NOVEMBER 3, 2025

CUSMA 2.NO

Canada should strive for fair trade in North America—
not agree to another bad deal on Trump's terms

Submission from the Canadian Centre for Policy Alternatives to the Government of Canada consultation on the mandated review of the Canada-U.S.-Mexico Agreement (CUSMA)

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Canada should strive for fair trade in North America—not agree to another bad deal on Trump's terms

The Canadian Centre for Policy Alternatives (CCPA) welcomes the opportunity to submit revised comments on the Canada-U.S.-Mexico Agreement (CUSMA) ahead of a planned six-year review of the treaty. While we stand by proposals we made in 2024 for enhancing worker, environmental, and human rights protections in the new North American trade deal, the circumstances under which the review will take place are drastically changed from when Canada first consulted on the matter late last year.

Given the current U.S. administration's violent aggressions at home and abroad, abandonment of any pretense of addressing the climate emergency, and its blatantly coercive economic extortion of Canada and Mexico, a fair or reasonable CUSMA review is unlikely. While the CCPA—in solidarity with Mexican and U.S. trade justice and human rights advocates—would welcome changes to the trade treaty to benefit workers, Indigenous Peoples and the environment, we doubt this will be possible.

Behind spurious claims about correcting trade imbalances and addressing the fentanyl crisis, the Trump administration's clear goal is to drain jobs from Canada and Mexico to the United States. Sectoral tariffs on Canadian steel, aluminum, copper, automobiles and automotive parts, furniture, lumber, heavy trucks, buses, and more products to come

fundamentally jeopardize Canada's and Mexico's economic prosperity. These unilateral U.S. actions violate the spirit and letter of CUSMA.

How does Canada salvage a fair, rules-based trading relationship with the U.S. in this hostile environment? Why would we even try when the outcome is almost certain to include high tariffs on important Canadian exports? U.S. deals with Malaysia, Cambodia, Japan, South Korea and the European Union are mostly one-sided lists of concessions to Trump. These deals, which also entail pumping trillions of dollars into the U.S. economy, still leave tariffs in place—and leave countries defenseless against future U.S. trade actions. We doubt Canada or Mexico will fare much better.

Even if the CUSMA review gets underway in a reasonable manner, a new bargain that deepens Canada-U.S. integration (e.g., by harmonizing customs tariffs, investment screening policy and other economic security measures with the Trump administration) could easily weaken Canada's industrial policy options and undermine relations with other countries. Closer Canada-U.S. cooperation on artificial intelligence and digital trade—likely demands in any future CUSMA review—would conflict with efforts to develop sovereign capacity in these and other important sectors including cultural industries, telecommunications, software, cloud computing and electronic commerce.

We must underline that a CUSMA review that keeps tariffs in place would be pointless. Why would Canada agree to anything the U.S. is proposing if, at the end of the day, even reduced tariffs on Canadian imports would continue to lure manufacturing away from Canada into the United States.

Canadian business lobby concerns about losing CUSMA are misplaced. Clearly, the agreement provides none of the investment certainty they claim it does. Prior to Trump's latest tariff tantrum, many Canadian and U.S. firms chose to pay the low U.S. most-favoured nation tariff rate on cross-border trade rather than certify their goods as CUSMA compliant. There is nothing inherent to CUSMA shielding Canadian exports to the U.S. from Trump's border and fentanyl tariffs. The reprieve rests entirely on Trump's will.

The CUSMA dispute settlement process, while more efficient than the one in NAFTA or at the World Trade Organization, is probably dead. Among the half-dozen disputes lodged under CUSMA, only one challenged the U.S. (related to how it calculates North American content in automotive parts) and the Biden administration ignored the ruling. The Trump administration has abandoned dispute settlement in recent deals. The U.S. plans to enforce *their* interpretation of the rules through tariffs.

Far from being essential to North American trade relations, CUSMA may be useless.

While running for prime minister earlier this year, Mark Carney wisely pointed out that the old Canada-U.S. relationship, "based on deepening integration of our economies and tight security and military cooperation, is over." The Trump administration's hostile trade wars against Mexico and Canada force us to "fundamentally reimagine our economy," Carney said. If elected, Carney promised to work with industry to "retool" the automotive sector while focusing on domestic production, increasing internal trade and diversifying Canadian exports.

