The Trans-Pacific Partnership: Working Families Need a New Trade Model

Statement by the national AFL-CIO - February 27, 2013

The Trans-Pacific Partnership trade deal (TPP) currently being negotiated has the potential to set a new standard for trade policy in the 21st century—but what has been made public about the negotiations to date is grounds for deep concern that it will not fulfill its promise. American working families need a game change—a high-road strategy that focuses on creating high-wage jobs, encouraging collective bargaining, implementing a strategic manufacturing policy and reinvesting in our infrastructure and our people.

Promoting economic growth with equity in the United States and worldwide requires an approach that couples expansion and enforcement of labor rights globally with necessary reforms in trade and economic policy. These reforms must break from current policies to address income inequality through demand-led growth, as part of a Global New Deal that raises incomes and standards of living for all.

The U.S. trade model, which began with NAFTA and continued with the Korea and Colombia agreements, undermines those goals by encouraging employers to pit one group of workers against another—both within and between countries. Under this model, our trade deficit has increased dramatically—from $75 billion in 1993, the year before NAFTA went into effect ,to $540 billion today (in nominal terms). The NAFTA-based model promotes a race to the bottom in workers' rights, wages, pensions and working conditions; resource conservation; food safety; and consumer protections. It actively undercuts the public policies that helped bring about the rise of the middle class in the first place. Changing the policies that have promoted the race to the bottom is as important as our work to promote freedom of association and collective bargaining for workers everywhere.

The AFL-CIO long has criticized the NAFTA-based trade model, including policies on investment, labor standards, procurement, services, financial services and core commercial rules, including rules of origin. [1] Progress in trade policy requires change in each of these areas—we need an entirely new model to ensure those whose work creates the wealth will share the gains from trade.

The AFL-CIO believes there is a serious risk that the TPP, a proposed trade agreement including the United States and 11 other countries (Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and potentially Japan), will repeat the mistakes of the NAFTA trade model. While negotiations continue, it appears too many of the proposals being offered by the United States closely follow the current trade model. This would be a tragic missed opportunity to strengthen our economy, reduce income inequality and promote sustainable growth. The United States cannot afford another trade agreement that hollows out our industrial base and adds to our substantial trade deficit. The AFL-CIO has proposed specific changes to the TPP in such critical areas as labor, state-owned enterprises, rules of origin, government procurement, currency, investment (including a more comprehensive screen for inward bound FDI), reciprocal market access, services, financial services, the environment, food safety and other public interest regulation, and access to medicines. [2] However, unless the TPP marks a break with the current trade model, workers will be unable to support it.

Unfortunately, it appears global firms that use the United States as a flag of convenience once again are seeking to define our national interest in trade negotiations. Such firms seek to increase profits by pitting countries against one another in the quest to attract foreign investment by reducing labor, environmental and social costs. This is fundamentally at odds with the economic interests of the United States and its citizens, and in many cases also at odds with the interests of our trading partners, who seek rising living standards in their own countries.

The disproportionate voice of global corporations in the formation of U.S. "free trade" agreements has advanced deregulation, privatization, tax and other preferences for businesses, weakened worker bargaining power and led to a dwindling social safety net. The results are clear: trade deficits, lost jobs, rising inequality, falling wages and weakened democratic governance. [3]

The most significant example of the systemic tilt of U.S. trade policy toward the richest 1% is the investor-state dispute settlement (ISDS) mechanism, which published reports indicate has been proposed for inclusion in the TPP. The investor-state language in the current trade model allows a single foreign-owned business to bypass domestic courts to challenge a democratically elected government's choice of labor, clean water or food safety regulations, or any other legislative, regulatory or judicial decision in an international arbitration forum. No such rights accrue to workers, citizens, civil society groups or state and local governments. This effectively creates a two-tiered legal system. Multinational enterprises that move their production and jobs offshore can use these rights to impede legitimate public-interest measures—thus harming our brothers and sisters abroad while shrinking our domestic job base.

Domestically, these investment provisions could be and have been used to challenge our own legitimate public-interest regulations.

