

# TRADING

# UP

**A Critical Perspective on  
Jobs, Governance and Security  
in U.S. Trade Policy**

**PROGRAM • JUNE 28, 2016**

815 16TH ST., N.W. • WASHINGTON, DC 20006

# AFL-CIO

<b>Welcome</b>	<b>3</b>
<b>Overview</b>	<b>5</b>
<b>Detailed Agenda</b>	<b>6</b>
<b>Twitter Handles for Speakers</b>	<b>8</b>
<b>Speaker Bios</b>	<b>9</b>
<b>Essays</b>	<b>17</b>

Dear Friends,

Welcome to “Trading Up: A Critical Perspective on Jobs, Governance and Security in U.S. Trade Policy,” a conference that will explore the kind of trade agreements that best can serve working people in the United States and abroad.

This is a unique moment in the history of U.S. trade policy. For the first time in decades, the national conversation is focusing on the quality versus the necessity of trade. The last time we had an opportunity like this was during the debate over the North American Free Trade Agreement (NAFTA). NAFTA’s supporters eventually carried the day, arguing that it would create jobs, stabilize Mexico and provide a bulwark against competition by Europe and China. However, the dismal results of NAFTA and its progeny have convinced many early supporters to rethink trade.

The pending Trans-Pacific Partnership (TPP) has come under intense scrutiny this year, with a significant proportion of the electorate strongly opposing its passage. However, instead of acknowledging core problems with the U.S. trade rules and with the negotiation process itself, proponents are offering only temporary, “transitional” support to workers who lose their jobs due to trade in the form of Trade Adjustment Assistance. No amount of funding for worker retraining will counteract the downward pressures on wages from corporate-dominated trade agreements, or the devastation to communities when productive investments move offshore.

TPP and its antecedents, negotiated behind closed doors under the influence of U.S.-headquartered global businesses, limit citizen input and shield their architects from democratic accountability. These trade agreements have created a permanent infrastructure in the global economy that skews benefits to the largest and wealthiest companies and investors, increases inequality, and allows continued abuses of environmental and labor standards.

“Trading Up: A Critical Perspective on Jobs, Governance and Security in U.S. Trade Policy” will examine the mounting criticism of the process and substance of trade negotiations. The conference will move beyond the false dichotomy of “pro-trade versus anti-trade,” and focus instead on alternative proposals of how to develop, negotiate, ratify, implement and amend trade and investment rules in ways that create shared prosperity for all working people, whatever their position in the global supply chain.

In this booklet, please find an agenda for the conference, biographical information for today’s speakers and moderators, and written contributions from some of the conference participants.

Thank you for attending. We welcome your input and invite you to continue the conversation on Twitter using the hashtag #BetterTrade, and on our blog, [aflcio.org/blog](http://aflcio.org/blog).

Regards,



Richard Trumka  
President, AFL-CIO



# OVERVIEW

Global trade agreements have become a critical part of the national debate about the economic policies our country needs to ensure broadly shared prosperity today and in the future. This convening will examine the impacts of the Trans-Pacific Partnership (TPP), the U.S.-EU Trans-Atlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TISA) on jobs, wages, national security and democratic accountability.

Every remaining presidential candidate is on the record opposing the TPP. While proponents of the agreement reluctantly admit that corporate trade deals do have a down side, they contend that the TPP is vital to the U.S. economy and that an improved Trade Adjustment Assistance program will help the small number of workers who are negatively impacted. Proponents also argue that trade is a national security issue, that passage of the TPP puts the United States in charge of writing global trade rules and that rejection of the agreement will cede future control of trade to China.

Does the process and substance of international trade and investment deals work for working families globally? This conference will examine the arguments, the evidence and the alternatives.

## DETAILED AGENDA

**8:15–9 a.m.**      **Breakfast and Registration**

**9–9:45 a.m.**      **Introduction and Welcome**

Richard Trumka, AFL-CIO President  
U.S. Sen. Sherrod Brown (D-Ohio)  
Joseph Stiglitz, Columbia University and the Roosevelt Institute (via video)

**9:50–11:20 a.m.**      **Trade and the Economy**

The rise of the World Trade Organization (WTO) and other trade agreements coincided with the rise of neoliberal economics in the West. What is the relationship between the two? What does the evidence show about the impact of neoliberal trade agreements on jobs, wages, consumer demand, monopoly power and income inequality? Is the economic modeling used by the U.S. International Trade Commission a good predictor of outcomes from free trade agreements? What is the impact of neoliberal trade deals on worker bargaining power? Does Trade Adjustment Assistance adequately compensate those harmed by U.S. trade policy? Are the rules proposed in the TPP, TTIP and TISA the right ones to advance shared prosperity?

Dean Baker, Center for Economic and Policy Research  
Joseph Guzman, Michigan State University  
Thomas Palley, AFL-CIO  
Robert Scott, Economic Policy Institute

*Moderator:* Thea Lee, AFL-CIO

**11:20–11:35 a.m.**      **Break**

**11:35 a.m.–  
12:30 p.m.**      **Secrecy, Democracy and Trade**

How does the manner in which trade agreements are negotiated contribute to the reality or perception that they are not in the public interest? Who wins and who loses in secret negotiations? What is the role and purpose of exclusive trade advisory committees? What is the appropriate role for congressional representatives and civil society voices? How else could trade deals be negotiated? Could they be concluded if they were more public?

James Love, Knowledge Ecology International  
Dan Pearson, Cato Institute

*Moderator:* Don Lee, Los Angeles Times

**12:30–1:25 p.m.**     **Lunch**

**1:30–3 p.m.**             **Trade and the Public Good**

Do the TPP, TTIP and TISA strike the right balance between trade and investment promotion and other policy goals? What are the risks of treating domestic policy choices (such as consumer and environmental protections and the provision of public services) as mere trade barriers to be overcome? How does the creation of a private justice for international investors affect fundamental human rights, particularly for vulnerable populations? How could trade deals assist in addressing climate change and inclusive, sustainable development? Do trade deals leave space for policy growth and innovation? If not, what will happen when new economic models displace the current dominant approach to trade and investment?

Elsadig Elsheikh, Haas Institute at UC Berkeley

Brooke Güven, Columbia Center on Sustainable Investment

Mark Langevin, Public Services International

Sanya Reid Smith, Third World Network

*Moderator:* Ari Rabin-Havt, Host of “The Agenda” on SiriusXM Radio

**3–3:15 p.m.**             **Break**

**3:15–4:45 p.m.**         **Trade and Security**

Do trade deals have an appreciable impact on security? How will the Trans-Pacific Partnership affect China’s trade relations with its Pacific neighbors or improve U.S.-China relations? Will the TPP ensure “we” write the rules of trade rather than China (and who is “we,” anyway)? What can we learn from NAFTA and CAFTA about the relationship between trade and national security?

Jeff Faux, Economic Policy Institute

Heather Hurlburt, New America

Manuel Pérez-Rocha, Institute for Policy Studies

Michael Wessel, The Wessel Group

*Moderator:* Damon Silvers, AFL-CIO

**4:45–5 p.m.**             **Closing Remarks**

William Spriggs, AFL-CIO

**5– 6:15 p.m.**             **Reception**

Entertainment by the DC Labor Chorus

## TWITTER HANDLES FOR SPEAKERS

**Dean Baker**  
@DeanBaker13

**Mark Langevin**  
@PSIglobalunion

**Sanya Reid Smith**  
@3rdWorldNetwork

**Sen. Sherrod Brown**  
@SenSherrodBrown

**Don Lee**  
@dleelatimes

**Robert Scott**  
@RobScott\_EPI

**Elsadig Elsheikh**  
@alsadig

**Thea Lee**  
@TheaLee1

**Damon Silvers**  
@DamonSilvers

**Jeff Faux**  
@EconomicPolicy

**James Love**  
@Jamie\_Love

**William Spriggs**  
@WSpriggs

**Brooke Güven**  
@bskartvedt

**Thomas Palley**  
@aflcio

**Joseph Stiglitz**  
@JosephEStiglitz

**Joseph Guzman**  
@MichiganStateU

**Dan Pearson**  
@DPearson\_mn

**Richard Trumka**  
@RichardTrumka

**Heather Hurlburt**  
@natsecheather

**Manuel Pérez-Rocha**  
@ManuelPerezIPS

**Michael Wessel**  
@MWesseIDC

**Ari Rabin-Havt**  
@AriRabinHavt

# SPEAKER BIOS



## Dr. Dean Baker

Co-Director, Center for Economic and Policy Research

Dean Baker co-founded the Center for Economic and Policy Research (CEPR) in 1999. His areas of research include housing and macroeconomics, intellectual property, Social Security, Medicare and European labor markets. He is the author of several books, including *Getting Back to Full Employment: A Better Bargain for Working People*; *The End of Loser Liberalism: Making Markets Progressive*; *The United States Since 1980*; *Social Security: The Phony Crisis* (with Mark Weisbrot); and *The Conservative Nanny State: How the Wealthy Use the Government to Stay Rich and Get Richer*. His blog, Beat the Press, provides commentary on economic reporting. He received his B.A. from Swarthmore College and his Ph.D. in economics from the University of Michigan.



## Hon. Sherrod Brown

U.S. Senate, D-Ohio

Described as “Congress’ leading proponent of American manufacturing,” U.S. Sen. Sherrod Brown is working with the Obama administration on the creation of a national manufacturing policy that would invest in manufacturing innovation, strengthen our component supply chain, connect workers with emerging industries and align our trade policies to promote our national interests.

He also is working with Ohio’s universities, entrepreneurs and community stakeholders to use Ohio’s resources to create new jobs in high-growth industries and make Ohio a national leader in clean energy manufacturing.

And as a longtime advocate for fair trade, Brown has stood up to presidents of both parties on

short-sighted trade agreements that ship U.S. jobs overseas. He led the bipartisan opposition to NAFTA in 1993—as a freshman in the U.S. House of Representatives—and to CAFTA in 2005. And he’s continuing that work today as the leading opponent of TPP in the Senate. Brown is working on trade policies that promote our workers, small businesses and manufacturers, while creating jobs and expanding markets through an aggressive export promotion strategy.

Brown serves as the ranking member of the Senate Banking Committee, where he played an instrumental role in passing the historic Wall Street reform law. He also serves on the Senate Committee on Finance, the Senate Agriculture, Nutrition, and Forestry Committee, and the Senate Veterans Affairs Committee.

Prior to serving in the United States Senate, Brown served as a U.S. representative for the 13th District, Ohio’s secretary of state, a member of the Ohio General Assembly, and he taught in Ohio’s public schools and at The Ohio State University.



## Elsadig Elsheikh

Global Justice Program Director, Haas Institute for a Fair and Inclusive Society, UC Berkeley

Elsadig Elsheikh is the global justice program director at UC Berkeley’s Haas Institute for a Fair and Inclusive Society; his research and writings focus on the themes and sociopolitical dynamics of food system, political ecology, political economy, state and citizenship, and structural inequality.

Earlier, Elsadig was a senior researcher at the Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University, and prior to that with various international grassroots and advocacy organizations

on issues related to migration, internal displaced persons, indigenous peoples, human rights, and environmental and social justice in Sudan, Greece, Colombia and the United States.

Elsadig holds degrees and trainings from Panteion University in Athens, Greece, The Ohio State University, SIT Graduate Institute in Vermont and Columbia University.



## Jeff Faux

Founder and Distinguished Fellow,  
Economic Policy Institute

Jeff Faux founded the Economic Policy Institute of Washington, D.C., America's leading think tank on the economic conditions of workers and their families. He is now the Institute's Distinguished Fellow.

His latest two books are *The Global Class War* and *The Servant Economy: Where America's Elite is Sending the Middle Class*. He also has written for a large number of magazines, newspapers and anthologies, has lectured at universities here and abroad and often has appeared on television and radio. He has begun a new book on foreign policy from the perspective of the interests of ordinary Americans.

He lives part of the year in Mexico. Learn more at [www.jefffaux.com](http://www.jefffaux.com).



## Brooke Güven

Legal Researcher, Columbia Center on Sustainable Investment

Brooke Skartvedt Güven is a legal researcher for the Columbia Center on Sustainable Investment (CCSI)'s work on international investment law and policy. She analyzes the contracts, legislation and international legal arrangements governing cross-border investments, and the impacts these

frameworks have on sustainable development objectives. She also focuses on the intersection of international investments and human rights. Prior to joining CCSI, she spent seven years working at large international law firms focusing on cross-border finance and investments. During 2011, she worked for the International Senior Lawyers Project as a legal adviser to the Liberian Ministry of Health and Social Welfare. Based in Monrovia, she advised the ministry on a public health law reform initiative, focusing on international and comparative practices. She received a bachelor of arts in economics and political science from Northwestern University, a master's degree in international public affairs and a J.D. from the University of Wisconsin, and an LL.M. in international legal studies from New York University School of Law, where she also was a Human Rights Scholar at the NYU Center for Human Rights and Global Justice.



## Dr. Joseph M. Guzman

Interim Director of Latino Studies,  
Michigan State University

Joseph Guzman is interim director of the Chicano/Latino Studies (CLS) Program at Michigan State University, where he holds a joint faculty position with the School of Human Resources and Labor Relations. Guzman previously served as deputy assistant secretary for the U.S. Navy and Air Force, and as a government executive in the Army.

Guzman holds a Ph.D. in business and advanced degrees in economics, statistics and business research from Stanford University, together with an MBA and undergraduate engineering degree from the University of Arizona.

Guzman is 2016 president of the American Society of Hispanic Economists (ASHE) and was named 2015 Michigan Educator of the Year by the State Civil Rights Commission, Hispanic/Latino and Hispanic Caucus Commission.



## Heather Hurlburt

Director, New Models of Policy Change,  
New America

Heather Hurlburt directs the New Models of Policy Change project at New America, where she leads exploration of how policy advocacy is adapting to political polarization, and guides advocates and funders seeking to navigate politics on behalf of policy.

Hurlburt was among the thinkers and organizers who set out to reshape center-left foreign policy, and public perception of it, in the mid-2000s. She ran the National Security Network while it was the nation's premier source for progressive foreign policy and messaging.

Hurlburt served as a special assistant and speechwriter to President Clinton, and as a speechwriter and member of the policy planning staff for Secretaries of State Madeleine Albright and Warren Christopher. She also worked in Congress, served on the U.S. delegation to the Organization for Security and Co-operation in Europe, and has run programs at the Carnegie Endowment, Human Rights First and the International Crisis Group.



## Don Lee

Reporter, Los Angeles Times

Don Lee writes about the economy from Washington, D.C., where he has been based since 2009. Since joining the Los Angeles Times in 1992, he has served as the business editor in Orange County and as the newspaper's Shanghai bureau chief from 2004 to 2009. Lee previously worked for the Kansas City Star, where he covered labor and manufacturing. Before journalism, he worked as a researcher for a bank in Seattle and as a machinist for a gear maker in Chicago. He is a graduate of the University of Chicago.



## Thea Mei Lee

Deputy Chief of Staff, AFL-CIO

Thea Lee is deputy chief of staff at the AFL-CIO, where she also has served as policy director and chief international economist. Prior to that, she worked as an international trade economist at the Economic Policy Institute in Washington, D.C., and as an editor at Dollars & Sense magazine in Boston.

Lee is co-author of *A Field Guide to the Global Economy*, published by the New Press. Her research projects include reports on the North American Free Trade Agreement, on the impact of international trade on U.S. wage inequality, and on the domestic steel and textile industries. She has appeared on numerous television and radio shows, including the "PBS News Hour"; CNN; "Good Morning America"; NPR's "All Things Considered" and "Marketplace"; and the PBS documentary "Commanding Heights."

She has testified before several committees of the U.S. House of Representatives and the Senate on various economic policy topics, and serves on the State Department Advisory Committee on International Economic Policy, where she co-chairs the subcommittee on investment. She received a bachelor's degree from Smith College and a master's degree in economics from the University of Michigan.



## James Love

Director, Knowledge Ecology  
International

James Love is the director of Knowledge Ecology International (KEI), a nonprofit focused on access to medicines and knowledge resources with offices in Washington, D.C., and Geneva, Switzerland. Love is an adviser to a number of UN agencies, national governments, international and regional intergovernmental organizations, and public health NGOs. He is also the United States co-chair of the TransAtlantic Consumer Dialogue (TACD) Working Group on Intellectual Property, the chairman of

Essential Inventions, and a member of the MSF working group on intellectual property and the UNITAID Medicines Patent Pool's Expert Advisory Group.

Love previously was senior economist for the Frank Russell Co., a lecturer at Rutgers University and a researcher on international finance at Princeton University. He holds a master's of public administration from Harvard University's Kennedy School of Government and a master's in public affairs from Princeton's Woodrow Wilson School of Public and International Affairs. In 2013, Love was awarded the Electronic Frontier Foundation's Pioneer Award alongside Glenn Greenwald and Laura Poitras, and Aaron Swartz.



