

Workers' Empowerment as U.S. Trade Policy

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ABSTRACT

U.S. trade policy stands at a critical inflection point. While the Biden administration's "worker-centered" approach and the Trump administration's "America First" platform sharply diverge, both recognize that trade deeply impacts domestic employment. However, both policies overlook how the treatment and costs of labor in partner nations directly protect U.S. workers from unfair competition. This Article argues that empowering foreign trade-sector workers to secure higher wages and better conditions must become a central pillar of U.S. trade policy. Drawing on an original empirical study of Mexico's automotive sector under the United States-Mexico-Canada Agreement (USMCA), I demonstrate that recent "worker-centered" efforts failed to truly empower foreign labor. Instead, they left workers vulnerable, incentivized corporate offshoring, and suppressed foreign consumer power—deficiencies that ultimately harmed domestic workers and fueled protectionist, tariff-driven alternatives. By uncovering the direct link between foreign supply-chain capacity and U.S. job opportunities, this Article challenges conventional narratives surrounding trade agreements and foreign aid. Ultimately, it underscores the urgent need to radically reconceptualize U.S. trade policy to protect the global workers who make trade possible.

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Workers' Empowerment as U.S. Trade Policy

DESIRÉE LECLERCQ*

U.S. trade policy stands at an inflection point. The Biden administration's "worker-centered" trade policy promised to empower foreign workers to improve employment and living standards globally, but it linked its trade assistance to political allies. The Trump administration's "America First" trade policy promises to use tariffs and isolationism to protect and empower U.S. workers, but it is fostering antagonism rather than cooperation in trade. Both policies, while sharply diverging at the edges, recognize that U.S. trade policy affects employment opportunities in the United States. Both policies also critically overlook the relationship between the treatment of workers in trade partner countries, the associated labor and production costs, and protecting workers in the United States from absorbing the losses caused by unfair trade competition.

In this Article, I argue that the empowerment of foreign workers in trade sectors to earn higher wages and better working conditions is a misunderstood feature that should be a key pillar of U.S. trade policy. Drawing on an original empirical project in Mexico's automotive sector under the United States-Mexico-Canada Agreement (USMCA), I demonstrate that even the Biden administration's efforts to center trade policy on workers failed to empower them. Instead, it left workers vulnerable to abuse, U.S. companies motivated to offshore

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production, and foreign consumers unable to afford U.S. exports—residual deficiencies that harm workers in the United States and opened the door for the Trump administration's tariff-centered and aggressive trade policy.

Uncovering the relationship between workers' capacity in trade supply chains and job opportunities in the United States challenges conventional policy narratives around the role of U.S. trade agreements, foreign aid, and assistance. Simultaneously, the resilience of protectionism in trade rhetoric underscores the need to unearth such relationships and envision a radical re-conceptualization of U.S. trade policy that benefits, or at least does not harm, the workers who make trade possible.

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INTRODUCTION

For many decades, we've enriched foreign industry at the expense of American industry . . . One by one, the factories shuttered and left our shores, with not even a thought about the millions upon millions of American workers left behind. The wealth of our middle class has been ripped from their homes and then redistributed across the entire world.

– President Trump¹

In January 2025, the Trump administration announced an abrupt departure from the Biden administration's U.S. trade policy.² Proclaiming that it's time to put "America First," President Trump canceled the former administration's aid and assistance to empower workers in trade.³ President Biden's approach had assumed that helping workers abroad would disincentivize a race to the bottom, consequently helping workers in the United States.⁴ President Trump

1. Donald Trump, President of the U.S., *The Inaugural Address* (Jan. 20, 2017), Nat'l Archives and Records Admin. <https://trumpwhitehouse.archives.gov/briefings-statements/the-inaugural-address/> [<https://perma.cc/GCC6-D2GQ>].

2. U.S. TRADE REP. (USTR), THE PRESIDENT'S 2025 TRADE POLICY AGENDA 2–3 (Mar. 3, 2025), <https://ustr.gov/sites/default/files/files/reports/2025/President%20Trump's%202025%20Trade%20Policy%20Agenda.pdf> [<https://perma.cc/KAP7-ACBN>] (describing the Trump administration's "America First Trade Policy" as one of "transformational change necessary to reverse our country's economic decline").

3. See E. Tammy Kim, *What 'America First' Could Cost Us*, THE NEW YORKER (Apr. 22, 2025), <https://www.newyorker.com/news/deep-state-diaries/what-america-first-could-cost-us> [<https://perma.cc/P5H5-3FR6>] (describing the administration's decision to cancel hundreds of millions of dollars in U.S. foreign assistance programs, including those under the USMCA).

4. USTR., *Fact Sheet: The USMCA Rapid Response Mechanism Delivers for Workers* (last accessed June 30, 2025) [hereinafter USTR FACT SHEET], <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2024/september/fact-sheet-usmca-rapid-response-mechanism-delivers-workers> [<https://perma.cc/B3W3-53Z9>] ("When Mexico's workers are exploited, U.S. workers suffer too . . . This results in a 'race to the bottom,' where firms

capitalized on Biden's failure to accomplish that objective,⁵ announcing in its place a slate of high tariffs promised to "strengthen the international economic position of the United States and protect American workers."⁶ Although Biden and Trump's approaches appear to diverge, they share a core belief that U.S. trade policy should improve opportunities and conditions for workers in the United States.⁷ However, neither approach has succeeded in protecting workers in the United States from the deleterious effects of cheap labor in competitor countries.

suppress labor costs by violating workers' rights, producing cheap goods at the expense of the workers everywhere.").

5. See generally THE WHITE HOUSE, *Fact Sheet: President Donald J. Trump Secures a Historic Trade Win for the United States* (May 12, 2025), <https://www.whitehouse.gov/fact-sheets/2025/05/fact-sheet-president-donald-j-trump-secures-a-historic-trade-win-for-the-united-states/> [<https://perma.cc/B8ZT-PU4M>] (arguing that Trump's tariff policy "strengthens our supply chains and ensures that American trade policy supports American workers first, instead of undercutting them").

6. See THE WHITE HOUSE, *Fact Sheet: President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security* (Apr. 2, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/> [<https://perma.cc/D5NV-9GKR>] ("These tariffs are central to President Trump's plan to reverse the economic damage left by President Biden and put America on a path to a new golden age."). Trump's position is not new.

7. See, e.g., THE WHITE HOUSE, *Remarks by President Biden on His Actions to Protect American Workers and Businesses from China's Unfair Trade Practices* (May 14, 2024), <https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2024/05/14/remarks-by-president-biden-remarks-by-president-biden-on-his-actions-to-protect-american-workers-and-businesses-from-chinas-unfair-trade-practices/> [<https://perma.cc/6SNP-A5BY>] ("The fact is that American workers are—can outwork and outcompete anyone, as long as the competition is fair. But for too long, it hasn't been fair."); THE WHITE HOUSE, *Fact Sheet: President Donald J. Trump Announces 'Fair and Reciprocal Plan' on Trade* (Feb. 13, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-announces-fair-and-reciprocal-plan-on-trade/> [<https://perma.cc/M2EF-7VK3>] ("Gone are the days of America being taken advantage of: this plan will put the American worker first, improve our competitiveness in every area of industry, reduce our trade deficit, and bolster our economic and national security."); Shannon K. O'Neil, *The New Supply Chain Insecurity: Fortress America Is Not a Safer America*, FOREIGN AFFS., (Nov./Dec. 2025), [<https://perma.cc/RFW4-L6PD>].

In the [Trump] administration's theory of the case, tariffs will ignite domestic re-industrialization, create jobs, turn trade deficits into surpluses, and reduce U.S. dependence on adversaries for strategic and mainstream goods alike. This, the administration believes, will reverse the trends of manufacturing job losses, rising deficits, and growing dependence that it ascribes to decades of "unfair" liberal trade policies.

This Article is about the relationship between U.S. trade policy, the empowerment of foreign workers, and the treatment of workers in the United States.⁸ My claim is that workers' empowerment throughout the trade sector, when executed correctly, is necessary if U.S. trade policy hopes to preserve high wages and decent working conditions at home. In that sense, worker protection is neither a domestic nor international issue; rather, it is a structural feature of fair competition. Conceptualizing empowerment as a pillar of U.S. trade policy will help mitigate the perverse incentives in liberalized trade that prioritize short-term profits over productivity, efficiency, and global demand.

The stakes of U.S. trade policy for workers in the United States and abroad are high. The complex relationship between trade, global competition, and empowerment in contemporary trade policy has been obfuscated by a myopic focus on national protectionism.⁹ It is driven by a fundamental belief that U.S. trade policy is intended to enhance economic opportunities for businesses and workers within the United

8. Trade and administrative scholars have studied the relationship between U.S. trade policy, domestic support, and broader U.S. foreign and economic policies. See Timothy Meyer, *Saving the Political Consensus in Favor of Free Trade*, 70 VAND. L. REV. 985, 988–89 (2017) (describing the link between trade policy, manufacturing job opportunities, and public consensus for liberalized trade); Timothy Meyer & Ganesh Sitaraman, *Trade and the Separation of Powers*, 107 CALIF. L. REV. 583, 597–612 (2019) (describing the foreign affairs function of U.S. trade powers); Kathleen Claussen, *Trade Policing*, 65 HARV. INT'L L.J. 25, 30 (2023) (arguing that U.S. trade “policing” in recent trade agreements, including the types of activities this Article describes, constitutes a seismic shift in cross-border economic law); Curtis A. Bradley & Jack L. Goldsmith, *Presidential Control Over International Law*, 131 HARV. L. REV. 1201, 1214 (2018) (given the importance of trade policy for foreign and domestic policies, noting with alarm the extent of executive control over trade agreements).

9. See Rafeal Di Tella & Dani Rodrik, *Labour Market Shocks and the Demand for Trade Protection: Evidence from Online Surveys*, 130 THE ECON. J. 1008, 1028 (2020) (“Our results demonstrate the ease with which protectionism can be stoked by presenting the public with concrete stories about factory closures and job losses.”). In 2019, Greg Shaffer predicted much of what now transpires in trade policy:

If international trade law contributes to rising inequality and spurs social disintegration within countries, then there will be a backlash against the international trade regime. If the international trade regime collapses, then there will be fewer constraints on rising nationalism. One country's policies will increasingly adversely affect others. Other countries, in return, will retaliate, exacerbating international conflict and undermining needed cooperation when a financial crisis strikes.

See Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 2019 U. ILL. L. REV. 1, 4 (2019).

States, rather than to rectify the abuse of workers elsewhere.¹⁰ That is reasonable. After all, trade agreements are not human rights instruments; they operate under different legal and normative architectures.¹¹ Trade agreements primarily focus on facilitating economic development and commercial exchanges, whereas human rights focus on the inalienable rights of individuals and communities.¹² East remains East, West as West, never the twain shall meet.

Here's the problem with that objection and the current direction of U.S. trade policy. As much as politicians and ideologues hope to decouple U.S. trade policy from the treatment of workers in trade sectors abroad, workers in the United States continue to bear the brunt of trade carried out with countries with low labor standards.¹³ When U.S. companies relocate to other countries to avoid costly labor laws, U.S. workers suffer. When countries produce goods and services under substandard labor conditions (such as suppressed wages), they export artificially cheapened goods that compete with goods and services provided by U.S. workers.¹⁴ While those cheap imports undoubtedly benefit workers as consumers in the United States, they do not help them secure jobs at home. Like it or not, the rights and standards afforded to workers in trade partner countries affect working conditions in the United States, and U.S. trade policy plays a direct and significant role in aligning them.¹⁵

10. See, e.g., Jagdish Bhagwati, *Free Trade, 'Fairness' and the New Protectionism*, in EXPLORATIONS IN ECONOMIC LIBERALISM—THE WINCOTT LECTURES 189 (1996) (arguing that efforts to protect rights in trade are merely disguised protectionism).

11. T. N. Srinivasan, *Trade and Human Rights*, in CONSTITUENT INTERESTS AND U.S. TRADE POLICIES 229–32 (Alan V. Deardorff & Robert M. Stern eds. 1998) (describing the differences between human rights and trade instruments, accusing the latter of selectively choosing to enforce rights for competitive reasons).

12. See Sung-joon Cho, *GATT Non-Violation Issues in the WTO Framework: Are They the Achilles' Heel of the Dispute Settlement Process?*, 39 HARV. INT'L L.J. 311, 329 (1998) (“It would be problematic if a [WTO] panel were to examine sensitive issues, such as policies related to ‘sovereign determination,’ simply because they appear idiosyncratic or unacceptable and thus result in nullification or impairment of another party’s benefits.”).

13. See *infra* Part I.

14. I realize the trade relationship can get more complicated than a linear competitive relationship. For example, if imported goods are made by cheap labor input into U.S. production (consider auto parts), those goods could lead to a greater output of finished goods in the United States (consider cars), benefitting the workers in the United States at the end of the supply chain.

15. See Shaffer, *supra* note 9, at 3 (arguing that the current trade regime grants permit capital to play “governments off each other” through offshoring, which erodes “governments’ ability to fund social protection and educational and employment policies” at home).

Unemployment in the United States is not a new problem. Scholars have advanced various *domestic policy* solutions, including innovative tax schemes, reshoring through industrial policy, revamped training and assistance for workers in offshored sectors, and the creation of new social welfare programs.¹⁶ *This* Article, by contrast, demonstrates how a U.S. *trade policy* could mitigate the perverse incentives in trade to capitalize on cheap labor by empowering foreign workers through aid and assistance.

Lacking a solid foundation upon which to assess how trade policy affects job opportunities and working conditions in the United States, politicians have dismissed most reform proposals, opting instead to rely on rhetoric to justify their ideological approaches to trade. For instance, President Biden used the ubiquitous term “empowerment” to justify his aggressive enforcement of labor laws in foreign countries,¹⁷ whereas President Trump uses it both as a signal of weakness¹⁸ and a shield to block foreign exports that compete with domestic industries.¹⁹ Neither has bothered to define empowerment, nor have

16. *Id.* at 17–26 (proposing changes to tax policies, social welfare and security, and trade adjustment policies); Timothy Meyer, *Misaligned Lawmaking*, 73 VAND. L. REV. 151, 206–16 (2020) (proposing solutions to trade adjustment assistance); Dani Rodrik & Stefanie Stantcheva, *Fixing Capitalism’s Good Jobs Problem*, 37 OXFORD REV. ECON. POL’Y 824, 825 (2021) (proposing “a multi-pronged strategy aimed directly at the productive sphere of the economy and targeting an increase in the supply of ‘good jobs’—jobs that provide a middle-class living standard, a sufficiently high wage, good benefits, reasonable levels of personal autonomy, adequate economic security, and career ladders”); James R. Repetti, *International Tax Policy’s Harm to Manufacturing and National Interests*, 2023 WIS. L. REV. 1309, 1309 (2023) (describing domestic policies, including reshoring, to counteract tax regulations that “have contributed to the loss of five million manufacturing jobs and the closure of more than 91,000 plants since 1997”).

17. See USTR FACT SHEET, *supra* note 4 (“As part of the Biden-Harris Administration’s worker-centered trade policy . . . is the groundbreaking U.S.-Mexico-Canada Agreement (USMCA) Rapid Response Mechanism (RRM)—an innovative trade agreement tool that is empowering workers in Mexico and the United States.”).

18. Many of the administration’s disparaging messages have been communicated over the social mediate website, X. See Image posted by U.S. Dep’t of Labor (@USDOL), X (Mar. 27, 2025, at 05:27 PM), <https://x.com/USDOL/status/1905371122754891885> [<https://perma.cc/FCE8-4787>] (posting an image making fun of the agency’s efforts to fund gender equity in Mexico); Lori Chavez-DeRemer (@SecretaryLCD), X (Mar. 21, 2025, at 01:26 PM) <https://x.com/SecretaryLCD/status/1903136157493244078> [<https://perma.cc/T2CE-CMR5>] (video promising to put “American workers first” by terminating foreign aid grants, including efforts to strengthen freedom of association abroad, likening such programs to “waste, fraud, and abuse”).

19. See THE WHITE HOUSE, *President Donald J. Trump Is Delivering On His Promise to Empower and Lift Up Our Nation’s Forgotten Communities* (Sept. 10, 2019), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump->

their trade policies fulfilled their promise to preserve jobs in the United States.²⁰

Given that empowerment is a loaded yet frequently invoked term in the policy discourse, I want to pause to define it. It's well worth giving this definition targeted attention because, as I will argue shortly, empowerment is key to protecting decent work and market opportunities in the United States, provided it's correctly understood. Thankfully, I have a rich literature upon which to draw in this regard.²¹ Namely, I can point to the studious works of Amartya Sen who, after decades of work in the field, concluded that empowerment is "the expansion of freedom of choice and action. It means increasing one's authority and control over the resources and decisions that affect one's life."²²

Sen's definition makes intuitive sense. I'll offer an illustration. Suppose the U.S. government negotiated with a trade counterpart and demanded specific wages and working conditions throughout trade sectors. Assume that those negotiations resulted in objectively higher wages and better conditions than workers or their union representatives could have negotiated with companies directly. We can all agree that those workers are better off because of the U.S. government's demands. But are those workers *empowered*? And, if not, will the resulting conditions of production and trade resolve the systemic abuse of workers—the lack of voice, the inability to alert authorities about workplace violations, the ignorance of labor rights and laws—that contributes to unfair competition and decisions to offshore jobs elsewhere?

delivering-promise-empower-lift-nations-forgotten-communities/ [https://perma.cc/A27W-8JKV] ("More than 6.3 million new jobs have been created since President Trump's election and job openings continue to far exceed the number of job seekers.").

