

# AFL-CIO

AMERICA'S UNIONS

## NAFTA Negotiations Recommendations Docket No. USTR-2017-0006

June 12, 2017

Ed Gresser  
Chair  
Trade Policy Staff Committee  
United States Trade Representative  
1724 F Street NW  
Washington, DC 20508

Dear Chairman Gresser:

Please accept these written comments and request from the AFL-CIO to testify at the TPSC hearing to be held on June 27, 2017 on the topic of the “Negotiating Objectives Regarding Modernization of the North American Free Trade Agreement with Canada and Mexico” (Docket No. USTR-2017-0006) as announced in the Federal Register on May 23, 2017.

### Name and Contact Information of Witness:

Thea Lee, appearing on behalf of  
AFL-CIO  
815 16<sup>th</sup> Street NW  
Washington, DC 20006  
202-637-5344

### Summary of Testimony:

The AFL-CIO recommends that the USTR incorporate a new approach to trade policy in NAFTA renegotiations, one that prioritizes benefits for working families, not simply benefits for multi-national or global enterprises. Equitable economic development, whether for the U.S., North America, or globally, requires fundamental changes to trade policy. It must promote international commerce while simultaneously promoting a virtuous cycle of wage-led growth and high standards of protection for working families and our very democracy. Its rules must promote investment in the domestic economies of the NAFTA countries rather than simply making it easier to relocate goods and services production elsewhere. Renegotiation must begin

with a democratized, inclusive process and proceed from there to stronger and more effective protections for workers, consumers, domestic farmers, ranchers and manufacturers, and the environment. It will require not just tweaks around the edges, but new provisions to address the unsustainable U.S. trade deficit and promote an equitable economy with human dignity. If instead, NAFTA is simply updated with provisions borrowed from the TPP, working families in the U.S., Mexico, and Canada will continue to pay a high price in the form of suppressed wages, a more difficult organizing environment, and an eroding democracy, no matter how much global corporations profit.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Celeste Drake". The signature is written in a cursive style with a large, prominent initial "C".

Celeste Drake  
On behalf of the AFL-CIO

# AFL-CIO

AMERICA'S UNIONS

## Making NAFTA Work for Working People

### Contents

Introduction.....	1
NAFTA Renegotiation Process.....	4
In-Depth Discussion of Key Recommendations.....	7
1. Rules of Origin (Chapter 4) .....	7
2. Regulatory “Harmonization” (Chapters 7, 9, 11, 12 and 14) .....	8
3. Procurement (Chapter 10).....	11
4. Investment (Chapter 11).....	12
5. Financial Services and Stability (Chapters 11 and 14) .....	13
6. Highway Safety (Chapter 12 and Annex I) .....	15
7. Intellectual Property and Drug Pricing Transparency (Chapter 17).....	15
8. Trade Remedies (Chapter 19) .....	16
9. Public Services (Annex II) .....	17
10. New Provision: Strong Labor Rules with Swift and Certain Enforcement .....	17
11. New Provision: Strong Environmental Rules with Swift and Certain Enforcement .....	20
12. New Provision: Enforceable Currency Rules.....	20
13. New Provision: Infrastructure Investment Commitment .....	21
Figure 1: Corporate Tax Rates in OECD Countries Compared (2000 vs. 2016) .....	23
Figure 2: Decline in Labor Share of Income, 1970–2014.....	24
14. New Provision: Agreement to Combat Tax Avoidance.....	25
15. New Provision and Change to Domestic Policy: Enhanced Screening for Foreign Domestic Investment (FDI).....	28
16. Change to Domestic Policy: Improve Trade Enforcement.....	28
17. Change to Domestic Policy: Improve the ITC’s Economic Modeling .....	29
Annex I: Background on the Failure of U.S. Trade Policy.....	30
Figure 3: Job Displacement Due to Existing Bad Trade Policies .....	30

Figure 4: Workers' Share of National Income is Shrinking (United States) ..... 31  
Figure 5: U.S. Trade Balance with FTA Partner Countries, 2016 (Deficits in Yellow) ..... 32  
Annex II: Proposal for NAFTA Labor Chapter (New Chapter 23) ..... 34

## Introduction

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) long has recognized that workers everywhere live in a global economic environment. The global economic environment brings many benefits for working families, from fresh fruit available off-season to more jobs in export sectors. But the global economic environment brings harm as well, from lost jobs and lower wages to unsafe imports and reduced freedom to make domestic economic policy choices.

It is crucial to recognize that working people's opposition to most trade deals since NAFTA<sup>1</sup> is not now, and never was, about withdrawal from international commerce or opposition to "trade" per se. Instead, we oppose a set of rules made largely by and for global corporations that use the United States as a flag of convenience. Rather than exacting a price for this flag of convenience by strengthening the American social contract and increasing equitable growth for America's workers, U.S. trade agreements—starting with NAFTA—largely have substituted the interests of global corporations for the interests of America's people. And, because the rules of these agreements have amplified and exacerbated the effects of domestic neoliberal economic policies, working- and middle-class families have paid the price in terms of increasing inequality, depressed wages, reduced job opportunities, a substantial trade deficit and a weaker democracy.

The key trade debate is not about whether to increase trade, but about what rules should govern trade and how those rules should be enforced. Those who frame the debate as "trade versus isolation" do a disservice to America's workers. The "trade versus isolation" frame fails to address the questions of what rules govern trade and who benefits.

Why are the rules of trade so important? Because trade deals are not simply about reducing tariffs and quotas. Beginning with NAFTA, trade deals and trade policy have incorporated rules and restrictions designed to limit the way citizens can organize and govern the economies of the countries in which they live. These sweeping trade rules deserve robust public debate about which economic policy choices are being removed from national control and why. But they typically receive only superficial debate, with supporters extolling the virtues of trade in general rather than the specific impacts of the rules in question. U.S. trade policy remains secretive, with members of Congress and official trade advisers frequently privy only to descriptions of the proposed deals rather than the full legal texts under negotiation.

As a result, NAFTA and other similar trade deals have fueled the U.S. trade deficit while failing to raise wages or strengthen the U.S. economy. But this failure is not a "bug" of NAFTA. It is a feature built into NAFTA.

---

<sup>1</sup> For example, the AFL-CIO worked for the passage of the U.S.-Jordan trade agreement and more recently for the reauthorization of the Generalized System of Preferences and the African Growth and Opportunity Act.

As President Trump recognized when he called NAFTA “a disaster,”<sup>2</sup> NAFTA’s rules are simply not constructed to benefit working people. Instead, its rules benefit economic elites, making it easier for global companies to suppress wages, disrupt union organizing, and skirt clean air and water obligations by relocating or threatening to relocate production elsewhere. NAFTA’s rules provide a variety of tools, such as investor-to-state dispute settlement (ISDS, a private justice system for foreign investors), that global corporations can use to ratchet down the levels of workplace safety, environmental protections and consumer safeguards.

On the other hand, as President Trump has recognized, “[w]orkers in both [Mexico and the United States] need a pay raise very desperately,”<sup>3</sup> but NAFTA provides no effective tools to raise wages.

In other words, NAFTA’s rules are skewed and in dire need of rebalance. One of the single most important things a renegotiated NAFTA could do for workers in all three countries is to raise wages and protect fundamental rights for workers in Mexico, thereby limiting the ability of corporations and Mexico's ruling elite to use Mexican wages as an instrument of labor arbitrage. Mere tweaks or “updates” to NAFTA’s rules will not do this. Nor will they change its basic race-to-the-bottom structure.

Equitable economic development, whether for the United States, for North America, or globally, requires fundamental changes to trade policy. Trade deals must stimulate international commerce while simultaneously promoting a virtuous cycle of wage-driven growth and high standards of protection for working families and our very democracy. Its rules must promote investment in the domestic economies of the participating countries rather than simply making it easier to relocate goods and services production.

Instead of minor tweaks, NAFTA renegotiation must embrace what AFL-CIO President Richard Trumka has called a “Global New Deal”:

The path to global prosperity, to restoring economic balance, should begin with making sure that every person on this planet has benefit of what the New Deal brought to most Americans—electric power, clean water, schools and libraries, and in this new digital age, internet access. . . .

But we must remember as we plan this better global future that at the heart of Franklin Roosevelt's New Deal was respect for the rights of workers. Without workers having a voice in the global economy, we get globalization for the few, we get special financial interests running rampant, we get a race to the bottom in wages and living standards.<sup>4</sup>

---

<sup>2</sup> Presidential Debate, University of Nevada, Las Vegas, Oct. 16, 2016.

<sup>3</sup> Remarks in Mexico City, Mexico, by Donald Trump, Aug. 31, 2016.

<sup>4</sup> Richard Trumka, Address to the Global Progressive Forum, Oct. 7, 2010.

For a quarter-century, NAFTA has exacerbated a race to the bottom for workers across North America. The document that follows is an attempt to lay out the substantial reforms needed for a new vision for trade. In place of policies that enrich the already economically and politically powerful at the expense of ordinary families, this document contains detailed, specific recommendations for a progressive NAFTA that puts working people first. The rules we propose aim to stop NAFTA's vicious cycle and replace it with a virtuous one.

The recommendations include effective new tools to address abuses of internationally recognized labor rights—but they go much further. Labor provisions alone cannot undo a set of trade rules that lock in powerful advantages for global corporations over people and the planet. NAFTA reform must be a holistic process, resulting in comprehensive changes, not just business-friendly updates. That is why the recommendations suggest wholly new chapters to address problems associated with international trade, such as currency misalignment, tax avoidance and base erosion, and the public disinvestment that has resulted from tax avoidance and base erosion.

We hope these recommendations are the beginning, not the end, of the conversation about how to reform NAFTA and other trade agreements. We look forward to robust consultations with the United States Trade Representative and Congress to reform the rules of trade so that they work for working people. A better NAFTA is possible, and it should begin with a serious conversation about the recommendations set forth in this document.

## NAFTA Renegotiation Process

**Key Recommendations:** NAFTA renegotiation must be focused on improving conditions for workers in all three countries. The negotiation must be transparent, democratic and participatory.

The following reforms are critical:

- With the full participation of the public and Congress, develop negotiating objectives that are specific to NAFTA, rather than generic;
- Review and revise past practices that have resulted in the overclassification of trade policy documents, including textual proposals, working negotiating texts and offers tabled by other parties;
- Increase access to U.S. trade policy making, U.S. trade proposals and negotiating texts for Congress, congressional staff and members of the public, including by publishing draft textual proposals in the Federal Register with adequate time for public comment before tabling them;
- Expand and balance membership in the existing trade advisory committees, ensuring adequate participation in all committees by academics, small domestic firms and family farms, labor unions, public interest advocates, and state and local officials;
- Ensure that trade advisory committees have the opportunity to meaningfully advise and consult on proposals *before* securing interagency approval on texts, at which point it is often too late for revisions; and
- Cooperate with Congress to ensure the opportunity for periodic oversight hearings, by all committees whose jurisdictions include issues covered by NAFTA, on the negotiations at the outset, midstream, and once negotiations are complete in order to understand the legal implications of the NAFTA revisions.

**Why This Is Important:** Decisions about international economic policy have been made behind closed doors and, as a result, have primarily advanced the policy preferences of political and economic elites, not the broad interests of working families or the nation at large. U.S. trade policy decisions have been made this way for years, and American workers, small farmers, small businesses and domestic producers have paid the price. The U.S. trade deficit has grown with each succeeding trade agreement, manufacturing employment continues to shrink, and even highly-skilled workers often have a hard time making ends meet. The administration must bring trade policy decision making out into the open so that all affected people can participate in the marketplace of ideas and have a fair opportunity to bring their influence to bear.

NAFTA is about more than tariffs and quotas. It has rules designed to encourage foreign investment, undermine public interest regulations and provide monopoly protections for particular industries. NAFTA includes rules that constrain Congress's ability to support the economy, even though the public had no opportunity to help shape those rules. NAFTA also has real consequences for local and state policy making, especially with regard to regulating goods and services in the public interest; yet state and local officials had only trivial opportunities to influence its rules.

Because trade agreements affect labor rights, investment incentives, environmental protections, food safety, anti-trust policies and more, America's working people have been clear: **these**

**decisions should not be made behind closed doors—away from the eyes of the people.** Such secrecy is inconsistent with democratic principles.

Trade agreements made on this expansive and secretive model, beginning with NAFTA, have harmed job growth, put downward pressure on wages and made workers rightly skeptical about who really benefits from these deals. Trade negotiators who tell the American public “trust me, this’ll be good for you, even though I can’t tell you what’s in it” only breed further distrust. NAFTA renegotiation presents an opportunity to undo this grave injustice. This administration can open the door to trade policy making and let all citizens participate, not just the wealthy and the powerful.

By transparent, democratic and participatory, we mean that trade negotiations must include broader and deeper consultations with the full range of congressional committees whose jurisdiction touches on the issues being negotiated. By transparent, democratic and participatory, we mean that all interested domestic parties (both citizens and organizations) must have opportunities to provide timely and meaningful input on developing trade agreements, and to provide advice regarding trade-offs and priorities, so that the final product does more than advance the agenda of a narrow elite. This includes the opportunity to review both initial proposals and working texts.

NAFTA renegotiation should be as open as other international policy-making processes. It is a misnomer to characterize these talks as “negotiations.” Trade deals are not analogous to two private parties haggling over the price of an acre of land. Trade policy making has more in common with the legislative process than with private negotiations, and its impact is even more far reaching. Because trade deals never expire and do not require periodic reauthorization to remain in place, they are much more difficult to amend or repeal than domestic laws and regulations.

The public understands the broad scope of coverage and impact of NAFTA and has made clear it must be renegotiated in a fair manner. It will be impossible to repeat the secrecy under which it was negotiated originally. Many other international policy-making frameworks already incorporate the transparency, democracy and participation we recommend. At the United Nations Framework Convention on Climate Change and World Intellectual Property Organization meetings, the negotiating texts are released and members of the public can attend meetings as observers and provide relevant feedback and advice to the parties. Even the World Trade Organization, which labor often criticizes, makes many submissions, offers and reports by member states and committee chairs available.

