Public services, trade treaties and a Green New Deal

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To begin, I'd like to say a few words about the Beyond NAFTA 2.0 report, which was published in June 2019.

The idea grew out of a gathering of NGOs and unions in Chicago in the fall of 2017 to discuss the new NAFTA, which was then under negotiation.

The conversation kept returning to a familiar theme.

As trade activists, we know what we are against, and who we are up against. But what are we for? What might a North American trade and development pact based around the needs of working people and our shared planet look like?

We also felt an urgent need to distinguish a left, internationalist critique of corporate globalization from the authoritarian and racially divisive perspectives on trade being espoused by Donald Trump and his supporters.

The report was our first step. Using NAFTA 2.0 as a foil, the report critiques the dominant neoliberal trade and investment model and articulates alternatives over a broad range of issues, including public services.

The current phase of our project involves regional workshops: Oct. 30 in Ottawa, Nov. 19-20 in Mexico City. There was also a launch event and strategy meeting in NYC in early October.

The next phase of the project will likely focus on the trade policy aspects of a Green New Deal (or rather of the challenges of coordinating national and local Green Deals within North America).

That's a big part of what I'd like to talk with you about today. Basically, our feeling is that the Green New Deal, or green transition, offers new hope to revitalize public services, challenge the institutional fetters of neoliberalism including FTAs, while literally doing what we must, over a very short time, to save an inhabitable planet.

Background

Since the mid-1990s, FTAs have included obligations to liberalize trade in services. This drive to liberalize services generates conflict with both the public and the not-for-profit service sectors.

Obviously, international trade in services can only occur where sectors are open to competition and services are commercial in character. Because many public services (e.g., single-payer health insurance or public postal services, etc.) deliberately limit or exclude commercial interests, they can readily be construed as barriers to increased services trade.

In fact, advanced public services are hallmarks of economic and social progress and an important goal of development. They play an essential role in meeting universal basic needs, as well as redistributing wealth, equalizing opportunity, and reducing inequality. Opening them to profit-making — simply for the sake of boosting international trade in services — threatens social well-being and the public interest.

Moreover, many essential services such as electricity, water, public transit, education, social services, and health care are best provided publicly or on a not-for-profit basis. Among the many reasons why that is so are: the higher financing costs associated with private, for-profit investment, and the demand for higher returns for private company shareholders. Commercial services firms also face greater pressure to restrict services (e.g., Wi-Fi coverage or inter-city bus service) to profitable regions, erode labor standards, and reduce the quality of services in order to lower costs and boost profits.

Despite the many benefits of public services, services liberalization and investment agreements treat them as market impediments that, if they are to be preserved, must be carefully excluded from a country's treaty obligations, usually, at a cost, in the form of negotiating concessions. Indeed, the right of governments to reverse privatizations, to expand existing public services and to create new ones, has long been a flashpoint in trade negotiations and debates.

Public services and the Green New Deal

Public sector unions have been at the forefront of campaigns to resist further services trade liberalization, including through CETA and the now-stalled Trade in Services Agreement (TiSA). Today, the challenges of climate change and the promise of a Green New Deal present an opportunity to shift from a defensive to a forward-looking, affirmative stance - to argue convincingly for the necessary renewal, restoration and revitalization of public services, despite FTA obstacles.

Climate scientists warn that we only have ten years to cut global emissions by 45% (below 2010 levels) if we are to meet the internationally agreed target of limiting global warning to 1.5 degrees Celsius. We also must fully decarbonize the global economy (net zero) by 2050.

As wealthy countries and some of the world's biggest historical GHG emitters, both the EU and Canada have the capacity and the obligation to pursue a just transition to a zero-carbon economy, both at home and globally.

Proposals for a Green New Deal (GND) are attractive because they face head-on the existential challenge to decarbonize our economies. Equally important, they bring opportunities to create a more equitable and just society, ensuring ecological sustainability, greater equality, social inclusion, and meaningful work. In fact, the local benefits and community development aspects of the GND are critical to gaining broad public acceptance and support for ambitious green transition policies.

