



# AFL-CIO

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**BEFORE THE HOUSE SUBCOMMITTEE ON TRADE  
OF THE COMMITTEE ON WAYS AND MEANS**

**HEARING ON**

**“TRADE AND LABOR: CREATING AND ENFORCING RULES TO  
BENEFIT AMERICAN WORKERS”**

**TESTIMONY OF**

**CELESTE DRAKE  
TRADE & GLOBALIZATION POLICY SPECIALIST  
AMERICAN FEDERATION OF LABOR &  
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)**

**MARCH 25, 2019**



## Introduction

On behalf of its 55 affiliates representing more than 12 and a half million working families, the AFL-CIO appreciates the opportunity to testify on “Trade and Labor: Creating and Enforcing Rules to Benefit American Workers.” The AFL-CIO represents working people in every sector of the economy, public and private, from energy and healthcare to manufacturing, transportation, and retail. We provide a voice to working families, advocating for policies that will help create high quality jobs and ensure working people have the freedom to join together to negotiate for better wages and working conditions.

The AFL-CIO appreciates the Ways and Means Committee’s interest in trade and labor. Repeatedly, over decades, America’s workers have made recommendations for improving trade policies—not ending them, but shaping them in ways that promote inclusive growth, global shared prosperity, and national and economic security. Our recommendations have typically been ignored as administrations, both Republican and Democratic, have pursued a misguided trade agenda that substitutes policies preferred by global corporations for policies that would promote the shared interests of businesses large and small and working people both here and abroad. Our criticism is not against trade per se: it is about the rules governing trade. We look forward to working with Congress to advance a new set of trade rules that promote good jobs, high wages, and sustainable and responsible economic growth that protects our environment and respects human dignity around the world.

## Why We Need a New Approach to Trade

*Trade policy should never be a question of “free trade” versus “protectionism.”* The AFL-CIO’s recommends a wholesale redesign of trade policy that is guided by this question:

**“How should the United States structure international trade rules so that they promote good, family-wage jobs, sustainable growth, dynamic economies, smart natural resource conservation, and the realization of human rights and dignity globally?”**

We believe that using this frame will lead to better trade policy choices and better outcomes for working families.

As Josh Bivens explains in his 2017 piece *Adding Insult to Injury*, this complex frame is what has been missing from U.S. trade policy, which seems to have been based on a misunderstanding of who benefits from trade. An extended excerpt is warranted:

“When people say that economics teaches that expanded trade is a ‘win-win’ proposition, this means only that trade is ‘win-win’ for total national income in each partner country. But textbook economics does *not* predict that expanded trade will be a win-win for all groups within those countries. . . .

“Because it can be shown that the sum of capital’s gains exceeds labor’s losses, globalization remains “win-win” at the country level. *Within* the U.S., however, there is nothing “win-win” about it; labor loses not just in *relative* terms, but can suffer *absolute* income losses as well.

“Importantly, these losses are not the damage stemming from the adjustment cost of manufacturing workers’ temporary unemployment spell[s] . . . . Rather, the big damage is the *permanent* wage loss resulting from America’s new pattern of specialization that requires less labor and more capital. Further, this wage loss is not just suffered by workers in tradeable goods sectors who are displaced by imports; it’s suffered by *all* workers who resemble these workers in terms of credentials and labor market characteristics. A simple way to say this is that while landscapers may not be displaced by imports, their wages suffer from having to compete with apparel (and auto, and steel) workers who have been displaced by imports.”<sup>1</sup>

As Jeronim Capaldo and his colleagues explain in their 2016 publication “Trading Down,” the current U.S. trade framework affects international competition in two ways. This framework pushes countries to lower nominal unit labor costs, through lower wages and more capital-intensive technologies. This process reduces labor’s share of income in practice because it introduces “incentives for countries to tilt income distribution in favor of profits.”<sup>2</sup>

By facilitating cross-border movement of capital, this framework pushes countries to provide higher returns in order to avoid losing investors to other countries. For a given level of economic activity, a higher profit rate requires a higher profit share of total income and, therefore, a lower labor share. Because policymakers are unlikely to standby while wages spiral down interminably, they may also increase returns to capital in other ways, including by reducing taxes and environmental compliance costs<sup>3</sup>—often in ways that are detrimental to trust in democracy, to collecting adequate governmental revenues and to ensuring sustainable environmental protections .

The following charts show the impact of the current global trade framework—along with other neoliberal economic policies—on wages and the share of national income going to working people, both in the United States and abroad.

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<sup>1</sup> Bivens, Josh, “Adding Insult to Injury: How bad policy decisions have amplified globalization’s costs for American workers,” Economic Policy Institute, Jul. 11, 2017. Available at: <http://www.epi.org/publication/adding-insult-to-injury-how-bad-policy-decisions-have-amplified-globalizations-costs-for-american-workers/>.

