to freedom of association and employment discrimination are recognized and protected, including by:
 - Repealing bans on public sector unions, multi-sector labor federations, political activity by unions, and a wide range of strikes, significant restrictions on union leadership and criminal sanctions for strikes in public services;
 - Banning employment discrimination, including based on political opinion and religion.
- **Development of new procedures and guidelines for the receipt and adjudication of allegations of discrimination** in the workplace and for redress and sanctions for violations identified.
- **Strengthening of tripartite social dialogue** through regular meetings and discussion of impediments to observance of international labor standards in the context of industrial relations and employment discrimination.

LOOKING AHEAD

USTR and DOL, together with the State Department, are continuing to support the Government of Bahrain's efforts to address remaining concerns regarding freedom of association and employment discrimination related to the civil protests in 2011. The aim is to help Bahrain return to its previous status among the leaders in the Gulf on labor matters.





KEY EXPORTS TO THE UNITED STATES:

Crude oil, gold, spices, coffee, cut flowers, bananas

LABOR FORCE:

23,107,300 workers

RELEVANT TRADE/LABOR POLICY TOOLS:

U.S.-Colombia Trade Promotion Agreement and Colombian Action Plan Related to Labor Rights

COLOMBIA

OVERVIEW

Through the United States-Colombia Trade Promotion Agreement (TPA), the Obama Administration has sought to address some of the longest-standing and most intractable concerns about labor rights and working conditions of any trading partners. In 2006, when the Bush Administration concluded the Colombia TPA, the State Department's Human Rights Report identified a range of labor concerns in Colombia, including violence and discrimination against trade union members to discourage workers from joining unions and engaging in union activity; impunity for acts of labor-related violence; a proliferation of fake worker "cooperatives" that were used to undermine workers' rights; and use of "collective pacts" with favorable terms negotiated directly with individual workers to weaken existing unions and avoid collective bargaining.

At that time, many in Congress were also demanding that all pending free trade agreements, including the Colombia TPA, be renegotiated to include strong labor protections, including an enforceable commitment to adopt and maintain fundamental rights as stated in the ILO *Declaration on Fundamental Principles and Rights at Work*. A bipartisan agreement between the Congress and the Administration, known as the "May 10, 2007, agreement," reflected these concerns.

In June 2007, the Colombia TPA was renegotiated to include elements of this bipartisan "May 10" agreement. However, it was not until after the Obama Administration came into office in 2009 that efforts were made to address the specific concerns raised in the Colombian context and to develop a roadmap for moving forward.

Labor Action Plan

Working closely with Congressional and other stakeholders, the U.S. Government negotiated with the Colombian Government a detailed “Colombian Action Plan Related to Labor Rights” (Action Plan). The Action Plan specified concrete steps that Colombia would take to address the major areas of concern, including with respect to violence against unionists, impunity for the perpetrators of the violence and protection of labor rights. The two governments initiated the Action Plan on April 7, 2011.

The United States has worked with Colombia on implementation of the Action Plan, including supporting the establishment of a separate Ministry of Labor to elevate the importance of labor issues within the Colombian Government. Regular meetings and ongoing engagement between the U.S. and Colombian Governments have also focused on achieving the underlying goals of the Action Plan, including through technical assistance and cooperation activities to help build the institutional capacity of Colombia’s Ministry of Labor.

Today, Colombia presents a record of both meaningful progress in areas of key importance under the Action Plan, as well as areas of concern that will require additional effort to address.

Working to End Violence & Impunity

The Action Plan took a two-pronged approach to addressing the long-standing concerns about violence against unionists and labor activists and impunity for the perpetrators:

- (1) It called upon Colombia to strengthen and make more accessible protections offered by Colombia’s National Protection Unit (UNP), a unit housed within Colombia’s Ministry of Interior that protects individuals, groups and communities facing an extraordinary or extreme risk of targeted violence.
- (2) It committed Colombia to more effectively prosecute perpetrators of violence against trade unionists and labor activists.

PROGRESS

Colombia has made progress in a number of areas:

- **An increase in resources.** The Santos Administration increased the UNP’s budget by over 30 percent and hired additional personnel from 2010 to 2014. \$47 million was allocated to the UNP in 2014 specifically for protection of union members and labor activists. The Santos Administration also increased the budget of the independent Prosecutor General’s Office, in part to expand law enforcement resources and personnel to investigate and prosecute cases of violence against union members and labor activists.

- **Improving confidence in the protection program.** 677 union members are currently in the protection program. 248 vehicles and 609 bodyguards are assigned to union leaders and labor activists for full-time protection. To date, no unionist under the protection program has been killed.
- **Additional prosecutors and police investigators.** In 2011, Colombia’s Prosecutor General assigned over 20 prosecutors exclusively to crimes against union members and labor activists and Colombia’s National Police assigned an additional 100 full-time judicial police investigators to support the prosecutors. Currently, 23 prosecutors across the country comprise the specialized sub-unit of the Prosecutor General’s Office that focuses on violence against unionists and labor activists. Approximately 80 judicial police investigators support the work of the prosecutors.

- **Conviction of Intellectual authors.** In two landmark cases in 2013, Colombian courts convicted the “intellectual authors” of the 2001 murders of two union leaders in the coal sector and one in the agriculture sector and sentenced the perpetrators to 38 years and 17 years in prison, respectively. Stakeholders have long pressed the Colombian authorities to investigate and bring to justice such “intellectual authors” and not just the trigger men who directly commit the crimes.



- **A steady decline in Colombian homicide rates,** including for union members and labor activists. This trend continued in the period since the Action Plan was announced. From 2001 to 2010, Colombian experts reported an average of close to 100 murders per year of union members. From 2011 to 2014, the number dropped to an average of 28. The United States is committed to working with Colombia to ensure that this trend continues until there are no more labor-motivated murders and union members no longer fear for their lives.

REMAINING CHALLENGES

- **The slow pace of prosecutions and convictions in recent labor homicides.** According to the Prosecutor General’s Office, in the 110 labor homicides that have occurred since

2011, there have been only four convictions. The Prosecutor General reports having arrested 28 suspects in an additional 16 cases.

