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TEARING UP TRADE AGREEMENTS WON'T HELP WORKERS: A MORE RESPONSIBLE APPROACH JUST MAY

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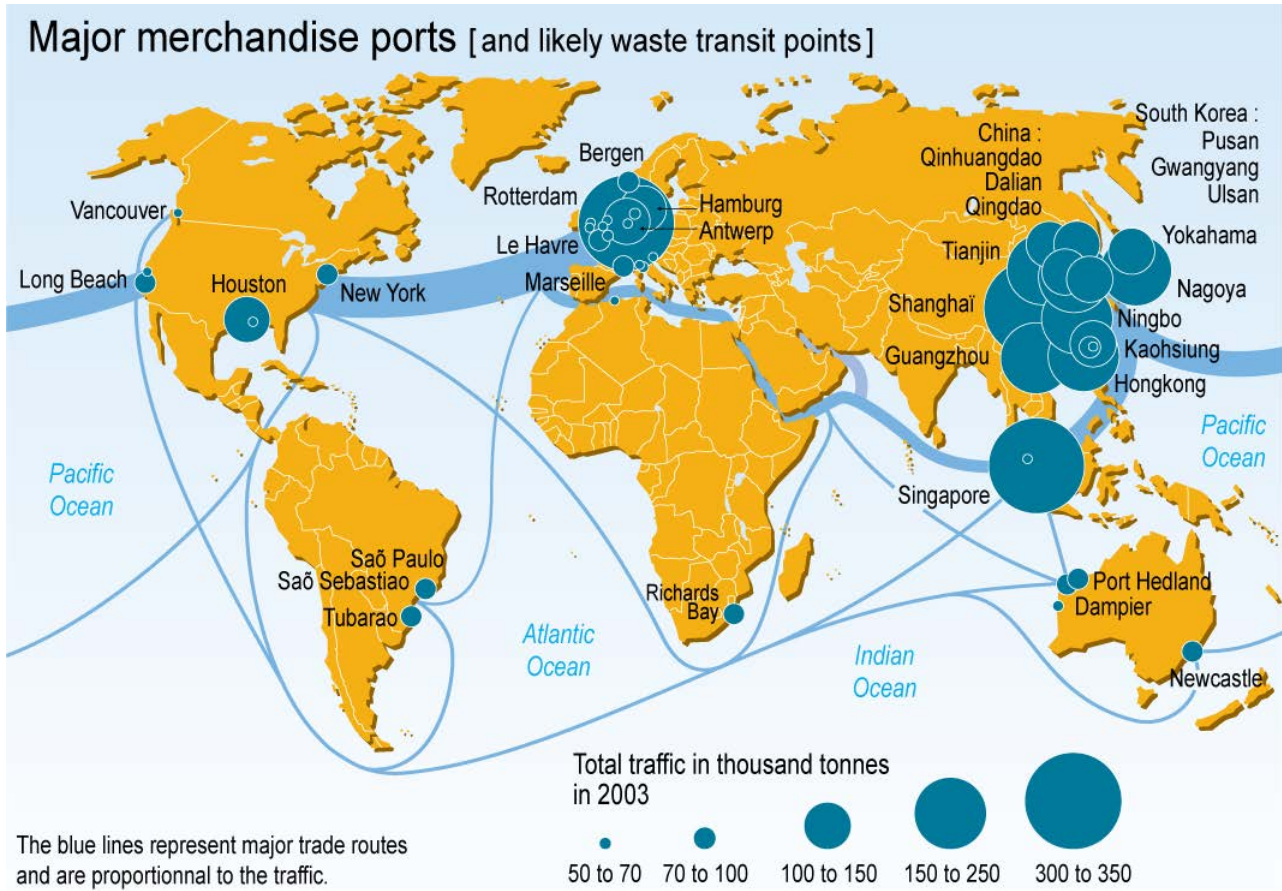
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About the Author

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Sources: *Atlas du Monde Diplomatique 2006*, Armand Colin; *Panorama des ports de commerce mondiaux 2003*, ISEMAR, January 2005; *Images économiques du monde 2002*, Sedes.

Congress.² Since Election Day, President-elect Trump has announced his intention to withdraw from TPP on his first day in office. US backing for international trade is on the ropes.

After nearly two generations of support for trade in Congress, including US trade agreement deals approved with Peru in 2007 and with Colombia, Panama, and South Korea in 2011, what explains this current distaste?

The current heated debate over international trade is the outcome of a flawed public policy and political framework. All participants in the debate are responsible for the flawed framework. The pro-trade advocates want only to focus on the gains and ignore the losses, while the anti-trade advocates want only to showcase the losses, deny any gains, and refuse to accept any remediation or compensation for the losses. Unfortunately,

few stakeholders in the current trade debate seek *integrated solutions*. Rather, nearly all stakeholders are merely counting the “*ayes*” or the “*nays*.”

As a result, the old framework (if there ever was one) has become completely disaggregated, failing to unify three core policies that, if developed and implemented fully, could not only build public support for a viable and sustainable international trade regime but could also provide the assistance and resources workers and developing countries need. The three elements that should represent an *integrated, holistic approach* to international trade are:

- a) a robust social safety net,
- b) labor rights protections, and
- c) critical international development assistance.

In recent times these core policies have not been presented as an integrated public policy framework. In the past, political leaders have paired a social safety net with trade agreements in an effort to win political support for an agreement's passage. More recently, political leaders have included various labor protections but only in the hopes of gathering sufficient votes to pass the agreement. What has been sorely missing in the discussion is the need for a holistic policy framework that would result in broadly shared prosperity, including prosperity from international trade.

Such a framework would position these core policies as the guiding elements for a new approach to trade, an approach in which US policy makers would ensure that each policy element sufficiently addresses needs arising as a result of a specific trade agreement. In doing so, this approach would underscore and reflect the need for a more transparent appraisal of the true benefits and costs related to international trade and of the resources necessary for its effective facilitation and sustainable implementation. This is not today's model and it is, in part, an explanation for the intractability in the debate over trade. In contrast, an integrated approach would provide a timely opportunity for a fresh look at trade and could help to create the dialogue necessary to advance innovative policies.

With growing public sentiment against trade and political leaders on both the left and right opposing international trade agreements, the US needs to act quickly yet deliberately with a vision that speaks clearly and honestly to all within society who continue to be skeptical, if not hostile, to international trade. A window of opportunity now exists to create a vital national dialogue not just around trade but on the public policy framework that must be enacted to support further trade agreements, workers in the United States and abroad, and trading partner nations. The policy framework that emerges would be one that future US leaders use as they approach prospective trade agreements.

This paper provides background, context, and an assessment of this policy framework and its respective elements and offers recommendations and potential models from which to draw guidance.

Policy Element #1: A robust social safety net and adjustment system for displaced American workers

Today's highly competitive global economy regularly produces winners and losers, as competitive pressures lead to thousands of jobs being created and destroyed every day.³ Trade, however, is not the sole reason for this volatility and instability; rather, it is one factor among a complex mix of explanations, including technological changes, industrial shifts, productivity gains, automation, outsourcing, tax incentives, foreign competition, global workforce expansion, the pursuit of low-cost labor, business patterns, and customer tastes and desires.

In this context, it is often difficult to pinpoint and isolate the exact cause of a worker's job loss or the shuttering, shrinking, or shifting of a given business. While most economists argue that trade is, overall, of benefit to our economy, these commingled forces have added to "new excruciating pressures on American workers" in some sectors such that trade has become a convenient nexus for voters' and middle class attention and anxiety over their economic insecurity.⁴ Continued skepticism over trade suggests that policy makers have been unsuccessful in communicating the complexities of globalization to the public and underscores two key points: 1) worker displacement is a real and legitimate concern; and 2) current policies have not done enough to alleviate these concerns and to respond to this challenge.

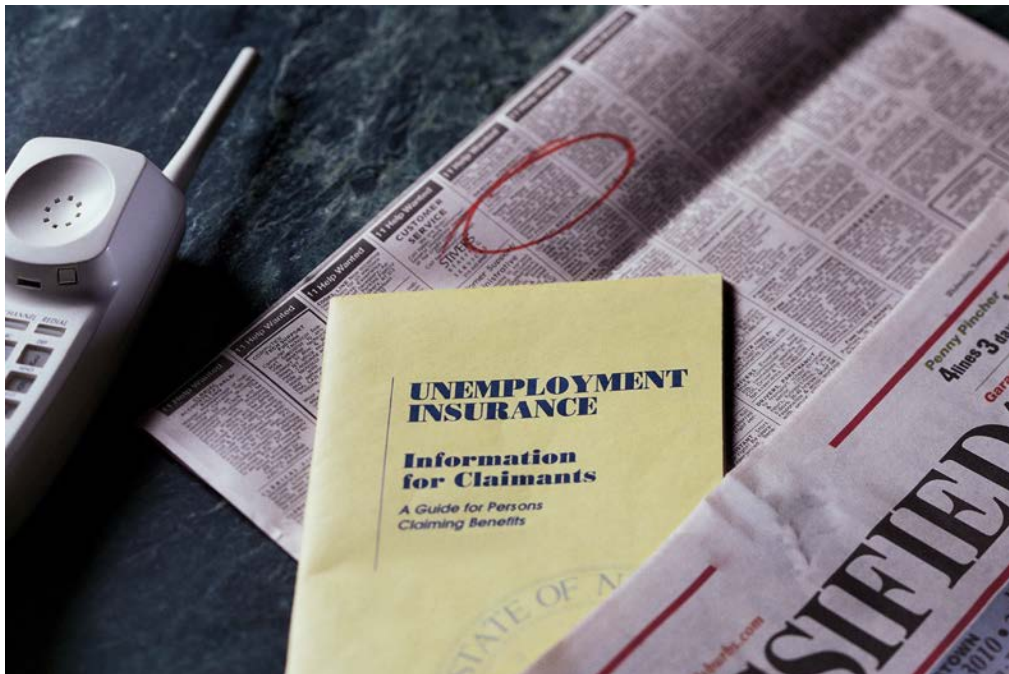
For the United States to pursue a trade agenda, it is imperative to elevate worker dislocation to a central and visible component of an integrated

policy approach so that working men and women can both understand and experience the benefits of the US economy rather than simply being asked “to embrace globalization . . . when . . . government has turned a blind eye” to their needs.⁵ Thus, the United States must develop “new domestic policies to ensure that [workers not only survive but also, and more importantly, that] they thrive in the global marketplace.”⁶

Continuing to pursue the existing policy framework will no longer suffice—as if it ever did—to meet workers needs and to assuage the public’s fears. The Obama administration spoke to the public mainly about the benefits—rather than the challenges—of trade and of trade agreements to the US economy and to American jobs.⁷ Notwithstanding the administration’s efforts, individual and community hardship has shown itself to have the louder voice and more compelling story—a point driven home by the results of the 2016 election in states such as Pennsylvania, Michigan, and Wisconsin. Rather than “tearing up trade agreements” the next administration should first analyze where American workers and employers are being or will be challenged to adjust to trade and other market dynamics prior to renegotiating old agreements and/or entering into new ones.