Not only does excessive secrecy undermine the quality of the resulting deal and undermine support for trade, it is also expensive. As adduced at a hearing of the House Committee on Oversight and Government Reform, the federal government spent more than \$100 billion

between 2006 and 2016 on security classification activities, and yet, it is estimated 50% to 90% of classified material never should have been kept from the public at all.<sup>5</sup>

The United States has championed transparency efforts in other fora and helped found the Open Government Partnership.<sup>6</sup> It makes no sense to abandon those principles just because it is traditional to make trade rules in locked rooms, without citizen oversight and participation. A quarter-century of NAFTA has demonstrated that trade deals negotiated behind closed doors will leave most Americans behind. As we say in the labor movement, “if you’re not at the table, you’re on the menu.”

---

<sup>5</sup> See testimony and transcripts from “Examining the Costs of Overclassification on Transparency and Security, 2016”: Hearing Before the House Committee on Oversight and Government Reform, 114th Congress, 2nd Session, 2016. Available at: <https://oversight.house.gov/hearing/examining-costs-overclassification-transparency-security/>.

<sup>6</sup> For more information, see [www.opengovpartnership.org/about/about-ogp](http://www.opengovpartnership.org/about/about-ogp).

# In-Depth Discussion of Key Recommendations

Recommendations are presented in the following order:

1. In numerical order by existing chapter number if the topics occur in the existing NAFTA text;
2. Proposals for new chapters, starting with existing “side agreements,” followed by wholly new ideas; and
3. Proposals for accompanying changes to domestic law.

## 1. Rules of Origin (Chapter 4)

**Key Recommendations:** In general, “rules of origin” should be set such that domestic producers and workers in the NAFTA signatory countries are the primary beneficiaries of market access commitments, not third-party countries that take on no trade obligations in the deal. This goal can be advanced through the following specific recommendations:

- a. Auto Regional Value Content (RVC) should rise above the current 62.5%, with a phase-in period to allow manufacturers to adjust supply chains.
- b. Auto Parts RVC also should increase from current levels; otherwise, the actual auto content will lag far behind its nominal value.
- c. Current producers could be granted additional time to comply with the new, higher auto and auto parts RVCs dependent on the degree to which their hourly compensation of employees exceeds the median wage in the industry in the country in which they operate, and to which the enterprise observes all applicable workers’ rights standards in NAFTA. Additional analysis on this topic, and a specific proposal, is being prepared that would ensure workers are the real beneficiaries of the NAFTA renegotiation.
- d. Abolish “deeming” and instead require auto parts to actually meet the nominal content requirement.
- e. For the class of green/energy-efficient parts identified by the International Association of Machinists, UAW and United Steelworkers in a joint Trans-Pacific Partnership safeguard proposal, require these parts to be made in the United States to count toward the RVC for vehicles sold into the United States. Although this would be a deviation from the typical NAFTA-region sourcing rules, the AFL-CIO understands that these high-value parts are not presently made in Mexico or Canada. This recommendation is aimed to promote the retention and growth of manufacturing in the particular class of parts here in the United States for utilization in vehicles sold here.
- f. Eliminate tariff preference level exceptions (TPLs), which undermine the yarn-forward rule.
- g. Close other rule-of-origin loopholes that minimize the domestic content through roll-up and other provisions.
- h. Rules of origin relating to the production of steel must require that, to be considered for tariff preferences, the steel must be melted and poured in the NAFTA region. A similar standard should be adopted for other materials (e.g., aluminum), to ensure the entire process relating to the production of the materials occurs in the NAFTA region.

**Why This Is Important:** A strong rule of origin (ROO) promotes production in the NAFTA countries, rather than rewarding outsourcing to third-party countries. In addition, a strong rule of origin supports production and jobs. If the NAFTA renegotiations also include stronger rules to raise wages and environmental protections in Mexico, thus leveling the playing field, strong ROOs could promote more jobs in the United States, as well as in Mexico.

This concern is not theoretical. Auto manufacturers and suppliers in the United States directly and indirectly contribute to jobs for 5.6 million U.S. families.<sup>7</sup> The United States had a trade surplus with Mexico in 1993, the year before NAFTA was implemented. Supporters of the trade agreement promised new jobs and an improved trade balance. Instead, U.S. trade deficits with Mexico displaced more than 850,000 U.S. jobs by 2013. Most of the jobs displaced were in manufacturing.<sup>8</sup> Strong rules of origin will provide an incentive to produce in North America as opposed to China, Vietnam and other export platforms that exploit workers, and the incorporation of labor and other reforms suggested elsewhere in this document will ensure workers in all three NAFTA countries can benefit.

The International Association of Machinists, UAW and United Steelworkers, supported by others in labor, tabled a proposal during the Trans-Pacific Partnership negotiations to ensure that domestic parts promoting energy efficiency and emissions reduction would have preferential status. That same class of parts should be given such status in the NAFTA renegotiation.

## **2. Regulatory “Harmonization” (Chapters 7, 9, 11, 12 and 14)**

**Key Recommendations:** NAFTA must not expand any commitments in Chapters 7, 9, 11, 12 or 14 that have the effect of limiting, undermining or inhibiting public interest standards or regulations. The renegotiated NAFTA must contain no negative lists, no ratchet clauses and no “Regulatory Impact Analysis” requirements. Negative list commitments in NAFTA must be rewritten into positive list commitments to ensure that North American democracies retain to right to advance commonsense rules relevant to newly developed services, free from the threat of trade challenges.

In addition, Article 2101, which currently provides a wholly ineffective general exception, must be rewritten to read:

Nothing in this agreement shall be construed to prevent the adoption or enforcement by any Party of non-discriminatory measures designed to achieve public interest objectives such as environmental protection; the conservation of climate, resources and biodiversity; human, animal and plant health; consumer protections; financial stability; international human rights compliance; social security, worker protections and labor laws; or worker health and safety unless the primary purpose of the measure is to discriminate with respect to market access. Parties seeking to challenge measures described in this paragraph have the

---

<sup>7</sup> Auto Alliance “Cars Move America: State of the Auto Industry.” 2016. *Available at:* [https://autoalliance.org/wp-content/uploads/2017/01/2016\\_Cars\\_Move\\_America\\_Report.pdf](https://autoalliance.org/wp-content/uploads/2017/01/2016_Cars_Move_America_Report.pdf).

<sup>8</sup> Economic Policy Institute, “Manufacturing Job Loss: Trade, not Productivity, is the Culprit” Aug. 11, 2015. *Available at:* [www.epi.org/publication/manufacturing-job-loss-trade-not-productivity-is-the-culprit/](http://www.epi.org/publication/manufacturing-job-loss-trade-not-productivity-is-the-culprit/).

obligation of demonstrating that the primary purpose of the measure is to discriminate with respect to market access.

Finally, U.S. negotiators must include a new provision that makes clear that, as between the NAFTA Parties, country-of-origin labeling (known as COOL) for meat products is consistent with NAFTA rules and cannot be subject to trade challenges under NAFTA or the World Trade Organization (WTO).

**Why This Is Important:** While the AFL-CIO agrees that, under the right circumstances, regulatory cooperation can increase trade and efficiency in ways that benefit workers and consumers, we also caution against blunt efforts to use NAFTA renegotiation as a back-door route to attack important worker, consumer, environmental, health and food safety protections. Deregulation via international negotiations is inherently undemocratic, reducing trust in the democratic system and undermining standards that citizens struggled to enact.

Business interests long have tried to politicize and demonize the concept of regulation, labeling all regulations “wasteful red tape.” As a result, NAFTA and its progeny have incorporated rules that provide corporate lobbyists with leverage to dismantle popular, commonsense protections. For example, various trade commitments have been used as justification to attack a host of U.S. measures, including consumer labels (regarding country of origin<sup>9</sup> and dolphin-safe tuna<sup>10</sup>, for example), “Buy America(n)”<sup>11</sup> coverage, and even efforts to stabilize the economy after the Great Crisis.<sup>12</sup> Trade deals should raise standards of living, not leave families more vulnerable. Thus, NAFTA renegotiation must not be used as a tool to undercut protective measures in any way—whether with regard to financial stability, food safety, highway safety or any other realm. It is imperative that NAFTA Parties retain the ability to enact, enforce, and strengthen protective measures, free from the chilling effect of trade challenges.

NAFTA renegotiations must not make it easier to avoid or block regulations meant to secure the health and safety of the public, including on-the-job health and safety regulations; licensing and certification requirements that protect consumers from bogus products or practitioners; bonding or deposit requirements to ensure the ability to pay customers’ claims; building codes; rules to deter risky financial services schemes; transportation safety standards in interstate commerce; or any other public interest measure. Working families should not have to give up the regulatory

---

<sup>9</sup> Huehnergarth, Nancy Fink, “Quashing Consumers’ Right-To-Know, Congress Repeals Country-Of-Origin-Labeling For Beef and Pork,” *Forbes*, Food and Agriculture Section, Dec. 21, 2015. Available at: [www.forbes.com/sites/nancyhuehnergarth/2015/12/21/quashing-consumers-right-to-know-congress-repeals-country-of-origin-labeling-for-beef-and-pork/#1de5a6d136e5](http://www.forbes.com/sites/nancyhuehnergarth/2015/12/21/quashing-consumers-right-to-know-congress-repeals-country-of-origin-labeling-for-beef-and-pork/#1de5a6d136e5).

<sup>10</sup> Dayen, David, “WTO Ruling on Dolphin-Safe Tuna Labeling Illustrates Supremacy of Trade Agreements,” *The Intercept*, Nov. 24, 2015. Available at: <https://theintercept.com/2015/11/24/wto-ruling-on-dolphin-safe-tuna-labeling-illustrates-supremacy-of-trade-agreements/>.

<sup>11</sup> “Senate eases ‘Buy American’ clause in stimulus,” *CNN Politics*, Feb. 5, 2009. Available at: [www.cnn.com/2009/POLITICS/02/05/senate.buy.american/index.html](http://www.cnn.com/2009/POLITICS/02/05/senate.buy.american/index.html).

<sup>12</sup> Robertson, Grant, and Kiladze, Tim, “Canadian banks warn proposed Volcker rule could violate NAFTA,” in *The Globe and Mail*, Business Section, Jan. 19, 2012. Available at: [www.theglobeandmail.com/report-on-business/international-business/us-business/canadian-banks-warn-proposed-volcker-rule-could-violate-nafta/article1359765/](http://www.theglobeandmail.com/report-on-business/international-business/us-business/canadian-banks-warn-proposed-volcker-rule-could-violate-nafta/article1359765/).

gains made in the 20th century nor the right to future protections in the name of “free trade.” Therefore, NAFTA must not require any Party to engage in “Regulatory Impact Analysis” to justify particular public interest measures. Nor should it include any “negative lists” that prohibit regulations on new products and services that have yet to be invented.

Recent trade negotiations have included proposals that would undermine the United States’ ability to protect American consumers’ private information. Such rules on “data localization” would make it easier for companies to offshore call center jobs, even when overseas call centers lack crucial privacy and data security protections. These rules should not be incorporated into NAFTA; instead, NAFTA renegotiations should be used to strengthen data security and privacy protections across North America.

COOL, an important consumer information law, provides an object lesson in the dangers of deregulatory policies in NAFTA and other trade deals. In 2015, the U.S. Congress voted to repeal country-of-origin labeling for beef and pork, as a result of a WTO decision that U.S. laws requiring such labeling constitute a “technical barrier to trade.” The COOL law did not prevent foreign meat from entering the United States. It merely required information for consumers about where the meat was born, raised and slaughtered. The WTO decision that such information is a barrier to trade is contrary to fact: U.S. imports of Canadian beef actually increased 53% under COOL.<sup>13</sup> The WTO’s COOL ruling provoked the United States to repeal COOL to avoid trade sanctions. The consumer’s right to know became a producer’s right to conceal. This is exactly the kind of encroachment into purely domestic consumer policy that is inappropriate in a trade agreement. It is important to recognize that not only is a specific COOL fix important in NAFTA, but adoption of the recommendations in this chapter will prevent repeat of the COOL debacle.

Rules that undermine high standards, like COOL, harm working families as well as domestic firms. Weak standards penalize U.S.-based producers that operate in a safe and responsible manner by forcing them to compete with businesses that cut corners. NAFTA should reward rather than suppress responsible business practices.

To the extent that harmonization is useful to enhance trade, NAFTA should call for the adoption of the strongest protections, not the weakest (this principle is known as “upward harmonization”). The United States has been a world leader in developing and implementing laws and regulations to improve workplace safety, regulate toxic chemicals, and protect consumers and the environment. NAFTA should build on this legacy, not tear it down. NAFTA should establish a cooperative framework that allows the United States, Canada and Mexico to share and build upon their respective regulatory experiences to enhance protections.

---

<sup>13</sup> Press Release: “WTO Orders U.S. to Gut U.S. Consumer Country-of-Origin Meat Labeling Policy, Further Complicating Obama Fast Track Push by Spotlighting How Trade Pacts Can Undermine U.S. Consumer, Environmental Policies,” Public Citizen, May 18, 2015. *Available at:* [www.citizen.org/sites/default/files/press-release-wto-cool-ruling-may-2015.pdf](http://www.citizen.org/sites/default/files/press-release-wto-cool-ruling-may-2015.pdf).

### 3. Procurement (Chapter 10)

**Key Recommendation:** Eliminate all procurement commitments that undermine domestic or local preferences.

**Why This Is Important:** Trade commitments that require the federal government to treat foreign bidders as if they were U.S. bidders undermine one of the most important job creation tools the United States has: fiscal policy. The AFL-CIO recommends abolishing such arbitrary commitments. Each NAFTA Party should be free to use stimulus funds to create jobs within its borders, and should not be prevented from using limited funds on domestic stimulus based on some arbitrary NAFTA commitment that fails to create reciprocal benefits.

Currently, NAFTA gives bidders from all NAFTA countries expansive access to U.S. goods, services and construction contracts. These provisions can undermine not only domestic preferences, but also responsible bidding criteria (such as requirements that a bidder provide benefits for same-sex spouses or have no outstanding environmental cleanup obligations, or a system that awards bonus points for bidders with better safety records or that source from local farms). Arbitrary procurement commitments curtail efforts to ensure bidders—from any NAFTA Party—are not unfairly undercut by unscrupulous competitors, which is a further reason to eliminate procurement commitments.

