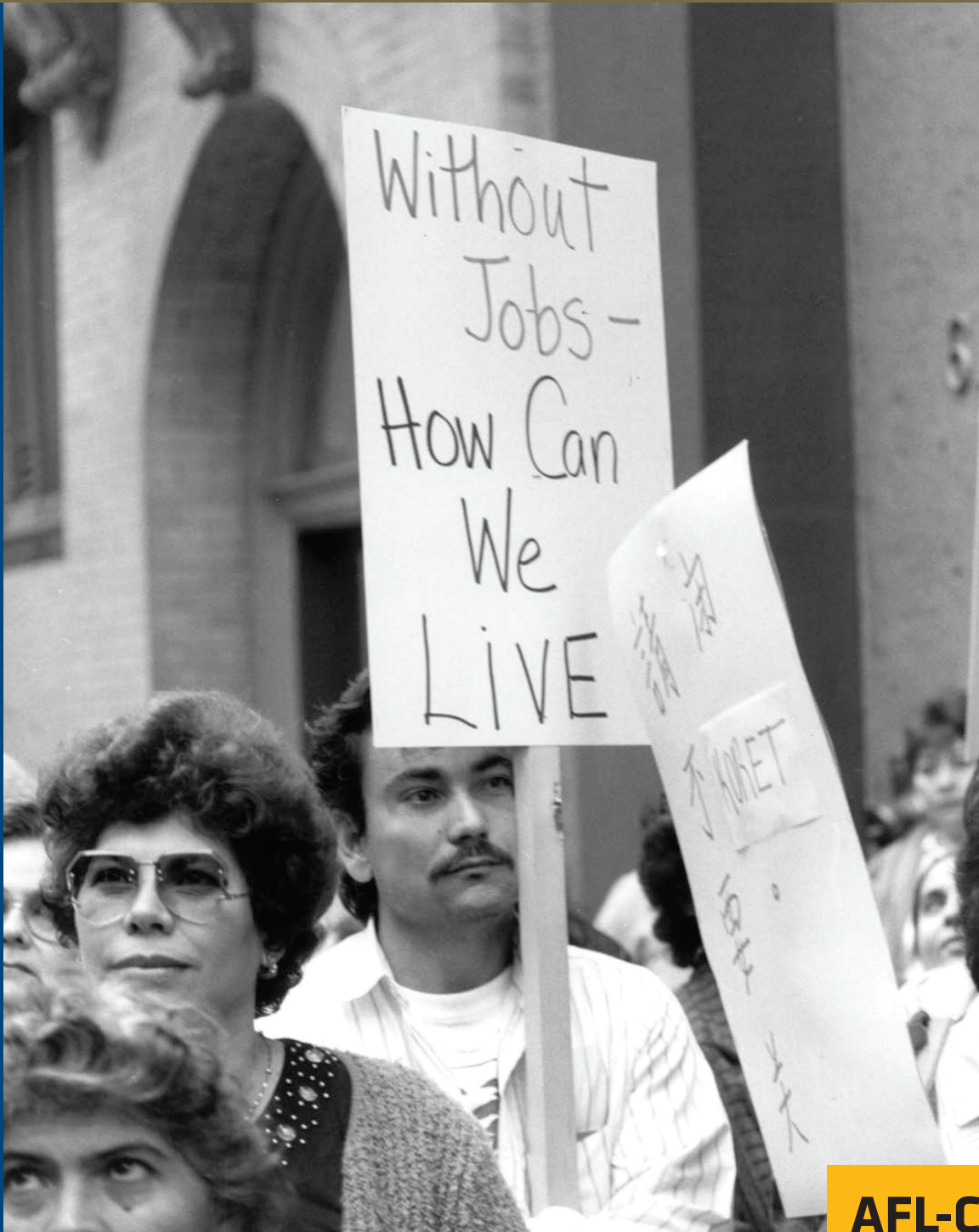


NAFTA at 20



AFL-CIO
March 2014

COVER: GARMENT WORKERS IN CALIFORNIA PROTEST THEIR EMPLOYER'S DECISION TO CLOSE THEIR PLANT AND MOVE OPERATIONS TO MEXICO.

PHOTO BY DAVID BACON

Introduction

Twenty years ago, Canada, Mexico and the United States entered into the North American Free Trade Agreement (NAFTA). As he signed the bill implementing NAFTA, President Clinton declared: “I believe we have made a decision now that will permit us to create an economic order in the world that will promote more growth, more equality, better preservation of the environment and a greater possibility of world peace.”¹ Unfortunately, the enduring result of NAFTA has been just the opposite: stagnant wages, increasing inequality and weakened social protections in all three countries.²

Trade deals should spur sustainable and inclusive development by creating high-quality employment opportunities, increasing equitable access to resources and enhancing labor and environmental standards. When candidate Barack Obama was on the campaign trail in 2007, he recognized NAFTA was a mistake, stating it was “devastating.”³ He promised to change U.S. trade policy to benefit workers and communities. However, since taking office, his administration instead has embarked on negotiations that would apply the NAFTA model on a much larger scale.

The NAFTA Model

NAFTA was a departure from traditional trade agreements, which focused on reducing tariffs and import quotas.⁴ Tariffs within North America already were very low when NAFTA was being negotiated,⁵ and while the agreement does further reduce or eliminate tariffs and quotas, the bulk of the agreement focuses on creating privileges and protections for investors. The language goes far beyond requiring that domestic and foreign business be afforded equal treatment, although that provision in itself has profound effects on governments’ ability to promote local economies and support innovative development. NAFTA provides investors with such sweeping guarantees as the right to “fair and equitable treatment and full protection and security”⁶ in accordance with international law, and requires that states compensate investors for “directly or indirectly” nationalizing or expropriating an investment or taking any actions “tantamount to nationalization or expropriation.”⁷ The enforcement

mechanism for these rights, known as investor-to-state dispute settlement (ISDS), allows investors to directly challenge government regulations that interfere with actual or potential profits before international panels that are unaccountable to the public.

The agreement limits when and how governments can regulate by opening domestic regulatory actions to supranational challenge. NAFTA requires states to adopt stringent protections for intellectual property rights, establishes a set of rules governing trade in services that includes nondiscrimination and right of access and restricts the requirements governments may place on procurement contracts.

This ambitious agenda affects a host of issues that normally would be left to the domestic democratic process, including food safety, patents and copyrights, land use and natural resources, professional licensing, government contracting and service-sector regulations in such areas as health care, financial services, energy and telecommunications.⁸

NAFTA was also the first trade agreement to address labor and environmental issues, in two separate side agreements.⁹ Unlike the procedures that protect investor rights, the complaint procedures for violations of labor or environmental standards are exceedingly slow and cumbersome, and provide no reasonable possibility of sanctions being imposed for noncompliance. While complaints have been used to draw increased scrutiny to particularly egregious violations, these weak provisions fail to meaningfully protect fundamental labor rights or the environment.

NAFTA-style agreements facilitate higher volumes of trade, but contain no measures to ensure that increased trade flows will be reciprocal or that the gains are widely shared. Many of the provisions actively hinder or deter social policies that would foster equitable development. While there have been modifications to the language in subsequent agreements, the fundamental architecture that promotes broad investor rights and restrictions on governments’

Currently, the United States is negotiating a trade agreement known as the Trans-Pacific Partnership (TPP). The TPP involves an expanding list of countries that ring the Pacific, including Canada and Mexico.¹⁰ Negotiations are conducted in secret, but from the limited information that has been published or leaked to the press,¹¹ the TPP will be based heavily on the NAFTA model.

regulatory autonomy remains the same. On the whole, NAFTA-style agreements have proved to be primarily a vehicle to increase corporate profits at the expense of workers, consumers, farmers, communities, the environment and even democracy itself.

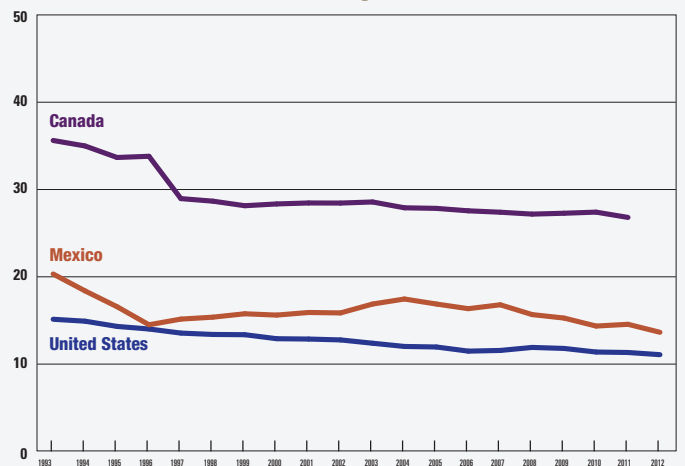
Upcoming negotiations are an opportunity to ensure the benefits from trade are shared throughout society. A new approach is needed.¹² Twenty years of the NAFTA model demonstrates that current U.S. trade policy does not create quality jobs, enhance social mobility or effectively improve labor and environmental protection. As negotiations are ongoing, it is essential to consider critical lessons learned from the past two decades before concluding new agreements.

Lessons from 20 Years of NAFTA

These agreements do not create quality job opportunities or increase wages.

While the overall volume of trade within North America has increased and corporate profits have skyrocketed, wages have remained stagnant in all three

Trade Union Density



Unionization rates have declined in all three countries.

Source: Organisation for Economic Cooperation and Development.

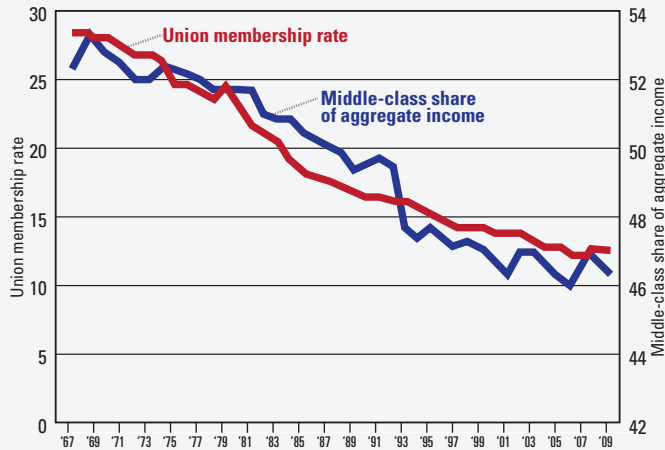
countries.¹³ Productivity has increased, but workers' share of these gains has decreased steadily,¹⁴ along with unionization rates.¹⁵

The NAFTA architecture of deregulation coupled with investor protections allows companies to move labor-intensive components of their operations to locations with weak laws and lax enforcement. This exacerbates incentives for local, state and federal authorities to artificially maintain low labor costs by ignoring or actively interfering with such fundamental rights as the rights to organize, strike and be free from discrimination. This dynamic undermines organizing and bargaining efforts even in areas with relatively robust labor laws.¹⁶ Today it is commonplace for employers to threaten to move south—whether to South Carolina or Tijuana—if workers do not agree to cuts in wages and benefits.¹⁷ Meanwhile, NAFTA's investor protections

“Twenty years ago, the people of the United States, Mexico and Canada were promised a trade deal that would create jobs, lift Mexico out of poverty and stem illegal immigration. But instead they got a trade deal that benefited multinational corporations at the expense of workers, leading to more inequality and less bargaining power for workers. Workers’ wages have stagnated in all three countries, and families struggle to pay for health care, education, housing and retirement. We need trade deals that strengthen workers’ rights, build strong communities and protect the environment, in America and worldwide.”

—Richard L. Trumka, President, AFL-CIO

Union Membership



In the United States, union membership and middle-class incomes have fallen in tandem.

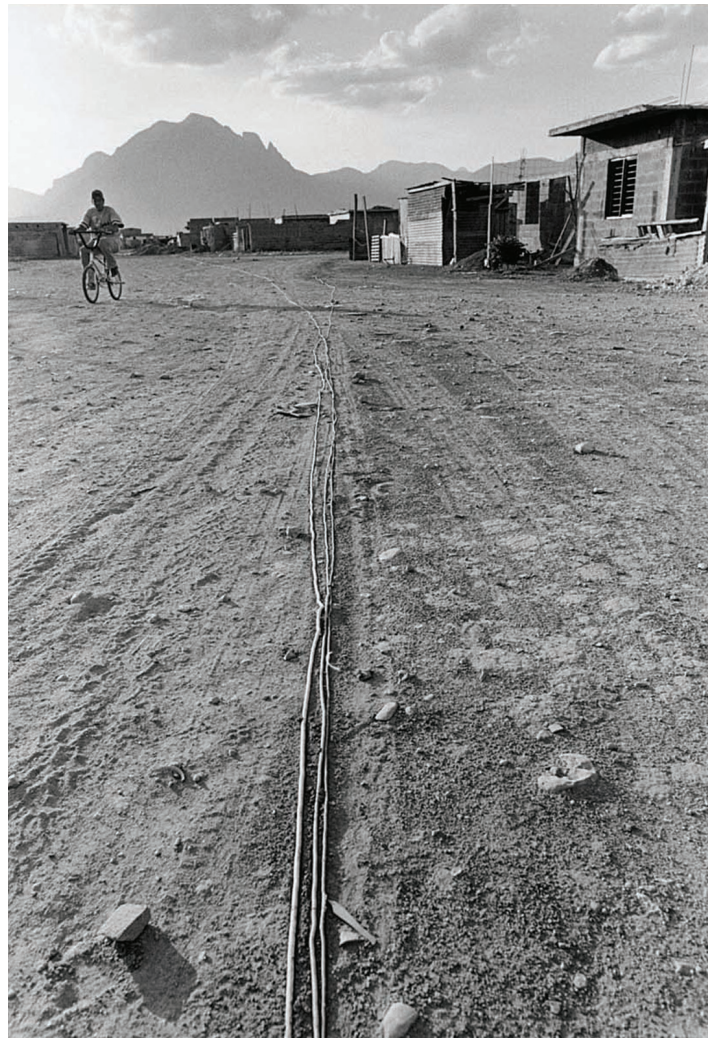
Original figure by David Madland, Karla Walters and Nick Bunker. Sources: Union membership rate is from Barry T. Hirsch, David A. Macpherson and Wayne G. Vroman, "Estimates of Union Density by State," *Monthly Labor Review*, Vol. 124, No. 7, July 2001. Middle-class share of aggregate income is from United States Census Bureau.

sectors, particularly manufacturing. In the United States, an estimated 682,900 jobs were displaced south of the border into Mexico alone.²³ More than a third of those displaced in manufacturing dropped out of the workforce entirely. Workers who managed to find alternative employment overwhelmingly ended up in sectors like fast food and retail that pay lower wages and offer fewer benefits. Average wages for those who found work fell by 11% to 13%.²⁴ This shift caused profound, lasting losses across the economy.²⁵ The decline of stable, high-wage employment has detrimental effects not just on individuals and families, but on the communities these types of jobs support, including municipal governments, which rely on local businesses to provide an adequate revenue base to sustain quality services like education, parks, libraries and sanitation.²⁶ NAFTA was sold to the American public as "jobs, American jobs and good-paying

provide foreign businesses with unique legal rights, unavailable to other economic actors, which provide additional leverage to weaken regulatory schemes.

