

# **Unifor Position Statement on the Renegotiation of the North American Free Trade Agreement**

**July, 2017**



## **SUMMARY**

Implemented nearly a quarter century ago, the North American Free Trade Agreement (NAFTA) set a dangerous benchmark for trade deals that came after it. It offers a model of trade facilitation that promotes largely unfettered capital mobility, economic and social policy deregulation, privatization and less government regulation. It grants privileged rights to private investors and corporations, while leaving workers with a legacy of broken promises for stronger working standards and shared prosperity.

Unifor has been an outspoken critic of NAFTA – along with many other labour unions, citizen groups and NGOs across the continent. For years, we have demanded that government undertake a fundamental rethink and renegotiation of NAFTA – to reset its priorities, rebalance its outcomes to better reflect the needs of communities and ensure the benefits of trade are shared equally. For the first time in a generation, we have a chance to do just that.

## **THE NEEDS OF WORKERS MUST COME FIRST**

Under NAFTA and its predecessor free trade deal between Canada and the U.S., domestic investment and private sector employment growth have slowed. Hundreds of thousands of manufacturing jobs have been cut. Growth in hourly wages has barely kept up with inflation. In Mexico, more stringent labour standards and higher living standards have proven to be a false hope. Through this lens, NAFTA has been a failure, and must be fixed.

## **A NEW APPROACH TO TRADE IS NEEDED**

For too long, trade agreements have been negotiated with limited public involvement and outside of public scrutiny. This has to change. NAFTA's renegotiation can set a new standard for consultation, collaboration and inclusivity in trade talks. It can also establish a new system for regular monitoring and assessments of targeted outcomes, including job creation, enhanced labour and environmental standards and balanced trade.

## **REBUILDING A NAFTA THAT WORKS FOR WORKERS**

NAFTA is a rulebook, and it can be rewritten. It can send different signals about the expectations of corporations and investors. It can reprioritize and rebalance its objectives. We have an opportunity to make changes to what has been a failed experiment in managing cross-border trade, cooperation and development.

Unifor has several recommendations on how to reform NAFTA and how to approach upcoming trade negotiations that we urge Global Affairs Canada to consider, including:

- Stronger labour rules, and demonstrated adherence to those rules; (Page 7);

- The elimination of NAFTA Chapter 11, and the extraordinary investor privileges within (Page 9);
- Bold new rules for cross-border trade in auto and auto parts, including stricter rules of origin, higher labour and wage standards, a greater balance in trade and investment and a fair share of benefit for workers in each country (Page 9);
- Settlement of the ongoing U.S.-led softwood lumber trade dispute, as a pre-condition for the start of NAFTA talks (Page 13);
- The full protection of Canada’s supply management system and its ability to provide a safe and stable food supply (Page 14);
- The rejection of any demand that restricts the strengthening of foreign ownership rules in telecommunications (Page 15);
- An explicit commitment to protect overhaul and maintenance (O&M) work regulations in Canadian aerospace, including regulations that ensure Canadian licensed aircraft must be maintained by Canadian-certified persons located within Canada. Additionally, the Canadian government must respond – in advance of the start of NAFTA renegotiations – to the threat of U.S. trade duties levied against exports of Bombardier C-Series aircraft (Page 15);
- Assurances that public services such as health and education are explicitly carved out of NAFTA (Page 16);
- The full elimination of Articles 315 and 605 (or “energy proportionality”) from the NAFTA - the clause requiring Canada to continue oil and gas exports to the U.S., even in the event of a shortage – as a condition of settlement (Page 17);
- The rejection of any demand that restricts the right of Canada’s regulatory bodies to impose licensing conditions on foreign online broadcasters (Page 18);
- A new continental standard on the use of domestic purchasing policies, reflecting governments ability to direct public procurement to domestic suppliers in fair and equitable way (Page 18);
- Stronger, enforceable environmental and sustainable development standards, as well as full latitude to establish ‘just transition’ programs for workers affected by climate change (Page 20); and
- Ongoing federal consultation with the labour movement and other NGOs, offering meaningful opportunity for dialogue and engagement. As well as a commitment to independently assess and analyze the economic, labour, environmental, social and other outcomes of a renegotiated NAFTA before and after its ratification (Page 21).

## A GENERATIONAL OPPORTUNITY

Implemented nearly a quarter century ago, the North American Free Trade Agreement has become the symbolic starting point for a new, neo-liberal model of trade and globalization – a model designed to promote unfettered capital mobility, economic and social policy deregulation, privatization and less government intervention through trade policy. In many respects, NAFTA set a new dangerous benchmark for global trade rules, which granted privileged rights to private investors and multi-national corporations. For working people, NAFTA’s legacy is shaped by broken promises of stronger working standards and shared prosperity.

For years, Unifor has been an outspoken critic of NAFTA – joined by countless other labour unions, politicians, worker advocates, NGOs, Indigenous communities, environmental organizations, student groups, citizen groups and others. For years, we have proposed that government leaders undertake a comprehensive review, rethink and renegotiation of NAFTA – to reset its priorities and rebalance its outcomes in order to better reflect the needs of communities and ensure the benefits of trade are shared by all. And for the first time in a generation, we have an opportunity to do just that.