The United States' trade obligations open far more U.S. procurement (by dollar amount and by percentage) to foreign bidders than any other large economy.<sup>14</sup> As detailed in a February 2017 Government Accountability Office (GAO) report, there is no evidence that the United States' procurement commitments, at the WTO or in regional trade deals like NAFTA, create more jobs for U.S. workers than they cede to workers elsewhere.<sup>15</sup> To the extent that procurement commitments like NAFTA's Chapter 10 drive down wages in a race to be the lowest bidder,<sup>16</sup> they already have harmed untold numbers of U.S. workers.

Although there is room for additional study of the impacts of existing procurement deals (e.g., an analysis of the job and wage effects of the reciprocal agreement between the United States and Canada that was adopted for the expenditure of American Recovery and Reinvestment Act funds and an analysis of U.S. procurement contracts won by multinational versus domestic-only firms), to date, there is simply no evidence to support maintaining Chapter 10 commitments that require the U.S. government to treat foreign bidders with the same preferences as U.S.-based bidders.

---

<sup>14</sup> U.S. Government Accountability Office, "Government Procurement: United States Reported Opening More Opportunities to Foreign Firms than Other Countries, but Better Data Are Needed," February 2017, Fig. 2, p. 12. Available at: [www.gao.gov/products/GAO-17-168](http://www.gao.gov/products/GAO-17-168).

<sup>15</sup> *Id.* In 2014 the Obama administration agreed to amend the World Trade Organization Government Procurement Agreement to delete the requirement that parties provide statistics on the country of origin of products and services purchased by covered government entities, ensuring that future studies will be stymied in efforts to document the effectiveness (or lack thereof) of procurement commitments as "job creation" tools.

<sup>16</sup> See, e.g., Richard B. Du Boff, "Globalization and Wages: The Down Escalator," in Dollars & Sense. Available at: [www.dollarsandsense.org/archives/1997/0997duboff.html](http://www.dollarsandsense.org/archives/1997/0997duboff.html).

Instead, the NAFTA Parties should work to develop transparent, multilingual bidding systems and responsible employer standards that will benefit enterprises and workers located within North America, while leaving our democracies the freedom to choose when domestic preferences are necessary and appropriate, and when other considerations should prevail.

A critical provision in Chapter 10 that should be maintained is its prohibition on offsets. Offsets require firms to transfer technology, production and jobs in return for government procurement. Collectively, these policies provide incentives to move jobs and whole enterprises, including call centers and factories, to other countries. The use of offsets has accelerated the relocation of aerospace, defense and other industries important to national and economic security to China and other nations with whom we have no effective rules against offsets. Thus, the offset provision in NAFTA should be maintained, and the USTR must enforce it in a swift and certain manner.

#### **4. Investment (Chapter 11)**

**Key Recommendations:** Omit Part B of Chapter 11, the Investor-to-State Dispute Settlement (ISDS) Mechanism. Also omit Article 1105, the Minimum Standard of Treatment.

**Why This Is Important:** Simply put, ISDS is a separate justice system for foreign investors for which there is no legal or moral justification. It discriminates against U.S.-located firms by providing extraordinary procedural and substantive rights to foreign-based firms. According to the Cato Institute, “It is effectively a subsidy that mitigates risk for U.S. multinational corporations and enables foreign MNCs [multinational corporations] to circumvent U.S. courts when lodging complaints about U.S. policies.”<sup>17</sup> Eliminating ISDS will protect democracy, Article III of the Constitution and America’s rich jurisprudence while eliminating a handout to companies that choose to produce abroad.

Rule of law requires that the law—including the system of justice—apply to everyone equally. ISDS violates this bedrock principle of democracy. Moreover, by offering additional legal protections beyond those that exist under U.S. law or other countries’ national courts, ISDS makes it more attractive to send production and investment overseas. NAFTA must not include provisions that promote the further offshoring of jobs—particularly good, middle-class jobs. Furthermore, ISDS disadvantages U.S. companies that only produce in the United States (e.g., micro- and small- to medium-sized companies) because they have fewer rights than their foreign competitors.

As one of the lawyers who brought a case against the United States on behalf of a Canadian company explained, “[The ISDS provision in] NAFTA does clearly create some rights for

---

<sup>17</sup> Ikenson, Daniel J., “A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement,” Cato Institute’s Free Trade Bulletin No. 57, March 4, 2014. Available at: [www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state](http://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state).

foreign investors that local citizens and companies don't have. But that's the whole purpose of it."<sup>18</sup>

ISDS undermines the rule of law by creating special rules and special "courts" available only to a certain class—the foreign investor class. Taking claims of powerful actors out of the jurisdiction of domestic courts impedes the development of domestic rule of law by removing the foreign business community as an advocate for fair and efficient courts. Finally, because there is no way for countries to "graduate" from the ISDS mechanism once domestic courts "measure up," including ISDS in deals such as NAFTA means subjecting the United States to these unaccountable tribunals in perpetuity.

Finally, the vague and overbroad minimum standard of treatment (MST) obligation should be eliminated. The MST obligation goes far beyond the property rights available under domestic property law and is ripe for abuse.<sup>19</sup>

## 5. Financial Services and Stability (Chapters 11 and 14)

### Key Recommendations:

- a. NAFTA must not expand any commitments in Chapter 14, nor insert any new provisions that have the effect of limiting, undermining or inhibiting financial services regulations.
- b. Add the following language to Article 1109.4 to ensure that under specified conditions, Parties may prevent the transfer of capital through the equitable, nondiscriminatory and good faith application of laws relating to:
  - (f) Unpaid obligations to employees, including wages and pensions; and
  - (g) Safeguarding the safety and soundness of the financial system.

**Why This Is Important:** The WTO's General Agreement on Trade in Services (GATS) and NAFTA's existing text already provide sufficient market opening for financial services providers. Further liberalization in financial services trade not only is unnecessary, it is likely to be harmful to working families given the role that financial services globalization played in creating and exacerbating the Great Crisis.

As Philip R. Lane explains in his paper, "Financial Globalization and the Crisis," financial globalization enabled the scaling-up of the U.S. "securitization boom" that triggered the crisis

---

<sup>18</sup> Greider, William, "The Right and US Trade Law: Invalidating the 20th Century: How the right is using trade law to overturn American democracy," *The Nation*, Nov. 17, 2001. Available at: [www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#](http://www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#).

<sup>19</sup> Even the staunchly free trade Cato Institute's Simon Lester calls the minimum standard of treatment a "poorly written" provision. Lester, Simon, "Responding to the White House Response on ISDS," *Cato at Liberty Blog*, Feb. 27, 2015. Available at: [www.cato.org/blog/responding-white-house-defense-investor-state-dispute-settlement](http://www.cato.org/blog/responding-white-house-defense-investor-state-dispute-settlement).

and was a key factor in the rise of large credit growth differences and current account imbalances that propelled the crisis across countries.<sup>20</sup> NAFTA Parties must incorporate the lessons learned from the aggressive financial deregulation of the 1990s and resist the entreaties of Wall Street and Canadian banks to use NAFTA renegotiation to ease financial services regulation.

In the aftermath of the Great Crisis, the U.S. government must reassess the relationship between finance and growth in the real economy.<sup>21</sup> U.S. trade policy must recognize that a too-large financial sector can slow economic growth and increase economic inequality.<sup>22</sup> Given that the rapid growth of the U.S. financial sector *already* has harmed the real economy, and that working families still are suffering from lost wealth and income, NAFTA renegotiation should not be used as a tool to fuel deregulation and financial instability.

Instead, the three NAFTA parties should take this opportunity to work together to design and promote the development of new laws, regulations, policies, practices and directives that promote financial stability and protect consumers from the ravages of financial crisis.

We urge the administration to carefully consider the economic interests of the 111 million American households (93% of the population), whose wealth plummeted between 2009–2011 as a result of the financial crisis.<sup>23</sup> Middle-class Americans bore the brunt of the financial crisis, through declining home values as well as unemployment and stagnant wages. Working Americans can afford neither another financial crisis nor another round of financial deregulation.

Given the size of the American and Canadian financial sectors, the banking sector will exert great pressure to use NAFTA renegotiation to narrow the available space for prudential policy development. Negotiators must resist this pressure.

Instead, negotiators should work together with academics, consumer advocates, national, state and provincial regulators, and other financial services policy experts to protect working families. Each NAFTA country must have adequate policy space, flexibility and authority to effectively regulate mergers and acquisitions; enforce antitrust law; administer criminal and civil penalties; and prevent systemic financial failures. NAFTA must leave room for stronger financial regulations, instead of creating leverage for financial institutions to cut back on existing regulations.

---

<sup>20</sup> Lane, Philip R., “Financial Globalisation and the Crisis,” Prepared for the 11th BIS Annual Conference on The Future of Financial Globalisation, Lucerne, June 21–22, 2012.

<sup>21</sup> See Buttonwood, “Warning: too much finance is bad for the economy,” *The Economist*, Feb. 18, 2015. Available at: [www.economist.com/blogs/buttonwood/2015/02/finance-sector-and-growth](http://www.economist.com/blogs/buttonwood/2015/02/finance-sector-and-growth).

<sup>22</sup> OECD, “How to restore a healthy financial sector that supports long-lasting, inclusive growth?”, OECD Economics Department Policy Notes, No. 27, June 2015. Available at: [www.oecd.org/eco/How-to-restore-a-healthy-financial-sector-that-supports-long-lasting-inclusive-growth.pdf](http://www.oecd.org/eco/How-to-restore-a-healthy-financial-sector-that-supports-long-lasting-inclusive-growth.pdf).

<sup>23</sup> “What Recovery? US Rich Get Richer, Middleclass Treading Water,” RT.com, April 24, 2013. Available at: <http://rt.com/usa/us-financial-crisis-wealth-occupy-wall-street-307/>.

On a related note, there has been an important shift in global thinking with respect to the value of capital controls. In 2012, even the IMF endorsed the use of capital controls in certain circumstances.<sup>24</sup> Accordingly, the NAFTA parties should amend the language that inhibits the use of capital controls in Article 1109. Article 1109 originally was included in NAFTA to ensure that those who invest abroad could freely transfer their profits elsewhere. However, the current provision (which lists exceptions to the general prohibition on capital controls) is too narrow. The current provision lacks explicit language to ensure governments can slow capital flows to stabilize their economies and act to protect workers from unscrupulous employers. The recommended additions would make clear that efforts to protect workers and economic stability are allowable and not subject to NAFTA challenges.

## 6. Highway Safety (Chapter 12 and Annex I)

**Key Recommendation:** Revise Chapter 12 (Services), including Annex 1212, and Annex I as they relate to cross-border transportation, including long-haul trucking and busing. These provisions have been applied in ways that undermine labor, environmental and safety standards and must be amended.

**Why This Is Important:** NAFTA has been interpreted to require the United States to permit unlimited access to U.S. roads for trucks from Canada and Mexico, even in cases where vehicles do not meet U.S. safety and environmental standards and drivers do not hold U.S. commercial driver's licenses.

NAFTA should be upgraded to ensure that Parties may enforce domestic highway safety, labor protections and environmental standards. The original intent of the NAFTA negotiators was to delay cross-border traffic beyond the border zone until the safe operation of foreign carriers could be tested and verified. Although cross-border trucking since has been approved and expanded, the inspector general of the Department of Transportation reported that too few participants completed the pilot program to make a reliable safety projection.<sup>25</sup> When Congress has supported a NAFTA interpretation that prioritizes highway safety over unrestricted access, the Mexican government has responded with manifestly excessive sanctions under Chapter 20. Amending Chapter 12, Annex 1212 and Annex 1 will eliminate the threat of further trade sanctions that have impeded congressional intent to protect highway safety and clean air.

## 7. Intellectual Property and Drug Pricing Transparency (Chapter 17)

### Key Recommendations:

- *For copyright:* NAFTA should retain strong provisions to protect creative and innovative workers (including actors, writers, musicians and others) whose income, standard of

---

<sup>24</sup> "The Liberalization and Management of Capital Flows: An Institutional View," International Monetary Fund, Nov. 14, 2012. Available at: [www.imf.org/external/np/pp/eng/2012/111412.pdf](http://www.imf.org/external/np/pp/eng/2012/111412.pdf).

<sup>25</sup> Department of Transportation Office of the Inspector General, "FMCSA Adequately Monitored Its NAFTA Cross-Border Trucking Pilot Program But Lacked A Representative Sample To Project Overall Safety Performance," Audit Report ST-2015-014, Dec. 10, 2014. Available at: [www.oig.dot.gov/sites/default/files/NAFTA%20Pilot%20Final%20Report\\_508.pdf](http://www.oig.dot.gov/sites/default/files/NAFTA%20Pilot%20Final%20Report_508.pdf).

living, and health and retirement benefits rely upon residuals, royalties and other payments tied to international copyright protection.

- *For patents and related protections:* NAFTA must balance innovation with affordability of health care. The administration must work to ensure NAFTA's patent provisions do not become a corporate welfare program for brand-name pharmaceutical and medical device companies. Nor should NAFTA undermine democratic choices about how to ensure prescription drugs and medical devices provided through public programs are affordable for taxpayers and beneficiaries. Reproducing TPP provisions on patents, exclusivity and so-called "transparency and procedural fairness" into a renegotiated NAFTA would be a step backward for the health of working families in the United States, Canada and Mexico, and is unacceptable.

#### **Why This Is Important:**

- *For copyright and related rights:* Illegal streaming, illegal downloads, unauthorized fixation and distribution of live musical and audio-visual performances, counterfeit products and similar acts of intellectual property theft have devastating consequences on creative arts workers across the nation. NAFTA should help curb such theft, which robs America's creative artists and innovators of incomes, and health and retirement benefits.
- *For patents and related protections:* The TPP exceeded the so-called "May 10" agreement, undermining drug and device affordability for working families. NAFTA would harm working families and lead to higher drug and device prices if it included new or harsher provisions on patent linkage, excessive data/market exclusivity periods, evergreening, bans on pre-grant opposition to patents, or a so-called "transparency annex" that gives drug makers leverage over drug listing and pricing decisions made by government health programs. While industrial espionage and other forms of patent theft can undermine American workers and their employers, the need for cooperation to protect legitimate interests should not undermine the social provision of health care or other efforts to ensure the affordability of medically necessary drugs and devices.

## **8. Trade Remedies (Chapter 19)**

**Key Recommendation:** Omit Chapter 19. Replace it with a mechanism for government cooperation to ensure effective enforcement against unfairly traded products from non-NAFTA countries.