- **An increase in threats against labor leaders and activists**, particularly through text messages, phone calls, letters, emails and other forms of communication that are often difficult to trace. The Prosecutor General has assigned prosecutors and investigators to cases of threats against labor leaders and activists. However, to date, no threat case, of the over 1,100 reported by the Government since 2011, has been successfully resolved.
- **Concerns that bodyguards hired through private contractors may not undergo adequate background checks and may be more susceptible to corruption.** The Colombian Government is transitioning to direct hiring of all bodyguards who provide protection.

More progress is needed to lower the incidence of threats and violence, and the U.S. Government is engaged with the Government of Colombia and international partners, like the ILO, to provide critical assistance. For example, the U.S. Agency for International Development (USAID) is providing roughly \$125,000 per year to the UNP. In addition, DOL has been funding a five-year, \$7.8 million ILO project that includes a focus on building the institutional capacity of the Colombian Government to combat impunity for perpetrators of violence against trade union leaders, members and activists, including through training of Colombian prosecutors, investigators and judges on labor rights and on investigating such crimes.

Strengthening Labor Laws & Enforcement

PROGRESS

Colombia has also taken important steps to strengthen labor laws and their enforcement.

- **Ban on abuse of cooperatives and other similar employment relationships.** The Colombian Government enacted new legal provisions and regulations in 2011 and 2013 to prohibit and sanction with significant fines, the misuse of cooperatives and other employment relationships that undermine workers' rights. A recent ruling by the Colombian Constitutional Court strengthens inspectors' ability to investigate these relationships.
- **Increase in labor inspectors.** Starting in June 2011, the Ministry of Labor has increased the size of the labor inspectorate from 424 inspectors to 718 inspectors, with an additional 188 slated to be hired.

- **Inspections conducted in priority sectors.** Since January 2014, labor inspectors have undertaken 54 investigations in the five priority sectors of palm oil, sugar, mines, ports and flowers for illegal subcontracting.
- **Fines imposed for unlawful subcontracting.** The Ministry of Labor has levied \$31 million in fines for unlawful subcontracting that undermines workers' rights (e.g., unlawful cooperatives), from 2011 to date. In 2013, the agency charged with collecting fines for labor violations announced new rules to improve its fine collection ability, in particular authorizing the agency to require and hold collateral payment from an enterprise pending the outcome of a judicial appeal of a fine.



- **Decline of cooperatives in sugar sector.** As of April 2014, more than 70 percent of sugar cane cutters (totaling roughly 7,000 workers) who were previously in unlawful cooperatives have formed unions and negotiated collective bargaining agreements with subsidiaries of the main sugar processing companies. Although the workers are employees of the subsidiaries and not the main companies themselves, labor unions in the sugar sector report that the subsidiaries are properly funded and that the unions are able to negotiate over wages and working conditions with them.
- **Reform of criminal code.** In 2011, as specified in the Action Plan, the Colombian Congress reformed the criminal code, establishing criminal penalties and possible imprisonment for employers that undermine the right to organize and bargain collectively, including by extending better conditions to non-union workers through collective pacts. It will be important to see whether any investigations under these reforms lead to convictions and, where warranted, successful "conciliations" (Government-led efforts to resolve alleged violations through voluntary negotiations between workers and employers).

REMAINING CHALLENGES

There are also areas where further work is needed to strengthen Colombia’s labor law regime and practices, including the following:

- **Limited fine collection.** The Colombian authorities have only collected roughly five percent of the \$31 million in fines levied for illegal subcontracting since 2011, according to the most recent information from the Colombian Government.
- **Increased abuse of other forms of indirect employment.** The number of unlawful cooperatives has dropped significantly, largely in response to Colombia’s focus on strengthening and applying labor laws intended to combat such arrangements. However, many employers have shifted to other forms of unlawful subcontracting that similarly avoid direct employment relationships and undermine workers’ rights, such as simplified stock companies (known as SASs). The Colombian Government is developing tools to address this problem, including a new legal instrument explicitly targeting such alternative forms of unlawful subcontracting.
- **Implementation of certain “formalization agreements” that undermine workers’ rights.** Colombia has established a mechanism—known as “formalization agreements”—to hire workers previously in unlawful subcontracting relationships, in part to bolster the Action Plan goals of shifting those workers into long-term direct employment relationships. While the development of the “formalization agreement” mechanism is positive, there have been concerns about implementation in some cases. That includes, for example, negotiation of agreements that do not require direct employment relationships or permanent contracts with the main enterprise benefiting from the labor and agreements that do not cover all workers affected by illegal subcontracting.

To help Colombia meet the labor law and enforcement challenges that still exist, DOL is funding a five-year, \$7.8 million ILO project that is focused on strengthening the overall capacity of the Colombian Ministry of Labor. DOL is also funding a three-year, \$1.5 million project started in 2012 with Colombia’s National Union School (Escuela Nacional Sindical), a labor rights NGO, to create “Workers’ Rights Centers” in four Colombian cities. The centers provide free legal advice to workers to raise awareness of labor laws and improve workers’ ability to protect and claim their labor rights, for example, by filing well-documented complaints with the Ministry of Labor.

LOOKING AHEAD

Most of the issues that are the subject of the Action Plan have a long history in Colombia and addressing them will require continued engagement. Towards that end, U.S. Trade Representative Froman met with Colombian Minister of Commerce Industry and Tourism, Santiago Rojas Arroyo, on April 4, 2014, to urge additional actions in areas where concerns remain. On October 21, 2014, Secretary of Labor Perez met with Colombian Minister of Labor Luis Eduardo "Lucho" Garzón to discuss remaining challenges such as collecting fines in cases of unlawful subcontracting, effectively targeting shifting forms of unlawful subcontracting and investigating and prosecuting the most recent cases of violence against trade unionists. Further engagement is also being discussed for 2015 and beyond.

USTR and DOL are committed to continuing to work in close collaboration with stakeholders in both countries and with the Colombian Government to achieve the underlying goals of the Action Plan and to support the efforts of workers to exercise their fundamental rights.





