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AFL-CIO
AMERICA'S UNIONS

BEFORE THE HOUSE SUBCOMMITTEE ON TERRORISM, NONPROLIFERATION, AND TRADE OF THE COMMITTEE ON FOREIGN AFFAIRS

HEARING ON

"THE FUTURE OF THE NORTH AMERICAN FREE TRADE AGREEMENT"

TESTIMONY OF

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Introduction

On behalf of its 55 affiliates representing more than 12 and a half million working families, the AFL-CIO appreciates the opportunity to testify on the future of the North American Free Trade Agreement (NAFTA). The AFL-CIO represents working people in every sector of the economy, from energy and healthcare to manufacturing and retail. We provide a voice to working families, advocating for policies that will help create high quality jobs and ensure working people have the freedom to join together to negotiate for better wages and working conditions.

The AFL-CIO appreciates the Foreign Affairs Committee's interest in NAFTA renegotiation. Repeatedly, over many decades, America's workers have made recommendations for improving trade policies—only to find the bulk of our recommendations ignored. Our criticism is not against trade per se: it is about the rules governing trade. We look forward to working with Congress to advance a new set of trade rules that promote good jobs, high wages, and sustainable and responsible economic growth that protects our environment and respects human dignity.

Background: Why We Need a New NAFTA

Under NAFTA, U.S. firms and workers lost more than 850,000 jobs.[1] A much more widespread impact, though less frequently discussed, is the wage suppression that affects about two-thirds of America's workers—those who lack a college degree. As the Economic Policy Institute's Jeff Faux explains:

> "[t]he inevitable result [of NAFTA's rules] was to undercut workers' living standards all across North America. Wages and benefits have fallen behind worker productivity *in all three countries*. Moreover, despite declining wages in the United States, the gap between the typical American and typical Mexican worker in manufacturing remains the same. Even *after* adjusting for differences in living costs, Mexican workers continue to make about 30% of the wages of workers in the United States. Thus, NAFTA is both symbol and substance of the global 'race to the bottom.'"[2]

As explained at length in the AFL-CIO publication "NAFTA at 20," NAFTA and subsequent U.S. trade deals facilitate higher volumes of trade, but contain no measures to ensure that increased trade flows will be reciprocal or that any gains will be widely shared. Many of the provisions—including investor-to-state dispute settlement and limitations on banking regulations and food safety rules—actively hinder policies that would foster equitable development. While there have been modifications to NAFTA's language in subsequent agreements, the fundamental architecture that promotes broad investor rights while restricting worker freedoms and regulatory autonomy remains in place. On the whole, NAFTA-style agreements have proved to be a vehicle to

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[1] 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.

[2] *See* Faux, Jeff, "NAFTA's Impact on U.S. Workers," EPI Working Economics Blog, Dec. 9, 2013. *Available at:* www.epi.org/blog/naftas-impact-workers/ (emphasis added).

increase corporate profits at the expense of workers, consumers, farmers, communities, the environment and even democracy itself.[3]

While one need look no further than the staunch defense of the current NAFTA by the U.S. Chamber of Commerce and the U.S. Council for International Business to know that the current version of NAFTA has benefited some sectors of the economy, one can also easily find devastation, particularly in Mexico's agricultural sector[4] and America's manufacturing heartland.[5] The paltry Trade Adjustment Assistance[6] program provides no help to working people whose wages, healthcare and retirement benefits have been pushed down by NAFTA's relentless race to the bottom, nor does it help devastated communities rebuild their tax base, build new infrastructure, or provide needed services to the un- and underemployed and those who find themselves in precarious "jobs" with uncertain incomes in the new digital economy.

Trade policy should never be a question of "free trade" versus "protectionism." The AFL-CIO's recommended frame for NAFTA renegotiation is "How should the U.S. structure international trade rules so that they promote good, family-wage jobs, sustainable growth, dynamic economies, smart natural resource conservation, and the realization of human rights and dignity globally?" We believe that using this frame will lead to better trade policy choices and better outcomes for working families.

