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Renegotiating NAFTA is an opportunity to get trade policy right

The United States, Canada, and Mexico are currently in talks over changes to the North American Free Trade Agreement (NAFTA). Renegotiating NAFTA offers an opportunity to create a new labor template based on long overdue and urgently needed labor standards that are consistently enforced and upheld. In order to accomplish this, we need to update and strengthen current language (based on the [May 10, 2007 template](#)). Among other things, there should be fewer limitations on the kinds of labor violations that are covered, and each signatory must be in compliance with the standards set forth prior to joining the agreement. The following recommendations constitute some of the steps needed to achieve these essential improvements to the labor chapter:

1. Incorporate explicit references to labor standards reflecting the conventions of the International Labour Organization (ILO), including those concerning the freedom of association, collective bargaining, discrimination, forced labor, child labor, and workplace safety and health.
2. Remove the footnote explicitly limiting the terms of the chapter to the ILO Declaration on Fundamental Principles and Rights at Work.
3. Eliminate the requirement that labor violations under the agreement must be in a manner affecting trade or investment between the parties.
4. Eliminate the requirement that labor violations must be sustained or recurring.
5. Verify that labor standards in the agreement are being honored and enforced by the signatories prior to the agreement going into effect.

Unions, environmental groups and other groups warned about NAFTA's threat to our economy and security before it came into force in 1994. Unfortunately, our efforts were not enough to overcome the millions of dollars poured into lobbying for the agreement. Since NAFTA went into effect, U.S. (and Canadian) workers have lost thousands of good jobs as corporations moved production to Mexico, wage inequality has skyrocketed, and our national security has been eroded. Despite the assurances that the only jobs that would leave our shores were low-skilled, low-wage jobs, NAFTA has paved the way for U.S. companies to transfer high-skilled, high-wage jobs—like those in aerospace, motor vehicles and parts, and other manufacturing industries, to Mexico—leaving U.S. workers and communities behind.

The lack of strong, effective, and enforced labor provisions in U.S. trade agreements is one of many reasons why **U.S. workers are competitively disadvantaged** in the global economy. It is crucial as we go forward that the United States develop, negotiate, and implement new models to uphold international labor rights obligations—both at home and by our trading partners—to prevent multinational corporations and unscrupulous governments from undermining labor rights to gain a competitive advantage.

Current labor provisions in existing U.S. trade agreements have failed to protect workers' rights and must be replaced. Governments have been able to interpret these provisions inconsistently, and they contain significant hurdles for parties filing complaints, leading to unconscionable delays and weak enforcement.

Last year, a panel ruled that the Guatemalan government had not violated the Central American Free Trade Agreement (CAFTA). The **report issued regarding the complaint** provides a clear demonstration of the ineffectiveness of the labor provisions in our trade agreements:

While the U.S. was able to prove that at eight worksites and with respect to 74 workers Guatemala had not effectively enforced its labor laws by failing to secure compliance with court orders, the report notes that the U.S. could not prove these cases constituted a course of inaction that was in a manner affecting trade.

While it reached the wrong conclusion, the panel's report should not be surprising. Indeed, unions have long criticized the burdensome and overly vague requirement that labor violations must be shown to be "in a manner affecting trade."

Effective and strong labor provisions in trade agreements are critical. If properly drafted, implemented and enforced, they can stop signatories from distorting the labor market by unfairly suppressing labor costs. Workers have been **denied** the right to form their own independent and democratic unions and engage in collective bargaining. Workers have also been subjected to **workplace discrimination**. **Forced labor and child labor** continues. By **preventing workers** from enjoying these fundamental human rights, manufacturers in countries like Mexico are unfairly subsidized because their labor costs are artificially lower than they would be under fair labor market conditions. These unfair labor market conditions create unfair trade, because countries that honor fundamental workers' rights are at a competitive disadvantage.

