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Free Trade without Apology

The Folly of Appeasing Organized Labor in Trade Negotiations

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With the economy sputtering and unemployment still high, President Obama is looking for ways to jump start growth. He recently stated his intention to gain Congressional approval for free trade agreements (FTAs) with Colombia, Panama, and South Korea. The president's new stated commitment to free trade is welcome, but there was no need for him to wait this long.

Moreover, the president accompanies his call for ratification of the trade deals with an endorsement of Trade Adjustment Assistance (TAA) for workers who supposedly lose their jobs due to trade. TAA usually just directs government money to politically favored constituencies. But even worse, it is part of a misguided pattern by policy makers to try to advance trade liberalization by appeasing its most dedicated opponent, organized labor.

Those three agreements have been awaiting congressional approval for years. What is the holdup? After several years of negotiations, Congress continues to ask for concessions from America's trading partners. Unions and other special interest groups have been actively pressuring Congress to include labor and environmental provisions in free trade agreements for quite some time. Unfortunately, U.S. trade officials and policy makers have chosen to address union demands through appeasement—a strategy that has been misguided and ineffectual.

Organized labor's success in getting labor issues included in trade negotiations is a relatively recent phenomenon. The 1985 U.S.-Israel free trade agreement was the last American trade deal that did not include labor and environmental provisions.[1] Since that time, the U.S. has entered into 10 free trade agreements covering 17 countries.

Eight years after the Israel agreement, the Clinton administration, as part of a deal to ratify the North American Free Trade Agreement (NAFTA), pushed Mexico and Canada to sign the North American Agreement on Labor Cooperation (NAALC) and North American Agreement on Environmental Cooperation (NAAEC) as side letters to the trade pact.[2] That was the first time that labor and environmental objectives were directly linked to international trade negotiations.[3]

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From that point onward, interest groups of various stripes have lobbied hard to include a host of irrelevant political agendas in trade negotiations. Organized labor and environmental groups have been especially active in this effort.

The NAFTA labor provisions were still not enough to satisfy Big Labor. Four years after the labor cooperation agreement was passed, the AFL-CIO stated in a public comment that the agreement had been "ineffective in promoting the concerns of workers beset by stagnant wages and job insecurity."[4] Rather than appease, the NAFTA labor provisions only whetted the union leaders' appetites. To this day, unions continue to pressure Congress for more stringent labor obligations in current and future agreements.

Bad Precedent for Labor. On October 24, 2000, the U.S. and Jordan signed a trade agreement that included workers' rights as core provisions of the pact.[5] The obligations are very similar to those in the North American Agreement on Labor Cooperation. The difference? Under the U.S.-Jordan deal, the same dispute settlement and enforcement provisions apply to both commercial activities and labor issues—essentially raising labor issues to the same level as the goods and services that the trade agreement addresses.[6] Also, if the accused party is found guilty of violating the terms of the agreement, "the affected Party shall be entitled to take any appropriate and commensurate measure."[7]

Under most trade agreements, a party can only be penalized for failing to enforce its *own domestic labor laws*. The U.S.-Jordan FTA, however, allows a party to be punished if it fails to comply with any of the labor provisions within the agreement. Second, the penalties for failing to adhere to the rules of the Morocco compact are capped at $15 million annually, whereas the Jordon agreement is much broader—with its usage of "any appropriate and commensurate measure."

Since then unions' supporters have compared every proposed FTA to the U.S.-Jordan agreement as if it were the ideal. They have been joined in that chorus by the U.S. Trade Representative's Labor Advisory Committee (LAC),[8] which lauded the terms of the U.S.-Jordan FTA in its comment on the proposed U.S.-Chile and U.S-Singapore FTAs: "The labor provisions of the Chile and Singapore FTAs will not protect the core rights of workers in any of the countries involved, and represent a big step backwards from the Jordan FTA and our unilateral trade preference programs."[9]

Bad Precedent for Environmental Regulation. Organized labor succeeded in its campaign to include favorable labor provisions in the U.S.-Jordan FTA. However, unions also wanted a legal guarantee that similar labor and environmental provisions would be in all future trade deals. They got that in the Trade Act of 2002 signed into law by President George W. Bush on August 6, 2002.