As Josh Bivens explains in his 2017 piece *Adding Insult to Injury*, this complex frame is what has been missing from U.S. trade policy, which seems to have been based on a misunderstanding of who benefits from trade. An extended excerpt is warranted:

> "When people say that economics teaches that expanded trade is a 'win-win' proposition, this means only that trade is 'win-win' for total national income in each partner country. But textbook economics does *not* predict that expanded trade will be a win-win for all groups within those countries. . . .
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> "Because it can be shown that the sum of capital's gains exceeds labor's losses, globalization remains "win-win" at the country level. *Within* the U.S., however, there is nothing "win-win" about it; labor loses not just in *relative* terms, but can suffer *absolute* income losses as well.
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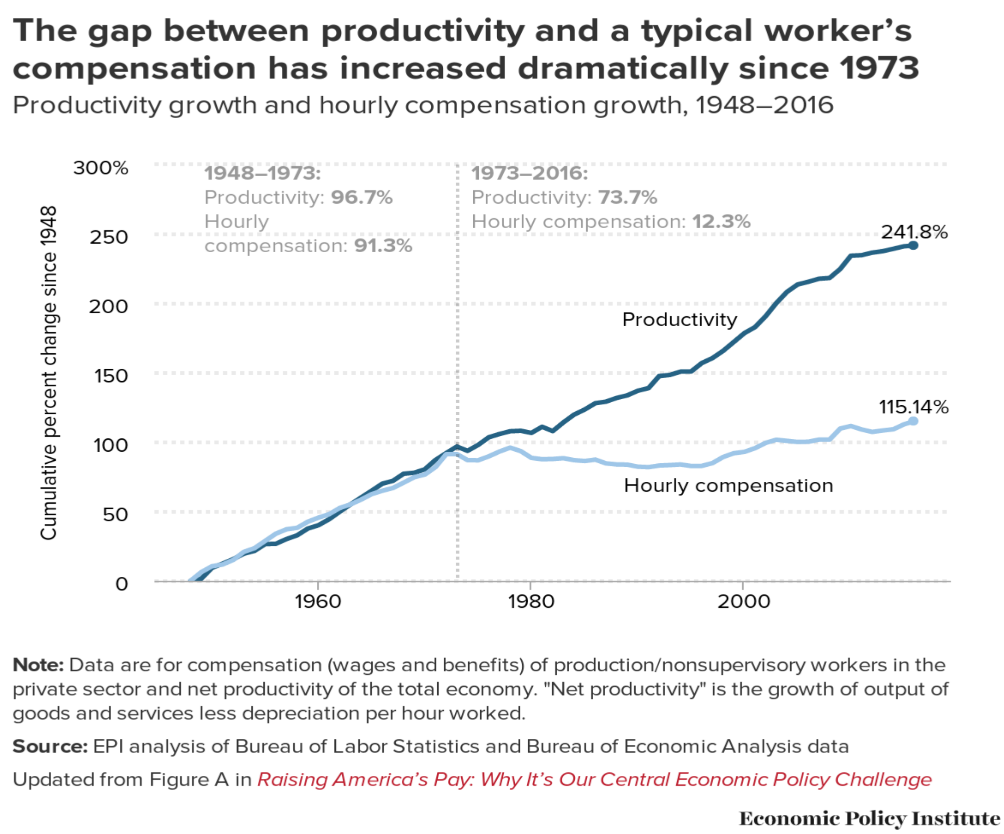
> "Importantly, these losses are not the damage stemming from the adjustment cost of manufacturing workers' temporary unemployment spell[s] . . . . Rather, the big

