

1994 NAFTA vs. Trump 2018 NAFTA 2.0 vs. 2019 New NAFTA

Patent Rules and Medicine Prices

1994 NAFTA

NAFTA's intellectual property rules expanded protections for drug firms beyond WTO requirements. But recent pacts, like the TPP, went far beyond NAFTA. When the U.S. left TPP, the other nations suspended these rules.

2018 NAFTA 2.0

NAFTA 2.0 added expansive new monopoly rights for pharmaceutical firms that would lock in high U.S. drug prices and raise prices in Mexico and Canada. Big Pharma protections go beyond any past U.S. trade pact and would lock in policies on patent evergreening/ extensions and limit generic competition for biologic medicines that Congress seeks to change to lower prices.

2019 New NAFTA

Big Pharma giveaways added to NAFTA 2.0 were eliminated. The entire provision on biologics was deleted from the text. The requirement to provide second-use patents was removed. Other terms were cut or modified to eliminate NAFTA-plus monopoly terms for medicines. PhRMA and BIO oppose the final agreement. The pharma-funded "Pass USMCA" corporate coalition withdrew support.

ISDS/Investor Protections That Subject Governments to Compensation Claims by Foreign Firms

1994 NAFTA

NAFTA's Investor-State Dispute Settlement (ISDS) grants rights to foreign corporations to bypass domestic courts and "sue" governments before tribunals of three corporate lawyers. The lawyers can award corporations unlimited sums to be paid by taxpayers, including for loss of expected future profits, on claims that a domestic environmental law, safety rule or court ruling violates their NAFTA rights. Tribunal decisions are not subject to outside appeal. More than \$392 million has been paid to corporations in a series of NAFTA ISDS cases against energy, zoning, water and timber policies, toxics bans, and more.

2018 NAFTA 2.0

ISDS between the United States and Canada was totally eliminated. This terminates more than 90% of U.S. ISDS liability. With Mexico, ISDS was replaced by a new approach that reflects some longstanding progressive demands. The extreme investor rights relied on for almost all ISDS payouts were removed, as was the 'right to invest.' Compensation is only for direct expropriation or post-establishment discrimination. A new process requires investors to exhaust domestic remedies and fixes some other procedural problems with ISDS, including new limits on compensation. A loophole preserves full investor rights for nine U.S. oil and gas firms that obtained 13 contracts with Mexico's Hydrocarbons Authority during the partial privatization of Mexico's oil and gas sector, as long as Mexico provides such rights in pacts with other nations.

2019 New NAFTA

No change relative to NAFTA 2.0. ISDS is eliminated between the United States and Canada, and ISDS is replaced with rights limited to compensation for direct expropriation and post-establishment discrimination under new procedures between the United States and Mexico. The oil and gas loophole remains, meaning the old NAFTA 1994 expansive substantive investor rights are preserved for nine U.S. firms with 13 contracts with the Mexican Hydrocarbons Authority to use. (The procedural reforms apply.) However, all of the other U.S., Mexican and Canadian oil and gas firms that NAFTA 1994 empowered to attack any U.S., Mexican or Canadian energy, climate or other public interest policy have lost these expansive investor rights. This includes the many U.S. firms with contracts with Pemex, the Mexican parastatal oil entity.

Labor and Environmental Standards and Enforcement

1994 NAFTA

Side agreements were added by Pres. Clinton to the NAFTA deal Pres. Bush signed in 1992. Terms were vague. Violations could only result in limited-amount fines being imposed against a government after a lengthy and circuitous process. Not a single labor or environmental claim ever resulted in fines. The side agreements were not connected to the text of the agreement, and violations could not result in trade sanctions or products being stopped at the border.) Conditions in Mexico did not improve. The lack of clear and enforceable labor and environmental standards subject to strong enforcement promoted a race to the bottom in wages and standards in North America and mass U.S. job outsourcing as companies relocated production to Mexico to pay workers less. The continuing absence of independent labor unions has contributed to real wages in Mexico being lower now than before NAFTA. Mexican manufacturing wages are 40% lower than in China. The lure of \$2 per hour wages for skilled employees located close to the U.S. has led many U.S. firms to build high-tech modern factories in Mexico and shutter U.S. plants. Also, firms operating in Mexico avoid environmental costs with mass toxics dumping, polluting air and water. More than 990,000 U.S. jobs have been certified as lost to NAFTA under the Dept. of Labor's Trade Adjustment Assistance (TAA) program. This is an undercount: TAA only covers a subset of jobs lost to NAFTA, and workers must know to apply. During NAFTA, a \$31 billion U.S. goods trade deficit with Canada and a \$2.7 billion surplus with Mexico in 1993 (the year before NAFTA) turned into a combined NAFTA goods trade deficit of \$215 billion in 2018.

