

Congress of the United States
Washington, DC 20515

May 9, 2018

The Honorable Robert E. Lighthizer
Ambassador
Office of the U.S. Trade Representative
600 17th Street NW
Washington, D.C. 20508

Dear Ambassador Lighthizer:

Congress has long emphasized the importance of strong environmental protections in our national trade policy. In the May 10th Agreement, members of both parties made this clear. It is imperative that the product of your North American Free Trade Agreement (NAFTA) renegotiation builds on our progress and contains a strong, binding, and enforceable chapter on the environment. This would not only protect our domestic and international ecosystems, but also shield American industry and labor from unfair competition.

The original NAFTA agreement exemplifies race-to-the-bottom policy, as it fails to link increased market access and certainty to other important reforms. The environmental provisions included in NAFTA were modelled after each country's existing laws and were relegated to a side agreement instead of being included in NAFTA's base text. Additionally, the agreement did not make the environmental provisions enforceable through the dispute settlement mechanism that applied to other chapters.

In order to garner sufficient congressional support, the renegotiated NAFTA must meet a number of basic standards. It must have an environment chapter as part of the base text. It must be enforceable in the same manner as commercial obligations, including recourse to trade sanctions. There must be a way to provide complaints about environmental abuses and for those complaints to receive a timely response from USTR on whether to take action. The text must provide for effective enforcement, requiring parties to adopt, maintain and implement all seven of the multilateral environmental agreements (MEAs) in our May 10th Agreement; strong, definitive obligations; the non-derogation of a party's environmental laws; and that any inconsistencies between NAFTA and the MEAs are resolved in favor of the MEAs. There must be clarity, so that we can easily track progress. Troublingly, past dispute panels have interpreted phrases that are used in defining environmental obligations, such as "in a manner affecting trade and investment" and "a sustained or recurring course of action or inaction," that are blatantly inconsistent with their plain meaning and the intentions of negotiators. Those mistakes must be corrected to prevent future panel misinterpretations and to ensure the enforceability of the obligations negotiated. And the agreement should reflect the world-wide transition to low-emission economies as a result of the Paris Climate Accord.

A renegotiated NAFTA must build upon the progress made in past trade agreements. Rigorous, enforceable rules on fishing subsidies, fishing management practices, and combatting illegal, unreported and unregulated (IUU) fishing would strengthen protections for our regional fish stocks, marine ecosystem, and fishing communities.

A new NAFTA must protect and strengthen enforcement of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Some of the world's worst actors trade in illegal rainforest timber, rhino horns, elephant ivory, and turtle shells—using their ill-gotten gains to fund vast criminal syndicates and terrorist organizations. The al Qaeda affiliate al Shabaab generates a significant portion of its funding from illegal ivory. The Lord's Resistance Army also depends on a portion of the \$10 billion generated each year from wildlife trafficking. Organized crime siphons off a piece of the \$30 to \$100 billion in the annual illegal timber trade.

While these syndicates often source these items from non-NAFTA countries, the new NAFTA can and should include strong, enforceable language that puts an end to the transshipment of these goods, especially those flowing through NAFTA countries. A transshipment obligation must be applied to all trade made in a manner inconsistent with the obligations included in the environment chapter.

U.S. law prohibits trade in products that were illegally harvested in their country of origin, and in 2008, the Lacey Act was amended to prohibit trafficking in illegally sourced wood products. Those amendments enjoyed broad bipartisan support in Congress and support from industry, labor, and environmental groups. Mexico does not have a similar law. NAFTA must ensure that the rules that will govern trade in illegally taken animals, animal products, plant, and plant products in North America be at least equivalent to current U.S. law, consistent with your approach in other chapters, ensuring a level-playing field for U.S. businesses and their employees.

By addressing transnational trade crime, a strong environment chapter would bolster national security, but it would also help the American economy. The strong language we suggest would be critical in the fight to protect U.S. small- and medium-sized businesses that are consistently undercut by the environmental practices. Each year, 15 percent of world fish catches occur illegally. This black market is estimated to be worth as much as \$23 billion dollars. That translates to billions in economic losses for those who play by the rules. Also, the American Forest & Paper Association estimates that illegal logging costs U.S. timber producers \$1 billion annually, eroding sustainable forest management practices and costing jobs in responsibly managed forests.

We are also deeply concerned about mitigating climate change. A renegotiated NAFTA should build on the progress our three countries are making as we move toward low-emission economies. Its investment chapter must protect the right of each of our countries to make and justly enforce strong environmental protections, including those relating to climate change—a significant threat to all three NAFTA countries. Ending energy proportionality would be a productive step toward a greener trade agreement.

A strong, binding, and enforceable environment chapter is not just required for Congressional votes, it is essential to ensuring a fair marketplace for American business and labor, as well as a clean environment for future generations of Americans. Accordingly, a successfully renegotiated NAFTA must also include a plan for ensuring the implementation and enforcement of the commitments secured in the chapter.

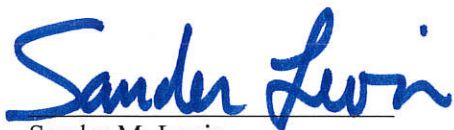
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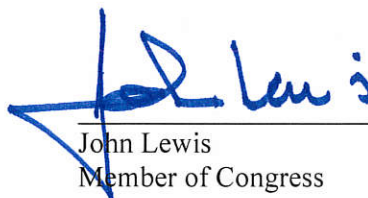
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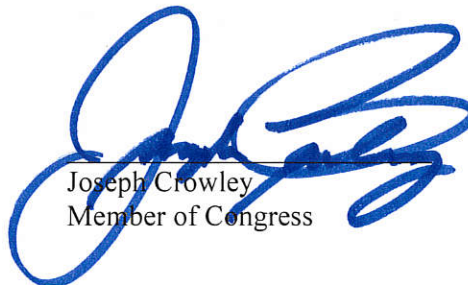
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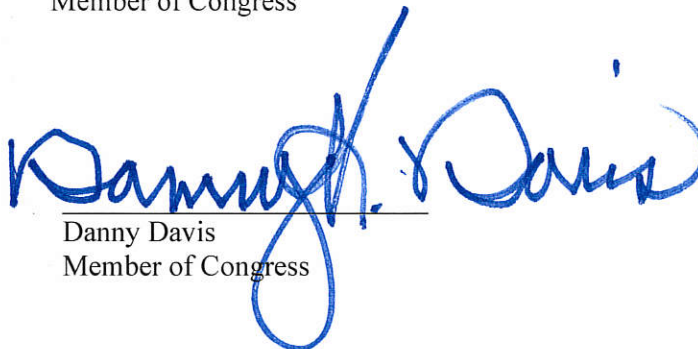
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