[3] For more detail, see "NAFTA at 20," AFL-CIO Report, March 2014. *Available at:* https://aflcio.org/reports/nafta-20.
[4] *See. e.g.*, Wise, Timothy, Agricultural Dumping Under NAFTA: Estimating the Costs of U.S. Agricultural Policies to Mexican Producers, Global Development and Environment Institute Working Paper No. 09-08, Tufts University, December 2009. *Available at*: http://www.ase.tufts.edu/gdae/Pubs/wp/09-08AgricDumping.pdf.
[5] *See, e.g.*, Stockman, Farah, "Becoming a Steelworker Liberated Her. Then Her Job Moved to Mexico," The New York Times, Oct. 14, 2017. *Available at*: https://www.nytimes.com/2017/10/14/us/union-jobs-mexico-rexnord.html.
[6] *See, e.g.*, DePillis, Lydia, "Obama's proposal to help workers who lose out on trade deals probably won't win Democratic votes." *The Washington Post*, Feb. 3, 2015. *Available at*: https://www.washingtonpost.com/news/wonk/wp/2015/02/03/obamas-proposal-to-help-workers-who-lose-out-on-trade-deals-probably-wont-win-democratic-votes/?utm_term=.84089ecc8fb8.

damage is the *permanent* wage loss resulting from America’s new pattern of specialization that requires less labor and more capital. Further, this wage loss is not just suffered by workers in tradeable goods sectors who are displaced by imports; it’s suffered by *all* workers who resemble these workers in terms of credentials and labor market characteristics. A simple way to say this is that while landscapers may not be displaced by imports, their wages suffer from having to compete with apparel (and auto, and steel) workers who have been displaced by imports.”[7]

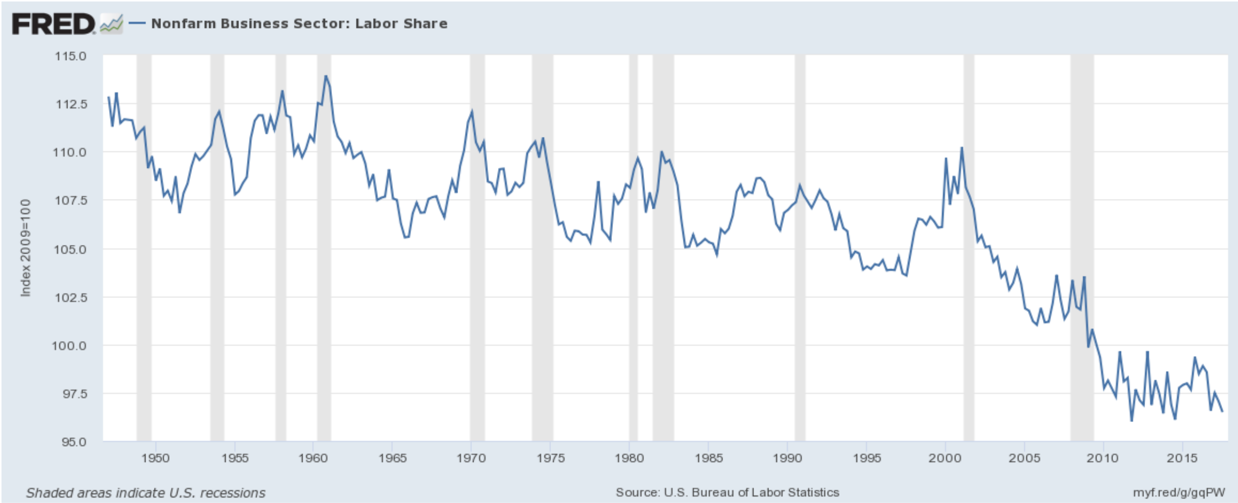
The following charts show the impact of this model of trade—and other neoliberal economic policies—on U.S. wages and the share of U.S. national income going to working people.

Figure 1: Gap Between U.S. Worker Productivity and Wages Is Growing



[7] Bivens, Josh, “Adding Insult to Injury: How bad policy decisions have amplified globalization’s costs for American workers,” Economic Policy Institute, Jul. 11, 2017. *Available at:* http://www.epi.org/publication/adding-insult-to-injury-how-bad-policy-decisions-have-amplified-globalizations-costs-for-american-workers/.

