

Hearing on Enforcement in the New NAFTA

HEARING

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

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HOUSE COMMITTEE ON WAYS & MEANS
CHAIRMAN RICHARD E. NEAL

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
225-6649
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CONTACT: (202)

Trade Subcommittee Chairman Blumenauer Announces a Subcommittee Hearing on Enforcement in the New NAFTA

House Ways and Means Trade Subcommittee Chairman Earl Blumenauer (D-OR) announced today that the Subcommittee is holding a hearing titled “Enforcement in the New NAFTA.” The hearing will take place on Wednesday, May 22, 2019 at 10:00 AM in room 1100 Longworth House Office Building.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “Hearings.” Select the hearing for which you would like to make a submission, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, June 5, 2019**. For questions, or if you encounter technical problems, please call (202) 225-6649.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but reserves the right to format it according to guidelines. Any submission provided to the Committee by a witness, any materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you require special accommodations, please call (202) 225-6649 in advance of the event (four business days' notice is requested). Questions regarding special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at <http://www.waysandmeans.house.gov/>

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Hearing on Enforcement in the New NAFTA
U.S. House of Representatives,
Subcommittee on Trade,
Committee on Ways and Means,
Washington, D.C

BETH BALTZAN

Principal, American Phoenix Trade Advisory Services PLLC

[Witness Statement](#)

OWEN HERRNSTADT

Chief of Staff to the International President, International Association of Machinists and Aerospace Workers

[Witness Statement](#)

SANDRA POLASKI

Independent Expert, Former Deputy Director-General for Policy, International Labor Organization

[Witness Statement](#)

ALEXANDER VON BISMARCK

Executive Director, Environmental Investigation Agency, U.S.

[Witness Statement](#)

DEVRY BOUGHNER VORWERK

Corporate Vice President, Global Corporate Affairs, Cargill, Inc.

[Witness Statement](#)

The Subcommittee met, pursuant to notice, at 10:01 a.m., in Room 1100, Longworth House Office Building, Hon. Earl Blumenauer [Chairman of the Subcommittee] presiding. *Chairman Blumenauer. Good morning. We are going to open our hearing this morning. We welcome you all to join us. We all agree that enforcement is critical, that the new NAFTA must have effective enforcement mechanisms that make the agreement's provisions meaningful and provide confidence that the problems with compliance can and will be corrected.

NAFTA 2.0 is seeking not just to replace but also improve the existing NAFTA. Therefore, lessons from enforcement failures in NAFTA, especially with respect to labor and environmental provisions, must guide our committee's work.

Following the May 10th agreement, most of us have grown increasingly concerned regarding the effective enforcement of labor obligations. In every case in which a labor complaint has been filed, there remain ongoing and serious concerns regarding compliance with the labor obligations.

In the only case in which the United States has pursued dispute settlement, the Guatemala labor case, it took nearly a decade to receive a final ruling, and of course, the United States lost the decision. Given the many challenges and the poor record on enforcement under NAFTA, there is a particular need for new ideas from more flexible and versatile enforcement mechanisms.

There are similar concerns for environmental provisions. Since 1993, environmental provisions have been incorporated in the text of our trade agreements, yet no environmental dispute has ever been litigated. This record of general non-enforcement raises a question of where environmental commitments will ever be enforced.

The Trump administration may tout the renegotiated NAFTA as the most comprehensive, enforceable environmental chapter in a U.S. trade agreement to date. Yet the new NAFTA does not require parties to adapt, maintain, and implement the seven relevant multilateral environmental agreements identified in the May 10th agreement.

Sadly but predictably, it does not address the effects of climate change, the most glaring flaw for the future of trade and the future of the planet.

As we consider the implementation and enforceability of the new NAFTA environmental provisions, transnational pollution continues on the U.S.-Mexico border in just an appalling degree.

I welcome Mr. von Bismarck to discuss lessons from the Peru Forestry Annex. We worked together on the U.S.-Peru trade agreement to include strong and enforceable environmental standards that were the first and so far the only one of its kind. These new standards include the Annex on Forest Sector Governance, the Forestry Annex, to ensure a Peruvian timber sector that would be free of illegally harvested wood. Without that annex, the Peru free trade agreement would never have been approved by Congress.

A decade later, we still struggle with enforcement of the Forestry Annex. Illegal logging continues in the Amazon basin, yet the new NAFTA free trade agreement's enforcement provisions appear to be weaker than those in the Peru trade agreement.

When discussing enforcement, the administration often points to the threat of unilateral investigations and sanctions under Section 301 to enforce commitments of NAFTA 2.0. But let's be clear. Section 301 is no substitute for strong enforcement provisions in NAFTA 2.0. The imposition of tariffs under Section 301 will likely be reciprocated in kind -- as they have been by China and by Mexico and Canada in response to the steel and aluminum tariffs -- and would more likely lead to a trade war than to corrective action.

While Congress has strengthened USTR's enforcement power through the creation of a trade enforcement trust fund, strong enforcement provisions must be baked into our

trade agreement. It is my hope that this hearing will help us learn from our prior agreements and explore proposals for stronger enforcement and a better agreement.

And now I am pleased to turn to our ranking member, Mr. Buchanan, for an opening statement.

*Mr. Buchanan. Thank you, Mr. Chairman, and thanks again for holding this important hearing on enforcement in the USMCA, our new and improved trade agreement with Canada and Mexico. I am pleased to have this opportunity to discuss the many strong provisions in the agreement, as well as the need for effective enforcement of all those ambitious provisions. Today's topic is bipartisan, and I thank you, all our witnesses, for being here today and taking their time and sharing their perspective with us as well.

At the outset, I note the significance of the trade relationship in terms of North America. Two-way trade with Canada and Mexico already total nearly \$1.3 trillion per year. My home State of Florida, annual exports over \$12 billion in terms of goods and services to Canada and Mexico, supporting over 700,000 jobs in the State in Florida.

These are massive trade relationships. The stakes are high for us to make sure we obtain the full benefit of the bargain as we work together as a seamless transition to the USMCA, our upgraded trade agreement. Americans rightly demand that our trade negotiators obtain quality agreements with strong provisions that ensure a level playing field for American farmers, manufacturers, and service providers. There is no question in my mind that USMCA has achieved this goal, and as a result, I am a strong supporter and look forward to approving the agreement very soon.

The agreement is modernized for the world today and into the future. Just a few highlights of major upgrades: USMCA includes a new digital trade chapter, strong

intellectual property standards with obligations to enforce them, new market access and fair treatment at the border for our farmers, discipline on state-owned enterprises, facilities, and as well, helps our small businesses and businesses in general.

Because our negotiators have obtained such a strong commitment from our trading partners, we must enforce them in a predictable and effective way. Otherwise the strong gains we won are meaningless. We have to hold our trading partners accountable so that Americans succeed in these markets and actually achieve the benefits that we bargained for.

As a businessman, I know through my experience that a contract is only as good as the two parties involved and the tools we have to make sure that the parties live up to their obligation. And the same is true of our trade agreements. Robust enforcement allows us to reap the full benefits of the concessions that other countries make to us.

I know that many of my Democratic colleagues have focused in particular on the enforcement of labor and environment provisions in USMCA. I am pleased that we have obtained strong provisions in these areas, and I agree that they should be fully and effectively enforced so that our companies can compete on quality and innovation rather than being undermined by weak labor and environmental rules.

These are just two important areas among many in the agreement. Though we need strong and effective enforcement above all aspects of the agreement, again this is a strong agreement across the board and it is our interest to make sure that it lives up to that expectation.

Thank you again, Mr. Chairman, for calling this hearing today, and I thank our witnesses for taking their time out of their day to be here today. I yield back.

*Chairman Blumenauer. Thank you, Mr. Buchanan.

And now to our witnesses. No stranger to the committee, I would like to welcome Beth Baltzan, principal of the American Phoenix Trade Advisory Services, PLLC, and Fellow at the Open Markets Institute. Following Ms. Baltzan will be Owen Herrnstadt, chief of staff and director of trade and globalization for the International Association of Machinists and Aerospace Workers. Then we will hear from Sandra Polaski, an independent expert and former deputy director general for policy at the International Labor Organization, the ILO. Our fourth witness will be Alexander von Bismarck, who is the executive director of the Environmental Investigation Agency. And finally, I would like to welcome Devry Boughner Vorwerk, chief communications officer and corporate vice president of global corporate affairs at Cargill, Inc.

Welcome to you all. We would request that you present your information in the context of five minutes. There is a little guide there to follow along. We would invite you to turn on your microphone and begin.

Ms. Baltzan, would you like to go?

STATEMENT OF BETH BALTZAN, PRINCIPAL, AMERICAN PHOENIX TRADE
ADVISORY SERVICES, PLLC

*Ms. Baltzan. Thank you, Mr. Chairman. In addition to being a private sector trade consultant and a Fellow at the Open Markets Institute, I spent 6 years in the General Counsel's Office at USTR litigating disputes and drafting trade agreement text. For the last 6 months of the Obama administration, I worked for Ambassador Froman on dispute

settlement against China.

I also worked for this subcommittee from 2012 to 2016, and for that reason it is a particular privilege to appear before you today to discuss enforcement in the new NAFTA. It is also an honor to be on a panel with people for whom I have enormous respect. I have submitted detailed written testimony for the record, so I will touch on just a few key points this morning.

The architects of the multilateral trading system were true visionaries. Out of the rubble of World War II, they sought to promote peace and prosperity through trade. Contrary to popular understanding, however, they did not think peace and prosperity would be achieved through tariff cuts alone. They recognized that liberalized trade and liberalized capital flows would lead to labor arbitrage and instability. For that reason, their vision for the system included enforceable labor standards.

Unfortunately, the American business community rejected the architects' vision, preferring to have no disciplines on their conduct. As a result, even today the WTO has no labor or environment standards.

Because of these omissions, there is only what can be considered a structural bias against viewing labor and environmental issues as genuine trade issues -- that is, issues that affect global conditions of competition. But they are trade issues. As globalization has intensified, multinational corporations have seized on opportunities to arbitrage labor and environmental standards as well as tax laws to minimize their costs.

The costs to others, however, have been incalculable. We need to look no further than the tragedy of Rana Plaza in Bangladesh. In 2013, a building housing garment factories, likely illegally, showed cracks, and workers were forced to return the next day

despite the danger. The building collapsed, killing more than 1100 people and trapping others under rubble for days.

The United States has, on a bipartisan basis, as the ranking member has indicated, sought in its bilateral and regional trade agreements to reduce the incentives to engage in this kind of exploitative arbitrage. One of the real improvements in NAFTA is the fulfillment, in large part, of the bipartisan May 10th agreement to make labor and environmental standards enforceable on the same terms as other chapters in the agreement, such as market access.

But with 12 years of enforceable labor and environmental standards under our belts, the record on enforcement remains disappointing. The U.S. Government has been slow to bring any labor or environmental disputes. This structural bias against treating labor and environmental issues as what they are, conditions of competition, means that we cannot rely on repeating the NAFTA dispute settlement system alone to solve the problem.

Fortunately, there are innovative solutions. For example, one of the lessons learned from the original NAFTA is that textile transshipment is a real problem. Thus, CAFTA included a novel verification system at the factory level. Those provisions are now part of the new NAFTA.

The Peru FTA includes a logging annex modeled on the CAFTA verification provisions in recognition of the endemic corruption problem Peru has in its logging industry. That annex has been used by this administration to identify illegal shipments and bar them from entry.

Drawing on the success of that approach, Senators Wyden and Brown have devised a verification system that would allow Mexico and the United States to work together, as

Peru and the United States worked together, to address these violations at the factory level.

The proposal allows both governments to focus on the violations where they are happening and to facilitate enforcement of Mexico's own labor reforms. One of the benefits of this approach is that it provides a valuable mechanism for addressing these problems through cooperation rather than litigation.

Finally, there is a significant amount of consternation over the sunset clause. But one of the potential benefits of the sunset clause is that it, perhaps more than even a binding dispute settlement system, might incentivize the parties to uphold their ends of the bargain.

Again, as detailed in my written testimony, the history of U.S. trade relations with Europe and Japan in particular is of achieving tariff concessions that are then frustrated through other means. No amount of rulemaking or modifications to dispute settlement, including creating the WTO itself, has changed that dynamic.

Thank you for the opportunity to present these views to you.

[\[The prepared statement of Ms. Baltzan follows:\]](#)

*Chairman Blumenauer. Thank you.

Mr. Herrstadt?

STATEMENT OF OWEN HERRNSTADT, CHIEF OF STAFF TO THE
INTERNATIONAL PRESIDENT, INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS

*Mr. Herrstadt. Thank you, Mr. Chair.

The International Association of Machinists and Aerospace Workers represents

several hundred thousand workers. Our members produce, service, assemble, and transport products, parts, and assemblies that create the global economy.

Under NAFTA and subsequent FTAs, outsourcing of U.S. jobs to Mexico across manufacturing industries continues unabated. The failure to establish and enforce strong labor standards in NAFTA is one of the major reasons for this massive outsourcing of U.S. jobs to Mexico. Effective enforcement of strong labor provisions in trade agreement are critical.

If properly drafted, implemented, and enforced, they can stop signatory countries from distorting the labor market by unfairly suppressing labor costs. Workers in Mexico have been denied the right to form their own independent and legitimate unions and to engage in collective bargaining. By preventing workers from enjoying these fundamental human rights, manufacturers in Mexico are unfairly subsidized because their labor costs are artificially lower than they would be under fair labor market conditions.

Workers have waited over 25 years for NAFTA to be renegotiated. When NAFTA negotiations were first announced, we were hopeful that a renegotiated NAFTA would be based on a dramatically new trade model. The model we urged reflected desperately needed reforms, including robust and effective enforcement of strong labor standards.

Unfortunately, in the current text, the current text fails to include many of those recommendations. Our recommendations involved three general and specific areas.

First, enforcement must be adequately funded and staffed, independently administered and monitored, and must provide swift relief for victims of labor rights violations and sanctions for States and employers that violate those rights.

Second, since enforcement is meaningless if the substantive standards to be

enforced are weak, labor obligations must be based on strong, clear standards based on internationally recognized labor rights and reports established by the International Labor Organization, an arm of the United Nations.

And third, labor obligations must cover broad sectors of workers and remove obstacles that narrow the types of labor violations that are recognized and actionable under the agreement.

Some of our recommendations include the following:

One: NAFTA, the revised NAFTA, must provide a meaningful forum for victims of labor violations.

