
# NAFTA 2.0:
## FOR PEOPLE OR POLLUTERS?

A Climate Denier's Trade Deal Versus a Clean Energy Economy

## EXECUTIVE SUMMARY

Communities across North America are enduring falling wages and rising climate threats. Instead of reducing these problems, the North American Free Trade Agreement (NAFTA) is exacerbating them. NAFTA was written before broad awareness of climate change, and negotiated with input from fossil fuel executives, not workers, climate scientists, or climate-impacted communities. Predictably, the negotiation prioritized the profits of multinational firms, not the well-being of working families who face increasing climate hazards. As a result, NAFTA includes an array of little-known rules that bind North America to fossil fuel dependency rather than supporting a just transition to a clean energy economy. NAFTA is an obstacle to climate progress.

After more than two decades of NAFTA, the deal is finally being renegotiated, offering an opportunity to invert its backwards priorities. Civil society organizations, academics, and legislators across North America have offered a litany of specific ideas for a more equitable, climate-compatible deal. This time around, will negotiators prioritize the workers and communities that have been hardest hit by the fossil fuel economy, or the CEOs who profit from it?

The track record so far is not encouraging. While some important proposals for change reportedly sit on the negotiating table, many of NAFTA's handouts to corporate polluters remain untouched. Even worse, negotiators are entertaining new corporate-backed rules for NAFTA 2.0 that would pose additional barriers to the bold climate action that science and justice demand. Such terms, if accepted, would be an exercise in climate denial, with long-lasting consequences for workers and communities across North America. We cannot shift to a clean energy future if a corporate trade deal tethers us to the fossil fuel past.

In this report, leading economists from each of the three NAFTA countries present original research and analyses on the climate implications of NAFTA, the new climate threats that NAFTA 2.0 could pose, and concrete alternatives for replacing NAFTA with a climate-friendly trade agreement. On the next page you will find some of the key findings.

## NAFTA'S OBSTACLES TO CLIMATE PROGRESS

- NAFTA includes a "proportionality" rule that locks in tar sands oil extraction and fracking in Canada, while giving corporate polluters a permanent green light to build tar sands oil pipelines into the U.S. The rule essentially requires Canada to export to the U.S. three-quarters of its oil production and over half of its natural gas. If Canada tries to meet its climate goals but remains bound by this NAFTA rule, the country will produce nearly 1,500 metric megatons more climate pollution by 2050 than if it ditched the rule. This cumulative NAFTA climate pollution "penalty" is twice as large as Canada's current annual emissions and more than 12 times greater than its 2050 climate pollution target. Negotiators must eliminate NAFTA's proportionality rule if Canada is to have a chance of meeting its climate goals.

- NAFTA encourages Mexico's dependency on fossil fuels, particularly natural gas, which has contributed far more than any other fuel type to Mexico's recent increase in climate pollution. NAFTA bars the U.S. Department of Energy from determining if gas exports to Mexico are in the public interest, facilitating a five-fold increase in U.S. gas exports to Mexico since 2010. This surge in gas exports has fueled increased fracking in the U.S., expansion of crossborder gas pipelines, and a crowding out of solar and wind power growth in Mexico. Half of Mexico's electricity now comes from gas, while only one percent comes from solar and wind. NAFTA also has incentivized increased foreign investment in Mexico's offshore drilling and oil and gas pipelines, reinforcing the country's fossil fuel dependency.

- NAFTA could prolong the climate damage from the Trump administration's regulatory rollbacks if NAFTA's private legal system for corporate polluters remains intact. NAFTA's controversial "investor-state dispute settlement" (ISDS) mechanism has allowed corporations to sue the U.S., Canada, and Mexico in unaccountable tribunals over restrictions on fracking, denials of tar sands oil pipelines, and other climate and community protections. Governments cannot "win" ISDS cases, but they can – and have – lost them, resulting in millions of tax dollars paid out to corporations. The threat of such losses has deterred governments from enacting environmental policies. If this threat remains in NAFTA, it could delay or weaken the re-establishment of U.S. climate policies after the Trump administration leaves, prolonging Trump's polluting legacy.

