

NOVEMBER 2024

GREENING TRADE?

Rethinking CUSMA's environment chapter for the future of the planet

Gavin Fridell, Cristi Jerez Campos and Stuart Trew



CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
CENTRE CANADIEN
de POLITIQUES ALTERNATIVES

Greening trade?

Rethinking CUSMA's environment chapter for the future of the planet

Summary of recommendations **3**

Question 1: In the past five years, what were the key successes and challenges in implementing the environment chapter? **5**

Question 2: Do you have views regarding the areas for cooperative activities that parties should focus on to strengthen their capacity to implement the obligations under the environment chapter? If so, in what areas? **6**

Question 3: How could the CUSMA environment committee improve its engagement with stakeholders and civil society in the implementation of the environment chapter? **13**

Conclusion **15**

Notes **17**

Greening trade?

Rethinking CUSMA's environment chapter for the future of the planet

Summary of recommendations

The Canadian Centre for Policy Alternatives (CCPA) welcomes the opportunity to submit views to the government on the operation of the environment chapter of the *Canada-U.S.-Mexico Agreement*, as part of the five-year review of the chapter outlined in Article 24.26. This submission was prepared by Gavin Fridell and Cristi Jerez Campos of Saint Mary's University, with assistance from Stuart Trew, director of the CCPA's Trade and Investment Research Project. It draws from and builds on a review of the CUSMA environment chapter in a CCPA report on the mandatory six-year review of CUSMA published in May 2024.¹

We have structured our feedback to respond to the guiding questions in the government's invitation for comments on the CUSMA environment chapter. In general, we urge the Canadian government to use all the leverage it has to negotiate much stronger protections for the environment than what was agreed in NAFTA or the renegotiated agreement—and to include obligations on CUSMA parties with respect to addressing the climate emergency. Our main recommendations are as follows.

CUSMA Article 24.26

...

7. During the fifth year after the date of entry into force of this Agreement, the Environment Committee shall:

- (a) review the implementation and operation of this Chapter;
- (b) report its findings, which may include recommendations, to the Council and the Commission; and
- (c) undertake subsequent reviews at intervals to be decided by the Committee.

1. **Strengthen enforcement of environmental obligations** by establishing a rapid-response mechanism for environmental complaints, inspired by the facility-specific rapid response labour mechanism in CUSMA's labour chapter.
2. **Expand the list of multilateral environmental agreements** that can be enforced through CUSMA's binding state-to-state dispute settlement process.
3. **Negotiate a climate peace clause** that shields measures aimed at reducing emissions or responding to the climate emergency from both state-to-state and investor-state dispute settlement in CUSMA.
4. **Rethink and reorganize the current activities associated with the Commission for Environmental Cooperation (CEC)** to allow for genuine, expanded and robust inclusion of stakeholders and civil society organizations in commission meetings, activities and workshops, while providing a collaborative forum for environmental groups and communities across the region.

Question 1: In the past five years, what were the key successes and challenges in implementing the environment chapter?

It is difficult to fully assess the successes and challenges of implementing the environment chapter. Much of the text of the chapter merely reaffirms CUSMA parties' existing commitments to domestic laws and international accords and recognizes the importance of environmental protection and conservation, but without setting firm or clear targets and goals.

Where the chapter does provide firm commitments with specific goals it is difficult to measure progress. Particularly notable in this respect are the CUSMA environment chapter commitments to crack down on illegal, unreported and unregulated (IUU) fisheries, often considered to be a major contributor to the depletion of global fishing stocks.

Articles 24.20 and 24.21 prohibit subsidies to IUU fishing and call on all three parties to cooperate and conduct monitoring, control, surveillance, compliance and enforcement measures to reduce IUU. The precise impact of these commitments, at this stage, is difficult to assess. According to the *IUU Fishing Risk Index*, from 2019 to 2023 Canada and the United States improved their overall ranking. Mexico's position, however, deteriorated so that it had the 11th worst ranking in the world in 2023.²

Beyond this, as discussed in more detail below, other challenges make assessing the impact of the environmental chapter very difficult:

- A general lack of enforcement, or evidence that the reporting, enforcement, cooperation, consultation and dispute resolution mechanisms within the chapter have been used for any direct or clear enforcement action.
- The lack of any explicit reference in CUSMA to climate change, or in the environment chapter to any specific commitments that would facilitate the three parties in meeting their obligations under the Paris Agreement.
- A general lack of any "proactive" mechanism to support decarbonization in North America. As the United Nations Conference on Trade and Development (UNCTAD) has recently noted, such mechanisms could include clear and firm commitments to promote and facilitate sustainable energy investments, cooperate on research and development, promote technology transfer and diffusion, affirm the right to regulate around climate change and the energy transition,

and formulate binding corporate social responsibility standards that include sustainable investment standards.³

Question 2: Do you have views regarding the areas for cooperative activities that parties should focus on to strengthen their capacity to implement the obligations under the environment chapter? If so, in what areas?