As the year comes to a close, with unemployment increasing and new U.S. tariffs hitting critical Canadian industries on a near-monthly basis, this realistic assessment of our economic options feels like a receding echo.

The government has removed most retaliatory tariffs on U.S. imports, which buffeted the blow of Trump's trade war, raised revenues Canada could use to support affected industries and sent a message to Washington that Canada would not be bullied. At the end of June, the government mothballed a carefully developed digital services tax at the Trump administration's request—and to applause from the Business Council of Canada—but with no apparent effect on Canada-U.S. trade negotiations. Will Canadian content rules for streaming services be next?

Should the government feel obliged to participate in the CUSMA review, under no circumstances should Canada make any further concessions to the Trump administration in areas such as digital trade, supply management, cultural policies, or national security integration. On the other hand, proposals for stricter automotive rules-of-origin benefiting North American auto workers, a common carbon border adjustment mechanism (i.e., a tax on imports with higher carbon emissions intensity than similar North American products) or a common external tariff on strategic goods such as steel may be worth considering.

In any event, the government must perform a gender-based analysis plus (GBA+) of the functioning of CUSMA to date, as promised. Women's and LGBTQI+ organizations from the three countries must be included in the CUSMA six-year review process. Likewise, the federal government must broadly consult Indigenous Peoples on Canada's future trade policy in North America, especially given Canada's harmful role in undermining—by unnecessarily narrowing—the general exception for Indigenous Peoples during the U.S. dispute against Mexico's genetically modified corn policies.

The chance that the Trump administration will threaten or actually leave CUSMA as leverage to strike a harder bargain is very real. United States Trade Representative Jamieson Greer has said he would prefer bilateral versus trilateral talks and that he could end up negotiating a new deal with both countries outside of CUSMA. Mexico and Canada should work together at every step—and consult meaningfully and widely with civil society in both countries—whether or not they ultimately decide to follow the U.S. into bilateral negotiations.

In the event Trump withdraws from CUSMA, the agreement stays in place for Mexico and Canada with respect to bilateral trade. In that case, Canada and Mexico should strike a truly next-generation partnership that could set an example for a more flexible, rights-focused international economic order. Rules-based trade must include binding international human, Indigenous and labour rights. We may even find common ground with Mexico on green industrial strategy, including technology transfer and production sharing.

Should CUSMA review talks drag out, as expected, the government could insist on a simple rollover of the current agreement with Mexico and the U.S. However, if the conditions for a fair and reasonable discussion present themselves—perhaps under a future U.S. administration—Canada should table a more forward-looking trade reform agenda that empowers workers and protects the planet. We present the following recommendations with that scenario in mind.

Labour rights and the rapid-response mechanism

The labour chapter protections and enforcement mechanisms in CUSMA Chapter 23 significantly improved upon the NAFTA labour side-agreement. Ideally, North American governments would agree to build on these improvements while extending the facility-specific rapid-response labour mechanism (RRM) to cover workplace labour violations in Canada and the United States. Independent of the CUSMA review, the federal government should recommit funding for successful transnational labour education programs in Mexico.

1. Expand the application of the RRM to include labour rights violations in Canada and the United States. At the moment, the RRM has no substantive application outside of Mexico. This lack of reciprocity is a fundamental flaw in the current mechanism. Moreover, given that

Canadian governments have recently demonstrated a willingness to override fundamental labour rights, including freedom of association and the right to strike, there is no basis to exclude Canada or the U.S. from this mechanism. The process has proven its worth as a tool for enforcing internationally recognized labour rights in Mexico and should be available to workers across North America.

2. Expand the RRM to cover other economic sectors. At the moment, only sectors involved in manufacturing goods, supplying services, or mining are defined as "priority sectors" covered by the RRM. The priority sectors should be confirmed and expanded to include all sectors that are impacted by cross-border trade, including the energy sector, the broader service sector and agriculture.

3. The scope of application of the RRM should also be expanded to include migrant workers. Migrant workers are, by definition, engaged in cross-border trade in labour and they should be a priority for protection in all three jurisdictions. Violations of the rights of migrant workers should be covered by the RRM.

