



AFL-CIO Position on Border Adjustments

The AFL-CIO strongly supports the ability us use a border adjustment mechanism as part of a climate change regime. The Federation supports a new industrial policy, an environmental economic development policy, which places manufacturing and trade at the center of a green economy program. New investment in a sustainable energy infrastructure must be structured to create good jobs and ensure stable energy prices. These must also be supported by effective trade policies.

Carbon Leakage

We are concerned that International regulation on carbon emissions unless binding and applied evenly will lead to carbon leakage (the movement of heavy industries such as steel from countries who respect or try to implement International governance to countries with weaker or no measures). We believe any climate change legislation must contain strong provisions dealing with International competitiveness in order to ensure that nations that lack a strong emissions program do not receive an unfair advantage. Such provisions should include border adjustments in energy intensive products when they are produced for export markets.

Carbon leakage, a euphemism for the offshoring of production, is more than a theoretical concern. Over the past decade the U.S has lost 4 million manufacturing jobs and seen 35,000 manufacturing facilities close. A recent study by the Economic Policy Institute estimates 2.3 million U.S. jobs have been lost to China production and trade since 2001. China is identified as a developing nation but their manufacturing sector rivals that of the most developed nations. It is where their energy production is directed. An estimated 70% of China's foreign direct investment is in manufacturing, with heavy concentration in export-oriented companies and advanced technology sectors. China, and other rapidly developing countries are already a magnet for manufacturers seeking illegal subsidies and undervalued currencies while avoiding labor, environmental and other standards.

Shared Interests

It is no ones interest to have the efforts of developed nations to reduce carbon emissions become another advantage used by developing nations to attract business. However, it is in the world's interest to have developing nations become part of the solution because the problem cannot be solved without them. Any climate change legislation or international agreement must contain strong provisions dealing with international competitiveness in order to ensure that nations that lack strong emissions control programs do not receive an undue advantage for polluting more.

China is especially important because of its size, geopolitical importance and emergence as the world's largest emitter; no global agreement would be effective unless China takes on binding targets. Only an international emissions –control scheme led by the United States and China can ensure that developed and developing countries are not adversely



impacted by binding emissions caps while developing nations ramp up energy-intensive production. However, one way to ensure that developed economies including the U.S. act immediately to curb emissions is to ensure that international competitiveness provisions, including border adjustments, go into effect simultaneously with the institutions of carbon pricing or cap and trade systems in that country.

We recognize that Annex 1 and Annex 2 countries may adopt different timelines for instituting carbon pricing; however, by leveling export markets we can ensure that developed countries energy intensive industries are not disadvantaged by moving rapidly in their own countries to curb emissions. Additionally, the IMF believes that the cost of transportation of goods in the global economy must be clearly measured and included in the costs of determining border adjustments in any international competitiveness provisions. In fact, such an approach would also benefit China ensuring that its economic growth is directed in a sustainable fashion toward its own markets.

Border Adjustment

The idea of a border adjustment mechanism is not antithetical to fair trade nor the environmental movement. It is a legitimate tool of last resort in world trade, a concept of economic leverage that unions are most familiar with. The Montreal Accords on chlorofluorocarbons provide the right to impose a trade penalty on nations in violation of the agreement and it has been used. A border adjustment mechanism is simply a recognized trade tool used both in negotiations and to ensure compliance with negotiated agreements. Trade unions understand this concept better than any other organizations. As trade unions we use the strike as a tool, a threat to impose costs upon employers, when negotiations falter or contracts are violated. We do not take this action lightly; it is a tool of last resort. The one thing we do not give up is the right to take action because this is most direct form of economic leverage.

The U.S. has had more direct experience with job loss due to employers seeking to evade domestic regulations like environmental standards than any other nation. And, a climate change regime is by far the greatest environmental standard the world has ever seen. Having a border adjustment mechanism as a tool, a part of a carbon emission regime, is a prudent and cautious approach to the real world of negotiations and compliance. The nations in the European Union recognize this. That is why they have discussed using border adjustments as a legitimate trade tool in a climate change regime. It is also the reason the U.S. climate change legislation that contained border adjustment language was used in Bali as leverage to help achieve the framework agreement that emerged.

The AFL-CIO believes climate change is both a crisis and an opportunity for our nation. By taking the right steps while being sensitive to the economic impacts on business, workers and communities; assuring that our investments capture the intellectual property of cutting edge technology, by producing these new technologies and goods domestically, and engaging the developing world in the solution -- we can have a cleaner planet, greater energy efficiency and a revitalized manufacturing base.



