

The
CONGRESSIONAL
PROGRESSIVE CAUCUS

A Fair Trade Agenda:
Renegotiating NAFTA for
Working Families

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Many Americans have not seen a pay increase in years, cannot find better-paying jobs, and have seen good jobs outsourced due in part to unfair trade deals like the North American Free Trade Agreement (NAFTA). Unfortunately, American trade policy currently rewards corporations that offshore jobs, drive down wages, and increase unemployment and underemployment. These wide-ranging trade agreements, including NAFTA, were negotiated in secret with hundreds of corporate advisors on the inside, while the public and Congress were shut out.

At the heart of NAFTA are special protections for corporations that make it easier for them to outsource jobs and empower them to attack our laws before panels of corporate lawyers that can order unlimited payments of our tax dollars to multinational corporations. Instead of leveling the playing field, NAFTA has made it easy for companies to continue outsourcing jobs to Mexico so they can spend less on workers and pollute more. Using just one narrow classification, almost one million American jobs already have been certified by the U.S. government as lost due to NAFTA.

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Since NAFTA was implemented, U.S. wages have remained flat and Mexico's already-low wages are down 9 percent. We must replace NAFTA with a deal that raises wages and eliminates NAFTA's incentives to outsource American jobs. Essential to preventing outsourcing is the addition of strong, binding labor and environmental provisions that meet fundamental international standards and that have swift and certain enforcement, as well as the elimination of NAFTA's investor protections that make it less risky and cheaper to outsource jobs. If NAFTA renegotiations lack enforceable labor and environmental standards, corporations will continue to outsource U.S. jobs in order to pay foreign workers poverty wages and dump toxins, only to then import products back into the U.S. – damaging the health and economic wellbeing of communities here and abroad.

The Trump Administration has stated that the goal of renegotiating NAFTA is to get a much better deal for American workers. Yet, given that the Trump Administration has implemented so many policies that blatantly attack workers by undermining their wages, benefits, health and safety, many Americans are skeptical that helping workers is the real goal of President Trump's NAFTA renegotiations. Moreover, President Trump's view of NAFTA is that somehow Mexican workers have benefitted at the expense of U.S. workers. In reality, the main beneficiaries have been the large corporations that shaped NAFTA's terms, not Mexican workers. Since NAFTA was implemented, real wages in Mexico are down 9 percent and 1.9 million Mexicans engaged in farming and related work have lost their livelihoods. Mexico's poverty rate two decades into NAFTA – 55.1 percent in 2014 – was higher than the 52.4 percent when NAFTA began in 1994, meaning 20.5 million more Mexicans now live in poverty.

The process by which the Trump Administration is renegotiating NAFTA does little to instill confidence that a new deal will stop putting corporations before people. Hundreds of trade advisors representing corporate interests continue to have special access to U.S. proposals and draft negotiating agreement texts, while these documents are kept secret from the public and are largely inaccessible to most Members of Congress. Without input from the American people and their elected representatives, the Trump Administration could make NAFTA even worse for workers.

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Making NAFTA better for workers will require a wholesale transformation of the agreement. The corporate protectionism that is now at the pact's core must be removed, and new, binding terms that prioritize working families must be its new pillar. President Trump promised to bring manufacturing jobs back to the U.S. and raise American workers' wages. If he fails to get a deal to replace NAFTA that levels the playing field by securing binding labor and environmental protections, more Americans will be forced into part-time and other low-paying jobs that do not support families, leading to continued wage stagnation across the continent.

The Congressional Progressive Caucus therefore issues the following recommendations for NAFTA renegotiations:

Put Workers First

A renegotiated NAFTA must create jobs at home, raise wages, and support American families. A new agreement must contain robust labor obligations that meet fundamental international labor standards with a clear framework for swift and certain enforcement and a timely redress of violations. The provisions must establish appropriate deadlines, mandatory enforcement mechanisms and remedies, and outline clear and comprehensive criteria for what constitutes a violation. Importantly, a revised NAFTA must address shortcomings exposed by the recent Guatemala-CAFTA labor rights case by eliminating the use of the terms “sustained or recurring course of action or inaction” and “manner affecting trade” as barriers to enforcement of labor and environmental standards.