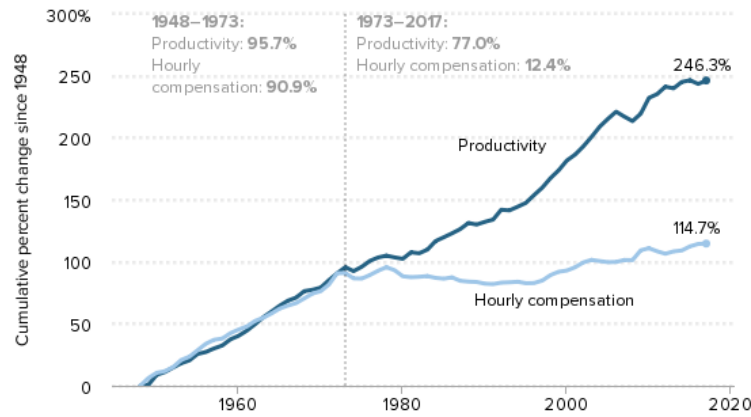
<sup>2</sup> Jeronim Capaldo et al., “Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement,” Global Development and Environment Institute Working Paper No. 16-01, Jan. 2016, at pp. 12-13 (emphasis added) (internal citations omitted), available at: <http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf>.

<sup>3</sup> *Id.*

Figure 1: Gap Between U.S. Worker Productivity and Wages Is Growing

### The gap between productivity and a typical worker's compensation has increased dramatically since 1973

Productivity growth and hourly compensation growth, 1948–2017



**Notes:** Data are for compensation (wages and benefits) of production/nonsupervisory workers in the private sector and net productivity of the total economy. "Net productivity" is the growth of output of goods and services less depreciation per hour worked.

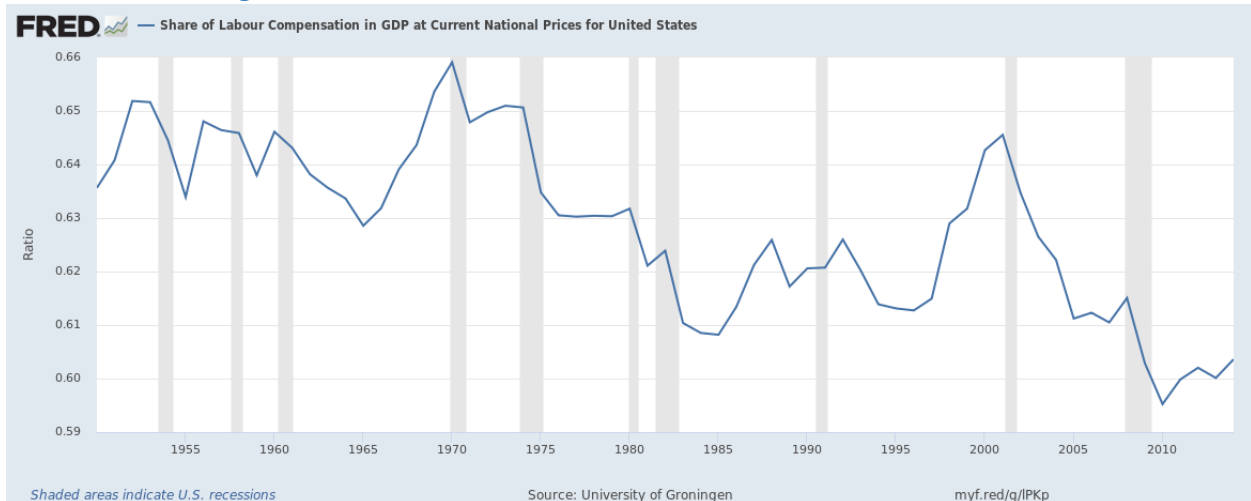
**Source:** EPI analysis of unpublished Total Economy Productivity data from Bureau of Labor Statistics (BLS) Labor Productivity and Costs program, wage data from the BLS Current Employment Statistics, BLS Employment Cost Trends, BLS Consumer Price Index, and Bureau of Economic Analysis National Income and Product Accounts

Updated from Figure A in *Raising America's Pay: Why It's Our Central Economic Policy Challenge* (Bivens et al. 2014)

Economic Policy Institute

Source: <https://www.epi.org/productivity-pay-gap/> (visited Mar. 24, 2019).

Figure 2: U.S. Workers' Share of GDP is Near Its Historic Low



Source: Created with the FRED Economic Data Tool of the St. Louis Federal Reserve Bank. Available at: <https://fred.stlouisfed.org/> (visited Mar. 24, 2019).

Figure 3: Workers' Share of National Income is Declining Globally



Source: IMF, *World Economic Outlook*, April 2017.

Source: Mai Chi Dao et al., “Drivers of Declining Labor Share of Income,” *IMF Blog*, Apr. 12, 2017, <https://blogs.imf.org/2017/04/12/drivers-of-declining-labor-share-of-income/> (visited Mar. 24, 2019).

As these graphs help demonstrate, even if the overall U.S. and global economic pie is growing, because the rules governing trade and economic policy are not carefully crafted, the bulk of the population is falling behind. Although it is important to note that trade policy is not the sole cause of the trends examined above, it is an important one, in particular because it takes more than a single act of Congress or a single Executive Order to rewrite the rules enshrined in North American Free Trade Agreement (NAFTA) or any other trade agreement. It takes the consent of all parties involved.

