

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

April 25, 2019

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

Dear Ambassador Lighthizer:

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

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

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

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

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