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**Testimony before the U.S.-China Economic and Security Review
Commission**

On

“U.S. Tools to Address Chinese Market Distortions”

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By

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Introduction

The AFL-CIO is the umbrella federation for America's unions, with 55 unions representing more than 12 million working men and women in every sector and industry of the American economy. We aim to ensure that all people who work receive the rewards of that work—decent paychecks and benefits, safe jobs, respect, and fair treatment. We work to make the voices of working people heard in the White House, on Capitol Hill, and in state capitals, city councils, and corporate boardrooms across the country.

The AFL-CIO and its affiliate unions support trade and investment policies that create good jobs, which is why we welcome the opportunity to testify before the Commission. We appreciate your continuous work to address economic and security issues posed by the U.S. relationship with China and to seek better solutions to maintain peace, security, and shared prosperity for all. We believe that the U.S. economy is best served when our trade and investment rules are aimed toward creating good jobs and high wages rather than merely profits, when those rules are robustly enforced, and when our trading partner countries can share in our prosperity, creating a virtuous global cycle of rising demand and standards of living for all.

China's mercantilist approach to trade has had significant adverse effects on both U.S. and world markets. Its "beggar thy neighbor" approach is contrary to the principle of shared prosperity for all. China's unfair trade practices have been a drag on U.S. wage and job growth. These practices eliminated 3.4 million U.S. jobs between 2001 and 2015 alone.¹ Nearly three-fourths (74.3 percent) of the jobs lost were in manufacturing (2.6 million), including 1,238,300 jobs in computers and electronics.² The manipulation and misalignment of the renminbi during this period significantly limited U.S. exports to China while bolstering Chinese exports to the U.S., thereby contributing to a structural trade deficit. Rampant intellectual property theft and forced technology transfers in China have cost untold millions for U.S.-based creative artists and innovators. China's continuing limits on market access have coerced major investments by U.S. companies in China, with joint-venture partners chosen by the government, ostensibly to access Chinese consumers, even though such access does not always materialize. Instead, those investments are often directed at producing for the U.S. market under labor, environmental, and health and safety conditions that both fail to meet international standards and disadvantage U.S.-located producers.

China is not solely to blame for weaknesses in the U.S. economy. The inadequate U.S. response and ill-considered adoption of neoliberal economic recommendations have also had sizable opportunity costs for U.S. working families. For example, those who supported China's accession to the World Trade Organization (WTO) argued that China would become a market economy and that a worldwide level playing field would benefit America's firms and workers. At the time, Rep. John Linder (R) called it "a gift to America's workers" and Rep. Charles Rangel (D) opined that it was "an agreement in the interest of the American worker [that would] create more jobs, more growth, and more prosperity for America." These and other rosy

¹ Robert E. Scott, "Growth in U.S.–China trade deficit between 2001 and 2015 cost 3.4 million jobs: Here's how to rebalance trade and rebuild American manufacturing," Economic Policy Institute, Jan. 31, 2017, available at: <http://www.epi.org/publication/growth-in-u-s-china-trade-deficit-between-2001-and-2015-cost-3-4-million-jobsheres-how-to-rebalance-trade-and-rebuild-american-manufacturing/>.

² *Id.*

predictions never came to pass. In the years since, neither Congress nor succeeding administrations have done enough to stop China's unfair trade practices or to protect America's working families

Trade Deficit with China

In 2017, the U.S. goods trade deficit with China exceeded \$375 billion.³ While U.S. exports to China have grown more than fivefold in that time, evaluating the impact of China's WTO accession by looking only at exports is like trying to determine the health of one's bank account while only reviewing one's deposits.