**Why This Is Important:** NAFTA allows for a final review of a domestic antidumping or countervailing duty case by a binational panel instead of by a competent domestic court. This rule, omitted from subsequent trade deals, can hamper trade enforcement, hurting U.S. firms and their employees. The USTR seems to have learned that Chapter 19 was a mistake, as a similar provision was not included in later trade agreements. To ensure the strength and primacy of U.S. domestic trade laws to protect America's working people, NAFTA should be updated to replace this chapter with something more productive.

Cooperation on enforcement against unfairly traded products from non-NAFTA countries could reduce circumvention and evasion of trade remedies imposed by a NAFTA signatory country. The United States, for example, has suffered from numerous instances where products that are

subject to relief measures in the United States under antidumping and countervailing duty laws then are imported through Mexico to evade duties or other measures. To the extent appropriate, the NAFTA signatory countries should cooperate to ensure that remedies imposed by one NAFTA Party are not undermined by a failure to effectively enforce trade remedy laws in other parties.

## **9. Public Services (Annex II)**

**Key Recommendation:** Expand the public services exception in Annex II so that public services are fully carved out, or protected, from the agreement. The current NAFTA text leaves out a number of important public services, including energy, postal, water and sewer, sanitation, immigration and public transportation services from its Annex II reservation. This shortcoming must be rectified to protect the full spectrum of democratic decision making regarding the provision of public services.

**Why This Is Important:** While NAFTA exempts some existing laws and regulations from some of the rules of the services and investment chapters of the agreement, many existing and future laws or policies can be challenged because the current carve-out is too limited. NAFTA renegotiation is an opportunity to correct this important shortcoming.

The interest in profit must not be allowed to trump economic justice and human dignity. Under existing NAFTA rules, an investor or Party may challenge domestic policies related to public services as trade or investment barriers. For instance, government rules may be necessary to guarantee equitable access to services. But if these rules are undermined by NAFTA challenges, some U.S. residents could find themselves with inadequate access to services or substandard services. NAFTA's existing investment rules also can penalize governments that reverse privatizations, even when those privatizations have lowered service quality or have led to less public accountability and access. NAFTA must not interfere with the right of a country's citizens to determine how best to provide services to residents.

## **10. New Provision: Strong Labor Rules with Swift and Certain Enforcement**

### **Key Recommendations:**

- a. To improve compliance and enforceability, include in the agreement explicit references to the eight core ILO Labor Conventions and others where appropriate;
- b. To protect workers, raise wages and level the playing field among NAFTA countries, require that Parties not waive or derogate from any of their labor laws—regardless of the sector in which the breach occurred;
- c. To level the playing field among NAFTA countries, define “acceptable conditions of work” to include such concepts as payment of all wages and benefits legally owed and compensation in cases of occupational injuries and illnesses;
- d. To increase compliance, include commitments aimed at ensuring effective labor inspections;
- e. To level the playing field among NAFTA countries, do not include any requirement that violations must be in a “manner affecting trade or investment between the parties,” or

that violations must be “sustained or recurring,” both of which add unnecessary barriers to enforcement;

- f. To prevent worker exploitation, agree that workers should be paid a floor wage that provides a decent standard of living, and include provisions to prevent social dumping of goods made by workers paid less than floor wages or inadequate enforcement of workers’ rights;
- g. To prevent forced labor and the worst forms of child labor, prohibit trade in goods made with forced labor and the worst forms of child labor;
- h. To prevent a spiral to the bottom in wages and working conditions, ensure migrant workers receive the same rights and remedies as a country’s nationals;
- i. To prevent human trafficking and forced labor, establish enforceable rules for international labor recruiters and employers of foreign labor;
- j. To ensure timely enforcement and reduce unwarranted delays, establish clear, universal timelines for consideration of and action upon labor complaints;
- k. To help raise standards across the region, create an *independent* labor secretariat (not controlled by the Parties) to research emerging issues, report on best practices, provide technical assistance when necessary, investigate alleged violations, recommend remediation and, in the absence of remediation, bring cases to dispute settlement;
- l. To make enforcement more effective and to reduce the ability to delay or ignore labor complaints, require the Secretariat to pursue meritorious complaints until the defects have been remedied;
- m. To ensure comprehensive analysis of the effects of NAFTA on working people, establish a Wages and Standards Working Group to oversee the Secretariat, recommend remedial responses and policies to aid workers, families and communities negatively impacted by NAFTA, and provide recommendations for improving NAFTA and national laws in ways that benefit working families;
- n. To ensure that enforcement occurs, include enhanced enforcement tools, such as social dumping tariffs, additional duties for persistent labor violations, and private rights of action where the Secretariat or Parties refuse to enforce obligations;
- o. To level the playing field, allow unions to engage in transnational collective bargaining with employers that operate in two or more NAFTA countries; and
- p. To maximize the potential for wages in Mexico to rise, continue to pursue constitutional and legal reforms already begun in Mexico as of 2016.

Please see Annex II for a complete labor chapter outline incorporating these recommendations.

**Why This Is Important:** Trade agreements that do not create a level playing field in labor obligations force communities and companies into a race to the bottom. NAFTA, in particular, has been poorly enforced. Its lack of any meaningful sanctions has left Parties free to violate labor obligations with impunity. This has had detrimental effects on working families and retarded consumer demand across the NAFTA countries.

When workers lack the right to speak up about workplace conditions and bargain collectively to improve their lives and livelihoods, it keeps wages, benefits and job safety lower than they

would otherwise be. This race to the bottom is real,<sup>26</sup> and has led to a global weakness in demand that hampers GDP growth and exacerbates inequality. Even the IMF has recognized a link between the decline in unionization and the dramatic increase in inequality worldwide.<sup>27</sup> If the new NAFTA fails to establish a level playing field for workers, it will continue to drive wages down and breed doubt that trade and globalization can be fair.

Mexico, like other popular offshoring destinations, promises low wages, no unions (or company-dominated unions) and substandard workplaces. Unfortunately, Mexican workers can face grave consequences for attempting to exercise their basic human rights. This is because, with few exceptions, Mexican labor unions are undemocratic and aligned more with employers or local political elites than with workers. These employer-dominated unions often sign contracts without any participation or input from workers for the sole purpose of interfering with the right to form effective, worker-directed unions. The cumulative effect of these bogus unions is to lower wages and working conditions in Mexico.<sup>28</sup> Improving wages will reduce the ability of employers to use NAFTA as a tool of arbitrage that pushes wages down across North America. Higher wages in Mexico not only are good for Mexico's working families, they are a required outcome of beneficial trade policy.

In addition to the specific labor provisions recommended here, the administration must, for every new trade agreement, ensure that negotiating partners are complying with labor rights obligations in practice before concluding negotiations and sending the agreement to Congress for approval. Failure to require labor compliance beforehand provides a free pass for continued labor abuses. The administration also must address domestic enforcement practices and pursue complementary measures to reduce the flood of imports from NAFTA and non- NAFTA countries that have been made under exploitive, social dumping conditions.

“Social dumping” is similar to other forms of dumping that unfairly use below-cost pricing to undercut competitors. Companies that engage in social dumping by paying workers subpar wages, allowing unsafe working conditions or escaping compliance with environmental and climate regulations effectively pull down standards for all other workers globally, including workers in the United States. We propose that NAFTA make clear that tariffs can be imposed for goods and services made under such race to the bottom conditions.

Without high labor and human rights standards and strong enforcement tools that cannot be weakened through delay, inaction or the acceptance of “progress” as a substitute for compliance, the labor rules in NAFTA will continue to provide cover for policies that impoverish workers. If these provisions are not amended as we recommend, NAFTA will continue to provide incentives for lowering standards and relocating jobs to locations where workers are most easily abused.

---

<sup>26</sup> See the explanation in Annex I for additional detail.

<sup>27</sup> Jaumotte, Florence, and Buitron, Carolina Osorio, “Power from the People,” Finance & Development, Vol. 52, No. 1, International Monetary Fund, March 2015. Available at: [www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm](http://www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm).

<sup>28</sup> See Annex I to learn more about wage suppression.

## **11. New Provision: Strong Environmental Rules with Swift and Certain Enforcement**

**Key Recommendations:** In addition to the robust enforcement mechanisms needed for both labor and environmental standards mentioned above, NAFTA must be reformed to include strong environmental standards. NAFTA must require adoption of and compliance with key multilateral environmental agreements, including: the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Montreal Protocol on Substances that Deplete the Ozone Layer, the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, the Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the Convention on the Conservation of Antarctic Marine Living Resources, the International Convention for the Regulation of Whaling (ICRW), and the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC).

The renegotiated NAFTA also must raise standards for combatting the illegal trade of timber and wildlife, as well as for responsible fisheries management. It also must ensure that treaties protecting indigenous rights are observed.

Finally, the agreement must recognize the economic and national security challenges presented by climate change. American efforts to address the problem must be protected so that countries cannot gain an unfair advantage by failing to act. Parties shall have the right to impose border adjustment mechanisms consistent with the climate change commitments. NAFTA should promote cooperation to address North American environmental challenges so that each Party does its part.

**Why This Is Important:** Just as many companies move production in search of the lowest wages and weakest labor standards, many do so to find the weakest standards for clean air and water. This kind of environmental arbitrage poisons communities and kills U.S. jobs.

Strong environmental rules with robust and effective enforcement can end this race to the bottom and ensure that American producers who comply with international standards are not undercut by lax enforcement elsewhere. Further, by ensuring that all parties meet basic environmental standards, these improvements would protect American industries that depend on a healthy environment.

## **12. New Provision: Enforceable Currency Rules**

**Key Recommendations:** NAFTA must include enforceable currency disciplines subject to trade sanctions in the text of the agreement.<sup>29</sup> NAFTA parties also should commit to coordinating enforcement efforts with respect to the currency manipulation by non-NAFTA countries. The

---

<sup>29</sup> There are many ways to establish such enforceable provisions against currency manipulation and misalignment. During the TPP negotiations, for example, two useful proposals included a test promoted by the American Automotive Policy Council and the incorporation of the International Monetary Fund's seven factor guidelines.

goal of both provisions would be to reduce the unsustainable U.S. trade deficit by addressing issues of trade and exchange rates.

**Why This Is Important:** Economists and elected officials across the political spectrum have urged the United States to insist on enforceable measures to curb currency manipulation and misalignment. Indeed, shortly after NAFTA entered into force, Mexico engaged in a predictable devaluation that virtually eliminated the potential benefit from tariff cuts envisioned by the agreement.

American workers have paid a heavy price, as millions of American jobs already have been lost due to currency misalignment in recent decades. The Economic Policy Institute (EPI) concludes that reducing the U.S. trade deficit through currency realignment would create 2.3 million to 5.8 million jobs over the next three years.<sup>30</sup> According to Matt Blunt, president of the American Automotive Policy Council, a weak yen adds \$5,700 per car in profits for Japanese imports. Toyota's record quarterly profits in 2015 can be directly attributed to the weak yen, according to The Wall Street Journal.<sup>31</sup> The Peterson Institute for International Economics, a strong, unquestioning supporter of trade agreements, agrees that the United States can strengthen its economy and increase jobs by addressing currency misalignments and global trade imbalances.<sup>32</sup>

### 13. New Provision: Infrastructure Investment Commitment

#### Key Recommendations:

- a. NAFTA must include a new chapter in which each Party commits itself to investing a minimum of 3% of GDP annually on public infrastructure construction, repair and maintenance. The commitment must ensure that preferences for domestic procurement are allowable. Parties shall determine their respective infrastructure priorities with public input, and all public construction, repair and maintenance investments (transit, aviation, bridges, roads, ports, water, sewer, electricity, communications, schools, parks, other public facilities, etc.) shall count toward the minimum. The idea behind this provision is simple: set a reasonable target<sup>33</sup> for public infrastructure spending and require Parties to report their actual spending annually. The public reporting aspect will assist local, state and federal policy makers in evaluating their respective investments and helping their economies to grow.

---

<sup>30</sup> Scott, Robert E., "Stop Currency Manipulation and Create Millions of Jobs, With Gains across States and Congressional Districts," EPI Briefing Paper #372, Economic Policy Institute, Feb. 26, 2014. Available at: [www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/](http://www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/).

<sup>31</sup> Kunaota, Yoko, "Toyota Posts Record Profits Fueled by Weak Yen," The Wall Street Journal, Aug. 4, 2015.

<sup>32</sup> Bergsten, C. Fred, and Gagnon, Joseph E., "The New US Currency Policy," Peterson Institute for International Economics Realtime Economic Issues Watch, April 29, 2016. Available at: <https://piie.com/blogs/realtime-economic-issues-watch/new-us-currency-policy>.

<sup>33</sup> According to the Congressional Budget Office, public spending on transportation and water infrastructure alone "over the past three decades has hovered at about 2.4 percent," "Public Spending on Transportation and Water Infrastructure, 1956 to 2014," CBO, March 2015. Available at: [www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49910-Infrastructure.pdf](http://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/49910-Infrastructure.pdf).

- b. Separately, and in addition, the NAFTA implementing bill must contain one-time mandatory funding for specific trade-related projects in the United States, to enhance the benefits working families can reap from North American trade, including but not limited to:
- New and improved land border crossings and ICC border commercial zones with Mexico and Canada;
  - Ports, airports, roadways and waterways;
  - New and improved rail corridors, including high-speed rail; and
  - Broadband infrastructure, including in rural communities.

