

NAFTA Negotiations – Communications Workers of America Comments

June 12, 2017

The Honorable Robert E. Lighthizer
United States Trade Representative
Office of the United States Trade Representative
600 17th St. NW
Washington, D.C. 20508

In re: Docket # USTR-2017-0006

Dear Ambassador Lighthizer:

On behalf of the 700,000 members of the Communications Workers of America (CWA), I am writing to submit the below comments in response to your request regarding negotiating objectives for renegotiation of the North American Free Trade Agreement (NAFTA).

As you likely know, CWA members work in a diverse range of fields, including telecommunications, aviation, manufacturing, health care, media, and public administration. Our members have been badly harmed by the existing structure of NAFTA, which prioritizes the interests of multinational corporations over the interests of workers. For example, thousands of call center jobs and hundreds of thousands of jobs in the auto supply chain, industries which employ significant numbers of CWA members, have been offshored to Mexico since the enactment of NAFTA.

To effectively remediate the harms caused by NAFTA, renegotiation must instead prioritize the interests of workers to help create jobs and raise wages. With that goal in mind, we recommend working to achieve the following objectives:

Investment

CWA strongly urges you to remove the undemocratic Investor-State Dispute Settlement (ISDS) process currently found in Chapter 11 of NAFTA from any renegotiated agreement. ISDS undermines the rule of law by providing a separate legal system that is only accessible to foreign investors. Moreover, the ISDS process established by Chapter 11 lacks all of the basic standards that we rely on to ensure that domestic courts are functioning properly, including reliance on precedent, robust rules on conflicts of interest, and the right to appeal.

ISDS also causes job offshoring and lower wages. While many multinational companies promised that the legal protections provided by ISDS would be used to enhance exports, they have instead been used to export jobs. Much of the research on ISDS shows that its implementation increases foreign direct investment, suggesting that companies feel more comfortable moving jobs and production to low-wage countries when ISDS processes are available;¹ this is particularly important for service sector jobs such as those in call centers that are not impacted by duties and tariffs. Meanwhile, ISDS has been shown to have a chilling effect on efforts to raise standards, suggesting that the inclusion of ISDS in NAFTA makes it harder to implement policies that would raise workers' wages and improve their working conditions.²

Simply put, any renegotiated NAFTA that includes ISDS will remain an anti-worker agreement.

Labor

Another critically important issue to fixing NAFTA for U.S. workers is introducing strong labor standards with effective enforcement mechanisms that serve to raise wages and protect collective bargaining rights in Mexico. Since NAFTA was implemented, Mexico has seen a significant increase in poverty and almost no real wage growth.³ At the same time, the vast majority of Mexican workers who are union members are actually forced into so-called "protection unions" which are undemocratic and work to the benefit of employers or the government instead of the workers. These outcomes are detrimental to Mexican workers, leading to routine abuse of their rights and also making it much more difficult for American workers to compete.

The NAFTA side agreement on labor has obviously been a failure. However, labor standards included in more recent agreements have also failed. Past agreements like the U.S.-Colombia FTA that have included labor rights in the core text have not provided meaningful security for workers and their rights. These problems stem in large part from a combination of low standards, broad and unwarranted loopholes exempting groups of workers from coverage, and an ineffectual enforcement process that relies on labor advocates to conduct extensive research, only to see that evidence sit unutilized for years.

A renegotiated NAFTA must include strong standards, broad coverage for all workers, and include new enforcement tools to ensure that complaints are effectively remedied in a timely manner. A new NAFTA must ensure adoption of the eight International Labor Organization fundamental conventions by all parties. Furthermore, to ensure that labor rights are being

¹ Abbott, Roderick, Fredrik Erixon, and Martina Francesca Ferracane. "Demystifying Investor-State Dispute Settlement (ISDS)." *European Centre for International Political Economy*. 2014. p. 15.

² Van Harten, Gus and Dayna Nadine Scott. "Investment Treaties and the Internal Vetting of Regulatory Proposals: A Case Study from Canada." Osgoode Hall Law School. 2015. pp. 6-9.