## THE NEEDS OF WORKERS MUST COME FIRST

Economic integration across North America, and rising trade volumes in NAFTA’s early years, have not yielded the promised benefits for Canadians. In fact, since Canada’s first free trade deal was struck with the United States in 1988, average annual investment growth and private sector employment growth in Canada has slowed. Hundreds of thousands of manufacturing jobs have been cut. Growth in hourly wages has barely kept up with inflation. Similar outcomes are shared between both Canada and the U.S.

In Mexico, NAFTA provided a false hope of more stringent labour standards and higher living standards. To this day, many are still denied the right to engage in free collective bargaining with their employer. Forced union “protection contracts” still suppress a vibrant, independent labour movement. Frustratingly, nearly half of the Mexican population still lives in poverty. According to reports, the number of those impoverished has been on the rise in recent years.<sup>1</sup> In 2012, there were over 14 million more Mexicans living in poverty today than in 1994, the year of NAFTA’s implementation.<sup>2</sup>

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<sup>1</sup> Reuters (July 23, 2015) “Mexican government says poverty rate rose to 46.2 percent in 2014”:

<http://www.reuters.com/article/us-mexico-poverty-idUSKCN0PX2B320150723>

<sup>2</sup> Weisbrot, Mark; Lefebvre, Stephen and Sammut, Joseph. *Did NAFTA Help Mexico? An Assessment After 20 Years*. Center for Economic and Policy Research, February 2014.

Through this lens, NAFTA has been a failure. What good is deepening trade if it translates into persistent insecurity, joblessness and poverty? What purpose does economic integration serve if not to lift all boats? What use is a “free trade” accord that serves to dampen worker expectations for higher living standards, and suppress wages?

### **A NEW APPROACH TO TRADE IS NEEDED**

For too long trade agreements have been negotiated outside of public scrutiny. In Canada, unlike other nations, officials are not required to publicly identify negotiating priorities and objectives in advance of trade negotiations, leaving too many stakeholders in the dark. Why does this matter? Because through trade agreements, major economic and social policies are crafted or subject to reform. The success of these reforms is then measured against the presumed benefits of a trade pact (which are often wildly exaggerated). As trade agreements become more sophisticated a wider range of economic and social policies are captured within their scope. This is concerning.

Unifor believes that the renegotiation of NAFTA can set a new standard for consultation, collaboration and inclusivity in trade talks. It can also establish a new system for regular monitoring and assessments of targeted outcomes, including job creation, enhanced labour standards and balanced trade.

### **REBUILDING A NAFTA THAT WORKS FOR WORKERS**

The historically intertwined economies of Canada, the United States and Mexico have evolved in a way that has more deeply integrated industry supply chains. Technological advancements have created more sophisticated production processes and expanded access to consumer goods. The NAFTA isn't solely responsible for these advancements. And there is a mistaken belief that, without the NAFTA, continental trade will grind to a halt, and that workers will face certain economic hardship.

NAFTA is a rulebook. And the rules have been structured in such a way as to demotivate government policymakers and discourage innovative solutions to complex economic challenges. Like most rules, they are complicated by double-standards and power imbalances. Why else would the NAFTA establish extra-judicial and binding dispute settlement mechanisms exclusively to protect private investors, whereas work standards and universal labour rights are denied similar protections?

As a rulebook, NAFTA can be rewritten. It can send different signals about the expectations and responsibilities of multinational firms and investors. It can reprioritize and rebalance its objectives – to become less a tool to support private capital, and more a tool to advance living standards, economic welfare, human rights and democratic decision-making. This renegotiation

is an opportunity to make the changes long-needed to what has been a failed experiment in managing cross-border trade, cooperation and development.

Unifor intends to be an active participant in meaningful discussions over a renegotiated NAFTA. As governments in all three countries continue to assign priorities and bargaining positions, we believe that Canada's negotiating position should be bold, imaginative and principled. As most government officials have stated, we also believe that NAFTA negotiations should be guided by the principle that no one should be disadvantaged. We believe this should apply equally to Canadian workers now and into the future.

But more than that, we believe it is not in the best interests of workers for governments to craft a new deal that maintains NAFTA's existing imbalances or to simply expand the scope of the deal to capture new industries and place further limits on democratic decision-making.

As part of its ongoing deliberations and consultations, Unifor submits the following initial recommendations, which should form the Government of Canada's negotiating position on a new NAFTA.

## **I. RESETTING PRIORITIES, RE-BALANCING THE RULES**

### **Reform NAFTA to Enhance Labour Rights**

The North American Agreement on Labour Cooperation (NAALC), implemented as a parallel accord to the NAFTA in 1994, provides inadequate and unenforceable protections for workers. It provides no meaningful mechanism to advance labour standards in any of the three NAFTA countries. Despite the documentation of widespread labour rights violations, not one successful complain has been filed under this accord, since its inception.

Mexico is notorious for low wages, sub-standard labour laws and poor working conditions. Mexican auto workers, for instance, receive total compensation of \$3.95 per hour (in USD) on average<sup>3</sup>. Labour rights are weak, and freedom of association is often not respected. "Protection contracts" (contracts signed between company-dominated unions and workers) are a blight on Mexico's industrial relations system. Independent unions are arbitrarily denied registration by labour boards and freedom to organize is limited<sup>4</sup>.

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<sup>3</sup> Alex Covarrubias V, "A Status Quo of the Mexican Auto Industry: Prospects and tendencies" (presentation, The College of Sonora, July 2014).