KEY EXPORTS TO THE UNITED STATES:

Knit and woven apparel, jewelry, miscellaneous textile articles, pharmaceutical products

LABOR FORCE:

1,898,000 workers

RELEVANT TRADE POLICY TOOLS:

U.S.-Jordan Free Trade Agreement, Implementation Plan Related to Working and Living Conditions of Workers, and Memorandum of Understanding Establishing a Labor Cooperation Mechanism

JORDAN

OVERVIEW

The United States and Jordan entered into a free trade agreement on October 24, 2000. The agreement commits both parties to enforce their labor laws and to strive to ensure that internationally recognized labor rights are recognized and protected by domestic law. The agreement was viewed by many as a significant step forward in U.S. trade and labor policy because, for the first time, the labor obligations were included in the core text, not a side agreement as in the earlier NAFTA. They were also made subject to the same dispute settlement processes available for the other parts of the agreement.

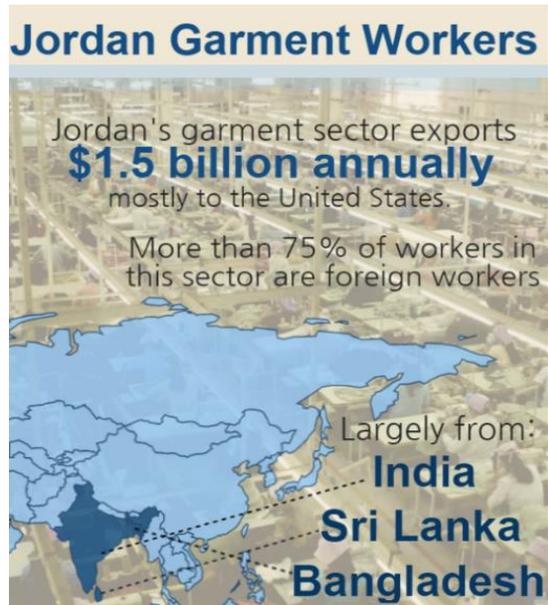
USTR and DOL have cited these provisions of the U.S.-Jordan FTA in their efforts to address significant concerns that have been raised with respect to worker rights and working conditions in Jordan's garment sector, especially with respect to foreign workers.

The 2012 State Department Human Rights Report on Jordan noted, for example, that "NGOs reported that foreign migrant workers, including garment workers and domestic workers, were especially vulnerable to sexual harassment, including sexual assault, in the workplace."

The report also noted that, although foreign workers were allowed to join unions, "[o]bservers reported it was common practice for management to refuse to renew foreign workers' contracts on the basis of 'troublemaking' or attempting to organize in the

workplace.” Further, the report noted that “[i]n the garment sector foreign workers were more susceptible than their Jordanian counterparts to dangerous or unfair conditions, including mandatory overtime, delayed payment of wages, deductions for room and board, and unacceptable dormitory conditions.”

Beginning in 2011 the U.S. Government engaged in consultations with stakeholders and the Government of Jordan to understand these concerns and to negotiate a resolution. As a result of this engagement, in January 2013, the United States and Jordan agreed to an Implementation Plan Related to Working and Living Conditions of Workers to address anti-union and gender discrimination against foreign workers, including sexual harassment and improve foreign workers’ dormitory accommodations.



In addition, DOL signed a Memorandum of Understanding with the Jordanian Ministry of Labor in December 2013 to develop a labor cooperation mechanism. As part of this cooperation, DOL is funding the ILO Better Work Jordan program that monitors and reports publicly on workers’ rights and working conditions in more than 90 percent of Jordan’s garment factories.

PROGRESS

Through these and other efforts there has been important progress in a number of areas.

- **New dormitory inspection processes and “accommodation criteria.”** Jordan has issued new protocols and procedures for inspecting dormitories at garment factories, as well as new “accommodation criteria,” which include requirements for sleeping quarters, bathrooms and general health and safety measures. The United States is working with Jordan to help ensure the Jordanian Ministries of Health and Labor closely cooperate on inspections to enforce the new standards and address violations.

- **Formation of an independent worker federation.** In April 2013, the first independent worker federation in Jordan, the Federation of Independent Trade Unions of Jordan, was established. The Federation represents nine Jordanian trade unions, which in turn represent more than 7,000 workers. The Solidarity Center, which has supported the efforts of Jordanian workers to organize, hailed the development saying it “demonstrate[d] a concrete commitment to independent trade unionism as workers in Jordan seek to mobilize for greater political freedom, improved economic conditions and strong social justice.”

*Under the **Better Work Jordan** program, the ILO has constructed and opened a state-of-the-art workers’ center in Jordan’s largest export processing zone, the Al-Hassan Industrial Zone. The workers’ center is a 1,300 square meter facility with indoor recreational and learning space that provides workers with access to exercise facilities; legal advice, including on issues of sexual harassment and union representation; and mental health and counseling services. Facilities include a computer lab with 30 computers and a canteen, and services offered include job skills training and cultural orientation for newly-arrived migrant workers. The workers’ center is also supported by USAID, the Al-Hassan Industrial Zone Authority, apparel factories at the Al-Hassan Industrial Zone, the garment workers’ union, and international clothing brands. The Center also provides an ILO training program on promoting gender equality in the workplace, which has already trained close to one hundred women workers.*

- **Signing of a landmark collective bargaining agreement.** In May 2013, the Jordanian Garment Workers’ Union and Jordan’s garment industry signed a landmark collective bargaining agreement which is one of the most comprehensive in the garment sector globally. The agreement contains provisions on dormitory standards, annual seniority bonuses, dispute settlement, trade union recognition and employer rights.
- **New labor legislation developed.** In 2014, Jordan submitted new labor legislation to its parliament in the areas of collective bargaining, trade union rights, and employment.

USTR and DOL have continued intensive work to follow up on implementation of the commitments under the Implementation Plan. In June 2014, the agencies conducted a monitoring trip to Jordan which included site visits to several garment factories and worker dormitories.



