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Replacing NAFTA: Eight Essential Changes to an Environmentally Destructive Deal

For more than two decades, the North American Free Trade Agreement (NAFTA) has harmed communities across Canada, Mexico, and the U.S.—particularly people of color and lower income families—by undermining environmental protections, eliminating jobs, increasing air and water pollution, eroding wages, and fueling climate change.¹ Widespread public opposition to such trade deals has swelled.

As leading environmental organizations, we have long called for a fundamentally different approach to trade – one that prioritizes the needs of people and planet. Thus, our basis for evaluating any NAFTA renegotiation is clear: Does it support – not undermine – a more stable climate, clean air and water, healthy communities, Indigenous peoples, and good jobs? If a deal is delivered that fails to reflect these broadly-shared priorities, we will work with our labor, health, consumer, family farm, and other allies to ensure that it meets the same fate as the Trans-Pacific Partnership (TPP).

To transform NAFTA from a polluter-friendly deal into one that supports environmental protection, any renegotiation must include, at a minimum, these eight changes:

1. Eliminate rules that empower corporations to attack environmental and public health protections in unaccountable tribunals. NAFTA's investor-state dispute settlement (ISDS) system has empowered multinational corporations like ExxonMobil to bypass our courts, go to private tribunals, and demand money from taxpayers for policies that affect corporate bottom lines. Corporations have used NAFTA to challenge bans on toxic chemicals, the decisions of environmental review panels, and protections for our climate. They have extracted more than \$370 million from governments in these cases, while pending NAFTA claims total more than \$35 billion.² The cases are heard not by judges, but by corporate lawyers outside the normal court system. Broad corporate rights, including ISDS, must be eliminated from NAFTA to safeguard our right to democratically determine our own public interest protections.

2. Add strong, enforceable environmental and labor standards to the core text of agreement. NAFTA's weak and unenforceable environmental and labor side agreements facilitated a race to the bottom in which corporations could offshore jobs to exploit lower environmental and labor standards in another country. Any deal that replaces NAFTA must create a fair playing field by requiring each participating country to adopt, maintain, and implement policies to ensure compliance with domestic environmental laws and important international environmental and labor agreements, including the Paris climate agreement, and treaties protecting Indigenous rights. In addition, each country must be required to eliminate fossil fuel subsidies, which encourage climate pollution while distorting trade, and must make commitments to tackle critical conservation challenges related to illegal timber trade, illegal wildlife trade, and fisheries management. These commitments must be included in the core text of the agreement and made enforceable via an independent dispute settlement process in which trade sanctions are used to correct labor and environmental abuses.

3. Safeguard energy sector regulation by overhauling overreaching rules. NAFTA's energy chapter limits Canada's ability to restrict production of climate-polluting fossil fuels such as tar sands oil.³ The chapter, written before awareness of climate change was widespread, must be eliminated. Other NAFTA rules allow renewable portfolio standards, low-carbon fuel standards, and other climate-friendly energy regulations to be challenged for impeding business for foreign fossil fuel firms.⁴ Such rules must be narrowed to protect climate policies in each country.

4. Restrict pollution from cross-border motor carriers. NAFTA encouraged a rise in cross-border motor carrier traffic without doing anything to mitigate the resulting increase in harmful vehicle emissions.⁵ Any deal that replaces NAFTA must require cross-border motor carriers to reduce emissions in order for their goods to benefit from reduced tariffs. In addition, all cross-border commercial vehicles must be required to comply with all state and federal standards to limit pollution.

5. Require green government purchasing instead of restricting it. NAFTA's procurement rules limit governments' ability to use "green purchasing" requirements that ensure government contracts support renewable energy, energy efficiency, and sustainable goods.⁶ NAFTA's replacement must *require* signatory governments to include a preference for goods and services with low environmental impacts in procurement decisions.

6. Bolster climate protections by penalizing imported goods made with high climate emissions. NAFTA allows firms to shift production to a country with lower climate standards, which can spur "carbon leakage" and job offshoring.⁷ To prevent this, and encourage greater climate action from high-emissions trading partners, each country must be required to impose a border tax on imported goods made with significant climate pollution.

7. Require governments to prioritize policies that minimize climate pollution. While NAFTA restricts climate policies that limit trade or investment, any replacement deal must instead put climate first. This includes requiring governments to use a "climate impact test" for policymaking, in which potential climate impacts of policy proposals are reported and weighed.

8. Add a broad protection for environmental and other public interest policies. NAFTA's many overreaching rules restrict the policy tools that governments can use to protect the environment and other broadly-shared priorities. NAFTA includes no provision that effectively shields public interest policies from such rules – only a weak "exception" that has consistently failed to protect challenged policies.⁸ Instead, any deal that replaces NAFTA must include a broad "carve-out" that exempts public interest policies from all of the deal's rules.

Any NAFTA renegotiation must be conducted through an open process that invites the public to help formulate U.S. positions and to comment on negotiated texts after each negotiating round.

Bolstered by resurgent support for a new trade model, we commit to push *for* this environmental overhaul of NAFTA, and *against* any polluter-friendly deal that masquerades as change.

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- ¹ [“NAFTA: 20 Years of Costs to Communities and the Environment,”](#) Council of Canadians, Institute for Policy Studies, Red Mexicana de Acción Frente al Libre Comercio, the Sierra Club, and Sierra Club Canada; March 2014.
- ² [“Table of Foreign Investor-State Cases and Claims under NAFTA and Other U.S. ‘Trade’ Deals,”](#) Public Citizen, October 2016.
- ³ The “proportionality clause,” Article 605, requires Canada to export a set proportion of its fossil fuel production to the U.S. Under this rule, efforts to curtail fossil fuel production could result in insufficient domestic supplies. Gordon Laxer and John Dillon, [“Over a Barrel: Exiting from NAFTA’s Proportionality Clause,”](#) Parkland Institute and Canadian Centre for Policy Alternatives, May 2008, pp. 27-29.
- ⁴ Such regulations could be challenged under the “national treatment” rules in NAFTA Articles 301, 606, and 1202. Robert K. Stumberg, [“NAFTA Services and Climate Change,”](#) The Future of North American Trade Policy: Lessons from NAFTA, Boston University, Pardee Center Task Force Report, November 2009, pp. 13-19.
- ⁵ For documented examples of increased trucking emissions under NAFTA, see Shelia Holbrook-White, [“NAFTA Transportation Corridors: Approaches to Assessing Environmental Impacts and Alternatives,”](#) Texas Citizen Fund and the Sierra Club, October 11, 2000.
- ⁶ Federal green procurement initiatives could be challenged for inadvertently having a disproportionate impact on foreign firms (under NAFTA Article 1003), for having the unintended “effect of creating unnecessary obstacles to trade” (under Article 1007.1), or for focusing on how a product is made, rather than how it is used (under Article 1007.2).
- ⁷ Meera Fickling and Jeffrey J. Schott, [NAFTA and Climate Change,](#) Peterson Institute for International Economics, September 2011, pp. 4 and 15-16.
- ⁸ Article 2101 of NAFTA incorporates the “general exception” of the World Trade Organization’s General Agreement on Tariffs and Trade. However, this “exception” does not apply, for example, to NAFTA’s restrictive investment rules. At the World Trade Organization, this “exception” has failed as a defense for challenged policies in all but one instance. [“Only One of 44 Attempts to Use the GATT Article XX/GATS Article XIV ‘General Exception’ Has Ever Succeeded,”](#) Public Citizen, August 2015.