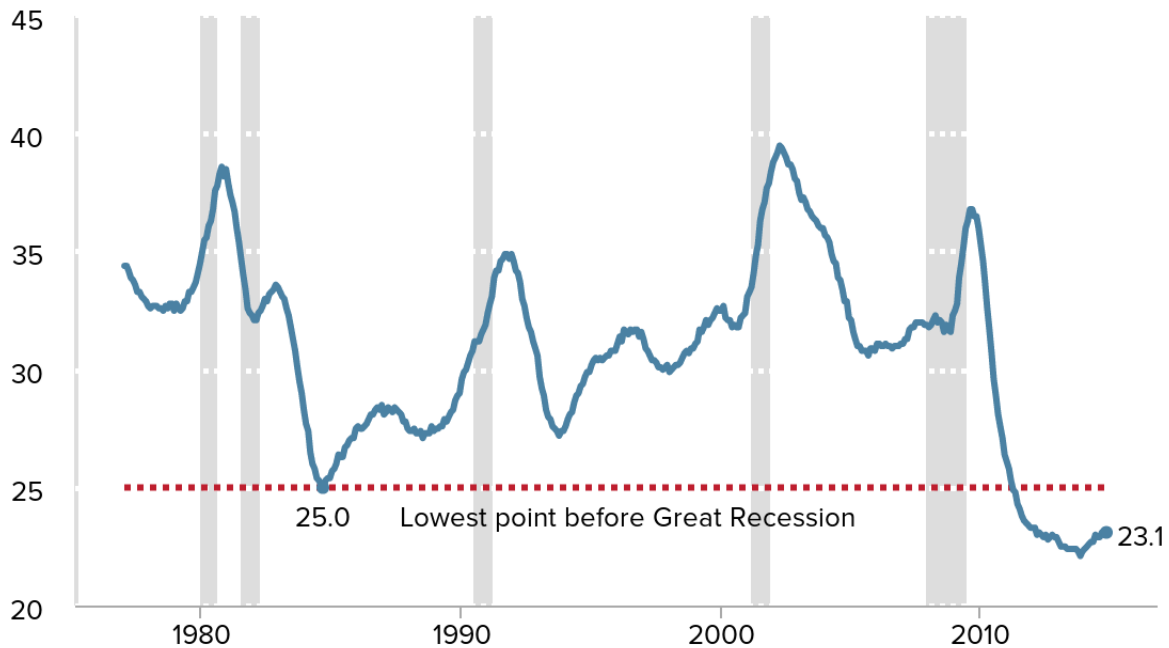
In that context, the new administration must provide the financial and training assistance necessary so that workers are not asked to adapt to new economic realities on their own but can become successful, competitive, and profitable in a highly technological age and a continually changing domestic market.

Looking back and criticizing old trade agreements is not sufficient and will not bring back jobs long lost to foreign competition. Instead, it is imperative to craft responsive and forward-thinking policies that will help workers manage during their job loss and to navigate toward re-employment.⁸ Rejecting trade agreements outright will not end global competition for US workers who will continue to confront corporate relocation and dislocation. In response, US leadership cannot “compartmentalize what happens in global commerce from the impact on workers at home as we have in the past.”⁹ While, rhetorically, we can try to ignore it, the global economy is here to stay and the US must have a robust social safety net for worker displacement whose features are clearly communicated—and demonstrated—to the public.¹⁰



Unemployment insurance benefits reaching a smaller share of unemployed workers

U.S. unemployment insurance (UI) reciprocity rate, 1977–2014



Note: The UI reciprocity rate is the share of unemployed workers receiving benefits from regular state programs, and is calculated by dividing the number of weeks compensated by the total number of unemployed persons. It is presented as a 12-month moving average. Shaded bars denote recessions.

Source: EPI analysis of Department of Labor (DOL) administrative data and Current Population Survey basic monthly data

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What we have now

In this era of fierce international competition, emerging industries and technologies, and changing skill requirements, the United States lags far behind other industrialized nations in helping our workers cope, adjust, and thrive in the global marketplace.

US labor market supports, as presently constructed, are neither deep nor forward-thinking enough to help American workers manage their job displacement or to compete successfully in the global economy. Current US

labor market supports have been criticized as a patchwork, an underfunded mix of outdated, diffuse, or inaccessible programs whose goals have not achieved their desired effects and whose questionable outcomes are unsuited to an international economy. Their vulnerability to politics and legislative machinations is seen as a further underlying weakness.¹¹

Among the most oft-cited worker displacement support programs is Unemployment Insurance (UI). Created as a federal-state program during the Great Depression, UI was designed as

a short-term support to replace earnings for workers who lost their jobs through no fault of their own. As a product of its unique era, UI was primarily designed to support workers during economic downturns until they were rehired by their same employer or in the same industry when market conditions improved. With few changes made to UI since its creation, the program is now unable to meet the unique challenges facing displaced workers in today's modern economy.¹² UI simply fails to accomplish what today's workers need: connecting skills to employer needs; transitioning to a new industry; and coping with lost benefits, including health care (although the Affordable Care Act helps in this regard).

Two significant problems with UI are that its benefit payments are small and its assistance lasts for a maximum of 26 weeks for most recipients.¹³ Overall, the average state-funded UI program paid benefits of just \$315 per week, putting recipients below the poverty levels in many states.¹⁴ In recent years, an average person's benefits replaced less than 50 percent of their previous earnings.¹⁵ Today, UI no longer serves its intended population. Estimates are that only about one in every four eligible unemployed persons is receiving UI benefits, and participation in the program has rapidly declined in recent years. Structural and administrative impediments as well as recent state budget cutbacks are among the most oft-cited explanations for reduced participation.¹⁶

In recent years, a number of states have moved to cut UI benefits, reduce the maximum duration of payments, and impose new restrictions on potential recipients.¹⁷ The economic downturn wrought by the 2007–2010 Great Recession also caused several state unemployment systems to become lodged in serious debt, leaving their UI benefits unprepared for the next major economic downturn.¹⁸

UI also fails to address the contemporary condition many workers face who are able to obtain new employment but at significantly

reduced wages. Despite the wage loss, UI benefit payments cease once a worker finds new employment. Unfortunately, in today's economy where wages have not kept pace with job growth, unionization is far less frequent, and technology has reduced the skill-level of workers needed, available jobs often offer wages significantly lower than those earned by displaced workers in their previous jobs. This circumstance is vastly different from the one that UI was originally conceived to address.

As a result, UI fails to balance the importance of supporting jobless workers during their time of transition and providing incentives such as wage insurance, which would incentivize a worker to actively seek and accept new employment opportunities with less compensation. Instead, workers who do choose to take new jobs at reduced wages are then on their own. Moreover, studies have shown that such decreased earnings can be "far more serious and consequential for workers and families than the period in between jobs."¹⁹ Beyond lost wages, unemployed workers have the additional challenges of coping with lost benefits, such as employer-sponsored health insurance and retirement savings accounts. Due to these and other factors, the UI system is currently seen as facing a "crisis that has made [this] safety net weaker than any time in its history."²⁰

The other major US labor support program meant to help displaced workers is Trade Adjustment Assistance (TAA). Established in 1962 as the United States began to pursue trade liberalization, TAA was created specifically to compensate and support workers who lose their jobs as a result of increased import competition and trade. TAA's benefits include extension of UI payments, funding for retraining programs, limited health insurance subsidies, and assistance with relocation services. Like UI, TAA was designed in and for a different era, one in which the United States was running trade surpluses and our manufacturing sector was strong. At that time, the United States traded with other, similarly developed countries.

That said, TAA has long been seen as the cornerstone of a “compact that trade opening and adjustment assistance should expand hand-in-hand.”²¹ But that compact is now in danger. With scarce financial and ideological support, TAA is not reaching its intended population. In 2015, “only about fifty-five thousand workers of more than 7.9 million unemployed participated in TAA” while rejecting more than 40 percent of all applications to qualify for support.²² This result is in large part because TAA places the burden of proof squarely on workers and their employers to show that job loss was the direct and unequivocal result of trade displacement. But in an era when a complex set of interrelated forces combine to cause worker dislocation, TAA is an anachronism in its single-minded focus on trade as an explanation. As a result, too many displaced workers who need assistance are left to fend for themselves.

Today, with an inverted trade balance, the United States is far more integrated into a global economy in which competition with low-wage and less-developed economies is unavoidable. In this much different environment, TAA is no

longer positioned to support the modern needs of today’s displaced workers. Instead it suffers from a conceptualization challenge: by focusing solely on trade as the single cause of worker dislocation, TAA ignores the interconnectivity and complexity of today’s global economy, thus shutting out workers who lose their jobs for reasons other than trade.²³

TAA also suffers from limited resources, weak participation, and insufficient political support. Beginning in the 1980s, TAA benefits were reduced.²⁴ It is no different today. The most recent congressional reauthorization of TAA in 2015 was for just \$450 million annually through 2021; this appropriation was \$125 million less than the president’s original request and less than previous assistance packages of \$575 million in 2011 and over \$600 million in 2009.²⁵

TAA continues to be the victim of partisan politics as Congress struggles to pass new TAA packages with support for worker dislocation being linked to the passage of Trade Promotion Authority (TPA).²⁶ Tellingly, traditional labor advocates have themselves lent little support

Earnings of Displaced Workers by Prior Tenure



Source: Jacobson et al. (2005c, Figure 1, p. 49).

to TAA over the years, apparently concerned that support for TAA would be interpreted as weakening the fight against a trade agreement.²⁷ While this predictable political maneuvering consistently results in the passage of trade agreements, it has also resulted in inadequately funded and severely limited TAA benefits. The lack of strategic vision is stark and is best demonstrated by TAA's 2022 phase-out.²⁸

TAA's limited income assistance and training programs are not adequate to the challenges workers face in today's dynamic economy. Like UI, TAA is not designed to financially support workers who accept jobs at lower pay, yet lower paying jobs are often the only jobs available.²⁹ TAA provides a small (and difficult to qualify for) earnings-loss supplement program for workers who are reemployed in lower paying jobs, but only for those over 50 years of age, leaving out numerous younger workers. Beyond the challenge of wage losses, TAA's narrow focus on training only in the same field or industry is unable to help workers successfully transfer to new roles in emerging and other growth industries.³⁰ Moreover, TAA's structure contains onerous training requirements that push workers "to enter retraining to receive extended income support only to find no job in their new specialty at the end of the program."³¹ Finally, TAA's restrictions, which only provide training and benefits while a worker is out of work and not as needed throughout the cycle of employment–unemployment–underemployment, are not suited to an economy that is constantly churning through thousands of jobs every week. As a result, TAA's structure acts as a disincentive for displaced workers to gain new skills that may eventually lead to higher wages.³²

Other equally diffuse and underfunded programs related to job losses and retraining for workers (such as those authorized by the Wagner-Peyser Act of 1933 and the Workforce Investment Act of 1998) are seen as focusing too narrowly on "short-term crisis interventions."³³ While an attempt to reform and consolidate these programs came with the 2014 passage of the Workforce Innovation and

Opportunity Act, this compromise effort largely failed to provide enough resources to cover even the majority of displaced workers.³⁴

In the current political environment, worker anxiety over their jobs and income has resulted in many Americans becoming wary of trade and its impact on the US economy. If Republican and Democratic leaders want to move the public to take the political risks associated with supporting trade agreements, much more needs to be done to convince voters that there will be both tangible benefits and broad supports for displaced workers. While the United States leads the world in job turnover, the amount we invest in a worker safety net to help workers adjust is paltry when compared to other high-income countries.³⁵ For an American international trade agenda to enjoy support in the years to come, a new approach to helping our workers adjust and thrive needs to be the rallying point for collective action.

What we should do

A truly responsive American safety net for displaced workers must be equipped to support workers in transition, regardless of the reason for their dislocation. Ending the current practice of treating unemployed workers differently would be a rational approach. A universal program based on workers' needs—not the reason for their job loss—is essential.³⁶ Under such a policy, a presumption of dislocation through no fault of workers would prevail unless it were otherwise established that an employee was complicit in losing his or her job. Having established this dislocation, workers must then be entitled to a wide range of benefits beyond what are presently offered. These must include benefits from *passive* labor-market policies, such as income, wage, and health insurance supports, as well as from *active* labor-market policies, such as access to job search assistance and targeted training and educational opportunities designed to match the dynamic forces and economic trends in our economy today.

Recommendation #1: Solidify and expand income, wage-loss, and health insurance supports for workers in transition

We need to stabilize and expand access to UI benefits as well as institutionalize a greatly expanded and improved TAA-like program for all workers, regardless of the reason for their dislocation. Both must be made financially solvent and sustainable; their existence should be independent from the whims and winds of politics. To better engender such support, much greater effort should be undertaken to educate the general public and the media on why such programs are widely beneficial. Proposals for reforming and broadening access to UI exist, including proposed reforms recommended by the Obama administration.³⁷ These and other proposals that focus on reducing the financial strain on workers, who through no fault of their own lose their jobs and experience great financial hardship as a result, should be seriously considered.