20. See Conor Sen, *Michigan and Ohio Jobs Will Be the True Test of Tariffs*, BLOOMBERG (July 3, 2025), <https://www.bloomberg.com/opinion/articles/2025-07-03/michigan-and-ohio-jobs-will-be-the-true-test-of-tariffs> [https://perma.cc/ZPF9-DH2N] ("Michigan and Ohio, which combined account for 25% of the 1 million motor vehicle and parts manufacturing jobs in America, now have some of the worst employment trends in the country.").

21. See generally Mauricio Guim & Michael A. Livermore, *Where Nature's Rights Go Wrong*, 107 VA. L. REV. 1347, 1387 (2021) (drawing on Amartya Sen's approach to define human interests as individual); Robin Kar, *Contract as Empowerment*, 83 U. CHI. L. REV. 759, 764 (2016) (arguing that contracts law should be understood under Sen's empowerment framework, which would give "people the freedom and ability to achieve a broad range of valuable beings and doings by contracting"); Ezra Rosser, *The Ambition and Transformative Potential of Progressive Property*, 101 CALIF. L. REV. 107, 111 (2013) (acknowledging scholarly efforts to rely on Sen's approach to drive "progressive property" arguments).

22. See THE WORLD BANK, EMPOWERMENT AND POVERTY REDUCTION: A SOURCE BOOK 13 (Deepa Narayan ed. 2002) (citing Sen's voluminous work).

This Article's empowerment-as-trade-policy thesis advocates for a radical reconceptualization of U.S. trade policy that views foreign worker awareness and capability as prerequisites for fair competition. It unfolds in five parts.

Part I describes how U.S. trade policy has managed the labor rights and standards of workers in trade partner countries. Because Mexico is one of the most important countries to the U.S. economy,²³ it uses the United States-Mexico-Canada Agreement (USMCA) as a case study. The Biden administration leveraged this Trump-era trade agreement to prove that its trade policy was “about using trade to empower workers and making sure that they can compete fairly and thrive”²⁴ The results of an original field study I carried out in the Mexican auto sector in 2024 suggest these efforts failed.

Part II explains Sen's theoretical approach to empowerment. It applies that approach to Biden's empowerment efforts under the USMCA to elucidate why efforts failed to help the most vulnerable workers in Mexico's trade sector.

Parts III and IV set out the stakes and limitations of an empowerment trade policy. Part III explains how the Trump administration's tariffs policy and anti-trade rhetoric exploit residual job losses in the United States to garner political support for high tariffs. Part IV concedes that an empowerment trade policy is no silver bullet. Namely, it risks excluding informal workers from empowerment activities and imposing collective rights over workers' individual rights. Furthermore, U.S. trade policy reflects congressional and executive agreements and decision-making, rendering it instrumentally inapposite to the bottom-up choice in empowerment.

Part V uses the International Labor Organization (ILO) Decent Work Agenda to exemplify how the U.S. government can overcome those challenges.

23. See Representative USTR, *Mexico* (last visited Oct. 28, 2025), <https://ustr.gov/countries-regions/americas/mexico> [<https://perma.cc/WF7Y-JCCR>] (“Mexico has consistently been one of the top two trading partners for the United States. The two countries share a long history of supply chain integration, including especially in the automotive, electronics, medical devices, and textiles industries.”).

24. THE WHITE HOUSE, *Press Briefing by Press Secretary Karine Jean-Pierre and United States Trade Representative Katherine Tai* (May 14, 2024), <https://www.whitehouse.gov/briefing-room/press-briefings/2024/05/14/press-briefing-by-press-secretary-karine-jean-pierre-and-united-states-trade-representative-katherine-tai/> [<https://perma.cc/XS5X-DXX7>].

I. U.S. TRADE POLICY AND WORKERS' EMPOWERMENT

Countless reports demonstrate that U.S. trade policy has had catastrophic distributional consequences for the workers—at home and abroad—who make trade possible.²⁵ Those who have borne the burden of international trade have tended to be the most vulnerable: women, children, informal workers, and workers who lack collective representation and a voice in policymaking.²⁶ The mistreatment of workers across borders creates unfair conditions in global competition, leading to perverse corporate incentives to further reduce labor costs.²⁷

This Part describes the evolution of recent U.S. trade policy, foregrounding the treatment of workers in Mexico, one of the United States' closest trade partners. Section I.A recounts how U.S. trade sought to level the playing field with trade partner countries through labor rights provisions in trade instruments. Section I.B describes the Biden administration's "worker-centered" trade policy, which promised a seismic change in trade. Section I.C describes the results of an empirical study conducted in 2024, which indicate that Biden's approach overlooked the most vulnerable workers in Mexico's auto sector.

25. See David Dorn & Peter Levell, *Trade and inequality in Europe and the U.S.*, 3 OXFORD OPEN ECONS. 1042, 1048 (2024) (noting disparate declines in manufacturing jobs among non-college-educated workers following new trade competition from China); Desirée LeClercq, *A Worker-Centered Trade Policy*, 61 COLUM. J. TRANSNAT'L L. 733, 737 (2023) ("Despite decades of attention and lobbying efforts within the labor community, government parties to trade agreements fail to protect vulnerable workers from carrying the burden of globalized trade.").

26. See Kimberly Ann Elliott, *Developing a More Inclusive U.S. Trade Policy at Home and Abroad*, CGD POLICY PAPER 146, June 2019, at 3–4, <https://www.cgdev.org/sites/default/files/developing-more-inclusive-us-trade-policy-home-and-abroad.pdf> [<https://perma.cc/UY7T-82TF>] (arguing that U.S. trade policy excludes and discriminates against poor working communities, including women, workers, and developing countries); LeClercq, *supra* note 25, at 737, n. 9 (arguing that trade policy excludes workers of color, women, LGBTQ+, and other marginalized workers, who "have lost jobs to offshoring, lack maternity benefits, and suffer from poor wages and working conditions, all while American corporations have gotten richer under globalized trade").

27. See Katrin Kuhlmann, *Micro International Law*, 61 STAN. J. INT'L L. 1, 45 (2025) (advocating for an approach that would "change institutional structures and address the challenge of the lack of diverse voices that have historically shaped international legal design and the ingrained inequalities that have caused faith in international systems to wane, with significant implications for global governance").

A. U.S. Trade Policy and Labor Rights

Much has been written about U.S. trade policy and labor rights.²⁸ Sufficient for present purposes is that the trajectory of trade and labor continues to evolve, as members of Congress negotiate with the Executive, labor unions, and corporations to design a regulatory framework capable of engendering conditions of free competition. This Part offers a brief overview, focusing primarily on the first U.S. trade policy to incorporate binding commitments to labor rights in Mexico.

This is no success story. Despite efforts to bind trade partner countries to a common floor of labor rights (which now include the right to join and form unions, bargain collectively, protections against forced labor, child labor, discrimination, and occupational safety and health),²⁹ liberalized trade coincides with a downward employment trend in the U.S. trade sectors, particularly manufacturing. Between 1998 and 2019, the United States lost “nearly five million manufacturing jobs,” which displaced “a disproportionately large number of good jobs for workers of color.”³⁰ The loss of jobs hurt Black and Hispanic

28. See Philip Alston, *Labor Rights Provisions in US Trade Law: ‘Aggressive Unilateralism?’*, 15 HUM. RTS. Q. 1, 3–5 (1993) (offering an overview of early labor provisions in U.S. trade agreements); Lance Compa & Jeffrey S. Vogt, *Labor Rights in the Generalized System of Preferences: A 20-Year Review*, 22 COMP. LAB. L. & POL’Y J. 199, 201–02 (2001) (describing the origins of labor provisions in U.S. trade preference instruments); Sandra Polaski, *Protecting Labor Rights through Trade Agreements: An Analytical Guide*, 10 U. C. DAVIS J. INT’L L. & POL’Y 13, 15–20 (2003) (describing the first decade of labor provisions in U.S. trade agreements); Holger Janusch, *Labor Standards in U.S. Trade Politics*, 49 J. WORLD TRADE 1047, 1048 (2015) (analyzing “the past decades of U.S. trade policy by looking at the struggle, consolidation, and deepening of the U.S. trade and labor approach in trade agreements.”); Desirée LeClercq, *The Disparate Treatment of Rights in U.S. Trade Policy*, 90 FORDHAM L. REV. 1, 15–26 (2021) (reviewing more recent labor provisions in U.S. trade agreements through the USMCA).

29. The common floor of labor standards regulated in U.S. trade agreements corresponds with the International Labor Organization’s “fundamental rights and principles,” set out in the ILO’s 1998 Declaration on Fundamental Principles and Rights at Work. For an overview of that incorporation and implications, see generally Jordi Agusti-Panareda, Franz Christian Ebert, & Desirée LeClercq, *ILO Labor Standards and Trade Agreements: A Case for Consistency*, 36 COMP. LAB. L. & POL’Y J. 347 (2015).

30. See ROBERT E. SCOTT ET AL., BOTCHED POLICY RESPONSES TO GLOBALIZATION HAVE DECIMATED MANUFACTURING EMPLOYMENT WITH OFTEN OVERLOOKED COSTS FOR BLACK, BROWN, AND OTHER WORKERS OF COLOR: INVESTING IN INFRASTRUCTURE AND REBALANCING TRADE CAN CREATE GOOD JOBS FOR ALL 10–11 (2022); SANDRA POLASKI ET AL., HOW TRADE POLICY FAILED U.S. WORKERS—AND HOW TO FIX IT 10 (2020) (“Black workers are highly represented in industries that have suffered numerous trade shocks, such as autos and auto parts, tires and pulp and paper mills and they and their communities have felt the harsh

workers in the United States “who tend to have less of a financial cushion to withstand spells of unemployment.”³¹ It also hurt white, middle-aged adults who lack a college education.³² As the Biden administration’s USTR Ambassador Tai would later describe it: “Putting the well-being of our workers and empowering our workers was never the point of our trade policies, and boy are we paying for it now.”³³

This Section explains how U.S. trade agreements evolved from the North American Free Trade Agreement (NAFTA) to the USMCA to give the U.S. government a much stronger role in Mexico’s labor laws and their enforcement. The details here likely delve deeper into Mexican labor relations than typical U.S. trade policy (or articles about its policy) concerns itself with. However, it is essential to recognize that Mexican firms gained a comparative advantage over U.S. competitor firms by, at least partly, artificially suppressing labor wages and other production costs, and that the Trump administration worked with Congressional Democrats to address that unfair advantage.

1. U.S. Trade and Labor

In the 1980s, a coalition of workers, unions, and organized human rights, religious, and consumer groups successfully lobbied to add

impacts.”); Mary Kate Batistich & Timothy N. Bond, *Stalled Racial Progress and Japanese Trade in the 1970s and 1980s*, IZA DISC. PAPER NO. 1213, Feb. 2019, at 2 (arguing that trade-induced skill upgrading disparately harmed Black communities).

The net five million loss of jobs is, of course, not fully attributed to liberalized trade, given the 2001 recession and financial crisis in 2008–10. While it is impossible to disentangle those endogenous shocks, trade policymakers consider that somewhere between 0.5 million to 1.1 million of those job losses are directly attributable to trade (namely, Chinese competition). See David H. Autor, David Dorn, & Gordon H. Hanson, *The China Syndrome: Local Labor Market Effects of Import Competition in the United States*, 103 AM. ECON. REV. 2121, 2139 (2013). Note, in this respect, empirical studies suggesting that while people tend to treat types of job loss differently, *trade shocks* “elicit a much more protectionist response,” while varying in sensitivity to the trade partner. See Di Tella & Rodrik, *supra* note 9, at 1010 (noting that job losses evoke a sense among voters to urge protectionist trade policy, although those instincts are heightened when trade is with developing countries). Consequently, whether the loss of manufacturing jobs is attributed to China or Mexico, the end result is a popular push to protectionism.

31. See Polaski et al., *supra* note 30, at 10.

32. See Eric D. Gould, *Torn Apart? The Impact of Manufacturing Employment Decline on Black and White Americans*, IZA DISC. PAPER NO. 11614, June 2018, at 2–3.

33. See David LaRoss, *Tai Questions Trump’s Trade Policy in First Post-Biden Interviews*, INSIDE U.S. TRADE (March 19, 2025) (quoting Amb. Tai).

unilateral labor rights to U.S. trade and investment legislation.³⁴ Their efforts led to labor criteria in the 1983 Caribbean Basin Initiative (CBI) and the 1984 extension of the Generalized System of Preferences (GSP).³⁵ Although neither the CBI nor GSP mentioned “empowerment,” the GSP’s labor criteria included the rights of workers to form and join unions.³⁶ Those trade instruments also introduced a petition process permitting grassroots organizations, such as unions and Indigenous communities, to signal violations of their rights.³⁷ These collective efforts reflected a growing awareness among U.S. trade policy-makers that, left unregulated, labor standards in trade partner countries could decline, giving foreign firms an unfair competitive advantage over U.S. firms.

Beyond unilateral preference programs, governments began incorporating specific rights and protections into their bilateral and plurilateral trade agreements, starting with NAFTA in 1991. During negotiations, the U.S. Congress and lobbyists demanded a link in the agreement to worker rights provisions to protect workers in the United States against competition from Mexico based on lower wages and weaker worker rights protections.³⁸ Consequently, in 1993, the United States negotiated commitments to acceptable conditions of work in a side agreement, marking NAFTA as the first trade agreement with labor provisions.³⁹ Since then, Congress has required the Executive to

34. See Lance Compa, *Going Multilateral: The Evolution of U.S. Hemispheric Labor Rights Policy under GSP and NAFTA*, 10 CONN. J. INT’L L. 337, 338 (1995).

35. See Steve Charnovitz, *Fair Labor Standards and International Trade*, 20 J. WORLD TRADE L. 60, 61 (1986).

36. See, e.g., The Generalized System of Preferences (GSP), 19 U.S.C.A. § 2462(a)(4) (defining “internationally recognized workers’ rights” to include “the right of association” and “the right to organize and bargain collectively”).

37. See Lance Compa, *Going Multilateral: The Evolution of U.S. Hemispheric Labor Rights Policy Under GSP and NAFTA*, 10 CONN. J. INT’L L. 337, 344 (1995) (“The GSP statutory provision was followed by detailed administrative regulations providing for a quasi-judicial process of petitioning, responding, holding public hearings, presenting written evidence and oral testimony, and filing briefs and counter-briefs by the ‘parties.’”).

38. See MARY JANE BOLLE, CONG. RSCH. SERV., 97–861 E, NAFTA LABOR SIDE AGREEMENT: LESSONS FOR THE WORKER RIGHTS AND FAST-TRACK DEBATE 2 (2001). See also *Hearings Before the Comm. on Pub. Works and Transp.*, 102d Cong., (1991) (testimony of Lane Kirkland, Am. Fed’n of Lab. & Cong. of Indus. Orgs.).

39. See Lance Compa, *NAFTA’s Lessons on Labor Standards and Trade Agreements*, in HANDBOOK ON GLOBALISATION AND LABOUR STANDARDS 275 (Kimberly Ann Elliott ed., 2022) (“When it took effect in 1994, NAFTA was the first and only reciprocal trade pact in the world with a labor dimension.”).

negotiate labor provisions in all U.S. trade agreements, the most recent iteration of which is contained in the USMCA.⁴⁰

2. The North American Free Trade Agreement (NAFTA)

NAFTA has been heavily criticized for failing to prevent and mitigate labor rights violations in North American trade sectors.⁴¹ It has not helped matters that Mexico has consistently and uniquely subverted workers' rights, artificially suppressing the costs of producing goods it exports into the United States. Specifically, Mexico's lax labor laws have deprived workers of their rights to freely associate and bargain.⁴² Without those rights, Mexican workers have been powerless. They have not been able to protect their children from child labor.⁴³ Or fight their way out of forced labor conditions that figuratively and literally shackle them to employers and job sites.⁴⁴ Or force companies to pay women and men equal wages for equal work.⁴⁵

Mexican unions, which ideally would have represented those workers and aggregated their power vis-à-vis Mexican corporations, have been predominantly "employer protection unions" (or "protection unions").⁴⁶ Those protection unions work closely with employers and the Mexican government to maintain favorable working conditions for businesses. Unsurprisingly, with their employers and union representatives colluding against them, workers have been forced to accept subpar working conditions, often codified in collective bargaining agreements.⁴⁷ They have been frequently unaware that a union

40. Labor provisions in trade agreements are constantly evolving. For the most updated list of all provisions, the ILO maintains a trade and labor hub listing the text and agreement. See Int'l Lab. Org., *Labour Provisions in Trade Agreements Hub* (last accessed July 28, 2025), at <https://webapps.ilo.org/LPhub/> [<https://perma.cc/7ST2-W2DF>].