NAFTA caused massive employment-related demographic shifts, both within and between countries. In Mexico, subsidized agricultural imports from the United States sparked unprecedented migration.¹⁸ The country lost 1 million jobs in corn alone between 1991 and 2000,¹⁹ and an additional million in the agricultural sector as a whole.²⁰ This drove waves of desperate migration from rural areas, both into the industrial sector in the north and across the border into the United States and Canada. Proponents claimed NAFTA would decrease immigration into the United States. Instead, illegal immigration flows from Mexico doubled after the agreement took effect, leveling off in recent years.²¹ NAFTA freed up constraints on international capital, but did nothing to address flawed immigration policies. This created a large pool of vulnerable workers willing to accept low pay, which increased downward pressures on wages.²²

In the United States and Canada, the agreement resulted in mass displacement in import-competing



The homes of displaced Mexicans working in maquilas in Monterrey, Mexico.

DAVID BACON



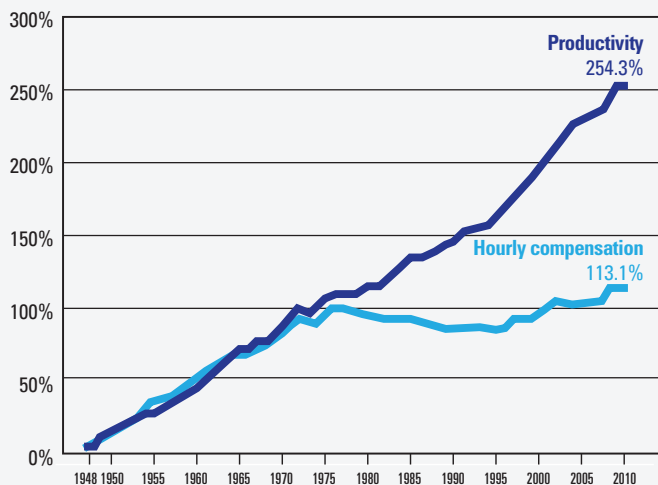
American jobs.”²⁷ In reality, NAFTA-style deals have failed to promote much in the way of jobs at all,²⁸ and have certainly failed to provide quality employment.

NAFTA contributed to growing inequality throughout North America.

While not attributable to NAFTA alone, the agreement contributed to larger policy trends favoring corpora-

tions and wealthy individuals, and those trends fostered growing income inequality. This trend is particularly dramatic in the United States, which has the highest inequality rate of any industrialized nation. The top 10% of income earners now take home nearly half the country’s income.²⁹ However, its neighbors do not fare much better. Mexico’s “income inequality index remains among the highest in the world,” with the wealthiest 20% pocketing half the country’s income, and only 5% going to the poorest 20%.³⁰ Inequality also is growing in Canada, with the largest rise occurring between 1994, when NAFTA went into effect, and the early 2000s. Between 1998 and 2007, a third of all income growth went to the top 1%.³¹ Societies with high inequality reduce poverty less effectively and have slower rates of economic growth.³² NAFTA has failed to ensure the kind of social distribution necessary to achieve sustainable economic growth.

Growth of Real Hourly Compensation for Production/Nonsupervisory Workers and Productivity, 1948–2011



Despite growth in productivity, wages in the United States have remained stagnant.

“NAFTA hasn’t delivered the promised prosperity for Canadian workers. The average worker has fallen behind, with incomes growing just 0.96% a year since NAFTA was signed, half the rate of the growth in Canada’s GDP.”

—Ken Georgetti, President, Canadian Labour Congress

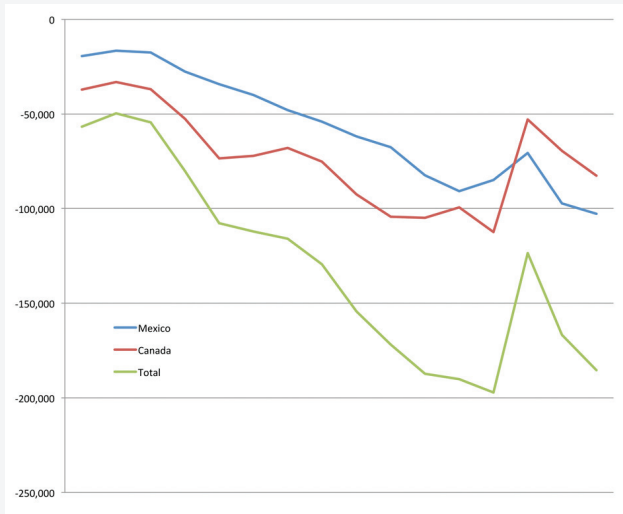
“The impacts of NAFTA have been the destruction of workers’ purchasing power, and the loss of benefits and quality employment in Mexico. There have been few benefits from this agreement, and for the majority of the population it has not resulted in any benefits at all.”

**—Maria del Carmen Llamas,
Secretary of Foreign Relations, *Sindicato de Telefonistas de la República Mexicana***

Trade deals increase the overall volume of trade, but do not necessarily improve economic growth or foster economic development.

While the overall volume of trade has increased, the rate of economic growth has been sluggish. In the United States, export growth to both Mexico and Canada slowed relative to the 10 years prior to NAFTA. U.S. trade deficits with both Canada and Mexico have grown steadily, crippling domestic industries and contributing to massive job displacement.³³ However, this did not necessarily result in a net gain for the other countries—the North American region as a whole got less competitive with the rest of the world.³⁴

Trade Deficits with NAFTA Countries, 1996–2011 (USITC Dataweb)

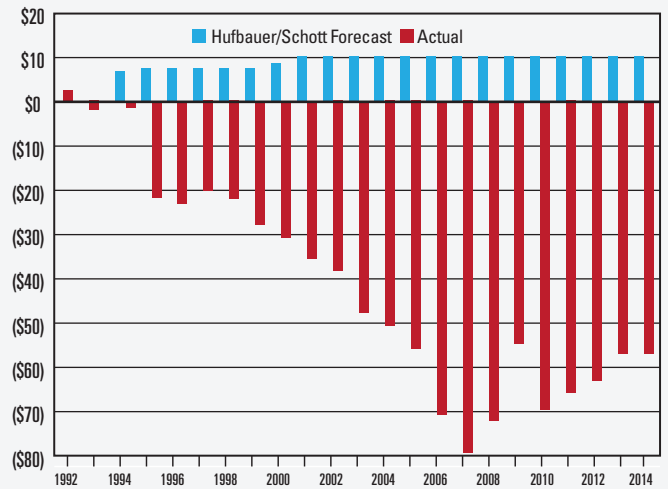


U.S. trade deficits increased after NAFTA came into effect.

Before the agreement was signed, pro-NAFTA economists predicted job growth based on the assumption that the U.S. trade surplus with Mexico would grow. “Our job projections reflect a judgment that, with NAFTA, U.S. exports to Mexico will continue to outstrip Mexican exports to the United States, leading to a U.S. trade surplus with Mexico of about \$7 billion to \$9 billion annually by 1995...rising to \$9 billion to \$12 billion between the years 2000 and 2010.”

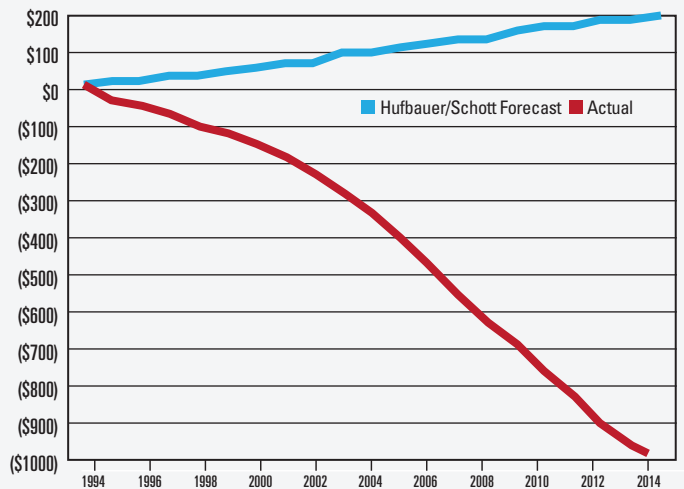
Predictions Wrong in Direction and Magnitude

Billions of Dollars: U.S. Annual Current Accounts Balance With Mexico



A \$1.2 Trillion Mistake

\$ Billions: Cumulative U.S. Current Account Balance With Mexico Since NAFTA



Sources: Gary Clyde Hufbauer and Jeffrey J. Schott, *NAFTA: An Assessment*, Washington, D.C., Institute for International Economics, October 1993, p. 14; Charles W. McMillion, “20 Years of Spin for America’s Failed Trade Model,” *Manufacturing & Technology News*, Dec. 17, 2013.



Millions live in poverty in Mexico.

NAFTA proponents claimed the deal would spur economic development in Mexico, bringing the country in line with its wealthier northern neighbors. In fact, the income disparity between Mexico and the United States and Canada has failed to close over the past two decades.³⁵ In 1997, hourly compensation costs for Mexican manufacturing workers were 15% of U.S. costs; in 2012, they were 18%.³⁶ For production workers specifically, the news is even worse: In 1994, Mexican hourly compensation costs were 17.98% of U.S. costs; by 2009 they had dropped to 14.53%.³⁷ Wages in Mexico now are lower than in China in many industries.³⁸

NAFTA has not significantly reduced poverty in Mexico, and its impact on economic growth is unclear. Mexico had the lowest per capita growth rate of any Latin American country over the last decade.³⁹ In 2012, the official poverty rate remained virtually unchanged from 1994 (from 52.4% to 52.3%).⁴⁰ Between 2006 and 2010, “more than 12 million people joined the ranks of the impoverished in Mexico.”⁴¹ Prices for consumer goods simultaneously reached all-time highs.⁴² “As a result, a minimum wage earner in Mexico today can buy 38% fewer consumer goods than on the day NAFTA took effect.”⁴³ Many workers have shifted into the informal economy.⁴⁴ Food poverty has dramatically increased: “25% of the population does not have access to basic food and one-fifth of Mexican children suffer from malnutrition.”⁴⁵ The decline of Mexican agriculture has made the country increasingly reliant on imports from the United States, mostly processed, prepackaged foods, which has created a perverse rise in both malnutrition and obesity.⁴⁶ President Clinton’s prediction that

NAFTA would increase regional peace has not played out, as violent crime and instability have increased at an alarming pace. Mexico is among the world’s most prolific exporters of illicit financial flows⁴⁷ and illegal narcotics,⁴⁸ and imports from the United States include a staggering number of weapons.⁴⁹

These agreements are hugely beneficial to multinational corporations.

Over the past 20 years, multinational corporations have emerged as a separate source of power and influence in international affairs. While this trend certainly is not linked exclusively to NAFTA, the agreement is emblematic of wider currents in global trade policy that offer multinationals expansive legal privileges and distinct advantages over small domestic businesses. These new rights come with no corresponding obligations or responsibilities.

Multinationals are uniquely positioned to take advantage of the many benefits offered by NAFTA—everything from prohibitions on local input requirements to new ways to challenge regulations. “Before NAFTA, Mexico produced trains, tractors and other industrial goods,” but competition destroyed these businesses, and the economic self-sufficiency and higher labor demands that came with it.⁵⁰ When Mexico deregulated financial services in preparation for NAFTA, “lending to Mexican businesses dropped from 10% of gross domestic product to 0.3%.”⁵¹ Investor-to-state dispute settlement, discussed in the next point, provides multinational corporations with a powerful legal tool that domestic businesses do not have.

Investor-to-state dispute settlement undermines the ability of governments to legislate in the public interest and threatens the democratic process.

Investor-to-state dispute settlement (ISDS) provides foreign investors—mostly multinational corporations—with the ability to obtain taxpayer-funded compensation for governmental actions that threaten their bottom line. ISDS allows investors from one member state to sue the government of another member state over local or national government actions—even court decisions—which the investor thinks violate NAFTA. This

right to challenge governmental action through ISDS procedures is in addition to the investor's rights under domestic law, which in the United States includes the right to lobby elected officials, the right to participate in rulemaking through administrative procedures and Fifth Amendment property rights in the Constitution. In other words, NAFTA guarantees that foreign investors get enhanced opportunities to fight laws and policies that threaten their profits beyond the democratic processes available to citizens and domestic businesses.

