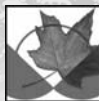


Globalization and the North:

Impacts of Trade Treaties on
Canada's Northern Governments



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Globalization and the North: Impacts of Trade Treaties On Canada's Northern Governments

By Noel Schacter, Jim Beebe and Luigi Zanasi

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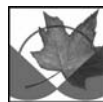
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Introduction

Canada's three northern territories are entering an era of major economic and political development. Economically, they are experiencing one of their periodic resource booms. There has been a revival of the proposals for a major gas pipeline from the Arctic Ocean to southern markets. This comes on top of the discovery (and now production) of diamonds, a very high-value product. Northern communities are looking forward not only to the direct economic benefits these projects can bring, but also to the economic diversification and social infrastructure they can help to finance.

Politically, the northern territories are in much better positions to build their economies with these developments. The territorial governments have won a wide range of provincial-like powers over the past three decades, including more control over the use of and benefits from natural resources. Aboriginal land claims have been recognized and largely settled over the same period, an important prerequisite for widespread resource development. First Nations now have viable voices in both their own areas and in the larger societies of which they are a part, some entrenched environmental protections, and the resources to participate in economic development. This tends to encourage them to participate in, rather than oppose, major resource developments, as they did in the past to gain recognition of their rights. Finally, the creation of the separate territory of Nunavut in the Eastern Arctic has resolved a long-standing division in the Northwest Territories.

Still, there are a large number of economic and political players in the North. The federal government retains significant control over resources and approval processes. The territorial governments must balance their

needs for tax and resources revenues with their interests in maximizing local economic benefits. Aboriginal governments have achieved a new degree of local control over resources, but are reliant on outside investment to finance their roles in major developments. Large multinational corporations are seeking access to resources and local partners for joint ventures in resource development.

The North needs carefully designed policies to ensure that northern communities reap as much benefit as possible from new resource projects, that economic growth contributes to socially and environmentally sustainable growth in the North, and that territorial, Aboriginal and community governments are strengthened and made more responsive to northerners.

While the northern context has changed significantly in recent decades, so has the international context in which national and local governments operate. The new context includes both continental and global trade

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treaties that Canada has signed. The general theme of these treaties is to open local markets to foreign competition by limiting government's ability to regulate corporations and by privatizing public services. The restrictive rules apply to all levels of government (territorial, Aboriginal and municipal, as well as federal and provincial), all agencies of governments, and all activities of governments. The restrictions apply not just to the movement of goods, but also to investment and the provision of public and

private services. The treaties are unbalanced and favour global corporate interests over local economic interests, as well as over non-commercial values and interests such as public health and the environment.

As northerners are aware, even more than other Canadians, a thinly populated and developed society needs public organizations to express, protect, and promote the needs of their citizens and communities. This paper looks in detail at what activities of northern organizations and communities will be affected and how they will be affected by the stringent new trade rules now in force. As will be seen, there is a fundamental conflict between the need for northern governments to play an active role in economic development and the basic commercial objectives of a variety of trade agreements.



Summary

Background on Northern Territories

Though the North shares much with the rest of the country, the three territories are quite different from the southern provinces and even from each other. The introductory section of this report describes these geographic, environmental, social, economic, legal, and political differences.

The Yukon is a northern extension of the Coast and Rocky Mountains, drained by the Yukon River to the Pacific. Its salmon runs are similar to British Columbia's, and are the basis of the traditional Aboriginal economy, along with moose, caribou, and small game. The NWT is partly an extension of the Canadian Shield and partly coastal plains, divided by the Arctic tree line. The large caribou herds that are the basis of Aboriginal subsistence migrate across the territory. In contrast, Nunavut is mostly a maritime culture, from Hudson Bay to the Arctic archipelago, rich in marine mammals and fish, with caribou herds roaming the treeless tundra.

The Yukon is the most Europeanized territory, the result of waves of immigrants since the Klondike Gold Rush coming as soldiers, miners and public servants. Three-quarters of the 30,000 people live in the capital of Whitehorse, the rest in a dozen small towns and villages connected by a road system. There are 5,000 Aboriginal people, and most First Nations have settled their land claims over the past decade, resulting in money, lands, and self-government powers. The Yukon has had an elected assembly for a century and an elected cabinet for a quarter of a century, based on familiar political parties. The federal government has devolved most provincial-type powers to the local government, including most lands and

natural resources in 2003. The territory's economy has seen booms and busts since the Klondike, mostly with the opening and closing of mines. Government is by far the largest sector, though tourism has grown significantly.