Moreover, it is not just the value of trade that matters, but its composition. Today the U.S. runs a deficit in Advanced Technology Products with China of well over \$100 billion. Among the top 15 U.S. exports to China over the past 5 years have been copper waste and scrap, aluminum waste and scrap, and paper waste and scrap. Even the top U.S. food exports to China over the last five years—soybeans and sorghum—are not the kind of value added products that provide large numbers of working people middle class jobs. China, in the case of soybeans, for example, has denied entry for U.S. crushed soybeans—which have a higher value-added than unprocessed soybeans and are therefore more important to creating good jobs. The U.S. trade deficit with China—in both size and quality—impacts the quality of jobs available to U.S. workers.

China's Unfair Intellectual Property Policies

The AFL-CIO has been at the forefront of efforts to protect American intellectual property. Our members know that strong intellectual property protections are key to ensuring the continuing vitality and competitiveness in both the manufacturing sector and the creative arts. Economic growth requires innovation. Continued threats to U.S.-developed intellectual property have a clear and direct impact on jobs and the U.S. standard of living.⁴

The Administration's announcement of Section 301 tariffs to combat Chinese policies and practices in this arena is long overdue. Since the early 1990s, China has engaged in illegal, predatory and protectionist actions to circumvent intellectual property protections. Unfortunately, previous administrations, Democratic and Republican, too often relied on behind-the-scenes diplomacy, which typically resulted in little more than ineffective statements of shared goals. As the years passed, China continued to acquire U.S. intellectual property that could be used to undermine U.S. production and the jobs and wages that go with it through a combination of legal, coercive, and illegal means.

China, including through its "Made in China 2025" initiative, has made clear it will continue its present course to dominate the industries of the future: robotics, autonomous and new energy vehicles, artificial intelligence, nanotechnology, biotechnology, 3D printing, and other cutting-edge technologies. China has made clear that it wishes to exclude foreign suppliers, promote indigenous development, and continue to promote its state-owned enterprises and national

³ U.S. Census Bureau figures. Available at: <https://www.census.gov/foreign-trade/balance/c5700.html> (accessed June 1, 2018).

⁴ Note that labor's strong support for intellectual property rights has always been accompanied by the recognition that intellectual property rules must not be employed as a means to deny working people affordable health care, including prescription medicines.

champions over competitors based outside China. These policies advance Chinese firms and interests to the detriment of U.S.-based working people, even where the stated policies contradict China's international commitments.

While U.S. and other non-Chinese businesses are often considered the victims of these policies, these companies have also often been complacent and even complicit in the transfer of intellectual property and related jobs to China. Many have bowed to pressure to share their technology with the Chinese partners because of their desire to harvest short-term profits even though their decisions may jeopardize the future of their companies and the U.S. economy as a whole. They have refused to stand up against overt Chinese protectionist policies due to fears they will lose favor with the leaders of the Chinese Communist Party and be subject to arbitrary restrictions.

It is painfully clear that the U.S. will continue to be at a competitive disadvantage if it solely relies on decisions made in corporate board rooms. America's working families need proactive trade policies that put the interests of the U.S. and its workers before those of multinational corporations and foreign competitors. However, revamping U.S. trade policies alone will not be enough. The U.S. will also need to finally develop and implement a set of comprehensive manufacturing policies that involve the public and private sectors. Without this commitment, the U.S. is likely to continue to fall behind China and other competitors in the race to build the products of the future.

State-Owned Enterprises

Upon WTO accession, China agreed that it would ensure that state-owned and state-supported enterprises (collectively, SOEs) would make purchases and sales decisions based solely on commercial considerations. It also agreed that it would not influence commercial decisions except in a WTO consistent manner. This promise, like so many others, has been broken. China's state-owned and state-supported enterprises receive raw materials and other inputs at below market rates, and have access to preferential debt and equity financing, including soft "loans" from state-owned banks that do not need to be repaid. Moreover, these firms are consistently operated in a manner that gains them market share—rather than profits. A private enterprise would not long remain in business if it failed to respond to the market, but, because state resources prop them up, Chinese SOEs not only can, but do. While losing money by selling goods at below market prices, they force U.S. competitors out of business. China is intentionally pursuing overcapacity in industries including solar panels, aluminum, glass, and steel. Once international competitors have folded, China's overcapacity will fill the gap, at which time prices should soar. The Rhodium Group reports that Chinese SOEs, rather than China's private firms, led new outbound investment announcements in 2017. China's latest five-year plan calls for greater Communist Party and state control over China's state-owned enterprises.⁵

⁵ U.S.-China Economic and Security Review Commission Staff Research Report, "The 13th Five-Year Plan," Feb. 14, 2017. *Available at:* <https://www.uscc.gov/sites/default/files/Research/The%2013th%20Five-Year%20Plan.pdf>.