Two: It must establish and ensure a fully funded and staffed independent and binding dispute settlement process.

Three: Signatory countries must be stopped from blocking the dispute settlement process from going forward.

Four: Labor standards must be strengthened, as I mentioned, including explicit reference to ILO rights and reports in the text.

Five: Labor obligations should be broadened so they are not limited to only violations that are in a manner affecting trade or investment between the parties.

Labor obligations in the chapter should include things like murder and other egregious human rights violations, even if they only occur once. The murder of one trade unionist is unacceptable and demonstrates to other workers what happens to them if they want to form a union.

Enforcement through side agreements and separate labor action plans are unacceptable and have not worked in our history. In addition to that, enforcement of labor

obligations through Section 301 trade complaints is no substitute for a strong, binding enforcement provision in the text of the agreement.

And Mexico must finally and once and for all demonstrate and adopt and enforce fundamental labor human rights.

For over 25 years, NAFTA has wreaked havoc on hundreds of thousands of U.S. workers whose jobs have been outsourced to Mexico. The time to overhaul NAFTA's weak labor standards and enforcement provisions are long overdue. Unfortunately, by refusing to incorporate our many recommendations concerning the enforcement of labor standards and our numerous recommendations and other provisions as well, the current text of the revised agreement continues to fail workers. The revised NAFTA maintains the fundamental flaws carried over from past trade agreements, especially the original NAFTA.

Until these and other recommendations mentioned above are adopted, the revised agreement will continue to fall short in effectively enforcing labor standards. U.S. workers simply cannot wait another 25 years to get NAFTA right. Thank you.

[\[The prepared statement of Mr. Herrstadt follows:\]](#)

*Chairman Blumenauer. Thank you.

Ms. Polaski?

STATEMENT OF SANDRA POLASKI, INDEPENDENT EXPERT, FORMER DEPUTY DIRECTOR-GENERAL FOR POLICY, INTERNATIONAL LABOR ORGANIZATION

*Ms. Polaski. Mr. Chairman, members, thank you for inviting me to comment on the labor enforcement provisions in the new NAFTA. I would like to make three points,

which I detail to a much greater extent in my written statement.

First, the labor enforcement approach in the agreement is basically the same flawed approach that was found in CAFTA and other U.S. trade agreements. It involves lengthy consultations, and ultimately it defers decisions to a panel of private sector arbitrators. The unsuitability of this approach was demonstrated forcefully by USTR's loss in the only case it has ever taken to arbitration on labor issues.

In U.S. versus Guatemala, an extensive pattern of serious labor rights abuses in that country was found by the arbitrators not to violate the trade agreement. This was despite the arbitrators' acknowledgment that there was proof of many of the violations. Under the USMCA, like those previous FTAs, there is no appeal process, so even when such a travesty of justice occurs, we are stuck with it, and that is the end of the road of enforcement in the current USMCA.

Compared to the enforcement mechanism under which USTR lost so badly, and the loopholes that have already been mentioned by my colleague, USMCA narrows one on the trade-related aspect. It does not close a loophole. It narrows it somewhat. It does nothing to narrow other loopholes and, most importantly, it does not constrain private sector arbitrators from disposing of cases involving serious violations of labor rights and serious violations of the agreement however they please.

My second point has to do with the Mexican labor law reform. The labor annex requires Mexico to reform its union representation and collective bargaining laws in order to end the decades-long policy and practice of wage repression by the Mexican Government. The negative effects of that policy have been stark.

Today average manufacturing unit labor costs in Mexico, taking into account

productivity and all else, are 30 percent lower than in China, and the gap between Mexican and U.S. wages has not narrowed since NAFTA was negotiated. Mexico recently passed legislation under a new administration that appears to be largely consistent with the requirements of the labor annex. However, the Mexican Senate has apparently left open the possibility of further amendments before the law is finalized.

And even if a robust reform survives, its implementation will require dismantling the current flawed system and creating entirely new administrative bodies and labor courts. This will be time-consuming and costly to establish and to staff. The reform will take years, as acknowledged by Mexican officials, and meanwhile, low wages will continue to punish Mexican workers and will continue to undermine U.S. wages.

My final point is that given the profound flaws in the enforcement mechanism in USMCA, along with this uncertainty about the future of Mexican reforms, a more robust approach to enforcement must be added to the agreement. Senators Brown and Wyden have put forward a promising approach.

They propose a bilateral agreement between the U.S. and Mexico that would allow the two governments to jointly audit and inspect facilities suspected of violating labor standards. If violations were found, the government of the importing country would have the right to deny entry to the good produced in that establishment under the preferential terms of USMCA.

This is a much more direct and timely approach to enforcement than what exists in USMCA. I would argue, though, that the goods should be denied entry, full stop, rather than simply facing slightly higher tariffs. Such an approach has already been used by the U.S., that has been mentioned, in the U.S.-Peru FTA around timber imports, exercised at

least once by the current administration, and more broadly under a general U.S. trade law to stop imports from any country that are made with forced labor. So we have some experience with this; we can build on that and we can expand it.

By targeting individual firms and facilities where violations of labor rights have occurred, this approach is an efficient use of resources and can have a powerful deterrent effect on other firms and other sectors. Building on the Brown-Wyden proposal, the new enforcement mechanism should assign a recognized role to stakeholders, such as unions and civil society, in identifying specific firms and facilities that violate labor rights.

The agreement should require that the governments investigate those claims within strict time limits, including through the use of the new cross-border inspection capacity they would create. When violations are found, there should be a presumptive requirement to deny entry to the goods in order to incentivize prompt remediation as well as to create the desired deterrent effect. Congress might also wish to assign itself a role in overseeing the enforcement of the labor provisions, and I can talk more about that if you ask me the question.

Mr. Chairman, over the 25 years since NAFTA was passed, many U.S. communities and close to a million workers have been hit by job losses to Mexico, and U.S. wages have stagnated. Congress cannot afford to ratify an agreement that proposes to keep doing the same thing and hoping for different results. Thank you.

[\[The prepared statement of Ms. Polaski follows:\]](#)

*Chairman Blumenauer. Thank you.

Mr. von Bismarck, welcome.

STATEMENT OF ALEXANDER VON BISMARCK, EXECUTIVE DIRECTOR,
ENVIRONMENTAL INVESTIGATION AGENCY, U.S.

*Mr. von Bismarck. Thank you, Mr. Chairman. Thank you for inviting me to discuss our views on trade and the environment and enforcement in the new NAFTA agreement.

As executive director of the Environmental Investigation Agency, I have conducted investigations on every continent into criminal networks dealing in illegal wood, endangered species, and harmful chemicals. Before joining the EIA, I researched the impacts of -- or, rather, the economic, ecological, and health impacts of climate change with the Harvard School of Public Health. I am also proud to have served as a U.S. Marine.

EIA's investigations, starting in the late 1980s, played a leading role in instigating an international ban on ivory trade and, more recently, as the chairman noted, the timber annex to the Peru Free Trade Agreement as well as the 2008 amendments to the U.S. Lacey Act. And last year EIA pinpointed the origins of the biggest unsolved environmental crime in recent history, about 10 billion tons of illegal global warming emissions in China.

This work with local partners to document the environmental and social impacts of environmental crimes, including, for example, Colombia, Peru, and Mexico -- this experience has shown unequivocally that the most destructive and most difficult crimes to fight are those that are carried out to feed international trade, whether endangered species, illegal logging, illegal fishing, or illegal emissions. Crimes driven by local demand can,

when there is political will, be solved locally. International crime driven by trade overwhelms the best local efforts to do so.

An increase in trade means an increase in both legal and illegal trade. After the U.S.-Singapore FTA, for example, went into effect, we documented a 62 percent increase in the trade of smuggled tropical timber, eventually ending up in the United States.

The new NAFTA contains significant changes which attempt to address these threats. If the agreement is ratified, it will be the first time in history that a multilateral trade agreement contains a description of the principle that is essential to counteract the negative effects of liberalizing trade -- in other words, to forbid the trade in illegally taken natural resources.

The text requires the parties to “take measures to combat and cooperate to prevent trade in products taken in violation of the laws of the source country.” It unfortunately does not commit to prohibit such trade, nor the possession and transport of such products, nor does it include mandatory commitments related to its transshipments.

Also, the larger universe of commodities that drive environmental destruction around the world -- oil palms, soybeans, cattle -- are not mentioned, despite being the cause of up to 80 percent of the world's deforestation and being largely the result of illegal land clearing, intimidation, and violence.

For the new NAFTA to be part of a global trend towards shutting down the market of stolen natural resources, it must result in clear prohibitions in such illegal trade as well as strong sanctions and penalties. The Forest Annex to the Peru Free Trade Agreement gives a window into these concerns of lack of enforcement as well as the potential value of enforcement.

Over the past year, USTR's actions deserve recognition for their attempts to enforce the Forest Annex. On January 4th of this year, the United States Trade Representative requested the first-ever consultations for a violation of a trade agreement's environment chapter. This came in response to the Peruvian Government having removed the independent status of its agency to control illegal logging. EIA and others pointed out at the time that this violated the environment chapter.

While an example of successful enforcement, it is notable that this enforcement step came 10 years after the finalizing of the FTA, and resulted in a return to the status quo rather than the significant improvement required. For example, a tracking system to actually improve the veracity of what environmental goods are reaching the U.S., announced with much fanfare, now remains a hidden mystery 10 years later.

The new NAFTA includes several other welcome new environmental initiatives -- for example, to reduce marine litter, a prohibition on commercial whaling, and enhanced language on illegal and sustainable fisheries management. There are also measures aimed at lessening the Investor State Dispute Settlement provisions, but the principle remains, and with it a serious threat to efforts of individual countries to pass measures to protect their, and in the case of climate change, all of our environment.

There are many good arguments for ISDS measures for business interests, perhaps, but they do not include protecting the environment. If that is the goal, they should be eliminated.

One glaring omission in modernizing the agreement is climate change. A trade agreement that stimulates trade and does not take specific measures to address climate change will worsen it, and this agreement does nothing to address climate change directly.

It is clearly a willful act of avoidance because even entirely pro-business measures, such as incentives for renewable energy technology, are absent, despite press reports that other parties in the negotiations were willing and even eager to engage in such measures.

Thank you very much, Mr. Chairman.

[\[The prepared statement of Mr. von Bismarck follows:\]](#)

*Chairman Blumenauer. Thank you.

Ms. Vorwerk?

STATEMENT OF DEVRY BOUGHNER VORWERK, CORPORATE VICE
PRESIDENT, GLOBAL CORPORATE AFFAIRS, CARGILL, INC.

*Ms. Vorwerk. Thank you. Thank you, Chairman Blumenauer and Ranking Member Buchanan. I would like to thank the committee for inviting Cargill to testify regarding the importance of effective enforcement in the new U.S.-Mexico-Canada agreement.

Cargill is a Minnesota-based provider of food, agricultural, financial, and industrial products and services. We are one of the world's leading food and agriculture companies, providing a channel for thousands of American farmers and ranchers to export their products around the world. In the United States, we employ 37,000 people in 275 communities across 40 States.

Approval of USMCA is critical for farmers and ranchers, food production workers, small business owners, and countless other people in communities across the United States who depend on food and agriculture for their livelihoods. Cargill supports USMCA

because the agreement not only offers the opportunity for growth of our business, but it is essential to our business.

We believe trade agreements must reflect the values Americans hold dear, including treating workers with dignity and respect and protecting the environment. We believe trade agreements such as USMCA can achieve sustainable development, but only if they are enforced.

Food and agriculture is one of the great success stories under NAFTA, quadrupling U.S. ag exports to Mexico and Canada to nearly \$40 billion. One in every 10 acres on American farms is planted for export to Mexico or Canada. At facilities in Texas, Colorado, Kansas, and Nebraska, 9,000 of our employees process more than 5 million cattle annually, contributing to nearly \$2 billion in beef we export from the United States.

Last year at facilities in Iowa, Illinois, Wisconsin, Michigan, and across the Midwest, we sourced and processed nearly 21 million metric tons of corn and soybeans from U.S. farmers, a substantial portion of which was exported to our NAFTA partners. That same year, Cargill's operations in Canada and Mexico directly imported more than \$1 billion of American-made goods.

NAFTA has been successful, but it is not surprising that occasional disputes arise in trading relationships of this magnitude. The built-in enforcement mechanisms are vital. Cargill itself has utilized those mechanisms in the past, including NAFTA's Chapter 19 and Chapter 11. Our success in both cases resulted in Mexico eliminating unfair trade barriers, restoring an export market worth nearly \$500 million per year for the industry as a whole.

We congratulate Ambassador Lighthizer and his team for modernizing NAFTA. We know it was hard-fought. I would like to highlight a few of the improvements.

First: USMCA assures the continued tariff-free movement of almost all goods among the three countries, and it achieves additional access in Canadian dairy.

Second: Improved sanitary and phytosanitary measures align our three countries around similar processes to ensure the safety of our food supplies based on solid scientific grounds.

Third: Important improvements were agreed on customs and trade facilitation -- for example, simplifying and modernizing customs declarations.

Fourth: The chapter on good regulatory practices provides transparency and best practices in development of regulations that are so important to the functioning of modern economies.

There is much more to highlight in the agreement on state-owned enterprises, anti-corruption, digital trade, and yes, labor and environment, and beyond. Having effective, expeditious, objective, and binding dispute settlement mechanism provisions is critical to ensure that these outcomes are achieved as part of USMCA. Effective dispute settlement ensures the many robust provisions of the USMCA are realized for the benefit of American workers, consumers, communities, and industries.

So in conclusion, my main two points are: It is critical that Congress provide certainty for U.S. farmers, ranchers, and manufacturers by approving the USMCA as soon as possible. Second, enforcement mechanisms that are effective, objective, timely, and binding must be an integral part of every trade agreement, ensuring all commitments made by the parties to the agreement will be faithfully implemented.

Thank you, Chairman Blumenauer and Ranking Member Buchanan, and I look forward to the committee's questions.

[\[The prepared statement of Ms. Vorwerk follows:\]](#)

*Chairman Blumenauer. Thank you all for your testimony. I would like to begin by recognizing myself for five minutes, and I wanted to begin asking Mr. von Bismarck: Your organization has documented the continued illegal logging in Peru's rainforest. In fact, members would not have any clue about how devastating that situation is on the ground without the work of you and your organization.

You referenced that it has taken 10 years for us to sort of get back to where we began. Do you have some thoughts about what we should be doing going forward to make sure that the intent of stopping illegal logging with that mechanism actually makes a difference, that it actually works?