<sup>4</sup> Mexican constitutional amendments approved in 2016 called for greater independence among tribunals (among other improvements). These are positive, but modest and slow-moving first steps. See IndustriALL's recap of the reforms in "Mexican Senate approves labour law reforms" (September 24, 2016): <http://www.industriall-union.org/mexican-senate-approves-labour-law-reforms-0>

In the United States, so-called “Right to Work” (RTW) laws across states are used to frustrate the process of unionization and blunt the effectiveness of collective bargaining. States that have established RTW laws are found to have lower average wages and union density is less than half that found in non-RTW states.<sup>5</sup> It is our view that such laws also constitute an unfair corporate subsidy that, in effect, drags down labour standards for North American workers. For example, Progress Rail’s decision to relocate diesel engine production from its London, Ontario facility to Muncie, Indiana in 2012 coincided with Indiana becoming the United States’ 23<sup>rd</sup> “Right to Work State”. Through collective bargaining, the union (CAW, one of Unifor’s predecessor unions) rejected company demands for severe wage reductions of around 50 percent prior to the announced closure (plant workers earned more than \$30 on average). Hourly wages in the Muncie facility were as low as \$12, according to reports.<sup>6</sup>

These conditions have created an unfair and imbalanced competitive economic landscape in North America - one that must be addressed. Manufacturers and processors operating across the continent’s borders have used these disparate conditions to justify demands for lower wages and outsourced work. This must not be allowed.

The tools needed to successfully raise labour standards for North American workers are varied, and require a mixture of legislative, fiscal, political and broader economic reforms. And these reforms must be guided by commitments to social justice, as well as gender and racial equality.

### Recommendation

Labour rights in a renegotiated NAFTA can be fundamentally strengthened by:

- Establishing a specific chapter designated to enhancing labour rights within the NAFTA;
- Requiring all parties to ratify and implement the eight “fundamental” conventions of the International Labour Organization, including adherence to the ILO’s Decent Work Agenda as a condition of tariff-free trade;
- Establishing a rigorous monitoring system that oversees compliance, in collaboration with domestic labour groups;
- Enabling workers and unions to directly file complaints regarding labour violations without facing additional hurdles to demonstrate that a violation is “sustained or recurring” or that the violation occur in a manner that “affects trade”;
- Clear, non-discretionary deadlines to investigate and adjudicate complaints;

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<sup>5</sup> Gould, Elise and Kimball, Will. “Right-to-Work” States Still Have Lower Wages. Economic Policy Institute, Briefing Paper Series #395 (April 22, 2015).

<sup>6</sup> Whitman, Ken. “Ontario company demands wage cuts greater than 50 percent,” in Digital Journal (December 29, 2011): <http://www.digitaljournal.com/article/316908#ixzz4mp896KHZ>



- Ensuring the terms of compliance is fully enforceable under the terms of the agreement, including through financial penalty or other material trade sanction.

## **Eliminate Investor-State Dispute Settlement – Chapter 11**

Canada is the most frequently-sued country under NAFTA, having been the target of 70 percent of all NAFTA claims in the decade between 2005 and 2015.<sup>7</sup> These trade challenges initiated by private investors have taken direct aim at important government policy decisions, including a ban on the practice of hydraulic fracturing and a court denial of pharmaceutical patents, among others. NAFTA arbitrators have interpreted the terms of Chapter 11 investment protections, including expropriation, very broadly and in a manner that unfairly favours investors<sup>8</sup>.

Despite being home to a well-developed institutional court system that already provides sufficient protection for investors, Chapter 11 has provided foreign investors in Canada additional and excessive privilege, effectively undermining our existing domestic court systems and threatening to “chill” domestic regulation and public interest policy-making.

Such privileges erode democracy and must be put in check.

### Recommendation

- Chapter 11 of NAFTA must be eliminated as part of a reformed agreement.

## **II. SECTOR SUPPORTS**

Workers everywhere have the right to safe jobs and economic security and trade rules should support those aims. Mechanisms can be negotiated into trade treaties to ensure that investment and employment in key sectors are proportional across borders. Such a principle requires multinational firms to understand the advantages of tariff-free border treatment as a privilege, not a right. The concept of proportionality means firms must carry some reciprocal responsibility to invest and build where they sell. NAFTA can and should facilitate such a framework for trade, just as trade agreements have done in the past.

### **Automotive**

The highly-integrated North America auto industry remains a powerhouse for automotive production, innovation and sales. And that’s a good thing. But since the NAFTA and other free

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<sup>7</sup> Sinclair, Scott. *Democracy Under Challenge: Canada and Two Decades of NAFTA’s Investor-State Dispute Settlement Mechanism*. Canadian Centre for Policy Alternatives (January 14, 2015).

<sup>8</sup> Van Harten, Gus. *Reforming the NAFTA Investment Regime in The Future of North American Trade Policy, Lessons from NAFTA*, Kevin P. Gallagher, Enrique Dussel Peters, and Timothy A. Wise (eds). Pardee Center Task Force Report No.1: November 2009 (Chapter 4, p.43-52).

trade accords, the auto industry has developed along an uneven plane, and Canada has been left worse off. 44, 000 Canadian auto jobs have been lost since 2001, or one out of four.<sup>9</sup> Half of Canada's current manufacturing trade balance with Mexico is made up of cars and parts.<sup>10</sup> In 2016, the ratio of automotive imports to exports between Mexico and Canada reached 14:1.<sup>11</sup>

The growing imbalance within NAFTA is reflected in each country's share of production. Tariff-free continental integration has provided enormous benefits to the auto industry and its shareholders, but the promise of liberalized trade at its core hinges on all parties getting a fair share of the benefits. That has not happened.