**Protectionism is not the answer, but changing the rules of trade is.** To make international trade successful, and to combat the race to the bottom that accompanied the trade rules enshrined since the original NAFTA, the administration and Congress must ensure that new trade deals and domestic economic policies incorporate different incentives.

In other words, the structure of the new NAFTA (also known as the United States-Mexico-Canada Agreement or USMCA) and other future deals must recognize that trade and globalization have pushed wages down and weakened worker negotiating power. Trade deals must build in countervailing incentives and new tools to raise wages, empower working people, protect precious natural resources, and address the United States’ persistent trade deficit. In addition, in conjunction with the deal itself, Congress should enact a broad set of domestic industrial and economic policies to rebuild, repair and modernize U.S. infrastructure; support research, development and advanced manufacturing and energy production; provide working people with state of the art education and skills; and strengthen the ability of workers to join

together in unions and negotiate for better.<sup>4</sup> Absent these investments and complementary policies, trade and globalization is poised to continue to leave workers—here and abroad—behind.

We also caution against viewing the NAFTA renegotiation and the announcement of additional trade deals with the European Union, the United Kingdom, and Japan as an effective growth strategy, standing alone. Given the already low levels of tariffs worldwide, the opportunities for more efficiency gains due to trade are miniscule.<sup>5</sup> We should improve NAFTA because NAFTA needs improving—not as a substitute for a purposeful growth policy.

For example, the U.S. could achieve far greater growth, far faster, **by investing in our own economy**. As the International Monetary Fund has demonstrated, an infrastructure investment of 1% of GDP will result in an increase in GDP of almost 3% a mere four years after the investment.<sup>6</sup> This outcome is six times the projected outcome of the failed Trans-Pacific Partnership (TPP) and would occur more than four times more quickly. In addition, according to economic modeling results by Ozlem Onaran of the University of Greenwich for the L20 in 2014, the U.S. could achieve as much as **9.84% growth over five years** by coordinating a 1% of GDP infrastructure investment with wage-led growth policies.<sup>7</sup>

## New Trade Policies That Meet the Needs of Working People Must Respond to the Backlash Against the Current Form of Globalization

Working people who advocate for better trade policies often face the simplistic response “Globalization is here to stay. You can’t cut the U.S. off from the rest of the world, so just get over it.” This response misrepresents the problem in order to foreclose effective solutions.

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<sup>4</sup> “It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.” National Labor Relations Act, § 1 (29 U.S.C. § 151).

<sup>5</sup> See, e.g., Krugman, Paul, “The Gains From Hyperglobalization (Wonkish),” *The New York Times*, Oct. 1, 2013. Available at: <https://krugman.blogs.nytimes.com/2013/10/01/the-gains-from-hyperglobalization-wonkish/> (arguing that trade and hyperglobalization since the 1990s has contributed only a “fairly small fraction” of global growth); Amiti, Mary and Mandel, Benjamin, “Will the United States Benefit from the Trans-Pacific Partnership?,” Liberty Street Economics Blog, Federal Reserve Bank of New York, May 16, 2014. Available at: [http://libertystreeteconomics.newyorkfed.org/2014/05/will-the-united-states-benefit-from-the-trans-pacific-partnership.html#.Vr4TO\\_krLcv](http://libertystreeteconomics.newyorkfed.org/2014/05/will-the-united-states-benefit-from-the-trans-pacific-partnership.html#.Vr4TO_krLcv) (explaining that 90% of all U.S. exports to TPP countries face zero tariffs, another 5% face tariffs of 5% or less).

<sup>6</sup> “Chapter 3: Is It Time for an Infrastructure Push? The Macroeconomic Effects of Public Investment,” in World Economic Outlook, International Monetary Fund, Oct. 2014. Available at: <https://www.imf.org/external/pubs/ft/weo/2014/02/pdf/c3.pdf>. See especially p. 83 (“[A] debt-financed public investment shock of 1 percentage point of GDP increases the level of output by about 0.9 percent in the same year and by 2.9 percent four years after the shock . . .”); Larry Summers, “Why public investment really is a free lunch: The IMF finds that a dollar of spending increases output by nearly \$3,” Larry Summers Blog, Oct. 7, 2014. Available at:

<http://larrysummers.com/2014/10/07/why-public-investment-really-is-a-free-lunch/#sthash.5fkH0nJ6.dpuf>.

<sup>7</sup> Ozlem Onaran, “The Case for a Coordinated Policy Mix of Wage-led Recovery and Public Investment in the G20, L20 in partnership with ITUC, TUAC, and the Council of Global Unions, Jun. 2014. Available at: <http://www.ituc-csi.org/IMG/pdf/modeling.pdf>

Unions, faith communities, health advocates, environmental organizations, migrant rights organizations and small farmers and ranchers who complain of the harmful effects of NAFTA and other trade arrangements (such as the World Trade Organization, or WTO) do not advocate building walls or turning back the clock. In fact, many working people and their employers rely on exports for a substantial portion of their income, including such well-known American brands as Boeing and Caterpillar. The AFL-CIO and our allies in the trade reform movement want to change the rules under which trade and globalization operate. Throwing up ones hands and saying that low wages, skyrocketing drug prices, dangerous imports, and environmental catastrophes are inevitable is not only wrong, it is counterproductive.

