WH – Weiss
NAFTA

During President Trump’s campaign, he ran against the North American Free Trade Agreement (NAFTA) between the U.S., Mexico and Canada, calling it the “worst trade deal ever.”

Pulling out of the 25-year-old trade agreement would be an arduous process and risky for the U.S., but experts say [there is room to renegotiate](https://www.nytimes.com/2017/01/25/upshot/what-can-trump-do-to-overhaul-nafta-quite-a-lot.html) the terms of the deal.

If the Trump administration is going to renegotiate NAFTA, what should and shouldn’t be on the table?

***Directions: See the Assignment sheet.***

**#1:Nafta’s Corporate Goodies Are Its Biggest Problem**

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Decades of Congress [delegating away](http://www.citizen.org/documents/Fast-Track-Book-Apr-2013.pdf) its constitutional trade authority mean President Trump can [unilaterally](http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title19-section4204&num=0&saved=%7CZ3JhbnVsZWlkOlVTQy1wcmVsaW0tdGl0bGUxOS1zZWN0aW9uNDIwNA%3D%3D%7C%7C%7C0%7Cfalse%7Cprelim) reopen the North American Free Trade Agreement for negotiation or create new bilateral deals with Mexico and Canada. He can [sign and enter into deals](http://uscode.house.gov/view.xhtml?hl=false&edition=prelim&req=granuleid%3AUSC-prelim-title19-section4205&num=0&saved=%7CKHRpdGxlOjE5IHNlY3Rpb246NDIwMiBlZGl0aW9uOnByZWxpbSk%3D%7C%7C%7C0%7Cfalse%7Cprelim) before Congress gets a vote and then [force congressional consideration](https://www.gpo.gov/fdsys/pkg/USCODE-1998-title19/html/USCODE-1998-title19-chap12-subchapI-part5-sec2191.htm) in 90 days with amendments forbidden and Senate supermajority rules suspended.

It’s paradoxical that Trump, who pledged to “[get a much better deal for our workers](https://www.donaldjtrump.com/policies/trade)” and withdraw from Nafta if that failed, will benefit from this Fast Track authority that was [narrowly enacted](http://clerk.house.gov/evs/2015/roll374.xml) by [supporters](http://www.usatoday.com/story/news/politics/2015/06/15/capital-download-paul-ryan-trade-deal-obamacare/71261862/) of the trade deals he hates. But to get the trade deficit reduction and job creation Trump promised, a replacement of Nafta would be needed. It won't be fixed by mere tweaks.

Even if Nafta were eliminated, trade would not revert to pre-Nafta tariff levels. The Nafta nations are all World Trade Organization signatories. Current median applied trade-weighted tariff rates are 1 percent for Mexico and Canada and 1.6 percent for the U.S., [according to the World Bank](http://data.worldbank.org/indicator/TM.TAX.MRCH.WM.AR.ZS?order=wbapi_data_value_1999+wbapi_data_value&sort=asc&page=3).

Rather, the target for renegotiation is Nafta’s [expansive non-trade](https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement)terms that determine who wins and loses in the global economy and reflect the interests of the 500 official U.S. trade advisors representing corporate interests enjoying a privileged role in developing past trade deals.

Given that Nafta is packed with these (often protectionist) corporate goodies, wiping the slate clean and creating a new deal is the way to deliver on job creation and deficit reduction goals. Many Nafta terms are non-starters.

[Nafta’s Chapter](https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement?mvid=1&secid=539c50ef-51c1-489b-808b-9e20c9872d25) 11 [promotes offshoring](https://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state) with special protections for firms that relocate. Private enforcement of these privileges, [called Investor State](https://corporateeurope.org/sites/default/files/publications/profiting-from-injustice.pdf) Dispute Settlement, [empowers investors to sue a government](https://www.buzzfeed.com/globalsupercourt) before a panel of [three corporate lawyers](https://corporateeurope.org/sites/default/files/publications/profiting-from-injustice.pdf) to obtain [unlimited sums of money from taxpayers](http://ccsi.columbia.edu/files/2015/05/Investor-State-Dispute-Settlement-Public-Interest-and-U.S.-Domestic-Law-FINAL-May-19-8.pdf) (including compensation for loss of future profits) when firms believe policies in the country to which they have relocated violate Nafta provisions. [Hundreds of millions](http://www.citizen.org/documents/investor-state-chart.pdf) have been paid under this extrajudicial Nafta regime available only to relocated corporations.

