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NAFTA's Broken Promises 1994-2013: Outcomes of the North American Free Trade Agreement

In 1993, the North American Free Trade Agreement (NAFTA) was sold to the American public with grand promises. NAFTA would create tens of thousands of good jobs here. U.S. farmers would export their way to wealth. NAFTA would bring Mexico's standard of living up, providing new economic opportunities there that would reduce immigration to the United States.

NAFTA was an experiment, establishing a radically new "trade" agreement model. It exploded the boundaries of past trade pacts, which had focused narrowly on cutting tariffs and quotas. In contrast, NAFTA contained chapters that created new privileges and protections for foreign investors; required the three countries to waive domestic procurement preferences, such as Buy American; limited regulation of services, such as trucking and banking; extended medicine patent monopolies and limited food and product safety standards and border inspection.

After nineteen years of NAFTA, we can measure its actual outcomes. The grand promises made by proponents remain unfulfilled. Many outcomes are exactly the opposite of what was promised. Many U.S. firms used the new investor protections to relocate production to Mexico to take advantage of its low wages and weak environmental standards and to attack NAFTA countries' environmental and health laws in foreign tribunals. Over $340 million in compensation to investors has been extracted from NAFTA governments via these "investor-state" challenges.

The small U.S. trade surplus with Mexico pre-NAFTA turned into a massive new trade deficit. The pre-NAFTA U.S. trade deficit with Canada expanded greatly. Overall, the inflation-adjusted U.S. trade deficit with Canada of $29.1 billion and the $2.5 billion surplus with Mexico in 1993 (the year before NAFTA took effect) turned into a combined NAFTA trade deficit of $181 billion by 2012.[1] The Economic Policy Institute (EPI) estimated that the NAFTA deficit had eliminated about one million net American jobs by 2004.[2] Meanwhile, U.S. food processors moved to Mexico to take advantage of low wages and food imports soared. U.S beef imports from Mexico and Canada, for example, have risen 130 percent since NAFTA took effect, and today U.S. consumption of "NAFTA" beef tops $1.3 billion annually.[3] The export of subsidized U.S. corn did increase, displacing over one million Mexican *campesino* farmers. Their desperate migration pushed down wages in Mexico's border maquiladora factory zone and contributed to a doubling of Mexican immigration to the United States.

The U.S. public's view of NAFTA has intensified from broad opposition to overwhelming opposition to NAFTA-style trade deals. According to a 2012 Angus Reid Public Opinion poll, 53 percent of Americans believe the United States should "do whatever is necessary" to "renegotiate" or "leave" NAFTA, while only 15 percent believe the United States should "continue to be a member of NAFTA." Rejection of the trade deal is the predominant stance of Democrats, Republicans and independents alike.[4] NAFTA has drawn the ire of Americans across stunningly diverse demographics. A 2011 *National Journal* poll showed strong rejection of the status quo trade model from both lower-educated and higher-educated respondents,[5] and a 2010 NBC News – *Wall Street Journal* survey revealed that a majority of upper-income respondents have now joined lower-income respondents in opposing NAFTA-style pacts.[6] In addition, a 2008 Zogby poll found majority NAFTA opposition across nearly every surveyed demographic group, including independents, Hispanics, women, Catholics and Southerners.[7]

U.S. Job Loss, Not Gain

Projections on trade balance, jobs prove wrong. In 1993, Gary Hufbauer and Jeffrey Schott of the Peterson Institute for International Economics (PIIE) projected that NAFTA would lead to a rising U.S. trade surplus with Mexico, which would create 170,000 net new jobs in the United States.[8] This figure was trumpeted by the Clinton administration and other NAFTA proponents. Hufbauer and Schott based their projection on the observation that when export growth outpaces the growth of imports, more jobs are created by trade than are destroyed by trade.[9] Instead of an improved trade balance with Canada and Mexico, however, NAFTA resulted in an explosion of imports from Mexico and Canada that led to huge U.S. trade deficits. According to Hufbauer and Schott's own methodology, these deficits meant major job loss. Less than two years after NAFTA's implementation, even before the depth of the NAFTA deficit became evident, Hufbauer recognized that his jobs prediction was incongruent with the facts, telling the *Wall Street Journal*, "The best figure for the jobs effect of NAFTA is approximately zero…the lesson for me is to stay away from job forecasting."[10]