Globalization was shaped by the rules of NAFTA and the WTO, and it can be reshaped by alternative rules. Such reshaping is necessary if the United States and its allies are interested in more, rather than fewer, trade arrangements.

As Harvard economist Dani Rodrik writes, trade breeds opposition when it “violates norms embodied in our institutional arrangements.”<sup>8</sup> In other words, trade arrangements become unpopular not just when they impact jobs, but when they undermine hard fought protections such as the right to join together in unions to negotiate for better, the right to protect clean air and water, and the right address counterproductive monopoly powers of global corporate giants. Rodrik continues:

“The benefit of thinking about fair trade along these lines is that it allows the drawing of a clear line between trade flows that threaten legitimate domestic political arrangements and those that don’t. For example, there is a clear distinction between situations where a trade partner’s low wages are due to low productivity, and the abuse of worker rights (including, say, the absence of collective bargaining, or freedom of association). Both may generate distributional implications at home, but there is a problem of unfair trade only in the second case.”<sup>9</sup>

Similarly, Nobel Prize winning economist Joseph Stiglitz has written recently about the growing opposition to globalization in both developed and developing countries. How can it be that the ordinary citizens of both the developed and developing worlds see the current trade and globalization regime as harmful? Stiglitz explains that the common dissatisfaction is a result of rigged rules that “weaken workers’ bargaining power. What corporations wanted was cheaper labor, however they could get it.”<sup>10</sup> He notes that unless most workers view trade and globalization as benefiting them, it cannot be sustained.

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<sup>8</sup> Rodrik, Dani, “It’s Time to Think for Yourself on Free Trade: What economists and populists both get wrong about the international economy,” *Foreign Policy*, Jan. 27, 2017. Available at: <http://foreignpolicy.com/2017/01/27/its-time-to-think-for-yourself-on-free-trade/>.

<sup>9</sup> *Id.*

<sup>10</sup> Stiglitz, Joseph, “Globalisation: time to look at historic mistakes to plot the future,” *The Guardian*, Dec. 5, 2017. Available at: <https://www.theguardian.com/business/2017/dec/05/globalisation-time-look-at-past-plot-the-future-joseph-stiglitz>.



There are three important points to consider before discussing how trade rules can work for workers. The first is that, since the original NAFTA, trade deals have become more about investment than they are about trade. While it is clear that firms can choose to outsource at any time, either with or without a specific trade agreement, the incentives to outsource greatly increase if the deal is covered by NAFTA or post-NAFTA trade agreement.

NAFTA was the first regional “trade” agreement to include not only comprehensive rules limiting how parties may treat foreign investors and foreign investments, but also method of “self-help” for foreign investors known as investor-to-state dispute settlement (ISDS). ISDS allows foreign investors to bypass domestic courts to pursue takings and other claims, including claims of “regulatory takings” that were at the time of NAFTA’s negotiation and ratification a controversial “hot topic” in law and politics.<sup>11</sup> Indeed, unlike dispute settlement at the WTO and the International Court of Justice, where only states are eligible to bring cases, NAFTA’s ISDS permits investors (whether human or corporate persons) to pursue cases directly.<sup>12</sup> States are not even permitted to play a gatekeeper role, which is to say that claimants need not seek the permission of either home or host states prior to pursuing their claims.<sup>13</sup>

The original NAFTA and subsequent trade and investment deals that adopt a similar framework have added the following incentives to outsource to any advantages that would exist without such a deal:

- Permanent reduction in tariff rates that is unconditional, even when the partner country fails to comply with labor obligations, if any, of the agreement
- Comprehensive legal rights for investors
- The opportunity for investors to bypass domestic courts and bring challenges in a private tribunal<sup>14</sup>
- Comprehensive new intellectual property rights—which, in the case of medicines, can delay generic competition and raise costs to governments and patients
- Guaranteed transfer of capital out of the country, even in the case of a dispute over whether money is owed to workers or should have been paid on behalf of workers to health and retirement systems
- Political cover allowing an investor to claim it is operating in a country with “high labor and environmental standards,” even when such standards do not exist in practice

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<sup>11</sup> See, e.g., James L. Huffman, “Judge Plager's ‘Sea Change’ In Regulatory Takings Law,” *Fordham Environmental Law Journal*, Vol. 6, No. 3 (1995,) pp. 597–617, [www.jstor.org/stable/44174235](http://www.jstor.org/stable/44174235) and William Michael Treanor, The Original Understanding of the Takings Clause and the Political Process, *Columbia Law Review*, Vol. 95 (1995), 782, <https://pdfs.semanticscholar.org/66b7/a73b2cee8ba9facb788c50dfd355510adc55.pdf>.