Figure 2: Workers' Share of National Income is Shrinking



Source: Created with the FRED Economic Data Tool of the St. Louis Federal Reserve Bank. Available at: *https://fred.stlouisfed.org/ (Dec. 8, 2017).*

As these graphs demonstrate, even if the size of the U.S. economic pie is growing, if the rules governing our economy are not carefully crafted, the bulk of the population gets a smaller slice, as is happening currently. Although it is important to note that trade policy is not the sole cause of the trends examined here, it is an important one, in particular because it takes more than a single act of Congress or a single Executive Order to change the rules enshrined in NAFTA or any other trade agreement. It takes the consent of all parties involved.

Protectionism is not the answer, but changing the rules of trade is. To make any new NAFTA successful, the administration and Congress must ensure that a new trade deal incorporates different incentives. In other words, the structure of the new NAFTA must recognize that current trade and globalization rules have pushed wages down and weakened worker negotiating power. It must build in counterbalancing incentives and tools to raise wages, empower working people, protect precious natural resources, and address the United States' persistent trade deficit. In addition, in conjunction with the deal itself, Congress should enact a broad set of domestic industrial and economic policies to rebuild, repair and modernize U.S. infrastructure; support research, development and advanced manufacturing; and provide working people with state of the art education and skills. Absent these investments, a new NAFTA seems poised to continue to leave workers behind.

We also caution against viewing NAFTA renegotiation as an effective growth strategy in and of itself. Given the already low levels of tariffs worldwide, the opportunities for large efficiency gains due to trade are largely exhausted.[8] We should improve NAFTA because NAFTA needs

[8] *See, e.g.*, Krugman, Paul, "A Protectionist Moment?," The Conscience of a Liberal (Column), *The New York Times*, Mar. 9, 2016. *Available at*: https://krugman.blogs.nytimes.com/2016/03/09/a-protectionist-moment/; Amiti, Mary and Mandel, Benjamin, "Will the United States Benefit from the Trans-Pacific Partnership?," Liberty Street Economics Blog, Federal Reserve Bank of New York, May 16, 2014. *Available at*: http://libertystreeteconomics.newyorkfed.org/2014/05/will-the-united-states-benefit-from-the-trans-pacific-partnership.html#.Vr4TO_krLcv.

improving—not as a substitute for a purposeful growth policy. For example, the U.S. could achieve far greater growth, far faster, by investing in our own economy. As the International Monetary Fund has demonstrated, an infrastructure investment of 1% of GDP will result in an increase in GDP of almost 3% a mere four years after the investment.[9] This outcome is six times the projected outcome of the failed Trans-Pacific Partnership and would occur more than four times more quickly. In addition, according to economic modeling results by Ozlem Onaran of the University of Greenwich for the L20 in 2014, the U.S. could achieve as much as **9.84% growth over five years** by coordinating a 1% of GDP infrastructure investment with wage-led growth policies.[10]

A New NAFTA That Meets the Needs of Working People Will Respond to the Popular Backlash Against the Current Form of Globalization

Working people who advocate for better trade policies often face the simplistic response "Globalization is here to stay. You can't cut the U.S. off from the rest of the world, so just get over it." This response misrepresents the problem and misunderstands the proposed solution.

Unions, faith communities, health advocates, environmental organizations, migrants rights organizations and small farmers and ranchers who complain of the harmful effects of NAFTA and other trade arrangements (such as the World Trade Organization) do not advocate building walls or turning back the clock. In fact, many working people and their employers rely on exports for some or all of their income. Reformers simply want to change the rules under which trade and globalization operate. Throwing up ones hands and saying that low wages, skyrocketing drug prices, dangerous imports and environmental crimes are inevitable is not only wrong, it is counterproductive.