Further, new tools must be added to ensure independent monitoring and enforcement, and preferential market access must be conditioned on sustained evidence of on-the-ground improvements. The existence of such protections and information about how workers can access them must be made widely available to the public in all three countries.

No congressional vote on a revised NAFTA should be held unless and until countries adopt and enforce domestic laws that provide the labor rights and protections included in the International Labor Organization's core conventions. This must include protecting a worker's right to organize and collectively bargain without interference or intimidation by their employer. Moreover, implementing legislation for a revised NAFTA must include a clear process for Congress to investigate compliance and provide a means to withdraw benefits or alter trade agreement terms if trade partners fail to enforce meaningful labor protections.

Following the implementation of NAFTA, severe problems with Mexico's labor practices and the lack of independent unions have resulted in meager wages and stagnant or declining living standards for most Mexicans. At the same time, these problems have directly contributed to job losses and lower wages for American workers. Ongoing concerns surrounding wages and organizing rights for Mexican workers must be addressed, meaning NAFTA's new rules must help raise wages and put an end to existing “protection contracts” that lack majority support of the workers they cover. Otherwise, American jobs will continue to be lost to the exploitation of poorly paid workers from Mexico, while wages in all three countries will be held down.

The U.S. should also agree to Canada's labor-standards proposal for NAFTA, including an end to so-called “Right-to-Work” laws that stifle worker's ability to organize and suppress wages.

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Furthermore, labor provisions should include language on standards for pay equity and paid leave. A renegotiated NAFTA must guarantee that all workers, no matter their country of residency, gender, or ethnicity, are respected and fairly compensated for their labor.

Establish an Open and Transparent Policymaking Process with Ability to Review

NAFTA negotiating texts must be made publicly available after each negotiating round with the opportunity for public comment, so Congress is able to provide input in the process and so the American people can evaluate whether their interests are being advanced. It is not too late to improve the transparency of the process. The current negotiating process minimizes input from the American people. Going forward it should be altered so that the American people have a meaningful say in remaking a trade deal that impacts their daily lives. A new clause should be added to NAFTA, automatically initiating a thorough review every five years with a requirement that each country reaffirm its willingness to continue the pact or propose changes.

For the remainder of the NAFTA renegotiations, the Trump Administration should make draft proposals publicly available and should solicit Congressional and public input before finalizing the proposals. Negotiating texts also must be made publicly available after each negotiating round with the opportunity for public comment, so Congress can provide input in the process and so the American people can evaluate whether their interests are being advanced.

Closed-door trade negotiations lead to rigged outcomes. Hundreds of corporate advisors dominated the development of past trade deals, while Congress and the public were effectively shut out of

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the process. Process inevitably affects outcomes: to achieve a NAFTA replacement that delivers for working people, a democratic, accountable, and transparent negotiation process with proposals and draft texts made available to Congress and the public is essential.

Systematic reviews and public debate over major policies must be the standard operating procedure in a democracy. Given that NAFTA's terms extend far beyond traditional trade matters, it is critical to ensure regular opportunities for review, debate,

and democratic accountability. Requiring a review at set intervals would ensure that the people living with the results of NAFTA can weigh in on the agreement's many non-tariff terms. Second, a regular performance review would also ensure that the outcomes of agreements are measured against their intended goals. In the case of NAFTA, 23 years of outcomes run counter to proponents' rosy predictions, fueling a backlash against trade in general. A regular review would provide the opportunity for corrections and improvements, and likely build support for the benefits of expanded trade.

Finally, by locking in a level of certainty that does not otherwise exist in the market and perpetually guaranteeing favorable treatment for various industries, NAFTA promotes investment decisions that

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often do not reflect the public interest. Without including a mechanism for systematic review and, as needed, improvements, NAFTA will continue to incentivize firms to outsource production or select a heavily polluting production method because of certainty that conditions cannot change, even if government priorities and other factors shift. No policy, including trade agreements, should be insulated against democratic accountability.