Huge new NAFTA trade deficit emerges. The U.S. trade deficit with Canada of $29.1 billion and the $2.5 billion surplus with Mexico in 1993 (the year before NAFTA took effect) turned into a combined NAFTA trade deficit of $181 billion by 2012.[11] This represents an increase in the "NAFTA deficit" of 580 percent. These are inflation-adjusted numbers, meaning the difference is not due to inflation, but an increase in the deficit in real terms. The U.S. deficit with NAFTA partners Mexico and Canada has worsened considerably more than the U.S. deficit with countries with which we have not signed NAFTA-style deals. Since NAFTA, the average annual growth of the U.S. trade deficit has been 45 percent higher with Mexico and Canada than with countries that are not party to a NAFTA-style trade pact.[12] Defenders of NAFTA argue that the NAFTA deficit is really only oil imports. Although oil accounts for a substantial portion of the trade deficit with Canada and Mexico, the oil share of the trade deficit with Canada and Mexico actually declined from 77 percent in 1993 to 55 percent in 2012.[13]

Services and manufacturing export growth slows under NAFTA. A key claim of supporters of NAFTA-style trade pacts is that they create jobs by promoting faster U.S. export growth. By contrast, growth of U.S. exports to countries that *are not* Free Trade Agreement (FTA) partners has exceeded U.S. export growth to countries that *are* FTA partners by 38 percent over the last decade.[14] Manufacturing and services exports in particular grew slower *after* NAFTA took effect. Since NAFTA's enactment, U.S. manufacturing exports to Canada and Mexico have grown at less than half the rate seen in the years before NAFTA.[15] Even growth in services exports, which were supposed to do especially well under the trade pact given a presumed U.S. comparative advantage in services, dropped precipitously after NAFTA's implementation. During NAFTA's first decade, the average growth rate in U.S. services exports fell by 58 percent compared to the decade before NAFTA, and has remained well below the pre-NAFTA rate through the present.[16]

One million American jobs lost to NAFTA. The Economic Policy Institute estimates that the rising trade deficit with Mexico and Canada since NAFTA went into effect eliminated about one million net jobs in the United States by 2004.[17] EPI further calculates that the ballooning trade deficit with Mexico alone destroyed about seven hundred thousand net U.S. jobs between NAFTA's implementation and 2010.[18] Moreover, official government data reveals that nearly five million U.S. manufacturing jobs have been lost overall since NAFTA took effect.[19] Obviously, not all of these lost U.S. manufacturing jobs – one out of every four of our manufacturing jobs – is due to NAFTA. The United States entered the World Trade Organization (WTO) in 1995, China joined WTO in 2000 and the U.S. trade deficit with China soared thereafter. However, at the same time, given the methodology employed, it is also likely that the EPI estimates do not capture the full U.S. job loss associated with NAFTA. Service sector jobs have also been negatively impacted by NAFTA, as closed factories no longer demand services. EPI estimates that one third of the jobs lost due to the rising trade deficit under NAFTA were in non-manufacturing sectors of the economy.[20]

Trade Adjustment Assistance data tracks the NAFTA jobs devastation. While EPI's estimates of the job losses resulting from NAFTA summarize the overall effect of the trade deficit, the government itself tracks some of the layoffs known to have specifically occurred due to imports or offshoring through a government program called Trade Adjustment Assistance (TAA). The TAA program is quite narrow, only covering a subset of jobs lost at manufacturing facilities, while excluding a portion of the jobs that have directly relocated to Mexico or Canada. The program is also difficult to qualify for, which has led some unions to direct workers to other assistance programs. Thus the NAFTA TAA numbers significantly undercount NAFTA job loss. Still, under TAA, over 720,000 workers were certified by 2010 (the most recent date for which public information is available) as having lost their jobs due to trade with Canada and Mexico or the shift in factories to those countries.[21] A report produced by PIIE estimates that fewer than 10 percent of workers who lose their jobs in industries facing heavy import competition receive assistance under TAA.[22] Thus, even the pro-NAFTA PIIE believes that TAA vastly underestimates the number of jobs lost due to trade-related displacement. The federal government also tried to determine specific jobs *created* by NAFTA rather than destroyed. The Department of Commerce established such a program, but after finding fewer than 1,500 specific jobs that could be attributed to NAFTA, the program was shut down because its findings were so bleak.[23]

