



March 30, 2015

Ambassador Michael Froman
Office of the US Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Dear Ambassador Froman:

In the context of ongoing trade policy discussions and the concerns raised in AFL-CIO President Trumka's January 5, 2015 letter to President Obama, I want to express my concerns about systematic violations of trade union rights in Mexico and the need for a binding and enforceable plan to address these violations.

Despite the provisions of the NAFTA labor side agreement and labor law reforms enacted in 2012, the State Department's 2013 report on human rights concludes that "[T]he government did not consistently protect worker rights. Its general failure to enforce labor law, to strengthen key elements of the federal labor law with the reform, and to enforce other laws left workers with little recourse regarding violations of freedom of association, poor working conditions, or other problems." This verdict is confirmed by the reports of ILO supervisory bodies, USDOL reports on cases filed under the NAALC, and numerous studies by academics and independent labor experts.

Mexican law and practice have created a series of obstacles to workers' ability to exercise their rights, which are summarized in the AFL-CIO's document *Mexico: Labor Rights concerns* <http://www.aflcio.org/Issues/Trade/Trans-Pacific-Partnership-Free-Trade-Agreement-TPP/Labor-Rights/Mexico-Labor-Rights-Concerns>. The effect of these practices is to distort the labor market, artificially depressing wages, limiting workers' purchasing power, and fomenting poverty and migration. This distortion hurts not only Mexican workers, but U.S. workers as well, by reducing export opportunities and stimulating plant shutdowns.

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In the context of trade negotiations, the U.S. must advance an effective and enforceable plan that requires Mexico to remedy these distortions and establish a fair basis for competition.

While this plan should be comprehensive and address all of the problems described in the AFL-CIO document, there are two critical issues that must be resolved if any progress is to be made:

- First, employer-dominated “protection contracts” are collective bargaining agreements signed between an employer and an employer-dominated organization, often without the knowledge of the workers. This practice is endemic, including the Mexican operations of US based and other multinational corporations, and denies workers the opportunity to choose their bargaining representative. Indeed, there may be millions of Mexican workers working under collective agreements of which they are completely ignorant.

During the debate on the 2012 labor law reform, the Mexican Senate approved a provision that would have curtailed the practice of protection contracts by requiring workers to ratify collective bargaining agreements before they could be registered (Article 388 bis). While this provision was not included in the final reform legislation, it provides a basis for discussion of mechanisms to ensure that collective bargaining agreements are, in fact, supported by the workers they cover.

While this objective could be achieved through legislation, I believe that similar procedures could also be established administratively through regulation, should the executive branch have the political will to do so.

- The second critical problem is the existence of tripartite Conciliation and Arbitration Boards (Juntas de Conciliación y Arbitraje) that are characterized by inefficiency, bias, and corruption. Workers who appeal to the CABs for justice routinely encounter a complete lack of transparency, interminable delays, demands for bribes, and not infrequently, violent repression. Without credible labor authorities, it will be impossible to make any progress on the many problems described in the AFL-CIO document.

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Mexican labor law experts have proposed that the current system of Conciliation and Arbitration Boards be replaced by a new and impartial system of labor justice, consistent with the principles reflected in Article 123 of the Mexican Constitution. This could be achieved through the establishment of an independent agency with both administrative and judicial functions, or within the judicial branch, or through a combination of transferring some functions to a new independent entity and others to the judiciary.

These critical issues of protection contracts and corrupt labor boards must be addressed as part of a binding plan for labor justice in Mexico that must be included in the heart of any new trade agreements, not as a side letter or separate action plan, and be implemented prior to a congressional vote on any new trade agreement. This is an opportunity to engage with the Mexican authorities in a serious discussion of problems that affect workers on both sides of the border.

Finally, to accomplish these goals, significant capacity-building assistance for government authorities, employers and worker organizations will be needed. Our government must be willing to combat impunity in the area of labor justice.

This is an important time to make progress on these critical issues. I look forward to further discussion.

Sincerely,



Larry Cohen
President

c: President Barack Obama
Thomas Perez, Secretary of Labor