Greatly expanded public services and public investment will necessarily play a key role in realizing the GND vision. All credible programs for a GND, such as those of Bernie Sanders in the US or the Labour Party in the UK, feature expanded public services, increased public ownership and revitalized not-for-profit sectors. They also envision a much stronger government role in regulating the economy and providing direction through green industrial strategies.

The negative role of trade treaties

The trade policy dimensions of GND strategies and of decarbonizing the global economy have not been fully explored. Forward-looking trade provisions would support the just transition, not get in the way. But current trade and investment treaties pose serious obstacles to achieving the transformative vision embodied in the GND.

For example, Canada's first major GND-style policy, Ontario's 2009 Green Energy Act, was struck down by the WTO after challenges from the EU and Japan. Germany, the Netherlands and Alberta have all been threatened by investor-state dispute settlement (ISDS) cases over the phasing out of coal-fired plants. India and the U.S. are locked in a cycle of WTO suits and countersuits over government incentives to boost local content and employment in the renewable energy sector.

In the face of a climate emergency, such litigation and the chilling effect it exerts on climate action are absurd. Fortunately, the most straightforward way to navigate multiple trade treaty constraints and to reduce the risk of trade treaty challenges to implementing a GND is by relying heavily (as the most progressive GND plans already do) on public investment, public services, and proactive public purchasing. However, even this publicly directed road has a few bumps.

Trade treaty obstacles

Some of the biggest trade treaty obstacles to having public services and purchasing play a pivotal role in a successful GND strategy are 1) investment treaties that include ISDS, 2) CETA's procurement provisions (which are the only Canadian trade treaty commitments to cover purchasing by provincial crown corporations, local governments and the broader public sector), and 3) the so-called market access provisions in GATS, TiSA, and multiple FTAs.

Dismantling ISDS

Canada's record under NAFTA's investor-state dispute settlement process is all the proof we should need that ISDS fundamentally clashes with plans for rapidly decarbonizing the economy. But globally firms are using ISDS (or threatening to) to sue countries for strengthening environmental measures that happen to affect investors' business interests.

The first step to resolving this problem is therefore to put an immediate moratorium on negotiating and implementing new investment agreements. Longer term, we should renegotiate or terminate existing treaties to remove ISDS and reform the substantive investment protection provisions. We need to extricate ourselves from ISDS as soon as possible.

The removal of ISDS in the new NAFTA would be a positive step. But even though Canada's Minister of International Trade Chrystia Freeland has portrayed ISDS as "elevating the rights of corporations over citizens," Canada continues to pursue ISDS in other FTAs, for example with Mercosur, in the CPTPP, and through CETA's Investment Court System.

Our governments must stop supporting firms that have been using ISDS against the environmental policies of other countries. Disgracefully, three separate Canadian mining firms are attacking Colombian laws prohibiting mining in the sensitive high-altitude ecosystems that provide 70 per cent of the country's drinking water.

Climate-friendly procurement policies

Proponents of activist public purchasing policies must hope that local governments, public utilities, and other publicly funded entities will be able to find creative ways to skirt CETA's unreasonable ban on considering local development benefits in procurement decisions—or find the courage to ignore it.

One policy option, which would not involve a frontal attack on CETA, would be to adopt "Buy Sustainable" procurement policies. These wouldn't need to include any nationality-based discrimination, but should stipulate social and environmental conditions on public purchasing designed to maximize community benefits, local hiring, minimum wages, decent working conditions, unionization, and worker and community control.

In addition, sustainable procurement policies would support renewable energy, conservation and high standards to limit GHGs in the production and use of products, retrofitting homes and buildings, reducing transport costs and more. These purchasing policies must be accompanied by substantial investment in skills training and programs to ensure that local firms and workers can meet these high standards and transform their production processes to eliminate carbon emissions.

Expanding public ownership and services

The market access provisions found in GATS and several other treaties (including CETA and the new NAFTA) prohibit public monopolies in committed sectors. Once a service sector is fully committed, it is meant to remain permanently open to foreign competition.

