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## **COMMENTS ON “NAFTA Negotiations”**

Docket ID USTR-2017-0006

**Submitted to the Office of the U.S. Trade Representative by the  
International Brotherhood of Teamsters  
June 12, 2017**

These comments are submitted on behalf of the 1.4 million members of the International Brotherhood of Teamsters in response to the notice published on May 23, 2017 (82 Fed Reg 23699) inviting comments on the “modernization” of the North American Free Trade Agreement (NAFTA). According to the notice, the goal of renegotiation is “to support higher-paying jobs in the United States and to grow the U.S. economy by improving U.S. opportunities under NAFTA.” The Teamsters enthusiastically support the goal of good jobs; and we hope that the United States Trade Representative will seek out and rely on the advice and experience of the U.S. labor movement in achieving it.

The renegotiation of NAFTA is an historic opportunity. For 25 years, the Teamsters and our allies in civil society – consumers, environmentalists, family farmers and other unions – have opposed NAFTA and its expansion through a generation of similar, managed trade agreements that have benefited transnational corporations and cost the U.S. hundreds of thousands of middle-class jobs. This year, the administration can lead the way to replace the flawed and failed NAFTA model with a bold new paradigm and a new set of priorities and premises that will govern our participation in the global economy. This is a breakthrough moment—America can initiate the hard reset of the “free trade” operating system in a permanent way that empowers workers around the world, starting in North America.

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The Teamsters will support a dramatic overhaul of NAFTA that puts working families first. Simply cutting and pasting selected provisions from the Trans-Pacific Partnership (TPP) into a new NAFTA is a non-starter. For our members, only the most dramatic NAFTA rewrite will enjoy their support.

However, stipulating the deep reforms that are needed to get labor support, we believe that changing the NAFTA from a corporate-managed commercial agreement to a new template for future negotiations that prioritizes good jobs will not be all that difficult. Some old provisions should come out; some new chapters should be inserted.

The purpose of these comments—and our goal going forward in consultation with the USTR through the Advisory Committee system—is to suggest a first set of negotiating objectives that will benefit workers, consumers and U.S. manufacturers. At the end of this process, the overhaul of NAFTA can and should be a fair trade deal that finally subordinates corporate interests to the demands and democratic values of civil society.

### **New Issues, New Chapters: Important Additions in NAFTA Upgrade**

#### **Labor Rights and Wages**

The first principle that must be incorporated into the new NAFTA is that basic labor rights must be strengthened and enforced, and the wages of workers must be raised, so the prosperity that is the promise of trade pacts will be shared more broadly. A central critique of the old NAFTA is that it subordinated the expectations of workers to the interests of transnational corporate and investment elites. Therefore, the most important addition to an upgraded NAFTA is a strong labor chapter to replace the weak and ineffective side agreement.

We concur in the specific recommendations of the AFL-CIO and respectfully direct your attention to the proposed labor chapter outlined in Annex II of their submission in response to your invitation for comments. The Teamsters are in solidarity with unions in all three countries in our strong desire for real reform on this front.

The new NAFTA must incorporate strong labor rights standards, grounded in the conventions of the International Labor Organization, that protect

freedom of association and the rights to organize and bargain collectively. Specifically, as we urged the previous administration before it began the TPP talks over seven years ago, and included in our comments in response to the original USTR inquiry in December 2009 (74 Fed Reg 66720), we recommend that the new NAFTA labor chapter explicitly incorporate the basic labor rights and jurisprudence of the core ILO Conventions:

- Freedom of association and collective bargaining (#87 and #98);
- Elimination of forced and compulsory labor (#29 and #105);
- Abolition of the worst forms of child labor (#138 and #182); and
- Elimination of discrimination in employment (#100 and #111).

These standards must be enforceable by the same trade sanctions that protect commercial interests. Only a denial of benefits under the agreement for violations of the labor chapter will give real teeth to its protections. Further, a NAFTA upgrade that can serve as a template for future trade treaties must include independent institutional infrastructure to protect the interests of all workers in all participating countries, including immigrant workers, along the lines of the independent tri-national labor secretariat described in the AFL-CIO model chapter, overseen by a new wages and standards working group.

