BETTER JOBS, BETTER WAGES, BETTER FUTURE

A BETTER DEAL

#ABETTERDEAL

A Better Deal on Trade and Jobs:

Fighting Back Against Corporations that Outsource American Jobs and Countries that Manipulate Trade Laws

When put on a level playing field, American workers are the most competitive in the world. However, America's trade policies are not working for many working families and small businesses. For too long, big corporations have dictated how trade deals and foreign acquisitions are negotiated and the American worker has been left without a seat at the table. As a result, many of these deals have boosted corporate profits, but for many hard-working Americans, these same policies have led to shuttered factories and lower wages.

Democrats are proposing a Better Deal on Trade and Jobs that puts workers and small business first, ahead of corporate special interests. This plan would level the playing field for American workers by ensuring our workers aren't competing in a race to the bottom on wages and labor protections. This plan would crack down on foreign countries that manipulate trade rules and penalize corporations that outsource American jobs.

A Better Deal on Trade and Jobs would fundamentally transform our trade policies by giving American workers and small businesses the tools to combat those countries that try to cheat on trade and a stronger voice in negotiating trade agreements. We stand ready to work in a bipartisan way in Congress and with the administration to act on these common-sense solutions.

Specifically, A Better Deal on Trade would raise incomes and create more good-paying jobs by implementing the following program:

1. **An Independent Trade Prosecutor to Combat Trade Cheating:** a new Independent Trade Prosecutor would begin rapidly challenging unfair trade practices by foreign countries, like China, that have been ignored for far too long, without relying on the years-long World Trade Organization process.

2. **The American Jobs Security Council:** a new council comprised of independent economic experts would review a potential purchase by a foreign company of an American company and have the authority to stop the deal if it could have detrimental economic impacts, like U.S. job losses. The council would operate in public and have a robust input process for working people.
3. **Make NAFTA Work for Working People:** a renegotiated NAFTA must support more American jobs and higher wages. This can be achieved by negotiating the agreement in the open with workers at the table, requiring strong and enforceable labor standards and ensuring greater market access for U.S. exports, especially agricultural exports.
4. **Penalties for Federal Contractors that Outsource Jobs:** new rules to penalize federal contractors that outsource good-paying manufacturing and call center jobs by requiring federal agencies to consider a company's record of outsourcing for three years prior to an application for a federal contract.

5. **Buy America Requirements for All Taxpayer-Funded Projects:** new rules to require that taxpayer dollars be spent on U.S. companies and U.S. jobs for all federal public works and infrastructure projects, and current rules be revised to limit Buy America loopholes.

6. **Crack Down on Countries that Manipulate Their Currency:** currency manipulation law that levels the playing field for U.S. manufacturers by penalizing countries that unfairly manipulate their currency.

7. **An Outsourcing Tax for Companies Leaving the U.S.:** new rules in our tax laws so that companies are punished, and no longer rewarded, for shipping jobs and factories overseas, while creating tax incentives for companies that relocate foreign jobs back to the U.S.

1. Independent Trade Prosecutor to Combat Trade Cheating

Problem:

Previous Administrations have been ineffective or unwilling to deter trade cheats like China from breaking the rules. While multinational corporations have special access to trade enforcers, American workers have largely been ignored.

- The U.S. Trade Representative's General Counsel, under the direct supervision of the President, is responsible for most trade enforcement, but has not done enough to stop trade cheating.

- When the U.S. has acted to address trade cheating only a small number of cases are addressed, which fall under the narrow confines of WTO or Free Trade Agreement protections, and these take many years to resolve after the damage has already been done. [1, 2]

- For countries that are pervasive trade cheats like China, the WTO and other international bodies do not provide an adequate check. WTO decisions have eroded a number of U.S. trade enforcement tools. [3]

- U.S. companies seeking remedies from foreign competitors for unfair practices that cost American jobs, like fraud, intellectual property theft and violations of labor and environmental standards in trade agreements, deserve a fair shot at justice.

- The U.S. needs a trade enforcement system from the bottom up where workers, small companies and major corporations have equal access to the enforcers of our trade laws. U.S. companies and their workers should not need expensive teams of trade lawyers and lobbyists to have their voices heard.

Solution:

An Independent Trade Prosecutor would begin rapidly challenging unfair trade policies that have been ignored for far too long.