## Thomas Palley

Senior Economic Policy Adviser, AFL-CIO

Thomas Palley is senior economic policy adviser to the AFL-CIO. He was formerly chief economist with the US-China Economic and Security Review Commission.

Palley is the author of numerous journal and magazine articles and several books, including *From Financial Crisis to Stagnation: The Destruction of Shared Prosperity and the Role of Economics* (Cambridge University Press, 2012) and *Plenty of Nothing: The Downsizing of the American Dream and the Case for Structural Keynesianism* (Princeton University Press, 1998). He holds a B.A. degree from Oxford University and an M.A. degree in international relations and Ph.D. in economics, both from Yale University. His writings on economics are available at [www.thomaspalley.com](http://www.thomaspalley.com).



## Daniel R. Pearson

Senior Fellow, Herbert A. Stiefel Center for Trade Policy Studies, Cato Institute

Daniel R. Pearson is a senior fellow in the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies, which is focused on pursuit of free trade.

From 2003 to 2013, he served as a Republican on the U.S. International Trade Commission, including a two-year term as chairman. Pearson was assistant vice president of public affairs for Cargill Inc. in Minneapolis from 1998 to 2003, and a policy analyst from 1987 to 1998. Before that, from 1981 to 1987, he was the agricultural legislative assistant to Sen. Rudy Boschwitz; his duties included staffing the Agriculture Committee's Foreign Agricultural Policy subcommittee.

From 1979 to 1980, he farmed near Ogilvie, Minnesota.

Pearson holds B.S. and M.S. degrees in applied economics from the University of Minnesota.



## Manuel Pérez-Rocha

Associate Fellow, Institute for Policy Studies

Manuel Pérez-Rocha is an associate fellow of the Institute for Policy Studies in Washington, D.C. He is a Mexican national who has led efforts to promote just and sustainable alternative approaches to trade and investment agreements for two decades. Prior to working for IPS' Global Economy Program, he worked with the Mexican Action Network on Free Trade (RMALC) and continues to be a member of that coalition's executive committee. He also worked for the Make Trade Fair campaign of Oxfam International.

Pérez-Rocha studied international relations at the National Autonomous University of Mexico (UNAM), has a diploma on European studies from the Autonomous Technological Institute of Mexico (ITAM) and holds an M.A. in development studies from the Institute of Social Studies (ISS) in The Hague, Netherlands. Some of his last publications include op-eds in *The Nation* and *The New York Times*.



## Ari Rabin-Havt

Host of "The Agenda," SiriusXM Radio

Ari Rabin-Havt is host of "The Agenda," a national radio show airing Monday through Friday on SiriusXM, and a senior fellow at People for the

American Way. His writing has been featured in USA Today, The New Republic, The Nation, The New York Observer, Salon and The American Prospect, and he has appeared on MSNBC, CNBC, Al Jazeera and HuffPost Live.

Along with David Brock, he co-authored *The Fox Effect: How Roger Ailes Turned a Network into a Propaganda Machine* and *The Benghazi Hoax*. He previously served as executive vice president of media matters for America and as an adviser to Senate Democratic Leader Harry Reid and former Vice President Al Gore.



### Sanya Reid Smith

Legal Adviser and Senior Researcher,  
Third World Network

Sanya Reid Smith is a legal adviser and senior researcher with Third World Network. She analyzes the implications of trade and investment agreements (including the Trans-Pacific Partnership agreement, for which she attended 27 negotiating rounds as a stakeholder, and the Trade In Services Agreement) on economic sectors, laws and policies. She is regularly invited to speak on these issues by various United Nations agencies. In addition to her law degree, she has studied economics.

Third World Network is a grouping of organizations and individuals involved in development issues with offices in various countries, including in Switzerland, where Reid Smith is based.



### Robert E. Scott

Senior Economist and Director of Trade and Manufacturing Policy Research,  
Economic Policy Institute

Rob Scott joined the Economic Policy Institute in 1996. His areas of research include international economics, trade and manufacturing policies and their impacts on working people in the United States and other countries, the economic impacts of foreign

investment, and the macroeconomic effects of trade and capital flows. He has published widely in academic journals and the popular press, including The Journal of Policy Analysis and Management, The International Review of Applied Economics, and The Stanford Law and Policy Review, as well as The Los Angeles Times, Newsday, USA Today, The Baltimore Sun, The Washington Times and other newspapers. He also has provided economic commentary for a range of electronic media, including NPR, CNN, MSNBC, Bloomberg and the BBC. He has a Ph.D. in economics from the University of California at Berkeley, and a B.S. in engineering from Washington University in St. Louis.



### Damon A. Silvers

Director of Policy and Special Counsel,  
AFL-CIO

Damon Silvers is the director of policy and special counsel for the AFL-CIO. He also serves on a pro bono basis as a special assistant attorney general for the state of New York and is a senior fellow for the Roosevelt Institute. He is a member of the Investor Advisory Committee of the Securities and Exchange Commission, the Treasury Department's Financial Research Advisory Committee and the Public Company Accounting Oversight Board's Investor Advisory Group.

From 2008 to 2011, Silvers served as the deputy chair of the congressional oversight panel for TARP. Between 2006 and 2008, he served as the chair of the competition subcommittee of the U.S. Treasury Department Advisory Committee on the Auditing Profession and as a member of the U.S. Treasury Department Investor's Practice Committee of the President's Working Group on Financial Markets.

Silvers led the successful efforts to restore pensions to the retirees of Cannon Mills lost in the Executive Life collapse and the severance owed to laid-off Enron and WorldCom workers following the collapse of those companies. He graduated from Harvard *summa cum laude*, studied history at Kings College,

Cambridge University, and holds an M.B.A. with high honors from Harvard and a J.D. with honors from Harvard Law School.



## William Spriggs

Chief Economist, AFL-CIO, and Professor of Economics, Howard University

William Spriggs serves as chief economist to the AFL-CIO, and is a professor in, and former chair of, the Department of Economics at Howard University. Spriggs assumed these roles in August 2012 after leaving the executive branch of the U.S. government.

Spriggs was appointed in 2009 to serve as assistant secretary for the Office of Policy at the U.S. Department of Labor, taking a leave of absence from Howard University to do so. At the time of his appointment, he also served as chairman for the Healthcare Trust for UAW Retirees of the Ford Motor Co., as chairman of the UAW Retirees of the Dana Corporation Health and Welfare Trust, on the joint National Academy of Sciences and National Academy of Public Administration's Committee on the Fiscal Future for the United States, and as senior fellow of the Community Service Society of New York.

Spriggs' previous work experience includes roles leading economic policy development and research at the Economic Policy Institute and the National Urban League, positions at the U.S. Department of Commerce and the U.S. Small Business Administration, the Joint Economic Committee of the U.S. Congress and the independent federal National Commission for Employment Policy.

While working on his Ph.D. in economics from the University of Wisconsin, he began his labor career as co-president of AFT Local 3220 in Madison, Wisconsin. Spriggs is a member of the National Academy of Social Insurance and the National Academy of Public Administration.



## Joseph E. Stiglitz

Nobel Laureate, University Professor at Columbia University and Chief Economist at the Roosevelt Institute

Joseph E. Stiglitz is an American economist and a professor at Columbia University. He is also the co-chair of the High-Level Expert Group on the Measurement of Economic Performance and Social Progress at the OECD, and the chief economist of the Roosevelt Institute. A recipient of the Nobel Memorial Prize in Economic Sciences (2001) and the John Bates Clark Medal (1979), he is a former senior vice president and chief economist of the World Bank and a former member and chairman of the (U.S. president's) Council of Economic Advisers.

In 2000, Stiglitz founded the Initiative for Policy Dialogue, a think tank on international development based at Columbia University. He has been a member of the Columbia faculty since 2001 and received that university's highest academic rank (university professor) in 2003. Based on academic citations, Stiglitz is the fourth most influential economist in the world today, and in 2011 he was named by TIME magazine as one of the 100 most influential people in the world. Known for his pioneering work on asymmetric information, Stiglitz's work focuses on income distribution, asset risk management, corporate governance and international trade. He is the author of numerous books, including several bestsellers. His most recent titles are *Rewriting the Rules of the American Economy: An Agenda for Growth and Shared Prosperity* and *The Great Divide: Unequal Societies and What We Can Do About Them*.



## Richard L. Trumka

President, AFL-CIO

Richard Trumka is president of the 12.5-million-member American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the largest organization of labor unions in the country. An outspoken advocate for social and

economic justice, Trumka is the nation's clearest voice on the critical need to raise workers' wages in this slow and painful recovery from the Great Recession. He heads the labor movement's efforts to build broadly shared prosperity and to hold government and employers accountable to working families.

Trumka is a tireless advocate for good jobs and for strengthening the middle class by restoring workers' freedom to join and form unions. He works passionately to end unfair trade practices and support U.S. manufacturing. His innovative leadership has established investment programs for union pension and benefit funds in order to create long-term value for workers. He challenges excessive corporate power and abuses of workers' rights here

and abroad. He has confronted racism and classism head on—from apartheid in South Africa to mass incarceration and immigration reform in the United States.

Trumka began his career as a coal miner, and continued to work in the mines as he attended Penn State University and Villanova University Law School. In 1982, at age 33, he ran on a reform ticket and was elected the youngest president of the United Mine Workers of America (UMWA). There he led one of the most successful strikes in recent American history against the Pittston Coal Co., which tried to avoid paying into an industrywide health and pension fund. Trumka joined an insurgent campaign and was elected secretary-treasurer of the AFL-CIO in 1995. He became the federation's president in 2009.

# ESSAYS

The opinions expressed in this booklet are solely those of their respective authors and do not necessarily reflect the views of the AFL-CIO. These essays were prepared in conjunction with the AFL-CIO conference "Trading Up: A Critical Perspective on Jobs, Governance and Security in U.S. Trade Policy."

# What's Trade Got to Do With It, Anyway?

Celeste Drake

AFL-CIO, Trade Policy Specialist and Conference Organizer

With decreasing bargaining power, increased offshoring, historic income inequality and shrinking manufacturing all correlated with expanded U.S. trade and investment agreements, it seems clear that U.S. trade policy isn't working for America's working families. Instead, it has contributed to a reduced voice in the workplace, wage stagnation and more dead-end service jobs, some of which don't even come with the basic benefits of a "job," such as knowing that you will be scheduled to work some minimum number of hours each pay cycle or that you will have access to workers' compensation if injured on the job.

With apologies to Tina Turner, those who fight for a reset in U.S. trade policy often hear that our argument proves too much—in other words, these impacts have nothing to do with trade, but are the result of other, unrelated economic trends. For those inclined to support more trade deals, no matter their contents, this proposition sounds reasonable, even compelling. But is it really true? In a word, no. Make no mistake—the current trade and investment rules are not the only cause of wage stagnation, income inequality, decreasing union density and the rise of informal work. But they play a large role. And they set up the wrong incentives.

In an era in which so-called "free trade agreements" have placed rules, restrictions and requirements on food safety, consumer labels, government purchasing, intellectual property, temporary entry visas, bank regulations, investor rights, environmental protections, manufacturing subsidies, renationalization of contracted services and other domestic policy decisions, it is virtually impossible to find an area of the global economy that trade and investment rules do not impact.<sup>1</sup> And yet these deals still are called "trade deals" in popular discourse. On the one hand, it's shorter than "trade, investment and economic policy agreement." On the other hand, it's a lot less accurate.

The community of critics of neoliberal trade deals, by which I mean the trade deals that have come in the wake of the groundbreaking North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), too often have been characterized by Washington policy elites as protectionists or isolationists. Our arguments have been criticized as uninformed, our concerns derided with such sweeping and inaccurate<sup>2</sup> generalizations as that "unions on principle, regardless of what the provisions are, are opposed to trade."<sup>3</sup>

However, the tide is turning. Respected academics—many of whom had formerly been solidly or moderately in the neoliberal trade camp—have begun to rethink the wisdom of further entrenching the current rules of trade, investment and globalization without reform, revision and rethinking.

Consider the following:

Nobel Prize Winner Paul Krugman:

*“[I]t’s hard to avoid the conclusion that growing U.S. trade with Third World countries reduces the real wages of many and perhaps most workers in this country. . . . I am arguing for an end to the finger-wagging, the accusation either of not understanding economics or of kowtowing to special interests that tends to be the editorial response to politicians who express skepticism about the benefits of free-trade agreements.*”

*“It’s often claimed that limits on trade benefit only a small number of Americans, while hurting the vast majority. That’s still true of things like the import quota on sugar. But when it comes to manufactured goods, it’s at least arguable that the reverse is true.”<sup>4</sup>*

MIT Professor David Autor:

*“The reality of adjustment to the China trade shock has been far different. Employment has certainly fallen in U.S. industries more exposed to import competition. But so, too, has overall employment in the local labor markets in which these industries were concentrated. Offsetting employment gains either in export-oriented tradables or in nontradables have, for the most part, failed to materialize. . . .*

*“Without question, a worker’s position in the wage distribution is indicative of her exposure to import competition. In response to a given trade shock, a lower-wage employee experiences larger proportionate reductions in annual and lifetime earnings, a diminished ability to exit a job before an adverse shock hits, and a greater likelihood of exiting the labor market, relative to her higher-wage co-worker.”<sup>5</sup>*

Nobel Prize Winner and former World Bank Chief Economist Joseph Stiglitz:

*“Even the way Obama argued for the new trade agreement showed how out of touch with the emerging global economy his administration is. He repeatedly said that the TPP would determine who—America or China—would write the twenty-first century’s trade rules. The correct approach is to arrive at such rules collectively, with all voices heard, and in a transparent way. Obama has sought to perpetuate business as usual, whereby the rules governing global trade and investment are written by U.S. corporations for U.S. corporations. This should be unacceptable to anyone committed to democratic principles.*”

*“Those seeking closer economic integration have a special responsibility to be strong advocates of global governance reforms: if authority over domestic policies is ceded to supranational bodies, then the drafting, implementation and enforcement of the rules and regulations has to be particularly sensitive to democratic concerns. . . . In 2016, we should hope for the TPP’s defeat and the beginning of a new era of trade agreements that don’t reward the powerful and punish the weak.”<sup>6</sup>*

Harvard Professor Dani Rodrik:

*“Globalization has not lifted all boats. Many working families have been devastated by the impact of low-cost imports from China and elsewhere. And the big winners have been the financiers and skilled professionals who can take advantage of expanded markets. While globalization has not been the sole (or even the most important) force driving inequality in the advanced economies, it has been a contributor.”<sup>7</sup>*

Former Secretary of Labor and NAFTA advocate in the Bill Clinton administration, Robert Reich:

*“I used to believe in trade agreements. That was before the wages of most Americans stagnated and a relative few at the top captured just about all the economic gains.*

*“The old-style trade agreements of the 1960s and 1970s increased worldwide demand for products made by American workers, and thereby helped push up American wages.*

*“The new-style agreements increase worldwide demand for products made by American corporations all over the world, enhancing corporate and financial profits but keeping American wages down.”<sup>8</sup>*

With so many advocates of earlier neoliberal trade deals switching sides, or at least expressing skepticism, advocates of the deals currently under consideration and negotiation would be wise to think before acting. Perhaps there really is a place where fair traders and free traders can meet.

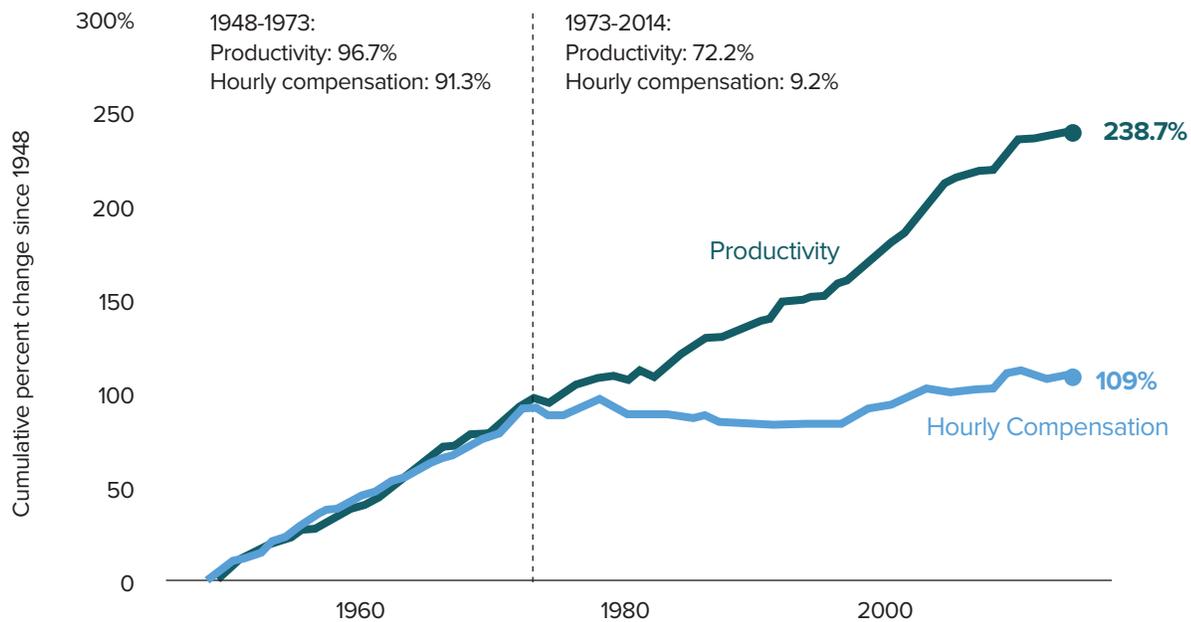
The task that lies before policy makers is to review the evidence, consider alternatives and chart a new course that includes trade, investment and globalization on the right model, with the right incentives. Four major themes in particular stand out: economy, transparency, security and the public good.