- NAFTA allows corporations to evade climate policies by offshoring their production, pollution, and jobs to countries with weaker climate standards. The deal offers protections to corporations that cross borders, without requiring crossborder protection of workers and the environment. This fundamental inequity has already resulted in the offshoring of pollution from lead and other toxins. As North America's governments begin to enact bolder climate policies at an uneven pace, corporations could take advantage of NAFTA to shift their emissions and jobs from climate leaders to climate laggards. This climate pollution loophole discourages climate leadership. Policymakers across North America regularly cite it as a reason not to enact stronger climate policies, for fear that doing so would spell job losses and a mere exporting of emissions.

## NEW CLIMATE THREATS IN NAFTA 2.0?

- NAFTA negotiators have explicitly stated that a goal for NAFTA 2.0 is to lock in the recent deregulation of oil and gas in Mexico – a key demand of fossil fuel corporations. The deregulation is encouraging increased offshore drilling, fracking, and other fossil fuel extraction in Mexico. A future Mexican government may want to restrict such activities to reduce climate emissions and air and water pollution. However, NAFTA 2.0 could bar such changes with a "standstill" rule that requires the current deregulation of oil and gas to persist indefinitely, even as governments change, the climate crisis worsens, and demands for climate action crescendo.

- NAFTA 2.0 could newly expose Mexico's climate policies to costly and unpredictable legal threats by stating that Mexico's energy sector is subject to ISDS. If oil and gas corporations are granted the right to sue Mexico in private NAFTA tribunals for policy changes that restrict their business, it could make future governments in Mexico think twice before taking bold climate action.

- NAFTA negotiators have suggested that NAFTA 2.0 could expand the proportionality rule – which already locks in climate pollution in Canada – so that it also is binding on Mexico. This new requirement to export oil and gas could make it more difficult for Mexico to cut climate pollution while satisfying domestic energy demand.

- NAFTA 2.0 reportedly already includes a set of expansive rules concerning "regulatory cooperation." Past trade deals suggest that these rules could require Canada, the U.S., and Mexico to use burdensome and industry-dominated procedures for forming new regulations, which could delay, weaken, or halt new climate policies. In addition, the rules could lead to requirements for the three countries to align, or "harmonize," regulations, which in the past has meant downward harmonization to the cheapest and weakest regulatory option. For example, Canada and Mexico could be pressured to adopt climate standards weakened by the Trump administration, making it harder to resume climate progress in the post-Trump era.

## CLIMATE-FRIENDLY NAFTA REPLACEMENT

- A new North American trade deal should close NAFTA's climate pollution loophole that allows corporations to evade climate policies by offshoring jobs and emissions. If a trade deal allows corporations to cross borders, it also must ensure cross-border protections for workers and communities. Each participating country should be required to enforce robust policies to reduce climate and other pollution, protect workers, and guarantee human rights in line with international agreements. That includes a requirement to fulfill the Paris climate agreement. A new, independent and binding process should enforce these requirements – one that empowers impacted communities to confront any violations. To further deter pollution offshoring, the deal also should penalize imported goods made with significant climate pollution.

- To prevent climate and other public interest policies from being challenged in private tribunals, NAFTA's replacement must eliminate ISDS. Corporations can use domestic courts, just like everyone else. Instead of ISDS, a deal should encourage investments that are compatible with the public interest (e.g., not fossil fuels) by offering investors basic protections in exchange for meeting basic legal obligations. To also shield climate and other public interest policies from trade challenges brought by other governments, NAFTA's overreaching rules must be curtailed and a broad "carve-out" should be included that exempts such policies from challenge.
- The deal that replaces NAFTA should allow the governments of North America to swiftly phase out fossil fuel exports as they pursue a just transition to a clean energy economy. That means deleting NAFTA's proportionality rule that locks in fossil fuel exports, climate pollution, and toxic practices like fracking and tar sands oil extraction. It also means protecting the autonomy of each government – including the U.S. Department of Energy – to determine whether gas and other fossil fuel exports are in the public interest, rather than requiring that those exports be automatically approved.

NAFTA's renegotiation is long overdue. But we cannot afford to lock North America's communities into another multi-decade pact that ignores climate change. To replace NAFTA with a deal that protects people, today's negotiators should listen to the workers and communities on the front lines of climate change, not the corporations fueling it.

To obtain a full copy of this report please call the Council of Canadians toll-free at 1-800-387-7177, or email us at inquiries@canadians.org

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