*Mr. von Bismarck. Thank you, Mr. Chairman. Absolutely. The lessons learned from the attempts to enforce the Forest Annex to the Peru Free Trade Agreement should provide, if not a blueprint, a lot of ideas for how to address the countries involved in the new NAFTA.

Interestingly, in the major enforcement action that tried to stop the single biggest flow of illegal wood from Amazon into the United States just a few years ago, it stopped the wood that was coming directly from Peru in Texas, but the wood -- the same illegal wood -- that was going to Mexico was welcomed in. Subsequently, shipments were found, a few, that were crossing the land border into the United States with that source. Many clearly were not.

So Mexico offers at the moment arguably the single biggest transshipment and manufacturing center for illegal wood into the United States, certainly over a land border. And so bringing, at minimum, the attention that was brought to Peruvian wood to wood

coming via Mexico is absolutely essential to ensure that U.S. customers are not the unwitting financiers of really horrendous crimes and environmental destruction.

*Chairman Blumenauer. Do you have a sense of any mechanisms that can accomplish that so that, when we have identified the problems, that we are able to act with dispatch and more effectiveness?

*Mr. von Bismarck. Yes. The provisions in the new NAFTA that refer to prohibitions need to be clarified and strengthened. In other words, Mexico needs a clear provision paralleling the U.S. Lacey Act, which makes it illegal for illegally sourced wood to come into Mexico and to get out of Mexico. Mexico needs to play its part. That is only, as I had described, referred to, which is a positive change, but it is not expressly required. So that should be required.

Further, I would underline comments made earlier that evidence should be -- there should be a mechanism put in place that evidence from civil society from any sources should be received and should be dealt with in a timely manner by enforcement agencies.

This kind of evidence of international crimes is difficult, and to have the grist in the mill of enforcement efforts in the United States and elsewhere of actual evidence coming from, say, the forests of Peru is absolutely essential. So one should set up mechanisms that willingly receive that evidence and in a timely fashion describe what has been done to respond to it.

*Chairman Blumenauer. Ms. Polaski, you note that the upward pressure on Mexican wages and labor standards that were promised in the original NAFTA did not materialize. In fact, real wages in Mexico, adjusted for inflation, actually decreased. NAFTA 2.0, as written, does not appear to give us leverage to make a difference. Would

you comment on that, about how effective you think it is, and what adjustments should be made if you think it is wanting?

*Ms. Polaski. Thank you, Chairman. Yes. I think that the annex, which requires Mexico to make certain profound changes in its process for recognizing workers' collective bargaining agents, their trade unions, would ostensibly, at least, prohibit the kind of corrupt protection contracts which have existed which preclude workers from actually organizing into their own unions.

The annex would seem to require Mexico to end those practices, and the recently-passed legislation in Mexico appears to be consistent, although, as I mentioned, the Mexican Senate is still willing to entertain amendments, and we know that there is some hostility among some members of the Senate and we do not know how worthwhile what survives will be.

But even if the law is fixed, we cannot say that this will guarantee the upward convergence of wages, which has not happened since NAFTA was first negotiated. For one thing, that revised law needs to be implemented, and as I said, it will require entirely new institutions, including labor courts in Mexico. This will take some years to establish. And in the meantime, the problems continue.

The advantage of an approach like the Brown-Wyden approach would allow stakeholders to bring complaints of problems in the factories and would allow joint inspection by the U.S. and Mexico. I think that is a very good way to begin to help allow this upward convergence.

Mexican workers want their wages to go up. They have not been complicit in this scheme that represses them. But they are going to need help, and the agreement itself

should set up the mechanisms, and we should provide both the support, technical assistance, to the Mexican government, and we should also provide the enforcement.

*Chairman Blumenauer. Thank you.

Mr. Buchanan.

*Mr. Buchanan. Thank you, Mr. Chairman.

Ms. Vorwerk, let me ask you just a little more background on Cargill. I mean, it is a big company. We have all heard about it. How long have you been doing business in Mexico and Canada? And in terms of dollars, if you have got a sense -- maybe you have shared that -- but how much business you are doing in both places, how many jobs your company has as a result of the trade agreements there?

So can you give us a little more a general feel for that? And then I will get into more of the questioning.

*Ms. Vorwerk. Thank you very much, Ranking Member Buchanan, for the question. Cargill's largest investment outside of the United States is in Canada. We have also been invested in Mexico for -- pre-NAFTA, but our two businesses have grown as a result of NAFTA. And so we have nearly 1700 employees in Mexico, and I think it is close to between 7- and 10,000 in Canada.

Our integrated supply chain allows us now to leverage North America as a market, as a full market. And I think I may have mentioned, if I did not in my testimony, that we use the United States as an export base for NAFTA. We have exported nearly a billion dollars in the last year to Canada, and \$1.2 billion to Mexico.

We do not view NAFTA has having been a "let's land and lift our investment from the U.S. and move it to Mexico." Actually, it has been quite additive. When we add the

investments in Mexico and Canada, that draws our exports to those markets.

*Mr. Buchanan. Yes. I have got limited time, so let me go through a couple other quick questions.

One: Obviously, you have had a lot of, I am sure, disputes or enforcement related-type issues. How have you been able to work through that? Because a lot of times I will hear stories where it takes forever once a complaint is filed. I know in business when that happens, many times you have lost whatever profits you might make. But what has been the experience so far in the dispute resolution? We need to do more in enforcement in general.

*Ms. Vorwerk. Yes.

*Mr. Buchanan. But just so far how is it going?

*Ms. Vorwerk. Cargill has been able to use the NAFTA provisions, Chapter 19 and Chapter 11, to combat some of the trade barriers that were put in place, which was a \$500 million market for our sweeteners. Initially, illegal tariffs were put in place that stopped all of U.S. exports to Mexico. We used Chapter 19 for that. We were able to recoup the illegal duties that we had to pay and get the market back.

But then a discriminatory tax was put on U.S.-based imported products inside of Mexico, and we were able to use Chapter 11 to challenge that and recoup the damages from that, but also reopen the market for a \$500 million trade flow for all of those exporters, not just Cargill.

*Mr. Buchanan. Now, you mentioned about an idea or concept to use a rapid response?

*Ms. Vorwerk. Oh, yes.

*Mr. Buchanan. Yes. And how does that exactly work? So there is the ability to take advantage of that?

*Ms. Vorwerk. This is an innovation in USMCA which is called Rapid Response. It is something that has been put in place for food and agriculture. As you know, when we trade food products, they are perishable. If some of our products are stopped at the border and we do not have an answer for that, and these products need to be moving across the border, we can now invoke the Rapid Response mechanism of USMCA.

This is the first time that an agreement is including the Rapid Response mechanism. It is not in the dispute settlement chapter, but it is certainly something that food and agriculture can use as a benefit.

*Mr. Buchanan. And then let me ask you, in terms of the current agreement that has been in place 25 years, there have obviously been some challenges. I know in Florida we are concerned about dumping, unfair trade practices, and other things. but how much better is this new agreement in terms of new and improved, so to speak, in your opinion?

*Ms. Vorwerk. Well, I think it is important to note that USMCA does have broad-based enforcement that goes beyond NAFTA. That said, there are some improvements that can be made to the enforcement chapter, and I think you are hearing that from my colleagues on the panel.

It does still maintain the anti-dumping and -- the ability to challenge anti-dumping and countervailing duty. To state provisions are there, that said, we would recommend that they apply broadly across the agreement. There is some tinkering that can be done, some tweaking that can be done there, to ensure that there is timely formation of panels, that there is a panel of experts --

*Mr. Buchanan. Would you say it is a substantially better agreement than what we currently have?

*Ms. Vorwerk. I think the enforcement measures, yes, broad-based, are better than what is in NAFTA. And what is most important is what my colleagues are saying here on the panel, which is the inclusion of labor and environment in the enforcement chapter.

*Mr. Buchanan. Thank you, and I yield back, Mr. Chairman.

*Chairman Blumenauer. Thank you.

Mr. Pascrell.

*Mr. Pascrell. Thank you, Mr. Chairman.

Enforcement of trade deals, I think, is essential to their effectiveness, and without it, an agreement is not worth the paper it is written on, period. We know that we cannot continue with a broken dispute settlement process that lingers like a fog from the first NAFTA. So you fool me once, shame on you; twice, the Congress cannot and will not be fooled again by false promises.

No dispute panels have been composed since 2000. For 19 years, no case has ever been resolved through NAFTA's state-to-state process. Not one. So when you say, with all due respect -- and your testimony was excellent, Ms. Vorwerk -- when you say that we should reflect on U.S. values and the agreement should reflect U.S. values, including, you said -- correct me if I am wrong -- the workers that are involved in either country, or all the countries that are involved in any trade agreement, what about the right to a secret ballot?

How important does your organization, the Global Corporate Affairs, Cargill, Incorporated, how do you value a secret vote, which has been debunked in Mexico for the last 20, 24 years?

*Ms. Vorwerk. Well, thank you very much for the question, Congressman Pascrell. And I would say that I agree with you that enforcement is critical, especially as it relates to labor and environment measures. And in particular, one thing I see as a positive in being able to address your question is that this agreement holds Mexico and Canada and the United States accountable to those measures that are important for collective bargaining and for labor's rights.

*Mr. Pascrell. You did not answer my question.

*Ms. Vorwerk. Right. And so --

*Mr. Pascrell. How much value does your organization place on a secret ballot? Because we know what has happened in Mexico. We know that there are not independent unions. We know that the Government has controlled it. They have been in cahoots with those "unions." And the third part of the Bermuda Triangle, I call it, are not only corporate America but other corporations that does business there.

What do you value? Let me ask it again.

*Ms. Vorwerk. Well, so what we value is our workers and their ability to collectively bargain.

*Mr. Pascrell. Do you value the secret ballot? Yes or no.

*Ms. Vorwerk. I would say if that is a way that they feel safe and that they can essentially give the vote that they need to vote, we value the secret ballot. And what we also value is our many unionized workers across the United States that, in accordance with how we operate in our guiding principles, they are treated with dignity and respect. And we uphold our commitment to human rights, which you can find out there openly, which we have recently put out, that is in line with their ability to collectively bargain.

*Mr. Pascrell. Your answer, with all due respect, is the reason why we have major problems. You do not want to really answer that question because if you answer the question -- correct me if I am wrong; this is not a one-sided thing here -- you are answering the question about human rights. You are answering the question, responding to the question about human dignity and the dignity of work itself.

When people are making a buck 25 an hour, that is why we lose jobs. This is why we export, regardless of what industry you are talking about. If that is not clear, if that is not part of the agreement and it becomes a footnote, as you are implying that it should be, that is the best we can get because it might be better -- well, let's take a look at those years.

The North American Agreement on Labor Cooperation, the NAALC, the first labor provision tied to a deal, went into force on January 1, 1994. And here we are -- the last time we looked, at the end 2018 -- there is yet to be a successful labor enforcement case in the United States under the FTA.

*Ms. Vorwerk. So --

*Mr. Pascrell. The book is stacked against American workers and workers in Mexico. What are you going to do about it? I do not want to hear the Fourth of July speech. I want to tell me what you think about the dignity of work.

*Ms. Vorwerk. I think it is about the dignity of work. And if I did not make that clear, I share your passion and your interest to ensure that workers are treated with dignity and respect.

*Mr. Pascrell. Thank you very much.

*Ms. Vorwerk. Thank you.

*Chairman Blumenauer. Mr. Nunes.

*Mr. Nunes. Thank you, Mr. Chairman. I want to thank you for holding this important hearing. It is critical that we get this trade agreement done as quickly as possible. For those of you that care about our Nation's security, working with our two closest neighbors, this agreement is clearly an improvement upon what we have had for the last 25 years.

The agricultural sector in this is very, very good. The ag products remain tariff-free; for California, this is a critical component, as the number one agricultural State. Also, very satisfied with the SPS measures that were put into this agreement and the increased transparency, and I think also the addition of some of the provisions dealing with the internet that we really did not deal with in the original NAFTA agreement. This is critical also for California as the leading high-tech sector in the world.

If you look at some of the problems and challenges that we have had with Canada as it relates to dairy products, specifically with Class 7, this agreement will for the first time allow U.S. producers to be able to get some of the Class 7 product into Canada.

And Ms. Vorwerk, I know that you are involved in agriculture, maybe not specifically dairy products, but I do not know if you could address, maybe, some of the work that has been done on dairy and some of the other agricultural sectors, and highlight for us the improvements for U.S. agriculture, as you see it, and maybe the top four or five products that are going to benefit from this new agreement.

*Ms. Vorwerk. Yes. Well, thank you, Congressman Nunes, and thank you very much for the work that you do to support agriculture. And I know in your district, while Cargill does not produce dairy, we feed a lot of dairy cows.

And so as it relates to this particular agreement, the fact that the increased access to

Canadian dairy was hard-fought is really important because that has been something that is important to, I know, dairy producers in your district, but across the United States.

*Mr. Nunes. Especially in the Upper Midwest.

*Ms. Vorwerk. Especially in the Upper Midwest. And so when we think about the access for the final product, we also have to think about everything that goes into making that final product, from growing the feed inputs in the field to producing that animal feed to feeding the animals to the ultimate access. So that is the first thing.

The second thing that you highlighted which is really important for agriculture in this agreement is the sanitary and phytosanitary measures. We call it SPS-plus. These are measures that go beyond the WTO. I mentioned that when you are in the food industry this really matters in terms of food safety and getting common alignment among the three governments, so that all producers in the food industry are producing to a common set of standards.

The rapid -- yes, go ahead.

*Mr. Nunes. If I could, just to put an explanation point on what you just mentioned there, in California we have a lot of products that are perishable so their shelf life is limited. And these are products that are grown not just in California but Arizona, all the way up into Oregon and Washington. And what often happens with the short lifespan of these products, they end up held somewhere in a port for what are just non-tariff barriers to trade. I just want to make sure I added that to your point.

*Ms. Vorwerk. Yes. Thank you, and you give us the opportunity to highlight one of the innovations, which is the Rapid Response mechanism. I know the Central Valley well; I grew up in California. I grew up in, actually, Congressman Panetta's district.

And so as it relates to perishable products moving across the border, if there is an arbitrary decision by a customs official that is stopping that product from getting from where it is to where it needs to be, now with Rapid Response we have the ability to immediately invoke the Rapid Response mechanism and ask the question, "Why is it being stopped?"