Subsidies, Offsets, National Treatment and Other Issues

Despite then-Rep. Nancy Johnson’s promise that PNTR for China would “eliminate[] quotas and special licensing requirements, and prohibit[] conditioning investment on local content requirements, offsets, research in China or technology transfer,” it did nothing of the kind. These practices remain commonplace across China, and many of them are employed either to induce investment in China or to give China’s national champions an advantage over non-Chinese competitors.⁶

In its 2015 Report to Congress, the Commission concluded that China restricts foreign investment in sectors in which it does not have a competitive advantage. The Commission also concluded that restrictions of foreign investment are largely driven by China’s economic and strategic goals rather than market forces.

China’s state-supported shift to higher value-added manufacturing (which the U.S. could and should support through of WTO-consistent policies, but regrettably so far has not) must be carefully monitored. Over the past few years, several of the largest automobile manufacturers in the world, including U.S.-based companies, have announced significant investments to build electric and hybrid vehicles of the future in China. Gao Feng Advisory, a Beijing-based consulting firm, estimates that China will have spent about \$15 billion by 2020 installing charging stations for electric cars. These and similar activities, if supported through WTO-inconsistent means, threaten the future of a broad array of U.S. industries with important good job opportunities.

In addition, and as we have mentioned before, though the WTO lacks specific disciplines regarding internationally recognized labor standards, China’s systematic violations of freedom of association and collective bargaining and its use of forced and child labor constitute not only human rights violations, but act as unfair subsidies that artificially lower the cost of goods and services from China. Worker exploitation is not a natural endowment.

Theme One: Relative Merits of Existing U.S. Domestic Measures to Address China’s Market Distortions

While there is some overlap between existing tools to address unfair trade practices (including Sections 201, 232, 301, and 337 of the Trade Act) each also has unique applications.

Section 232 is designed to address adverse effects of imports on our national security. It is not qualified by whether the underlying cause of those imports is due to unfair trade practices. The unlimited nature of 232 makes its use rare, perhaps overly so. In an era in which U.S. policy is nominally (if not in actual practice) based on “free trade,” administrations have been reluctant to use this tool, concerned over possible backlash from both Congress (often representing the interests of global companies to the detriment of U.S. working families) and trading partners. Although we agree Section 232 should not be overused, nor should it be underused.

⁶ See, e.g., Antonio Graceffo, “China’s National Champions: State Support Makes Chinese Companies Dominant,” *Foreign Policy Journal*, May 15, 2017. Available at: <https://www.foreignpolicyjournal.com/2017/05/15/chinas-national-champions-state-support-makes-chinese-companies-dominant/>.

For example, we support the implementation of Section 232 tariffs to address steel and aluminum imports; had the prior administration implemented such tariffs, many communities, firms and working people in these vital industries could have been better protected and our national security would have been at reduced risk. However, as we have repeatedly made clear, we believe China's overcapacity and overproduction of steel and aluminum is causing problems globally and requires a global solution. As such, the U.S. should be working with allies (including Canada and the European Union) instead of alienating them. The go-it-alone approach the U.S. is using with respect to the 232 case risks undermining this effort and could make it harder to achieve other trade goals. It is certainly not building relationships.

