

THE NEW NAFTA

ORGANIZING TOOLKIT

THE
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NOT ANOTHER NAFTA RUBBER STAMP: WE NEED A REAL DEBATE IN CANADA ON NAFTA 2.1!

The Trudeau government says NAFTA 2.1 is the first order of business when Parliament resumes and the Liberals are [urging](#) other parties to swiftly ratify the deal.

But not so fast!

In the U.S., lawmakers, spurred on by newly elected U.S. House Democrats, worked over a year on the agreement. In Canada, parliamentarians and the public have had absolutely no meaningful input in the deal.

We can't let this be a closed circuit, where corporations and the one per cent decide the future of NAFTA. We need a conversation on the fundamental issues – climate change, jobs, public services, family farms, Indigenous rights, inequality, and regulations – that this agreement affects.

With a minority government, it shouldn't be business as usual. We demand, at a minimum, a full study of the agreement in committee, and a robust national debate. The NDP and Bloc Québécois have said they want a [full debate](#) on the agreement. The Green Party has also traditionally opposed NAFTA.

You can speak up for democracy and fair trade. Take action! Contact Deputy Prime Minister and Intergovernmental Affairs Minister Chrystia Freeland

The Council of Canadians has prepared the following analysis for Council of Canadians chapter members and supporters to use to help you have discussions in your chapter and community, contact Deputy Prime Minister Chrystia Freeland and your local MP, and get the message out.

NAFTA: A TIMELINE

The original NAFTA was signed in 1993. History has shown it has [weakened](#) labour rights, environmental protections, and helped

corporations attack public interest regulations and the public sector. The Council of Canadians took up the fight against NAFTA and its [Chapter 11](#) provisions that allow corporations to sue governments over environmental and public policy decisions that affect their profits. We argued against [energy proportionality](#), which mandates Canada to export quotas of energy to the U.S. We also highlighted our concerns about NAFTA's effects on public health care and public services, jobs, energy and the environment, [water](#), and democracy.

When he was elected, U.S. President Donald Trump said NAFTA was a bad deal for the U.S. He vowed to either renegotiate the agreement on his terms, or the U.S. would withdraw. President Trump then hatched a deal with Mexico, saying that Canada had three weeks to come to the table with an agreement, or be turfed out of the deal.

During this process, Maude Barlow, Honorary Chair of the Council of Canadians, presented the Council of Canadian's negotiating priorities in the report, [Getting it Right: the People's Guide to NAFTA](#), which was accompanied by action tools such as postcards, letters, polling information, factsheets and videos. Council of Canadians supporters sent more than 30,000 messages to their MPs. We also placed an ad on CBC's Television show, *The National*.

At midnight on September 30, 2018, Canada, the U.S. and Mexico agreed to a rewrite of the NAFTA agreement, renaming it the Canada-United States-Mexico Agreement (CUSMA) in Canada and the United States-Mexico-Canada Agreement (USMCA) in the U.S. The deal was swiftly ratified in Mexico and implementing legislation was presented in Canada. The Council of Canadians' analysis is [here](#).

However, it didn't end there. In November 2018, U.S. midterms ushered in a majority of Democrats to the U.S. House of Representatives. With this new majority, Democrats vowed they would not ratify the agreement until important changes were made, including binding mechanisms to enforce labour and environmental rights, and the removal of provisions that would make [biologic drugs](#) more expensive which in turn would make a public, universal pharmacare program harder to afford.

The Council of Canadians campaigned [to push pause on Canada's implementing legislation](#), arguing that we must wait for U.S. progressive changes and fight against the new deal's most [toxic provisions](#). With the 2019 federal election, the implementing legislation was left abandoned on the order paper.

U.S. Democrats negotiated to make changes to the agreement. Canada and Mexico accepted these important changes, signing a new agreement on December 11, 2019. On Wednesday, January 29, 2020 President Trump signed the new NAFTA into law.

