**Comments to the United States Trade Representative**

***Re: Operation of the Agreement Between the United States of America, the United Mexican States, and Canada, Docket Number USTR-2025-0004***

**October 29, 2025**

Public Citizen welcomes the opportunity to comment on the Office of the U.S. Trade Representative's (USTR) public consultation process in advance of the joint review of the Agreement between the United States of America, the United Mexican States, and Canada (USMCA) on July 1, 2026.

Public Citizen is a nonprofit consumer organization with over 1,000,000 members and supporters. A mission of Public Citizen is to ensure that in this era of globalization, a majority can enjoy economic security, a clean environment, safe food, medicines, and products, access to quality, affordable services, and the exercise of democratic decision-making about the matters that affect their lives. We have conducted extensive analysis of U.S. trade and investment agreements and their outcomes, starting in 1991 during the initial North American Free Trade Agreement (NAFTA) negotiations.

While noting that the USMCA included important improvements on the outdated NAFTA, such as strengthened labor standards, a novel rapid response labor enforcement mechanism, and the removal of controversial corporate tribunals that undermined sovereignty and democratic policymaking, the USMCA contains a host of provisions that undermine the rights of consumers and workers in all three countries. The mandated review of the USMCA in 2026 provides a crucial opportunity to fix the damaging trade rules that have contributed to the continued offshoring of good U.S. jobs as well as the root causes of migration from Mexico.

Below, we outline a number of areas that must be fixed during the USMCA review to put workers and the public interest ahead of corporate profits.

## 1. Digital Trade

The USMCA contains several 'digital trade' related provisions that limit the ability of Congress and state governments to hold Big Tech companies accountable and protect consumers in a rapidly changing digital ecosystem.

In particular, USMCA's provisions on "free flow of data across borders," prohibitions on source code disclosure, provision on "safe harbor" for intermediaries, and sweeping "non-discrimination" provisions are all straight out of Big Tech's digital trade wishlist, which seeks to pre-empt the ability of governments to introduce regulations that could affect their bottom lines or hold them accountable, irrespective of the consequent harm to the public interest.[i]

The USMCA was not the first time that Big Tech companies tried to include extreme digital trade provisions in a U.S. trade agreement. The first such attempt, the Trans-Pacific Partnership Agreement (TPP), was signed by President Obama in 2016.[ii] President Trump campaigned against the TPP and once in office, withdrew the U.S. from the unpopular pact. Nonetheless, this did not stop President Trump from replicating the TPP digital trade provisions in the USMCA, and even including more extreme versions of those provisions with far fewer exceptions, thereby further limiting the sovereign ability of signatories to regulate the digital ecosystem.[iii]

The USMCA's July 2020 entry into force was a big win for Big Tech companies, as this was the first time that such extreme digital trade rules were codified in a binding and enforceable trade agreement that included the U.S.[iv]

However, as the known and potential harms of digital platforms, AI systems, and unregulated data flows become more apparent, the corporate-first, deregulatory model pushed by the 'digital trade' provisions in the USMCA must be reworked. Allowing this deregulatory agenda to continue to be codified in the USMCA (and other enforceable trade agreements entered into by the U.S.) could have disastrous effects on the regulation of the tech industry in the U.S. and globally and, as a consequence, for the many millions of people and small businesses whose rights are directly impacted by a laissez-faire attitude to the regulation of the tech industry.

### *1.1. Source Code Disclosure*

Article 19.16 of the USMCA limits the ability of signatories to require disclosure of or access to the source code of software/algorithms as a condition precedent to the import, sale, use, or distribution of the relevant software or products containing the software. The agreement provides a limited exception that permits disclosure of source code to a regulatory or judicial body for the purposes of a specific investigation or proceeding, and subject to implementation of safeguards against unauthorized disclosure.

The limitation of disclosure only to instances where a specific investigation has been launched can be extremely restrictive and allows for redress only after documented harm has been done. It may be difficult to establish bona fide grounds for an investigation without access to the source code or algorithm itself. This provision also limits the ability for external or independent audit of algorithms and software systems, which could be critical in jurisdictions with low regulatory capacity.

Provisions that bar scrutiny of source code/algorithms prior to deployment can enhance the "black box" nature of AI and software tools, thereby enhancing risks associated with such systems.

The provision in the USMCA goes beyond what is seen in agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), a renamed version of the TPP, which does not specifically limit access to source code to instances where an investigation has been initiated. The CPTPP provision recognizes that parties may require the modification of source code to enable compliance with domestic regulation. The power to require correction or modification of source code is done away with in the USMCA, thereby further limiting the ability of governments and regulators to require changes to algorithms or source code that could be demonstrated to be biased or otherwise harm individuals.[v]

Ensuring that governments, regulators, and researchers can access the source code of software, particularly that used in AI systems, is increasingly important from a consumer safety, public health, as well as competition perspective.

For example:

(a) Software can cause product safety violations in several areas, from transport to health via medical devices. Malicious or poorly written code can cost lives, particularly when used in devices that play a critical safety role. It may be important for such devices to undergo pre-emptive safety tests, which may need to include access to source code. Independent researchers and regulators may also need access to source code to gauge a host of unethical or illegal practices, for instance, the intentional degradation of battery life in smartphones.

(b) Software can contain malicious code that intentionally or otherwise allows user data to be captured and shared with third parties. Ensuring that software does as it says may require access to source code. This may be particularly true of software embedded in consumer products, particularly those directed at children or vulnerable populations, or those that may capture sensitive personal information.