<sup>12</sup> A right that working people have never had. For more information on the comparison of labor obligations and enforcement to investment obligations and enforcement, see Drake, Celeste, “Disparate Treatment for Property and Labor Rights In U.S. Trade Agreements,” *Journal of International Law and Foreign Affairs*, 2018.

<sup>13</sup> NAFTA at Chap. 11, Part B.

<sup>14</sup> Note that ISDS actually removes an incentive for a host country with a need for an improved justice system to make such improvements. When the most powerful interest group with an interest in justice reform (global investors) is out of the picture, the system may remain ineffective and inefficient for years, thereby ensuring better justice for foreign investors than for local businesses or other citizens.

In practice, many of these rights, including the right to opt out of local legal systems, undermine the main competitive advantages enjoyed by the United States for decades. They also make it harder for smaller enterprises in the United States—many of whom prefer to operate domestically and “Make it in America”—to compete because United States wages, environmental protections, reliable judicial systems, labor standards and the like come with costs not borne by outsourcers.

On a related note, the unpopularity of the current trade and globalization framework is also tied to the breadth of topics it covers. Although citizens in the United States and other countries with democratic forms of government are accustomed to debating and fighting for policy choices in the domestic sphere, we have found that hard fought policies can be changed or undermined with the stroke of a pen via trade policy, leaving citizens wondering which popular policy is next on the chopping block.

For example, when the WTO determined in 2015 that a popular U.S. country-of-origin labeling program violated the WTO’s rules, U.S. citizens rightly questioned why an important and hard-fought labeling rule was suddenly a trade issue. In one form or another, the rules of trade deals, including the proposed new NAFTA, put democracy in a box – limiting the choices that citizens can make in all types of policy areas—including decisions that stray far from basic trade issues such as tariffs and quotas. Legislators should be clear eyed about their decisions to box in democracy. While in some instances the benefits are clear (such as an agreement not to engage in torture), in others the benefits are doubtful (such as an agreement to permanently lock in 10 years of exclusivity for biologic drugs).

Finally, it is important to note that the United States’ misguided trade policies have impacted both public and private sector workers. Current trade rules have reduced the annual wages of a full-time American worker without a four-year college degree by about \$2,000 a year on average. Given that non-college-educated workers are the majority of America’s workforce, this trend affects us all workers, including those in the public sector. This trend makes it harder to negotiate for better wages, benefits, and working conditions. When failed trade policies incentivize manufacturers to move jobs offshore, they also leave devastated communities in their wake. Just ask residents of Detroit, Michigan, Bridgeport, Connecticut, and Baltimore, Maryland. Disused land and buildings and unemployed residents lead to reduced federal, state, and local tax revenues. Combine this with the added leverage that tax-avoiding global corporations have over our economy and it is a recipe for disinvestment: exactly the kind of disinvestment that has been plaguing not only Amtrak, but infrastructure, education, library, law enforcement, and worker training programs across the country.

Figure 4: The Policy Box Created by Trade Deals (Popular Conception)

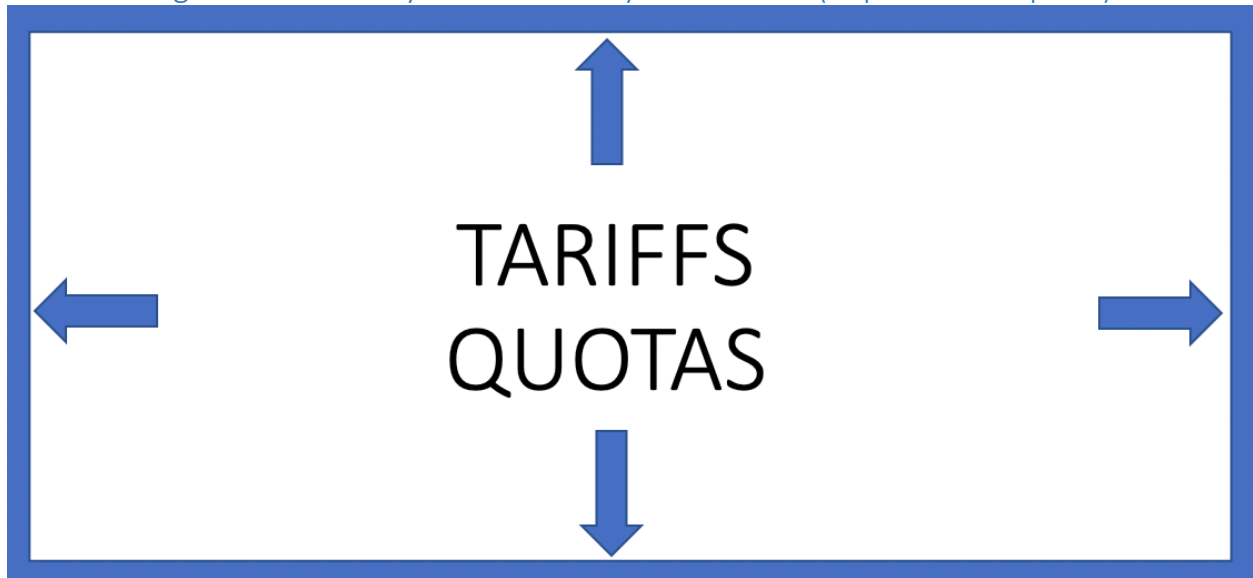


Figure 4: The Policy Box Created by Trade Deals (Reality)