Restore Balanced Trade

The massive U.S. trade deficit with Mexico and Canada that resulted after NAFTA's implementation has been disastrous for American manufacturers, farmers, and workers across the country that have seen their jobs outsourced or demand for their products stifled by access to cheap foreign imports. NAFTA has resulted in the largest trade deficit of any U.S. trade agreement, jumping from a \$10.5 billion deficit before NAFTA to a \$144.4 billion deficit in 2016, in inflation-adjusted terms. During this time, more than 930,000 American jobs have been certified as lost to NAFTA alone by the U.S. government under the Trade Adjustment Assistance program.

Imports from Mexico and Canada have grown exponentially while the growth of U.S. exports to Mexico and Canada under NAFTA has been slower than to countries with which the U.S. has no trade agreement. As a result, since NAFTA's implementation, the annual growth of the U.S. goods trade deficit has been 43 percent higher with Mexico and Canada than with countries that are not party to a NAFTA-style trade pact.

Eliminate NAFTA's Job Outsourcing Incentives and Corporate Tribunals

A renegotiated NAFTA must eliminate the special corporate privileges – including the private corporate legal system known as Investor State Dispute Settlement (ISDS) – that help corporations outsource jobs, and empower them to attack environmental and health laws and get large payouts of our tax dollars.

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While the U.S. proposal for countries to be able to opt out of the ISDS regime and to limit investors' rights is an improvement on the status quo, a renegotiated NAFTA should eliminate ISDS provisions entirely. Additionally, NAFTA's expansive substantive investor rights that guarantee privileged treatment to foreign investors must be eliminated. Providing additional protections to multinational firms subsidizes outsourcing by providing them treatment better than what market conditions provide if they relocate.

Foreign investors use ISDS provisions to sue sovereign nations in private tribunals. ISDS grants corporations special rights to bypass domestic court systems and demand taxpayer compensation for consumer protections, environmental regulations, court decisions, and other government actions

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that they claim violate their expansive NAFTA rights. Cases are heard by tribunals of three corporate attorneys who can order payment of unlimited sums of taxpayer funds, including for the corporations' claimed future expected profits. The lawyers' decisions are not subject to appeal.

A foreign investor need not pursue a case to conclusion to achieve the watering down of environmental, health, and other public interest policies, or deter the establishment of new ones. The mere threat of an ISDS case against an existing or proposed policy raises the prospect that a government will need to spend millions of dollars in tribunal and legal costs to defend the policy, even if the government might ultimately prevail.

Moreover, the substantive investor protections that ISDS enforces operate like no-cost risk insurance. Combined with access to a pro-investor dispute-resolution regime outside domestic courts, they eliminate many of the usual risks and costs that make corporations think twice about moving production to a low-wage developing country like Mexico.

Expand Buy American Procurement Policies

A renegotiated NAFTA must eliminate existing provisions that undermine the use of Buy American and other government purchasing policies that create good jobs, and must respect each nation's right to determine how the government spends tax dollars.

The Trump Administration's overdue study regarding the impacts of the government purchasing domestically-produced goods is not a substitute for strong Buy American provisions. Rather, NAFTA's terms that require a waiver of Buy American and other domestic procurement preferences and that limit environmental, labor, human rights, and other conditions on procurement policy must be eliminated. Four out of five American voters – Republicans, Democrats, and Independents alike – support Buy American provisions, which require that the government purchase U.S.-made goods, unless a product is much more expensive, or unavailable domestically.

Currently, NAFTA undercuts the Buy American policy that has been a cornerstone of supporting American workers and businesses for over 80 years, outsourcing our tax dollars to purchase products manufactured elsewhere instead of reinvesting tax dollars domestically to boost production and create good jobs for workers in the U.S. The agreement also threatens the use of procurement policies that protect our environment and boost wages and labor standards. U.S. businesses selling U.S.-produced goods should have preferential treatment when applying for taxpayer-funded government contracts.