(c) Software is increasingly being used to make decisions such as hiring and firing, determining credit or social benefits eligibility, predictive policing, and the like.[vi] Ensuring that algorithms used in such products do not exacerbate biases can be essential to ensure that both the public and private sectors meet social obligations. A number of U.S. states already have laws in place that require an audit of algorithms used for purposes of employment.[vii] Therefore, AI regulation implementing transparency mandates may fall foul of digital trade rules mandating source code secrecy.[viii]

(d) Software and the algorithms used therein can be embedded within products used to regulate environmental impacts, such as emission controls in cars. Scrutiny of source code could have prevented the infamous case of Volkswagen enabling millions of cars with emissions-cheating software.[ix]

(e) A number of recent laws attempt to promote the right to repair, that is, the ability for consumers to access the necessary hardware and software to repair their electronic devices themselves or through independent third parties.[x] Access to source code could be essential in promoting this right, given the growing integration of software that uses algorithms in all manner of consumer goods and other devices, from tractors to wheelchairs.[xi]

(f) Software can be designed and used in ways that treat competitors unfairly. Several Big Tech companies, including Google[xii] and Amazon,[xiii] have prioritized their own products and services over those of competitors when ranking search results. Regulators may require access to source code in investigating such monopolistic behavior by dominant entities. Several competition authorities the world over are increasingly seeking to examine the anti-competitive harms caused by algorithms used by big digital platforms. The UK's Competition Markets Authority notes in this regard that "*Having access to the data and/or the code means it is possible to audit a decision-making system through a comprehensive regulatory inspection in a more thorough manner than a 'black-box' approach.*"[xiv] The Organization for Economic Cooperation and Development (OECD), citing several instances of competition authorities examining algorithms for anti-competitive outcomes, also recognizes the importance of algorithmic auditability to protect consumer interests.[xv]

In essence, USMCA provisions mandating algorithmic secrecy are akin to enabling pharmaceutical companies to market drugs without pre-authorization from the Food and Drug Administration (FDA). Given the growing ubiquity of AI-based systems in policing and justice, insurance, housing, employment, healthcare, and more, ensuring that algorithms are not perpetuating or exacerbating biases will be vital to ensuring a fairer and more just society. In a similar vein, ensuring that the data of American citizens cannot be exploited by tech companies is crucial to protecting the rights of vulnerable populations.

**Provisions on source code and algorithmic secrecy must therefore be removed from the USMCA.**

### *1.2. Cross-border Data Transfers*

Article 19.11 of the USMCA provides that: "*No Party shall prohibit or restrict the cross-border transfer of information, including personal information, by electronic means if this activity is for the conduct of the business of a covered person.*" This provision's exceptions that permit the implementation of restrictions on cross-border data flows are limited to those that are "necessary to achieve a legitimate public policy objective" and that are not (a) applied in a manner so as to constitute an arbitrary or unjustifiable discrimination or a disguised restriction on trade, and (b) do not impose restrictions on transfer of data greater than necessary to achieve the relevant public policy objective. Further, Article 19.12 of the USMCA restricts signatories from requiring computing facilities to be located domestically as a condition to conduct business in that territory.

Under the USMCA, the cumulative impact of a domestic measure having to be both necessary and the least restrictive possible, reduces the policy space available to a signatory government to adopt restrictions on cross-border flows in public interest.[xvi] Together, these provisions act to limit the ability of signatories to decide on whether and how to regulate the exports of data from their territories.

Targeted restrictions on cross-border data transfers can be used to (a) protect civil liberties such as privacy, (b) ensure regulators and other government entities can access data to carry out their supervisory functions, and (c) for economic and strategic reasons.[xvii] When stored in foreign jurisdictions, American citizens' data is subject to foreign laws and privacy practices, which may not ensure appropriate standards of data security. Enforcement of privacy or related claims in foreign jurisdictions may also be difficult. Unregulated exports of data also imply that jobs related to that data, such as in the AI supply chain, can be offshored, negatively impacting U.S. tech workers.

The narrow scope of the permissible derogations under the USMCA provisions sets a high standard for any domestic measure to meet to pass muster. By way of comparison, the provisions in the USMCA are far stricter than in free trade agreements (FTAs) such as the Regional Comprehensive Economic Partnership (RCEP) and the CPTPP, which allow parties to establish their own regulatory requirements in this regard and provide for broader exceptions than in the USMCA.[xviii] Further, even broad, general exceptions under trade agreements have not shielded governments from challenges to their public interest policies; for instance, there have been only two successful uses of general exceptions under the General Agreement on Trade and Tariffs (GATT) and General Agreement on Trade and Services (GATS), out of 48 attempts.[xix]

Any attempt to implement regulations to restrict the transfer of personal data on rights-based grounds — that could help consumers, workers, and vulnerable groups protect their sensitive personal data and thereby seek to dismantle the surveillance-capitalism-based model of the Internet — could be challenged under the USMCA. State privacy and data protection regulations that restrict data transfers or the foreign processing of American data, such as biometrics, could also be threatened.