The Act, through Bipartisan Trade Promotion Authority (TPA), required the U.S. to uphold a plethora of objectives when negotiating potential FTAs. The Act compels the president, when negotiating trade agreements, to fulfill the following trade and environmental goals:

> (A) to ensure that a party to a trade agreement with the United States does not fail to effectively enforce its environmental or labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the United States and that party after entry into force of a trade agreement between those countries;

> (B) to recognize that parties to a trade agreement retain the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor or environmental matters determined to have higher priorities, and to recognize that a country is effectively enforcing its laws if a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources, and no retaliation may be authorized based on the exercise of these rights or the right to establish domestic labor standards and levels of environmental protection;
>
> (C) to strengthen the capacity of United States trading partners to promote respect for core labor standards (as defined in section 2113(6));
>
> (D) to strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development;
>
> (E) to reduce or eliminate government practices or policies that unduly threaten sustainable development;
>
> (F) to seek market access, through the elimination of tariffs and nontariff barriers, for United States environmental technologies, goods, and services; and
>
> (G) to ensure that labor, environmental, health, or safety policies and practices of the parties to trade agreements with the United States do not arbitrarily or unjustifiably discriminate against United States exports or serve as disguised barriers to trade.[10]

Furthermore, when negotiating dispute settlement procedures, the U.S. was "to seek provisions that treat United States principal negotiating objectives equally with respect to—(i) the ability to resort to dispute settlement under the applicable agreement; (ii) the availability of equivalent dispute settlement procedures; and (iii) the availability of equivalent remedies."[11]

The 2002 TPA law set a new standard for free trade agreements by requiring all subsequent trade agreements to include labor and environment objectives as key negotiating objectives. Yet even that has not been enough to satisfy organized labor, which has continued to push for ever more onerous labor provisions in free trade deals. In fact, the AFL-CIO has cited the 2002 TPA provisions in several of its comments on proposed trade agreements to call on Congress to renegotiate the FTAs to make them more to unions' liking or reject them altogether.[12]

Appeasement Fails Again. Organized labor's anti-trade campaign has continued unabated. In 2006, the United States began free trade talks with four separate countries: Colombia, Peru, Panama, and South Korea. The U.S.-Colombia FTA was signed on November 22, 2006. The three other agreements looked like they would follow suit until they hit a roadblock. Then-House Speaker Nancy Pelosi (D-Calif.) and other House Democrats demanded that the trade deals include even more rigorous labor and environmental provisions. What did Speaker Pelosi and her colleagues have in mind? Each FTA partner would have to enforce five core labor standards as listed in the International Labor Organization's *Declaration on Fundamental Principles and Rights at Work*. More importantly, both parties would have to agree that violations of these obligations could potentially subject either country to trade sanctions.

A bipartisan trade deal announced in May 2007 was intended to address the unions' and House Democrats' concerns.[13] The unions were still not satisfied. Then-AFL-CIO President John Sweeney said that it showed progress toward "improving workers' rights and environmental standards in the Peru and Panama Free Trade Agreements,"[14] but he expressed concern regarding

the Bush administration's commitment to enforcing the terms of the agreement. The United Steelworkers said in a statement that it would be "hard pressed to support the agreement" as it stood.[15] U.S. Chamber of Commerce Vice President John Murphy summed up the situation perfectly: "Repeatedly, political leaders in both parties who want to open foreign markets to U.S. workers have reached out to labor to seek a compromise to move agreements forward ... each time, labor pockets the concessions and then opposes the deals anyway."[16]

Back to the Drawing Board. U.S. officials returned to the negotiating table to try to revamp the agreements once more. After nearly two years of discussions, negotiators began to make some headway. The trade pact with Panama was signed on June 28, 2007. Two days later the U.S. signed an agreement with South Korea. The Peru FTA, approved by Congress on December 14, 2007, was the first agreement to incorporate the terms of the bipartisan deal. However, the Panama, South Korea, and Colombia agreements continue to linger awaiting passage, even though they also incorporated labor and environmental provisions as required under the 2002 TPA law, as well as the newer requirements of the 2007 bipartisan trade deal.

Today, Big Labor and its congressional allies continue to push for progressively more stringent provisions in each of the three agreements. In the case of the Korea FTA, issues relating to beef and autos have required more high-level meetings.[17] Furthermore, President Obama and many Democrats have coupled their support for the agreements with the inclusion of funding for Trade Adjustment Assistance (TAA).[18] The delay of the Colombia agreement has been particularly egregious. Even though the agreement was signed by both parties almost five years ago, it has yet to be approved, and the Obama administration has made even more demands relating to workers' rights.

To appease Democratic opponents of the Colombia pact, in April of 2011, U.S. and Colombian government officials issued the Colombian Action Plan Related to Labor Rights, under which the Colombian government would set up a Labor Ministry, hire 480 new civil service labor inspectors, and set up a hotline and Web-based system to handle labor complaints. The agreement specifies that 100 of the new labor inspectors will conduct "preventive inspections" in specific industries sectors: palm oil, sugar, mines, ports, and flowers.[19] However, the agreement provides no justification as to why these sectors of the economy deserve special attention.

