



THE NEW NAFTA: HOW IT IMPACTS OUR ENVIRONMENT

NAFTA 2.1: A 20TH CENTURY DEAL FOR A 21ST CENTURY CLIMATE CRISIS

Since the original North American Free Trade Agreement (NAFTA) was signed, we are much more aware of the gravity of the climate crisis. According to recent statements from the Intergovernmental Panel on Climate Change, we have only 10 years to make drastic changes if we want to keep global warming under the critical threshold of global temperature rise of 1.5 degrees.

As trade and globalization contribute to the climate crisis, it is vital to have a new NAFTA agreement that not only doesn't worsen the crisis, but contributes to addressing it. While some of the worst aspects of NAFTA are gone in its new iteration, it is still an agreement with no teeth to tackle the climate crisis – in fact, it exacerbates it. NAFTA lets corporations evade environmental laws and regulations by allowing them to move their operations to the least restrictive jurisdiction.

NAFTA 1.0

The Council of Canadians and our allies deeply criticized the original NAFTA, which was responsible for limiting and attacking Canada's attempts to protect the environment. During the NAFTA years, energy exports to the U.S. increased 527 per cent, making Canada the U.S.'s largest supplier of crude oil. During the same period, Canada's economy became more de-industrialized as we shifted more to oil production.

According to a report by Economist Jim Stanford, in 1999, the resource sector represented 25 per cent of the economy and high-value-added industries represented 60 per cent. In 2014, the export sector had grown to 40 per cent of the economy. Stanford adds that our decline into a resource economy was so bad, that in 2013 we had the least technically complex economy in the OECD, according to the Observatory of Economic Complexity.

NAFTA's Chapter 11 investor-state dispute settlement (ISDS) provisions help the oil industry and polluters. Under these provisions, corporations could sue governments over laws that restrict their profits. For example, TransCanada sued the U.S. government for \$15 billion after former U.S. President Barack Obama rejected the Keystone XL pipeline. TransCanada withdrew the case only after newly-elected U.S. President Donald Trump approved the pipeline. Keystone XL – if it goes ahead – will take 830,000 barrels of tar sands oil, the dirtiest oil on the planet, to the U.S. Gulf Coast.

Energy proportionality rules require Canada to export a locked-in percentage of our energy production to the U.S. This means more production in the environmentally destructive tar sands, which will stop us from meeting our climate commitments.

As well, the original NAFTA's environmental side agreements were highly unenforceable. None of the cases before the original NAFTA's environmental cooperation body went to arbitration.

WHAT'S NEW IN NAFTA 2.0

Corporate courts gone

While NAFTA 2.0 gets rid of the ISDS provisions between the U.S. and Canada – a victory for all of us that campaigned against it – the provisions remain in full force between the U.S. and Mexico, particularly for Mexico's energy sector. Faced with a progressive new Mexican president who wants to undo the privatization of Mexico's energy sector, Big Oil – including U.S. and Canadian companies – successfully ensured that this clause remains there.

As well, ISDS still exists between Mexico and Canada through the so-called Comprehensive and Progressive Agreement for Trans-Pacific Partnership which went into force at the end of 2018.

Energy Proportionality gone

Energy proportionality is also gone from the agreement, however, there are side letters encouraging energy integration through the Americas, and a provision that would make it cheaper for tar sands bitumen to be transported through pipelines. There are also protections for Canada's federally-owned Trans Mountain pipeline.

Energy chapter gone

The Council of Canadians pushed to get rid of the energy chapter in NAFTA. In one version of the negotiated agreement, an energy chapter would have locked in Mexico's privatization of its state-controlled energy company, Pemex. It would have encouraged deep integration of the energy industry and the ability to challenge regulations that prevented energy integration.

Council of Canadians Honorary Chairperson Maude Barlow and former Chairperson Leo Broderick wrote to the newly elected Mexican President Andrés Manuel López Obrador urging him to be concerned how Mexico would be affected by the new agreement.

While the energy chapter is no longer there, it has been reduced to a less onerous side agreement between the U.S. and Canada.

Instead, there is a new chapter titled Recognition of the United Mexican States' Direct, Inalienable, and Imprescriptible Ownership of Hydrocarbons, guaranteeing Mexico's sovereignty over its energy industry.

Regulatory Harmonization added

Regulatory cooperation, or as they should be known, new corporate rights, have been added to the new NAFTA. In the original NAFTA corporations could sue states using Chapter 11 –through the front door. Now, they have a back door where they can preview and argue against public regulations related to the environment, chemicals, food safety, and labelling before our democratic institutions see them. Corporations also have enhanced powers to challenge and defeat these regulations.

Cheaper to produce tar sands

Tariffs on a product that dilutes bitumen have been jettisoned, making tar sands oil cheaper to produce.

As Gordon Laxer writes in the report Billion Dollar Buyout, “Currently, if corporations want to add diluent to bitumen to export it under U.S. tariff-free access, they have to source the diluent from the United States. Diluent is a chemical-based thinner used to make bitumen move more easily through pipelines. USMCA’s Chapter 4 (Rules of Origin) will allow the U.S. to import cheaper diluent. That will lower the cost of Canadian tar sands oil imports. The US Sierra Club calls this “a clear step backwards for our climate.”

Environmental rights need work

Within the last year, Democrats worked to make the environmental provisions in CUSMA more enforceable. In the original NAFTA, environmental provisions were in an ineffective side agreement, which resulted in no cases brought to arbitration. In the new NAFTA, environmental provisions are now in the agreement and are subject to a dispute mechanism. The Democrats also changed the complaints process so that it is less burdensome and easier to access.

Climate change: the elephant in the room

The problem is what is not included in the new NAFTA’s environment chapter, specifically that it does not mention climate change at all. It doesn’t mention pollution much either. And it certainly doesn’t mention the Paris Climate Change Accord. So while the agreement is more enforceable, it barely addresses the most dangerous issues of our time.

As global trade increases greenhouse gasses, and as countries use trade agreements to evade environmental regulations by moving to the least restrictive jurisdiction, the new NAFTA not only doesn’t deal with these problems, it encourages the race downward.

Read more at www.canadians.org/factsheet-nafta-environment.