During the same month, USTR and DOL convened a meeting of the FTA Labor Subcommittee in Amman, Jordan, to engage directly with Jordanian senior officials from the Ministry of Labor on the Implementation Plan. The Labor Subcommittee held in-depth discussions on several topics related to FTA labor commitments including strengthening the Ministry of Labor's labor law enforcement capacity; combatting gender discrimination, including sexual harassment; improving occupational safety and health; and strengthening social dialogue between the government, employers and workers.

REMAINING CHALLENGES

Challenges remain with respect to Jordan's implementation of commitments to address labor concerns, including:

- **Issuing and applying directives clarifying garment sector workers' rights** in connection to anti-union and gender discrimination, including related sexual harassment, and to union representatives' access to workers.
- **Developing and implementing procedures for joint Ministries of Health and Labor inspections of dormitories** in the garment sector to ensure compliance with new dormitory standards.
- **Ensuring that union representatives have access to workers**, without fear of reprisals and that the landmark garment sector collective bargaining agreement is applied equally to all workers, including migrants.
- **Ensuring effective outreach to migrant workers on gender and anti-union discrimination**, including by increasing the availability and foreign language capacity of Ministry of Labor inspectors and hotlines.
- **Training and equipping police to effectively protect the safety of female workers**, in particular in police stations near and in industrial zones.

LOOKING AHEAD

USTR and DOL, together with the U.S. Embassy in Amman, are continuing to work closely with the Government of Jordan on labor matters, in particular to ensure ongoing progress under the Implementation Plan, and to cooperate under the Memorandum of Understanding.

The U.S. Government will continue to systemically monitor and work to address the remaining challenges to fulfillment of the Implementation Plan commitments and application of the garment sector collective bargaining agreement, including in the course of the cooperative labor dialogue under the FTA. DOL has also committed an additional \$1 million to support Better Work Jordan's efforts to help ensure that garment factories comply with internationally-recognized labor standards.

The U.S. and Jordanian Governments will also continue to cooperate to improve labor law enforcement nationally. For example, at the request of the Jordanian Government, DOL has provided a \$2 million extension for an ILO project to facilitate implementation of Jordan's National Framework on Child Labor, including by improving enforcement of child labor laws, raising awareness of child labor, and referring at-risk children and families to social services and educational and vocational opportunities.





KEY EXPORTS TO THE UNITED STATES:

Apparel, textiles, headgear, shrimp and prawns, agricultural products (primarily tobacco)

LABOR FORCE:

78,820,000 workers

RELEVANT TRADE POLICY TOOLS:

Generalized System of Preferences and EU-US-ILO-Bangladesh Sustainability Compact

BANGLADESH

OVERVIEW

Bangladesh does not have a trade agreement with the United States; rather it is a beneficiary of a U.S. trade “preference program” known as the Generalized System of Preferences (GSP). That program, designed to promote economic growth and sustainable development in the developing world, provides duty-free access to the U.S. market for approximately 5,000 products from 122 beneficiary countries, provided that the countries meet certain eligibility criteria. On labor, the GSP program requires that beneficiary countries be “taking steps to afford internationally recognized worker rights.” Under the GSP statute, failure to meet the eligibility criteria is grounds for suspending benefits under the program. For the Obama Administration, the GSP labor eligibility review process has provided an important avenue to address serious labor concerns in developing countries, including Bangladesh.

The expansion of the garment industry has revolutionized the economy of Bangladesh. It has grown GDP and provided opportunities for millions of workers and their families. But the industry’s rapid growth has also presented enormous challenges for the Government of Bangladesh and for the industry itself, including for ensuring compliance with basic workplace safety laws and fundamental labor rights.

The combination of extraordinary business growth and inadequate worker protections has had tragic consequences. By 2012, there were frequent reports of fatal factory fires, unpaid wages, assaults on labor leaders and large-scale worker demonstrations. In November 2012, a fire at the Tazreen Fashions garment factory killed 117 workers, many of whom worked behind gated windows and locked exits.

Several months later, in April 2013, the multi-story Rana Plaza building, which housed several garment factories, collapsed, killing 1,129 men and women. Although serious structural cracks had been discovered in the building before the collapse, factory managers insisted that workers continue working in the building under threat of termination.

For a number of years before these two tragedies, the U.S. Government had been pressing the Bangladeshi Government, as part of an ongoing “eligibility review” under the GSP program, to make significant improvements in its workers’ rights and worker safety laws and practices. Despite some early encouraging signs that the Government of Bangladesh was addressing the underlying issues, by late 2012 the situation had deteriorated and reports of workers’ rights violations and safety concerns had escalated.



In January 2013, USTR announced that, in view of the lack of progress by the Government of Bangladesh in addressing workers’ rights and worker safety issues, it was considering a recommendation to the President to withdraw or suspend Bangladesh’s trade benefits under GSP. The Rana Plaza tragedy, three months later, underscored the seriousness of the concerns. On June 27, 2013, following an extensive interagency review, President Obama announced his decision to suspend Bangladesh’s trade benefits under GSP.

Although the suspension of Bangladesh’s GSP trade benefits affected only a small portion of Bangladesh’s exports to the United States (less than 1 percent), the action helped to focus the attention of the Bangladeshi Government on the measures it would need to take to improve worker rights and worker safety.

At the same time as the withdrawal, the Administration provided the Government of Bangladesh with an action plan that, if implemented, could provide a basis for the President to reinstate GSP benefits. The plan included specific commitments with respect to government inspections for labor, fire and building safety. The plan also included provisions regarding reforming labor law and practice to protect the rights to organize and collectively bargain in the apparel sector, export processing zones and the shrimp processing sector.

Since July 2013, the United States has also been working in partnership with the European Union, the ILO and the Government of Bangladesh under the “Sustainability Compact” on workers’ rights and factory safety in the garment sector in Bangladesh to ensure a coordinated approach to improving labor conditions and respect for workers’ rights in the sector. These efforts have also been matched with significant related technical assistance.