Drawing from the May 2024 CCPA report on the mandatory review of CUSMA, we propose three critical improvements the parties could urgently negotiate to expand the obligations and strengthen the effectiveness of the environment chapter. They are a rapid-response mechanism for investigating environmental violations, an expanded list of international environmental commitments that can be enforced via CUSMA state-to-state dispute settlement or the new rapid-response mechanism, and an environmental peace clause shielding a wide range of government measures from trade challenges.

1. Create a rapid response mechanism for the climate

The dedicated environment chapter (Chapter 24) in CUSMA marked a potential step forward for environmental protection and conservation. The old NAFTA contained a side agreement, the North American Agreement on Environmental Cooperation (NAAEC), which produced reports and recommendations but had little direct impact on environmental enforcement. It was never used to launch a single formal dispute, even if this was technically possible during the NAFTA years.⁴

There is growing recognition that such imprecise and effectively unenforceable agreements have been unsuccessful for meeting strong and necessary environmental objectives. Even the World Bank now recognizes that, “Environmental provisions in trade agreements can be effective in improving environmental welfare, but need to be *specific and legally binding*” (emphasis added).⁵

The CUSMA environment chapter has stronger language around conservation and protecting biodiversity, and it appears to offer a more direct pathway to enforcement through binding dispute resolution.⁶ The public complaints process from the NAAEC was maintained and brought into the body of the new agreement, allowing individuals or groups

from any CUSMA party to request investigations of non-enforcement of environmental protections in any other country.

While CUSMA is still a young agreement, so far there is little indication that the new environment chapter's impact differs significantly from the past.⁷ Environmental investigations have been slow and there has yet to be a significant cooperative or enforcement outcome. For instance, one of the earliest submissions to the Commission for Environmental Cooperation (CEC) after CUSMA replaced NAFTA in July 2020 involves the near extinction of the vaquita porpoise in Mexico. An investigation was launched in August 2021, but the CEC secretariat continues to work on a "factual record," even while there are approximately only 10 vaquita left in the world.⁸

Also concerning, in July 2022 environmental groups made a submission to the CEC challenging the significant environmental and cultural impact of the Tren Maya, a 1,500-km rail link through the Yucatan peninsula in the state of Quintana Roo, Mexico. The train project, which was rushed through with minimal and inadequate consultation, could be completed by the end of 2024, potentially before a "factual record" on Mexico's actions will be completed.⁹

The challenge with these cases is twofold. First, even when the CEC process is complete, it is not clear what impact it has on enforcement. The CEC produces "recommendations" that governments may or may not act upon (CUSMA Article 24.28). Second, if CEC investigations cannot be carried out in a reasonable amount of time, their effectiveness as a tool for cooperation or enforcement is questionable, regardless of their final recommendations. Justice delayed is justice denied.

Given all this, there is an urgent need to revise the CUSMA environment chapter to provide more rapid responses and enforcement of the obligations therein. The Facility Specific Rapid Response Labour Mechanism (RRM) in the CUSMA labour chapter provides inspiration.

The RRM is a marked improvement over the old labour provisions in NAFTA, which proved extremely difficult to enforce. Under CUSMA, Mexican workers can directly petition the U.S. or Canada to enforce labour violations at certain workplaces in Mexico. More than two-dozen cases of alleged denial of workers' rights in Mexico having been resolved this way or are under review.

Several improvements to the RRM are still needed including expanding the number of sectors to which it applies, and related to the involvement and commitment of Canada, which has only brought forward one case.¹⁰ Still, in general, the RRM shows that when governments get

serious about their international obligations, in this case to workers, institutional creativity can produce good results.

Although the RRM cannot be replicated for environmental disputes, given its facility-specific orientation, a revised environment chapter could include the following features:

- Like with RRM labour disputes, there should be a 45-day process, after which a public submission on environmental enforcement matters (CUSMA Article 24.27) is open to formal state-to-state dispute settlement. The process currently contains too many hurdles and undetermined timelines.
- Article 24.29 of CUSMA, on environmental consultations, should be altered so that governments have a responsibility to act on CEC recommendations. As it stands, there is no requirement that recommendations made by the CEC will lead to further action, whether in the form of consultations or dispute settlements between governments.
- The consultation process needs to be reduced to a single consultation before moving to the dispute resolution phase. Currently, before dispute settlement can be triggered, parties are required to conduct an environmental consultation (Article 24.29), a senior government representative consultation (Article 24.30), and a ministerial consultation (Article 24.31). International trade lawyer Jim Holbein observes that these steps “can be seen as either multiple points to reach an agreement or layers of governmental hurdles to be overcome, depending on the viewpoint one brings.”¹¹

On this last point, given only one case has reached the consultation stage—requested by the U.S. around the endangered vaquita porpoise in Mexico¹²—and given that these consultations have dragged on for three years, “layers of government hurdles” would appear to be the most accurate description so far. This does not reflect the urgent need for strong and rapid action around biodiversity loss and climate change.