Corporate promises of job creation are broken. In addition to NAFTA supporters' unfulfilled promises of overall job creation, specific companies also lobbied for NAFTA by claiming that the deal would boost their own hiring and reduce the need to move jobs to Mexico and Canada. In reality, the vast majority of their promises of job creation failed to materialize and many of these companies have actually moved operations to Mexico and Canada since NAFTA's passage.[24] For example, Caterpillar, Inc. said that NAFTA would eliminate the incentive to move jobs to Mexico and that it would export more equipment.[25] However, in 2008 Caterpillar laid off 338 workers at its Mapleton, Illinois facility as it shifted production to Mexico, while 105 workers were laid off from its Pendergrass, Georgia facility due to rising imports from Mexico in the same year.[26] Siemens made claims similar to Caterpillar's, and yet it has eliminated over 1,500 U.S. jobs while shifting production to Mexico.[27] Johnson and Johnson promised that it would hire hundreds of U.S. workers if NAFTA was approved, but it has ended up offshoring over 800 U.S. jobs to Mexico and Canada since NAFTA went into effect.[28]

Special investor privileges promote offshoring of American jobs. NAFTA's special new rights and privileges for foreign investors eliminated many of the risks and costs that had been associated with relocating production to a low-wage venue. The incentives these rules offered for offshoring included a guaranteed minimum standard of treatment that Mexico had to provide to relocating U.S. firms, which went above and beyond the treatment provided to domestic firms. This included the right for foreign investors to directly challenge the Mexican government in United Nations and World Bank tribunals, demanding compensation for environmental, zoning, health and other government regulatory actions of general application that investors claimed as undermining their expected profits. (Some of these cases are described below.) By providing foreign investors access to foreign tribunals, NAFTA also eliminated the risk of having to rely on Mexico's domestic court system. The protections granted to corporations interested in offshoring contributed to the flow of foreign investment into Mexico, which quadrupled after the implementation of NAFTA.[29]

Decreased Wages, Increased Inequality

Wages decline due to NAFTA. Trade affects the *composition* of jobs available in an economy. The United States has lost millions of manufacturing jobs during the NAFTA era, but overall unemployment has been stable (excluding recessions) as new low-paying service sector jobs have been created. Proponents of NAFTA raise the *quantity* of jobs to claim that NAFTA has not hurt American workers. But what they do not mention is that the *quality* of jobs available, and the wages most American workers can earn, have been degraded. According to the Brookings Institution, the average worker displaced from manufacturing went from earning $40,154 to $32,123 when re-employed, a 20 percent drop in earnings.[30] According to the Bureau of Labor Statistics, two out of every five displaced manufacturing workers who were rehired in 2012 experienced a wage reduction of even greater than 20 percent.[31] Such displacement not only spells wage reductions for former manufacturing workers, but also for existing service sector workers. As increasing numbers of workers displaced from manufacturing jobs have joined the glut of workers competing for non-offshorable, low-skill jobs in sectors such as hospitality and food service, real wages have also fallen in these sectors under NAFTA.[32] The shift in employment from high-paying manufacturing jobs to low-paying service jobs has thus contributed to overall wage stagnation. The *average* U.S. wage has grown less than one percent annually in real terms in the 19 years since NAFTA was enacted even as worker productivity has risen at more than three times that pace.[33] Given rising inequality, the *median* U.S. wage has fared even worse and today remains at the same level seen in 1979.[34]

Economic inequality reaches new extremes. The richest 10 percent of Americans are now taking nearly half of the economic pie, while the top 1 percent is taking one fifth. Since NAFTA's implementation, the share of national income collected by the richest 10 percent has risen by 18 percent, while the top 1 percent's share has shot up by nearly 40 percent.[35] NAFTA-style trade helps explain the soaring inequality. NAFTA has placed downward pressure on wages for the middle and lower economic classes by forcing decently-paid U.S. manufacturing workers to compete with imports made by poorly-paid workers abroad. The resulting displacement of those decently-paid U.S. workers has further depressed middle class wages by adding to the surplus of workers seeking service sector jobs. NAFTA also contributes to rising inequality by enabling employers to threaten to move their companies overseas during wage bargaining with workers. For instance, a Cornell University study commissioned by the NAFTA Labor Commission found that after the passage of NAFTA, as many as 62 percent of U.S. union drives faced employer threats to relocate abroad, and the factory shut-down rate following successful union certifications tripled.[36] NAFTA-style deals also dampen middle class wages by forbidding federal and state governments from requiring that U.S. workers perform the jobs created by the outsourcing of government work. "Anti-off-shoring" policies, Buy American procurement provisions and prevailing wage laws (designed to ensure goods wages for construction work) are subject to challenge in foreign tribunals for violating trade agreement rules. Even proponents of NAFTA admit that such trade pressures have likely contributed to today's historic degree of inequality. The pro-NAFTA PIIE has estimated that as much as 39 percent of the observed growth in U.S. wage inequality is attributable to trade trends.[37]

