

NAFTA Renegotiation: Fair Trade vs Free Trade Essentials

The North American Free Trade Agreement (NAFTA) is now up for renegotiation by the Trump Administration. The U.S. Congress will play a role. International trade agreements such as NAFTA have a profound impact on quality of life for Americans and others around the globe. Under agreements like NAFTA a few corporations reap huge benefits from “free trade” while imposing high costs on workers, consumers, communities and the environment. Workers are left helpless in a low wage global labor market with few protections. Learn how people power recently defeated another bad trade deal, the Trans-Pacific Partnership (TPP). Understand NAFTA’s current impact on workers, communities and the environment and see what the “fair trade” alternative looks like and what we can do to influence the upcoming NAFTA renegotiation.

People Defeated the TPP

- **The TPP was designed as a much larger more comprehensive and powerful version of NAFTA.** The twelve country, 30 chapter agreement was negotiated in secret, with the assistance of over 500 corporate “advisors” while civil society, labor and most environmental interests were virtually shut out. Like NAFTA, the TPP was less about trade and much more about consolidating corporate power over people and their governments so they can go wherever and do whatever they want (think fracking). TPP employed NAFTA-like corporate tribunals with the power to overrule national laws and courts. Public policies from the federal level on down to local zoning ordinances could be challenged by multi-national corporations and overruled by corporate tribunals staffed by corporate lawyers.
- **Years of international grass roots opposition eventually defeated the TPP.** President Obama worked very hard to pass the agreement yet was unable to muster enough votes in the House of Representatives.
- **The Rocky Mountain Peace and Justice Center was part of a national network of citizens and civic organizations that defeated the TPP.** Citizen groups and organizations informed and organized to pressure elected representatives to not vote for the TPP. Mr. Polis never took an official position on the TPP.
- **Congressman Polis’ remained an unofficial supporter of the TPP** throughout President Obama’s campaign to pass the agreement. He was the only Democrat from Colorado to vote for ‘fast track’ authority, which is designed to grease the skids for up-or-down trade agreement approvals. More pressure will be needed to move Mr. Polis away from the corporate free trade model embodied in the TPP and NAFTA toward a concept of *fair* trade that benefits all citizens, respects democracy, protects workers and prevents or mitigates environmental impacts.
- **Bigger and more powerful multi-lateral corporate-friendly trade deals are in the works** and many bad trade deals including NAFTA are still in effect. There is much more citizens can do in the fight for fair trade that benefits everyone and preserves our environment.

NAFTA’s Legacy: Damage to People, Communities and the Environment

On May 18, 2017, the Trump administration issued its long anticipated letter informing Congress of its intent to start negotiations. Detailed negotiating objectives are scheduled to be released after 60 days of “consultations” with Congress and the public on July 17. Official negotiations may begin after August 16, 2017. Congress will

vote on substantive changes to the treaty, particularly those requiring alterations in U.S. law. Even without a vote, congressional buy-in is important. So it is important for citizens to let their representatives know what they want in a new trade agreement.

Recent administration statements suggest Trump may break his campaign promise to reform or abandon an agreement he called “a disaster” for working people. Some see this as an opportunity to revive the Trans-Pacific Partnership (TPP). The official letter sent by U.S. Trade Representative Robert Lighthizer is short and its objectives are vague. It’s not hard to imagine things going badly. Citizen activists must be vigilant and ready to vigorously protect people, communities and the environment from yet another bad trade deal.

(For an easy to read yet comprehensive analysis of NAFTA, see Public Citizen’s [NAFTA at 20](#))