Mexico's **average wage for a manufacturing worker is less than \$3.00 per hour**, and its repression of workers' rights is a major contributing factor. Mexico's manufacturing industry has dramatically expanded since NAFTA, with a direct negative impact on U.S. workers. For example, since NAFTA, aerospace has become the third largest industry in Mexico, employing between 30,000 and 40,000 workers. Aerospace manufacturers promote Mexico's low wages to

draw business across the border. Analysts have commented that “Mexico’s proximity to the U.S. and its lower labor cost structure have drawn approximately 300 foreign manufacturers to areas in five Mexican states.” As one review of the aerospace industry noted, “[T]he downside of this is that the country may be used increasingly for its cheap labor by profit-hungry companies from more established markets.” Mexico’s aerospace industry is now a major exporter to the U.S. The direct U.S. job loss to Mexico would be even greater if we took into account the lost job opportunities that would have been created if European aerospace companies and their suppliers had located production in the United States, rather than in Mexico.

The United States International Trade Commission reported:

U.S. and foreign aerospace component suppliers have been increasingly locating production facilities in Mexico. Lower manufacturing costs (largely due to a lower wage structure), proximity to original equipment manufacturers (OEMs) in the United States, duty-free access to other important aerospace markets ... all contribute to Mexico’s greater appeal compared with other global manufacturing locations. Mexico’s base of aerospace suppliers expanded rapidly from 109 firms to 249 during 2006–11. Employment also grew from 10,000 to 31,000 workers during this period, and by 2012, companies located in Mexico were supplying parts and structures to U.S. and foreign transport aircraft OEMs (table 1) and OEMs of general aviation aircraft (Bombardier Learjet, Cessna, and Hawker Beechcraft).

In addition to the companies mentioned above, other U.S. companies with an industrial presence in Mexico include General Electric, Honeywell, Rockwell Collins and UTC. Suppliers to aerospace giants Boeing and Europe’s Airbus have operations in Mexico. United Technologies has “showcased” its operations in Mexico.

Despite promises from supporters, NAFTA’s long outdated and highly criticized labor chapter has been ineffective in addressing Mexico’s violation of international labor norms for three reasons. First, the labor provision is not included in the core text of the agreement, but is relegated to the side agreement referenced as the North American Agreement on Labor Cooperation (NAALC). Second, the standards that are referenced are vague, providing ample room for signatories to claim that they are honoring the standards when in fact they are not. And third, standards are placed into different categories with accompanying different levels for enforcement. As a result, the fundamental human right of freedom of association, which is explicitly referenced in the ILO’s Constitution, is placed in the lowest and the least effective category, for which dispute resolution enforcement mechanisms are not available.

NAFTA's failure at raising labor standards in Mexico has been well documented. The U.S. State Department's Country Reports on Human Rights once again lists Mexico as one of the most notorious countries for failing to respect these rights. As the report states:

Workers exercised their rights to freedom of association and collective bargaining with difficulty.

Protection (unrepresentative, corporatist) unions and "protection contracts," collective bargaining agreements signed by employers and these unions to prevent meaningful negotiations and ensure labor peace, continued to be a problem in all sectors.

According to several NGOs and unions, many workers faced procedural obstacles and various forms of intimidation (including physical violence) from protection union leaders, or employers supporting a protection union, in the lead-up to, during, and after bargaining-rights elections from other workers, union leaders, violent individuals hired by a company, or employers favoring a particular union.

Other intimidating and manipulative practices continued to be common, including dismissal of workers for labor activism.

Nor are fundamental human rights prohibiting forced labor honored. Again, according to the State Department report:

The law prohibits all forms of forced or compulsory labor, but the government did not effectively enforce the law. Forced labor persisted in the agricultural and industrial sectors, as well as in the informal sector.

Fundamental human rights with respect to child labor in Mexico are also of extreme concern:

Enforcement was inadequate in many small companies and in the agriculture and construction sectors and nearly absent in the informal sector, in which most child laborers worked.