Wage losses outweigh cheaper prices under NAFTA. Many proponents of NAFTA-style trade acknowledge that it will cause the loss of some American jobs, but argue that U.S. workers still win overall by being able to purchase cheaper goods imported from abroad. First, this promise has failed to materialize for many critical consumer items, such as food. Despite a 188 percent rise in food imports from Canada and Mexico under NAFTA,[38] the average nominal price of food in the United States has jumped 63 percent since the deal went into effect.[39] Second, even those reductions in consumer goods prices that have materialized have not been sufficient to offset the losses to wages under NAFTA. The Center for Economic and Policy Research discovered that when comparing the lower prices of cheaper goods to the income lost from low-wage competition under current trade policy, the trade-related losses in wages outweigh the gains in cheaper goods for the vast majority of U.S. workers. U.S. workers without college degrees (over 65 percent of the workforce) have likely lost an amount equal to 12.2 percent of their wages under NAFTA-style trade even after accounting for the benefits of cheaper goods, meaning a net loss of almost $3,300 per year for a worker earning the median annual wage of $27,000.[40]

Devastation of American manufacturing erodes the tax base that supports U.S. schools, hospitals and essential infrastructure. Since NAFTA's implementation, over 60,000 manufacturing facilities have closed.[41] The loss of these firms and erosion of manufacturing employment means there are fewer firms and well-paid workers to contribute to local tax bases. Research shows that a robust manufacturing base contributes to a wider local tax base and offering of social services.[42] With the loss of manufacturing, tax revenue that could have expanded social services or funded local infrastructure projects has declined,[43] while displaced workers turn to welfare programs that are ever-shrinking.[44] This has resulted in the virtual collapse of some local governments in areas hardest hit.[45] Building trade and construction workers have also been directly impacted both by shrinking government funds for infrastructure projects and declining demand for maintenance of manufacturing firms.

Flood of Unsafe Imports

NAFTA undermines safety standards for imported food. Since NAFTA was enacted, imports of food from Canada and Mexico have surged 188 percent.[46] NAFTA required the United States to replace its long-standing requirement that only meat and poultry meeting U.S. safety standards could be imported. Under this standard, only meat from plants specifically approved by U.S. Department of Agriculture (USDA) inspectors could gain access. NAFTA required that meat and poultry for all facilities must be provided access if Mexico and Canada could show that their overall safety and inspection systems provide "equivalent" levels of protection, even if core aspects of U.S. food safety requirements were not met. "Equivalence" was not defined in NAFTA. The resulting equivalence determinations have allowed meat imports even after infrequent USDA spot checks of a sample of Canadian and Mexican processing plants found major health threats.[47] Despite such threats, under NAFTA U.S. consumers are eating increasing quantities of meat imported from Mexico and Canada. For instance, U.S. beef imports from both countries have risen 130 percent since NAFTA took effect – Americans now consume about $1.3 billion worth of imported NAFTA beef each year.[48]

Surging food imports overwhelm food inspections. A dangerous side effect of the flood of imports has been the inability of U.S. inspectors to ensure the safety of the food supply. The Food and Drug Administration only inspects 1.5 percent of the food imports that it regulates (vegetables, fruit, seafood, grains, dairy, and animal feed) at the border. Imported seafood rates are even lower, with FDA checking only 0.1 percent of imported seafood for drug residues.[49] Only 9 percent of beef, pork, and chicken is inspected at the border by the USDA.[50] Among the most notorious NAFTA-related food borne illness outbreaks was the hepatitis-A infection of Michigan schoolchildren and teachers in 1997.[51] A severe hepatitis-A outbreak related to strawberries imported from Mexico resulted in 163 children and teachers becoming ill, several seriously.[52]

