

# Getting it Right:

A people's guide to renegotiating NAFTA



## 10 Things Canada Must Demand in a New NAFTA

The governments of North America are deep into a process of renegotiating the North American Free Trade Agreement that was signed over 20 years ago. NAFTA has been instrumental, along with other policies, in increasing wealth inequality, job insecurity, wage stagnation and the creation of a precarious work force. It has weakened public services and led to lower regulatory standards in areas such as food, pesticides, and health and safety rules. NAFTA has allowed American corporations to challenge higher Canadian environmental regulations.

**We should only support a new trade agreement for North America if it will:**

- 1. Remove Chapter 11.** Chapter 11 has been used as a corporate charter of rights and has no place in a future North American trade agreement. Foreign Affairs Minister Chrystia Freeland has stated her wish to “improve” the ISDS provision of NAFTA by mirroring the one contained in the Canada-European Comprehensive Economic and Trade Agreement (CETA) which set up an investment court system to hear investor disputes. However, a report by European and Canadian research institutes found that most of the controversial ISDS challenges launched under NAFTA would have been allowed to proceed in the CETA system.<sup>1</sup> In any case, setting up a more formal court that gives foreign investors rights not accorded to domestic companies is undemocratic and dangerous.

Canada should also reject any attempt to kill Chapter 19 and seek instead to gain agreement on clear timelines for decisions and enforcement.

- 2. Put workers and their rights at the heart of the new agreement.** It appears that the countries may be getting ready to bring core labour rights into the body of the agreement and this is good. However, if it is just targeted to Mexican violations and does not deal with bad practices in the U.S. and Canada such as right-to-work laws and allowing corporations to get concessions by threatening to move their production away, the laws will not lift the rights of all. As well, and as NUPGE points out, the burden of proof and scope of the proposal to allow human and workers' rights groups to launch disputes in the United States Trade Representative's (USTR) proposal are too limited and undermine enforceability as labour complaints would never get past their requirements that a violation must be trade related and recurring. The Canadian Labour Congress adds that an effective labour chapter must contain clear deadlines requiring authorities to investigate and adjudicate complaints, while providing for binding enforcement and meaningful penalties for non-compliance.

It must be clear, however, that even if the language on labour rights is greatly improved, unless other provisions of NAFTA that give corporate investors their current powers are drastically curtailed, this chapter will not be enough to protect workers in the long run. As Canadian Union of Public Employees President Mark Hancock wrote in a September 2017 letter to Prime Minister Trudeau, “A bad agreement with good labour rights is still a bad agreement.”<sup>2</sup>

**3. Promote and protect public services.** Vibrant public services are very important to Canadians and must be fully protected in any new trade agreement. Since the signing of the first NAFTA, which included exemptions for a number of public services such as health care and education, there have been a raft of agreements such as the TPP and the Trade in Services Agreement targeting public services. Not only must the exemption to these services be crystal clear in the new text, it must be spelled out that governments have the right to introduce new public services such as childcare and pharmacare, without penalty from either other governments or corporations. Canada must resist the American push for longer patent rights for biologic drugs to keep these drugs affordable to Canadians.

There must also be strong language to ensure that governments can direct public procurement funds to local enterprises. Unifor's Jerry Dias says that procurement rules are the "lifeblood" for thousands of workers and their communities and public funds must be used to support jobs at home. Governments at all levels must retain the right to control procurement funds to social ends.

**4. Include strong provisions to protect the environment and natural resources.** Friends of the Earth U.S. and Canada call the current USTR proposals to protect the environment unenforceable and weak. A new NAFTA must explicitly include a chapter that is comprehensive and enforceable through dispute resolution. It must include an obligation for the three countries to enforce their domestic laws, including agriculture, food, chemicals, and biotechnology. It must also include an enforceable obligation to adhere to a comprehensive list of multilateral agreements, including the Paris Climate Accord. As with the chapter on labour rights, there needs to be an enforceable mechanism through dispute settlement, including those started by civil society and environmental groups.



**5. Maintain the right to regulate in the public interest.** The Canadian government is promoting stronger "regulatory cooperation" provisions in a new NAFTA similar to those found in CETA and the TPP. Promoted by right wing groups like the U.S.-based Cato Institute, regulatory cooperation is meant to harmonize regulations in areas as diverse as GMOs, resource extraction projects, water protection rules, regulating toxic mining waste, pesticide residue levels in food, and drug approvals. This is a dangerous development for Canada given its American partner is set on a deregulation crusade. Regulatory cooperation gives the major corporate lobbies of the countries an "in" to challenge non tariff barriers such as higher food, health and environmental standards. As shown in a 2016 Council of Canadians report, Canada's informal process of regulatory cooperation in the first NAFTA led to increased market size and concentration in the chemical industry, and the concentration of American food conglomerates in Canada.<sup>3</sup> If a chapter on regulatory cooperation is indeed included, it must lead to the adoption of the highest possible standards and include non-industry groups from all countries.