Experts have offered recommendations for putting UI funds on solid financial footing, including a recent report recommending an annual tax on employees of just \$92, which works out to \$1.77 per week.³⁸ We must also consider insurance proposals that would expand health and wage-loss insurance for all displaced workers regardless of the reason for their job loss or their age. By providing regular earnings supplements to compensate workers for part of their diminished income, wage insurance would help facilitate the process for individuals to rejoin the labor force. Broadly speaking, reforms should incentivize the unemployed to search for work proactively by enabling them to take positions that may pay less than their previous job, which through wage insurance and on-the-job skills training are widely understood to be far preferable to any government-run training program “where job prospects are highly uncertain after one finishes.”³⁹ Wage-loss insurance also benefits and incentivizes employers to take on new workers by subsidizing the cost of training a new employee.⁴⁰

Another potential route would be to use existing resources more efficiently. For example, one approach recommends folding UI and TAA into a revamped and broadened *Adjustment Assistance Program* for all displaced workers, regardless of the reason for their job loss, which would “commit more than twenty times the resources currently spent on TAA.”⁴¹ In addition to expanded health insurance coverage and penalty-free access to withdrawals from individual retirement accounts, such proposals include wage insurance to replace 50 percent of workers’ lost wages for up to two years of their employment in the new, lower paying position. To pay for the program, its designers call for “scrapping the current unemployment insurance tax structure, which is extremely regressive, for a low flat tax [of 1.32 percent] on all worker earnings—a change that would cut taxes for tens of millions of lower-wage workers.”⁴² Other payment proposals include financing the program from “a small addition to the federal unemployment insurance tax.”⁴³ This option would incur savings from UI payments that will no longer be needed once workers are reemployed. Because many such targeted reforms can be quite cost-effective, they have considerable potential to engender bipartisan support.⁴⁴

Recommendation #2: Expand and improve our current approach to training and educating workers to re-enter a globalized economy

Training programs for dislocated workers, the most generous of which fall under TAA, should be extended to all workers in transition, regardless of the reason for their job loss. The approach to training must also be more flexible. TAA’s approach makes it difficult for workers to develop, upgrade, and expand into new skill areas geared toward growth industries where jobs are actually available or are emerging. TAA should also be revamped so that worker transition programs emphasize *reemployment* rather than simply *job training*. Moreover, job training has been too disconnected “from the demands of today’s hypercompetitive economy, where no industry is immune from foreign competition.”⁴⁵



To enable this shift, state- and local-level integrated partnerships must be developed and supported. Calls for greater participation by the private sector should be particularly heeded “because private employers better grasp the needs, skills, and types of training required.”⁴⁶ Some American as well as foreign companies investing in the United States have implemented strategies aimed at aligning “workforce training programs and the needs of local employers.”⁴⁷

But scaling such strategies requires much “tighter coordination between job-seekers and employers” to improve the kind of “skill-to-job matching” that experts say is too often missing from our current approach.⁴⁸ By using such innovative approaches and paired with wage subsidies to reduce the salaries needed to hire new workers, employers would be incentivized to hire and train the workers they need.

Recommendation #3: Foster better coordination with and between the private sector and educational institutions

Universities, research facilities, and community colleges are on the forefront of skills training and technological innovation. Together, they provide examples of new collaborative models with the private sector. For example, firms and schools

in former manufacturing regions have pioneered *open-knowledge* partnerships designed to revitalize de-industrialized areas to “compete not on cheap labor but on the advanced skills and knowledge of companies and workers and the resulting uniqueness and high value of the area’s products.”⁴⁹

Empowering community colleges to be sources for skills training and leveraging their typical strong local engagement capacity would allow them to serve as a forum for relevant stakeholders, including federal, state, and local governments; unions; businesses; community organizations; and displaced workers.⁵⁰ These entities working together are the most effective mechanisms to address local employment challenges in their regions.⁵¹

Recommendation #4: Look abroad to comparative models for best practices

It is instructive to review effective programs from other high-income countries to provide guidance. Much attention has focused on Denmark and Germany, which, in part due to their experience with long-term unemployment, have taken a far more “proactive role in equipping the unemployed with new skills and identifying available jobs.”⁵² A comparison of

the resources devoted to such efforts highlights just how far the United States lags behind. Denmark and Germany, respectively, spend 2.3 percent and 0.8 percent of their GDP on worker assistance and training, while the United States spends just 0.1 percent.⁵³ In addition to this relatively large investment, both countries employ innovative approaches to worker dislocation, which experts believe have helped to reduce long-term unemployment and “successfully mitigated some of the worst consequences of the Great Recession.”⁵⁴

Germany’s *Kurzarbeit* (short-time work) program and work-time accounts agreements incentivize employers to reduce full-time workers to part-time, rather than lay them off.⁵⁵ These programs benefit from government support that makes up part of the difference in salaries and, based on an agreement between employers and employees, enables workers to put in overtime hours while forgoing extra pay during *boom times* in exchange for keeping their jobs but at reduced hours (paid through their accrued *time bank* accounts) during more lean times. Denmark also has similar government-subsidized short-work approaches in addition to its famous *flexicurity* policy that “maintains a flexible labor market by ensuring near-universal access to worker training and tying income support to employment services.”⁵⁶ Designed to minimize potential earnings losses and to reduce mass lay-offs, these approaches also help employers “preserve an experienced work force and minimize recruitment and training costs” of future new hires.⁵⁷

Apprenticeship, a unique German success story, is another approach that the United States could look to as a model. Germany’s *dual education* approach enables workers to combine on-the-job training with directly relevant in-class learning. Funded by private sector employers, these programs prepare employees for potential future full-time employment. This approach, a cost-effective means for building talent pools, is gaining increasing attention in the United States. Several US companies and educational institutions are working in cooperation with

their German counterparts such as Siemens USA, BMW, and Volkswagen.⁵⁸ Combining practical, on-the-job experience, German-style apprenticeships should be much more prevalent in the United States than they are today.⁵⁹

While the Obama administration recently created a grant program to foster apprenticeships and has called for more funding, merely 0.2 percent of Americans today participate in apprenticeship programs, all while a high number of Americans are lining up across the country to take unpaid internships.⁶⁰ At every level (local, state, and federal), the government must socialize, champion, and support (including providing subsidies) the benefits of apprenticeship.⁶¹ This leadership is especially needed because many US private-sector employers are wary of the financial and human resource costs involved in supporting these programs, and/or employers may not be aware of the long-term advantages of offering in-house apprenticeship opportunities.

Beyond Europe, the United States can also look to Singapore for other models. As it moves toward a high-wage, high-skilled workforce, Singapore is pursuing innovative, longer-term planning strategies to account for a greater span of a worker’s career lifecycle. Looking beyond traditional passive- or active-labor market supports, it is placing “strong emphasis on mid-career workers and ongoing learning to upskill current workers,” including not just those in vocational trades “but also those in professional, management and even executive jobs.”⁶² Further, rather than focusing primarily on the skills needs of employers, Singapore focuses on workers’ needs, endeavoring to build “a pipeline of competent workers through the constant upgrading of workers’ skills and raising industrial performance standards.”⁶³ Focusing on the evolving lifespan of workers could contain valuable lessons for US policymakers.⁶⁴

There is no magic bullet that will easily and finally solve the challenges associated with worker dislocation, but this is not an excuse to settle for an outdated, vastly underfunded,

and underperforming system that fails to help hard-working Americans weather and manage difficult transitions. There is a glaring need for comprehensive and integrated strategies that provide robust wage and benefits supports, incentives toward re-employment, and access to innovative and targeted educational and training opportunities. The response must help people cope with the downsides of a job loss while enabling them to take advantage of new and emerging opportunities to enhance the overall competitiveness of our dynamic, international economy. By doing so, we will be able to build a broad political consensus that a dynamic and global economy—with international trade being one aspect—can be managed in a way that is responsive to all Americans.⁶⁵

Policy Element #2: Strong and enforceable labor rights provisions in trade agreements for workers in trading partner nations

The second element of an integrated US international economic policy must be strong and enforceable labor rights protections for workers in foreign partner countries.⁶⁶ In the past few decades, providing a framework to protect labor rights has become increasingly urgent, as globalization has enabled developing countries with limited labor rights to become more deeply integrated into the international marketplace and spheres of trade.⁶⁷ After many years of debate, a consensus has been achieved that labor protections, like other guaranteed rights, must be embedded in the core language of trade agreements and subject to a full trade sanctions regime.

Historically, arguments supporting embedding worker rights in trade arrangements have been



The remains of the Rana Plaza building collapse in Bangladesh.

based on both moral/humanitarian concerns as well as on fairness/economic grounds.⁶⁸ First, advocates argue that labor protections advance human rights by tying the allure of trade liberalization's expanded market access to labor rights, thereby encouraging reforms and ensuring against the moral hazard of a potential race to the bottom by poor countries seeking an advantage over countries with stronger labor safeguards. Second, incorporating labor standards into trade agreements and subjecting violators of those standards to trade sanctions provides US workers with a more level playing field in a globally competitive market where trade liberalization contributes to job displacement.⁶⁹

Less than fruitful attempts to advance the incorporation of labor standards into trading arrangements were made in global trade rounds, including the Uruguay Round of the General Agreement on Tariffs and Trade spanning 1986 to 1994 and successive World Trade Organization (WTO) Ministerial Conferences in Singapore (1996) and Seattle (1999). As a result of these failings, countries—the United States, in particular—sought to link trade and labor standards in bilateral and regional trade agreements.⁷⁰ The policy impetus for these efforts was drawn from the International Labour Organization's (ILO) 1998 landmark “Declaration on Fundamental Principles and Rights at Work,” which identified four core labor standards that all countries should promote.⁷¹ Since its adoption, the number of trade agreements with labor rights provisions has increased from just 4 agreements in 1995 to 21 in 2005 and 58 by 2013.⁷²

While the United States has pursued multiple strategies to incorporate worker rights protections and enforcement into trading

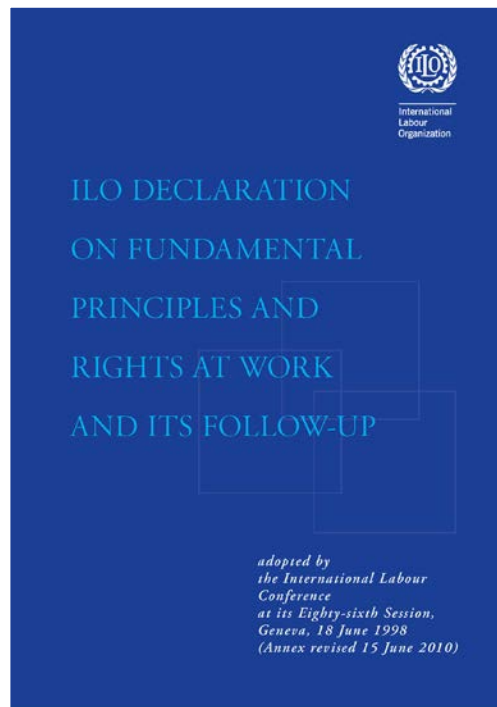
arrangements, this process has been gradual and has extended over several US presidential administrations.⁷³ In this way, it has left critics to rightly argue that efforts have not gone far enough or resulted in improving labor protections for workers in US trading partner countries.

President-elect Trump's intention to withdraw from TPP will bring a screeching halt to what would have been substantial progress in the area of labor standards in trade agreements.

Unlike any other previous agreement, TPP dedicated an entire chapter to labor standards and represented significant progress by the US on this long, albeit circuitous, path of attempts to include labor protections in trade agreements. TPP's structure and its “pressure to upgrade standards and enforce binding . . . commitments” gave it the potential to serve as a promising model for future US trading and economic partnerships.⁷⁴ Specifically, the agreement: (a) consolidated gains in enforceability; (b) modernized existing agreements and corrected the shortcomings of previous ones; (c)

extended a labor rights agenda to important new partners; and (d) expanded the range of issues covered by the agreement to urgent labor rights challenges of the 21st century. While President-elect Trump has never discussed his views regarding labor standards and trade agreements, it is important to note that Republicans generally have not supported such provisions.

