

Will Trump Really Give Us a Better NAFTA?

It depends on how much influence the corporate lobby has in the final deal, and it's not over.

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Renegotiations of the North American Free Trade Agreement (NAFTA) are moving at warp speed, with a fourth round of talks underway this week in Washington. In a startling role reversal, the Chamber of Commerce called an emergency news conference last week to attack the U.S. agenda as “**highly dangerous.**”

In response, progressive Senator Sherrod Brown of Ohio **announced** that “it’s about time USTR took the pen away from corporate lobbyists and started writing trade policy that puts American workers first. Any trade proposal that makes multinational corporations nervous is a good sign that it’s moving in the right direction for workers.”

Brown and many other longtime critics of NAFTA are reserving judgment until there is a final deal to review, while urging the administration to secure an agreement they can support. Progressives are understandably concerned about where a final deal may land given that the president could be kindly described as a walking, tweeting multinational corporate brand, and that he packed his administration with a rogues gallery of Goldman Sachs alumni and other NAFTA lovers.

Despite a looming year-end deadline, it remains unclear whether talks will result in a deal that is better for working Americans. Or whether the more-of-the-same gang led by the Chamber of Commerce and Republican congressional leaders will manage, as is their agenda, to get elements of the Trans-Pacific Partnership (TPP) added to NAFTA, which could make NAFTA even worse for working people. Or whether negotiations will get derailed altogether by team status quo.

But it is clear that the top U.S. trade official, U.S. Trade Representative Robert Lighthizer — a results-oriented trade lawyer with decades of experience advocating for U.S. manufacturing

firms and workers and a **strong critic** of NAFTA's damage to America's industrial might and middle class—seems intent on creating a new trade agreement model. This has come as a shock to the corporate lobbyists who have dictated the terms of U.S. trade deals for decades.

The specific proposals that triggered the chamber's hissy fit reveal the gap between NAFTA's brand as a "free trade" agreement and its contents, which feature hundreds of pages of corporate protectionism wrapped around a few chapters of actual trade matters. With NAFTA, the **500 official U.S. trade advisers representing corporate interests** who helped design it were able to impose a set of binding, enforceable rules **creating new protections for their investments** and **extending monopoly intellectual property** rights for pharmaceutical and other firms that limit the competition needed to bring down consumer prices. They also locked in limits on what policies U.S., Mexican, and Canadian elected officials can maintain or create on a vast array of non-trade topics, from food, **product**, and **trucking** safety to **energy** conservation to **how tax dollars can be spent** when the government procures goods and services. The corporate advisers' goal was to maximize corporate profits, not raise wage levels, create jobs or promote healthy communities.

Given **NAFTA's buffet of corporate goodies**, which has served as the menu for each trade agreement since, no doubt team status quo reacted like a banquet of vampires being served garlic soup when they were briefed about the administration's rewrite proposals.

That includes a major rollback of the corporate investor protections and investor-state dispute settlement (ISDS) at the heart of NAFTA. By guaranteeing favorable treatment for foreign investors, these terms make it less risky and expensive for corporations to outsource jobs to Mexico.

These provisions empower corporations to sue governments before a panel of three corporate lawyers who can award the corporations unlimited sums to be paid by taxpayers, including for the loss of expected future profits. The corporations need only convince the lawyers that **a domestic law, regulation, or court ruling** violates their expansive NAFTA rights and privileges. More than **\$392 million in compensation** has already been paid out to corporations to date after NAFTA ISDS attacks on oil, gas, water, and timber policies; toxics bans; health and safety measures; and more. More than \$36 billion in NAFTA ISDS attacks are pending.

Last month, **more than 100 small-business leaders sent a letter calling for elimination of ISDS in NAFTA.** The organizations representing U.S. state legislatures and attorneys general and hundreds of prominent economics and law professors **oppose ISDS**, while conservative U.S. Supreme Court Chief Justice John Roberts **has warned about ISDS's threats to U.S. sovereignty in a recent dissent.**

The U.S. proposal would require countries to opt in to being subjected to ISDS at all, with the United States opting out. (Mexico and Canada have not indicated what they would do.) According to press reports, if countries do opt in, the substantive rights that corporations could enforce using ISDS tribunals would be significantly scaled back. Investors could obtain compensation if their property was expropriated, but not use ISDS, as is now permitted, to demand compensation for changes they oppose to government policies.