Section 301, alternatively, is applicable where there are practices that are unreasonable or unjustified or where there is a violation of a trade agreement. It is the chief U.S. tool to address unfair trade practices. Although Section 301 includes options for both mandatory and discretionary action, even the mandatory actions can be avoided, if for example, the United States Trade Representative (USTR) determines that a party is "taking satisfactory measures" to grant rights under a trade agreement—a vague standard that could be used to avoid action to the detriment of firms, jobs, and communities in the U.S. In addition, Section 301 has been woefully underused to address violations of labor and environmental obligations in trade agreements—the violation of which not only acts as an inducement to transfer production abroad, but also creates downward pressure on wages and standards in the United States. The AFL-CIO supports the current Administration's use of Section 301 to address China's unfair and in many cases illegal intellectual property practices, but has concerns about the on-again, off-again nature of the roll out and implementation. China's intellectual property practices have serious consequences. Tools to address them should not be used capriciously.

Section 201 is a safeguard measure and, accordingly, has a different set of "triggers" to determine whether it is available to address high levels or surging injurious imports. Section 201 does not require a finding of an unfair trade practice but requires that the injury or threatened injury be "serious" and that the increased imports must be a "substantial cause" (important and not less than any other cause) of the serious injury or threat of serious injury. These higher standards of proof make this section more difficult to use, particularly for less well-heeled entities seeking protection, and therefore less effective from the point of view of protecting U.S. economic and national security.

Section 337 is a statute that has much broader applications than have been successfully utilized by the private sector. The ITC has essentially limited its utility to addressing violations of intellectual property despite the expansive scope provided for in its authority. For example, a recent case filed by US Steel under 337 was undermined by the misreading of the statute to eliminate an antitrust claim. As a result, future Section 337 claims asserting that foreign companies are fixing prices at below-market prices and thereby undercutting the prices of domestic competitors are unlikely to be successful, which is contrary to Congressional intent. This Commission could help by making clear that the original intent of Congress under 337 should be restated and its broad authority reaffirmed.

While the AFL-CIO believes that the Administration has made a number of significant missteps in terms of executing action, we support of the robust use of our trade laws to promote the interests of U.S. workers and action to protect our economic and national security.

In general, we believe that U.S. tools to address unfair trade practices could be strengthened in a variety of ways, some of which have been previously recommended by this Commission. These opportunities for improvement include:

- Increase the use of self-initiated cases, to reduce the financial burden on firms already suffering from unfair trade
- Expand opportunities for municipalities and other local bodies to bring cases, as this would allow communities of workers and firms to band together to address injurious trade practices
- Create a sort of public trade prosecutor, who could bring cases that firms, communities and workers may not otherwise be able to bring
- Increase automaticity in enforcement, reducing discretion not to act even when a petitioner has made the required showing
- Ensure that the International Trade Commission has the authority to address “social dumping” by foreign countries and firms engaging in egregious labor and environmental practices (such an approach is contemplated in S.2566 - Level the Playing Field in Global Trade Act of 2018)
- Provide Congress an opportunity to officially recommend trade enforcement cases to the administration, and to require public reporting if referred cases are not pursued
- Strengthen and enhance opportunities to address predatory foreign investment that threatens our national economic security, including by addressing joint ventures that do not operate on U.S. soil (for example, S.1983 - United States Foreign Investment Review Act and H.R.4311 - Foreign Investment Risk Review Modernization Act (as introduced) would help in this regard; both incorporate prior recommendations of the Commission)
- Create channels through which predatory investments may be addressed through trade law, for example when a state-owned enterprise imports dumped, subsidized, or other unfairly traded goods from its foreign affiliate, such imports do not “enter commerce” by changing hands and thus may not be reachable with existing tools

Theme Two: Relative Merits of U.S. Multilateral Actions to Address Trade Challenges