Loss of Family Farms

NAFTA fails to deliver on promises to farmers. U.S. agriculture was supposed to be the sector with the most to gain from NAFTA.[53] However, family farmers have seen rising trade deficits and declining profitability in many of the years following NAFTA. The average annual trade deficit in agricultural goods with Canada and Mexico in the five years before NAFTA nearly tripled (a 174 percent increase) in the five years after the deal took effect. The average annual agricultural deficit under NAFTA's first nineteen years was $800 million, more than twice the pre-NAFTA level.[54] High imports and lackluster exports under NAFTA have particularly wracked family farmers in some sectors. For example, while total U.S. vegetable imports from Canada and Mexico have more than tripled (a 237 percent increase) under NAFTA, U.S. vegetable exports to NAFTA partners have remained comparably flat (a 67 percent increase). The U.S. vegetable deficit with Canada and Mexico has soared to $3.6 billion, more than eight times the pre-NAFTA level.[55] Since NAFTA took effect, about 170,000 small family farms have gone under – a 21 percent decrease in the total number.[56]

Pork and beef suffer under NAFTA. Proponents of NAFTA claimed that pork and beef would do particularly well under NAFTA.[57] However, U.S. exports of beef and pork to Mexico in the first three years of NAFTA were 13 percent and 20 percent lower, respectively, than beef and pork exports in the three years before NAFTA.[58] The 50 percent devaluation of the Mexican peso against the U.S. dollar after NAFTA went into effect staunched the flow of these goods into Mexico.[59] Although policymakers should have learned the lesson and inserted provisions against currency manipulation in subsequent trade agreements (NAFTA did not have any), the Korea FTA passed in 2011 also did not discipline currency manipulation, even though Korea is one of only three nations to have ever have been officially certified by the U.S. Treasury Department as a currency manipulator.[60] In the first nine months of the Korea FTA, U.S. beef exports to Korea declined by 11 percent in comparison to the same months in 2011, while U.S. pork exports to Korea fell by 17 percent – a combined loss of $96 million in U.S. exports.[61]

Corporate Attacks on Public Interest Laws

NAFTA grants multinational corporations new privileges and an extreme enforcement process. NAFTA included an array of new investment privileges and protections that were unprecedented in scope and power. NAFTA elevates foreign investors to the level of sovereign signatory governments, uniquely empowering corporations to skirt domestic laws and courts and privately enforce the terms of the public treaty by directly challenging governments' public interest policies before World Bank and U.N. tribunals. The tribunals are comprised of three private sector attorneys, unaccountable to any electorate, who rotate between serving as "judges" and bringing cases for corporations against governments.[62] This process is called "investor-state" enforcement. Only commercial interests have standing to challenge government policy, not unions or consumer groups. Despite being embedded in a "trade" agreement, NAFTA's sweeping investor privileges have nothing to do with the flow of goods across borders. Ostensibly, this investor-state regime was intended to provide foreign investors a venue to obtain compensation when their factory or land was expropriated by a government that did not have a reliable domestic court system. However, the actual NAFTA provisions expand far beyond that reasonable safeguard, providing foreign investors extreme privileges not available to domestic firms, and creating incentives to offshore investments to gain the new privileges. For example, the new protections include a guaranteed "minimum standard of treatment" that host governments must provide, which investor-state tribunals have increasingly interpreted as a foreign investor's "right" to a regulatory framework that conforms to their expectations.

Corporate demands for taxpayer compensation surge. Foreign corporations have launched investor-state attacks on a wide array of consumer health and safety policies, environmental and land-use laws, government procurement decisions, regulatory permits, financial regulations, and other public interest polices that they allege as undermining "expected future profits." The number of investor-state cases has soared over the last decade – in 2011 the cumulative number of launched investor-state cases was nine times the cumulative investor-state caseload in 2000, even though treaties with investor-state provisions have existed since the 1950s.[63] When the foreign investor wins a case, the government must hand the corporation an amount of taxpayer money decided by the tribunal as compensation for the offending policy. There is no limit to the amount of money tribunals can order governments to pay corporations, and there are very limited appeal rights. Foreign firms have won more than $340 million taxpayer dollars thus far in investor-state cases brought under NAFTA. Of the more than $12.3 billion in the 14 claims still pending under NAFTA, all relate to environmental, energy, land use, public health and transportation policies – not traditional trade issues.[64]