The Compact for Continuous Improvements in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry in Bangladesh (Sustainability Compact) is a joint effort by the United States, European Union, International Labor Organization and Bangladesh, developed in the wake of the Rana Plaza tragedy, to address workers' rights and worker safety concerns in the Bangladeshi garment sector. The goals of the Sustainability Compact are broadly consistent with, and complement, those in the action plan that the United States developed in connection with its GSP program. The Sustainability Compact is an important public commitment by the Government of Bangladesh to undertake specific reforms and actions—with support from the United States, European Union, and ILO—to improve respect for workers' rights and workplace safety.

In October 2014, one and half years after the Rana Plaza collapse, the parties to the Sustainability Compact gathered in Brussels for a stocktaking meeting. The Compact partners acknowledged improvements since the launch of the Compact, such as increased union registrations and authorization for hiring of inspectors. However, the partners also “recognised that there are a number of areas where further measures need to be taken for full implementation of actions outlined in the Compact, with a view to sustaining progress made and securing further improvements in occupational safety and health, working conditions, and the respect for labour rights.” This includes important outstanding work on labor law reforms and addressing unfair labor practices. The partners indicated their joint commitment to address the outstanding issues and have agreed to conduct a further review of the commitments in 2015.

PROGRESS

U.S. and international efforts with Bangladesh have supported progress in some key areas:

- **Amendments to Bangladesh Labour Act.**

With technical support of the ILO, funded in part by DOL, the Government of Bangladesh drafted and passed amendments to the Bangladesh Labour Act in July 2013. The amendments included a number of improvements sought by the ILO, including to permit the operation of a Better Work factory monitoring program in the garment sector, such as provisions to improve trade union registration procedures and expand access during collective bargaining to experienced negotiators.



- **Some new inspectors hired.** Since the collapse of Rana Plaza, the Inspectorate of Factories and Establishments has hired dozens of new inspectors and undertaken a concerted program for re-training on fire and building safety.
- **Some fire, electrical, and structural safety inspections conducted.** With assistance from the private sector—including the international brands and retailers participating in the so-called “Alliance” and “Accord” initiatives—over 2,000 factories, representing all of the major suppliers to North America and Europe, have been inspected by either government or third-party inspectors for fire, electrical and structural safety and the most urgent remediation measures have largely been completed.
- **Website listing factories and posting inspection reports.** The Ministry of Labour and Employment (MOLE) has created a website listing approximately 3,500 factories and begun posting summary inspection reports of the factories.

REMAINING CHALLENGES

Despite these improvements, much work remains to be done to implement the GSP Action Plan and Sustainability Compact and improve worker safety and respect for workers’ rights.

- **Regulations implementing the amendments to Bangladesh Labour Act.** Bangladesh has not yet issued regulations implementing the July 2013 amendments to the Bangladesh Labour Act.
- **Government delays in completing inspections and hiring additional inspectors.** The most recent U.S. Government review of progress on the GSP Action Plan found that the Government of Bangladesh is behind schedule in carrying out hundreds of critical safety inspections and in hiring additional inspectors.
- **Slow response to unfair labor practices.** While the Government of Bangladesh has, for the first time, undertaken a number of investigations and prosecutions of unfair labor practices, it has been slow to offer protections for labor activists, particularly those organizing unions, and labor law enforcement remains inadequate.
- **Labor reforms for export processing zones.** The United States continues to press Bangladesh to pass other needed labor law reforms, including for export processing zones.

The U.S. Government has underscored that progress in these and other areas is critical to ensuring the safety of workers and their ability to exercise their fundamental rights to organize and collectively bargain. On June 14, 2014, U.S. Trade Representative Froman met with Commerce Minister Tofail Ahmed to urge the Government of Bangladesh to take further actions pursuant to the Action Plan and Sustainability Compact.

In October 2014, Ambassador Froman also met with Bangladesh’s Ambassador to the United States, Mohammad Ziauddin, in advance of a periodic review of Bangladesh’s efforts under the Action Plan, to urge further progress.

LOOKING AHEAD

We remain committed to working with Bangladesh to address fully the outstanding concerns about workers’ rights and worker safety. Our interest, and that of our international partners, remains as strong today as it was in the aftermath of the terrible Tazreen and Rana Plaza tragedies. The lessons from those tragedies continue to inform our work not only in Bangladesh, but in other parts of the world.





KEY EXPORTS TO THE UNITED STATES:

Knit and woven apparel, prepared fruits and vegetables

LABOR FORCE:

424,100 workers

RELEVANT TRADE POLICY TOOLS:

African Growth and Opportunity Act (AGOA)

SWAZILAND

OVERVIEW

Swaziland is a beneficiary of the African Growth and Opportunity Act (AGOA). AGOA offers regional preferences for qualified sub-Saharan African countries that build on the GSP program and provide additional market access to the United States, including for apparel. AGOA has its own set of eligibility criteria that sub-Saharan African countries must meet in order to enjoy its benefits. One of these criteria is that sub-Saharan countries must have “established” or be making “continual progress toward establishing” protection of internationally recognized worker rights, including the right to organize and bargain collectively.

For a number of years, the U.S. Government has conveyed to the Swazi Government serious concerns about labor conditions in Swaziland. Specifically, the U.S. Government has expressed concern about respect for workers’ rights to assembly and association and to form trade unions, including Swaziland’s use of security forces and arbitrary arrests to stifle peaceful demonstrations and the lack of legal recognition for worker and employer federations. The United States has repeatedly conveyed that these actions raise questions about the country’s compliance with the AGOA labor criteria.

These concerns have grown in recent years. As the State Department’s 2013 Human Rights Report notes, in April 2012, the Government deregistered the Trade Union Congress of Swaziland labor federation, claiming that the Swazi Industrial Relations Act only permitted registration of “organizations,” not “federations.” Additionally, the Government conducted

police raids of trade union headquarters, detained and threatened union leaders and committed other acts of apparent intimidation that violated workers' right to freedom of association.