Globalization was shaped by the rules of NAFTA and the WTO, and it can be reshaped by alternative rules. Such reshaping is necessary if the U.S. and its allies are interested in more, rather than fewer trade arrangements—and outcome that appears to be in doubt given the United Kingdom's impending exit from the European Union, the United States exit from the Trans-Pacific Partnership, and the stalled negotiations on a number of other agreements, including the Trans-Atlantic Trade and Investment Partnership.

[9] "Chapter 3: Is It Time for an Infrastructure Push? The Macroeconomic Effects of Public Investment," in World Economic Outlook, International Monetary Fund, Oct. 2014. *Available at*: https://www.imf.org/external/pubs/ft/weo/2014/02/pdf/c3.pdf. See especially 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 . . ."); Larry Summers, "Why public investment really is a free lunch: The IMF finds that a dollar of spending increases output by nearly $3," Larry Summers Blog, Oct. 7, 2014. *Available at*: http://larrysummers.com/2014/10/07/why-public-investment-really-is-a-free-lunch/#sthash.5fkH0nJ6.dpuf.

[10] Ozlem Onaran, "The Case for a Coordinated Policy Mix of Wage-led Recovery and Public Investment in the G20, L20 in partnership with ITUC, TUAC, and the Council of Global Unions, Jun. 2014. Available at: http://www.ituc-csi.org/IMG/pdf/modeling.pdf

As Harvard economist Dani Rodrik writes, trade breeds opposition when it "violates norms embodied in our institutional arrangements."[11] In other words, trade arrangements become unpopular not just when they affect jobs, but when they undermine hard fought protections such as the right to join together in unions to negotiate for better. Rodrik continues:

> "The benefit of thinking about fair trade along these lines is that it allows the drawing of a clear line between trade flows that threaten legitimate domestic political arrangements and those that don't. For example, there is a clear distinction between situations where a trade partner's low wages are due to low productivity, and the abuse of worker rights (including, say, the absence of collective bargaining, or freedom of association). Both may generate distributional implications at home, but there is a problem of unfair trade only in the second case."[12]

Similarly, Nobel Prize winning economist Joseph Stiglitz has written recently about the growing opposition to globalization in both developed and developing countries. How can it be that the ordinary citizens of both the developed and developing worlds see the current trade and globalization regime as harmful? Stiglitz explains that the common dissatisfaction is a result of rigged rules that "weaken workers' bargaining power. What corporations wanted was cheaper labor, however they could get it."[13] He notes that unless most workers view trade and globalization as benefiting them, it cannot be sustained.

This is the current dilemma. Can and will NAFTA be reformed in ways that satisfy and benefit the many instead of the few in the U.S., Canada and Mexico? If it will not, it seems likely that the social fabric in each country will continue to deteriorate and harmful populist rhetoric will increase, as families become more dissatisfied and angry about broken promises by governments that do the bidding of economic elites while ignoring the common good.[14]

Raising Wages and Ensuring High Labor Standards Are Step One

By putting the U.S., Canada, and Mexico into competition for investment without ensuring that each country not only had high standards on paper but an effective enforcement regime for worker and environmental protections, NAFTA acted as an anchor, dragging down tax revenues, wages and environmental standards, not just in the U.S., but in all three NAFTA countries. Because of the incentives imposed by NAFTA and similar trade policies, income distributions

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[11] Rodrik, Dani, "It's Time to Think for Yourself on Free Trade: What economists and populists both get wrong about the international economy," Foreign Policy, Jan. 27, 2017. *Available at*: http://foreignpolicy.com/2017/01/27/its-time-to-think-for-yourself-on-free-trade/.

[12] *Id.*

[13] Stiglitz, Joseph, "Globalisation: time to look at historic mistakes to plot the future," *The Guardian*, Dec. 5, 2017. *Available at*: https://www.theguardian.com/business/2017/dec/05/globalisation-time-look-at-past-plot-the-future-joseph-stiglitz.