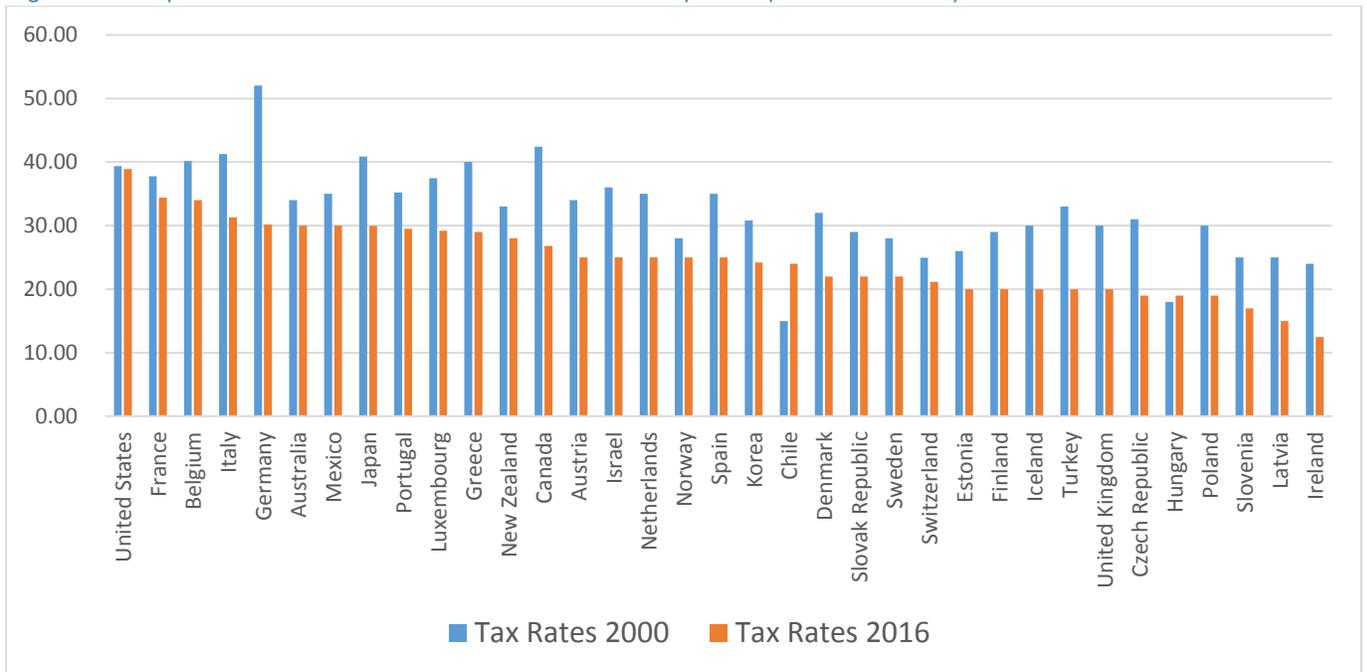
**Why This Is Important:** Investing in infrastructure drives long-term, broadly shared growth, which would benefit both the United States and its NAFTA partners. However, NAFTA sets up a set of incentives that lead to underinvestment. NAFTA stimulates a form of competition that tries to increase returns to capital at the explicit expense of wages and tax revenues, making it difficult to engage in commonsense infrastructure investment. NAFTA’s neoliberal model has fostered income inequality both within and between Parties. A reformed NAFTA can counteract these inequality and disinvestment-producing effects, and critical to that reform is the inclusion of infrastructure investment commitments in the text of NAFTA itself, as well as in its implementing bill.

Public and private disinvestment in U.S. infrastructure is a result of many factors, including competition to increase returns to capital investments by decreasing nominal labor unit costs (i.e., wages) and reducing direct taxes. Virtually all Organization for Economic Co-operation and Development countries, including all three NAFTA countries, have pursued this strategy (see Figure 1), creating a negative cycle of disinvestment. As Jeronim Capaldo explains in a 2016 paper, the neoliberal trade model favors this form of competition, accelerating a race to the bottom as investors seek “ever more elusive trade gains” in a world of already low tariffs.<sup>34</sup> This low-road strategy is particularly counterproductive because infrastructure investment is a mechanism to drive broadly shared growth.

---

<sup>34</sup> Capaldo, Jeronim et al., “Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement,” Global Development and Environment Institute Working Paper No. 16-01, January 2016, at pp. 12–13. Available at: [www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf](http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf).

Figure 1: Corporate Tax Rates in OECD Countries Compared (2000 vs. 2016)

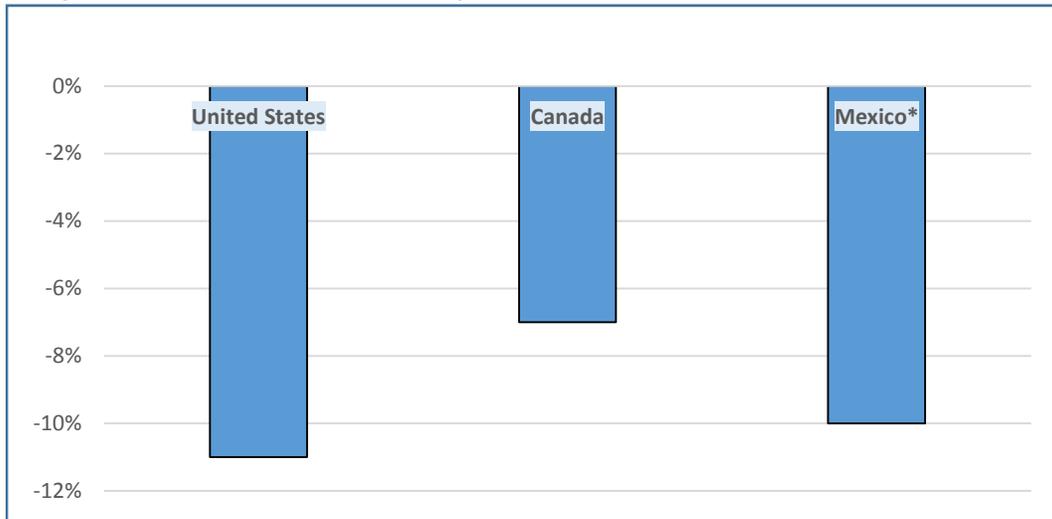


Source: AFL-CIO-created chart using data from OECD.Stat. Available at: <http://stats.oecd.org/Index.aspx?QueryId=58204> (Data extracted on March 30, 2017).

This competitive drive to increase the share of national income accruing to capital at the expense of labor (see Figure 2) reduces America’s tax base even as its tax-rate reducing impacts have hobbled public investments in America’s future. The American Society of Civil Engineers give U.S. infrastructure a D+ and calls for an investment of nearly \$5 trillion over the next 10 years.<sup>35</sup>

<sup>35</sup> “2017 Infrastructure Report Card,” American Society of Civil Engineers, March 2017. Available at: [www.infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card.pdf](http://www.infrastructurereportcard.org/wp-content/uploads/2016/10/2017-Infrastructure-Report-Card.pdf).

Figure 2: Decline in Labor Share of Income, 1970–2014



\* Data for Mexico covers 1995–2012. Source: AFL-CIO-created chart using data from “The Labour Share in G20 Economies,” *International Labour Organization and Organisation for Economic Co-operation and Development*, Feb. 25–26, 2015. Available at: [www.oecd.org/g20/topics/employment-and-social-policy/The-Labour-Share-in-G20-Economies.pdf](http://www.oecd.org/g20/topics/employment-and-social-policy/The-Labour-Share-in-G20-Economies.pdf).

Despite using a methodology that has repeatedly proved over-optimistic, the U.S. International Trade Commission projected the now-defunct Trans-Pacific Partnership would result in a mere .15% growth in GDP after 15 years.<sup>36</sup> By contrast, the International Monetary Fund projects that that an infrastructure investment of 1% of GDP will result in an increase in GDP of almost 3% a mere four years after the investment.<sup>37</sup> This outcome is **six times the over-optimistic projected outcome of the TPP and would occur more than four times as quickly.**

The United States could achieve far greater growth, far faster, by investing in its own economy than by concluding another NAFTA without infrastructure investment—but the race to the bottom model of NAFTA makes that difficult.

Investing in infrastructure is important for reasons beyond creating jobs and boosting the economy in the short term. Investments spur sustainable economic growth, enhance long-term

---

<sup>36</sup> “Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors,” U.S. International Trade Commission, May 18, 2016. Available at: [https://usitc.gov/press\\_room/news\\_release/2016/er0518ll597.htm](https://usitc.gov/press_room/news_release/2016/er0518ll597.htm).

<sup>37</sup> “Chapter 3: Is It Time for an Infrastructure Push? The Macroeconomic Effects of Public Investment,” in *World Economic Outlook*, International Monetary Fund, October 2014. Available at: [www.imf.org/external/pubs/ft/weo/2014/02/pdf/c3.pdf](http://www.imf.org/external/pubs/ft/weo/2014/02/pdf/c3.pdf). See especially p. 82 (“During periods of low growth [as the U.S. is in now] a public investment spending shock increases the level of output by about 1½ percent in the same year and by 3 percent in the medium term . . .”); and p. 83 (“[A] debt-financed public investment shock of 1 percentage point of GDP increases the level of output by about 0.9 percent in the same year and by 2.9 percent four years after the shock . . .”).

economic competitiveness and improve the quality of life for residents.<sup>38</sup> In addition, the benefits of public infrastructure investment will be shared more broadly across households at all income levels: the benefits of state-of-the-art ports, airports, roads and rail; education, training and research centers; water and wastewater treatment and storage; and upgraded national utilities, including broadband, cannot be “captured” by any one group in the economy, but benefit us all, with huge spillover effects for the economy as a whole.<sup>39</sup>

Critically, ensuring that infrastructure investments occur not just in the United States, but on a regionwide basis will ensure the benefits of economic growth are more widely shared than they have been under the current NAFTA. Under NAFTA, while corporate profits and incomes for economic elites have continued to soar, returns to wage earners have stagnated.<sup>40</sup> Workers have reduced leverage to bargain for better wages and working conditions,<sup>41</sup> and the wage gap between workers in the United States and Mexico has grown, even for workers performing similar jobs with similar skill sets and levels of education.<sup>42</sup> Substantial investments in infrastructure could mitigate wage distribution issues within countries as well as between them. Infrastructure occupations offer higher wages compared with jobs that require similar skills sets and educational requirements and frequently pay more than the national median wage.<sup>43</sup> By increasing the demand for these jobs and tightening the labor market through enhanced public investment, the new NAFTA could help repair the income inequality that the treaty originally helped accelerate.

Including infrastructure investment as a core commitment of NAFTA will help build popular support for it and help break the cycle of disinvestment in North American infrastructure.

## 14. New Provision: Agreement to Combat Tax Avoidance

**Key Recommendations:** Parties must agree to cooperate to combat tax havens and tax avoidance. Specifically, the renegotiated NAFTA must include at least the following obligations:

---

<sup>38</sup> See Bivens, Josh, “The Short- and Long-Term Impact of Infrastructure Investments on Employment and Economic Activity in the U.S. Economy,” EPI Briefing Paper No. 374, Economic Policy Institute, July 1, 2014. Available at: [www.epi.org/publication/impact-of-infrastructure-investments/](http://www.epi.org/publication/impact-of-infrastructure-investments/); and Testimony of Richard L. Trumka, President, AFL-CIO, before the Committee on Transportation and Infrastructure, U.S. House of Representatives, Feb. 1, 2017. Available at: <http://transportation.house.gov/uploadedfiles/2017-02-01-trumka.pdf>.

<sup>39</sup> *Id.*

<sup>40</sup> “NAFTA at 20,” AFL-CIO Report, March 2014. Available at: <https://aflcio.org/reports/nafta-20>.

<sup>41</sup> *Id.* at pp. 4–5.

<sup>42</sup> See “The US-Mexico Wage Gap Has Grown, Not Shrunk, under NAFTA. Awkward.,” Center for Global Development Views from the Center, March 17, 2015. Available at: [www.cgdev.org/blog/us-mexico-wage-gap-has-grown-not-shrunk-under-nafta-awkward?utm\\_source=150317](http://www.cgdev.org/blog/us-mexico-wage-gap-has-grown-not-shrunk-under-nafta-awkward?utm_source=150317).

<sup>43</sup> See Kane, Joseph, and Puentes, Robert, “Beyond Shovel Ready: The Extent and Impact of U.S. Infrastructure Jobs,” The Brookings Institution, May 2014. Available at: [www.brookings.edu/wp-content/uploads/2014/05/Beyond-Shovel-Ready.pdf](http://www.brookings.edu/wp-content/uploads/2014/05/Beyond-Shovel-Ready.pdf).

- a. *Country-by-Country Reporting*: Each Party shall require all multinational enterprises (MNEs) with prior revenues of \$850,000,000 or more to report annually and for each tax jurisdiction in which they do business the information set out in the OECD/G20 Base Erosion and Profit Shifting Action 13 Guidance.<sup>44</sup> Require that such reporting be made public, e.g., through the Department of the Treasury.
- b. *No Secret Tax Deals*: To ensure equal footing for all enterprises, each Party shall prohibit secret tax deals and shall instead create a public database to report tax abatements, tax holidays and the like.
- c. *Improve Enforcement Against Transfer Mispricing Schemes*: The Parties shall make available to customs officers of each Party a database of typical prices for HTS items. Customs officers shall use the database to refer for further investigation those shipments whose invoice prices are grossly misaligned with comparative prices as recorded in the database.

**Why This Is Important:** The rise of the neoliberal model of globalization has had a negative long-term impact on tax rates and public investment. In addition, through a variety of legal and illegal tax avoidance schemes, tax revenues have fallen for jurisdictions around the world, regardless of rates. The OECD and G-20 both have recognized and developed recommendations to address this troubling trend, which undermines the social contract and inhibits robust public investment in infrastructure and human capital. Recommendations have been organized into the “OECD/G20 Base Erosion and Profit Shifting (BEPS) Package.” Without efforts to address base erosion and tax avoidance, it is unlikely that Parties will be able to sustain their infrastructure commitments outlined in Section 13 (above) or to continue to cultivate public support for international trade.

As the OECD explains, BEPS are:

“tax planning strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations where there is little or no economic activity. Although some of the schemes used are illegal, most are not. [BEPS] undermines the fairness and integrity of tax systems because businesses that operate across borders can use BEPS to gain a competitive advantage over enterprises that operate at a domestic level. Moreover, when taxpayers see multinational corporations legally avoiding income tax, it undermines voluntary compliance by all taxpayers.”<sup>45</sup>

To build an inclusive North American economy that promotes shared prosperity, the NAFTA parties must work together to combat base erosion and profit shifting. No country can do it alone.

---

<sup>44</sup> See “Guidance on the Implementation of Country-by-Country Reporting: BEPS Action 13,” Organisation for Economic Co-operation and Development (OECD), last updated April 6, 2017. Available at: [www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm](http://www.oecd.org/tax/beps/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.htm).

<sup>45</sup> “About BEPS and the inclusive framework,” OECD website. Available at: [www.oecd.org/tax/beps/about.htm](http://www.oecd.org/tax/beps/about.htm).

