One Step Forward, Two Steps Back: The new NAFTA and Canadian trade

by Sujata Dey

On November 30, after months of drama, U.S. President Donald Trump, outgoing Mexican President Enrique Pena Nieto and Canadian Prime Minister Justin Trudeau, signed the new NAFTA in Buenos Aires at the G20 summit.

The deal was unfinished, with lawyers working around the clock right up until the signing. President Trump has already threatened Mexico with auto tariffs over GM's closing of auto plants and has said he will rip up the old NAFTA. The U.S. Congress – both Republicans and Democrats – are asking for profound changes to the agreement before they would approve it. So, as we saw with the Canada - European Union Comprehensive Economic and Trade Agreement (CETA), this may not be the last signing.

But what is in the deal? Is it a new NAFTA, or is it really different? The answer is both. NAFTA has gone through significant changes, some for the better, some for the worse. In essence, it has copy-pasted corporate-friendly parts of the Trans-Pacific Partnership (CPTPP), the 11-country deal that ironically, Trump pulled out of. These provisions were on intellectual property, limits on Crown Corporations, higher monopoly protections for drug companies, and benefits to Big Data.

The Council of Canadians, with the generous help of our supporters, brought the voices of people across the country forward. We worked with allies, wrote reports, sent postcards, commissioned surveys, organized rallies, and spoke directly to politicians. With U.S. and Mexican allies, we delivered petitions asking for Chapter 11 to be removed at the U.S. Congress. Our Honorary Chairperson, Maude Barlow, produced the *People's Guide to Renegotiating NAFTA* outlining our 10 principles for a fairer deal. We also produced fact sheets and handimation videos.

The good news is that in some ways, the deal has improved. During this renegotiation, more than 30,000 Council of Canadians supporters urged the government to get rid of Chapter 11, the mechanisms in NAFTA that allow foreign corporations to sue governments over their public policy if it hampers profits. And we were heard! The Chapter 11 investment provisions will not exist between Canada and the U.S. This is a major victory. The mechanisms will, however, exist between the U.S. and Mexico, but in a less potent form.

We also teamed up with University of Alberta Professor Gordon Laxer from the Parkland Institute to discuss the problematic energy proportionality provisions. Lifted from the U.S. Canada Free Trade Agreement, they mandate Canada to export energy to the U.S. according to a set formula. With these provisions, Dr. Laxer showed that Canada would be unable to meet Canadians' basic needs in the event of energy shortages, and would also be unable to meet our G8 climate commitments. This, too, was taken out of the new NAFTA.

The Council fought to keep and expand the cultural exemption in NAFTA. In September 2017, the Council of Canadians and the Régroupement Québécois sur l'intégration continentale gathered 100 prominent Canadian, Québécois and Indigenous artists to write a letter to the Canadian government asking it to enshrine and expand Canada's cultural exemption in NAFTA.

The cultural exemption was kept, and now is expanded to include digital culture: Netflix, video games, and on-line culture. It does, however, still permit U.S. retaliation.

But as is the case with trade agreements hatched in secret with corporate interests at the forefront, the new deal has severe flaws. Corporations may have gotten rid of their ability to challenge legislation in Chapter 11, but they have now been empowered to have a seat at the table, to review and approve policy and regulations before they see the light of day. These provisions – called regulatory cooperation – are being sold as being about eliminating red tape for businesses when in fact, these regulations are often our environmental, food safety, chemical, and other public interest rules. Now, corporations are given the opportunity to challenge regulations on a whole series of grounds. Pipeline companies have been given their own side agreement where they specifically can review regulators' actions.

Dairy farmers have also been devastated by concessions that grant U.S. farmers close to 3.6 per cent access to Canada's dairy market. Combined with the Trans-Pacific Partnership and CETA, this is a horrible blow to the industry. It also will open the floodgates for the imports of milk containing genetically engineered Bovine Growth Hormone. Not licensed in Canada, the hormone is widely used in the U.S. to boost milk production at the expense of human and animal health. In general, the agricultural chapter will be a severe attack on our ability to produce and consume locally sourced food.

Patent extensions for pharmaceutical drugs are bad news. The U.S. has allowed two more years of protection for biologics, a class of drugs made of human or animal tissue. This wildly expensive but essential medicine is found in drugs for arthritis, Crohn's and ulcerative colitis. It will certainly add to the price we pay for drugs, to the benefit of Big U.S. Pharma.

The Labour and environment chapters are also problematic. A 21st Century labour chapter and environmental chapter would need adequate teeth, and the environmental chapter, at minimum, would have to recognize the biggest problem facing humanity: climate change. Unfortunately, none of those things are happening within this new deal. However, U.S. House of Representative Democrats have said they will push for these changes.

The CPTPP

And while the world was fretting over President Trump's tweets on NAFTA, another deal was quietly being ratified. The so-called "Comprehensive and Progressive" Agreement for Trans-Pacific Partnership – the old TPP – was pushed through the House of Commons at unprecedented speed. After the U.S. ditched the deal, the remaining 11 countries bordering the Pacific Ocean revamped it, eliminating the deal's pharmaceutical and intellectual property provisions, but keeping most of the old TPP intact.

In less than a few weeks, the deal passed three readings in the Senate and House of Commons as the Trudeau government limited debate. While the new NAFTA does not have the Chapter 11 provisions, this CPTPP has them and adds the corporations of nine more countries to the roster of those that can sue Canada over its public interest policies.

CETA in Europe

In Europe, the Council of Canadians joined The Stop TTIP and CETA Italia movement to reinforce the Italian government's statement that it will not ratify CETA. While the agreement has been provisionally in effect since September of 2017, the investor-state dispute settlement mechanisms have been controversial. Full implementation requires the consent of all 28 EU states and 10 regional governments. With a legal challenge still ongoing at the European Court of Justice and the ratifications of EU countries, CETA is not a done deal.

As you can see, with trade agreements, our collective voice does make a difference. We are able to challenge corporate power when we work together. We have had some critical successes in Canada and in Europe. However, as corporations continue to have access to power, and wield it through trade agreements, we are a long way off from fair trade agreements for people and the planet.

Luckily, the Council of Canadians, working alongside groups all over the world, is trying to win this important global struggle.

Sujata Dey is the Trade Campaigner for the Council of Canadians.

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