Responsive environmental cooperation and enforcement through CUSMA also necessitates mechanisms to protect specific and diverse communities from environmental damage and unethical corporate practices. The CUSMA environment chapter provides only brief, unenforceable recognition of voluntary commitments from corporations and “the importance of promoting corporate social responsibility and responsible business conduct” (Article 24.13).

Instead of this soft language, enforceable mechanisms rooted in hard obligations (“shall” instead of “shall endeavor to,” for example) are needed. This could be done in the environment chapter and elsewhere in the agreement. For example, CUSMA parties could be required to put in place effective mechanisms to ensure that internationally recognized rights and obligations around free, prior and informed consent, human rights due diligence, and Indigenous rights are respected and enforced.

2. Expand the list of international environmental agreements and other binding obligations that can be enforced through CUSMA dispute settlement processes

With annual global carbon emissions from fossil fuels in 2023 reaching the highest ever recorded, the need for urgent action on climate change beyond current government activity is clear.¹³ Yet, as was frequently pointed out in U.S. debates about CUSMA, “climate change” is not mentioned once in the NAFTA replacement deal.

Nor is the Paris Agreement, the 2015 treaty that sets targets for climate change mitigation, among the multilateral environmental agreements that can be enforced through CUSMA’s new state-to-state environmental dispute settlement process.¹⁴ While the chapter commits all three North American countries to implementing seven other multilateral environmental agreements, and contains language that could be directed toward climate goals,¹⁵ it falls short in three important areas.

First, investigations and consultations under the environment chapter focus on biodiversity protection and conservation. These objectives are significant but have led to a disproportionate focus on Mexico,¹⁶ which confronts challenges around state capacity, resources and criminal networks. Yet, while Mexico is an important producer of fossil fuels, the U.S. and Canada were the first and fourth largest oil exporters in the world in 2023.¹⁷ The impacts of Canadian and U.S. fossil fuel production and exports have a heavy toll on the planet but are not addressed in the environment chapter.¹⁸

Second, in not mentioning climate change, the environment chapter also provides no commitments to meet climate action goals. This contrasts sharply with corporate-friendly chapters in the agreement such as Chapter 20, covering intellectual property rights, which contains numerous hard commitments. Under Chapter 20, all parties “shall provide a term of protection for industrial designs of at least 15 years,” and Canada and Mexico pledge to “fully implement [their] obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified,” ranging from 2.5 to five years.¹⁹

COMESA Article 29

Business Ethics and Human Rights

1. COMESA investors and their investments shall observe the United Nations Guiding Principles on Business and Human Rights with modifications necessary for local circumstances.

2. COMESA investors and investments shall among others:

(a) support and respect the protection of internationally proclaimed human rights;

(b) ensure that they are not complicit in human rights abuses;

(c) uphold the freedom of association and the effective recognition of the right to collective bargaining;

(d) eliminate all forms of forced and compulsory labour, including the effective abolition of child labour; and

(e) eliminate discrimination in respect of employment and occupation.

Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, COMESA investors should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

These are the sort of firm commitments, with precise timelines for implementation, that are required for climate change action and should be included in a revised environment chapter.

Finally, even though the environment chapter went into effect only a few years ago, it is already dated compared to more explicit commitments to addressing climate change. For instance, both Canada and the United States are members of the Coalition of Trade Ministers on Climate, which emphasizes “the urgent need for climate change mitigation and adaptation in line with the UNFCCC, the Paris Agreement, and the Sustainable Development Goals.”²⁰ One significant way to act on this commitment would be to bring these agreements directly into the CUSMA environment chapter.

North American countries could go a step further by obligating investors from all parties to observe the United Nations Guiding Principles on Business and Human Rights, as required by Article 29 of

the COMESA revised investment agreement and other recent African investment treaties (see box).²¹ Environmental destruction is often a source of gross human rights violations, in particular related to extractives like oil, gas and mining.

Incorporating the UN guiding principles into the CUSMA text would be in line with, but greatly improve upon, CUSMA due diligence requirements with respect to blocking imports of products made in whole or in part using forced and child labour—if these obligations are accompanied by domestic legal regimes for enforcing the obligations on business and/or access to state-to-state dispute settlement through CUSMA.