Crucially, the U.S. implements a number of restrictions on free cross-border data flows — which could be threatened by the extreme "free flow of data" provisions in the USMCA. At the federal level, the U.S. restricts foreign data transfers under the Protecting Americans' Data from Foreign Adversaries Act of 2024, Cybersecurity requirements for U.S Cloud Computing Contractors, and Executive Order 14117 – Preventing Access to Americans' Bulk Sensitive Personal Data, and United States Government Related Data by Countries of Concern. At the state level, cross-border data transfers are restricted by laws such as Montana's Genetic Information Privacy Act, and the 2023 Amendment to California's Confidentiality of Medical Information Act.[xx]

In the fast-changing technology landscape, it is ill-advised to limit the ability to regulate cross-border data flows, particularly when such measures are increasingly being considered around the world to protect private and public interests.[xxi]

**Provisions on cross-border data flows should therefore be removed from the USMCA.**

### 1.3. <u>Intermediary Regulation</u>

Article 19.17 of the USMCA states that signatories should not adopt measures that treat “a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information.” Parties are barred from imposing liability on suppliers of interactive computer services for taking action to moderate content on their platforms in good faith.

Other major FTAs, such as RCEP and CPTPP, do not contain an analogous provision, indicating the global shift away from the “safe harbor” model adopted in the 1990s.

There is a bipartisan, vigorous, and ongoing debate in the U.S. on the need to tackle the harms arising from social media, including through potential revision of Section 230 of the Communications Decency Act (CDA).[xxii] U.S. law also imposes additional content moderation and related obligations on intermediaries in certain contexts, for instance, concerning intellectual property violations (under the Digital Millennium Copyright Act, 1998) and in the context of child rights (Children’s Online Privacy Protection Act, as well as statutes preventing the distribution of CSAM, etc.). Recent legislative attempts, such as the Kids Online Safety Act (KOSA), also impose ‘duties of care’ on covered platforms.[xxiii] A number of states have adopted laws regulating social media platforms and online content. For example, the California Age Appropriate Design Code Act (CAADCA) requires relevant platforms to assess and mitigate risks posed by their products to children. Several other states have implemented regulations casting additional obligations on intermediaries who direct content at children, including through age-verification and other requirements.[xxiv]

Essential regulatory interventions that cast content moderation or similar obligations on intermediaries could therefore be threatened by the “safe harbor” provisions in the USMCA.

**Given the ongoing debate on regulation of intermediaries, the provision should be removed from the USMCA.**

### 1.4. <u>Non-discrimination and Other Provisions</u>

The extreme digital trade rules in the USMCA could also be used to challenge a host of other U.S. regulations that aim to ensure greater competitiveness and fairness in the digital economy. For instance, provisions on <u>non-discrimination</u>, investment, and financial services could be used to challenge laws that seek to limit the power of Big Tech to abuse their monopolies or avoid paying their fair share of taxes.

Notably, Canadian digital services taxes have been challenged under relevant provisions of the investment and financial services chapters of the USMCA.[xxv] Given the failure of countries to agree to a resolution on taxation of multinational companies at the OECD/BEPS negotiations, countries must be free to tax multinational corporations in an appropriate manner, without being hindered in this respect by a trade agreement. *The relevant provisions in the services and investment chapters of the USMCA must therefore be removed or amended* so as to limit the possibility of bringing frivolous complaints alleging discriminatory behavior, where no such behavior exists.

In a similar vein, Article 19.3 of the USMCA, which prohibits parties from imposing customs duties, fees, or other charges on or in connection with the import of digital products transmitted electronically, must be removed.

As indicated in a number of studies, the revenue foregone from taxing digital imports can be significant.[xxvi] Taxation of digital platforms can also be difficult in cases where the company has no significant or physical presence within the territory of a country.[xxvii] President Trump's announcement that the administration intends to impose taxes on foreign films would itself be a violation of this provision, as most films are now consumed through interactive streaming services. **It is therefore advisable to remove Article 19.13 of the USMCA to provide each signatory country with the policy space to collect taxes as it sees fit.**

While some policymakers close to Big Tech companies may argue that formalizing a deregulatory agenda in trade negotiations would benefit the U.S. by providing its Big Tech companies more leeway to earn profits in the short run, in the long run, this will certainly backfire and lead to unnecessary harm. The U.S. must ensure that it takes the lead in promoting robust and rights-based regulatory systems for technology. The revision of the USMCA should therefore avoid inclusion of any provisions that restrict the ability of governments from regulating the digital ecosystem in public interest, whether that may be measures to regulate the AI ecosystem, digital payment mechanisms, or advance the use of controversial schemes such as digital identities — all measures being advocated for by technology companies including through a range of new FTAs. The signing of trade agreements that limit U.S. sovereignty and the ability to implement public interest regulation is a shortsighted move, with significant adverse consequences for consumers, workers, and the digital economy as a whole.

### *1.5. Recommendations on 'Digital Trade' Provisions*

In the circumstances as described above, to protect the fundamental rights of U.S. citizens, workers, and marginalized communities and ensure our sovereign right to regulate the digital ecosystem in the public interest, the USMCA's 'digital trade' related provisions must be amended to:

(a) Remove provisions that protect source code from disclosure to governments, regulators, and independent researchers or that restrict the right to repair.

(b) Remove provisions that confer 'safe harbor' on intermediaries.

(c) Remove or retool provisions in the digital, investments, and services chapters that allow for anti-discrimination claims to be brought against laws that meet critical public interest regulation, such as those seeking to ensure competition in the digital economy or taxation of large digital companies.