Finally, the new NAFTA should establish a process to determine basic living wage rates in all regions of all three countries and an enforcement mechanism to guarantee the right to remuneration for workers to be able to enjoy a decent standard of living, including the ability to save for emergencies and retirement. As we have argued for many years as NAFTA was implemented and emulated in other trade talks, that model has increased income inequality, fostered a race to the bottom and frustrated the goal of a level playing field. Again, the Teamsters and our brothers and sisters throughout the North American labor movement are standing by, eager to assist our respective negotiators to fix this most egregious failing of NAFTA.

## **Currency Manipulation**

Another easy and obvious augmentation to an upgraded NAFTA--and an important addition to America's trade template, in anticipation of future negotiations--is a new chapter with enforceable disciplines against currency manipulation. Our opposition to the TPP was solidified when the previous administration refused to consider this important improvement to the NAFTA model.

As this administration and most economists are aware, the U.S. has run chronic trade deficits for nearly 20 years, going back to the ballooning deficits with our NAFTA partners in the years since its entry into force. For the last decade, these deficits have been driven by conscious strategies of our trading partners to buy dollar denominated financial assets to increase the value of our currency against theirs, with the intended and actual effect of making their exports cheaper. The U.S. Congress agrees that our trade agreements should anticipate and protect against currency manipulation; that's why bipartisan majorities on both sides of Capitol Hill sent letters to the previous administration demanding that the TPP include enforceable disciplines against currency management "to bolster our ongoing efforts to respond to these trade-distorting policies."

We appreciate the renewed interest in the causes and effects of our persistent trade deficits, as reflected in the recent executive order that requires a deeper analysis and invites solutions to job-killing trade deficits. There is broad agreement in this administration, in Congress, among American manufacturers and the unions that represent their workers, that currency manipulation is a prime culprit. It is past time for the U.S. to do something about this problem, as a matter of trade policy reform that levels the playing field and in the basic templates of our trade agreements, starting with NAFTA renegotiation.

## **Old Issues, Old Problems: NAFTA Provisions that Must be Removed or Improved**

In addition to the new chapters described above, the metamorphosis of NAFTA into a template for trade agreements that work for working families demands that several of the original provisions must be removed.

### **Government Procurement: Protecting Buy American**

For example, the NAFTA chapter that regulates government procurement should be drastically reformed to remove all previous commitments that undermine domestic and local preferences. As this administration is aware, the old NAFTA model undermines “Buy American” by requiring the federal government to treat foreign bidders as if they were U.S. bidders. Teamsters support spending our federal and state taxes at home, to buy American and hire American, especially as we hope to work with this administration on important infrastructure investments over the next several years. Overhauling NAFTA Chapter 10 will begin an important course correction in America’s fiscal policy.

### **Investment: Eliminating Corporate Courts**

Similarly, the NAFTA chapter on investment should be overhauled to eliminate the controversial investor-state dispute settlement (ISDS) mechanism. ISDS discriminates against U.S.-located firms by providing extraordinary procedural and substantive rights to foreign investors. There is no legal justification for a separate system of justice for foreign companies.

The elimination of Part B in Chapter 11 is a precondition to the support of all civil society stakeholders in a NAFTA upgrade--the unions, like the Teamsters and the AFL-CIO, but also the environmental community, human rights and consumer advocacy networks. The inclusion of ISDS in the TPP was a central reason why we opposed that ambitious and misguided NAFTA expansion; and our critique of the Trans-Atlantic Trade and Investment Partnership (TTIP), negotiated inconclusively by the previous administration, was sharpened when the USTR insisted on keeping the ISDS corporate courts among the investment provisions.

Once ISDS is removed from Chapter 11, the remaining provisions relating to investment, throughout the text of a modernized NAFTA, must also:

- Preserve the ability of each country to regulate foreign investment in a manner consistent with its needs;

- Define a standard of minimum treatment to provide no greater legal rights than U. S. citizens possess under the due process clause of the 14th Amendment to the Constitution;
- Allow each country to restrict speculative capital to reduce global financial instability and trade volatility; and
- Provide for government-to-government dispute resolution relating to expropriation, and only for those disputes relating to a government action that permanently destroys all value of the real property of a foreign investor, to the exclusion of investor-state dispute settlement mechanisms.