Since the signing of NAFTA, U.S. and Canadian vehicle and auto parts trade deficits with Mexico have grown dramatically. In 1993, the U.S. had an automotive trade deficit with Mexico of \$3.5 billion dollars. By 2016, that deficit had grown to \$45.1 billion. For auto parts, the situation is significantly worse. In 1993, the U.S. had a very small auto parts trade deficit with Mexico of \$100 million. By 2016, it was 200 times larger at \$23.8 billion<sup>12</sup>. In terms of Canadian trade with Mexico, the overall automotive deficit has increased four-fold from \$1.6 to \$8.7 billion dollars under NAFTA. In contrast to the situation concerning Mexico, auto trade balances between Canada and the U.S. have remained relatively stable, and the U.S.'s modest deficit with Canada has declined by 23% since 1993<sup>13</sup>.

Over the first dozen years of NAFTA, new production facilities were added relatively evenly across the three countries. This was primarily due to foreign-based auto manufacturers adding production capacity in the region. However, in the last decade a different trend emerged. Production capacity was eliminated in the U.S. and Canada, and added in Mexico. Over this period the U.S. witnessed a net loss of 10 final vehicle assembly plants (representing 17% of the total), Canada lost 4 plants (29% of the total), while Mexico nearly doubled the number of plants, gaining 8 (an increase of 89%)<sup>14</sup>. Today, Mexico accounts for 8 percent of North American auto sales, but an estimated 45 percent of auto industry employment.

Further, auto trade within NAFTA should not be considered in isolation. As a region, North America has persistent and growing automotive trade deficits with other key auto-production regions including Japan, South Korea, the E.U. and increasingly China. The 4.9 million non-NAFTA vehicles imported annually into the region account for 24 percent of sales in the North

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<sup>9</sup> Statistics Canada CANSIM Table 281-0024

<sup>10</sup> Industry Canada, Trade Data Online (accessed June 21, 2017)

<sup>11</sup> Ibid.

<sup>12</sup> U.S. Congressional Research Service, "The North American Free Trade Agreement," May 2017.

<sup>13</sup> Industry Canada Trade Data Online – Statistics Canada. Available at <http://www.ic.gc.ca/eic/site/tdo-dcd.nsf/eng/Home>

<sup>14</sup> Ward's Automotive, "Automotive Yearbook," selected years.

American market – that’s a level of imports 40 percent higher than the EU, far higher than South Korea, at least twice as large as Japan and well above China’s five percent imports.<sup>15</sup>

Part of the explanation is in the fundamentally weaker tariff lines for North American bound vehicles (passenger vehicle tariffs are 2.5 percent in the U.S., 6.1 percent in Canada and 20 percent in Mexico) than other nations such as Brazil (25 percent), China (25-47 percent), Russia (25 percent), India (60 percent) and 10 percent tariffs are still on the books in the EU.<sup>16</sup> Japan and Korea famously have fully effective non-tariff barriers that serve to limit foreign imports.

This broader imbalance in global auto trade adds to the urgency to address the failures of NAFTA, and set North America on a path toward greater overall balance in trade with other regions.

Rebalancing auto trade to the benefit of North American auto workers must look both inward, *and* outward. It’s no good just to worry about balance of auto trade within NAFTA alone. Mexico is now building 3.6 million vehicles a year, but NAFTA as a whole is importing 4.9 million a year from overseas. Developing tools to fix the situation within NAFTA will by necessity need to address trade with other countries.

And we can’t just find ways to raise overall NAFTA production without ensuring Canada gets a fair share. Proportionality must be fair for everyone, but we need real tools to stop all new investment from driving to those areas of the continent with the lowest standards.

### Recommendation

In order to ensure a greater balance in auto trade for North Americans, Unifor has joined with the UAW (the largest union in the United States representing auto workers) to propose four key directional priorities for the auto industry in the re-negotiation of NAFTA<sup>17</sup>:

1. Strengthening Labour Standards and Raising Wages
2. Real “Made in North America” Rules
3. Balanced Trade
4. A Fair Share of Benefits for Workers in Each Country

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<sup>15</sup> Ward’s Automotive; Japan Automobile Manufacturers Association, “Motor Vehicle Industry of Japan 2016;” European Automobile Manufacturers Association; U.S. International Trade Administration, “China – Automotive Industry,” June 2016; Ednathan Andrada, “Sales Of Imported High-End Cars In Korea Increased in 2016” JKDaily, February 16, 2017.

<sup>16</sup> U.S. Department of Commerce, International Trade Administration and Office of Transportation and Machinery, “Compilation of Foreign Motor Vehicle Import Requirements” (December, 2015).