[14] Dolan, Eric, "'Oligarchic tendencies': Study finds only the wealthy get represented in the Senate," Raw Story, Aug. 19, 2013. *Available at*: https://www.rawstory.com/2013/08/oligarchic-tendencies-study-finds-only-the-wealthy-get-represented-in-the-senate/.

became more unequal as global companies captured an ever-larger share and workers an ever-smaller share.[15]

All the NAFTA renegotiation efforts in the world will not create U.S. jobs, raise U.S. wages, or reduce the U.S. trade deficit if the new rules do not include clear, strong, and effective labor rules that require Mexico to abandon its low wage policy[16] and instead implement and enforce the fundamental labor rights developed by businesses, working people and governments at the International Labor Organization. The pull factor of poverty wages, denial of worker freedoms, and exploitive working conditions simply cannot be counterbalanced by new rules of origin or digital trade rules alone. Working families and their advocates across North America are united in their support for greater workplace protections, a level playing field, and higher wages.

With few exceptions, Mexican "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 government has gone along with this practice as part of a low-wage development strategy. The cumulative effect of these bogus unions is to lower wages and working conditions in Mexico.[17] 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. Raising wages in Mexico must be one of the most important outcomes of NAFTA renegotiation, or the effort will not affect outsourcing, trade balances or wage stagnation.

When workers lack the freedom to speak up about workplace conditions and negotiate together to improve their lives and livelihoods, wages, benefits and job safety are lower than they would otherwise be. NAFTA's race to the bottom has led to a global weakness in demand that hampers gross domestic product (GDP) growth and exacerbates inequality. Even the IMF has recognized a link between the decline in unionization and the dramatic increase in inequality worldwide.[18]

Those who advocate to maintain 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 has limited the potential for U.S. exports. Indeed, wage suppression in Mexico means that there are even more Mexicans living in poverty than before

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[15] *See* 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.
[16] *See, e.g.*, U.S. Rep. Sandy Levin, Press Release: NAFTA's Top Problem: Mexico's Industrial Policy of Low Wages and No Rights, Oct. 10, 2017. *Available at*: https://levin.house.gov/press-release/naftas-top-problem-mexicos-industrial-policy-low-wages-and-no-rights.
[17] *See* NAFTA at 20, *supra* note 3.
[18] 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.

NAFTA,[19] that immigration push-factors have not abated, and that Mexico has become an increasingly attractive investment target.

It is too early to judge the NAFTA renegotiations a success or failure. To date, it is not clear whether any of the negotiating parties have taken our advice. While some interesting and potentially beneficial proposals have been made (including Canada's proposal to expand workplace freedoms and worker protections and the U.S. proposals to radically restrict investor-to-state dispute settlement and to incorporate a periodic review mechanism to measure whether NAFTA is achieving results), many other proposals fall in the category of "trade policy as usual" or worse, would radically expand the privileges granted to global banks and brand name pharmaceutical companies.

Recommendations[20]

The AFL-CIO's NAFTA recommendations (included below in summary form) are comprehensive, and include changes not just to the labor provisions, but to most chapters of NAFTA, as well as to domestic policies. The 2016 elections showed that America's working people are not satisfied with the status quo. They have heard promises about the benefits of trade—but seen those benefits accrue to global corporations and economic elites. It is imperative that Congress provide a comprehensive response that improves trade and related policies. NAFTA renegotiation cannot be just mere tweaks or the importation of rules from the failed TPP. Working people are ready to support beneficial changes to NAFTA. We will oppose any NAFTA that continues the status quo, even if it carries a "new and improved" label.

1. Democratize the Renegotiation Process

The TPP negotiations demonstrated that secrecy breeds contempt. NAFTA renegotiation must be transparent, democratic and participatory, with more access for Congress and the public to proposals and negotiating texts. There must be opportunities for public comment, periodic congressional hearings to review progress and more inclusive trade advisory committees.

