

**Comments Concerning Proposed
United States-North American Free Trade Agreement**

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Bringing a Public Health Voice to Trade and Sustainable Development

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Introduction

On behalf of the Center for Policy Analysis on Trade and Health (CPATH), we appreciate the opportunity to comment on the direction, focus, and content for renegotiating the North American Free Trade Agreement (NAFTA). CPATH is an independent organization that brings a public health voice to debates on trade and sustainable development, through research, policy analysis, and advocacy. **Public Health Objectives for U.S. Global Trade Agreements**, below, present specific recommendations for NAFTA negotiations that will safeguard the health of Americans and our trading partners, and promote economically and socially just, democratically controlled, and environmentally sustainable outcomes. They reflect years of consultations with numerous colleague organizations.

New Trade Deal: A Smokescreen for Corporate Interests

Glaring inequality is increasing in incomes and wealth between the super-rich, and the majority of the population. **Workers experience precarious and low-paying jobs**, at the same time as social costs such as health care and education are shifted to individuals.

Ownership of transnational corporations has become more concentrated. Financial services increasingly dominate the U.S. economy, and its priorities influence U.S. policy, including trade rules.

While candidate Trump proposed to withdraw the U.S. from NAFTA – a partial and inadequate policy response to concerns about falling incomes - the Administration’s actual proposals to renegotiate NAFTA increasingly reflect provisions of the vastly unpopular, corporate-driven Trans Pacific Partnership (TPP), roundly abandoned right after the November, 2016, election.

In other policy arenas, the Administration is rushing to lock in policies that widen income inequality for the majority of Americans:

- Budget proposing huge tax breaks that enrich the already wealthy, while undermining economic and health security;
- Dismantling the Affordable Care Act, and cutting funds for Medicare and Medicaid, throwing millions of Americans off of health insurance, endangering their health and financial well-being;
- Eliminating vital programs like Meals on Wheels for Americans who truly need them; and

- Dismantling Dodd-Frank legislation, which attempts to put the brakes on irresponsible maneuvers by banks and financial institutions that generated the Great Recession in 2008, driving millions of Americans into income insecurity.

Public Health Objectives for U.S. Global Trade Agreements, below, present specific recommendations for NAFTA negotiations.

We seek to ensure that the re-consideration of NAFTA will safeguard the health of Americans and our trading partners, and promote **economically and socially just, democratically controlled, and environmentally sustainable outcomes**. To achieve these aims, trade negotiating objectives and trade rules must complement and safeguard strong domestic policies that seek to reduce economic inequality and strengthen economic and health security for all Americans. In contrast, trade policies that would further enrich and empower the already-wealthy will be a bad deal for America, for American working families, and for our trading partners.

Public Health Objectives for the United States-North American Free Trade Agreement

1. **Assure democratic participation by public health and transparency in trade policy:**
 - a. Open all proceedings and documents of trade negotiations and trade advisory committees to the public; and
 - b. Publish all proceedings of the meetings.
 - c. Appoint to all three tiers of trade advisory committees representatives of organizations that work to assure equitable access to affordable health-related services and products, and promote the health of individuals, communities and populations, who can provide formal advice to USTR from the public health and health care community to USTR; and
 - d. USTR to consult with all relevant committees of the House and Senate in the development, negotiation, implementation, and administration of trade and negotiating objectives.
 - e. Conduct hearings, solicit public comment, and take other appropriate investigatory and oversight actions in all relevant Committees in Congress to assess the impact of past, pending and current trade agreements on population health, and assure based on such assessment that these agreements do not have an adverse impact on health.
2. **Develop mutually beneficial trade relationships with trade partners that create sustainable economic development** in an increasingly interdependent world.
 - a. Implement trade policies and provisions that facilitate sustainable development, including **public investment in infrastructure and human resources**.
 - b. Examine **models to reduce economic and social asymmetries and inequalities**, including the EU and MERCOSUR.
 - c. **Assess the impact of NAFTA.**
 - d. **Assess the comparative costs and benefits** of NAFTA on the federal budget and US economy, particularly in terms of employment creation/retention and trade value, of the allocation of resources and trade protections to agricultural commodities, technology research and development, industrial goods, manufactured products, and services sectors, including international trade and investment data at the state level on services and merchandise imports and exports, and on international investment.

2. **Develop mutually beneficial trade relationships with trade partners that create sustainable economic development** in an increasingly interdependent world. (Continued)
 - e. Develop an economic program that **supports and trains workers** for the emerging high-tech economy, with strong social supports for valued community members who do not work including children, the elderly, caregivers, and people with employment limitations.