Trade rules currently facilitate tax base erosion and profit shifting. Using NAFTA to combat these trends will turn a negative effect into a positive one, simultaneously helping to create a level playing field, increase revenues without raising taxes, and help build support for trade as an equity building policy instead of a rigged game to benefit global corporations.

Regarding Recommendation No. 1, the United States already has embraced country-by-country reporting for United States persons that are the ultimate parent entity of a multinational enterprise group with annual revenues for the preceding accounting period of \$850,000,000 or more.<sup>46</sup> The next step is to make such reporting public to increase accountability and oversight.

News reports of tax avoidance schemes by Apple<sup>47</sup> and Amazon<sup>48</sup> have contributed to enhanced oversight of such schemes and efforts to close loopholes in the United States, Europe and elsewhere. Incorporating such publication by rule, rather than leaving it to enterprising journalists, not only will flip the tendency of trade deals to ease tax avoidance, it will enhance public trust, good governance and oversight of the financial sector. As Justice Louis Brandeis wrote: “Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

Regarding Recommendation No. 2, tax abatements, tax holidays and other tax deals are becoming ever more common as cities, states, provinces and countries compete for jobs and investment. However, research indicates that such strategies can be wasteful, particularly when workers underpaid by firms that benefit from secret tax deals must turn to publicly funded support services.<sup>49</sup> Ensuring that such deals are transparent will enhance scrutiny and public debate regarding the ultimate costs and benefits of such deals while leveling the playing field for businesses too small to pressure governments into providing such tax schemes. As tax deals continue to be made, making them public will ensure democratic oversight and a better value proposition for the public.

Finally, regarding Recommendation No. 3, as noted by the OECD and G20, transfer pricing schemes are another important source of base erosion and profit shifting. Three of the BEPS Package proposals focus on better aligning transfer pricing outcomes with value creation. Recommendation No. 3 would provide a stronger tool to help customs officials identify and sanction the most basic of transfer pricing schemes: deliberate mispricing to avoid duties. The

---

<sup>46</sup> “Country-by-County Reporting,” Internal Revenue Bulletin: 2016-29, July 18, 2016, T.D. 9773. Available at: [www.irs.gov/irb/2016-29\\_IRB/ar05.html](http://www.irs.gov/irb/2016-29_IRB/ar05.html).

<sup>47</sup> See, e.g., Wong, Andrea, “Americans Are Paying Apple Millions to Shelter Overseas Profits,” Bloomberg Technology, Dec. 7, 2016. Available at: [www.bloomberg.com/graphics/2016-apple-profits](http://www.bloomberg.com/graphics/2016-apple-profits).

<sup>48</sup> See, e.g., Marks, Simon, “How Amazon Saved Billions in Taxes,” Newsweek.com, Sept. 2, 2016. Available at: [www.newsweek.com/behind-amazons-tax-strategy-494325](http://www.newsweek.com/behind-amazons-tax-strategy-494325).

<sup>49</sup> For example, in “Money for Something: Job Creation and Job Quality Standards in State Economic Development Subsidy Programs,” (December 2011) by Mattera, Philip et al., the authors found that programs “without any wage requirement—which together cost more than \$8 billion a year—can potentially result in jobs that pay so little that workers must rely on social safety net programs such as food stamps, Medicaid, State Children’s Health Insurance and the Earned Income Tax Credit. These hidden taxpayer costs may also occur from wage requirements that are sometimes set *below market levels...*” (emphasis added).

proposal will enhance duty collection without raising rates, thereby promoting rule of law and public confidence that all businesses, not just domestic ones, are paying their fair share.

## **15. New Provision and Change to Domestic Policy: Enhanced Screening for Foreign Domestic Investment (FDI)**

**Key Recommendations:** NAFTA should be amended to ensure the Committee on Foreign Investment in the United States (CFIUS) can consider economic security and review greenfield transactions, in addition to national security issues. In addition, the United States must update and improve CFIUS to emulate the screening mechanisms that Australia and Canada use (e.g., add a “net economic benefit test”) to ensure that foreign direct investment (FDI) does not undermine the U.S. economy or U.S. workers.

**Why This Is Important:** The existing interpretation of CFIUS prevents the United States from scrutinizing deals such as the original proposal for a China Development Bank loan to Lennar Corp., which would have required the homebuilder to use a Chinese state-owned construction company. To create jobs, raise wages and strengthen the U.S. economy, the United States must be able to screen investments based on risk to America’s economic security as well as national security. Once the United States has updated its domestic policy, trade policy must align with it, which requires an update to NAFTA and other existing agreements. Otherwise, the United States could face costly and wasteful trade challenges designed to pressure it to allow investments that will harm America’s working families.

## **16. Change to Domestic Policy: Improve Trade Enforcement**

**Key Recommendations:** Trade enforcement should promote the export of goods and services, rather than the export of jobs. Rules crafted to create a fair and level playing field will help support employment and rising wages in all three NAFTA countries; this will be a significant improvement over the current rules, which reward low-road practices, harming businesses, farms and working families across the region.

In particular, a renegotiated NAFTA must be accompanied by an effective new trade enforcement strategy to protect against trade cheating, including:

- Domestic tools to prevent and address currency manipulation and misalignment by NAFTA and non-NAFTA countries alike;
- A strategy to address overcapacity, particularly China’s overcapacity in aluminum and steel, which is harming all three North American countries;
- Strong, timely and effective enforcement of existing rules against forced technology transfer, performance requirements and forced localized production (known as offsets);
- Changes in U.S. law to assist smaller businesses with promptly identifying and addressing violations of trade laws and to provide timely self-initiation, where appropriate, by the U.S. government; and
- Timely, robust and effective enforcement of labor and environmental rules.

**Why This Is Important:** Trade rules are only as good as their enforcement. Upgrading NAFTA’s provisions without a simultaneous upgrade in the U.S. enforcement strategy will send

the wrong message to trading partners: that obligations are not worth the paper they are written on. As working people have learned over the years, obligations without swift and certain enforcement strategies—including the full range of consultations through the imposition of sanctions when necessary—simply do not work.

## 17. Change to Domestic Policy: Improve the ITC’s Economic Modeling

The United States International Trade Commission is responsible for projecting the economic outcomes of proposed U.S. trade and investment negotiations. The ITC uses a model called the computable general equilibrium. The CGE has a number of limitations. It focuses almost exclusively on tariff reduction. The ITC report typically supplements its CGE results with an explanation that benefits likely are underestimated for the trade deal in question because CGE does not account adequately for the efficiencies gained through reduced regulation or enhanced intellectual property protection. The CGE model does not adequately address such issues as mercantilist trade policies, currency manipulation, long-term wage stagnation or inefficiencies that result from trade deal-caused deregulation, privatization, market concentration or deunionization.

Not only have the ITC’s past projections been *overly* rather than *underly* optimistic,<sup>50</sup> the CGE method is particularly ill suited to NAFTA renegotiations, as tariffs for nearly all traded goods already are at zero. The AFL-CIO recommends that the ITC expand its methodology to include economic analyses that can compensate for some of the limitations of the CGE, including:

- Currency misalignment;
- Mercantilist trade behavior;
- Social welfare losses due to weakened regulations;
- Income inequality;
- Wage suppression;
- Enhanced corporate influence, which can drive government revenues down and undermine the ability of governments to invest in infrastructure and market-correcting mechanisms; and
- Variable impacts of strong versus weak enforcement approaches.

There are numerous ways the ITC can attempt to better account for these effects, including adjusting its current model as well as supplementing CGE with alternative models, including the United Nations Global Policy Model.<sup>51</sup> The ITC also may wish to consult with economists who have criticized the predictive effects of the CGE model, such as Jim Stanford (author of *Economics for Everyone*) and Robert E. Scott of the Economic Policy Institute.

---

<sup>50</sup> See, e.g., Drake, Celeste, on behalf of the AFL-CIO, Oral Testimony on “Investigation No. TPA-105-001, Trans-Pacific Partnership Agreement: Likely Impact on the U.S. Economy and on Specific Industry Sectors,” Before the U.S. International Trade Commission, Jan. 13, 2016. Available at: [www.usitc.gov/press\\_room/documents/testimony/105\\_001\\_005.pdf](http://www.usitc.gov/press_room/documents/testimony/105_001_005.pdf).

<sup>51</sup> The UN Global Policy Model was used in Jeronim Capaldo et al., “Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement,” Global Development and Environment Institute Working Paper No. 16–01, January 2016. Available at: [www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf](http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf)

## Annex I: Background on the Failure of U.S. Trade Policy

Repeatedly, over many decades, America’s workers have protested flawed trade policies, including those enshrined in the North American Free Trade Agreement (NAFTA), the World Trade Organization (WTO) and Permanent Normal Trade Relations (PNTR) for China. Yet the United States seems to be duplicating the same old mistakes about trade policy despite the fact that the bulk of the economic evidence weighs in favor of reforming of trade rules.

*Figure 3: Job Displacement Due to Existing Bad Trade Policies*

Policy	Projected U.S. Jobs Lost	Source	Relevant Dates
NAFTA	851,700	Robert E. Scott <sup>52</sup>	1993–2013
PNTR with China, with no action on currency manipulation	3,400,000	Economic Policy Institute <sup>53</sup>	2001–2015
Korea FTA	95,000	Economic Policy Institute <sup>54</sup>	2011–2015
Trade deficit with Japan with no action on currency manipulation	896,600	Economic Policy Institute <sup>55</sup>	2013

Under past trade agreements and policies, U.S. communities lost hundreds of thousands of jobs as companies shed their U.S. workforces to shift jobs and production to places where workers’ fundamental human rights are routinely violated (despite promises made in FTA labor chapters) and wages consequently are suppressed unfairly. While there have been improvements in trade-linked labor and environmental provisions over the past 20 years, these provisions have not been effectively enforced and have come nowhere near to creating a level playing field.

---

<sup>52</sup> Scott, Robert E., “The effects of NAFTA on US trade, jobs, and investment, 1993–2013,” *Review of Keynesian Economics*, Vol. 2 No. 4, Winter 2014, pp. 429–441. Available at: [www.elgaronline.com/view/journals/roke/2-4/roke.2014.04.02.xml](http://www.elgaronline.com/view/journals/roke/2-4/roke.2014.04.02.xml).

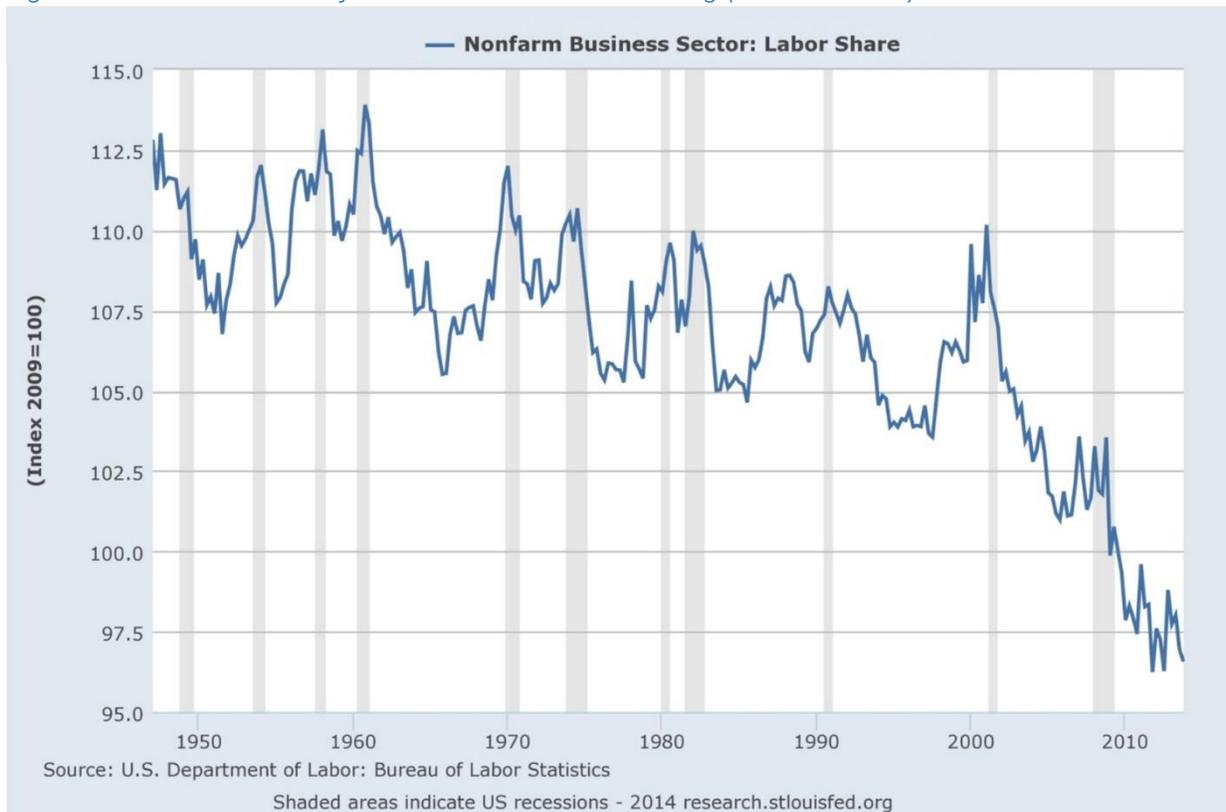
<sup>53</sup> Scott, Robert E., “Growth in U.S.–China trade deficit between 2001 and 2015 cost 3.4 million jobs: Here’s how to rebalance trade and rebuild American manufacturing,” *Economic Policy Institute Report*, Jan. 31, 2017. Available at: [www.epi.org/files/pdf/114752.pdf](http://www.epi.org/files/pdf/114752.pdf).

<sup>54</sup> Scott, Robert E., “U.S.-Korea trade deal resulted in growing trade deficits and more than 95,000 lost U.S. jobs,” *Economic Policy Institute Working Economics Blog*, May 5, 2016. Available at: [www.epi.org/blog/u-s-korea-trade-deal-resulted-in-growing-trade-deficits-and-more-than-95000-lost-u-s-jobs/](http://www.epi.org/blog/u-s-korea-trade-deal-resulted-in-growing-trade-deficits-and-more-than-95000-lost-u-s-jobs/).

