GJOP
Global Justice
Overcoming Poverty
Network BULLETIN

- Opportunities in a post-NAFTA world: a Canadian perspective
- A case study: Canada loses NAFTA court challenge
- Obesity and diabetes epidemic in the Global South: we have free trade to thank for it
- South Africa: miners reach settlement with mining companies

OPPORTUNITIES IN A POST-NAFTA WORLD: A CANADIAN PERSPECTIVE

It is now clear that the renegotiation of the North American Free Trade Agreement (NAFTA) between Canada the United States of America and Mexico may fail because of the protectionist demands and political bluster of President Trump.

It is reassuring that both Canada and Mexico have rejected the extreme one-sided demands that the USA negotiators have put on the bargaining table. However, it is now quite possible that President Trump could give notice of abrogation of the agreement and win support for this position in the USA Congress. We Canadians should now be thinking hard about a possible life after NAFTA, and consider how to take advantage of any change to the rules currently governing trade and investment in North America.

Mainstream opinion has long held that NAFTA has been a huge success for Canada, even though it clearly failed in its original purpose of closing the large innovation and productivity gap with the United States. To be sure, the flow of cross-border trade and investment has risen, but experts agree that Canada's economy has also become much more tilted toward the export of raw resources, notably oil, and that automotive assembly and advanced manufacturing as a whole have declined precipitously over the past 25 years in terms of both production and jobs.

A recent report on Canada by the International Monetary Fund (IMF) pointed out that our share of the USA market for non-resource goods, now 11%, has fallen by half under NAFTA, as the Chinese and Mexican share of our largest market has risen rapidly. Economists also note that, despite some notable success stories, Canadian businesses chronically underinvest in modern machinery and equipment and, above all, in research and development, which is required for successful exporting of innovative and high value goods and services to global markets.

Even some of the architects of the original free trade deal with the United States, such as chief negotiator Gordon Ritchie, agree that abrogation 'would not be the end of the world'. Most trade experts now argue that a bad deal, caving in to USA protectionist demands, would be worse for Canada than no deal. After NAFTA we could and would still trade with the United States under the rules of the World Trade Organisation and the IMF estimates that the hit to the economy from moving to WTO tariffs would be just 0.4% of gross domestic product (GDP).

The end of NAFTA would free us from some major constraints on public policy serving the interests of Canadians. We would no longer have to fear giant USA corporations continuing to sue Canadian governments for enacting public interest regulation in such areas as the environment or for expanding public services, as they can now do under Chapter 11.

The end of NAFTA would mean that we could limit the export to the United States of unprocessed resources, such as logs and fish and bitumen, and thus increase jobs at home through value-adding processing. In the auto industry, we might be able to return to a managed bilateral trade agreement with the United States, that would counter the ongoing shift of market share and jobs to Mexico and Asia. Without NAFTA Canada would have a reduced ability to sell to USA governments, but it would give us the option to expand 'Made in Canada' requirements for public procurement at home.

No NAFTA would also mean we could more stringently review foreign takeovers of Canadian companies to ensure that they are in the national interest. It makes more sense than ever to review takeovers at a time when Canadian governments are heavily subsidising new corporate invest-ment in areas such as clean energy and advanced manufacturing with the goal of building up Canadian-based innovative companies that can create the knowledge-based jobs of the future.

Canada has always been and should remain a trading nation with close linkages to the global economy. I hope my point is clear. No Canadian wants the current negotiations to fail. However, the end of NAFTA could present us with major new opportunities.

Ed Broadbent , Chair of the Broadbent Institute, Toronto Star, Oct. 19, 2017, www.thestar/opinion

A case study
CANADA LOSES NAFTA COURT CHALLENGE

The is a case study of **how any country's laws and policies can be defeated** by a so-called 'free trade' agreement which allows a corporation to sue a government when it makes a decision that restricts the corporation's profits. We first reported on this particular issue in the GJOP Bulletin, March 2015, although we have often written in strong opposition to Investor-State Dispute Settlement (ISDS) provisions in all trade agreements.