The features of the new Trade Prosecutor are as follows:

- The Trade Prosecutor would revamp our trade enforcement system to address more trade cheating than USTR is currently able to and address this cheating in a timely manner, independent from the administration's foreign policy goals and WTO constraints.
- The Trade Prosecutor would be housed at a new office in the independent, non-partisan, International Trade Commission and would evaluate petitions alleging trade violations from unions, businesses and trade associations, allowing workers and small business the same access to trade relief as large

[1] http://www.reuters.com/article/us-wto-disputes-idUSKBN18Z2K1
[2] http://www.lexology.com/library/detail.aspx?g=13fe0fa8-2e4c-45ca-b619-c4609ae96797
[3] http://www.americanmanufacturing.org/i/uploads/research-pdf/WTOReport_R3.pdf

corporations. This office would coordinate with the Department of Labor, the Department of Agriculture and the Department of Commerce.

- The Trade Prosecutor could pursue an expansive list of potential trade violations, including: unfair measures to block U.S. agricultural exports; subsidies causing industrial overcapacity forced technology transfers; pervasive violations of labor and environmental commitments; and forms of corporate espionage, including cyber espionage used for stealing intellectual property. The Trade Prosecutor would be responsible for evaluating possible trade violations under strict timelines.

- If foreign countries are found to be in violation and have not agreed to eliminate offending policies, they would face retaliation in the form of restrictions to U.S. market access in proportion with a U.S. company's losses or the foreign company's unfair advantage, without authorization from the WTO.
- The Trade Prosecutor would also be able to review WTO decisions that impact U.S. trade enforcement laws to determine if the WTO decision is consistent with U.S. WTO obligations and to what extent the U.S. should comply with the WTO decision.

2. The American Jobs Security Council

Problem:

Countries like China and Russia are using state-owned enterprises to acquire U.S. companies in an effort to gain an unfair advantage over U.S. industries and workers. In some cases, this has meant the erosion of U.S. competitiveness and jobs lost to foreign producers.

- The number of U.S. companies bought by China's state-directed investors has skyrocketed. From 2009 to 2015, China's foreign direct investment (FDI) in the U.S. increased 800 percent and within two years alone, China's FDI went from $12.8 billion in 2014 to $45.6 billion in 2016. Unfortunately, there is no reciprocity for American companies and investors in China, where there are numerous barriers to foreign investment. [4, 5]

- U.S. companies report that China's companies have been buying U.S. assets in order to directly compete against U.S. rivals using unfair practices. Chinese acquisitions are often aimed at purchasing U.S. assets to siphon trade secrets and technology to directly compete with other U.S. firms, threatening U.S. jobs. U.S. companies have also reported instances where foreign companies have lobbied for weakening Buy America rules and anti-dumping rules that protect U.S. jobs. [6]

- Unfortunately, the U.S. does not have a robust system for vetting potential foreign acquisitions for economic security concerns, like the health of jobs, wages, and impact to regional economies. While the Committee for Foreign Investment in the United States (CFIUS) analyzes potential deals for national security impacts, it does not make evaluations based on the impact to U.S. economic interests.

Solution:

The new American Jobs Security Council would examine foreign companies' proposed acquisitions and have the authority to halt major purchases that would create significant market distortion or have other detrimental economic impacts, including U.S. job losses.

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[4] http://rhg.com/notes/record-deal-making-in-2016-pushes-cumulative-chinese-fdi-in-the-us-above-100-billion
[5] https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2017/march/2017-national-trade-estimate-report-%E2%80%93
[6] https://www.uscc.gov/Annual_Reports/2016-annual-report-congress

For example, the Council would have the authority to block the pending purchase of the Chicago Stock Exchange and Aleris Aluminum to Chinese firms with ties to the Chinese government.

The features of the new Jobs Security Council are as follows:

- **A New Economic Security Test:** The American Jobs Security Council (the Council) would seek to limit negative economic influence or market distortion caused by foreign acquisitions of U.S. assets by requiring an evaluation of the economic impacts of potential transactions.
- **Consideration of Multiple Economic Factors:** The Council would have the authority to consider major investments, mergers and acquisitions by foreign entities, and specifically be able to evaluate a transaction's potential impact on job losses in economically distressed industries and regions, intellectual property leakage, loss of market share in critical industries, and the foreign investor's home country's domestic policies on foreign investment that may distort U.S. markets, among other factors.
- **Ability to Identify and Scrutinize Deals Backed by Certain Countries:** The Council's consideration of transactions would focus on entities that either have ties to or are directly controlled by certain governments or state actors that do not abide by market principles or have a history of intellectual property theft.
- **A More Open Evaluation with a Focus on Transparency:** This Council's analysis of the foreign investor and the potential negative economic influence or market distortion would be transparent and allow for companies, the public and workers to comment on their concerns.