Rather than relying on domestic courts, investors can bring their claims directly before private arbitration panels hosted at the World Bank or the United Nations.⁵² These panels are ad hoc bodies composed of three private individuals, usually trade lawyers, selected by the investor and the state party to the case. The panels are empowered to award monetary compensation from the public coffers but are not accountable to any electorate or open to public scrutiny. Investors have wrung at least \$340 million from NAFTA governments since the agreement took effect, although the number is potentially higher, since there is no requirement that claims, or resulting decisions or settlements, be made public.⁵³

During the NAFTA debate, Big Business argued ISDS was necessary because the Mexican government frequently nationalized property without compensation, and local courts could not be trusted to deliver unbiased rulings. However, a review of publicly available ISDS cases shows these procedures are being used for entirely different purposes. Most corporate challenges have nothing to do with expropriation of tangible property; they target government regulations that interfere with anticipated profit in some conceivable way, everything from government standards for granting patents⁵⁴ to government programs to create green jobs.⁵⁵ As Joseph Stiglitz explained in a recent opinion piece, "those supporting the investment agreements are not really concerned about protecting property rights....The real goal is to restrict governments' ability to regulate and tax corporations—that is, to restrict their ability to impose responsibilities, not just uphold rights. Corporations are attempting to achieve by stealth—through secretly negotiated trade agreements—what they could not attain in an open political process."⁵⁶

In *Mobil v. Canada* (2012), Exxon Mobil and Murphy Oil successfully won \$60 million from the Canadian government based on local regulations that required oil companies to pay into a fund for research and development in Canada's poorest provinces.⁵⁷ The regulation applied equally to domestic and foreign companies, and was designed to ensure that at least some of the profits derived from resource extraction went back to the community. The companies first tried to overturn the law in the Canadian courts and lost.⁵⁸ However, using the investor rights provisions of NAFTA, the companies successfully argued the regulations violated investor rights.

Advocates argue that ISDS provides a neutral forum. In fact, the system is anything but neutral. The arbitrators who decide the case are selected and paid for by the parties. These arbitrators thus have a financial and professional interest in maintaining and expanding the system.⁵⁹ There is a revolving door between arbitration panels, elite international law firms and trade positions within governments.⁶⁰ In addition to promoting an insular and "clubby" mentality, thanks to lax ethical standards, members of corporate boards and lawyers who represent multinationals *can* and *do* sit on panels as arbitrators. These individuals have a strong incentive to issue decisions that will benefit current and potential clients, promoting an entrenched structural bias "in favor of corporations and against nations and communities."⁶¹



DAVID BACON

The rights provided to multinational corporations under ISDS exceed those available under domestic law. In 1999, the Canadian company Methanex used NAFTA's ISDS provisions to bring a claim for \$970 million in damages against the U.S. government because California had banned a chemical additive in order to protect the water supply. As the company's lawyer explained, the corporation chose ISDS because NAFTA "clearly create[s] some rights for foreign investors that local citizens and companies don't have....that's the whole purpose of it."⁶² Corporations that lose U.S. court cases even can seek compensation for adverse decisions, including jury awards they consider excessive. This provides foreign investors with an opportunity to attack domestic court decisions in a private process where the other parties to the original case have no right to participate.⁶³

In ISDS, there is no requirement that arbitration panels weigh public concerns or defer to decision making by elected officials who are accountable to the public. In *Metalclad v. Mexico* (2000), the U.S.-based company initially won \$15.6 million from the Mexican government after municipal authorities refused to allow the corporation to build a toxic waste facility that was opposed by local residents, and instead declared the area a nature reserve.⁶⁴ The panel criticized the officials for responding to public opposition, effectively penalizing politicians for working on behalf of their constituents.⁶⁵

ISDS can be a deterrent to forming and maintaining social policies that benefit the public. Cases brought before arbitral panels can cost the parties far more than domestic court cases—a staggering \$8 million, on average, with some cases costing in excess of \$30 million.⁶⁶ An empirical study of investment arbitration costs found that "tribunals most frequently required parties to share tribunal and administrative costs equally and absorb their own legal fees," even if they successfully defended the claim.⁶⁷ This creates a strong incentive to avoid laws likely to draw a challenge from powerful multinationals, especially considering the sympathetic panelists who too often decide these cases.⁶⁸

The deterrent effect has troubling implications for regional innovation and federalism. After the Canadian paper company AbitibiBowater announced it was shuttering all its mills in Newfoundland,⁶⁹ the provincial government revoked the company's rights to water and timber on certain public lands. The company demanded compensation. Under the terms of the lease, the water and timber rights were contingent on the company continuing to use them to operate the mills. Thus, the company had no legal right to compensation under Canadian law. However, when the corporation used a U.S. subsidiary to bring an ISDS case, the Canadian government decided to settle rather than risk lengthy litigation,⁷⁰ and announced that in the future it would "hold provincial and territorial governments liable for any NAFTA-related damages paid by the federal government."⁷¹

"I've seen the letters from the New York and D.C. law firms coming up to the Canadian government on virtually every new environmental regulation and proposition in the last five years. They involved dry cleaning chemicals, pharmaceuticals, pesticides, patent law. Virtually all of the new initiatives were targeted, and most of them never saw the light of day."

—Former Canadian official⁷²

Given what a powerful tool ISDS is, it is unsurprising companies continue to press for its inclusion in trade deals. What is more puzzling is why government negotiators continue to include it. The use of these provisions to target regulations in the public interest and undermine the democratic process is hardly restricted to NAFTA. Philip Morris used bilateral investment treaties containing ISDS provisions to bring claims against Uruguay and Australia, arguing the tobacco conglomerate should be compensated for mandatory health warnings and plain packaging requirements on cigarettes. Germany is being sued by the energy company Vattenfall over its decision to phase out nuclear energy.⁷³

Eli Lilly Threatens Access to Effective, Affordable Medicines

In September 2013, the U.S. pharmaceutical giant Eli Lilly filed an ISDS case against the government of Canada claiming \$500 million in damages after two of its patents were invalidated. The patent for Strattera, a drug to treat attention deficit hyperactivity disorder (ADHD), was revoked in 2010 on grounds that the company had failed to establish its “utility”—that is, that the drug delivered the benefits the company claimed. Separate court decisions also invalidated the patent for the anti-psychotic medication Zyprexa. As explained by Stuart Trew, a trade campaigner for the Council of Canadians, “[a] settlement or loss for Canada would undoubtedly spark a wave of NAFTA claims from other pharmaceutical companies whose patents have been invalidated under Canada’s ‘utility’ doctrine. It would also embolden brand name pharmaceutical companies to pursue similar investor-state lawsuits globally where domestic patent regimes differ from those of the United States and European Union....When considered with the nine other current NAFTA cases against Canada—worth about \$2.5 billion in total—this should create an imperative for change. Canada has paid out over \$160 million in losses or settlements as a result of NAFTA investment disputes. Even where Canada prevails, the sums paid to lawyers to defend the cases have been a significant drain on public resources. The \$500 million sought by Lilly is more than the province of Newfoundland and Labrador received in federal health transfers in 2013.”⁷⁴

The inclusion of labor provisions has not resulted in improved labor conditions on the ground.

The North American Agreement on Labor Cooperation (NAALC), adopted as a parallel agreement to NAFTA itself, commits the three countries to enforce their own labor regulations and to promote, through domestic law, 11 fundamental labor principles (see box, top right). There is no obligation to adopt stronger laws or adhere to international labor standards.

Pursuant to the NAALC, each government has established a national administrative office (NAO) to inves-

Guiding labor principles specified in the NAALC:

- Freedom of association and protection of the right to organize;
- The right to bargain collectively;
- The right to strike;
- Prohibition of forced labor;
- Labor protections for children and young persons;
- Minimum employment standards;
- Elimination of employment discrimination;
- Equal pay for women and men;
- Prevention of occupational injuries and illnesses;
- Compensation in cases of occupational injuries and illnesses; and
- Protection of migrant workers.

tigate and respond to complaints. Any interested party can file a submission with a country’s NAO alleging failure to enforce domestic labor law affecting fundamental rights in another member country. The NAALC also created an international secretariat with leadership rotating between the three countries to monitor and investigate labor conditions.

NAOs can resort to a variety of collaborative procedures with the accused government to attempt to reach a resolution. However, only some claims can be escalated, since the NAALC separates the principles into a hierarchy. Complaints alleging failure to adequately enforce domestic laws concerning the rights to organize, collectively bargain and strike can be addressed *only* through government consultations. However, if consultations fail to resolve complaints alleging failure to adequately enforce minimum wage, child labor and occupational health and safety laws, the NAO can call for an independent arbitral panel. In theory, this panel can issue fines.⁷⁵ In reality, no complaint has ever gone beyond the first stage of the process: government-to-government consultations.⁷⁶

Although numerous complaints have been filed under these procedures, the NAALC process has not resulted in significant enhancements in standards or enforce-

ment. For example, several submissions have detailed how U.S. law and practice leave migrant workers vulnerable to exploitation and abuse.⁷⁷ As explained in a 2011 complaint filed with the Mexican NAO regarding labor rights and enforcement in the U.S. carnival industry, “[l]ow-wage migrant workers suffer minimum wage violations at nearly twice the rate of their U.S.-born counterparts,” and “face disproportionate impediments in accessing administrative or judicial resources because they are frequently employed in industries that require work seven days per week and constant moving from location to location.”⁷⁸

Carnival workers, often lured by recruiters making highly misleading promises, may work 16 hours a day or more for as little as \$1 an hour, suffer brutal workplace injuries and are frequently housed in bedbug- and flea-infested trailers in remote areas.⁷⁹ The U.S. Department of Labor does not conduct regular inspections of the industry and relies on workers to report violations. Numerous factors make reporting difficult—everything from language barriers to long work hours and frequent relocation. Further, carnival workers enter the country under temporary H-2B visas, which are tied to a specific employer. If the employees are fired or quit, their status is revoked, so workers are reluctant to report violations and risk retaliation. The U.S. enforcement system is primarily driven by private civil suits. Federal law restricts H-2B workers from using federally funded legal aid resources, which makes launching a case extremely difficult.⁸⁰

While the complaint drew international attention to the U.S. government’s failure to adequately enforce fundamental labor principles, three years have passed without meaningful change. The Mexican NAO issued a report agreeing that violations had occurred,⁸¹ but as of January 2014 only informal discussions have been held between the U.S. and Mexican governments.⁸² There are no set procedures in the NAALC that define how consultations are to proceed or who should be included in the process. The result has been uneven, ad hoc approaches adopted by NAOs that too often exclude workers and other stakeholders. In the carnival case, like many others, the consultation process has not been transparent or accessible.

“I’ve been fired twice since 1997, when I signed up union members and we tried to get better wages.”

—Luis Castañeda, apple picker⁸³

“[B]efore we started organizing, [apple-packing plant] Stemilt didn’t mind if we didn’t have papers. It is only now that we have started organizing that they have started looking for problems with people’s papers....it is only now that they have started threatening us with INS raids.”

—Apple packer, speaking anonymously⁸⁴

In 1998, Mexican unions filed a complaint alleging systemic problems with U.S. labor law and its enforcement in the apple-picking and -packing industries in Washington State.⁸⁵ Workers in these industries are subjected to persistent violations of minimum wage and overtime law, exposed to harmful pesticides and other violations of health and safety laws and face retaliation and firings for attempting to organize. Agricultural workers are excluded from U.S. labor laws that ensure freedom of association and collective bargaining rights.⁸⁶ Undocumented immigrants, who make up about 75% of the agricultural labor force in the United States,⁸⁷ are provided even less protection. The U.S. government has failed to effectively investigate, prosecute or provide remedies for these violations.

After a protracted two-year process, the end result was a ministerial agreement between the United States and Mexico, wherein the U.S. government agreed to host public outreach sessions to educate workers on their rights.⁸⁸ However, no substantive changes to U.S. law or policy resulted. Agricultural workers still are excluded from basic labor law protections. Discrimination against undocumented workers continues, despite criticism by multiple international bodies, including the International Labor Organization⁸⁹ and the Inter-American Court of Human Rights.⁹⁰ In 2002, the U.S. Supreme Court further entrenched discriminatory enforcement by concluding that undocumented workers fired for trying to form a union should not be compensated under U.S. labor law because of their status.⁹¹ Ultimately, the NAALC

process has proved inadequate at addressing serious deficiencies in U.S. law and policy.

Severe cases of worker abuse have failed to trigger a significant response. In 2006, a gas explosion at the Pasta de Conchos mine left 65 workers buried. Workers had complained of dangerous conditions, including smelling gas. Grupo Mexico, the country's largest mining concern, abandoned rescue operations after recovering only two bodies.⁹² The government of Mexico allowed the company to seal the mine after only five days, cutting off both rescue efforts and any inquiry into the cause of the collapse. To this day, there has been no investigation, and the bodies of 63 workers remain buried.⁹³

Napoleón Gómez Urrutia, the head of the National Union of Mine, Metal and Steelworkers of the Mexican Republic (SNTMMSSRM/*Los Mineros*), called the explosion "industrial homicide" and organized a campaign against Grupo Mexico demanding the company complete a thorough investigation into the explosion and compensate the families of the victims. In response, the government of Mexico engaged in systematic violence and repression against SNTMMSSRM. The military has been used to break strikes. Four workers were killed between 2006 and 2011.⁹⁴ The government withdrew recognition of union leadership and brought frivolous charges against Gómez, forcing him to flee the country. Despite five separate courts of appeal decisions in his favor, he remains in exile⁹⁵ and has been denied the right to travel abroad.⁹⁶ An NAALC complaint filed with the U.S. NAO in 2006 produced no concrete action designed to address this shameful situation, let alone any trade sanctions.⁹⁷

"Yes, jobs have been created, but under terrible conditions."