41. See I.M. DESTLER & P. H. BALINT, *THE NEW POLITICS OF AMERICAN TRADE: TRADE, LABOR, AND THE ENVIRONMENT* 19 (1999); See also Philip Alston, 'Core Labour Standards' and the Transformation of the International Labour Rights Regime, 15 EUR. J. INT'L L. 457, 500 (2004) (noting the complaints concerning the NAFTA's labor provisions).

42. See SOLIDARITY CENTER, *JUSTICE FOR ALL: THE STRUGGLE FOR WORKER RIGHTS IN MEXICO* 10–21 (2003) (describing Mexico's faulty laws and lacking protections for workers' freedom of association and bargaining rights).

43. *Id.* at 28–32.

44. *Id.*

45. *Id.* at 22–28.

46. For a rich history of how Mexico's substandard labor rights have affected U.S. trade policy, see Lance A. Compa, *Trump, Trade, and Trabajo: Renegotiating NAFTA's Labor Accord in A Fraught Political Climate*, 26 IND. J. GLOB. STUD. 263 (2019).

47. *Id.* at 284.

represented them, let alone that they were parties to collective bargaining agreements that suppressed their wages and deprived them of critical occupational and safety protections and workplace benefits.

3. The United States-Mexico-Canada Agreement (USMCA)

During his 2015–2016 presidential campaign, President Trump attacked NAFTA for being “the worst trade deal maybe ever signed anywhere, but certainly ever signed in this country.”⁴⁸ His anti-trade rhetoric resonated with voters in central manufacturing states, including Michigan, Ohio, Pennsylvania, and Wisconsin. It armed him with credible threats to withdraw from NAFTA if Canada and Mexico did not agree to substantial revisions.⁴⁹ Formal renegotiations began in August 2017 and, from the start, U.S. labor organizations and congressional Democrats collaborated with U.S. trade negotiators to address Mexico’s lax labor regulations.⁵⁰

As part of this process, the Trump administration worked with Mexican government officials to revise Mexico’s national labor laws.⁵¹ On May 1, 2019, the Mexican government, led by newly elected President López Obrador, adopted a new federal labor law that reflected U.S. demands.⁵² Those demands centered on reforming Mexico’s protectionist union regime and strengthening the rule of law in Mexican labor relations. Mexico’s new labor law, consequently, gives workers greater agency over their working conditions than they had under Mexico’s sham collective bargaining system. For instance, under those reforms, unions must now show that they enjoy the support of at least thirty percent of eligible voters, through a secret ballot election.⁵³

The new labor law also tries to make workers aware of their collective bargaining agreements. Once the union establishes a collective bargaining agreement, it must circulate it to the workers and

48. KEVIN J. MIDDLEBROOK, *The International Defense of Workers: Labor Rights, U.S. Trade Agreements, and State Sovereignty* 245 (2024).

49. *Id.* at 245–46.

50. For a detailed description of these negotiations and the role of labor unions and congressional Democrats, *see id.* at 251–77.

51. *Id.* at 264–65.

52. *See Nuevo Modelo Laboral*, Secretaría del Trabajo y Previsión Social, Gobierno de México, https://reformalaboral.stps.gob.mx/nuevo_modelo_laboral [<https://perma.cc/9BE2-CUBZ>].

53. Ley Federal del Trabajo [LFT], art. 390 Bis I and III, Diario Oficial de la Federación [DOF] 01-04-1970, Últimas Reformas DOF 27-12-2022 (Mex.).

receive their approval before submitting it for official validation.⁵⁴ Employers and unions must renegotiate their existing bargaining agreements every two years, and most workers must approve.⁵⁵

Rather than eliminate all collective bargaining agreements on behalf of workers, the Mexican government gave workers decision-making authority over those agreements. It thus introduced a new procedure, referred to rather awkwardly as the “legitimization” procedure, to vote on the collective bargaining agreements that covered them.⁵⁶

Mexico’s labor reforms hold considerable promise for workers and for the conditions of competition between U.S. and Mexican firms. With legal protections in place, workers are more likely to join and form unions. When they amalgamate, workers enhance their bargaining power vis-à-vis that of the employer (strength in numbers). Their enhanced bargaining power and stronger negotiating positions enable them to demand wage increases and better, safer working conditions.⁵⁷

While the new law seemed to address many of the weaknesses in Mexico’s labor law regime, there has remained a cause for concern. Mexico lacks the resources to inspect all its facilities, raise awareness among the workforce of their rights, and enforce violations.⁵⁸ Furthermore, workers in Mexico had been tasked with legitimating their collective bargaining agreements without first receiving training on the meaning and implications of their votes. Under the labor law, workers had a four-year transitional period, which concluded on May 1, 2023,

54. *Id.*

55. Ley Federal del Trabajo [LFT], art. 400, Diario Oficial de la Federación [DOF] 01-04-1970, Últimas Reformas DOF 27-12-2022 (Mex.).

56. Gobierno de México. Protocolo para la legitimación de contratos colectivos de trabajo existentes, art. 30.I.d., www.dof.gob.mx/2021/CFCRL/Protocolo_Legitimacion_ContratosColectivos.pdf.

57. A rich economics literature examines this positive relationship between bargaining power and wages and working conditions, all of which affect production costs. See, e.g., Timothy C.G. Fisher & Robert G. Waschik, *Union Bargaining Power, Relative Wages, and Efficiency in Canada*, 33 CAN. J. ECON. 742, 742–43 (2000) (arguing that the effect of unions, which amalgamate worker power, “on wages has received more attention from economists than any other aspect of union behavior. The consensus from this substantial literature is that unions raise the wages of their members above the wages of otherwise comparable non-union workers.”).

58. See Sandra Polaski, *USMCA and the Rapid Response Labor Mechanism: A New Approach to Cross-Border Governance of Labor Rights*, 12 (Nov. 21, 2023) (B.U. Working Paper) (“Previous Mexican administrations had failed to provide resources for adequate enforcement of labor laws and the López Obrador administration inherited a weak labor ministry.”).

to vote on the 139,000 pre-existing collective bargaining agreements.⁵⁹ Recall that under Mexico's labor regime, those agreements tended to protect employers, not workers. Contrary to expectations, most workers who participated in the legitimization process *accepted* their sub-standard collective bargaining agreements, raising questions about capacity and understanding.⁶⁰

The USMCA, finalized in 2020, was amended to address these concerns.⁶¹ The Trump administration added new requirements, primarily at the insistence of U.S. Senate Democrats Ron Wyden and Sherrod Brown, which committed the Mexican government to a new enforcement tool: the Facility-Specific Labor Rapid Response Mechanism.⁶² That tool, known colloquially as “the RRM,” authorizes the U.S. government to inspect and enforce those reforms in individual facilities in Mexico.⁶³ The RRM is a complex process that begins with filing a complaint or grievance (or the U.S. government can self-initiate) and may end with resolving the issue at the facility or through a formal panel proceeding.⁶⁴ If the Mexican government agrees that a Mexican facility has denied the rights stipulated in the RRM, it can work with the U.S. government to pursue a “course of remediation” to rectify the violation.⁶⁵ Thus far, remediation plans have included immediate legitimization votes, union elections, and other corrective activities that involve participation among the rank and file.⁶⁶

59. Data obtained from the *Repositorio de Información del Registro Laboral*, <https://repositorio.centrolaboral.gob.mx/> [<https://perma.cc/SU96-K3AZ>] (last accessed June 27, 2024).

60. See Alejandro Encinas Nájera et al., *Legitimación de Contratos Colectivos de Trabajo: La Llave de Acceso al Nuevo Modelo Laboral*, SECRETERÍA DEL TRABAJO Y PREVISIÓN SOCIAL (2021), https://www.gob.mx/cms/uploads/attachment/file/616210/LEGITIMACION_DE_CONTRATOS_COLECTIVOS_110221-1.pdf [<https://perma.cc/R99L-7HXH>].

61. See MIDDLEBROOK, *supra* note 48, at 273–77.

62. See Brown, *Wyden Stand with Workers in First USMCA “Rapid Response” Labor Case*, U.S. SENATE COMM. ON FIN. (May 10, 2021), <https://www.finance.senate.gov/chairmans-news/brown-wyden-stand-with-workers-in-first-usmca-rapid-response-labor-case> [<https://perma.cc/V9D9-R8KV>] (“Brown and Wyden fought for and successfully secured important worker-empowering provision as part of the USMCA....”).

63. See LeClercq, *supra* note 28, at 25–26.

64. See USMCA, Annex 23-A.

65. 19 U.S.C. §4692(b)(2).

66. See USTR Fact Sheet, *supra* note 4, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2024/september/fact-sheet-usmca-rapid-response-mechanism-delivers-workers> [<http://perma.cc/56DS-G69Q>], (“Fourteen cases included backpay to workers, eleven included reinstatements of workers, eleven resulted in independent unions representing

Considering how violations of labor rights historically enabled facilities in Mexico to reap profits at the expense of U.S. competitors, the Office of the U.S. Trade Representative (USTR) and Congress established incredibly short timelines for investigations and remediation. Those timelines complement the government of Mexico's timelines, including a scant four-year window for workers to vote on their previous collective bargaining agreements and a six-month window for new unions to negotiate a collective bargaining agreement with the facilities. Mexico established those timelines while working with the U.S. government to replace its previous system of protection contracts with fair contracts as a matter of urgency.

B. The Biden Administration's Empowerment Promise

This Section explains how the Biden administration leveraged the USMCA upon taking office to prove to unions, Democrats, and the workers who elected him that labor provisions in U.S. trade agreements can improve trade conditions through empowerment. Immediately following his election, President Biden joined calls echoed throughout the European Union,⁶⁷ Canada,⁶⁸ and even the World Trade Organization (WTO) to level the playing field in trade through empowerment.⁶⁹ These calls acknowledged that workers, on their own, stand little chance of sharing in the profits generated by trade, given the outsized power of capital.

workers at the facility, and many resulted in successful negotiations for higher wages, workers' rights trainings, and improved policies at the facilities.”)

67. See European Commission, *Remarks by Executive Vice-President Dombrovskis at the Press Conference on the Trade and Sustainable Development Review* (June 21, 2022), https://ec.europa.eu/commission/presscorner/detail/en/speech_22_3918 [<https://perma.cc/R7ZJ-MG7G>].

68. To better achieve “sustainable socio-economic development,” Chile and Canada’s FTA recalls, in an appendix to the agreement, international goals to “empower all women and girls.” Appendix II – Chapter N bis–Trade and Gender, Can.-Chile (last modified May 31, 2017), https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng [<https://perma.cc/35VN-JQ4F>].

69. For example, in 2017, the WTO introduced an initiative presupposing that “[t]rade has an important role to play in driving economic growth by supporting women’s empowerment and advancing gender equality.” *Women and Trade*, WORLD TRADE ORG. https://www.wto.org/english/tratop_e/womenandtrade_e/bfwomen_and_trade_e.htm [<https://perma.cc/SG7Q-C5PC>] (last accessed Jan. 13, 2025); *Buenos Aires Declaration*, WTO 11th Ministerial Conf. (2017), https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf [<https://perma.cc/63TF-G6MP>].

President Biden immediately turned to the USMCA, which was still hot off the press from the Trump administration's negotiations. His USTR stressed that "[w]hen Mexico's workers are exploited, U.S. workers suffer too."⁷⁰ It claimed that the USMCA and its RRM were "helping to produce a 'race to the top,' preventing companies that violate workers' rights from benefiting from the USMCA and helping ensure that companies cannot secure unfair advantages by exploiting workers."⁷¹ A 2023 report that the Biden administration's Department of Labor (DOL) commissioned argued: "Worker voice is empowered through the USMCA because it allows the U.S. government to suspend the trade rights of individual companies operating in Mexico upon finding merit in worker complaints of the company's interference in their freedom of association and collective bargaining rights."⁷²

Apart from rhetoric, the Biden administration struggled to offer cogent guidance on its approach to empowerment in trade. Invoking the term, the Biden administration's USTR Fact Sheet instead points to the investigations it conducted under the RRM, claiming those investigations and enforcement follow-up "directly benefited over 36,000 workers."⁷³ Those benefits are salient. They include millions of dollars in backpay and benefits for Mexican workers, their reinstatement, and independent union representation.⁷⁴ They also included worker-level trainings, granting worker beneficiaries a greater choice over their union representation.⁷⁵ Neither the Fact Sheet nor the benefits explain whether workers in Mexico's trade sectors were empowered.

Labor and trade advocates in the United States and Europe generally embrace the RRM, lauding it as a "gold standard" due to its prompt procedures and targeted nature.⁷⁶ Mexican scholars and

70. USTR Fact Sheet, *supra* note 4.

71. *Id.*

72. See Mark Anner & Matthew Fisher-Daly, *Worker Voice: What it is, What it is Not, and Why it Matters*, U.S. DEP'T OF LAB. (Dec. 19, 2023), https://ler.la.psu.edu/wp-content/uploads/sites/4/2024/04/Penn-State-Worker-Voice-Report-Dec.-19-Financial_amended_mfd_23March2024-2.pdf [<https://perma.cc/VB32-9H2G>].

73. USTR Fact Sheet, *supra* note 4.

74. *Id.*

75. DESIRÉE LECLERCQ, ALEX COVARRUBIAS-V & CIRILA QUINTERO RAMIREZ, ENFORCEMENT OF THE UNITED STATES-MEXICO-CANADA AGREEMENT ("USMCA") *RAPID RESPONSE MECHANISM: VIEWS FROM MEXICAN AUTO SECTOR WORKERS* 18–19 (Cornell Univ. Rsch. Rep. Nov. 7, 2024) [hereinafter "*RAPID RESPONSE MECHANISM REPORT*"].

76. See, e.g., Gregory Felder et al., *The Trade and Labour Nexus*, in *THE CONCEPT DESIGN OF A 21ST CENTURY PREFERENTIAL TRADE AGREEMENT* 305 (Kathleen Claussen,

advocates, on the other hand, have been less optimistic that Mexico's labor law reforms and U.S.-led enforcement would strengthen workers' bargaining rights beyond a slim group of beneficiaries.⁷⁷ Further, a Congressionally-appointed board of experts, the Independent Mexico Labor Expert Board (IMLEB), expressed concerns early on about how labor rights were unfolding under the agreement in Mexico.⁷⁸ It noted that the RRM grievance procedures required workers to raise complaints rather than proactively monitor their working conditions, thus placing the onus of reporting squarely on the very workers the RRM was supposed to protect. Although the RRM supposedly empowers workers by reinforcing the national labor reforms, the board found, after interviewing workers in Mexico, "little indication that workers feel empowered by the new legislation or are even aware of it."⁷⁹

C. The Biden Administration's Empowerment Approach

This Section describes the results of an original field project that I led in 2024 to see how and whether workers in Mexico's key trade sector, autos, were empowered under the USMCA. Specifically, I was interested in how that approach affected Mexican workers on the shop floor who produced and serviced auto parts destined for the United States.⁸⁰ Our study revealed that the Biden administration's approach to worker empowerment under the USMCA and its RRM disproportionately benefited workers affiliated with politically powerful U.S. unions and their affiliates, while missing more vulnerable workers.

When we conducted our field research in the spring of 2024, the Biden administration had initiated seventeen cases against facilities in the Mexican auto sector.⁸¹ In each of those cases, RRM petitioners who were successful at convincing the U.S. administration to launch

Manfred Elsig & Rodrigo Polanco eds., 2025) ("Using the USMCA's enforcement mechanisms as the current gold standard...").

77. See, e.g., Alex Covarrubias V. & Mélanie Dufour-Poirier, *The USMCA and Third-Generation Labour Arrangements: From Previous Experience in Latin America to Probable Scenarios in Mexico*, in *THE NORTH AMERICAN AUTO INDUSTRY SINCE NAFTA* 316, 318 (Grieg Mordue & Dmitry Anastakis eds., 2024) (hypothesizing that a "sustained labour relation transformation" would only occur under the USMCA and labor law reform "if the legislative changes are supported by the stakeholders involved").

78. *Report of the Independent Mexico Labor Expert Board to the ILC* 11 (Mar. 20, 2023).

79. *Id.* at 47–48.

80. See *RAPID RESPONSE MECHANISM REPORT*, *supra* note 75, at 25.

81. *Id.* at app. A, tbl.1.

an inquiry and investigation also received assistance from the U.S. government, U.S. unions, or U.S. non-governmental organizations.⁸² Because the U.S. government does not provide information about *un*-successful petitions, it was not possible to determine whether all petitioners who lacked a relationship with those U.S. actors, and hence their assistance, were rejected, or whether the relationship between U.S. assistance and petition acceptance was coincidental.⁸³ What could be determined, however, was that *none* of those successful petitions advanced *without* assistance from powerful U.S. actors.