<sup>17</sup> Fair Trade and Shared Prosperity: Unifor-UAW Statement on Auto and the Re-negotiation of NAFTA ([http://www.unifor.org/sites/default/files/documents/document/unifor\\_uaw\\_statement\\_eng\\_final\\_2017.pdf](http://www.unifor.org/sites/default/files/documents/document/unifor_uaw_statement_eng_final_2017.pdf))

Unifor and the UAW will continue ongoing dialogue and pursue joint strategies as the negotiation process continues, including responding to specific proposals from industry and governments. Unifor's views on mechanisms and actions required to achieve our four priorities include:

- *Strengthening labour standards and raising wages:*

Disparate wages, working conditions and labour rights across the NAFTA region are among the core contributors to the growing imbalance in trade and investment in the auto sector. A new NAFTA must be conditional on enhancing labour rights. A new NAFTA must also chart a new, bold course on enforceable labour standards as part of any fair trade framework, as noted above. With respect to crafting a trade model that promotes fairer and more balanced North American auto trade, we propose all governments institute the following four recommendations as a means to enhancing labour standards throughout the industry.

Free Collective Bargaining and Democratic Trade Unions - To comply with the ILO Declaration on Fundamental Principles and Rights at Work and ILO Convention 182, Mexico, *at a minimum* must:

- Require independent, democratic unions
- Require workers to vote on all contracts and union leadership
- Require unions to provide copies of contracts to workers
- Require that unions have a duty to represent their members

As stated above, it is ultimately desirable that all NAFTA partners be required to ratify and implement the eight "fundamental" conventions of the International Labour Organization, including adherence to the ILO's Decent Work Agenda as a condition of tariff-free trade.

Punitive Duties for Labour Violations - Beyond allowing labour violations to be settled using the same dispute settlement system, considering the decade's long suppression of labour rights in Mexico, labour violations should be subject to special punitive duties. Labour unions in all three countries should have standing authority to directly bring charges of labour abuses – regardless of whether the union represents the workers. Additionally, labour groups should participate in a program of rigorous monitoring that oversees compliance of labour rights.

Expand Anti-Dumping Provisions - Expand the anti-dumping provision to include wage standards. One country must not be able to export items whose costs are subsidized by workers or communities through the paying of wages that are not high enough to support a family or labour practices that would not be allowed in the importing country.

Raising Wages --Exporters must not only meet the North American content requirements for full duty-free access within NAFTA, but also demonstrate that goods are produced by workers who earn at least 50 percent of the prevailing industry wage of the receiving country.

- *Establishing real “Made in North America” rules*

Rules of origin have not kept pace with changes in technology, meaning that major elements of today’s vehicles are not adequately captured by the standard. Additionally, the ability to roll-up partial North American content in auto parts to count as fully North American in other auto parts, allows vehicles with content far below the required 62.5% to cross borders duty-free. The standard needs to be raised above 70% for both finished vehicles and parts, modernized and the loopholes closed. Mechanisms designed to monitor the originating content of goods (i.e. the tracing list) must be maintained.

- *Balanced trade*

The North American vehicle market is the most lucrative in the world and entry should come with a price. The price has to be meaningful compared with the price of entry into other countries and high enough to make meeting the rules of origin test worthwhile.

Achieving stronger North American rules of origin standards must have a meaningful impact on business decisions and support North American investment. Current tariff levels on finished vehicles for non-NAFTA originating imports are too low and non-existent on most parts. Strengthening rules of origin standards will be ineffective without advancing a policy toward establishing a more meaningful harmonized price of entry into the North American market.

- *A fair share of benefits for workers in each country*

Stronger labour standards, higher wages and better rules of origin will help support greater balance in trade and production within North America. However, until conditions improve significantly for Mexican workers, investments will continue to flow disproportionately to that country. The re-negotiation of NAFTA auto provisions must consider mechanisms to fairly weigh the preferential treatment afforded by fully reduced tariff access, against each country’s long-run share of value-added production and employment in proportion to their share of the North American market.

## Forestry

The U.S.-invoked trade dispute targeting Canada’s softwood lumber industry threatens tens of thousands of Canadian jobs. Preliminary countervailing and anti-dumping duties have (once again) been imposed on Canadian exporters, based on unfounded claims that Crown land and

forest-management practices constitute unfair subsidies. These duties are malicious and unfair.

The fact is, \$6 billion worth of softwood lumber is exported to the United States each year – this is to meet the demands of U.S. wood processors, home builders and other consumers. The U.S. can only currently supply two-thirds of its own softwood lumber needs domestically. In short, the U.S. needs our lumber.

Historically excluded under the terms of the NAFTA, both governments must work toward a final, permanent solution of the softwood lumber dispute before NAFTA talks begin – one that retains the right of all Canadian provinces to manage forest lands and that is in the best interests of workers and local communities.

#### Recommendation

- We urge the federal government to reach a fair and balanced settlement on softwood lumber, and communicate this as a condition prior to the commencement of formal NAFTA talks.

#### **Dairy and poultry**

The integrity of Canada’s supply management system for dairy and poultry products must continue to be protected under NAFTA, in the face of U.S. pressures to expand access to the Canadian market.

Supply management has proven to be an effective model that equalizes the benefits of dairy and poultry production across consumers, farmers and processors, and stabilizes the industry against price shocks and oversupply. It is also a self-sustaining industry model that does not require public subsidies, unlike other nations – including the U.S.