- **NAFTA granted vastly expanded rights to multi-national corporations** covering much more economic activity than traditional trade agreements that deal narrowly with trade-specific issues such as tariffs, export subsidies and import quotas. Modern free trade agreements artificially lower risks for foreign investors, enabling them to more easily outsource jobs to low wage markets and challenge domestic laws, including those protecting human and workers’ rights, public health and environmental quality that might negatively affect “expected future profits.” Foreign corporations are empowered to sue governments for “compensation” in a system of ad hoc international arbitration panels staffed by corporate lawyers who rotate between representing corporations and acting as judges on the panels. ISDS panels are not subject to established due process or conflict of interest rules and protocols. On a practical level, the NAFTA tribunal system gives multi-national corporations a “legal” means to force the repeal of offending domestic laws and regulations or extract large payments from governments.
- **NAFTA tribunals are used to override national and local laws, courts and regulations**, including those affecting public health, economic policy, environmental quality, consumer product safety, labor protections and human rights. There’s no appeal process for losers. When a corporation wins, taxpayers may be compelled to pay unlimited sums to corporations unless the offending policy is modified or withdrawn. Fear of expensive corporate suits has a chilling effect on governments’ willingness and ability to protect and serve their own citizens. Domestic labor organizations and civil society organizations are given no standing in ISDS panels. Despite so-called labor and environmental “sidebar agreements” belatedly inserted into NAFTA, the U.S. Government has undertaken no enforcement actions concerning violations of labor, human rights or environmental standards.
- **NAFTA caused large trade deficits and heavy US job losses**, opposite of what proponents had promised. The combined trade deficit with the two NAFTA partners increased over thirteen fold in inflation adjusted dollars with a consequent loss of at least one million American jobs, mostly in manufacturing. A flood of displaced factory and tech workers has forced down wages, lowered middle and working class living standards and helped worsen economic inequality.
- **NAFTA effectively prohibits enforcement of the Buy America Act.** Foreign corporations can sue states or the federal government to stop tax-supported local job creation programs. Prevailing wage laws intended to ensure government contractors pay wages comparable to local area wages can be challenged. NAFTA undermines domestic employment as it off-shores tax dollars.

- **Corporate suits under NAFTA are frequently aimed at rolling back environmental and public interest regulations.** Mexico has lost hundreds of millions to corporate challenges against the government's attempts to protect public health and environment. One result has been increased water and air pollution in affected areas, particularly in mining districts, and maquiladora free trade zones along the Mexican border. Such corporate assaults fundamentally challenge a country's ability to enact and enforce its own laws. The U.S. was forced to abandon certain food safety and labeling standards or face suits from Canada and Mexico.
- **Family farms in the U.S. were weakened by NAFTA.** Mexican demand for American produce dropped after a NAFTA-inspired devaluation of the Mexican peso made U.S. exports more expensive in Mexico and Mexican produce imports cheaper in the United States. NAFTA also forces family farmers to participate in an environmentally destructive agribusiness model.
- **NAFTA decimated Mexico's family owned agricultural sector** by removing tariffs on heavily subsidized US corn exports that predictably drove down domestic farm prices causing mass unemployment in the countryside. Two and a half million farmers and agricultural workers were dislocated, and many more were uprooted as local economies dried up, fueling a mass migration of unemployed Mexican workers to the US. Retail corn prices in Mexico skyrocketed as the corn market concentrated into a few large corporations. Consumer prices rose six hundred percent as Mexican incomes plummeted. Twenty million *more* Mexicans live below the poverty line now than in 1994, the year NAFTA went into effect.
- **NAFTA weakens food safety.** Standards and inspection regimes for meat and produce imports were watered down under NAFTA to reduce costs for foreign food importers. Surging food imports overwhelmed inspections. Several studies have found significant sanitation deficiencies in imported food from both Canada and Mexico.
- **NAFTA prohibits enforcement of U.S. vehicle safety and driver's licensing regulations on foreign vehicles and drivers on U.S. roads.** Law suits by environmental and consumer safety groups have limited access by Mexican domiciled trucks to a small pilot program, but the possibility remains for much broader and deeper access to U.S. roads by potentially polluting and unsafe vehicles.
- **NAFTA protects big pharmaceutical firms from competition.** These protections come in the form of strengthened and extended patent protections for drug companies that raise prescription prices and deny millions access to important therapies. For [example](#), the Hepatitis C drug Sovaldi has a list price of \$84,000 in the United States. A high-quality generic version is sold in India for less than \$200.

NAFTA Reset: What Fair Trade for People and the Environment Looks Like

The notion of free trade in the modern sense extends well beyond the classical understanding of international exchange. To a significant extent many so-called 'free trade' rules actually advantage certain economic stakeholders at the expense of others, and in several ways are anti-competitive and anti-democratic. International corporations benefit from today's rules at the expense of people and the environment. One needs

not be “protectionist” to suggest a different model is needed, one that is designed to benefit all people while protecting our rights and the environment.