### Raising Wages and Ensuring High Labor Standards Are Step One

By putting the U.S., Canada, and Mexico into competition for investment without ensuring that each country not only had high standards on paper but an effective enforcement regime for worker and environmental protections, the original NAFTA acted as an anchor, dragging down tax revenues, wages and environmental standards, not just in the U.S., but in all three NAFTA countries. Because of the competitive incentives imposed by NAFTA and similar trade policies,

income distributions became more unequal as global companies captured an ever-larger share and workers an ever-smaller share.<sup>15</sup>

All the NAFTA renegotiation efforts in the world will not create U.S. jobs, raise U.S. wages, or reduce the U.S. trade deficit if the new rules do not include clear, strong, and effective labor rules that require Mexico to abandon its low wage policy<sup>16</sup> and instead implement and enforce the fundamental labor rights developed by businesses, working people and governments at the International Labor Organization. The pull factor of poverty wages, denial of worker freedoms, and exploitative working conditions simply cannot be counterbalanced by new rules of origin or digital trade rules alone. Working families and their advocates across North America are united in their support for greater workplace protections, a level playing field, and higher wages.

With few exceptions, Mexican “unions” are undemocratic and aligned more with employers or local political elites than with workers. These employer-dominated unions often sign contracts without any participation or input from workers for the sole purpose of interfering with the right to form effective, worker-directed unions. The government has gone along with this practice as part of a low-wage development strategy. The cumulative effect of these bogus unions is to lower wages and working conditions in Mexico.<sup>17</sup> Improving wages will reduce the ability of employers to use trade and investment as a tool of arbitrage that pushes wages down across North America. Higher wages in Mexico not only are good for Mexico’s working families, they are a required outcome of beneficial trade policy.

When workers lack the freedom to speak up about workplace conditions and negotiate together to improve their lives and livelihoods, wages, benefits, and job safety are lower than they would otherwise be. The original NAFTA’s race to the bottom has led to a global weakness in demand that hampers gross domestic product (GDP) growth and exacerbates inequality. Even the IMF has recognized a link between the decline in unionization and the dramatic increase in inequality worldwide.<sup>18</sup>

Those who advocate to maintain trade policies that drive wages ever lower in the relentless pursuit of quarterly profits and “competitiveness” ignore the fact that workers also are consumers. Consumers drive the demand necessary to support the global economy. This one-sided vision of competitiveness has limited the potential for U.S. exports. Indeed, wage suppression in Mexico means that there are even more Mexicans living in poverty than before

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<sup>15</sup> See Capaldo, Jeronim et al., “Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement,” Global Development and Environment Institute Working Paper No. 16–01, January 2016, at pp. 12–13. Available at: [www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietatPP.pdf](http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietatPP.pdf).

<sup>16</sup> See, e.g., U.S. Rep. Sandy Levin, Press Release: NAFTA’s Top Problem: Mexico’s Industrial Policy of Low Wages and No Rights, Oct. 10, 2017. Available at: <https://levin.house.gov/press-release/naftas-top-problem-mexicos-industrial-policy-low-wages-and-no-rights>.

<sup>17</sup> See NAFTA at 20, *supra* note 3.

<sup>18</sup> Jaumotte, Florence, and Buitron, Carolina Osorio, “Power from the People,” Finance & Development, Vol. 52, No. 1, International Monetary Fund, March 2015. Available at: [www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm](http://www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm).

NAFTA,<sup>19</sup> that immigration push-factors have not abated, and that Mexico has become an increasingly attractive investment target.

***The new NAFTA is not yet worthy of support.*** If the administration insists on a premature vote on the new NAFTA in its current form, **we will have no choice but to oppose it.**

Most importantly, the new NAFTA does little to stop the continued outsourcing of U.S. jobs to Mexico across all sectors, including aerospace, electronics, appliances, food processing, heating, ventilation and air conditioning (HVAC) products, paint finishing systems and booths, and other manufacturing. For example, it does not prevent U.S. corporations like General Motors or Carrier from closing plants and hurting workers and communities across the supply chain. Provisions like the auto labor value content requirement, which appear promising on the surface, are actually likely to be ineffective at addressing outsourcing. Nor does the deal address existing inequities, including permitting employees of Mexican railroads to operate trains within the United States while Mexico maintains a prohibition on the reverse scenario.

The new NAFTA includes some modest improvements. But its labor rules repeat the flaws of past trade agreements. The new NAFTA's labor rules must be significantly strengthened, including by eliminated language that undermines the obligations and makes them harder to enforce. The new agreement must ensure that the labor rules will be swiftly and certainly enforced. While we have provided numerous recommendations for how that could be accomplished, none of them are included in the draft. Targeted improvement in labor enforcement is absolutely essential because without it, the agreement's substantive provisions are of little value.