3. A NAFTA that works for working people

Problem:

Unenforceable labor and environment standards in NAFTA encouraged a race to bottom that led to the offshoring of U.S. jobs and declining U.S. wages. Many NAFTA provisions empower corporations to erode U.S. laws through international tribunals and put profits before people.

- Mexico's labor and environmental laws have gotten weaker since NAFTA was implemented in an attempt to lure corporations. The absence of enforceable labor and environmental standards incentivized American companies to outsource to Mexico, eroding our manufacturing base and lowering wages for workers. [7] Mexico's minimum wage has lost 78 percent of its value in the last 30 years while real compensation declined 20 percent between 1994 and 2011. [8] Mexico still lacks true worker unions and remains on U.S. watch lists for human trafficking and large-scale child labor abuses. [9, 10]
- Designs at NAFTA's tribunals threaten U.S. sovereignty including environmental, health, safety and consumer protection regulations and U.S. trade enforcement laws. These provisions should not provide a back door to undermine U.S. Wall Street reform laws, U.S. welfare programs or efforts to combat climate change.
- NAFTA trade negotiators relied heavily on input from large corporations and their teams of lobbyists. Labor organizations, public interest groups and small businesses were not provided meaningful participation in crafting the agreement, while the public was largely kept in the dark. This allowed corporations to make sweetheart deals that advanced their profit-driven agenda over the interests of workers and consumers.

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[7] http://epi.3cdn.net/fdade52b876e04793b_7fm6ivz2y.pdf
[8] http://cam.economia.unam.mx/el-salario-minimo-en-mexico-de-la-pobreza-la-miseria-perdida-del-78-66-del-poder-adquisitivo-del-salario-reporte-de-investigacion-117/
[9] https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258821.htm
[10] https://www.dol.gov/ilab/map/countries/mexico.htm

- Unfair trade practices that distort markets, like currency manipulation and unfair government subsidy programs, were not addressed in the agreement and countries have been cheating without repercussions.

Solution:

A New NAFTA must achieve the following goals:

- Support more American jobs and higher wages. The interests of working families must come before corporate profits.
- Exclude provisions that infringe upon U.S. laws and regulations that protect U.S. workers, consumers and small businesses. This includes laws protecting workers health and safety, Wall Street reform laws protecting U.S. consumers from unfair practices, laws protecting U.S. businesses from unfair trade practices and laws protecting the environment and addressing climate change.
- Not leave workers and the environment behind in a race to the bottom. A new NAFTA must include strong and enforceable rules that raise Mexico's labor standards and protect the environment. These rules must be much stronger than those in any past trade agreement. These rules must combat the worst forms of child labor, human trafficking and forced labor. Additionally, new rules should ensure that Mexico's workers are paid a floor wage, are provided good working conditions and are able to collectively bargain. To increase compliance, a new NAFTA must include provisions aimed at ensuring effective labor inspections in Mexico and require the USTR to pursue meritorious complaints until the violations have been remedied.
- Strengthen Buy America rules by eliminating loopholes.
- Deter unfair, market-distorting behaviors such as state-owned enterprises and include strong and enforceable tools to combat currency manipulation.
- Ensure greater and more secure market access for U.S. exports, especially agricultural exports.
- Secure new economic opportunities in services and digital trade.
- Protect the NAFTA countries from unfairly traded and dumped products from countries outside the region.
- Lead to more balanced trade between the three countries.

New Transparency and Public Input Provisions

- Revamp the Trade Advisory Committees. For too long, USTR trade advisory committees have been captured by large corporations and their teams of lobbyists. U.S. businesses small and large, unions, and public interest groups must all be given meaningful opportunities to provide their views in the negotiating process. To that end, the industry trade advisory committees should be revamped to represent a broad swath of interest and limit the current influence of multinational corporations. USTR should publish all of their NAFTA meetings with stakeholders. Additionally, USTR trade advisory committees should be led by businesses and organizations that support strong labor, environmental, and public health standards in trade agreements, and have not used or sought to use the investor-state dispute settlement mechanisms to undermine U.S. sovereignty or regulatory standards.
- Negotiate in an open, transparent process. The public should regularly be given detailed information about the negotiations so that they know what is at stake at every step of the way. U.S. Trade Representative's staff should hold town hall meetings open to the public in at least 10 different states to discuss specific NAFTA priorities before draft text can be finalized. The American people and Congress must know what the administration seeks to achieve in the agreement before and throughout the negotiations.