- **Fair trade implies that international exchange and investment occur *within* a global framework of rules designed to ensure benefits flow to all citizens.** NAFTA must be reset to function as a ‘fair’ trade agreement, distinct from the so-called “free” trade model that shields corporations from competition and the risks of international investment at the expense of people and the environment. International markets can alternatively function to improve the quality of life for all people, communities and nations. Fair trade honors domestic laws intended to protect human rights, enforce labor standards, preserve environmental quality, protect consumers and strengthen local economies.
- **Fair trade replaces the corporate-dominated Investor-State ad hoc tribunal system with an independent, transparent and accessible legal adjudication mechanism.** The ISDS tribunal system flies in the face of democratic principles, national sovereignty self-determination and due process all the way down to the local level. Numerous technical problems with ISDS are documented in a 2013 UN [report](#). Corporations must not be given a legal status equal or superior to sovereign governments. Trade should improve living standards across the board, not simply lower costs and risks for international investors at public expense. Less intrusive and arbitrary mechanisms can enforce trade agreements. One option is an independent international investment court with the power to suspend selective agreement-based trade preferences to ensure compliance. Compensation paid to corporations should be limited, as under current U.S. takings law, to the value of confiscated *real property*. Trade rules should not apply to the expansive definitions of investments and “expropriation” now covered under NAFTA.
- **Fair trade agreements are negotiated and administered transparently and inclusively.** Full public participation by civil society including, civic, labor, human rights and environmental organizations is guaranteed. There is no “fast track.” Congress plays its full constitutional role in overseeing, debating, amending and ultimately passing on trade agreements. Transparency and inclusivity in enforcement implies that proceedings are public, an appeal process exists and civil society has standing to bring cases of non-compliance by corporations and governments before adjudicators.
- **Fair trade prioritizes enforcement of international agreements on human rights, labor standards, consumer safety, environmental protection and climate policy.** All parties to a fair trade agreement must be in compliance with these international agreements *before* receiving trade benefits. Importantly, fair trade must facilitate effective international and domestic climate mitigation policies, carbon emissions reduction and sustainable development rather than act as a hindrance. Broad protection should be afforded to domestic public policies protecting human rights, enforcing labor standards, protecting, preserving and restoring the environment, advancing [climate-friendly trade policy](#) and ensuring consumer safety. Civil society should be empowered to legally hold corporations and governments accountable under the terms of the agreement. Wealthy nations should help developing nations acquire the enforcement capacity necessary to uphold these treaty provisions, again *before* a treaty’s implementation or new members added.
- **Fair trade does not invalidate the Buy America Act or similar job creation programs in member nations.** Effective national and local jobs programs funded by public money are a necessary component of successful macroeconomic policy, particularly during recessions. Tax dollars used for procurement

and the delivery of public services and infrastructure should be allocated at the discretion of domestic governments, including those programs dedicated to creation of local business and job opportunities.

