

Public Services International (PSI) North America NAFTA Modernization Comment

Principles for NAFTA Renegotiation

Submitted to the United States Trade Representative

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After more than 20 years, it is clear that the North American Free Trade Agreement (NAFTA) has failed workers and the environment. We were promised secure, well-paid jobs, shared prosperity, and stronger social programs. Instead, NAFTA contributed to the devastation of manufacturing and processing industries, and paved the way for a golden age of corporate wealth, greed, and power. Large corporations and investors have gained, while workers have been left behind. Instead of better jobs, NAFTA facilitated an economic explosion of precarious and part-time work without rights, benefits, or economic security. Wages have stagnated and income inequality has been steadily rising. NAFTA empowers foreign investors to sue governments, threatens public services, and limits the ability of governments to regulate in the public interest.

We need a new approach to trade that puts the interests of working people and the environment first. We need an economy that puts a high priority on jobs, living standards, sustainability, and labor rights. A renegotiated continental trade agreement must therefore include the following reforms to address the failures of NAFTA.

1. Open and Public Negotiations

Agreements negotiated behind closed doors without public dialogue or consent are anti-democratic and unjust, and they foster public distrust and skepticism. The negotiations must be open, public, and democratic. Labor unions and civil society must be consulted from the outset, whose advice and consent must be taken seriously and included in shaping the treaty.

2. Listen to Indigenous Peoples

The Indigenous peoples of Canada must have a place in the negotiations. At the very least, the Crown must negotiate in good faith with Indigenous representatives to seek their free, prior, and informed consent on the content of NAFTA that might affect their rights, freedoms, and interests.

3. Eliminate ISDS

A special resolution mechanism for disputes between investors and states, as currently set out in Chapter 11, is not necessary and should be deleted. Instead, private investors should use the existing domestic court systems to settle complaints, just like everybody else does. Alternatively, there could be a state-to-state dispute settlement mechanism in which private investors have neither special

privileges nor any formal role.

4. Include a new Labor Chapter

The North American Agreement on Labor Cooperation flawed because the core standards and objectives they mention is limited and lacks enforcement mechanisms or penalties for non-compliance. Common labor rights and freedoms, must be recognized and protected as an integral part of any agreement, rather than relegated to unenforceable side agreements. For labor standards, this includes explicit guarantees to protect the freedom of association, the right to strike, the right to collective bargaining, and protection from anti-union discrimination. In particular, this protection of human rights and labor rights should address exploited, vulnerable, and precarious workers, such as children and migrant workers, and it should prohibit gender-based unequal remuneration.

Finally to guarantee of labor rights and freedoms, the text must include in clear and explicit terms a statement of corporate responsibilities.

To protect and enforce these core standards, a robust system of dispute settlement must be articulated. This would include binding and enforceable sanctions to punish any violation of the core standards and obligations, with penalties in cases of non-compliance, including trade sanctions, compensation, or the suspension of benefits.

5. Include a New Environment Chapter

The North American Agreement on Environmental Cooperation is also flawed for many of the same reasons. Core principles of environmental protection and sustainability must be recognized and protected as an integral part of any agreement. Nothing in the agreement should prohibit governments from taking measures to protect the environment, or stop climate change.

A new agreement should therefore allow for democratic decisions over energy resources, infrastructure and options, up to and including the option of reclaiming energy systems to public ownership and control in order to meet climate protection and sustainable development goals agreed through global processes such as the Paris Climate Agreement.

On climate change, the agreement should recognize and create space for governments and communities to pursue effective adaptation strategies and solutions to address the impacts of diseases and epidemics, extreme weather events (including droughts, floods and hurricanes) without being constrained by clauses to protect investors.

The principles of energy sovereignty and energy democracy should be embodied in the agreement. The needs of private investors must always be secondary to the needs of the environment, public health and the protection of vital services.

Therefore, the components of new labor and environment chapters will

- a. articulate and expand core standards;
- b. enforce core standards with penalties;
- c. articulate and enforce corporate responsibility.

6. Public Procurement: Delete or Amend the Procurement Chapter

The entire procurement chapter should be deleted, or at least amended. Its provisions should not prevent governments from making purchasing decisions that could protect the environment, promote sustainable development, and create jobs, for example, by investing in infrastructure or other projects. Social and environmental criteria should be obligatory in public procurement decisions. If the parties are not willing to make such criteria obligatory, they at least must make clear that nothing in NAFTA shall be construed to apply to measures adopted by a party with respect to progressive procurement.

7. Protect and Enhance Public Services

a. Exempt public services from the scope of the treaty

Insert a wide-ranging, comprehensive, and clear exemption of all existing public services, stipulating that nothing in NAFTA shall be construed to apply to their adoption or maintenance. Specifically, exempt water, and remove all references to water as a tradable good or investment; protect food and food safety, including supply-managed food; protect public health insurance and other social services.

b. Justify new and expanded public services

Insert a clear and comprehensive justification clause that allows state measures in favor of new or expanded public services (pharmacare, for example).

c. Abandon and replace the negative list model and its ratchet mechanism

The negative list model and its ratchet mechanism must be abandoned. They endanger public services by automatically locking in any future liberalization of listed (existing) reservations, thus setting the stage for future efforts to weaken or eliminate public services; and they do not adequately shield key public services from investor claims.

8. Ensure Tax Fairness

Include quantified and binding measures to combat fiscal dumping, for example, common minimum rates of corporate tax. Negotiate other measures guaranteeing tax fairness or progressive tax policy.

9. Protect State-Owned Enterprises

The text on “Monopolies and State Enterprises” (Chapter 15) is too rudimentary. Add more robust language and stronger exemptions to create and protect state-owned enterprises, public monopolies, non-profit organizations, and similar entities.

10. No New Sectors: Safeguard Existing Non-conforming Measures (Carve-Outs)

Ensure that sectors now exempt from NAFTA are not included in the negotiations. Guarantee that any existing and future reservations (for example, Social Services), and others listed in accompanying schedules, are protected.

11. Encourage Proportionality in Trade Flows Across Key Sectors

Enshrine the principle that investment and employment in key goods-producing sectors should be proportional across borders. Corporations must be required to build where they sell, thereby underpinning future growth of investment and good jobs in key industries like auto manufacturing. Such a model would be similar to the *Canada-United States Automotive Products Agreement (1965–2001)*, commonly known as the Auto Pact, a free trade agreement with provisions for balanced trade.

Furthermore, *Rules of Origin* provisions should be strengthened to incentivize greater continental production and to ensure that “*Made in North America*” requirements are not undermined by loopholes.

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