3. Negotiate a CUSMA climate peace clause

The idea of a climate peace clause comes out of a growing movement to prevent trade and investment rules, most of which were written prior to widespread recognition of the climate crisis, from blocking climate policies. Basically, all regulations, bans, subsidies, preference, and procurement policies aimed at rapidly lowering emissions and transitioning to low-carbon energy, transportation and industrial practices should be treated as immune to trade disputes.²²

Recently, over 190 U.S. state legislators from 52 states and territories called on their government to support a climate peace clause.²³ As described by the Trade Justice Education Fund and the Sierra Club, such a clause:

would help governments safeguard existing climate policies and create the space for them to adopt the bolder policies that justice and science demand. This could include, for example: (a) policies to reduce use of and reliance on fossil fuels (e.g., rejecting fossil fuel permits, bans on fossil fuel extraction, removal of fossil fuel subsidies) and (b) policies to ramp up the production and distribution of renewable energy and clean energy goods like electric vehicles, heat pumps, and wind turbines (e.g., subsidies, procurement policies, domestic content preferences).²⁴

While aimed at state-to-state disputes at the World Trade Organization (WTO) and under free trade agreements like CUSMA, a climate peace clause could also apply to investor–state dispute settlement (ISDS), which unfortunately still exists in a limited form in the renegotiated North American trade deal. Both state-to-state and investor-to-state disputes involving environmental policy pose serious barriers to rapid climate action, threatening governments with potentially billions of dollars in compensation and creating a “chill” effect around new regulations.²⁵

Japan and the European Union used the state-to-state dispute mechanisms of the WTO to successfully challenge Ontario's feed-in tariff for renewable energy, which was phased out in 2017. The U.S. and India have both used the WTO to successfully challenge each other's renewable energy policies, which were aimed at promoting local industry while increasing the supply of wind, solar and other renewables.²⁶

ISDS mechanisms have been favored by the fossil fuel industry, which has initiated more investment treaty and trade agreement arbitrations than any other sector, securing at least \$77 billion USD in compensation from governments and, by extension, taxpayers.²⁷ The ISDS process in NAFTA was frequently invoked against environmental measures—a key reason why Canada chose to remove ISDS from the renegotiated CUSMA, according to Minister Chrystia Freeland.²⁸

In 2023, Ruby River Capital launched a huge NAFTA "legacy" claim against Canada for refusing to permit the construction of an environmentally and economically dubious liquified natural gas (LNG) plant in Quebec.²⁹ The U.S. investor is seeking no less than \$1.04 billion USD in compensation, but this amount could increase significantly as the case proceeds, as it is based on an estimate of the potential value of the investment when the tribunal issues its final award.³⁰

Given the expansion of climate policies and the potentially lucrative gains to be made from ISDS, Kyla Tienhaara et al. anticipate more climate-related investment claims in the future.³¹ The Mexican state remains highly vulnerable to such claims from U.S. investors under CUSMA's amended ISDS process and from Canadian investors under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). In fact, the first ISDS case under the CPTPP was filed this year by two Canadian mining firms. It's related to the revocation of a gold and silver mining permit based on a previous government's failure to adequately consult affected Indigenous communities that worried about the environmental impacts of the planned mine.³²

We should anticipate more state-to-state disputes involving environmental protection measures. Several countries have already raised the possibility of challenges at the WTO against the European Union's new [carbon border adjustment mechanism](#) (CBAM)—a tariff applied at the border to imports of high-carbon goods that are not subjected to carbon levies equivalent to those in Europe.³³ After decades of subsidizing its now-booming electric vehicle industry, China initiated a WTO dispute panel against U.S. electric vehicle subsidies in September 2024.³⁴ Part of the U.S. *Inflation Reduction Act* (IRA), which is the largest investment in climate and energy in U.S. history, such subsidies are widely seen

as essential to driving decarbonization, including by many industries. The Global Wind Energy Council (GWEC), despite being in favour of “open” trade, asserts: “The IRA is a good example of an incentive-based approach to counteract inflation and provide financial support for supply chain investments.”³⁵

A climate peace clause can play an important role in preventing trade and investment challenges from delaying or blocking new policies and regulations aimed at rapidly responding to climate change. The inclusion of such a clause in CUSMA would be a major step toward its expansion to other trade and investment arrangements, including adoption “ultimately...by all WTO countries to offer global protection for climate policies.”³⁶

Question 3: How could the CUSMA environment committee improve its engagement with stakeholders and civil society in the implementation of the environment chapter?