The U.S. dairy lobby has identified Canada’s supply management system as unfair, and is seeking more sizeable import quotas that would provide greater access for U.S. exports to the Canadian market.

#### Recommendation

- Protecting supply management must be a priority for the Canadian government, and a clear “red-line” in negotiations. This will help ensure Canadians have access to high-quality, locally produced food and will support small family farms and rural communities.

## Telecommunications

The 2017 U.S. National Trade Estimate Report highlighted Canada's 46.7 per cent limit on foreign ownership and guidelines around membership of boards of directors, calling it "...one of the most restrictive regimes among developed countries."

A leaked United States Trade Representative memo, revealed earlier this year, suggested that one of the priorities for a renegotiated NAFTA could be greater access into Canada for American telecommunications companies. We imagine this to include proposals that would either demand Canada fully relax, or at least limit, Canada's ability to maintain restrictions on foreign ownership. This is troubling from both a sovereignty point of view (the rules simply ensure a slim majority of control and reflect the view that Canada has the right to structure foreign ownership rules as it sees fit) and an economic point of view (foreign services may be more inclined to operate outside of Canada, while existing Canadian telecom workers could face job losses).

In past Trans-Pacific Partnership negotiations, Canada's foreign ownership rules were treated as 'non-conforming measures' and were identified in the list of Annex I reservations. However, any attempt to strengthen those foreign ownership rules would have been potentially subject to challenge as unnecessary or discriminatory under the National Treatment provisions in the Investment chapter. This so-called 'ratchet' effect would simply force more deregulation in the industry (and the rules could not be strengthened).

### Recommendation

- Canada's negotiating team must ensure that no concessions are made to the U.S. or Mexico that restricts or relaxes Canada's foreign ownership rules in telecommunications or its ability to manage such rules in the national interest.

## Aerospace

Canada's two-way trade in the aerospace sector accounts for nearly \$18 billion annually. Nearly all of our exports are destined for the US market (98 percent) and Canada has maintained a fairly consistent trade surplus in North America (in 2016 it topped \$500 million). However, Canada's trade deficit in aerospace goods with Mexico has been rising steadily since 2008. It currently sits at just above \$200 million.

According to the United States International Trade Commission, Mexico's base of aerospace suppliers has been expanding rapidly, with the number of firms more than doubling between 2006 and 2011. Recent estimates peg the number of aerospace firms operating in Mexico at

nearly 300, growing from about 100 in 2006. Mexican employment in the sector is growing in lock-step.

Employment in Canada's aerospace sector has remained relatively stable since 2011, however there are experiences of component part work (including at Bombardier and elsewhere) being awarded to Mexican-based suppliers and shipped into Canada, tariff-free, as part of final assembly. As the Mexican aerospace industry continues to expand, there will no doubt be new competitive pressures put on Canadian workers as the threat of job loss becomes a starker reality. NAFTA contains no meaningful checks and balances, or proportionality requirements on aircraft assembly and component parts, but it could - loosely mirroring the framework outlined above in relation to proportional auto production.

Additionally, there is a persistent threat of soon-to-be levied U.S. trade duties against Canadian aerospace firm Bombardier. Allegations of unfair subsidies and predatory pricing of its C-series civil aircraft claims put forward by U.S. aircraft maker Boeing (who itself was recently charged by the World Trade Organization for receiving egregious and "prohibited" U.S. state subsidies)<sup>18</sup> are unfair and potentially damaging.

### Recommendation

- In the lead-up to NAFTA negotiations, it is incumbent on the Canadian government to respond – in kind – to these potential U.S. duties against Bombardier, including a refusal to accept bid applications from Boeing on future aerospace procurement contracts, until the current trade investigation (and potential dispute) has ended.
- Further, Canadian negotiators must make an explicit commitment to protect overhaul and maintenance (O&M) work regulations. NAFTA currently includes a provision that Canadian licensed aircraft must be maintained by Canadian-certified persons most often in locations within Canada. There is minor potential for this provision to be revisited under a NAFTA renegotiation leading to a further off-shoring of aircraft maintenance jobs to facilities located in foreign countries.

### **Public services**

Governments have a direct role to play in the delivery and development of quality public services both now, and in the future - a principle that must be upheld in a renegotiation of the NAFTA.

NAFTA has historically employed what is referred to as a "negative list" approach for public services coverage. What this means is that only those services explicitly exempted from the

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<sup>18</sup> WTO rules Boeing's state subsidies illegal (November 28, 2016), BBC News Exclusive (<http://www.bbc.com/news/business-38131611>)



deal are guarded against deregulatory and liberalization pressures. Conversely, those not exempted (including any new services) would not be protected, and must conform to NAFTA rules.

The impact of the NAFTA services chapter has been muted by the fact that most public services in Canada are delivered through sub-national bodies (e.g. provinces, cities), not the federal government. The Trump Administration's desire to modernize and expand the NAFTA, along with Canada's willingness to expose provincial and municipal services for the first time under the Canada-EU trade deal, raises the prospect that public services including health and education could be caught in the negotiating crosshairs.

### Recommendation

- Canada must not expand the scope of public services in a renegotiated NAFTA, and must ensure that critical sectors such as health care and education are wholly and explicitly carved out of the deal.
- Canada must also ensure the terms of a new NAFTA do not preclude the government's right to establish and deliver on broader public health policy objectives, including a universal Pharmacare program as well as universal child care and early learning program.