Because there are real lives on the other side that are waiting to receive these food products, from a food security standpoint, and there are lives on our side who have produced those products, and their livelihoods depend on it. And so I think you can feel incredibly good that this is something that, as we move forward with USMCA, it will enforce the ability for perishable products to move much more swiftly across the border.

*Mr. Nunes. Well, this is a concept that we began working on nearly a decade ago, trying to get it into TPP and dealing with it as a TPA. So I am glad in this agreement it has finally been implemented.

*Ms. Vorwerk. Yes. Thank you.

*Mr. Nunes. Thank you, all of you, for being here.

Thank you, Mr. Chairman. I yield back.

*Chairman Blumenauer. Thank you.

Mr. Kind.

*Mr. Kind. Thank you, Mr. Chairman. Thank you for holding such an important meeting as we begin consideration of USMCA. And I want to thank all our witnesses for your testimony here today.

Ms. Polaski, you touched upon it in your opening statement, but the Guatemala case, 9 years, adverse decision, clearly not good enough. What are the big takeaways from

that as it relates to USMCA today?

*Ms. Polaski. Thank you for the question, Congressman. As somebody who was involved in some of the negotiations of U.S. free trade agreements and as somebody who was involved at ILAB in trying to get the Guatemala case moved forward by the U.S. and preparing it during the years I was there, I would say that the decision was so shockingly negative and revealed so many weaknesses of the arbitration system as it applies to labor rights that it persuaded me -- my takeaway is that that system is not a workable system, that we need a different system of enforcement.

And this is why I have supported the Brown-Wyden proposal. Other things can be done as well, but that happens to be, I think, a particularly promising approach because of its timeliness, because of its targetedness, in terms of trying to address the problems that we are not addressing.

*Mr. Kind. Let me ask you, was it a problem with the standards used? The fact that it had to be systematic? The fact it had to have a showing of affecting trade or investment? Or was it the process itself that was involved?

*Ms. Polaski. Both.

*Mr. Kind. Both?

*Ms. Polaski. Both. I think that the notion that the only recourse that the U.S. has to enforce trade agreements when trading partners are violating the labor provisions, after going through a very long process that our partners can stall for years or that we can neglect to move forward rapidly -- in that case, after 9 years -- the only recourse is going to a panel of private arbitrators who do not have a public responsibility, who do not have the interests of labor markets, of workers, of good governance in mind. And they can make

such flawed decisions, and there is no appeal. So I think the basic model is --

*Mr. Kind. Yes. Mr. Herrstadt, let me turn to you. You mentioned the problem with panel blocking, and I could not agree with you more. There has been a problem in the past. Under old NAFTA we had three state-to-state resolutions. Another one brought a U.S.-blocked panel, and then nothing ever since then.

Is there enough being done with the new USMCA to prevent panel-blocking?

*Ms. Polaski. No. No, I do not think that -- I do not think anything that --

*Mr. Kind. I was asking Mr. Herrstadt that question. Thank you.

*Mr. Herrstadt. No. In fact, it is really a step backwards because what it does is it requires a consensus of this fair trade or free trade commission, and so anything itself may be blocked.

And in terms of things going forward, like Guatemala, again, you still have the basic obstacle of this convoluted legal concept that something has to be affecting a trade or manner of investment, which the panel itself had trouble deciphering. And even though there is some attempt to clean up that language, it still exists.

And any time any panel takes 9 years to make a decision, it is an abysmal statement on what type of relief and just --

*Mr. Kind. You also expressed a lack of confidence in 301 remedies. Is that correct? There have been some in the administration, some from the Senate, saying, "Why not go the 301 route with this?"

*Mr. Herrstadt. Yes. The time to convince a country to get labor rights enforced and honored is before the deal is signed, not after. If there is anything we have learned in the past, that is one of the truisms, if truism is a word.

In addition, 301 leaves it pretty much at the discretion of whoever resides as the U.S. Trade Representative at that point. Leaving it up to remedies of tariffs does very little to restore relief to the actual victims of labor violations and can also lead to trade wars and other things that we are currently experiencing. And it also takes a very long time.

I recall I think it was 13 years ago the U.S. filed a trade complaint, a 301 complaint, against the EU.

*Mr. Kind. Well, it seems that is the preferred route with China right now. It seems to be taking us into a bad box with no end game, but that might be premature.

But Ms. Baltzan, let me ask you, obviously the Department of Labor's Bureau of International Affairs is the primary entity in charge of labor enforcement monitoring. How important is it to make sure that that is fully financed, that they are equipped and resourced in order to do an adequate job?

Because I would remind you that the current administration now just submitted their budget that would take ILAB's budget from \$86 million down to \$18 million. That does not engender a lot of confidence on our side that this administration is serious about enforcement.

*Ms. Baltzan. I could not agree with you more. And there has been a longstanding effort to defund ILAB. These are the experts on labor issues. These are the people who know them; when I was working with the committee, we worked very closely with ILAB. To the extent that we can even try to make the dispute settlement system work for labor, it has to be fact-based. And that is what ILAB does.

*Mr. Kind. Thank you. I yield back.

*Chairman Blumenauer. Thank you very much.

*Mr. Holding. Thank you, Mr. Chairman.

This Congress, and particularly this committee, have a great opportunity to lock in the many advancements that have been made within the USMCA. Both Canada and Mexico are top trading partners with the United States, and it is important for us, I think, to move forward and remove the barriers to commerce so that our economic climate continues to flourish and workers and consumers benefit.

The manufacturers, farmers, and service providers in my district in North Carolina and the consumers stand to benefit from the agreement, and it is important not only for the advancements to be enforced but for the whole agreement to be enforced.

USMCA raises the bar amongst trade agreements. It gives American workers new market access so that their products can be sold outside the United States, and it sets new standards in other areas like in agriculture, digital trade, and intellectual property. And we are all right to want this agreement to be enforced, not just some of it but, as I said and will emphasize, all of it.

So Ms. Vorwerk, I know that in addition to your position at Cargill, you are also leading as co-chair on the USMCA coalition. So can you give me a sense of some of the sectors of our economy and employment that the coalition is representing, or members of your coalition, and whether you would say that the diverse membership demonstrates why we need strong enforcement of all the chapters of the agreement?

*Ms. Vorwerk. Yes. Thank you very much for the question. And indeed I co-chair the coalition that is advancing the USMCA.

The coalition is a broad-based coalition across all sectors of our economy. And you have raised an incredibly great point as it relates to enforcement because while the

enforcement chapter is better than it was in NAFTA, I think what you are hearing is there are some opportunities for some key improvements across the board.

And one of the recommendations that we have as it relates to this broad cross-sector of business is that whatever improvements that are done on the enforcement mechanism apply to all sectors and all chapters of the agreement.

We are fortunate to see the highest, most innovative chapter on digital trade that keeps up with the economy, the digital economy, so that is a positive. But it is only as positive as it can be enforced. We are pleased with the state-owned enterprise issues that matter to several of our members across the coalition.

I could continue to go on -- the anti-corruption measures. And contrary to popular belief, our coalition also wants to ensure that labor and environment, which are the highest standards of any trade agreement that we have had thus far, have the ability to be enforced.

And so I think you are hearing from the colleagues on the panel that there are opportunities to potentially improve those enforcement mechanisms as we go forward. But our coalition supports broad-based enforcement across all chapters of the agreement, including investment.

*Mr. Holding. Thank you. And Mr. Chairman, I really want to thank you for holding this hearing, and I am certainly ready to work with you and our other colleagues here on the committee to get USMCA across the finish line as soon as possible.

As Ambassador Lighthizer has told us, if we cannot get USMCA across the line, the rest of our trade agenda is dead because if we cannot demonstrate to the world that we can get an agreement done with two of our very closest trading partners, we are not really going to be able to negotiate much of anything else. And we have other things to negotiate.

The world will not stand still and wait for us to get our act together. So I look forward to working with you. Let's try to get USMCA across the line as soon as possible and move on to other interesting trade opportunities that we have across the world to further enhance the opportunities not only for our workforce but also the benefits for our consumers. So thank you, Mr. Chairman.

*Chairman Blumenauer. Thank you, Mr. Holding.

*Mr. Davis. Thank you. Thank you, Mr. Chairman, for holding this hearing. And as I listen to the witnesses, I sort of get mixed notions. Mr. Herrstadt, listening to your testimony, I got the impression that the new NAFTA proposal is not much different from the old proposal. So could you tell us what is in the new proposal that was not in the old proposal?

*Mr. Herrstadt. Yes. In our viewpoint, revised new NAFTA looks very much like the old NAFTA for the substantive labor provision issue on it. There is some language, positive language, when it comes to the right to strike, when it comes to violence against workers, when it comes to some forms of discrimination.

The problem is, all of those are undercut by two things. One is the lack of clear definitions of what those standards are, which is why we refer to the ILO reports and rights; and two, the problem lies in enforcement, which is often undercut by aspirational language, by language that leaves it to the parties to decide what is appropriate, and by the lack of some sort of binding dispute settlement process that provides for swift and effective enforcement, especially for those victims of labor and human rights violations.

*Mr. Davis. —Mr. Von Bismarck, please.

*Mr. von Bismarck. Thank you, Congressman. And as it relates to environmental

concerns, there is new language. There is new, as I mentioned, discussion of how to reduce marine litter, a prohibition on commercial whaling, enhanced language on illegal and sustainable fisheries management, and a description of this concept that I pointed to our stopping the import of goods that were illegally produced, natural resource goods.

But the entire experience of enforcement that we have had has shown that unless that language is particularly clear about what is actually prohibited and what enforcement is required, it will be worth very little. And in that sense, it is an opportunity lost to learn from our experiences and provide not just the aspirational language, as it was said, but the actual language that is required.

*Mr. Davis. Ms. Polaski, we know that enforcement is very difficult. We do not have any international law that says, "You have got to comply with what you have said you were going to do." So what constitutes -- given the fact that all parties are always looking for whatever advantage or whatever wins, they can leave the negotiations feeling that they have accomplished -- what would you consider a win/win for all the parties involved in the negotiation?

*Ms. Polaski. Congressman, thank you for that question. I can think of several things that would constitute a win/win. I will refer to the comment by Mr. Herrstadt about the idea of referring not only to the declaration, ILO declaration of fundamental principles and rights at work, but referring to the actual interpretation by experts at the ILO of what those rights mean, what they require, and when they are being violated.

Getting very specific about that, taking out a footnote which says that you cannot look beyond the declaration, you cannot look to those decisions, that should be amended. The agreement should be opened and that should be amended. So that is one problem.

I would also point to the fact that the chapter on Mexican reform -- the annex, rather, on Mexican reforms, is pretty good. It actually echoes some things that the Obama administration was trying to do with Mexico in the context of TPP. It gets to some of the core problems that have been identified by Mexican workers, Mexican unions, American workers, American unions --

*Mr. Davis. My time is going to run out. But let me just see if Ms. Baltzan could answer the same --

*Ms. Baltzan. Do you mean specifically on the labor, environment, and enforcement issues, or just across the whole agreement?

*Mr. Davis. Right.

*Ms. Baltzan. One thing I think we should point out -- I echo what Sascha said about the illegal take in trade issue. I think that language deserves to be strengthened. It does not come out enough that that is actually a national security issue. It is a global security issue. Illegal take and trade is used to fund terrorism, so I would really put a point of emphasis on that particular issue.

*Mr. Davis. Thank you very much, and I yield back, Mr. Chairman.

*Chairman Blumenauer. Thank you.

*Mr. Schweikert. Forgive me. Thank you, Mr. Chairman.

A couple things I want to get my head around, so I am going to ask everything about the new law coming out that I believe has made it through the Congress and the Senate in Mexico. But I also have a question, Ms. Vorwerk, on ISDS, and particularly in some of the rewriting.

I see the ISDS actually having less protections for particularly capital investments.

Can you tell me your history, your experience in the past, and will the new layout actually create some fragility in new investments?

*Ms. Vorwerk. Thank you for the question, Congressman Schweikert. And I can also speak to the new law in Mexico, if you would like.

But on ISDS, it is in there but it is not inclusive across all industries and all chapters. So as it relates to Cargill, I can speak from our experience. In NAFTA, having the Investor-State Dispute Settlement provisions allowed us to challenge the Mexican government when these trade barriers were put in place.

And it allowed us -- when the first round of barriers came in -- it allowed us to use ISDS to, well, first to challenge on the prohibitive tariffs, the illegal tariffs that were put in place; we were able to recoup those duties. And then, in addition, when a second round came in, we were able to recoup the damages that were done. And that allowed us to reestablish the market for about a \$500 million market, not just for Cargill.

*Mr. Schweikert. Can you speak to, though, the changes?

*Ms. Vorwerk. So this is where I think there is an opportunity to get in under the hood and see whether there is an opportunity to make sure that ISDS applies comprehensively across all sectors. At the moment in food and agriculture, for example, ISDS or capital investments would not be protected in the current text.

*Mr. Schweikert. Okay. You just hit on what -- because actually, in a weird way, this is a derivative of something Mr. von Bismarck was saying.

*Ms. Vorwerk. Yes.

*Mr. Schweikert. And it is a slightly different view I have of the world is capital investments, particularly with modern and new technology, are cleaner, more

environmentally sensitive, friendlier to the world. And I have this fear that under this new language, the willingness of Canadian and U.S. capital to go down and improve capital infrastructure, everything from -- whether it produce greenhouse gas or something else, all of a sudden now we are going to continue to move with existing technology.

Under the newer language coming, would a company really want to go and make large capital investments of new, cleaner technology?

*Ms. Vorwerk. Yes. We would share your concern, and we actually think that is why this is a beneficial conversation around if there are ways to enhance the enforcement mechanisms to ensure that it applies across the board to all chapters, including environment, clean tech investments -- there is a lot of innovation that is happening. And without the proper sort of investment protections, that may mean that an investor would shy away.

*Mr. Schweikert. Okay. Mr. von Bismarck, and forgive me, but Mr. Chairman, often I do not get a chance to ask this, I greatly appreciate what had been done with the logging annex and the Peruvian -- and this is a little off of U.S.-Mexico-Canada.

A little while back I was in Iquitos and did the traveling around and those things. And I actually found almost a heartbreak of devastation, but it was coming substantially from clear-cutting and burning to grow coca. And when meeting with the experts in the region, they had coca devastation and illegal gold mining.

When you are doing your reports, are you moving on to other types of those things - the illegal narcotic trades, the devastation it is creating in the rainforest, and how do we deal with that type of transshipment of illegal products or gold? What would you do?