Between January and March 2024, we spoke with 130 workers across twelve facilities, including seven supplier facilities (comprising auto plant facilities and logistics facilities) and five assembly plants.⁸⁴ We targeted eight states of central importance to the auto export sector in Mexico: Tamaulipas, Coahuila, Chihuahua, Sonora, San Luis Potosí, Guanajuato, Estado de México, and Morelos. Six of the twelve companies were headquartered in the United States, while the remaining six were headquartered outside North America. We included assembly plants and supplier facilities (for auto parts and logistics). Three of the twelve companies were not unionized, and nine were unionized. Three of the twelve companies had been the subject of an RRM enforcement action (“RRM facilities”), while nine had not been subject to an RRM enforcement action (“non-RRM facilities”).⁸⁵

The interview team comprised Mexican nationals. They met workers outside the facilities and used a non-probability snowball sampling method whereby the interviewee could suggest other possible interviewees. Concededly, the workers we spoke with were a small fraction of the tens of thousands of workers in the Mexican automobile sector. Nevertheless, we targeted facilities of central importance to the auto trade sector, looking for evidence of workers’ awareness of their rights and voice in enforcing those rights.

While our findings were voluminous and extend beyond the scope of this project, three key points bear mentioning. *First*, many of the workers we spoke with were unaware of their legal rights, despite

82. *Id.* at 18–19, fig. 3.

83. While the U.S. government does not offer information about rejected petitions, a November 2024 Freedom of Information Act response indicated that USTR accepted twenty-nine out of fifty-four petitions under the USMCA’s RRM between May 2021 and June 28, 2024. See Margaret Spiegelman, *RRM ‘Black Boxing’ Spurs Solidarity Among Tri-National Labor Reps*, INSIDE U.S. TRADE (Oct. 14, 2025), <http://insidetrade.com/share/184474> [<https://perma.cc/9HBQ-BGCX>].

84. *RAPID RESPONSE MECHANISM REPORT*, *supra* note 75, at 25.

85. *Id.*

Mexico's labor law reforms and U.S.-funded technical assistance.⁸⁶ Comparatively, workers at the RRM facilities were far more aware of the labor law reforms (76%) than workers at non-RRM facilities (48%).⁸⁷

Second, only a minority of workers (38%) reported that they understood the new democratic processes introduced by the Mexican labor reform and enforced by the USMCA and RRM.⁸⁸ Here, again, there was a large discrepancy between the workers at RRM facilities, where the majority (64%) had received some form of training on the processes and felt they understood them.⁸⁹ The workers at the non-RRM facilities, by contrast, were far less exposed to the processes and unsure about the meaning of their legitimization votes. Their testimony raised grave questions about the results of their legitimization votes, which had required them to understand what they were voting for and locked them into their substandard collective bargaining agreements in many cases.⁹⁰

Third, most of the unionized workers at non-RRM facilities (79%) were unaware of the RRM or the petition process.⁹¹ When we explained the process, most (53%) told us they did not intend to use it. Those figures contrasted sharply with the majority of workers at RRM facilities (70%) who were aware of the mechanism and would use it (70%).⁹² Workers in general supported the Biden administration's efforts to enforce their labor rights, but many did not seem to trust that the administration had their best interests in mind.⁹³

II. THEORIZING AN EMPOWERMENT TRADE POLICY

This Part applies a theoretical lens to empowerment, both to give the term a concrete meaning and to explain why the Biden administration's efforts to protect U.S. workers from unfair competition abroad failed, and why the Trump administration's tariffs will fail—not to lament opportunities lost but, instead, to take stock for future trade policy. It draws heavily from the works of Amartya Sen, who

86. *Id.* at 29.

87. *Id.* at 29, tbl. 3.

88. *Id.* at 34.

89. *Id.* at 35, tbl. 12.

90. *See id.* at 36, tbl. 13.

91. *Id.* at 39, tbl. 17.

92. *Id.*

93. *See id.* at 67, app. E.

was the first to push us to think about empowerment programs from the perspective of their beneficiaries. Sen argued that those programs must identify and address the beneficiaries' lack of capability and autonomy over their circumstances and decision-making.⁹⁴ Following Sen's pathbreaking work, scholars have applied his "capability approach" to empowerment to everything from development assistance⁹⁵ to disability rights⁹⁶ to labor law.⁹⁷ Here, I apply this concept to U.S. trade policy. I argue that empowering workers in trade sectors by building their capacity to participate in the legal regimes to which they are bound is key to improving their working conditions and, ultimately, the competitiveness of U.S. firms. By protecting the conditions of competition, U.S. trade policy will protect workers in the United States from job losses attributable to suppressed labor costs elsewhere, rendering empowerment a key pillar to the U.S. trade agenda.

A. Individual Capability

Imagine designing a program to empower impoverished women working in the textile sector in Bangladesh. Assume your approach focuses on building their capacity and knowledge. A fundamental feature of empowerment, you might assume, is that beneficiaries get to form their own decisions. Armed with that assumption, you would likely consult with those women at the outset.⁹⁸ *What do you need—you might ask. How can we modify our program to meet those needs? And before we step in, how do you already negotiate and*

94. See AMARTYA SEN, DEVELOPMENT AS FREEDOM 24–33 (1999) (arguing that development should focus on removing 'unfreedoms' caused by a lack of capacity and control over one's circumstances).

95. See, e.g., Meghnad Desai, *Amartya Sen's Contribution to Development Economics*, 29 OXFORD DEV. STUD. 213 (2001) ("The range, the depth and the impact of Amartya Sen's work in development economics are immense and far reaching.").

96. See, e.g., WIEBKE KUKLYS, AMARTYA SEN'S CAPABILITY APPROACH: THEORETICAL INSIGHTS AND EMPIRICAL APPLICATIONS 83 (M. Salles, P. K. Pattanaik, & K. Suzumura eds., 2005) (applying empirical methodology to individual choice and capacity and identifying the faulty assumptions that often exclude disabled individuals).

97. See, e.g., OXFORD UNIV. PRESS, THE CAPABILITY APPROACH TO LABOUR LAW (Brian Langille ed., 2019).

98. See Frances Cleaver, *Institutions, Agency and the Limitations of Participatory Approaches to Development*, in PARTICIPATION: THE NEW TYRANNY? 36, 43 (Bill Cooke & Uma Kothari eds., 2001) (describing a study in Zimbabwe in which village-level meetings proved more valuable to the local community in decision-making than formal, functional committees established and required by donor agencies).

resolve disputes within your community? How do you decide on your representatives? How can our program align with these established practices to support your decision-making?

Alternatively, if your approach to empowerment focuses on garnering national political support for vulnerable workers in Bangladesh, you might operate differently. Instead of devoting time and resources to ex-ante consultations, you might simply hold a meeting for those women, one that you could use back home to show how *many* women you just reached, how many women you just saved. That you scheduled the meeting during their domestic duties, that you excluded those with young children, that you merely captured the elite women with the time and capacity to attend your meeting outside work hours, would have eluded you and your domestic constituents. Left voiceless, the relatively vulnerable women who could not participate would likely experience little to no changes in their needs, thus cementing them to the abusive working conditions that ignited concerns back home in the first place. But you need not have cared about those matters. Your priority was to deliver, to show your constituents which boxes you ticked.

Amartya Sen predicted this tension and sought to mitigate its policy effects. Rather than letting policymakers congratulate themselves for satisfying top-down, pre-cooked indicators, Sen introduced a capability approach that re-contextualized empowerment around individual choice and freedom.⁹⁹ I should mention at the outset that I don't intend to endorse *all* of Sen's views, some of which overlook pre-existing power dynamics within local communities and often ignore the tensions between collective and individual rights.¹⁰⁰ I am sympathetic to Martha Nussbaum's argument that empowerment encompasses more than mere capacity, as Sen's work might suggest, but should also incorporate human flourishing and power.¹⁰¹

While Sen's work may be somewhat incomplete, it is essential to understanding both where Biden's empowerment initiatives went wrong and how U.S. trade policy, executed correctly, could tackle unfair competition through empowerment. Importantly, Sen emphasized that empowerment is the *means* to autonomy, choice, and economic

99. See, e.g., DEVELOPMENT AS FREEDOM, *supra* note 94, at 24–33.

100. See Hugh Collins, *What Can Sen's Capability Approach Offer to Labour Law*, in THE CAPABILITY APPROACH TO LABOUR LAW 21 (Brian Langille ed., 2019) (lamenting that “the capability approach, with its strong emphasis on the goal of individual freedom for the achievement of well-being, appears to be pointing in the wrong direction”).

101. See, e.g., MARTHA C. NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH (2000).

advancement, rather than an *end* in itself.¹⁰² He lobbied for development programs to empower beneficiary communities through education and skills training so that they could improve their quality of life.¹⁰³ Sen considered the attendant capacity to participate in the market a fundamental freedom for all.¹⁰⁴

B. Autonomy Over Decision-Making

Sen's conception of empowerment renders individuals capable of leading the "kind of lives they value" rather than having someone else decide on their behalf.¹⁰⁵ That conception encases "both the *processes* that allow freedom of actions and decisions, and the actual *opportunities* that people have, given their personal and social circumstances."¹⁰⁶ Against that dual backdrop, Sen emphasized "agency" as power over *oneself* rather than over *another*.¹⁰⁷ Instead of disrupting pre-existing power systems, Sen and others advocated for a new development approach that preserves and enhances individual autonomy over *choice*, while recognizing that some subjects may have "no immediate interest in exercising the freedom to speak or to participate."¹⁰⁸ Empowered individuals would consequently decide, for themselves, whether to participate.¹⁰⁹

Sen's approach thus features two notable prerequisites to empowerment initiatives. The first is that such initiatives are designed through consultative processes in which beneficiaries enjoy bottom-up agency. That is, those initiatives *invite* beneficiaries and construct approaches in response to articulated needs; they do not *require* those individuals to participate in top-down events with pre-established

102. See, e.g., Bill Cooke, *The Social Psychological Limits of Participation?*, in PARTICIPATION: THE NEW TYRANNY? 102, 103 (Bill Cooke & Uma Kothari, eds., 2001) (describing competing approaches to participation as a means and an end and the distinctive methodologies used respectively).

103. See DEVELOPMENT AS FREEDOM, *supra* note 94, at 119–20 (noting that development programs needed to address simultaneous obstacles to equalize income-earning and income-using abilities).

104. See *id.* at 7.

105. *Id.* at 18.

106. *Id.* at 17.

107. *Id.* at 18–19.

108. DEVELOPMENT AS FREEDOM, *supra* note 94, at 37.

109. *Id.* at 31–32.

outcomes. The second is that empowerment initiatives foreground education as a means to ensuring informed decision-making and choice.¹¹⁰

C. Sen's Empowerment in Other Contexts

The literature of the late twentieth century and early 2000s seemed to agree with Sen's conceptions of empowerment as agency and capacity, while critiquing development programs for their programmatic deficits.¹¹¹ However, it was also clear that empowerment through participation was difficult to operationalize in practice, notably because Sen's theory often failed to account for practical political dynamics and the distribution of wealth and power.¹¹²

Applying Sen's empowerment framework to economic development, John Hammock invites a more pragmatic approach to capability objectives.¹¹³ If the ultimate aim is to empower marginalized communities through participation designed to challenge the status quo, empowerment programs ask too much from impoverished communities.¹¹⁴ Given that possibility, he cautions, governments and agencies must respect the decision-making autonomy of their subjects, recognizing that those individuals are best suited to determine their own capacity to participate in any situation.¹¹⁵ Hammock's critique

110. See Elain Unterhalter, *Balancing Pessimism of the Intellect and Optimism of the Will: Some Reflections on the Capability Approach, Gender, Empowerment, and Education*, in *THE CAPABILITY APPROACH, EMPOWERMENT AND PARTICIPATION: CONCEPTS, METHODS AND APPLICATIONS* 75, 91 (David Alexander Clark, Mario Biggeri & Alexandre Apsan Frediani, eds., 2019).

111. See Alexandre Apsan Frediani, David Alexander Clark & Mario Biggeri, *Human Development and the Capability Approach: The Role of Empowerment and Participation*, in *THE CAPABILITY APPROACH, EMPOWERMENT AND PARTICIPATION: CONCEPTS, METHODS AND APPLICATIONS* 3, 4–5 (David Alexander Clark, Mario Biggeri & Alexandre Apsan Frediani, eds., 2019); Manabi Majumdar, *Sen Symposium*, IV REV. OF DEV. & CHANGE 376 (1999) (describing the symposium of scholars discussing Sen's development theories).

112. See John Hammock, *The Practice of Participation and the Capability Approach*, in *THE CAPABILITY APPROACH, EMPOWERMENT AND PARTICIPATION: CONCEPTS, METHODS AND APPLICATIONS* 39, 39–40 (David Alexander Clark, Mario Biggeri & Alexandre Apsan Frediani, eds., 2019).

113. See *id.*

114. Hammock, *supra* note 112, at 41.

115. *Id.* (arguing that development programs need to “find[] out what people are already doing and then push[] [them] along existing methods of participation, rather than calling for new meetings or more dialogue promoted by the outsider”); CLEAVER, *supra* note 99, at 51 (“Contrary to the ubiquitous optimistic assertions about the benefits of public participation,

has been echoed by others in the field who argue that “rather than focusing on the instrumental role of participation for project effectiveness, the original motivations for bringing participation to the heart of development process has been to enable a personal, collective and structural process of empowerment.”¹¹⁶

Hammock further emphasizes that “practitioners of the capability approach cannot accept a cookie-cutter approach to participation.”¹¹⁷ Communities necessarily reflect their national political systems, and tactics that work under one system will not necessarily work under another.¹¹⁸ Walking into a project without first understanding the existing power dynamics creates possibilities for abuse. For instance, local leaders may be tempted by outside funding, which could lead to corruption and attract politicians seeking to divert resources.¹¹⁹ “In practice,” Hammock offers, “this means throwing out the ‘outsider’ framework for success that...organizations often hold and trading it in for a locally created framework.”¹²⁰

In addition, Hammock highlights the importance of local ownership.¹²¹ Impoverished or otherwise vulnerable communities may simply go along with project initiatives linked to resources by guessing what participatory exercises seek to “sell.” Empowerment projects should reflect local ownership and agency, rather than relying on top-down, parochial projects from Washington, D.C.¹²² They should permit people to “empower themselves” and “have the capability to grasp and own the process.”¹²³

Finally, Hammock reminds us that change takes time.¹²⁴ Trust and relationships can take years to build, requiring a long-term perspective and commitment. Time is also necessary for outsiders to build solidarity with local communities, particularly if projects require change and risk.¹²⁵ This preliminary work cannot be accomplished “in

there are numerous documented examples of situations where individuals find it easier, more beneficial, or habitually familiar not to participate.”) (internal citations omitted).

116. Frediani, Clark & Biggeri, *supra* note 111, at 4.

117. Hammock, *supra* note 112, at 45.

118. *See id.*

119. *See id.* at 48.

120. *Id.* at 50.

121. *Id.* at 46.

122. *Id.*

123. Hammock, *supra* note 112, at 50.

124. *Id.* at 48.

125. *Id.* at 49.

a one or two-year project, or even in a five-year process.”¹²⁶ Trust aside, projects are unavoidably carried out in the context of winners and losers, and project implementers must have the time to think through potential ripple effects before advancing solutions.¹²⁷ To illustrate, he recalls a USAID-funded project aimed at improving the living conditions of a low-income community in Guayaquil, Ecuador.¹²⁸ The program funded new housing, which was occupied by an impoverished community for less than a year, by which time the community could not afford the minimal fees and had been evicted, leaving ample housing for middle-class residents.¹²⁹

Sen’s approach to empowerment, as operationalized by scholars and practitioners, provides a framework for understanding why President Biden’s worker-centered trade policy overlooked vulnerable workers. While President Biden understood the importance of worker empowerment, his approach to empowerment was as a political device rather than a structural feature of trade and competition policy. Consequently, our results showed ineffective short timelines in a rush to prove enforcement, a narrow scope for workers in politically advantageous facilities, and a lack of trust among workers.

First, consider the timing. The Biden administration began threatening and imposing penalties under the USMCA, which wasn’t finalized until July 1, 2020,¹³⁰ against facilities in May 2021.¹³¹ While some labor scholars criticized the administration for taking *too long* to enforce the USMCA’s labor provisions,¹³² the window between announcing new labor rules and enforcing them was a mere *ten*

126. *Id.* at 48.

127. *Id.* at 47.

128. *Id.*

129. *Id.*

130. *United States-Mexico-Canada Agreement*, USTR, (last visited Nov. 5, 2025), <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement> [<https://perma.cc/S7E2-GM4B>].

131. *See United States Seeks Mexico’s Review of Alleged Worker’s Rights Denial at Auto Manufacturing Facility*, USTR (May 12, 2021), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/united-states-seeks-mexicos-review-alleged-workers-rights-denial-auto-manufacturing-facility-0> [<https://perma.cc/3UPG-PT24>].