Unfortunately, at present, U.S. multilateral trade efforts actions tend to exacerbate, rather than help address, the trade and investment challenges China poses. Beginning with North American Free Trade Agreement (NAFTA) and WTO and continuing with subsequent trade deals, U.S. trade agreements have facilitated higher volumes of trade, but contain no measures to ensure that increased trade flows will be reciprocal or that any gains are widely shared. Many of the provisions—including investor-to-state dispute settlement and limitations on financial services and food safety rules—actively hinder or deter domestic policies that would foster equitable development. The fundamental architecture of existing deals promotes broad investor rights while restricting governments’ regulatory autonomy. On the whole, NAFTA-style agreements have proved to be primarily a vehicle to increase corporate profits at the expense of U.S.-located

manufacturers, workers, consumers, farmers, communities, the environment and even democracy itself.⁷

The chief problem in the U.S. approach to these bilateral, regional, and multilateral deals is that those who negotiate them have substituted the interests of global companies that use the United States as a flag of convenience for the interests of the American people and the U.S. economy writ large. As such, these agreements are filled with tools that address the corporate priority to minimize regulations and escape responsibilities imposed by democratic societies, but very little, if anything, to address trade balances, economic security, labor and human rights, environmental protections, consumer information, or other issues of importance to those outside the management of the world's largest firms.

Trade policy should never be a question of “free trade” versus “protectionism.” U.S. trade agreements should adopt the frame, “How should the U.S. structure international trade rules so that they promote good, family-wage jobs, sustainable growth, dynamic economies, smart natural resource conservation, and the realization of human rights and dignity globally?” We believe that using this frame will lead to better trade policy choices and better outcomes for working families.

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

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

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

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

⁷ For more detail, see “NAFTA at 20,” AFL-CIO Report, March 2014. Available at: <https://aflcio.org/reports/nafta-20>.

compete with apparel (and auto, and steel) workers who have been displaced by imports.”⁸

To address the shortcomings of the current U.S. approach, the AFL-CIO has made numerous recommendations for improvement. These recommendations are described at length in our submissions regarding the two most recent trade deals under negotiation, the NAFTA (a renegotiation)⁹ and the Trans-Pacific Partnership.¹⁰

I will include here some of the key recommendations the Commission may wish to consider:

Add Enforceable Rules to Address Currency Manipulation and Misalignment

U.S. bilateral, regional, and multilateral trade deals must include enforceable currency disciplines subject to trade sanctions in the text of the agreement.¹¹ In addition, in bilateral and regional deal such as NAFTA, parties also should commit to coordinating enforcement efforts with respect to the currency manipulation and misalignment by non-party countries, including China. The goal of both provisions would be to reduce the unsustainable U.S. trade deficit by addressing issues of trade and exchange rates. Currency realignment would create 2.3 million to 5.8 million jobs over the next three years.¹²

Add Enforceable Rules to Ensure State-Owned Enterprises Do Not Operate to Harm the U.S.

It is important U.S. trade deals include appropriate rules to discipline non-commercial, anti-competitive behavior of SOEs that invest in the U.S.¹³ These rules should require SOE transactions be based on commercial considerations and increase transparency and reporting to facilitate enforcement of such rules. In addition, and in conjunction with these trade rules, domestic laws should be updated to ensure that an effective domestic remedy is readily available to the private sector to fight for its interests when SOE behavior on U.S. soil injures U.S.

⁸ Bivens, Josh, “Adding Insult to Injury: How bad policy decisions have amplified globalization’s costs for American workers,” Economic Policy Institute, Jul. 11, 2017. *Available at:* <http://www.epi.org/publication/adding-insult-to-injury-how-bad-policy-decisions-have-amplified-globalizations-costs-for-american-workers/>.

⁹ AFL-CIO, Making NAFTA Work for Working People, June 12, 2017. *Available at:* https://aflcio.org/sites/default/files/2017-06/NAFTA%20Negotiating%20Recommendations%20from%20AFL-CIO%20%28Witness%3DLee%29%20Jun2017%20%28PDF%29_0.pdf.

¹⁰ AFL-CIO, Testimony Regarding the Proposed Trans-Pacific Partnership Trade Agreement, January 25, 2010. *Available at:* <https://www.citizen.org/sites/default/files/afl-cio-comments-on-proposed-tpa.pdf>.

