

## **A better deal for Canada: Fixing the flaws in North American trade**

---

**Submission to Government of Canada consultations on the operation of  
the Canada-United States-Mexico Agreement (CUSMA)**

*October 31, 2024*



Contact  
Lana Payne  
National President  
[lane.payne@unifor.org](mailto:lane.payne@unifor.org)

CUSMA Consultations  
Global Affairs Canada  
Trade Negotiations – North America  
John G. Diefenbaker Building  
111 Sussex Drive  
Ottawa, Ontario  
K1N 1J1

Email: [cusma-consultations-aceum@international.gc.ca](mailto:cusma-consultations-aceum@international.gc.ca)

## Introduction

Unifor is Canada’s largest union in the private sector, representing 320,000 workers in virtually every major industry. Unifor represents tens of thousands of workers in trade-exposed workplaces including in manufacturing, energy, and transportation, among others. Our union welcomes the opportunity to provide input to Global Affairs on the operation of the Canada-United States-Mexico Agreement (CUSMA), in force since July 2020.

In 2017, Unifor presented a broad critique on the outcomes of the NAFTA (the predecessor agreement to CUSMA), along with numerous proposed reforms to the agreement itself<sup>1</sup>. For working people in Canada, as well as the United States and Mexico, trade under NAFTA represented a policy failure. Expanded market access for the cross-border trade in goods and services as well as foreign investment, and the absence of adequate labour market protections, severely undermined job quality, depressed wages, weakened labour rights, and exacerbated social inequalities. At the time, Unifor imagined NAFTA’s renegotiation as a “generational opportunity” to rethink and reform the terms of North American trade.

To its credit, the federal government undertook an unprecedented civil society stakeholder engagement effort that solicited the opinions and ideas of Unifor members as well as working people more broadly. The input and recommendations provided by labour unions is reflected in parts of CUSMA’s final text.

The revised agreement included improved and enforceable labour and environmental standards, including a novel dispute mechanism to defend basic worker rights and freedoms in Mexico. Labour supports also included dedicated technical assistance funding for projects, led by Canadian unions (including a project that establishes multiple community-based worker action centres in Mexican industrial centres, led by Unifor),

---

<sup>1</sup> Unifor Position Statement on the Renegotiation of the North American Free Trade Agreement, 2017, <https://www.ourcommons.ca/Content/Committee/421/CIIT/Brief/BR9287699/br-external/Unifor-e.pdf>

designed to help Mexican workers exercise their expanded rights under the trade deal, and through recent Mexican labour reform efforts.

The new agreement partially dismantled a maligned investor rights regime that undermined government's regulatory authority. It eliminated guaranteed supply provisions (i.e. "proportionality" provisions) that imposed limits on domestic oversight and public regulation of Canadian energy resources. It preserved important exemptions for Canada's cultural industries and introduced new protections for Indigenous economic development. It also expanded the regional content rules that qualify a North American-built vehicle, or component part, for tariff-free access.

Despite these noted advances, Unifor expressed skepticism on whether the "new NAFTA" constituted a meaningful change in direction on trade. Apart from notable and progressive amendments listed above, the original NAFTA was mostly unchanged. New labour protections and stronger North American content rules for autos, for instance, seemed a hypothetical victory until they were put into practice. Worse still, having conceded to U.S. demands to extend intellectual property rights for certain pharmaceuticals and further expand market access to imported dairy, the CUSMA left Canadians worse off.

## Risks and Opportunities for Canada in the CUSMA Review

The forthcoming six-year review of the CUSMA is a double-edged sword, presenting both risks and opportunities for Canadian workers.

