

Mexican civil society platform on the start of the renegotiation of NAFTA

We reject NAFTA and its renegotiation.

Not in our name. The current Mexican government lacks social backing and legitimacy to negotiate our future

No to deepening the failed model of free trade

For a different model of cooperation and complementarity among the peoples of the United States, Canada and Mexico

Accelerated NAFTA negotiations imposed mainly by Trump are, on the part of Mexico, a surrender.

Mexican negotiators are so fixated on keeping NAFTA and completing its modernization before entering fully into the electoral cycle that they are willing to give in to any demand of the US government and transnational corporations. They sell us the idea that if NAFTA is canceled it would be a catastrophe for Mexico. It is true that the Mexican economy is broadly tied to the US, but precisely because of this, if NAFTA ends, this relationship [with the United States and Canada] would not change overnight; there will be time to rethink the kind of relationship that Mexico really needs. The only thing that would change is that it [the termination of NAFTA] would end the super-privileges currently enjoyed by transnational corporations. Even without these privileges their relationship with Mexico will continue to be good business, so they will not leave. Without NAFTA, the obstacles to regulate these relationships so there are more benefits for Mexico would be removed, while transitioning to an economic model that is less dependent on foreign entities.

[President Enrique] Peña Nieto does not represent us to negotiate our future. He does not have the legitimacy to negotiate on our behalf. According to a survey by Parametria on March 29, 2017, published by the business magazine *Expansion*, just 4% of Mexicans strongly approve of the President and another 11% approve "a little," which is to say that 85% do not approve. Among the business sector, 7 out of 10 corporate executives do not approve of his administration (KPMG Consultation held in November-December 2016).

Negotiations that could determine our future should not be held in secret. The Mexican government seeks to justify its policy of secrecy as a negotiating strategy ("not show its cards to cards to U.S. and Canadian negotiators" ("no revelar a las contrapartes sus cartas" (<http://www.eluniversal.com.mx/articulo/cartera/economia/2017/07/27/>)). They even refuse to make public the goals and red lines that will guide the negotiations. That is unacceptable. We demand that the roadmap and terms of negotiation be made public and that final approval is not reached without a thorough discussion by all sectors of the population. The current government is interested only in hearing the views of NAFTA's beneficiaries, who are just a few big businesses and the government even makes them co-participants in the negotiations. The last straw is that they have even consulted representatives of foreign businesses with investments in Mexico that could be affected by the negotiations, and invited them to be co-participants in the negotiations. The main group excluded from the negotiations is the Mexican people and their organizations, as well as the bulk of national business. It is a mockery that compared to dozens of meetings with business leaders and their direct participation alongside the negotiating table, the participation of the Mexican people and their organizations is only through an alleged electronic consultation composed of general questions. There is no guarantee that

the views of Mexican people and businesses will be taken into account. **The undersigned organizations strongly reject this pseudo consultation process. We demand a transparent and democratic negotiation with a broad discussion informed by all sectors of the population and their organizations, as well as active support during the debate and approval by the Senate of the Republic.**

These aforementioned facts represent a great danger to Mexico: a government without legitimacy, obsessed with a treaty that has benefited only a small minority; a government, pressured by forthcoming elections, that is willing to accept any proposal from Trump in a submissive and servile way; and to top it off, a government that negotiates in secret. These are the worst conditions for negotiating and in themselves announce the continuation of the catastrophe that the Mexican people have endured under 23 years of NAFTA. To these three facts must be added an aggravating fourth factor: the widely known and analyzed characteristics and positions of the President of the United States. **Only a broad united mobilization of the Mexican people and their organizations, in partnership and coordination with similar coalitions in the United States and Canada (as already agreed in the trinational meeting held in Mexico on May 26-27, 2017), can prevent this catastrophe that would mortgage our peoples' futures to corporate projects.**

We do not accept the false choice between nationalism and free trade. We seek a new way to integrate into the global economic dynamics for the benefit of all peoples and the planet. We cannot trust our future to the supposed invisible hand of the market, which, in reality, is not invisible and has a name: the big corporations that dominate the market and have put at risk the very survival of human life on our planet.