(d) Remove provisions that restrict the ability of governments to restrict cross-border transfers of data or require the establishment of local computing facilities.

(e) Remove provisions that restrict the ability of governments to tax cross-border trade in digital products.

(f) Avoid the inclusion of additional digital trade provisions that restrict the ability of governments to regulate developing technologies.

## 2. Intellectual Property Provisions

The WTO's Trade-Related Aspects of Intellectual Property Rights agreement (TRIPS), which sets binding minimum standards for IP protection across all WTO member countries, including patents for medicines, has often been criticized for putting pharma company interests over public health.[xxviii] The USMCA goes beyond TRIPS in including a number of provisions that enhance the monopoly power of behemoth pharmaceutical companies at the expense of patients in the U.S., Mexico, and Canada.[xxix]

The USMCA's IP chapter locks in pharmaceutical monopolies, constrains domestic policy space, undermines the flexibility of health policy, and endangers the region's public health crisis preparedness.[xxx]

### *2.1. Long Patent Terms (for Patent Examination Period)*

Article 20.44 of the USMCA requires member states to provide extensions to patent monopolies for perceived delays in reviewing patent applications at the patent office. These extensions can significantly delay the market entry of generic competition, allowing the holders of patent monopolies to continue to charge unaffordable prices after the patent monopoly would ordinarily have run.[xxxi] The provision provides member states with the flexibility not to allow extensions for delays attributable to the patent holder or other actions not attributable to the patent authority. This method of extending an already long patent term beyond the WTO-mandated twenty years represents a windfall for Big Pharma.

Pharmaceutical companies have attacked Canada's implementation of this provision, including the fact that Canada's patent term adjustment regulations allow the adjusted term to run concurrently with any adjustments for delays in the regulatory review period.[xxxii] Canada has, and should retain, the flexibility under the USMCA to treat these patent term adjustments concurrently. Mandating the independent treatment of all patent term adjustments would artificially extend patent monopolies, delay the entry of generic competition, and threaten access to medicines.

### 2.2. *Long Patent Terms (for Regulatory Review Period)*

Article 20.46 of the USMCA requires member states to provide patent term extensions for perceived delays in market entry resulting from the marketing approval process. This requires member states to grant monopolies to pharmaceutical companies longer than the TRIPS twenty-year patent period, allowing Big Pharma to continue charging consumers high prices and block generic competition.

### 2.3. *Exclusive Rights Over Clinical Trial Data*

Data exclusivity rules, as seen in Article 20.48 of the USMCA, delay generic drug approval by preventing generic manufacturers and regulatory authorities from using an originator company's data to grant marketing approval for a generic drug. This provision allows for at least five years of market exclusivity for new pharmaceutical products, in which member states shall not permit generic manufacturers to market cheaper versions of the product using the same clinical trial data.

TRIPS does not require the grant of exclusive rights over test data. Exclusivity protections reduce flexibility to introduce medicines needed to respond to health needs, including during pandemics that spread across borders.

### 2.4. *Market Exclusivity for New Forms and Combinations of Old Medicines*

Article 20.48.2 of the USMCA allows pharmaceutical companies to engage in "evergreening," a process in which a pharmaceutical company makes a minor modification to a drug (such as an extended-release version) to justify additional years of patented monopoly control. Marketing exclusivity applies regardless of the drug's patent status, so even off-patent medicines can block generic competition for five years if combined with a new chemical entity that has not been previously approved.

### 2.5. *Restricting Access to Generics Through Market Exclusivity and Term of Patent*

Article 20.51 of the USMCA requires member states to treat market exclusivity and patent term independently. This prohibits countries from altering or ending market exclusivity when patent protection terminates. In cases where exclusivity outlasts patent protection, this provision extends originator companies' monopoly control, preventing generic competition.

### 2.6. *Imposition of Patent Linkage Systems That Can Delay Generic Approvals*

Article 20.50 of the USMCA creates a patent linkage mechanism that allows patent holders to block the registration of generic medicines for marketing approval. This provision requires member states to notify a patent holder before marketing a competing product and to provide an adequate opportunity for the patent holder to seek remedies. While this provision does not explicitly block registration of generic medicines, it can still delay generic market entry and facilitate patent abuse. Even spurious patents can be used to delay the introduction of generics, and the financial benefits of blocking generic competition often outweigh the risks of penalties.

### 2.7. *Enforcement Tools That Empower Corporations to Protect Their Monopolies Across Borders*

USMCA enforcement provisions further tilt the balance of power toward industry interests. Provisions such as Article 20.71 (criminal enforcement of trade secrets), 20.77 (sanctions for unauthorized disclosure by officials), 20.81(4) (enhanced damages), and 20.82 (border measures) grant pharmaceutical corporations broad tools to suppress generic competition and intimidate regulators. These mechanisms risk chilling legitimate policy actions aimed at expanding access to medicines.