Extending labor rights protections in all TPP countries would have been a significant challenge, especially in places with weak track records on issues such as freedom of association, wages, child labor, forced labor,



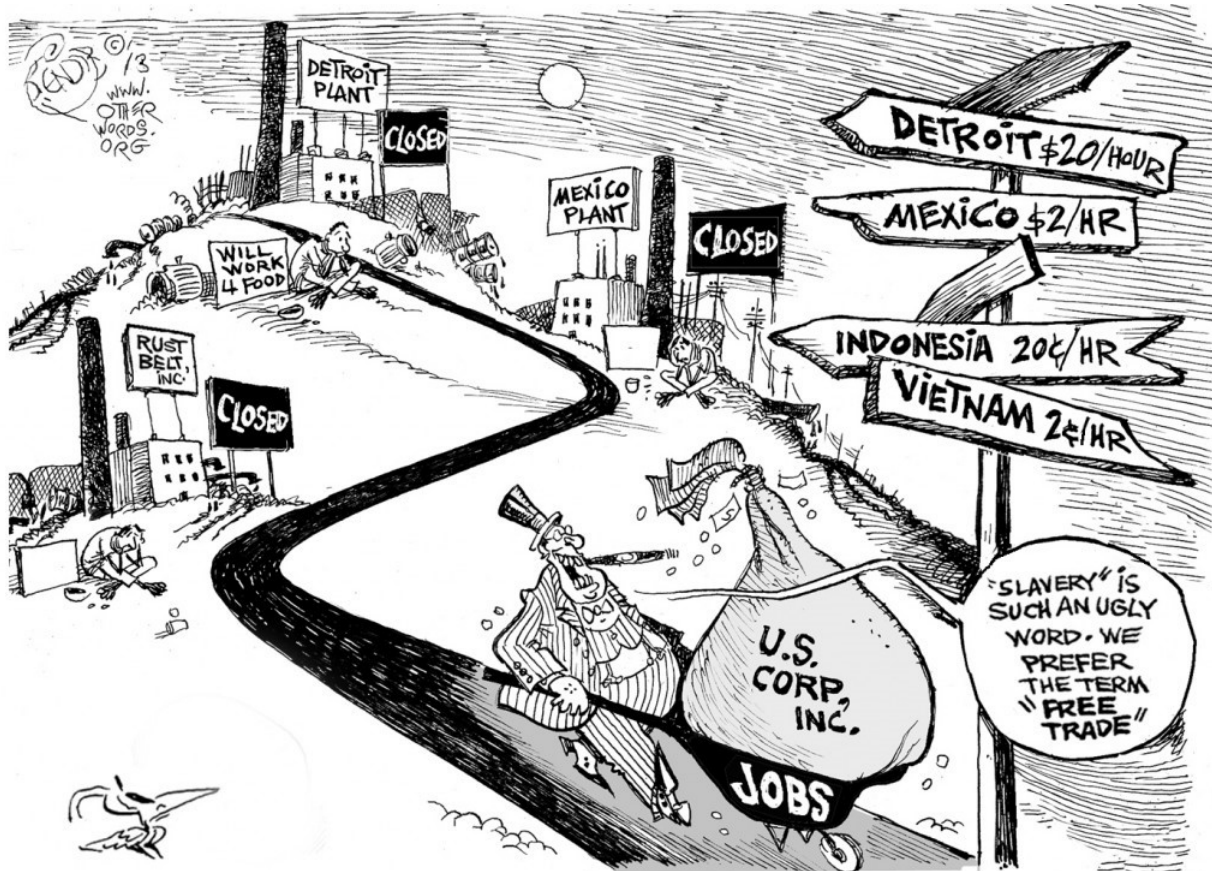
and human trafficking. TPP also did not create avenues for labor organizations to challenge signatory governments by lodging complaints regarding violations of the agreement's labor provisions—itself not a provision that is likely to be included in a renegotiated TPP. But when viewed from the perspective of the last 20 years of US free trade policy, TPP was a significant step forward for labor rights. The pact set a higher standard for worker protections in free trade agreements and, in its application across a large geographic and economic region, created the potential for practical gains in working conditions for millions of workers.

To achieve these worthy gains, the US government would have to dedicate not only significant resources but also the political will and leadership from the next presidential administration. Similarly, ongoing vigilance from unions, civil society, and the media to hold governments accountable to their commitments would also be necessary. Civil society has

demonstrated that it will not walk away from its commitments in this area. Nor should these gains or challenges be discarded by the incoming US administration. The challenges of the global economy for the US economy and for American workers are complex—unfortunately there are no easy answers and single solutions. For the United States to maintain its strong geo-political and economic position in the world and for the US economy to continue to grow and to maintain robust exports, US leaders must garner the public's support for an international economic regime—one that includes international trade and labor standards for all workers.

What we have had to date

Prior to the contentious WTO Ministerial conference in Seattle in 1999, the only US trade agreement in which the subject of labor conditions was mentioned was the 1994 North American Free Trade Agreement (NAFTA), signed by Canada, Mexico, and the United



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States. Provisions to address labor rights violations in NAFTA signatory countries were included “in a side agreement, rather than in the main agreement,” called the North American Agreement on Labor Cooperation (NAALC).⁷⁵ NAALC, which existed *outside* of NAFTA’s enforcement mechanisms, established a process through which labor-related complaints would be processed, heard, and, if found to be true, addressed. It quickly became clear that the NAALC process would have little, if any, remedial impact. Because its scope and mandate were limited only to obligations under the signatories’ existing domestic national laws and further only to “persistent patterns of non-enforcement,” it effectively ensured that a single violation—even if egregious and established—would not meet the threshold for a remedy.⁷⁶

As a result of this burdensome legal threshold, only 28 complaints were submitted under NAALC.⁷⁷ Of those, just 18 were accepted for review, with *none* resulting in a finding that an employer violated national law. Further, workers were not compensated in any case for a violation of their rights, and no employer was found guilty of compromising workers’ labor or workplace health or safety rights. Given the common knowledge of poor working conditions in Mexico’s export manufacturing industry, known as the *maquiladoras* sector, the failure to determine both substantial violations of labor rights and effective remedies negatively impacted NAALC’s legitimacy as a mechanism to address labor violations and undermined NAFTA’s positive economic results for years to come.⁷⁸

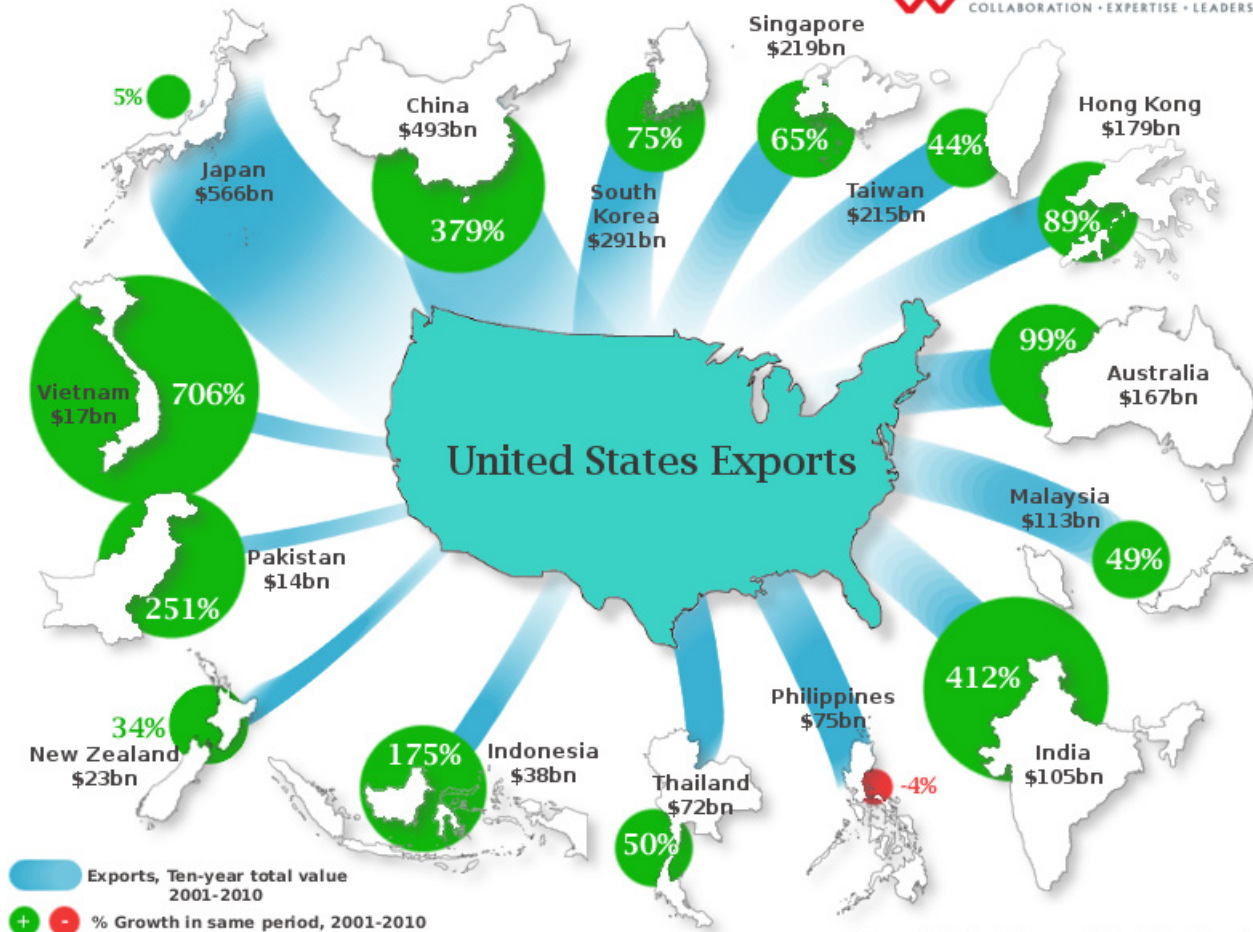
After years of failing to resolve even the clearest and most egregious labor violations under NAFTA, the WTO Ministerial hosted by the United States in Seattle in 1999 became a battleground and a turning point in the global debate over trade and labor. Mass protests now known as the “Battle in Seattle” criticized the WTO and free trade as the primary cause of global inequality. Years after the Battle in Seattle, no multilateral gathering—ranging from World Bank and IMF meetings to G7 and the

G20 summits—would be free from protests and claims of deepening global inequality.⁷⁹

Support for or opposition to free trade was quickly becoming a litmus test for *all* elected officials—not only in the United States but also in other countries as well.⁸⁰ This in turn heightened the perceived tension between labor rights and free trade. In Seattle, President Clinton acknowledged that trade had failed to deliver on its promise to *lift all boats*. For example, while corporate investments in Mexico under NAFTA were returning huge profits for executives and shareholders, US manufacturing jobs were being lost to Mexican production facilities and workers in Mexico.⁸¹ In particular, economic trade zones where workers were being paid wages well below productivity gains and were suffering under harsh conditions were attracting many US manufacturers.⁸² In this context, President Clinton, much to the dismay of many corporate leaders and trade negotiators, told world leaders that they could no longer negotiate agreements without putting a “human face on the global economy.”⁸³ Thereafter, global working conditions and the impact trade had on US workers would no longer be ignored, as both issues would come to drive political and public debates in years to come, including today.

After the events in Seattle and the widespread recognition that NAFTA had fallen far short of protecting workers in trading partner countries, the Clinton Administration sought to include labor provisions in the core and body of its free trade agreement with Jordan in 2000.⁸⁴ In the agreement, violations of labor rights were made subject for the first time to the dispute resolution processes of the agreement. Even more importantly, if workers’ rights violations were established, either party would be entitled to take “any appropriate and commensurate measure,” language that was interpreted to include the leveling of sanctions.⁸⁵ While the agreement’s labor provisions referenced the parties’ “obligations as members of the International Labor Organization” and their corollary commitments under the ILO’s

US Exports to Top-15 Asia-Pacific Markets



Source: US Dept. of Commerce | Graphic by: Grace Ruch

Declaration on Fundamental Principles and Rights at Work, the trade agreement’s text only obligated that the countries “strive to ensure” that such “internationally recognized labor rights” would be protected in their domestic labor laws and that they “not fail to effectively enforce” their own labor laws.”⁸⁶

Still, the Jordan agreement broke new ground by: a) conditioning trade privileges to the parties’ adherence to their respective domestic labor laws, while also referencing the ILO’s core labor standards; and b) making labor rights violations subject to the dispute resolution processes, thereby providing a forum for labor complaints to be heard and hopefully remedied.⁸⁷ It is important to note that prior to the US–Jordan free trade agreement, violations of labor rights could only be addressed through national mechanisms, which proved largely ineffective for

workers. In these ways, the Jordan agreement signified a major advance by providing a new avenue outside of just domestic channels for workers seeking to remedy violations of labor rights.