North America's working people know this is essential because we have been trying to enforce the labor provisions of trade agreements for more than a quarter century. Neither the United States nor any other country has self-initiated a labor enforcement case. Neither the United States nor any other country has imposed penalties of any sort due to violations of labor provisions in a trade agreement. Nor have law and practices come into full compliance with labor standards as a result of the labor consultations (formal or informal) that substitute for labor enforcement in United States trade agreements.<sup>20</sup>

Because the political will to enforce labor provisions in trade agreements does not exist, we have recommended the creation of a politically independent labor secretariat, creating binding the discretion of governments to choose not to enforce, and allowing interested parties to play a role in advancing cases. Any effective enforcement mechanism must have mandatory monitoring and reporting, assurance that action will be taken promptly when violations occur, and, critically, an avenue by which workers can intervene when governments lack the will to act. Moreover, it must have a guaranteed funding stream to ensure that technical assistance, monitoring, and enforcement occur. The new NAFTA has none of these. Simply put, without assurance that labor rules will be enforced, we have no confidence that the deal will change the terms of trade.

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<sup>19</sup> Weisbrot, Mark, et al., "Did NAFTA Help Mexico? An Update After 23 Years," Center for Economic and Policy Research, updated March 2017. Available at: <http://cepr.net/images/stories/reports/nafta-mexico-update-2017-03.pdf?v=2>.

<sup>20</sup> Please see Appendix I to this testimony.

The original NAFTA allowed a party being accused of violating the deal to block the dispute settlement process. This proved harmful to working people in all three countries. In subsequent trade agreements, the United States abandoned this failed notion. But the new NAFTA revives this failed idea. This means that outsourcing, downward pressure on wages and labor standards and growing inequality are likely to continue.

The new NAFTA will not end the race to the bottom in the workplace, but it is by no means the only failure of this deal. It will also keep drug prices high by expanding monopoly power for brand-name pharmaceutical companies. This provision will hurt workers in all three countries, but it will especially hurt Mexico's workers. We cannot limit the future health policy choices for North American countries simply because Big Pharma seeks to use NAFTA to lock in and increase its profits. The rules relating to medicines should revert to those in the Peru trade deal—a deal which the AFL-CIO did not oppose.

Work on the new NAFTA is far complete. Among the changes we have requested, but which have not been addressed in the text, are:

- Strengthened labor rules, including explicit reference to International Labor Organization language that clarifies fundamental labor obligations and the elimination of footnotes that make the rules difficult to enforce;
- New and strengthened rules (including rules of origin) for all manufacturing sectors to promote more U.S. domestic content and high-wage production, including strengthening of the \$16 per hour labor value content rule (including by making it a true minimum), and strengthening rules for rail cars, steel, aluminum and other manufacturing sectors, and adding appropriate floor wage provisions;
- Strengthened environmental rules and enforcement;
- The elimination of rules that allow foreign investors to continue to use a private justice system (ISDS) to challenge non-discriminatory public interest laws and regulations;
- The removal of rules that undermine strong public interest regulations and chemical safety;
- The removal of provisions that undermine income, health care and pension plans for creative arts workers (Articles 19.17 and 20.89);
- An assurance that the United States, Mexico, and Canada may require government contractors to comply with the deal's labor rules (Article 13.7.5);
- An assurance that food labeling (including country-of-origin labeling) that lets families know where and how their food is produced is not a trade violation; and
- The creation of additional tools to address outsourcing, including in the aerospace, auto, baked goods, HVAC, call center and processed meat industries.

## Recommendations for Trade that Works for Workers<sup>21</sup>

The AFL-CIO recommends that new trade agreements abandon efforts to put democracy in a box and instead focus on promoting inclusive trade. To that end, we make the following recommendations.

### **1. Democratize the Renegotiation Process**

The TPP and Trans-Atlantic Trade and Investment Partnership negotiations demonstrated that secrecy breeds contempt. All trade negotiations must be transparent, democratic, and participatory, with more access for Congress and the public to proposals and negotiating texts. There must be opportunities for public comment, periodic congressional hearings to review progress and more inclusive trade advisory committees.<sup>22</sup>

### **2. Add Strong Labor Rules with Swift and Certain Enforcement**

To help raise wages and improve working conditions, trade agreements must ensure all working people can exercise the fundamental labor rights reflected in International Labor Organization (ILO) labor conventions, including the bedrock right to form unions and bargain collectively. Labor obligations must be supported by an independent enforcement mechanism with innovative tools and penalties to overcome entrenched indifference and hostility to worker rights. Labor reforms must be measured by performance, not merely changes on paper, and they must not include barriers to effective enforcement of trade obligations, including those that contributed to the U.S. loss in the Guatemala labor case. Measurements must include the payment of floor wages, particularly in trading partner countries such as Mexico which have engaged in systematic labor and wage suppression. Finally, obligations must promote freedom of association and collective bargaining, including by permitting cross-border negotiation when workers themselves organize cross border structures to act as partners to cross border employers.<sup>23</sup>

### **3. Create Jobs by Adding Enforceable Currency Rules**

Trade rules should include enforceable currency disciplines subject to trade sanctions in the text of the agreement.<sup>24</sup> Parties also should commit to coordinating enforcement efforts with respect to the currency manipulation and misalignment by non-parties. Such provisions could help reduce the unsustainable U.S. trade deficit by addressing issues of trade and exchange rates. Currency realignment would create 2.3 million to 5.8 million jobs over the next three years.<sup>25</sup>

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<sup>21</sup> For an expanded explanation of the AFL-CIO's NAFTA renegotiation recommendations, please see our submission to the U.S. Trade Policy Staff Committee, "How to Make NAFTA Work for Working People." Available at: <https://aflcio.org/statements/written-comments-how-make-nafta-work-working-people>.