### 2.8. *Recommendations on Intellectual Property Provisions*

The result of the aforementioned provisions is long delays to access affordable medicines, restricted national policy space, and legal leverage for pharmaceutical companies to protect profits at the expense of public health.[xxxiii] For example, during the COVID pandemic, Mexico struggled with delayed shipments, limited supply, and inflated prices, and was unable to procure timely supplies of basic medical countermeasures.[xxxiv] Restrictive IP rules meant that, even in the face of a global emergency, companies could not legally produce or distribute generic versions of tests, treatments, and vaccines without the express authorization from rights-holders through complex and delayed licensing arrangements. Donations of surplus doses, high-priced imports, and volatile international supply chains were no substitute for localized, sovereign production.[xxxv]

In the circumstances as mentioned above, existing USMCA provisions that privilege pharmaceutical monopolies over access to affordable medicine must be eliminated, including "TRIPS-plus" provisions that leave consumers at the mercy of behemoth pharmaceutical companies. **Thus, the entire intellectual property chapter in the USMCA should be removed.** Decisions regarding the balance between the rights of patent holders and the right to public health should be made through democratic policymaking, not through international trade agreements negotiated in secret.

Should the chapter be retained, the following changes must be made so as to enhance the ability of generics to compete with proprietary pharma products:

(a) Eliminate patent term extensions. Patent term extensions grant corporations additional years of monopoly beyond the TRIPS 20-year term. These rules inflate prices and delay access to generic medications.

(b) Remove provisions that grant additional monopolies through data and market exclusivity. Data exclusivity creates barriers to generic competition even in the absence of valid patents. This is especially dangerous during pandemics. U.S. trade policy should never prevent countries from utilizing existing clinical trial data to authorize the production of generics in health emergencies.

(c) Eliminate patent linkage. Requiring governments to notify patent holders before marketing a competing product so that the patent holder can first seek remedies can lead to further delays in the generic medicine's entry into the market, allowing for continued de facto monopolies.

(d) Eliminate TRIPS-plus enforcement provisions. Giving companies expanded remedies beyond the generous infringement remedies they already have is imbalanced and unfair.

(e) A renegotiated USMCA should also include provisions affirming governments' right to use compulsory licensing to address public health needs and to negotiate for lower prescription medicine prices.

## 3. Labor Standards

The USMCA's labor chapter represented an important departure from prior trade frameworks by establishing enforceable obligations and creating the Rapid Response Mechanism (RRM) to investigate facility-specific violations of workers' rights. However, the overall framework has failed to deliver the wage growth, union representation, and cross-border equity that were promised. Wage gaps between the United States, Mexico, and Canada remain vast, and offshoring to low-wage, weak-enforcement jurisdictions continues to erode industrial employment across the region. We support the changes that organized labor has called for in the USMCA revision, and wish to call particular attention to the issues described below.

### 3.1 *Weak Wage and Value Requirements*

The existing Labor Value Content (LVC) rule — which requires that 40 to 45 percent of a vehicle's value be produced by workers earning at least $16 per hour — applies only to a narrow subset of the automotive sector and is easily circumvented through creative supply-chain accounting. Most manufacturing and industrial workers remain outside its scope. Without broader wage standards or transparent reporting on wage distribution across export sectors, corporations continue to exploit wage differentials while retaining preferential trade benefits.

### 3.2 *Shortcomings of the Rapid Response Mechanism*

The RRM has achieved modest success in improving wages and labor conditions in specific Mexican facilities, yet its reach remains narrow and inconsistent. It excludes entire industries, fails to protect migrant and contract laborers, and has not generated economywide improvements in collective bargaining or independent union representation. The mechanism's narrow mandate and limited institutional capacity prevent it from addressing wage suppression, retaliation, or wage theft, and there are no parallel enforcement tools for environmental or wage-related violations.

### 3.3 *Persistent Offshoring Incentives and Erosion of Bargaining Power*

The USMCA's investment and procurement provisions continue to privilege corporate mobility over worker stability. By allowing firms to relocate production to low-wage jurisdictions without offsetting obligations or compensation, the Agreement perpetuates downward pressure on wages and bargaining power. The persistence of these structural incentives has deepened economic inequality, weakened domestic manufacturing, and sustained a model of export dependency that leaves workers across the region vulnerable to exploitation and volatility.

To achieve equitable growth and shared prosperity, the USMCA must be revised to:

(a) Improve the "Labor Value Content" requirement for automobiles;

(b) Condition preferential access to goods and services on payment of fair wages and full compliance with labor rights, supported by transparent reporting on wage levels in exported goods and services;

(c) Establish a North American minimum wage for manufacturing workers in key sectors, premised on equal pay for equal work, and raise wages in Mexico to stimulate regional demand and deter offshoring;

(d) Strengthen and expand the RRM to cover all sectors and all forms of labor violations — including wage theft, retaliation, and union-busting — and to enable enforcement against systemic abuses, not just individual facilities;

(e) Increase the Regional Value Content (RVC) thresholds to ensure that a greater share of inputs in North American goods — such as automobiles, aircraft, wind turbines, and computers — are produced within the region, improving supply chain resilience and domestic employment;

(f) Adjust Most Favored Nation (MFN) tariff rates for key manufactured goods on a coordinated trilateral basis to prevent circumvention of strengthened labor and environmental standards; and

(g) End the prohibition on "Buy American" provisions in U.S. federal procurement, ensuring that taxpayer dollars create domestic jobs rather than subsidizing offshored production. This will require coordinated adjustments to procurement commitments at the WTO to restore policy space for all three countries to prioritize domestic industry.

## 4. Environment

A key priority for the U.S. government must be to spur a "race to the top" in environmental standards. In addition to the climate and ecosystem-related benefits of strengthening environmental protection norms, such provisions are key to ensuring that U.S. manufacturing that complies with environmental standards is not undermined by unfair competitors that take advantage of weak environmental standards abroad. This must ensure that, in addition to strengthening labor standards globally, there is a focus on providing high and enforceable environmental standards in manufacturing processes.