In the years that followed, the Bush Administration negotiated trade agreements with Chile (2003), Singapore (2003), and Australia (2004). It also negotiated the 2004 Dominican Republic–Central America Free Trade Agreement (CAFTA–DR) with six Latin American countries and incorporated labor provisions into the actual text of the agreement, a significant advance over NAFTA. Unfortunately, CAFTA–DR only required adherence to the countries’ respective domestic labor laws (as opposed to the ILO’s internationally recognized core labor rights) and did not subject violations to dispute settlement or trade sanctions.⁸⁸ None of these

trade agreements provided an adequate forum or remedy beyond domestic national judicial processes, which proved both expensive and ineffective. CAFTA–DR also included individually tailored “labor action plans” for some participant countries that were intended to guide labor rights implementation. However, like their predecessor NAALC/NAFTA, these plans were separate from the actual agreement and unenforceable.

The limitations of CAFTA–DR’s approach came into sharp focus in 2008, when six Guatemalan trade unions, in partnership with US trade unions, filed a complaint against the Guatemalan government for failing to enforce its labor laws, citing extreme levels of violence against union leaders in the country.⁸⁹ For two years, the case did not go to trial; it took another four years before arbitration began in November 2014.⁹⁰ These delays in prosecution and remedy further frustrated advocates across the human and labor rights spectrum and undermined the legitimacy of labor action plans and US efforts to improve labor conditions in trading partner countries.

Moreover, by choosing not to include the problem of anti-union violence among the complaint’s charges, the United States has not only created a glaring labor rights omission but also may have, perhaps unwittingly, opened a path for countries to continue to perpetrate violent acts against labor officials and worker advocates.⁹¹ While the Guatemala arbitration process is still ongoing, the United States’ choice not to raise the issue of violence against trade unionists in the case may prevent the panel from addressing one of the most serious challenges facing the protection of workers in Guatemala today.⁹²

In May 2007, as a result of these and other documented failings with respect to implementing and enforcing labor rights standards for workers in trading partner countries, Congress endeavored to play a more significant role in driving the improvement of global labor rights.⁹³ In what would be hailed

as the “May 10th Agreement,” Congress and President Bush signed a Congressional–Executive pact mandating that all countries entering into free trade agreements with the United States shall adopt and maintain “enforceable reciprocal” labor rights standards as articulated by the ILO Declaration on Fundamental Principles and Rights at Work.⁹⁴ The May 10th Agreement also required that all labor obligations of trade agreements be subject to full dispute settlement and trade sanctions.

Once the May 10th Agreement was signed, the United States was compelled to demand action from its trading partners. As a result, all previously negotiated trade agreements—including those between the United States and Peru, Colombia, Korea, and Panama—were required either to be revised and updated or otherwise reshaped to include labor rights provisions that would be more effective than those contained under CAFTA–DR. Specifically, under the May 10th Agreement, trade agreements had to include the ILO’s fundamental labor rights as terms of the trade agreement, mandate that trading partner countries effectively enforce their labor laws, and provide that allegations of labor violations, whether of national laws or of the trade agreement itself, would be subject to the agreement’s dispute processes. Finally, if violations were determined, trade sanctions could be initiated against the trading partner found to have violated the labor provisions.

TPP’s labor chapter: Should be a path forward

TPP’s labor chapter stands on the shoulders of this iterative history and attempts to fill gaps in both standards and enforcement regimes.⁹⁵ Specifically it would:

- extend internationally recognized labor standards and obligations to all 12 TPP countries, including countries with troubling labor rights records that were not previously covered by trade agreements with the United States;

- set out new obligations that discourage forced and child labor and guard against lowering labor standards in export processing zones;
- provide labor provisions that go beyond those included in previous agreements and subjects them to full enforcement and trade sanctions; and
- incorporate individually tailored labor rights “consistency plans” with Vietnam, Malaysia, and Brunei (countries with troubling labor rights histories), including both sanctions and other remedies should countries fail to implement their commitments.

TPP’s three bilateral labor consistency plans, in particular, are a meaningful advancement. Their requirements and enforcement mechanisms far exceed those that were included in CAFTA–DR’s labor action plans. Moreover, TPP’s provisions on labor rights, outlined in Chapter 19 of the agreement, include a robust discussion on the rights of workers and are evidence that US negotiators have learned from the weaknesses of past trade agreements. TPP partners, perhaps most importantly, are required to adhere to and enforce the ILO’s core labor standards; failure to do so means being subject to trade sanctions and/or the withdrawal of trade benefits.⁹⁶

Like previous agreements with Peru, Colombia, Korea, and Panama, Chapter 19 details the obligations and commitments of signatory countries with respect to labor rights and their own national laws. But Chapter 19 goes further—it *requires* US trading partners to adopt and maintain the ILO’s fundamental labor rights *and* stipulates that countries cannot waive or derogate laws that implement fundamental labor rights. Further, Chapter 19 builds on previous trade agreements and takes a more ambitious approach by including labor protections and the bilateral labor consistency plan accords as part of the trade agreement itself. In doing so, Chapter 19 subjects participant countries to sanctions for non-compliance and addresses

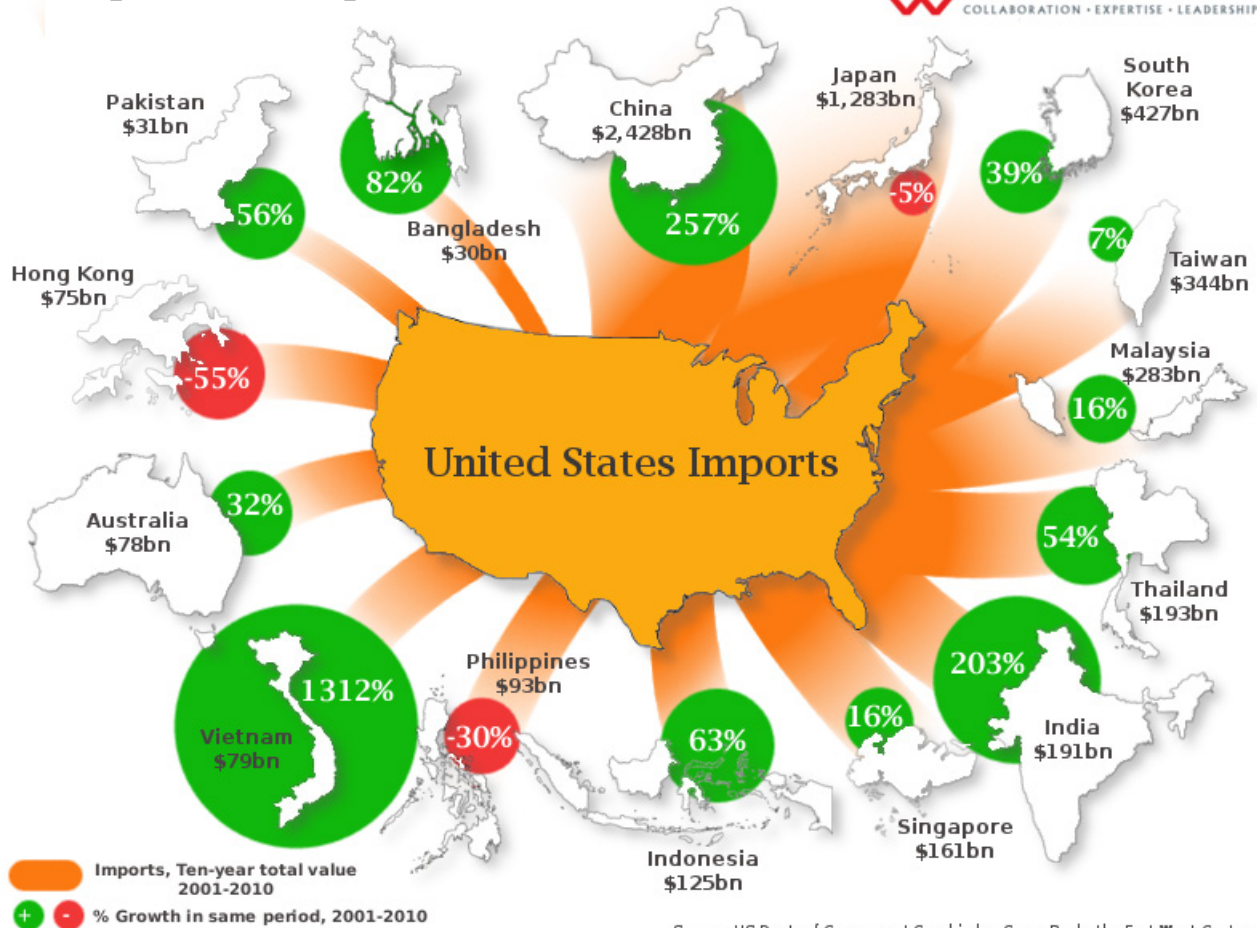
labor rights challenges and criticisms that have historically plagued previous free trade agreements.

Among the most notable provisions are:

Forced and child labor: TPP includes provisions against forced labor as a core part of the agreement’s labor chapter. Specifically, Article 19.6 commits TPP signatories to “the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour” and to “discourage . . . the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.”⁹⁷ With growing public awareness of the prevalence of forced labor in manufacturing, fishing, electronics, and mining industries, Chapter 19’s inclusion of obligations to eliminate forced labor in these areas is a significant step forward. While these commitments will depend on the political will of each country’s leadership, Chapter 19’s language provides civil society, policy makers, and governments with a clear basis to call on countries to address forced labor.

Export processing zones (EPZs): TPP prevents the lowering of standards in EPZs, a well-known workaround for countries to avoid mandatory labor rights provisions in trade agreements. In the name of attracting foreign direct investment, countries have historically created EPZs to offer low taxes and to render labor protections nonexistent, including minimum wage requirements and guarantees of freedom of association. Without freedom of association guarantees, it is impossible to organize trade unions or for civil society to effectively advocate for workers. Therefore, it is significant that TPP expressly prohibits parties from waiving, derogating, or weakening any labor laws or protections in EPZs.

US Imports From Top-15 Asia-Pacific Markets



Source: US Dept. of Commerce | Graphic by: Grace Ruch, the East West Center

Full enforcement: A common criticism of US trade agreements has been that they did not include trade sanctions as a deterrent and a remedy for labor rights violations. Instead, a number of remedies short of trade sanctions or “full enforcement” were used as penalties, which proved too weak to make a significant and lasting impact on labor rights violations. Trade critics and advocates agree that the inability to use trade sanctions as a full-throated remedy for labor violations essentially left such efforts without a remedy because trading partners knew that the ultimate sanction would never be imposed. TPP takes this criticism head-on by expressly declaring trade sanctions as a remedy for labor violations.

Bilateral implementation plans for high-risk countries: While previous free trade agreements such as CAFTA–DR and the US–Colombia free trade agreement included labor rights implementation plans, those plans were not considered part of the actual core trade agreement. As a result, a country’s failure to adhere to the action plans’ labor commitments had neither enforcement mechanisms nor remedies because the plans were not incorporated into the trade agreement. In contrast, TPP’s labor consistency plans with Vietnam, Malaysia, and Brunei—each of which has a troubling history of labor rights protection—are included in the core agreement. Accordingly, the trade benefits derived from TPP (i.e., reductions of tariff and non-tariff barriers) would be suspended if these countries

do not achieve the progress described in their bilateral plans. The consistency plans represent a meaningful step forward for labor rights and, if implemented, would improve working conditions for millions of workers, especially on difficult issues such as freedom of association, collective bargaining, and child and forced labor.

Taken as a whole, TPP's Chapter 19 represents a higher standard for labor rights by including core labor standards and more effective enforcement mechanisms. It modernizes existing agreements with TPP countries negotiated before 2007 and helps correct the failings of NAFTA by extinguishing the ill-fated "side agreement" approach and incorporates TPP labor standards and enforcement mechanisms for Mexico and Canada as well. Additionally, the bilateral labor consistency plans with Vietnam, Malaysia, and Brunei provide these trading partners with carefully designed "carrots and sticks" to incentivize much-needed labor reforms, including the adoption of ILO core labor standards and creating labor inspectorate regimes and mechanisms for workers' voices. Still, the proof of the respective labor consistency plans' effectiveness will be in their implementation and enforcement. Unlike the CAFTA-DR and Colombia labor action plans, the TPP plans provide new enforcement mechanisms wherein each of the three countries must accomplish the following:

- form a joint Senior Officials Committee, which will be comprised of representatives from relevant government ministries and the Office of the US Trade Representative and Department of Labor, that will conduct periodic program assessments and facilitate rapid response to concerns about compliance with the action plan;
- commit funds for inspection and enforcement; and
- work with the ILO to implement "Technical Assistance Programs" (TAP) and to retrain inspection and enforcement staff.