CETA was Europe's first experience with negative listing. Under that "list it or list" approach, a few key public service sectors such as health, public education and social services are protected through strong exceptions, but many others are not. Taken literally, Canada's market access commitments prevent all levels of government from creating new public monopolies, even on a regional or local basis, in many sectors where expanded public services will be critical to achieving the green transition.

These include public transit, intercity transport, wastewater services, waste management services, and private health or automobile insurance. In all these sectors, public policy measures cannot be made more trade-restrictive (standstill), and once a measure is amended or eliminated to make it less trade restrictive, its protection disappears and can't be restored by future governments (the ratchet effect).

[Despite the Commission's initial attempts to remove it, the EU still has the so-called public utilities reservation which provides some cover for new monopolies, but is untested and falls short of a full exclusion.]

CETA's services and investment provisions, in particular, make it difficult for future governments to restore or expand universal public services without risking a trade treaty challenge.

They are an unacceptable infringement on democratic choice that progressive governments should simply disregard. The firm official assurances made regarding the sanctity of public services, for example in the CETA interpretive instrument, must now be taken at face value, even if they are not fully reflected in the treaty text.

Thinking longer term, this failing can be remedied by including an effective, unequivocal exclusion for public services in all new and existing trade and investment agreements. Such a carve-out should ensure that all levels of government can create new public services, expand existing ones, and reverse privatization without incurring compensation claims or facing sanctions under trade and investment treaties.

International aspects

Neither the EU nor Canada's fair contribution to meeting global GHG-reduction targets can be met through domestic measures and reductions alone. To do their fair share, rich countries, who are responsible for most historical emissions, must act globally, including assisting developing countries in their green transitions.

This will mean a substantial increase in foreign aid. This aid should be "untied," meaning that it should only apply criteria such as effectiveness in reducing carbon and other pollution, encouraging community benefits in the receiving country and respecting human rights, rather than being directly tied to commercial benefits for home-country firms. It should be channelled through direct financial contributions to high-impact and equitable GHG reduction initiatives, not carbon offsets or carbon trading schemes.

All trade agreements should include binding, enforceable obligations to combat climate change (e.g. meeting a country's Paris Agreement obligations) and to safeguard greenhouse gas reduction initiatives from trade challenges. Trade benefits should be suspended when any country shuns its commitments, or blatantly disregards its obligation to reduce GHG emissions. An obvious example is Bolsonaro's Brazil, with which both the EU and Canada are currently negotiating free trade agreements despite the burning and destruction of the Amazon rain forest.

We also need a "peace clause" to halt brewing trade wars where countries are challenging each other over public policies to promote green energy or other climate-friendly initiatives. The goal should be to negotiate a global moratorium on climate-related trade disputes. Our governments could act immediately and unilaterally by vowing not to initiate any environment- related disputes and withdrawing support for trade or investment challenges initiated by our firms against other countries.

Green transition, not stimulus

In closing, the GND must be different from traditional stimulus programs. It is not simply Green Keynesianism. The goal of the GND is not to revive the "animal spirits" of entrepreneurs or simply to restore the health of the market economy. Instead, the aim is to effect a permanent transition to a new form of production and commerce that is ecologically sustainable and less materially intensive.

Again, public services are pivotal. George Monbiot has talked about aiming for "private sufficiency and public luxury." In this vision of a sustainable future, the ability of individuals and families to accumulate large quantities of private wealth will be curbed. But working hours will be reduced, leaving more time and energy for leisure.

Public investment in shared services and the common good (universal childcare, healthcare, social housing, smart grids, free public transit, public internet, public banking, the arts, public parks, wilderness conservation and more) can unlock the potential for a rich quality of life with a smaller ecological footprint.

As Naomi Klein among others have stressed, we need credible, inspirational transition stories. Public services and the public and not-for-profit sectors will play a leading role in any such narratives. We must sidestep, ignore or replace trade rules that impede realizing this vision.