4. **<u>Penalties for Federal Contractors that Outsource</u>**

<u>Problem</u>:

Federal contracts, paid for by taxpayers, are being awarded to companies that are moving U.S. jobs overseas.

- In fiscal year 2016, the Federal Government spent roughly $1.137 trillion on federal contracts and grants. Unfortunately, some of the companies that received these federal contacts or grants outsource production. [11]
- Many companies that receive federal grants or loans are outsourcing customer service functions, like call centers that handle sensitive U.S. consumer information, to countries that have poor data security protections, putting American consumers at risk.

<u>Solution</u>:

Account for outsourcing in federal contracting awards, and certain federal grants and loans.

- The proposal would penalize federal contractors who outsource by requiring federal agencies to consider a company's record of outsourcing for three years prior to application for federal contract.
- The proposal would establish a negative preference of up to 10 percent of the cost of a contract for that company for outsourcing activity.
- The proposal would create a public "shame" list managed by the Department of Labor of U.S. companies that regularly relocate U.S. jobs overseas and give companies the ability to get off the list by relocating production to the U.S.
- The proposal would establish a negative preference for issuing certain federal grants and loans for companies on the list.
- The proposal would require companies that handle sensitive U.S. consumer data abroad, like call centers, to disclose to consumers what country they are physically located in and the level of data protection in that country.

5. **<u>Buy America for All Taxpayer Funded Projects</u>**

<u>Problem</u>:

Existing Buy America programs do not apply to all taxpayer-funded projects. Even when in place, Buy America rules sometimes have loopholes that provide foreign producers access to large sums of American taxpayer dollars.

- A recent Government Accountability Office (GAO) report found a massive discrepancy in levels of U.S. procurement awards open to foreign competition relative to our trading partners. [12]
- The report found that in 2010, $837 billion of $1.7 trillion in U.S. government procurement money was eligible for contract with foreign competitors. This dwarfs the amount eligible to U.S. companies by our largest trading partners.
- The next five largest signatories of the WTO's agreement on government procurement are the European Union, Japan, South Korea, Norway, and Canada. The WTO agreement was supposed to open up foreign

[11] https://www.citizen.org/media/press-releases/new-report-reveals-trump-not-punishing-corporations-offshore-american-jobs
[12] http://www.gao.gov/assets/690/683273.pdf

markets to foreign contracts. However, all of these foreign countries combined had $2.4 trillion in procurement, but only committed to open $381 billion to be bid on by U.S. companies. [13]

- Clearly, many of our trade partners have much stronger programs and protections favoring their domestic companies.

Solution:

Spend taxpayer dollars on U.S. products and U.S. jobs. To level the playing field, the U.S. needs stronger programs to favor its producers and workers in government procurement.

- The proposal would require that taxpayer dollars be spent on U.S. companies and U.S. jobs for all federal public works and infrastructure projects.

- The proposal would strengthen Buy America requirement in transportation and water infrastructure projects by limiting the amount of manufactured products that can be foreign made.

- The proposal would similarly strengthen Buy American requirements by limiting the amount of foreign production in military contracts.

- This proposal would require up-to-date reporting on the use of Buy America waivers for foreign firms.

- The proposal would maintain the existing melted and poured standard for iron and steel, with no exceptions.

- Finally, it would restrict the use of waivers of Buy America rules for products from non-market economies.

6. Combat Currency Manipulation

Problem:

When a country manipulates it currency, one direct impact is that it makes their exports to the U.S. artificially cheaper, and makes U.S. exports to that country artificially more expensive. This gives foreign companies an advantage that acts just like a subsidy. [14]

- Despite repeated requests from a wide range of U.S. industries and workers, successive Presidential Administrations have not recognized currency manipulation for what it is – a subsidy.

- Our competitors continue to threaten U.S. jobs through currency manipulation, and the threat of a currency war remains without any enforceable deterrents.

Solution:

A tough currency manipulation law that punishes countries, like China, that unfairly manipulate their currency.

- The proposal would clarify that countervailing duty law can address currency undervaluation.

