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With the Obama Administration's reversal of the campaign pledge that it would "not support NAFTA-style trade agreements," the U.S. Congress is set to consider three pending trade agreements negotiated by the Bush Administration and amended slightly since then. The agreements with South Korea, Colombia, and Panama have been the subject of heated debate, and votes are expected in September with the administration lobbying heavily for passage. Meanwhile, largely out of public view the administration has been actively negotiating what it promises will be "a trade agreement for the twenty-first century" – the TransPacific Partnership with a wide range of developed and developing Pacific Rim countries, including Peru and Chile. Negotiators meet in Chicago in September with the goal of finalizing a draft agreement by November of this year.

Not surprisingly, the U.S. administration and congressional supporters of the pending FTAs argue that these are not NAFTA-style agreements. They point to reforms to the original agreements in labor enforcement, environmental protection, and intellectual property rules. They further argue that the TPP, unencumbered by language negotiated by the previous administration, will represent a further break from the NAFTA mold.

Are these trade agreements a significant departure from NAFTA, which has been the template for U.S. trade agreements since its signing in 1993? Will the TPP correct some of that model's most problematic flaws? And what does this mean for Latin American countries involved in the negotiations?

Here we argue that the three FTAs and the TPP remain locked in the NAFTA model, an approach that fails to account for asymmetries among trading partners, restricts the policy space of developing country partners, elevates the rights of investors and multinational firms, and fails to ensure the livelihoods and rights of working people. We base our analysis on a detailed study of NAFTA by a task force of experts who assessed eight key areas - services, manufacturing, agriculture, investment, intellectual property, environment, labor, and migration. Based on a close examination of the North American experience under NAFTA, the Task Force outlined the reforms that could make NAFTA and future trade agreements compatible with the goal of promoting just and sustainable long-term development for all partners.

The Task Force's report, recently released for the first time in Spanish under the title, "El Futuro de la Política de Comercio en América del Norte: Lecciones del TLCAN," called for more substantive reforms than we see included in the pending FTAs.[1] Thus far, the U.S. positions in TPP negotiations represent steps backward rather than forward toward a trade agreement for the twenty-first century.

Lessons from NAFTA

Mexico was once a poster child for the benefits of free trade and neoliberal policies. No longer. Sluggish economic growth since NAFTA took effect in 1994, and even more sluggish job creation, undermined the claims that opening one's borders to foreign goods, services, and capital would automatically lead to broad-based economic development. Meanwhile, many Canadian and U.S. civil society groups came to see the agreement as granting undue rights to investors and exporters at the expense of workers, farmers, and domestic enterprises. NAFTA was also seen as sacrificing labor rights and environmental protections.[2]

NAFTA became a hot-button issue in the 2008 presidential campaign, and candidate Barack Obama was unequivocal in his position: "I voted against CAFTA, never supported NAFTA, and will not support NAFTA-style trade agreements in the future. NAFTA's shortcomings were evident when signed and we must now amend the agreement to fix them. While NAFTA gave broad rights to investors, it paid only lip service to the rights of labor and the importance of environmental protection."[3]

The Obama Administration has since abandoned its promise to fix NAFTA. The administration has amended three Bush-era trade agreements, with Korea, Colombia and Panama, but these reforms fall short of the promise to bury NAFTA-style trade agreements. Most do little more than incorporate limited reforms in labor, environmental, and intellectual property provisions negotiated in May 2007 between the Bush Administration and the newly elected Democratic majority and since incorporated into the U.S.-Peru agreement.

1 To download the English or Spanish editions of "The Future of North American Trade Policy: Lessons from NAFTA," see: http://www.ase.tufts.edu/gdae/policy_research/pardee.html. Task Force members included: Enrique Dussel Peters, Kevin P. Gallagher, Rodolfo García Zamora, Kenneth Shadlen, Robert Stumberg, Gus Van Harten, Christian Weller, and Timothy A. Wise.

2 For a comprehensive review of NAFTA's impacts on Mexico, see Zepeda, Wise, and Gallagher, "Rethinking Trade Policy for Development: Lessons from Mexico Under NAFTA," Carnegie Endowment for International Peace, 2009: http://www.ase.tufts.edu/gdae/policy_research/Carnegie.html

3 Ohio Conference on Fair Trade, February 28, 2008, http://www.citizenstrade.org/pdf/OCFT_%20PresPrimaryTradeQuestionnaire_Obama_022008.pdf

The so-called "May 10 agreement" called for the inclusion in pending and future trade agreements of:

- Labor: recognition by all parties of the International Labor Organization's core labor standards and the establishment of enforcement mechanisms more likely to ensure compliance, backed by the dispute resolution process in the agreement.
- Environment: recognition by all parties of a set of key international environmental agreements as well as the enforcement mechanisms to ensure compliance with those and with existing environmental laws.
- Intellectual Property: relaxation of NAFTA's strict patent regime to allow the entry of generic medicines, in addition to other reforms.
- Investment: Clarification of the controversial investor-state dispute provisions to ensure that regulations with "bona fide" public-welfare objectives could not be considered "expropriations" subject to investor claims, and that foreign investors in the United States are not granted greater rights than U.S. investors have under U.S. law.

Toward a Twenty-first Century Trade Agreement

The Task Force on North American Trade Policy concluded in its assessment of NAFTA that these were all welcome reforms, but they did not go far enough. The Task Force offered two broad recommendations for reforming the NAFTA model. These address flaws that remain even with subsequent U.S. trade policy changes.