132. *See, e.g.*, Kimberley Breier, *Getting U.S. Policy toward Mexico and Canada Right*, CTR. FOR STRATEGIC & INT’L STUDS. (Dec. 9, 2020), <https://www.csis.org/analysis/getting-us-policy-toward-mexico-and-canada-right> [<https://perma.cc/W7Q5-LKYW>] (“As with any new enforcement tool, the devil is in the details, and effective implementation of the tool may not, in the end, imply the imposition of penalties as many seem to expect.”).

months.¹³³ Most workers and employers hadn't received technical assistance and education on Mexico's new labor regime and the USMCA by the time workers were expected to know about their rights, the RRM, and the U.S. government's intentions. Without that assistance, some workers miscast their votes, missing valuable opportunities to free themselves from suppressive collective bargaining agreements and protection unions. The workers who intended to usher in independent unions but mistakenly anchored themselves to protection contracts missed the chance to enhance their bargaining power and reap the benefits of higher wages, better working conditions, and more realistic production costs that would have followed. In other words, by not empowering auto workers in Mexico, the administration missed a critical opportunity to redress unfair conditions of trade, the costs of which are borne by workers and firms in the United States that compete with them.

The Biden administration lacked the five-plus-year window that Hammock advocates.¹³⁴ Nonetheless, the U.S. government had a much longer runway to educate workers and work with communities than the RRM's hasty text would have us believe. Negotiations over the USMCA began in 2017 and concluded in 2020.¹³⁵ U.S. officials actually began negotiating with the Mexican government over its labor law reforms in 2016, within the framework of the TPP.¹³⁶ During that four-year window, the parties could have been consulting with the respective worker and employer representatives within trade sectors, along with their citizens, to discuss the USMCA's potential labor rights commitments and areas of technical assistance and support. However, and concededly, doing so would have required the *Trump* administration to take those proactive measures, given that Biden did not take office until 2020. Nevertheless, the runway enabled during negotiations is key to understanding the feasibility of a future empowerment trade policy, discussed in greater detail in Part V.

Even though the Biden administration inherited a trade agreement lacking fundamental relationship-building and groundwork, there were still steps it should have taken, including working with the Mexican government and the workers and companies there to disseminate information about the new labor law reform and upcoming

133. From July to May 2021.

134. Hammock, *supra* note 112, at 48.

135. See M. ANGEL VILLARREAL, CONG. RSCH. SERV., R44981, THE UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA) 8 (2024).

136. See MIDDLEBROOK, *supra* note 48, at 229–233 (describing efforts in Mexico to address U.S. labor criticisms within the TPP framework in 2016).

elections. When we spoke with workers, their window to vote on their collective bargaining agreements had already closed in July 2023. During their brief window, workers voted to approve approximately ninety-eight percent of those agreements, which would have been a positive outcome *had the workers intended to approve them*. However, our interviews revealed that workers did not understand the legitimization process, and some had voted to approve under the false understanding that their vote would permit them to renegotiate the agreement in question. Under an empowerment approach, the Biden administration should have pressured the Mexican government to extend those deadlines, rather than citing worker participation as a benchmark of success.

The Biden administration's efforts also did not leave sufficient time for U.S. government officials to understand local power and legal dynamics in the Mexican auto sector.¹³⁷ Consider the U.S. government's RRM action at the Draxton facility in Irapuato, Guanajuato. There, the U.S. government drew up a remediation plan for a free and fair union election, which (it claimed) would ensure "a way forward for workers to affiliate with the union of their choice without any form of interference or retribution."¹³⁸ After speaking with representatives of the independent union and other actors involved, labor researchers concluded that the USMCA and its RRM "assume that democratizing union practices will inherently improve labour conditions" despite "local power structures that favour corporate interests."¹³⁹ Notwithstanding the Biden administration's announcement of success, the researchers pointed out that the incumbent (corrupt) union simply challenged the case to Mexico's labor justice authorities, delaying the new union's organizing efforts and distancing it from the workers it sought to represent.¹⁴⁰

Anecdotally, a minority of workers in the Mexican auto sector reported to us that, although they had elected independent unions under USMCA RRM-remediated elections, they later regretted their

137. See María Gómez Ojeda & Nadine Reis, *USMCA Labour Provisions and Their Impact on Working Conditions in the Mexican Automotive Industry: An Initial Assessment*, 40 J. FÜR ENTWICKLUNGSPOLITIK 39, 54–56 (2024) (comparing the RRM cases in a General Motors facility to one at a Draxton facility).

138. See USTR, *United States Announces Successful Resolution of Rapid Response Labor Mechanism Matter at Draxton Facility* (Apr. 9, 2024), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/april/united-states-announces-successful-resolution-rapid-response-labor-mechanism-matter-draxton-facility> [<https://perma.cc/5CV4-ZRBG>].

139. Ojeda & Reis, *supra* note 138, at 60.

140. *Id.* at 56–57 (concluding: "Although the [Rapid Response Mechanism] has been useful in making labour demands visible and increasing pressure on companies, it lacks the capacity to generate profound structural change in local labour relations.").

decisions. Their regret grew from their frustration with their new union's inability to secure bargaining gains from employers who had no legal obligation to bargain in good faith. It also reflected the lobbying carried out by the displaced protection unions, whose members remained in the facility. By not consulting with the workers before deciding what the RRM would enforce, the U.S. government missed a critical opportunity to address the root causes of some of those bargaining inequalities.

Of course, it is possible that the Biden administration would have eventually reached the workers at non-RRM facilities, had it had more time and resources. Projects, after all, need to start somewhere. This is not an indictment of the Biden administration's inability to inform hundreds of thousands of workers in Mexico of their new labor rights within the four years available, nor is it an accusation that the women and men working in his administration were anything less than fully committed to the cause. As a former government official in trade and labor, I can attest that people tend not to devote their professional livelihoods to causes they don't believe in. Finally, it would be remiss to suggest that reforming Mexico's labor system falls on U.S. policies and not on the Mexican government, which has certainly contributed to stalled progress by reducing necessary budgetary expenditures and has undermined some of its labor commitments.¹⁴¹ Nevertheless, the administration's concentration of resources and attention on facilities with ties to U.S. stakeholders and interests contradicts the aim of U.S. trade policy, which seeks to eliminate unfair comparative advantages in competitor countries and enterprises, not just those with political connections.

Second, and relatedly, consider the scope. Workers at facilities that had not received U.S. actor assistance were unaware of their rights and had not received training before casting their votes during the legitimization vote. They hadn't heard of the USMCA, were unaware of the Biden administration's intentions, and faced potential job loss and retaliation for blowing the whistle on their employers. The other workers, those who received U.S. actor assistance, disproportionately benefited from targeted training and election opportunities. If the scope of unfair competition could be reduced to a few firms and factories, the administration's targeted approach might have been sufficient. Given that suppressed labor costs and conditions pervade Mexico's

141. For an account of the Mexican government's accomplishments and drawbacks concerning its USMCA labor rights commitments, see Report of the Independent Mexico Labor Expert Board, at 23–25 (Oct. 6, 2025).

trade sectors, the narrow scope hurt the administration's overarching aim to protect U.S. workers from unfair competition.

By highlighting these drawbacks, I hope to show that they were avoidable. An empowerment-centered trade policy is crucial to U.S. workers, as I outline below. President Biden's ambition was a good one. Still, he suffered from an inheritance problem, political control, unrealistic deadlines, and limited resources, and had only four years to make a difference. An empowerment trade policy can resolve these deficiencies.

III. THE STAKES OF AN EMPOWERMENT TRADE POLICY

Who cares? Trade agreements are designed to open markets, liberalize the exchange of goods and services, and ease burdensome restrictions on border entry. They aren't designed to direct U.S. resources to foreign workers abroad or ensure workers in trade sectors feel heard in U.S. trade policy.

The problem, however, is that workers in the United States can't afford for trade policymakers to ignore the relationship between trade, the perverse incentives under global competition to lower labor costs, and their job opportunities in the United States. American workers and consumers are witnessing a misguided tactic to alleviate job losses—tariffs—that many nevertheless embrace as an alternative to the Biden administration's perceived failures. As jobs decline and prices threaten to creep up, it is time for scholars, policymakers, and voters to understand how U.S. trade policy hurts working-class Americans, and how that policy needs to change to uplift them.¹⁴²

Those who voted for President Trump in 2024 did so for a myriad of reasons. However, exit polls show that working-class Americans voted for the candidate most likely to disrupt a status quo they perceived as tipped against them.¹⁴³ Candidates from the far right and

142. I am not suggesting that it is the job of U.S. trade policy to improve the labor conditions of workers—a field that Congress preempts under the National Labor Relations Board. Instead, my argument is that workers in the United States will be uplifted by fair competition achieved through a relatively level playing field between labor conditions in the United States and trade partner countries.

143. See, e.g., Stephanie Perry et al., *How Trump Won, According to the NBC News Exit Poll*, NBC NEWS (Nov. 6, 2024), <https://www.nbcnews.com/politics/2024-election/donald-trump-won-according-nbc-news-exit-poll-rcna178603> [https://perma.cc/LCM9-NVTA] (“About three-quarters of voters nationwide said they felt negatively about the way things are going in the country, including 29% who said they were downright angry.”). This sentiment had been growing. When President Trump won the election in 2016, some commentators associated the win with resentment over the disruption of economic life in cities “that once

far left joined a chorus of voices demanding greater protections for workers in the United States, who are rendered vulnerable by U.S. trade agreements.¹⁴⁴ Many voters were angry about the loss of good manufacturing jobs to trade partner countries like Mexico, and with what they perceived as threats to their jobs from undocumented immigrants.¹⁴⁵ When voters face these kinds of “labor-market shocks,” their instincts tend to support trade protectionism.¹⁴⁶

On March 26, 2025, President Trump fulfilled his promise for radical change by canceling over sixty-nine international programs, including those under the USMCA, totaling more than \$500 million in funding.¹⁴⁷ He did so, citing “agency priorities and national interest” such as “investments in the *American* workforce.”¹⁴⁸ President Trump announced a “Liberation Day” on April 2, 2025, which included a slew of tariff hikes against countries in the name of U.S. workers.¹⁴⁹ In

formed the country’s manufacturing backbone.” See Gordon H. Hanson, *Can Trade Work for Workers? The Right Way to Redress Harms and Redistribute Gains*, FOREIGN AFF. 20, 22 (Apr. 20, 2021) (“Resentment over those changes helped Donald Trump win the presidency in 2016.”).

144. See David Autor et al., *Help for the Heartland? The Employment and Electoral Effects of the Trump Tariffs in the United States* 4 (Nat’l Bureau of Econ. Rsch., Working Paper No. 32082, 2024) (describing empirical data on U.S. trade elections).

145. See, e.g., Miguel Jiménez, *Trump Wins Votes from Working-Class Discontent Over Inflation and Immigration*, EL PAÍS (Nov. 7, 2024), <https://english.elpais.com/usa/elections/2024-11-07/trump-wins-votes-from-working-class-discontent-over-inflation-and-immigration.html> [<https://perma.cc/KB63-FU2C>] (noting that Trump “has never wavered on the issues that matter most to our community: reducing costs, restoring the economy, restoring American prosperity, securing the border, and security at home and abroad”).

146. Di Tella & Rodrik, *supra* note 9, at 1009 (“Trade protection is nearly always the favoured response to labour-market shocks at the margin, even when job losses are due to non-trade factors such as technology and demand shocks.”).

147. Joseph Gedeon, *Trump Cuts 69 Global Programs Tackling Child Labor and Human Trafficking*, THE GUARDIAN (Mar. 27, 2025), <https://www.theguardian.com/us-news/2025/mar/27/trump-cuts-child-labor-human-trafficking-programs> [<https://perma.cc/GKM6-LER9>] (“The Washington Post obtained an email detailing how the US Department of Labor’s bureau of international labor affairs (ILAB) will immediately end grants totaling more than \$500m that supported labor standard enforcement across 40 countries, including critical initiatives in Mexico, Central America, south-east Asia and Africa.”).

148. *Id.* (emph. added). Sandra Polaski and others point out that “Donald Trump campaigned on a promise to change the course of U.S. trade policy. But his counterproductive tariff wars have made things worse.” See Polaski et al., *supra* note 30, at 3.

149. See The White House, *Fact Sheet: President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security* (Apr. 2, 2025), <https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and->

place of foreign aid, President Trump's trade policy promises "economic independence."¹⁵⁰ Tariffs, not the empowerment of foreign workers, are key to ensuring that "[j]obs and factories will come roaring back into our country...."¹⁵¹

Economists and trade policymakers warn that President Trump's tariff policy will hurt not only U.S. trade and the living standards of vulnerable communities abroad but also the very U.S. workers Trump claims to protect.¹⁵² High tariffs will do so by closing markets, increasing production costs, and igniting retaliatory trade wars.¹⁵³ As the price of goods in the United States increases, it will be more difficult for American consumers, who are also workers, to afford them.

Despite these obvious drawbacks, the residual mistreatment of workers in Mexico, and the economic consequences of that mistreatment in Mexico and the United States, left three policy spaces that President Trump's anti-immigrant, populist narrative fills: (1) the residual offshoring of jobs into Mexico; (2) widening imbalances

economic-security/ [https://perma.cc/LBE2-NA7P] ("Today, President Donald J. Trump declared that foreign trade and economic practices have created a national emergency, and his order imposes responsive tariffs to strengthen the international economic position of the United States and protect American workers.").

150. See Elisabeth Buchwald, *Trump Just Massively Escalated His Trade War. Here's What He Announced*, CNN (Apr. 2, 2025), <https://www.cnn.com/2025/04/02/business/liberation-day-trump-tariffs/index.html> [https://perma.cc/MTY4-V7VX].

151. *Id.*

152. See Autor et al., *supra* note 144, at 1–2 (finding that the Trump administration's first term tariffs on Chinese and other foreign goods "had neither a sizable nor significant effect on US employment" while foreign retaliatory tariffs "by contrast had clear negative impacts" that were "only partly mitigated by compensatory subsidies"); Kalea Hall, David Shepardson & Nora Eckert, *Stellantis to Temporarily Lay Off 900 US Workers as Tariffs Bite*, REUTERS (Apr. 3, 2025), <https://www.reuters.com/business/autos-transportation/stellantis-says-will-temporarily-lay-off-900-us-workers-following-tariff-2025-04-03/> [https://perma.cc/7KRH-GWES] (describing how, within one month of announcing tariffs, Stellantis (at least temporarily) laid off 900 auto workers in the United States); Eduardo Baptista & Che Pan, *US Chipmakers Outsourcing Manufacturing Will Escape China's Tariffs*, REUTERS (Apr. 11, 2025), <https://www.reuters.com/technology/us-chipmakers-outsourcing-manufacturing-will-escape-chinas-tariffs-2025-04-11/> [https://perma.cc/L2E5-H48J] (reporting that China has announced retaliatory tariffs on U.S. chipmakers while exempting U.S. chipmakers that have outsourced manufacturing to other countries). Notably, the United States and China are swiftly announcing changes to these tariffs policies. The above reflects the status as of April 28, 2025.

153. See PENN WHARTON UNIV. OF PENN., BUDGET MODEL, *The Economic Effects of President Trump's Tariffs* (Apr. 10, 2025), <https://budgetmodel.wharton.upenn.edu/issues/2025/4/10/economic-effects-of-president-trumps-tariffs> [https://perma.cc/HDE9-4ZHF] ("Less capital reduces worker productivity, translating into lower wages and causing households to work slightly less. By 2054, wages will decline by 3.9 percent, and hours worked will fall by 1.3 percent. The combination of reduced private capital and fewer hours worked leads to a 5.1 percent decline in output by 2054.").

between U.S. imports and exports into Mexico; and (3) increasing border crossings by undocumented workers coming from and through Mexico. The following sections address each of those spaces and explain why a U.S. trade policy that takes empowerment seriously would better address each perceived deficiency.

A. Offshoring Jobs

Offshoring refers to a firm's decision to move across borders and relocate its value chain activities that were previously performed elsewhere.¹⁵⁴ The academic and empirical literature is replete with theories regarding firm motives and the effects of offshoring on workers.¹⁵⁵ Offshoring jobs also provides new employment opportunities to workers in foreign countries. Consequently, normative judgments concerning whether it is a "good" or "bad" phenomenon in trade typically depend on whether these judgments are made in the original or destination country.¹⁵⁶ Sufficient for our purposes is the widespread suspicion in the United States that U.S. firms decide to offshore at least portions of their activities to enjoy lower wages and production costs,¹⁵⁷ weaker institutions, and laxer labor regulations, particularly

154. See Bjoern Schmeisser, *A Systematic Review of Literature on Offshoring of Value Chain Activities*, 19 J. INT'L MANGM'T 390, 390 (2013) (defining offshoring).

155. See MATTHEW N.O. SADIKU, ABAYOMI J. AJAYI-MAJEBI & PHILIP O. ADEBO, *EMERGING TECHNOLOGIES IN MANUFACTURING* 233 (2023) (addressing the "counterintuitive and definitely questionable major business principle behind offshoring..." that assumes sending goods far away is good for business, notwithstanding political and exchange rate problems).

156. See Nicolas Lamp, *How Should We Think About the Winners and Losers from Globalization? Three Narratives and Their Implications for the Redesign of International Economic Agreements* 30 EUR. J. INT'L L. 1359, 1370 (2019) (pointing out that "whether one accepts the movement of jobs on the basis of comparative advantage as legitimate is a purely normative judgment. Denying the legitimacy of the reallocation of production based on comparative advantage is not unprecedented in US trade politics.").