CUSMA's environment chapter modestly improves upon the NAFTA side agreement with respect to public participation and consultation and it acknowledges the importance of disclosing information to the public through programs and activities. The chapter also explicitly recognizes actors that had not previously been taken into consideration. For example, whereas the NAAEC made no mention of Indigenous Peoples, preserving Indigenous traditional knowledge or maintaining Indigenous livelihood practices, these are now included as provisions in Chapter 24. Future generations are also acknowledged as beneficiaries of sustainable forest management and trade (Article 24.23).

In meetings to discuss the implementation of the chapter, these commitments have been reiterated throughout the activities of the CUSMA environment committee. Yet public participation accompanying committee meetings has fallen short of what was promised.

For instance, 171 people attended the inaugural meeting of the environment committee in 2021, but only five questions from this group were addressed by government convenors.³⁷ Committee members underscored commitments to include Indigenous Peoples in trilateral conversations on biodiversity, marine conservation and sustainable forestry. Yet, aside from translating the agreement into Indigenous languages, it is difficult to locate any plans for future consultations along

these lines. Closing the gap between the official commitments (e.g., to bolster public participation and disseminate information to marginalized groups) and on-the-ground action should be the focus of further action by the environment committee.

Challenges around the CEC's submission on enforcement matters (SEM) mechanism also persist under CUSMA. In Mexico's southeast, many of the communities most affected by trade liberalization and the opening up of their territory to Canadian and U.S. corporations do not recognize CUSMA as a legitimate tool for environmental law enforcement. Considering there is no requirement that factual records are followed up by government action, as discussed above, it is not surprising these communities would feel that way.

However, the investigative function of the SEM could be useful in its own right. While the contentious Tren Maya project—a 1,500 km rail line connecting Cancún and Tulum with the rest of the Yucatán Peninsula—has been completed before a factual record could be finished, NGO submitters believe that their fight for the protection of the Mayan jungle continues. Many key questions remain unanswered around the process involved with the train's construction, and it is certain that new environmental issues will arise as it and other megaprojects advance in the region.

Consequently, Mexican groups opposed to the project have shifted their focus from halting the construction of the railway toward forming networks with academics, scientists and fellow activists to promote information sharing and decentralized citizen mobilization. In theory, the SEM could help facilitate building bridges between these organizations across North America. But this will only happen under two conditions:

1. The inclusion of stakeholders and civil society directly in CUSMA environment committee meetings.
2. Workshops on CUSMA's environment chapter's enforcement mechanism.

Broadening the participation of the public beyond brief Q&A sections after environment committee meetings would enable new avenues for trilateral cooperation and expand the scope of implementation. Critics of the SEM, moreover, highlight how excruciatingly time consuming the submission process is, requiring legal knowledge and a thorough understanding of the somewhat convoluted SEM process for a submission to be accepted.³⁸ Providing a forum for representatives of civil society, who already have networks in their local communities to

disseminate this knowledge, to receive SEM submission training has the potential to make environmental enforcement under the existing framework more transparent.

The Commission on Environmental Cooperation launched the Communities for Environmental Justice Network Project (CEJN) in 2021. The project brought together representatives from environmental justice organizations in North America with the stated aim of strengthening resilience in their communities through sharing knowledge and advocacy strategies based on lessons from their distinct experiences.³⁹ Following this example, the environment committee could appoint representatives from the CEC secretariat's legal affairs and SEM unit to lead workshops where previous submitters could be invited to attend.

Drawing on the CEC's retrospective review of the SEM process, the majority of submitters in Mexico are professional non-governmental organizations (NGOs) and informal groups. Relying on these existing networks while providing them with the tools to use the existing enforcement mechanism would strengthen environmental cooperation activities and foster partnerships across North America.⁴⁰ The CEJN was held in Oaxaca, Mexico, but in the future, more emphasis could be placed on remote workshops, to alleviate the issue of travel costs and time constraints.

Conclusion

Given the unprecedented nature of Chapter 24, and its potential to serve as a step forward in advancing regional cooperation on environmental protection and climate change, we would urge the Canadian government to act decisively to strengthen the protections, enforceability, obligations and activities associated with the chapter, with the goal of enhancing the North American regional partnership more broadly.

While activities and dialogue have emerged out of the chapter, we are not aware of any substantive direct or measurable impacts from the agreement thus far that has significantly improved environmental stewardship. We recommend that the government advance negotiating positions and inter-governmental dialogue aimed at:

1. Strengthening the enforcement of environmental obligations and establishing a rapid-response mechanism for environmental complaints.