Another no-go are [Nafta’s terms](https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement?mvid=1&secid=a550e516-c181-49fc-9176-76db29b2969b) that waive Buy American rules for government procurement. These terms send our tax dollars offshore rather than investing them to create jobs here.

[What terms are necessary](http://jaredbernsteinblog.com/wp-content/uploads/2016/09/The-New-Rules-of-the-Road.pdf)? A Nafta replacement must level the playing field by conditioning trade benefits on improvements in Mexican wage levels and on countries adopting and rigorously implementing policies to fulfill [the International Labor Rights Conventions](http://www.aflcio.org/Blog/Political-Action-Legislation/6-Ways-We-Could-Improve-NAFTA-for-Working-People) and [Multilateral Environmental Agreements](http://www.ciel.org/wp-content/uploads/2015/11/TPP-Enforcement-Analysis-Nov2015.pdf) obligations to which they have committed.

Absent such labor and environmental measures, stronger [rules of origin](https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement?mvid=1&secid=feb541cc-bfc2-4240-829f-b5a7ec26a08a) – requirements for greater North American content in products qualifying for trade benefits – would push more American companies to low-cost Mexico.

A Nafta replacement must also discipline against [trade distortions caused by undervalued currencies,](https://www.theatlantic.com/business/archive/2016/12/trump-trade-deficit/509912/) a factor like labor and environmental costs that can entirely undermine gains other improvements achieve.

Perhaps the only upside to our [$168.3 billion](http://www.citizen.org/documents/Combined-factsheets-on-data-tricks-and-deficits.pdf) NAFTA goods trade deficit ($134 billion, if the service sector surplus is included) is that Mexico and Canada have a greater interest in a new deal than we do.

But Trump still must build House and Senate majorities to enact his promised Nafta redo. And to deliver on his stated goals, it must exclude the offshoring incentives and other elements that most congressional Republicans and their [corporate allies](https://www.uschamber.com/sites/default/files/150519_coalition_supportofinvestmentrulesintpa_senate.pdf)support. That means not alienating congressional Democrats who for [decades](https://www.congress.gov/bill/111th-congress/house-bill/3012/text) have promoted Nafta [alternatives](https://delauro.house.gov/sites/delauro.house.gov/files/Trump-NAFTA-Letter-1-3-17.pdf) to expand trade without undermining American jobs and wages, access to affordable medicine, food safety or environmental protections.

Many congressional Republicans and the corporations view Nafta renegotiation as a means to [revive aspects of the Trans-Pacific Partnership](https://www.washingtonpost.com/blogs/plum-line/wp/2016/12/28/shocking-but-true-corporate-elites-think-trumps-trade-agenda-might-help-them/?utm_term=.a68926bdf049), including limits on generic competition that lowers medicine prices. Including this would gut [Democratic support](http://keionline.org/sites/default/files/24July2015-11-pro-tpa-dems-TPP-a2m.pdf).

If corporate elites shape Nafta renegotiations, the resulting deal could not only be more damaging to working people, but — like TPP — impossible to enact.

Miscalculation about what terms make for a politically viable Nafta replacement could make withdrawal – which Mr. Trump could do [unilaterally](https://www.nafta-sec-alena.org/Home/Legal-Texts/North-American-Free-Trade-Agreement?mvid=1&secid=d5a8ba07-1fb2-4f28-88d0-a8eac08611a2) — the only option.

**#2: Improved Workers’ Rights for Mexicans Will Benefit Americans**

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The real tensions over the North American Free Trade Agreement (Nafta) concern U.S.-Mexico trade. A key goal ought to be getting a better deal for American workers and the best route to that is improving conditions for Mexican workers on both sides of the border. We can embrace trade, engage the global economy and prosper together.

When Nafta was debated over two decades ago, worker rights and environmental standards were by far the most contentious issues. The deep concern was that high productivity and quality in Mexico — combined with low wages — would prove irresistible for U.S. production. In fact, that is what happened. Even the threat of moving plants to Mexico served to depress U.S. wages.