157. *Id.* at 1390; See also Mathieu Dupuis, *Collective Bargaining and Employment Relations in the North American Auto Industry: From Convergence to Marginalization?*, in *THE NORTH AMERICAN AUTO INDUSTRY SINCE NAFTA* 277 (Grieg Mordue & Dmitry Anastakis, eds. 2024) (arguing that the United Auto Workers has had to agree to "the closing of several plants and to diminishing their membership, mainly through early retirements") (internal citations omitted); *Ford Moving All Small Car Production to Mexico from U.S.*, CBC NEWS (Sept. 14, 2016), <https://www.cbc.ca/news/business/ford-profit-outlook-1.3761540#:~:text=Ford%20Motor%20Co.,are%20made%20in%20suburban%20Detroit> [https://perma.cc/C73V-7MWP] ("Ford currently makes its Fiesta subcompact in Mexico, but its Focus and C-Max small cars are made in suburban Detroit. Making them in Mexico would boost company profits because of low wages there.").

in unskilled and labor-intensive sectors.¹⁵⁸ The effects of offshoring in the host country, while varied, tend to disproportionately hurt low-skilled workers in the United States, resulting in an unemployed working class.¹⁵⁹

Concededly, some economists disagree with the notion that lower wages and lax labor regulations attract businesses.¹⁶⁰ Under the theory of marginal productivity in neoclassical economics, labor is measured by its economic return; consequently, employers decide wages based on the value of the worker's labor.¹⁶¹ Workers' wages, accordingly, should be left to the market, as interpreted by the employer. If workers in Mexico have low wages, it presumably means they have relatively low productivity.¹⁶² That relative productivity would then offset the competitive gains in Mexico.¹⁶³

The theory of relative productivity and its relationship to wages fails to explain productivity or offshoring *in Mexico*, however, where

158. See SADIKU, AJAYI-MAJEBI, & ADEBO, *supra* note 155, at 236 (“Cheap labor is almost synonymous to offshore manufacturing.”); Ángela García-Alaminos et al., *Reassembling Social Defragmented Responsibilities: The Indecent Labour Footprint of US Multinationals Overseas*, 33 ECON. SYS. RSCH. 536, 537 (2021) (citing economics research showing that multinational corporations relocate to countries with low wage costs, weaker institutions, and laxer labor protection). Notably, companies make offshoring decisions for other objectives. See Shaffer, *supra*, note 9, at 3 (“Because technological change enables capital to produce and trade more efficiently from abroad, capital can threaten to offshore jobs if workers insist on higher wages and better working conditions.”).

159. See Andre Barbe & David Riker, *The Effects of Offshoring on U.S. Workers: A Review of the Literature*, J. INT'L COM. & ECON. 3 (2018).

160. See Jagdish Bhagwati, *Trade and Wages: A Malign Relationship?* in IMPORTS, EXPORTS, AND THE AMERICAN WORKER 57–67 (Susan M. Collins, ed. 1998) (arguing that trade between a country with unskilled labor with high wages and one with low wages can only drive down wages in the former is the relative price of the good that is intensively using the unskilled labor has fallen). But see SADIKU, AJAYI-MAJEBI, & ADEBO, *supra* note 155, at 233 (arguing that offshoring decisions rarely reflect good business sense).

161. See Nicolas Bueno, *From Productive Work to Capability-Enhancing Work: Implications for Labour Law and Policy*, 23 J. OF HUM. DEV. & CAPABILITIES 354, 356 (2022) (describing the neoclassical economic view of the relationship between productivity and wages).

162. See Elliott, *supra* note 26, at 3 (“While there is no question that workers in some developing countries are harshly, and unfairly, exploited, the nominal wage gap between workers in poorer countries and those in richer ones is due primarily to the lower productivity levels in developing countries with limited infrastructure and lower education levels.”).

163. See I.M. Destler, *Trade Politics and Labor Issues, 1953–1955*, in IMPORTS, EXPORTS, AND THE AMERICAN WORKER 404–05 (Susan M. Collins, ed. 1998) (arguing that high wages will not decrease when competing with goods made by lower-waged workers, because “wages reflect their productivity....”).

employers artificially suppress wages under a corrupt labor regime.¹⁶⁴ Mexican auto sector scholars contend that “[e]ven though the [Mexican] automotive sector has been a booming industry, with high increases in output and employment, it has shown the same tendency as the rest of the economy when it comes to wages.”¹⁶⁵ During the NAFTA negotiations, President Clinton attempted to secure a commitment from President Carlos Saline de Gortari to make productivity-linked increases in the minimum wage.¹⁶⁶ That commitment remains unfulfilled.¹⁶⁷ Comparing productivity in the Mexican auto sector to that in the U.S. sector, U.S. International Trade Commissioner Jason Kearns offers by way of illustration: “Productivity at Ford’s Hermosillo stamping and assembly operation . . . is acknowledged to be almost as high as at a comparable U.S. plant.”¹⁶⁸

The argument that trade between developed countries with high labor costs and developing countries with low labor costs doesn’t affect real wages or profits is also, frankly, of little concern in a discussion about offshoring. Whether or not companies are making *good* business decisions to relocate is irrelevant. Instead, the concern here is that U.S. companies are deciding to offshore jobs to Mexico, and that their decisions have influenced the U.S. trade agenda.¹⁶⁹ When President Trump unveiled his high-tariffs policy, he did so promising

164. See Alex Covarrubias V. & Jose Alfonso Bouzas Ortiz, *Employment and Trade Union Policies in the Auto Industry in Mexico*, in *THE AUTOMOTIVE SECTOR IN EMERGING ECONOMIES: INDUSTRIAL POLICIES, MARKET DYNAMICS AND TRADE UNIONS. TRENDS & PERSPECTIVES IN BRAZIL, CHINA, INDIA, MEXICO AND RUSSIA* 163 (Rudolf Traub-Merz, ed. 2017) (arguing that “the wage bargaining system has been distorted by state intervention, which includes infringements of the law and labour standards, as well as extremely fragmented trade unions, which have been co-opted by powerful groups intent on perverting their role.”); Alex Covarrubias V. & Mélanie Dufour-Poirier, *The USMCA and Third-Generation Labour Arrangements: From Previous Experience in Latin America to Probable Scenarios in Mexico*, in *THE NORTH AMERICAN AUTO INDUSTRY SINCE NAFTA* 277 (Grieg Mordue & Dmitry Anastakis, eds. 2024) (arguing that under an “America First” approach, U.S. actors “lobbied strongly” to amend NAFTA, which they viewed as “a vessel to drain jobs and investment away from the US towards Mexico and the low wages that country offered”).

165. See Covarrubias V. & Bouzas Ortiz, *supra* note 165, at 166.

166. See MIDDLEBROOK, *supra* note 48, at 268.

167. *Id.*

168. U.S.-Mexico-Canada Trade Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors 217, Inv. No. TPA 105-003, USITC Pub. 4889 (Apr. 2019) [hereinafter USITC Report 2019].

169. See Lamp, *supra* note 156, at 1365 (“A key distinguishing feature of Trump’s narrative, compared to discussions of job losses among academics and other politicians, is the notion that a country that attracts investment in factories, while factories are closing in the USA, is ‘stealing’ jobs from US workers.”).

that tariffs would secure “historic investments as companies seek to make their products in America instead of paying tariffs.”¹⁷⁰ His operating theory is that tariffs will force companies to recalculate their offshoring decisions by raising the costs of exporting to the United States, thereby offsetting relatively low production costs abroad.

The U.S. International Trade Commission (USITC) appeared to confirm these associations in a 2019 report that estimated the effects of the USMCA on U.S. wages. It suggested: “U.S. workers may benefit from higher Mexican wages, as reduced wage disparity may decrease U.S. firms’ motivation to outsource production to Mexico”¹⁷¹ Nevertheless, it notes that wage increases will take time to percolate, and technical assistance will be required from the United States to establish protected union elections and educate Mexican workers¹⁷² or, put another way, to empower workers in Mexico to secure those increases. More recently, it was found that efforts to level the U.S. and Mexican playing field through strict rules of origin, stipulating wages rather than through workers’ voices, had “practically zero” economy-wide effects since the USMCA entered into force.¹⁷³

Empowerment could address this problem at its root cause. By educating workers in Mexico on their rights and empowering them to build their collective power, U.S. trade policy could strengthen workers’ bargaining position in Mexico vis-à-vis their employers. That increased bargaining power could help workers secure wage increases. The USITC estimated that improved collective bargaining “would increase Mexican union wages by 17.2 percent, assuming that these provisions are enforced.”¹⁷⁴ As workers’ wages in Mexico increase, so will production costs, thus rendering the conditions of competition between U.S. and Mexican firms more equivalent.¹⁷⁵

170. See The White House, *President Trump is Putting American Workers First—And Bringing Back American Manufacturing* (Mar. 4, 2025), <https://www.whitehouse.gov/articles/2025/03/president-trump-is-putting-american-workers-first-and-bringing-back-american-manufacturing/> [<https://perma.cc/92V8-TP6N>].

171. USITC Report 2019, *supra* note 168, at 219 (internal citations omitted).

172. *Id.*

173. USMCA Automotive Rules of Origin: Economic Impact and Operation, 2025 Report 20, Inv. No. 332-600, USITC Pub. 5642 (Jul. 2025) (“At the economy-wide level, changes in U.S. gross domestic product and aggregate employment attributed to the ROOs [rules of origin] were less than 0.01 percent. Therefore, economy-wide effects have been practically zero since the USMCA entered into force, consistent with the small, estimated effects within the U.S. automotive industry and the industry’s size relative to the U.S. economy.”).

174. *Id.* at 25.

175. The exact relationship between wages and other labor costs (benefits, occupational safety and health, etc.) and prices is, of course, not absolute. As economist Lloyd G. Reynolds noted early on: “Determinate results can be obtained for a hypothetical firm only by assuming

B. Trade Imbalances

A second concern in trade policy debates is that trade partners are not importing U.S. goods at the same rate as the United States imports from them. As of 2024, the U.S./Mexico goods trade balance was \$505 billion in imports from Mexico into the United States and \$334 billion in exports from the United States into Mexico.¹⁷⁶ President Trump recently threatened Mexico with high tariffs, citing, among other justifications, the size of the U.S. trade deficit.¹⁷⁷ To be clear, I do not subscribe to the Trump administration's methodology or theory regarding trade deficits, which tends to overlook essential sectors (like services), rendering most deficit estimations inaccurate. My point is that the relatively low demand in Mexico for U.S. exports has given rise to the deficit *rhetoric* used to build popular support for high tariffs.

The problem is not the deficit but the lack of demand among consumers in Mexico for U.S. goods. On the other hand, how *can* those consumers, many of whom receive substandard pay, afford those imports? Consider your own spending habits. Typically, the money we spend on goods, particularly elastic goods like new cars, is the money left over after paying our rent or mortgage, buying food, and paying our bills. If we have no leftover money, we postpone purchasing those goods unless we want to take on debt. The USITC had sound reasons to suggest that the United States provide technical assistance in Mexico to improve collective bargaining rights (and wages),

some functional relation between net earnings and managerial efficiency and between net earnings and the wage decisions of company and trade union official." See Lloyd G. Reynolds, *Relations Between Wage Rates, Costs, and Prices*, 32 AM. ECON. REV. 275, 285 (1942). Furthermore, when comparing wages internationally, "it is the exchange rate which makes unit-labour costs in some countries high and in others low." See Hansjörg Herr, *Wages, Employment and Prices: An Analysis of the Relationship Between Wage Level, Wage Structure, Minimum Wages and Employment Prices* 45 (IMB Inst. of Mgmt. Berlin, Berlin Sch. of Econ. & L. Working Paper No. 15, 2002). Thankfully (for us all), this Article need not resolve empirical questions concerning firms' wages and pricing calculi. Rather, this Article makes the case that lower labor costs and attendant production costs feed into a protectionist trade policy that characterizes workers as production costs and tariffs as price equalizers.

176. See The U.S. Census Bureau, *Trade in Goods with Mexico* (last accessed July 10, 2025), <https://www.census.gov/foreign-trade/balance/c2010.html> [<https://perma.cc/6RF6-B9AC>].

177. See The White House, Fact Sheet: President Donald J. Trump Imposes Tariffs on Imports from Canada, Mexico and China (Feb. 1, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/> [<https://perma.cc/HZ9B-5AZE>].

arguing that doing so “could provide an export market for U.S. products.”¹⁷⁸

Rather than addressing trade imbalances by imposing tariffs, U.S. trade policy should empower workers as consumers in trade partner countries. So long as Mexican workers cannot afford U.S. products, they will opt for alternatives. However, if workers had the opportunity and legal protections to bargain for higher wages and secure steady employment, their consumer practices could also change. There is no assurance, of course, that consumers in trade partner countries will want goods produced in the United States. Top exports from the United States into Mexico in 2024, for example, consisted of “electrical machinery, machinery, energy products, vehicles, and plastics.”¹⁷⁹ The typical consumer in Mexico is unlikely to be in the market for a U.S. bulldozer. Nevertheless, by assisting workers/consumers in Mexico to raise their wages, U.S. trade policy will better ensure that its consumer-friendly goods (cars, computers, clothing) find a market there.

C. Undocumented Immigration

A third concern in trade policy debates concerns undocumented immigration, the prevalence of which President Trump cites in support of threatening tariffs if countries do not take strong action at their borders.¹⁸⁰ Support for Trump’s anti-immigration stance and weaponization of tariffs is fueled (among other reasons) by the belief that immigrant workers are a threat to U.S. workers because the former are willing to accept lower wages and weaker workplace protections than the latter.¹⁸¹ If those undocumented workers are unsuccessful at

178. See USITC Report 2019, *supra* note 168, at 219.

179. See USTR, *Mexico*, *supra* note 23 (listing leading U.S. exports to Mexico).

180. See WHITE HOUSE, FACT SHEET: PRESIDENT DONALD J. TRUMP IMPOSES TARIFFS ON IMPORTS FROM CANADA, MEXICO AND CHINA (Feb. 1, 2025), <https://www.whitehouse.gov/fact-sheets/2025/02/fact-sheet-president-donald-j-trump-imposes-tariffs-on-imports-from-canada-mexico-and-china/> [<https://perma.cc/B9HC-TXMB>] (“President Trump is taking bold action to hold Mexico, Canada, and China accountable to their promises of halting illegal immigration and stopping poisonous fentanyl and other drugs from flowing into our country.”).

181. See Raphael Kaplinsky, *Two scientists for every man, woman and dog in America? How Sustainable is Globalisation?*, in *THE LAW AND ECONOMICS OF GLOBALISATION: NEW CHALLENGES FOR A WORLD IN FLUX* 279, 293 (Linda Yueh ed., 2009) (arguing that a contributing factor to income inequality in the United States is “the compression of wages due to rising pressure from imports and, in some cases, immigrants flowing into the US from Mexico and elsewhere”).

finding formal employment, they will be more vulnerable to unscrupulous employers offering substandard wages off the books.

A significant flaw in this argument (there are many) is that it fails to interrogate the root *causes* of undocumented immigration, at least between Mexico and the United States. Forgotten in the emotional rhetoric is that workers need wages to eat and live, let alone provide for their families and live a decent life. When unemployment in one country increases or wages are disproportionately low, as is the case in Mexico, workers there must find work and higher standards of living elsewhere.¹⁸²

Consider the Mexican auto worker. Assume she has little to no bargaining power. She must accept offers of employment conditioned on acceptance of collective bargaining agreements negotiated between employers and employer-friendly unions under a legal system designed to attract businesses and investors.¹⁸³ Wages throughout the sector are suppressed; even if they are higher than those in other sectors, they are essentially subsistence wages, barely enough to keep her alive.¹⁸⁴ Because all the auto companies suppress wages, she can't simply move within Mexico. Should she seek livable wages, her closest hope is to cross the border into the United States, potentially leaving her family and culture behind in search of employment and a higher standard of living.

Some eight million such undocumented workers live in the United States.¹⁸⁵ President Trump and many of his supporters claim that these workers are taking work from American workers.¹⁸⁶ When asked directly, however, the majority of Americans recognize that undocumented workers mainly fill jobs that U.S. citizens don't want.¹⁸⁷

182. See Matthew C. Wilson, *The Economic Causes and Consequences of Mexican Immigration to the United States*, 84 DENV. U. L. REV. 1099, 1102–03 (2007) (arguing that unemployment and low wages are significant causal forces behind Mexican immigration to the United States).

183. See Covarrubias V. & Bouzas Ortiz, *supra* note 165, at 163.

184. *Id.* (noting that workers in the Mexican auto sector must sign “protection contracts, a novelty unique to Mexico, to fix wages behind workers’ backs and without their consent even before a new factory opens”).

185. Jennifer J. Lee, *Legalizing Undocumented Work*, 42 CARDOZO L. REV. 1893, 1894 (2021) (“An estimated eight million undocumented workers live as a subclass of workers in the United States.”).

186. *Id.* at 1895–96 (describing the “moral” opposition to undocumented workers in the United States and the assumptions of how those workers affect U.S. citizens).

