



- From NAFTA to USMCA (2): **Mexico**, Canada, USA and renegotiate
- Indonesia: civil society wins trade and investment case in Constitutional Court
- Malaysia reviews ratification of TPP-!!
- ActionAid's principles of gender-just trade

FROM NAFTA TO USMCA: CANADA, USA AND MEXICO RENEGOTIATE (2) North American Free Trade Agreement– US, Mexico, Canada Agreement

The USMCA, replacing NAFTA, was signed by the leaders of the three member countries on 30 November last year. *Mary Boyd* and *Rosaurora Espinosa*, Grail leaders in Canada and Mexico, have each written for the Bulletin some analysis of what the new agreement means for her country. We published Mary's article from Canada in the last Bulletin. Here is a Mexican analysis sent by Rosaurora. Thanks to both for helping the rest of us to understand the consequences of the USMCA for their two countries

After almost 25 years since the North American Free Trade Agreement (NAFTA), Mexico, the United States and Canada ratified the United States–Mexico–Canada Agreement (USMCA) and so replaced the former agreement (1994).

The Preamble speaks of the USMCA as an agreement that is 'a 21st Century, high standard, new agreement to support mutually beneficial trade leading to freer, fairer markets, and to robust economic growth in the region'. And, according to Mexican national news-paper *Milenio* and *BBC News* the new agreement 'safeguards economic security'. But *For whom?* we might ask of these claims.

After more than 13 months of high tension negotiation, there was first a bilateral agreement between the United States and Mexico, reached in August, which Canada reluctantly agreed to join at the end of September. They say that the agreement governs a free trade zone in which 450 million people live and which regulates the

movement of more than one trillion dollars a year.

In addition to the name change, these are some of the ways the USMCA differs from NAFTA, from a Mexican perspective:

1 The automotive sector

This was one of the most sensitive issues of the agreement. In this area, a series of restrictions were incorporated in order to combat the migration of this industry out of the United States to countries with cheaper labour, such as Mexico. Up till now, a car in the USA could be considered 'local product and therefore free from tariffs', if 62.5% of its content was manufactured in one of the three partner countries. Now, this percentage will rise to 75% by 2023, 40% of which must have been made by 'employees who are paid at least \$16 an hour'. The increased overall percentage provision aims to encourage car manufacturers in the USA to increase North American content in their product. The second provision, if implemented by the automotive industry in Mexico, will triple the wages of the Mexican factory worker – good news for unions and workers, but an unwelcome headache for the corporations involved. (In Canada and the USA, autoworkers already, on average, earn the required wage level.)

2 Steel

Despite the above, the demands imposed on steel leave Mexico in a vulnerable position, according to economist and researcher, David Lozano, from the

Faculty of Economics at the National University. 'The tariffs and quotas imposed have the effect of diminishing Mexico's exports of steel and increasing its imports from the USA. It is now more expensive for Mexico to sell its own steel than to buy it from the USA. A ridiculous situation because Mexico was making profits in this area.'

3 The agricultural sector

'There is no real agreement that benefits the Mexican producers and exporters in this sector; things are as they were before', says David Lozano.

No mention is made of the intense invasion by Mexican and foreign corporations in Mexican regions where there are resources such as forests, sea, oil, water, mountains, minerals and other resources. Corporations impose development of megaprojects; they ignore treaties and governments; they deprive the indigenous peoples who own the original resources; they kill leaders who oppose them - defenders of human rights and the environment. The corporations establish alliances with criminal groups that use violence and fear as weapons to force villagers to leave their homes and resources – fear for their lives and the lives of their families. In these conditions, the agricultural sector in our country is heading, day by day, to ruin. This has already happened in some regions. Elsewhere farmers struggle against adversity to produce from their farms.

In addition to all this, there is endless looting of indigenous seeds, mainly by companies such as Monsanto.

4 Pharmaceutical industry

There is also looting of medicinal herb species from which pharmaceutical companies produce medicines which they then patent in their name. This gives the companies monopoly ownership of the profits from the medicine for many long years and threatens traditional healers and their practice of ancestral medicine. It

is all loss for Mexico. And for Latin Americans, in general, it means more expensive pharmaceutical products throughout the continent, according to Lozano.

5 The environment

The environmental organisation, the *Sierra Club*, asserts that the USMCA ignores the commitments made by the USA in various multilateral environmental agreements. It not only fails to make reference to a commitment to combat the polluting emissions responsible for global warming, but it also adds elements that will prolong the NAFTA's contribution to the climate crisis. It offers corporations new ways to weaken environmental policies, pro-motes the extraction of gas and oil from the subsoil, known as fracking, and generates incentives for highly polluting companies 'to throw away their toxic waste in Mexico'.

Although the agreement has a chapter on the environment, it does not include binding commitments. For example, the document recognises that 'air pollution is a serious threat to public health', but does not include a single binding rule to reduce air pollution. In the 21st century, no trade agreement should ignore the urgency of the climate crisis.

6 Periodic review

Among the positive aspects, the agreement will last for 16 years, and it will be subject to review every 6 years, thus preventing the treaty from expiring automatically, as the USA had originally proposed, and allowing it to be renewed.

With Mexico, Donald Trump was brutal throughout the renegotiation of NAFTA, both in what Mexico managed to gain for itself and in the insults that Mexicans had to endure.

Sources: *BBC News Mundo*, 17 Oct. 2018; *Bugarin*, 1.8 Oct. 2018 *El Universal*; *Sin Embargo*, 18 Oct. 2018; *Tello Díaz, C. Milenio*, 4 Oct. 2018 www.milenio.com/opinion Edited *Rosaurora Espinosa (Grail Mexico)*.