³ Weisbrot, Mark, Lara Merling, Vitor Mello, Stephan Lefebvre, and Joseph Sammut. "Did NAFTA Help Mexico? An Update After 23 Years." *Center for Economic and Policy Research*. March 2017. p. 2.

respected in practice, the new agreement should include penalties on goods that are produced using sub-living wage labor and remit the proceeds of those penalties to the underpaid workers.

Finally, because we have seen for many years the reality that companies routinely utilize the threat of offshoring to defeat efforts to improve wages and standards, the new agreement should include a right for workers to collectively bargain across borders throughout the NAFTA region; in so doing, this standard would help implement a race-to-the-top to replace NAFTA's existing race-to-the-bottom in terms of wages and standards.

Services/Digital Trade

Past trade discussions regarding services and digital trade have often wrongly overlooked the importance of call centers to the American economy. In many communities across the U.S., call center jobs have replaced manufacturing jobs that had been automated or sent overseas. The Bureau of Labor Statistics estimates that call center workers make an average of \$16.82 per hour.⁴ This pay is measurably better than the minimum wages available in replacement jobs for call center workers who have found their jobs offshored. Call centers are often primary sources of stable jobs in regions that have been decimated by previous poor trade policy.

Furthermore, maintaining call centers in the U.S. is crucial to protecting consumers' data privacy. Because of inconsistent policies related to data security, as well as the lack of protection for the rights of call center workers who identify problems, call centers around the world have a lengthy track record of data security failures.⁵

As such, a renegotiated NAFTA should not include any provisions on data localization that would inhibit our ability to enact initiatives to keep crucial call center jobs in the U.S., such as H.R. 1300/S. 515, the *United States Call Center Worker and Consumer Protection Act*. To the extent that the new NAFTA addresses issues related to data, the agreement should instead be used to strengthen data security and privacy protections across North America. By lifting these standards across the NAFTA region, doing so would not only protect consumers' private information, it would also help prevent regulatory arbitrage that helps drive call centers overseas.

Procurement

CWA strongly opposes the provisions in Chapter 10 of NAFTA that undermine domestic procurement preferences for a wide range of goods, services and construction contracts. While advocates for these provisions claim that they are helpful in securing American companies access to foreign procurement markets, the reality is that the size of the American government

⁴ Bureau of Labor Statistics, U.S. Department of Labor. "Occupational Employment Statistics." May 2016. http://www.bls.gov/oes/current/naics5_561420.htm.

⁵ Communications Workers of America. "Why Shipping Call Center Jobs Overseas Hurts Us Back Home—2017 Update." March 2017. <https://www.cwa-union.org/sites/default/files/why-shipping-call-center-jobs-overseas-hurts-us-back-home-april-2017.pdf>.

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procurement market far exceeds those of Mexico and Canada *combined*. Given that there is no evidence that these procurement commitments have created more jobs for American workers than they have cost⁶, it is unwise to maintain these provisions that jeopardize American jobs in call centers, manufacturing, and other industries.

As such, we urge you to ensure that a new NAFTA does not harm our efforts to expand Buy American laws by maintaining the harmful commitments in Chapter 10 that undermine our procurement preferences. We particularly oppose any effort to impose obligations on state and local governments that would undermine Buy Local efforts.

Rules of Origin

CWA represents workers in the auto parts supply chain through our Industrial Division, IUE-CWA. As such, strengthening rules of origin for autos in particular is highly important for our members in a new NAFTA.

Because existing NAFTA rules set the Auto Regional Value Content (RVC) at only 62.5 percent, autos whose value is nearly 40 percent outside of the NAFTA region can still enter the U.S. with preferential tariff treatment. These rules must be strengthened significantly. In particular, the RVC should be set at 90 percent and should not permit the use of "deeming," in which parts altered in the NAFTA region are treated as originating entirely in the NAFTA region for purposes of calculating the RVC.

Failing to strengthen rules of origin or to continue permitting the use of loopholes like deeming will undermine any efforts we achieve to raise wages and standards in the NAFTA region, as autos largely manufactured outside of the NAFTA region without those raised wages and standards would still receive preference.