—Female textile worker, speaking anonymously⁹⁸

Perhaps no sector is more emblematic of NAFTA than Mexico's assembly factories, where goods like garments, electronics and auto parts are produced for export. These industrial centers are notorious for low wages, long working hours, hazardous conditions and sexual harassment. Workers face serious challenges to organizing and bargaining collectively to change these conditions, most notably the use of protection contracts (see box below).

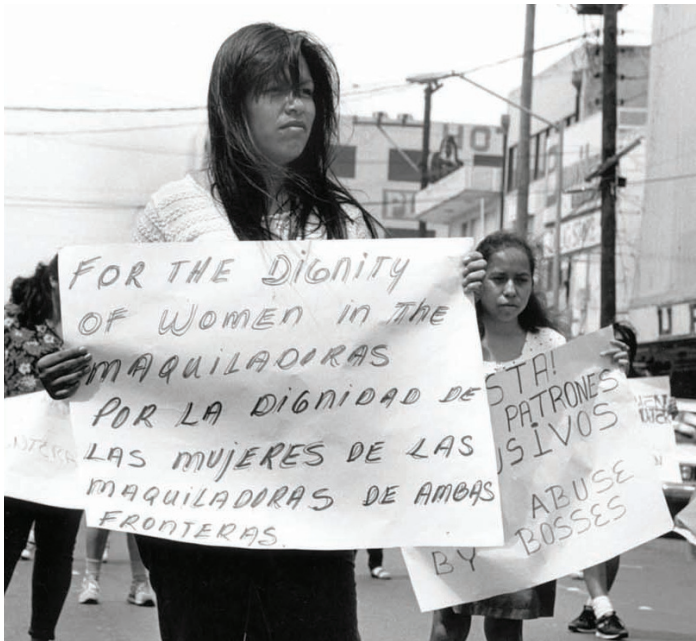
An estimated 90% of all union contracts in Mexico are protection contracts. These sham arrangements do not provide workers with democratic representation. Instead, an employer signs a contract directly with a "protection" union, usually in secret. Often workers are completely unaware of the union's existence. Contracts provide no benefits beyond those required by law, and there is no requirement that the terms be disclosed to anyone, even the employees the contract supposedly covers. These protection unions, often associated with both employers and local political elites, sit on the labor boards that certify the results of union elections. This makes getting recognition for an independent union extremely difficult.⁹⁹ In export processing plants, protection contracts are "the norm rather than the exception."¹⁰⁰



Los Mineros members carry coffins through the streets of Mexico City to commemorate the anniversary of the Pasta de Conchos disaster.

Multiple complaints have not produced prolonged or systemic changes to working conditions. For example, in 2000 Mexican workers at a subsidiary of Delaware corporation Breed Technologies Inc.,¹⁰¹ one of the largest auto parts manufacturers in the world, submitted a complaint to the U.S. NAO charging the Mexican government with failing to enforce health and safety laws at the company's Autotrim and Customtrim plants. The complaint detailed exposure to hazardous chemicals and severe repetitive stress injuries that left some workers permanently disabled.¹⁰² The U.S. NAO set arbitrary deadlines and requirements that made it more difficult for workers to submit information and participate in the initial public

SINDICATO NACIONAL DE TRABAJADORES MINEROS, METALÚRGICOS, SIDERÚRGICOS Y SIMILARES DE LA REPÚBLICA MEXICANA



DAVID BACON

Workers demonstrate for equal rights in export assembly factories.

hearing.¹⁰³ Breed Technologies declined to participate, but submitted lengthy documents directly to the U.S. NAO. Advocates were not given copies, and were only able to see Breed’s submission months later through a Freedom of Information Act request. The company also gave NAO officials a private tour of its facilities that workers were not allowed to attend.¹⁰⁴

Meanwhile, conditions on the ground did not improve following the complaint. Workers who came forward to report the violations were harassed by their employer, local police and anonymous individuals. Some received death threats. A researcher studying the case found evidence that workers were fired and that the company shifted parts of production to more remote areas to avoid scrutiny.¹⁰⁵ The protocol envisioned in the NAALC in case of persistent failure is escalation to an independent panel of experts, and eventually to an arbitral panel that could issue fines. However, two years after the complaint was filed, the U.S. and Mexican governments simply announced the creation of a bilateral working group. Workers were shut out of the process, and the working group’s agenda contained no concrete plans to address the enforcement problems or enhance accountability for violations raised in the complaint.¹⁰⁶ Requests from both the petitioners and U.S. senators to include more substantial commitments, or in the least to include workers and independent health and safety experts, were ignored.¹⁰⁷

Too often, the lack of clear procedural rules and requirements has resulted in workers being excluded from NAALC processes and remedies. One of the earliest

“They meet, they tell you nice things, that the officials...respect the law...but nothing happens.”

—Mexican autoworker, describing the NAALC process¹⁰⁸

cases, filed in 1997, involved workers trying to freely form a union at Han Young, a factory producing parts for Hyundai.¹⁰⁹ Workers overcame immense obstacles to vote in favor of an independent union, a process that the U.S. NAO noted required “extensive litigation, intervention by the Mexican federal labor authorities, two representation elections...international public attention and extensive media coverage.”¹¹⁰ Workers not only had to confront the company, which actively fought against the union using “intimidation, threats and dismissals,” but also the local labor authorities, who were supposed to be responsible for enforcing the workers’ rights to freedom of association.¹¹¹ Ultimately, the Mexican government agreed to host a training in Tijuana on freedom of association, but members of the independent union who attempted to enter the meeting were beaten by security forces and prevented from participating.¹¹² Officials from the U.S. Department of Labor who were present at the meeting did not intervene.¹¹³

In its early days, the NAALC mechanism contributed to some modest victories.¹¹⁴ For example, in 1996, the Canadian province of Alberta scrapped plans to privatize the enforcement of workplace health and safety shortly after the public employees’ union announced plans to file an NAALC complaint.¹¹⁵ However, as it became increasingly clear that no concrete trade repercussions would be pursued, countries became less and less responsive. In 2009, the Mexican government privatized the state electrical company, fired all 44,000 employees, used military force against union leaders and summarily dissolved one of the country’s oldest unions by decree (see box, next page). More than 93 organizations, including unions and civil society groups in all three countries, joined in submitting complaints to both the U.S. and Canadian NAOs, in 2011 and 2012, respectively.¹¹⁶ However, the NAALC case prompted no concrete action to ensure that Mexican authorities respect the fundamental rights of electrical workers.



DAVID BACON

Fired electrical worker Leobardo Benitez.

As the NAALC complaint filed on behalf of the Mexican Union of Electrical Workers (*Sindicato Mexicano de Electricistas* [SME]) details: “The Mexican government’s unlawful attack on SME began on Oct. 10, 2009, with the deployment of 27,000 police and military officials to forcibly remove union members from their workplaces in the dead of night. Subsequently, the Mexican government extinguished the state-owned electrical power company, known as Central Light and Power (*Luz y Fuerza del Centro* [LyFC]), which employed all SME members, and consequently terminated the employment of SME’s entire membership through a single presidential decree. The government transferred assets and facilities that had previously belonged to LyFC to another state-owned electrical company, the Federal Electricity Commission (*Comisión Federal de Electricidad* [CFE]). As a result, the work that was previously performed in LyFC by union workers was given to nonunionized workers and subcontractors in the CFE. These workers suffered from significantly worse working conditions and lacked adequate health and safety protections, resulting in the death of a number of subcontracted workers.”¹¹⁷

Ultimately, while the process has increased international solidarity, the NAALC has failed to promote its central mandate: to ensure compliance with fundamental rights and enforcement of labor laws.¹¹⁸

NAFTA’s environmental provisions similarly failed to result in enhanced environmental standards.

The environmental provisions of NAFTA have failed to result in heightened enforcement, let alone a significant rise in standards. The environmental side agreement suffers from many of the same core failings as the labor provisions: The mechanism is structurally weak, and its institutions are underfunded. There is a citizen complaint procedure for resolving disputes, but it provides for negotiations between governments and does not allow for the possibility of penalizing polluters directly. This has led to pilot projects rather than systematic efforts to tackle problems.¹¹⁹

In Mexico, real spending on enforcement of environmental laws has declined since NAFTA was enacted. Hazardous waste and pollution have increased,¹²⁰ as have chemically intensive production methods on large commercial farms, including harmful pesticides and fertilizers.¹²¹

Simultaneously, environmental regulations are the target of a huge number of ISDS cases, which has undermined innovation and seriously threatens existing and future commitments in environmental treaties. For example, Canada halted exports of PCB wastes to the United States to comply with the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal. U.S. waste treatment company S.D. Myers launched an ISDS case. The arbitral panel awarded the corporation \$20 million.¹²²

NAFTA provisions interfere with member governments' ability to adopt comprehensive policies that support investment in local communities, promote living-wage jobs, ensure robust protections for consumers and the environment and provide equitable access to vital goods and services.

NAFTA went far beyond simply requiring that states treat domestic and foreign businesses equally¹²³ by including provisions that fundamentally interfere with a democratic society's ability to determine policy priorities. Trade agreements should foster rather than inhibit sustainable, equitable growth that increases social mobility and shared prosperity. However, NAFTA's restrictive provisions, in areas including government procurement, intellectual property and services, hurt local development and the ability to ensure stability and equity.¹²⁴

NAFTA prevents federal, state and local governments from imposing requirements on covered government procurement contracts that do not relate directly to the ability to perform the contract. This can make it difficult to support local job creation and development, stimulate economic growth in times of financial hardship and promote green purchasing or social justice. For example, when President Clinton signed an executive order preventing federal contractors from sourcing from businesses using the worst forms of child labor, the order had to contain exemptions for Mexico and Canada to comply with NAFTA obligations.¹²⁵

NAFTA's strict intellectual property protections contain several measures that inflate drug prices, including

restrictions on access to generics and prohibitions on importing from where a good is cheapest.¹²⁶ NAFTA's rules also make it more difficult for communities to retain rights to native plant species and indigenous knowledge.¹²⁷

NAFTA was one of the first trade agreements to liberalize trade in services. The agreement does not provide exceptions for measures to regulate public goods, such as roads, parks and water, or to conserve natural resources.¹²⁸ This can make it difficult for states and localities to ensure equitable access to high-quality services. Privatization often results in lower-quality services and poorer working conditions for those employed in the industry. Commercial enterprises may end up excluding those too poor or geographically isolated to make service delivery profitable.¹²⁹

NAFTA adopted a so-called "negative list" approach to the sectors covered under the agreement. This allows member governments to carve out exceptions during negotiations, but automatically includes those areas not specifically identified. This leaves sectors that did not even exist during negotiations automatically subject to NAFTA's provisions.¹³⁰ Investor rights in the agreement make these decisions difficult to change, despite changing community preferences.

Negative lists lock in the policy preferences of the government that signed the original agreement, automatically cover sectors not in existence during signing and limit the policy choices future generations can make.

Even when countries have attempted to carve out exceptions, ISDS cases have ignored the preferences of the democratically elected government. In NAFTA, Canada specifically attempted to exclude regulations on research and development from NAFTA's prohibition on local performance requirements. However, in the Mobil case (discussed in the ISDS section of this report), the arbitral panel concluded that changes that substantially increased the amount corporations were required to pay modified the measure to the point it no longer fell under the exception.¹³¹

Toward a New Trade Model

NAFTA has had a profound impact on U.S. trade policy. Subsequent bilateral and regional trade deals replicate the same failed model, coupling sweeping investor rights with restrictions on domestic policy.¹³² Current negotiations openly focus on “regulatory harmonization” and “behind the border” barriers, encouraging or requiring parties to trade agreements to adopt similar laws and standards to facilitate cross-border supply chains.¹³³ A 2011 statement by the trade ministers involved in TPP negotiations states, “[r]egulatory and other non-tariff barriers increasingly are the major hurdles that companies face in gaining access to foreign markets. To address these barriers, we have agreed to work to improve regulatory practices, eliminate unnecessary barriers, reduce regional divergence in standards, promote transparency, conduct our regulatory processes in a more trade-facilitative manner, eliminate redundancies in testing and certification and promote cooperation on specific regulatory issues.”¹³⁴

Unfortunately, corporate-driven trade deals too often interpret “regional divergence in standards” to mean any deviation from the lowest possible standard. Innovative policy measures enacted on the local and regional levels and societal choices about how to solve problems and balance risks are reduced to “export barriers.” Quebec’s ban on fracking is a divergence, and now the subject of an ISDS claim by the U.S. company Lone Pine Resources.¹³⁵ Many neutral, generally applicable measures designed to protect the public, serve local objectives or raise standards similarly are under attack. The French multinational Veolia is demanding compensation from the Egyptian government for a package of reforms that includes raising the minimum wage.¹³⁶ Meanwhile, corporate actions that exploit workers, pollute the environment and poison consumers are facilitated by the architecture of these agreements. Negotiators must move away from this flawed model toward a system that builds sustainable, inclusive development, fosters social mobility, ensures corporate accountability and encourages rather than hinders innovative social policy.



COUNCIL OF CANADIANS

Canadian workers protest the TPP.

Increase public participation

NAFTA’s provisions were crafted, debated and finalized without significant public engagement or scrutiny. The result was language that disproportionately benefited corporations at the expense of citizens. Unfortunately, the Obama administration has continued the tradition of operating behind closed doors. TPP negotiations are conducted entirely in secret. The administration currently is pushing for trade promotion authority often referred to as “Fast Track.” A bill introduced in Congress would lock legislators into an up-or-down vote on the final text of trade agreements, with no ability to amend, an arrangement that would further curtail public debate and scrutiny.¹³⁷ If these deals are ever to become real catalysts for social improvement, the workers, consumers and communities affected by them must be able to participate in the negotiations.



