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## **Mexico City NAFTA Renegotiation Round: If No Progress on Major U.S. NAFTA Reform Proposals, What is Path Forward?**

WASHINGTON, D.C. – As the seventh round of North American Free Trade Agreement (NAFTA) renegotiation talks begin in Mexico City this weekend, Lori Wallach, director of Public Citizen’s Global Trade Watch, commented:

“A NAFTA replacement deal that would enjoy bipartisan congressional support is entirely possible because U.S. negotiators have stood up to the interests trying to thwart real change and have resolutely pushed proposals to cut NAFTA’s job outsourcing incentives and the ISDS tribunals where corporations can attack our laws and to add stronger rules of origin and an accountability-injecting sunset clause.

With time running short, the question is whether some of these U.S. proposals to restructure NAFTA can be agreed upon in Mexico City and progress made on adding strong labor and environmental standards with swift and certain enforcement to stop companies from moving U.S. jobs to Mexico to pay workers poverty wages and dump toxins and then import those products back for sale here.”

### **The State of Play as the 7<sup>th</sup> Round of NAFTA Renegotiations Talks Begin**

Two major related questions loom over the seventh round of NAFTA renegotiations that will be begin this weekend: the timeline and whether the three countries can make progress on the elements of a deal that will be necessary for it to get through the U.S. Congress.

The extended end-of-March deadline that the NAFTA countries set for completing a deal is fast approaching, as is the July 1 Mexican presidential election.

The U.S. corporate lobby has battled against the proposals that U.S. Trade Representative (USTR) tabled at the October NAFTA round to restructure NAFTA’s investment, procurement and rules of origin terms and to add higher rules of origin and a review and sunset provision. Not surprisingly, given these changes are necessary both to deliver on President Trump’s campaign promises on NAFTA and to achieve a deal that can get through Congress, the administration has not budged on these proposals.

For most of 2017, both Mexico and Canada simply refused to engage on the main U.S. demands, which was the corporate lobby’s advice. In late December Mexico shifted course, perhaps recognizing that ignoring priority U.S. NAFTA reform proposals actually would not make them go away.

Now with the window of opportunity closing to get a deal before Mexico's election season kicks into high gear, will agreement be reached in Mexico City on any of the core U.S. reforms? Doing so could pave the way to the sorts of grand bargains that get trade deals done. And given that the United States launched the renegotiations with specific goals in mind, if the changes needed to deliver on those goals remain deadlocked, what is the path forward to any deal - much less one that achieves the bipartisan support needed to ensure passage?

Not surprisingly, the administration is seeking a deal that counters NAFTA's job outsourcing trend and appeals to the Democratic-swing voters in Midwestern states that sent Trump to the White House – and the unions to which many of them belong. And, certainly this administration does not want to repeat the Obama administration's strategic blunder of agreeing to a deal that cannot achieve majority support in Congress despite months of intense lobbying à la the Trans-Pacific Partnership.

Agreement on the U.S. proposal on NAFTA's controversial investment chapter and its Investment-State Dispute Settlement (ISDS) system could be the key to unlocking the impasse. ISDS is unpopular in Congress, not only with Democrats but with a sizeable bloc of GOP committed to opposing any pact that includes ISDS. Progressive and conservative organizations and unions have long held the same view.

ISDS has become a third rail issue because it both promotes job outsourcing and undermines what conservatives call sovereignty and progressives call democratic governance.

The substantive investor protections ISDS enforces operate like no-cost risk insurance and combined with access to a pro-investor dispute resolution regime outside domestic courts, eliminate many of the usual risks and costs that make corporations think twice about moving production to a low-wage developing country like Mexico. More than [930,000 specific U.S. jobs](#) have been certified by the U.S. Labor Department as lost to NAFTA outsourcing and import floods under just one narrow program called Trade Adjustment Assistance (TAA).

Meanwhile, the GOP-majority, the National Conference of State Legislatures, the National Association of Attorneys General, the National Association of Counties and the League of Cities [all oppose](#) ISDS as a threat to sovereignty. No doubt. The regime grants new rights unavailable in U.S. law or courts to thousands of foreign corporations to sue the U.S. government before a panel of three private-sector lawyers. These lawyers can award the corporations unlimited sums to be paid by American taxpayers, including for the loss of expected future profits. These foreign corporations need only convince the lawyers that a U.S. law or safety regulation or court ruling violates their NAFTA rights. Their decisions are not subject to appeal and the amount awarded has no limit.

Even conservative U.S. Supreme Court Chief Justice John Roberts has weighed in on the ISDS sovereignty threat in his [dissent](#) in [BG Group PLC v. Republic of Argentina](#). In that 2014 case, the majority ruled in favor of the enforceability under U.S. law of an ISDS tribunal's ruling. Roberts decried the notion of a country allowing an extra-judicial international tribunal to "... review its public policies and effectively annul the authoritative acts of its legislature, executive and judiciary ... a Contracting Party grants to private adjudicators not necessarily of its own choosing, who can meet literally anywhere in the world, a power it typically reserves to its own courts, if it grants it at all: the power to sit in judgment on its sovereign acts."

Unless the United States joins the growing number of countries extracting themselves from ISD agreements, it's just a matter of time before the United States loses a case. The number of cases being filed and the types of laws, government decisions and court rulings being attacked through ISDS is expanding. There were 50 total ISDS cases from the 1950s to 2000. In recent years, [more than 50 cases](#)

are filed annually. Almost half a billion dollars has been paid out so far by Canadian and Mexican taxpayers just under NAFTA and \$36 billion in additional known claims is now pending under NAFTA. (Because a lot of these cases result in governments changing laws or paying off foreign corporations before the cases get to the stage where they get listed publicly, many cases remain unknown.) And increasing large developed countries are facing ISDS attacks, with Germany paying out tens of millions thanks to two cases.

The intensive focus of the corporate lobby on saving ISDS in NAFTA has verified that these investor privileges and protections that facilitate outsourcing, not any actual trade terms, are what the corporate lobby most values about NAFTA. Yet, for all the claims and hype about ISDS somehow being necessary for U.S. investors' success, the reality is that if they are worried about investing in Mexico, they can buy risk insurance so it's their skin in the game not the U.S. Treasury's. And, if firms investing in oil, gas or mining concessions in Canada or Mexico want ISDS-style protections, they can include in their concessions contracts with those governments' terms sending disputes to the same UN and World Bank arbitration venues that NAFTA uses. That would provide U.S. firms the same protections in Mexico or Canada that NAFTA now provides them, but it would not empower Mexican or Canadian investors – or Japanese or Chinese firms incorporated in Mexico or Canada – with investments in the United States to use ISDS to attack U.S. policies.

***Melinda St. Louis, international programs director of Public Citizen's Global Trade Watch will be available for on-the-ground interviews March 1 to March 5. Wallach can be reached by email and cell in D.C.***

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