

ISSUE BRIEF

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Why the Trump Administration Should Not Expand NAFTA's Environmental Obligations

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President Donald Trump has taken many positive steps to address the excessive regulation that exists in the U.S., including environmental regulation. One of his first actions was issuing an executive order on “Reducing Regulation and Controlling Regulatory Costs.”¹ He issued an executive order directing the Environmental Protection Agency and the U.S. Army Corps of Engineers to rescind or revise the Obama Administration’s controversial “Waters of the U.S.” rule.² He also pulled the United States out of the Paris Climate Accord.³

But more recently, his Administration released environmental objectives⁴ for the renegotiation of the North American Free Trade Agreement (NAFTA) that are counterproductive to his regulatory reform agenda, and which would exacerbate a major problem with NAFTA: Environmental provisions were associated with a free trade agreement for the first time.⁵

Background

President Ronald Reagan proposed the idea of a North American free trade area. NAFTA was later negotiated and signed by President George H. W. Bush. President Bill Clinton worked with Congress on NAFTA’s implementing legislation and he signed

the legislation into law, but he added an environmental side agreement known as the North American Agreement on Environmental Cooperation along with another side agreement on labor policy.⁶

These controversial side deals set a bad precedent by including non-trade-related environmental and labor provisions with trade agreements, and have led to post-NAFTA trade agreements incorporating increasingly comprehensive environmental and labor provisions, including within the agreements themselves (that is, not just through side agreements).

Unfortunately, the Trump Administration’s NAFTA renegotiation objectives propose to “bring the environment provisions into the core of the Agreement rather than in a side agreement,”⁷ and to subject environmental provisions to the same dispute-settlement process that exists for other enforceable obligations of NAFTA.⁸

Further, these objectives go beyond merely incorporating the existing side agreement into the main text of NAFTA. They also include other measures that could lead to boxing the U.S. into a corner when it comes to trying to address the sweeping regulatory overreach that already exists in the U.S. One of these objectives is to “establish strong and enforceable environment obligations.”⁹ While the specifics of this objective may be vague, the intent of having strong and enforceable environmental obligations for Canada, Mexico, and the United States is very clear.

Trade Agreements Should Be About Trade

Trade agreements exist to promote trade and therefore should be focused on trade, not unrelated

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matters, such as the environment. Except for labor provisions, which were also included in a NAFTA side agreement,¹⁰ NAFTA generally focuses on matters *directly* connected to the exchange of goods and services between the U.S., Canada, and Mexico.

The environmental provisions in the side agreement, and those in free trade agreements in general, are not concerned directly with trade but are primarily focused on ensuring that the parties to the agreement properly develop and enforce their own environmental laws. Even provisions to prohibit nations from weakening environmental laws in order to attract trade and investment are really about preserving environmental protection instead of promoting trade.

Trade helps nations in a variety of ways. It can increase export opportunities for domestic industries providing those industries with new customers for their goods and services. Trade can lead to more jobs and economic growth. It can also provide consumers a greater choice of goods and services. It can allow for a more efficient use of resources.

Trade can help developing countries achieve the standard of living that developed countries currently enjoy; for some of these countries, trade can mean the chance of moving many citizens out of

dire poverty. Bringing in unrelated issues, such as the environment, to trade agreements undermines the opportunity to fully achieve the benefits of trade. Instead of focusing solely on promoting trade objectives, the U.S. and other nations have to simultaneously negotiate environmental objectives that likely will require having to make trade-offs that are counter to reducing barriers to mutually beneficial trade.

Trade Helps the Environment

Many proponents of including environmental provisions in trade agreements assert that trade can hurt the environment.¹¹ There seems to be an underlying assumption that, without proper protections, economic growth causes environmental problems. However, the best way to improve the environment is to promote economic growth, including through trade. Data in The Heritage Foundation's *Index of Economic Freedom* show that countries with low trade barriers score better on Yale University's Environmental Performance Index, for instance.

Further, this anti-growth mindset would deny Americans the many benefits of trade. For developing countries in which trade can help get many citizens out of poverty, vague environmental objectives could

