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## THE NORTH AMERICAN FREE TRADE AGREEMENT: IMPACTS ON INDIGENOUS PEOPLES

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Although there has been a dynamic public debate over the proposed North American Free Trade Agreement (NAFTA), very little attention has been given to the question of what effect the agreement might have on the rights and sovereignty of the approximately 2.3 million indigenous people presently living in Canada, Mexico and the United States. While it is clear that any revision in policy between the three countries would have an impact on native peoples, it is not so well-known that NAFTA directly threatens their sovereignty, property, health and spirituality.

For those who view the removal of all "barriers" to trade and investment between Canada, Mexico and the United States as an essential component of economic growth, NAFTA would be a dream come true. Proponents argue that the removal of trade barriers -- such as long established tariff and quota systems, investment rules, and subsidy programs -- would lower production costs, increase productivity, and create new job opportunities in all of North America. Opponents argue that lower prices and lower wages would destroy farmers and workers, and that many important environmental, health and safety and other social regulations achieved through decades of hard work with legislators could be over-ruled as "disguised" barriers to trade.

Concern over NAFTA has swelled mightily in the past year. Many people active in the environmentalist movement, consumer groups, labor unions, farm organizations, and state and local government officials tremble at the realization that U.S. congressional approval is the only barrier to prevent NAFTA -- signed by the leaders of Canada, Mexico and the United States on 17 December 1992 -- from becoming the new law of the land. The governments of Canada, Mexico and the United States have tried to calm the fears of environmental and labor organizations by negotiating "supplemental agreements," although these side deals do not address most of the potentially devastating terms of the original NAFTA.

Unfortunately, the general public and the negotiators have shown little concern for individual rights and have utterly disregarded the legislated sovereignty of indigenous peoples. Despite the fact that NAFTA would likely circumvent tribal authority, traditional indigenous leaders and tribal government members have been excluded from the negotiations. And despite the fact that NAFTA would likely have an adverse impact on indigenous peoples generally, they have been left out of the debate. Critical issues include sovereignty, intellectual property rights, energy and water, other natural resources, land and the environment, pollution, and toxic dumping.

The power of NAFTA to abolish indigenous sovereignty is of major concern.. Would NAFTA break the existing treaties between federal governments and tribal nations? Would provisions of NAFTA supersede previously enacted provisions in tribal treaties if such provisions are deemed unfair trade barriers? Would tribal representatives and traditional leaders continue to be excluded from NAFTA negotiations and dispute settlement procedures? Unfortunately, affirmative answers to these questions are likely given the current structure of the negotiation process and its emphasis on economics above all.

To grasp the impact of international trade agreements on the sovereignty of independent nations one need only look at the infamous tuna/dolphin dispute between the United States and Mexico. Mexico challenged the U.S. ban on Mexican tunafish, calling it an unfair trade barrier. The U.S. Congress enacted the ban to discourage the Mexican tuna industry from continuing the use of purse seine nets, which indiscriminately capture dolphins and other marine life caught in their path. But instead of changing its practices, Mexico sought to redress the situation through the international General Agreement on Tariffs and Trade (GATT), to which both the U.S. and Mexico are members. As members, countries can claim unfair trade practices and bring cases before international dispute resolution panels. In the case of the tuna/dolphin dispute, the GATT panel accepted Mexico's claim and ordered the United States to end its democratically-legislated ban of Mexican tuna. So much for the sovereignty of the U.S. Congress!

In Canada -- where "First Nations" are protected by a clause in the constitution -- land claim negotiations are underway which are designed to solidify constitutional guarantees of land security and indigenous peoples' rights to self determination. Yet according to Laurie Henderson of the Environmental Choice Program in Canada's Yukon province, NAFTA would make it more difficult for First Nation peoples to negotiate land claims when third party interests, such as mining and logging, are involved. Similar to the deliberations of the GATT tuna/dolphin panel, a NAFTA dispute panel could decide that international law supercedes national law. Because First Nations' are not parties to the NAFTA, their claims could be considered as secondary to those of the parties; further, First Nations' rights to natural resources on their lands could be considered barriers to trade among the official parties.

NAFTA also threatens the sovereignty of the Lummi and other indigenous groups in Washington State. In a decision by U.S. courts, several indigenous nations were granted co-management authority to protect salmon spawning areas, whether in public or private lands. According to Kurt Russo, of the Treaty Protection Task Force, the court's decision allows indigenous groups to set restrictions on tree cutting and mining operations in areas that may threaten salmon spawning. Under NAFTA, logging and mining interests in the area could challenge the court's decision by arguing that the co-management authority granted by the court creates an unfair trade barrier.