Investing in clean technologies and manufacturing will not only boost the competitiveness of U.S. exports, especially as countries increasingly seek access to more sustainable products through their supply chains, but also help create prosperous and resilient working-class communities throughout the U.S.

Revisions to the environmental provisions in the USMCA are crucial to protect and promote domestic investments in manufacturing and the consequent job growth.[xxxvi]

### 4.1. Strengthening Enforcement

Chapter 24 of the USMCA, the Agreement's environment chapter, remains too weak to address the urgent realities of the climate crisis or to support clean, competitive, and resilient U.S. industries. While it represents modest progress over the virtually nonexistent standards in NAFTA, its reliance on aspirational phrasing — such as "shall strive to" — renders its commitments largely unenforceable. This stands in sharp contrast to the binding protections granted to investors and intellectual property holders.

To ensure the environment chapter upholds the same level of enforceability as other core provisions, the United States should lead efforts to replace all directory language with mandatory obligations requiring each Party to maintain, enforce, and continuously improve strong environmental protections. Article 24.3.2 and similar provisions should be revised to use binding language such as "shall ensure."

### 4.2 Multilateral Environmental Agreements

Chapter 24 should also include a new provision that automatically expands the list of Multilateral Environmental Agreements (MEAs) to encompass any existing and future MEAs where at least two partners are or become signatories. MEAs are international treaties through which countries commit to addressing shared environmental challenges by adopting, maintaining, and enforcing common standards and obligations.

To align with this purpose, the amended provision should require parties to implement all necessary laws, regulations, and measures to fulfill their MEA commitments and prohibit any derogation, even where such compliance may conflict with other provisions of the USMCA. To ensure coherence, relevant MEAs should also be incorporated by reference into a new clause under Article 32.1.

At present, Article 24.4 references only a narrow set of MEAs without requiring implementation or automatic adoption of future agreements. This limitation undermines environmental goals by allowing companies to relocate to jurisdictions with weaker environmental enforcement, thereby shielding polluting industries from accountability. Establishing automatic incorporation of MEAs would close this gap, ensuring that the USMCA remains consistent with evolving environmental standards.

### *4.2. Establishing Response Mechanisms:*

Given the relative success of the Rapid Response Mechanism created to enforce labor standards, a similar mechanism should be implemented to ensure timely compliance with environmental standards. This would allow for the quick resolution of complaints regarding breaches of environmental norms.

Thus, Articles 24.4 and 24.32 of the USMCA should be appropriately amended to establish a facility-specialty enforcement mechanism for point-source violations of USMCA and other relevant environmental standards and protections by specific facilities. Appropriate provisions in Chapters 30 (Administrative and Institutional provisions) and 31 (Dispute Settlement) must also be revised appropriately to support the operation of a new RRM.

The creation of an RRM should be supported by harmonized data collection and information provision requirements for emissions, enabling uniform and consistent access to information on facilities in the U.S., Mexico, and Canada.

Article 24.4 should be further amended to include a commitment by each party to establish an interagency body to gather inputs and meet regularly to address emerging concerns that affect the climate and environment as unintended consequences, or abuse, of the USMCA.

A tri-national working group should be established under Article 24.11 to harmonize air pollution monitoring and reporting for extensive facilities, such as those manufacturing steel, cement, or aluminum, covering at least greenhouse gas emissions and criteria air pollutants.

### *4.3. Improving Air Quality and Transparency*

Under Article 24.11, a tri-national working group should be established to harmonize air pollution monitoring and reporting for major industrial facilities such as steel, cement, and aluminum plants. This group should publish recommendations to reduce emissions and improve public air quality reporting no later than July 1, 2027. Articles 24.27 and 24.28 should also be strengthened to allow stakeholders from any Party to escalate enforcement claims to consultation or dispute settlement once a factual record has been issued, ensuring transparency and accountability.

### *4.4. Modernize Manufacturing*

To align trade rules with the transition to low-carbon manufacturing, a new article on Modernizing Manufacturing should commit the Parties to:

(a) Reduce greenhouse gas emissions in line with a 1.5°C trajectory by 2035, including through deployment of innovative low-emissions technologies;

(b) Harmonize and publicly share interoperable data on emissions intensity and beneficial ownership across critical supply chains;

(c) Refrain from challenging one another's green industrial and procurement policies, including those favoring low-carbon production;

(d) Establish a tri-national initiative on circularity and material optimization by 2028, setting parameters for sustainable recycling and resource use; and

(e) Within two years, issue a report developed in consultation with stakeholders on creating an international partnership focused initially on steel and aluminum, including common emissions thresholds and tariffs on high-emissions imports from noncompliant countries.

### *4.5 Additional Revisions*

To make the environmental framework fully operational, it must guarantee environmental justice and community participation in enforcement and remediation, and add a "climate peace clause" to protect climate and clean-energy policies from trade and investment disputes.