We believe in an [economic] integration arising from the peoples, a globalization for justice, equality, democracy, peace and care of the environment. We seek new relationships in North America, negotiated from different parameters and principles. This will not be achieved by making "adjustments" or "modernizing" NAFTA, incorporating the supposed advances negotiated in the failed Trans Pacific Partnership (TPP) as confirmed both in the [negotiating objectives] document that President Trump sent to the U.S. Congress, and in the similar document that the Pena Nieto administration delivered to the Senate of the Republic.

We propose a new agreement based on cooperation and complementarity, not greater deregulation to leave everything in the hands of the market. At the same time, we propose to strengthen the domestic economy and diversify our relations with other countries.

It is not reasonable to expect the current Mexican government -- which clearly intends to deepen an [economic] integration model that it leaves to the market to determine, but which has already shown its failure and has benefited only a very small group of Mexican businesses associated with large global companies -- to negotiate a better agreement for the benefit of all Mexicans. Nor can we expect Trump, who has appointed a cabinet largely made up of big business promoters of free trade, to negotiate a better deal for the people of the United States. The peoples of the three countries have opposed NAFTA for 25 years, recently rejected the TPP (which is the basis for updating NAFTA) and now oppose a renegotiation of NAFTA under the same orientation that has already demonstrated such negative effects for our three peoples.

In this context, we demand that the Mexican government seek an agreement not guided by the ideology of free trade, but instead a Complementarity and Cooperation Agreement in North America

that benefits the peoples of the three countries. If the US government does not accept this negotiating framework, we should not be afraid if NAFTA ends. It is better to have no agreement than a worse agreement.

Certainly, Mexico is terribly economically dependent on the United States but, as the Mexican government itself recognizes, a possible future cancellation of NAFTA does not mean that Mexico's vaunted participation in global supply chains (which furthermore has not brought widespread benefits) would end overnight or that from one day to the next all foreign investment would leave the country. What will change are the rules of the game and with them the excessive privileges that NAFTA has meant for big corporate capital. There will be time to reach consensus on a new development model and a new form for Mexico's participation in the global economic dynamics, for which very well-developed proposals already exist.

WE PROPOSE THE FOLLOWING AS GUIDING PRINCIPLES FOR A NEW RELATIONSHIP IN NORTH AMERICA (AND WITH THE WORLD):

1. Any agreement must respect the national sovereignty of the three countries and recognize the right to self-determination in their development policies with justice and sustainability. This implies at least the following:

- a) The exclusion of any supranational dispute settlement mechanism such as those included in Chapter XI and XIX of NAFTA or the so-called Investment Court System proposed in the treaty between Canada and the European Union. Investors, both domestic and foreign, must be guaranteed legal certainty, i.e. clear rules, but **not** be granted extreme privileges or rights, including supra-national tribunals held behind closed doors (as at the World Bank ICSID) to settle disputes.
- b) No agreement should limit the sovereignty to define foreign policy, including trade or investment issues. Any trade and investment agreement must exclude the so-called "most favored nation" principle (i.e. the right of any member country in any commercial or investment agreement to receive the same concessions made to a "partner" country).
- c) The exclusion of the so-called "National Treatment" principle, i.e., the treatment of foreign goods, services or investment as if they were domestic.
- d) Any negotiations must recognize the asymmetries among the signatory countries and maintain the principle, still in force at the World Trade Organization, of Special and Differential Treatment for less developed countries.
- e) Any agreement must safeguard the right to protect and promote national culture, including the existing multiculturalism in each country. This safeguard does not preclude exchange, dialogue and enrichment with other cultures; but the agreement must privilege and promote national culture as the source of identity and national sovereignty. The so-called "cultural industries" should not be included in any trade and investment agreement.

- f) Public enterprises, as well as public procurement and government contracts, should not be subject to any supranational commitments or regulation. The government must retain regulatory capacity for the public good and not only to maximize private profits.