### **Energy**

The previous Canada-US Free Trade Agreement (CUFTA), signed in 1988, effectively locked in the deregulated, continental energy market and prevented the future use of a two-priced system.

In exchange for secure access to U.S. markets for oil and gas, Canada locked itself into an export arrangement that prioritized U.S. energy security. The so-called 'proportionality clause' meant that Canada could not arbitrarily restrict product to established U.S. customers, even in the case of a Canadian shortage. The proportion being sold to the U.S. had to remain fixed. Some saw the NAFTA as 'constitutionalizing' the North American energy system, thus making it much more difficult for future governments to politically manage energy development.

Insofar as NAFTA's proportionality clause imposes a limit on the democratic oversight and public regulation of Canadian energy development, especially the conservation of petroleum resources, Unifor opposes it.

### Recommendation

- We urge Canada's negotiating team to fully eliminate Articles 315 and 605 (energy proportionality) from the NAFTA as a condition of settlement.

## Culture

NAFTA contains a general exemption for Canada's cultural industry, which enables us to continue our advancement of national cultural policies and programs. The exemption is not unconditional, and has been the subject of past criticism.

Ultimately, under NAFTA the U.S. can't trigger a trade challenge to stop Canada from imposing Canadian Content rules or other regulations that enable us to promote our culture and cultural industries. Nor can Mexico take steps to challenge our public broadcasting systems. These are important carve-outs.

However, the strength of these cultural exemptions in trade deals has been eroding. There was significant concern surrounding cultural exemption language that was proposed in the TPP, for instance, as being needlessly weaker than in other accords.

Most concerning is that Canadian TPP negotiators conceded to a US demand that threatens to grant online television service providers (such as Netflix) the ability to challenge any future imposition of Canadian content requirements or other licensing rules as discriminatory treatment<sup>19</sup>. The concern is that a similar "exception" to cultural policy rules, as negotiated in the TPP, could be brought forward in a NAFTA renegotiation. Such a move would raise troubling questions for Canadian cultural policy over the long term, as broadcast television services continue to migrate to online platforms and since online television services have (for the time being at least) been exempt from making contributions to existing Canadian content and other programming funds.

### Recommendation

- We urge Canadian negotiators maintain a clear cultural exemption in a renegotiated NAFTA.
- We also urge Canada to reject any demand that aims to restrict the ability of regulators to impose licensing and other conditions on foreign online broadcasting services.

## III. ECONOMIC DEVELOPMENT AND ENVIRONMENTAL PROTECTION SUPPORTS

### Domestic Procurement

"Buy American" and "Buy America" rules have been a standard feature in U.S. federal and state goods and services purchase contracts, for more than 80 years.

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<sup>19</sup> See Michael Geist blog, "The Trouble With TPP, Day 18, Failure to Protect Canadian Cultural Policy" (January 27, 2016): <http://www.michaelgeist.ca/2016/01/the-trouble-with-the-tpp-day-18-failure-to-protect-canadian-cultural-policy/>

In certain cases, 100 percent of material inputs (including iron and steel) on projects funded through federal grants must be sourced from American suppliers. Similar conditions have been attached to manufacturing content in public transit vehicles as well as shipbuilding projects.

U.S. lawmakers have shown a willingness to expand this decades-old policy, to meet both economic and political ends. For instance, as part of its 2009 American Recovery and Reinvestment Act, the U.S. attached stringent Buy American rules on the purchase of iron, steel, textiles and manufactured goods through federal stimulus funds. In 2014, the U.S. Congress attached strict Buy American rules to water and sewage projects. More recently, an executive order signed by President Trump in April 2017 directed government agencies to maximize the use of U.S. made goods, products and materials in future public projects (including labour).

Buy American and Buy America laws are not entirely unrestricted. Projects above a set threshold and purchased directly by the federal government fall under the scope of NAFTA, and other trade treaties and must grant Canada equal access to bidding. But those infrastructure projects that are procured through state and municipal legislators (even if wholly supported by federal funds) have virtually no restrictions on how Buy American rules are applied.

Any expansion of these rules are bound to disrupt jobs in Canada, even if we are able to secure some carve-outs for critical industries (as has been done in past). While proposed rules under the Canada-EU trade agreement would limit our ability to pursue similar “Buy Canadian” policies, there remains some latitude to support Canadian industry and jobs in upcoming infrastructure spending – and the federal government should carefully consider those measures.

According to news reports<sup>20</sup>, U.S. contractors granted exclusive access to bid on federally funded projects have also been given unfettered access to bid on government-funded projects in Canada. Past efforts by Canada to negotiate exemptions to Buy America rules for steel and other suppliers came with extraordinary conditions that further opened provincial and territorial procurement contracts to U.S. firms.

Unifor believes that domestic procurement policies are strategic economic development tools that can maximize the value of public spending for jobs and local development. However, the application of these rules must conform to some standard that applies equally across NAFTA members. Fully restricting the use of Buy American, Buy Canadian or Buy Mexican laws across government agencies is not the solution.