## 5. Investor State Dispute Settlement

The inclusion of Investor State Dispute Settlement (ISDS) provisions in trade and investment agreements has long been one of the most controversial features of the global trade system. ISDS provisions empower foreign investors to undermine democratic governance and critical public interest regulation, and essentially socialize their investment risk.[xxxvii]

While the USMCA made significant progress by eliminating ISDS between the U.S. and Canada and restricting its application between the U.S. and Mexico, considerable risks remain.[xxxviii] Annex 14-E preserves full ISDS rights for companies with covered government contracts in the oil, gas, power generation, telecommunications, transportation, and infrastructure sectors. These provisions allow a narrow group of corporations to maintain extraordinary legal privileges unavailable to domestic entities, including the right to challenge permit cancellations, environmental restrictions, or contract reforms before private tribunals.[xxxix]

This carveout undermines the progress achieved by phasing out ISDS elsewhere. It creates an unequal system where fossil fuel investors retain recourse to international arbitration, even as other industries must rely on domestic legal remedies. Several U.S. oil companies, which hold concession contracts with the Mexican Hydrocarbons Authority, retain their full substantive rights, which are enforceable until Mexico ends ISDS with other countries whose firms hold similar contracts.[xl]

ISDS cases around the world have routinely targeted environmental, labor, and public health safeguards. Fossil fuel corporations have been among the most prolific users of the system, winning multi-billion-dollar awards against governments that sought to phase out coal plants, limit oil exploration, or increase environmental accountability. The continued availability of ISDS for energy contracts under the USMCA threatens to deter Mexico from enforcing environmental standards or pursuing its climate transition.

Proponents of ISDS often argue that such provisions attract foreign investment. However, empirical evidence shows no correlation between ISDS access and higher investment inflows. Multiple studies and United Nations Conference on Trade and Development (UNCTAD) reviews have confirmed that countries terminating ISDS agreements have not experienced a decline in foreign direct investment.[xli] Conversely, states that remain bound by ISDS continue to face increasing legal exposure and budgetary risk.

Furthermore, ongoing NAFTA "legacy" cases undermine sovereignty to regulate in the public interest and threaten environmental and community protections by foreign investors. The "legacy annex" (Annex 14-C) in the USMCA investment chapter allowed for investors to bring ISDS claims forward under NAFTA's old investment rules for three years following July 1, 2020, the date on which NAFTA was replaced by the USMCA. All three USMCA parties have asserted in their defense and non-disputing party submissions that Annex 14-C only allowed claims to be brought against alleged NAFTA violations that occurred while NAFTA was still in force.

Speculative foreign investors, however, have launched "legacy" ISDS claims based on events that occurred after NAFTA ceased to exist. These are some of the most expensive and outrageous claims in NAFTA's 30-year history of ISDS, including Ruby River Capital's $1 billion (at a minimum) case against Canada for rejecting a liquid natural gas project in Quebec based on the results of two rigorous environmental impact assessments, and at least four cases surpassing $3 billion in total claims against Mexico.[xlii] The USMCA review should explicitly state that claims based on events that occurred after the USMCA took effect are not permitted under the legacy annex.

Just as governments around the world are moving away from the ISDS system, there has been growing bipartisan opposition to ISDS in the U.S., including from Republican former USTR Robert Lighthizer[xliii] and Democratic former USTR Katharine Tai.[xliv] In 2024, more than 300 Democratic and Republican state legislators from 48 states signed a letter urging the removal of ISDS from existing trade and investment agreements, citing concerns over sovereignty and states' rights.[xlv] U.S. Supreme Court Chief Justice Roberts has noted that "[g]ranting a private party the right to bring an action against a sovereign state in an international tribunal regarding an investment dispute is a revolutionary innovation." He raised particular concerns that ISDS allows private arbitrators to "sit in judgment on [a nation's] sovereign acts," and "review its public policies and effectively annul the authoritative acts of its legislature, executive, and judiciary."[xlvi]

Similarly, the National Conference of State Legislatures (NCSL), representing the Republican and Democratic majority legislatures in all 50 states and territories, has declared its opposition to any trade or investment agreement that provides foreign investors with greater rights than those available to U.S. companies under the Constitution. NCSL's 2024 policy directive affirms that when a state enacts a non-discriminatory law or regulation serving a public purpose, such action "shall not constitute a violation of an investment agreement or treaty, even if the change in the legal environment thwarts the foreign investors' previous expectations."[xlvii] Even the Cato Institute — a leading free-market think tank — has argued that ISDS "is not even essential to the task of freeing trade," concluding that removing it "makes sense economically and politically" and would "pave the way for freer trade."[xlviii]

This rare convergence across political ideologies underscores that ISDS is both unnecessary and harmful. Accordingly, **the existing ISDS provisions in the USMCA must be removed**.

### 6. Farmers and Agricultural Communities

Agriculture remains one of the sectors most distorted by current trade rules. While large agribusiness corporations have benefited from export expansion and consolidation, small and medium farmers, rural workers, and Indigenous communities have faced displacement and declining incomes.

The Agreement perpetuates structural imbalances inherited from earlier frameworks. As a condition of joining NAFTA, Mexico dismantled constitutional land protections (*ejidos*), allowing foreign agribusinesses to consolidate farmland. The influx of subsidized U.S. corn after Mexico eliminated agricultural tariffs as required by NAFTA caused domestic prices to collapse by more than 60 percent and displaced over two million small farmers.[xlix] The USMCA maintained unrestricted agricultural market access without addressing subsidy asymmetries or concentration in processing and retail sectors, undermining rural livelihoods across North America.