Originally proposed by the U.S. as a 'sunset clause', wherein the trade agreement would automatically expire unless renewed by the Parties (a potentially damaging proposition that would destabilize forward-facing investments in Canada), this review – a compromise position to the 'sunset clause' – still presents risks to Canada. Steve Verheul, Canada's chief negotiator during 2017 NAFTA talks, characterized the six-year review as having been negotiated at the U.S.' request to "build leverage" and "seek changes on an agreement on an ongoing basis."<sup>2</sup> Verheul's comments reflected remarks made by U.S. Trade Representative Katherine Tai, who said of the CUSMA review: "The whole point is to maintain a certain level of discomfort—which may involve a certain level of uncertainty. To keep the parties motivated to do the really hard thing, which is to continue to re-evaluate our trade policies and trade programs ... That discomfort is actually a feature, not a bug."<sup>3</sup>

---

<sup>2</sup> Neil Moss, "Deal disquiet: CUSMA review could be a rough ride with the U.S. holding the reins, says pact's negotiator", in Hill Times (June 12, 2024): <https://www.hilltimes.com/story/2024/06/12/deal-disquiet-cusma-review-could-be-a-rough-ride-with-the-u-s-holding-the-reins-says-pacts-negotiator/424965/>

<sup>3</sup> Alexander Panetta, "U.S. trade czar: Don't get 'too comfortable' North American trade pact will stay as is," in CBC News (March 6, 2024): <https://www.cbc.ca/news/world/tai-brookings-usmca-comments-1.7135517>

Threats to tariff-free market access, or other discriminatory trade measures imposed by the United States has reverberated through Canada's economy. A common refrain among business lobbyists is that parties seek a "rollover" of current CUSMA terms, billed by some as the best possible outcome of this review.<sup>4</sup> This, of course, is an unlikely scenario – regardless the outcome of the November 5<sup>th</sup> U.S. election – nor does Unifor believe it a desirable scenario for Canada. The United States Trade Representative (USTR) has identified numerous trade complaints, including on Canada's implementation of expanded import quotas on dairy to proposed digital services taxes. Although meritless, Canada can expect these complaints (among others) to feature prominently in this review process. Further, U.S. presidential candidates have identified trade policy reforms impacting the operation of CUSMA within their campaign platforms. This is a reality that Canada, and Canadian businesses, must face.

In the context of this six-year review, Canada should avoid communicating any desire for a stand-pat agreement. Such a position is not tactical in the face of anticipated U.S. demands for reform, nor does it reflect the myriad challenges faced by workers since the deal entered into force. These include:

- The persistence of labour rights violations in the United States, despite CUSMA's strengthened labour provisions. There is documented evidence by trade unions of employer and state interference and intimidation in union organizing drives, including at the Mercedes assembly plant in Vance, Alabama in 2024. Under CUSMA rules, such incidents are challengeable and remediable under CUSMA's novel Rapid Response Labour Mechanism (RRLM) in Mexico, but not in the United States or Canada – a design flaw of the RRLM.
- Non-compliance with CUSMA's updated North American vehicle content rules. The U.S. Government Accountability Office (GAO) reported that many automakers have foregone preferential tariff treatment under CUSMA when importing vehicles into the U.S., thereby bypassing the new, stricter North American automotive content rules. At an October 2024 International Trade Commission hearing, U.S. auto industry representatives estimated that 20% of autos imported to the U.S. from Mexico did not comply with new automotive trade rules – compared to just 2% under NAFTA. The lack of transparency in automotive content, and troubling non-compliance, raises concern that the deal is not meeting its intended objectives. Part of the reason is that the penalties for non-compliance (a 2.5% tariff in the U.S., and a 6.1% tariff in Canada) are too low.
- Labour Value Content rules are too weak, insufficient to raise Mexican autoworker wages. A stated objective of CUSMA was to address wage disparities

---

<sup>4</sup> Goldy Hyder and Louise Blais, "Why America's Election is Canada's Business" in Policy Options (August 24, 2023): <https://www.policymagazine.ca/why-americas-election-is-canadas-business/>

between autoworkers in Mexico and those in Canada and U.S. Novel provisions, like the Labour Value Content (LVC) require automakers to pay a “minimum” plant wage of \$16 USD per hour for at least 40% of a vehicle. One study estimates the wage boost in Mexican auto plants from 2020 to 2022 to be marginal, factoring in high rates of consumer price inflation<sup>5</sup>. Part of this is explained by the flexibilities built into the LVC provision, that can reduce covered content down to 25% per vehicle. Additionally, and in fact, the LVC does not prescribe a “minimum” rate of pay, but rather an “average” rate of pay for production workers in factories – a point widely misunderstood by commentators. Lastly, the \$16 USD benchmark set in 2020 remains unchanged since it was negotiated with no built-in adjustment for price inflation at a time when we have seen the worst inflation in recent times.

