



# Smack! Elizabeth Warren gets it wrong, Obama's trade rep says

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The U.S. Trade Representative's Office is pushing back against a scathing report issued by Sen. Elizabeth Warren on past international trade deals.

The report, released Monday by the free-trade critic, charges that labor rights violations are rampant among U.S. trading partners and the government does little to address it.

One of the Massachusetts Democrat's key pieces of evidence is that the Department of Labor has "accepted only five complaints against countries" since 2008.

But that's because only six complaints have been submitted to the Labor Department, the U.S. Trade Representative's Office said Tuesday.

"[O]nly five petitions [have been made] under FTA labor chapters since 2008, and one under the NAFTA side agreement, on Mexico. All were accepted by [the Department of Labor]," said spokesman Trevor Kincaid. FTA is the abbreviation for "free trade agreement."

A labor petition involving a complaint with Costa Rica was withdrawn after a settlement was reached in local courts, he said.

"We get information regularly about problems in FTA countries, but they are not submissions, or 'formal' FTA complaints unless they follow the process," Kincaid said. "Stakeholders understand the process, and only six cases have been filed."

Scott Lincicome, a trade policy expert with the free-market Cato Institute, says the labor and human rights organizations in the countries the U.S. trades with are just not filing complaints. "You have to petition the government and they just haven't done it," he said.

A source in Warren's office countered that more complaints should have been filed. "[T]he fact that there have only been six submissions is evidence that the submissions process is broken," the source said.

Warren is a staunch critic of free-trade deals, arguing they cost American jobs and do not benefit the broader economy. She led the fight in the Senate last week to block consideration of Trade Promotion Authority legislation, also known as "Fast Track," a key part of President Obama's trade agenda.

She dealt the White House a temporary setback when the bill initially failed to break a Democratic filibuster. It passed a subsequent vote and debate on the legislation is moving ahead.

To build her case against fast track, Warren released a report Monday called "Broken Promises: Decades of failure to enforce labor standards in free trade agreements" that focused on labor and human rights issues.

A key charge she leveled against past deals is that the U.S. government rarely investigates complaints of labor rights violations by its trading partners, despite requirements to do so. A press release from Warren's office says the report "shows that the United States pursues very few enforcement actions to uphold the labor protections in its trade agreements."

One of Warren's key pieces of evidence is the following:

"Prior to 2008, the Department of Labor had not accepted a single formal complaint about labor abuses in free-trade agreements. Since then, the Obama administration has conducted in-depth investigations into complaints and issued fact-finding reports and recommendations. However, DOL has accepted only five claims against countries for violating their labor commitments, and it only agreed to restart the first ever labor enforcement case under any free trade agreement in 2014, six years after the initial claim was filed. This reveals both the cumbersome nature of complaint process and the overall enforcement problems with these agreements."

A later, more in-depth section in the report is ambiguous, stating, "DOL has since [2008] conducted in-depth investigations into each of the complaints and issued fact-finding reports and associated recommendations. However, [the Government Accountability Office] found that [the Labor Department] since 2008 has only resolved one of five submitted complaints."

According to information on the Labor Department's website, anyone can file a report alleging labor violations under a free trade agreement. The complaints are referred to the department's Office of Trade and Labor Affairs, which must respond in 60 days, either accepting the report and beginning a preliminary investigation or rejecting it.

Cato's Lincicome says it is not as simple as filling out a form. "There are specific requirements they have to meet" to make a proper complaint. The main one is they have to gather evidence of a violation, which he concedes isn't always easy.

The source in Warren's office pointed to a November report from the Government Accountability Office that highlighted the problem with filing complaints. The GAO said interviews with unions and nongovernmental organizations in trading partner countries — the people who would be expected to file the complaints — "suggested that [they had] little or no awareness and understanding of the FTA labor submission process." In several cases, they were "unaware" the process existed or found it too difficult to use. U.S. agencies had made "minimal" efforts to publicize the process.

The six complaints that have been submitted to the department since Obama took office are: Guatemala (filed April 23, 2008); Peru (filed Dec. 29, 2010); Bahrain (filed April 21, 2011); Mexico (filed Nov. 14, 2011); the Dominican Republic (filed Dec. 22, 2011); and Honduras (filed March 26, 2012).

The department issued reports finding credible allegations of violations in the cases of the Dominican Republic, Bahrain, Guatemala and Honduras. The department made recommendations to fix the problems and the U.S. is in talks with Bahrain and Guatemala. It did not find violations in the Peru case. The Mexican case is still under review.

Fran Smith, adjunct fellow at the free-market Competitive Enterprise Institute, says there is another reason why there have been few complaints: Until fairly recently, free-trade agreements did not include labor sections.

"The first time any labor provisions were included in any labor agreement was NAFTA [in 1994] and that was a side agreement. The first labor provisions were included in the [text] of an agreement was in 2001," Smith said. "So it is not surprising that before 2008 there wouldn't be complaints about labor abuses because there were few provisions they could point to."