"New NAFTA" continues damaging climate legacy

Free trade agreements, like the 25-year-old North American Free Trade Agreement (NAFTA), have been a major driver of climate change. Through legally-binding rules, these deals have favored high greenhouse gas (GHG) emitting and extractive industries, like energy and agriculture, over environmental protection. The Trump administration's rebranded NAFTA, called the U.S.-Mexico-Canada Agreement (USMCA), repeats past mistakes by ignoring climate change, disregarding the pact's impact on GHG emissions and failing to consider how climate change will affect the three countries into the future. The deal stands in stark contrast to the warning in the latest Intergovernmental Panel on Climate Change report that "rapid, far-reaching and unprecedented changes in all aspects of society" are needed to avoid the severe and costly impacts of climate change.[1] The new NAFTA represents a lost opportunity to fundamentally reconsider trade deals in the context of climate change.

The role of trade agreements in driving climate change has taken on new importance. Recent research estimated that 25 percent of global GHG pollution is from operations that have been off-shored, with the products then imported.[2] The U.S. is the number one importer of products with embedded emissions. The new NAFTA further integrates a North American market for fossil-fuel intensive sectors like agriculture, forestry and energy itself. In doing so, the new NAFTA charts a dangerous path forward, accelerating climate change.

Specifically, the new NAFTA empowers energy companies to legally challenge environmental protections, creates new venues for governments to weaken or block environmental regulations, and facilitates a North American system of energy, fuel and agriculture that are major sources of GHG emissions. Here are a few areas of particular concern:

PROTECTING THE FOSSIL FUEL INDUSTRY

One of the most highly criticized provisions of NAFTA is the Investor State Dispute System (ISDS). Under ISDS, private corporations can sue governments if they believe a new government policy treats them unfairly. Fossil fuel companies have used ISDS numerous times to sue governments over environmental protections critical to protect the climate.[3]

In a step forward, the new NAFTA phases out ISDS between the U.S. and Canada over three years. But the existing ISDS will remain in place in U.S.-Mexico relations for the oil, gas and energy industries, infrastructure, transportation, and telecommunications sectors. For other sectors, ISDS could be used on a more limited basis by corporations based in the U.S. or Mexico to challenge domestic policies unfavorable to the industry.

As the Sierra Club points out,[4] "That means, for example, that Chevron and ExxonMobil—the two largest corporate climate polluters in history and repeat users of ISDS—would be allowed to challenge environmental protections in Mexico by relying on the same broad corporate rights that they have used to successfully challenge public interest policies from Ecuador to Canada."

Maintaining ISDS between the U.S. and Mexico was a major win for the oil industry.[5] After 77 years under state ownership, Mexico amended its constitution in 2013 to open its oil and gas reserves to private investment. U.S.-based energy companies are jumping to

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invest in Mexico's natural gas reserves,[6] while the two countries explore cross-border electric transmission projects.[7] A new NAFTA annex on energy regulatory measures between the U.S. and Canada makes clear the goal is to support "North American energy market integration," with non-discriminatory access to pipelines and other electric transmission facilities.[8]

It's worth noting a positive step for the climate: New NAFTA does away with the Proportionality Clause. The highly controversial clause required Canada (and only Canada) to export a portion of its oil to the U.S. indefinitely.[9] The clause has been linked to the development of the highly polluting Tar Sands and its elimination should have long-term benefits for Canada in reducing its GHG emissions.

EXPANDING HIGH GHG EMITTING INDUSTRIAL AGRICULTURE

The original NAFTA largely eliminated tariffs between the three countries in the trade of agricultural goods. There were exceptions, including the Canadian dairy, poultry and egg supply management programs and the U.S. sugar program. The new NAFTA whittles away at supply management programs in Canada that protect dairy, poultry and egg producers.[10] Canada will allow marginal new access for U.S. dairy products, while equivalent U.S. access will be given for Canadian dairy imports. Canada will also provide new access for U.S. chicken, turkey and eggs. Canada's supply management programs remain, but are noticeably weaker. (See "'New NAFTA' puts the brakes on farm policy reforms" for more detail)

The agriculture sector is the fifth-highest source of GHGs in the U.S., according to the EPA.[11] The primary sources of agriculture emissions are linked to large-scale industrial operations—the heavy use of synthetic fertilizers (linked to the GHG nitrous oxide[12]) particularly for corn, and methane emissions associated with livestock (mostly from confined animal feeding operations or CAFOs[13]). California has identified methane emissions from their giant dairy CAFOs as an important target for the state's climate mitigation strategy.[14] NAFTA, coupled with the U.S. Farm Bill, has played a major role in expanding the CAFO model of production for pork, poultry, beef and dairy in all three countries—where animals often cross borders during their lifetime as part of an increasingly integrated, tri-national system.[15] The Trump administration ignored calls from family farm groups to include mandatory Country of Origin Labeling (COOL) for meat in new NAFTA to help consumers support local markets, after Mexico and Canada had successfully challenged COOL at the World Trade Organization. Recent research has documented the role of global meat and dairy companies as major contributors to climate change.[16]

The erosion of agricultural supply management programs in new NAFTA is a setback for a critically important climate strategy. Supply management programs reduce GHGs by effectively limiting production, including on environmentally sensitive land. Supply management programs that place food grains in reserve are also an important adaptation tool in years of climate disruption.[17]

DEREGULATORY HARMONIZATION

The new NAFTA includes a broad and novel chapter on Good Regulatory Practices.[18] The GRP chapter, along with regulatory provisions in other chapters, consists of a complex, bureaucratic and confusing web of rules restricting how domestic regulators research, draft and implement public policies. For the first time in a U.S. free trade agreement, a chapter that focuses on regulations broadly will include a dispute settlement provision—meaning it is legally enforceable. These provisions have no precedent in the original NAFTA, which contained only limited and completely voluntary regulatory transparency measures. Under the chapter, countries will be required to report publicly on regulations under consideration for the following year and provide justification and pre-implementation impact assessments. The intended result is to harmonize state, federal, and international regulations and standards. The practical result, though, is that corporate interests can head off proposed regulations, even if such measures are designed specifically to meet climate goals.