Strengthen Rules of Origin

To create jobs in North America, a renegotiated NAFTA also must include strengthened rules of origin. Under current NAFTA rules, almost 40 percent of a vehicle's value can come from China or another country outside North America and still qualify for NAFTA treatment. As well, without strong rules of origin, companies could bypass a renegotiated NAFTA's new, strong labor and environmental standards by sourcing parts and raw materials from countries with low wages and lax standards, thus benefiting the trade deal while exploiting weak labor and environmental standards outside

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of North America. New safeguards also are needed to reduce opportunities for “leakage” and to halt “trans-shipment” cheating while encouraging production in North America in general and the U.S. in particular. To effectively address American job loss and wage stagnation, strengthening rules of origin must go hand in hand with including in a renegotiated NAFTA strong and binding labor and environmental standards and rules to raise wages, with swift and certain enforcement.

Protect Our Air, Water, and Climate

A renegotiated NAFTA must halt the outsourcing of jobs and pollution by including strong environmental standards with swift and certain enforcement. Trade agreements must contain legally binding obligations for partner nations to adopt, maintain, implement, and strengthen policies to protect our air, water, and climate.

Trade agreements that fail to ensure a binding floor of environmental protection across borders will continue to incentivize the outsourcing of jobs and pollution to countries with lower environmental standards. The current existing side agreement in NAFTA on the environment is powerless and perpetuates a trade regime that shields corporations from real accountability for ecological damage. This race to the bottom costs American jobs and exacerbates climate change and other forms of environmental degradation, harming people and communities both at home and abroad.

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A renegotiated NAFTA must include strong and binding provisions that commit all three countries to protecting our environment. That includes requiring countries to adopt, maintain, and implement policies to fulfill commitments made in multilateral environmental agreements, including the Paris Agreement. As with labor standards, an independent body must be created to investigate potential violations of these environmental standards and to bring cases to binding dispute settlement, subject to the same penalties used to enforce the commercial terms of the agreement.

A renegotiated NAFTA also should explicitly preserve flexibility for each country to adopt standards and implement environmental policies that exceed the standards negotiated in the agreement, such as feed-in tariffs, a carbon cap and/or tax, renewable energy programs, and energy efficiency standards or labels. A broad carve-out for non-discriminatory environmental and health policies must be included in a renegotiated NAFTA to exempt such policies from challenge. Finally, a renegotiated NAFTA must exclude provisions that inhibit a swift transition to a clean energy economy through requirements for any signatory country to export a set quantity of gas and oil. For instance, NAFTA’s “proportionality clause,” which obligates Canada to maintain a fixed share of energy exports, including oil and gas to the U.S., should be eliminated.

Congress must not vote on a renegotiated NAFTA until each country adopts, maintains, implements, and enforces domestic laws that fulfill the Paris Agreement and other core multilateral environmental

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agreements, including those that reduce pollution. New tools must be added to ensure that independent monitoring and enforcement will occur, and preferential market access must be conditioned on sustained evidence of on-the-ground improvements, with environmental-dumping tariffs imposed for backsliding.

Prioritize People Above Profits

A renegotiated NAFTA must not supersede a nation's ability to safeguard the health and safety of its citizens.

Under a renegotiated NAFTA, any provisions for regulatory convergence must require high standards of consumer and other protections. Specifically, only goods, services, and service providers that comply with a nation's consumer health and safety, environmental, land use and zoning, labeling and licensing, professional qualification, privacy, transparency, and consumer access policies should be allowed to gain entry into its market.

Past trade pacts have allowed products and services into the market that do not meet U.S. health and safety standards. They also have required signatory countries to weaken their domestic policies, such as food and product safety standards, financial regulations, and internet governance rules. This effectively rewrites non-trade consumer protection policies in closed-door negotiations under the influence of the very commercial interests being regulated. The results have been requirements to "harmonize" U.S. standards downwards to satisfy business interests. New rules and a broad carve-out are needed, so strong domestic consumer protection laws cannot be attacked as barriers to trade and weakened, putting the population at risk of health and environmental hazards.