It is now Canada's turn. According to *Inside U.S. Trade*, the agreement must sit 21 days before it is ratified by cabinet. Implementing legislation, the law that changes Canadian laws to conform to the agreement, must go through three readings in the House of Commons and in the Senate. At second reading, it can go to a committee for study. **At this point, the new NAFTA must go to a committee to be fully examined and debated.**

There is already pressure on the opposition to give unanimous consent to waive the prescribed procedure, which is not acceptable. Our jobs, environment, family farms, and our regulations are all at stake!

PRINCIPLES OF FAIR TRADE

From the beginning it was clear CUSMA was going to be a corporate-friendly trade agreement. With President Trump in the White House, the old NAFTA as a template, media hysteria around the possible loss of NAFTA, and corporations being granted preferential access to the negotiations, the stage was set.

Together with labour, citizen's groups, environmental and faith groups in the three countries, we successfully campaigned to get rid of some of NAFTA's most destructive provisions. While we succeeded in removing certain provisions like Chapter 11 and the energy proportionality clause, which we have fought against for decades, we were unable to prevent problematic new provisions like the erosion of farming conditions and corporate-friendly forums to impact regulations.

The next big trade negotiation must be different. From day one, the public and society at large must be able to change the entire frame of the agreement. Negotiations must be open and involve municipalities, provinces, unions and environmental groups. Indigenous Peoples should be consulted as nations in trade agreements. Parliamentarians from all parties must be able to debate the contents of the agreement, not just its implementation.

We must ensure independent evaluations of trade agreements, not only examining economic impacts, but also environmental and social impacts. Many of our trade agreements, such as [CETA](#) and the [South Korea](#) agreement, have not resulted in increased Canadian exports. For too long, decision makers have relied on the idea that trade is good and all trade agreements are positive. Future agreements must be regularly evaluated to see whether they are actually benefiting us at all – something that isn't happening with current agreements.

With so much at stake, it is not just industry stakeholders that are affected. Our health and our planet are at risk. Trade agreements rule how our globalized planet is run and there is much to be concerned about. Trade debate in Canada must reflect that.

WHAT'S AT STAKE

- [Canadian farms and Bovine Growth Hormone](#)
- [Regulatory Cooperation](#)

INDIGENOUS RIGHTS

Right now, there is no meaningful nation-to-nation relationship where Indigenous Peoples have the right to participate in any treaty that Canada enters into even though this is exactly what the United Nations Declaration of the Rights of Indigenous Peoples requires. The Canadian government's attempt to have an Indigenous Chapter in CUSMA fell apart. Canada's commitment to Indigenous rights is exempt from being challenged in the new NAFTA.

However, Canada's duty to respect Indigenous Peoples' self-governance agreements is only included in a footnote. The United Nations Declaration on the Rights of Indigenous Peoples is not referenced in the agreement.

CUSMA does include [protections](#) for Indigenous fishing rights, trade, and allows Crown Corporations to hire Indigenous Peoples through preferential hiring programs. The environment chapter recognizes the importance of Indigenous knowledge in environmental stewardship. While there are some gains, CUSMA does not do enough to recognize and respect Indigenous Peoples.

CULTURAL EXEMPTION STRENGTHENED

CUSMA's cultural exemption section, which allows Canada to protect its cultural policies such as Canadian content rules, has been strengthened. The Council of Canadians joined with more than [100 prominent](#) Canadian, Québécois and Indigenous authors, publishers and artists, including [Susan Swan](#), Margaret Atwood and Michel Tremblay, in asking for the protection to remain and to be expanded.

These protections have been kept and now include digital cultural works such as Netflix productions, video games and online culture that were not protected under the original NAFTA. CUSMA maintains the U.S.'s right to retaliate, though, like in the original NAFTA.

CORPORATE RIGHTS AND CORPORATE COURTS

Our most important victory was the removal of Chapter 11 investor-state dispute settlement (ISDS) provisions, at least for the U.S. and Canada. As the Council's Honorary Chairperson Maude Barlow says, our movement should stand up and take credit for this. For decades, the Chapter 11 provisions that allow corporations to sue governments over public policy and environmental decisions had been especially problematic for Canada. In fact, Canada was the most sued country in the developed world because of these provisions. Canadian taxpayers have paid more than [\\$300 million](#) for decisions such as not authorizing neurotoxins, putting a moratorium on fracking, and not renewing a pharmaceutical patent.