4. Expand the definition of a "denial of rights" under the RRM. The complaint process has proven successful at enforcing workers' right to organize and democratically choose their preferred union. Unfortunately, these victories become symbolic if employers refuse to engage in good-faith bargaining for collective agreements, or continue to violate workers' rights in other ways. Violations of the right to collective bargaining, discrimination on the basis of gender or sexual orientation or gender expression, gender-based violence, child labour, health and safety violations, and derogations from minimum standards of work should all be grounds for complaints under the RRM.

5. Clarify and expand the definition of "covered facility" under the RRM. Much of the early litigation under the RRM has focused on attempts by responding parties to limit the definition of a "covered facility." The definition should be clarified to include all facilities operating in a priority sector.

6. Reduce the burden of proof on workers submitting RRM complaints. Mexican workers currently face a number of hurdles to filing CUSMA labour violation complaints, including limited resources, restricted internet access, workplace repression and threats of retaliation for speaking up. This burden on workers could be eased by simplifying procedures for verifying the targeted facility is covered under the RRM

process, obligating targeted firms to supply evidence in their defence, and establishing a network of independent, impartial experts who could collaborate with local labour attachés and the Mexican government to conduct field investigations into complaints.

7. Adopt an official investigation protocol for RRM cases. There have been too few cases brought through Canada to establish a predictable, consistent process for filing and investigating labour violation complaints. The U.S. process, on the other hand, works consistently and relatively well. The three CUSMA parties should agree to common practices for RRM cases covering initial contact, field investigations, document investigation, communication with complainants, definition of remediation measures and implementation of the remediation plan. A key reform for remedial matters is providing the affected labour organization standing in the negotiation and implementation of remedial agreements.

8. Create a dedicated Canadian contact point for CUSMA labour matters and RRM cases. The contact point must have sufficient resources to document, investigate and prosecute RRM cases within the timelines established by the agreement. Canada should also establish a body, similar to the Independent Mexico Labour Expert Board in the United States, to provide expert independent advice and guidance to the Canadian government in respect of CUSMA labour matters.

9. Effectively prohibit the importation of goods produced by forced or compulsory labour. Canada is obligated by CUSMA Article 23.6 to ensure imported goods do not contain materials derived by forced or child labour. Yet to date, while the U.S. has stopped thousands of shipments under forced labour legislation, Canadian border agents have only flagged a handful of cases. Canada must effectively legislate and enforce the forced labour ban, as promised by the federal government and recently proposed by the Bloc Québécois, by devoting sufficient resources to enforcement agencies, streamlining practices, and enhanced reporting and transparency obligations for importers.

Indigenous Peoples' rights

Mexico's disappointing CUSMA dispute settlement loss, in the U.S. challenge to measures restricting genetically engineered corn in food production, exposed the current general exception for Indigenous

Peoples' Rights as insufficient. Though Mexico justified the measures, in part, as a way to preserve the integrity of the *milpa* (an ancient ancestral farming technique), a panel of arbitrators decided, based on arguments from the U.S. and Canadian governments, that the measures were disguised restrictions on U.S. corn imports and, therefore, not protected by the exception.

1. Revise Article 32.5 to remove any ambiguity or conditions regarding the self-declaring nature of the general exception for policy affecting or related to Indigenous Peoples. This could be done by removing the first clause of the exception—"Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and investment"—so that it reads: "This Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfil its legal obligations to Indigenous Peoples." This change is necessary to give meaning to the exception, in line with Canada's commitment to reconciliation with Indigenous Peoples and, more importantly, Canada's international legal obligations under the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

2. Broadly engage North American Indigenous communities, including First Nations, Inuit and Métis in the Canadian preparations for the six-year CUSMA review and during any future trade negotiations with the United States and Mexico.

Environment and climate change

As the CCPA proposed in its November 2024 submission to the government consultation on the CUSMA environment chapter, Canada should use whatever leverage it has, independently and/or with Mexico, to negotiate much stronger protections for the environment and stronger, enforceable obligations on states with respect to the climate emergency.

