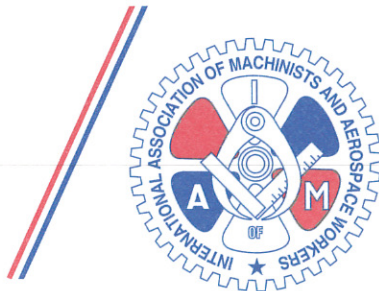


**International
Association of
Machinists and
Aerospace Workers**



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**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 International Association of Machinists and Aerospace Workers (IAM) 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:

Owen Herrnstadt
Chief of Staff and Director of Trade and Globalization
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Testifying on behalf of the International Association of Machinists and Aerospace Workers
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Summary of Testimony:

The IAM urges the USTR to replace NAFTA with a new template for trade policy. The new template is based on transparency and fairness and dramatically strengthening its provisions including, but not limited to, those regarding labor rights, rules of origin, and government procurement. It also means eliminating the investor-to-state dispute settlement mechanism (ISDS) and adding enforceable currency rules.

The IAM's testimony places emphasis on NAFTA's weak and ineffective labor provision, which has allowed it to artificially suppress workers' wages. Our own U.S. State Department has well-documented, year after year, Mexico's inability to effectively enforce fundamental human rights, such as the right to form a union and engage in collective bargaining.

Tweaking NAFTA's current language on labor, or any other provision for that matter, will not correct its fatal flaws. The new labor provision the IAM recommends is based on explicit reference to ILO Conventions and jurisprudence. The IAM also recommends the elimination of obstacles that exist in the current labor template that make it more difficult to file a violation. Of course, the IAM also reminds negotiators that strengthening labor provisions alone will not make NAFTA acceptable. Lastly, the IAM urges negotiators to walk away from the trade agreement if all aspects of the concerns expressed by the IAM, and the AFL-CIO, are not fully addressed in a negotiated agreement.

Sincerely,

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke, positioned above the typed name.

Owen Herrnstadt
Chief of Staff to the International President
and Director of Trade and Globalization
International Association of Machinists and
Aerospace Workers

NAFTA Negotiations Recommendations

Docket No. USTR-2017-0006

REQUEST TO TESTIFY AT THE HEARING ON JUNE 27

**RECOMMENDATIONS
OF THE
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO
REGARDING NAFTA NEGOTIATIONS RECOMMENDATIONS (DOCKET NO.
USTR-2017-0006)**

The International Association of Machinists and Aerospace Workers (IAMAW) represent hundreds of thousands of workers in North America. IAM members work in a variety of industries, including manufacturing, aerospace, electronics, shipbuilding, defense, steel, woodworking and transportation, just to name a few. Our members produce, service, assemble and transport products, parts and assemblies that create the global economy.

The IAM warned about NAFTA's threat to our nation's economy and security before it was put into place. Unfortunately, our warnings did not stop the implementation of this disastrous trade deal. Since NAFTA has gone into effect, IAM represented workers have lost thousands of jobs to Mexico, our national economy has been threatened, and our national security has been eroded. NAFTA has paved the way for U.S. companies to transfer aerospace and other manufacturing production to Mexico, leaving U.S. workers out in the cold. Given our negative experience under bad trade agreements, the IAM welcomes the opportunity to offer suggestions on re-negotiating NAFTA that will replace the current template with one that will benefit workers here at home and in other countries.

We need an agreement that will create more U.S. jobs and not lower U.S. wages and benefits. Negotiators must be willing to replace NAFTA with an agreement built on transparency, democracy, fairness, strong labor standards, and social safeguards. Merely tweaking current language is unacceptable. Among other things, we urge negotiators to greatly strengthen provisions regarding labor, rules of origin, procurement and many other critical matters. We also urge negotiators to delete language regarding investor state dispute

mechanisms and add language on currency rules. We also urge negotiators to add strong language eliminating the use of offsets, the mandated transfer of production and technology to another country to gain market sales. Since suggestions on each of these matters, is included in the AFL-CIO submission, they will not be repeated here.¹ In view of the AFL-CIO's comments, which the IAM shares, we will use this opportunity to provide additional comments with respect to the labor provision in a re-negotiated NAFTA as well as the disastrous impact NAFTA has had on U.S. manufacturing workers, including aerospace.

The lack of a strong, effective labor provision in all U.S. trade agreements, especially NAFTA, is one of many reasons why U.S. workers have been placed in an unfair position in the global economy. Past templates for labor provisions in various U.S. trade agreements, including NAFTA, must be rejected. These provisions reference standards that have not been interpreted consistently by various parties. They also contain significant hurdles for complaints to proceed under these provisions. In other words, it is not enough that major violations of labor rights, which are human rights, are violated. Under NAFTA and the current trade template, these violations must also meet additional, burdensome standards on the party filing the complaint.