2. Expanding the list of multilateral environmental obligations that can be enforced through CUSMA, with particular attention paid to global climate change commitments that all three parties are already committed to.
3. Negotiating a climate peace clause to shield measures aimed at reducing emissions or responding to the climate emergency from CUSMA state-to-state and investor-state dispute settlement.
4. Reorganizing the activities of the Commission for Environmental Cooperation (CEC) to allow for more genuine, expanded and robust inclusion of stakeholders and civil society organizations in Commission activities, while providing a collaborative forum for environmental groups and communities across the region.

Notes

- 1 Gavin Fridell, "Getting serious about enforcing CUSMA's environmental rules: Making the most of the CUSMA review," Canadian Centre for Policy Alternatives, May 30, 2024: <https://monitormag.ca/reports/getting-serious-about-enforcing-cusmas-environmental-rules/>.
- 2 G. Macfadyen and G. Hosch, G. The IUU Fishing Risk Index: 2023 Update. Poseidon Aquatic Resource Management Limited and the Global Initiative Against Transnational Organized Crime, 2023, p. 113, <https://www.iuufishingindex.net/report>.
- 3 UNCTAD, Trends in the Investment Treaty Regime and a Reform Toolbox for the Energy Transition, IIA Issues Note, Issue 2, New York and Geneva, August 2023, https://unctad.org/system/files/official-document/diaepcbinf2023d4_en.pdf.
- 4 The NAAEC contained significant hurdles inhibiting the possibility of formal dispute settlement, even if technically feasible. The most significant was that disputes had to be triggered by governments as opposed to being unilaterally launched by investors, as was the case with ISDS. See John H. Knox, "Separated at Birth: The North American Agreements on Labor and the Environment," Loyola of Los Angeles International and Comparative Law Review and Comparative Law Review, 26:4, 2024, pp. 359–387: <https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1570&context=ilr>.
- 5 Paul Brenton and Vicky Chemutai, "The Trade and Climate Change Nexus: The Urgency and Opportunities for Developing Countries," World Bank, Washington, D.C., 2021, p. 24: <http://documents1.worldbank.org/curated/en/644711632894241300/pdf/The-Trade-and-Climate-Change-Nexus-The-Urgency-and-Opportunities-for-Developing-Countries.pdf>.
- 6 Canada-United States-Mexico Agreement (CUSMA), Chapter 24: Environment: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/24.aspx?lang=eng>.
- 7 James Bacchus, "Using the USMCA for climate action," USMCA Forward: Building a more competitive, inclusive, and sustainable North American economy, The Brookings Institute, February 2022: <https://www.brookings.edu/articles/usmca-forward-building-a-more-competitive-inclusive-and-sustainable-north-american-economy-climate/>.
- 8 CEC, Submission SEM-21-002: Vaquita Porpoise, August 11, 2021: <http://www.cec.org/submissions/registry-of-submissions/vaquita-porpoise/>; Maxwell Radwin, "Concern for Mexico's vaquita as totoaba swim bladder trafficking surges online," Mongabay, February 9, 2024: <https://news.mongabay.com/2024/02/concern-for-mexicos-vaquita-as-totoaba-swim-bladder-trafficking-surges-online/>.
- 9 CEC, Submission SEM-22-002, Tren Maya: <http://www.cec.org/submissions/registry-of-submissions/tren-maya/>; Thomas Graham, "Mexico's Maya Train pulls in ahead of schedule but with a host of questions," The Guardian, December 15, 2023: <https://www.theguardian.com/world/2023/dec/15/mexico-maya-train-yucatan-cancun-environment>.

10 While the U.S. has put significant infrastructure in place to receive labour complaints and act on them, Canada has not, and its existing process is burdensome for independent unions in Mexico. The Canadian process for lodging a RRM complaint requires that Mexican groups find a Canadian partner and that they submit all documents in English and French. This helps explain why all but one of the two-dozen RRM complaints to date were filed via the U.S. process. Rowlinson and Archer conclude: “Canada should share more of the burden and show stronger commitment to the cause of improving labour rights in Mexico and in the North American region.” See, Mark Rowlinson and Simon Archer, “Advancing Worker-Centred Trade in the 2026 CUSMA Review,” *The Monitor*, May 30, 2024, <https://monitormag.ca/reports/advancing-worker-centred-trade-in-the-2026-cusma-review/>.

11 Jim Holbein, “Recourse for USMCA Environmental Issues,” Braumiller Law Group, April 5, 2021: <https://www.braumillerlaw.com/recourse-usmca-environmental-issues/>.

12 Margaret Spiegelman, “USTR: USMCA environmental commitments still a challenge for Mexico,” *World Trade Online*, July 18, 2023: <https://insidetrade.com/daily-news/ustr-usmca-environmental-commitments-still-challenge-mexico>.