Turn Around America

AFL-CIO Recommendations for the Obama Administration

International Trade

The Obama Administration should signal early on that it will put in place a coherent national economic strategy encompassing both deep reform of international economic policy and increased domestic investments in education and skills, infrastructure, clean renewable energy, and a healthy manufacturing sector. These are mutually reinforcing. Our trade and international policy should have at its core creation of good jobs at home and support for equitable, democratic, and sustainable development abroad.

The first priority for the new administration with respect to trade policy should be attention to our large and unsustainable current account deficit. The key initial levers include dramatically improved enforcement of trade laws across the board, and a newly focused action-oriented dialogue with the Chinese government over our enormously imbalanced and unfair trade relationship. We also urgently need to reform our tax policy to eliminate incentives to offshore production, and to use our government procurement policy more strategically to support the creation of good jobs domestically. Further, we must ensure that as we transition to using more renewable energy, clean coal, and reducing carbon emissions, we do so in a way that does not handicap U.S. manufacturers and workers or create new incentives to shift production offshore.

The new administration should place a moratorium on new trade deals, and review and repair existing ones. Review should include a comprehensive examination of existing trade agreements – including their impact on the following: domestic employment and wages, bilateral trade and investment flows, worker rights, environmental standards and practices, consumer safety, and impact on migration patterns. The results of the review should inform the administration's forward-looking trade agenda with respect to bilateral, regional, and multilateral trade priorities. Review should be ongoing, on an annual or biannual basis.

The administration should announce its priorities and benchmarks regarding pending free trade agreements with Colombia, S. Korea, and Panama. The Colombia FTA should not be considered by Congress until the continuing problems of violence against trade unionists, the high levels of impunity for those who commit these crimes, and the government's failure to adopt, maintain, and enforce labor laws that comply with the International Labor Organization's core labor rights are resolved. As to the agreement



with S. Korea, the administration should not move forward without – at a minimum -- renegotiation of the auto-related provisions of the agreement, as well as improvements in S. Korea's labor laws and practices. The new administration should also revisit the provisions in existing FTAs on investment rules, government procurement, intellectual property rights, and services before proceeding.

With respect to the Doha Round at the World Trade Organization (WTO), the new administration should lay out its own priorities in terms of the current agenda. First, multilateral trade talks ought to address worker rights, currency manipulation, climate change, and tax issues. Second, current Doha proposals with respect to services, immigration rules, procurement, and non-agricultural market access issues should be revisited. And, third, WTO processes need to be made more transparent and accountable to civil society groups from both developing and industrialized countries – not just multinational corporations.

The new administration should review our current unilateral trade preference programs (including the Generalized System of Preferences, the African Growth and Opportunity Act, the Andean Trade Preference and Drug Eradication Act, and the Caribbean Basin Initiative) to see how these programs can be strengthened, improved, and made more consistent with respect to development objectives and worker rights criteria.

The worker rights and environmental provisions included in current trade agreements and preference programs have not been adequately or consistently enforced by the Bush Administration. The current international negotiations over climate change serve to emphasize the need for enforceable environmental provisions and appropriate international coordination to achieve global environmental objectives. The new administration should put in place a strengthened institutional structure with adequate funding to rigorously monitor and effectively enforce the worker rights and environmental provisions included in current trade agreements and preference programs. The administration should also issue an Executive Order prohibiting the federal government from procuring products made with sweatshop labor.

Any consideration of extending trade negotiating authority should lay out clearly defined criteria for new trade agreements and strengthen the role of Congress throughout the negotiation process to ensure that any new agreements enjoy broad support among the American public.

President Obama should nominate as USTR an individual who has demonstrated commitment to addressing the destabilizing imbalances in trade policy and who is committed to ensuring that trade policies provide broadly shared benefits for working people and domestic businesses and the expansion of jobs and incomes in the United States. Other key appointments at Commerce, Treasury, the National Economic Council, Labor, and State should also share this commitment.



All of the existing trade advisory committees (including the President's Advisory Committee on Trade Policy and Negotiation and the industry trade advisory committees) should broaden their membership to include labor, consumer, and environmental representatives, in addition to corporate members.

The new administration should urge Congress to adopt an expanded, improved, and well-funded Trade Adjustment Assistance bill, as introduced by House Ways and Means Chairman Rangel in 2007 (HR 3920, approved by the House, but never implemented). The new TAA should expand eligibility to service and public sector workers impacted by trade, as well as to secondary-sector workers; improve the health care benefits available to dislocated workers; increase the funds for training; improve outreach by states to eligible workers; require that TAA be administered by state Unemployment Insurance agencies (merit staff); and strengthen plant closing notification legislation (the WARN Act). In the long term, the administration should carry out an ambitious national program to invest in the continuing skill development of the American workforce, so that workers are well prepared and able to work at their peak potential in an ever-evolving labor market.