When the USA company *Bilcon* proposed an expansion of the White Point quarry in Digby Neck, Nova Scotia, in September 2002, the Nova Scotia and Federal governments rejected it after a joint assessment panel recommended against it. The Joint Review Panel spent three years in extensive community consultation and review of government policy and planning documents. It based its recommendation on such sustainability principles as public involvement, traditional community knowledge, ecosystem analysis, sustain-able development and the precautionary principle.

The company challenged the governments' decision before a tribunal set up under Chapter 11 in the North American Free Trade Agreement (NAFTA). The tribunal found in favour of *Bilcon*. Canada then appealed against this finding in its Federal Court, arguing, among other things, that the NAFTA tribunal had exceeded its jurisdiction when it overruled a Canadian environmental assessment panel. On 25th April 2018, Federal Court judge, Anne MacTavish, ruled that the NAFTA tribunal had made no errors that warranted a reversal of its decision. Having won this challenge, Bilcon intends to claim dam-ages from Canada, estimated to be bet-ween US$300 and $500 million.

Ecojustice lawyer, Amir Attaran says: 'NAFTA tribunals are only supposed to decide questions of NAFTA law. In this case, the NAFTA tribunal went outside its realm of expertise to rule on a matter of Canadian law, and now Canadian taxpayers are on the hook for half a billion dollars to a single company. That's enough money to pay the salaries of at least 7,000 nurses or teachers for one year. There is clearly a problem with NAFTA and its investment protection chapter'.

This is a world-wide issue as corporations succeed in winning similar investment protection in more and more trade agreements. Peoples' sovereignty is at stake.

Sources: Canadian Press, Statement from Ecojustice, East Coast Environmental Law and Sierra Club Canada, 2 May 2018. Sent M. Boyd, edited A. Healey.

OBESITY AND DIABETES EPIDEMIC IN THE GLOBAL SOUTH WE HAVE FREE TRADE TO THANK FOR IT

Today, many countries in the global south are experiencing an explosion of diabetes and obesity. [1] Why? Because governments have welcomed the products of transnational food companies looking for 'new growth markets' for their poor quality, heavily processed food. For big conglomerates to increase their profits, they need to sell products aimed at hundreds of millions of the world's poor.

Many of these people still eat food they produce themselves or buy from national markets that sell local produce. The livelihoods of untold numbers of people lie in local food systems and circuits. But large food corporations are infiltrating and inundating traditional food distribution channels around the world, and replacing local foods with junk, often with the direct support of local governments. Free trade and investment agreements have been essential to their success.

[Here we take the case of Mexico. which provides a stark picture of the consequences. We leave it to our readers to consider the situation in their own countries – Editor]

Over the past 20 years, the government of Mexico has signed more than a dozen free trade agreements and nearly 30 investment treaties that have opened the countryside and the retail sector to transnational companies. Between 1999 and 2004, three quarters of the foreign investment in Mexico went into the production of processed foods and sales of processed foods went up by 5% - 10% per year. Mexico is now one of the 10 biggest producers of processed food in the world, with total sales reaching US$124 billion in 2012. The corporations running this business – such as PepsiCo, Nestlé, Unilever and Danone – made US$28 billion in profits from these sales, $9 billion more than they made in Brazil, Latin America's largest economy.

Mexico offers the global food industry not only low operation costs, but a network of trade agreements that provide access to big markets such as the European Union and the USA. At the same time, these corporations are investing heavily in taking over local distribution. The number of supermarkets, discount chains and convenience stores exploded: in 1997, their numbers went from 700 to 3,850; there were 5,730 such stores in 2004. By 2015, Oxxo, a convenience store chain owned by a unit of Coca-Cola Mexico, was opening an average of three stores a day, and aiming to inaugurate its 14,000th store in Mexico that year.

This has meant a radical change in peoples' diets and a disproportionate increase in malnutrition, obesity and diabetes. According to Mexico's National Institute for Public Health, between 1988 and 2012 the proportion of obese women in the ages 20 to 49 increased from 9.5% to 37.5%. A staggering 29% of Mexican children aged 5 to 11 were overweight, as were 35% of youngsters between 11 and 19. Mexico's Diabetes Foundation points out that the level of diabetes is equally troubling. Up to 10 million people suffer from the disease, including 21% of people between the ages of 65 and 74; and around 2 million are unaware they have it. Mexico is ranked sixth in the world for diabetes deaths. Obesity and diabetes interact so strongly that a new term has emerged: 'diabesity'. This is all thanks to the transnational food industry supported by governments.