¹¹ There are many ways to establish such enforceable provisions against currency manipulation and misalignment. During the TPP negotiations, for example, two useful proposals included a test promoted by the American Automotive Policy Council and the incorporation of the International Monetary Fund’s seven factor guidelines.

¹² Scott, Robert E., “Stop Currency Manipulation and Create Millions of Jobs, With Gains across States and Congressional Districts,” EPI Briefing Paper #372, Economic Policy Institute, Feb. 26, 2014. *Available at:* www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/

¹³ To be clear, the AFL-CIO does not consider public service providers to be SOEs and would not apply SOE rules to such institutions as the postal service, public universities, public hospitals, public transit systems and the like.

businesses and their employees.¹⁴ We also recommended the creation of a rebuttable presumption that an SOE is acting on its home country's behalf, not the interests of our workers, if it seeks to block action to protect an injured party in the U.S., and the consideration of a screening mechanism for SOE investments.

WTO Reforms to Address Gaps and Overreach

Since China acceded to the WTO, its shortcomings have become clear. It has no clear or effective rules to address the problems created by China's state capitalist model. Key among these are overcapacity, currency manipulation and misalignment, anti-trust type issues when one or a very small number of firms (or countries) essentially corner the global market, and the WTO's complete failure to address unfair trade created by the suppression of worker rights and environmental exploitation. If the WTO can be reformed to effectively address these issues, such changes would have a beneficial impact on jobs, wages, and workplace rights.

However, as it stands, America's working families have little faith that the WTO can work for them, instead of against them. To date, the WTO is better known for its overreach to impede U.S. domestic trade laws (primarily through its attack on zeroing) and U.S. consumer laws (country of origin labels for beef and pork and dolphin-safe tuna labels).

One proposed change to the WTO that should be strenuously opposed is an attempt to expand investor-to-state dispute settlement (ISDS) to that body, for example through an "investment court system," as proposed by the European Union. ISDS is a separate justice system for foreign investors. It discriminates against U.S.-located firms by providing extraordinary procedural and substantive rights to foreign-based firms. According to the Cato Institute, "It is effectively a subsidy that mitigates risk for U.S. multinational corporations and enables foreign MNCs [multinational corporations] to circumvent U.S. courts when lodging complaints about U.S. policies."¹⁵ By offering additional legal protections beyond those that exist under U.S. law or other countries' national courts, ISDS makes it more attractive to send production, investment, and jobs overseas.

As one of the lawyers who brought a case against the United States on behalf of a Canadian company explained, "[The ISDS provision in] NAFTA does clearly create some rights for foreign investors that local citizens and companies don't have. But that's the whole purpose of it."¹⁶ But rule of law requires that the law—including the system of justice—apply to everyone equally. ISDS violates this bedrock principle of democracy. ISDS also disadvantages U.S. companies that only produce in the United States (e.g., micro- and small- to medium-sized

¹⁴ As mentioned in the trade remedies section, a corresponding change to trade remedy law is critical. Otherwise, Chinese state-owned enterprises such as Tainjin Pipe can invest their way out of U.S. trade remedy law.

¹⁵ Ikenson, Daniel J., "A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement," Cato Institute's Free Trade Bulletin No. 57, March 4, 2014. Available at: www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state.

¹⁶ Greider, William, "The Right and US Trade Law: Invalidating the 20th Century: How the right is using trade law to overturn American democracy," The Nation, Nov. 17, 2001. Available at: www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#.

companies) because they have fewer rights than their foreign competitors. ISDS should be eliminated from U.S. bilateral and regional deals as well.

Strengthen Rules of Origin

In general, “rules of origin” in trade deals should be set such that domestic producers and workers in the signatory countries are the primary beneficiaries of market access commitments, not third-party countries that take on no trade obligations in the deal. Strengthening the auto regional value content and closing related loopholes, as the Administration has proposed for NAFTA, is important, but is not the only way to address this recommendation. The parties must also strengthen content requirements for steel, aluminum, textiles and apparel, and aerospace products, for example. Strong rules of origin will provide an incentive to produce in the U.S. and limit opportunities for leakage to non-party producers.

