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September 25, 2017

Robert Lighthizer
Office of the United States Trade Representative
600 17th Street NW
Washington, D.C. 20508 USA

RE: U.S. proposals on labour provisions in NAFTA

Dear Mr. Lighthizer,

It has come to my attention that the United States negotiating team intends to bring forward its proposed draft text on labour rights as part of the North American Free Trade Agreement negotiations taking place this week. The public signals from all three NAFTA parties so far indicates that labour protections can, and must be enhanced beyond the current conditions established in the NAFTA labour side accord. These are positive signals.

No amount of signaling, or posturing, will serve a purpose unless the terms of the deal deliver meaningful, demonstrable and enforceable provisions to improve work standards throughout the continent. I recall your remarks in the opening round of talks, where you outlined the U.S. position as not being interested “in a mere tweaking of a few provisions and a couple of updated chapters” but that NAFTA needs “major improvement.” On this matter, we agree.

However, I am writing to express my deep concern that the anticipated U.S. proposals on labour standards will closely mirror the language adopted in the now defunct Trans-Pacific Partnership – language designed in accordance with template U.S. Congress trade policy and contained in the “May 10th Agreement.”

I fear that this TPP language has major limitations. And it does not provide the fundamental change in NAFTA that many in Canada, the U.S. and Mexico desire.

The TPP, for instance, excludes any specific reference to the eight core International Labour Organization conventions – foundational conventions that set a floor for labour standards throughout the world. Further, the TPP language only serves to enforce – not enhance - existing domestic labour standards, which are often insufficient, and in breach of international work standards. The TPP is entirely silent on issues of gender equality. It offers no reprieve for workers subjected to violence and intimidation for exercising their rights, and no penalties for governments and employers who breach those rights. It fails to effectively bar trade in goods made with forced or child labour. Unfortunately, these examples only scratch the surface.

Aside from all that is not contained in the TPP, I am most concerned that – when tested – U.S. trade language is ill-equipped to ensure enforceability of the standard it sets. I look no further than the recent decision of the panel appointed under Chapter 20 of the DR-CAFTA, with respect to a U.S.-led complaint on labour rights in Guatemala.

I commend the efforts of U.S. representatives in bringing this complaint forward. In the wake of the panel's decision, I also share the frustration expressed by those in the global labour movement - a frustration shared by many in Congress and the office of the USTR. I do not support the panel's findings.

At the same time, there's no denying that the narrow scope through which the panel interpreted the language of Chapter 16 is a product of the language itself. Labour standards in Guatemala are abysmal. The murder of 83 trade unionists since the trade agreement was put in force is outrageous and criminal. But the requirements to prove that any violations must be shown to be "sustained and recurring" and that they must have been done "in a manner affecting trade" are both unnecessary and incomprehensible tests. The lack of definitive timelines to hear labour cases is concerning too.

It is not enough for us simply to lament the panel's decision. Untouched, the U.S. runs the risk of having that panel decision influence future decisions. Fortunately, NAFTA renegotiations are upon us. This is our first opportunity, collectively, to address the shortcomings of the DR-CAFTA language, and to draw on the experience to better improve our approach to labour rights. We have to take advantage of this moment. We cannot fail.

The lack of meaningful protections for workers in trade treaties has hit a boiling point, and I'm sure you would agree. For too long free trade's negative impacts on working people, including indigenous people, as well as our natural environment has been treated as the "collateral damage" of globalization. Governments have not paid close enough attention to the social conditions affected by trade policy, and that's a hallmark failure of our global trade regime. In NAFTA, we cannot wholly rewrite the rules of global trade. We cannot fix the systemic and structural problems that have created colossal imbalances in wealth distribution, poverty and gender inequality. But, through this negotiation, we can certainly send the world a strong message that done right, trade can serve as the international development tool it was meant to be, on matters of labour, environmental protection and others.

Mr. Lighthizer, as the third round of NAFTA talks continue in Ottawa, I strongly urge your negotiating team to consider moving beyond the limitations of the United States' template trade policy language, and beyond the scope of the Trans-Pacific Partnership. Our objective is to make meaningful, demonstrable and enforceable improvements to labour standards; and we trust that the negotiating teams in all NAFTA parties agree. Let's ensure a level playing field for North America workers. Let's set a new standard for fairness. Let's raise the ambitions of working people around the world.

Sincerely,



JERRY DIAS
NATIONAL PRESIDENT

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cc: Chrystia Freeland, Minister of Foreign Affairs, Canada
Luis Videgaray Caso, Secretary of Foreign Affairs, Mexico