Promote Affordable Medicines and Medical Devices

A renegotiated NAFTA must eliminate excessive monopoly protections and drug- and medical device-pricing rules that delay generic drugs, raise drug prices, or undermine countries' abilities to negotiate lower prices for government health programs like Medicare or Medicaid.

Health policy should not be constrained or limited by NAFTA rules that favor brand-name pharmaceutical and medical device companies. The three NAFTA nations are signatories to the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). NAFTA should not further limit the NAFTA nations' discretion over patent and other monopoly protections, including, for example, the ability to determine the standards for issuing and revoking patents.

By the same token, no new NAFTA terms should limit governments' ability to direct public health policies and programs to meet the needs of all patients, but especially the most vulnerable. A renegotiated NAFTA must not include any limitations on drug pricing or listing policies of government-supported health programs, such as Medicaid or Medicare.

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Congress and state legislatures must retain their right to make prescription drugs more affordable through price negotiation and other means. The production of generic pharmaceuticals is an important tool for increasing access to lifesaving medicines in the U.S. and abroad. The WTO TRIPS agreement attempts to balance the interests of rights holders with the need to expand access to life-saving drugs and devices. Trade agreements should not tip that balance toward the monopoly rights of pharmaceutical corporations, delaying the entry of lower-priced generics into the market through the inclusion of TRIPS-plus provisions to extend patent periods, expand the scope of patentability, allow firms to continually renew patents, require government agencies to withhold drug test data so generic companies cannot produce lower-cost alternatives or establish other forms of additional exclusivity.

NAFTA already includes provisions that extend beyond TRIPS, but adding in the extreme medicine monopoly terms of the Trans-Pacific Partnership is a priority of the corporate lobby. More heavily weighing the scale in favor of the interests of brand-name pharmaceutical manufacturers at the expense of consumers would make NAFTA even worse for the working people. A renegotiated NAFTA should eliminate rules that go beyond the TRIPS standard and level the playing field, balancing affordability with innovation.

Support Communities of Color

A renegotiated NAFTA must stop the outsized damage done to communities of color because of unfair trade deals.

Communities of color have been among the hardest hit by NAFTA, with a number of the industries that have endured the worst job outsourcing under the agreement disproportionately employing people of color. Economists estimate that auto manufacturing – a sector that employs a high share of African-American workers – has lost more jobs than any other U.S. sector to NAFTA-incentivized outsourcing and imports. The second-highest job loss under NAFTA has been in the manufacture of communications and audio-visual equipment – a sector that employs a disproportionate share of Latino and Asian-American workers.

Studies find that U.S. workers of color who lose their jobs to imports are even less likely than their white counterparts to find a replacement job. Communities of color are also disproportionately impacted by attacks on environmental, worker safety, and public health standards that arise from unfair trade.

NAFTA's renegotiation must be led by input from communities of color – not the corporations responsible for NAFTA's legacy of outsourcing and pollution. Any deal that replaces NAFTA must reverse this legacy – and its outsized impact on communities of color – by including binding, cross-border standards to elevate wages, reduce pollution, support family farmers, and protect the rights of minority communities.

Respect Human Rights

A renegotiated NAFTA must respect the human rights of all individuals in the signatory countries. Protection of human rights is a core American value and must take precedence in diplomatic and economic relations with other nations.

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As a global leader, the U.S. must urge economic partners to adopt internationally recognized civil, political, and human rights standards, while ensuring these same rights are implemented at home. The U.S. has a moral responsibility to use its economic power to promote the respect of human rights.

A renegotiated NAFTA should require signatory countries to adopt, implement, and enforce domestic laws consistent with the United Nations Universal Declaration of Human Rights and the nine core international human rights conventions and covenants. Further, our trade policies should prohibit discrimination against workers on basic human rights standards, including race, color, sex, sexual orientation, gender identity, religion, political opinion, national extraction, social origin, age, disability, HIV/AIDS status, engagement in organizing activities, or union membership.

Deteriorating economic conditions in Mexico as a result of NAFTA led to widespread displacement and an immigration surge, with many people leaving their families behind in Mexico in search of work. This has divided families, exposed migrant workers to abuse, and placed a disproportionate burden on Mexican women to support their families.

