

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

April 25, 2019

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

Dear Ambassador Lighthizer:

As our Committee prepares to consider the renegotiated trade agreement with Canada and Mexico (“the new Agreement”), we write to express our concerns regarding the enforceability and eventual enforcement of the new Agreement. The question of enforceability relates directly to the value of the deal that has been negotiated: will the commitments each of the parties signed onto have meaning? What happens when a party fails to deliver on its commitments, whether because it has overlooked a promise, its system has produced an imperfect result, or because it no longer wishes to be bound by the promise?

Our concerns are most pointed with respect to the enforceability of the new Agreement’s labor and environment commitments. But they also apply more broadly to all commitments enshrined in the new Agreement.

Since the debate and consideration of the North American Free Trade Agreement (NAFTA) over 25 years ago, Committee Democrats have persisted in advocating for not just strong, but also enforceable labor and environment provisions in U.S. trade agreements. Our efforts resulted in labor and environment cooperation provisions in side agreements to NAFTA in 1993. Those provisions were subject to special enforcement mechanisms different from the mechanism applicable to other commitments in the NAFTA, which were never fully pursued or utilized.

In the early 2000s, labor and environment provisions found their way into the main text of U.S. trade agreements, subject to the same dispute settlement mechanism as other obligations in the agreement. However, the commitments were largely limited to the requirement that partner countries “effectively enforce” their own labor and environmental laws and try not to weaken those laws to encourage trade or investment. And the enforceability of those commitments was qualified by the requirement that failures be sustained or recurring.

In 2007, after Democrats assumed the majority in the House, Committee Democrats led the negotiations of the May 10 Agreement with the Bush Administration and Congressional Republicans. As a result of May 10, four pending trade agreements were reopened to, among other things, strengthen their labor and environment commitments and the enforceability of those commitments.

Despite the incorporation and advancement of labor and environment provisions in our trade agreements, since 1993, no environmental disputes have ever been litigated and only one labor enforcement dispute has ever been pursued under a U.S. trade agreement. That case, brought against Guatemala under the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), failed to secure affirmative findings of breach, despite clear evidence of the Guatemalan government's failure to ensure compliance with court orders, conduct labor inspections, impose penalties, and register legitimate unions. This record of general non-enforcement and one deeply disappointing result, has led Democrats to question whether labor and environmental provisions are at all enforceable or will ever be enforced.

Our questioning is compounded by the fact that the new Agreement's mechanism for resolving disputes carries over NAFTA's flawed procedures. Those procedures are easily frustrated by a responding party that wishes, for whatever reason, not to be sued.

In the first years of NAFTA, three state-to-state disputes were fully litigated between the parties. In the fourth instance, a case that Mexico brought against the United States, the United States managed to prevent the formation of the arbitral panel. That case was never able to proceed further and no other case has ever been resolved through NAFTA's state-to-state mechanism since.

With the same procedures in place in the new Agreement, what reason do we have to believe that any disputes over broken promises in the labor, environment, or any other chapter in the agreement will lead to recourse or remedy? What reason do we have to believe that the new Agreement will truly modernize the terms of North American trade or level the playing field for our workers and communities?

We look forward to engaging with you on addressing our concerns and questions. Our interest is in replacing NAFTA with an agreement that remedies the well-known flaws of NAFTA.