*Mr. von Bismarck. Thank you, Congressman. It is a great point. And just as coca

can have that dynamic, the other main agricultural commodities that would flow into the United States, or mining products such as gold, make coca pale in comparison to the impact on deforestation.

*Mr. Schweikert. Well, the last 5 years' calculation on coca clear-cutting was actually the biggest number coming out of the rainforest. And I am sorry. Thank you, Mr. Chairman. But it is a really interesting question we need to also deal with.

*Chairman Blumenauer. Thank you.

The committee will now be recognizing two Democratic inquiries for each Republican. We will deal with members of the subcommittee before we turn to people who have joined us. And we welcome people who are not members of the subcommittee to be part of the inquiry. But we will deal with committee members before we turn to folks who are not members of the subcommittee.

Mr. Higgins?

*Mr. Higgins. Thank you, Mr. Chairman. With the North American Free Trade Agreement, the goal was to integrate Mexico with the highly developed economies of the United States and Canada. And NAFTA had pioneered the incorporation of labor and environmental standards, theoretically.

Mr. Herrstadt, what as a percentage, in your estimation, is the difference between the United States-Mexican-Canada agreement with that of NAFTA?

*Mr. Herrstadt. I am sorry. I do not understand the question.

*Mr. Higgins. Well, what is the difference? Is there a big difference between the proposed United States-Mexican-Canadian agreement when compared to the NAFTA, the original NAFTA agreement of 25 years ago?

*Mr. Herrstadt. Oh, I am sorry.

*Mr. Higgins. That is okay.

*Mr. Herrstadt. Well, there is not a lot of real impact --

*Mr. Higgins. As a general percentage.

*Mr. Herrstadt. I am not sure I follow that.

*Mr. Higgins. Is it a radical -- is it 75 percent new? Is it 90 percent new? Is it 95 percent the same?

*Mr. Herrstadt. In terms of the labor provision of it?

*Mr. Higgins. Labor and environmental. Let's just --

*Mr. Herrstadt. Well, I am not really an expert on environmental.

*Mr. Higgins. Labor.

*Mr. Herrstadt. But I will say it is primarily the same agreement.

*Mr. Higgins. It is primarily the same.

*Mr. Herrstadt. And the effect on U.S. workers and Mexican workers and Canadian workers will be almost identical. In fact, it will not stop outsourcing. It will not raise standards.

*Mr. Higgins. So no big difference. No big difference. So the goal of the integration of Mexico with the highly developed economies of the United States and Canada has not been achieved.

*Mr. Herrstadt. Yes. I would agree.

*Mr. Higgins. Okay. Well, I think you are right.

*Mr. Herrstadt. Particularly the impact on workers, yes.

*Mr. Higgins. I think you are right because the North American Free Trade

Agreement used a term called “wage convergence” between the United States and Mexico, basically telling us 25 years ago, bamboozling us 25 years ago, that we were going to have wage convergence.

The minimum wage in Mexico today is \$4.70 a day. That is less than 59 cents an hour. The United States lost 53,000 manufacturing businesses in the last 20 years, representing 5.5 million manufacturing jobs over that same 20 years.

Do you know what a maquiladora factory is?

*Mr. Herrstadt. Yes. In fact, I have toured them.

*Mr. Higgins. Yes. Can you explain it?

*Mr. Herrstadt. Yes. A maquiladora factory sometimes is a state-of-the-art factory in Mexico using high technology, doing advanced leading-edge technology, on everything from appliances to electronics. Workers there are paid abysmally. The labor rights do not exist in terms of free labor unions and collective bargaining, and often the workers live in slums.

*Mr. Higgins. Yes. Let's move to the issue of environment. There are 2,700 maquiladora factories. These are factories that are in Mexico and that are foreign-owned, that do most of the exporting back to the country where the company is owned. So it seems to me that they are put in place to sidestep, perhaps, U.S. environmental laws that were put in place in 1971/1972 to help restore our waterways, our land, and our air. Right? Okay.

So it says here that -- this is according to the Mexican government -- that NAFTA-related environmental damage has been about \$40 billion a year for the past 25 years. That is one trillion dollars. And when you look at that damage that has been created, when you look at the wage convergence promise and the great disparity in reality, it seems to me that

while we are sold on the notion that trade agreements are supposed to be, in game theory, variable sum -- in other words, there can be multiple winners -- where in fact they are zero sum. There are winners and there are losers.

And I would argue, at least for places like Buffalo, New York and those urban centers of the American Northeast, this agreement that is before us today is really nothing more than a redox of the agreement that we are trying to get out of. So in terms of wages and in terms of the environment, this agreement is a loser.

With that, I will yield back.

*Chairman Blumenauer. The gentleman's time is expired.

Mr. Panetta. Thank you, Mr. Chairman. I appreciate this opportunity, and of course appreciate all the witnesses being here as well as the preparation in order to be here. Clearly you have prepared, based on your statements and your answers today. So thank you very much. Always good to have a Central Coast local, down there and not just up here. Gonzales High or Notre Dame?

*Ms. Vorwerk. Gonzales High.

*Mr. Panetta. Gonzales High. Good. Spartan. Nice. And then UC Davis as well. Correct?

*Ms. Vorwerk. Yes.

*Mr. Panetta. Understood. So you know well why each time I normally talk, be it in this committee or on the Ag Committee, why I proudly claim where I come from, not just Central Coast of California but the salad bowl of the world. Agriculture is the number one industry in my district. We're very proud of the agriculture we have.

And that is why, to be frank, NAFTA has actually helped the Central Coast of

California and helped the number one industry there and many of our communities, especially towns, small farm towns like Gonzales.

But obviously, we understand as good as it was for our farmers, the deal failed to set certain standards -- labor, environmental, and especially enforceability standards. I just read something where even though they had the NAALC set up, there have been 39 submissions of noncompliance and not one of them have led to any sort of penalties or any sort of arbitration, unfortunately.

So clearly, a lot in the USMCA is there for environment and for labor. But I think the focus is going to continue to be on enforceability. And I think we can do that, and I think we have to make sure that we continue to work at that in order to get to yes because I can tell you there are a lot of members on this side of the aisle, on that side of the aisle, that want to get to yes on this agreement. But certain things need to be put in place in order to do that.

So let's talk about enforceability. And Ms. Baltzan, if I can ask you a question based on your extensive experience, obviously we have heard certain proposals today. How can we take them -- how can we go about incorporating them into the USMCA? Would adding an annex be workable? Or do we want to do something like inserting new footnotes to clarify passages in order to have meaningful improvements? What would be the process that we should go about doing that?

*Ms. Baltzan. I think I would point out two things. The first thing I would do, if I were in charge of the pen, would be to delete the language "in a manner affecting trade and investment," and "sustained or recurring." Those are provisions that are not in other chapters that also do not involve cross-border trade. So for example, the IP chapter is also

a series of domestic rules, right. So you could put those two chapters on the same footing.

I think if you wanted to do the Wyden-Brown proposal, I think that requires an amendment to the agreement. You would add it as an annex the same way that the Peru Forest Annex was added to the Peru FTA even after that was signed. It was amended to do that.

*Mr. Panetta. Okay. And Ms. Polaski, would you agree with that or would you have any other ideas?

*Ms. Polaski. Congressman, I think that you could structure the agreement between U.S. and Mexico-- and by the way, no reason Canada should not join that as well in terms of the enforcement of labor -- you could structure it as something that is appended to the agreement, but only if it was integrated in the sense that all of the authorities and all of the penalties in the agreement would be available for this as well, in addition to the new enforcement mechanism.

However, I think, after reading the agreement very carefully, you would have to reopen to eliminate some black letter language that is in the agreement that would get in the way of an effective enforcement mechanism such as Brown-Wyden.

And let me just say, having been involved in U.S. negotiating teams over the years in different capacities, you can reopen agreements and agree with the parties that you are going to open narrowly only on a particular topic. The idea that once you reopen, everything is back on the table, is simply not the way negotiations work, and it is certainly not the case with eager partners like Canada and Mexico.

And so it seems to me that you can reopen, put this in the agreement or append it in a way that it is clearly integrated, make the changes you need in the agreement, and you

would have a very serious step forward. Now, labor enforcement is not the only concern of many members and much of the public, and so I am talking about one issue. But that would be a powerful way of dealing with the issue. It would require, I think, reopening.

*Mr. Panetta. Understood. I mean, obviously you have heard the sentiment about reopening and what that would entail. And it would be very difficult. Would you agree? Go ahead.

*Ms. Polaski. I do not think it is difficult, no. I think you approach your partners -- in fact, the Mexican ambassador has said Mexico would be interested in an enforcement agreement like the Brown-Wyden proposal. They just want to know what we mean, and they want it to be reciprocal, which of course it should be. No one disagrees with that.

So I do not think it is difficult to reopen, no.

*Mr. Panetta. Understood. Thank you. I yield back my time.

*Chairman Blumenauer. Thank you very much.

Mr. Rice.

*Mr. Rice. I agree with the statements of a lot of you up here about the effect of stagnation of middle class incomes in America. And I think that the problem has been, for the last 30 years, that we have kind of sat on our hands and watched while the rest of the world passed us by.

And that is why we had to revise our tax system and it is paying off greatly. And that is why we have revised our regulatory system and it is paying off greatly. And we are seeing marked improvement. We have got 3-3-3, 3 percent GDP growth, 3 percent unemployment, and 3 percent wage growth. For the first time in a long time, the middle class is finally coming ahead.

And the next step in this is trade agreements. For too long -- 30 years ago we could accept a one-sided trade agreement because we were so far ahead of the rest of the world. But guess what? We are not any more. So we have got to readjust. And I think this new NAFTA is a huge success. The USMCA is a huge success.

It gives us increased access for American products, improved labor standards, improved environmental standards, improved de minimis rules, and on and on and on. And our allies have made a lot of concessions from the old NAFTA to the USMCA. I do not think we have made any concessions.

Do you know of any concessions that America has made, Ms. Vorwerk? Have we made any concessions from the old NAFTA? I do not think we have. Can you name any, Mr. von Bismarck? Can you name any, Ms. Polaski? Can you name any, Mr. Herrstadt? Ms. Baltzan?

So this agreement we have gone and renegotiated, we have looked our closest allies in the eyes. And we have had a hard time bringing them to the table, you know? And we have gotten great concessions across the board. Mr. Herrstadt, your statement that there really are not any new labor standards I find utterly ridiculous.

You do not think that the laws the Mexico just enacted on labor mean anything? You do not think the fact that they just enacted a labor-friendly -- or elected a labor-friendly government, you do not think that means anything? And those laws that they enacted, that was not something that was on their agenda. It is something that we pressed under NAFTA because we were trying to make labor in America happy with this new agreement. So I find your statement completely ridiculous.

We have gotten to this point. It could be better. It could be better, but I do not

know that if we pursue all this that you are talking about that we will ever get to the point that it will be enough. If we get to this line, you will want something else.

And Ms. Polaski, you mentioned something I think may be the most important issue in this whole thing, and that is: These trade agreements are often structured with great aspirations but then they are circumvented, routinely. Right? That is what you said. Right?

Then you also mentioned the sunset provision. In other words, a lookback 5 years from now is maybe a way to deal with that circumvention so that maybe we can reassess and adjust. Would you fill the meat in on the bones on that?

*Ms. Polaski. I think it was actually one of my colleagues who mentioned the sunset provision, and so I will defer to her.

But in terms of the question of circumvention, which I think the current USMCA does nothing to prevent, that is why I think we need a new enforcement mechanism on labor issues. Mr. Panetta mentioned that 39 submissions have been filed under NAFTA and not a single one of those has gone to arbitration.

*Mr. Rice. Do you not think that --

*Ms. Polaski. We need a new provision which is going to be direct and timely.

*Mr. Rice. Do you not think that a sunset provision gives us a chance to look at it 5 years from now and readjust and maybe fix it if some of these things have not worked?

*Ms. Polaski. I am certainly not against the sunset provision. But I did not raise it, and I will defer to my colleague.

*Mr. Rice. And do you not believe that the laws that Mexico passed on labor have any effect at all? You do not think that is a dramatic improvement?

*Ms. Polaski. They have not been implemented. It has not yet been signed. It is still open for amendment in the Mexican Senate. Nothing has happened so far, so no, I do not think it has changed anything.

*Mr. Rice. You do not think that the laws that the Mexican legislature is working through will have any effect and that they are meaningless, Mr. Herrstadt?

*Mr. Herrstadt. No. In fact, that is not something I said.

*Mr. Rice. Actually, it is. You just said it to Mr. Higgins a minute ago.

*Mr. Herrstadt. It is a positive aspect. But as my colleague just said very clearly, they are far from being implemented, and the defects in the law were extensive and, when NAFTA was enacted in 1994, we were promised those labor law reforms would also --

*Mr. Rice. Okay. Well, they are going to be -- they are being made right now or NAFTA is not going to get across the line. Right? So we will solve that problem.

Now, I just want to point this out. We have made great improvements -- tax reform, regulatory reform, we are moving on two trade agreements, this one and China. If we can get these across the line, we can expect to see above-trend GDP growth for the foreseeable future. We move on to high-skilled immigration and to infrastructure, we can expect to see a booming economy for the foreseeable future.

Thank you, Mr. Chairman. I yield back.

*Chairman Blumenauer. The gentleman's time has expired.

Ms. Murphy.

*Mrs. Murphy. Thank you, Mr. Chair, and thank you to the witnesses for your testimony.

Many people can agree that the new NAFTA is an improvement over the status quo

in most areas. But I think when it comes to enforcement, specifically state-to-state dispute settlement, this agreement misses the mark. And I believe that our demands for improvements are reasonable. Trade rules must be clearly enforceable to provide both workers and companies the confidence that these agreements will work as intended.

Enforcement provisions have to be strategic to maximize effectiveness. But I think instead of including strong enforcement mechanisms in the agreement, the administration's plan is to use Section 301 to unilaterally enforce provisions in this new NAFTA. And I think this is misguided and inappropriate.

Currently we are seeing how the use of unilateral trade sanction plays out. And this administration has launched multiple concurrent trade wars, and it is American families and farmers that are paying the price. And meanwhile, my constituents are living a tariff nightmare with no end in sight. Tariffs on U.S. imports, and then coupled with retaliation on U.S. exports, are not good for Americans, and they are not good for our relationships with our foreign allies, and they hurt our leverage in the world.

If we use Section 301 as an enforcement mechanism in the new NAFTA, we will be creating additional trade wars. And I am worried that these are trade wars that our workers and our small businesses will not be able to survive. In trying to enforce new NAFTA in this way, we will end up destroying the same people that we were trying to protect.