2. Add Strong Labor Rules with Swift and Certain Enforcement

To help raise wages and improve working conditions, NAFTA must ensure all working people can exercise the fundamental labor rights reflected in International Labor Organization (ILO) labor conventions, including the bedrock right to form unions and bargain collectively. NAFTA must embed strong labor obligations in the text and establish an independent enforcement mechanism with innovative tools and penalties to overcome entrenched indifference and hostility to worker rights, including the use of violence in Mexico. The new provisions must ensure that labor reforms are measured by performance, not merely changes on paper, and they must address the failed labor case against Guatemala, which provided strong evidence that the existing

[19] Weisbrot, Mark, et al., "Did NAFTA Help Mexico? An Update After 23 Years," Center for Economic and Policy Research, updated March 2017. *Available at*: http://cepr.net/images/stories/reports/nafta-mexico-update-2017-03.pdf?v=2.

[20] For an expanded explanation of the AFL-CIO's NAFTA renegotiation recommendations, please see our submission to the U.S. Trade Policy Staff Committee, "How to Make NAFTA Work for Working People," available at: https://aflcio.org/statements/written-comments-how-make-nafta-work-working-people.

framework is not only ineffective, but wholly inadequate, setting up barriers to effective enforcement of trade obligations.

3. Eliminate Investor-to-State Dispute Settlement and Minimum Standard of Treatment

Investor-to-state dispute settlement (ISDS) is a separate justice system for foreign investors. It discriminates against U.S.-located firms by providing extraordinary procedural and substantive rights to foreign-based investors. 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."[21] 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.

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 foreign investors that local citizens and companies don't have. But that's the whole purpose of it."[22] Rule of law requires that the law—including the system of justice—apply to everyone equally. ISDS violates this bedrock principle of democracy. ISDS also 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-owned competitors.

Eliminating ISDS will protect democracy, Article III of the Constitution and America's rich jurisprudence while eliminating a subsidy to companies that choose to produce abroad. Moreover, the new NAFTA must abolish the vague and overbroad "minimum standard of treatment" (MST) obligation that goes far beyond the property rights available under the U.S. Constitution.[23]

4. Create Jobs by Adding Enforceable Currency Rules

NAFTA must include enforceable currency disciplines subject to trade sanctions in the text of the agreement.[24] NAFTA parties should also commit to coordinating enforcement efforts with respect to the currency manipulation and misalignment by non-NAFTA countries. The goal of both provisions would be to reduce the unsustainable U.S. trade deficit by addressing issues of

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[21] 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.

[22] 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#.

[23] 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.

[24] 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.

trade and exchange rates. Currency realignment would create 2.3 million to 5.8 million jobs over the next three years.[25]

5. Strengthen Rules of Origin

In general, "rules of origin" should be set so that domestic producers and workers in the NAFTA signatory countries are the primary beneficiaries of NAFTA, not third-party countries that take on no trade obligations. Strengthening the auto regional value content and closing related loopholes is important, but is not the only way to address this recommendation. The parties must also strengthen content requirements for steel, aluminum, textiles and apparel, and aerospace products, for example. Strong rules of origin will provide an incentive to produce in North America as opposed to China, Vietnam or 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.

6. Protect Responsible Government Purchasing and Buy American Policies

NAFTA should support domestic job creation efforts by eliminating procurement commitments and promoting responsible bidding standards.[26] 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 have no outstanding environmental cleanup obligations or the implementation of 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 employers, 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.[27] Instead of blindly repeating existing procurement rules, 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. The new rules should continue the prohibition on government offsets.

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[25] 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/

[26] 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 suggest that the current procurement rules create U.S. jobs or raise U.S. wages.

[27] 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.