The United States has pledged its full support for implementation, including providing resources to countries with labor consistency plans. Further, the United States has promised to withhold TPP benefits until newly mandated labor law reforms are in place. In addition, the United States will remove market access and impose trade sanctions if regular assessments show that a country has failed to enforce these new laws. These pledges are new to TPP and have never before been included in US trade agreements.

In this context, critics have questioned whether the United States will indeed act to withhold benefits and impose trade sanctions in the event of noncompliance with labor standards. Historically, the United States has shown itself to be slow in invoking sanctions or suspending trade benefits, even in those countries where labor obligations are part of a trade program and labor rights abuses are well documented. For example, in 2007, 2011, and 2012, the AFL-CIO lodged a succession of worker rights petition complaints with the Office of the US Trade Representative regarding Bangladesh's failure to meet its labor rights obligations under the US Generalized System of Preferences (GSP) program, calling for the country to be removed from the program.⁹⁸

Specifically, the AFL-CIO petitions alleged that Bangladesh had "failed to make meaningful and consistent progress towards affording internationally recognized worker rights, including freedom of association, organizing and collective bargaining and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."⁹⁹ The United States did not act on these petitions until 2013 in the wake of the tragic collapse of the Rana Plaza factory complex outside Dhaka, Bangladesh, which killed more than 1,100

garment workers.¹⁰⁰ Despite having placed Bangladesh under review in 2007, only in June 2013 did President Obama act to officially suspend Bangladesh's GSP eligibility, citing that it had not taken the requisite actions "to afford internationally recognized worker rights to workers in the country."¹⁰¹

Fortunately, while the country was suspended from GSP, the United States remained engaged and committed to helping Bangladesh on its road to compliance. For example, there is now an active interagency working group that includes the Department of State, US Trade Representative, Department of Labor, and the US embassy in Dhaka that is focused on implementing a bilateral action plan, which is a condition for the reinstatement of Bangladesh's participation in GSP.¹⁰²

In Bahrain, the Obama administration took more timely action after the AFL-CIO's April 2011 complaint over the Bahraini government's brutal crackdown during the political and civil unrest surrounding the Arab uprisings of that year.¹⁰³ The Bahraini government's efforts to dismantle the indigenous labor movement were in clear violation of its commitments to protect workers' rights under the 2006 US–Bahrain free trade agreement. In its complaint, the AFL-CIO called for the United States to withdraw from the pact, alleging that Bahrain had "violated its commitments . . . regarding the right of association, particularly non-discrimination against trade unionists."¹⁰⁴ In late December 2012, the US Department of Labor issued a report following two fact-finding in-country visits, in which it urged diplomatic talks to resolve and improve issues, including allegations that Bahrain had "targeted trade unionists and others for firing and criminal prosecution . . . [and] that Shia workers and political critics of the government faced discrimination."¹⁰⁵

In 2013, while not withdrawing from the trade agreement or removing benefits, the United States initiated formal bilateral consultations with Bahrain to address its labor rights violations and to provide assistance for improvements

on labor rights protections and enforcement. Today, consultations are ongoing and the United States has made efforts to help Bahrain rectify its past shortcomings and to improve its ongoing labor rights compliance, including reinstating dismissed workers, engaging a tripartite process with workers' and employers' organizations, and drafting and passing labor law reform.¹⁰⁶ Still, continued diligence is required; as of July 2015, international labor rights advocates had continued to call attention to the declining labor and human rights situation in Bahrain.¹⁰⁷ As the United States advances trade arrangements with less than fully democratic countries—including some that are part of TPP—the Bahrain experience may contain useful lessons.

The US response to labor rights violations historically has been sluggish and advocates have legitimately asked whether the United States would have invoked the *expanded* labor obligations and enforcement mechanisms under TPP. That said, the Obama administration's actions in Bangladesh and Bahrain suggest that, with sufficient and sustained pressure from civil society groups together with political leadership, the United States can and will invoke the labor provisions of trade agreements and preference programs and undertake corrective action that can lead to meaningful improvements among its trading partners.

After November's election, the question must be asked: what will President-elect Trump's position be toward enforcing labor standards, globally? As a candidate, Mr. Trump's "America First" platform underscored what many viewed as a noninterventionist foreign policy, including his speech announcing his presidential candidacy in which he said that the US should "stop sending foreign aid to countries that hate us" and rather devote resources domestically to "invest in our infrastructure... our tunnels, roads, bridges and schools."¹⁰⁸ But while President-elect Trump has aligned with those voices opposing international trade and trade agreements, the existing paradox is that many of those voices *also* strongly supported US enforcement of global labor rights. It is at best an open question

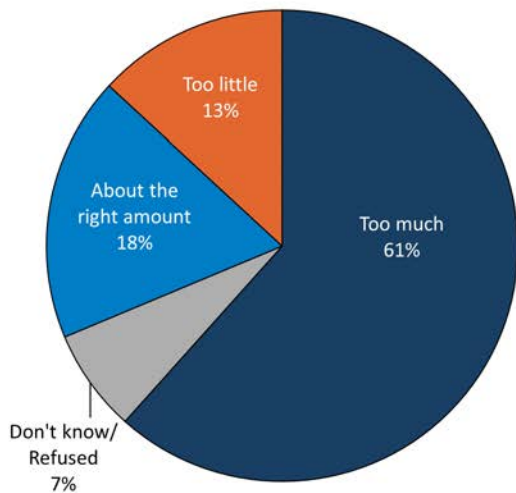
whether President-elect Trump will continue to make important strides in the area of labor rights protections or advance an intelligent vision to extending labor rights and their application and adoption in the future.

If President-elect Trump truly intends to stand by and support US workers, then adopting a policy that extends and enforces labor rights for global workers is absolutely essential. As countries with limited labor protection histories enter into global trade arrangements, labor protections will garner increasing attention as well as greater scrutiny. In this context, the United States must adopt a diplomatic approach that addresses these challenges more fully, including working in close and sustained coordination with trading partners to assess and support their unique situations and needs.

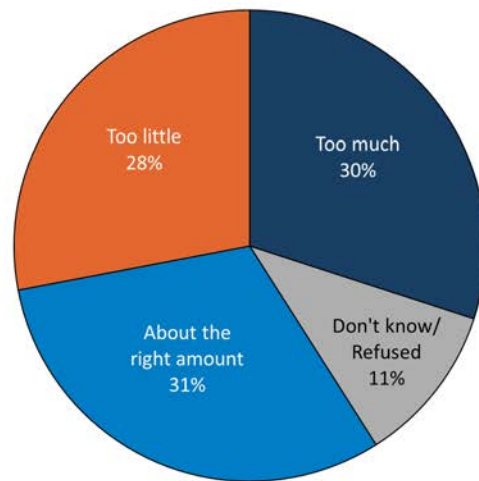
As the president-elect signals his desire to walk away from TPP and asserts that he will instead enter into bilateral agreements that help US workers, TPP’s labor chapter should not be scrapped. Indeed, demanding global labor standards for workers is a key and essential component to supporting US workers, including its relevance to help to “level the playing field.” Labor provisions that mirror TPP’s labor chapter should be included in each and every bilateral agreement that President-elect Trump intends to negotiate. Ultimately, TPP’s labor provisions represent the best way to improve labor standards in countries that are, or will become, US trading partners. Once such provisions are included, the new administration must single mindedly focus on implementation and demonstrate that it has the political will to invoke trade sanctions or to withdraw trade benefits,

Information Can Change Perceptions About Amount Spent On Foreign Aid

Do you think the U.S. is now spending too much, too little, or about the right amount on foreign aid?



What if you heard that about one percent of the federal budget is spent on foreign aid? Would you still think that the U.S. is spending [too much/too little/about the right amount] on foreign aid, or would you now say that the U.S. spends...



SOURCE: Kaiser Family Foundation 2013 Survey of Americans on the U.S. Role in Global Health (conducted August 6-20, 2013)



where warranted. Absent the inclusion of a TPP-like labor chapter, the new administration will fall short of its commitment to US workers and it will further erode what is left of the public's belief that trade can be managed for the public good.

It is clear that much work will be needed to elevate labor standards and to help develop the infrastructure for their sustainability. Trade and other mechanisms can play key roles in advancing this agenda. Rather than “throwing out the baby with the bathwater,” TPP's labor chapter and its guiding principles can serve as a model for future US global economic and trading partnerships and should be included in potential bilateral trade agreements pursued by the next administration.

Policy Element # 3: Strategic international development and technical assistance support for countries as part of a global approach to US economic engagement

The third element of an integrated US international economic policy—a development assistance program—should reflect the United States' overall trade and international economic agenda. For example, as the new USTR begins thinking about potential trading partners, it must consider and budget for concurrent comprehensive technical assistance programs to ensure that partner governments are able to implement—and enforce—the rights of workers, including human and labor rights protections. This approach should be adopted as policy, not as an afterthought once the United States later determines that its trading partners have neither the capacity to enforce their own laws or adhere to binding labor and human rights regimes.

Ignoring the very real challenges facing developing countries or claiming that the US should have no interest in how other countries manage their domestic policies will ultimately harm not only global workers but also American

workers. It is axiomatic that lower global labor standards allow US and other corporate interests to flee the US market and shed US jobs in search of lower wages and standards. Accordingly, just as the US must have a more frank and open discussion about the challenges American workers face in adjusting to globalization, we also need to be honest about the challenges that many developing countries, including our trading partners, face in managing the myriad governance and technical capacity requirements that come with increased global economic partnerships.

For example, over the last decade, including in TPP most recently, the United States has endeavored to embed stricter standards for partner countries to comply with a host of newly agreed to commercial and human and labor rights obligations. These range from increased labor protections (as described earlier in this paper) to environmental practices, food safety, intellectual property, health, privacy, freedom of expression, transparency, and rule of law. However, because many trading partner nations have dedicated few resources toward and have limited experience in these areas, it is unrealistic to assume that these countries will be able to fulfill these requirements without US support. A more accurate picture is that these countries too often lack the basic infrastructure—and, in some cases, the political will and commitment—to put these practices into place in any immediate, thorough, or sustained manner.

Consequently, US trading partners require deep technical support and sustained institutional guidance from expert advisors. It has become abundantly clear that, absent a US commitment and long-term engagement to a development agenda that assists partners in building the necessary public institutions, mechanisms, and legal regimes to underpin and to enforce these heightened standards, US objectives in this arena will remain but lofty visions on paper.