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<sup>20</sup> See: <https://www.theglobeandmail.com/report-on-business/international-business/buy-american-driving-a-truck-through-naftas-loopholes/article18940347/> and <http://www.pressreader.com/canada/the-globe-and-mail-prairie-edition/20170419/281792808903343>

## Recommendation

- We urge Canada to negotiate a new, continental standard on how domestic content policies shall be applied within the context of NAFTA. This standard must accept that governments shall retain the right to set domestic content requirements, where deemed appropriate. But also that these requirements cannot wholly deny the use of supplies from the NAFTA region (e.g. thresholds cannot be set at 100%, unless deemed a matter of national security or other extraordinary circumstance).
- Further, this standard should enable federal governments to impose new “local development offset” requirements – a return in investment that is equal to the full value of the contract awarded – on foreign suppliers that supply public works projects. Such offsets can be used to help maximize local job creation, investment and other economic benefits spurred by government purchasing.

## **Environmental Protection**

The rising threat of global climate change must be matched with ambitious government strategies designed to lower greenhouse gas emissions, as well as strategies to help communities adapt to a warming world.

Despite being referenced as the first multilateral accord linking trade to sustainable development, NAFTA lacks meaningful tools to encourage and enforce climate and environmental protection measures. Worse still, NAFTA investment rules have been used to actively challenge various laws and regulations designed to support sustainable development. This includes a recent NAFTA panel decision allowing U.S. firm Bilcon to sue Canada after plans to expand a Nova Scotia quarry were rejected on environmental grounds.

NAFTA’s environmental side accord, the North American Agreement on Environmental Cooperation (NAAEC), is limited in scope and effectiveness. The terms of this accord fall outside of the main agreement text and do not carry the same legal and institutional weight (similar to its sister accord on labour rights, noted above). Parties to the accord are under no obligation to strengthen environmental practices or laws. In fact, much of the work conducted by the NAAEC’s Commission for Environmental Cooperation is limited to monitoring and advocacy.

NAFTA must be sufficiently improved so as to ensure Canada maintains the policy tools and latitude to deliver on its commitments made under the Paris Agreement. NAFTA rules must also enable the full and unrestricted development of support measures for workers to ensure a “just transition” for those affected by climate change.

### Recommendation:

- Establish a specific chapter designated to promote environment and sustainable development and ensuring these provisions are fully enforceable under the agreement;
- Establish specific obligations in a new Environment and Sustainable Development chapter that reinforce commitments made under the Paris Agreement;
- Undertake to develop a continent-wide carbon pricing system to ensure that products crossing borders from jurisdictions without a carbon price are not being unfairly dumped;
- Ensure NAFTA rules broadly support governmental measures to enact “just transition” strategies for workers affected by climate change.

## **IV. CONSULTATION AND MONITORING**

The federal government has committed to extensively engage with labour unions and other civil society organizations before, during and after NAFTA renegotiations unfold. This is a welcome change in approach from previous governments.

Canadian labour unions, non-governmental organizations and other civil society and indigenous groups can offer crucial perspectives on the effects of trade agreements on social, economic, environmental, health and labour policy.

### Recommendation

- We urge the Canadian government to continue this practice of consultation, and offer meaningful opportunity for dialogue and engagement among all stakeholders.
- We also urge the Canadian government to independently assess and analyze the economic, labour, environmental and social costs and benefits of a reformed NAFTA prior to its ratification. We recommend the government commit to conduct a similar analysis within five years of the agreement’s implementation.<sup>21</sup> Such a commitment could be part of a broader public monitoring and measurement effort, aimed at identifying both the costs and benefits of the agreement at regular intervals and ensuring that the desired balance in outcomes of the agreement has been achieved.

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<sup>21</sup> See Recommendation #9 in the Report of the Standing Senate Committee on Foreign Affairs and International Trade, “Free Trade Agreements: A Tool for Economic Prosperity” (February, 2017).

## V. CONCLUSION

Unifor welcomes the opportunity to share its views and recommendations on NAFTA in the wake of its renegotiation. Trade is an important economic activity, but the rules that govern it must seek to achieve outcomes that offer the greatest benefit to people, rather than a narrow focus on facilitating capital mobility, enhancing investor rights and expanding corporate power.

We hope that the recommendations identified above will be carefully considered by Canadian officials as negotiating preparations continue.

Our recommendations include bold, alternative mechanisms designed to rebalance trade in key sectors (both within North America and throughout the world) and that factor in social development goals.

In our recommendations, we identify key policy areas that should be considered off limits in any new trade negotiation, including in areas of public health and Canadian culture policy.

We offer proposals intended to reclaim a degree of Canadian sovereignty, including through our energy resources.

And we identify areas where Canada must seek to correct unfair trade practices (including in government procurement) and settle existing (and impending) trade disputes that impact Canadian workers, including in softwood lumber and aerospace.

There is a lot at stake for Canada in this NAFTA renegotiation. Our government must be prepared to table these and other bold proposals that seek to redefine the goals and objectives of trade agreements. Canada's negotiating position must also be strengthened by a clear commitment to walk away from NAFTA, if this deal is not in the best interest of workers.

Ultimately, Unifor believes the federal government must re-evaluate its vision and mandate for international trade; taking meaningful steps to carefully define and operationalize what a truly "progressive trade agenda" means – and how it works.

Unifor members expect bold changes to NAFTA, changes designed to improve job prospects, raise living standards, and that signal a shift away from the neoliberal model of free trade that has become the standard template for nearly a quarter century.

This is our once-in-a-generation opportunity to do just that.