- The proposal specifies that if a U.S. industry requests an investigation alleging currency manipulation, the Department of Commerce is required to investigate currency undervaluation as a subsidy.

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[13] http://www.gao.gov/assets/690/683273.pdf

[14] https://www.forbes.com/sites/realspin/2015/02/25/currency-manipulation-why-something-must-be-done/#674f8b757762

- The proposal would also allow duties to be assessed against countries that manipulate their currencies, equal to the effect of the manipulation by that country.

7. Outsourcing Tax for Companies Leaving the U.S.

Problem:

Large corporations are getting federal tax breaks to ship good-paying U.S. jobs to foreign countries that have cheap labor and low standards.

- U.S. companies can deduct expenses for moving production out of the U.S.
- U.S. corporations are using accounting gimmicks and tax loopholes to make a foreign country their new home for tax purposes. These maneuvers can result in job loss and the erosion of the U.S. tax base. [15]

Solution:

Changing our tax laws so that companies are punished, and no longer rewarded, for shipping jobs and factories overseas.

- The proposal would deny current tax deductions for the cost of moving U.S. production and jobs outside of the U.S.
- To encourage companies to bring jobs back to the U.S. (insourcing) this proposal would create a tax credit of up to 20% of the cost of relocating production and jobs back to the U.S.
- The proposal would punish outsourcers even further by recapturing certain tax benefits for five years prior for companies that outsource. Companies that outsource jobs would have to forfeit the tax incentives that helped them grow.
- To help rural communities that are most devastated by outsourcing, this proposal would also create tax incentives for companies that relocate foreign jobs to rural and impoverished communities in the U.S.
- Finally, we would require companies that move their headquarters overseas to pay their full U.S. tax bills on all profits they hold overseas before setting up their headquarters in a new country. The profits would be taxed at the current corporate rate of 35 percent.

[15] https://obamawhitehouse.archives.gov/blog/2016/04/08/corporate-inversions-tax-loophole-what-you-need-know

BACKGROUND: Providing Relief from Trade Cheating -A Rising Challenge:

A number of America's trading partners have manipulated our trade rules, but China has been an outlier in its rapacious tactics to undercut American competitors. In 2001, the U.S. struck a deal with China to join the World Trade Organization (WTO). Since then, American workers have faced growing competition from China's state-run economy and unfair tactics, including the manipulation of its currency and the heavy subsidization of its manufacturers. China's artificially cheap exports were enough to drive some of the most technologically advanced and competitive U.S. companies out of business.[16]

The weak U.S. response to China's flouting of our trade rules was a major factor in the loss of roughly 5 million U.S. manufacturing jobs between China's entry into the WTO in 2001 and 2017. Many of those jobs were lost due to unfair competition from China. Especially hard hit were communities in Appalachia and the Rust Belt, where manufacturing plants were often the sole engines of local economies.[17] When these good-paying jobs left, communities were thrown into economic disrepair and wages in once secure industries declined.

China and other countries have only become more aggressive in their pursuit for global market dominance. Intellectual property (IP) theft and extortion from these countries is now one of the biggest threats to U.S. competitiveness and jobs of the future.[18, 19] The governments of Russia and China have directly engaged or aided in efforts to steal and extort billions in job-producing U.S. IP, including in the automotive, aerospace and renewable energy sectors. A recent report from the IP Commission placed the cost of IP theft to U.S. businesses at $225 billion to $600 billion a year. [20] Victims of this intellectual property theft, often small companies and their workers, have limited options when attempting to recuperate losses in countries like China with corrupt foreign courts.

Administration after administration has sought to bring countries that violate the rules into compliance through "tough talk" and WTO cases. It is clear that these tactics have not worked. The U.S. needs aggressive trade enforcement to counter countries like China and Russia. U.S. companies need incentives to insource production that has already been lost and be forced to pay an exit tax when outsourcing. Finally, workers and small businesses need access to a trade enforcement system that addresses modern trade concerns in a timely manner, without final approval from the WTO.

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[16] https://www.aeaweb.org/articles?id=10.1257/aer.103.6.2121
[17] https://www.ddorn.net/papers/Autor-Dorn-Hanson-ChinaShock.pdf
[18] https://www.bloomberg.com/news/articles/2015-11-18/no-sign-china-has-stopped-hacking-u-s-companies-official-says
[19] https://www.usitc.gov/publications/332/pub4226.pdf
[20] http://www.ipcommission.org/