Teamster members and civil society networks across a broad partisan spectrum are offended by ISDS and the threat to sovereignty that it represents in the NAFTA model. For progressives, sovereignty in trade negotiations refers to self-determination, local democratic control and the confidence that non-discriminatory measures at the sub-federal level will not be the basis of a corporate claim under secretive trade pact. For conservatives, ISDS is an affront to the American judicial system, Article III of the Constitution and our rich jurisprudence, and its secretive tribunals, in which foreign investors make claims against U.S. taxpayers, thereby undermine our sovereignty.

### **Enforcement: New Cooperation will Strengthen Remedies and Protect Jobs**

Currently, NAFTA allows for a final review of our domestic trade enforcement orders, arising from either countervailing duty or antidumping cases, by a binational panel rather than by a competent American court. This rule, omitted from subsequent trade deals, hampers trade enforcement, which hurts U.S. companies and their workers. To ensure the primacy of U.S. domestic trade laws to protect America's workers, a renegotiated NAFTA should replace Chapter 19 with a new mechanism for government cooperation to ensure effective enforcement against unfairly traded products from non-NAFTA countries.

New NAFTA cooperation on enforcement will reduce circumvention and evasion of trade remedies imposed by our three countries. The United States, for example, has suffered from numerous instances where products that would be subject to relief under antidumping and countervailing duty laws are then imported through Mexico to evade enforcement and redress. In other words, the NAFTA signatory countries should cooperate to ensure that remedies imposed by one NAFTA party are not undermined by a failure to effectively enforce trade remedy laws in other parties.

### **Rules of Origin: Protecting Continental Supply Chains, Domestic Content and Jobs**

In solidarity with other manufacturing unions, especially our sisters and brothers in the United Auto Workers, the Teamsters submit that the NAFTA “rules of origin” must be recalibrated to better protect North American workers. We predict that the Canadian and Mexican negotiators will agree that the primary beneficiaries of market access commitments should be the signatory economies, not third-party countries that take on no trade obligations in the deal. Strong rules of origin will reaffirm the incentive to produce in North America as opposed to China, Vietnam and other export platforms that exploit workers.

Specifically, we recommend that the auto Regional Value Content (RVC), currently pegged at 62.5 percent, should be dramatically raised in a consensus NAFTA upgrade. In textiles, the yarn and fiber-forward rules should be strengthened by eliminating tariff preference levels for goods that do not meet the origin criteria. Similarly, in steel, melting and pouring must happen in North America for products to enjoy tariff preferences. The combination of these reforms to NAFTA Chapter 4, along with the new labor chapter that we recommend above, will ensure that workers in all three countries will benefit from a truly modernized NAFTA.

### **Transportation Services: Prioritizing Highway Safety**

For the Teamsters, another prime example of a problematic NAFTA provision that must be removed is the extension of national treatment to cross-border long-haul trucking services under Chapter 12. We recommend a small but important textual adjustment that will resolve, once and for all, a



persistent problem that the NAFTA negotiators created when they agreed to open the U.S. Interstate system to Mexican-domiciled trucks that do not meet American safety and environmental standards.

As USTR negotiators prepare to sit down with their Mexican counterparts this summer with the goal of improving NAFTA, we urge them to make it clear from the outset that the U.S. will no longer trade away highway safety. The new generation of Mexican officials who will be at the table will perhaps not remember the intent of the original NAFTA negotiators—namely, that U.S. roadways would not be opened completely to Mexican carriers until the U.S. Department of Transportation could certify that their trucks and drivers met all applicable safety standards that apply to U.S. carriers. It will be important to explain to them specifically how this condition has not been fulfilled in all the years since NAFTA was implemented.