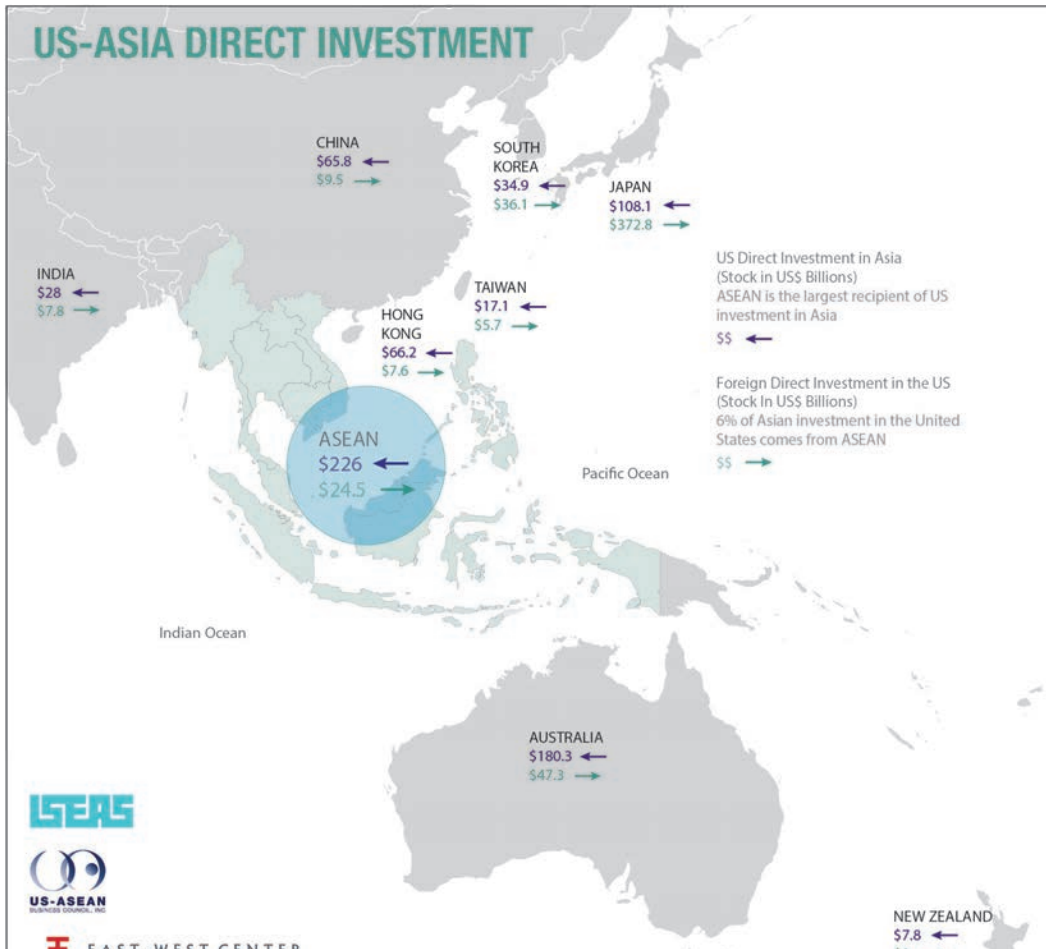
Unfortunately, US strategy to date has been decidedly piecemeal on each of these counts. As a result, programs and resources

supposedly allocated to design and implement such standards have suffered from unfocused attention or financial cutbacks and are vulnerable to recurring budget debates and changes in political leadership. Such conditions are not a stable strategy for success. Moreover, failure to institutionalize long-term engagement and assistance programs that are at least somewhat insulated from political meddling has contributed to public skepticism about US trade agreements, especially those with developing countries.

Technical assistance for labor capacity is but one focus area. Equal attention must be given to capacities that undergird the very foundations of functioning governments, including the rule of law and an independent judiciary, good governance and transparency, and the means to combat corruption. Zeroing in on each of these areas with equal weight, targeted development assistance, and strong incentives

to encourage progress that are buttressed by a willing “stick” to cancel trade arrangements if results are not demonstrated are each essential parts of a comprehensive international trade agenda. Absent a bipartisan commitment to institutionalize a dedicated and well-resourced international economic and trade policy that demonstrates to trading partners that the United States is in for the long haul, the continued erosion of domestic and international public support for trade is all but ensured.

The recently signed TPP includes bilateral labor action plans with Vietnam, Malaysia, and Brunei. These agreements are a step in the right direction and should serve as a model for any new bilateral agreement negotiated by the incoming Trump administration, which should outline broad protections and rights—coupled with targeted development, governance, and technical assistance—to develop, implement, and enforce standards.



The US track record

US consideration for the challenges that new trading partners will encounter in these areas must be met with robust financial and technical support. No longer can such assistance be left as an afterthought, secondary to the narrowly defined business interests, commercial considerations, and priorities of American industries. Instead, equal consideration must be directed to the diverse development, technical, and policy implementation assistance needs of trading partners. Unfortunately, US attempts to include such financial and technical assistance have at various times suffered from a lack of leadership and vision, limited and constrained timeframes, and politically dependent resources. As a result, implementation and real-world application of these requirements has shown limited success.

This reality has been borne out with respect to the implementation of labor rights standards in particular. Many trading partners lack mature political structures, institutional government capacity, and technical know-how required to develop, sustain, and enforce international labor market norms consistent with their new obligations. While successively negotiated trade deals have incorporated progressively stronger labor protection expectations into their textual language, the track record of implementation and enforcement by US trading partners has been mixed. Given these countries' limited histories in protecting the rights of workers, this record of underachievement has perhaps been a predictable outcome. However, because the United States has not shown a concerted, long-term engagement and assistance strategy toward these countries, the failing grades given to the United States and its trading partners by international labor rights organizations and US oversight bodies should not come as a surprise.¹⁰⁹

Several investigations have substantiated these weaknesses. In its report focusing on the United States' free trade agreements (FTAs) with Jordan (2001), Chile (2003), Singapore (2003), and Morocco (2004), the US

Government Accountability Organization (GAO) concluded that progress in labor reforms "has been uneven and U.S. engagement minimal."¹¹⁰ The report references the virtual elimination of appropriations for technical cooperation on labor issues, resulting in severely limited "U.S. assistance to strengthen country capacity to enforce labor laws," further noting that the United States "did not use information it had on partner weaknesses to establish remedial plans or work with partners on improvement."¹¹¹ Notably, despite their creation of a "labor cooperation mechanism" and the expectation for engagement to improve labor standards as negotiated under TPA at the time, none of the cited FTAs specified amounts of funding dedicated to this goal.¹¹² With no clear long-term funding commitment and subsequent budget cut-backs by Congress and the executive branch in the years after the FTAs were signed, US development assistance to build "labor capacity was limited to partners or issues with preexisting program resources and was less than initially foreseen due to funding cuts. . . [and as a result] has not had a direct source of funding available to dedicate to new technical assistance for FTA partners. . . ."¹¹³

GAO evaluations of subsequent FTA-related labor capacity-building assistance for CAFTA-DR countries (2005) and for FTAs with Colombia (2011), Oman (2006), and Peru (2007) noted similar results, citing "persistent challenges to labor rights, such as limited enforcement capacity, the use of subcontracting to avoid direct employment, and . . . violence against union leaders."¹¹⁴ With regard to US engagement, the GAO report states that "limited funding and staffing as constraints on [US officials'] ability to monitor and enforce" the respective FTAs' labor provisions.

To be fair, the overriding goal of US international development efforts have not primarily been to eradicate human and labor rights abuses, but rather to help developing countries engage in and benefit from global trade. This assistance, which is known as Trade Capacity Building (TCB) or Aid for Trade (Aft) and is coordinated

by USAID in conjunction with over 20 other US agencies and international partners, such as the ILO, represents a patchwork of efforts primarily designed to solve political issues and to garner votes for trade agreements.¹¹⁵ Such efforts have included funding for technical assistance and institutional support in developing countries in a wide variety of areas, including “implementing the provisions of existing trade agreements, participating in new agreements, undertaking trade policy reform, or improving the functioning of government agencies involved in trade.”¹¹⁶

Still, TCB has been strongly criticized for its failure to coordinate policy implementation between multiple and often competing US agencies, thus hampering “a whole-of-government approach.”¹¹⁷ Even US trading partners have reported challenges in receiving TCB aid and have registered specific difficulties “when the assistance comes in the form of multiple short-term projects rather than a long term strategy coordinated with national development plans.”¹¹⁸ Other feedback indicates that TCB assistance has a strong tendency to be supply driven by donor country administrative or political priorities as opposed to the recipient country’s unique needs and goals. Additionally, while USAID provides the most funding for TCB activities, no single agency is responsible and accountable for coordinating TCB assistance.¹¹⁹

In no small part due to sustained pressure exerted by trade unions both in the United States and abroad, the US has taken steps in recent years toward a more targeted approach of working more closely with trading partner governments to identify specific areas for improvement and, concomitantly, their technical assistance needs. For example, the 2011 US–Colombia Labor Action Plan (LAP) outlined with greater specificity concrete labor market reforms that Colombia was obligated to make as part of its trade pact with the United States.¹²⁰ As one of the first such iterations of this particular approach, the results have been mixed. While noting that US technical assistance efforts as part of the agreements helped make some improvements, including “recruiting 100 labour

inspectors, and increasing the resources of the trade union protection programme,” international labor rights monitoring groups have criticized the Colombia LAP as having not fulfilled its promise, noting that “the requirements . . . have not been fully implemented within the agreed timeframe and are, by themselves, not sufficient to address labour rights deficits.”¹²¹ They argue that while the LAP called for such major changes as the creation and staffing of a new Ministry of Labor supported by technical assistance from the ILO and with funding from the US government, such improvements have been largely cosmetic, due to a lack of “real political intent [by Colombian authorities] to comply with the LAP or the recommendations of the High-Level Mission of the ILO.”¹²²

While acknowledging that significant challenges remain, the Obama administration’s recent five-year report notes that “Colombia has made meaningful progress across a number of areas, including a significant decline in the use of fake worker cooperatives that undermine workers’ rights, a reduction in violence against labor unionists, and a doubling of the number of labor inspector positions in Colombia’s Ministry of Labor, which was re-established in 2011 consistent with commitments under the Action Plan. . . . This progress has contributed to tens of thousands of workers joining or forming new unions in Colombia, with a reported 150,000 new union members since 2011.”¹²³

TPP’s labor consistency plans: An approach to model

Based in part on this iterative experience, the United States negotiated, as part of TPP, unprecedentedly robust bilateral labor consistency plans with Vietnam, Malaysia, and Brunei, three nations whose histories of labor rights challenges are well documented.¹²⁴ These agreements represent a serious attempt to improve on what has been lacking in previous labor action plans. The TPP plans evidence a balanced carrot-and-stick approach of specifying commitments and tying compliance to trade privileges and the threat of cancellation and sanctions. This approach makes the plans’

potential for success higher than any other such agreement outlined to date.

The TPP labor consistency plans identify the unique challenges of each country and establish robust mechanisms that go beyond the provisions of the overall agreement's labor chapter, thereby elevating labor law and its enforcement. This level of specificity is particularly significant in Vietnam and Malaysia where the right to freedom of association is severely constrained and labor rights abuses in the manufacturing sector are well-documented. Each country has committed to recognize and protect fundamental labor rights long recognized by the ILO, including freedom of association, collective bargaining, the right to strike, and the right to form independent trade unions. These commitments are significant and represent the most difficult challenges workers have had to face in these countries.

The consistency plans also contain a strong stick. By tying improvements in labor law and practice to the benefits and potential sanctions of TPP, the plans leverage an economic weapon that could lead to improved working conditions. In particular, the focus on freedom of association and union formation and protections for migrant and trafficked workers are significant steps. Additionally, these plans are the first specific and detailed commitments on labor in any FTA to date. Though previous trade agreements have included labor standards and subjected violators of those standards to sanctions, the TPP labor consistency plans mandate that countries enact significant reforms or trade benefits could be terminated. To comply with the consistency plans' labor mandates, countries must adopt or reform existing labor legislation. Failure to do so within five years of the agreement will lead to trade sanctions. No other bilateral labor plan has mandated such reforms while subjecting failures to trade sanctions.

In analyzing these labor consistency plans, international human rights organizations have acknowledged their potential to motivate much-needed reforms while also expressing

caution that “the extent to which they will be implemented or enforced is unclear, particularly given poor enforcement of labor rights provisions in other trade agreements and under each country's domestic laws.”¹²⁵ Still, the plans represent a laudable effort to drive change—which the president-elect should embrace—in these countries by tying specific labor commitments to TPP trade benefits. The plans—which should be incorporated into any future bilateral trade agreement negotiated by the Trump administration—include the following elements.

Reforming the rights of migrant workers:

Protections for migrants and trafficked workers could further help laborers in Vietnam, Malaysia, and Brunei as well as in nearby labor-sending countries. Each country has committed to implement and enforce national passport acts. These commitments are critical for migrant worker protections by prohibiting the well-established employer practice of holding foreign workers' passports. Without this commitment, employers would continue this practice, essentially treating workers as forced laborers. If each country enforces its respective national passport act as envisioned, employers will no longer be able to withhold passports and employers with multiple foreign workers will be required to post notices stating that workers will have the right to retain these documents. Finally, each country has also committed to passing legislation to further reduce the economic burdens placed on foreign workers. For example, agencies that recruit migrant workers will have to pay workers' fees instead of transferring these fees to the workers. And each country has agreed to make debt bondage a criminal offense. These reforms take a meaningful step toward decreasing debt bondage, a well-documented challenge in each country.