### Trade and the Economy

As Autor and Krugman note, too often, advocates of neoliberal trade simply assert the economic value of trade agreements based on economic models, rather than on empirical evidence. But those models make too many unrealistic assumptions, such as that trade-related unemployment is temporary, transition costs for workers are negligible, and that wages rise with productivity.

As it turns out, the reality is far different. Of course trade can create jobs. It also can destroy them. And it's unlikely to raise U.S. wages in any meaningful way given that the link between worker productivity and wages broke more than 40 years ago (see chart, next page). That link of course could be re-established by changing policy choices related to the ease with which workers may form unions, strengthening rights on the jobs and social protections, increasing and improving access to education, training and innovation hubs, and reforming the tax incentives faced by offshorers. To really work, such policy choices must be implemented domestically and be supported by trade rules that prevent a race to the bottom, and instead enshrine a race to the top.

## Disconnect between productivity and a typical worker's compensation, 1948–2014



Note: Data are for average hourly compensation of production/nonsupervisory workers in the private sector and net productivity of the local economy. “Net productivity” is the growth of output of goods and services minus depreciation per hour worked.

Source: EPI analysis of data from the BEA and BLS (see technical appendix of *Understanding the Historic Divergence Between Productivity and a Typical Worker’s Pay* for more detailed information)

Economic Policy Institute

To date, such wage-raising rules have yet to appear in a U.S. trade deal or even in a U.S. implementing bill. Trade Adjustment Assistance (TAA), which has been proposed as a sweetener for the Trans-Pacific Partnership (TPP) and other attempts to nod at the problem while racing at high speed toward more job loss and wage stagnation simply don’t work. And they explain the large and growing resistance to the TPP and similar deals, which seem far more focused on enhancing corporate profits than the lives of ordinary workers.

As Robert Scott explains in his essay, one of the TPP’s critical failures is its omission of enforceable currency rules, while Dean Baker argues that the TPP’s intellectual property provisions make it more “protectionist” than “market opening.” To reset these deals and create terms that working people can support, U.S. trade policy needs a heavy dose of transparency, which I will deal with in the last section of this paper. Until then, these deals will be rightly viewed by many as back-room deals by and for corporations.

## Trade and Security

As Heather Hurlburt notes in her compelling essay for this conference, the national security case for trade has a long history. Unfortunately, working people have not always found the case particularly compelling with respect to NAFTA and its progeny, because it often seems those advancing it propose trading away our economic welfare in exchange for vague and transitory security promises.

The idea that trade deals can enhance security ought to be more than a promise, but as with promises about trade strengthening our economy, working people believe the terms of trade would have to change. As Manuel Pérez-Rocha and Jeff Faux explain, security is a two-way street. Terms of trade that benefit global corporations while pulling the rug out from under traditional and impoverished communities actually undermine security. NAFTA and its cousin, the Central America Free Trade Agreement (CAFTA), devastated rural economies without creating decent jobs in their wake. This led to displacement and forced migration, and contributed to lawlessness and narcotics trafficking. In other words, in at least some instances, trade degrades security.

On a related note, some TPP advocates argue that its terms will enhance security in Asia by lifting China's standards to "ours." First, workers must ask the obvious question about just "whose" standards the TPP adopts. Then we must ask whether the TPP contains the right tools to incentivize China to change anything at all. Damon Silvers addresses these questions, arguing that the TPP's rules are so weak and porous that China could reap trade benefits from it without changing its policies at all.

## Trade and the Public Good

The controversy surrounding the TPP as well as the Trans-Atlantic Trade and Investment Partnership (TTIP) and the Trade in Services Agreement (TISA) finally have forced a public discussion of how trade rules have been used to lower standards, to deregulate, and to enhance corporate power over national economies. This is the critical question facing our third panel today. U.S. Sen. Sherrod Brown's contribution to this booklet lays out in a concise fashion the key ways in which the TPP undermines the public good.

Just as in most areas in life, the rules of trade matter. A lot. For example, if the rules on regulations and technical standards place a higher value on the "right" to sell a product in the form and manner preferred by its producer than on the obligation of a government to keep its populace well-informed and its economy sustainable, standards *will* be undermined, no matter how many promises trade negotiators make. This is the kind of thinking that contributes to WTO decisions that the U.S.'s country of origin labeling and India's promotion of a domestic solar panel industry both constitute trade violations.

The global businesses that benefit from U.S. trade policy often use trade rules to box in domestic policies, thus limiting the choices a democratic society may make about how to deal with financial crises; preserve natural resources; provide critical public services; and ensure clean air, food and a pure water supply.

For example, U.S. trade agreements contain provisions that attempt to limit certain types of reasonable, nondiscriminatory regulations that a country may impose on financial services providers.<sup>9</sup> U.S. trade agreements also impose on domestic policy deliberations by requiring that nations (and in some cases their political subdivisions, such as states and provinces) adopt only measures that “are not more trade-restrictive than required.”<sup>10</sup> In September 2011, a WTO panel issued a decision invoking a similar clause when it ruled that the United States’ “dolphin-safe” tuna labeling requirements “are more trade-restrictive than necessary” to achieve the legitimate objective” of letting consumers know whether dolphins were harmed in the process of fishing for tuna.<sup>11</sup>

The biggest threat to the public good in U.S. trade policy, however, is investor-to-state dispute settlement (ISDS), an issue addressed comprehensively by Brooke Güven in her essay. ISDS is a private justice system only available to foreign investors. It allows investors unhappy with a local, regional or national law, regulation, or administrative or judicial decision to bypass domestic courts and seek unlimited sums to repay its lost “expected” profits. In one particularly galling case, *Mobil & Murphy Oil v. Canada*, two oil companies challenged guidelines issued by the Canada-Newfoundland Offshore Petroleum Board governing required research and development and education and training expenditures to assist economic development in Canada’s poorest province. Even though the guidelines merely updated existing obligations, Canada lost. The companies first tried to overturn the guidelines in the Canadian courts and lost, but won in the ISDS “corporate court,” essentially getting a second bite at the apple—a bite a domestic company could not get.

These cases are on the rise, with a record high of 70 cases filed in 2015.<sup>12</sup> Perhaps the most telling fact about ISDS is that it only applies to investors. This special privilege to sue a government in an international arbitration forum is denied to labor, environmental and human rights groups. No credible legal or philosophical argument has ever been offered to explain this differential treatment of property rights and other fundamental human rights. This profound difference in enforcement reveals much about the imbalance of political power among those seeking to influence U.S. trade policy, and leads us back again to the question of who should be at the table as these global rules are negotiated.

As with the other themes raised in today’s conference, trade deals might be used for the opposite effect, to constantly raise the bar, to improve health and safety, to fight pollution and climate change, and to strengthen public services. But to date, this has been neither the goal nor the outcome of neoliberal deals. This pattern can change, but civil society must be at the table, not simply in rooms nearby.

## Trade and Secrecy

When decisions about economic policy are made behind closed doors, those decisions tend to advance the policy preferences of political and economic elites, not the broad interests of the populace at large. U.S. trade policy decisions have been made this way for years, and workers, small farmers, small businesses and domestic manufacturers have paid the price. The U.S. trade deficit has grown with each succeeding trade agreement, the manufacturing sector continues to shrink, and even the well-educated and highly skilled often have a hard time making ends meet.

This is why the AFL-CIO has been arguing for a new trade policy that brings decision making into the light of day and addresses longstanding deficiencies in the United States' approach to trade and investment.

As today's conference recognizes, contemporary trade agreements are about much more than tariffs and quotas, yet the U.S. government still treats trade policy making as though a few negotiators in a smoke-filled room need to retain secrecy in order to make difficult tradeoffs between increasing quotas on sugar and reducing tariffs on cheese. Because trade agreements affect virtually every other policy area, America's working people have been clear: these decisions should not be made behind closed doors—away from the eyes of the people.

Such secrecy is inconsistent with democratic principles, archaic and, for workers, devastating. Trade negotiators who tell the American public “trust me, this'll be good for you, even though I can't tell you what's in it” only breed further distrust in government. Even so, secrecy in trade negotiations is traditional, longstanding and has strong supporters from both inside and outside government. In our panel addressing this issue today, the panelists will address these questions head on.

Ordinary families around the world are fighting for the soul of trade policy. Will it remain a way to entrench corporate rights or will it usher in an era of progressive, standard-raising agreements designed to promote inclusive growth and shared prosperity? No one thinks righting the course of globalization and trade will be quick or easy. But if the process is to begin, with both major presidential candidates rejecting the status quo, now is an opportune time to make a stand to change the rules: not to stop trade, but to use it as a tool to achieve a global economy that works for all.

### Endnotes

1 See, e.g., the 30 chapters and numerous annexes, consistency plans and side letters to the Trans-Pacific Partnership. Available at: <http://tpp.mfat.govt.nz/text>.

2 For example, the AFL-CIO supports the Generalized System of Preferences and the African Growth and Opportunity Act, both of which provide unilateral benefits to developing countries to promote increased U.S. imports. Similarly, the AFL-CIO supports the Export-Import Bank, which provides financing to increase U.S. exports.

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6 Joseph Stiglitz, “In 2016, let’s hope for better trade agreements—and the death of TPP,” *The Guardian*, Jan. 10, 2016. Available at: [www.theguardian.com/business/2016/jan/10/in-2016-better-trade-agreements-trans-pacific-partnership](http://www.theguardian.com/business/2016/jan/10/in-2016-better-trade-agreements-trans-pacific-partnership).

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8 Robert Reich, “The New Truth About Free Trade,” *RobertReich.org*, March 14, 2016. Available at: <http://robertreich.org/post/141046532920>.

9 See, e.g., U.S.-Peru Trade Promotion Agreement [hereinafter Peru TPA], Art. 12.4 (available at: [www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset\\_upload\\_file461\\_9544.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file461_9544.pdf)), in which parties agree not to place limitations on the number of financial institutions that may exist or on the number of persons a financial institution may employ. While the United States has not employed such quotas nor shown any recent desire to impose them, the question remains how far future agreements will attempt to go in limiting nondiscriminatory domestic measures.

10 See, e.g., the Agreement on the Application of Sanitary and Phytosanitary Measures, art. 5, April 15, 1994, 1867 U.N.T.S. 493. Available at: [www.wto.org/english/docs\\_e/legal\\_e/15-sps.pdf](http://www.wto.org/english/docs_e/legal_e/15-sps.pdf).

11 WTO Dispute Settlement Panel Report on U.S. Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, WT/DS381/R, para. 7.578 (Sept. 15, 2011). Available at: [www.wto.org/english/tratop\\_e/dispu\\_e/381r\\_e.pdf](http://www.wto.org/english/tratop_e/dispu_e/381r_e.pdf).  
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# The TPP as a Protectionist Pact: The Case of Intellectual Property

Dr. Dean Baker

Co-Director, Center for Economic and Policy Research

The proponents of the Trans-Pacific Partnership (TPP) like to tout it as a 21st century free trade agreement. Rather than being a “free trade” agreement, it is likely that, on net, the TPP actually increases barriers to trade. The reason is that one of the major priorities of the TPP is stronger rules on intellectual property (IP) in the form of longer and stronger copyright, patent and related protections. The increase in these barriers is likely to more than offset the small reduction in tariffs and other trade barriers in the TPP, making the TPP a protectionist pact.

The basic story of patents and copyrights is that they are government-granted monopolies that allow companies to charge prices far above the free market price. The rents associated with these monopolies provide an incentive for firms to innovate, and for writers, musicians, movie producers and others to do creative work. The argument is that the value of the innovation and creative work spurred by these protections exceeds the higher prices consumers must pay.

There are two important points to be made about intellectual property rules as a way to promote innovation and creative work. The first is that honest analysts cannot ignore their impact on prices, even if they consider them to be good policy. In other words, consumers and the economy bear a substantial cost in the form of higher prices due to patent and copyright protection, even if these are an effective mechanism for supporting innovation and creative work.

The second point is that it is not clear patents and copyrights are the best ways to support innovation and creative work. More immediately relevant to the TPP, it's not clear that stronger protections in these areas will be an effective way to further boost innovation and creative work. Starting with the first point, extending protection to items that currently are not protected is equivalent to imposing an enormous tariff. While most of the tariffs between the countries in the TPP already are low (under 10%), applying IP protection to items that otherwise would be available at their free market price can be equivalent to tariffs of several hundred or even several thousand percent. Just as lowering tariffs in general will be a boost to economic efficiency and lead to an increase in GDP, higher prices due to IP protections will create inefficiencies and reduce GDP.

While none of the models assessing the economic impact of the TPP has sought to measure the drag from stronger IP protection, New Zealand's government did assess the impact on the country of the TPP provision requiring that copyright duration be 70 years, extending it from New Zealand's

current 50-year duration. The government [estimated](#) this one relatively minor measure would cost an amount equal to 0.024% of New Zealand's GDP.

This figure is striking because its impact on New Zealand likely would be small compared with its impact on other countries in the TPP, and also because this is probably one of the less important IP provisions in the TPP. Since New Zealand already had a well-developed system of copyrights, the impact on growth of extending the duration to 70 years almost certainly would be far less than in countries like Malaysia and Vietnam that don't currently have strong systems of copyright enforcement. The loss in these countries presumably would be considerably larger than in New Zealand. By comparison, the International Trade Commission estimated the gains from the TPP at just 0.23% of GDP.

The other point is that provisions on patent-related protections are probably far more important economically than the copyright provisions. The impact is likely greatest in the case of prescription drugs. The goal of the U.S. trade policy is to apply the same sort of IP rules to its trading partners as we currently have in the United States.

The United States currently spends around \$430 billion a year (at 2.2% of GDP) on drugs that likely would sell for about one-tenth this amount in a free market. This gap implies protection-related costs of around \$380 billion a year, or more than 2% of GDP. TPP provisions could raise these costs even higher in the United States, but more importantly, they would have the effect of raising prices in the other TPP countries.

It would be difficult to determine how much higher prices would go in other countries since many issues, such as the duration of marketing exclusivity stemming from clinical trial test data, remain unresolved. Furthermore, the exact extent of protections effectively amounts to trench warfare, with the U.S. government pressuring other countries on behalf of the pharmaceutical industry to always make patent protections stronger and to apply to more areas.

However, the sums involved in pharmaceuticals alone are likely to dwarf the gains projected from the tariff reductions in the TPP. While many people have raised high drug prices as an important health issue, which is certainly true, the economic impact is quite large relative to the reductions in trade barriers in the TPP. When the impact of stronger protections in other areas is included, the economic cost could be more than an order of magnitude greater than the potential gains from the tariff reductions in the TPP.

There is one last point worth making about stronger IP protection. The standard trade models assume that a deal like the TPP will not affect the balance of trade. The idea is that the value of the dollar relative to other currencies will adjust so that the overall trade balance does not change, even if the composition does change.

A direct implication of this assumption is that if the United States receives more money from its trading partners for its copyrights and patents as a result of the TPP, then it will have to run large

deficits in other areas to keep the trade balance constant. This means that increased patent and copyright protection by our TPP partners will cause the United States to run a larger trade deficit in manufactured goods and other areas. The result will be less income for U.S. steel and auto manufacturers, but more income for Pfizer, Disney and Microsoft.

The other side of the patent/copyright story is the assumption that we will get more innovation and creative work as a result of the increased protections in the TPP. This is a dubious assumption with weak economic evidence. Patent monopolies give people an incentive to pursue patent rents; this often is not productive. In the case of drugs, for example, it gives drug companies more incentive to develop copycat drugs that treat a condition for which a successful drug already exists. From an economic standpoint, such copycat drugs may be of little value, but they will allow a drug company to get a portion of the patent rents that had been accruing to the successful drug.

The rents from patents and copyrights also give their holders incentive to use the courts to harass potential competitors. They also provide an incentive to lobby the government to make these protections ever stronger. The TPP is one manifestation of these efforts. One outcome is considerably more punitive rules on copyright violations, not only for the United States, but also for all the countries in the TPP. These punitive measures impose a cost on the government and society for the benefit of the copyright holders.