Improving Trade Enforcement Across the Board

The new administration must commit to vigorous enforcement of our trade laws to support U.S.-based businesses and American workers and farmers. A first step should be a review of existing unfair trade practices and an assessment of where possible WTO or other trade action is indicated.

President Obama should nominate as Assistant Secretary for Import Administration (IA) at Commerce an individual who has a demonstrated commitment to the vigorous enforcement of the antidumping (AD) and countervailing duty (CVD) laws and who is strongly committed to protecting workers and domestic industries that face unfair import competition.

With respect to antidumping policies, any implementation of the Market-Oriented Enterprise (MOE) Test would be problematic in that it treats individual companies operating in China as if they were operating in a market economy, which underestimates the amount of dumping. IA should state its intent not to apply this test by notice and comment in the Federal Register or in an ongoing case.

Because the WTO has ruled that in determining the amount of dumping that is taking place, the United States must offset dumped sales with non-dumped sales, IA is now *not* using its "zeroing practice" to count only the dumped sales. Instead, IA is resorting to an alternative statutory method – targeted dumping – and applying it in a manner that will reduce or eliminate the amount of actionable dumping. IA should state its intent to alter the manner in which it applies targeted dumping by notice and comment in the Federal Register or in an ongoing case.



With respect to Customs and Border Protection (CBP), the new administration will need to devote adequate resources to border inspection and security, as well as ensuring that safety inspections and certifications of foreign facilities are carried out effectively.

Labor and domestic manufacturing representatives should be included on the Commercial Operations Advisory Committee (COAC), CBP's industry advisory committee. This committee is involved in major policies related to manufactured imports, and currently has a roster of 20 members, none of whom represent U.S. industry or American manufacturing workers.

The "first sale" rule is applied in situations where a foreign middleman is selling to a U.S. importer. In determining the import's entered value, the CBP relies on the lower price paid by the middleman to the foreign producer, instead of the higher sale price paid by the importer to the middleman. This results in lower duties being collected and understates the nation's trade deficit. We propose that the President issue an Executive Order to require the CBP to conduct audits of importers that represent 20 percent or more of those buying from middlemen to determine the degree to which such importers are reporting different import prices for tax purposes and entered value.

China Policy

Since our trade deficit with China accounts for over half of our non-oil goods deficit, cracking down on the Chinese government's unfair trade practices (currency manipulation, illegal subsidies, worker rights violations, and lax enforcement of environmental and consumer safety standards) should be a top priority for trade policy in the first 100 days of the new administration.

The new administration should urge Congress to act quickly on the Fair Currency Act of 2007, S. 796, introduced by Senators Stabenow, Bayh, and Bunning. This legislation would provide WTO-consistent remedies to treat currency manipulation as an actionable subsidy. Despite some moderate revaluation of the renminbi during the last two years, the exchange rate between the dollar and the renminbi remains significantly out of equilibrium (the China Currency Coalition estimates the undervaluation at about 35%), as demonstrated by the Chinese government's continued interventions into the currency market, its accumulated foreign exchange reserves -- now in excess of \$2 trillion -- and its annual trade surplus with the United States.

In order to signal to the Chinese government a new commitment to promoting respect for workers' human rights, the Obama Administration should accept for review the AFL-CIO's Section 301 case (last filed in 2006) alleging that the Chinese government's systematic and egregious violation of workers' rights is an unfair trade practice, harming American businesses and American workers, as well as Chinese workers who do not have the right to form independent unions or bargain collectively with their employers. Accepting the case would launch an investigation into the claims, which could take up to one year.



In China, weak environmental standards and an even weaker enforcement regime present a challenge with worldwide consequences, especially when it comes to climate change. Because of China's size, geopolitical importance and emergence as the world's largest emitter, no global agreement will be effective unless China takes on binding targets. An international emissions-control scheme led by the United States and China is necessary to ensure that binding emissions caps do not have adverse consequences while developing nations ramp up energy-intensive production. It is important that international competitiveness provisions, including border adjustments, go into effect simultaneously with the implementation of carbon pricing or cap and trade systems.

Illegal subsidies continue to be a major problem in our trade relationship with China. While USTR initiated several WTO challenges in the last couple of years, more needs to be done.

One relatively simple step would be to officially change the Commerce Department's policy with respect to CVD law and non-market economies. Recently, Commerce has agreed to apply CVD law to China, but this is being done on an ad hoc basis, and has not been officially adopted. Commerce should issue a Policy Bulletin stating that its policy is to apply CVD law to non-market economies.