We therefore reject the Mexican government's intention to include petroleum in the renegotiation of NAFTA. The sovereign right to define our own energy policy must be made explicit, emphatically excluding any energy annexation. Energy sovereignty must be safeguarded in order to prioritize supplying the domestic market and to define a policy to transition to renewable, decentralized, and sustainable energy sources with respect for human rights in that transition. A sovereign energy policy must also seek to reduce per capita energy consumption. Technologies that harm the environment and human health, such as fracking, must also be excluded from NAFTA. The same exclusions [in public procurement and government contracts] must apply to other strategic sectors, such as telecommunications, public services and the digital realm.

- g) Nations must be able to retain the possibility of an economic and industrial policy that meets the needs of the domestic market and fosters high national content and domestic value added to exportable products. In order to do this, the rules of origin necessary for export tariffs should require national content, not just regional content.
- h) Each country should be able to exclude from free trade such products as it deems appropriate, so that all negotiations should be based on positive lists (i.e. only goods or services that are explicitly named are included, rather than negative lists, in which everything, except what is explicitly excluded, is included).
- i) In terms of foreign investment, any treaty should:

- Preserve the possibility of including performance requirements in the authorization of foreign investment.
- Safeguard the possibility of implementing capital controls to prevent massive flights of speculative capital that cause financial crises. These controls also serve to ensure that portfolio investments entering a country contribute to economic development by requiring a minimum time spent in the host country.
- Nothing should prevent privileging investments that are productive, that respect the environment and that discourage speculation. To do this, we must implement taxes on financial transactions and implement controls on massive capital outflows, thus preventing recurrent crises and instabilities. It is necessary to ensure that "productive" investments do not destroy the environment or the livelihoods of diverse communities, such as occurs, for example, with extractive industries. In the case of mining, Canadian investments deserve particular attention, given the increases that have occurred under NAFTA and the enormous social impacts they have caused. (Currently at least 709 cases of criminalization and harassment against defenders of the environment are attributed to at least thirteen Latin American countries, including Mexico).

- Maintain the possibility of developing and implementing national and/or regional regulations and policies that favor investments that contribute to the national development plan and discourage those that violate the public interest; that allow for combining the rights of nature with social rights and inclusive well-being; that give priority to new productive investments in strategic sectors according to each country's development strategy, contributing to the generation of employment and technological development.
- i) Nothing in trade treaties must limit the state's ability to curb tax exemptions and facilitate taxation. It is imperative to improve enforcement mechanisms not only to prevent money laundering, but also the control of illicit flows and tax evasion and to end tax havens and the lack of transparency over real earnings. Prohibitions on capital controls in NAFTA and other agreements contribute to facilitating illicit capital flight, escaping control both in the country of origin and the receiver through various methods provided by the deregulation imposed by FTAs.
 - j) Regarding agriculture, Mexico must guarantee food sovereignty and security and exclude basic grains, especially corn and all products indispensable to guarantee those objectives. Transgenic crops should be excluded and the precautionary principle should be followed regarding the threat of genetically modified seeds to health and the environment. In the case of corn, in particular, imports must be prohibited, since NAFTA is responsible for the contamination of native corn varieties with transgenic crops in many states of the Republic, which are the center of origin and biodiversity of corn. The right to information must be applied through labeling that indicates which [food] products contain transgenics. Likewise, the ability of nation states to promote sustainable agriculture must be maintained. In addition, keep Mexico's accession to UPOV 1978 Act and reject the commitment to adhere to UPOV 1991 Act, as was sought of Mexico in the TPP.