<sup>55</sup> Scott, Robert E., “Currency Manipulation and the 896,600 U.S. Jobs Lost Due to the U.S.-Japan Trade Deficit,” *Economic Policy Institute Briefing Paper No. 387*, Feb. 4, 2015. Available at: [www.epi.org/files/2014/JapanCurrencyManipulation.pdf](http://www.epi.org/files/2014/JapanCurrencyManipulation.pdf).

Furthermore, to make any new trade and economic deal successful, the administration and Congress must enact and implement, in conjunction with the deal itself, a broad set of domestic industrial and economic policies to rebuild, repair and modernize U.S. infrastructure; support research, development and advanced manufacturing; and prepare the workforce for the jobs of the future. Absent these investments, globalization and trade deals will continue to leave workers behind.

Figure 4: Workers' Share of National Income is Shrinking (United States)



Source: Created with the FRED Economic Data Tool of the St. Louis Federal Reserve Bank. Available at: <https://fred.stlouisfed.org/>.

Bad trade deals, beginning with NAFTA, have contributed significantly to wage stagnation in a number of ways. First, and most obviously, these deals have expanded the U.S. trade deficit (see Figure 5). While some imports represent important intermediate parts, they also represent lost opportunities for jobs and production in the U.S. The current \$500 billion dollar U.S. trade deficit<sup>56</sup> hampers both economic growth and job creation.<sup>57</sup>

<sup>56</sup> According to the U.S. Census Bureau, the current U.S. trade deficit with the world in 2016, on a balance of payments basis, is \$500,560,000,000, a slight uptick from 2015. The deficit in goods is a whopping \$749,926,000,000. See <https://www.census.gov/foreign-trade/statistics/historical/gands.pdf>.

<sup>57</sup> Although China represents more than half the current U.S. trade deficit, it is important to recognize that all trade policy decisions, from NAFTA renegotiation to enforcement priorities, have a role to play.

Figure 5: U.S. Trade Balance with FTA Partner Countries, 2016 (Deficits in Yellow)

Country	2016
	In \$1,000
Australia	12,690,147
Bahrain	133,764
Canada	-12,106,120
Chile	4,141,477
Colombia	-696,322
Costa Rica	1,564,753
Dominican Rep	3,101,760
El Salvador	465,628
Guatemala	1,951,406
Honduras	227,297
Israel	-9,009,351
Jordan	-62,372
Korea	-27,666,003
Mexico	-63,191,939
Morocco	844,199
Nicaragua	-1,828,962
Oman	675,176
Panama	5,736,338
Peru	1,780,200
Singapore	9,067,884
<b>Total</b>	<b>-72,181,042</b>

Source: Created with the U.S. International Trade Commission's Dataweb tool. Available at: [Dataweb.usitc.gov](http://Dataweb.usitc.gov) (Accessed May 8, 2017).

Further, by providing incentives that make offshoring decisions more attractive (including ISDS, guaranteed market access, excessive intellectual property protections and a low-standards regulatory framework), these deals provide added leverage for employers to actively hold down wages and standards by “predicting” workplace closures and offshoring of jobs if workers form a union or refuse to give back hard-won wages and protections during negotiations.<sup>58</sup>

When trade deals cause “job churn,” as all economists recognize that they do, affected workers do not immediately find jobs with the same or better wages as traditional economic models

---

<sup>58</sup> Bronfenbrenner, Kate, “We’ll Close! Kate Bronfenbrenner’s article on threats of plant closings after NAFTA,” *Multinational Monitor*, 18(3), 8–14, 1997. Available at: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1018&context=cbpubs>.

assume. Instead, many former manufacturing workers find new jobs in lesser-paid service and retail sectors. As Jeff Faux noted, “[t]he vast majority of workers who lost jobs from NAFTA suffered a permanent loss of income.”<sup>59</sup> This trend affects not just the workers in higher-paid countries such as the United States, but also workers in lower-paid countries. For example, since NAFTA, wages in Mexico have lost purchasing power, and the U.S.-Mexico wage gap actually has increased.<sup>60</sup>

It is important to recognize that trade deals can cause so much churn and economic upheaval that they contribute to migration flows and, in the worst scenarios, produce economic refugees. When NAFTA and other inadequate trade policies fail to address worker exploitation in trading partner countries, they can add to wage stagnation in the United States. They allow bad-actor employers to drive down the wages and working conditions of all workers by exploiting and abusing undocumented migrants. This drives wages down, just as water will equalize between connected full and empty pools. Even highly skilled, less-trade-exposed workers can be affected.

Finally, by putting trading bloc countries into competition for investment without ensuring—before a trade deal is signed—that those countries not only have high standards on paper but an effective enforcement regime, and that brakes are in place to avoid a “race to the bottom” in taxes and regulations, these trade deals act as an anchor, dragging down taxes, wages and standards toward their lowest level within the trading bloc. Because of the competitive incentives imposed by NAFTA and similar trade policies, income distributions become more unequal as capital captures an ever-larger share and workers an ever-smaller share.<sup>61</sup>

Added together, these trends suppress wages and reduce demand for goods and services, both of which are important to economic growth. Those who advocate trade policies that drive wages ever lower in the relentless pursuit of quarterly profits and “competitiveness” ignore the fact that workers also are consumers. Consumers drive the demand necessary to support the global economy. This one-sided vision of competitiveness leaves jobs and development opportunities on the table and limits the potential for U.S. exports.

---

<sup>59</sup> See “NAFTA’s Impact on U.S. Workers,” EPI Working Economics Blog, Dec. 9, 2013. *Available at:* [www.epi.org/blog/naftas-impact-workers/](http://www.epi.org/blog/naftas-impact-workers/).

<sup>60</sup> See “The US-Mexico Wage Gap Has Grown, Not Shrunk, under NAFTA. Awkward.,” Center for Global Development Views from the Center, March 17, 2015. *Available at:* [www.cgdev.org/blog/us-mexico-wage-gap-has-grown-not-shrunk-under-nafta-awkward?utm\\_source=150317](http://www.cgdev.org/blog/us-mexico-wage-gap-has-grown-not-shrunk-under-nafta-awkward?utm_source=150317); Weisbrot, Mark, et al., “Did NAFTA Help Mexico? An Assessment After 20 Years,” Center for Economic and Policy Research, February 2014. *Available at:* <http://cepr.net/documents/nafta-20-years-2014-02.pdf>.

<sup>61</sup> See Jeronim Capaldo et al., “Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement,” Global Development and Environment Institute Working Paper No. 16–01, January 2016, at pp. 12–13. *Available at:* [www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf](http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietaTPP.pdf).

## Annex II: Proposal for NAFTA Labor Chapter (New Chapter 23)

### A. Scope and Definitions

- 1. Basic Labor Rights to Ensure Level Playing Field:** Parties are obliged to ensure, in law and in practice, all workers in their territory, regardless of the workers' citizenship, immigration status or national origin, the rights and freedoms guaranteed in the eight ILO Core Conventions (C87, C98, C29, C105, C138, C182, C100 and C111). In cases in which there is a dispute regarding the level of protection required, the Secretariat and any dispute settlement panels shall refer to ILO conventions, reports, and recommendations for guidance.
- 2. Acceptable Conditions of Work to Ensure Level Playing Field:** Parties are obliged to ensure acceptable conditions of work, in law and in practice, covering all workers in their territory, regardless of the workers' citizenship, immigration status or national origin. The term "acceptable conditions of work" includes all measures pertaining to wages and benefits owed whether by law or by contract, including payments made on behalf of workers to public and private retirement and health arrangements; hours of work; worker representation; termination of employment; gender-based violence; and occupational health and safety, including the right to compensation for workplace injuries and illnesses.
- 3. Floor Wages to Ensure Level Playing Field:** Parties agree that all workers—regardless of sector—have the right to receive wages sufficient for them to afford, in the region of the signatory country where the worker resides, a decent standard of living for the worker and her or his family. Elements of a decent standard of living include food, water, housing, education, health care, transportation, clothing and other essential needs, including the ability to save for retirement and emergencies. Parties agree that it is a violation of NAFTA to export products whose production in one of the signatory countries, at any point in the supply chain, involved the payment, to any worker involved in the production process, of remuneration for a standard workweek that was insufficient to meet this standard. Enforcement of this provision shall be subject to the procedures outlined in Sections C and D.
- 4. All Workers Covered:** Given the impact of systemic abuse of worker rights on the ability of all workers in an economy to make fair wages, the work of all workers in the economy shall be deemed trade-related and therefore subject to the obligations of this chapter. Lesser coverage would create loopholes that would drive down wages and working conditions in other sectors and in trading partner countries.
- 5. No Derogation:** Parties agree not to reduce labor standards, provide formal or informal exceptions to any employer, whether or not to induce a particular investment, or fail to enforce such standards as to any obligation covered by this chapter. Any tolerance of lesser application or enforcement will create loopholes that will drive down wages and working conditions for all workers.

- 6. Threats and Violence Against Workers are Unacceptable:** A threat, act of intimidation or an act of violence against a worker or workers exercising, or attempting to exercise, any of the rights and freedoms protected by this agreement shall be considered a violation of the underlying right or freedom being exercised or attempting to be exercised. Failure to investigate any such threat, act of intimidation or act of violence or failure to prosecute identified perpetrators of any such threat or act shall be considered a failure to enforce the underlying right or freedom and therefore a violation of this chapter.
- 7. No Forced or Child Labor:** All trade in goods made, in whole or in part, by forced labor or the worst forms of child labor (as outlined in ILO Convention 182) is banned outright, regardless of the source of such goods. Parties also agree that no Party shall procure goods, regardless of the source of such goods, made with forced labor or the worst forms of child labor. Customs procedures shall be improved to better trace goods' production lines to better identify products made with forced labor and the worst forms of child labor. Such goods shall be seized at the border.
- 8. Access to Justice:** Parties shall ensure that all persons have appropriate and timely access to tribunals for the enforcement of the Party's own labor laws. Parties shall ensure that cases are resolved without undue delay.
- 9. Adequate Inspections:** Parties shall ensure that their domestic laws and regulations provide for adequate and timely access to labor inspectors from any level of government, that denial of lawful access carries meaningful punishment, and that efficient processes are in place to allow unions to seek timely inspections to follow up on alleged violations of this Chapter. In cases in which there is a dispute regarding the level of protection required, the Secretariat and any dispute settlement panels shall refer to ILO Labor Inspection Conventions for guidance.
- 10. Non-Derogation by Misclassification:** Parties shall ensure that no person wishing to be protected by this section shall be excluded from such protections by virtue of being classified as a temporary worker, fixed-contract worker, subcontracted worker, "independent contractor" or the like. Persons in positions of management as defined in national law, and consistent with ILO guidance, may be excluded from such rights. Parties shall establish legal mechanisms, such as joint and several liability for labor and employment law violations, to help effectuate this obligation.
- 11. Non-Derogation by Employer-Dominated Unions or Unions Controlled by the Parties:** To guard against employer-dominated unions or unions controlled by the Parties, unions must be responsible to their members. All Parties must have laws in place requiring that unions provide members with timely access to union bylaws and collective bargaining agreements.
- 12. Place of Posting:** Parties shall ensure workers are entitled to all rights and benefits of their primary work location (including but not limited to minimum wages and other

applicable wage, hour and benefit requirements), regardless of their citizenship, immigration status or national origin, and that adequate effort be made to ensure that workers are provided with access to information in their primary language and in printed format, if requested.

## **B. Recruiting Foreign Labor**

1. All migrant workers (regardless of immigration status) are to be afforded the same rights and remedies available to nationals.
2. Prior to hiring, each employer and foreign labor contractor/recruiter who engages in foreign labor contracting shall ascertain and disclose to each recruited worker in writing, and in a language the worker understands, definite information on:
  - a. His/her rights under law (including the right not to be charged fees per subsection 3. below) and means of redress for violations;
  - b. Terms of employment, including worksite, compensation, job description, period of employment and employee benefits (e.g., housing, transportation);
  - c. Terms of any work visa, including duration, family provisions, renewal procedures and overseeing government agencies;
  - d. Existence of any union in the relevant sector (and contact details if applicable);
  - e. The nature of any training related to the condition of employment; and
  - f. Other relevant information.
3. Parties shall ensure foreign labor contractors/recruiters are prohibited from charging fees to workers. Employers shall pay the transportation and subsistence costs during the period of travel and recruitment, and any fees charged by the contractor/recruiter. Workers who report being charged fees at any point in the recruitment and employment process shall have recourse to prompt recoupment of fees from employers, while maintaining their visa eligibility.
4. Parties shall ensure that under no circumstance may an employer or labor contractor/recruiter take possession of a worker's passport, visa or other travel documents.
5. Parties shall establish and maintain a functioning public registry system, available in real time, of job offers in relation to employers offering jobs and their relationships to all labor contractors/recruiters who are recruiting workers, so as to prevent fraud and other violations and afford workers a channel to search for available jobs and verify the legitimacy of job offers and terms of employment.
6. Lowering standards or failing to enforce any laws, regulations, or policies covered by this Section shall be a violation of this agreement.
7. Limiting access to legal services, due process or justice systems on the basis of immigration status shall be a violation of this agreement.

8. Retaliation against workers who exercise their rights under this Section shall be a violation of this agreement.
9. Parties are responsible for ensuring their laws reflect these standards for labor contractors/recruiters and that laws include penalties sufficient to deter violations. In addition, Parties must establish or maintain a process to bar employers and contractors/recruiters from accessing work visas if they violate the terms of this Section, including, but not limited to, the use of visas to drive down wages and working conditions.
10. Chapter 16 Reform: The TN and TD visas shall be phased out. Those currently working abroad on a TN visa shall be given an option to establish permanent residence or return to their country of origin after a period of not less than three years. The decision to remain or return should be made by each individual TN worker, and not his or her employer. This agreement shall not create any new visa categories or guarantee levels of access to any country's labor market for any specific type of migrant worker. Each nation's relevant ministries must determine annual visa allotments based upon actual labor market conditions.