In this regard, we direct your attention to the December 2014 report to Congress by the Inspector General of the Department of Transportation, which concluded that the safety performance of Mexican carriers could not be determined from the data generated by the Mexico Cross-Border Trucking Pilot Program. That program, initiated by the previous administration in 2011, failed to generate statistically significant data in areas of inspections, crossings and miles traveled, and participation rates. Notwithstanding its failure, and the report by the DOT Inspector General, the U.S. began to accept applications from Mexican carriers to operate in long-haul transportation beyond the U.S. commercial zones.

NAFTA Article 1203, which extended national treatment to the trucking industry, should be removed and cross-border transportation services added to Annex II (Reservations for Future Measures). This is a high priority for the Teamsters and for our allies among highway safety advocates, independent long-haul owner-operators and environmentalists who have monitored increases in air pollution along the border due to long lines of idling trucks that use lower-quality fuels.

A related NAFTA repair dovetails with another high priority of the Teamsters and of this administration—namely, investments in transportation infrastructure. We note with approval the recommendation in Section 13 of the AFL-CIO comments that all three countries commit to “public



infrastructure construction, repair, and maintenance” that includes “improved land border crossings and ICC border commercial zones.” When the time comes to take the renegotiated NAFTA to Congress, we hope to work with the administration to lobby for this important collateral investment in the implementing legislation.

**Conclusion: Real NAFTA Modernization is Attainable if the Process is Transparent**

Teamsters General President James Hoffa is a member of two advisory committees. He is one of three labor leaders on the Advisory Committee on Trade Policy and Negotiations (ACTPN), which also includes several representatives of corporate, pro-NAFTA trade associations. He and the presidents of the Steelworkers and Auto Workers unions filed the dissent to the final ACTPN report on the TPP in the waning days of the last administration. The Teamsters hope that we will be in the majority in support of a dramatically improved NAFTA. That outcome depends in large measure on the integrity and transparency of the renegotiation process.

President Hoffa also represents the Teamsters on the Labor Advisory Committee (LAC). Given the USTR’s appropriate focus on “higher-paid jobs in the United States” in the request for comments, we respectfully submit that the LAC will be among the most important advisory committees upon whom the USTR will depend as it develops and describes the specific negotiating objectives that will animate NAFTA renegotiation. We hope that the USTR staff, as well as others in the administration, will seek and rely on the advice of the Teamsters and the labor movement, at every level of detail, before the new NAFTA talks begin and throughout the negotiations with the Mexican and Canadian governments and, down the road, with the U.S. Congress.

Our past experience on the ACTPN and on the LAC has identified significant limitations on the content and quality of consultations that, in our view, have undermined the effectiveness of the advisory committee system as it relates to the interests of working people. In our advisory role in this administration, we look for assurances that there will be greater transparency and consultation regarding the specifics of NAFTA renegotiations.

In particular, we call on this administration to begin the process, which your welcome request for comments begins, with two important commitments. First, the negotiating objectives must be as specific as possible; the notice to Congress required under Fast Track was very general, and all the stakeholders in NAFTA modernization will need to know much more about the priorities that you will be taking to the table. Second, the negotiating texts themselves must be made available to the public and to Congress; similarly, draft textual proposals should be published in the Federal Register with an invitation and adequate time for public comment before tabling them.

Following many years of fair trade activism and advocacy to educate policy-makers about our many concerns with expanding NAFTA throughout the Pacific Rim, this administration got America out of the TPP, which we applauded. And you have started the statutory process to renegotiate NAFTA, which we welcome. To achieve the NAFTA modernization goal of more good-paying U.S. jobs, which we share, then it is incumbent upon the entire trade-policy reform apparatus in this administration to maximize the levels of engagement and transparency throughout the process. We hope that you agree that a shroud of secrecy over these new NAFTA talks will be inconsistent with democratic principles.

If the process of renegotiation is open and inclusive, and if the substance of the renegotiated NAFTA reflects the dramatic pro-working family reform we recommend—starting with our suggestions as to chapters that should be added and provisions that should be removed—then the Teamsters will support this long overdue overhaul. On the other hand, if the negotiations fail to produce a new pro-worker template that can replace the retrograde NAFTA model, then we will strongly recommend that the U.S. withdraw from NAFTA.