187. Sahana Mukherjee & Jens Manuel Krogstad, *Most U.S. Voters Say Immigrants—No Matter Their Legal Status—Mostly Take Jobs Citizens Don't Want*, PEW RES. CTR. (Oct. 21, 2024), <https://www.pewresearch.org/short-reads/2024/10/21/most-us-voters-say-immigrants->

Nevertheless, the invocation of anti-immigrant rhetoric sounds to many as correct *enough* to garner political support for a trade policy focusing on isolationism and border control.

Empowering workers in trade partner countries will not resolve U.S. immigration policy or law. However, by assisting workers in trade partner countries to make their own choices at work, elect representatives, and bargain for livable wages, an empowerment trade policy would address one of the drivers of immigration. It could help ensure that workers who immigrate to the United States do so for work-related reasons, such as by supplying essential services in agricultural and construction sectors that workers in the United States cannot or will not provide, rather than out of desperation for a sustainable living.

The Trump administration's abandonment of foreign workers in trade signifies the stakes of a misguided U.S. trade policy.¹⁸⁸ Tariffs place workers in U.S. import sectors at odds with those in export sectors, dividing the labor movement and creating an acrimonious trade regime.¹⁸⁹ Benefiting *all* U.S. workers has never been the point of Trump's tariff policy, however. His policy creates a special priority for manufacturing jobs by imposing tariffs on auto imports and key components such as steel and aluminum. As recently explained by the Trump administration's U.S. Trade Representative Ambassador Greer:

no-matter-their-legal-status-mostly-take-jobs-citizens-dont-want/ [https://perma.cc/PB3E-FR4M] ("Three-quarters of voters say undocumented immigrants fill jobs citizens don't want....").

188. See, e.g., Letter from the U.S. Senate to Sec'y of Labor Chavez-DeRemer (Apr. 21, 2025), https://www.duckworth.senate.gov/imo/media/doc/letter_to_lori_mchavezderemer.pdf [https://perma.cc/X8DP-J69A] (arguing that cuts to the Department of Labor's ability to assist under U.S. trade agreements prevents it from leveling "the playing field for American workers and ensur[ing] businesses cannot profit from labor abuses by stopping the problems at their source. Offshoring work will only drive down wages, incentivize abusive labor practices abroad, and take jobs away from hard working Americans.").

189. Compare UAW, *In a Victory for Autoworkers, Auto Tariffs Mark the Beginning of the End of NAFTA and the 'Free Trade' Disaster* (last visited July 13, 2025), <https://uaw.org/tariffs-mark-beginning-of-victory-for-autoworkers/> [https://perma.cc/E9FW-V4TZ] ("With these tariffs, thousands of good-paying blue collar auto jobs could be brought back to working-class communities across the United States within a matter of months, simply by adding additional shifts or lines in a number of underutilized auto plants."), with AFL-CIO, *AFL-CIO President on Tariff Announcement* (April 2, 2025), <https://aflcio.org/press/releases/afl-cio-president-tariff-announcement> [https://perma.cc/Y4P7-MMK6 blocked] ("Unfortunately, the Trump administration's attacks on trade union workers' rights at home, gutting of the government agency that works to discourage the outsourcing of American jobs, and efforts to erode critical investments in U.S. manufacturing take us backward.").

Ford's Rouge Plant alone employed over 75,000 workers in the late 1940s. These workers not only earned a good living, but had the opportunity to build a good life too. They could afford the cars they crafted out of cold metal, and the enormous and widespread demand for work provided long-awaited opportunities for Americans of every color and creed. Their promissory note for the American Dream was not signed on paper, but forged in steel. It was stamped 'Made in the USA.'¹⁹⁰

However, studies suggest that tariffs don't even do *that job* well. Early studies show that manufacturing jobs have *contracted* in 2025 by some 78,000 fewer jobs than in 2024.¹⁹¹ Even if *some* manufacturing workers benefit in the short term, they also impose long-term costs on the broader American workforce. Examining President George W. Bush's 2002 and 2003 tariffs on steel and aluminum in 2025, Lydia Cox captured the long and short-term effects of upstream tariffs on downstream industries in the United States.¹⁹² For every one worker that produced steel, Cox found that eighty workers relied on steel as an input and suffered from tariffs.¹⁹³ Notably, the gains from Bush's tariffs consisted of "a temporary shock to steel tariff rates," while the negative impact on downstream workers persisted in the long term.¹⁹⁴

Outside of employment effects, studies also suggest that the costs of tariffs will be carried by consumers in the United States, mainly the poor.¹⁹⁵ Kimberly Anne Elliott, for example, points out that "[i]mports now account for the vast majority of US consumption of items such as clothing and footwear, yet high barriers still force

190. Ambassador Jamieson Greer Remarks at the Reindustrialize Summit in Detroit, Michigan (July 16, 2025), <https://ustr.gov/about/policy-offices/press-office/speeches-and-remarks/2025/july/ambassador-jamieson-greer-remarks-reindustrialize-summit-detroit-michigan> [<https://perma.cc/P4RU-GK9S>].

191. O'Neil, *supra* note 7. ("According to the nonprofit Institute for Supply Management's Purchasing Managers' Index, U.S. manufacturing has been contracting for the past six months. Jobs in manufacturing have fallen by 78,000 this year.")

192. Lydia Cox, *The Long-Term Impact of Steel Tariffs on U.S. Manufacturing*, Working Paper (2025), https://economics.princeton.edu/wp-content/uploads/2022/06/cox_steel_20220601.pdf [<https://perma.cc/A9CA-MQR9>].

193. *Id.* at 1.

194. *Id.* at 1–2.

195. See Elliott, *supra* note 26, at 1.

consumers to pay more.”¹⁹⁶ The highest tariffs tend to settle on products that “poorer Americans disproportionately consume.”¹⁹⁷

In sum, tariffs as a trade policy impose costs on workers in the United States, while a trade policy that empowers workers abroad would equalize the conditions of trade. Competition would be driven by factors such as efficiency and production, allowing markets to reflect capacity and consumer preferences. Rather than sink all boats in its quest for fair competition, U.S. trade policy should raise them.

IV. THE LIMITATIONS OF AN EMPOWERMENT TRADE POLICY

Even if policymakers adopt an empowerment approach to U.S. trade policy as urged here, not all workers will benefit equally. U.S. trade agreements are formal, top-down, and parochial. Before going further, therefore, I must first acknowledge some of the obvious limitations to my thesis. They range from scope (*excluding informal workers*) to substance (*do unions prima facie demonstrate worker empowerment?*) to governance (*why would the U.S. government cede its enforcement discretion in trade?*). I nevertheless defend empowerment as a critical and realizable component of U.S. trade policy.

A. *The Scope of Empowerment*

Earlier, this Article criticized the Biden administration for failing to target vulnerable workers in the Mexican auto sector. However, it assumed that those workers *could* have received such assistance from the U.S. government. One notable flaw in this argument is that labor markets in developing countries, including many countries like Mexico, are characterized by a dual system in which formal (legally regulated) jobs coexist with informal (existing outside of legal regulations) jobs.¹⁹⁸ Approximately ninety-three percent of all informal employment is concentrated in these countries.¹⁹⁹ While trade liberalization may help formalize work in sectors like manufacturing, the formalizing effects have proven to be greater among male workers,

196. *Id.* at 3.

197. *Id.*

198. See Sarra Ben Yahmed & Pamela Bombarda, *Gender, Informal Employment and Trade Liberalization in Mexico*, 34 WORLD BANK ECON. REV. 259, 259 (2020).

199. See Brenda Samaniego de la Parra & León Fernández Bujanda, *Increasing the Cost of Informal Employment: Evidence from Mexico*, 16 AM. ECON. J. APPLIED ECON. 377, 377 (2024).

leaving women disproportionately excluded from legal protections due to informality.²⁰⁰

The co-existence of formal and informal work in trade sectors presents huge barriers to effective empowerment policies. In Mexico, for instance, employers are required to register all wage-earning employees, which grants those employees workplace benefits (such as sick leave, maternity leave, and retirement) and deducts their taxes.²⁰¹ Workers who are not registered miss out on those benefits and the integration into systems of rights and protections. If U.S. financial resources are distributed through public channels, including through trade partner agencies and local organizations, they risk centering on formal workers whose names appear on wage lists and who operate in facilities and institutions that already benefit from legal protections. Simultaneously, they risk missing the workers whose input may feed into the production of tradeable goods and services, but who lack legal protections and receive the lowest wages and benefits from companies that can produce cheap goods and export them.

B. Paternalism in Trade and Labor

Without a doubt, empowering workers in another country through trade is difficult.²⁰² A fundamental tension is that of paternalism, which permeates labor law (not just trade and labor policy). It centers on the normative grounds that workers have weaker bargaining power than employers and, consequently, need legal protection.²⁰³ For example, the Biden administration's empowerment indicators include workers' decision to join a union. That indicator reveals the administration's assumption that workers are atomized and powerless and will only countervail capital if they can aggregate into units through unionization.²⁰⁴ That is not a bad assumption. On the contrary, it's

200. Yahmed & Bombarda, *supra* note 198, at 261 (finding empirically that, following trade liberalization in Mexico, "the formalization effect is bigger among men, in particular for highly educated workers").

201. Samaniego de la Parra & Fernández Bujanda, *supra* note 199, at 382.

202. See Hugh Collins, *What Can Sen's Capability Approach Offer to Labour Law*, in *THE CAPABILITY APPROACH TO LABOUR LAW* 28 (Brian Langille ed., 2019).

203. See Riccardo Del Punta, *Labour Law and the Capability Approach*, 32 *INT'L J. COMP. LAB. L. & INDUS. REL.* 383, 386 (Dec. 2016) ("The normative element of this principle thus tends to prevail, so there appears to be no escape from a paternalistic conception of labour law.").

204. See Laura Weinrib, *Labor History and the Clash of Capabilities*, in *THE CAPABILITY APPROACH TO LABOUR LAW* 161 (Brian Langille ed., 2019) ("Efforts to enhance the decisional

well proven. Workers *are* far less capable of securing workplace protections and fair wages than combined groups of workers, and formal unions are often the only legal bodies capable of organizing and demanding that the employer bargain with them.²⁰⁵

At the same time, workers' decisions to organize through formal unions are a false indicator of their empowerment.²⁰⁶ Shepherding workers into unions is not the same as empowering them. The decision to unionize suggests that workers' choices were protected against anti-union interference. Still, it tells us little to nothing about whether workers' decisions *not* to unionize were equally empowered. There is a tension between individual decision-making autonomy (as empowerment calls for) and the outcome of decision-making that favors collective rights through unionization.²⁰⁷

Moreover, workers may have justifiable reasons to choose to reject the union that campaigns before them. Perhaps the union has failed to earn their loyalty and trust. Perhaps they prefer an alternative union. Perhaps they have had insufficient time and training to understand the benefits of their collective power and dislike the idea of unions. Celebrating one choice over the other reveals a preference for collective over individual rights, which may falsely assume that the union in question is best suited for the job. Unavoidably, Robert Salais points out, it is the freedom of *choice* that lies at the center of Sen's lessons,²⁰⁸ not the outcome of that choice.²⁰⁹

autonomy of individual workers are often at odds with measures to improve their collective welfare.”).

205. See Desirée LeClercq, *Labor Strife and Peace*, 15 UNIV. CAL. IRVINE L. REV. 216, 225–31 (2024) (explaining the process of worker power, resistance, and amalgamation).

206. See, e.g., Priya Ange, Jérôme Ballet, Aurélie Carimentrand & Kamala Marius, *Changing women's lives? Empowerment and aspirations of fair trade workers in South India*, 15 J. GLOBAL ETHICS 32, 33 (2019) (acknowledging the “relatively poor way” empowerment is assessed “by participation or non-participation in decision-making bodies”).

207. Weinrib, *supra* note 204, at 161 (describing the assumption in labor law “that members of a union subordinate their own particular interests to the interests of the group—or, framed more antagonistically, that the objectives of the union overbear the interests of its individual members.”). That tension may render labor rights incompatible with an approach that centers the individual. By draining unions of their coercive power, their ability to subordinate workers' individual interests to the collective good, such an approach would “pose a significant barrier” to revitalizing the labor movement.). *Id.* at 170.

208. See Robert Salais, *Freedom in Work and the Capability Approach*, in *THE CAPABILITY APPROACH TO LABOUR LAW* 324 (Brian Langille ed., 2019) (“The capability to choose is at the core of Sen's reflections.”).

209. See Brian Langille, *Capability Approaches*, in *RESEARCH METHODS IN LABOUR LAW* 49 (Alysia Blackham & Sean Cooney eds., 2024) (arguing that “what counts, according to the capabilities approach, is not what people do—that is to say, their functionings, for example,

C. Top-Down Trade Governance

A third fundamental challenge confronting an empowerment trade policy concerns governance. Trade policy is heavily regulated. It generally seeks to remove barriers to trade in the pursuit of fair competition, in ways decided by members of the top echelon of government who advance high-level political, financial, and strategic objectives. Trade's elitist governance structure directly contradicts an approach that regales rights or entails "outsiders giving up control" and allowing local communities to participate in the "design, implementation, and evaluation" of programs deemed to empower them.²¹⁰

In the United States, the President decides trade policy, although they must obtain congressional consent for trade agreements. Congress uses its consent powers to leverage various negotiating objectives, typically legislated through the President's Trade Promotion Authority (TPA). Under the so-called "fast track authority," the President can rely on a thumbs-up or down vote in Congress depending on whether she or he adhered to the TPA's negotiations guidance.²¹¹ The President and Congress police those authorities, only accounting for public participation in slivers of trade policy, usually after the ink of negotiations has dried.²¹²

Under the TPA, U.S. trade agreements have little breathing space for bottom-up input. Those agreements replicate the objectives almost verbatim and reproduce the same text in subsequent U.S. trade agreements for continuity and predictability.²¹³ They often stipulate realizable benchmarks (attendance, votes, participation) for the public to evaluate. They also establish timelines to achieve those benchmarks, demonstrating efficiency. This is in sharp contrast to an

whether they vote or not—but their capability, that is, having real substantive freedom to choose whether to act or not").

210. See Hammock, *supra* note 112, at 50.

211. The most recent TPA legislation, TPA-2015, P.L. 114-26, expired in 2021 and has not been renewed. Congress used TPA-2015 to approve and implement the USMCA. M. Angeles Villarreal, Cong. Rsch. Serv., R44981, *The United States-Mexico-Canada Agreement (USMCA)* 7 (2024).

212. See generally Gabriel Gari, *Engaging Stakeholders in Trade Policymaking—What Can We Learn from the USTR Public Consultation on US-UK Trade Negotiations?*, 14 TRADE L. & DEV. 157, 157 (2022) (noting numerous issues in public participation in U.S. trade negotiations, particularly in areas like labor).

213. For an in-depth examination of the various TPA iterations and attendant trade agreements (including labor standards criteria), see Lewis Karesh & Desirée LeClercq, *Labor Provisions in U.S. Free Trade Agreements under Trade Promotion Authority*, in INTERNATIONAL LABOR AND EMPLOYMENT LAWS (Ute Krudewagen & Anne Radolinski eds., 2020).

empowerment trade policy that would, ostensibly, craft timelines and benchmarks through discussions with local communities (in this case, trade sector workers). As elaborated in Part V, the resulting agreement would likely stipulate different labor standards that needed to be addressed, along with the methods for addressing them, based on the specific needs at hand.

Historically, legal instruments that craft top-down objectives without such bottom-up participation have failed to empower beneficiary communities.²¹⁴ To the extent that trade policies have promoted principles of freedom, those principles have often centered on the freedom of corporations to make competitive decisions without government intervention. Thus, corporations have had the freedom to move facilities to countries with cheaper production costs, the freedom to set wages (above the legal minimum) and determine working conditions, and the freedom to align those wages with productivity.

Those freedoms, however, are proving anathema to the broader purpose of global trade, as stipulated in the Generalized Agreement on Tariffs and Trade (GATT): “[T]o raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods”²¹⁵

The WTO, which is the international organization that oversees the GATT, notes that trade rules seek to “secure fair conditions of trade.”²¹⁶ In that sense, the WTO rejects efforts to describe it as a “free trade” organization, noting that it intervenes in trade measures like tariffs and “other forms of protection” that impede “fair and undistorted competition.”²¹⁷

The challenge, however, is that the WTO members’ governments are ill-equipped to tackle issues of inequality and unfair competition through empowerment. More generally, when governments and agencies have incorporated empowerment rhetoric into their programs,

214. See Francis Cleaver, *Institutions, Agency and the Limitations of Participatory Approaches to Development*, in *PARTICIPATION: THE NEW TYRANNY?* 48–49 (Bill Cooke & Uma Kothari eds., 2001) (lamenting that development programs never took the time to understand the local context and culture).

215. General Agreement on Tariffs and Trade 1994 pmb1., Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994).

216. World Trade Org., *Principles of the Trading System*, (last visited May 24, 2025), https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm [<https://perma.cc/H5FF-V4FU>].