According to the 2013 INEGI survey, the most recent data available on child labor, the number of employed children between ages five and 17 remained at 2.5 million, or approximately 8.6 percent of the 29.3 million children in the country. Of these children, 746,000 were between ages five and 13, and 1.8 million were between ages 14 and 17. Of employed children 30 percent worked in the

agricultural sector in the harvest of melons, onions, cucumbers, eggplants, chili peppers, green beans, sugarcane, tobacco, coffee, and tomatoes. Other sectors with significant child labor included services (25 percent), retail sales (26 percent), manufacturing (13 percent), and construction (4 percent). On August 25, the government announced the percentage of children engaged in labor decreased from 11.5 percent of total children in 2007 to 7.5 percent in 2015.

And Mexico does not honor fundamental human rights with respect to discrimination in the workplace. The State Department **report** noted:

The government did not effectively enforce its laws and regulations. Penalties for violations of the law were not generally considered sufficient to deter violations. Discrimination in employment or occupation occurred against women, indigenous groups, persons with disabilities, LGBTI individuals, and migrant workers.

These violations of workers' rights have let Mexico's manufacturers artificially lower labor costs, resulting in an unfair competitive advantage over U.S. manufacturers, incentivizing the transfer of production.

Renegotiation of NAFTA offers the signatory countries the opportunity to **create a new template** that is clear, unambiguous, and based on labor standards reflected in ILO Conventions and ILO jurisprudence. This could be accomplished by including language in the labor chapter explicitly stating that parties must honor and effectively enforce the rights and standards expressed in ILO Conventions and interpretations issued under the ILO's supervisory mechanisms, like the Committee on the Freedom of Association. Footnotes that raise uncertainty over the definition of labor rights and standards, like the one in the Peru FTA limiting the terms of the chapter to the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, should be eliminated.

In order to be certain that parties satisfy these requirements, they must demonstrate that they are in compliance prior to the agreement going into effect. This is especially critical in view of the long, frustrating dispute resolution path contained in the Peru template.

Vague limitations on the nature of violations that are covered by a renegotiated NAFTA must also be avoided. Specifically, NAFTA negotiators should not replicate the Peru FTA requirements that labor violations must be "in a manner affecting trade or investment" and constitute a "sustained or recurring course of action or inaction." Since **research** has shown that trade and investment agreements can impact a nation's entire labor market, it is somewhat artificial to try to isolate violations of workers' rights that occur "in a manner affecting trade or

investment.” Furthermore, particularly outrageous violations of labor rights should by themselves be eligible for a complaint, regardless of whether the violation was part of a sustained or recurring violation.

Fundamental human rights, like the labor standards defined by the ILO Conventions, apply to all workers throughout the world with equal intensity. For this reason, side agreements or alternative arrangements like those used in conjunction with NAFTA, the U.S.-Colombia Labor Action Plan, or proposed for Vietnam, Brunei and Malaysia (under the failed Trans-Pacific Partnership agreement) are no substitute for the strong labor chapter described above. These side arrangements have not been effective. After more than 20 years the NAALC has not stopped Mexico from continually violating workers’ rights, nor has the **Labor Action Plan** with Colombia stopped the murder and death threats for trade unionists and human rights activists.

It is also imperative that these ILO core rights and standards be adopted into national law and effectively enforced before any agreement can be signed, let alone implemented. Promises to effectively enforce labor laws after a trade agreement has been implemented have been repeatedly found to be disingenuous.

Replacing the current trade agreement template on labor provisions is **only one of several dramatic changes** that must take place in NAFTA before it can be acceptable. Effective mechanisms for processing complaints under an expeditious manner is also essential. (The **Guatemala** case took 9 years to reach the final conclusion.) The entire negotiating process must be transparent and democratic. Investor to state dispute mechanisms must be eliminated, rules of origin must be strengthened for autos and all manufactured goods and government procurement requirements must be protected. The addition of currency rules and the elimination of tax loopholes and other mechanisms that encourage offshoring jobs are among other items that must be addressed. Renegotiating NAFTA represents one more opportunity to create a U.S. trade policy that works for everyone. We cannot afford to waste it.

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