WENDY COLUCCI

Remove ISDS

ISDS places the interests of private foreign investors on an equal footing with the interest of the general public of an entire nation. Including ISDS in trade deals hinders the ability of local, regional and national governments to protect public welfare, distorts the policymaking process and threatens equitable, sustainable development. Despite a clear pattern that demonstrates the danger ISDS poses to democratic decision making, TPP proposals actually appear to expand ISDS rather than curtail it, by drawing broader rights in such areas as intellectual property and explicitly opening such new areas as financial services.¹³⁸ This is particularly troubling because measures enacted to ensure financial stability during times of economic collapse have been a frequent target of ISDS cases.¹³⁹

The original justification for ISDS, dysfunctional courts, does not apply to the countries involved in TPP negotiations that have developed, independent judicial systems. The United States provides strong protection for private property, including constitutional guarantees in the Fifth Amendment.¹⁴⁰ However, including ISDS when domestic courts may be underdeveloped, biased or corrupt is equally problematic. ISDS undermines rather than enhances the rule of law by providing investors with a separate legal structure from those workers and communities rely on. This allows multinationals to avoid one of the primary disadvantages of operating in localities with underdeveloped court systems, while continuing to take advantage of the lax labor and environmental enforcement that too often accompany a lack of access to justice.¹⁴¹

Reform is a weak substitute for removing these harmful provisions, but there are proposals that would reduce the damage the system currently causes.¹⁴² Currently, investors are bestowed extraordinary rights but no corresponding obligations. To access ISDS, foreign investors should be required to commit to protect fundamental rights and demonstrate they adhere to the laws of both their home state and those in the locality where they operate and first engage with the domestic political process.¹⁴³ Domestic concerns should be banned from using subsidiaries

to pursue cases. ISDS provisions should limit recovery to situations of actual expropriation, and contain clear exceptions for all nondiscriminatory public interest regulations.¹⁴⁴ One solution to address the serious ethical issues that result when decisions are made by ad hoc gatherings of individuals with a financial and professional stake in perpetuating the system is the creation of a permanent standing body to handle these disputes.¹⁴⁵ Hearings and decisions must be open to the public, affected parties should be allowed to participate in the process and deference should be afforded to government decision making, particularly when the matter affects the public interest.¹⁴⁶ Panelists should consider broader policy objectives and place investor rights in context rather than making a narrow determination based solely on these concerns. It seems unlikely that moderate reforms will redress the entrenched failures of the system, however. If ISDS is to continue, serious substantive and structural changes must be pursued.

Reform labor provisions to ensure greater enforcement and accountability

Trade deals should include explicit commitments to supporting decent work.

Trade deals should include firm commitments to increase quality employment that allows workers to live with dignity and be treated with respect in the workplace.

“Decent work,” a concept developed at the ILO, focuses on ensuring all women and men have the opportunity to “obtain decent and productive work, in conditions of freedom, equity, security and human dignity.”¹⁴⁷ A decent work program focuses on creating opportunities and social mobility, guaranteeing rights and respect on the job, promoting social dialogue through strong worker organizations and extending social protections, including safe working conditions, access to health care and family leave, sufficient workers’ compensation and allowance for adequate leisure time and rest.¹⁴⁸

Trade deals should adopt core ILO Conventions as a minimum floor that all member countries must adhere to in order to enjoy trade benefits, and include provisions for strengthening standards over time.

U.S. trade policy has made positive steps toward incorporating core labor standards in trade deals. After NAFTA, subsequent trade deals evolved to link labor commitments to core ILO principles (see box below).¹⁴⁹ This creates a common baseline to prevent countries from subverting fundamental rights to gain trade advantages.

Core ILO Rights

Most U.S. trade agreements signed after May 10, 2007, commit parties to adopt, maintain and enforce the rights stated in the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998):

- (a) Freedom of association;
- (b) The effective recognition of the right to collective bargaining;
- (c) The elimination of all forms of compulsory or forced labor;
- (d) The effective abolition of child labor and, for purposes of this Agreement, a prohibition on the worst forms of child labor; and
- (e) The elimination of discrimination in respect of employment and occupation.¹⁵⁰

The most recent U.S. trade agreements (with Peru, Korea, Panama and Colombia) cite the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). However, greater clarity would result if the language instead referenced core ILO Conventions. While both establish fundamental protections for workers, the rights contained in the Conventions have clearer definitions and associated jurisprudence to guide decision makers.¹⁵¹ Trade deals also should contain commitments to continued improvement and elevation of standards of over time.

Trade deals should include the same robust trade sanctions for labor violations as for commercial violations and automatic deadlines to advance complaints.

Countries that fail to enforce fundamental labor rights should not benefit from trade deals. Sanctions should be the same as those available for commercial violations—substantial enough to secure meaningful change and tied to the sectors where the violations are occurring to encourage accountability and incentivize employers to rectify problems. Exporters that are complicit in violations also should face sanctions.¹⁵²

The NAALC has no effective mechanism for imposing financial or other costs on entrenched, systematic violations of fundamental rights. Subsequent trade deals have evolved to include the possibility of trade sanctions. However, these mechanisms have not been adequately tested, as no complaint has reached the dispute settlement phase. Like NAFTA,¹⁵³ these agreements rely on political will to move cases forward, allowing but not requiring escalation.

Leaving the complaint process subject to diplomatic and political considerations too often results in lengthy bureaucratic undertakings rather than substantive change. For example, a 2008 complaint against Guatemala under the Dominican Republic-Central American Free Trade Agreement details grave violations of fundamental labor rights, including violence and repression against union activists and prolonged non-enforcement of labor regulations relating to areas like minimum wage, health and safety, overtime and social security payments.¹⁵⁴ Following continued noncompliance by the government of Guatemala, the U.S. government initially requested an arbitral panel, but suspended the proceedings after the two governments developed a joint Labor Action Plan.¹⁵⁵ The plan has proved to be little more than a stalling tactic, as systematic violence, repression and exploitation continues. On Jan. 5 of this year, 19-year-old Marlon Dagoberto Vásquez López became the 65th trade union activist murdered since 2007.¹⁵⁶ Meanwhile, the government of Guatemala and unscrupulous employers reap trade benefits by

ignoring the basic rights of workers. Such persistent, blatant violations must be met with tangible repercussions.

Continuing noncompliance should result in mandatory, automatic escalation over set time periods, rather than relying on government actors to affirmatively decide to escalate the case. This would improve the efficacy of the system.

Trade deals should address deficiencies in enforcement of fundamental labor rights at the beginning of negotiations and require compliance before signature.

Adherence to fundamental labor rights should be a requirement of any trading partner. Labor concerns should be identified and addressed at the beginning of negotiations, and countries should be required to make substantive, meaningful changes before any deal is signed. This is the approach adopted for commercial considerations, but unfortunately current U.S. policy sidelines labor conditions until the end of negotiations.¹⁵⁷

Noncompliance has been addressed through initiatives like the Colombia Labor Action Plan, a conditional side agreement designed to address that country's abysmal record on workers' rights.¹⁵⁸ Since 1986, some 3,000 Colombian trade unionists have been murdered. The vast majority of these cases have never even been investigated, let alone resulted in a conviction. Workers are subjected to harassment and threats and persistent violations of minimum wage, health and safety and other labor regulations. Employers engage in a range of deceptive practices to characterize workers as independent contractors to deny them legal rights.¹⁵⁹ The Labor Action Plan was designed to address informality and enhance inspections and enforcement, but it has resulted in limited change to entrenched impunity and exploitation.¹⁶⁰ This tactic has failed to produce results, and should not be replicated in current negotiations with countries with questionable labor rights records. Potential trade partners should instead be required to make relevant changes to laws, policies and practices before agreements enter into force.

Trade deals should include provisions to enhance worker access to complaint mechanisms, and ensure adequate funding and staffing requirements for any monitoring bodies.

Accessing the NAALC system is costly for workers and organizations that do not command vast resources. The primary mechanism is through country-level hearings, which often are drawn-out processes requiring extensive information gathering, travel, translation and other costs.¹⁶¹ Hearings are not held near where the violations occur, but at arbitrary locations determined by the national NAO. There is no mechanism to shift the costs of participating onto wrongdoers if the claim is valid. Obtaining evidence is particularly difficult with no formal discovery process. Trade deals should include location-specific hearings, fee-shifting, financial support and discovery rules to allow workers to access the system. Solutions to NAALC complaints too often are negotiated behind closed doors without significant input from those most affected. Workers and independent experts should be incorporated into remedial measures rather than sidelined.

Funding for NAOs and the secretariat has been inadequate from the start, but over the years it has been reduced to the point that the secretariat is unable to carry out core functions. Trade agreements must include adequate mechanisms for funding the important work these institutions carry out. This should be coupled with robust hiring criteria to ensure independent and effective personnel. The NAALC secretariat lacked such provisions, which facilitated questionable assignments. In 2004, the executive director resigned abruptly following revelations that he had registered as a lobbyist in Pennsylvania, charged trips, meetings and expenses that appeared to be unrelated to secretariat business and placed friends and relatives on the payroll.¹⁶² Stricter ethical obligations and selection criteria would enhance the effectiveness and credibility of international organizations designed to enforce labor provisions in trade agreements.

Trade deals should adopt measures to ensure supply chain accountability.

Currently, no mechanism offers remedies to victims or sanctions private employers that routinely and knowingly flout the law. Under the NAALC, employers involved in the violations are not even required to participate in the process.¹⁶³ Trade agreements with investor rights must contain corollary responsibilities. This should include a commitment to monitor supply chains, investigate labor violations and provide adequate compensation, as required under the United Nations Guiding Principles on Business and Human Rights.¹⁶⁴ Failure to do so should be subject to challenge in both the corporations' host and home state.

Trade agreements should not hinder the ability of governments to build public policy informed by the democratic process and responsive to community needs.

States should be able to target public resources to promote local development, enhance social standards and reward businesses that behave responsibly. This means procurement measures in trade agreements should not prevent states from using purchasing power to further important public policy aims.

Current trade negotiations appear poised to include more NAFTA-like restrictions on regulation of the financial industry.¹⁶⁵ Trade agreements should protect, rather than undermine, governments' ability to react to economic crises and ensure robust, sustainable markets.

According to leaked documents, the TPP contains even stronger intellectual property rights provisions than NAFTA,¹⁶⁶ including new forms of protections

such as data exclusivity and limitations on the ability of governments to negotiate over pricing, which will further increase drug costs.¹⁶⁷ These provisions must be modified to ensure affordable medicines. Intellectual property should preserve and protect community knowledge, and foster growth and innovation.

Trade agreements should adopt positive lists for all commitments to reduce confusion and ensure that the sectors covered are determined by a deliberate, democratic process, not included by default. Governments should retain the autonomy to ensure access to quality public services based on community needs and priorities.

Workers and Communities Deserve Better

Trade is not an end in itself, but a means to enhance living standards and promote shared prosperity. Unfortunately, the legacy of NAFTA and the flawed U.S. trade policy it both shaped and reflects has been stagnant wages, declining social standards and increased inequality. The TPP and other forthcoming trade agreements do not have to repeat the mistakes of the past 20 years. These negotiations are an opportunity to build an inclusive and sustainable trade model.