Merchandise trade between the two countries [soared six-fold](https://www.census.gov/foreign-trade/balance/c2010.html) to $480 billion in 2015 as a small U.S. trade surplus morphed into a $110 billion deficit. The U.S. [lost 850,000 jobs](http://www.epi.org/blog/fast-track-to-lost-jobs-and-lower-wages/) as a result between 1993 and 2013, according to the Economic Policy Institute.

Pundits tend to treat low wages in Mexico as a given. They’re not. They reflect government and corporate policy to attract investment through depressed wages. A convoluted, at times corrupt, labor relations system makes it virtually impossible to form independent unions in the export sector.

After World War II, strong U.S. unions forged a link between rising productivity and wages. The result was a rapidly growing economy and a middle-class society from which businesses as well as workers benefited. In Mexico, a lack of labor rights has fractured that link. As a result, Mexican [manufacturing productivity](http://clas.berkeley.edu/research/trade-nafta-paradox) rose 80 percent between 1994 and 2011 while real compensation dropped almost 20 percent. Not only did the benefits largely bypass Mexican workers, their depressed wages set a new competitive standard for U.S. workers as well.

President Trump has stated often that inept negotiators made Mexico a winner and the U.S. a loser during the writing of Nafta. The reality is that Nafta provided considerable benefits to investors and transnational firms on both sides of the border while gains bypassed Mexican workers and the fallout damaged workers and communities in both countries.

Many things need to be renegotiated in Nafta — from environmental standards to dispute settlement panels. A reform of core labor rights — the ability to form independent unions and bargain collectively — is essential prior to the full provisions of the agreement being implemented. Anything less will prove more cosmetic than substantive.

Effective labor rights in the export sector would clearly benefit Mexican workers. The flip side of this would be higher purchasing power, stronger economic growth and more imports from the U.S. It could move both countries toward a more balanced trading relationship, and relieve a fierce downward pressure on U.S. wages and manufacturing jobs.

**#3: End Patent and Copyright Requirements in Nafta**

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The trade deals negotiated in the last quarter century are becoming less focused on traditional trade barriers like tariffs and quotas. Instead, they are imposing a regulation structure on the parties, which tend to be very business oriented. In many cases, the rules being required under the trade deals would never be accepted if they went through the normal political process.

The renegotiation of the North American Free Trade Agreement allows the United States, Canada and Mexico to get rid of rules that have no place in trade deals. At the top of this list is the Investor-State Dispute Settlement (I.S.D.S.) tribunals. These tribunals operate outside the normal judicial process. Their rulings are not bound by precedent, nor are they subject to appeal. Also, they are only open to foreign investors as a mechanism to sue member governments.

These tribunals can be used to penalize governments for measures designed to protect the environment, consumers, workers or to ensure the stability of financial institutions. TransCanada, the company that had been building the XL pipeline, gave us an example of how these tribunals can be used. It initiated a suit after President Barack Obama decided to cancel the pipeline. It is likely that we would see many more suits in the future using the I.S.D.S. tribunals if they are left in Nafta and other trade deals.

The other non-trade elements that should be removed from Nafta are the provisions requiring strong patent and copyright protection. These 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. The impact of these protections is especially pernicious in the case of prescription drugs.

Drugs that would be readily available in a free market can be prohibitively expensive because of patent protection. 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.

While companies need an incentive for innovating, there are far more efficient mechanisms than patent monopolies. It doesn’t make sense for a 21st century economy to be dependent on this relic of the feudal guild system for supporting innovation.

Ending the patent and copyright requirements in Nafta would be a good first step. We need a fuller debate on modernizing our systems for financing innovation and creative work.

**#4: President Trump Should Not Renegotiate Nafta**

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There is no reason to renegotiate Nafta. The agreement is not perfect, nor was it perfect in 1994, but if you consider all the evidence of the impact of Nafta on the U.S. economy, it turns out the agreement has achieved its intended objectives and is actually a very good deal.

Although the agreement did lead to some plant closings and layoffs in some industries, it also led to expansions in others. It did not increase unemployment in the long run and actually increased productivity. Although Nafta did not stop the decline in manufacturing output and jobs in the U.S., the decline has more to do with a shift to service-based economies than with the trade deal. Strong and productive value chains require low trade barriers between countries and Nafta facilitated that.