2.- Any agreement must guarantee the full validity of all human rights. This implies at least the following:

Include a good "democratic clause," not as the one in the FTA between Mexico and the European Union, which has no implementation mechanisms and enforcement sanctions. The logic of the free trade agreements is incompatible with international human rights law, as stated by a notable, prominent and prestigious group of United Nations experts and special rapporteurs on human rights. They issued a strong challenge to the signatory governments to the TPP¹ because the obvious contradictions between the previously attached, signed and ratified commitments in the

¹ Mandates of the Special Rapporteur on cultural rights, of the Independent Expert on the promotion of international democratic and equitable order; of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; of the Special Rapporteur on all people enjoying the highest possible level of physical and mental health; of the Special Rapporteur on the rights of indigenous peoples; of the Independent Expert on human rights and international solidarity; of the Special Rapporteur on the right to privacy: Reference: ALCHL2/2016: 20 April, 2016 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/151/22/PDF/G1615122.pdf?OpenElement>

international legal system on human rights and the clauses of each of the chapters of the TPP, which has been proposed as the basis for the purported modernization of NAFTA.

We demand that the three countries support the United Nations negotiations for a binding treaty for transnational corporations on human rights, which is currently being negotiated in Geneva. Any agreement negotiated in North America must include a clause explicitly requiring global corporations to submit to international human rights law.

- a) The negotiation process of any agreement must be done with full respect for the right to prior information and consultation of all sectors of the population. For this reason, the negotiating process must comply with at least:
 - The publication of the proposals submitted by the Mexican negotiators immediately after having presented them to the other parties within the negotiation and the opening of these proposals to discussion and public dialogue;
 - the publication of the reports on the meetings that are carried out as part of the negotiation, containing the proposals presented by each party, agreements reached, as well as a list of those attending all such meetings and the economic sector or association of the listed attendees;
 - the development of independent analyses on the benefits and costs of the entry into force of the treaty: these analyses are considered in making decisions about treaty provisions;
 - the appointment of an independent state body responsible for complying with these and other transparency measures that may be adopted in the treaty negotiation process.

- b) Any trade or investment agreement must fully adhere to international agreements such as the Paris Climate Agreement, the Convention on Biological Diversity, the Agenda for Sustainable Development 2030, the General Comment 24 of the United Nations Committee on Economic, Social and Cultural Rights and the Guiding Principles on Business and Human Rights of the UN, rather than undermining or ignoring those agreements. The trade and investment agreements should also help to fulfill Mexico's Intended Nationally Determined Contributions (INDCs) in reducing climate-damaging emissions. Free trade is one of the major contributors to global warming or climate disaster due to excessive use of transportation. The fight against climate change is incompatible with the ideology of free trade, which postulates leaving as much as possible of the social and economic dynamics to the logic of the market and profit. Moreover, even if that fight were consistent with mercantilist logic and the producer or importer were to pay the cost of environmental damage, it [a trade policy to achieve the INDCs] would recognize that domestic production is cheaper and would favor production as close as possible to the consumer rather than privileging imports.

Furthermore, the trade and investment treaties must define the precautionary principle as a legal obligation to protect public health and the environment, which all the parties to the agreement must implement. These agreements must enforce standards and ensure protection of the environment, potentially affected communities, consumers and workers, health and public services.

Trade and investment agreements should distinguish among traded goods based on how those goods are produced or harvested, captured, or extracted, as well as regulate and provide mechanisms to prevent the adverse impacts of production systems on human rights and the

environment. The agreements should also promote the labeling and traceability of products, services and investments.

- c) The three countries should ratify and submit to Convention 169 of the International Labor Organization and not barter away in NAFTA domestic laws critical to realizing this fundamental right to free, prior and informed consent. Ratifying ILO 169 means that, before any investment project or development is undertaken, independent evaluations with the participation of possibly affected communities are carried out. These evaluations would include studies of environmental, social, economic and cultural impacts of the proposed investments and development projects.
- d) Public services, especially those related to human rights (water, health, education, etc.) should be excluded from deregulatory logic and from free trade. Therefore, any negotiations on services should be based on positive lists. Any new treaty should recognize that the right to health, education, information and other human rights shall take precedence over the rights of intellectual property and the interests of investors in maximizing benefits.
- e) Any agreement on trade and investment should include a binding labor chapter, but this chapter is not enough. The totality of what is agreed in the remainder of the treaty must be consistent with the possibility of an economic model capable of generating enough good jobs. It is of little use to safeguard labor rights if there are few jobs. The labor chapters of existing free trade agreements (including the TPP, which is presented as the most advanced) are only intended to prevent low wages and working conditions from enabling unfair competition. These chapters remain focused on the rights of capital to ensure competition and not on workers' rights. The labor chapter must be binding and subject to sanctions for violations, but sanctions must not only discourage unfair competition but instead benefit workers.