Endnotes

- 1 NAFTA at 20: Lori Wallach on U.S. Job Losses, Record Income Inequality, Mass Displacement in Mexico, *Democracy Now!*, Jan. 2, 2014, [available at www.democracynow.org/2014/1/3/nafta_at_20_lori_wallach_on](http://www.democracynow.org/2014/1/3/nafta_at_20_lori_wallach_on)
- 2 See, e.g., Robert E. Scott, Jeff Faux and Carlos Salas, *Revisiting NAFTA: Still Not Working For North America's Workers*, Economic Policy Institute (2007) [available at www.epi.org/publication/bp173/](http://www.epi.org/publication/bp173/); Dean Baker, *Opinion, It Lowered Wages, As It Was Supposed To Do*, *New York Times*, Nov. 24, 2013, [available at www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/nafta-lowered-wages-as-it-was-supposed-to-do](http://www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/nafta-lowered-wages-as-it-was-supposed-to-do)
- 3 Nina Easton, *Obama: NAFTA not so bad after all*, *CNN Money*, June 18, 2008, [available at http://money.cnn.com/2008/06/18/magazines/fortune/easton_obama.fortune/](http://money.cnn.com/2008/06/18/magazines/fortune/easton_obama.fortune/)
- 4 Celeste Drake, *U.S. Trade and Economic Policy: American Workers Need More Than Strong Labor Chapters*, *ABA Journal of Labor & Employment Law*, Vol. 27, Issue 3 458 (2012)
- 5 Report of the U.S. Congressional Delegation, *NAFTA at Ten: Journey to Mexico 14* (2003), [available at www.kaptur.house.gov/images/pdf/trade_nafta_yr_annivers.pdf](http://www.kaptur.house.gov/images/pdf/trade_nafta_yr_annivers.pdf)
- 6 North American Free Trade Agreement, Chapter 11, Article 1105 (1994)
- 7 North American Free Trade Agreement, Chapter 11, Article 1100 (1994)
- 8 See, e.g., DeLauro, Miller Lead 151 House Dems Telling President They Will Not Support Outdated Fast Track for Trans-Pacific Partnership, Website of Rep. Rosa DeLauro, Nov. 13, 2013, [available at http://delauro.house.gov/index.php?option=com_content&view=article&id=1455:delauro-miller-lead-151-house-dems-telling-president-they-will-not-support-outdated-fast-track-for-trans-pacific-partnership&catid=2:2012-press-releases&Itemid=21](http://delauro.house.gov/index.php?option=com_content&view=article&id=1455:delauro-miller-lead-151-house-dems-telling-president-they-will-not-support-outdated-fast-track-for-trans-pacific-partnership&catid=2:2012-press-releases&Itemid=21)
- 9 See Thea Lee, on behalf of the AFL-CIO, *Public Comments, Review of the North American Agreement on Labor Cooperation 1994–1997* (1998), [available at http://naalc.org/english/review_annex5_usa.shtml](http://naalc.org/english/review_annex5_usa.shtml)
- 10 AFL-CIO website, *Trans-Pacific Partnership Free Trade Agreement*, [available at www.aflcio.org/Issues/Trade/Trans-Pacific-Partnership-Free-Trade-Agreement-TPP](http://www.aflcio.org/Issues/Trade/Trans-Pacific-Partnership-Free-Trade-Agreement-TPP)
- 11 See, e.g., Zach Carter, *Obama Faces Backlash Over New Corporate Powers In Secret Trade Deal*, *Huffington Post*, Dec. 8, 2013, [available at www.huffingtonpost.com/2013/12/08/tpp-trade-agreement_n_4409211.html](http://www.huffingtonpost.com/2013/12/08/tpp-trade-agreement_n_4409211.html)
- 12 Testimony of Celeste Drake, *AFL-CIO before the House Terrorism, Nonproliferation and Trade Subcommittee*, Aug. 1, 2013, [available at http://docs.house.gov/meetings/FA/FA18/20130801/101233/HHRG-113-FA18-Wstate-DrakeC-20130801.pdf](http://docs.house.gov/meetings/FA/FA18/20130801/101233/HHRG-113-FA18-Wstate-DrakeC-20130801.pdf)
- 13 Robert E. Scott, Jeff Faux and Carlos Salas, *Economic Policy Institute, Revisiting NAFTA: Still Not Working For North America's Workers 1* (2007), [available at www.epi.org/publication/bp173/](http://www.epi.org/publication/bp173/)
- 14 *Ibid.*
- 15 Organisation for Economic Cooperation and Development, *StatExtracts, Trade Union Density 1994–2012*, [available at http://stats.oecd.org/Index.aspx?QueryId=20167#](http://stats.oecd.org/Index.aspx?QueryId=20167#)
- 16 *NAFTA's Broken Promises 1994–2013: Outcomes of the North American Free Trade Agreement*, *Public Citizen 4* (2013), [available at www.citizen.org/documents/NAFTAs-Broken-Promises.pdf](http://www.citizen.org/documents/NAFTAs-Broken-Promises.pdf)
- 17 Jeff Faux, *NAFTA's Disaster at 20: State of the North American Worker*, *Foreign Policy in Focus*, Dec. 16, 2013, [available at www.commondreams.org/view/2013/12/16-5](http://www.commondreams.org/view/2013/12/16-5); Kate Bronfenbrenner, *We'll Close! Plant Closings, Plant-Closing Threats, Union Organizing and NAFTA*, *Multinational Monitor*, 18(3), 8–14. (2007), [available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1018&context=cbpubs](http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1018&context=cbpubs)
- 18 Timothy Wise, *"Agricultural Dumping Under NAFTA: Estimating the Costs of U.S. Agricultural Policies to Mexican Producers," Woodrow Wilson International Center for Scholars 3* (2010), [available at www.ase.tufts.edu/gdae/Pubs/rp/AgricDumpingWoodrowWilsonCenter.pdf](http://www.ase.tufts.edu/gdae/Pubs/rp/AgricDumpingWoodrowWilsonCenter.pdf)
- 19 Robert E. Scott, Jeff Faux and Carlos Salas, *Economic Policy Institute, Revisiting NAFTA: Still Not Working For North America's Workers 43* (2007), [available at www.epi.org/publication/bp173/](http://www.epi.org/publication/bp173/)
- 20 Laura Carlsen, *NAFTA is Starving Mexico*, *Foreign Policy in Focus*, Oct. 21, 2011, [available at www.ciponline.org/research/entry/nafta-starving-mexico](http://www.ciponline.org/research/entry/nafta-starving-mexico)
- 21 *NAFTA's Broken Promises 1994–2013: Outcomes of the North American Free Trade Agreement*, *Public Citizen 2* (2013), [available at www.citizen.org/documents/NAFTAs-Broken-Promises.pdf](http://www.citizen.org/documents/NAFTAs-Broken-Promises.pdf)
- 22 John B. Judis, *Trade Secrets*, *The New Republic*, April 9, 2008, [available at www.newrepublic.com/article/trade-secrets](http://www.newrepublic.com/article/trade-secrets)
- 23 Robert E. Scott, *Heading South: U.S.-Mexico trade and job displacement after NAFTA*, *Economic Policy Institute 2* (2011), [available at www.epi.org/publication/heading_south_u-s-mexico_trade_and_job_displacement_after_nafta1/](http://www.epi.org/publication/heading_south_u-s-mexico_trade_and_job_displacement_after_nafta1/)
- 24 *Ibid.*
- 25 L. Josh Bivens, *Economic Policy Institute, Globalization and American Wages: Today and Tomorrow* (2007), [available at www.epi.org/files/page/-/old/briefingpapers/196/bp196.pdf](http://www.epi.org/files/page/-/old/briefingpapers/196/bp196.pdf)
- 26 *NAFTA's 20-Year Legacy and the Fate of the Trans-Pacific Partnership*, *Public Citizen 23*, February 2014, [available at www.citizen.org/documents/NAFTA-at-20.pdf](http://www.citizen.org/documents/NAFTA-at-20.pdf)
- 27 Jason Margolis, *20 years on, NAFTA still stings in Ypsilanti, Mich.*, *Al-Jazeera America*, Nov. 23, 2013, [available at http://america.aljazeera.com/articles/2013/11/29/20-years-later-naftastillstingsinypsilantimich.html](http://america.aljazeera.com/articles/2013/11/29/20-years-later-naftastillstingsinypsilantimich.html)
- 28 See, e.g., Robert E. Scott, *Signing trade deals is a terrible jobs strategy*, *Economic Policy Institute Working Economics Blog*, Feb. 13, 2013, [available at www.epi.org/blog/signing-trade-deals-terrible-jobs-strategy/](http://www.epi.org/blog/signing-trade-deals-terrible-jobs-strategy/); Paul Krugman, *Trade Does Not Equal Jobs*, *New York Times*, Dec. 6, 2010, [available at http://krugman.blogs.nytimes.com/2010/12/06/trade-does-not-equal-jobs/](http://krugman.blogs.nytimes.com/2010/12/06/trade-does-not-equal-jobs/)
- 29 The Economic Policy Institute has developed an excellent interactive resource on this problem, *Inequality Is*, [available at http://inequality.is/](http://inequality.is/)
- 30 *NAFTA's 20-Year Legacy and the Fate of the Trans-Pacific Partnership*, *Public Citizen 23*, February 2014, [available at www.citizen.org/documents/NAFTA-at-20.pdf](http://www.citizen.org/documents/NAFTA-at-20.pdf)
- 31 Konrad Yakabuski, *Income inequality in Canada: What's the problem?*, *The Globe and Mail*, Nov. 18, 2013, [available at www.theglobeandmail.com/news/national/time-to-lead/income-inequality-in-canada-whats-the-problem/article15470499/?page=all](http://www.theglobeandmail.com/news/national/time-to-lead/income-inequality-in-canada-whats-the-problem/article15470499/?page=all)
- 32 Joseph E. Stiglitz, *The Price of Inequality* (2012); Sandra Polaski, *Brief Submitted to the Canadian Standing Senate Committee on Foreign Affairs, Mexican Employment, Productivity and Income a Decade After NAFTA*, Feb. 25, 2004, [available at http://carnegieendowment.org/pdf/files/canadasenatebrief.pdf](http://carnegieendowment.org/pdf/files/canadasenatebrief.pdf)
- 33 See, e.g. Robert E. Scott, *Heading South: U.S.-Mexico trade and job displacement after NAFTA*, *Economic Policy Institute 2, 7, 12* (2011), [available at www.epi.org/publication/heading_south_u-s-mexico_trade_and_job_displacement_after_nafta1/](http://www.epi.org/publication/heading_south_u-s-mexico_trade_and_job_displacement_after_nafta1/)
- 34 Enrique Dussel Peters, *Manufacturing Competitiveness: Toward a Regional Development Agenda, The Future of North American Trade Policy: Lessons from NAFTA*, *Pardee Center Task Force Report 30* (2009), [available at www.ase.tufts.edu/gdae/Pubs/rp/PardeeNAFTACH2PetersManufNov09.pdf](http://www.ase.tufts.edu/gdae/Pubs/rp/PardeeNAFTACH2PetersManufNov09.pdf)
- 35 M. Angeles Villarreal and Ian F. Fergusson, *NAFTA at 20: Overview and Trade Effects*, *Congressional Research Service*, 17 (2013), [available at www.fas.org/sgp/crs/row/R42965.pdf](http://www.fas.org/sgp/crs/row/R42965.pdf)
- 36 U.S. Bureau of Labor Statistics, *International Comparisons of Hourly Compensation Costs in Manufacturing, 1997–2012*, Table 1 (Aug. 9, 2013), Table 1 [available at www.bls.gov/fls/ichcc.pdf](http://www.bls.gov/fls/ichcc.pdf)
- 37 U.S. Bureau of Labor Statistics, *International Hourly Compensation Costs for Production Workers in Manufacturing, 1975–2009*, Table 1.1, [available at www.bls.gov/fls/pw/ichcc_pwmfg1_1.txt](http://www.bls.gov/fls/pw/ichcc_pwmfg1_1.txt); unfortunately, BLS has discontinued this series due to budget cuts.
- 38 *Mexico hourly wages now lower than China's-study*, *Reuters*, April 4, 2013, [available at www.reuters.com/article/2013/04/04/economy-mexico-wages-idUSL2NOCR1Y20130404](http://www.reuters.com/article/2013/04/04/economy-mexico-wages-idUSL2NOCR1Y20130404)
- 39 Dean Baker, *More NAFTA Pushing at the Post: You Can't Find Wage Inequality in a One Wage Model*, *Center for Economic and Policy Research*, Nov. 12, 2012, [available at www.cepr.net/index.php/blogs/beat-the-press/more-nafta-pushing-at-the-post-you-cant-find-wage-inequality-in-a-one-wage-model](http://www.cepr.net/index.php/blogs/beat-the-press/more-nafta-pushing-at-the-post-you-cant-find-wage-inequality-in-a-one-wage-model)
- 40 Mark Weisbrot, *NAFTA: 20 years of regret for Mexico*, *The Guardian*, Jan. 4, 2014, [available at www.theguardian.com/commentisfree/2014/jan/04/nafta-20-years-mexico-regret](http://www.theguardian.com/commentisfree/2014/jan/04/nafta-20-years-mexico-regret)
- 41 Javier Rojo and Manuel Pérez-Rocha, *NAFTA at 20: The New Spin*, *Foreign Policy in Focus*, March 14, 2013, [available at http://fpif.org/nafta_at_20_the_new_spin/](http://fpif.org/nafta_at_20_the_new_spin/)
- 42 *Ibid.*
- 43 *NAFTA's 20-Year Legacy and the Fate of the Trans-Pacific Partnership*, *Public Citizen 23*, February 2014, [available at www.citizen.org/documents/NAFTA-at-20.pdf](http://www.citizen.org/documents/NAFTA-at-20.pdf)
- 44 Robert E. Scott, *The High Price of Free Trade*, *Economic Policy Institute* (2003), [available at http://s2.epi.org/files/page/-/old/briefingpapers/147/epi_bp147.pdf](http://s2.epi.org/files/page/-/old/briefingpapers/147/epi_bp147.pdf)
- 45 Laura Carlsen, *Mexico Suffered, and the United States Felt Its Pain*, *New York Times*, *Opinion*, Nov. 24, 2013, [available at www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/under-nafta-mexico-suffered-and-the-united-states-felt-its-pain](http://www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/under-nafta-mexico-suffered-and-the-united-states-felt-its-pain)
- 46 Sarah E. Clark and Corinna Hawkes, *Exporting Obesity*, *Institute for Agriculture and Trade Policy*, April 5, 2012, [available at www.iatp.org/documents/exporting-obesity](http://www.iatp.org/documents/exporting-obesity)