7. **Eliminate Chapter 19 Obstacles to Effective Trade Enforcement**

Chapter 19 should be eliminated and replaced with a mechanism for North American cooperation to ensure effective enforcement against unfairly traded products from non-NAFTA countries

8. **Combat Tax Dodging**

NAFTA and subsequent trade and globalization rules have had a negative long-term impact on tax revenues 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 tax rates. This troubling trend undermines the social contract and inhibits robust public investment in infrastructure and human capital. The new NAFTA should address base erosion and tax avoidance to help meet infrastructure needs and cultivate public support for international trade. If trade rules are beneficial, they should help America build new schools, high-speed communications networks, and transportation corridors. But if trade is viewed as a vehicle to facilitate tax dodging by economic elites, public opposition will only grow.

9. **Remove Rules That Undermine Protections for Workers, Consumers and the Environment**

NAFTA must not limit, undermine or inhibit public interest standards or regulations. NAFTA must ensure that North America's democracies retain the freedom to develop, advance and implement commonsense protections, including country-of-origin labeling, free from the threat of trade challenges. 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.

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 both trade and democracy because it undermines standards that citizens struggled to enact (such as "COOL" labeling).

10. **Add Commitments to Invest in Infrastructure**

Investing in infrastructure drives long-term, broadly shared growth, but is hard to do when global companies are driving a race to the bottom. Adding an infrastructure commitment will help offset the incentives of prior trade deals that have depressed public investment.

Specifically, NAFTA must include a new chapter in which each Party commits itself to investing a minimum of 3% of its GDP annually in its own 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[28] 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.

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; ports, airports, roadways and waterways; new and improved rail corridors, including high-speed rail; and broadband infrastructure, including in rural communities.

11. Protect Consumers and Ensure Financial Stability

A new NAFTA should not expand financial services commitments or limit regulation of the financial sector. NAFTA should protect the ability to engage in fair and nondiscriminatory application of capital controls and other measures to ensure the stability of the financial system. 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 and was a key factor in the rise of large credit growth differences and current account imbalances that propelled the crisis across countries.[29] 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.

12. Promote Transportation Safety

The new NAFTA must ensure that all Parties may enforce domestic highway safety, labor protections and environmental standards on foreign trucks, rail and buses. In addition, NAFTA should continue its existing policy of broadly excluding water and air transportation services from coverage. This includes maintaining existing reservations covering the Jones Act, laws respecting ownership and control of airlines, and the like.

13. Protect Intellectual Property While Ensuring the Right to Affordable Medicines

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

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[28] 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.

[29] Lane, Philip R., "Financial Globalisation and the Crisis," Prepared for the 11th BIS Annual Conference on The Future of Financial Globalisation, Lucerne, Jun. 21–22, 2012.

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.

14. Prohibit Global Corporations from Using NAFTA to Capture Public Services for Profit

NAFTA renegotiation must expand the public services exception 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.

15. Add Strong Environmental Rules with Swift and Certain Enforcement

NAFTA must be reformed to include strong environmental standards that will be enforced. NAFTA must require adoption of and compliance with key multilateral environmental agreements; prohibit illegal trade of timber and wildlife; promote responsible fisheries; and ensure countries cannot gain an unfair trade advantage by allowing highly polluting practices. This should be done in a manner akin to the recommendations for labor obligations.

16. Improve Screening for Foreign Direct Investment

Congress and the administration should work together to enhance the powers of the Committee on Foreign Investment in the United States to be sure the U.S. can review greenfield investments and use a "net economic benefit test" to measure more impacts on our working people as a whole. In addition, NAFTA should be updated to accommodate this domestic policy change.

17. Improve Trade Enforcement as Part of a Robust Manufacturing Policy

Trade rules are only as good as their enforcement. Enforcement tools must be expanded and used promptly. Rules crafted to create a fair and level playing field and promote good jobs in growing industries will support employment and wage growth 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 North America.

18. Improve the ITC's Economic Modeling

The United States International Trade Commission (ITC) 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 (CGE). The CGE has a number of limitations and 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. As a result, the ITC's past projections been *over* rather than *under* optimistic.[30] Importantly, the CGE method is particularly ill suited to NAFTA renegotiations, as tariffs for nearly all traded goods already are at zero.

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[30] *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.