- Aluminum inputs for vehicles are treated differently than steel. To meet stricter automotive rules of origin, automakers are required to source steel that not only originates in North America but is processed (i.e. melted and poured) in the region. The same sourcing rules for vehicles apply to aluminum inputs, but without a comparable requirement for aluminum to be smelted and casted in North America. Ensuring that qualifying aluminum is mostly smelted and most recently casted in North America is necessary to achieve the stated intention of the automotive rules of origin.
- The Rapid Response Labour Mechanism is effective but narrow in scope. Unifor is the first labour union in Canada to have petitioned the federal government to act on a “denial of rights” claim under CUSMA’s RRLM. Experiences in the past four years show the potency of this mechanism in addressing violations, expeditiously. However, the Mechanism is imbalanced – and generally applicable only to violations occurring in Mexico. Also, the Mechanism is bilateral and cannot address trade-distorting labour rights violations between the United States and Canada. There is sufficient evidence of labour rights violations having occurred in the U.S., particularly in jurisdictions considered ‘Right to Work’ states.
- Inconsistent enforcement of forced labour bans. In accordance with commitments made in CUSMA Chapter 23, Canada legislated amendments to the *Customs Tariff* prohibiting the importation of goods produced in whole or in part using forced labour. This *Customs Tariff* provision aligns with powers granted to U.S. Customs and Border Protection Officials, who work closely with U.S. Department of Labor officials to prevent forced labour goods from entering the country. Canada has so

---

<sup>5</sup> Cesaire Chiatchoua and Rita Avila Romero (June 2023), Analysis of the evolution of wages since USMCA in the Mexican automotive industry. *Ciencia Latina Revista Científica Multidisciplinar*, Volume 7, Issue 3.

far failed to effectively enforce this ban, creating a disparity in implementation, creating vulnerabilities in the North American supply chain.<sup>6</sup>

- No coordinated strategy to lower emissions in critical resource sectors. There is an urgent need to reduce greenhouse gas emissions from widely used industrial goods, including material inputs like steel, aluminum and concrete. Investing in cleaner and emissions-free energy technology to feed production processes is advancing in North America, but not supported or enabled by CUSMA in any way, either through carbon border adjustments or other policies to limit carbon leakage. High-emission (and low-cost) imports, including from China, undermine North America's net zero efforts and undermine job growth and regional investment. The absence of a climate "peace clause" in CUSMA further disables governments from enacting climate and industrial job growth strategies.
- No resolution to the softwood lumber dispute. In 2017, Unifor urged the federal government to make its participation in NAFTA renegotiation a condition of settlement of the softwood lumber dispute. This dispute is ongoing, and of increasing detriment to Canadian forestry workers. Global Affairs' claim that CUSMA provides "certainty for business and investors" is unjustified considering these persistent, illegal penalties imposed by the U.S. on Canadian producers. As Canada litigates this dispute through CUSMA's special dispute settlement procedures, work must be done to negotiate a permanent, durable and bilateral resolution.
- No funding earmarked for union-led technical assistance programs, post-2025. In conjunction with CUSMA's implementation, the federal government earmarked "technical assistance" funding for union-led, capacity-building projects in Mexico. Unifor, along with Mexican trade union partners, secured funding to establish new public-facing, worker action centres (referred to as '*casa obreras*') across key industrialized cities in Mexico. For the past 3 years, these community centres have helped raise-awareness among tens of thousands of Mexican industrial workers regarding Mexican state labour law improvements, CUSMA-enabled labour protections as well as the foundations of free and independent collective bargaining. Program funding ends in 2025.

---

<sup>6</sup> On October 16, Global Affairs Canada launched a public consultation seeking stakeholder views on measures to strengthen Canada's import ban on all goods mined, manufactured, or produced wholly or in part by forced labour. Unifor intends on filing a stand-alone submission to this consultation.