After visiting the country in 2012, the UN Special Rapporteur on the Right to Food said: 'The overweight and obesity emergency that Mexico is facing could have been avoided, or largely mitigated, if the health concerns linked to shifting diets had been integrated into the design of the country's trade policies'. Health is just as important to development as trade; countries should not pursue one at the expense of the other.

Source: Ramon Vera Herrera The Guardian, April 2015. Edited by M. Boyd.

---

[1] Diabetes is a complex disease. While obesity is a major factor in the development of diabetes, the disease may have a genetic cause. Pregnant women may acquire gestational diabetes.

SOUTH AFRICA: MINERS REACH SETTLEMENT WITH MINING COMPANIES

Critics of trade agreements constantly point to their neglect of just labour requirements. Here is an example of the poor health safety standards of six mining companies working in South Africa. Such destructive lack of concern for workers exists all over the world.

On 3rd May, South African gold producers agreed on a 5 billion rand (US$400 million) class action settlement with law firms representing thousands of miners who contracted the fatal lung diseases, silicosis and tuberculosis. Silicosis is an incurable disease caused by inhaling silica dust from gold-bearing rocks. It causes shortness of breath, a persistent cough and chest pains, and also makes people highly susceptible to tuberculosis. This most far-reaching class action settlement ever concluded in South Africa follows a six-year legal battle by miners to win compensation for illnesses they contracted over decades, because of negligence in health and safety.

Estimates for the number of potential claimants range from tens of thousands to hundreds of thousands. The companies involved are Harmony Gold, Gold Fields, African Rainbow Minerals, Sibanye-Stillwater, AngloGold Ashanti and Anglo American South Africa. The latter no longer has gold assets but historically was a bullion producer. Three smaller gold producers are not party to the settlement and the class action against them will continue. Almost all the claimants are black miners from South Africa and neighbouring countries, such as Lesotho, who were not pro-vided with adequate protection either during apartheid rule or after it ended in 1994.
The settlement is in three parts and a Trust will have 12 years to track down the claimants and distribute the funds - no easy task as many are in remote rural areas and may not have proper medical and other records. Out of the 5 billion rand, 845 million rand will be used to cover the administration expenses of the Trust over the 12 years and 370 million rand will be paid to the law firms. The remainder is for 'compensation' and the final total will depend on the number of claims that are processed. If there are more claimants than estimated, the 5 billion rand could increase. If there are fewer, it will decrease.

While the money to be distributed hardly compensates for such extensive and severe damage to workers and their dependants, the workers agreed that this settlement was preferable to pursuing even longer expensive litigation; and it enabled claimants to get some relief from their suffering more quickly.

In recent years, the gold mining industry in South Africa has taken precautions to protect its workers from contracting silicosis.

Source: Ed Stoddard and Patricia Aruo, Health News, 3 May 2018. Sent by Jane Harris. *Edited by A Healey*

'The teaching set forth by our predecessor Leo XIII in *Rerum Novarum* is still valid today: when two parties are in very unequal positions, their mutual consent alone does not guarantee a fair contract... In *Rerum Novarum* this principle was set down with regard to a just wage for the individual worker; but it should be applied with equal force to contracts made between nations: trade relations can no longer be based solely on the principle of free, unchecked competition, for it very often creates an economic dictatorship. Free trade can be called just only when it conforms to the demands of social justice...'

Pope Paul VI, Populorum Progressio, 1967

Contributions to Bulletin and responses to its content are welcomed.
Deadline: 14th of each publication month. Publication bi-monthly from office in Sydney.

The Bulletin is currently produced by two networks: *Justice and Trade Agreements* and *Human Trafficking.* Coordinators: *JTA* - Mary Boyd (maryboyd@live.ca); Alison Healey (grailsydney@ozemail.com.au); *HT* – Patricia Foito e Camisao (pcamisao@gmail.com); Angelina Kyondo (mksgrail@yahoo.com). Design: Thanks to Marian Kelly for her donation of time and talent.