- **Fair trade ensures imported goods and services meet domestic safety standards.** Safety requirements and inspection regimes for imports meet scientifically valid product safety and public health standards and protocols. Wealthy nations should assist developing nations to acquire the capacity to enforce standards *before* treaty provisions are implemented.
- **Enforcement of any trade agreement necessitates strong ‘rules of origin’** and effective safeguards against transshipment that enables production to be outsourced to countries in non-compliance with agreement standards. Otherwise, some corporations will seek cheaper and potentially sub-standard inputs for products that benefit from the agreement.
- **Fair trade includes enforceable standards to guard against and offset currency manipulation.** A large share of the U.S. trade deficit and associated job losses since the launch of modern free trade agreements has been attributed to currency manipulation by a number of nations, especially China, and notably Mexico under NAFTA. Currency manipulation has a profound systemic impact on open economies. Currency devaluation by a trading partner artificially reduces the price of imports from that nation, which then displaces domestic production and jobs. Concurrently, import prices in the manipulating country are increased, artificially depressing their trading partners’ exports.
- **Fair trade excludes provisions enforcing strong patent and copyright protection.** The kind of patent protection in NAFTA and proposed for the TPP and other agreements are forms of protectionism – the opposite of free trade – that can raise the price of the protected items by a factor of 10 or even 100. Fair trade should not be a vehicle for globalizing excessively long and extendable patents and copyrights. Patents and copyrights on intellectual property are intended to provide incentives to innovate. However, trade should not become a vehicle to protect and perpetuate monopoly power. Most importantly, under a fair trade regime, all persons are guaranteed access to affordable medical treatment, including pharmaceuticals.
- **Export of privately produced goods subsidized by governments should be prohibited.** Subsidized U.S. corn exports were good for multi-national agribusiness corporations, but they undermined the Mexican economy causing mass unemployment and migration. A fair trade agreement prohibits this form of unfair competition.
- **Fair trade necessitates regulation of financial products, speculative financial transactions and capital flows.** Big banks and hedge funds supported U.S. efforts to prohibit regulations on financial speculation in the TPP, including transaction taxes. Dangerous financial products, reckless risk taking and a housing asset bubble helped bring down the world economy in 2008. Trade agreements must not prohibit enactment of reasonable domestic financial regulation to protect the stability of the world financial system. Also, nations should be allowed to deploy [capital controls](#) during periods of financial volatility. Many economists and the [International Monetary Fund](#) have recognized capital controls as necessary to protect small and developing economies from financial instability due to large short term capital movements.

- **Fair trade rules guarantee Internet neutrality for all member countries.** Equal access to the Internet is a condition for a free and informed public that can fully participate in the global marketplace. Restrictions on user access to information, pay-to-play “lanes” and other discriminatory manipulation of information across the Internet intended to advantage specific commercial interests should be barred under fair trade agreements.

What We Can Do

No one can do all of these actions, but it’s a powerful statement if all of us do one or two. Our collected efforts add up to a force that’s hard to ignore. So, consider adding your voice. Here’s what you can do.

- **Be informed.** Lots of information on NAFTA and fair trade can be found at the Rocky Mountain Peace and Justice Center Economic Justice [website](#). Public Citizen has an extensive archive of information [here](#). Learn the basics. There is no need to become an expert to express your views, just be well enough informed to make your point when an opportunity arises.
- **Help create a public presence around the NAFTA reset to educate and agitate on behalf of fair trade** and against proposals that would preserve the NAFTA status quo or make matters worse. A continuous and persistent presence is key to both educating the public and persuading politicians to do the right thing. We don’t need to be experts just reasonably well informed. Be polite yet persistent in seeking answers and pressing decision makers for a commitment to people over corporate profits.
- **Write letters to the editor**, post articles and commentary or your own thoughts on social media. This is one of the most important contributions concerned citizens can make to the effort to educate and activate fellow citizens. You can use this website or download Public Citizen’s NAFTA [fact sheet](#). Pick one or two points to make. To make it more personal, you can cite your own experiences to make your case.
- **Ask Mr. Polis and our senators to support fair trade.** Representatives should propose and/or support rule changes to NAFTA that protect workers, communities, public health and the environment. Replacement of the ISDS tribunals is the first step toward a fair trade policy. Trade sanctions issued by an independent publicly funded court can ensure compliance without sacrificing democracy and self-determination. Attend meetings and town halls with representatives and make phone calls to their offices. Send emails and letters too. Post information and statements on their social media sites, including those of elected officials. Attend your representatives’ town hall meetings and other public events to speak to public officials and draw public attention to the issue. Hold decision makers’ feet to the fire by asking pointed questions.
- **Help build support for fair trade** among citizens, local elected officials, civic organizations and prominent private sector individuals to show federal officials there is support for fair trade. Petitions, open letters and endorsements by groups and individuals demonstrate support for change.

The Rocky Mountain Peace and Justice Center is one member of a coalition of individuals and organizations working to change trade policy for the betterment of all people and the environment. If you would like to learn

more about NAFTA and other trade deals in the making, go to the RMPJC [website](#). If you have questions or would like to get involved, please contact Carolyn at carolynbninski@gmail.com or Ken Bonetti at kenecon2004@gmail.com.