## Unifor Recommendations

### Automotive Rules of Origin

There has been demonstrable growth in North American auto sector investment since CUSMA's inception. This investment growth, largely in the electric vehicle supply chain, outstrips industrial investments made over the past two decades. However, this has more to do with sizeable government investment incentives than new trade rules, although as part of any cohesive industrial strategy both must work in tandem.

CUSMA's rules of origin for vehicles are more ambitious and complex than the rules under NAFTA. The granting of tariff-free market access must require automakers to build cars and parts with more North American content. However, early evidence (as noted above) suggests this is not happening, undermining the intent of the agreement to localize good auto sector jobs and re-shore production, relying less on low-wage global suppliers.

Unifor recommends:

- 1. Encouraging greater compliance with CUSMA's rules-of-origin.** The penalty to automakers for non-compliance is a Most Favoured Nation tariff-rate of 2.5 per cent on the price of a passenger vehicle imported into the United States or 6.1 per cent on a vehicle imported into Canada. In Mexico there is no tariff. These rates are not high enough to encourage compliance with new rules of origin. To resolve this, CUSMA parties can consider special measures to encourage compliance, including establishing a harmonized import tariff on non-complying vehicles at 10 per cent.
- 2. An updated list of core automotive components to better reflect the advanced technologies in future vehicles, including EVs.** Research and development of new vehicle technologies happens at a rapid pace. Since CUSMA's implementation there is a clearer understanding of which auto parts are necessary to produce domestically to ensure the ongoing viability of existing and vulnerable facilities. Products such as cathode active material and anodes must be included in the list of "core" automotive components, as well as e-drivetrain components such as electric motors and inverters (domestic production of these drivetrain components represents the best opportunity for the transition of existing internal combustion engine and transmission facilities in North America).

3. **Clarification that the Labour Value Content (LVC) requirement as a minimum rate of pay (not an average rate of pay) and creating a mechanism that automatically adjusts this rate based on a measure of inflation.** The labour value content requirement of 40–45 per cent high-wage labour content in vehicles qualifying for tariff-free treatment is a novel trade provision not found in pre-CUSMA trade deals. The various flexibilities built into the model limit its effectiveness in encouraging automakers and parts-makers to raise the wages of production workers, mainly in Mexico, to an average of \$16 USD per hour. This “average” rate must be renegotiated as a “minimum” rate. Further, this rate must include an annual inflation-adjustment provision.
4. **Requiring the release of annual compliance reports for each automaker, to enhance public and consumer awareness of regional content levels for all vehicles sold in North America.** There is no requirement in Canada for automakers to publicly report on compliance with CUSMA’s automotive rules-of-origin. Therefore, it is not possible to publicly scrutinize and analyze the efficacy of those provisions in achieving their intended purpose: to onshore a larger share of auto assembly and component part investment and jobs and to raise the wage standards for workers across the industry. The Canadian government and Canada Border Services Agency (CBSA) can provide regular compliance updates to the public while respecting the confidentiality of individual automakers’ supplier and sourcing arrangements. Such a report can at least aggregate information on the share of originating material and compliance with Labour Value Content rules across automakers as well as vehicles and vehicle segments.
5. **Requiring North American “smelting and casting” of aluminum.**

To qualify for tariff-free treatment under CUSMA, we urge the Canadian government to propose that automakers demonstrate that 70% of the aluminum sourced for vehicle production has been smelted and casted in North America. Comparable conditions already exist under CUSMA for steel inputs.

## Labour Rights and CUSMA’s Rapid Response Mechanism

CUSMA’s labour provisions are among the most advanced in any trade agreement in the world. It’s novel structures, including the Rapid Response Labour Mechanism, are directly responsible for large groups of Mexican workers gaining trade union independence, and exercising rights to free and fair collective bargaining. The mechanism has been invoked in dozens of cases by the United States, and once by the Canadian government (in response to a claim submitted to the NAO by Unifor in 2023).