However, the ISDS provisions are not completely removed. Mexico is subject to ISDS particularly for its energy and telecommunications industries. As Mexico attempts to reign in dubious private contracts with U.S. companies for Pemex, its national energy company, it could face ISDS challenges. Canadian mining and oil companies can also count on ISDS provisions with Mexico in another agreement, the so-called Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

We must now ensure that our other trade agreements do not allow ISDS provisions. Existing ISDS provisions are also being challenged internationally.

See our [video and fact sheet](#) about ISDS.

ENERGY PROPORTIONALITY

The Council of Canadians opposed energy proportionality provisions that mandated Canada to export quotas of energy to the United States. They have been removed from the recent agreement.

Contained in the original U.S.-Canada Free Trade agreement, these provisions were grandfathered into the new NAFTA. However, as the old U.S.-

Canada Free Trade agreement is only suspended, not removed, these provisions could [be reestablished](#) when the U.S. reviews the agreement six years from now under the sunset clause. We must cancel the U.S.-Canada free trade agreement completely.

See our [video and fact sheet](#) about energy proportionality.

BIG PHARMA

The Council of Canadians, with U.S. allies were successful in removing costly provisions that would have raised the price of some prescription drugs. The first new NAFTA deal negotiated by President Trump contained provisions that would give market protections to biologics, a class of drugs made with human or animal tissue. These drugs, which cost thousands of dollars, are used to treat arthritis, ulcerative colitis and other conditions. This drug class has the fastest rising costs for public and private drug plans. The deal's original provisions would have increased the price tag even further, potentially jeopardizing a future universal, public pharmacare plan.

The Council of Canadians with [trade and health coalitions and Canadian MPs](#) challenged these provisions. The U.S. Democrats successfully removed them from the agreement.

To learn more, [watch our video and read our fact sheet](#).

LABOUR

During talks on the first CUSMA, Mexico agreed to strengthen enforcement and protection of labour laws and collective bargaining. In this version, there are two important changes. Human rights and labour organizations have documented many cases in Mexico of unions claiming to represent workers, but are in fact people essentially chosen by the employer and to represent the employer's interests.

Now, once the new agreement goes into effect, there are mechanisms to determine whether Mexican employers are truly allowing free and

democratic union organizing. Canada or the U.S. can enact a rapid response mechanism. A panel of independent labour inspectors would investigate potential violators, with the potential for tariffs or trade sanctions.

Labour provisions are also not in a side agreement, but in the main text with dispute mechanisms to enforce the text. The agreement eliminates many hurdles to getting a labour violation case heard. In the past, the burden was on the complainant to prove that the violation affected trade. Now, it is assumed that the violations meet those criteria unless it is shown otherwise. In automobile manufacturing, a certain amount of workers must be paid at least \$16 an hour.

Québec aluminum unions still have concerns about how North American content is determined. They worry that it gives a loophole for foreign companies to qualify under NAFTA. The Bloc Québécois are raising these concerns.

Public services are also affected by NAFTA's original ratchet and standstill clauses that prevent states from bringing back entities into public hands after they have been privatized. It also puts constraints on crown corporations, forcing them to act like private corporations in preventing them from receiving public support or pursuing their social or public policy mandate.

Given that similar mechanisms have not existed in other trade agreements, it remains to be seen if they can truly protect workers. And while these mechanisms mark an improvement, they do not fundamentally change situations where corporations shift to operate where labour laws are lax and salaries are low. It will not challenge U.S. right-to-work laws or Canadian labour violations. It will not set what a decent wage is or what minimum labour standards are. It will not undo the downward spiral of precarious work and lower labour standards caused by unregulated corporate globalization.

But workers' rights loom larger than in previous trade agreements, which is testimony to the work of labour movement in all three countries.



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