3. **Recognize the legitimate exercise of national, regional and local government sovereignty to protect population health**, and ensure that countries do not weaken or reduce, as an encouragement for trade, sound policies that contribute to health and well-being and democracy, including laws on public health, the environment, labor, food safety, human rights and internet freedom.
 - a. NAFTA should be negotiated, implemented, and interpreted to **safeguard existing state and local level regulatory, tax, and economic development policies, and to support the social, economic, and environmental values that those policies promote.**
 - b. **Eliminate “investor-state” provisions** that give foreign corporations the right to file trade disputes based on measures of state and local governments, and that give greater rights to foreign investors than to domestic ones.
 - c. NAFTA should state that statutes and regulations of states and local governments are afforded the same protection against preemption as those of the federal government, i.e. that nothing in the Agreement shall preempt any state or local law.
 - d. Codify in the Agreement that:
As a matter of general international law, a non-discriminatory regulation for a public purpose which affects a foreign investor or investment is not deemed expropriatory and compensable.
 - e. Maintain the principle that the United States may not require states to alter their regulatory regimes in areas over which they hold constitutional authority. The U.S. must obtain approval from the legislature and executive of the implicated state or locality before a state or locality is bound by any trade provision or a rule, regulation, or statute is listed in – or otherwise implicated by – a trade agreement, offer or other binding commitment.
 - f. **Exempt state laws on government procurement for health care services from trade rules.**

4. **Exclude tariff and nontariff provisions that address vital human services** such as health care, water supply and sanitation, food safety and supply, and education, including licensing and cross- border movement of personnel in these fields.
 - a. Specifically **exclude** from trade agreements **vital human services** such as health care, water supply and sanitation, food safety and supply, and education, including licensing and cross-border movement of personnel in these fields. **Eliminate any requirement that they be established or maintained for a public purpose.**
 - b. **Eliminate any requirements for a necessity test and an objectivity test in regulatory decision-making.** Trade tribunals should not be authorized to determine whether measures regarding essential services are objectively determined, or necessary to ensure the quality of services, public health and safety, environmental protection, and other important policy objectives.

4. **Exclude tariff and nontariff provisions that address vital human services** (continued)
- c. Trade commitments for NAFTA should be derived via a process based upon “**positive lists**,” that require the affirmative, informed consent from affected national, state and local entities, in consultation with public health representatives, to list each service.
5. **Exclude tobacco and tobacco products**, which are lethal, and for which the public health goal is to reduce consumption, from tariff and nontariff provisions of NAFTA, including advertising, labeling, product regulation and distribution.
- Tariff and Nontariff Provisions:
- a. **Exclude tobacco products** from all trade rules and in each relevant Schedule and Annex, including but not limited to Market Access, Most Favored Nation, National Treatment, Services, Intellectual Property, and tariff reduction schedules.
- b. **Negotiate to add** the following:
 “Notwithstanding any language to the contrary, nothing in this agreement shall block, impede, restrict, or modify the ability of any party to take or maintain any action, relating to manufactured tobacco products that is intended or expected, according to the party, to prevent or reduce tobacco use or its harms and costs or that is reasonably likely to prevent or reduce tobacco use or its harms, including tariffs and restrictions on the marketing of tobacco or tobacco products.”
- c. **Negotiate to add** the following: “Provisions of the Framework Convention on Tobacco Control shall govern, in the event of any conflict with this Agreement.”

We note that the **Canadian Free Trade Agreement**, adopted in April, 2017, applies to trade among Canadian provinces. The Exceptions Chapter, Part IV of this Agreement, protects measures relating to tobacco control from trade-related penalties: **PART IV – EXCEPTIONS, Chapter Eight - General Exceptions, Article 806: Tobacco Control Measures:**

“This Agreement does not apply to any measure adopted or maintained by a Party relating to tobacco control.”

6. **Exclude alcohol products**, which present serious hazards to public health. Policies designed to reduce the harm caused by alcohol products should not be subject to compromise in exchange for other trade benefits.
- a. **Negotiate to add** the following:
 “Notwithstanding any language to the contrary, nothing in this agreement shall block, impede, restrict, or modify the ability of any party to take or maintain any action, relating to alcohol beverages that is intended or expected, according to the party, to prevent or to reduce harm to the public’s health related to alcohol beverage use or that is reasonably likely to prevent or reduce alcohol beverage use or its harms, including tariffs and restrictions on the marketing of alcohol beverages. “
- b. **Encourage** the World Health Organization to develop a legally binding international convention on alcohol beverages.

7. **Eliminate intellectual property provisions related to pharmaceuticals from NAFTA negotiations**, as these are more appropriately addressed in multilateral fora, **and promote trade provisions which enable countries to exercise all flexibilities provided by the Doha Declaration on Public Health**, including issuing compulsory licenses for patented pharmaceuticals, parallel importation, and other measures that address high prices and promote access to affordable medicines.
- a. **Exclude all TRIPS-plus provisions** from NAFTA.
 - b. **Provide technical, political, and economic support to trading partners to enact and enforce TRIPS public health safeguards**, as reaffirmed by the Doha Declaration on TRIPS and Public Health.

We note that financial pressure to prioritize stock prices also increasingly drives up pharmaceutical prices.

Sincerely,

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