

United States Senate

WASHINGTON, DC 20510

November 15, 2017

The Honorable Robert E. Lighthizer
United States Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Lighthizer:

In advance of the fifth round of North American Free Trade Agreement (NAFTA) negotiations in Mexico City, it is clear that the Parties are at an inflection point. Entrenched corporate special interests are fiercely lobbying against reforms that benefit American working families. They fight because NAFTA has allowed them to reap big profits by taking advantage of cheap foreign labor—causing job losses, stagnating wages, and shuttered factories here at home. We write to encourage you to end the race to the bottom that has been the hallmark of previously failed agreements. We ask you to do this by pressing ahead with a bold labor chapter proposal that includes clear standards with swift and certain enforcement.

As you are well aware, the May 10, 2007 Agreement is the baseline from which the new labor chapter must build. While May 10th was an improvement for its time, recent events have made clear that its provisions are inadequate. Nowhere is this more evident than in the recently decided Guatemala labor case, in which a panel concluded that Guatemala is in compliance with its free trade labor obligations despite a horrifying labor record.¹

The Guatemala case demonstrates how the May 10th model must be improved as part of the renegotiated NAFTA. First, the new labor chapter must eliminate or narrowly define the requirement that labor law violations must be through a “sustained or recurring course of action or inaction” to constitute a violation of the agreement. As the panel noted, such a requirement is overkill as “individual instances of non-compliance do not *ipso facto* prove that enforcement is ineffective. A given case of employer non-compliance in the face of inaction or deficient action by enforcement authorities certainly could indicate a failure of effective enforcement. However, this is not necessarily always the case.”² Second, the requirement that violations occur “in a manner affecting trade” should be eliminated. The Parties should stipulate that the working conditions of all workers affect the labor market, thereby always affecting the conditions of trade and investment.

In addition to fixing these two important textual issues, we recommend that you build-in an independent labor monitoring and compliance body. This will help address entrenched labor issues in Mexico and overcome decades of inadequate monitoring and enforcement of labor

¹Dominican Republic – Central America – United States Free Trade Agreement, Arbitral Panel Established Pursuant to Chapter Twenty. [Final Report of the Panel](#). Jun 14 2017.

² Id. at para. 137.

obligations in trade agreements and ensure that rights and remedies apply to all workers, including seasonal and migrant workers.³

Finally, as has long been the case with the provisions sought by multinational corporations, the broader benefits of NAFTA's replacement—lower tariffs, greater market access—should not be granted unless and until all Parties have implemented the fundamental protections of the new labor chapter. In other words, Mexican labor law reforms must be fully implemented before entry into force of the new agreement. If this requires an annexation, that is acceptable.

We believe that the reforms outlined above can reverse the race to the bottom that has led to job losses and wage stagnation in the United States. Additionally, we request that you engage with us to discuss these and related ideas further. We find that face-to-face engagement can spur creativity and bridge divides.

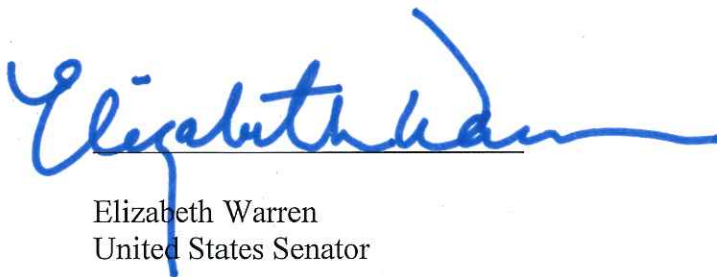
Sincerely,



Tammy Baldwin
United States Senator



Edward Markey
United States Senator



Elizabeth Warren
United States Senator

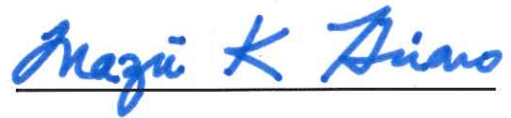


Kirsten Gillibrand
United States Senator

³ U.S. Government Accountability Office. 'Free Trade Agreements: U.S. Partners Are Addressing Labor Commitments, but More Monitoring and Enforcement Are Needed.' [GAO-15-160](#). Nov 6 2014.



Chris Murphy
United States Senator



Mazie K. Hirono
United States Senator



Debbie Stabenow
United States Senator



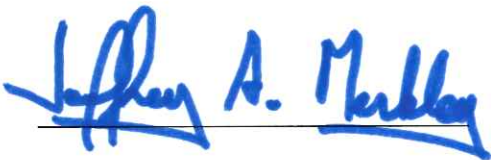
Sheldon Whitehouse
United States Senator



Al Franken
United States Senator



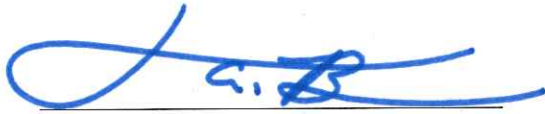
Robert P. Casey Jr.
United States Senator



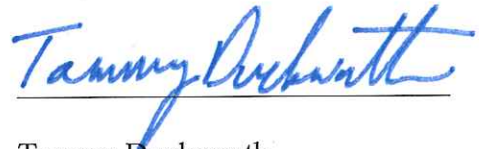
Jeffrey A. Merkley
United States Senator



Gary C. Peters
United States Senator




Cory A. Booker
United States Senator



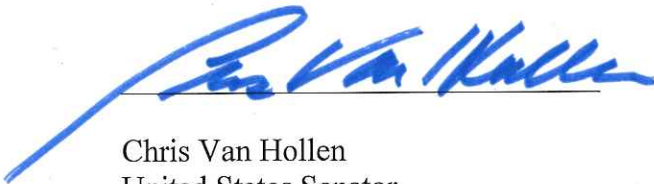
Tammy Duckworth
United States Senator



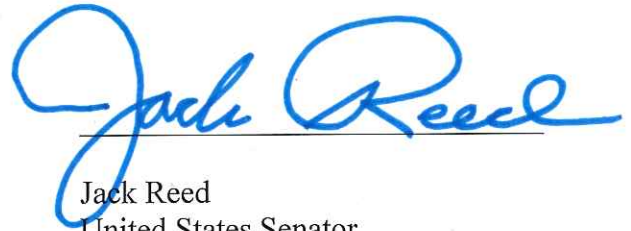
Richard Blumenthal
United States Senator



Robert Menendez
United States Senator



Chris Van Hollen
United States Senator



Jack Reed
United States Senator