

Phase 2 in the Battle to Replace NAFTA & Stop Its Ongoing Damage



After a year of North American Free Trade Agreement (NAFTA) renegotiations, a revised text was signed November 30, 2018. It includes some essential improvements that progressives have long demanded. But also includes unacceptable new terms for pharmaceutical firms that would lock in place the policies that keep U.S. medicine prices high. And critically, the deal's labor and environmental standards must be strengthened and made subject to swift and certain enforcement or job outsourcing and downward pressure on wages will continue.

This NAFTA 2.0 text is not the transformational replacement of the corporate-rigged trade-pact model that we have demanded. But if we fight to get the Big Pharma giveaways out, swift and certain enforcement of improved labor and environmental standards in, and achieve some other key improvements — then a final package *could* stop some of NAFTA's continuing, serious damage to people across North America. That's worth fighting for. We must win improvements to the current deal before it is sent to Congress, likely in the first half of 2019.

No one should call NAFTA 2.0 by Donald Trump's "U.S.-Mexico-Canada Agreement" (USMCA) rebrand. Trump's claim this is a totally different kind of agreement is a deceitful sales pitch like those past presidents used to hawk trade pacts. But NAFTA 2.0 is different, including in ways that reflect decades of progressives' efforts to change trade policy. But more improvements are needed for a new deal to stop NAFTA's ongoing damage and not create new problems.

Key Areas Where the NAFTA 2.0 Text Must Be Improved

New Powers for Big Pharma Undermine Peoples' Access to Affordable Medicine: The NAFTA 2.0 text requires signatory governments to guarantee pharmaceutical corporations monopoly powers to block generic competition. This would lock in high U.S. medicine prices, denying people access to lifesaving medicines. Among other dangerous terms, NAFTA 2.0 requires governments to guarantee 10 years of marketing exclusivity for biologic drugs and provide patent evergreening opportunities. This would lock the United States into our bad policies that keep medicines, including critical cancer treatments, outrageously expensive and export our failed system to Mexico and Canada. *We must eliminate these special protection for Big Pharma from the deal.*

Powers Preserved for Some Oil and Gas Firms to Attack Mexican Environmental Protections: The NAFTA 2.0 text eliminates the infamous investor-state dispute settlement (ISDS) system between the U.S. and Canada. Between the U.S. and Mexico, ISDS is replaced with a new process that eliminates almost all substantive and procedural ISDS problems. But the old ISDS rights are preserved for seven U.S. oil and gas companies with nine extraction contracts with Mexico's Hydrocarbons Authority. The only basis for compensation must be limited to getting money back for cancellation of contracts without cause and without compensation. *These terms must be amended so Big Oil cannot attack Mexican environmental & health laws.*

Labor Standards Must be Strengthened and Swift and Certain Enforcement Ensured: The NAFTA 2.0 text includes modest but meaningful labor standards gains. Further improvements are needed. The deal has one outstanding feature: rules to end wage-suppressing "protection contracts" in Mexico. If enforced, this could make a real difference over time to raise Mexican wages, which also would cut incentives to outsource jobs to Mexico. BUT, the NAFTA 2.0 text does not have the monitoring or enforcement terms necessary for the rules to a difference for workers. *Unless strong labor terms are subject to swift and certain enforcement, U.S. firms will keep outsourcing jobs to pay Mexican workers poverty wages.*

Environment Standards Must be Strengthened and Swift and Certain Enforcement Ensured: NAFTA 2.0 fails to require countries to adopt, implement and enforce domestic laws that achieve the goals of six core multilateral environmental agreements included in past U.S. trade pacts. Like the Trans-Pacific Partnership (TPP), NAFTA 2.0 fails to mention the words "climate change," much less address the social, economic and national security challenges presented by climate change. And, except for fisheries terms, the conservation provisions in the NAFTA 2.0 text impose few obligations. *Environmental terms must be strengthened and subject to swift and certain enforcement, or NAFTA 2.0 will cause more outsourcing of pollution and jobs.*

Progress Was Made in NAFTA 2.0 Text, More Improvements Needed

The NAFTA 2.0 text does not eliminate all of the provisions from the original NAFTA that we oppose and includes some unacceptable new terms, *but some important progress was made*:

Investor-State Dispute Settlement (ISDS): Important progress was made reining-in NAFTA's ISDS tribunals that corporations have used to grab hundreds of millions of dollars from North American taxpayers after attacks on environmental and health policies.

First Time Link Between Wage Levels and Trade: NAFTA 2.0 includes a first-time innovation of conditioning trade benefits on wage standards. This Labor Value Content (LVC) requirement that 40 percent of the value of autos must be produced by workers paid \$16 per hour on average to qualify for NAFTA benefits sets an important precedent. But it is difficult to calculate its real effect. Only the auto firms know precisely where each element of their product is made, and thus whether production must be relocated to high-wage countries or whether wages must be raised to meet the rules.

China Rule of Origin (ROO) Loophole Narrowed: Goods with significant Chinese and other non-North American value now get NAFTA benefits. NAFTA 2.0 raises the ROO for autos from 62.5 percent to 75 percent made in North America. Multi-national firms sought to lower NAFTA's auto rules to the 45 percent they got in the TPP so they could bring more parts made by workers paid even less than Mexican workers to be assembled in Mexico and then sell finished cars duty free in the United States. Beyond autos, NAFTA 2.0 strengthens NAFTA's ROOs in ways that should increase production and employment in North America.

Natural Resources: NAFTA terms that forced countries to continue to export natural resources that they seek to conserve are eliminated. These natural resources "proportional" sharing rules required exports of oil/gas, timber and even water based on previous years' export levels.

NAFTA Trucks: Longtime problems related to NAFTA requirements for trucks from all three nations to have access to all North American roads regardless of safety or environmental concerns were resolved. When the U.S. denied access because of widespread standards violations for trucks and drivers, a NAFTA tribunal okayed sanctions on \$2.4 billion in U.S. trade. NAFTA 2.0 provides discretion to limit access.

Currency Misalignment: NAFTA 2.0 includes first-time terms on manipulating currency values to gain trade advantages. This is an important precedent for future pacts with countries, unlike Mexico and Canada, where this is a big problem. But the NAFTA 2.0 terms provide no means to stop or discipline cheating. The only obligation that is enforceable merely requires countries to provide information on currency practices.

The Fight to Replace NAFTA Continues

Working people have suffered under NAFTA's corporate-rigged rules for decades. Nearly one million jobs have been government-certified as lost to NAFTA, with NAFTA helping corporations outsource more jobs to Mexico every week. The downward pressure on U.S. wages caused by NAFTA outsourcing is intensifying as Mexican wages have declined since NAFTA. Corporations have grabbed hundreds of millions using NAFTA investor-state tribunals to attack environmental and health laws, with more NAFTA cases launched monthly. Failed U.S. trade policies that have dramatically boosted corporate power and harmed workers, consumers and the environment require a complete transformation. That is key to the future of America's middle class.



The way forward on trade is neither NAFTA's damaging neoliberalism nor Trump's hateful nationalism. Today, more than ever, we must fight for a new trade model that increases wages and democracy and reduces outsourcing and corporate power.