Chapter 17 of NAFTA covers intellectual property rights and is particularly onerous to indigenous peoples. It calls for the "adequate and effective protection and enforcement of intellectual property rights" -- legal claims that turn knowledge into private property. Agricultural and pharmaceutical corporations, in particular, have utilized the traditional knowledge of native peoples in the cultivation of seeds and plants, seizing the plants' genetic heritage as the corporation's private property and

ensuring their private gain. Others have secured intellectual property rights over traditional indigenous symbols after incorporating them freely into their own design work. Chapter 17 would officially legitimize these long-established practices of exploitation and profiteering. Chapter 17 makes no mention of traditional knowledge and fails to define any indigenous product worthy of protection.

Chapter 6 of NAFTA covers energy and petrochemicals. This chapter would require Canada to export volumes of hydropower and other energy to U.S. consumers in proportions no less than that exported in the prior three years. This means Canadian sovereignty over its energy resources would be sacrificed to seemingly insatiable U.S. demand. This requirement would likely give new impetus to those seeking to develop James Bay and flood the lands upon which millions of Cree Indians depend for their sustenance and culture. The Mexican negotiators resisted U.S. attempts to assume majority ownership of its oil deposits, a change which would have required altering the Mexican Constitution -- certainly an infringement of Mexico's sovereignty, although some concessions were made over production rights. Clearly, foreign ownership of oil resources and mandated energy production would accelerate the pace of resource depletion and threaten valuable resource-rich indigenous lands.

Similar provisions of the NAFTA would require Canada to ship water to the U.S. in proportions no less than the prior three years. In western Canada, huge mega-schemes to channel the waters of many rivers into irrigation supplies for the dry agricultural belts of the western U.S. are planned. Western Canada could be left dry. In northwestern British Columbia, an area rich in timber and mineral deposits, indigenous lands and the way of life they support are also threatened by development.

Native peoples throughout North America are desperately trying to protect their lands and resources from the growing pressures of industrialized society. In southern Mexico, the Maya Lacondone indigenous group is currently fighting logging interests in the Lacondone rainforest in order to protect their timber and other natural resources. NAFTA would accelerate the depletion of resources through increased consumer demand, trade, and energy use -- posing a clear and present danger which must be recognized by both indigenous and non-indigenous groups in all three countries.

Adoption of NAFTA would lead to an acceleration of industrial development in other regions of Mexico, not just the infamous maquiladora region of the northern border. While pollution in this area is already as severe as anywhere else in the world, accelerated industrialization facilitated by NAFTA would cause pollution levels to soar even higher. Indigenous lands in the maquiladora zones and down-river would suffer as environmental de-regulation and the lax enforcement possible under NAFTA would enable companies to continue wanton contamination of the water and air.

Any threat to the environment holds devastating repercussions for indigenous populations. Most indigenous peoples throughout the continent rely directly on the environment for their sustenance, spirituality and economic opportunities. NAFTA's provisions enabling corporations to capitalize on the resources of tribal nations need restructuring or abolishment. But the anticipated weakening of environmental standards under NAFTA may seriously affect indigenous people in ways that go beyond direct pollution.

Pesticides such as DDT, legal in Mexico, would cross the borders as residues on imported foods -- made possible by NAFTA provisions over-ruling legislated limits to the types and amounts of pesticide residues allowed into the U.S. and Canada. Current bans and limits on such pesticides -- democratically achieved by workers and consumers stunned by illness and deaths from pesticide poisoning in their families -- could be challenged as unfair trade barriers. Under NAFTA, these laws could only be upheld if health risks are scientifically proven. Increases in pesticide applications on crops in Mexico would translate into increases in the level of pesticide residues found in bodies of water and in the fish and wildlife that populate them. In turn, this would poison native peoples in the region, for whom fish is a staple food.

Finally, the ability of tribal groups to prevent the disposal of toxic substances on their lands may be hampered under NAFTA. Tribal areas in the U.S. are already under assault by the waste disposal industry's search for new dumping grounds for the unwanted toxic nuclear, medical, and solid wastes of industrialized society. The increased energy demand resulting from NAFTA would undoubtedly increase the need for waste disposal sites. It is quite possible that under NAFTA the toxic waste of industrialized societies could become a "commodity" protected from unfair trade barriers. Such protection would make it difficult for tribal nations to deny access to a waste disposal company that has targeted their land as a disposal site.

The issues raised here represent only a sampling of the impact NAFTA might have on indigenous peoples throughout Canada, Mexico and the United States. Although the "fast-track" pace of NAFTA has been slowed by the concerted efforts of various grassroots organizations, more work is needed. Indigenous people are invited to join the hemispheric campaign to defeat NAFTA.

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