Protect Responsible Government Purchasing and Buy American Policies

U.S. trade deals should support domestic job creation efforts by eliminating procurement commitments and promoting responsible bidding standards.¹⁷ Currently, NAFTA, the WTO’s Government Procurement Agreement, and various smaller agreements give bidders from other countries expansive access to U.S. goods, services and construction contracts. These provisions can undermine not only domestic preferences, but also responsible bidding criteria (such as requirements that a bidder have no outstanding environmental cleanup obligations or the implementation of a system that awards bonus points for bidders with better safety records or that source from local farms).

Add Commitments to Address Combat Tax Dodging

NAFTA and subsequent trade and globalization rules have had a negative long-term impact on tax revenues and public investment. In addition, through a variety of legal and illegal tax avoidance schemes, tax revenues have fallen for jurisdictions around the world, regardless of tax rates. This troubling trend undermines the social contract and inhibits robust public investment in infrastructure and human capital. U.S. trade deals should combat base erosion and tax avoidance to help meet infrastructure needs and cultivate public support for international trade. Optimally, countries should also coordinate rates to avoid a race to the bottom in a competition for investment (Panama, for example, is known as a tax haven; the U.S.-Panama trade deal could have and should have addressed tax issues head on to help ensure U.S. working families had a chance to reap fair benefits from the deal). If done right, such tax coordination could help all trade partners build new schools, high speed communications networks, and transportation corridors. If trade is viewed as a vehicle to facilitate tax dodging by economic elites, public opposition to trade will only grow.

¹⁷ Although there is room for additional study of the impacts of existing procurement deals (e.g., an analysis of the job and wage effects of the reciprocal agreement between the United States and Canada that was adopted for the expenditure of American Recovery and Reinvestment Act funds and an analysis of U.S. procurement contracts won by multinational versus domestic-only firms), to date, there is simply no evidence to support duplicating existing procurement commitments that require the U.S. government to treat foreign bidders with the same preferences as U.S.-based bidders.

Add Commitments to Invest in Infrastructure

Investing in infrastructure drives long-term, broadly shared growth, but is hard to do when global companies are driving a race to the bottom. Adding infrastructure commitments to bilateral and regional deals could help offset the incentives of prior trade deals that have arguably depressed public investment. This kind of coordinated investment (e.g., by creating target annual investments) could help create jobs to offset any lost through trade, while also improving economic efficiencies and providing public goods for the long term.

Include Internationally-Recognized Labor Rights with Swift and Certain Enforcement

Finally, the AFL-CIO strongly recommends that all bilateral, regional, and multilateral trade efforts require parties to ensure that all workers within their territory can exercise the fundamental labor rights established in a tri-partite manner by the International Labor Organization in its eight core conventions. This would ensure that competition is not based on human abuse and exploitation. To accomplish this, the U.S. must incorporate in both trade deals and domestic practice, effective monitoring and enforcement procedures. Otherwise the labor rules will become guidelines.¹⁸

Theme Three: Coalition Building Opportunities

Unfortunately, the United States has not optimized its opportunities to build effective coalitions to address trade and investment issues, particularly those posed by China. In fact, some in the Administration have engaged in rhetoric that is xenophobic and nationalistic. Such rhetoric is counterproductive and will make it more difficult to build the coalitions America's workers need to build a strong, inclusive global economy in which workers around the world can all prosper.

The TPP was touted as an opportunity to build an effective trade coalition to address threats from China, but any opportunity that existed was squandered. In fact, it is important to note that, with respect to the Trans-Pacific Partnership in particular, which was promoted to the public as a way to deal with the challenges China poses, its impact would have been the opposite. Important trade policy reforms needed to achieve shared prosperity and sustainable growth and development in the TPP were unfortunately non-existent (climate change and currency), inadequate to the challenge (labor and state-owned enterprises), or counterproductive (investment) in the TPP. The deal was unlikely to help workers organize, bargain and raise wages in Vietnam, Mexico, or the U.S., and it would not have prevented any trading partners from disadvantaging American manufacturing by manipulating their currency. The argument that it nevertheless somehow set a "high bar" for China is therefore unsupported.