The labor chapter must start from the three countries signing and ratifying all ILO core conventions, not just the generic form found in the 1998 Declaration. The chapter should also include all of the technical annexes and the jurisprudence of those agreements that give them concrete content and make them verifiable and subject to sanctions. Any labor violation should be subject to sanctions, not only those that enable the dumping of traded goods. The TPP labor chapter, which is suspected of serving as a model for the NAFTA renegotiation, does not meet these conditions.

- f) Any agreement must include the migration issue, full respect for migrants' human and labor rights, and avoid over-exploitation based on their defenselessness as undocumented workers.
3. Any bilateral or multilateral agreement on trade and investment must not include issues related to intellectual property in its multiple dimensions, as there are other multi-sectoral international forums such as the World Intellectual Property Organization.
 4. The issues related to electronic commerce and intellectual property, such as disclosure of source codes, net neutrality, free cross border flow of data, encryption, technical protection measures, the responsibility of intermediaries and other issues that may arise must remain outside the renegotiation of NAFTA and other treaties. The regulation of these issues poses challenges that threaten human rights, such as freedom of expression, access to knowledge and privacy. A free trade agreement is not the place to establish regulations on these constantly evolving topics, whose

deliberation requires a deep and comprehensive analysis, as well as a public debate that includes multiple stakeholders.

5. The agreements must include collaboration for a multidimensional, comprehensive fight against organized crime, assume co-responsibility for violence, arms smuggling and the corruption organized crime generates. This fight should start with decriminalization of drug use and demilitarization of the fight against production and trafficking. These collaborative programs should also include effective measures to combat money laundering and illicit flows of capital and tax evasion and circumvention facilitated by financial, trade and investment deregulation, phantom companies and the lack of transparency regarding the "real beneficiaries". The agreements should include economic and social programs that provide decent living options to those that today are driven by poverty into criminal activities. All with full respect for the sovereignty of each country.
6. The new agreement should include, with respect for sovereignty, cooperation in the fight against corruption and impunity in all its forms, including bribery to get concessions, public procurement or tax evasion and circumvention, as well as illicit capital flows.

These are our goals for any negotiations, not only with the United States and Canada, but also with the European Union and other multiple free trade agreements and/or investment that Mexico has in place.

We reject the limited and undesirable agenda for negotiations presented by governments and business beneficiaries of the current free trade agreements. The priorities presented by the Mexican government for negotiation deserve critical in-depth analysis, which we will undertake in the coming days. For now we can say that they: 1) reflect a triumphalist vision of the benefits of these 23 years of NAFTA; 2) accept much of the US agenda; 3) speak much more of the benefits for "North America" than for Mexico; 4) accept as a benefit the practice of hydraulic fracturing (fracking), exploitation of the deep waters of the Gulf of Mexico for oil, and the exploitation of tar sands in Canada. Worse yet, the proposed negotiations offers Mexican petroleum for the "benefit of the region," not primarily for the interests of Mexico.

For transparent negotiations involving all sectors of the population.

For a North America for the benefit of peoples and not big corporations.

We will continue to strengthen a grand unitary social alliance of all sectors in the three countries.