1. Create a new article supporting modernizing manufacturing partnerships. Countries should track and share data on emissions intensity in North American industries. As recently proposed by several U.S. environmental organizations, this information could be used to develop regional tariffs on countries that do not meet certain emissions thresholds, as a tax on pollution, beginning with steel and aluminium.

2. Strengthen the enforcement of environmental obligations and establish a rapid-response mechanism for environmental complaints. There is a lack of evidence that the reporting, cooperation, consultation and dispute resolution mechanisms within the existing environment chapter have been used for direct, clear or timely enforcement action. The chapter should be revised to include a rapid-response mechanism similar to that in the labour chapter for investigating worker rights violations. Like with RRM labour disputes, there should be a 45-day process, after which a public submission on environmental enforcement matters is open to formal state-to-state dispute settlement.

3. Negotiate a climate peace clause. There should be no possibility within CUSMA for companies or countries to dispute measures—at the federal or sub-federal levels—aimed at responding to the climate emergency. This could be achieved by agreeing to a climate peace clause, as proposed by over 190 state legislators in the U.S. from 50 states.

4. Expand the list of multilateral environmental agreements that can be enforced through CUSMA. Particular attention should be paid to environmental agreements that all three parties are already committed to, making sure their obligations are protected and enhanced by CUSMA rules.

Automotive trade and rules-of-origin

The Trump administration's trade wars against Canada and Mexico, and elimination of the Biden administration–era subsidies and tax benefits for electrification, have stalled and, in some cases, reversed industry-wide plans to transition from the internal combustion engine (ICE) to electric vehicle (EV) manufacturing. The situation could not be worse for Canada. Once again, the survival of the Canadian automotive industry is at stake.

Between January 2020 and March 2024, automakers invested nearly $175 billion USD into North American vehicle assembly and parts facilities, dwarfing the amount of capital investment in both internal combustion engine technology and zero-emission vehicles over the prior decade. Canada received a significant and outsized share of this investment frenzy (about 14 per cent), thanks, in part, to its strategic proximity to the materials (e.g., minerals) required to make EVs.

The situation has changed significantly since then. The Big Three North American automakers are reversing course on EVs after the

Trump administration cancelled consumer subsidies, undermining the business case for producing batteries or other EV components in Canada. Even worse, Trump's tariffs on finished vehicle imports have triggered restructuring away from Canadian facilities. Stellantis and General Motors have cancelled EV *and* ICE production at Canadian plants, shifting some models to U.S. facilities. It's not clear whether laid off autoworkers at these plants will return to work.

If Canada does not take decisive action, we risk losing large portions of our domestic automotive manufacturing capacity. These are productive, profitable plants staffed by knowledgeable workers whose output supports hundreds of thousands of jobs. We do not have time to wait for Trump to do an auto deal, if he would even be open to this. Most evidence suggests the U.S. president's plans are to destroy the Canadian automotive industry. He has said as much on various occasions.

Canada should urgently leverage pressure on the U.S. and on U.S.-based automakers to force a deal—whether Trump wants one or not. This could be achieved through retaliatory tariffs, justified as necessary to preserve jobs in Canada, and careful use of export restrictions on goods U.S. buyers would have trouble sourcing elsewhere (e.g., uranium, potash, oil).

Only once the Canadian automotive sector is on more solid ground should Canada contemplate further coordination with the U.S. and Mexico on North American automotive trade along the following lines.

1. Establish a new, harmonized North American tariff rate for vehicles and parts that encourages compliance with CUSMA's rules-of-origin and guards against a surge of Chinese imports.

2. Update CUSMA's list of core automotive components to better reflect the advanced technologies in future vehicles, including EVs.

3. Update CUSMA's labour value content requirement and create a mechanism that automatically adjusts this rate based on inflation.

4. Require the Canada Border Services Agency to release annual compliance reports for each automaker, to enhance public and consumer awareness of regional content levels for all vehicles sold in North America.

Digital trade

The digital trade chapter in CUSMA pretends to manage a type of international commerce (electric commerce) not accounted for in earlier trade deals, including NAFTA. In reality, the chapter is a protection racket for large, oligopolistic, tax-dodging U.S. tech companies. The recommendations below reflect the fact that the chapter's worst clauses are irredeemable and its most innocuous ones—on regulating spam or promoting open government data, for example—can be coordinated across North America outside of a binding trade agreement.