13 Ajit Niranjani, “Global carbon emissions from fossil fuels to hit record high,” *The Guardian*, December 5, 2023: <https://www.theguardian.com/environment/2023/dec/05/global-carbon-emissions-fossil-fuels-record>.

14 James Bacchus, “Using the USMCA for climate action,” in Brookings Institution, *USMCA Forward 2022*.

15 Article 24.8.4; James Bacchus, “Using the USMCA for climate action,” *USMCA Forward: Building a more competitive, inclusive, and sustainable North American economy*, The Brookings Institute, February 2022: <https://www.brookings.edu/articles/usmca-forward-building-a-more-competitive-inclusive-and-sustainable-north-american-economy-climate/>.

16 As of February 14, 2024, out of the 12 total open submissions under consideration by the CEC, 10 involved Mexico, one involved Canada and one involved the United States. See “Registry of Submissions,” http://www.cec.org/submissions/registry-of-submissions/?_sem_status=open. See also Manuel Perez-Rocha, “With Passage of NAFTA 2.0, Congress Boosts Fossil Fuel Polluters in Mexico,” *Inequality.org*, January 18, 2020: <https://inequality.org/research/nafta-investment-mexico/>; Bashar H. Malkawi & Shakeel Kazmi, “Dissecting and Unpacking the USMCA Environmental Provisions: Game-Changer for Green Governance?,” *JURIST: Legal News & Commentary*, June 5, 2020: <https://www.jurist.org/commentary/2020/06/malkawi-kazmi-usmca-environment/>.

17 U.S. Energy Information Administration FAQ: <https://www.eia.gov/tools/faqs/faq.php?id=709&t=6>.

18 Marc Lee, *Extracted Carbon: Re-examining Canada’s contribution to climate change through fossil fuel exports*, Canadian Centre for Policy Alternatives (CCPA), January 25, 2017: <https://policyalternatives.ca/publications/reports/extracted-carbon>.

19 CUSMA Articles 20.G.4, 20.K.1.3, and 20.K.1.4.

20 Coalition of Trade Ministers on Climate, “Coalition Launch Statement,” 2023: <https://www.tradeministersonclimate.org/>.

21 Common Market for Eastern and Southern Africa, *Revised Investment Agreement for the COMESA Common Investment Area*, October 2020: <https://www.comesa.int/wp-content/uploads/2020/10/English-Revised-Investment-agreement-for-the-CCIA-28.09.17-FINAL-after-Adoption-for-signing.pdf>.

22 Public Citizen, “Climate Peace Clause: What you Should Know,” not dated: https://www.citizen.org/topic/globalization-trade/climate-peace-clause/?tax_topic=environment; Trade Justice Education Fund and the Sierra Club, “FAQ: Climate Peace Clause,” not dated: <https://tradejusticefund.org/wp-content/uploads/FAQ-Climate-Peace-Clause-Final.-1-1.pdf>.