- 47 Currently ranked at third according to a recent report. Clark Gascoigne, Study Finds Crime, Corruption, Tax Evasion Drained \$946.7bn from Developing Countries in 2011, *Global Financial Integrity*, Dec. 11, 2013, *available at* www.gfintegrity.org/content/view/667/70/
- 48 *See, e.g.*, June S. Beittel, Mexico's Drug Trafficking Organizations: Source and Scope of the Violence, Congressional Research Service (2013), *available at* www.fas.org/sgp/crs/row/R41576.pdf
- 49 *See, e.g.*, Halting U.S. Firearms Trafficking to Mexico, A Report by Senators Dianne Feinstein, Charles Schumer and Sheldon Whitehouse to the United States Senate Caucus on International Narcotics Control (2011), *available at* www.feinstein.senate.gov/public/index.cfm?Fuseaction=Files.View&FileStore_id=beaff893-63c1-4941-9903-67a0dc739b9d
- 50 Manuel Pérez-Rocha, OP-ED: NAFTA's 20 Years of Unfulfilled Promises, *Inter Press Service*, Dec. 29, 2013, *available at* www.ipsnews.net/2013/12/op-ed-naftas-20-years-unfulfilled-promises/
- 51 Signing Away The Future, Oxfam Briefing Paper 101 (2007), *available at* www.oxfam.org/sites/www.oxfam.org/files/Signing%20Away%20the%20Future.pdf
- 52 North American Free Trade Agreement, Chapter 11, Article 1120.
- 53 North American Free Trade Agreement, Chapter 11, Article 1120A; *See also* A Transatlantic Corporate Bill of Rights, *Corporate Europe Observatory*, June 3, 2013, *available at* <http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights>; Pia Eberhardt and Cecilia Olivet, Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom, *Corporate Europe Observatory* (2012); Transnational Institute and Corporate Europe Observatory, Legalised Profiteering? How Corporate Lawyers Are Fuelling an Investment Arbitration Boom, *Corporate Europe Observatory* (2011), *available at* <http://corporateeurope.org/trade/2011/11/legalised-profiteering-how-corporate-lawyers-are-fuelling-investment-arbitration-boom>
- 54 U.S. Pharmaceutical Corporation Uses NAFTA Foreign Investor Privileges Regime to Attack Canada's Patent Policy, Demand \$100 Million for Invalidation of a Patent, *Public Citizen*, March 2013, *available at* www.citizen.org/eli-lilly-investor-state-factsheet
- 55 NAFTA's Broken Promises 1994–2013: Outcomes of the North American Free Trade Agreement, *Public Citizen* 7 (2013)
- 56 Joseph Stiglitz, South Africa breaks out, *Business Day*, Nov. 8, 2013, *available at* <http://businessdayonline.com/2013/11/south-africa-breaks-out/>
- 57 Table of Foreign Investor-State Cases and Claims Under NAFTA and Other U.S. "Trade" Deals, *Public Citizen* 15 (August 2013), *available at* www.citizen.org/documents/investor-state-chart1.pdf
- 58 Center for Policy Alternatives, NAFTA Chapter 11 Investor-State Disputes, *available at* www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2010/11/NAFTA%20Dispute%20Table.pdf; *Mobil v. Canada*, ICSID Case No. ARB(AF)/07/4, 177 (May 22, 2012), *available at* www.italaw.com/sites/default/files/case-documents/italaw1145.pdf
- 59 Pia Eberhardt and Cecilia Olivet, Profiting from Injustice: How Law Firms, Arbitrators and Financiers Are Fuelling An Investment Arbitration Boom, *Corporate Europe Observatory* 35 (2012)
- 60 Pia Eberhardt and Cecilia Olivet, Profiting from Injustice: How Law Firms, Arbitrators and Financiers Are Fuelling An Investment Arbitration Boom, *Corporate Europe Observatory* 35–50 (2012)
- 61 Transnational Institute and Corporate Europe Observatory, Legalised Profiteering? How Corporate Lawyers Are Fuelling An Investment Arbitration Boom 2 (2011), *available at* <http://corporateeurope.org/trade/2011/11/legalised-profiteering-how-corporate-lawyers-are-fuelling-investment-arbitration-boom>
- 62 William Greider, The Right and US Trade Law, *The Nation*, 2001, *available at* www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#
- 63 "Loewen" NAFTA Case: Foreign Corporations Unhappy with Domestic Jury Awards in Private Contract Disputes Can Demand Bailout from Taxpayers, *Public Citizen*, *available at* www.citizen.org/documents/Loewen-Case-Brief-FINAL.pdf
- 64 *Metalclad v. Mexico*, CASE No. ARB(AF)/97/1, 26, Aug. 30, 2000, *available for download at* https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC542_En&caselid=C155
- 65 *See* Caroline Henckels, Balancing Investment Protection and the Public Interest: The Role of the Standard of Review and the Importance of Deference in Investor-State Arbitration 12–13 (2012), *available for download at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192389
- 66 Organisation for Economic Co-operation and Development Investment Division, Investor-State Dispute Settlement, Public Consultation Report 18 (2012), *available at* www.oecd.org/daf/inv/internationalinvestmentagreements/50291642.pdf
- 67 Susan Franck, Rationalizing Costs in Investment Treaty Arbitration, *Washington University Law Review* 88:4, 769–852, p. 812, *available for download at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1781844
- 68 Pia Eberhardt and Cecilia Olivet, Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom, *Corporate Europe Observatory* 15 (2012)
- 69 Abitibi vows NAFTA lawsuit, *The Star*, Dec. 20, 2008, *available at* www.thestar.com/news/canada/2008/12/20/abitibi_vows_nafta_lawsuit.html
- 70 Bertrand Marotte, Ottawa pays AbitibiBowater \$130-million for expropriation, *The Globe and Mail*, Aug. 24, 2010, *available at* www.theglobeandmail.com/report-on-business/ottawa-pays-abitibibowater-130-million-for-expropriation/article1378193/
- 71 Center for Policy Alternatives, NAFTA Chapter 11 Investor-State Disputes, 9, *available at* www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2010/11/NAFTA%20Dispute%20Table.pdf
- 72 William Greider, The Right and US Trade Law, *The Nation*, 2001, *available at* www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century#
- 73 Pia Eberhardt and Cecilia Olivet, Profiting from Injustice: How Law Firms, Arbitrators and Financiers are Fuelling an Investment Arbitration Boom, *Corporate Europe Observatory* 11 (2012)
- 74 Stuart Trew, Eli Lilly's NAFTA lawsuit should prompt rethink of investor "rights" deals, the Council of Canadian blog, Aug. 30, 2013, *available at* www.canadians.org/blog/eli-lilly%E2%80%99s-nafta-lawsuit-should-prompt-rethink-investor-rights-deals
- 75 North American Agreement on Labor Cooperation, Annex 1 (1994), *available at* http://new.naalc.org/naalc/naalc-full-text/annex_one.htm
- 76 Justice for All: A Guide to Worker Rights in the Global Economy, *Solidarity Center and AFL-CIO* 135 (2008), *available at* www.solidaritycenter.org/files/pubs_jfa2009.pdf
- 77 Mexican NAO Submission 2011–1 (migrant workers), filed Sept. 19, 2011; *see also*, *e.g.*, Mex 2005–1, filed April 13, 2005; Mex 2003–1
- 78 Mexican NAO Submission 2011–1 (migrant workers), filed Sept. 19, 2011, pages 10–11 *available at* www.cdmigrante.org/wp-content/uploads/2012/01/NAALC-Petition-2011-1-English.pdf
- 79 Taken for a Ride: Migrant Workers in the U.S. Fair and Carnival Industry, *American University Washington College of Law Immigrant Justice Clinic and Centro de los Derechos del Migrante Inc.*, February 2013, *available at* www.wcl.american.edu/news/documents/ride_report.pdf
- 80 Supplement to Mexican NAO Submission 2011–1 (migrant workers), filed Aug. 15, 2012, page 12, *available at* www.cdmigrante.org/wp-content/uploads/2012/01/NAALC-Supplement-2011-1-English.pdf
- 81 Mexican Government Sides with Migrant Workers and Seeks Consultation with the U.S. DOL to Remedy Violations, *Centro de los Derechos del Migrante*, *available at* www.cdmigrante.org/mexican-government-sides-with-migrant-workers-and-seeks-consultation-with-the-u-s-dol-to-remedy-violations/
- 82 The delay in addressing problems in the H2-B visa program is not solely attributable to the weakness of the NAALC procedures. The Obama administration proposed modest changes to immigration regulations in 2011, but they currently are on hold pending resolution of a suit brought by business associations. However, many of the issues raised in the complaint were raised in previous complaints, like those put forward in the Washington Apple case filed well over a decade ago, and still remain unresolved.
- 83 Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards, *Human Rights Watch*, 140 (2000)
- 84 Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards, *Human Rights Watch*, 144 (2000)
- 85 Mexico NAO Submission No. 9802 (Apple Growers), 2001
- 86 Unfair Advantage: Workers' Freedom of Association in the United States Under International Human Rights Standards, *Human Rights Watch*, 139–146 (2000)
- 87 Jeff Luckstead, Stephen Devadoss and Abelardo Rodriguez, The Effects of North American Free Trade Agreement and United States Farm Policies on Illegal Immigration and Agricultural Trade, *Journal of Agricultural and Applied Economics*, 44, 1 (February 2012), *available at* <http://ageconsearch.umn.edu/bitstream/120457/2/jaae453.pdf>
- 88 Ministerial agreement on USNAO Case No. 9801 (Solec), 9802 (Washington Apples) and 9803 (DeCoster Egg Farm), May 18, 2000
- 89 *See* International Labor Organization, Committee on Freedom of Association, Case(s) No(s). 2227, Report No. 332 (United States): Complaints against the Government of the United States presented by the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO) and the Confederation of Mexican Workers (CTM), (2003)

- 90 See Inter-American Court of Human Rights, *Condición Jurídica y Derechos de los Migrantes Indocumentados*, Consultative Opinion OC-18/03, Sept. 17, 2003
- 91 See *Hoffman Plastic Compounds, Inc. v. National Labor Relations Board*, 535 U.S. 137 (2002)
- 92 Hanako Taniguchi, Families grieve for Mexican miners left underground, CNN Mexico, Feb. 22, 2011, available at www.cnn.com/2011/WORLD/americas/02/21/mexico.miners/
- 93 United Steelworkers, Steelworkers Stand with Los Mineros, Demand Justice, Feb. 20, 2013, available at www.usw.org/news/media-center/articles/2013/steelworkers-stand-with-los-mineros-demand-justice
- 94 Richard Trumka, Bob King, Leo Gerard and Larry Cohen, President Obama and labor rights in Mexico, Opinion, Politico, May 2, 2013, available at www.politico.com/story/2013/05/labor-reforms-obama-should-look-in-mexico-90833.html
- 95 Statement by AFL-CIO President Richard Trumka on President Obama's meeting with Mexican President-Elect Enrique Peña Nieto, Nov. 27, 2012, available at www.aflcio.org/Press-Room/Press-Releases/Statement-by-AFL-CIO-President-Richard-Trumka-on-President-Obama-s-meeting-with-Mexican-President-Elect-Enrique-Pena-Nieto
- 96 Richard Trumka, Bob King, Leo Gerard and Larry Cohen, President Obama and labor rights in Mexico, Opinion, Politico, May 2, 2013, available at www.politico.com/story/2013/05/labor-reforms-obama-should-look-in-mexico-90833.html
- 97 See U.S. Department of Labor, U.S. NAO Submission No. 2006-01 (Coahuila)
- 98 Report of the U.S. Congressional Delegation, NAFTA at Ten: Journey to Mexico, 13 (2003), available at www.kaptur.house.gov/images/pdf/trade_nafta_yr_annivers.pdf
- 99 Protection Contracts: An Introduction, International Metalworkers' Federation, available at www.imfmetal.org/files/10033015240866/Protection_Contracts_-_an_introduction.pdf; 2012 Human Rights Report, Mexico, United States Department of State, Chapter 7, available at www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper
- 100 Public Hearing on U.S. National Administrative Office Submission No. 2003-01 (Puebla), United States Department of Labor (2004), available at www.dol.gov/ilab/media/reports/nao/submissions/2003-01Transcript.htm
- 101 Public Report of Review of NAO Submission No. 2000-01 (Auto Trim), United States Department of Labor (2000), available at www.dol.gov/ilab/media/reports/nao/submissions/Sub2000-01pt4.htm#va
- 102 Lynda Yantz, Mr. Fox, does Mexican democracy include workers?, The Globe and Mail, Aug. 23, 2000, available at www.theglobeandmail.com/globe-debate/mr-fox-does-mexican-democracy-include-workers/article769355/
- 103 Los "Jonkeados" and the NAALC: The Autotrim/CustomTrim Case and Its Implications for Submissions Under the NAFTA Side Agreement 22 Ariz. J. Int'l & Comp. L. 291 319 (2005)
- 104 Los "Jonkeados" and the NAALC: The Autotrim/CustomTrim Case and Its Implications for Submissions Under the NAFTA Side Agreement 22 Ariz. J. Int'l & Comp. L. 291 320–321 (2005)
- 105 Los "Jonkeados" and the NAALC: The Autotrim/CustomTrim Case and Its Implications for Submissions Under the NAFTA Side Agreement 22 Ariz. J. Int'l & Comp. L. 310–318 (2005)
- 106 Los "Jonkeados" and the NAALC: The Autotrim/CustomTrim Case and Its Implications for Submissions Under the NAFTA Side Agreement 22 Ariz. J. Int'l & Comp. L. 331–333 (2005)
- 107 Los "Jonkeados" and the NAALC: The Autotrim/CustomTrim Case and Its Implications for Submissions Under the NAFTA Side Agreement 22 Ariz. J. Int'l & Comp. L. 334 (2005)
- 108 Los "Jonkeados" and the NAALC: The Autotrim/CustomTrim Case and Its Implications for Submissions Under the NAFTA Side Agreement 22 Ariz. J. Int'l & Comp. L. 291–292 (2005)
- 109 U.S. NAO Public Submission 9702m (Han Young), United States Department of Labor (1997), available at www.dol.gov/ilab/media/reports/nao/submissions/Sub9702.htm
- 110 Public Report of Review of NAO Submission No. 9702, United States Department of Labor (1998), available at www.dol.gov/ilab/media/reports/nao/pubrep9702.htm
- 111 *Ibid.*
- 112 Heather L. Williams, Of Labor Tragedy and Legal Farce: The Han Young Factory Struggle in Tijuana, Mexico, Social Science History Winter 2003 27(4): 525–550, available at www2.ucsc.edu/globalinterns/cpapers/williams.pdf; NAFTA Side Agreement sidelined labor rights, UE International, available at www.ueinternational.org/trade/nafta.php; Sj Ten-year Review of NAALC Maquila Cases, Maquila Solidarity Network, Sept. 22, 2004, available at <http://en.maquilasolidarity.org/issues/trade/nafta/naalc/tenyears>
- 113 Heather L. Williams, Of Labor Tragedy and Legal Farce: The Han Young Factory Struggle in Tijuana, Mexico, Social Science History Winter 2003 27(4): 525–550, available at www2.ucsc.edu/globalinterns/cpapers/williams.pdf
- 114 Lance A. Compa, NAFTA's Labour Side Agreement and International Labour Solidarity, Cornell University, ILR School (2001)
- 115 *Ibid.*
- 116 Department of Labor, North American Agreement on Labor Cooperation Notice of Determination Regarding Review of Submission 2011–02, Federal Register Volume 77, Number 18, Jan. 27, 2012, available at www.gpo.gov/fdsys/pkg/FR-2012-01-27/html/2012-1765.htm; Canadian Labour Organizations Host SME Leaders; File NAALC Complaint in Support of SME, Mexican Labor News & Analysis, UE International, October 2011, available at www.ueinternational.org/MLNA/mlna_articles.php?id=193#1357; Unions, Non-Governmental Organizations and Human Rights Groups Supporting the Sindicato Mexicano de Electricistas' (Mexican Union of Electrical Workers) NAFTA Complaint, Solidarity Center, available at www.solidaritycenter.org/files/mexico_supporting_organizations_and_unions.pdf
- 117 Public Communication to the U.S. Office of Trade Agreement Implementation (OTIA), filed on Nov. 14, 2011
- 118 Thea Lee, on behalf of the AFL-CIO, Public Comments, Review of the North American Agreement on Labor Cooperation 1994–1997 (1998), available at http://naalc.org/english/review_annex5_usa.shtml
- 119 Kevin P. Gallagher, NAFTA and the Environment: Lessons from Mexico and Beyond, The Future of North American Trade Policy: Lessons from NAFTA, Pardee Center Task Force Report 62 (2009)
- 120 *Ibid.*
- 121 NAFTA's Impact on Mexico, Sierra Club, available at www.sierraclub.org/trade/downloads/nafta-and-mexico.pdf
- 122 Center for Policy Alternatives, NAFTA Chapter 11 Investor-State Disputes, available at www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2010/11/NAFTA%20Dispute%20Table.pdf
- 123 North American Free Trade Agreement, Chapter 11, Article 1105 (1994)
- 124 Testimony of Celeste Drake, AFL-CIO before the House Terrorism, Nonproliferation and Trade Subcommittee, Aug. 1, 2013, available at <http://docs.house.gov/meetings/FA/FA18/20130801/101233/HHRG-113-FA18-Wstate-DrakeC-20130801.pdf>
- 125 Justice for All: A Guide to Worker Rights in the Global Economy, Solidarity Center and AFL-CIO 138–139 (2008), available at www.solidaritycenter.org/files/pubs_jfa2009.pdf; See also 48 CFR 22.1503(b)(1),(b)(3)
- 126 See Dean Baker, NAFTA and Free Trade Do Not Belong in the Same Sentence, Center for Economic and Policy Research Blog, April 17, 2013, available at www.cepr.net/index.php/blogs/beat-the-press/nafta-and-free-trade-do-not-belong-in-the-same-sentence; Kenneth C. Shalden, Intellectual Property for Development in Mexico, The Future of North American Trade Policy: Lessons from NAFTA, Pardee Center Task Force Report 54 (2009); See also All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines, Oxfam Briefing Paper (2007), available at www.oxfam.org/sites/www.oxfam.org/files/vietnam-trans-pacific-partnership-agreement-oxfam-mb-040313.pdf
- 127 Timothy A. Wise, Reforming NAFTA's Agricultural Provisions, The Future of North American Trade Policy: Lessons from NAFTA, Pardee Center Task Force Report 40 (2009)
- 128 Robert K. Stumberg, NAFTA Services and Climate Change, The Future of North American Trade Policy: Lessons from NAFTA, Pardee Center Task Force Report 11–15 (2009)
- 129 AFL-CIO, Response to Request for Comments on the "Trans-Atlantic Trade and Investment Partnership," Federal Register, April 1, 2013, Docket Number USTR-2013-0019, available at www.aflcio.org/content/download/83241/2300531/AFL-CIO+Comments+on+TTIP+%26+Request+to+Testify+May13.docx.pdf
- 130 Robert K. Stumberg, NAFTA Services and Climate Change, The Future of North American Trade Policy: Lessons from NAFTA, Pardee Center Task Force Report 11–15 (2009)
- 131 *Mobil v. Canada*, ICSID Case No. ARB(AF)/07/4, 177 (May 22, 2012), available at www.italaw.com/sites/default/files/case-documents/italaw1145.pdf
- 132 Chile (2004), Singapore (2004), Australia (2005), Colombia (2006), Bahrain (2006), Morocco (2006), Peru (2006), Jordan (2009), Oman (2009), Korea (2010) and Central America and the Dominican Republic (CAFTA-DR, 2006)
- 133 See, e.g., White House Fact Sheet: Transatlantic Trade and Investment Partnership (T-TIP) 2013, available at www.ustr.gov/about-us/press-office/fact-sheets/2013/june/wh-ttip; Testimony of Mickey Kantor, former United States trade representative and secretary of commerce, before the U.S. Finance Committee, regarding the future of U.S. trade policy, July 29, 2008, available at www.finance.senate.gov/imo/media/doc/072908mkttest1.pdf
- 134 Trans-Pacific Partnership (TPP) Trade Ministers' Report to Leaders, Office of the United States Trade Representative, Press Release, Nov. 12, 2011, available at www.ustr.gov/about-us/press-office/press-releases/2011/november/trans-pacific-partnership-tpp-trade-ministers%E2%80%99-re