In the case of patents, higher rents also encourage secrecy, which impedes scientific progress. Companies naturally want to secure as much of the benefits from their research as possible for themselves. This means sharing as little information as possible with other researchers.

This is an especially serious problem in the case of prescription drugs, where companies have a strong incentive to conceal evidence that may reflect poorly on their product. The result is that patients may end up taking drugs that are not helpful for their condition, and even could be harmful. There have been numerous instances in which drug companies have been forced to pay damages based on such misrepresentation. The [cost](#) in the form of unnecessary illness and death easily can run into the tens of billions of dollars annually.

In short, we know that stronger and longer patent and copyright protections will impose serious costs on consumers and the economy. The idea that these costs will be offset by an increase in innovation and creative work is really just a hope by TPP proponents, rather than a well-founded claim resting on solid evidence. For this reason, we should view the TPP as a protectionist pact, not a free trade agreement.

## Why We Need to Fix TPP

Hon. Sherrod Brown

U.S. Senate, D-Ohio

Our country has seen firsthand what free trade agreements have done to our economy. Bad deals have closed factories, torn apart families and devastated communities.

Americans have every right to be skeptical of new trade deals, particularly the Trans-Pacific Partnership—the largest trade deal ever negotiated. The agreement, which already includes 11 other countries, only will continue to grow, leaving the door open to other countries like China to join the agreement later. Given the ability of other countries to dock onto TPP, it is critical the United States makes improvements to the agreement in its current form.

Our trade policy should make it easier to sell American-made products around the world while expanding economic opportunities, increasing workers' wages, and strengthening international labor standards and preserving access to medicines. Right now, TPP falls short in each of these areas.

The administration claims the TPP is the most progressive trade agreement in terms of labor standards. But after decades of administrations failing to fully enforce labor standards in our free trade agreements, it's hard to imagine how TPP will be any different. Labor standards mean something to workers only if they're enforced, and the TPP does not require our trading partners to live up to the labor standards from day one of the agreement.

Another area where TPP falls short is access to medicines. Instead of achieving a balance between intellectual property protections and public health, the TPP will limit access to affordable, lifesaving drugs by restricting access to generic medicines. Limiting competition from generic pharmaceuticals might be good for corporate profits, but it is bad for U.S. and global health objectives.

TPP also includes investor-state dispute settlement—a process that allows corporations to sue foreign governments over regulations or policies that could hurt their bottom line. This practice has no place in our trade agreements. It is good news that the agreement includes a carve-out to prevent tobacco companies from challenging tobacco control measures that protect public health. But it proves exactly why we shouldn't give corporations greater rights than workers.

The currency agreement reached by TPP parties—which is not even part of the TPP itself—is inadequate and does not come close to the strong, enforceable provisions I pushed for during the Fast Track debate. As a result, TPP does nothing to crack down on countries that manipulate their currency to gain an unfair advantage.

And in the auto rules of origin, the TPP's rules actually are weaker than NAFTA. The auto chapter will allow 55% of cars to come from non-TPP countries, such as China. These provisions will undermine our auto supply chain and cost jobs.

We must do everything we can to ensure this agreement does not move forward without meaningful improvements that will boost our auto sector, create U.S. jobs and export opportunities, and raise labor standards in countries around the world. This is especially important since the agreement will grow to include new trading partners. I will continue to push for these improvements before this deal is voted on by Congress. The potential impact of this agreement is too important to rush it through Congress in its current form.

## Do Trade Deals Make Us Safer?

Jeff Faux

Founder and Distinguished Fellow, Economic Policy Institute

During the 1993 congressional debate over the North American Free Trade Agreement, an influential Democratic congressman, who had a solid pro-labor voting record, invited me to his office to tell him why I thought NAFTA would be bad for working people.

“Well, you may be right about the economics,” the congressman said finally. “But we have a long southern border. The president told me we need NAFTA to make Mexico more stable so the border will be more secure.”

NAFTA has been the model for all of the so-called “free trade” agreements the United States has signed since—and for the currently proposed Trans-Pacific Partnership. During the debates, when the economic case for these deals starts to crumble, national security becomes the fallback rationale.

The national security argument for NAFTA was that it would halt illegal immigration (which at the time was quite modest) and create a modern stable democracy in Mexico under the rule of law. “There will be less illegal immigration,” promised President Clinton, “because more Mexicans will be able to support their children by staying home.” Former President Gerald Ford warned against “a huge illegal flow of illegal immigrants” who “want jobs that are presently being held by Americans.”

The foreign policy experts assured us that Carlos Salinas, then the Mexican president, was “our man” in Mexico. We were told that he represented a new generation of honest, highly competent leaders that would transform Mexico into a First World democracy. Ex-president (and former head of the CIA!) George H.W. Bush said the “courageous” Salinas “had dramatically improved Mexico.” Former Secretaries of State Republican Henry Kissinger and Democrat Cy Vance, in a joint Washington Post op-ed, praised Salinas’ “dynamic leadership.” TIME magazine named him “Latin American Man of the Year.”

This argument began unraveling as soon as NAFTA went into effect on Jan. 1, 1994. An armed revolt broke out that same day in the southern Mexican state of Chiapas, with rebels citing NAFTA as a major grievance. In December, the Mexican peso collapsed after it was revealed Salinas had been covering up the country’s mismanaged finances. The U.S. government then had to bail out Mexico with a \$25 billion loan. In January 1995, Salinas—whose family had been linked to narcotics trafficking—fled the country in disgrace.

After that unhappy start, the credibility of the national security claims for NAFTA kept going steadily downhill. Not only did NAFTA not reduce undocumented immigration, it accelerated it. For example, Mexican small farmers could not compete with heavily subsidized U.S. agribusiness, triggering a massive dislocation of rural families into the cities, where there was no work. Desperate for jobs,

millions headed north across the border. As a result, undocumented immigration became a major divisive issue in American politics, and now has elevated the demagogue Donald Trump to the Republican nomination for president.

Far from making Mexico more stable under the rule of law, NAFTA helped Mexico descend into lawlessness and social insecurity. The huge increase in trade overwhelmed U.S. Customs, making it easier to ship marijuana and cocaine from Mexico and South America across the border. And just as NAFTA allowed Mexico to become an export platform for trans-shipping Chinese goods to the United States, it allowed Mexico to become a channel to the United States for heroin and synthetic drugs from Asia.

As the narcotics business boomed, so did the power of the drug lords, who now reach into every level of Mexican government—including the armed forces. Wars among the cartels have spread violence throughout the country. This has spawned a new generation of criminal gangs that have expanded into kidnapping, robbery and extortion—and the murder of journalists, officials and ordinary citizens who get in their way.

The 2016 U.S. State Department travel advisory on Mexico warns Americans not to travel to two of the six states bordering the United States, and to exercise extreme caution in the other four. According to the report, “U.S. citizens have been the victims of violent crimes, such as homicide, kidnapping, carjacking and robbery by organized criminal groups.... Gun battles between rival criminal organizations or with Mexican authorities have taken place in towns and cities in many parts of Mexico, and have occurred in broad daylight on streets and in other public venues, such as restaurants and clubs.”

Drawn further by our NAFTA relationship into Mexico’s woes, the United States has given Mexico at least \$2.5 billion in military aid for its “war” on drugs, despite widespread narcotics corruption in the army, the police and the judiciary at all levels. A 2016 report by the University of the Americas in Puebla concluded that the chance of being convicted of a serious crime (e.g., murder, torture, kidnapping) in Mexico is 1%. Of 59 countries studied, only the Philippines had a worse record of impunity from justice.

NAFTA is certainly not the sole cause of violence and corruption in Mexico. The point here is that the claim of the U.S. foreign policy establishment that NAFTA would strengthen the security of our southern border has been thoroughly discredited. Yet the same assertion that NAFTA-like trade agreements will make us more secure continues to go virtually unchallenged in our national debate.

Today, few of the promoters of the Trans-Pacific Partnership can claim with a straight face that the deal will make most working Americans’ lives better. Rather, their arguments have been reduced to assuring workers their lives won’t be much worse—at least not too much worse.

Then, why do it? The answer, once again, is national security. TPP, we are told, is part of a grand strategy to “contain” China. If we do not pass it, argue the corporate globalists, China will dominate East Asia and set the rules for the global economy. Thus, The Washington Post editors, who never saw a trade deal they didn’t like, write that the TPP will give us more allies, like Japan, against our

“common rival” China. President Obama adds that, by having us set the rules rather than China, we can force China to accept our free-market “values” and our hegemony in the region.

But it is precisely the made-in-USA trade rules that allowed China to become our economic and political rival. Obama’s argument is the same one that Bill Clinton used in 2000 for the Permanent Normal Trade Relations (PNTR) deal that deregulated trade with China and subsequently flooded the U.S. market with cheap goods made by repressed and abused labor. PNTR, Clinton told us, was a clever geopolitical strategy to “pull China in the right direction.”

After 16 years of continuous job loss and a relentless trade deficit that has transferred trillions of dollars from the United States to China, we now are told that China has moved in the “wrong” direction. Our politicians and pundits express shock that its authoritarian government pursues mercantilist policies of currency manipulation, export dumping and labor suppression to expand its market shares to the point where China is about to surpass the United States as the world’s largest economy.

Flush with dollars from its massive trade surpluses, China has built up both its “hard” and “soft” geopolitical power. On the hard power side, it is rapidly expanding its armed forces, with which it inevitably will dominate its regional neighborhood, just as we dominate ours in the Western Hemisphere. In response, the United States is expanding its military presence in Asia, where today, Chinese and U.S. warplanes and ships are dangerously buzzing each other in the South China Sea.

On the soft power side, China has built up a massive global capital investment machine, elbowing out U.S. commercial interests all over the world. Among other things, it has emerged as the biggest economic beneficiary of the U.S. invasion of Iraq—without firing a shot. Its Asia Infrastructure Investment bank now rivals the U.S.-dominated World Bank in that part of the world; member/investors include such U.S. allies as Great Britain, Germany, France, Saudi Arabia and Israel. And with its huge cache of U.S. dollars, it has cornered the supply of a group of strategic materials used by our own military.

Now, after having created this huge rival through trade deregulation, what is the American policy class’ strategy for dealing with it? More deregulated trade! In other words, we must sacrifice more U.S. jobs to countries in southeast Asia in the hope that they will ally with us against China.

Given our experience, the notion that by further opening up what is left of our domestic markets to low-wage labor competition we can somehow halt the growth of China’s influence in Asia is simply unbelievable. China’s trade with its neighbors will dwarf its trade with us. And all of the developing nations in that region are following the mercantilist Chinese model of development—the “wrong direction” Bill Clinton assured us China would abandon under PNTR.

Moreover, this is an increasingly dangerous game. Stronger economic commitments to these governments could drag us deeper into potential military conflicts with China, involving issues and places that have nothing to do with the national security of the people of the United States.

As the experience of NAFTA and the PNTR clearly show, the proposition that trade deals make Americans safer has spectacularly failed. Albert Einstein defined insanity as doing the same thing over and over again and expecting different results. It’s time we started learning from our mistakes.

# Investor-State Dispute Settlement: Tensions with Democracy and Human Rights

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As the United States and other governments consider ratification of the Trans-Pacific Partnership (TPP) and move forward with the negotiation of bilateral investment treaties and other megaregional agreements, including the Trans-Atlantic Trade and Investment Partnership (TTIP), it is crucial to gain a full appreciation of what these agreements mean for democracy and human rights, and to consider how they allocate, or reallocate, rights among and between governments, citizens and foreign investors. One issue that is increasingly apparent is that the investment chapters of these agreements, specifically the investor-state dispute settlement provisions contained therein, allow foreign investors to challenge legitimate governmental regulatory measures taken in good faith and in the public interest, including measures related to the protection of the environment and human rights, and that these agreements do not adequately permit third parties whose rights are implicated by the dispute to have their voices heard. By transferring sovereign rights and judicial interpretation away from public legal systems to private arbitrators and limiting the participation of impacted parties, these treaties undermine fundamental tenets of democracy and rule of law principles.

Investor-state dispute settlement (ISDS), which is included in the TPP and is being considered in the context of the TTIP, is a mechanism that allows foreign individuals and foreign companies to sue host-country governments through ad hoc arbitration proceedings rather than through domestic administrative and judicial channels.<sup>1</sup> Interested and affected third parties are not afforded a meaningful avenue to intervene in these disputes and there is no appellate mechanism, even in cases where tribunals make mistakes of law or fact.<sup>2</sup> ISDS mechanisms contained in existing treaties, and the hundreds of disputes that already have been brought pursuant to them, already have raised substantial concern among civil society as well as certain governments, as an increasing number of ISDS cases challenge a wide range of measures taken by governments in good faith and in the public interest. Available evidence on the nearly 700 known ISDS suits filed to date indicate that investors are using this mechanism to challenge and seek compensation for a seemingly unlimited range of government actions, including new and stronger environmental policies,<sup>3</sup> efforts to protect the rights of indigenous communities,<sup>4</sup> decisions to phase out nuclear power,<sup>5</sup> measures to protect public health through anti-tobacco legislation,<sup>6</sup> and for failing to “protect” investors against citizen opposition to investments perceived as being a risk to human rights, including those related to health, the environment and indigenous peoples.<sup>7</sup>

The United States Trade Representative (USTR) claims the investment chapters of the TPP and TTIP have been or are being drafted with the aim of overcoming the serious shortcomings of ISDS in the form in which it has been included in earlier treaties.<sup>8</sup> However, the USTR does not sufficiently consider the full scope of the issues posed by ISDS and the tensions that ISDS creates, both within a democratic society as well as with other international legal obligations, including in the area of human rights. Specifically, the USTR has not adequately addressed concerns that the investment chapters of these treaties: (1) have negative impacts on domestic law, policies and institutions; (2) impose large costs on governments, and by extension, domestic taxpayers, resulting from litigation and liability; (3) may inhibit democratic lawmakers' ability to regulate in the public interest; (4) provide greater substantive and procedural rights to foreign investors than are provided to their host-country, domestic counterparts; and (5) do not provide meaningful participation for third parties whose rights are affected by an investment or by the outcomes of an investment arbitration.<sup>9</sup>

First, ISDS has negative impacts on domestic law, policies and institutions. While it is frequently asserted that ISDS is an essential ingredient to protect the rights of foreign investors who may face biased or dysfunctional domestic adjudication systems, ISDS in its current form undermines these very legal systems and weakens protections for other domestic stakeholders. Further, the concern about underdeveloped or biased legal systems is not legitimate in the TTIP context, and is at most a questionable concern with respect to the TPP.

The United States, as in most other countries, has a domestic legal framework that has evolved over time to find the proper balance between private interests and the government's right to regulate and take other actions in the public interest. Detailed substantive and procedural rules govern who can bring claims, under what circumstances, through what processes, for what types of harms, and for what remedies. This balance, which continues to evolve through our common law legal system, reflects social norms and attitudes, and is checked through a constitutionally established separation of powers.

ISDS completely circumvents the deliberate balance between private and public rights we have so carefully developed in our domestic context. In so doing, it also undermines the institutions that frame the contours of and continue to shape this system. ISDS allows foreign investors, and only foreign investors, the option to bypass domestic courts and their substantive and procedural rules, and to opt into a parallel but distinct system in which party-appointed arbitrators determine whether substantive treaty protections have been breached, without the rules and considerations that underpin an analysis of government action in the domestic context.

With respect to any TPP or TTIP partner countries (or other multilateral or bilateral treaty partners) in which the legal system may be considered substandard, ISDS similarly undermines the necessary development of the domestic legal system and institutions. The United States, along with other developed countries, international organizations and international aid agencies, spends vast amounts of money to strengthen legal systems and train foreign judges in our partner countries. Are these efforts meaningful if we do not rely on these same judges to implement and help to shape domestic law as it relates to the balance of public and private interests? Are we not undermining

the evolution of these legal systems when we allow foreign investors to completely bypass such systems, and their corresponding rules?

Second, ISDS imposes large costs on governments and leaves taxpayers effectively insuring foreign investors for the risk of regulation, including for changes that impact domestic taxpayers as well as foreign investors. Awards rendered by arbitral tribunals average in the tens of millions of dollars and can reach billions of dollars. Setting aside the outsized awards, merely bringing or defending a claim costs an average of at least US\$8 million.<sup>10</sup> This, when investors who are concerned about their ability to obtain justice in a host-state's legal environment can purchase political risk insurance on the open market to protect against losses suffered by wrongful government conduct.<sup>11</sup> While ISDS effectively relies on taxpayer dollars to provide free "insurance" to foreign investors, political risk insurance factors in host-country characteristics, investment climate and governance indicators, sending market signals about the host-country business environment to both investors and to host countries. To the extent foreign investors had to purchase political risk insurance rather than relying on ISDS, they would be forced to internalize their risk-taking behavior to a greater extent and to consider more thoroughly the kinds and number of risks their business can sustain. And host countries would have more incentive to improve their investment climate to lower the risk premiums for interested investors.