In response, the United States identified five discrete, short-term benchmarks that the Swazi Government could meet to address the labor concerns and offered to provide Swaziland assistance in satisfying them. Specifically, the United States urged Swaziland to make concrete and measurable progress in the following areas:



- Amendment of the Swazi Industrial Relations Act to allow for the registration of worker and employer federations.
- Amendment of the Swazi Suppression of Terrorism Act to ensure that the definition of terrorism does not undermine the rights to freedom of association, assembly, speech and to organize.
- Amendment of the Swazi Industrial Relations Act to remove any civil or criminal liability for participants in peaceful labor protests.
- Amendment of the Swazi Public Order Act to ensure that provisions to protect public order do not undermine the rights to freedom of association, assembly, speech and to organize.
- Approval, dissemination, and implementation of a Swazi Code of Good Practice on Protest and Industrial Action, in conformity with international standards.

In April 2014, an interagency U.S. Government delegation traveled to Swaziland to assess progress in meeting these benchmarks and to meet with senior Swazi Government officials, parliamentarians, civil society representatives, private sector stakeholders and trade union representatives to urge compliance by Swaziland.

In June 2014, faced with the lack of any progress toward meeting the five benchmarks, President Obama made the decision to withdraw benefits for Swaziland under AGOA, effective January 1, 2015. The withdrawal of trade benefits from Swaziland represented the first-ever such action under the AGOA program for violations of the workers' rights criteria.

The decision was not taken without careful consideration. Swaziland is one of the smallest countries in sub-Saharan Africa, with high rates of poverty and unemployment and one of the highest HIV/AIDS prevalence rates in the world. AGOA has been a major boon to the Swazi apparel sector, which is an important source of employment for approximately 15,000 Swazi citizens, many of them women.

However, after extensive U.S. Government efforts to encourage reform failed to achieve progress, it became clear that the Swazi Government lacked the political will to bring about basic changes necessary to protect internationally recognized workers' rights, which are both integral to the AGOA framework and critical to ensuring sustainable, broad-based economic growth.

LOOKING AHEAD

The Administration considers the suspension of AGOA benefits as a means to help bring about much-needed change on the ground and will continue to engage with the Government of Swaziland on the issue of workers' rights. On August 7, 2014, U.S. Trade Representative Froman met with King Mswati III of Swaziland and, separately, with representatives of the Swazi labor movement to discuss AGOA and the importance of the Government and stakeholders working together to ensure that Swaziland takes the actions necessary to regain benefits under the program. The U.S. Embassy in Swaziland also continues to engage with stakeholders and the Swazi Government to monitor labor conditions closely and press for further progress.

By the end of 2014, these efforts were beginning to bear some fruit. To address two of the five AGOA-related benchmarks, the Swazi Government passed legislation in November 2014 amending the Industrial Relations Act to allow for the registration of union federations and to remove a provision establishing criminal liability for labor leaders during peaceful demonstrations. The U.S. Government, working in close cooperation with stakeholders, will continue to press the Swazi Government to implement these reforms in a manner consistent with international standards, as well as to make the additional changes necessary to regain AGOA benefits.





KEY EXPORTS TO THE UNITED STATES:

Knit and woven apparel, mangos, perfumery

LABOR FORCE:

4,810,000 workers

RELEVANT TRADE POLICY TOOLS:

Haiti Hemispheric Opportunity through Partnership Encouragement (HOPE) Act

HAITI

OVERVIEW

Haiti is the poorest and only least-developed country in the Western Hemisphere, with 80 percent of the population living under the poverty line and 54 percent in abject poverty. More than two-thirds of Haiti's labor force does not have formal employment. In 2010, the official unemployment rate was nearly 41 percent. In 2012, 76 percent of Haiti's exports were to the United States.

The Haitian Hemispheric Opportunity through Partnership Encouragement Act (HOPE) program, originally passed by Congress in 2006 and updated in 2008 and 2010, provides critical opportunities for Haitian exports and jobs. It also establishes one of the most robust mechanisms under any U.S. trade program for monitoring and reporting on labor rights compliance.

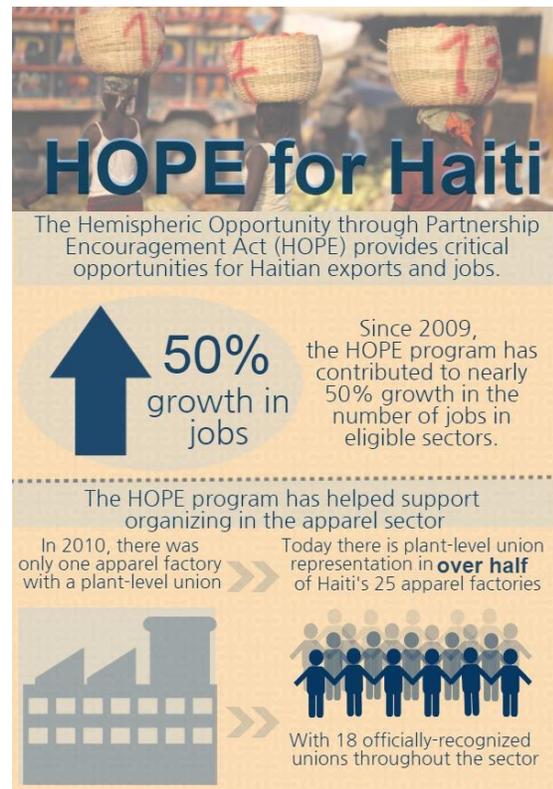
Like AGOA, the HOPE program provides duty-free access to the U.S. market—including for important product categories like apparel—if Haiti meets certain eligibility criteria. Under HOPE, however, key labor eligibility requirements must be implemented at not just the national level, but the factory level as well. Specifically, factories exporting under the program are required to comply with core international labor standards and related Haitian labor laws. If a problem is identified and a factory does not remediate it, the factory can lose its duty-free access to the U.S. market.

In assessing factories' compliance with the labor criteria, the U.S. Government considers the factory-specific monitoring and assessments conducted by the ILO in Haiti pursuant to its Better Work program. Under Better Work, which promotes respect for labor rights and improved working conditions in global supply chains, the ILO inspects 100 percent of HOPE-eligible factories for compliance with fundamental labor standards and Haitian labor laws and publishes compliance reports for individual factories on a bi-annual basis.