When and if enacted, even in the absence of the United States as a party, the TPP would allow China to benefit from its provisions without even joining. Its weak rules of origin, lack of rules on currency manipulation, and benefits that would apply to Chinese companies operating in any of the TPP countries mean that China has very little incentive to change its mercantilist model that has been undercutting U.S. manufacturers and displacing millions of U.S. jobs for more than a decade. For example, if Chinese intermediate parts were exported to Malaysia for final

¹⁸ For more information, see AFL-CIO, "A Gold Standard for Workers? The State of Labor Rights in Trans-Pacific Partnership Countries," 2016. Available at: https://aflcio.org/sites/default/files/2017-03/1628_TPPLaborRightsReport.pdf.

assembly and export to the U.S., those parts could be made far out of compliance with any TPP standards, but still receive TPP benefits in the finished product if the U.S. had remained in the deal. Accordingly, the AFL-CIO strongly supports the Administration's decision to withdraw from the TPP.

Rather than a go-it-alone approach, which the Administration seems to be pursuing vis a vis the China 301 tariffs to address intellectual property, and to some extent the 232 tariffs on steel and aluminum, the U.S. should work with like-minded allies to act in concert. The risk of not doing so is great: it could send our potential allies even more strongly toward capitulating to China's predatory practices. Canada and Europe should be amongst our strongest allies in addressing China's steel overcapacity, yet the U.S. approach to them regarding the 232 tariffs would seem to indicate otherwise.

Theme Four: Additional Recommendations

In addition to the recommendations already made, the AFL-CIO would like the Commission to consider:

Improve CFIUS

The AFL-CIO agrees with the Commission's prior recommendation to add a net economic benefits test to CFIUS. Already, trading partners including Australia and Canada require foreign investments to undergo a similar review. Such a review would consider not just strategic acquisitions that could turn advanced technologies against us, but also strategic acquisitions designed to strip high value-added production jobs from the U.S. Adding an economic benefits test could change an intended "acquire and run" acquisition into a longer-term investment and induce the investor to continue operating the U.S., creating more jobs opportunities for U.S. workers. Limiting CFIUS review to a narrow and outdated definition of national security leaves open the prospect of predatory acquisitions designed to weaken our economy—not just acquire strategic technology and know-how. A weakened economy has fewer jobs and lower wages and creates impediments to making the security investments necessary to keep working families safe.

The AFL-CIO also recommends expanding CFIUS's ability to review greenfield investments beyond those proximate to a military base or other strategic facility. Given the demonstrated ability of the Government of China to guide and manage foreign investments to achieve long-term goals, it would seem prudent to expand the scope of investments subject to CFIUS review, so that we do not, as a nation, face challenges that could have been prevented or mitigated with appropriate and timely action.

Should the U.S. adopt this recommendation, it would be well-advised to act to ensure that existing trade commitments could not be used to undermine enhanced investment reviews.

Complementary Industrial Policy

The U.S. must develop and implement a broad set of domestic industrial and economic policies to rebuild, repair and modernize U.S. infrastructure; support research, development and advanced manufacturing, including by identifying and affirmatively targeting the jobs and industries of the future; provide working people with state of the art education and skills; and

upgrade its support for both works and entrepreneurs to support risk taking. Absent these investments, trade policy seems poised to continue to leave workers behind. Certainly, trade deals alone will not help the United States maintain prosperity and security vis a vis China in the future.

Conclusion

In summary, it is time to act. Workers across the country are the real victims as their future, and U.S. economic and national security, are under attack. The U.S. cannot continue to trade away its economic strengths for empty promises.