Third, ISDS may inhibit democratic lawmakers' ability to regulate in the public interest.<sup>12</sup> While costs to regulatory space imposed by ISDS are difficult to determine, in a democratic system regulators decide how to appropriately balance public and private interests in enacting public policies that may have a negative impact on businesses. The checks and balances inherent to a domestic legal system facilitate a socially legitimate determination that regulators have upheld their role of protecting the public without overstepping their boundaries into the rights of the private sector. When democratically unaccountable arbitrators are charged with analyzing and interpreting public policies outside of the applicable socioeconomic context, and when they have the ability to impose large costs on governments that run afoul of their determinations, legislators may hesitate to risk such liability by taking legislative actions, particularly in such critical areas as the protection of the environment, health, and the rights of indigenous or local communities. This may be particularly the case when a problematic investment simultaneously is providing a much-needed economic boost to a particular region or country.

Fourth, ISDS provides foreign investors greater rights than their host-country, domestic counterparts. While the USTR has stated that foreign investors will not be afforded greater rights than U.S. investors under the auspices of TPP or TTIP, claiming that protections in these treaties mirror their comparable domestic standards, evidence does not support this claim.<sup>13</sup> In addition to the preferential substantive rights afforded in treaties, the disparate procedural rules and rights impact how substantive legal claims are likely to be treated differently under ISDS than they would be under a domestic system. For example, would a treaty obligation not to "expropriate" property be treated similarly to the Fifth Amendment protection against uncompensated takings under the U.S. Constitution? While many elements of a "taking" versus an "expropriation" are similar, an investor that characterizes a domestic "taking" as a treaty-based "expropriation" under ISDS can eschew

many of the substantive and procedural limitations of domestic courts. Identifying a “taking” under the U.S. Constitution is an extremely complex undertaking governed by extensive jurisprudence that provides substantive guidance on how this analysis must be conducted. While one of these domestic law “takings” tests is roughly reflected in the TPP and the TTIP, other tests are not.<sup>14</sup> Even when ISDS tribunals seek to apply the one U.S. domestic law-based test under a treaty, these ad hoc tribunals are not bound by the domestic precedent that provides the actual substantive meaning to the legal standard; nor are arbitrators or foreign investors limited by the plethora of procedural rules that further circumscribe the types of claims that can be brought. How then, can the USTR legitimately claim there could not be stronger substantive protections than the domestic system when there is no guarantee that the standard applied in the treaty is the same as that applied under domestic law, and in which procedural rules are inapplicable in ISDS?

A recent NAFTA case against Canada provides a useful illustration of a judgment rendered by an arbitration panel that differed from both the process and likely result of a determination under Canada’s administrative processes. In *Bilcon v. Canada* (rendered under NAFTA’s Chapter 11, which is comparable to the investment chapters of TPP and TTIP),<sup>15</sup> a proposed quarry in a sensitive coastal area in Nova Scotia faced widespread opposition among the local community, and after an administrative review, Bilcon, the investor, was denied the right to move forward with the controversial investment. The ISDS panel reviewing the claim brought by Bilcon determined that it was “arbitrary” and a violation of the fair and equitable treatment standard for the local administrative decision to have been based on an expert panel’s consideration of “core community values” as part of their assessment of the proposed project’s impacts on the human environment, economy, lifestyle, social traditions and quality of life. The panel gave no deference to the domestic regulators’ understanding of the applicable environmental impact assessment regulations and how they impacted the decision to deny the ecologically sensitive investment, and the investors completely bypassed the appeals process mandated by domestic administrative law.

Finally, ISDS does not provide meaningful participation for third parties whose rights are implicated by an investment or by the outcomes of an arbitration.<sup>16</sup> ISDS is a bilateral procedure between an aggrieved investor and a host-country government that does not provide meaningful opportunities for interested third parties to be heard, let alone to assert any rights that may be at stake in the ISDS dispute.<sup>17</sup> For example, a dispute surrounding a contract granting a concession that displaces land users or owners, and also violates their rights to food, housing, water and sanitation or a clean environment, would proceed only as between an investor aggrieved by the land dispute and the government.<sup>18</sup> The land users or owners who legitimately were claiming rights to the land from which they had been displaced would have no voice in this proceeding, and at most could petition the tribunal for the ability to submit a brief as *amicus curie*, with no guarantee the brief would be considered by the tribunal in rendering their award. They would have no other rights to participate in the dispute. This assumes, of course, that these interested parties knew of the dispute and arbitration in the first place, as many ISDS cases remain confidential, and interested parties may not even be unaware of the existence of an investment arbitration in the first place. In some cases, the government’s human rights obligations may be in conflict with its contractual obligations. Under ISDS, an ad hoc arbitral tribunal has the power to determine how those rights will be allocated, but

will do so after hearing the arguments of only the investor and the state, as other interested parties are structurally silenced.

The TPP and the TTIP, along with other bilateral and multilateral agreements that permit investors to directly sue states through ISDS or similar systems, stand to dramatically expand countries' liabilities toward investors. Looking to the United States as an example, as of the end of 2014, the eight largest sources of foreign investment into the United States, from the United Kingdom, Japan, the Netherlands, Canada, France, Switzerland, Germany and Luxembourg, account for approximately 80% of the US\$2.8 trillion of foreign investment into the United States.<sup>19</sup> Of those eight countries, the United States currently has a treaty providing for ISDS with only one country, Canada. Investment from Canada accounts for less than 10% of foreign direct investment into the United States, meaning that less than 10% of inward investment is protected by treaty provisions and enforceable through ISDS. If the United States proceeds to conclude the TPP and the TTIP with ISDS or similar provisions in each, investors from seven of the eight largest foreign investors in the United States will be protected by this system, and more than 70% of all foreign direct investment into the United States will be covered by an investment treaty providing for ISDS. Of course, this does not even include the investors from the numerous other countries that will benefit from these megaregionals and already existing U.S. investment treaties and that will be in a position to directly sue the United States government through subsidiaries and shareholders. To say that this is a serious problem understates the reality that the fundamental problems we already are seeing with ISDS have the potential to increase exponentially. While the United States and other governments claim that ISDS is an essential ingredient to promoting sustainable investment, these claims are not supported by the evidence and do not comport with the obligations of a democratic government. ISDS remains problematic from a democratic and human rights perspective and should not be part of the TPP or the TTIP.

#### Endnotes

1 Trans-Pacific Partnership, Ch. 9, available at <https://ustr.gov/trade-agreements/free-trade-agreements/trans-pacific-partnership/tpp-full-text>. While the European Union has proposed an investor court system in lieu of a standard ISDS mechanism, this change in form does little to solve the underlying problems of ISDS. See Brooke Skartvedt Güven, "Inclusion of ISDS Arbitration or an Investment Court in the TTIP: Unresolved Concerns," April 28, 2016 (remarks delivered at TTIP Stakeholder Briefing), available at <http://ccsi.columbia.edu/files/2016/04/160428-TTIP-Stakeholder-Session-The-Investment-Chapter-Unresolved-Concerns-FINAL.pdf>; see also Gus Van Harten, "Key flaws in the European Commission's proposals for foreign investor protection in TTIP," Research Paper No. 16, Osgoode Hall Law School Legal Studies Research Paper Series, 12(4) (2016). A recent study found that the beneficiaries of ISDS, in the aggregate, have overwhelmingly been companies with more than US\$1 billion in annual revenue—particularly extra-large companies with more than US\$10 billion—and individuals with more than US\$100 million in net wealth. Gus Van Harten and Pavel Malysheuski, "Who has benefited financially from investment treaty arbitration? An evaluation of the size and wealth of claimants," Osgoode Legal Studies Research Paper No. 14, 12(3) (2016).

2 Notably, in only the third known third-party intervention in an ICSID proceeding, a Costa Rican environmental NGO, *Asociación Preservacionista de Flora y Fauna Silvestre* (APREFLOFAS), was on June 1, 2016, permitted to make a written intervention and obtain the written filings of the parties, but not to attend the nonpublic hearings, in *Infinito Gold Ltd. v. Costa Rica*, ICSID Case No. ARB/14/5 (still pending). In reaching its decision to allow the intervention, the tribunal emphasized that APREFLOFAS would provide a different perspective to the dispute because it was a plaintiff against both of the arbitrating parties in domestic proceedings.

3 Including but not limited to: *Compañía del Desarrollo de Santa Elena SA v. Republic of Costa Rica*, ICSID Case No. ARB/96/1, Award (Feb. 17, 2000); *Metalclad Corporation v. United Mexican States*, ICSID Case No. ARB(AF)/97/1, Award (Aug. 25, 2000); *Técnicas Medioambientales Tecmed SA v. United Mexican States*, ICSID Case No. ARB(AF)/00/2, Award (May 29, 2003); *Waste Management Inc. v. United Mexican States*, ICSID Case No. ARB(AF)00/3 Award (April 30, 2004); *Methanex Corporation v. United States of America*,

NAFTA (UNCITRAL), Award (Aug. 3, 2005) (decision in favor of the United States on the merits); *Glamis Gold, Ltd. v. United States of America*, NAFTA (UNCITRAL), Award (May 16, 2009) (decided in favor of the United States on the merits); *Pac Rim Cayman LLC v. Republic of El Salvador*, ICSID Case No. ARB/09/12 (still pending); *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/2 (still pending).

4 Including but not limited to: *Glamis Gold, Ltd. v. United States of America*, Award (June 8, 2009) (decided in favor of the United States on the merits); *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/2 (still pending).

5 *Vattenfall AB and others v. Federal Republic of Germany*, ICSID Case No. ARB/12/12 (still pending).

6 *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7 (still pending); *Philip Morris Asia Limited v. The Commonwealth of Australia*, (UNCITRAL), Award Dec. 17, 2015 (decision in favor of respondent on jurisdiction).

7 Including but not limited to: *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/2 (still pending); *Álvarez y Marín Corporation S.A. and others v. Republic of Panama*, ICSID Case No. ARB/15/14 (still pending); *Dominion Minerals Corp. v. The Republic of Panama*, ICSID (request for arbitration); *Glamis Gold, Ltd. v. United States of America*, Award (June 8, 2009) (decided in favor of the United States on the merits).

8 United States Trade Representative, “Upgrading & Improving Investor-State Dispute Settlement,” available at <https://ustr.gov/sites/default/files/TPP-Upgrading-and-Improving-Investor-State-Dispute-Settlement-Fact-Sheet.pdf>; see United States Trade Representative, Investment, at <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip-5>.

9 For a more in-depth discussion of these issues, see Lise Johnson, Lisa Sachs and Jeffrey Sachs, “Investor-State Dispute Settlement, Public Interest and U.S. Domestic Law,” CCSI Policy Paper, Columbia Center on Sustainable Investment (May 2015), available at <http://ccsi.columbia.edu/files/2015/05/Investor-State-Dispute-Settlement-Public-Interest-and-U.S.-Domestic-Law-FINAL-May-19-8.pdf>; see also Lise Johnson and Lisa Sachs, “The Outsized Costs of Investor-State Dispute Settlement,” AIB Insights 16(1) (2016), available at <http://ccsi.columbia.edu/files/2016/02/AIB-Insights-Vol.-16-Issue-1-The-outsized-costs-of-ISDS-Johnson-Sachs-Feb-2016.pdf>. The analysis contained in this paper draws freely from these publications.

10 D. Kaukrodger and K. Gordon, “Investor-State Dispute Settlement: A Scoping Paper for the Investment Policy Community,” OECD Working Papers on International Investment 2012/03, at 19-24 (2012).

11 Political risk insurance can be purchased from government and private entities. Government providers include entities established by individual home states (e.g., the U.S.’s Overseas Private Investment Corporation) and entities established by multilateral institutions (e.g., the World Bank’s Multilateral Investment Guarantee Agency). Private political risk insurance providers include Chartis, Lloyd’s, Sovereign and Zurich. See, e.g., Daniel Wagner, *Managing Country Risk: A Practitioner’s Guide to Effective Cross-Border Risk Analysis*, New York: CRC Press (2012).

12 See Lise Johnson and Oleksandr Volkov, “State Liability for Regulatory Change: How International Investment Rules are Overriding Domestic Law,” Investment Treaty News (Jan. 6, 2014), available at <https://www.iisd.org/itn/2014/01/06/state-liability-for-regulatory-change-how-international-investment-rules-are-overriding-domestic-law/>.

13 *Infra* note 8. See also Lise Johnson and Lisa Sachs, “The TPP’s Investment Chapter: Entrenching, rather than reforming, a flawed system,” CCSI Policy Paper, Columbia Center on Sustainable Investment (November 2015), available at <http://ccsi.columbia.edu/files/2015/11/TPP-entrenching-flaws-21-Nov-FINAL.pdf>; see also, Johnson *et al.*, Investor-State Dispute Settlement, Public Interest and U.S. Domestic Law, from which this section draws freely.

14 The “*Penn Central*” test that is reflected in some form in most U.S. treaties requires that “Neither Party may expropriate or nationalize a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (“expropriation”), except: (a) for a public purpose; (b) in a non-discriminatory manner; (c) on payment of prompt, adequate and effective compensation; and in accordance with due process of law and Article 5 [Minimum Standard of Treatment] (1) through (3). US 2012 Model BIT, Article 6 (Expropriation and Compensation).

15 *William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware Inc. v. Government of Canada*, UNCITRAL, PCA Case No. 2009-04, Award March 17, 2015 (award in favor of applicant on jurisdiction and liability).

16 See e.g., Kaitlin Y. Cordes, Lise Johnson and Sam Szoke-Burke, “Land Deal Dilemmas: Grievances, Human Rights and Investor Protections,” Columbia Center on Sustainable Investment (March 2016), available at [http://ccsi.columbia.edu/files/2016/03/CCSI\\_Land-deal-dilemmas.pdf](http://ccsi.columbia.edu/files/2016/03/CCSI_Land-deal-dilemmas.pdf).

17 On June 1, 2016, an environmental NGO was granted the right to participate in an ongoing arbitration through the submission of a brief, and the right to receive some of the parties’ filings, but this is an extremely rare and almost unknown occurrence. See *supra* note 2.

18 See e.g. *supra* note 7.

19 Organization for International Investment, Foreign Direct Investment in the United States – 2014 Report, p. 3.

# As Old as the Republic: Why the National Security Case for Trade is Here to Stay

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One sub-element of the national debate about trade policy in general, and the TPP in particular, has been whether the national security case for it is sincere, or a cynical late add-on when economic arguments carried the day. This paper makes the case that, whatever one thinks of the agreement's economic merits, the case for trade as an alternative to war is well developed and deeply embedded in American political thinking. With 200 years behind it, the concept received a fresh boost as a perceived alternative to the military-first failures of the 2000s. The security argument can serve as a bridge for evaluating, and rebuilding consensus across U.S. stakeholders around, what makes a trade agenda beneficial.

Benjamin Franklin in the 18th century, and John Hay in the 19th century, saw equal access to trade as a fundamental check on the power of empires. The roots of an intellectual world view linking trade with peace, and competitive trade barriers with war, go back to John Stuart Mill in the mid-19th century. In the 20th century Cordell Hull, America's longest-serving secretary of state under Franklin Roosevelt, who received the Nobel Prize for his part in creating the United Nations, made the case this way:

*“When the war came in 1914, I was very soon impressed with two points.... I saw that you could not separate the idea of commerce from the idea of war and peace.... [and] that wars were often largely caused by economic rivalry conducted unfairly.... to me, unhampered trade dovetailed with peace; high tariffs, trade barriers, and unfair economic competition, with war. Though realizing that many other factors were involved, I reasoned that, if we could get a freer flow of trade—freer in the sense of fewer discriminations and obstructions—so that one country would not be deadly jealous of another and the living standards of all countries might rise, thereby eliminating the economic dissatisfaction that breeds war, we might have a reasonable chance for lasting peace.”*

Hull believed—like many of his generation—that the tariff wars of the 1930s (explicitly echoed in the “America First” rhetoric of a 2016 presidential contender) had contributed to both the Great

\*From Cordell Hull's memoirs, as cited in Douglas Irwin, “Trade Liberalization: Cordell Hull and the Case for Optimism,” Council on Foreign Relations, 2008, available at [www.cfr.org/trade/trade-liberalization-cordell-hull-case-optimism/p16873](http://www.cfr.org/trade/trade-liberalization-cordell-hull-case-optimism/p16873).

Depression and the success of fascism in Europe. It's particularly worth noting that, then as now, both support for and opposition to trade crossed socioeconomic lines; while Roosevelt and Hay were American aristocracy, Franklin was the prototype of the self-made small businessman, and Hull was born in a log cabin in Tennessee. The Marxist critique of global capitalism, and its modern-day extension to the global trade agenda, simply doesn't match up well with the regional and occupational complexities of American economic life. Moreover, while it is a tremendous tool for academic analysis, it has yielded few useful policy prescriptions for those who work within American political economy in its current form—and therefore is not treated here.