PROGRESS

Active monitoring of apparel factories, including through regular engagement with stakeholders and factory-specific and sector-wide technical and capacity building assistance from DOL and the ILO has helped bring about important progress in a number of areas. For example:

- Currently, there are six union confederations in the apparel sector, with affiliated members in over half of Haiti's apparel factories. In 2010, there was only one apparel factory in Haiti with a trade union presence.
- DOL has investigated allegations of labor violations at the factory level, identified factories that are not compliant with HOPE labor eligibility criteria and successfully facilitated remediation, including reinstatement of wrongly-terminated workers.



The ILO's Better Work Program monitors and reports on compliance by factories with fundamental labor standards, national labor laws consistent with those standards, and national laws on minimum wages, hours of work, and occupational safety and health. Better Work currently operates in a number of countries around the world: Cambodia (where the program got its start and is known as "Better Factories"), Haiti, Indonesia, Jordan, Lesotho, Nicaragua, and Vietnam. In Haiti, the program has a unique relationship to U.S. trade policy. The HOPE Act of 2008 required the Haitian Government to work with its own business and labor communities to develop a monitoring and compliance program operated by the ILO for those factories participating in the HOPE preference program. The Better Work Haiti program implements the mandate in the HOPE legislation.

- Cases in which apparel factory managers require excessive and involuntary overtime by workers have dropped significantly.
- DOL has provided significant direct technical assistance in factories to improve compliance with international standards, including in particularly problematic areas, such as anti-union discrimination, forced overtime, and sexual harassment of female garment workers.

LOOKING AHEAD

Work continues across Haiti's apparel sector to help ensure compliance with fundamental labor standards and labor laws, particularly with respect to anti-union discrimination and sexual harassment, where significant challenges remain. This includes continued monitoring of factory-level compliance by DOL and Better Work Haiti, as well as significant direct technical assistance. DOL will continue to fund capacity building programming, including through projects aimed at improving the limited capacity of the Haitian ministry of labor, in particular the labor inspectorate and alternative dispute resolution systems, to help implement the provisions of the HOPE legislation and improve protection of worker rights and working conditions in Haiti's apparel sector.





KEY EXPORTS TO THE UNITED STATES:

Fish and seafood, precious stones, artificial flowers, vegetables, knit apparel

LABOR FORCE:

34,130,000 workers

RELEVANT TRADE POLICY TOOLS:

Initiative to Promote Fundamental Labor Rights and Practices in Myanmar

BURMA

OVERVIEW

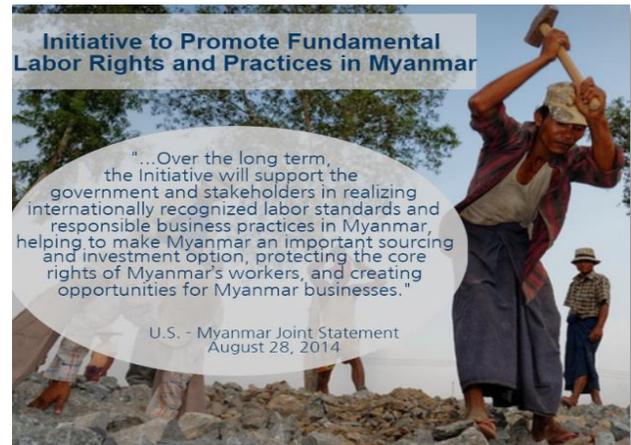
Burma does not have a free trade agreement with the United States. Nor is Burma currently enjoying benefits under any preference program, having lost its GSP eligibility in July 1989 for non-compliance with the workers' rights criteria. The Obama Administration is however working with Burma to develop new tools to help Burma address labor rights issues and set a strong foundation for sustainable growth and development.

Burma is at a pivotal stage of its political and economic development. Its future depends on its ability to grow its economy, create good jobs and reintegrate into the global economy. Burma's ability to accomplish these goals—including by attracting substantial investment and fostering trade—is contingent on undertaking needed legal and economic reforms and on demonstrating that it is in good standing in the global community by respecting international human rights and fundamental labor standards. While Burma is certainly not the only country that faces these challenges, it has a unique opportunity to become a model for others by promoting strong labor laws, positive industrial relations in which workers' rights are respected and a competent, effective labor regulatory system at an early stage of its economic reform and development.

On August 28, 2014, during a visit by Ambassador Froman to Burma, the first ever by a U.S. Trade Representative, the United States and Burma announced that they would work together to establish a partnership to advance labor rights and protections for workers in Burma. On November 13, 2013, during a visit of President Obama to Burma, the initiative was

formally launched by the United States, Burma, Japan, Denmark and the ILO. The United States is working to encourage the participation of other governments as well as the initiative develops.

Known as the *Initiative to Promote Fundamental Labor Rights and Practices in Myanmar*, the program takes a multilateral, multi-stakeholder approach to strengthen labor reform, enforcement, transparency and domestic stakeholder consultations. It is supported by two pillars.



- **PILLAR 1:** Development by the Burmese Government, in partnership with the ILO and other governments, of a multi-year labor reform plan. Burma has already undertaken some significant labor law reforms, but the labor reform plan will build on those legal reforms, helping Burma progress towards compliance with international standards, and will lay out a plan to improve the capacity of the Government to implement these reforms.
- **PILLAR 2:** Bringing stakeholders into the discussion on labor reforms and to help build the foundations for good industrial relations and civil society consultations in Burma. Specifically, the Initiative envisions the establishment of a stakeholder consultative mechanism that will foster tripartite engagement in Burma (among the Government, employers and workers), as well as engagement with civil society and build relations among international stakeholders from business, labor and civil society engaged in Burma.

PROGRESS

Burma has already begun moving forward on the first pillar of the Initiative. Under an ILO-supported donor coordination mechanism known as the Nay Pyi Taw Accord, Burma has established a specific working group technical cluster on labor law reform and labor law enforcement capacity building that will be used to develop the labor reform plan. The first meeting of this working group was held on October 16, 2014. DOL is providing initial “seed” funding to the ILO in order to bring on board a labor law expert to assist the Government in developing the labor reform plan over the next six months through this working group.