The prohibition in CUSMA on accessing company source code or software (Art. 19.16) is an unreasonable restriction on public oversight of tech company activities that also undermines our options for fairly taxing digital revenues. The ban on local data storage requirements (Art. 19.12) facilitates data hoarding by large U.S. firms while complicating efforts to protect online privacy. There is no reasonable public interest justification for this article in CUSMA, which many other countries refuse to include in trade agreements.

1. Remove the digital trade chapter entirely. Canada should not have tied its hands in CUSMA with respect to regulating electronic commerce, social media platforms, or artificial intelligence and the products that will derive from its further development. Besides addressing the climate emergency, perhaps no area of policy presents such urgent and sensitive questions, in this case related to privacy, accuracy of information, surveillance in the workplace, job security, future job creation, and so on.

2. Alternatively, Canada and Mexico should press for reforms to the digital trade chapter. Nothing in CUSMA should hamstring the regulation of emerging AI-based technologies and services, or efforts to protect workers against invasive surveillance and unaccountable algorithm-based discipline by firms. States must be able to give primacy to privacy over profits in the handling of personal data, rein in data and tax hoarding in zero-tax jurisdictions, and retain policy space to support domestic competition to monopoly firms in the global digital economy.

Agriculture

In solidarity with farmers and campesinos in Mexico, Canada and the United States, the CCPA proposes that **trade in, and policies concerning**

the growing and production of, corn and beans be shielded from CUSMA disciplines related to market access, investment, sanitary and phytosanitary standards, and technical barriers to trade. Country-of-origin labelling regimes should also be shielded in CUSMA, to preserve each country's right to respond to consumer demands for more information about the food we eat. Canada must maintain current tariff-rate quotas (TRQ) for dairy imports and maintain the authority to determine TRQ allocation in the future.

Furthermore, CUSMA should not obligate parties to ratify the International Convention for the Protection of New Varieties of Plants (UPOV), a treaty that restricts farmers from saving and sharing protected seeds. UPOV 1991 expanded intellectual property rights in a way that unfairly benefits the multinational corporations that control more than half of the global seed supply, allowing them to target farmers who save, use, exchange and sell seeds. The ability of independent farmers to freely save and use seeds is a human right and is critical to advance food security, increase economic vitality, decrease input costs, and ensure resilience to natural disasters.

Investment and investor-state dispute settlement

The removal of investor-state dispute settlement between Canada and the U.S. was undoubtedly a positive feature of the new NAFTA, hailed by then–deputy prime minister Chrystia Freeland as a key achievement in the CUSMA negotiations. ISDS "has cost Canadian taxpayers more than $300 million in penalties and legal fees," said Freeland. "ISDS elevates the rights of corporations over those of sovereign governments. In removing it, we have strengthened our government's right to regulate in the public interest, to protect public health and the environment, for example."

The continued applicability of ISDS to Mexico, even in a more limited form under Chapter 14 of CUSMA, is a great injustice that should be corrected during the six-year review. Mexico continues to permit ISDS claims involving alleged breaches of the national treatment, most-favoured-nation treatment, and expropriation clauses in CUSMA's investment chapter. This right is available to U.S. investors holding government contracts in the fossil fuel, telecommunications, power generation, transportation services sectors, or in the management of infrastructure like roads and bridges.

Canada should press the U.S. and Mexico to strip ISDS out of the agreement for all three countries—or co-operate with U.S. or Mexican proposals to do the same. Canada should further propose to Mexico to disapply the ISDS mechanism of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) for Canadian investors in Mexico and vice versa. The first two CPTPP-linked investor-state disputes are from Canadian investors against Mexico—one from Almaden Minerals and Almadex Minerals, the other from the Caisse de dépôt et placement du Québec—and continue a highly problematic trend in ISDS of challenging environmental protection measures and energy policy.

We acknowledge the Anishinaabe Algonquin People whose traditional unceded, unsurrendered territory is where this report was produced.

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