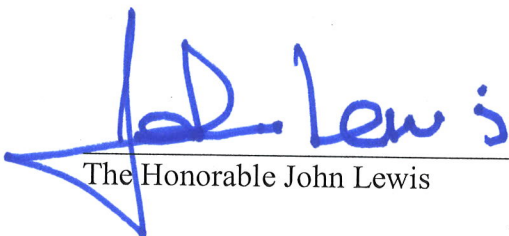
Sincerely,



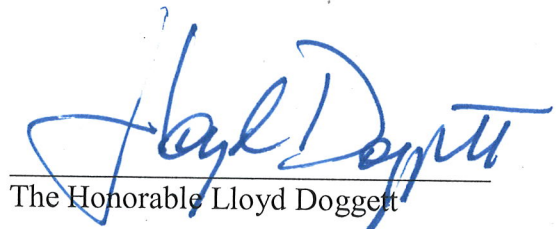
The Honorable Richard E. Neal
Chairman



The Honorable Earl Blumenauer
Chairman, Subcommittee on Trade



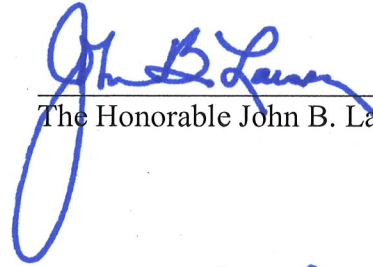
The Honorable John Lewis



The Honorable Lloyd Doggett



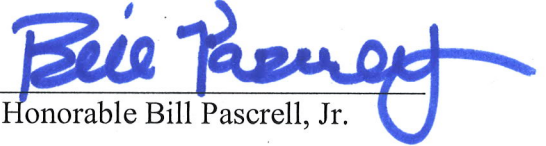
The Honorable Mike Thompson



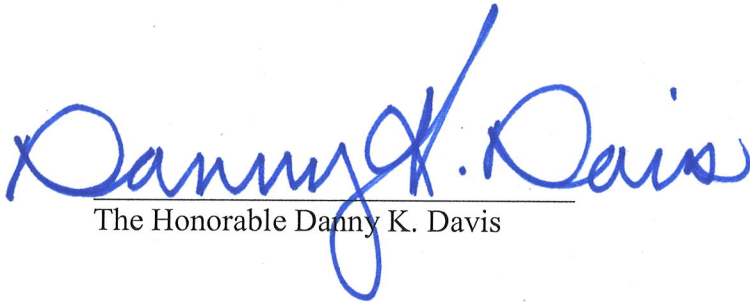
The Honorable John B. Larson



The Honorable Ron Kind



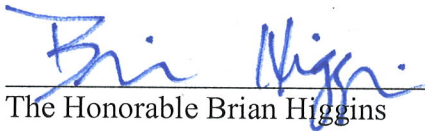
The Honorable Bill Pascrell, Jr.



The Honorable Danny K. Davis



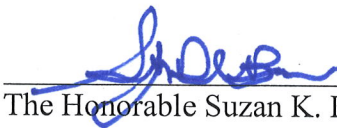
The Honorable Linda T. Sánchez



The Honorable Brian Higgins



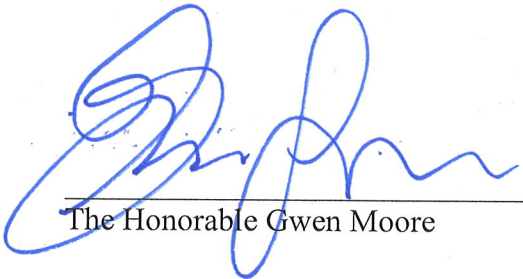
The Honorable Terri A. Sewell



The Honorable Suzan K. DelBene



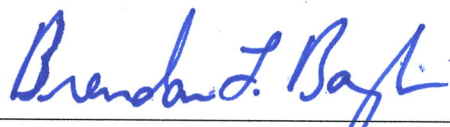
The Honorable Judy Chu



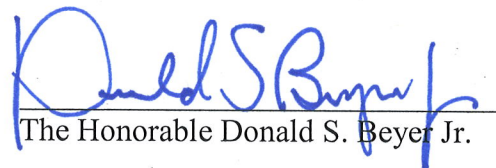
The Honorable Gwen Moore



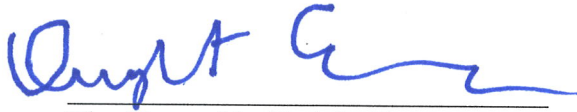
The Honorable Daniel T. Kildee



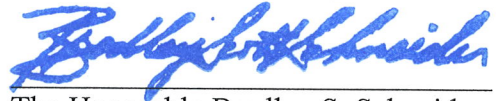
The Honorable Brendan F. Boyle



The Honorable Donald S. Beyer Jr.



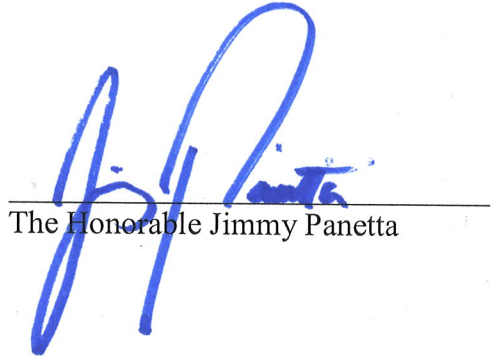
The Honorable Dwight Evans



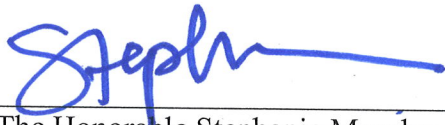
The Honorable Bradley S. Schneider



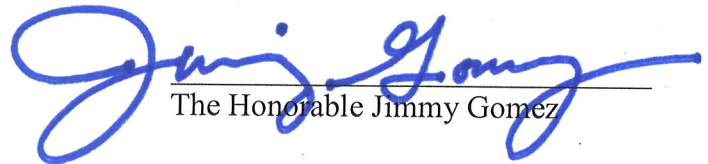
The Honorable Thomas R. Suozzi



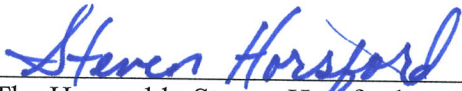
The Honorable Jimmy Panetta



The Honorable Stephanie Murphy



The Honorable Jimmy Gomez



The Honorable Steven Horsford