

Summary:

Under the right conditions, trade can generate growth and support the realization of human rights. However, free trade deals that give investor rights the highest priority, especially in countries with poor democratic governance and human rights records, can do more harm than good.

Quick Facts:

- Canada has concluded free trade agreements with the United States, Mexico, Honduras, Panama, Costa Rica, Chile, Colombia and Peru.¹
- The controversial Canada-Colombia Free Trade Agreement (CCFTA) was announced in July 2007 and came into force in August 2011. The Canadian government must present the House of Commons and the Senate with a yearly Human Rights Impact Assessment of the agreement, starting on or before May 15 2012.²
- Corporations have used NAFTA investor-state tribunals to win over \$325 million in compensation from NAFTA-country governments who were trying to implement environmental and land use rules.³
- Canadian mining companies use trade and investment agreements to assert investor rights over human rights. Pacific Rim Mining is suing the state of El Salvador for more than \$77 million after failing to obtain a permit to develop a gold mine. El Salvador has already spent \$5 million fighting this lawsuit, enough money to provide one year of adult literacy classes to 140,000 people or to double the scholarships available to middle school students.⁴
- The percentage of Mexico's rural population earning less than the minimum needed for the basic food basket grew by nearly 50% in the first 4 years of NAFTA.⁵ Since NAFTA was implemented, Mexico's minimum wage has lost 20 percent of its value in real terms.⁶

Key Issues

Non-Transparency

In Latin America and Canada, citizens and parliamentarians are calling for open and transparent Free Trade Agreement (FTA) negotiations, including public release of draft texts and parliamentary scrutiny. The negotiations for two recent and highly controversial FTAs (Canada-Colombia and Canada-Honduras) were conducted in a rushed and secretive fashion with little opportunity for civil society engagement. The government concluded FTA negotiations with Colombia before the Standing Committee on International Trade had released the report which was supposed to guide the talks.⁷ The text of the agreement itself was only released after it was signed. The text of the Canada-Honduras FTA, which was signed last August, has still not been released for public, media and parliamentary scrutiny.

Investor-State Clauses

Canada is a big promoter of investor rights, including investor-state dispute settlement mechanisms. These measures are designed to provide very strong protection to foreign investors and can be developed part of FTAs or as stand alone agreements. They allow investors to sue governments in international tribunals for alleged breaches of treaty protections. Canada's pursuit of investor protections remains essentially modelled after

NAFTA's investment chapter. Canada has incorporated an investor rights chapter into its FTAs with Peru, Colombia and Panama. Investor-state dispute resolution mechanisms raise concerns about democracy and state sovereignty as they severely restrict host governments' power vis- a-vis foreign companies. Moreover, while investment treaties regulate how governments can treat foreign investors, they place few countervailing obligations on investors.⁸

Labour Side Agreements.

FTAs between northern and southern countries generally capitalize on the southern country's comparative advantage: cheap labour. However, the pursuit of cheap labour at all costs is problematic, especially in countries with widespread poverty or where the right to unionize is severely constrained. When negotiating FTAs, Canada tends to address labour concerns in side agreements rather than in the body of the agreements. However, side agreements have no enforcement mechanism and have so far been ineffective in protecting labour rights. This is a serious problem in Colombia, a country known for its widespread violations of labour rights and for being the most dangerous place in the world for trade unionists.⁹

Human Rights

Trade can support realization of human rights if it brings benefits to vulnerable populations. However, the political conditions in some of Canada's free trade partner countries do not provide this guarantee.

In Colombia, for example, paramilitary groups often use violence to displace people from their lands for lucrative projects. Colombia's FTA with Canada has the potential to make things worse, since FTAs tend to increase the kinds of investment that are most associated with violence and forced displacement, such as gold and oil.¹⁰ In 2008, the Standing Committee on International Trade recommended that Canada not sign a FTA with Colombia until an independent Human Rights Impact Assessment (HRIA) was conducted.¹¹ The government disregarded this recommendation, committing instead to producing a yearly HRIA once the deal was in force. Civil society is concerned that the HRIA will, at best, report on human rights violations that have already taken place -- and at worst, be a mere public relations exercise.

Honduras is another country that lacks the political conditions for free trade to benefit its people. Since the June 2009 coup d'état, hundreds of regime opponents have been intimidated, arbitrarily arrested, disappeared, tortured and killed. Trade agreements with countries that do not allow for broad-based democratic participation in public decision-making processes do not reflect the interests of citizens.

Recommendations

- That Canada refrain from concluding FTAs with countries that have poor democratic governance, human rights and labour rights records. In order to determine whether a FTA is appropriate or not, an independent HRIA should be conducted prior to ratification.
- That Canada stop incorporating investor-state dispute mechanisms into treaty law and dismantle existing mechanisms.
- That the methodology for the Canada-Colombia FTA HRIA be guided by the *UN Guiding Principles on Human Rights Impact Assessments for Trade and Investment Agreements*
- That there be substantive consequences to any negative findings contained in the Canada-Colombia FTA HRIA reports, such as cessation of the agreement.

- That future trade agreements be negotiated in a transparent and democratic manner, be informed by an independent HRIA, include support for ongoing participatory monitoring and include fixed time periods for review and renewal.
- That Canada use its leverage to create positive change in Honduras, refraining from ratifying the FTA until there is a verifiable improvement in Honduras' democratic governance and human rights situation.

¹ [Foreign Affairs and International Trade Canada: Negotiations and Agreements \(2012\)](#)

² [Canada-Colombia Free Trade Agreement Implementation Act \(2010\)](#)

³ [PublicCitizen: Outcomes of the North American Free Trade Agreement \(2011\)](#)

⁴ [Foundation for Studies on the Application of Law: The costs of ICSID arbitration and the consequences for the enjoyment of social rights in El Salvador \(2012\)](#)

⁵ [World Bank: Poverty in Mexico: An Assessment of Conditions, Trends and Government Strategy \(2004\)](#)

⁶ [PublicCitizen: Outcomes of the North American Free Trade Agreement \(2011\)](#)

⁷ [Canadian Council for International Cooperation: Making a Bad Situation Worse: An Analysis of the Text of the Canada-Colombia Free Trade Agreement \(2010\)](#)

⁸ [Canadian Council for International Cooperation: Bilateral Investment Treaties: A Canadian Primer \(2010\)](#)

⁹ [Canadian Council for International Cooperation: Making a Bad Situation Worse: An Analysis of the Text of the Canada-Colombia Free Trade Agreement \(2010\)](#)

¹⁰ [Canadian Council for International Cooperation: Making a Bad Situation Worse: An Analysis of the Text of the Canada-Colombia Free Trade Agreement \(2010\)](#)

¹¹ [Canadian Council for International Cooperation: Making a Bad Situation Worse: An Analysis of the Text of the Canada-Colombia Free Trade Agreement \(2010\)](#)