**6. Remove the energy chapter and cancel the energy proportional sharing provision.** A coalition of North American climate groups reminds us that the climate crisis requires that governments have a full range of policy and regulatory options to reduce climate pollution as quickly as possible. The NAFTA proportionality sharing clause limits Canada's ability to restrict climate-polluting fossil fuels, including tar sands crude. NAFTA's national treatment rules threaten policy options such as renewable portfolio standards, low carbon fuel standards and other climate-friendly energy regulations perceived as impeding business for foreign fossil fuel firms. NAFTA's procurement rules limit governments' ability to use "green purchasing" requirements that ensure government contracts support renewable energy, energy efficiency and sustainable goods. Instead of protecting corporate interests in ongoing fossil fuel exploitation, trade agreements should shield public interest policies to ensure compliance with domestic environmental laws and important international environmental agreements.<sup>4</sup>

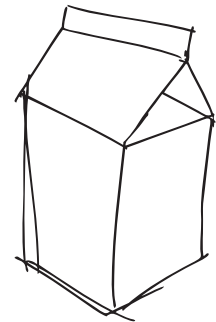


**7. Remove all references to water.** Water in all its forms should be removed from the annex that lists the tradable goods named in the current NAFTA. This would end the debate on whether the current federal ban is sufficient to protect Canada should one of its provinces start the commercial export of water as it would remove any potential for a NAFTA challenge. Removing water as a service would help protect water as an essential public service. Removing it as an investment and cancelling Chapter 11 would make it much harder for foreign corporations to fight domestic or international rules that protect water sources.



**8. Maintain and expand the exemption for culture.** It is crucial not to give in to U.S. demands to exchange the protections Canada had in NAFTA for the weakened ones of the TPP. For instance, Canada fully conceded a U.S. demand in the TPP that prevented online broadcasters, such as Netflix, from ever being subject to Canadian content rules. Canada must not only maintain its current cultural exemption, but strengthen it by updating the definition of cultural industries. This, says ACTRA, can best be done by putting a focus on the artist and the creative work that provides the cultural content produced and distributed by the cultural industries, rather than on the medium used. It would also allow the coverage of new forms of culture not envisaged when NAFTA was first signed. ACTRA also wants to remove the “notwithstanding” clause of NAFTA that allowed retaliation measures if the U.S. is unhappy with our use of a cultural exemption.<sup>5</sup>

**9. Protect Canada’s supply management system.** The government must keep its promise to retain the protection for dairy and poultry farmers in order to ensure that Canadians have access to high quality locally-produced food while supporting small family farms and rural communities. “The U.S. cannot solve its dairy crisis by taking over the Canadian dairy market,” says Jan Slomp, President of the National Farmers Union. “We need Canada to stand firm against any temptation to negotiate away supply management. Our system ensures farmers are paid the cost of production, processing plants are able to run at full capacity and consumers have a reliable, wholesome and affordable supply of dairy, poultry and eggs – all without any government subsidies.”<sup>6</sup>



**10. Protect and enhance Indigenous rights.** Lost in most analysis of NAFTA is the impact it has had on Indigenous peoples in Canada. More has been studied and written about the massive displacement of Indigenous people, small farmers and peasants in Mexico who lost their land rights in the agreement’s aftermath. While perhaps difficult to pinpoint what impacts NAFTA itself has had on First Nations in Canada, they have undoubtedly taken the brunt of the fall-out from large hydroelectric and extractive energy, fracking and mining projects, all of which have been spurred by the open and unregulated markets of which NAFTA has been a centrepiece. A new agreement must contain a chapter clearly defining First Nations’ rights based on their now accepted right to free, prior and informed consent contained in the United Nations Declaration on the Rights of Indigenous Peoples.

There is a great deal at stake in these talks and Canada should be prepared to walk away if a new agreement does not protect the rights of Canadians and the environment. A study by the Canadian Centre for Policy Alternatives found that if NAFTA is terminated and Canadian exporters were forced to revert to the World Trade Organization rules and tariff rates, the impact would be “disruptive, but by no means catastrophic.” Written by CCPA senior researcher Scott Sinclair and labour economist Pierre Laliberté, the report finds that for 96 per cent of total Canadian exports – the effective cost of losing the “NAFTA advantage» – would amount to only 1.5 per cent of the value of Canadian exports.<sup>7</sup>

A September 2017 EKOS Research poll commissioned by the Council of Canadians found that most Canadians say the government should walk away from NAFTA if it's a "bad deal." Eighty per cent agreed that water should not be treated as a commodity under NAFTA as it is now; 70 per cent said measures requiring Canada to maintain energy export quotas to the U.S. should be removed; and 63 per cent agreed that Chapter 11 should be removed from the deal.<sup>8</sup>

Whether it is called NAFTA or something else, a new North American trade agreement must empower the governments, individually and collectively, to enhance the rights of workers, promote the sustainable use of our shared resources, and introduce the measures needed to fight climate change and stop the destruction of water, forests, fisheries, wetlands and soils.

There has never been a better time for a debate about the nature of trade agreements like NAFTA. There has never been a better time to reign in the power of transnational capital and transnational corporations and recognize the sacred democratic authority of people, communities and their elected governments to protect human and workers' rights and the environment upon which we all depend for life.

Let's get it right.

*This text is excerpted from Maude Barlow's new report, "Getting it Right: A people's guide to renegotiating NAFTA."*

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4. Patterson, Brent. "NAFTA 2.0 Could Include Provision Removing US Presidential Permitting Process for Cross-border Tar Sands Pipelines." Blog post. Council of Canadians, 12 Sept. 2017.
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