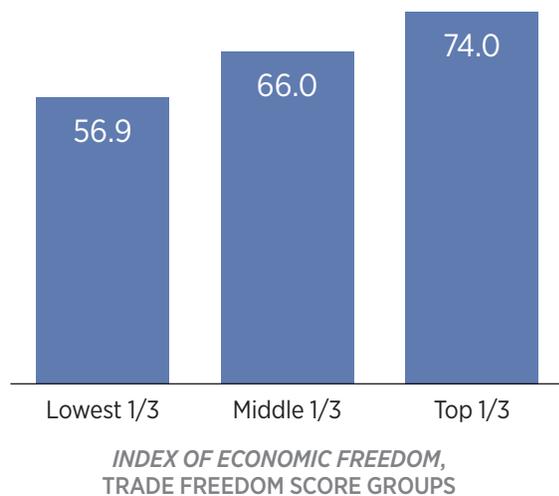
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1. News release, "Executive Order: Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs," The White House, January 30, 2017, <https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling> (accessed August 28, 2017).
 2. News release, "Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule," The White House, February 28, 2017, <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic> (accessed August 28, 2017), and Daren Bakst and Daniel Davis, "What You Need to Know About Trump's Executive Order on the Water Rule," The Daily Signal, February 28, 2017, <http://dailysignal.com/2017/02/28/qa-on-trumps-wotus-executive-order/>.
 3. News release, "Statement by President Trump on the Paris Climate Accord," The White House, June 1, 2017, <https://www.whitehouse.gov/the-press-office/2017/06/01/statement-president-trump-paris-climate-accord> (accessed August 28, 2017).
 4. Office of the U.S. Trade Representative, "Summary of Objectives for the NAFTA Renegotiation," July 17, 2017, <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTAObjectives.pdf> (accessed August 28, 2017).
 5. See, for example, M. Angeles Villarreal and Ian F. Fergusson, "The North American Free Trade Agreement (NAFTA)," Congressional Research Service, May 24, 2017, <https://fas.org/sgp/crs/row/R42965.pdf> (accessed August 28, 2017), and Congressional Research Service, "Environmental Provisions in Free Trade Agreements (FTAs)," *In Focus*, May 28, 2015, https://digital.library.unt.edu/ark:/67531/metadc815515/m2/1/high_res_d/IF10166_2015May28.pdf (accessed August 29, 2017).
 6. Commission for Environmental Cooperation, "North American Agreement on Environmental Cooperation," <http://www.cec.org/about-us/NAAEC> (accessed August 28, 2017).
 7. Office of the U.S. Trade Representative, "Summary of Objectives for the NAFTA Renegotiation."
 8. *Ibid.*
 9. *Ibid.*
 10. Villarreal and Fergusson, "The North American Free Trade Agreement (NAFTA)."
 11. Sierra Club, "Responsible Trade," <http://www.sierraclub.org/trade> (accessed August 28, 2017), and Congressional Research Service, "Environmental Provisions in Free Trade Agreements (FTAs)."
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CHART 1

Free Trade and the Environment

Nations with more trade freedom also have better environmental performance.

ENVIRONMENTAL PERFORMANCE INDEX



NOTE: Figures are based on data for 102 countries.

SOURCES: Terry Miller and Anthony B. Kim, *2017 Index of Economic Freedom* (Washington, DC: The Heritage Foundation, 2017), and Angel Hsu et al., *2016 Environmental Performance Index* (New Haven, CT: Yale University), <http://epi.yale.edu/reports/2016-report> (accessed August 29, 2017).

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Economic growth and trade are critical in helping to reduce poverty in developing countries. As a recent World Bank and World Trade Organization report explained, “Strong growth in developing countries will be needed to achieve the end of poverty, and trade is a critical enabler of growth, opening up opportunities for new and better work for the poor.”¹² Central to economic growth and reducing poverty is greater economic freedom. As the global economy has moved toward greater economic freedom over the past two decades, the global poverty rate has been cut in half.¹³

NAFTA Should Not Contribute to Expanding Environmental Regulation

The U.S. already has far too many onerous environmental regulations, and the Trump Administration appears to recognize this problem. Therefore, it is particularly confusing why the Administration would push to expand the environmental reach of NAFTA. It could not only make it more difficult to address environmental overreach, but it could also allow Canada and Mexico to have influence over U.S. environmental laws,¹⁴ specifically by giving them the means to challenge how the U.S. is addressing its domestic environmental issues.

It is not merely harmful U.S. environmental objectives that are a concern. Canada and Mexico could very well be able to put pressure on the U.S. to maintain or even adopt certain environmental policies. In fact, Canadian Foreign Affairs Minister Chrystia Freeland recently explained that Canada wants to make NAFTA more “progressive,” including by creating a new chapter on the environment, and to have a trade agreement “that fully supports efforts to address climate change.”¹⁵

take precedence over the trade benefits of helping these citizens meet even basic needs, such as having clean water and getting enough food to eat.

12. World Bank Group and World Trade Organization, *The Role of Trade in Ending Poverty*, 2015, https://www.wto.org/english/res_e/booksp_e/worldbankandwto15_e.pdf (accessed August 28, 2017).

13. Terry Miller and Anthony B. Kim, *2017 Index of Economic Freedom* (Washington, DC: The Heritage Foundation, 2017), p. 14, <http://www.heritage.org/index/book/chapter-1>.

14. Some point out that other countries do not have the same regulatory obstacles (including environmental regulations) that exist in the United States. This is true, but instead of trying to impose greater environmental regulations on a sovereign nation, the United States should focus on identifying harmful regulations that unnecessarily hurt itself. Further, as discussed, other countries could try to use this mindset as a way to impose greater and harmful environmental regulations on the United States.

15. Government of Canada, “Address by Foreign Affairs Minister on the Modernization of the North American Free Trade Agreement (NAFTA),” August 14, 2017, https://www.canada.ca/en/global-affairs/news/2017/08/address_by_foreignaffairsministeronthemodernizationofthenorthame.html (accessed August 28, 2017).

Recommendations

- The Trump Administration should limit NAFTA negotiations to provisions directly related to North American trade and investment. All other extraneous measures should be addressed through other vehicles, if at all.
- If Canada and Mexico insist that NAFTA should include environmental provisions, those issues should be kept in the side agreement and not incorporated into the main agreement.
- Environmental measures should not expand the existing scope of NAFTA, especially in ways that could make it more difficult for the United States to change its environmental laws and regulations.
- Continued efforts should be made to increase economic freedom by reducing trade barriers, subsidies, and other measures that limit the ability of people in Canada, Mexico, and the United States to better address their environmental challenges.

Conclusion

One of the primary ways the Trump Administration can improve NAFTA and help reshape future free trade agreements is to move away from side-tracking trade agreements with environmental provisions. The Administration should set a clear precedent, requiring future trade agreements to exclude unrelated issues, such as environmental provisions. NAFTA set the U.S. down the wrong path with the environmental side agreement; President Trump can now guide the nation back in the right direction.

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