NAFTA cases target health laws, environmental regulations and even the behavior of government officials. The U.S. Ethyl Corporation used NAFTA's investor-state system in the late 1990s to reverse a Canadian environmental ban of the carcinogenic gasoline additive MMT, also banned by numerous U.S. states, while also obtaining $13 million in compensation from the Canadian government.[65] In another infamous NAFTA case, a Mexican municipality's refusal to grant the U.S. firm Metalclad a construction permit, which it had also denied to the contaminated facility's previous Mexican owner (until and unless the site was cleaned up), resulted in $15.6 million in compensation being paid by Mexico.[66] A British Colombian official's rude conduct was the target of another NAFTA investor-state challenge launched by the U.S. Pope & Talbot firm. The corporation sought over half a million in compensation for the official's rudeness, which a tribunal deemed a violation of NAFTA's guaranteed minimum standard of treatment.[67] Of the 70 investor-state cases launched under NAFTA, foreign investors have won 10 cases, governments have won 17 cases and the rest are pending or have otherwise finished.[68] Recently filed cases include U.S. corporate attacks on a Canadian province's ban on fracking and Canada's revocation of a drug patent for a medicine that its courts found to not deliver on the promises used to obtain monopoly patent rights. Canadian financial interests, meanwhile, have threatened to challenge elements of the U.S. Dodd-Frank financial regulation.

NAFTA threatens green jobs programs. As governments have come to recognize the necessity of supporting renewable energy generation and creating green jobs, corporations have started using NAFTA's backdoor investor-state system to try to undermine these policies. In July 2011, U.S.-based Mesa Power, LLC announced that it would challenge a successful Ontario renewable energy program under NAFTA.[69] Under the new program, which has already created more than 20,000 jobs, renewable energy companies have committed over $20 billion to clean energy investments.[70] Michael Eckhart, President of the American Council on Renewable Energy, called the program part of "the most comprehensive renewable energy policy entered anywhere around the world."[71] Despite wide praise for this leading effort to combat climate change and support green jobs, Mesa Power is now using NAFTA to undermine the program and demand $775 million in taxpayer compensation.[72]

Investor-state attacks force costly defense of U.S. policies. Although the U.S. government has had to expend tens of millions in legal expenses to defend against NAFTA investor-state cases, thanks to technical errors by the lawyers representing the foreign corporations, the U.S. government has thus far dodged the bullet of having to pay compensation. For example, in the *Loewen vs. U.S.* case, a NAFTA tribunal ruled against the United States on the merits. It concluded that a Mississippi jury's requirement that a Canadian funeral home conglomerate follow normal civil procedure rules, such as posting a bond to appeal a contract dispute it had lost against a U.S. firm, violated NAFTA investor protections.[73] Luckily for U.S. taxpayers, before the compensation phase could conclude, the Canadian firm's bankruptcy lawyers reincorporated the firm as a U.S. corporation under bankruptcy protection. This eliminated Loewen's status as a foreign investor. When U.S. state laws are challenged under this system, state governments have no standing and must rely on the federal government to defend their laws. If states are invited by federal officials to participate, they must pay their own legal expenses. California has incurred millions in legal costs helping to defend two state environmental laws – a toxics ban and a mining reclamation policy – that were challenged under NAFTA.[74]

The NAFTA Trucks Threat

NAFTA requires access to U.S. roads for trucks without safety or environmental standards. The NAFTA truck saga provides an example of how NAFTA reaches "behind the border" to undermine important domestic environmental and safety policies, and how Congress can lose control of such domestic policies if they are implicated by a trade pact. NAFTA's service sector chapter included a requirement that all three countries' highways be fully accessible to vehicles of trucking companies based in any NAFTA nation by 2000, an item pushed by large U.S. trucking firms seeking deregulation and lower wages.[75] NAFTA also recommended, but did not require, that Mexican and U.S. truck safety, emissions and driver standards be harmonized (i.e. made uniform). That provision had no deadline, nor did it require that Mexican standards be brought up rather than U.S. standards brought down.[76] Post-NAFTA negotiations on the standards issues went nowhere.[77] The U.S. Department of Transportation's Inspector General (IG) conducted studies that repeatedly revealed severe safety and environmental problems with Mexico's truck fleet and drivers' licensing.[78] For instance, Mexico's commercial drivers' licenses permitted 18-year-old drivers and required no medical exam or drug testing. Nor did the government have a system for tracking driver violations, insurance or hours of service. The Clinton administration relied on the IG reports and did not implement the NAFTA trucking rules.[79]