In Vietnam: The Vietnam labor consistency plan would have required Vietnam to permit independent labor unions to operate.¹²⁶ This TPP requirement was and remains a primary concern for civil society organizations, labor

groups, and Congress. Under the TPP, Vietnam's consistency plan required the country to pass a reformed labor law before the US would have implemented TPP. Without TPP, there is no longer any incentive, economic or otherwise, for Vietnam to allow independent labor unions. Additionally, unless the Trump administration includes a similar consistency plan in a potential bilateral trade agreement with Vietnam, is unlikely that Vietnam will allow independent unions to form.

Scrapping Vietnam's consistency plan would halt hard fought progress won by independent unions in Vietnam and gains made by US trade unions. TPP's consistency plan would have allowed independent unions to "administer their affairs with autonomy," own and manage "their assets and property," and be free of "mandatory political obligations."¹²⁷ To achieve this end, the Vietnam consistency plan reformed the role and reach of the Vietnam General Confederation of Labour (VGCL), Vietnam's national trade union, which to date has had a monopoly over all union activity because it requires all recognized unions to register and to affiliate with it. Under the new plan, unions may register with the VGCL or another competent government body, but they can also choose to remain unaffiliated. Further, workers must be allowed to strike; to date, due to onerous procedures, strikes have been technically unlawful, resulting in many informal and illegal "wildcat" strikes. Though Vietnam's government has tolerated peaceful strikes, wildcat strikes have been vulnerable to selective enforcement. Allowing independent unions would have been a huge step toward achieving core labor rights and protections that are good for Vietnam and US workers.

Finally, the Vietnam consistency plan calls for concrete inspection plans and effective enforcement measures in sectors where forced and/or child labor is a problem. The plan mandated a focus on subcontractors in the garment and other low-wage manufacturing sectors where child labor is particularly prevalent and these provisions have the potential to address pressing labor concerns in the country.

According to a 2014 ILO survey, 9.6 percent of Vietnamese children between the ages of 5 and 17 are laborers.¹²⁸ One hopes that the positive results that would have been achieved by Vietnam's consistency plan are themselves consistent with the president-elect's desire to end global practices that undermine US workers' wages and job security.

In Malaysia: Responsibility for union registration and administration falls to the country's powerful Director General of Trade Unions (DGTU), which historically has limited workers' ability to assemble and strike. For example, the DGTU has deregistered the unionized employees of Malaysia Airlines after strikes to protest mandatory overtime.¹²⁹ Therefore, Malaysia's consistency plan appropriately calls for significantly diminishing the power of the DGTU; the DGTU will no longer have the authority to refuse union registrations on the grounds that a similar union already exists or when there are more than two proposed unions for the same occupation. The plan also requires that trade unions be allowed to affiliate with international unions and that Malaysian authorities cease penal sanctions in response to peaceful strikes.¹³⁰

In combating human trafficking and forced labor, TPP and the Malaysian consistency plan could be important levers in driving much-needed substantive changes. To date, trafficked migrants have been treated as immigration law violators and detained in government facilities where they have been denied access to health treatments. As part of the TPP negotiations, the Malaysian Anti-Trafficking in Persons and Anti-Smuggling of Migrants Acts of 2007 were strengthened to permit NGOs to shelter victims of trafficking while allowing them to move from shelters to work and to have access to legal counsel. These are important first steps, but much more needs to be done. Tellingly, Malaysia's consistency plan requires that it implement further specific reforms, such as restricting onerous recruitment fees paid by foreign workers; expanding protections for freedom of movement and adequate

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housing for foreign workers; removing barriers to employment for women; implementing regulations on child labor; allocating resources for the enforcement of labor laws; hiring, training, and retraining inspectors; and increasing transparency about violations.

In Brunei: Though Brunei is a smaller country than Vietnam or Malaysia, it has a sizeable per-capita migrant labor population and faces similar labor rights challenges. The country's population is approximately 415,000 and its estimated 100,000 migrant laborers often face "debt bondage, nonpayment of wages, passport confiscation, abusive employers, and confinement to the home."¹³¹ The Brunei consistency plan commits the country to further reform its laws to limit the government's power over union registration and cancellation, protect against interference in union activities, strengthen efforts to combat child and forced labor, and implement a minimum wage.¹³²

The high degree of specificity of the respective consistency plans' commitments and their transactional structure (i.e., the threat of cancellation and sanctions) is a promising

development and should be a model for US development assistance programs, not only for trade agreements. But none of these envisioned changes—except perhaps for cosmetic changes to these countries' legal codes—will come to fruition without long-term US engagement and significant political and financial commitment from the United States and Vietnam, Malaysia and Brunei. Even beyond robust development assistance, the United States will need to apply continued political pressure and demonstrate that it has the will to impose trade sanctions if improvements in enforcement and reporting are not made. Finally, civil society and international agencies such as the ILO will have to press for accountability and support the creation of new enforcement programs for workers and migrants.

Notwithstanding these promising elements, if we desire to hold these countries to the standards set out in the consistency plans, then established, dedicated, and well-resourced development and technical assistance programs that commit resources to these partners for the long-haul must become part and parcel of official US international economic policy.

Steps toward integrated development

While each TPP labor consistency plan contains sections speaking to “technical assistance” and “collaboration,” the text of the agreements lacks specific commitment terms or exact financial outlays.¹³³ Instead, the plans evidence rather vague statements providing that countries “*shall endeavor* to secure funding for technical assistance programming,” as in the case of Vietnam and Malaysia, or that they “*may request* cooperation, advice and technical assistance from the United States or other Parties to the Agreement or any relevant international organisation” in the case of Brunei.¹³⁴ With respect to “collaboration,” the plans are less specific, noting that the countries “*intend to*” [Vietnam and Malaysia] or “*shall* [Brunei] collaborate on the development of the relevant . . . legal reforms and instruments [and] . . . other measures related to the implementation . . . that result from this Plan.”¹³⁵

While TPP’s somewhat vague language did not calm critics or inspire confidence that the United States or its trading partners would have the political and financial will to see these plans through to success, scrapping these plans altogether presents an even greater crisis. President Obama’s White House previously announced that the “U.S. government will commit resources and technical expertise to support Vietnam and our other TPP partners to implement and effectively enforce the obligations of the agreement.”¹³⁶ In contrast, President-elect Trump’s stated intention to withdraw from TPP and to instead enter into bilateral agreements makes no claim to commit resources and/or technical expertise to support US trading partners.

Paradoxically, withdrawing from TPP may also portend a withdrawal from the very resources and technical assistance that US workers and their organizations themselves desire. More generally, while the US was on a path to integrate its development policy with its international economic programs—including its trade programs—not only is it now unclear whether that integration will continue but it is

also likely that commitments such as these labor consistency plans have no guarantee of being upheld in a Trump administration. Indeed, future presidents and/or Congresses could choose to dismantle or defund these programs and they may very well do so.¹³⁷

Under the current political circumstances, institutionalizing a framework for US trade policy is critically needed. Fortunately, a step in this direction is present in the most recent TPA legislation that was signed into law in June 2015. The law states that “capacity-building” for US trading partners is highly relevant and it “for the first time, establishes [U.S.] principal negotiating objectives as ensuring implementation of trade commitments and obligations by strengthening good governance, transparency, the effective operation of legal regimes and the rule of law of U.S. trading partners *through capacity building and other appropriate means*.”¹³⁸ The act further directs the president “to work to strengthen the capacity of United States trading partners to carry out obligations under trade agreements by consulting with any country seeking a trade agreement with the United States . . . and to provide technical assistance to that country if needed.”

If implemented as envisioned and applied in conjunction with model labor consistency plans, the 2015 TPA law could be a promising step toward a more deliberate development assistance strategy. A further step must be to institutionalize capacity building and to safeguard it from political currents, funding reductions, and inattention.

While the United States has not had a policy framework approach to international development assistance, other countries do have such approaches and could be models from which to draw inspiration. For example, Norway posits an “integrated approach to (its) foreign and development policy . . . designed to promote economic development, democratisation, implementation of human rights, good governance and measures that can lift people out of poverty for good.”¹³⁹

Further, Norway's approach has emphasized "alignment with recipient countries' systems" and concerted efforts to "increase predictability in long-term development assistance by entering into agreements with selected partner countries and UN organisations that contain multi-year commitments."¹⁴⁰

Norway's model is supported by robust funding allocations for assistance that have withstood the test of time; since 2009, Norway has committed to allocating about 1 percent of its annual gross national income (GNI) to development assistance, making it among the world's top donors.¹⁴¹ For its "consistent commitment to development," Norway has been commended by Organisation for Economic Co-operation and Development (OECD) peer review reports for pursuing "highly focused and long-term development co-operation initiatives" complemented by "aid budgeting and programming processes [that] allow for great flexibility, well-tailored country programmes, and a certain degree of predictable funding."¹⁴²

Each of these elements stands in stark contrast to US policies. Critical reviews highlight many structural and conceptual hindrances to effective international assistance.¹⁴³ Among these shortcomings is the corrosive impact of the inherent "institutional and budget fragmentation of U.S. development co-operation and the respective roles of the Administration and Congress."¹⁴⁴ OECD peer review reports reference a proliferation of competing priorities, directives, and allocation models, making it nearly impossible to "translate the US vision into a coherent set of strategies [and which] leads to supply-driven approaches."¹⁴⁵

Moreover, the OECD report notes that US development assistance priorities are typically subservient to and driven by larger US national security interests and consequently have not been "aim(ed) primarily at making these policies coherent with partner countries development aspirations." The result is a "complex array of instruments and reporting requirements for field offices, leaving them very little discretion . . . to

adapt programmes to local priorities." Thus, the OECD concludes that the United States "lacks a strategic framework to ensure that its domestic and foreign policies support, or at least do not undermine, developing country efforts."¹⁴⁶

In recent years, ideas for reforming the United States' approach to international development assistance have become part of a national dialogue.¹⁴⁷ Below are two recommendations that, if adopted, would be a step toward an international development assistance policy framework that would be integrated into an international economic policy framework.

Strategic Foundation: The United States should develop "a national strategy for global development [and reach] a 'grand bargain' between the Executive Branch and Congress" to govern the future of development assistance.¹⁴⁸ Doing so would help safeguard programs and funding allocations from short-term vision and partisan or political interference. The US should begin by formulating "a comprehensive national strategy for global development that outlines clear objectives and encompasses all relevant trade, aid, and investment programs."¹⁴⁹

Sustainability: To improve accountability and promote partner country ownership of its development objectives, US development assistance should replace its current supply-driven approach with more specific alignment with host countries' development plans.¹⁵⁰ Programs should be designed in collaboration with "local, developing country institutions—both governments and civil society—[so that all stakeholders] play a larger role in shaping [country] priorities, implementing programs and projects, and financing . . . development."¹⁵¹ TPP's labor consistency plans are one example of a more collaborative and locally empowering country-specific approach to development assistance.

If the United States were to implement these recommendations, US international assistance and support for our economic and trading partners would no longer be an afterthought

or a political chit for a trade vote. Instead, they would be core components of an inclusive and integrated approach to international economic engagement with partner countries.

Contemporary observers and opponents of trade have increasingly focused criticism on trading partners' poor performance in instituting much-needed reforms and enforcing new standards, including labor rights obligations. These challenges are in part due to the structural and political hazards of trade negotiation and of development assistance programs. Without a deliberate course correction by the United States, partner countries' performances are likely to continue to be weak. These weaknesses will justifiably provide fodder for opponents of trade and lead to a further subsequent deterioration of support for international trade agreements.

Whether in the area of labor rights standards or among the broader array of commercial, good governance, and human rights challenges, the United States must attach great importance to standing side-by-side with its economic and trading allies—for the long-haul—to help achieve democratic and human rights as part of a shared vision for prosperity and development. Getting it right means not waiting for the moment that a trade deal is negotiated to figure out the development assistance program that will help garner the votes for passage; long before that trade deal is negotiated, the United States should be working collaboratively with prospective trading partners to build capacity for better governance overall.

Brought together as a holistic approach, these three policy elements should form the basis for an integrated framework that would do much to heal many of the divisions that characterize the debate over international trade and economic policy in the United States today. Absent such a course correction, trade skeptics will become further entrenched and justified in their beliefs that the US approach to global economic engagements is content to pursue its goals from a narrow vantage point. In such an environment,

the current impasse will continue to grow, further dividing pro- and anti-trade advocates from a mutually agreed path forward. To avoid this outcome, an integrated framework solution is needed now more than ever.

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