WEAKENING ENVIRONMENTAL PROTECTIONS

The new NAFTA Environment Chapter is considerably weaker than the original.[19] In 2007, Congress reached a bipartisan agreement[20] to include obligations to seven multilateral environmental agreements in future Free Trade Agreements: The Convention on International Trade in Endangered Species (CITES), Montreal Protocol on Ozone Depleting Substances, Convention on Marine Pollution, InterAmerican Tropical Tuna Convention (IATTC), Ramsar Convention on Wetlands, International Whaling Convention (IWC), and Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

The new NAFTA includes only three of those treaties (Montreal Protocol, Marine Pollution and CITES). Of those three, it weakens the commitment for two of them, making it generally unenforceable. One of the main criticisms of trade agreements has been the lack of enforceable environmental commitments. The new NAFTA contains no substantive changes in this regard. The Trump administration has yet to conduct an Environmental Review of the new NAFTA as has been done with recent U.S. free trade agreements.[21]

REINFORCING A CLIMATE VULNERABLE AGRICULTURAL SYSTEM

Maintaining genetic diversity in crop and animal production is essential for adapting to climate change, according to a recent report by the UN Food and Agriculture Organization.[22] Climate adaptation strategies identified by the U.S. Department of Agriculture contain practices that strengthen soil health and include more perennial and diverse systems. These same systems have the added benefit of producing less GHGs. Less diversity and more homogeneity results in agricultural systems vulnerable to extreme weather and new pests and weeds, all of which are expected outcomes of climate change.

Rather than supporting strategies to build climate resilience in agriculture, the new NAFTA requires all participating countries to sign on to a global seed breeders' rights treaty (known as UPOV91), which prohibits farmers and breeders from exchanging established seeds.[23] (See "'New NAFTA' puts the brakes on farm policy reforms" for more detail). In addition, it includes new rules covering patented genetically engineered crops at the behest of the biotech industry. GE crops, primarily used for monocultural commodity crop production, have played an integral role in expanding the high GHG model of agricultural production in the U.S. and Canada. The USTR boasts that the new NAFTA is superior to the Trans-Pacific Partnership when it comes to advancing agriculture biotechnology, including for the first time new technologies like gene editing.[24] The new rules will make it difficult for Mexico and Canada to block imports of GMO and gene-edited crops approved for use in the U.S., but not in those countries. (See "Entrenching the non-regulation of food and agricultural products of "modern biotechnology" in the USCMA" for more detail)

INCREASING FOOD SAFETY RISKS

Climate change is expected to increase risks related to food safety and plant and animal health due to variances of temperatures and the spread of animal and plant diseases.[25] Under new NAFTA, countries would be given new powers to challenge food safety inspectors who stopped food shipments, and require a quick review of the action. Equivalency elements in the agreement establish that food safety systems and inspections are the same in all three countries—thereby reducing the need for food safety inspections at the border. A major concern is the inability of governments, including the U.S., to fully fund enforcement of existing food safety rules. The U.S. Food and Drug Administration has conducted less than one-third of the inspections of foreign facilities exporting into the U.S. as required under the current national food safety law, partially due to a lack of funding.[26] (For more, see Food safety and agricultural biotechnology in USMCA: the anti-science Trump administration negotiates rules based on "scientific principles")

UNDERMINING THE PARIS CLIMATE AGREEMENT

At the heart of the Paris Climate Agreement are national-level plans to reduce GHG emissions.[27] Within each plan are goals, policies and strategies to reduce GHG emissions and adapt to climate change. Both Mexico and Canada are part of, and remain committed to, the United Nations' Paris Climate agreement. And while the Trump administration has signaled it will withdraw from the Accord, at least nine U.S. states and 125 U.S. cities have expressed their commitment to the Paris Climate Agreement.

Each country, along with sub-federal governments, will need policy flexibility to meet their climate goals. New climate policies like carbon markets, carbon taxes, carbon tariffs, emission regulations and renewable energy programs could come into conflict with new NAFTA's various deregulatory rules.

CONCLUSION

The Trump administration's attacks on climate action have been numerous. From the announcement to withdraw from the Paris Climate Agreement, to attempts to kill the Clean Power Plan,[28] to the steady removal of scientific expertise from government agencies[29]—the administration's assault on environmental protections has been unrelenting.

The new NAFTA represents a critical opportunity to ensure that trade policy does not conflict with policies or inhibit investments to reduce greenhouse gases and adapt to climate change. Instead of setting a new bar and integrating climate goals within a trade deal, the Trump administration has done the opposite, not only setting the U.S. back, but also Canada and Mexico, in efforts to address climate change. NAFTA has helped drive GHG emissions for the last 25 years. The climate can't afford to continue this damaging legacy under the new NAFTA.

Read further analysis on the "New NAFTA"

- *"New NAFTA" puts the brakes on farm policy reforms*
- *Imposing hurdles to delay and weaken public protections*
- *Food safety and GMOs in "new NAFTA:" A retreat in science-based policy*

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