2018 NAFTA 2.0

NAFTA 2.0 included standards in its core text, but loopholes made those terms unenforceable even if the pact had strong enforcement mechanisms. The Environment Chapter did not refer to climate and cut the only environmental rule in the core NAFTA text, which gave priority to certain environmental treaties if they conflicted with NAFTA. NAFTA 2.0's Labor Chapter had a strong Mexico Labor Annex requiring "protection" union contracts be replaced with those approved by workers within four years. But it had no labor- or environment-specific monitoring or enforcement mechanisms. Non-complying goods could not be specifically targeted with sanctions nor stopped at the border à la enforcement of intellectual property rules. The Labor Advisory Committee (LAC) of U.S. unions raised "serious doubts that the improved rules will make a meaningful difference to North American working families *without additional provisions...* Unenforced rules are not worth the paper they are written on." LAC also noted: "the text retains limitations we reject that labor violations under the agreement must be in a 'manner affecting trade or investment' (which likely excludes much of the public sector) and occur in a 'sustained or recurring course of action or inaction' (which excludes egregious but one-time acts such as murder or torture)..." Some labor standards extended beyond past pacts, with new terms on violence, migrant workers, and right to strike. A core flaw of past pacts remained: Labor standards are defined by a vague 1988 Int'l Labor Organization "Declaration of Fundamental Principles and Rights at Work" not the actual ILO Conventions with a footnote excluding reference to the Conventions. In May, Mexico passed labor reforms, but the law was challenged. Mexican courts issued injunctions. The law enacts the Labor Annex obligations from creation of impartial labor courts to an independent agency to administer conciliation/registration of collective bargaining agreements. The initial Mexican Labor

2019 New NAFTA

A key loophole was closed: it is now assumed that a labor or environmental violation is trade-related unless the defending country can prove it is not. The requirement to show repeats or a pattern was eliminated for the violence standard and narrowed for other labor and environmental standards. There is still no climate reference. The environmental safeguard for environmental treaties is restored and strengthened relative to original NAFTA text. The "May 10" environmental standard was added: Countries must "adopt, maintain, and implement laws, regulations" to fulfill obligations of seven listed environmental treaties. The strong Mexican Labor Annex was unchanged. A new "Facility-Specific Rapid Response Labor Mechanism" was added, with the intent of imposing financial incentives on firms to meet Labor Annex terms. For a "good faith basis" claim of denial of collective bargaining or freedom of association rights under the Labor Annex, three-person panels of labor specialists can inspect facilities, interview workers and consider government pleadings to determine violations and remedies. Panels include one labor specialist from each country and one from neither. This covers workers in manufacturing, service and mining. From start to possible penalty, the process takes 150 days with an initial 45-day period for the responding country to remedy or deny. The penalty for first violation is tariffs on goods of firm or fines proportionate to violation. For the second violation at same facility or another facility of same firm, the penalty is up to unlimited tariffs or fines on all goods of that firm. Third violations can result in goods being denied entry. Throughout the process, customs bonds on goods from the facility/firm can be held to create incentive for speedy resolution. The U.S. implementing bill authorizes funding for five labor attachés in U.S. consulates in Mexico to monitor and

Dept. budget was insufficient to provide funds to establish these new institutions.

help with enforcement. It also funds border water treatment and enforcement of various U.S. environmental laws allowing non-complying goods to be stopped at border. It funds additional labor staffing and grants to Mexico. The Mexican labor law remains under challenge. Funding levels increased, but remain heavily backloaded with only first year appropriated and at levels below that necessary to set up key institutions.