Environment

Just as companies often shift jobs and production to countries that lack fair wages and worker protections, many companies engage in a similar form of environmental arbitrage, in which they seek opportunities to move jobs to find the weakest environmental protections. This dynamic not only harms communities and their access to clean air and water, it also helps drive offshoring of jobs.

It is clear that NAFTA must be amended to include meaningful, enforceable environmental protections to help level the playing field for American workers. However, as with labor protections, environmental protections in past agreements have been facially inadequate. Strikingly, despite the inclusion of nominally enforceable environmental protections in every

⁶ U.S. Government Accountability Office. "Government Procurement: United States Reported Opening More Opportunities to Foreign Firms than Other Countries, but Better Data Are Needed." February 2017. <http://www.gao.gov/products/GAO-17-168>. p. 28.

American FTA for over a decade, the U.S. has literally never brought a single case over violations of these provisions to dispute settlement.

A renegotiated NAFTA must include robust environmental protections with an enforcement mechanism that actually achieves results. These provisions must require countries to adopt, maintain and implement policies to fulfill commitments under the seven multilateral environmental agreements referenced in the so-called “May 10th Agreement,”⁷ and must also ensure that countries are responsive to modern environmental challenges. The TPP would have failed to achieve either of these objectives, so the new NAFTA environmental standards must be stronger and more comprehensive than those included in the TPP.⁸

Intellectual Property

CWA is concerned about NAFTA’s existing monopoly protections for prescription drugs that keep drug prices unnecessarily high for consumers and government purchasers. These high costs not only directly harm sick patients, they result in higher costs for governments in terms of programs like Medicare and Medicaid, as well as higher costs for any participants in health plans that cover those drugs. The result is not just poor health outcomes, but also lost jobs for public sector workers including nurses and social workers.

CWA urges you to relax those monopoly protections and to certainly avoid expanding those protections as would have occurred under the Trans-Pacific Partnership (TPP).

Currency Manipulation

Because currency manipulation is a recurring problem that has cost the U.S. millions of jobs, it is important that NAFTA include enforceable currency disciplines subject to trade sanctions in the body of the agreement. One estimate found that stopping currency manipulation worldwide would create between 2.3 million and 5.8 million jobs.⁹

Including enforceable, effective disciplines against currency manipulation in our FTAs starting with NAFTA would create a real deterrent effect against currency manipulation and would provide much stronger remedies in situations where countries manipulate the value of their currencies to advantage their exports over American exports.

⁷ U.S. Trade Representative. “Bipartisan Trade Deal.” 10 May 2007.

https://ustr.gov/sites/default/files/uploads/factsheets/2007/asset_upload_file127_11319.pdf, p. 2.

⁸ Labor Advisory Committee on Trade Negotiations and Trade Policy. “Report on the Impacts of the Trans-Pacific Partnership.” 2 December 2015. <https://ustr.gov/sites/default/files/Labor-Advisory-Committee-for-Trade-Negotiations-and-Trade-Policy.pdf>, pp. 60-62.

⁹ Scott, Robert E. “Stop Currency Manipulation and Create Millions of Jobs, With Gains across States and Congressional Districts.” EPI Briefing Paper #372. Economic Policy Institute. 26 February 2014. <http://www.epi.org/publication/stop-currency-manipulation-and-create-millions-of-jobs/>.


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Conclusion

NAFTA does not need to be simply “tweaked” or “updated.” It would make no sense to turn it into a version of TPP for the U.S., Mexico, and Canada. NAFTA has had a hugely negative impact on CWA members and other working families across the country. The renegotiation of NAFTA must replace this deal written by and for multinational corporations with an agreement that is designed to create jobs and raise wages for working men and women.

The recommendations above, while not exhaustive, offer the core of a blueprint for a new NAFTA that actually benefits working families. I strongly urge you to adopt this set of recommendations to help create a new trade structure that actually benefits CWA members. Thank you in advance for your consideration of these proposals.

Sincerely,


Christopher M. Shelton
President