Effective and strong labor provisions in trade agreements are critical. If properly drafted, implemented and enforced, they can stop signatories, like Mexico, from distorting the market because they unfairly suppress labor costs. These artificially low labor costs are obtained by denying Mexico's workers the right to form their own unions, engage in collective bargaining, and being free from discrimination, forced labor and child labor. Indeed, 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 who honor fundamental human rights to form unions and to engage in collective bargaining, have labor costs that are established by a free and fair labor market, and thus are not able to compete fairly with countries like Mexico that do not.

Mexico receives the benefits of NAFTA, but because its rules with respect to labor are seriously flawed, Mexico gains an advantage on both the U.S. and Canada through artificially low labor costs. The record is replete with examples of significantly lower labor cost in Mexico obtained by withholding workers with fundamental human rights, where the average wage for a manufacturing worker is less than \$3.00 per hour.²

Mexico's manufacturing industry has dramatically expanded since NAFTA, at the direct cost of U.S. workers. Since NAFTA, its aerospace industry is now the third largest industry in Mexico, employing between 30,000 and 40,000 workers. Aerospace manufacturers promote the

¹ The IAM is an active affiliate of the AFL-CIO and has contributed to its submission regarding this matter.

² "Want Cheap Labour? Head to Mexico Not China", Financial Times, <https://www.ft.com/content/bddc8121-a7a0-3788-a74c-cd2b49cd3230>

existence of low wages in Mexico to draw business across the border. “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.”³ 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.”⁴ Mexico’s aerospace industry is now one of the major exporters to the U.S. While U.S. workers have lost thousands of jobs to Mexico in this fashion, this number is multiplied when considering the lost job opportunities that would have been created if European aerospace companies and their suppliers would have located production in the U.S., as opposed to Mexico.

NAFTA and low labor costs are increasingly attract U.S. aerospace production. 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).⁵

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.⁶

Despite promises from NAFTA’s supporters, NAFTA’s labor provision has been ineffective in preventing Mexico from taking advantage of this unfair trade mechanism for three reasons: First, the labor provision is not even included in the core text of the agreement, 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,

³ <https://offshoregroup.com/industries/aerospace-manufacturing-in-mexico/>

⁴ <http://www.americasquarterly.org/content/aerospace-emerging-mexican-industry>

⁵ “The Rise of Foreign Aerospace Suppliers in Mexico”,
https://www.usitc.gov/publications/332/coffin_mexico_aerospace4-25.pdf

⁶ https://www.usitc.gov/publications/332/coffin_mexico_aerospace4-25.pdf; ⁶
<http://www.utc.com/News/UTAS/Pages/UTC-Aerospace-Systems-joins-Mexico-for-inaugural-Aerospace-Fair.aspx>

thirdly, 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 in which dispute resolution mechanisms are not available.

NAFTA's failure at raising labor standards in Mexico has been well documented. Our own 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 states⁷:

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 U.S. government:

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 is 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.

⁷ <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

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.

Mexico does not honor fundamental human rights with respect to prohibitions regarding discrimination in the workplace. As found by the U.S. government:

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 fundamental human rights have enabled Mexico's manufacturers to artificially lower labor costs, resulting in an unfair competitive advantage over U.S. manufacturers and have incentivized the transfer of production from the U.S, despite NAFTA's anemic labor side agreement.

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.⁸ This can simply be accomplished if the labor chapter in the agreement explicitly states that parties 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 unenforceable 1998 Declaration on Fundamental Principles and Rights at Work, must be abandoned.

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. Of course this

⁸ Portions of this and the following four paragraphs were taken directly from Owen Herrnsstadt, "TTIP: Time for a new approach to labor rights and standards". *Revista Derecho Social y Empresa*, 4, 113-127. (2015) <http://digitalcommons.ilr.cornell.edu/globalschol/5/>

presumes that a renegotiated NAFTA will have an effective dispute resolution provision that covers labor violations. Failure to adopt such a provision would be a fatal flaw to the effectiveness of any labor chapter.

Vague limitations on the nature of violations that are covered by a renegotiated NAFTA must also be avoided. Specifically, the Peru FTA requirements that labor violations must be “in a manner affecting trade or investment” and constitute a “sustained or reoccurring action or inaction” should be rejecting by negotiators. As mentioned, the mere fact that labor standards are included in a trade agreement should indicate a direct relationship to trade without placing a further burden of proof on an agreed party. 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 reoccurring 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 are no substitute for the kind of strong labor chapter described above. As previously mentioned, 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 been found to be disingenuous, especially in view of the U.S. State Department’s documentation regarding continuing violations in Mexico.

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. Mere tweaks and word changes will not suffice. Investor to state dispute mechanisms must be eliminated, rules of origin must be strengthened and enforced, as well as other provisions. Further suggestions on these and other provisions are attached to the IAM’s comments.

We appreciate the opportunity to provide these written comments, as well as the following attachment, which reflect the IAM’s recommendations concerning the renegotiation of NAFTA.