Mr. Herrstadt and Ms. Baltzan, Section 301 has been around since 1974. Do you think Section 301 would be an effective NAFTA enforcement tool? And why do you think it has not been used as a backstop for enforcement before?

*Mr. Herrstadt. Suggestions that 301 complaints are adequate in terms of labor rights, labor standards are, as we have said before, simply misplaced. As I mentioned, they

require the full support of whoever happens to be the USTR and can take years to pursue. The remedy would also, as you have pointed out, involve tariffs, which have questionable deterrence for labor violators themselves on it.

Most telling, of course, is the simple fact that despite having plenty of opportunities to proceed on 301 complaints for labor violations in the past, no USTR has ever pursued such a complaint let alone pursued one to a successful conclusion. Indeed, USTR in the past has quickly dismissed Section 301 complaints and petitions filed by the AFL-CIO with respect to China's violations of labor rights. So they are no substitute for the specific enforcement mechanisms we have been talking about this morning.

*Mrs. Murphy. Thank you.

Ms. Baltzan?

*Ms. Baltzan. I think if we are looking for effective enforcement procedures that supplement what would be a functioning dispute settlement process, we should be looking at cooperative mechanisms. And that is one of the reasons, I think, that the Wyden-Brown proposal is valuable. I think you have an option of getting better results when both countries are working together to solve the underlying problem.

If what you use is Section 301, then that is a context in which it is acrimonious. You are taking an action against the country. You are not looking for the kind of cooperative solution that I think Wyden-Brown offers.

*Mrs. Murphy. And Ms. Baltzan, given that the state-to-state dispute settlement in the new NAFTA is ineffective and structurally flawed, and the approach that you just discussed is also not an approach that gets to a cooperative solution, are there any previous trade agreements that we can point to that might be a better model for enforcement?

*Ms. Baltzan. I mean, I do -- I guess I would put it this way. I do not think we should consider that even a functioning dispute settlement system, the way we have in other agreements, would necessarily address the labor and environment concerns. That is the heart of my testimony. I think we need extra mechanisms to address the labor and environment issues.

*Mrs. Murphy. Ms. Polaski, did you want to answer that?

*Ms. Polaski. I agree with Ms. Baltzan. I think leaving the possibility of using the arbitration mechanism that is there for the entire agreement, adapting it for labor as a fallback, could be an additional step taken. But without a much more direct enforcement mechanism -- for example, along the lines of Brown-Wyden -- I do not think you are going to have an effective enforcement of labor standards.

So I think improve what is there, but it is not good enough. There needs to be a new mechanism.

*Mrs. Murphy. Thank you, and I yield back.

*Chairman Blumenauer. Thank you.

Ms. DelBene?

*Ms. DelBene. Thank you, Mr. Chairman. And thanks to all of our witnesses for sharing your testimony and for joining us today. We appreciate it. This is a very important topic.

Ms. Polaski, I wanted to follow up. You have talked a lot about Brown-Wyden and the proposal, and obviously a fundamental question to that moving forward would be having Mexico agree to that proposal. The current proposal allows for U.S. and Mexican governmental officials to conduct audits and inspect facilities suspected of violating the

deal's labor standards.

If Mexico will not accept the language, what other ideas do have? Could a third party potentially conduct those? What ideas do you have on how you would move that forward?

*Ms. Polaski. First of all, I believe that Mexico will accept the language, partly based on what their ambassador has already said publicly, which is that this is not inimical to them.

And I might just mention -- it is in my written testimony -- that when the bracero program, which some Californians here may be familiar with, was originally established during World War II, Mexico insisted and the U.S. Government agreed that Mexico could send labor inspectors in to look at the farms and make sure that Mexican workers' labor rights were not being violated in the U.S. So there is history there. We can agree with Mexico, and as I say, it should be Canada as well, to have this, and I do not think it is going to be difficult to get that agreement.

There are third party ways of monitoring, and when I was in government I was involved in trying to set some of those up. To set up a third party monitoring mechanism that could cover all of North America, or even just all of the workplaces in Mexico, would be an undertaking much larger than anything that has ever been tried.

It would be costly. The independent authority would need to have strong legal protections so that it would have the right to access factories. I think, in fact, having it done jointly by the U.S. and Mexican Governments is simply a more direct way of doing it. I am not against the idea of a monitoring authority that would have enforcement powers. But I just think it is an extremely ambitious proposal, and Brown-Wyden, I think, is

something that could be very robust and much more direct.

*Ms. DelBene. Thank you.

Mr. von Bismarck, out of 150 ISDS cases under a U.S. agreement, the majority of the cases were brought by companies in the oil or energy and gas industries. And while the administration did reduce the scope of ISDS in USMCA, they unilaterally carved in certain industries like oil and gas and extended them almost full ISDS rights.

So rather than simply allowing certain industries to use ISDS, do you think we would be better off fundamentally reforming the whole ISDS system to make sure that we have a system that works for everyone as opposed to certain individual industries? To make sure that generally all companies are not abusing a system or trying to prevent countries from regulating the public interest?

*Mr. von Bismarck. Thank you. Yes, I do. I think, if I am asked from an environmental perspective to comment on ISDS, I do not know of an example of a company being in conflict with a government and saying that, "Your environmental laws are too lax." I do not think that has happened, it would be great, but I do not think it is going to happen.

So if the question is: "To protect our global environment, what should happen to ISDS?" I think you need to really look at the fact that in whatever form it comes, you are talking about a mechanism that will have a chilling effect on an individual country's attempt to pass laws to protect its environment, and in the case of climate change, all of our environments. And these laws are urgently needed.

And under the threat of the biggest companies in the world, especially for smaller countries, that is an enormous deterrent to passing the kind of laws we really need. So I

think absolutely, major reform, and from an environmental point of view, ISDS should be eliminated.

*Ms. DelBene. Thank you very much. I yield back, Mr. Chairman.

*Chairman Blumenauer. Thank you.

Mr. Smith.

*Mr. Smith. Thank you, Mr. Chairman.

“We have to see that they pass the legislation, that they have the factors in place that will make sure it is implemented and that they demonstrate some commitment sincerity.” That was Speaker Pelosi on April 2nd, referring to the new labor reforms Mexico needed to pass in order to be compliant with USMCA.

Democrats have used many excuses to prevent a vote on the President's trade agreement. First they started with Mexico's labor reforms. Well, Speaker Pelosi, I have good news. On May 1st, the Mexican President signed those reforms into law. Thanks to President Trump, USMCA's labor provisions exceed what is required under TPA.

Second, they said they could not decide how to vote until the ITC report was released. Well, the ITC report was released last month, and it showed that USMCA will increase U.S. employment by 176,000 jobs and increase GDP by more than double the proposed rate for TPP.

Then they said they could not vote on USMCA until the U.S. lifted its steel and aluminum tariffs. Well, last Friday an agreement was reached between the U.S., Mexico, and Canada that lifts the 232 tariffs and protects American steel and aluminum.

When it comes to President Trump, Democrats are always moving the goalpost to fulfill their political ambitions. They have used the exact same playbook with the Mueller

Report. First they said they tried to wait for the report before deciding on impeachment. Guess what? The report was released and it showed no collusion.

Even then they could not accept the outcome. Now they want Attorney General Barr to release the full, unredacted report in violation of the U.S. law, and they will hold him in contempt if he does not. Even after this, Democrats will not drop their collusion narrative. They still want to impeach. Different day, same old story.

When will it be good enough? President Trump fulfilled one of his key promises to the American people by delivering a modern USMCA, yet we have not held a vote because it is politically inconvenient for Democrats to move something this President supports. Just like it is politically inconvenient for them to let go of the collusion narrative.

Even the name of this hearing suggests Democrats cannot accept reality. It is time for Democrats to decide what it is. What is a worse outcome for them, giving President Trump a win or allowing the U.S. American workers to win?

Ms. Vorwerk, you said in your testimony that passing the USMCA is critical to strengthening the United States' position to deliver on future trade aspirations. What is the importance of securing this trade agreement as it relates to our ongoing negotiations with China, in particular the importance of setting enforcement standards that can be the benchmark for all future trading relationships?

*Ms. Vorwerk. Thank you, Congressman Smith, for the question. And I know that you would feel that this agreement is intimately related to your district's ability to grow and for communities to grow. The Mississippi River is a powerhouse that feeds the world. And our ag supply chain in Missouri is an example of who will benefit, and all those farmers associated with it.

I would like to use this opportunity to highlight that USMCA has the strongest labor and environment provisions of any agreement thus far, and also just to highlight that there is freedom of association and the right for collective bargaining. And as Cargill, we believe in our employees' right to choose freely, and therefore we would support a secret ballot in line with this agreement.

And so I could tick off that it is dealing with forced labor, child labor, human trafficking, elimination of the discrimination of employment. It requires protections for migrant workers, and indeed, we have seen that Mexico has overhauled its labor laws.

On the environmental side, we are pleased to see that it is combatting illegal fishing, overfishing. We know that our oceans are overfished. Cargill has a significant aquaculture business that can resolve some of those situations. It deals with illegal wildlife and trafficking of illegal wildlife and timber. And it fulfills the commitments made under multilateral agreements.

And so I want to ensure that the full picture is given of the importance of the labor and environment agreements in this, in the USMCA.

*Mr. Smith. Let's get a vote. I yield back, Mr. Chairman.

*Chairman Blumenauer. The fact that we are holding this hearing I think is a demonstration of interest on the part of Democrats on this committee to be able to engage the issues to be able to move forward. I will compare that to the fact that as near as I can recall, the committee in the last Congress under Republican leadership had virtually no hearings on these elements.

I do not want to get back and forth, but I just take exception to the tone and the direction. And we are moving on a good faith effort to try and come together on issues that

people on both sides of the aisle tell me matters to them. Enforcement matters to our leadership. I think it matters to your members. And I just take exception to the notion that this is an example of slow walking. This is the second hearing we have had to try and deal with issues of contention.

Let me turn, if I may, to Mr. Kildee and then Mr. Beyer.

*Mr. Kildee. Thank you, Mr. Chairman. And I echo your comments. I reject the bizarre conflation of other really contentious issues that we are dealing with and the very thoughtful approach that this committee has taken to this question in our deliberations with one another, in our meetings with Mr. Lighthizer, and in the interaction between the Members of this committee and this panel. It is unfortunate that those comments were somehow introduced into what I think has been a really civil conversation.

I would also like to ask if I could submit for the record some testimony provided by a former member of this committee, Mr. Levin, who has been giving some very good thought to this and has a document that he would like to have added to that record.

*Chairman Blumenauer. Without objection.

*Mr. Kildee. Thank you.

*Chairman Blumenauer. We miss him.

*Mr. Kildee. We do. We really do.

[\[The statement of Mr. Levin follows:\]](#)

*Mr. Kildee. I want to thank you all. This is a subject that is very important to the people that I represent. I come from Michigan, from East Central Michigan, and specifically my home town of Flint, which has an incredible history in manufacturing. And it was the birthplace of General Motors, and it was the place in 1937 when the first UAW

contract was written after 44 days of a sit-down strike. So we helped build the middle class, and very sadly have felt the brunt of bad trade deals for a long time.

So I come to this conversation very interested, not just in what the plain promises are in the agreement, but how these agreements are going to be enforced. So I am very concerned that this is a subject that does need more attention, and would just like to pursue -- this may be somewhat redundant with some of the past questions, but would like to pursue a bit, perhaps starting with Ms. Polaski.

So how does this new agreement's enforcement provision improve over what my community has experienced in the last couple of decades? Does it improve enforcement over what we have experienced? We even heard those same promises before, by the way.

We were told that this was going to be good for Mexican workers -- the previous agreement. We were told that there would be robust enforcement -- the previous agreement. We were told that it would not result in the net loss of jobs to Mexico -- the previous agreement. And now we see Mexican workers making less than \$2 an hour.

Will this improve that situation substantially? Can I go home to my constituents and tell them that?

*Ms. Polaski. Congressman, I am afraid that the enforcement mechanism of USMCA does absolutely nothing to improve enforcement of labor rights in Mexico or throughout the North American territory. So I do not think that you can reassure your constituents of that.

And that is why I think we need a new robust enforcement mechanism, not a little bit of tweaking with what is in there because it has not worked for 25 years. I think therefore we need to have a new mechanism, and I think given that good ideas have already

been put forward, they can be expanded, developed, and improved. And I hope that today's hearing helps to launch that conversation more broadly because what we have now will not produce different results than what has happened over the last 25 years.

*Mr. Kildee. Thank you.

Mr. Herrstadt, I wonder if you might comment. We were just lectured that we should have a vote tomorrow, I suppose, on this. What would happen to American workers if we simply ratified this agreement without any additional work? What would happen to American workers in manufacturing, for example?

*Mr. Herrstadt. It would be a dreadful waste of an opportunity to get this thing right. We would continue, as my colleague has just said, with the same outsourcing that has gone on for U.S. workers, with the same abuse of rights for Mexican workers.

And by the way, I do take issue with some that say this NAFTA 2.0 represents the highest labor standards of any trade agreement because where we have been, that is not really much of a test. You could do very small things that have no effect, no effect, on workers that are losing their jobs as we speak, as another plant moves to Mexico with respect to that.

*Mr. Kildee. Thank you. And I wonder if I could just finish by asking Ms. Vorwerk if you could comment. I am happy to hear you comment that you are of the belief that increased enforcement would be helpful. Would you agree that it would make sense to reopen the agreement to include stronger enforcement language in the agreement?

*Ms. Vorwerk. I think what you are hearing is consensus among this panel that enforcement is important. And I also believe what you are hearing, Congressman Kildee, is that there is an opportunity to tweak some of the enforcement mechanisms in the

agreement. And --

*Mr. Kildee. Just to be clear, that would require additional negotiations and new language included in the agreement to strengthen enforcement. Is that correct?

*Ms. Vorwerk. I am not going to claim to be the legislator or the negotiator. I think what is important -- to say exactly how it gets done. What I am pleased by is that we are having the conversation, and we would encourage a bipartisan approach to addressing these issues on enforcement. There are some good ideas that have been put forward today across all the panelists.

*Chairman Blumenauer. The gentleman's time is expired.

*Mr. Kildee. Thank you. And I thank the panel very much. Thank you, Mr. Chairman.

*Chairman Blumenauer. Ambassador Beyer?

*Mr. Beyer. Thank you, Mr. Chairman. Thank you all for being here. And I am sorry my colleague from Missouri left because I too felt that many of those comments were completely unfair and inaccurate. This has nothing to do with opposing Donald Trump. It is not political at all.