After World War II, the national security case for trade was inextricably bound up with the Cold War—and the decisive factor in both how trade regimes were structured and how political support was secured. Pro-trade commentators such as the neoliberal analyst C. Fred Bergsten were clear that, rather than economics, it was the security imperative that drove the trade deals of the Cold War era.

On foreign policy terms, U.S. Cold War-era trade policies were spectacularly successful. The European coal and steel community grew from its economic foundations—always intended to buttress political integration and prevent renewed continental warfare—into what was for more than 50 years the greatest economic and political union the world has ever seen, producing tremendous improvements in the material and political lives of its citizens, incorporating a range of European states beyond its founders' dreams and, over time, shouldering a significant proportion of the cost of global development and conflict prevention. The relative openness of U.S. trade with Asia—though not reciprocated—also is viewed as a key enabling factor of the growth of representative government there. Viewed in the starkest terms, the U.S. economic opening first to Korea, and later to Vietnam, must be said to have produced great political and social benefits at costs which, though real in human and economic terms, are minuscule compared with the death and destruction wrought by military interventions in East Asia.

Thus, in the immediate post-Cold War period, the idea that trade could transform societies internally and anchor peace internationally was a central element of center-left national security thinking. It was such a cliché that it found voice in the “Golden Arches Theory”—countries with a McDonald's would never make war on each other. (Falsified first when NATO bombed Belgrade; most recently in Russia's attacks on Ukraine.) It was at the heart of the support that the North American Free Trade Agreement (NAFTA) and normalization of trade relations with China (China PNTR) received from Democratic politicians from President Clinton on down.

From a national security perspective, the results are mixed. U.S. partnership with Mexico on crime, drug trafficking and counterterrorism is significantly closer and smoother than it was 25 years ago. Analysts point to the NAFTA framework, as well, as one of a number of elements that have helped maintain the steady centrality of U.S.-Canada ties through challenging trade disputes and periods of intense political discord between the two countries' leaders. China PNTR, of course, was supposed to incorporate Beijing into the rules-based global economic order and encourage it to accept those rules in both the security and economic spheres, thus lessening the likelihood of violent conflict; more softly spoken was the idea that it also would empower China's population to demand greater say in its governance, and produce a regime more likely to live peaceably with its neighbors and

fellow great powers. The Chinese government has proven highly adept at diverting its citizens' energies away from political protest—and it is fair to say that 1990s thinkers across the political spectrum underestimated how much popular resentments would flow into nationalism rather than pro-democracy movements, a point that also is relevant to the current state of the European Union. China has indeed integrated into global markets for goods and capital, as well as global economic institutions—the complex effects of China's advent on American workers and consumers in different sectors and regions also is well known. What 1990s policy makers also failed to anticipate, however, was Beijing's ability to shape the global regulatory environment, rather than being shaped by it.

TPP and TTIP, then, grow from policy makers' mid-2000s perception of several developments in national security policy: the effort to secure U.S. interests through a military-first approach in the Middle East had been disastrous in human and economic terms; in the wake of perhaps the greatest security policy failure in American history, U.S. allies were perceived to be questioning whether Washington was able or willing to sustain its partnerships; and Washington policy makers believed security interests demanded continued integration with those allies, while a new generation of leaders overseas was unwilling to sustain ties based on the memory of battles fought and institutions forged more than 50 years before.

At the same time, security and economic analysts agreed that the size and velocity of Asian economic growth meant shared norms and rules of the road would emerge no matter what—and that such China-centric alternatives as the proposed pact between ASEAN members and associates (not the United States) and China, the Regional Cooperative Economic Partnership, or China's One Belt One Road initiative to tie together Central Asia and countries along the maritime route from China to India, would be disadvantageous to U.S. workers, U.S. corporations and U.S. security interests alike.

Thus those two agreements emerged *from national security thinking* rather than from economic advisers. They were seized upon by candidate and then President Barack Obama, who while pledging to renegotiate NAFTA also made it clear from his campaign on that he favored an economics-first approach to Asia, as the cutting edge of a “pivot” away from militarily led Middle East policy and draining ground wars.

Meanwhile, of course, the priority content for trade agreements had changed to items that Franklin, Mill and Hull hardly would have recognized as “trade”—patent protection, corporate dispute resolution and the like. The security case for trade had always hinged on creating as much intercourse as possible between societies, and entanglement of elites who were perceived, when competing, as a major force promoting war within societies. Thus the shift in content was not particularly a matter of concern for national security professionals, who, having pioneered the constructs, handed them over to others to fill with content and negotiate.

The rest we know—the final Trans-Pacific Partnership document contains a great many provisions that have nothing to do with tariff reduction and free flows of goods and services, and has occasioned significant criticism from the point of view of worker rights abroad, job security at home, and public and environmental health worldwide.

The national security agenda, far from being a crutch for a weak agreement, should become an analytical tool to help make smarter policy decisions about this and future agreements. To open the very first stages of what must be a deep and challenging conversation among those most affected by trade deals, I pose the following five questions. Thoughtful answers will scramble trade policy orthodoxy on both sides, and may form the foundation of nationally shared interests from which to shape the future of trade:

- Review the full range of topics proposed to be treated in a negotiation. Whether agricultural tariffs, dispute resolution mechanisms, or intellectual property rights for pharmaceuticals, do the outcomes have the effect of improving or weakening the security, stability and self-government of the United States and the other parties?
- Societies are complex organisms. Which elements of society does a given agreement have the effect of binding together, and which does it have the effect of driving to view each other as foes? Do the contents of a proposed trade deal with a country struggling with extremism, for example, prioritize opportunity and dignity for young men?
- “America First” and its parallel protectionisms around the world in the 1930s helped unleash economic misery and cataclysmic violence, communal and international. What negotiations and steps are needed to protect the reliable partnerships, and very real protections, that give millions of Americans both employment and security in the quality and availability of consumer goods?
- The means that sporadically has been made available to deal with the economic disruptions at home caused by trade, Trade Adjustment Assistance, is discredited and perennially underfunded. How can responses to disruptions be factored in to the next generation of investment in infrastructure, empowerment of workers and improvements to our system of social insurance to reflect the changing nature of work?
- Seeing trade policy as a security interest underlines that the policy must enjoy the confidence of the American public. How can the next generation of trade policy be structured in a way that labor, health and environmental interests are represented alongside industry and capital?

# Failed Economic Policies and the Humanitarian and Security Crisis in Mesoamerica

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After more than three decades of failed economic policies, the links between free trade and the humanitarian crisis in the Mesoamerican region (which covers Mexico and Central America) are rarely made, despite the fact that widespread economic instability and poverty have turned the region into one of the most dangerous in the world.

In fact, U.S. trade negotiators continue to claim that free trade actually helps fight terrorism. This became one of their core arguments in the immediate aftermath of 9/11. Then-USTR Robert Zoellick was desperate to advance his agenda at the World Trade Organization (WTO) and in regional agreements, and so he took advantage of this terrible tragedy to put pressure on developing country governments that were resisting U.S. demands.

Those of us who'd been documenting the negative impacts of the 1994 NAFTA deal, including my Institute for Policy Studies (IPS) colleagues here in the United States, and the Mexican Action Network on Free Trade, where I was working at the time, were quite shocked. It was clear to us the free trade model was not promoting "real security," encompassing economic, human, financial and political security. Instead, it primarily was benefiting the few, while exacerbating the root causes of instability—namely poverty, weak human rights protections, and financial and political volatility. Today, these links between free trade and security are even clearer.

## The Origin of the Crisis is Failed Macroeconomic Policy

To understand the origins of the crisis, we must go back to the '80s, when the International Monetary Fund (IMF) and World Bank imposed structural adjustment policies in the region that helped pave the way for the free trade agreements.

The civil society-led SAPRI/CASA investigations back in the '90s identified four basic ways in which adjustment policies have contributed to the further impoverishment and marginalization of local populations, while increasing economic inequality.<sup>1</sup> The first is through the demise of domestic manufacturing sectors and the loss of gainful employment by laid-off workers and small producers due to the nature of trade and financial-sector reforms. The second relates to the contribution that agricultural, trade and mining reforms have made to the declining viability and incomes of small farms and poor rural communities, as well as to declining food security, particularly in rural areas.

Third, the retrenchment of workers through privatizations and budget cuts, in conjunction with labor-market flexibilization measures, has resulted in less secure employment, lower wages, fewer benefits and an erosion of workers' rights and bargaining power. Finally, poverty has been increased through privatization programs, and the application of user fees, budget cuts and other adjustment measures that have reduced the role of the state in providing or guaranteeing affordable access to essential quality services.

## Then Came Free Trade Agreements

According to its proponents, NAFTA would bring prosperity to Mexico, both economically and politically. There would be more employment, living standards of Mexicans would move up to those of the U.S. or Canadian people, and there would be democratic stability.

Instead, by removing trade barriers, NAFTA took away protections for Mexico's domestic food production, leading to greater food insecurity and the widespread loss of agricultural livelihoods. By removing investment barriers, the deal made it even more profitable for large corporations to set up factories along the border to assemble goods for export back to the United States. Because the labor side agreement was extremely weak, these jobs remained low-road jobs, without basic labor protections, and with low wages and often dangerous working conditions. And because under NAFTA the government no longer could impose conditions on foreign investors to use domestic suppliers, the ripple effects of this investment plummeted.

Compared with before NAFTA, Mexico's poverty has increased, and the country has to import 45% of its food (back in 1994, it imported only 15%). There is a plethora of data to demonstrate the ill effects of NAFTA in Mexico but, in sum, as we declared when this agreement became 20 years old, "it represented the abandonment of national production of food to favor imports. This has meant the fall of production, employment, income and the increase of inequality, poverty and migration. The abandonment of the countryside by the government propelled that this vacuum would be occupied by the organized crime. NAFTA is responsible [for] the increase of violence and public insecurity in the countryside and in all of Mexico."<sup>2</sup>

Ten years later, CAFTA was imposed in Central America. As the Committee in Solidarity with the People of El Salvador (CISPES) reports, CAFTA has "ushered in a decade of deteriorating economic conditions for working people, major new threats to the environment and national sovereignty and the further unraveling of rural economies. As the union leaders from the Salvadoran Union Front (FSS) told us, 'the consequences of CAFTA will be more violence, more poverty, and more migration. That's why we vow to continue to fight with all of our strength against CAFTA.' However, as expected, transnational corporations have responded with unprecedented aggression, using new legal weapons offered by CAFTA and exploiting the sweeping rights it grants them. As the Institute for Policy Studies has documented, 'transnational corporations in the extractives sector are increasingly turning to international arbitration tribunals to resolve resource disputes' as a result of the Investor-State Dispute Settlement (ISDS) mechanisms that are written into free trade agreements and bilateral investment treaties. One of the most egregious examples is the Canadian

mining company Pacific Rim’s pursuit of hundreds of millions of dollars from the government of El Salvador through the World Bank’s International Centre for Settlement of Investment Disputes.”

A regional observatory of civil society organizations in Central America has concluded that “the perspective of Central American countries is to continue promoting extractive industries, in particular metallic mining. This will continue generating social conflicts and environmental impacts.”<sup>3</sup> A recent report of the AFL-CIO on Honduras documents how labor activists of the region say that “as the United States exports misery to the south, ‘free trade’ has plunged a generation of youth into free fall.”<sup>4</sup>

### The Humanitarian Crisis

These three decades of failed policies have led to a deep humanitarian crisis. As Ruben Figueroa, coordinator of the Mesoamerican Migrant Movement who has helped organize more than 10 caravans of women searching for their disappeared sons has said to Interpress Service,<sup>5</sup> “the situation of the North Triangle of Central America is a human tragedy... you don’t hear bombs like in the Middle East, but a lot of blood is shed.” Mexico has lost in the so-called war on drugs more than 100 thousand lives and tens of thousands of disappeared people.

According to the 2016 Global Report of Internal Displacement<sup>6</sup> in Mexico and the three countries of the so-called Northern Triangle, in 2015 there were 1 million people displaced by violence, almost double the number in 2014. Human rights organizations in the region blame not only criminal gangs for this violence, but also the institutional violence perpetrated by the states of these countries against those who oppose energy and extractive projects like mining. “What we are living is not a war against the narcos, but a war of the state against the population,” said Figueroa.

As Lisa Haugaard of the Latin America Working Group has remarked, “the Northern Triangle of Central America (Honduras, El Salvador and Guatemala) is currently one of the most dangerous areas in the world. Honduras led the world in murders per capita for several years until 2014. El Salvador just bested Honduras in 2015 as the country with the highest murder rate, with an astounding 103 homicides per 100,000 people. Large-scale development projects are another source of displacement in Central America. Mining, tourism, African palm plantations, dam projects—large-scale economic projects that are not consulted with communities—have resulted in displacement of poor communities, some of which are indigenous or Garifuna. Private company security or government security forces have at times threatened, evicted or otherwise forced small farmers to flee or relocate, as with palm projects in Honduras’s Bajo Aguán region or mining projects in Guatemala.”<sup>7</sup>

And with respect to Mexico, according to the Washington Office on Latin America (WOLA), the country is today “experiencing a crisis of disappearances. In the first four months of 2016, an average of 10 people per day disappeared in the country. This crisis has been building for some time: between 2007 and April 2016, over 27,000 persons were officially reported as disappeared in Mexico.” Despite this, WOLA says, the “government (still) must step up its efforts to respond to this human tragedy and combat the impunity and disregard that has characterized its efforts for far too long.”<sup>8</sup>

## U.S. Government Reaction to the Humanitarian Crisis: Business as Usual

This crisis in the Northern Triangle has been recognized by the U.S. government. Vice President Biden has said that “as we were reminded last summer when thousands of unaccompanied children showed up on our southwestern border, the security and prosperity of Central America are inextricably linked with our own. The economies of El Salvador, Guatemala and Honduras remain bogged down as the rest of the Americas surge forward.” More importantly, he has said that “Confronting these challenges requires nothing less than systemic change, which we in the United States have a direct interest in helping to bring about.”<sup>9</sup>

However, the \$1 billion USD the United States is pledging to give to these countries through the Alliance for Prosperity plan in the Northern Triangle is far from addressing any “systemic change.” It is, as organizations in the region and the United States have said, a project of the business elite. As Guatemalan journalist Luis Solano has said, “The plan that emerged to address a solution to the so-called crisis of the migrant children, and that offers to promote development, economic growth and security in the region, is in the end an entrepreneurial project with the ultimate objective to foster and consolidate big private investments with the participation of the state.... the IDB and the World Bank. The goal of the Alliance as we see [it] is to attract foreign direct investment for the exploitation of natural resources.”<sup>10</sup>

## Conclusion

In conclusion, I believe the AFL-CIO report’s conclusions about Honduras also accurately describe the broader Mesoamerican context. “What is striking—and tragic—in the current debate is that there has been no effective response to the roots of the crisis: desperate poverty, violence and a lack of decent work opportunities at home.” This applies to all of the Northern Triangle as well as Mexico. And I agree that for working families in Honduras and the region, to stand a chance in today’s global economy, “governments must reorient their migration, trade, foreign and labor policies to better protect and empower workers.” The Alliance for Prosperity plan does not address this and, furthermore, agreements like the Trans-Pacific Partnership (TPP), on top of NAFTA and CAFTA, will only mean an acceleration of the race to the bottom and further dislocation, displacement and regional insecurity.

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# Trade, Jobs and Wages: The Implications of the TPP for Workers, American Businesses and the U.S. Economy

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The Trans-Pacific Partnership (TPP) agreement between the United States and 11 other Pacific Rim countries lacks an absolutely key component to keep it from doing potential damage to the U.S. economy. The missing piece of this trade and investment deal is a set of restrictions and/or enforceable penalties against member countries that engage in currency manipulation. Currency manipulation is one of the key driving forces behind the high and rapidly rising U.S. trade deficit with the 11 other members of the TPP. In 2015, the U.S. deficit with TPP countries translated into 2 million U.S. jobs lost, more than half (1.1 million) of which were in manufacturing. Without such provisions against currency manipulation, the TPP could well follow other trade agreements and leave even greater U.S. trade deficits in its wake.

Currency manipulation occurs when a country artificially depresses the value of its currency. Currency manipulation acts like a subsidy to the exports of the manipulating country, and a tax on U.S. exports to every country where U.S. exports compete with the currency manipulator's exports. In this way, currency manipulation increases U.S. imports, suppresses U.S. exports, and inflates U.S. trade deficits. As past EPI research has shown, currency-manipulation-fueled trade deficits have reduced U.S. gross domestic product (GDP), eliminated millions of U.S. jobs, driven down U.S. wages and propelled the outsourcing of U.S. jobs to currency manipulators.