Affront to Sovereignty. Apparently these burdensome provisions—which strike at countries' sovereignty—do not yet go far enough for some Members of Congress. Rep. Sandy Levin (D-Mich.), a strong union supporter, has said he would actively oppose the FTA unless the Action Plan were to be explicitly referenced in the agreement.[20]

Even when countries share the same values and goals, they do not necessarily adopt the same approaches to reach those goals. Individual countries are in the best position to determine what is needed to achieve their own goals and the trade-offs that are involved in exercising discretion. For the U.S. to insist that Colombia or any other country ensure compliance and enforcement of its domestic laws through detailed procedures specified by the U.S. would violate the sovereignty of that nation.[21]

Draconian demands such as the Colombia Action Plan are a slap in the face to those trading partners that have bent over backwards to please Big Labor in the United States. Worse yet, requiring trading partners to kowtow to every single one of our non-trade related demands could dissuade many from negotiating trade deals with the U.S. in the future.

Increasingly stringent labor and environmental obligations serve only one purpose: protectionism, which they achieve by either raising labor costs in another nation or increasing the complexity of the terms of the agreement, thus making violations almost inevitable.[22]

The AFL-CIO's recent complaints against Bahrain and Guatemala perfectly illustrate how this tactic works. The labor federation claims that the Guatemalan government has failed to enforce its own labors laws regarding the right of association, the right of workers to organize and bargain collectively, and acceptable working conditions.[23] It cites an increase of violent crimes against union members as evidence, ignoring the fact the violent crime as a whole has increased in Guatemala over the last decade. The AFL-CIO also cites the recent layoff of 881 union workers as evidence that "the trade union leadership appears to be bearing the brunt of the dismissals,"[24] yet it also acknowledges that "[s]ome 2,000 workers" had been dismissed, meaning that less than half of all the workers fired were union members.[25] In both complaints, the AFL-CIO used these alleged labor "violations," among several others, to call for a withdrawal from the FTAs.[26]

Conclusion. Special interest groups, such as unions, claim to support labor provisions in trade agreements because they protect foreign workers, while their real motive is to protect their own jobs. Moreover, unions and their political allies ignore the fact that higher labor standards are best achieved through better economic and institutional conditions—and the economic growth they make possible. Trade and economic liberalization can lead to improved economic performance, reduce poverty, and raise living standards.

Unfortunately, as labor and environmental provisions become more stringent with each new U.S. trade agreement, they increase the ability of special interests, such as unions and protected industries, to restrict trade. It is time to end this practice of appeasement. As history has shown, it does not work. Big Labor will never endorse free trade in any form. Congress needs to approve free trade deals on the treaties' own merits. "Free" trade ought to be free again.

Notes

[1] Office of the United States Trade Representative, *Israel Free Trade Agreement*, http://www.ustr.gov/trade-agreements/free-trade-agreements/israel-fta.
[2] NAALC website, *Welcome to the Commission for Labor Cooperation*, http://www.naalc.org/naalc.htm.
[3] Ibid. The U.S. did include labor standards similar to ILO standards in unilateral trade preference agreements with developing countries.
[4] Thea Lee, "NAALC—Annex 5: Public Comments," *Welcome to the Commission for Labor Cooperation*, http://new.naalc.org/index.cfm?page=256.
[5] Office of the United States Trade Representative, *Agreement Between The United States Of America And The Hashemite Kingdom Of Jordan On The Establishment Of A Free Trade Area*, http://www.ustr.gov/webfm_send/1041.
[6] Mary Jane Bolle, *Overview of Labor Enforcement Issues in Free Trade Agreements*, Congressional Research Service, February 29, 2008, p. 3, http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1497&context=key_workplace&seiredir=1#search=%22jordan%2C%20trade%20agreement%2C%20u.s.%2C%20labor%20provisions%22.