- 135 A Transatlantic Corporate Bill of Rights, Corporate Europe Observatory, June 3, 2013, *available at* <http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights>
- 136 European Trade Union Confederation, ETUC Resolution on EU Investment Policy, Adopted at the Executive Committee meeting of 5–6 March 2013, *available at* www.etuc.org/a/11025
- 137 Jackie Tortora, Trumka: Fast Track Trade Promotion Is ‘Undemocratic’ and ‘Bad for American Workers’, AFL-CIO Blog, Jan. 9, 2014, *available at* www.aflcio.org/Blog/Political-Action-Legislation/Trumka-Fast-Track-Trade-Promotion-Is-Undemocratic-and-Bad-for-American-Workers
- 138 Yves Smith, It Successfully Undermined Regulations, New York Times, Nov. 27, 2013, *available at* www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/nafta-successfully-undermined-regulations
- 139 A Transatlantic Corporate Bill of Rights, Corporate Europe Observatory, June 3, 2013, *available at* <http://corporateeurope.org/trade/2013/06/transatlantic-corporate-bill-rights>
- 140 Celeste Drake, The U.S. Should Follow South Africa’s Lead on Investor Rights: No ISDS in the TPP, AFL-CIO Blog, Nov. 8, 2013, *available at* www.aflcio.org/Blog/Political-Action-Legislation/The-U.S.-Should-Follow-South-Africa-s-Lead-on-Investor-Rights-No-ISDS-in-the-TPP
- 141 Organisation for Economic Co-operation and Development Investment Division, Investor-State Dispute Settlement, Public Consultation Report 12 (2012), *available at* www.oecd.org/daf/inv/internationalinvestmentagreements/50291642.pdf
- 142 See AFL-CIO, Response to Request for Comments on the “Trans-Atlantic Trade and Investment Partnership,” Federal Register, April 1, 2013, Docket Number USTR-2013-0019, *available at* www.aflcio.org/content/download/83241/2300531/AFL-CIO+Comments+on+TTIP+%26+Request+to+Testify+May13.docx.pdfNational
- 143 *Ibid.*
- 144 For a more detailed discussion of the legal standards, please see AFL-CIO, Response to Request for Comments on the “Trans-Atlantic Trade and Investment Partnership,” Federal Register, April 1, 2013, Docket Number USTR-2013-0019, *available at* www.aflcio.org/content/download/83241/2300531/AFL-CIO+Comments+on+TTIP+%26+Request+to+Testify+May13.docx.pdfNational
- 145 United Nations Conference on Trade and Development, ISDS: Legitimacy, Transparency & Governance Problems & Solutions, UNCTAD No. 2 (May 2013)
- 146 See generally Caroline Henckels, Balancing Investment Protection and the Public Interest: The Role of the Standard of Review and the Importance of Deference in Investor-State Arbitration 3–6 (2012)
- 147 International Labor Organization Website, Decent Work Agenda, *available at* www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm
- 148 International Labor Organization Website, Decent Work Agenda, *available at* www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm; International Labor Organization, Report to the Inspector General on Decent Work, *available at* www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm
- 149 See, e.g., Free Trade Agreement between the Republic of Peru and the United States of America (2006), *available at* www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text; Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area (2009), *available at* www.ustr.gov/sites/default/files/Jordan%20FTA.pdf
- 150 See, e.g., Free Trade Agreement between Peru and the United States, Chapter 17, Article 17.2 (2006), *available at* www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file73_9496.pdf
- 151 Carol Pier, A Way Forward for Workers’ Rights in US Free Trade Accords, Human Rights Watch 8–9 (2008), *available at* www.hrw.org/sites/default/files/reports/us1008webwcover.pdf
- 152 AFL-CIO, Response to Request for Comments on the “Trans-Atlantic Trade and Investment Partnership,” Federal Register, April 1, 2013, Docket Number USTR-2013-0019, *available at* www.aflcio.org/content/download/83241/2300531/AFL-CIO+Comments+on+TTIP+%26+Request+to+Testify+May13.docx.pdfNational; Carol Pier, A Way Forward for Workers’ Rights in US Free Trade Accords, Human Rights Watch 11 (2008), *available at* www.hrw.org/sites/default/files/reports/us1008webwcover.pdf
- 153 Linda Delp, Marisol Arriaga, Guadalupe Palma, Haydee Urita and Abel Valenzuela, NAFTA’s Labor Side Agreement: Fading into Oblivion? An Assessment of Workplace Health & Safety Cases, UCLA Center for Labor Research and Education, vii (2004), *available at* www.labor.ucla.edu/publications/pdf/nafta.pdf
- 154 Public Submission to the Office of Trade & Labor Affairs Under Chapters 16 and 20 of the Dominican Republic-Central American Free Trade Agreement (2008), *available at* www.dol.gov/ilab/programs/otla/GuatemalaSub.pdf
- 155 Mutually Agreed Enforcement Action Plan Between the Government of the United States and the Government of Guatemala (2013), *available at* www.dol.gov/ilab/programs/otla/0413GuatEnforcementPlan.pdf
- 156 2014 Ushers in More Anti-Union Violence in Guatemala, Solidarity Center, Jan. 17, 2014, *available at* www.solidaritycenter.org/content.asp?contentid=1792
- 157 Carol Pier, A Way Forward for Workers’ Rights in US Free Trade Accords, Human Rights Watch 13–14 (2008), *available at* www.hrw.org/sites/default/files/reports/us1008webwcover.pdf
- 158 Colombian Action Plan Related to Labor Rights, April 7, 2011, *available at* www.ustr.gov/uscolombiatpa/labor
- 159 See The Colombian Action Plan Related to Labor Rights: The View Through Workers’ Eyes, AFL-CIO (2012), *available at* www.aflcio.org/content/download/38251/594971/report+version+2+no+bug.pdf
- 160 See Testimony of Celeste Drake, AFL-CIO Trade and Globalization Policy Specialist, Hearing on “Human Rights in Colombia,” Tom Lantos Human Rights Commission, Oct. 24, 2013, *available at* http://tlhrc.house.gov/docs/transcripts/2013_10_24_Colombia/Celeste%20Drake.pdf; A Staff Report on behalf of U.S. Representatives George Miller and Jim McGovern to the Congressional Monitoring Group on Labor Rights in Colombia, The U.S.-Colombia Labor Action Plan: Failing on the Ground, October 2013, *available at* <http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/documents/Colombia%20trip%20report%20-%2010.29.13%20-%20formatted%20-%20FINAL.pdf>
- 161 Linda Delp, Marisol Arriaga, Guadalupe Palma, Haydee Urita and Abel Valenzuela, NAFTA’s Labor Side Agreement: Fading into Oblivion? An Assessment of Workplace Health & Safety Cases, UCLA Center for Labor Research and Education, viii (2004), *available at* www.labor.ucla.edu/publications/pdf/nafta.pdf
- 162 U.S. Department of Labor, Office of General Inspector – Office of Audit, Internal Controls Over Commission For Labor Cooperation Secretariat Activities Need Strengthening 2 (2008), *available at* www.oig.dol.gov/public/reports/oa/2008/21-08-002-01-070.pdf; Paul W. Singer, Allegations of cronyism, misdeeds leave labor panel under cloud, Government Executive, Oct. 31, 2006, *available at* www.govexec.com/federal-news/2006/10/allegations-of-cronyism-misdeeds-leave-labor-panel-under-cloud/23040/
- 163 Thea Lee, on behalf of the AFL-CIO, Public Comments, Review of the North American Agreement on Labor Cooperation 1994–1997 (1998), *available at* http://naalc.org/english/review_annex5_usa.shtml
- 164 United Nations Guiding Principles on Business and Human Rights, United Nations Office of the High Commissioner for Human Rights (2011), *available at* www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- 165 Yves Smith, It Successfully Undermined Regulations, New York Times, Nov. 27, 2013, *available at* www.nytimes.com/roomfordebate/2013/11/24/what-weve-learned-from-nafta/nafta-successfully-undermined-regulations
- 166 Five Key Questions and Answers About the Leaked TPP Text, Washington Post Blog, Nov. 15, 2013, *available at* www.washingtonpost.com/blogs/monkey-cage/wp/2013/11/15/five-key-questions-and-answers-about-the-leaked-tpa-text/
- 167 Putting public health at risk: US proposals under the Trans Pacific Partnership Agreement (TPPA) to exacerbate Vietnam’s access to medicines crisis, Oxfam Media Briefing Paper 5, March 4, 2013, *available at* www.oxfam.org/sites/www.oxfam.org/files/vietnam-trans-pacific-partnership-agreement-oxfam-mb-040313.pdf

AFL-CIO

815 16th St., N.W., Washington, DC 20006 | www.aflcio.org