In fact, this committee, with your leadership, Mr. Chairman, has sent four different letters to Mr. Lighthizer pointing out our specific concerns, and, in the context of the steel and aluminum tariffs, Mexico, Canada, the Democratic, and the Republican leadership all said needed to be lifted before we could even consider it. So the fact that these were lifted by no means takes the other four considerations away.

And by the way, these are the exact same concerns that Democrats had with President Obama's TPP, that Democrats had with President Clinton's NAFTA. This is not

about politics. I think we all want to get to yes. We just want to get to yes in a way that actually helps the American families and American workers.

Ms. Baltzan, during both this hearing and my conversations with stakeholders, I have heard near unanimity about the deficiency of the state-to-state dispute settlement provisions of the new NAFTA, specifically with regard to panel blocking. It does not seem that anybody thinks that the text, as currently written, is a good idea, except for a few people at 600 17th Street.

Ambassador Lighthizer has argued it is important to allow parties to block the formation of panels for defensive purposes, particularly in order to prevent Canada and Mexico from challenging U.S. trade remedy laws.

Ms. Baltzan, do you find that argument particularly compelling?

*Ms. Baltzan. I understand where the concern is coming from. I think that is a WTO concern. We have had issues at the WTO with overreaching on trade remedies, and Canada did not do itself any favors by bringing a massive -- filing a massive complaint against the United States. So I think that is where the concerns are.

I am not sure that the solution to that problem is to actually have what is effectively a Potemkin dispute settlement chapter.

*Mr. Beyer. Do you see a distinction between the WTO panels and the panels that would be raised in a new NAFTA? Or are they virtually the same?

*Ms. Baltzan. No. It is different. I think a lot of the problems on the trade remedy side at the WTO have been a problem of the Appellate Body, not all of them but some of them, a good number of them. And you would not have an appellate body mechanism in the dispute settlement chapter of NAFTA.

*Mr. Beyer. Ms. Polaski, I had mentioned earlier I had dinner with the Mexican ambassador last night. And their landmark labor reforms are incredibly welcome, but we still have to be sure that there is a full implementation, and that any vote we take is going to be an act of faith.

What concrete signs or actions should we be looking for from Mexico in both the government and the private sectors to get a sense of the utility of these reforms and how they are actually taking place?

*Ms. Polaski. Thank you, Congressman. Well, I am troubled by the idea that there are many reports that the Senate has already said it will allow further amendments, that the deal is not as done as it might appear to be once having passed. They were trying to meet a deadline and they did not have time to accept amendments, so they guaranteed that Senators could introduce them later. So there is already that possibility of a back door.

But beyond that, moving forward expeditiously to set up this brand-new administrative system, these brand-new labor courts, is going to require resources. Right now I am told that there is no funding in this year's Mexican budget to begin this process, and we do not know even when it will begin let alone when it will end.

I think it would be a mistake to rush to a vote before we have the demonstration that the law is completely finalized and that the institutions are being built and being staffed up. That is a very important signal, and I also think it is very important to see changes in behavior in the Mexican businesses that have been paying these below-poverty wages, that have been denying workers the right to have independent unions.

I think we need to see some evidence of that partly because, as you and other members have said, there were a lot of promises when NAFTA was passed. There were a

lot of promises with other trade agreements that have not come to fruition. And so I think it is important to proceed carefully and be sure that we have evidence that it is going to be different this time.

*Mr. Beyer. Thank you.

Mr. von Bismarck, you noted that this agreement, like those before, does not address climate change at all. And there is a lot of disagreement whether a trade agreement is the right venue for it, but this agreement and future agreements, if they wanted to do it, how would you go about it?

*Mr. von Bismarck. What seems to me was clearly on the table, and that by all past measures has been very bipartisan and very pro-business, would be incentives for renewable energy and other such innovations, and using actually free trade mechanisms to incentivize the new technologies that solve some of the problems that drive climate change, as a colleague of yours has mentioned was the hope of a free trade agreement. That possibility has been totally shunned and put aside here, and seem to be to be politically unnecessary, certainly in the negotiating dynamics.

If I may underline very briefly the new law --

*Chairman Blumenauer. The gentleman's time is expired.

*Mr. von Bismarck. Sorry. Yes.

*Chairman Blumenauer. I would like to move forward. Thank you very much.
Mr. Estes.

*Mr. Estes. Thank you, Mr. Chairman. And thank you all to our witnesses for showing up today and testifying before our panel.

As a representative of the air capital of the world and the breadbasket of America,

trade is a critical issue for my 4th congressional district in Kansas. In fact, international trade supports 380,000 jobs in Kansas, and Canada and Mexico are our two top trading partners worth roughly \$4.9 billion in trade in 2017, and supports 110,000 of those jobs. That is why I am proud to serve on the team to help get USMCA finalized in Congress, and appreciate the opportunity to talk about it today.

Since its inception, NAFTA was beneficial to my district, especially our farmers, ranchers, and aerospace manufacturers. However, as we have talked about earlier today, that over-20-year-old agreement was outdated and it needed reform.

USMCA builds on NAFTA, and according to U.S. -- excuse me -- according to the International Trade Commission, it will boost our GDP by \$68 billion and create 176,000 new jobs. Kansas agriculture and manufacturers have been big winners under the USMCA. The deal increases and boosts and supports higher wages for manufacturing, provides new access for U.S. dairy, eggs, poultry, and sets unprecedented standards for agriculture biotechnology.

As mentioned earlier today, Mexico has passed sweeping labor reforms that were called for in the USMCA, and just this week the tariffs on aluminum and steel were dropped, as well as the retaliatory tariffs from Mexico and Canada on our American agriculture. And these are all significant steps towards passing of the USMCA as we work to finalize it in Congress.

I think it is very important that we in Congress get the opportunity to vote on implementing this agreement. As we all know and mentioned earlier, this requires law changes in all three of the countries in terms of the process. So it is going to be enough of a drawn-out process to make that happen in all three countries, so the sooner we get started,

the sooner we can help make that happen.

As this process moves along, I agree with our colleagues that ensuring USMCA is enforceable is one of the top priorities. While most of the discussion has been focused on environmental and labor provisions, I believe that there are other sections of the deal that also need to be enforceable to create the best outcome for American jobs and products.

Ms. Vorwerk, as you know, Cargill has a significant presence in my home State of Kansas. It is an impressive organization and an important part of our community. Can you describe a little bit about how Cargill and your industry will benefit from passing of the USMCA?

*Ms. Vorwerk. Certainly. Thank you very much, Congressman Estes, for the question. And indeed, our business in Kansas has been the poster child for how an integrated supply chain can be built and thrive under NAFTA.

And so essentially, this agreement reduces nearly 100 percent of tariffs across the board. So that is what is important to know. In addition, because 50 percent of U.S. exports are tied to U.S. investment in foreign markets or overseas, our ability to move not only goods but services and capital across the borders of Mexico and Canada is critically important for our ability to grow in Wichita, Kansas.

And so we see this agreement as an imperative for our business not only to grow but to survive. The measures that we would benefit from, the enhanced sanitary and phytosanitary measures that are considered best practice, SPS-plus, beyond World Trade Organization standards, will allow for an integrated supply chain where all three countries can agree on standards that are based on sound science. And that is absolutely critical for our business because food safety is our business.

The fact that we have the best digital trade chapter -- you would be surprised: Our business is going digital. Our business is being disrupted by digital. So to have a strong digital trade chapter is absolutely critical.

We have good regulatory practices. One that is quite practical are the customs procedures that have been put in place that will allow us to facilitate our movement of products across the board. And the unique opportunity in USMCA is something called Rapid Response, which is important for our products that we produce in your district because when we are shipping perishable products across the border and they get stopped for some unknown or unnecessary reason, we have the ability to invoke the Rapid Response mechanism immediately and get answers to our questions from the customs officials on either side of the border.

*Mr. Estes. Thank you.

*Ms. Vorwerk. Thank you.

*Mr. Estes. I see my time is expired. I will yield back, Mr. Chairman.

*Chairman Blumenauer. Thank you.

Ms. Moore?

*Ms. Moore. Thank you so much, Mr. Chairman, for allowing me to join your panel this afternoon. And I want to thank the witnesses for their patience.

I would like to ask a question maybe of Ms. Baltzan, Mr. Herrstadt, and Ms. Polaski. I am concerned about the arbitrage, the wage arbitrage. And I know, Ms. Baltzan, you took time in your written testimony to explain the historical context of that. I am going to ask you a little bit more about that.

But I am wondering if the promise of increasing, doubling, the minimum wage in

Mexico and increasing it by 16 percent, number one, is that -- do we have the enforcement mechanism for that? And secondly, what methodology was used to determine that those were the numbers, that they could even afford to do that in Mexico? Let's start with you, Ms. Baltzan.

*Ms. Baltzan. Are you talking about the minimum wage in the NAFTA --

*Ms. Moore. Yes. In Mexico.

*Ms. Baltzan. In the auto provisions?

*Ms. Moore. Yes.

*Ms. Baltzan. Okay. My interpretation of the way that works was that it was not necessarily that it would be Mexico raising its wages to \$16 an hour, but that that was a mechanism for preserving a certain amount of production in the United States and Canada.

*Ms. Moore. Mr. Herrnsstadt?

*Mr. Herrnsstadt. Yes. I think there are two separate things. One is the issue of auto and the \$16. One, we do not know how that is going to be calculated. We have no idea how that is going to be enforced. And it only impacts a certain amount of jobs in one industry.

The way it gets calculated, if you are going to include salaried workers, if you are going to include research and development or engineers, it is a pretty easy number to hit. It is not a minimum wage. It does not affect other manufacturing workers.

The ITC had mentioned in their report, I believe, that if all the labor reforms in Mexico were actually implemented and effective, they talked about wages going up by, I think, 17 percent. But that is still pretty low.

*Ms. Moore. Okay. So will they -- so Ms. Polaski, I guess what I am trying to get

at, because I am running out of time, is whether or not these are realistic sorts of goals. Ms. Polaski?

*Ms. Polaski. Yes. I think, Congresswoman, you referred to it as a 16 percent increase and a doubling at the border. These were increases in the Mexican minimum wage that were made by the new government when it took power in December 2018. One of their first acts was raising the minimum wage as --

*Ms. Moore. So they did do that? Okay. Thank you. So we paid like \$7.35 an hour. We are -- my State recently became a right-to-work State. So are we trying to insert things -- let me ask Mr. Herrstadt -- in our agreements that we are not able to hold here? This is a fair question, I think.

*Mr. Herrstadt. I think it is an excellent question. And of course, we always say honoring international human rights begins at home. On that, and if we are talking about \$15 an hour for minimum wage, that is something that we need to go for. But even if you increase minimum wage in Mexico, you have got an awful, awful long way to go to make it competitive with workers in Wisconsin and elsewhere.

*Ms. Moore. Okay. Thank you. Let me ask you about the state-to-state negotiation process and the Brown-Wyden initiative. I guess what I would like to know is who is really blocking -- who is really standing up this state-to-state negotiation that we have seen not working? Is it our United States business community? Is it our government? who would you say is really insisting on this provision? Go on. Go for it, Ms. Polaski.

*Ms. Polaski. Yes. In terms of why the state-to-state existing arbitration mechanism, which was in NAFTA, which has been in all our trade agreements, which is still in USMCA, why does it not work? The notion, as I mentioned before, of deferring to

private sector arbitrators, many of whom are trade lawyers or do not have public interest at heart, that they would make the final decision about whether countries are respecting workers' rights so that we can have an upward convergence of wages and labor standards --

*Ms. Moore. So this is a commercial business decision?

*Ms. Polaski. It is not the way that we should solve this problem. And in terms of the Brown-Wyden, it is a way to get much more directly involved, with stakeholders being able to identify specific factories that are violating labor laws, and then get the U.S. and Mexico, in the case of a bilateral agreement, to go in and look at those factories, on the ground, hands-on. I think that is a much more effective way of dealing with labor rights as opposed to commercial disputes.

*Ms. Moore. Thank you so much. And thank you, Mr. Chairman, again for your indulgence in allowing me to participate. I yield back.

*Chairman Blumenauer. We appreciate you and our other colleagues joining us to be part of the panel.

I will turn to Mr. LaHood.

*Mr. LaHood. Thank you, Mr. Chairman. And I want to also thank the witnesses for being here today for your valuable testimony on this important topic.

As I think about the new USMCA and I think about my State of Illinois and the district that I represent, about a third of the products we grow, produce, and manufacture in Illinois go to Mexico or Canada. Ninety-eight percent of the corn that Mexico imports comes from the United States, much of it from the Midwest.

And I look at the economic opportunities and the jobs that have been created with NAFTA and now under the new USMCA, and it is a win for workers, it is a win for

economic opportunities, and it is a win for Illinois, whether you are in manufacturing, whether you are in ag, whether you are in services, whether you are in technology.

You look at the 24 chapters and how they were negotiated, this is a strong agreement. This is good for America. And if you put politics aside, this should pass overwhelmingly. And I guess, as I hear a number of the witnesses talk about, particularly on labor and environment, what should be and the standards that we should raise, I go back and look at -- under the Obama administration we had the Colombia Free Trade Agreement. We had the South Korea Free Trade Agreement. As I look at the standards in there and the enforcement, this is stronger on both of those provisions, on labor and environment. Stronger provisions, stronger enforcement, negotiated under the Obama administration, passed by this Congress.

And so I look at what the ask is here by a number of these witnesses, and it appears to me in some ways we are moving the goalposts on what we want to do here. And I guess that is a bit frustrating for me when I look at the economic opportunities that we have before us here. And I guess as I look at the higher standards that are included in USMCA, Ms. Vorwerk, I would ask you: Your familiarity with Colombia and South Korea and the enforcement mechanism we have here, can you comment on that?

*Ms. Vorwerk. Yes. Thank you, Congressman LaHood, for the question. And you are right in that this is the most comprehensive agreement as it relates to the commercial aspects, the labor aspects, and the environmental aspects in comparison to the other agreements ahead of time that you have mentioned.

I think where you are hearing some conversation, and this is not -- this should not be a political issue or a party issue; this is an American issue, and I am honored to be

sitting up here with labor and environment so that we can have this discussion -- I think what you are hearing is that, across the board, we all say enforcement is critical.

And in USMCA, the enforcement chapter is better than the NAFTA. It has succeeded in including labor and environment into the agreement, and that is important because if not this, then what else? If not USMCA on labor and environment, then what else?