- 23** National Caucus of Environmental Legislators, "State Legislators Call for Creation of Climate Peace Clause to Ensure Climate Progress," Press Release, March 30, 2023: <https://www.ncelenviro.org/articles/state-legislators-call-for-creation-of-climate-peace-clause-to-ensure-climate-progress/>.
- 24** Trade Justice Education Fund and the Sierra Club, "FAQ: Climate Peace Clause," not dated: <https://tradejusticeedfund.org/wp-content/uploads/FAQ-Climate-Peace-Clause-Final-1-1.pdf>.
- 25** Kyla Tienhaara, "Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement," *Transnational Environmental Law*, Vol. 7, Issue 2, July 2018; Scott Sinclair, "Toxic legacy: Énergie Saguenay, climate action and investment arbitration," *The Monitor*, December 14, 2023, <https://monitormag.ca/reports/toxic-legacy/>.
- 26** Trade Justice Education Fund and the Sierra Club, "FAQ: Climate Peace Clause," not dated: <https://tradejusticeedfund.org/wp-content/uploads/FAQ-Climate-Peace-Clause-Final-1-1.pdf>. Carolyn Fischer, "Canada–Renewable Energy: Implications for WTO Law on Green and Not-So-Green Subsidies," *Resources*, October 31, 2014: <https://www.resources.org/common-resources/canadarenewable-energy-implications-for-wto-law-on-green-and-not-so-green-subsidies/>; D. Ravi Kanth, "India wins solar case against US at the WTO," *Mint*, June 27, 2019: <https://www.livemint.com/news/india/india-wins-solar-case-against-us-at-wto-1561634893762.html>; and Zainab Irfan, "Domestic Manufacturing Is Essential to India's Green Energy Transition" *Council on Foreign Relations*, May 10, 2023: <https://www.cfr.org/blog/domestic-manufacturing-essential-indias-green-energy-transition>.
- 27** Lea Di Salvatore, Lorenzo Cotula, Anirudh Nanda, and Chloe Yuqing Wang, "Investor-state dispute settlements: a hidden handbrake on climate action," *International Institute for Environment and Development*: <https://www.iied.org/21971iied>. See also David R. Boyd, Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, "Paying polluters: the catastrophic consequences of investor-State dispute settlement for climate and environment action and human rights," *United Nations General Assembly*, A/78/168, July 13, 2023: <https://www.ohchr.org/en/documents/thematic-reports/a78168-paying-polluters-catastrophic-consequences-investor-state-dispute?s=03>.
- 28** Deputy Prime Minister of Canada, "Statement by the Deputy Prime Minister on the entry-into-force of the new NAFTA," June 30, 2020: <https://deputyprime.minister.gc.ca/en/news/statements/2020/06/30/statement-deputy-prime-minister-entry-force-new-nafta>.
- 29** As explained in the dispute settlement section below, while the United States and Canada removed ISDS in CUSMA for U.S. investors in Canada and vice versa, an investment chapter annex in the new agreement permitted so-called legacy investors to bring claims for a further three years following July 2020, when CUSMA replaced NAFTA.
- 30** Scott Sinclair, "Toxic legacy: Énergie Saguenay, climate action and investment arbitration," *The Monitor*, December 14, 2023: <https://monitormag.ca/reports/toxic-legacy/>.
- 31** Kyla Tienhaara, Rachel Thrasher, B. Alexander Simmons & Kevin P. Gallagher, "Investor-state dispute settlement: obstructing a just energy transition," *Climate Policy*, Vol. 23, No. 9, December 5, 2022, pp. 1197–1212: <https://www.tandfonline.com/doi/full/10.1080/14693062.2022.2153102>.
- 32** Lisa Bohmer, "Canadian gold and silver mining companies file CPTPP claim against Mexico," *Investment Arbitration Reporter*, July 17, 2024: <https://www.iareporter.com/articles/canadian-gold-and-silver-mining-companies-file-cptpp-claim-against-mexico/>.
- 33** Gavin Fridell, "US Republicans are looking to implement a carbon border tax—what does that mean?," *The Monitor*, December 21, 2023: <https://monitormag.ca/articles/us-republicans-are-looking-to-implement-a-carbon-border-tax-what-does-that-mean/>.
- 34** AFP News, "WTO to Examine China Complaint Over US Electric Vehicle Subsidies," *Barron's*, September 23, 2024: <https://www.barrons.com/news/wto-to-examine-china-complaint-over-us-electric-vehicle-subsidies-91eaa825> <https://www.bnnbloomberg.ca/china-files-wto-complaint-over-us-electric-vehicle-subsidies-1.2051774>.

- 35** Global Wind Energy Council and Boston Consulting Group (2023), Mission Critical: Building the global wind energy supply chain for a 1.5°C world, p. 76, <https://gwec.net/supplychainreport2023/>.
- 36** Trade Justice Education Fund and the Sierra Club, "FAQ: Climate Peace Clause," not dated: <https://tradejusticefund.org/wp-content/uploads/FAQ-Climate-Peace-Clause-Final.-1-1.pdf>.
- 37** World Trade Law, "USMCA Environment Meeting 06/17," 2021, <https://www.worldtradelaw.net/document.php?id=usmca/USMCAEnvironmentCommitteeTranscript-June2021.pdf>.
- 38** Ross E. Mitchell, "Environmental Actions of Citizens: Evaluating the Submission Process of the Commission for Environmental Cooperation of NAFTA," The Journal of Environment & Development, Vol 15, No. 3, September 2006, p. 309, <https://doi.org/10.1177/1070496506291152>.
- 39** Commission for Environmental Cooperation, Trilateral workshop for the creation of a Communities for Environmental Justice Network, Executive Summary, September 23, 2024, <http://www.cec.org/wp-content/uploads/Executive-Summary-Trilateral-Workshop-CEJN.pdf>.
- 40** CEC, Submission on Enforcement Matters: What Have We Learned? A Retrospective Review of Performance, 2023, p. ix, <http://www.cec.org/files/documents/publications/sem-long-term-impact-assessment-en.pdf>.

This report is available free of charge at www.policyalternatives.ca. The Canadian Centre for Policy Alternatives (CCPA) is an independent policy research organization. This report has been subjected to peer review and meets the research standards of the centre. The opinions in this report, and any errors, are those of the author(s) and do not necessarily reflect the views of the CCPA or funders of the report.

We acknowledge the Anishinaabe Algonquin People whose traditional unceded, unsundered territory is where this report was produced.





CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
CENTRE CANADIEN
de POLITIQUES ALTERNATIVES