There are also problems with how the CVD law is being applied to China. IA has chosen an arbitrary date -- the date when China acceded to the WTO -- to determine if a subsidy can be countervailed. Because the Chinese government has provided vast subsidies prior to that arbitrary date, the CVD law does not provide relief to counter such pre-existing subsidies. Commerce should issue a change in policy by notice and comment in the Federal Register or in an ongoing case.¹

Also, Commerce is wrongly adjusting for inflation when it relies on an interest rate from a market economy to determine if a loan is a subsidy. This lowers the amount of the actionable subsidy. This can be rectified by issuing a change in policy stating its intent not to adjust its benchmark interest rate for inflation by notice and comment in the Federal Register or in an ongoing case.

The President should also consider taking the following unilateral actions with respect to China:

¹ The change would be to follow normal agency practice: take the total amount of a subsidy given at a particular time ("nonrecurring") and spread it out over a period of years that equal the average useful life of the equipment in the industry at issue (e.g., if a subsidy for \$100 million was given in 1990 in an industry where the average useful life of equipment is 10 years, then in a CVD case covering the year 2000, \$10 million of that subsidy amount will be countervailable).



- Reinstate Section 421 safeguard cases designed to protect against destabilizing import surges from China. Several of these cases were rejected without basis by the Bush Administration despite unanimous recommendations from the U.S. International Trade Commission.
- Prohibit the federal government from purchasing products or services from China if dialogue does not yield satisfactory results with respect to currency revaluation. (China is not a signatory to the WTO Procurement Code);
- Direct U.S. banks to pause in issuing loans to China;
- Pressure the IMF to consult with China;
- Address the undermining of China's non-market economy status under the AD law by not permitting requests of individual Chinese exporters that they be treated as if operating in a market economy. This can be done in an ongoing proceeding.

Offsets and Procurement Policy

The new administration should undertake a thorough, cross-agency review of policies with respect to offset agreements (where foreign governments require shift of production or technology as a condition of sales), procurement, taxes, and other government-impacted incentives to shift production offshore. At the same time, the administration should seek to negotiate bilateral and multilateral constraints on the ability of foreign governments to condition sales on technology or job transfer. The review should include policies at the Departments of Commerce, State, Labor, USTR, Treasury, and Defense.

Defense procurement policies should be overhauled to make certain that future decisions benefit U.S. workers and our communities. Procurement decisions must give adequate consideration to the control of key technologies, manufacturing processes, and domestic employment. In addition, the Buy American Act (Title 10) and the "Made in the USA" requirements of the Jones Act are currently poorly enforced, with government agencies allowing the use of numerous loopholes that were not intended by Congress. The new administration should undertake a thorough review of these laws to make certain that they are being utilized to support good jobs here at home.

Import Safety

Enhance effectiveness of the food safety import system by requiring clear labeling of products refused for entry and immediate notification of all U.S. ports (FDA responsibility).

Bilateral Investment Treaties

Review and substantially revise the model BIT and postpone BIT negotiations with China and Vietnam until the model BIT has been revised.

**Key Federal Agency Positions – International Trade**

Department	Agency	Position	Nature of Position
White House	United States Trade Representative	U.S. Trade Representative	PAS
White House	United States Trade Representative	Deputy U.S. Trade Representative	PAS
White House	United States Trade Representative	Deputy U.S. Trade Representative	PAS
White House	United States Trade Representative	Deputy U.S. Trade Representative	PAS
White House	United States Trade Representative	General Counsel	NA
White House	United States Trade Representative	Counselor to the U.S. Trade Representative	
White House	United States Trade Representative	Assistant U.S. Trade Representative for Trade and Labor	CA
White House	United States Trade Representative	Assistant U.S. Trade Representative for Monitoring and Enforcement	CA
White House	United States Trade Representative	Assistant U.S. Trade Representative for Congressional Affairs	CA
White House	United States Trade Representative	Assistant U.S. Trade Representative for Multilateral Trade	CA
Commerce	Office of the Secretary	Secretary of Commerce	PAS
Commerce		Undersecretary for International Affairs	PAS
Commerce		General Counsel	PAS
Commerce	International Trade Administration	Assistant Secretary for Manufacturing and Services	PAS
Commerce		Assistant Secretary for Import Administration	PAS
Commerce		Deputy Assistant Secretary for Operations for Import Administration	PAS



Commerce		Undersecretary of Industry and Security (BIS)	PAS
Commerce		Deputy Undersecretary for Industry and Security	CA
Commerce		Assistant Secretary for Export Administration	PAS
Treasury		Undersecretary for International Affairs	PAS
Treasury		Deputy Assistant Secretary for Trade and Investment Policy	NA
Treasury		Deputy Assistant Secretary for International Monetary and Financial Policy	CA
Treasury		Deputy Assistant Secretary for Development, Debt and Environmental Policy	CA
	Committee on Foreign Investment in the United States		
	NAFTA Steel Committee		
	JCCT/SED China		