Another proposal that has attracted corporate ire is the replacement of NAFTA's open-ended waiver of Buy American and other local preferences in government procurement. These NAFTA terms offshore our tax dollars rather than reinvesting them to create jobs here. They also allow U.S. firms to continue benefiting from lucrative U.S. government contracts even when they offshore their production to Mexico or Canada. The administration is proposing to only provide favorable access for the same value of goods produced in Mexico and Canada that the Mexican and Canadian government purchase in U.S. goods.

The administration is also demanding an end to the loopholes that benefit goods with significant Chinese and other non-North American value-added. A common corporate claim is that the large, persistent U.S.-NAFTA trade deficit—last year \$176 billion in goods—is not a problem because NAFTA supply chains ensure high U.S. value-added in these imports. A recent **study** torpedoed that notion, showing that U.S. content of manufactured goods imported here from Mexico fell from 26 percent at the start of NAFTA to 16 percent in recent years, while the U.S. value-added share of Canadian imports fell from 21 percent to 15 percent.

Another excellent proposal is a **performance review every five years** that would require the signatory countries to reaffirm their commitment to NAFTA. Systematic reviews of major public policy and opportunity for public debate about its future is standard operating procedure in a democracy. Republican House members even founded a “Sunset Caucus” (coincidentally chaired

by one of the staunchest defenders of the trade status quo, Ways and Means Chair Kevin Brady, a Texas Republican) to demand that the worth of *every* government policy and program be demonstrated on a set schedule.

But in the NAFTA context, the corporate lobby argues that the very possibility that NAFTA could be altered or terminated in the future would undermine the certainty that allows firms to make long-term plans and related investments. Outside of the suites of corporations with chronic outsourcing habits, few Americans would support the notion that our trade agreements should enhance the certainty that outsourcing U.S. jobs to lower-wage venues is a good bet.

But guaranteeing a level of certainty, not otherwise existing in free markets, that policies privileging multinational investors cannot be altered regardless of democratic elections and/or shifts in public opinion is now NAFTA's main feature. The high tariffs in place before NAFTA have since been largely eliminated through the World Trade Organization (WTO). NAFTA is no longer needed to ensure market access in Mexico and Canada for most U.S. goods. If NAFTA disappeared tomorrow, the mountains of yellow corn the U.S. ships annually to Mexico would still be duty-free. In fact, after decades of WTO tariff cuts going into effect, the applied weighted average tariffs for trade *with the world* for Mexico, the United States, and Canada are 1.02 percent, 1.63 percent, and .79 percent respectively, **according to the World Bank**.

The intense opposition to the NAFTA performance-review proposal by the most ardent supporters of past pacts spotlights how entirely the firms benefiting from NAFTA, and indeed NAFTA itself, have been exempted from democratic accountability for nearly a quarter-century.

Rather than the promised expansion of the modest pre-NAFTA U.S. trade surplus with Mexico and reduction of a small deficit with Canada, the United States now has large NAFTA trade deficits year after year. **Even agriculture**, promised to be a major NAFTA winner, went from a \$2.3 billion surplus with Mexico and Canada before NAFTA to a \$5.8 billion deficit in 2016. Rather than the 200,000 new American jobs NAFTA promised to create in each of its first five years, more than 930,000 specific American workers have been certified **under just one narrow government program** as having lost their jobs to NAFTA. And every week, NAFTA helps corporations outsource more middle-class jobs to Canada and Mexico, including recently at GE, Carrier, and Nabisco.

Rather than NAFTA having lifted wages, real manufacturing wages in Mexico are now **9 percent lower** than pre-NAFTA starvation wages (and lower than in coastal China), and **U.S. wages are flat** despite productivity gains.

The fury that this gap has fueled not only was vital in propelling Trump to the White House. It should turn all proponents of trade expansion into leading advocates for a NAFTA performance-review provision, so regular improvements can be made before public ire turns into a desire to toss out baby, bathwater—and tub!

Instead, the five-year review and the administration's other NAFTA rewrite proposals have generated an unprecedented level of hysteria from team status quo. This is especially notable, as to date, U.S. proposals on labor and environmental standards have been worryingly acceptable to the corporate lobby, as have intellectual property and other terms.

This week's round of NAFTA negotiations have just been extended by two days. Perhaps this will provide the corporate lobby the time to stop hyperventilating and recognize that their apparent choice is not between the old NAFTA and something different they don't like. Rather, given Trump's willingness to exercise a U.S. presidential authority to unilaterally exit NAFTA, the choice is between something different and no NAFTA.