The United States is also working to engage the international community to support this work. On October 10, 2014, U.S. Trade Representative Froman brought together representatives from the United States, Burma, Australia, the European Union, Japan, the Netherlands, Norway, Sweden, as well as the ILO, the World Bank and the International Finance Corporation to discuss supporting the Labor Initiative.

LOOKING AHEAD

While the initiative is still in early development stages, key benchmarks will include the development and passage of labor legislation that is consistent with international standards, regular consultations between business and labor interests, as well as civil society and concrete, significant improvements in the capacity of the Government to enforce labor laws and ensure that Burma's growth supports its goals of sustainable and inclusive economic development.



LABOR PROTECTIONS

COMPARING ACROSS TRADE AGREEMENTS

	1994	→				2014
	NAFTA	Jordan	Singapore Chile Australia Morocco CAFTA-DR Bahrain Oman	Peru Colombia Korea Panama	Trans-Pacific Partnership	
Labor provisions in the core of the agreement.	✘	✔	✔	✔	✔	
Parties must adopt and maintain fundamental labor rights	✘	✘	✘	✔	✔	
Parties must not waive or derogate from laws implementing fundamental labor rights	✘	✘	✘	✔	✔	
Parties must adopt and maintain statutes and regulations governing acceptable conditions of work	✘	✘	✘	✘	✔	
Parties shall take measures to discourage importation of goods made by forced labor	✘	✘	✘	✘	✔	
Parties shall not waive or derogate from <i>any</i> labor laws if it would weaken labor protections in export processing zones	✘	✘	✘	✘	✔	
Parties must effectively enforce their own labor laws	✔	✔	✔	✔	✔	
Normal dispute settlement applies to all labor provisions	✘	✔	✘	✔	✔	
Normal trade sanctions apply to all labor provisions	✘	✔	✘	✔	✔	

TPP & T-TIP

The Obama Administration is not only using existing trade policy tools to improve respect for fundamental workers' rights and working conditions in our trading partners; we are developing stronger tools with even greater reach. With the Trans-Pacific Partnership (TPP) agreement with 11 countries in the Asia-Pacific region (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam) and the Transatlantic Trade and Investment Partnership negotiations (T-TIP) with the 28 Members of the European Union, we are seeking to build on existing agreements and negotiate the strongest FTA labor protections in history. When completed, these agreements—and the protections provided under them—will apply to nearly two-thirds of the global economy.



TPP and T-TIP bear very little resemblance to early trade agreements like NAFTA. Indeed, NAFTA did not include any labor provisions—those were included in a side agreement known as the North American Agreement on Labor Cooperation or “NAALC.” Only a single provision of the NAALC—the obligation to effectively enforce parties’ own occupational safety and health, child labor and minimum wage technical labor standards—could be the subject of dispute settlement. Further, the dispute settlement processes and sanctions for violations of the NAALC were not the same as for the provisions of NAFTA. For example, a violation of the former could generally only be remedied through the imposition of an annual monetary assessment (a fine) subject to a cap, whereas violations of NAFTA could be subject to broad “suspension of concessions” (imposition of tariffs on the violating party’s exports) until the violating party came into compliance.

The labor provisions in U.S. free trade agreements have evolved significantly since NAFTA. With the free trade agreement with Jordan, labor provisions were brought into the core of trade agreements. But the key operative discipline in the U.S.-Jordan FTA continued to be an “enforce your own law” standard and parties were only required to “strive” towards other goals, such as ensuring compliance with internationally recognized labor standards in law and practice.

It was not until the “May 10, 2007” bipartisan Congressional-Executive Agreement that a breakthrough was made in that regard, with critical new labor obligations relating to fundamental labor rights being made subject to full dispute settlement and normal trade sanctions. The “May 10” provisions were included, for the first time, in the free trade agreement with Peru and, thereafter, Colombia, Panama and South Korea.

These “May 10” provisions have been the starting point of the Obama Administration’s labor negotiations in TPP. Including the groundbreaking “May 10” provisions in TPP means that countries will be expected to “adopt and maintain” in their laws and practices the fundamental labor rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work. Workers must have the right to organize, to bargain collectively, to be free from forced labor and child labor and to be free from discrimination in employment. If a country fails to implement those fundamental rights, it can be held accountable through the dispute settlement processes set out in the agreements.

But the “May 10” provisions have not been a ceiling. In TPP, we are seeking new commitments to discourage trade in goods produced by forced labor, to adopt and maintain laws on acceptable working conditions (e.g., minimum wage, maximum hours and occupational health and safety), and not to weaken labor protections in export processing zones.

T-TIP also presents a unique opportunity to raise the bar on labor. The European Union and United States have some of the highest labor standards in the world. T-TIP provides an opportunity for these two major players to develop a framework that not only reflects their own high labor standards but strengthens their collective capacity to address labor concerns in the dozens of developing countries whose largest trade and investment relationships are with the United States and the EU.

Simply put—with TPP and T-TIP—we have a real opportunity to lock in the gains we have made in recent years to protect workers' rights, improve working conditions, shape globalization and level the global playing field for American workers.

MAKING A DIFFERENCE

A TRADE POLICY CONSISTENT WITH AMERICAN VALUES & INTERESTS.

The common thread across all of the countries, programs and initiatives highlighted throughout this report is that trade policy tools can be used—and, under the Obama Administration, are being used—to support the aspirations of workers in this country and in trading partner countries around the world to earn a decent living in a safe and healthy workplace, enjoy fundamental labor rights and share in growing prosperity. Where we can, we need to strengthen our hand and extend our reach to achieve these ends. And the disciplines that the United States is negotiating in TPP, and will seek in T-TIP, will help us do that—calling for respect for fundamental labor rights for two-thirds of the world’s economy and helping to establish a new norm for protecting workers’ rights in the global trading system.

As President Obama has made clear, U.S. trade policy must be consistent with both our interests and our values. The clarity and consistency of that commitment is at the heart of efforts by USTR, DOL and other U.S. agencies to protect workers’ rights. By defending the dignity of workers abroad, we are helping to ensure that trade-driven growth is inclusive and broad-based. We are also helping to level the global playing field for American workers. U.S. trade policy can, and must, work for workers at home and around the world.