Despite its early successes, the agreement's labour provisions are not without flaws (as noted above) that must be addressed among the forthcoming 5-year review of the labour chapter and six-year CUSMA review.

Unifor recommends:

**6. Expanding the application of the RRLM to include labour rights violations in Canada and the U.S.**

The RRLM has proven an effective measure to identify and remedy labour rights violations occurring in Mexico. The conditions by which claims can be filed for an alleged denial of rights in either the United States or Canada are far more restrictive. Serious and severe allegations of labour rights violations in recent years, particularly in so-called Right to Work U.S. states, are concerning and potentially trade-distorting. This includes alleged rights violations at the Mercedes assembly plant in Vance, Alabama (2024) as well as an Amazon warehouse in Bessemer, Alabama (2021), among others. CUSMA partners should be able to trigger expedited investigations into an alleged denial of rights, particularly in trade-exposed workplaces.

**7. Expanding the definition of a “denial of rights” under the RRLM.**

Within the RRLM, a “denial of rights” allegation is limited to a denial of freedom of association (i.e. union representation) and collective bargaining. What constitutes a denial of rights should be expanded to include discrimination based on gender or sexual orientation or gender expression, gender-based violence, child labour, health and safety, and derogations from minimum standards of work.

**8. Clarifying the meaning and intent of footnote 2 the Canada-Mexico RRLM annex to confirm that the Mechanism shall apply to a denial of rights at any covered facility covered by any domestic legislation.**

The 2024 RRLM panel decision of the San Martin Mine case found against the United States, claiming that the U.S.-Mexico annex (31-A) limits RRLM application to a denial of rights subject only to the Mexican labour law reform of 2019 (claiming that the infringements would have been subject to labour laws that pre-date the Mexican labour reform). This is unduly restrictive and not the stated intent of the Parties when establishing the RRLM's original parameters. This requires clarification to avoid a similar panel finding in future.

**9. Create a Canadian consultative body, like the Independent Mexico Labour Expert Board (IMLEB) in the United States.**

Such a consultative body in Canada would provide a dedicated contact point and expert independent advice and guidance to the Canadian government in respect

of CUSMA labour matters. It can also enable greater cross-border collaboration and information sharing with U.S. and Mexican labour partners, including on matters such as forced labour and child labour.

#### **10. Renew funding for technical assistance projects.**

In conjunction with the forthcoming 5-year labour chapter review, Canada should renew its technical assistance funding envelope under ESDC's International Labour Program for another 4-year term.

### Softwood Lumber

Unfair and illegitimate duties imposed on lumber exports by the U.S. has costed the Canadian and U.S. economies billions of dollars since 2017. Canada has lost significant market share to the U.S. since the prior Canada-U.S. lumber agreement expired in 2016. As one of many factors negatively impacting the forestry industry, Canadian workers have suffered through permanent mill closures, industry consolidation and future threats to jobs. Efforts to litigate this dispute through CUSMA's appeal process have proven debilitatingly slow, with extensive delays. Industry observes expect current anti-dumping and countervailing duties on Canadian producers to further increase in the fall of 2025.

Unifor recommends:

#### **11. Articulating that Canada's participation in the forthcoming six-year CUSMA review is conditioned on a negotiated settlement of the softwood lumber dispute.**

### Equity

The CUSMA five-year labour chapter and six-year agreement review must also invite a rigorous interrogation of its impact on women, racialized people, indigenous people and other historically disadvantaged groups. "Inclusive trade" has been a hallmark of Canadian trade policy in recent years. Efforts to integrate equity-advancing trade terms on gender and for indigenous people were stymied by a disinterested U.S. administration under former president Trump. Initially efforts by CUSMA Parties to address workplace discrimination through expanded labour rights provisions in chapter 23 were ultimately thwarted by Congress, prior to the agreement's implementation. The six-year review presents an opportunity to revisit these inclusive terms of trade.