For example, the Metalclad Corp., a U.S. waste disposal company, instituted arbitration proceedings against Mexico under NAFTA's ISDS provisions, arguing Mexico wrongfully refused to grant a permit to open and operate a hazardous waste disposal facility in San Luis Potosi, despite concerns that unstable soil at the site could pollute the community's water supply. The panel found that Mexico had violated Metalclad's right to "fair and equitable treatment" under NAFTA; after a Canadian court overturned a portion of the award, Mexico eventually paid Metalclad $15.6 million.

Of course, the promoters of this approach promise that a TPP based on the NAFTA trade model will produce good jobs and improve the United States' strategic position in the global economy, promises that also were made about NAFTA and the accession of China to the World Trade Organization. In the end, those promises were hollow. Since the implementation of NAFTA, the growth in the trade deficit with Mexico has cost the United States nearly 700,000 net jobs. China's entry into the World Trade Organization has been even more disastrous, contributing to the displacement of 2.7 million American jobs—2.1 million of them in manufacturing alone.

Finally, we have serious concerns about including additional countries into the TPP and what the process for accession of new partners will be**.**

We are concerned by the recent announcement laying the groundwork for Japan to join the TPP negotiations. We oppose including Japan because its inclusion could jeopardize millions of good, middle-class jobs. Although it is a high-wage nation with a well-unionized workforce, its auto markets are some of the most closed in the world. U.S. products and services will not gain meaningful market access in Japan unless USTR adopts a wholly new approach to eliminating non-tariff barriers, including addressing Japan's history of currency manipulation. Our concerns with Japan's entrance into the TPP can best be addressed through bilateral means.

On a different note, we are deeply concerned about the labor and human rights situations in several other TPP countries, as well as potential TPP entrants. The TPP should not be an open-ended agreement that allows "any willing partner" to join, regardless of its labor and human rights record. A democracy clause and a commitment that each party will afford *all* its workers (including migrant workers) fundamental labor rights (as set forth in the ILO core conventions and their jurisprudence) are essential. Unless the TPP requires these minimum standards for democracy and fundamental labor rights *prior* to granting trade benefits under the agreement, we will end up in a situation similar to the one prevailing under the U.S.-Colombia FTA, in which "some progress" in a country that is a notorious labor rights violator may be declared "good enough," even as workers there remain largely unable to exercise the rights to freedom of association, organization and collective bargaining.

We appreciate the Obama administration's increased transparency and its openness to working diligently with us to address concerns we have raised. Increased transparency is crucial because the TPP represents an opportunity to cooperate with our trading partners to set a new and higher standard and embrace a people-centered framework for trade agreements. The American people, citizens in other TPP countries and, indeed, people around the world are seeking trade policies that will promote growth with equity, protect their health and safety and foster sustainable development. Let us take advantage of this moment to create shared prosperity as part of a Global New Deal. We do not need another trade deal that simply boosts corporate profits by encouraging offshoring good jobs while undermining wages, benefits and worker rights. We must do better.

[1] Rules of origin specify how much of a product has to be made inside the trading partners' territories to be eligible for tariff benefits. It may specify a value percentage (e.g., 35% of the product's value) or how much the product has to be transformed (which is a proxy for how much labor was involved). The stronger the rule of origin, the more work done inside the trading zone. Of course, rules of origin cannot guarantee that jobs will be created in any particular country within the trading zone—but weak rules of origin make it possible for countries not in the trading zone that have not made any obligations to the trading partners to benefit from the tariff benefits of the agreement.

[2] These ideas are laid out in the AFL-CIO's "Testimony Regarding the Proposed United States –Trans-Pacific Partnership Trade Agreement," presented to the United States Trade Representative, Jan. 25, 2010.

[3] For more information, see Robert E. Scott, "The China Trade Toll: Widespread Wage Suppression, 2 Million Jobs Lost in the U.S.," EPI Working Paper, July 30, 2008 (wage suppression); Robert E. Scott, "The China Toll: Growing U.S. Trade Deficit with China Cost More than 2.7 Million Jobs between 2001 and 2011, with Job Losses in Every State," EPI Briefing Paper #345, Aug. 23 , 2012 (deficit and job loss); Mariama Williams, "Challenges Posed by BITs to Developing Countries," in South Views No. 49, Dec. 11, 2012, and "Dangerous Weapons: How International Investment Rules Undermine Social and Environmental Justice," Network for Justice in Global Investment, Aug. 20, 2012 (weakened democratic governance).