Many members of the proposed TPP, including Malaysia, Singapore and Japan, are known currency manipulators. Others, such as Vietnam, appear to be following the lead of currency manipulators by, for example, acquiring excess foreign exchange reserves to depress the value of their currency. Currency manipulation explains a substantial share of the large, persistent U.S. trade deficit with the 11 other TPP countries that not only has cost millions of U.S. jobs, but also increased income inequality and put downward pressure on American wages. We can't afford a trade agreement that not only allows but would intensify these harmful trends.

Despite widespread calls from a majority of members of both houses of Congress, and many economists, the TPP includes no enforceable disciplines on currency manipulation. Key conclusions of this analysis are:

- Currency manipulation could nullify the benefits of the TPP.
- Purchases and holdings of foreign exchange reserves (broadly defined) would have a direct impact on exchange rates and trade flows in the TPP.
- China, as the world's largest currency manipulator, could affect trade in the TPP in at least two ways. Firstly, as a result of relatively weak rules of origin, the United States and other countries would be vulnerable to increased imports from China through the TPP. Secondly, currency manipulation by China could influence other TPP members to adjust or manipulate the value of their currencies in order to remain competitive with China, and thereby nullify some or all of the benefits of the TPP to the United States.
- Models that have assumed full employment to evaluate the effects of the TPP and past free trade agreements should not be used to evaluate the potential demand-shifting effects of currency manipulation on the members of the TPP.
- Japan is also an important currency manipulator, and this manipulation is the leading cause of the U.S. trade deficit with Japan, which contributed to the large U.S. trade deficit with TPP countries in 2015.
- The \$177.9 billion U.S. goods trade deficit with the 11 other TPP countries reduced U.S. GDP by \$284.6 billion (1.6%) and eliminated 2 million jobs in 2015.
- Even if the TPP were a true free trade agreement, it likely would be hard on non-college-educated American workers, who make up nearly two-thirds of the U.S. labor force. Growing trade with low-wage countries is one of the leading causes of the increase in U.S. income inequality. The TPP is likely to reinforce these trends.
- The TPP isn't principally about free trade—it's about providing increased protection for intellectual property rights for pharmaceutical makers, software vendors and others, and stronger property rights for foreign investors, which encourages outsourcing, job losses and a further decline in labor's share of national income.
- Finally, the TPP likely would result in growing trade deficits, trade-related job losses and downward pressure on the wages of the majority of U.S. workers.
- Future U.S. trade and investment deals should emphasize the need to rebalance global trade flows by realigning U.S. exchange rates. Three countries have maintained large, persistent trade and current account flows in recent years: China, Germany and Japan. It is time for a new Plaza Accord to rebalance global trade flows with these three countries/regions.

# Who is Really Setting the Rules?

## The TPP, the Corporate Trade Model and China<sup>1</sup>

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### Introduction

The Obama administration has argued with increasing vehemence that the challenge of how U.S. policy should respond to the rise of China is at the heart of the debate over the Trans-Pacific Partnership. Advocates of the TPP argue the TPP is the best chance for creating a global economic order based on “American values.” In the absence of the TPP, goes the argument, China will be able to craft trading rules for all of Asia and beyond that lock in both Chinese dominance and the dominance of the Chinese variant of state capitalism.

For this argument to be convincing, China must view global trading rules as meaningful constraints on its behavior. Given its lack of compliance with its WTO commitments,<sup>2</sup> this initial threshold may be a bridge too far for many China observers. Putting that threshold issue aside for the moment, the “TPP as setting American standards for the Asia-Pacific” argument requires a positive answer to three crucial questions:

1. Will there be meaningful boundaries between the economic zone made up of TPP countries and China such that it will change China’s behavior as promised?
2. Is the TPP focused on the correct issues in relation to U.S. objectives in its relationship with China?
3. Are the standards embodied in TPP actually “high standards” in relation to China on those issues that matter for the well being of the United States and the people who live here?

The remainder of this paper lays out why, in each case, the answer to these critical questions is “no.”

The problem here is not the idea of a regional trade agreement. Nor is there any doubt as to the importance of the United States having a comprehensive response to the rise of China—a response that ensures the United States will prosper in a future in which China’s GDP is larger than ours. The question is: do the actual terms of the TPP achieve these ends?

### **TPP will not change China because China can benefit from it without joining it.**

The first issue is whether the TPP will constitute a meaningful economic zone, such that there will be reasons for China and other countries to comply with the TPP’s supposedly higher standards. If the zone is porous, then Chinese content may gain legitimate preferential access to U.S. markets through intermediate goods exported to TPP countries. Note that China also may gain enhanced access through existing illegitimate means such as illegal transshipment and duty evasion schemes.<sup>3</sup>

Even if the TPP zone sets high standards, those standards could be rendered ineffective if nonmember countries, including China, are able to access TPP's benefits by selling goods and services through TPP member countries without complying with TPP's standards.

This issue is governed in the TPP by its "rules of origin," which define how much of the content of a finished product must originate within the TPP region to be given preferential treatment under the TPP. The rules of origin of the TPP generally are low, in most cases amounting to no more than a required "transformation" of a product from one tariff line to another. Products often can meet the "transformation" requirement with negligible effort and minimal labor. For example, many chemicals and electrical products require only a transformation of a product "from any other subheading," the weakest possible standard.

In other cases, a minimum regional value content (RVC) is required. The smaller the RVC, the more value of the product that can originate outside the TPP zone. The single greatest threat to manufacturing in the TPP results from the rules of origin provisions in the auto and auto parts sector. Under this provision, which requires 45%, at most, of a finished automobile to consist of value originating in the TPP countries, the majority of an auto could consist of value created outside of the TPP, from a country such as China. Even the 45% figure is misleading, as most parts require only 35% to 45% TPP content, but count as 100% originating when assembled into a finished car or truck. And the final loophole is the most devastating: some critical car parts are subject only to a rule best described as "hybrid deemed originating," meaning that so long as a designated process such as laminating, stamping or machining was performed on the part in a TPP country, it will count as originating.

Under NAFTA, 62.5% of the value of a vehicle had to originate in the signatory countries to qualify for preferential trade treatment. The immediate reduction of that requirement to 45%, with the potential for significantly more foreign-sourced parts to be deemed as originating in the TPP for calculation purposes, will deal a devastating blow to U.S. production and employment. The technical and detailed provisions in this critical area cannot mask the serious negative impact that the TPP will have.

Given the strength of the auto and auto parts sectors in Japan and Malaysia, it seems certain that, even discounting China, the TPP will have a negative effect on American auto-sector jobs no matter what the final rule of origin is for autos and auto parts.

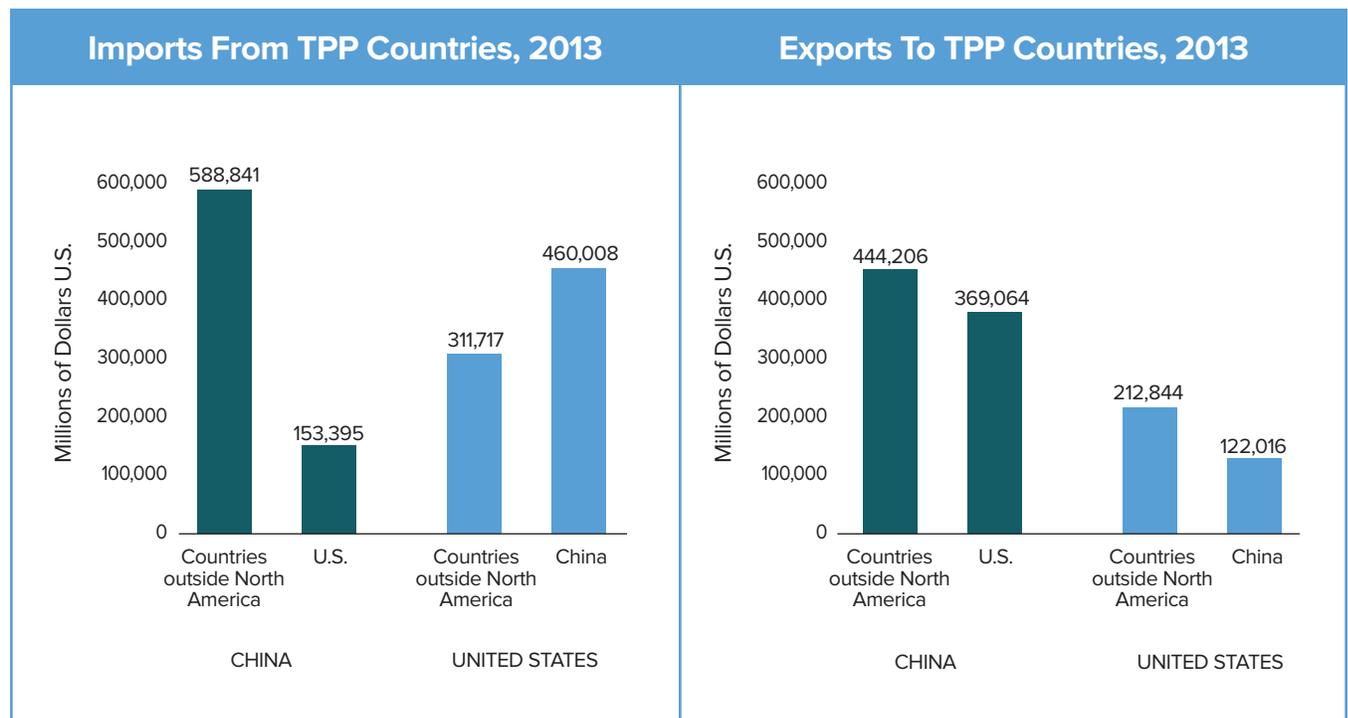
In sum, weak rules of origin and lack of effective means to prevent transshipment and duty evasion schemes mean that the TPP is largely porous, and that China and other nonsignatories can gain access to the benefits of the TPP without complying with TPP standards.

This is particularly consequential because of the depth and forward momentum of existing economic ties between China and such key TPP countries as Australia, Malaysia and Vietnam. Most of this momentum toward integration is dictated by the economic gravity of China's size, its proximity to other regional economies, and the financial benefits that China, as the world's second-largest

economy, can provide its neighbors and trading partners, in addition to the spillover benefits of China’s own massive infrastructure development.<sup>4</sup>

China also is seeking or already has achieved preferential access to a number of these same TPP countries. There is considerable overlap between the member countries in TPP and those in the ASEAN-based Regional Comprehensive Economic Partnership (“RCEP”). In addition, other forces are responsible for drawing China closer together with other regional ASEAN economies—namely, geography and the several hundred billion dollars China is committing to infrastructure development in the region (in addition to its own domestic infrastructure investments).<sup>5</sup>

The data on the integration of TPP countries with China is striking. On both the export and the import side, TPP countries outside of North America trade close to twice as much with China than with the United States. In 2013, China exported more to TPP countries outside of North America than it did to the United States, and it imported almost three times as much from TPP countries outside of North America than from the United States. Barring a political crisis, the difference in long-term growth rates between the United States and China predicted by the Organisation for Economic Co-operation and Development (OECD) almost certainly will mean this gap will grow, not shrink. This long-term trend will not in the future be driven primarily by supply chain management considerations, but rather by the growth of the Chinese consumer economy and the Chinese government’s focus on leveraging that growth to ensure continued high levels of both domestic and foreign investment in the Chinese economy.



Given this context, it is not credible to argue that the TPP will have a meaningful influence on China's international economic practices unless TPP truly can offer to China economic benefits that China does not already have from its current position outside the TPP. Given the weak rules of origin in the TPP, and the ease with which China skirts existing rules, the end result of the TPP is likely to be a further opening of the U.S. economy to China—without gaining any reciprocal market access or imposing higher standards.

This point is critical, because it shows the weakness of the argument that we must ratify the TPP—no matter what its terms are—in order to draw the larger Pacific basin away from China and into a U.S.-centered orbit. There is no reason to believe that drawing the Pacific basin countries away from China is a realistic goal, so long as China continues to offer mutually beneficial trade, investment and supply chain opportunities to Pacific Rim countries.<sup>6</sup>

TPP must be evaluated based on its substance—not on the notion that it represents a strategic counter to China's economic power. Given the level of existing economic integration of TPP member countries with China, it seems likely that horse has left the barn.

### **The TPP and China Bilateral Investment Treaty are framed around a mistaken understanding of U.S. economic interests in China—one focused on the interests of global corporations rather than on the interests and policy objectives of the United States.**

The second issue is: what is our objective as a nation in relation to our economic relationship with China? Some have argued that our most important objective should be to facilitate investment by U.S.-based global corporations in China under the most favorable terms possible to those global corporations, particularly given the history of the government of China's arbitrary treatment of foreign firms and its opaque rulemaking process. This approach confuses the interests of the United States with the interest of global corporations based in the United States.

It is in the interest of the United States for the United States and the people who live in it to have a fair chance to compete for investment and jobs in the world economy on the basis of high labor and environmental standards. In this light, if we believed TPP ultimately was going to shape our commercial relationship with China, what is most important in TPP is that it effectively address unfair trade practices like currency manipulation, state-orchestrated subsidies to exports, systematic and egregious violation of internationally recognized labor rights, and environmental degradation. Low wages, repression of independent unions and denial of the right to bargain collectively, the lack of meaningful social protection floors and environmental degradation are policy choices, not necessitated by economics or a growth imperative. The TPP only will succeed at creating a level global playing field with rising standards if it recognizes these as policy options and not comparative economic advantages.

In contrast, global corporations seek to make investments under the most favorable terms possible for themselves. Such corporations easily can benefit from the same unfair trade practices that harm the United States, undermine U.S. jobs and wages, and feed global economic imbalances. Global corporations seek to have features in trade agreements that limit the ability of governments

to regulate their economies in the public interest, and they seek to keep trade agreements from having enforceable provisions in areas like labor rights and the environment. This approach to trade agreements has dominated U.S. trade policy since NAFTA, and it has shaped in particular U.S. policy toward China. If TPP has an influence on China, and TPP is really a vehicle for reinforcing and intensifying the corporate trade model, then the TPP actually will exacerbate further what has gone wrong with the U.S.-China trade relationship since the passage of China PNTR.

The confusion between the U.S. national interest and the interests of global corporations has led to the TPP embodying a trade regime and an approach to China that is *not* in the U.S. national interest—for example, allowing China and other TPP countries to keep wages low, providing more loopholes to shelter profits from taxation, and locking in rules that could allow firms operating in those countries to emit carbon at a level they could not do in the United States, simultaneously undermining U.S. climate policy and threatening jobs.

To the extent TPP is an effective tool for shaping the U.S.-China relationship, it should have been negotiated with a focus on the United States' interest in restoring balanced trade between the United States and China; and encouraging demand-led growth in China on the basis of rising wages, fundamental labor rights and expanded social protection floors.

Keeping the distinction in mind between a model of trade that benefits global corporations, and a model that would be in the interests of the United States, we now turn in detail to the actual terms of the TPP as it was negotiated. In that light, the real question is: Does the TPP point toward an international economic order that would promote the shared values of democracy and prosperity that the United States stands for?

**TPP is not a high standards agreement in such fundamental areas as currency, rule of law and labor rights, and it will undermine such U.S. policy objectives as supporting a U.S. manufacturing revival and mitigating climate change.**

The heart of the problem with TPP is that it does not really embody high standards in relation to China—at least in key areas that will have strategic importance to the United States in a multipolar 21st century. China's political economy poses several interlinked challenges for a rules-based global economy, and for the particular interests of the United States. Addressing these challenges is critical for a stable and beneficial world economic and political order as China grows to become the world's largest economy. These challenges all relate to China's fundamental mercantilist strategy—an economic strategy designed to ensure that China's exports grow and its foreign exchange reserves grow. China's mercantilist approach is not unique to China; many countries have pursued mercantilist policies to drive growth. But they cannot be squared with the larger goals or interests of the United States or the rules-based model for the global economy that has been the goal of U.S. international economic policy since World War II.

Among the most important of these policies is currency manipulation—active intervention by the Chinese authorities to keep the value of the renminbi lower than it would be if it were freely traded.<sup>7</sup> Other policies include the subsidization of state-owned enterprises and “national champions,” the

suppression of labor costs through violations of the International Labor Organization (ILO) core conventions, an ineffective labor inspectorate, a porous set of social protection floors like adequate minimum wages and universal health and retirement benefits, the use of high levels of cheap, carbon-emitting inputs to make China competitive industrially, repeated instances of dumping exports at below fair market value, and a variety of policies designed to limit competition by both foreign investors and imports to China.

Part of China's mercantilist strategy appears to be strategic noncompliance with trade agreements, as illustrated by repeated serious issues of noncompliance in relation to China's existing commitments under the WTO. This should be a reminder that the measure of the strength of a trade agreement is not simply the substantive standards—it is the means and resources the parties have to enforce them as well as the political will to do so.

China's policies and the failure of the United States to respond effectively to them have led to the United States running a large structural trade deficit with China—a record-breaking \$365.7 billion in 2015, the highest single bilateral trade deficit in the history of the world.<sup>8</sup> Among the consequences of this trade deficit have been the loss of several million manufacturing jobs in the United States and the development of a set of global financial imbalances that were contributing factors in the global financial crisis that began in 2007.<sup>9</sup> An effective TPP would involve terms that moved China to cease these beggar-thy-neighbor strategies as a condition of joining the TPP.

