

NAFTA THREATENS THE ENVIRONMENT

International trade agreements cause environmental problems because our governments don't act in accordance with their rhetoric. Specifically, they don't treat the environment and economy as inextricably linked when they get down to the serious work of making economic deals. They don't negotiate economic relationships with other countries based on environmental principles including the need to conserve resources, and to maintain high environmental standards and the freedom to constantly improve them. Neither do they allow for public participation in the negotiations, or public access to information.

The Canadian government continues to deny that trade agreements, which so fundamentally structure our economies, also structure how we treat the environment, both here and in other countries. An emerging business argument, favoured at the OECD and GATT and in Ottawa, says that trade is good for the environment because it increases GNP and therefore provides better resources for environmental protection. However, we do a deplorable job of environmental protection in the developed world, constantly running behind the damage we cause with ineffectual cleanup efforts. Nor have we begun to reduce our rapacious and unsustainable use of natural resources. Trade agreements premised on the desirability of continual growth cause environmental problems.

The North American Free Trade Agreement (NAFTA) continues these damaging trends. With regard to environmental standard setting, it turns the clock back.

OBSTACLES TO ENVIRONMENTAL STANDARD SETTING IN NAFTA

A draft text of the NAFTA was leaked to the public in March. It indicates that various trade rules, originating in the GATT and jurisprudence under GATT, have been codified and strengthened. These rules reduce the authority of elected governments (federal, provincial, and state) to enact measures that differ from the terms of the NAFTA in an enormous range of subject areas.

No measure of a country may constitute a disguised restriction on trade or "otherwise nullify or impair any benefit reasonably expected to accrue to one or more of the other Parties, directly or indirectly, under this Agreement." (Article 106) Subject to these sweeping restrictions, countries may adopt measures including those for protection of the environment, and human, animal, or plant life or health, or to enforce "generally agreed international environmental or conservation rules or standards", provided that they are "the least trade-restrictive necessary for securing the protection required." (Article 111)

It is difficult to imagine an environmental standard that could not be challenged by the industrial sector it affects for its "impairment" of unfettered economic activity. Various environmental standards have been found to contravene international trade rules for not being "the least trade-restrictive necessary". Most important for Canadians, regulations under the Canadian Fisheries Act that required landing of West Coast salmon and herring in Canada for biological sampling were found to contravene the Canada-US Free Trade Agreement (FTA) based on this standard, and the conservation program involved was down-graded.

This wording definitely has a "chilling" effect on new government initiatives: why take a chance with a program that may be struck down if challenged?

Having made any possible environmental standards subject to these reservations, the NAFTA then goes further and establishes an extensive process of harmonization of technical and sanitary and phytosanitary (plant-related) standards. (Chapter 12) In essence, the parties are to comply with international standards through processes involving committees under the agreement, GATT, and international environmental and conservation agreements. The bodies that will set a wide range of standards include Codex Alimentarius, the International Office of Epizootics, and the Tripartite Animal Health Commission. These closed industry-dominated organizations will now have the power to replace public, accountable governmental processes for environmental protection.

The right to set different, higher national standards was not agreed to, although Canada and Mexico had a proposal to that effect. If accepted, it would still be subject to the standards above (no nullification of benefits; least restrictive to trade) and could not be maintained "against available scientific evidence". Given that scientific certainty never exists in environmental standard setting but is always a matter of debate, and given that the least trade restrictive standard may not be the environmentally-preferred one, these proposals are further limitations on our ability to set necessary environmental standards.

The US proposed the use of risk assessment, in which health and environmental benefits of a measure are "balanced" against its possible economic effects. This is another pressure to lower environmental standards. Canada has also proposed risk assessment regarding sanitary and phytosanitary standards, using risk assessment techniques developed internationally or by the Parties, with consideration of economic factors in setting the standard and with the objective of "minimizing negative trade effects". They will also take into account "the exceptional character of human health risks to which people voluntarily expose themselves."

These are all code words for a range of arguments used by industry to deny responsibility for environmental health effects, and to block strengthened environmental standards. These excuses, based

on economic self-interest and a refusal to take responsibility for environmental degradation, will now provide the basis of standard setting for a large and crucial range of health-related measures including pests and pesticides, and food additives, contaminants, and toxins.

There are no proposals in the NAFTA for any form of public involvement, access to information, or accountability in environmental standard setting. The right of the public to "leap-frogging", when one country's superior standard becomes adopted in other countries due to public pressure, will be cut off in favour of stagnant or lowered standard setting by business groups.

OBSTACLES TO RESOURCE CONSERVATION

The NAFTA repeats the problems caused by the GATT, and US-Canada FTA which effectively preclude export and import restrictions, even for purposes of resource conservation. Canada and the US also go further and propose, in the NAFTA, the further restriction to GATT rights that Canada accepted in the FTA: namely, that a country cannot reduce exports of any good (ie. resource) to another party beneath the proportion of total production of the good which that party obtained in the previous three year period.

These import-export control prohibitions are the "guts" of free trade agreements. They are also totally antithetical to sustainable resource management by democratic, accountable governments.

A particular concern in the agreement refers to the inclusion of non-energy pipeline operations in the Services chapter, indicating that water exports are again on the table.

AGRICULTURE

At this time, the approach to agriculture in the NAFTA is in doubt, but Canadians should know that our government proposed, in the NAFTA, the same approach to agriculture that it allegedly opposed in the Uruguay Round negotiations at the GATT. This approach would see Canada's supply management scheme for agro products replaced by protective tariffs, to be gradually phased out.

Environmentalists support national self-sufficiency in food, both to satisfy a fundamental human need, and to reduce the environmental effects of increased energy use related to long-distance transport of food. We therefore support a healthy national farming sector. We know that significant environmental problems exist in the agricultural sector in Canada: high energy inputs, waste management problems, heavy pesticide use, and soil degradation. Realism suggests that these problems won't be dealt with unless farmers have a measure of income security, and in this era of farm income crisis, supply management provides some of that security.

Our government's temporary "tariffication" scheme for farm products in the NAFTA is therefore disturbing.

INTELLECTUAL PROPERTY

Intellectual property rights are not a part of the US-Canada Agreement but were a major goal for American negotiators in NAFTA. The resulting provisions are of concern because they implicitly include rights to patent life forms. Mexico has proposed various exclusions from patentability: biological processes for the reproduction of life forms, plant and animal species, genetic material, and inventions concerning living matter of the human body. However, these exclusions had not been accepted when the document was leaked.

The chapter also has provisions for patent protection for producers of agricultural and pharmaceutical chemicals, raising all the issues associated with higher prices to consumers that we've seen in Canada.

Expanded intellectual property rights for the gifts of nature represent an appropriation for corporate profit of our fellow earth creatures. Given the richness of biodiversity in our ecosystems, and particularly in Mexico's environment, humanity as a whole is made poorer by the right of business to exclusive use of our natural heritage.

THE "WEB" OF THE AGREEMENT

Various sections of the NAFTA mention issues that involve environmental concerns: packaging standards, auto emissions, occupational health and safety costs, transport of hazardous goods, energy subsidies, the role of multilateral environmental agreements. The list goes on.

The Canadian government argues that the NAFTA is not of great concern to Canada because only about 1% of our trade is with Mexico. However, it significantly erodes our sovereign rights to conserve resources and set environmental standards, and potentially affects **all** our environmental protection strategies.

Michelle Swenarchuk
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