A NAFTA THAT WORKS MUST EMPOWER WORKING PEOPLE, NOT CORPORATIONS

THE NORTH AMERICAN FREE TRADE AGREEMENT

has failed working people in Canada, Mexico and the United States. While overall trade volume and corporate profits are up, wages in all three countries have remained stagnant.¹ Worker productivity increased, but workers are not receiving a fair return on their work.² The freedom for working people to negotiate together is under constant attack, resulting in union density falling across North America³ while economic inequality has grown.⁴ Worker rights are under assault in all three signatory countries.

Working people's opposition to NAFTA is not about isolationism or opposition to "trade" per se. Rather, we oppose a set of rigged rules made by and for global corporations that enrich themselves at the expense of working people. Trade should be a cooperative endeavor that benefits all of us.

NAFTA's race-to-the-bottom rules can't be fixed with mere tweaks or by importing rules from the failed Trans-Pacific Partnership. We must replace NAFTA's vicious cycle with a virtuous one. A new NAFTA, with rules that working people help write, is an opportunity to begin constructing a Global New Deal for working families.⁵ We hope these recommendations are the beginning, not the end, of the conversation about how to reform NAFTA.

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.

Add Strong Labor Rules with Swift and Certain

Enforcement. To help raise wages and improve working conditions, NAFTA must ensure all workers can exercise fundamental labor rights reflected in 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 enforcer with innovative tools and penalties to overcome entrenched indifference to worker rights.

Eliminate Corporate Courts. The new NAFTA must omit the investor-to-state dispute settlement (ISDS) mechanism, which undermines the rule of law and facilitates offshoring by creating unique privileges and private "courts" in which foreign investors can challenge laws they claim will cut profits.⁶

Create Jobs by Adding Enforceable Currency Rules.

NAFTA must include enforceable currency rules subject to penalties for violations. Currency realignment would create 2.3 million to 5.8 million jobs over the next three years.⁷

Strengthen Rules of Origin. Rules of origin should be set to maximize benefits for workers, farmers and firms in NAFTA countries. This includes increasing regional value requirements for autos, auto parts and other manufactured products, and enforcing "melted and poured" standards for steel.

Protect Responsible Government Purchasing and Buy American Policies. NAFTA should support domestic job creation efforts by eliminating procurement commitments and promoting responsible bidding standards.

Improve Screening for Foreign Domestic Investment. Update and improve the Committee on Foreign Investment in the United States to be sure it can review greenfield investments and use a “net economic benefit test.” Update NAFTA to accommodate this change.

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.

Eliminate Obstacles to Effective Trade Enforcement.⁸ Replace those limits with a cooperation mechanism to promote effective enforcement against unfairly traded products from non-NAFTA countries.

Combat Tax Dodging. To ensure global companies pay their fair share of taxes, NAFTA needs new rules to combat tax avoidance schemes, secret tax deals and transfer pricing ploys.

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 right to develop, advance and implement commonsense protections, including country-of-origin labeling, free from the threat of trade challenges.

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 balance the incentives that have depressed public investment.

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.

Promote Highway Safety. Ensure all Parties enforce domestic highway safety, labor protections and environmental standards on foreign trucks and buses.

Protect Intellectual Property While Ensuring the Right to Affordable Medicines. NAFTA should retain strong provisions to protect creative and innovative workers whose living is tied to international copyright protection, while ensuring no patent, pricing or data protection rules undermine affordable medicines or interfere with the provision of Medicare, Medicaid or other public health programs.

Prohibit Global Corporations from Using NAFTA to Capture Public Services for Profit. Expand the public services exception to protect democratic decision making regarding the best way to provide transit, postal, water and other services.

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; combat illegal trade of timber and wildlife; promote responsible fisheries; and ensure countries cannot gain an unfair trade advantage by allowing highly polluting practices.

Endnotes

1 See, e.g., Robert E. Scott, Jeff Faux and Carlos Salas, “Revisiting NAFTA: Still Not Working For North America’s Workers,” Economic Policy Institute, 2007. Available at: www.epi.org/publication/bp173/; Dean Baker, Opinion, “NAFTA Lowered Wages, As It Was Supposed To Do,” The New York Times, Nov. 24, 2013. Available at: www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/nafta-lowered-wages-as-it-was-supposed-to-do.

2 *Id.*

3 Organisation for Economic Co-operation and Development, StatExtracts, Trade Union Density 1994–2012. Available at: <http://stats.oecd.org/Index.aspx?QueryId=20167#>

4 Heather Long, “U.S. Inequality Keeps Getting Uglier,” CNN Money, Dec. 22, 2016. Available at: <http://money.cnn.com/2016/12/22/news/economy/us-inequality-worse/index.html>.

5 Richard Trumka, Address to the Global Progressive Forum, Oct. 7, 2010.

6 William Greider, “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#.

7 Robert E. Scott, “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/.

8 Chapter 19 of NAFTA.