INDONESIA: CIVIL SOCIETY WINS TRADE AND INVESTMENT CASE IN CONSTITUTIONAL COURT

This is a great achievement in law by colleagues in Indonesia. They and we await the consequences of its implementation.

On 22nd November, 2018, the Constitutional Court of Indonesia ruled that the Indonesian President cannot approve trade agreements without presenting them to the House of Representatives for approval. All such agreements will now need to be reviewed.

The decision also widened the definition of 'a treaty requiring House of Representatives approval' and ruled that, before a treaty is finalised, there must be extensive public consultation on its impact on the environment and on economic, social and human rights.

Treaties that could be affected by this ruling include the Indonesia-Australia Comprehensive Economic Partnership Agreement (CEPA), Indonesia-Europe Free Trade Agreement (IEFTA), the Indonesia-Singapore Bilateral Investment Treaty (BIT), and the Agreement with the Asian Infrastructure Investment Bank

(AIIB).

The Constitutional Court also said that the involvement of the state in international treaties should not conflict with the Indonesian principles of independence, peace and social justice. Civil society groups argue that this should mean that treaties which harm the people's interests or offend social justice should not be ratified.

The case was brought to the Constitutional Court by the Advocacy Team for Economic Justice, comprising Indonesia for Global Justice (IGJ), Indonesian Human Rights Committee for Social Justice (IHCS), Indonesian Peasants Union (SPI), FIELD Indonesia, People's Coalition for Fisheries Justice (KIARA), Bina Desa, Indonesian Peasants Alliance, Women Solidarity, Palm Oil Farmers Union, and five individual Salt Farmers.

Source: Pers Realese Publication, January 9, 2019. Submitted by A. Healey.

MALAYSIA REVIEWS RATIFICATION OF TPP-11 Call to 'rethink trade agreements in uncertain times'

Jomo Kwame Sundaram, a key economic advisor to the Malaysian Government, has called for a turn away from bilateral and regional free trade agreements towards a revival of the multilateral World Trade Organisation. 'Developing country governments should amend legislation and policy in line with their national needs, especially for development, not at the behest of corporate lobbyists or geostrategic priorities.' His analysis of the regional trade agreement, the Trans-Pacific Partnership (TPP) and its amended version, the Comprehensive and

Progressive Trans-Pacific Partnership (CPTPP) follows.

US President Donald Trump withdrew from Barak Obama's Trans-Pacific Partnership (TPP), involving twelve countries on the Pacific rim, on his first day in office. Japan, Australia and their closest allies proposed to continue negotiations among the remaining 11 countries¹. Initially referred to as TPP-11, it was officially named the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and came into force on

¹ Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam

December 30, 2018, when six of the eleven signatories ratified it. The new Malaysian government has not ratified it and is seriously reviewing its entire approach to trade and investment agreements.

A geostrategic deal

President Obama had explicitly promoted the TPP for geostrategic reasons to counter China's fast-growing power and influence in the region and further strengthen USA's involvement, even though two US government cost-benefit analyses had found very modest gains from the free trade agreement.

With miniscule real trade gains from the original TPP, US withdrawal has made the benefits from the CPTPP even more trivial. Without the US market, the supposed benefits of the TPP largely disappeared with the CPTPP. To make matters worse, besides the meagre trade gains, the enhancing of intellectual property rights (IPRs) will further limit technology transfer to developing countries and raise costs, e.g., for buying medicines and technology. The investor-state dispute settlement (ISDS) provisions will enable foreign investors to sue CPTPP governments, not in national courts, but in private arbitration tribunals. Besides undermining national judicial sovereignty, small country governments with limited legal resources will be seriously disadvantaged. Ironically, Trump's US

Trade Representative now rejects reciprocal ISDS because it undermines US sovereignty!

Policy for development

It is worrying that very few developing country negotiators have actually scrutinised and understood the likely implications of this 6350-page agreement.

Some minor changes were made to the TPP agreement for the CPTPP. Several onerous provisions were amended and some others suspended, but the most onerous provisions remain.

The CPTPP has committed Malaysia to further trade liberalisation which leads to accelerating de-industrialisation and constraining the growth of modern services, development finance and 'policy space'. The World Trade Organisation (WTO) came into being in the mid-1990s recognising these problems. Most developing countries since have sought to ensure that WTO rules are more development-friendly and launched a Development Round at the Ministerial Meeting in Doha in 2001. Bilateral and plurilateral (regional) free trade agreements have long undermined WTO multilateral trade.

Source: Jomo Kwame Sundaram, 'Rethinking trade agreements in uncertain times', Inter Press Service, Kuala Lumpur, Malaysia, 8th January 2019. Edited by A Healey.

ACTIONAID'S PRINCIPLES OF GENDER JUST TRADE

1. Trade policies promote and protect human rights, women's rights, labour rights and the environment, over and above the rights of investors and free market expansion.
2. Trade policies are democratic, accountable and transparent, and subjected to parliamentary and public scrutiny, including trade unions and wider civil society.
3. Trade is approached in a gender-responsive way that recognises the diversity of women and the overlapping systems of oppression that many face.
4. Trade policies do not impinge upon the policy space of states to meet their constitutional, national and international obligations to protect, respect and fulfil human rights, including

providing quality, gender-responsive public services, infrastructure and social protection.

- 5 Trade supports the creation of decent work for women and sustainable industrial strategies.
- 6 Corporations are held to account for rights violations and environmental abuse.
- 7 Trade is used as a tool to support wider development and human rights goals, and to eliminate inequalities between countries in the Global North and South.
- 8 International trade and investment safeguards women's livelihoods, land rights, food sovereignty and the natural environment.
- 9 Intellectual property rights do not infringe on the right to health and food sovereignty.

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

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.