Unifor recommends:

**12. Removing footnote 15 of CUSMA’s Chapter 23 (Labour, Article 23.9).**

Article 23.9 of the Labour Chapter commits CUSMA Parties to both “recognize the goal” of eliminating workplace and occupational discrimination based on sex and “support the goal of promoting equality of women in the workplace”. The inclusion of such text in the Labour Chapter would have made charges of gender-based discrimination (with “sex” being defined to include sexual orientation and gender identity) subject to state-to-state dispute settlement in the event of a breach of obligation. In an otherwise striking improvement to the terms of the deal, a last-minute qualifying footnote (Footnote 15) was introduced (at the behest of opposition U.S. lawmakers in Congress<sup>7</sup> - including those claiming it infringed on American sovereignty<sup>8</sup>). The footnote waives any U.S. obligation to the agreement’s terms, stating that current federal U.S. policies are sufficient to fulfil its obligations to this provision. Footnote 15 undermines the intent of Article 23.9, on the most dubious of grounds, and must be removed.

**13. Undertake an equity review and gender-based analysis of the CUSMA.**

Parties should undertake an equity and gender-based analysis review of CUSMA in hopes to identify better and more inclusive provisions in both the Labour Chapter, and elsewhere, to address negative, trade-related impacts on jobs, working conditions, and economic opportunities among equity-deserving groups. Such work must include women, 2SLGBTQIA+ and indigenous organizations from Canada, Mexico and the United States in the review process.

## Environmental and Climate Considerations

The CUSMA establishes a formal Environment Chapter that, like the Labour Chapter, enforces the Parties’ negotiated obligations under the agreement’s dispute settlement mechanism. Notably excluded from the Chapter is any reference to “climate change”, which seriously weakens the agreement’s purpose (reducing the focus mostly to biodiversity and conservation efforts, which are still laudable). Codifying commitments to climate action goals is an important step to further improving the CUSMA. Exploring ways to both reduce greenhouse gas emissions, and the rise of carbon-intensive goods imported into North America (including from China), should frame the Parties’ review of the agreement’s operation and the Environment Chapter itself.

---

<sup>7</sup> James McCarten, “Coalition of U.S. lawmakers urge Trump not to sign USMCA until LGBTQ language excised,” published in Globe and Mail (November 16, 2018).

<sup>8</sup> See Statement from U.S. Congressperson Doug Lamborn: <https://lamborn.house.gov/new-trade-deal-threatens-american-sovereignty>

Unifor recommends:

#### **14. Expanding the Parties' obligations under Chapter 24 (Environment)**

Parties must coordinate to update the obligations of Chapter 24 to explicitly identify shared commitments to address and combat climate change, and to add reference to the 2015 Paris Agreement and the United Nations Framework Convention on Climate Change (UNFCCC) with other multilateral treaties under Article 24.8.

#### **15. Launching a formal cooperative, tri-nation dialogue on the use of border carbon adjustments to balance carbon-intensive trade in goods and services both within North American borders, and with other nations.**

Within the six-year review, CUSMA Parties can launch exploratory talks on the creation of a framework to implement border carbon adjustments (BCAs), in the spirit of balancing trade in carbon-intensive goods originating from outside of North America, while advancing sustainable economic development objectives in the North American region – stopping firms from relocating operations to carbon-intensive jurisdictions that have lax environmental and emissions regulations. Both Canada and the United States continue to study the introduction of BCAs as a mechanism to reduce exposure to carbon intensive inputs while advancing domestic economic development in clean technologies and green infrastructure, reducing carbon in goods over their production and lifecycle. A tri-national dialogue also opens up possibilities to tailor North American procurement toward less carbon-intensive preferences.

## Summary

The forthcoming six-year review of CUSMA is an opportunity to reflect on the shortcomings of the agreement, and where it fails to address promised improvements to work standards, environmental protection, and economic development. The review is an opportunity to propose meaningful solutions to these challenges, in a strategic way, that defends Canadian interests. Unifor has proposed a series of initial recommendations for Canadian officials to consider in preparation for this review (and the five-year Labour Chapter review that precedes it). Our union looks forward to ongoing stakeholder engagement and dialogue on CUSMA's operation, as well as opportunities to present additional commentary on evolving U.S. and Mexico trade policies that impact Canadian workers and workplaces.