### **C. Establishment of an Independent Labor Secretariat**

1. There shall be established a NAFTA Labor Secretariat to address transnational labor issues, to monitor and enforce this chapter, and to provide research on:
  - a. Best practices for any area covered by this agreement that affects the lives and livelihoods of working people.
  - b. The contribution of NAFTA toward the creation of stable, secure, family-supporting jobs.
  - c. Wage, job, union, community and public well-being effects of NAFTA. The Secretariat shall report at least biennially, or more frequently if requested by the Working Group, on such issues as positive and negative impacts of NAFTA on labor markets, including the transfer of production between nations and the effects on displaced workers; wage effects of NAFTA, particularly in sectors and industries impacted by significant transfers of production; and community effects of NAFTA, including impacts on local tax revenues, municipal services, and community enrichment or impoverishment. The Secretariat shall indicate when negative effects are sufficient to warrant policy intervention by the Parties and shall recommend solutions.
  - d. The Secretariat will be responsible for providing regular, independent and public reports on compliance with this chapter of NAFTA.
  - e. In addition to reports referenced in subsection (d), the Secretariat shall research and report on noncompliance alleged by any interested party in submissions made to the Secretariat. The Secretariat shall create an effective mechanism to receive such submissions, which shall be language appropriate. The Secretariat shall establish technical assistance protocols to ensure members of the public of whatever means and background are able to present submissions.

- f. Reports in response to submissions made under subsection (e) shall be completed within 180 days. The Secretariat may grant itself extensions on reports if necessary. Each extension may consist of a maximum of 30 days and must be published, together with the reasons therefor.
  - g. The Secretariat shall immediately refer submissions alleging violations of Section A.3. to the Expert Wages Panel described in Section D.9.
- 2. When, pursuant to subsections (1) (c), (d) or (e) above, the Secretariat finds good cause to believe that a Party, employer or recruiter is not in compliance with the chapter, it shall create recommendations for improvement and shall provide technical assistance, where necessary or appropriate, to effectuate the recommendations and bring the Party, employer or recruiter into compliance. Such recommendations and technical assistance will be publicly available, and stakeholders must have a reasonable opportunity for consultation and advice in their development.
- 3. When, pursuant to subsection 1(g) above, the Secretariat receives report from the Expert Wages Panel affirming the payment of less than decent wages at any point in the supply chain for a good exported from a NAFTA Party, the Secretariat shall work with the relevant government official(s) and the employer(s) in question to raise wages to meet the standard set out in A.3. If such standard is not achieved within one year of the initial finding, the Parties shall cause to be affixed to affected goods (exports from the NAFTA Party where final assembly is performed, which are made in whole or in part in violation of Section A.3.) a label specifying, as applicable, in English, Spanish and French:
  - a. “This good was made in [NAFTA Party] in a facility in which workers receive less than a decent wage.” or
  - b. “This good was made with components made in [NAFTA Party] in a facility in which workers receive less than a decent wage.”

Employers who come into compliance with Section A.3. may petition for a re-evaluation of the wages paid in such facility. If the Expert Wages Panel finds that wages are being paid in compliance with Section A.3., the Secretariat shall notify the Parties that the labels no longer are required. Should the facility(ies) in question remain out of compliance at the end of the second year after the initial finding, the Secretariat shall recommend to the NAFTA Parties importing such goods that they levy a duty equal to the difference between the wages received by the affected workers in the relevant facility(ies) and the wages they would receive if the facility(ies) complied with the Floor Wage obligation in Section A.3., plus a 20% penalty. The collecting Parties shall cause the funds so collected to be distributed to the affected workers who are receiving less than the wages specified in Section A.3. The duties shall continue as described in this section until such time as the Expert Wages Panel confirms pursuant to the procedures specified in Section D.9.(b) that decent wages are being paid in the facility(ies) in question.

- 4. In order to perform its work monitoring, investigating and providing technical assistance for any item described in subsection (1), Secretariat staff shall be free to visit and monitor workplaces within the Parties, to interview workers free from employer or government

monitoring and interference, and to visit, observe and assist relevant government offices tasked with securing the rights and freedoms protected under this chapter in a timely manner. Secretariat personnel shall be empowered to recommend to employers and labor officials on-the-spot changes to workplace conditions to bring employers into compliance with the provisions of this chapter, and to otherwise help effectuate the rights of workers and responsibilities of Parties under this chapter.

5. When the Secretariat determines that meaningful progress toward effective implementation of its recommendations has ceased, and if the Party remains out of compliance with this chapter, the Secretariat shall begin dispute settlement procedures subject to Chapter 20 of this agreement. For greater transparency, the Secretariat shall report publicly at least annually on the progress of each open case, including the reasons that case does not yet qualify for closure and, if applicable, the reason why it has not yet been referred for dispute settlement.
6. Cases referred for dispute settlement shall proceed under the terms of that chapter, with no differences, including with respect to penalties, except that the arbitrators shall have expertise in international labor law, or human rights law, or both. The arbitrators shall base their decisions on ILO guidance, including Conventions, reports and recommendations, and may seek technical assistance or request expert reports from the ILO Committee of Experts at any time. The work of a dispute settlement panel may be delayed for a reasonable period, not to exceed 75 days, while it seeks such expertise from the ILO. Should the ILO decline to provide such advice, dispute settlement processes shall resume immediately.
7. As with any other matter that proceeds to dispute settlement pursuant to the Dispute Settlement Chapter, a panel may authorize sanctions in the form of suspension of benefits. In such a case, the panel is directed to authorize such benefits to be suspended as to the specific workplaces identified as problematic in the case; and if that is not practicable, then by specific employers where lack of compliance is documented; and if that is not practicable, then in specific industries in which the lack of compliance subject to the dispute is concentrated; and if that is not practicable, then in specific sectors in which the lack of compliance subject to the dispute is concentrated. The workplaces, industries and sectors thereby will be motivated to come into compliance. The amount of the suspension authorized shall be dissuasive enough to encourage resolution at the initial stages of the dispute and shall bear a relationship to the number of workers affected, the severity of the noncompliance, the length of the noncompliance, and the potential for such noncompliance to induce a race to the bottom by motivating other employers to reduce wages, benefits, safety conditions or other workplace standards. Further, dispute settlement panels are authorized to escalate the level and the breadth of the suspension, or both, if, year on year, the Party has not come into compliance.
8. So long as the Secretariat continues to find good cause to believe that a Party remains out of compliance with the terms of this Chapter, it shall proceed through the steps described in this Section C. to achieve compliance.

9. Should the Secretariat bring a case that results in a dispute settlement panel authorizing a suspension of benefits against one Party, the other two Parties shall suspend benefits as described Section C.7.
10. If a Party chooses not to suspend benefits as authorized in Section C.9. or to impose duties as authorized in Section C.3., above, that Party shall publish in writing the reasons therefor. Where Parties decline to suspend benefits or impose duties, the Secretariat may define other remedies. Further, when any Party declines to suspend benefits, interested parties, including workers and unions, may pursue remedies in the domestic courts of any Party, each of which shall have jurisdiction to decide the case and order damages at law.
11. Experts in labor and human rights law, including former officers and staff of the International Labor Organization, shall staff the Secretariat. In no case shall more than 40% of the staff consist of any of the following groups: U.S. nationals, Mexican nationals or Canadian nationals. Staff shall be considered employees of the Secretariat, and shall not be considered employees or officials of any Party. Staff may not simultaneously be an employee, or an elected or appointed officeholder of any Party government, or political subdivision thereof, during the term of Secretariat employment.
12. The Secretariat shall establish and maintain an office of the public advocate to assist interested parties with submissions, promote robust stakeholder participation, ensure affected workers may participate in dispute settlement proceedings, and the like. It shall be the mandate of the public advocate to ensure income and language do not pose barriers to workers and unions seeking to ensure NAFTA Parties comply with obligations.
13. No Party shall have veto power over Secretariat activities, nor shall a Party control, prevent or delay Secretariat activities or the publication of Secretariat reports or recommendations.
14. The Secretariat shall be funded by the Parties on a pro-rata basis, with each Party contributing to the budget consistent with the size of its GDP compared with the size of the GDP of the entire NAFTA.
15. The Secretariat shall have at least one office in each Party, which must be accessible to the public. Staff may rotate between the offices in a manner to be determined by the executive director.
16. The executive director of the Secretariat shall be approved by a majority vote of the Working Group, and must receive affirmative votes from members from each NAFTA Party as well as from each sector (labor, employers, civil society, academics and government).
17. The executive director shall serve an initial term of three years. To promote balance, no executive director may serve more than five consecutive years, and no series of executive directors who are nationals of the same Party may serve consecutive terms totaling more than five years.

18. Interested parties, including workers and unions, are authorized to use the domestic courts of any Party to compel action from the Secretariat if either of the following occur:
  - a. 18 months after an initial submission pursuant to Section 1(e) above, the Secretariat still has not published an initial report; or
  - b. 30 months after the publication of a report pursuant to 1(f) above, the conditions complained of have not materially improved and the Secretariat has not initiated Dispute Settlement.
  
19. Interested parties, including workers and unions, are authorized to use the domestic courts of any Party to seek damages at law or to compel action from the Secretariat or the Parties if either of the following occur:
  - a. 13 months after an initial finding by the Expert Wages Panel that less than decent wages are being paid in a relevant facility(ies), the situation has not been remedied and notification labels are not being affixed to covered exports pursuant to Section C.3. above; or
  - b. 25 months after an initial finding by the Expert Wages Panel that a product or products are being exported in violation of Section A.3., the Expert Wages Panel has not found the relevant facility(ies) in compliance and either or both importing Parties are not levying duties as authorized in Section C.3.

#### **D. Creation of the NAFTA Wages and Standards Working Group**

1. The Parties shall establish a Wages and Standards Working Group that may consider issues upon its own accord or in response to reports produced by the Secretariat. The Working Group shall include representatives of trade unions, employers' organizations, civil society groups, academia, and government from each Party. The Working Group shall be chaired by an independent eminent person with labor expertise, without voting power, for an initial term of three years. The chairperson shall not hold any elected or appointed office in the government of any Party.
2. The Working Group shall meet at least once a year. Decisions of the working group must include a majority of each sector represented. When the Working Group fails to reach consensus, its published recommendations must include the diversity of opinions of Working Group members. The Working Group shall develop its own rules of procedure, taking into account existing practice of social dialogue.
3. The Working Group shall study, review and consider the impact of the NAFTA on wages, benefits, labor rights, working conditions, inequality, disparities and the creation of stable, secure, family-wage work in order to prevent a race to the bottom, and instead create a cycle of continuous improvement.
4. The Working Group shall be tasked with investigating and reporting on policies that support or promote a degradation in equity, standards of living or quality of life matters, including tax policies and infrastructure investment, in any Party or locale within NAFTA.

5. The Working Group shall consider in its deliberations and recommendations the annual public infrastructure spending reports produced by the Parties (as recommended in Chapter 13 of this document).
6. If the Working Group determines there is evidence that as a result of, or potentially as a result of, NAFTA:
  - a. Wages, benefits, labor rights, working conditions, social protections, or the creation of stable, secure, family-wage work are stagnating or falling anywhere in the NAFTA countries;
  - b. Gender, racial, ethnic or other socioeconomic disparities are growing;
  - c. Income or wealth inequality is increasing;
  - d. Disadvantaged populations are not sharing in economic growth; or
  - e. Parties (or political subdivisions thereof) are engaging in harmful race-to-the-bottom policies,

the Working Group shall have the authority to do any or all of the following:

- f. Recommend changes to NAFTA labor provisions or to national laws, or both;
- g. Recommend actions to the Secretariat;
- h. Recommend that the NAFTA Free Trade Commission meet; and
- i. Develop recommendations for renegotiation of NAFTA.

Any such recommendations shall be public.

7. The Working Group may request information or reports from the Secretariat at any time. The Secretariat shall respond promptly to information and report requests.
8. The Working Group shall monitor the work of the Secretariat. On the basis of sufficient evidence, the Working Group shall have the power to launch an official complaint to the Executive Director of the Secretariat for the Secretariat's shortcomings and failures to deliver on its mandate. Upon receipt of such a complaint, the Secretariat must reply within 30 days in writing, with measures to be taken to correct the shortcoming or to explain the reasons for rejecting the complaint.
9. The Working Group shall be advised by an Expert Wages Panel. The panel shall be composed of seven people who possess appropriate academic credentials and a record of research and publication demonstrating substantial expertise in relevant fields, including, but not limited to, wage and welfare economics, labor markets, wages and benefits, public health and calculations of costs of living, and who have not been employed by or received significant compensation from a for-profit corporation or labor union at any time in the past five years.
  - a. The Panel shall publish biennially, or more regularly if directed by the Working Group, advice for amending national wage laws and rates in order to improve standards of living in the NAFTA region. The Working Group shall consider and include this advice in any recommendations made pursuant to Section 4. (above).

- b. The Panel shall be tasked with analyzing submissions referred from the Secretariat that allege that goods have been traded between NAFTA parties that fail to meet the commitment in Section A.3. For each referral received, the Panel shall perform a cost-of-living analysis and pay practices investigation specific to the exported goods in question and issue a report to the Secretariat within 90 days. The report shall state the panel's conclusion, in the affirmative or negative, as to whether pay practices by relevant employers yielded remuneration, at the time of the alleged violations, insufficient to meet the standard referenced in Section A.3., and also providing the data and analysis supporting the panel's conclusion and indicating the extent, as well as the fact, of any violation. The panel's reports must be endorsed by at least five of its seven members.

## **E. Collective Bargaining**

The existence of international labor standards does little to enhance cross-border labor relations, as these standards are framed for employment relations within one jurisdiction. Thus, we need a framework that could give employers and workers the ability to address labor relations matters across borders. The NAFTA must specifically allow workers in unions employed by a common employer in two or more NAFTA countries to jointly organize unions and negotiate binding collective agreements. As part of the NAFTA, employers with more than 500 total employees, with at least 50 employees in two or more NAFTA Parties, shall recognize and bargain with, if established, a supranational labor organization. Such organizations must have the opportunity to negotiate a binding enterprisewide agreement, which individual workplace agreements could build upon, with greater specificity at the workplace level. Supranational labor organizations also will have the authority to engage in other concerted activities for the purpose of collective bargaining. In no case may such agreements authorize wages below the floor wage level for the region in which a workplace is located. Enforcement of such agreements would be subject to the national and subnational laws of the applicable jurisdiction. Failure to provide for this supranational bargaining shall be a violation of this chapter. Further, investors of a Party seeking to assert rights under the investment provisions of NAFTA may be denied such rights unless and until recalcitrant Parties come into compliance with the supranational collective bargaining provision E.