But the TPP includes neither meaningful language addressing currency manipulation nor language addressing the level of carbon emissions in member countries. Nor are its labor rights provisions a meaningful improvement upon the Bush-era agreements (Colombia, Peru, Korea and Panama).<sup>10</sup> While the Bush-era agreements made a step forward on enforceability, they did nothing to ensure *actual enforcement*. The labor framework of prior trade agreements has been ineffective at dealing with labor rights violations in countries like Guatemala and Honduras, even in the context of a U.S. administration committed to labor rights enforcement. The November 2014 GAO report, "Free Trade Agreements: U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed,"<sup>11</sup> made clear that even the lauded "May 10" language has proved insufficient to ensure effective monitoring and enforcement. Certainly this problem, left unaddressed in the TPP, only will be compounded by a future administration hostile to labor rights.

What the TPP does include is investor-to-state dispute settlement ("ISDS"). This mechanism undermines the rule of law by providing foreign investors unique abilities to challenge efforts by TPP member governments to protect the public interest. Foreign investors, who are not party to the agreement and take no responsibilities under it, can access private arbitration tribunals directly, without first seeking the approval or consent of their own governments.

The grounds the TPP gives them to challenge government measures at the federal, state and local level go far beyond actual expropriations or discriminatory measures. Even when measures apply equally to domestic and foreign companies, they can be challenged as violations of broad and ill-defined rights, such as the right to "fair and equitable treatment," a standard that does not

exist under U.S. law.<sup>12</sup> Even the libertarian Cato Institute has judged that “investment agreements [that include ISDS] go beyond nondiscrimination in ways that no one seems to be able to define clearly, opening up the floodgates for litigation as creative lawyers look for new ways to characterize government actions as inconsistent with international law.”<sup>13</sup>

By contrast, for example, all provisions for the enforcement of labor rights require action by member governments—neither workers nor unions can enforce the labor rights provisions on their own. The TPP’s ISDS provisions too easily can be used by multinational firms to challenge efforts by TPP member countries, and perhaps eventually by the Chinese government, to develop modern regulatory states in such areas as financial, environmental, public health and labor regulations. ISDS is a provision that tilts the playing field away from workers and consumers toward business. If applied to China, it could undermine the central U.S. policy goal of encouraging rising incomes and consumption in China.

A final argument made by proponents of TPP has been that TPP would reorient global supply chains in a way that would benefit the U.S. economy and U.S. workers and reduce China’s power. We heard similar assertions in the early 1990s about NAFTA. The labor movement has engaged in a multiyear dialogue with USTR in which we have asked for data supporting this assertion on supply chains and have received none. There is no evidence that TPP as negotiated would strategically help the United States become a technology hub or maximize opportunities for new jobs. USTR has not supplied robust projections of TPP job growth (by industry or geography), instead relying on figures related to current exports. It is hard to avoid the conclusion that the TPP is an example of bait and switch—policy makers are told it will enhance the global economic position of the United States, when what it really is designed to do is to give global firms power over workers and governments in both the United States, China and TPP member companies, while allowing mercantilist strategies by China and the countries that are economically integrated with it to continue.

To review the initial questions posed:

1. Will there be meaningful boundaries between the economic zone made up of TPP countries and China such that it will impact China as promised? **No.**
2. Is the TPP focused on the correct issues in relation to U.S. objectives in its relationship with China? **No.**
3. Are the standards embodied in TPP actually high standards in relation to China on those issues that matter for the well being of the United States and the people who live here? **No.**

These answers undermine the notion that the TPP will serve as an effective tool to drive global development on the basis of American values.

### **TPP will undermine U.S. manufacturing revival and will not meaningfully affect whether China can obtain control of global supply chains.**

There is one respect in which TPP is likely to affect the structure of global supply chains—and that is to slow the return of manufacturing to the United States. Supply chains are designed and controlled by the firms that have the intellectual property—patents, trademarks (brands) and the like. Apple

controls the iPhone supply chain, not Foxconn; Sony controls the supply chain for Sony televisions, not the Korean firms that make the key components, or the Chinese firms that do the final assembly. In this respect, China's power remains today greater at a macro level than at a micro level. While China has a large share of production and Chinese firms increasingly are important in serving the Chinese market, Chinese firms do not yet control supply chains serving global markets. Whether or not China gets control of global supply chains is a function of whether Chinese firms are able to innovate and develop competitive global brands, a function the TPP is unlikely to affect.

Of course, the issue of supply chains in TPP is closely linked to the debate over the TPP's intellectual property provisions. Intellectual property protections in trade agreements are critical to the incomes of inventors, actors, writers, musicians and other intellectual property creators. On the other hand, IP provisions must be balanced: when extreme IP protections for pharmaceuticals restrict access to lifesaving medicines, people die. This is not just a moral concern—the global economy does not benefit from rent-seeking behavior that reduces public health and worker productivity. The intellectual property language in the TPP appears designed to protect pharmaceutical monopolies, not to set a global standard for effective and balanced IP protections that would promote innovation everywhere.

No matter their strength, the intellectual property protections of the TPP will not determine what countries' firms will control global supply chains. This is a delusion similar to the 19th century British delusion that by imprisoning millwrights in the British Isles they could prevent the development of a U.S. textile industry. Chinese intellectual property violations have hurt the United States—but they have not given China control over supply chains, nor will enforcing intellectual property rules prevent Chinese firms from eventually becoming leading global innovators as their capacity develops. It is simply not good national economic strategy in relation to China to establish a trade regime that locks in deeply disadvantageous practices like currency manipulation and carbon dumping in exchange for intellectual property rules primarily designed to maintain pharmaceutical monopolies.

Conversely, what the TPP likely will affect is the relative attractiveness of Vietnam, the second-largest Asian participant in TPP, as an alternative manufacturing location to both China and the United States. In the last five years, rising wages in China and concerns about supply chain risk have helped drive some manufacturing operations in U.S. firms' supply chains back to the United States. Wage levels in Vietnam are less than a third of wage levels in China, according to the ILO.<sup>14</sup> Against this background, TPP seems aimed to make it easier for U.S. and perhaps Japanese firms to move assembly from China to Vietnam under terms that protect their intellectual property. The result will be to put downward pressure on wages in China—which are well above wages in Vietnam—and will undermine a key driver of the revival of U.S. manufacturing—rising Chinese wages.

Of course, if the TPP had labor rights provisions that were likely to be effective, this would be less of an issue. But the dispute settlement provisions in the TPP do not address the failures that have become so apparent in the Guatemala and Honduras cases, namely the ability to delay action indefinitely, preventing workers from benefiting from even apparently “high standards” labor provisions. Moreover, the TPP's labor provisions are ill-suited to dealing with the core problems

in Vietnam—the total absence of independent worker organizations, the continued repression of independent activists, the lack of meaningful collective bargaining, and the continued practice of child labor, forced labor, human trafficking, and arbitrary political arrests and detentions.

In summary, the key provisions of TPP are not “high standards” in relation to key U.S. policy goals or in relation to the U.S. broader policy objective of ensuring shared prosperity in our nation and in the world economy. Moreover, even *if* China were subject to them, they would not push China in the direction the United States has stated it wishes China to go. In the area of climate change and carbon emissions, TPP silence is a step backward from the U.S.-China bilateral agreement. In the area of currency, China could join TPP and continue its current policy of currency manipulation. And the ISDS provisions of TPP likely would be used by global firms to slow down efforts to regulate China’s economy in the public interest.

Finally, it is important to note that the special interest provisions in the TPP, including ISDS, pharmaceutical data protections, drug pricing policy provisions and limitations on service-sector regulations, come with a high price. Not only do they limit what may be achievable in more development-friendly issues as labor, environment and currency, but they also build resentment instead of good will from the other TPP parties. The contentious issues within the TPP already have caused great heartburn in foreign capitals, as governments have been forced to defend charges that the TPP will increase the price of medicines,<sup>15</sup> give away important development policies such as Bumiputra procurement preferences in Malaysia,<sup>16</sup> or subject their economies to too much influence and intervention by global corporations.<sup>17</sup> As the Financial Times’ Alan Beattie wrote in 2015:

*“Under American influence structural adjustment programmes in sub-Saharan Africa and elsewhere for years it attempted to forcibly export US-style deregulation using the bank as a lever. It may have made the US powerful; it did not make the US popular. . . . Washington should not delude itself that trade deals which inflict political pain on the US’s negotiating partners will necessarily function as durable and positive elements of a wider diplomatic relationship.”*<sup>18</sup>

## Conclusion

It is clear that TPP is not a high standards agreement in the critical areas of currency, climate, democratic governance and labor rights. It is an agreement that is focused on giving global companies greater leverage to reduce manufacturing costs within the mercantilist paradigm established by China, but little else. In many respects—from the perspective of U.S. jobs and wages, the perspective of the development of civil society in both China and in Asian TPP countries, and the perspective of the climate crisis, this is, if not the worst outcome, a fairly bad one—and certainly not superior to status quo.

## Endnotes

- 1 This paper updates a 2015 AFL-CIO publication, “The U.S.–China Economic Relationship: The TPP Is Not the Answer,” *available at: [www.aflcio.org/content/download/156731/3897641/TPPChinaReport.pdf](http://www.aflcio.org/content/download/156731/3897641/TPPChinaReport.pdf)*.
- 2 See, e.g., Testimony of Elizabeth J. Drake, Congressional-Executive Commission on China, Jan 15, 2014. *Available at: [www.stewartlaw.com/Content/Documents/CECC%20Jan%2015%20Testimony.pdf](http://www.stewartlaw.com/Content/Documents/CECC%20Jan%2015%20Testimony.pdf)*. Webster, Timothy, “Paper Compliance: How China Implements WTO Decisions,” Aug. 19, 2013, Michigan Journal of International Law, Forthcoming. *Available at SSRN: <http://ssrn.com/abstract=2312877> or <http://dx.doi.org/10.2139/ssrn.2312877>*; Aaronson, Susan Ariel, “Is China Killing the WTO?,” International Economy, Winter 2012. *Available at: [www.nccr-trade.org/fileadmin/user\\_upload/nccr-trade.ch/downloads/TIE\\_W10\\_Aaronson.pdf](http://www.nccr-trade.org/fileadmin/user_upload/nccr-trade.ch/downloads/TIE_W10_Aaronson.pdf)*.
- 3 See, e.g., “Duty Evasion: Harming U.S. Industry and American Workers, Staff Report Prepared for Senator Ron Wyden (Public Version), Nov. 8, 2010. *Available at: [www.wyden.senate.gov/download/?id=ab312b37-d16b-495c-a103-c1887afb37af&download=1](http://www.wyden.senate.gov/download/?id=ab312b37-d16b-495c-a103-c1887afb37af&download=1)*. Michael J. Coursey, “Eleven Years of Duty Evasion under the Antidumping Order on Honey Imports from China,” American Honey Producers Association. *Available at: [www.ahpanet.com/?page=AntiDumpingInfo1](http://www.ahpanet.com/?page=AntiDumpingInfo1)*. Jung Seung-hyun, “‘Made in Korea’ label being misused: Amount of fake Korea-origin goods worries EU, U.S. ahead of FTA deals,” Korea JoongAng Daily, Jun. 6, 2011. *Available at: <http://koreajoongangdaily.joins.com/news/article/Article.aspx?aid=2937625>*.
- 4 This includes the recently announced Asian Infrastructure Investment Bank (see [www.dw.de/world-bank-chief-welcomes-chinas-new-infrastructure-investment-bank-aiib/a-18366324](http://www.dw.de/world-bank-chief-welcomes-chinas-new-infrastructure-investment-bank-aiib/a-18366324)) and the existing “New Silk Road” Initiative (<http://thediplomat.com/2014/05/chinas-new-silk-road-vision-revealed/>). See also Endnote 5.
- 5 In 2014, China committed nearly \$300 billion to development financing in the Asia-Pacific region and beyond, including \$50 billion to the BRICS Bank, \$100 billion to China’s new Asian Infrastructure Investment Bank, and separate additional multibillion-dollar infrastructure funds for the “New Silk Road”—exporting consumer and industrial goods and importing energy and other resources from Central Asia and Russia—and for a “Maritime Silk Road”—trade with developing Asia and the Middle East.
- 6 China’s orbit includes Latin American countries. See, e.g., [www.reuters.com/article/2015/01/08/us-china-latam-idUSKBN0KH06Q20150108](http://www.reuters.com/article/2015/01/08/us-china-latam-idUSKBN0KH06Q20150108).
- 7 For a discussion of why currency intervention should be addressed in the TPP, as well as a thorough analysis of why the Federal Reserve’s monetary policy does not qualify as currency manipulation, see U.S. Rep. Sander Levin, “TPP in Focus: The need to address currency manipulation in TPP, and why U.S. monetary policy is not at risk,” The Huffington Post, Feb. 6, 2015. *Available at: [www.huffingtonpost.com/rep-sander/the-need-to-address-curre\\_b\\_6631514.html](http://www.huffingtonpost.com/rep-sander/the-need-to-address-curre_b_6631514.html)*.
- 8 [www.bea.gov/newsreleases/international/trade/2016/trad1215.htm](http://www.bea.gov/newsreleases/international/trade/2016/trad1215.htm).
- 9 See, e.g., Krishna Guha, Paulson says excess led to crisis, Financial Times, Jan. 2, 2009. *Available at: [www.ft.com/intl/cms/s/0/c56df5aa-d86f-11dd-bccc-000077b07658.html#axzz3WjpxR6te](http://www.ft.com/intl/cms/s/0/c56df5aa-d86f-11dd-bccc-000077b07658.html#axzz3WjpxR6te)*.
- 10 Nor does the TPP appear to address any human rights other than labor rights. There is a clear need for such provisions, especially given the notorious denial of rights by several of the TPP partner countries, including the rights to free speech, free assembly and free religion. These rights are linked to labor rights, whether by exposing workers to discrimination or by inhibiting workers’ right to organize by limiting their rights to speak and gather. If the United States fails to address these issues through the TPP, it will lose leverage to address these issues in the future, because the TPP will have locked in full market access. For more information, see AFL-CIO, “The Trans-Pacific Partnership: Four Countries That Don’t Comply With U.S. Trade Law,” 2015. *Available at: [www.aflcio.org/content/download/150491/3811471/file/TPPReport-NO+BUG.pdf](http://www.aflcio.org/content/download/150491/3811471/file/TPPReport-NO+BUG.pdf)*.
- 11 *Available at: <http://gao.gov/assets/670/666787.pdf>*.
- 12 For a good introduction to the dangers of ISDS and its difference from U.S. takings jurisprudence, see William Greider, “The Right and US Trade Law: Invalidating the 20th Century,” The Nation, Nov. 17, 2001. *Available at: [www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#](http://www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#)*.
- 13 Simon Lester, “The Sad State of the Investor-State Debate,” The Huffington Post, Oct. 22, 2014. *Available at: [www.huffingtonpost.com/simon-lester/the-sad-state-of-the-inve\\_b\\_6023444.html?](http://www.huffingtonpost.com/simon-lester/the-sad-state-of-the-inve_b_6023444.html?)*
- 14 See ILO Regional Office for Asia and the Pacific, “Wages in Asia and the Pacific: Dynamic but uneven progress,” Global Wage Report 2014/15 | Asia and the Pacific Supplement, International Labor Organization, December 2014, at Figure 2. *Available at: [www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/--sro-bangkok/documents/publication/wcms\\_325219.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/--sro-bangkok/documents/publication/wcms_325219.pdf)*.
- 15 See Conan Young, “Medicines ‘won’t cost more under TPP,’” Radio New Zealand News, Oct. 22, 2014. *Available at: [www.radionz.co.nz/news/national/257457/medicines-%27won%27t-cost-more-under-tpp%27](http://www.radionz.co.nz/news/national/257457/medicines-%27won%27t-cost-more-under-tpp%27)*.
- 16 See Banyan, “No End in Sight,” The Economist, Feb. 25, 2014. *Available at: [www.economist.com/blogs/banyan/2014/02/trans-pacific-partnership-0](http://www.economist.com/blogs/banyan/2014/02/trans-pacific-partnership-0)*.
- 17 See “What will the TPP mean for Australia?” (Video), Australian Broadcasting Corp., March 31, 2015. *Available at: [www.abc.net.au/news/2015-03-31/what-will-the-tpp-mean-for-australia/6363354](http://www.abc.net.au/news/2015-03-31/what-will-the-tpp-mean-for-australia/6363354)*.
- 18 Alan Beattie, “The flaws in the geopolitical case for the TPP,” Financial Times, March 25, 2015. *Available at: <http://blogs.ft.com/the-world/2015/03/the-flaws-in-the-geopolitical-case-for-the-tpp/>*.



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