At the same time, NAFTA has threatened the jobs, land rights, and legal status of Indigenous communities in all three signatory countries. As such, a renegotiated NAFTA should account for the impact of trade on women and promote women's contributions and leadership, protect the rights of immigrants, and uphold the rights and concerns of Indigenous communities. We applaud the efforts of Canada's women's and Indigenous movements in advocating for new NAFTA chapters dedicated to strengthening gender and Indigenous protections.

Stop Currency Misalignment and Manipulation

U.S. trade agreements must contain enforceable provisions that prohibit partner nations from manipulating or misaligning the value of their currencies.

Although the Trump Administration has announced its intention to counter currency manipulation, to date, no such proposal has been forthcoming with respect to NAFTA. A renegotiated NAFTA should include countervailing duties to eliminate the effective subsidy provided by misaligned currency values if a partner nation is found to be in violation.

Undervalued exchange rates allow partner countries to boost their exports and impede the flow of goods and services from other trading partners. Currency manipulation and misalignment contributes to trade imbalances and leaves millions of American jobs at risk due to floods of subsidized imports and decreased export potential for American goods.

A renegotiated deal could provide a mechanism for the U.S., Mexico, and Canada to confront currency manipulation as a united front. A revised NAFTA should require the parties to work together to address currency manipulation and misalignment by non-NAFTA parties. Such coordinated efforts will amplify unilateral actions. In addition, the U.S. government should combine effective trade policy with efforts to ensure the U.S. dollar is not overvalued, thereby undermining U.S. exports abroad.

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Enact Comprehensive Investments in Workers and Provide a Robust Safety Net for Workers Displaced by Trade

In order to assist those hurt by the job losses, lower wages and resulting economic distress from our trade policy, the U.S. must adopt a comprehensive set of policies to expand the social safety net for workers displaced by trade. This should include strong public investments in the Trade Adjustment Assistance program, unemployment insurance, job training and retraining programs, and an iron-clad, comprehensive guarantee that workers who lose their jobs to trade will not also lose their homes or become food insecure.

NAFTA has been devastating for a broad range of U.S. workers: the Trade Adjustment Assistance program alone lists over 930,000 certified American jobs as lost to NAFTA. Under NAFTA, American auto industry workers have witnessed the closing of factories and the loss of thousands of jobs, while the auto-sector trade deficit with Mexico grew by 200 percent between 1993 and 2016. Workers in these and other industries negatively impacted by global trade deserve a robust safety net that provides economic stability and opportunity.

End Handouts that Promote Corporate Consolidation

NAFTA's provisions that undermine small businesses and concentrate the power and profits of big corporations must be ended. In addition to NAFTA's outsourcing incentives, which powerful corporations exploit to seek out low wages and weak labor and environmental standards, other associated policies related to ISDS, exports, agriculture, and patent protections only rig the playing field further. For example, of all the money that firms have taken from taxpayers in ISDS cases worldwide, 96 percent of it has gone to corporations with more than \$1 billion in revenue.

NAFTA's export incentives such as deregulatory measures and tariff reductions disproportionately favor big corporations. Only 3 percent of small businesses export any good to any country, yet even for those that do, their exports have actually grown much more slowly under NAFTA than outside of NAFTA. Meanwhile, big corporations' exports under NAFTA have grown more than twice as fast as that of small businesses.

NAFTA enabled agribusiness giants to shift production and processing operations across borders, operating wherever subsidies were highest and production costs were lowest. This allowed agricultural giants to consolidate their market power, further squeezing out small-scale U.S. farmers. From 1992 to 2012 – roughly the first two decades of NAFTA – the U.S. lost 22 percent of its small-scale farmers while large-scale agribusinesses increased their market share.

Trade deals like NAFTA also grant broad monopoly patent rights to pharmaceutical and other corporations. Large pharmaceutical firms – not small ones – tend to hold patents protected by NAFTA, expanding their power to limit competition in foreign markets so as to further increase rents.