The NWT is equally balanced between Aboriginal people and settlers from the south. Almost half of the 40,000 residents live in the capital of Yellowknife, 4,000 in Inuvik on the Arctic coast and the rest in about 20 small towns and villages. Yellowknife and some towns have road links, but several do not. Many non-Aboriginal people originally came as public servants, as government here, too, is the largest sector, with some mining and sporadic oil-and-gas development in the Beaufort Basin. The Inuvialuit settled their land claims 20 years ago, and most inland Dene First Nations are on the verge of settlements. The NWT was run by Ottawa—in fact, from Ottawa—until recently. Power began to be transferred about 30 years ago to an elected assembly and cabinet, which operate by consensus, not parties. Only control of lands and resources remains in federal hands.

All three territories tend to have very young populations, with the Aboriginal population growing rapidly, and high unemployment rates similar to the Maritimes.

Nunavut is the homeland of the Inuit, who form 80 per cent of the population, and was carved out of the NWT as a separate territory as part of their 1993 land-claim settlement. The new government formally began in 1999, funded almost entirely by Ottawa. It comprises almost the entire economy in the absence of any significant industry to date. Indeed, 40

per cent of the adults do not work in the wage economy, and subsistence harvesting is still very important. Most of the 30,000 residents live in a dozen small, mostly coastal communities, with only 4,000 in the capital of Iqaluit on Baffin Island, all of them dependent on air and sea links.

Generally, all three territories tend to have very young populations, with the Aboriginal population growing rapidly, and high unemployment rates similar to the Maritimes. They have access to most of the social services familiar to all Canadians – public education, health care, social supports – though often at a very modest level.

Background on Trade Treaties

The new rules for “globalization” of business and economies have been created and implemented through trade and investment treaties. This process began modestly after World War II, with the General Agreement on Tariffs and Trade (GATT) in 1948, signed by 23 industrial nations including Canada, to restrict government measures on the import and export of goods. Canadians are most familiar with the Free Trade Agreement with the United States, which was later expanded to include Mexico in the North American Free Trade Agreement (NAFTA) in 1995. Negotiations have since been under way to expand NAFTA through the Free Trade Agreement of the Americas (FTAA) for the whole Western Hemisphere. The Government of Canada also set up the Agreement on Internal Trade (AIT) with provinces and territories, with rules mirroring those in the WTO and NAFTA. So far, it has only been a political agreement rather than a legally binding one.

The global context for NAFTA was the growth of the original GATT into the much broader and more powerful World Trade Organization (WTO). This has grown to 146 countries and administers completed trade treaties, organizes negotiations for new ones, and settles disputes among countries. The trading system the WTO manages is based on 15 interrelated and legally binding agreements. Their main points are:

- They apply only to governments; there are no restrictions on corporations.
- They apply to all levels of government: national, sub-national, Aboriginal, local.
- They apply to all parts of government: legislative, administrative, judicial.
- They apply to all activities of government: laws, regulations, policies, programs and procedures, including unwritten practices – all called “measures.”
- They apply not just to goods, but also to:
 - Services – the General Agreement on Trade in Services (GATS);
 - Investments – the Trade Related Investment Measures (TRIMS); and
 - Intellectual Property – the Trade Related Aspects of Intellectual Property (TRIPS);
- They are enforced with a mandatory and binding dispute process.

Here are the major aspects of most trade treaties:

1. National treatment: This is the key rule usually associated with trade agreements. National treatment means that nations must provide treatment to foreign enterprises that is at least as favourable as the best treatment provided to similar domestic goods, services, service providers, investments and investors. If the national-treatment rule were applied to public services, then it could lead to unwanted privatization.
2. Sub-national governments: While national governments sign treaties, they apply to their entire nation state, including all the “sub-national” governments within the nation: provincial, state, territorial, Aboriginal, regional, and local.
3. Absolute prohibitions: These provisions apply regardless of whether a measure is discriminatory or not. NAFTA’s expropriation and compensation rules can apply even when a government is acting for a

The new rules for “globalization” of business and economies have been created and implemented through trade and investment treaties.

public purpose, such as protecting the environment, and require compensation for affected investments. The GATS market-access rule ensures that private service providers have the right to gain access to public services.

4. Exceptions: Both the WTO and NAFTA allow very few exceptions to their trade rules. Exceptions are treated as violations of basic trade rules for opening up markets and can only be justified on very narrow and limited grounds. While human, animal and plant life or health and environmental conservation can be excepted, there have been only two such cases since 1948.