Mexico uses NAFTA dispute to supersede U.S. standards. To enforce its NAFTA-granted rights, Mexico launched a formal NAFTA dispute resolution case. In 2001 a three-person NAFTA tribunal ruled that the United States was required to allow full access to U.S. roads for Mexican-domiciled trucks or face trade sanctions.[80] Shortly after entering office, George W. Bush sought to implement the NAFTA tribunal order.[81] Public Citizen, Sierra Club and a coalition of other consumer, labor and environmental groups successfully sued in U.S. federal court to block the order based on the administration's failure to conduct an environmental impact assessment as required by the National Environmental Policy Act. At issue was the prospect that Mexico-domiciled trucks driving throughout the United States would exacerbate air pollution, since the Mexican truck fleet is older and emits greater quantities of pollutants, including nitrogen oxide and particulate matter.[82] Some U.S. border states supported the suit, as the influx of these trucks was projected to put them out of compliance with the Clean Air Act. This victory for safety and the environment was later overturned by a 2004 Supreme Court ruling.[83] In a chilling ruling with implications for a wide array of domestic policies implicated by NAFTA and other FTAs, the court concluded that the executive branch had significant discretion on this *domestic highway safety policy* because it implicated the president's foreign affairs authority relating to enforcement of an international agreement.[84]

"Pilot" program favors NAFTA compliance over safety and environmental concerns. During Bush's second term, his administration worked with the Mexican government to finalize a controversial pilot program for Mexico-domiciled trucks to be allowed access – despite ongoing safety concerns.[85] A bipartisan coalition in Congress intervened, setting specific safety and environmental conditions that had to be met before the program could go into effect. In response, a private Mexican association of truck drivers launched a case against the United States under the investor-state privileges of NAFTA, demanding $6 billion in damages from U.S. taxpayers for their representatives' failure to implement the

NAFTA "open-border" trucking policy.[86] Meanwhile, environmental and consumer groups filed another lawsuit against the so-called pilot program for its failure to meet basic statutory requirements for a pilot program, such as providing safety data to determine if congressional requirements were met to transition the test period into a permanent policy. The Bush administration implemented its "pilot program" anyway, claiming congressional dictates only applied to a final open border policy, not a test program.

Obama administration caves to Mexico's $2.4 billion NAFTA trade sanctions threat, allows NAFTA trucks to run over safety and health concerns. In March 2009, after years of congressional pressure, President Obama signed into law a bill that ended Bush's 18-month "pilot" truck program. A few days later, Mexico announced that it would impose tariffs on U.S. trade worth $2.4 billion in retaliation. [87] The sanctions initially targeted exports from the states of House and Senate members that had voted in favor of the measure to forbid access until safety and environmental improvements were made.[88] In April 2010, 78 members of Congress, including Rep. Peter DeFazio (D-Ore.), then-Chairman of the Highways and Transit Subcommittee of the House Transportation and Infrastructure Committee, sent a letter to Department of Transportation Secretary Ray LaHood and U.S. Trade Representative Ron Kirk, urging them to negotiate with Mexico to remove the cross-border trucking provisions from NAFTA. They asked the administration to swap improved access in another sector to "buy back" the policy space to maintain U.S. highway safety. Such negotiated compensation is allowed under NAFTA. The administration refused, instead allowing the sanctions to remain in place. Then, in a shocking move, the Obama administration caved to NAFTA in 2011 by signing a deal to allow Mexican-domiciled trucks into the U.S. interior for three years despite the unresolved safety and environmental concerns, thereby imperiling highway safety and clean air for the sake of NAFTA's extreme provisions.[89] The first Mexico-domiciled truck crossed into the U.S. interior in October 2011 without needing to show it was built to U.S. safety standards, while Public Citizen, the International Brotherhood of Teamsters, and the Sierra Club filed a lawsuit to block the dangerous new "pilot" program. The program does not even serve its stated purpose of evaluating the ability of Mexico-domiciled trucks to operate safely in the United States, since there is no plan to collect a statistically valid sample of program participants.[90]

Displacement, Not Development, for Mexico

Rural dislocation under NAFTA encourages immigration. NAFTA promoters claimed that NAFTA would raise the standard of living in Mexico, thereby reducing immigration into the United States. Even then-Mexican President Carlos Salinas claimed NAFTA would reduce the flow of migrants from Mexico into the United States, saying, "Mexico prefers to export its products rather than its people."[91] In reality, as predicted by development groups, NAFTA's agricultural provisions, which removed Mexican tariffs and other limits on corn imports but did not discipline U.S. subsidies, led to widespread dislocation in the Mexican countryside. The price paid to Mexican corn farmers fell by about 66 percent following NAFTA, forcing many to leave their farms.[92] As an exposé in the *New Republic* put it,

> …as cheap American foodstuffs flooded Mexico's markets and as U.S. agribusiness moved in, 1.1 million small farmers – and 1.4 million other Mexicans dependent upon the farm sector – were driven out of work between 1993 and 2005. Wages dropped so precipitously that today the income of a farm laborer is one-third that of what it was before NAFTA. As jobs disappeared and wages sank, many of these rural Mexicans emigrated, swelling the ranks of the 12 million illegal immigrants living incognito and competing for low-wage jobs in the United States.[93]