217. *Id.*

their accomplishments (as this Article has also shown) have been political rather than practical.²¹⁸

Programs marketing “women’s empowerment,” for instance, have sought to rebalance the distribution of power between women and men in various trade sectors. Those programs are designed by bureaucrats far removed from the lived realities of the target communities. Historically, many have assumed that women will be highly motivated to participate. In practice, the most vulnerable women have been unable to participate owing to family obligations, leaving as participants the elite (“older, richer, senior women”²¹⁹). The elite women participants have used their seats at the table to “delegate water fetching to other women and men (relatives, poor neighbo[ur]s, hired workers) and, significantly, to children.”²²⁰

Consequently, trade law’s approach risks “reproducing processes of exploitation and perpetuating the causes of injustices.”²²¹ It overlooks that working-class women and men “do not have the resources of time and money to be empowered through participation in collective action, or the costs of their participation [are] disproportionately high.”²²² Without first offering local communities education and informed choice, top-down governance (like trade instruments) suits the objectives of an industry or interest, sometimes by increasing control over local people.²²³

218. See Nicholas Hildyard, Pandurang Hegde, Paul Wolvekamp & Somasekhare Reddy, *Pluralism, Participation and Power: Joint Forest Management in India*, in PARTICIPATION: THE NEW TYRANNY? 59 (Bill Cooke & Uma Kothari eds., 2001) (citing the World Bank’s 1997 World Development Report to argue that empowerment rhetoric was actually used to lower transaction costs rather than conduct the important work of empowerment).

219. Cleaver, *supra* note 216, at 49.

220. *Id.*

221. Alexandre Apsan Frediani, David Alexander Clark, & Mario Biggeri, *Human Development and the Capability Approach: The Role of Empowerment and Participation*, in THE CAPABILITY APPROACH, EMPOWERMENT AND PARTICIPATION: CONCEPTS, METHODS AND APPLICATIONS 4 (David Alexander Clark, Mario Biggeri & Alexandre Apsan Frediani eds., 2019).

222. *Id.*

223. See Hildyard, Hegde, Wolvekamp & Reddy, *supra* note 220, at 60. See also Katrin Kuhlmann, *Gender Approaches in Regional Trade Agreements and a Possible Gender Protocol Under the African Continental Free Trade Area: A Comparative Assessment*, in TRADE POLICY AND GENDER EQUALITY 218 (Amrita Bahri, Dorotea López, & Jan Yves Remy eds., 2023) (arguing that despite a proliferation of trade agreement provisions designed to address women’s economic empowerment, these provisions often fail to address “the concrete challenges women face and the sectors in which they work”).

The limitations of an empowerment-as-trade-policy are severe and warrant greater attention in the trade policy debates. I'd like to offer a qualified defense of it as the means of *reconciling* some of the tensions between trade governance and empowerment. If the U.S. government organized its activities on the auto shop floor, for example, it could gain a deeper understanding of the prevalence of informal work and consider ways to incorporate informal workers into its plans of action. Those types of realizations require time and trust, necessitating a runway that can accommodate adaptation, relationship building, and bespoke design.

And even if empowerment programs seem to dismiss individual choice and autonomy in favor of collective rights, including unionization, their efforts to educate workers about their rights to organize and bargain will move the needle in the right direction. A trade policy that prioritizes information, capability, and autonomy, even if cheering on one choice over the other, places workers in a better position to establish risk, reward, and opportunity—the conceptions that guide their decision-making, including their decisions to participate in an enforcement instrument invoked by a foreign government.²²⁴

Such a reframing also permits trade policymakers to display public victories under an empowerment trade agenda. Instead of enforcement actions, an administration facing impatient voters and legislators could benchmark technical assistance and awareness-building. Efforts could render visible the resources and initiatives centered on leveling the playing field of competition, leaving enforcement as a last step in a broader process of outreach and education.

V. OPERATIONALIZING AN EMPOWERMENT TRADE POLICY

To mediate the apparent antinomy between U.S. trade policy and the enabling conditions for workers' empowerment and fair competition, this Part offers another case study, this time a case of relative success. Outside of trade policy, the ILO is commonly called upon to regulate working conditions in global production, including by providing governments with advice on their national and regional instruments. While the ILO has numerous tools in its toolbox, of interest here is its Decent Work Agenda, which demonstrates how policymakers may govern from the top while working with workers at the

224. See Timothy J. Pleskac, Larissa Conradt, Christina Leuker, & Ralph Hertwig, *The Ecology of Competition: A Theory of Risk-Reward Environments in Adaptive Decision Making*, 128 PSYCH. REV. 315, 316, 328 (2021)(describing the risk-reward structure of decision making).

grassroots level. I do not depict the ILO's system as perfect; on the contrary, I have taken issue with many of the ILO's trade-related efforts.²²⁵ What is relevant is that its Decent Work Agenda is capable of replication and instrumentalization, and that it operates in the local community by preserving the unique conditions and interests of the intended beneficiaries.

Before explaining how U.S. trade policy can replicate the empowering features of the Decent Work Agenda, I want to take a moment to outline its origins and intentions. In the late 1990s, the ILO's members—comprising governments, employers, and workers—considered extending the ILO's mandate to trade matters.²²⁶ By then, it had become clear to the labor community that governments would not prioritize workers' well-being over capital profits, even when doing so would have helped overall economic functioning in the countries concerned. Some governments were concerned that other governments were deliberately keeping labor regulations lax to attract investments and gain a competitive advantage, which was hindering economic development and global prosperity.²²⁷ Some hoped that giving the ILO a role in trade relations would establish a neutral and expert platform upon which labor rights could be regulated.²²⁸ Their efforts were unsuccessful. Ultimately, developing countries worried that the ILO would merely authenticate disguised protectionism in trade.²²⁹

In 1999, the ILO's Director General, Juan Somavia, argued that the Organization could not sit idly by while unequal economic

225. See, e.g., Desirée LeClercq, *A Tale of Tripartism, a Tribunal, and Trade*, in SOCIAL JUSTICE AND THE WORLD OF WORK: POSSIBLE GLOBAL FUTURES 210 (Brian Langille & Anne Trebilcock eds., 2023) (“While the ILO waits, frozen in tripartite deadlock, governments have taken ownership of its standards . . .”); Desirée LeClercq, *Integrating Non-Binding Labour Standards in Binding Trade Agreements: The ILO's Feedback Loop*, 26 J. INT'L ECON. L. 543, 552–55 (2023) (admonishing the ILO for offering its members bad legal advice on the implications of incorporating its non-binding standards into their binding agreements).

226. Internal initiatives culminated in the ILO's Working Party on the Social Dimensions of the Liberalization of International Trade in 1994. See INT'L LAB. ORG., RECORD OF PROCEEDINGS: WORKING PARTY ON THE SOCIAL DIMENSIONS OF THE LIBERALIZATION OF INTERNATIONAL TRADE (1999) (“The Working Party on the Social Dimensions of the Liberalization of International Trade was established by the Governing Body at its 260th Session (June 1994).”).

227. See, e.g., General Agreement on Tariffs and Trade, Preparatory Committee, Record of Discussions, paras. 45–65 (23–26 June 1986) https://www.wto.org/gatt_docs/English/SULPDF/91230020.pdf [<https://perma.cc/3RAP-WA68>] (debating the merits of inserting a labor rights clause into the GATT).

228. *Id.*

229. *Id.*

development and trade liberalization devastated workers worldwide.²³⁰ He proposed a new Decent Work Agenda that would “promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”²³¹

The ILO’s Decent Work Agenda accordingly creates legal instruments between the ILO and beneficiary countries, operationalized through Decent Work Country Programs (DWCPs).²³² Those instruments do not craft one set of commitments; instead, the DWCPs establish a menu of *options* appropriate to different regional situations.²³³ Those options consist of four strategic objectives: (1) promote and realize fundamental principles and rights at work (international labor standards); (2) create greater opportunities for women and men to secure decent employment and income; (3) enhance the coverage and effectiveness of social protection for all; and (4) strengthen tripartism and social dialogue.

The ILO’s DWCPs have achieved mixed results. However, their ability to bring local actors together to identify and address needs under broad strategic objectives offers important insight into how instruments from above facilitate participation from below. To illustrate, one of the ILO’s programs in Latin America sought to improve labor standards in the coffee supply chain.²³⁴ Most of the ILO’s communications with workers and farmers were conducted virtually, such as through video conferences.²³⁵ However, the ILO struggled to reach the coffee farmers and workers in Colombia, where coffee farms are distributed throughout the country.²³⁶ Many lived in rural areas, far from cities, where internet connectivity was low.²³⁷ The ILO’s

230. See INT’L LAB. ORG., DECENT WORK: REPORT OF THE DIRECTOR-GENERAL 1 (1999).

231. *Id.* at 3. Somavia defined “decent work” as “productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-earning opportunities.” *Id.* at 13.

232. See INT’L LAB. OFF., ILO DECENT WORK COUNTRY PROGRAMME: A PRACTICAL GUIDEBOOK 1 (Ver. 4, 2016).

233. *Id.* at 6. For an overview of the process of consultations, see Desiree LeClercq, *Strengthening the Southern African Development Community: A Critique of the International Labor Organization’s Development Assistance in Swaziland and Zimbabwe*, 27 MICH. ST. INT’L L. REV. 41, 57–58 tbl. 1 (2018).

234. See ILO, INT’L LAB. ORG., INDEPENDENT CLUSTERED EVALUATION OF VISION ZERO FUND PROJECTS IN THE GLOBAL COFFEE SUPPLY CHAIN 12 (2023).

235. *Id.*

236. *Id.* at 42.

237. *Id.*

program pivoted and redesigned the virtual communications to be sent through WhatsApp, which merely required “simple mobile phones.”²³⁸ Its efforts paid off, and the communications made their way through the various farms.²³⁹

Imagine if the Biden administration’s outreach under the USMCA focused as much on sectoral facilities as it had on facilities affiliated with U.S. stakeholders. At the outset, U.S. officials would have consulted with local populations in prospective trade partner countries to inform their decisions on which labor standards to include and how to enforce them. Those preliminary consultations would have enabled program designers to gain an understanding of the target communities’ needs and power dynamics.²⁴⁰ Those consultations could have also broadened the scope of awareness-raising activities. Instead of waiting for workers to learn about and successfully utilize the RRM to deliver assistance, the administration could have collaborated with formal and informal workers in the trade sector. It could have offered its trainings to workers (not to unions or governments), identifying and establishing chains of communication.

Furthermore, like the Decent Work Agenda’s strategic objectives, the labor standards negotiated in U.S. trade policy should be discretionary and deliberately open-textured.²⁴¹ By not concretely defining the applicable standards, trade policy could ensure that compliance and enforcement would vary from country to country, as decided in agreement with local workers “in terms of their own lives, in relation to their own society.”²⁴² It would accordingly flip the script from prescribed objectives and outcomes to relativist outcomes decided within cultural and socioeconomic contexts. While that variance will inevitably raise transaction costs, it may pay off in terms of compliance and addressing the root causes of substandard labor conditions in trade.

Finally, such a trade policy would require those who draft and negotiate trade agreements to strategically use the time before those agreements are finalized. Drafters could use that time to build

238. *Id.*

239. *Id.*

240. See Hammock, *supra* note 112, at 45–47.

241. See Leah F. Vosko, ‘Decent Work’: *The Shifting Role of the ILO and the Struggle for Global Social Justice*, 2 GLOBAL SOCIAL POL’Y 19, 26 (2002) (arguing that “the central dimensions of ‘decent work’ laid out in the platform are left vague; they are said to be culturally- and regionally-specific and based on people’s experiences in their daily lives”).

242. Juan Somavia, *Decent Work in the Global Economy*, INT’L LAB. ORG., (Feb. 2000) (accessed July 30, 2025), at <https://webapps.ilo.org/public/english/bureau/dgo/speeches/somavia/2000/delhi.htm> [<https://perma.cc/6N4B-FA6A>].

relationships and trust, placing workers on the Mexican shop floor in a better position to turn to the U.S. government with their grievances during the implementation of the trade agreement.

Linking the Decent Work Agenda's methodology to U.S. trade policy aligns with U.S. trade objectives. It helps ensure that assistance and enforcement realize pragmatic gains to advance fair competition in supply chains. It also shifts some of the responsibility from stronger partners, such as the United States, to local beneficiaries, encouraging them to participate in and eventually own the initiatives. By advancing more practical and accepted solutions in local communities that have been educated and offered choice, trade instruments will better address deficits before they cross borders and harm national industries and workers.

Imagine how this could play out for U.S. workers who compete with foreign firms. Without labor laws and protections that guarantee workers in trade partner countries the same rights to bargain collectively, form and join unions, and enjoy workplace benefits as those in the United States, foreign firms can produce, say, widgets at a substantially lower cost than American firms that comply with U.S. laws and regulations. Now let's say the United States and the foreign government begin to negotiate a trade agreement. U.S. officials would presumably have a sense of the country's exports and imports and could immediately identify the key trade sectors. They could visit facilities within those sectors and request meetings with union representatives and workers. Their conversations could review a list of labor market conditions, such as wages, benefits, and laws, and identify the most significant gaps between those conditions and internationally acceptable labor standards. Those conversations would then inform *ex ante* assistance and *ex post* commitments. By addressing the root causes of unfair competition—put broadly, the suppression of labor costs through faulty labor rights—U.S. trade policy would level the playing field of competition between U.S. and foreign firms. From that point, the market controls, not the abuse of foreign workers, and the loss of jobs for U.S. workers.

Adopting an empowerment approach to U.S. trade policy requires a radical shift in policymaking: from top-down control and paternalistic interventions to bottom-up education and informed choice. Such a shift is necessary to achieve global trade objectives of full employment and high standards of living. It will also better address current concerns in the United States about job losses to other countries and the alleged influx of workers by leveling the playing field in terms of production standards, which include labor costs and working conditions. Even if one disagrees with the ideology behind foreign aid and

assistance, empowering workers throughout the trade supply chain through U.S. trade policy will shift the balance of power between labor and capital, resulting in better opportunities for American workers.

Some may protest that such a policy would require financial resources and expertise from U.S. agencies that should be dedicated to workers in the United States. There are ways to address this concern. The U.S. government could solicit the support of the ILO to deliver the above actions. It has done so previously.²⁴³ In two instances under the USMCA's RRM, for example, the U.S. and Mexican governments requested the ILO to act as an official international observer for contested union elections. The ILO sent officials to the worksites, interviewed the workers involved, and issued a report on whether the facilities in question had followed the directions stipulated in the orders.²⁴⁴

As a neutral and experienced actor, the ILO is well-positioned to take on that responsibility, and it will be equally prepared to execute empowerment programs akin to its DWCPs. The Organization can also offer visibility to benchmarks of success (defined in terms of capacity building) and may prove more resilient to internal political pressures. For instance, its reliance on public reports could deter politicians from raising accusations of labor rights infringements without sufficient evidence and process.

Concededly, many in the United States advocate for *fewer* U.S. resources for international organizations and multilateralism. While I do not share those views, my proposal can accommodate them. The United States and its trade partner could cost-share, as they did under the USMCA's RRM case. Alternatively, the U.S. government could require the prospective trade partner to assume the costs as an ex-ante condition for market access. The point is not to commit one country to shouldering the expenses of empowerment. It is to shift the conceptualization of trade policy from an instrument of protection to one of empowerment through participation, autonomy, and capability.

243. See Karen Curtis & Elizabeth Echeverría Manrique, *The ILO's Support in Labour Commitments in Trade Agreements*, in INTEGRATING TRADE AND DECENT WORK, VOL. 1 331–39 (Marva Corley-Coulbaly, Pelin Sekerler Richiardi & Franz Christian Ebert eds., 2023) (describing the ILO's monitoring and observing activities at Mexican facilities under the USMCA).

244. *Id.*

CONCLUSION

U.S. trade policy has used empowerment as a powerful rhetorical tool, promising to lessen the burden of trade liberalization on workers in the United States, but has failed to take empowerment seriously as a structural feature of fair competition. The Biden administration carried political accolades but did not allocate the necessary time or relinquish control to build the capacity of the most vulnerable workers who contribute to and are affected by U.S. trade. When President Trump began his campaign, he had ample grounds to accuse progressive policymakers of failing Americans. After years of protecting U.S. jobs through foreign aid, American voters opted for radical, populist change.

This Article has made the case for empowerment as trade policy. When we trade with countries that lack labor rights protections, we lose jobs through offshoring, face reduced demand for our exports, and become an attractive location for workers desperate for livable wages. Whether one believes that U.S. trade policy should focus on inclusion and a fair distribution of wealth or not, our trade and society benefit from robust global trade backed by standard rules of production, including the labor that is necessarily involved in international production and shipping.

As things stand, U.S. trade policy is carried out in the name of a working class that will likely carry the weight of our increasing tariffs and isolationism. The implications of this debate are far-reaching. Trade partners, including China, the United Kingdom, and the European Union, are considering retaliatory trade measures. These countries are on the precipice of closing markets, raising prices, and constraining employment. The global trade agenda is rushing in the wrong direction—one that will worsen, not improve, working conditions in the United States.

By building workers' capability and choice, U.S. trade policy shifts the power imbalance between labor and capital. The U.S. government—irrespective of political ideology—must empower workers along the trade supply chain, if not for cosmopolitan reasons, then for the sake of its workers.