So where I think we are having the conversation is, are there slight tweaks in terms of ways that we can enhance the mechanism? And from our standpoint, there are areas on state-to-state dispute that can be strengthened, especially as it relates to the panels and ensuring that we have solidified panels and experts to choose from. Whether those are experts in trade, labor, or environment, this agreement, USMCA, will actually address that. But the question is: Are there enforcement mechanisms that need to be looked at?

Across the board, USMCA is a good deal for America. It is a good deal for farmers, ranchers, workers, and the environment. And when we think about how we operate around the world, this is a vehicle to raise the standards for others on the other sides of the border in Mexico and Canada.

And the fact that Mexico is changing its laws on labor to comply with this agreement, I ask again, if not this agreement, then what else? This is a vehicle for change, for commercial, environment, and labor.

*Mr. LaHood. Thank you for that. And then also I would just -- I want to commend the Trump administration for eliminating or making the announcement on the Section 232 tariffs on steel and aluminum. Very important moving forward. I am not generally a fan of tariffs. Tariffs are taxes. They are taxes on consumers, taxes on

businesses.

But with that decision moving forward, tell me, Ms. Vorwerk, how impactful that is in terms of the USMCA.

*Ms. Vorwerk. It is incredibly impactful because it removes a barrier to passage of USMCA. And we need USMCA for our communities, our businesses, to thrive. So if that removes a barrier, that is important. We are not fans of tariffs. We are in the food business. Tariffs are taxes that raise the price of food, and we, knowing that there are 815 million people that are hungry and malnourished, the last thing we want to see is raising taxes on food.

*Mr. LaHood. Thank you.

Mr. Chairman, I look forward to working with you and the rest of my colleagues on getting this USMCA across the finish line. Thank you.

*Chairman Blumenauer. Thank you, Mr. LaHood.

Mr. Arrington.

*Mr. Arrington. Thank you, Mr. Chairman. Like many of my colleagues, agriculture is the lifeblood of the economy of West Texas and the district that I represent. And I would say that rural economies and the future prospect of prosperity really hinge on the relationships we have, trade relationships with Canada and Mexico. They are good partners.

I think NAFTA, on balance, was good for our country. It supports a million jobs in Texas. Ag trade has increased 800 percent in the great State of Texas since NAFTA was passed in 1993. Were there some holes in it? Were there areas to improve, enhance, modernize? Absolutely. I think the President is right on. And I think he has done a

remarkable job of modernizing, improving.

And those are not just my words. The AFL-CIO, the United Steelworkers of America, United Auto Workers, were at a hearing like this, and I asked each of them, after working through what this President and Bob Lighthizer negotiated to improve the labor provisions in this. The fact is, labor provisions were not even in NAFTA. They were a sidecar agreement.

These provisions that we are discussing that have been enhanced significantly are in the main body of the deal, as they should be. And I have mentioned prohibitions against forced labor, violence against workers, worker safety, protections for migrant workers, right to strike, et cetera, et cetera -- these are in addition to what was in NAFTA, beyond the TPA core principles and provisions, and to a person, when I asked, they said, "This is better." And they even, one of them -- I can't remember -- said, "Bob Lighthizer has done a fantastic job."

So I am a little miffed, to be frank, Mr. Herrstadt, that you say that this agreement does not -- it looks the same -- you say it looks like the old labor provisions in NAFTA. That just cannot be right. I have had too many people say otherwise, and I have read these provisions.

Mr. Herrstadt, are you aware that the labor provisions in NAFTA were not part of the corpus, they were a sidecar agreement? But in this new NAFTA 2.0, if you will, they are in the main body of the agreement. Are you aware of that?

*Mr. Herrstadt. Yes. I am very aware.

*Mr. Arrington. The difference. And would you say that is an improvement?

*Mr. Herrstadt. I would say they were --

*Mr. Arrington. Just a quick answer.

*Mr. Herrstadt. I would say they were in the subsequent FTAs, and just like the subsequent FTAs, they are in the agreement.

*Mr. Arrington. Would you agree that -- and to my colleague -- he has left, but he mentioned this whole secret ballot around union activities. Do you know and are you aware that in fact, he is right; the secret ballot around union activities was not a part of NAFTA? Are you aware of that?

*Mr. Herrstadt. Yes.

*Mr. Arrington. Okay. And are you aware that they are in fact part of the NAFTA 2.0?

*Mr. Herrstadt. I am aware that NAFTA 2.0 and the --

*Mr. Arrington. Let me ask a few of you to answer this. Do you think it is good that: "We have an effective system to verify the elections of union leaders are carried out through a personal, free, and secret vote of union members"? Yes or no, is that a good thing?

*Mr. Herrstadt. Oh, it is absolutely --

*Mr. Arrington. Shake your head, just raise your hand. Raise your hand. Is that a good thing?

*Mr. Herrstadt. Yes. It is a good thing.

*Mr. Arrington. Okay. Do you think it is a good thing to provide in labor laws: "Union representative challenges are carried out by labor courts through a secret ballot vote"? Do you think that is a good thing?

*Mr. Herrstadt. I think it is a step forward.

*Mr. Arrington. Do you think that the provisions on salary and working conditions, et cetera, et cetera, are carried out by a secret vote is a good thing? Look. That is all in the new NAFTA 2.0 that my colleague was saying he had a fundamental problem. And I respect his passion and his sincerity on this, but it is in it. So it has to be improved, and I think it is significantly improved.

So I do think -- and I share my colleague's concerns about, are we going to politicize this like we do everything else here? And Mr. Chairman, both sides are guilty of that. Okay? But let's do this for America. Let's give our country some confidence that we can actually look at a good deal when we see it and get it done and help our workers, our economy, and so on.

Let me end with this because climate change and a provision for climate change was mentioned by one of my colleagues. Let me see. My Cargill colleague, Devry? Is that how you say your name?

*Ms. Vorwerk. Yes.

*Mr. Arrington. What would -- y'all deal in cows. I think 4500 cows a day are processed in the Friona, Texas plant. What would happen in the Green New Deal if it were eliminated, if we eliminated cows? What would happen to your business?

*Chairman Blumenauer. The gentleman's time is expired.

*Ms. Vorwerk. Our business is processing cattle.

*Chairman Blumenauer. The gentleman's time is expired.

*Mr. Arrington. Mr. Chairman, would you let her answer that question, please? I would just ask if she could answer that question.

*Chairman Blumenauer. Well, I would like if you would extend the same courtesy

to Mr. Herrstadt, to whom you asked a question and would not allow him to answer your question.

*Mr. Arrington. I will. I will extend that.

*Chairman Blumenauer. And I am going to -- at the end of this hearing --

*Mr. Arrington. Okay.

*Chairman Blumenauer. -- I am going to give him an opportunity --

*Mr. Arrington. Good.

*Chairman Blumenauer. -- to actually answer the question that you would not allow him.

*Mr. Arrington. Sure.

*Chairman Blumenauer. Take another 15 seconds, if you wish. We are extending our patience to people who are --

*Mr. Arrington. Thank you. Thank you, Mr. Chairman.

*Ms. Vorwerk. Thank you, Chairman. If we were not able to be in the beef business, then our beef business would not exist. So I think the question was what would happen if we were not allowed to produce and process cattle. It is an important part of our American economy, and there would be massive job losses.

*Mr. Arrington. Thank you, Mr. Chairman.

*Chairman Blumenauer. Mr. Herrstadt, do you want to do it now or do you want to do it at the conclusion of the hearing? To allow him to answer your question.

*Mr. Arrington. Absolutely. And my apologies if I cut you off. I have got a minimal amount of time to get these questions in. Please, elaborate.

*Mr. Herrstadt. Well, thank you, Mr. Chair. Of course the annex is a step in the

right directions. But it means absolutely nothing if Mexico's laws do not really change. And as my colleague already pointed out, the labor law reforms have just been announced. There is no funding mechanism. There are over 500,000 protection contracts that have to be reviewed.

My understanding of the reform legislation is that it will take 4 years to take place, and experts say that is not nearly the amount of time to not only fund a program, set up the program, make sure that free and fair elections take place with a secret ballot, but that protection unions and protection collective bargaining agreements are eliminated, and a culture that is pervasive that permits this type of labor relations becomes eliminated through education and proper implementation.

Thank you, Mr. Chairman.

*Mr. Arrington. I agree. Enforcement is an important part of it.

*Chairman Blumenauer. Mr. Ferguson.

*Mr. Arrington. Thank you.

*Mr. Ferguson. Thank you, Mr. Chairman. And thanks to all of y'all for taking the time to be with us today.

I think I have got a pretty unique perspective on trade. I am from an area in West Georgia that, following NAFTA, we saw the exodus of about 35,000 textile jobs. And we learned an awful lot about trade agreements and what is good in them and what is bad in them.

And one of the things that we found in all of that is that when you try to use a trade deal to simply save one industry or one sector, you wind up failing in that. The things that have to happen is you have to take care of your business at home first. You have to have

the right tax environment, the right regulatory environment, and the right education environment.

And so what we have seen and what we had to do at the local level is what the Federal Government had failed to do for so long, which is to address the tax environment, to address the regulatory environment, make strategic investments in infrastructure, and be profoundly innovative in education.

Now that we are seeing that happen at the Federal level, look at what is happening across the country. Our economy is booming. Wages are up significantly, particularly for those under -- in the lower half of the wage scale. We are seeing demand for workers go up. Wages are rising. We are seeing more and more opportunities, and this is giving us the momentum that we need to invest in infrastructure to keep this going.

I say all of this to say that it is vitally important that we get this trade agreement done because of all the conversations that we have had, and talking about enforcement and fairness to workers and making sure that the American worker is protected and has the best opportunity, I agree completely with that.

But here is the thing. If we do not do this, if we do not get this trade deal done, then it puts the American worker in jeopardy. And I will tell you something. Coming from a community that lost all of those jobs, I can tell you how important every single one of those jobs is.

And we can continue to push and innovate, and we can continue to do great things. But if we do not have certainty and our business community cannot make strategic investments for the long haul because of uncertainty in these trade agreements, then it is going to hurt all workers, whether you are in a pro-labor State or whether you are in a right-

to-work State. We have to have these agreements in place. And I encourage each of these members to push this to the top so that we will actually have a vote here.

So with that, talking about certainty, Ms. Vorwerk, can you talk a little bit about how certainty plays a role in your company's future investment and the impact that that has on employment opportunities?

*Ms. Vorwerk. Thank you for the opportunity, Congressman, and thank you for the question. And I want to commend you on mentioning the community impacts because this is truly where communities can either put their head in the sand or they look forward and think about what is our future.

Trade is something that facilitates growth in communities. There are winners and losers. But at the end of the day, there is so much more going on around us, like technology and other disruptions, and trade is actually something that will keep a lifeline to the 95 percent of customers that are outside the U.S.

When we think of certainty, let's think about a farmer who is trying to make a decision around how many acres to plant, and in taking a look at is there a market on the other side? Well, for a company like Cargill, we are looking to say, do we have certainty if we invest in this community, whether it is in the United States or deploy capital across the border? Are we going to have certainty that that investment will be afforded the protections that we need?

It is integrated, everything from the farmer having certainty that they will have a buyer like Cargill to us having certainty that our investment will be protected so we can process those products. And that is what USMCA offers.

*Mr. Ferguson. I think it is important, whether it is in agriculture or whether it is in

advanced manufacturing. The automotive industry is huge in my district. Kia Motors Manufacturing Georgia has a plant there, have a supply chain across global lines, both in Canada and Mexico. It is important that those are held intact and that they are able to continue to produce cars, hire American workers, and our community can continue to thrive.

*Ms. Vorwerk. Thank you.

*Mr. Ferguson. And with that, Mr. Chairman, I want to make one final comment. I am glad to hear that members on both sides of the aisle and our panelists all agree that enforcement of laws is important and enforcement of this agreement is important. And I hope that they will make that commitment to all laws here in the U.S. And with that, I yield back.

*Chairman Blumenauer. Thank you. And we are glad that you were able to join us.

Let me say how much I appreciate the patience of the witnesses sticking with us. I thought your written testimony and your answers were very helpful.

Mr. Buchanan, let me just say how much I appreciate our collaboration on this and so many other areas. I am looking forward to working with you moving it forward.

Let me just say that the subcommittee has been working to be able to achieve clarity so that we can move forward in a way that people feel comfortable voting for it. This is not going to be jammed through the subcommittee. It is not going to be jammed through the full committee. And I am quite confident that it is not going to be jammed through the House.

We have clarified four specific areas, after great interaction, at least, with people on

our side of the aisle, to find out what is necessary to have the degree of comfort, to clarify things that need to be clarified, so we know what we are getting into. We will continue to do that.

I had extended an invitation to Mr. Lighthizer to be here this week to deal with the specifics in the letters that were sent to him. And I look forward to that happening.

Last but not least, I hope that we can conduct these hearings in a way that are respectful to one another. If people want to make a speech, they have got their five minutes and they can make a speech. But I would hope that if we are going to ask questions to witnesses, that we have the courtesy to at least let them answer questions that are put to them and not pose problems and put them in an awkward position where they are not being able to answer fully and accurately.

And I will work hard with Mr. Buchanan to have a tone of civility and productivity to be able to work this through, the same way that we have extended the courtesy of joining us to people who are not members of the subcommittee, because I think that adds to the process.

And anybody who has got suggestions to do it better, I am open, and I think Mr. Buchanan is as well. And we are going to move forward as expeditiously as we can. It is not the only thing that the subcommittee or the committee is dealing with, but it is important and we are committed to doing it right.

Thank you again for joining us, for your patience, and adding really important information that helped this member and I think the other members of the subcommittee as well.

Vern, do you have any concluding observations?

*Mr. Buchanan. Well, let me just first and foremost thank all of our witnesses for your patience. I think we are all interested in this enforcement because it is a big issue. I was in business for 30 years before I got in this business, and an agreement is only as good as the parties involved. You have got to have the enforcement capability.

And I also do look forward -- we co-chair two other committees together.

[Pause]

*Chairman Blumenauer. Please be advised that members have two weeks to submit written questions to be answered later in writing, with the patience of our witnesses. Those questions and your answers will be made part of the formal record of the committee.

With that, we are adjourned.

[Whereupon, at 12:35 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow:]

[The Hon. Kevin Brady and the Hon. Vern Buchanan, Letter](#)

[Center for Fiscal Equity, Submission for the Record](#)

[CATO Institute, Submission for the Record](#)