Job Outsourcing Incentives

1994 NAFTA

NAFTA includes investor rights that eliminate many costs and risks of relocating to low-wage nations. The pro-NAFTA Cato Institute labels these outsourcing subsidies. These include minimum standard of treatment in Mexico and rights to government compensation for violations of these rights.

2018 NAFTA 2.0

The investor outsourcing subsidy features are eliminated.

2019 New NAFTA

Unchanged from NAFTA 2.0. The investor outsourcing subsidy features remain eliminated.

Waiver of Buy American Government Procurement Rules

1994 NAFTA

NAFTA's government procurement rules forbid preferences for domestic goods, effectively banning application of Buy American rules against Mexican or Canadian goods. Labor and green procurement standards are exposed to challenge. This increases government purchases of foreign goods rather than reinvestment of U.S. tax dollars to create jobs at home and ensures U.S. firms could relocate to Mexico and still be ensured lucrative U.S. government purchasing contracts.

2018 NAFTA 2.0

The Buy American waiver is retained. The exception if that certain purchases of the Transportation Security Administration were excluded from the ban on applying preferences for American-made goods. Language in U.S. trade pacts since 2007 designed to clarify that countries can use technical specifications for goods and services relating to environmental protection was added, but language pertaining to labor standards was weakened.

2019 New NAFTA

Unchanged from NAFTA 2.0.

U.S. Must Import Food Not Meeting U.S. Safety Standards; Consumer and Other Public Interest Laws Exposed to Challenge

1994 NAFTA

With respect to food safety and inspection, product safety, service sector consumer protections and more, NAFTA sets a ceiling but no floor with strong consumer and environmental standards subject to challenge as illegal trade barriers. Many of same rules are in the WTO.

2018 NAFTA 2.0

The existing problematic NAFTA regulatory limits were retained and in some instances expanded, including related to e-commerce and internet policy. This includes a liability waiver for online platforms with respect to their content similar to §230 of the Communications Decency Act and limits on governments' ability to halt cross-border data transfers. (For instance, even the TPP provided governments a right to require certain sensitive financial information not be offshored.)

2019 New NAFTA

Unchanged from NAFTA 2.0.

Non-Agricultural Trade

1994 NAFTA

All tariffs and quotas are eliminated. U.S. non-agricultural exports totaled \$450 billion to Mexico and Canada in 2018 relative to only \$40 billion in agricultural exports.

2018 NAFTA 2.0

Duty/quota-free terms were unchanged. Helpfully, some rules-of-origin are higher so goods with high Chinese or other non-NAFTA value do not slip through. For autos/trucks, 40-45% of value must be made by workers paid *on average* \$16, but this counts some high-wage salaried workers. Auto firms' supply chains likely already comply without moving production.

2019 New NAFTA

These terms are the same as in the 2018 NAFTA 2.0, but were clarified so that within five years, the rule of origin in the auto sector requires that steel content must be steel that is melted and poured in North America.

Agricultural Trade

1994 NAFTA

All U.S.-Mexico agricultural trade is duty-free, as is most between the U.S. and Canada. The \$2.5 billion U.S. agricultural trade surplus with NAFTA partners before NAFTA reversed to a \$9 billion deficit in 2018. Nearly 250,000 small-scale U.S. farms were wiped out since the original NAFTA went into effect. Several million Mexican rural residents reliant on small scale farming also lost their livelihoods.

2018 NAFTA 2.0

U.S. agricultural market access gains are limited to small additional amounts of duty-free access to Canada for dairy, eggs, poultry, and wine. Canada gets new U.S. duty-free access for dairy, peanuts and sugar and products containing them. The International Trade Commission projected total U.S. agricultural access gain at \$450 million with vanishingly small (1,700) agricultural job benefits. (U.S. 2018 agricultural exports to NAFTA partners were more than \$41 billion.) There were no changes to policy-related terms on dumping, subsidies, etc. that organizations representing small farmers in North America have identified as extremely damaging.

2019 New NAFTA

Unchanged from NAFTA 2.0.