Initial signers

Convergencia de Organizaciones Sociales y Ciudadanas "México mejor sin TLCs" •

Campaña Nacional Sin Maíz no hay País • Nueva Central de Trabajadores (NCT) • Red Mexicana de Acción Frente al Libre Comercio (RMALC). • Asociación Nacional de Empresas Comercializadoras de Productores del Campo (ANEC). • Sindicato Mexicano de Electricistas (SME). • Sindicato de Trabajadores de la UNAM (STUNAM). • Unión Nacional de Trabajadores (UNT). • Grupo de Estudios Ambientales (GEA). • Centro de Derechos Humanos "Fray Francisco de Vitoria OP". • Centro de Investigación Laboral y Asesoría Sindical (CILAS). • Consejo Civil Mexicano para la Silvicultura Sostenible (CCMSS). • Coordinadora Nacional Agua para Tod@s, Agua para la Vida. • Coordinadora Nacional de Sindicatos Universitarios, Educación Superior, Investigación y Cultura (CNSUESIC). • Vía Orgánica. • Millones contra Monsanto. • FIAN México. • CEN del Sindicato Nacional de Trabajadores del Inca Rural (INCA). • ENLACE, Comunicación y Capacitación. • Unión de Comunidades Indígenas de la Zona Norte del Istmo

(Ucizoni). • Semillas de Vida. • Comunidades Campesinas y Urbanas Solidarias con Alternativas (COMCAUSA). • Comité Amigos de Puerto Rico (CAPR). • Frente del Pueblo (FP). • Kolec vo “El Rebelde”. • Movimiento Migrante Mesoamericano. • Laboratorio de Investigación en Desarrollo Comunitario y Sustentabilidad (LIDECS). • Promotora de Servicios para el Desarrollo. • Unión de Pochtecas de México. • Ayuntamiento Popular de Ixtacalco. • Democracia Directa APN. • Red Nacional Género y Economía. • Mujeres para el Diálogo. • Siembra. • Unión Popular Valle Gómez. • Grupo de Tecnología Alterna va. • Escuela de Agricultura Ecológica U Yits Ka’an. • Propuesta Integral para la Sustentabilidad. • Servicios para una Educación Alterna va (EDUCA). • Fundación Ambientalista Mariano Abarca. • Servicio Internacional Cristiano en Solidaridad con América Latina (SICSAL). • Revista La Guillotina. • Unión Campesina Democrática (UCD Tlaxcala) . • CNTE- Tlaxcala. • Sindicato Único de Trabajadores del CONALEP-Tlaxcala. • Comité Monseñor Romero. • Inicia vas para el Desarrollo de la Mujer Oaxaqueña (IDEMO). • Mujeres por México Chihuahua. • Carnaval del Maíz. • Asociación Nacional de Industriales de Transformación (ANIT). • Centro de Orientación Alimentaria (COA Nutrición). • Sindicato UNTyPP . • Instituto de Estudios Obreros Rafael Galván. • Periódico Regeneración. • Bia’lii, Asesoría e Investigación. • Guerreros Verdes. • Colectivo MA OGM. • Sindicato de Trabajadores Académicos de la Universidad Autónoma Chapingo (STAUACH). • Movimiento Democracia Directa (MDD). • Movimiento “El campo es de todos”. • Consejo Nacional de Organismos Rurales y Pesqueros (CONORP) • Greenpeace México • Sindicato Nacional De Trabajadores Mineros Metalúrgicos Y Similares De La República Mexicana • Central de Organizaciones Campesinas y Populares (COCYP) • Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER) • Alianza Mexicana contra Fracking • Central Campesina Cardenista. • Consejo de Ejidos y Comunidades Opositores a la Presa la Parota (CECOP). • Seminario permanente de Estudios Chicanos y de Frontera • Grupo de trabajo del Consejo de Ciencias Sociales sobre Fronteras, Regionalización y Globalización de América Latina. • Unión Popular Revolucionaria Emiliano Zapata (UPREZ). • Barzón • Sociedad Organizada en Lucha (SOL). • Patria Nueva. • Asamblea de Barrios. • Nahui Ollin. • Producción Social. • Unión Cívico Popular. Frente Unido de Organizaciones Sociales y Civiles (FLUOSyC)