5. Dispute resolution: Both the WTO and NAFTA have rules and processes to resolve disputes between countries. NAFTA also has an additional process to allow private investors to challenge government laws and other measures at all levels. The largest single category of NAFTA investor claims to date are those dealing with environmental and public-health issues.

Impacts of Trade Treaties on the North

A. GOVERNANCE

Nunavut and some Aboriginal governments are coming into existence after the creation of NAFTA and the WTO back in 1995. As a result, these governments are less likely to be able to access any exceptions or limitations from rules in these agreements. This will also be the case for newly devolved powers acquired by the Yukon and NWT after January 1, 1995. This lack of the limited protections available increases the risk of a trade challenge to a variety of government initiatives, in particular economic initiatives, which are often inconsistent with trade rules. Also, Aboriginal self-government powers enshrined in the Constitution are not reflected in trade treaties. This means their actions are denied even the limited protections afforded to the Yukon and NWT.

B. HEALTH CARE

Per-capita health-care costs in the North are about twice as high as in the rest of Canada. Even so, there is less access to medical services, and the health status of northerners is lower. There is a strong need to maintain public control and ownership of health services, especially in the North where private services would lower access to health care for many citizens. Also, northern governments want to develop more telehealth services, since this could increase the availability of services in remote areas and reduce costs.

Health services are covered under both the WTO and NAFTA. There is a concern that Canada's public health insurance is covered by GATS rules, mainly the ones on national treatment and market access. This leaves open the door to a trade challenge by another WTO member country. NAFTA's investor-state dispute process can also be used to challenge Medicare and to force governments to pay compensation to corporations. Both trade agreements are potential threats to any expansion of health services covered under Medicare, such as home-care and prescription drugs, as recommended by the Romanow Commission.

Future negotiations to expand these agreements could increase the risks of a trade challenge to health care. Of particular concern to the North is the GATS negotiation of electronic-commerce rules. These rules have the potential to limit government control of telehealth policies to ensure

universal access and necessary costs savings while maintaining high quality of care. This is because trade rules lead to commerce-friendly regulations and even privatization that run counter to needs in the North.

C. ECONOMIC DEVELOPMENT

Economic-development policies in the North are important in light of the already high dependence on government spending in the economy. Efforts to add more value to natural resources or negotiate local economic-benefit agreements and to provide preferential treatment for northern businesses and workers are important vehicles to expand the economic base. Yet these initiatives are potentially limited by rules in trade and investment treaties.

NAFTA's investment rules limit any requirements to use local labour, business, services or materials in a project, regardless of whether there is discrimination or not. The WTO limits export prohibitions, potentially making a requirement to process raw diamonds in the North a violation of its rules. The present round of negotiations to expand both NAFTA and the GATS could increase the restrictions on governments to pursue economic-development strategies, especially relating to government procurement of construction, goods, and services.

Both economic and social development in the North is supported by public infrastructure. In transportation, northerners are concerned about postal services, which are the main method of transporting food and supplies to many communities. This transport is provided at about one-third its commercial cost. The U.S. Corporation UPS is currently challenging Canada Post's services under NAFTA's dispute process, which could lead to the loss of services and increases in rates for the North.

D. ENVIRONMENT

The North faces two sources of environmental degradation: local development of natural resources and international impacts such as air- and water-borne pollution and global warming. Efforts to protect the environment are deemed to be inconsistent with the basic rules in trade agreements and are allowed only if they meet the requirements of narrowly interpreted exceptions. There have been no successful defences of environmental-protection measures challenged in trade agreements using the allowed exceptions. But there have been several cases where environmental measures were struck down by trade panels in both the WTO and

NAFTA and where governments were forced to withdraw these measures and pay compensation as well.

Multilateral environmental agreements (MEAs), such as the Kyoto Protocol, are the most effective ways to deal with international issues. There are fewer risks arising out of WTO and NAFTA challenges for MEAs than for domestic environmental measures. MEAs are particularly important for the North, where there is a greater concentration of industrial chemicals and a greater threat from global warming. MEAs are essential for ensuring the ongoing viability of traditional lifestyles that depend on subsistence harvesting.

Conclusion

Existing trade and investment treaties pose a serious threat to northern governments' ability to choose policies that are in the best interest of their citizens, including health care, economic development, and environmental protection measures. The federal government needs to reconsider some of the commitments it has made in these agreements, especially its commitment to cover health services under insurance services in its GATS schedule of specific commitments. Furthermore, the federal government needs to ensure that vital public-policy options in all areas are not further restricted by the present round of negotiations in the GATS, WTO at large, and the FTAA.

Existing trade and investment treaties pose a serious threat to northern governments' ability to choose policies that are in the best interest of their citizens