Rules on agricultural market access and subsidy disciplines further prioritize export expansion over food sovereignty, limiting governments' ability to stabilize prices, manage reserves, or prevent dumping. Combined with sanitary and phytosanitary measures that favor large exporters' supply chains, these provisions have reinforced the dominance of global agribusiness. As a result, rural communities face chronic poverty while giant agricultural corporations capture the value chain, paying producers below-cost prices and charging consumers record margins.

The U.S. government's challenge to Mexico's restrictions on genetically modified (GM) corn imports illustrates how these rules are used to undermine the sovereignty to regulate in the public interest.[l] Mexico's cautionary approach to GM cultivation and consumption is rooted in legitimate environmental, public health, and cultural concerns and should be respected as the right of each nation to determine its food safety and biodiversity.[li]

To build resilient rural economies and ensure that trade supports — rather than undermines — sustainable food systems, the USMCA should be reformed to:

(a) Restore policy space for governments to manage agricultural imports, stabilize markets, and prevent dumping of subsidized commodities;

(b) Eliminate provisions that entrench agribusiness concentration and restrict domestic regulatory authority;

(c) Reinstate country-of-origin labeling (COOL) for major food products, including beef, pork, dairy, eggs, and seafood, to guarantee transparency and informed consumer choice;

(d) Condition preferential access on compliance with fair labor and environmental standards throughout agricultural supply chains;[lii]

(e) Support smallholder, Indigenous, and women farmers through cooperative financing, credit access, and tri-national technical assistance programs;

(f) Ensure equitable representation of small producers in national and regional agricultural advisory bodies; and

(g) Establish a North American Agricultural Observatory to monitor pricing, land concentration, and farm income trends, enhancing data transparency and accountability.

**7. <u>Migration and Displacement</u>**

This review of the USMCA is taking place amid ramped-up efforts by the Trump administration to unjustly scapegoat immigrants from Mexico and across Latin America, by deploying ICE raids, expedited removals, and militarized border operations that terrorize communities, violate due process, and enrich private prison contractors. These tactics are not only cruel; they do nothing to address the root causes of migration, which stem from decades of economic dislocation driven by trade and investment regimes that prioritize corporate profit over human rights and stability.

The promises that trade integration would deliver higher wages, job creation, and industrial upgrading in Mexico have not been fulfilled.[liii] Instead, U.S. multinational corporations exploited weak labor standards in Mexico to expand export-oriented manufacturing zones along the border, fueling low-wage, precarious work and severe environmental degradation.[liv] Real wages for Mexican workers fell sharply after NAFTA entered into force and have stagnated ever since.[lv] Employment in *maquiladora* sectors declined further after China's WTO accession in 2001, as firms relocated once again in pursuit of even cheaper labor.[lvi] The same trade rules that facilitated this capital flight also eroded rural livelihoods by flooding Mexican markets with subsidized U.S. corn, displacing millions of small farmers.

The result is a cycle of displacement, exploitation, and criminalization as communities uprooted by economic policies are then met with border militarization, detention, and exclusion when they migrate in search of jobs. Trade and migration are thus two sides of the same coin, structured by policies that protect mobility for corporations while restricting it for people.

The USMCA's labor chapter contains no enforceable protections for migrant workers, who comprise a large share of North America's agricultural, food-processing, construction, and service workforce. The RRM does not cover sectors where subcontracting and cross-border recruitment are most common, leaving workers exposed to debt bondage, wage theft, and retaliation. Without facility-level enforcement and cross-border coordination, migrant workers remain invisible to the trade system that depends on their labor.

To break this cycle, trade policy must address the root causes of migration and protect the rights of migrants.

The following reforms to the USMCA and immigration policy are necessary:

(a) Implement transparent and inclusive trade policymaking. Replace corporate-dominated advisory committees with on-the-record public consultations that include labor, Indigenous, and migrant organizations from all three countries.

(b) Strengthen labor, human rights, and environmental enforcement. Make binding facility-specific protections for all workers — including migrants — a condition of market access. The benefits of the agreement should be limited to goods and services produced under verified fair-wage and rights-respecting conditions.

(c) Affirm national sovereignty and development policy space. Restore governments' ability to safeguard rural livelihoods, manage food supplies, and regulate foreign investment in the public interest through price supports, tariff protections, and anti-dumping measures.

(d) Integrate trade and migration governance. Establish a tri-national mechanism to monitor trade-related displacement, protect labor mobility, and ensure access to justice for cross-border workers.

(e) Immediately stop cruel and chaotic mass deportation. Stop expanding the inhumane immigration detention system. Guarantee due process and protection for vulnerable populations. Uphold and expand legal pathways and humanitarian protections for individuals covered under VAWA, DACA, DALE, and TPS, recognizing that trade-driven displacement is a human rights issue, not a criminal one.

Last but not least, the USMCA review process itself must be transparent, participatory, and accountable to the public. Decisions that will shape the region's labor, environmental, and economic future cannot be negotiated behind closed doors or dominated by corporate lobbyists. The Parties should commit to open and ongoing consultations with unions, environmental, Indigenous, migrant, and civil society organizations, as well as legislators, in all three countries to ensure the Agreement reflects democratic input and advances the public interest. Any textual proposals from the United States should be published in an on-the-record public comment process before they are tabled to the other parties, and all consolidated texts after any negotiating rounds should also be made public so that civil society experts can influence the contents before a renegotiated text is finalized. Finally, the revised USMCA must be approved by the U.S. Congress, which has the constitutional authority over foreign commerce.

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