<sup>22</sup> For more information on how to democratize trade negotiations, please see the AFL-CIO Executive Council Statement, "Time for a New Track." Available at: <https://aflcio.org/about/leadership/statements/time-new-track-trade-policy-making-must-be-transparent-democratic-and>.

<sup>23</sup> For a complete proposal on how to incorporate modern and effective labor standards into trade deals, please see the AFL-CIO submission to the USTR for the proposed United States-United Kingdom trade deal. Available at: <https://www.regulations.gov/document?D=USTR-2018-0036-0119> (Regulations.gov Docket #USTR-2018-0036).

<sup>24</sup> There are many ways to establish such enforceable provisions against currency manipulation and misalignment. During the TPP negotiations, for example, two useful proposals included a test promoted by the American Automotive Policy Council and the incorporation of the International Monetary Fund's seven factor guidelines.

<sup>25</sup> Scott, Robert E., "Stop Currency Manipulation and Create Millions of Jobs, With Gains across States and Congressional Districts," EPI Briefing Paper #372, Economic Policy Institute, Feb. 26, 2014. Available at: [www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/](http://www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/)

#### **4. Strengthen Rules of Origin**

In general, “rules of origin” should be set such that domestic producers and workers in signatory countries are the primary beneficiaries of market access commitments, not third-party countries that take on no trade obligations in the deal.

#### **5. Combat Tax Dodging**

NAFTA and subsequent trade and globalization rules have had a negative long-term impact on tax revenues and public investment. In addition, through a variety of legal and illegal tax avoidance schemes, tax revenues have fallen for jurisdictions around the world, regardless of tax rates. This troubling trend undermines the social contract and inhibits robust public investment in infrastructure and human capital. Trade rules should address base erosion and tax avoidance to help meet infrastructure needs and cultivate public support for international trade. If trade rules are beneficial, they should help America build new schools, high speed communications networks, and transportation corridors. But if trade is viewed as a vehicle to facilitate tax dodging by economic elites, public opposition will only grow.

#### **6. Add Strong Environmental Rules with Swift and Certain Enforcement**

Trade deals must include strong environmental standards that will be enforced. They must require adoption of and compliance with key multilateral environmental agreements; prohibit illegal trade of timber and wildlife; promote responsible fisheries policies; and ensure countries cannot gain an unfair trade advantage by allowing highly polluting practices. This should be done in a manner akin to the recommendations for labor obligations.

#### **7. Trade Policy Must Not Take Place in a Vacuum**

Trade is only as good as the domestic economies it helps to support. Rules that promote exports are not useful without domestic policies that ensure that the United States benefits from the new technologies it helps invent by performing at least some advanced manufacturing here. Complementary domestic policies include tax, labor, training and education, and infrastructure policies to ensure that we are actively making the United States a place where people want to live, not just where investors want to invest. Workers and employers can prosper together, but it takes policy choices—not luck.

#### **8. Create Voluntary Working Groups to Discuss Regulatory Issues**

Instead of the current “democracy in a box,” trade deals should include, by mutual agreement, voluntary working groups (including participation by trade unions and other members of civil society) to discuss any issue, including so-called “trade irritants” and possibilities for trade cooperation and coordination, for example in areas such as ending duplicative product testing regimes. Recommendations developed by the working groups should have no force of law unless enacted through normal domestic processes of each party.

This recommendation means that trade deals should contain no mandatory rules regarding technical barriers to trade, regulatory practices, sanitary and phyto-sanitary standards or the like; no negative lists or ratchet mechanisms; no ISDS; no procurement obligations; no limitations on anti-trust law or financial services regulations; no restrictions on the ability to adopt policies to constrain growth in the price of medicines; and no limitations or restrictions on public services of



any kind. Outside the realm of fundamental human and labor rights and agreed multilateral environmental obligations where the enforcement of minimum standards are paramount, parties should be free to determine and enforce democratically-chosen levels of protection, free from trade challenges foreign firms or countries. Rules limiting legislation and regulation already exist at the WTO and are more than sufficient to address the interests of firms engaged in global trade.

Collectively, these eight recommendations will bind the parties involved in trade to a race to the top instead of binding them to a race to the bottom. They will help restore confidence that active citizenship works, and preserve for future Congresses a variety of policy choices to raise wages, protect families, promote businesses and strengthen our economic and national security.

# APPENDIX I

## U.S. LABOR ENFORCEMENT PROCESS