An outright withdrawal from Nafta would be extremely disruptive and damaging to the U.S. and to the North American economies. It would damage American manufacturing and service sectors and significantly disrupt financial markets. About five million American jobs are directly tied to trade with Mexico. And nine million American jobs are tied to trade with Canada.

Renegotiating a complex agreement like Nafta will lead to considerable uncertainty during the negotiations and involve too much time and effort dealing with all the gripes and grievances among the three countries. And remember, the previous negotiations on Nafta took over three years to complete.

Rather than open up that can of worms – and risk the possibility that one or more of the parties will walk away – it would be better to work together to update and improve certain elements of the agreement.

And actually, all three countries just completed an extensive negotiation that did precisely this. It also involved nine other countries. The Trans-Pacific Partnership was an ambitious agreement that brought provisions in Nafta up to date and improved upon the agreement. The T.P.P. was exactly what we needed to address some of the outdated and poorly conceived aspects of Nafta. President Trump made a grave mistake in pulling out of that deal. Let’s hope he doesn’t do the same with Nafta.

**#5: Eliminate Nafta Provisions That Protect Polluters**

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Nafta has put the environment of all three countries in danger. Canada, Mexico and the United States would benefit enormously from getting rid of [Chapter 11](http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/disp-diff/nafta.aspx?lang=eng), which has been used by corporations to challenge environmental rules and local control of natural resources. Here in Canada, it has been used to challenge bans on the cross-border trade in a dangerous gasoline additive, and on P.C.B. waste and fracking near the St Lawrence River.

For our continent to meet its Paris climate commitment, the energy provision of Nafta also must go. Under that provision, Canada gave up its sovereign control of Canadian energy supplies and signed a “proportionality clause” that means it must continue to supply the U.S. with its dwindling oil and gas supplies, or pay to conserve by cutting its own energy use. This has led Canada to expand the climate-harmful Alberta tar sands and promote pipelines such as Keystone XL that would endanger the continent’s water sources by carrying the dirtiest oil on earth.

Water is also at risk under Nafta. Water in all but its natural state is a “tradable good,” meaning that once commercial exports of water commence, there would be no turning the tap off. Massive water trade of this kind would be very expensive and controlled by corporations more interested in profit than human rights. Like the rest of the world, North America has a water crisis and needs the kind of cross-border cooperation that conserves water and protects it as a human right and public trust. This must be built into a new agreement.

**#6: Keep the Trade Deal; the U.S. Needs Mexico to Prosper**

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The United States-Mexico relationship is more complex than Nafta. For half a century, starting with the end of the Mexican Revolution in the 1930’s, Mexico’s authoritarian governments saw and used the United States as Mexico’s enemy to bolster legitimacy internally. In the 1980s, after a series of financial crises, Mexico came to terms with its northern neighbor and the two nations – led by presidents George H.W. Bush and Carlos Salinas – came to an understanding. They agreed to a framework based on cooperation and a commitment to addressing common problems; ever since, the two nations have integrated their security structures and their economies.

Mexico has gone a long way in reforming its economy and Nafta is a critical part of that process. There are plenty of issues Mexico needs to address in order to become a full democracy, and it is here where Nafta is most important. A stable, prosperous Mexico is critical to both Mexican and American interests and security. Nafta is far more than a trade agreement — it is Mexico’s engine of growth. It needs upgrading and updating, and that is exactly what happened during the negotiations that took place in the context of Trans-Pacific Partnership. But it is also crucial to regional stability, which is in the U.S.’s interests.

Nafta does not confer on Mexico any advantages or privileges. It is a symmetrical arrangement in which Canada, Mexico and the U.S. are equal partners. There is, however, a big asymmetry in the importance of the trade agreement to each nation: Even though certain industrial sectors profit enormously thanks to their Mexican business interests, Nafta’s impact on the U.S. is relatively minor. The opposite is not true: The impact of U.S. economic and political decisions in regarding Mexico can be extraordinary, as witnessed by the devaluation of the peso over the last few months.

Mexico has been a willing and cooperative partner of the U.S. for three decades now — to the benefit of both nations. Let’s keep it that way.