Under NAFTA, the annual flow of immigrants from Mexico to the United States more than doubled from 370,000 in 1993 (the year before NAFTA) to 770,000 in 2000 – a 108 percent increase.[94] The number of undocumented immigrants in the United States (who are mostly from Mexico and Central America) increased 185 percent since NAFTA and the 2005 Central America Free Trade Agreement (CAFTA), from 3.9 million in 1992 to 11.1 million in 2011.[95] President Obama noted this connection in a *Fortune* magazine interview in 2008:

> Not only did [NAFTA] have an adverse effect on certain [U.S.] communities that saw jobs move down to Mexico, but, for example, our agricultural section pretty much devastated a much less efficient Mexican farming system... As a practical matter, those are millions of people in Mexico who are displaced. Many of whom now are moving up to the United States, contributing to the immigration concerns that people are feeling.[96]

Deteriorating social conditions under NAFTA destabilize Mexico. The World Bank, a major promoter of trade liberalization, estimates that the percentage of Mexico's rural population that earned less than the minimum needed for the basic food basket grew by nearly 50 percent *in the first four years of NAFTA alone*, contributing to rising hunger.[97] Although the price paid to farmers for corn in Mexico plummeted 50 percent after NAFTA, the price of corn-based tortillas – Mexico's staple – did not fall.[98] In fact, the price of tortillas in Mexico skyrocketed by 279 percent in the first ten years of NAFTA.[99] Since NAFTA, Mexico's minimum wage has lost 24 percent of its value in real terms.[100] These impacts brought about by NAFTA have combined to severely weaken the social fabric in Mexico, bringing it closer to the status of a failed state on the U.S. border. A Pentagon report warns that Mexico now "bear[s] consideration for a rapid and sudden collapse."[101]

Surge in Trade Conflicts

NAFTA partners lead the world in trade pact attacks on the United States. Despite claims that NAFTA would help deepen alliances with Mexico and Canada, these two countries are among the top challengers of U.S. policies – not only in NAFTA – but also at the WTO, where Canada has brought three times more cases against the United States than the United States has brought against Canada.[102] (Mexico has brought nine cases against the United States, while the United States has filed six cases against Mexico.) Next to the European Union, Canada has launched more WTO cases against the United States than any other country, while Mexico ranks as the fourth most frequent challenger of U.S. policy in the WTO.[103]

NAFTA countries challenge U.S. consumer protection rules. Among the WTO cases brought against the United States by its NAFTA partners are Canada and Mexico's joint 2009 challenge of a popular U.S. meat country-of-origin labeling policy. The United States instituted the policy so consumers could make informed choices about their purchases of meat. In 2012 Canada and Mexico won the case in a decision by the WTO Appellate Body, meaning that the United States must weaken or eliminate its country-of-origin meat labeling requirement or risk facing trade sanctions from Canada and Mexico. Continuing its attacks on U.S. consumer safety measures, Mexico even joined in on Indonesia's successful WTO attack on U.S. measures to reduce teenage smoking.[104]

NAFTA partners attack label to protect dolphins. Though NAFTA supporters claimed that NAFTA would promote better ties and help the United States avoid a repeat of Mexico's challenge of U.S. "Dolphin Safe" labeling for tuna, Mexico has persisted in its case under the WTO. In 2012 the WTO Appellate Body ruled in favor of Mexico and against the U.S. policy, which simply informs consumers when the tuna they purchase has been harvested with methods that reduce harm to dolphins. Despite the popular label's non-discriminatory application and oft-noted success in contributing to a vast reduction in dolphin deaths, the WTO concluded that the label violates WTO rules and thus must be weakened or removed for the United States to avoid facing trade sanctions.[105]

ENDNOTES

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[104] See WTO, "Oral Statement by Mexico," *U.S. — Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/R, September 2, 2011, Available at: http://docsonline.wto.org/DDFDocuments/t/WT/DS/406R-02.doc
[105] For more information, *see* Global Trade Watch, "Public Citizen Condemns WTO Attack on U.S. Dolphin Protection Efforts," Public Citizen, May 16, 2012. Available at: http://citizen.typepad.com/eyesontrade/2012/05/public-citizen-condemns-wto-attack-on-us-dolphin-protection-efforts.html.