[7] Ibid.
[8] According to the USTR website, "The advisory committee system, established by the U.S. Congress in 1974, was created to ensure that U.S. trade policy and trade negotiating objectives adequately reflect U.S. public and private sector interests." LAC is one of 28 advisory committees and is almost exclusively composed of union representatives. Available at http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees.
[9] Office of the United States Trade Representative, *Report of the Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC)*, February 28, 2003, http://ustraderep.gov/assets/Trade_Agreements/Bilateral/Chile_FTA/Reports/asset_upload_file280_4926.pdf.
[10] Employment and Training Administration, Department of Labor, *Trade Act of 2002*, August 6, 2002, http://www.doleta.gov/tradeact/directives/107pl210.pdf.
[11] Ibid.
[12] For a summation of the AFL-CIO position, see *Testimony of Thea M. Lee, Chief International Economist American Federation of Labor and Congress of Industrial Organizations Before the U.S. House of Representatives Committee on Energy and Commerce Subcommittee on Commerce, Trade, and Consumer Protection, On Trade in Services and E-Commerce: The Significance of the Singapore and Chile Free Trade Agreements*, Citizens Trade Campaign."[U]nlike the Jordan agreement, the Chile and Singapore agreements include a separate dispute resolution process for labor and environment, distinct from that available for the commercial provisions of the agreement. This new and separate dispute resolution process, in our view, does not meet a key objective of the Trade Promotion Authority legislation, to ensure that trade agreements shall 'treat United States principal negotiating objectives equally with respect to (i) the ability to resort to dispute settlement under the applicable agreement; (ii) the availability of equivalent dispute settlement procedures; and (iii) the availability of equivalent remedies. … [W]e urge you to reject the Chile and Singapore FTAs and send our negotiators back to the drawing board."
[13] "A New Trade Policy for America," fact sheet, U.S. House of Representatives Committee on Ways and Means, May 11, 2007 http://waysandmeans.house.gov/Media/eNewsLetter/5-11-07/07%2005%2010%20New%20Trade%20Policy%20Outline.pdf.
[14] Doug Palmer, "Top U.S. Labor Group Wary of Bipartisan Trade Deal," Reuters, May 11, 2007, http://www.reuters.com/article/2007/05/11/us-usa-trade-labor-idUSN1117298020070511.
[15] "The Grand Bipartisan Trade Deal," *New York Sun*, May 17, 2007 http://www.nysun.com/opinion/grand-bipartisan-trade-deal/54690/.
[16] Editorial, "A Free-Trade Fast One," *Investor's Business Daily*, May 16, 2011 http://www.investors.com/NewsAndAnalysis/Article/572385/201105161848/A-Free-Trade-Fast-One.aspx.
[17] Jijo Jacob, "US-South Korea free trade pact trips over autos, beef," *International Business Times*, November 11, 2010 http://www.ibtimes.com/articles/80870/20101111/south-korea-us-fta-free-trade-obama-seoul-lee-jobs-auto-beef-deficit.htm.
[18] Office of the United States Trade Representative, "Update on pending trade issues," May 2011, http://www.ustr.gov/about-us/press-office/press-releases/2011/may/update-pending-trade-issues,
[19] Office of the United States Trade Representative, "Colombian Action Plan related to labor rights," April 7, 2011, http://www.ustr.gov/webfm_send/2787.
[20] Office of Rep. Sandy Levin, "Colombia FTA Implementing Bill Fatally Flawed Without Worker Rights Action Plan," press release, June 27, 2011, http://levin.house.gov/press-release/colombia-fta-implementing-bill-fatally-flawed-without-worker-rights-action-plan.
[21] Office of the United States Trade Representative, "The U.S.-Australia Free Trade Agreement Report of the Trade and Environment Policy Advisory Committee (TEPAC)," Attachment 2, submitted by TEPAC members Frances B. Smith, Consumer Alert, and Dennis Avery, Hudson Institute's Center for Global Food Issues, http://ustraderep.gov/assets/Trade_Agreements/Bilateral/Australia_FTA/Reports/asset_upload_file674_3383.pdf.
[22] Jagdish Bhagwati, an internationally renowned economist and one of the world's foremost authorities on trade, has noted: "Except for consensus on a very small (but possibly growing) set of universal labour standards such as the proscription of hazardous child labour, many standards will reflect local history, politics and economic circumstance. When labour unions in the United States typically ask, nonetheless, that others abroad raise their labour standards to the US standards, the argument is usually couched in terms of altruism: we are doing this for your workers. But, in truth, the argument is prompted by self-interest, that is, it is designed to raise the cost of production abroad so as to moderate competition which, it is wrongly feared, is harming one's own workers. Economists will recognise this as a form of export protectionism, as an alternative to conventional import protectionism." Jagdish Bhagwati, Ngaire Woods, and Saugato Datta, "Economist Debates: Fair Trade: Statements," *The Economist*, May 4, 2011, http://www.economist.com/debate/days/view/508.

[23] AFL-CIO, "Concerning The Failure Of The Government Of Guatemala To Effectively Enforce Its Labor Laws And Comply With Its Commitments Under The ILO Declaration On Fundamental Principles And Rights At Work," April 23, 2008, http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/guatemala_petition.pdf.
[24] AFL-CIO, "Concerning The Failure Of The Government of Bahrain To Comply With Its Commitments Under Article 15.1 Of The U.S.-Bahrain Free Trade Agreement," April 21, 2011, http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/bahrain_fta04212011.pdf.
[25] Ibid.
[26] Ibid.