First, trade agreements must address the asymmetries among trading partners and provide well-funded institutions to support weaker partners. NAFTA established some important institutions, but they have received neither the mandate nor the funding to be effective in assisting Mexico in becoming a more equal economic partner. As a result, gaps between Mexico and its northern trading partners have grown rather than narrowed. This further accentuates the tensions that come with such asymmetries, particularly when the flows of goods, services, and capital are liberalized but the flow of labor is not. And it results in economic dis-integration, as migratory pressures weaken the commitment to integration and as competitive pressures from other trading nations or blocs undercut the economic benefits of closer ties. All trading partners will benefit, and integration will be enhanced, if the less developed partners begin to catch up to their more developed counterparts.

Second, the Task Force concluded that a trade agreement is no substitute for a coherent national development strategy. Developing countries should learn from Mexico's experience that increasing trade and foreign investment will not alone generate dynamic economic development. Trade can contribute to dynamic and inclusive growth, but only if complementary policies are in place. For trading partners to enact such policies, trade agreements must grant the policy space to allow governments – particularly developing country governments – to play an active role in shaping economic growth, ensuring inclusive development, and protecting the environment. They must be permitted to address the market failures that are often exacerbated by liberalized trade. Trade agreements must allow governments to pursue policies that increase both the quality and quantity of employment.

Task Force members offered a range of detailed recommendations to the U.S. template for trade agreements (see text box). They provide a valuable set of standards for evaluating U.S. trade policies and agreements since President Obama took office.

Toward a Twenty-First Century Trade Agreement
Recommendations from the Task Force on North American Trade Policy

1. Reforms to U.S. trade policy must go deeper than the May 10, 2007, agreement. While valuable, they do not address the most important flaws in the NAFTA template.
2. Trade agreements must address the asymmetries among trading partners and provide well-funded institutions to support weaker partners.
3. A trade agreement is no substitute for a coherent national development strategy. Increasing trade and foreign investment will not generate dynamic development without complementary policies.

Recommendations for reforms in key areas:

- **Services** - Provisions for cross-border trade in services must not undermine the efforts of national, state, and local governments to regulate in the public interest. This is particularly important now in relation to new efforts to address energy and climate change.

- **Manufacturing** – If integration is the goal, there is a need for regional funding to develop strategic industries, and governments must be permitted to take measures to ensure that future expansion of manufacturing goes beyond "enclave development" and builds genuine links to the economy.

- **Agriculture** - Reforms must address continued asymmetries in agricultural development by borrowing concepts from other trade negotiations: "special and differentiated treatment" for developing country partners; "special products" designations for key food crops; "special safeguard mechanisms" to protect against import surges; a regional investment fund for productivity-enhancing projects in developing countries.

- **Investment** – The investor-state provision should be eliminated. Governments must retain the right to enact prudential regulations of capital flows to limit contagion from "hot money." And governments must be permitted to impose performance requirements on foreign investment to ensure that it stimulates technology transfer and domestic development.

- **Intellectual Property** – The May 10 reforms are important, but so are measures to limit the granting of second-use patents and to allow parallel importing of less expensive patented drugs from a third country. The IP regime should reflect a country's level of development and serve to stimulate, not restrict, domestic innovation.

- **Environment** – Adding enforcement measures is an important step, but trade agreements since NAFTA have taken a step backward by eliminating some of the institutions created to monitor and promote environmental stewardship. To promote sustainable development, reforms are also needed to investment rules (to prevent regulatory chill), IP rules (to promote green technology transfer), and services language (for regulation in the public interest).

- **Labor** – Improved enforcement of agreed upon labor standards is necessary but not sufficient to protect labor rights and promote employment and quality jobs. Agreements should set up and fund strong labor commissions to develop and enforce high standards.

- **Migration** – Short of liberalizing the flow of labor across borders, those borders should not be militarized and migration criminalized. Agreements must address asymmetries and make employment-generation a top priority, in part through a well-funded regional development bank. Migrant labor and human rights must be guaranteed.

Source: "The Future of North American Trade Policy: Lessons from NAFTA," Pardee Center Task Force Report #1, Pardee Center, Boston University, 2009: http://www.ase.tufts.edu/gdae/policy_research/pardee.html

Assessing U.S. Trade Policy Under Obama

How do recent U.S. trade policy reforms measure up? Poorly. Recognition of key labor and environmental accords and enhanced enforcement mechanisms improve on the NAFTA template, but there remains a strong economic impetus for a "race to the bottom" in labor and environmental performance. An exception for key generic medicines improves the intellectual property regime, but it does little to recognize the asymmetries in development among trading partners and the need for IP regimes that foster domestic innovation. In any case, the May 10 IP reforms were not included in the Korea agreement and seem to have been dropped from the administration's new post-NAFTA template.

The clarifications on investor-state provisions are welcome, but they fall short of the recommendation to abandon such investor protections altogether. They do not prevent U.S. firms from suing foreign governments over environmental measures. Nor do such reforms address the need to recognize the legitimate development goals countries have in placing conditions on foreign investment to ensure it fosters domestic development. They also leave in place dangerous restrictions on the actions of governments to curb capital flows in times of financial crisis, measures that have proven critical for some developing countries, including Korea and Colombia, during the recent economic crisis.

Some have argued that U.S. negotiators have gone beyond the May 10 agreement in reforming the three pending FTAs. Indeed, the final agreements contain additional provisions, but they hardly break the NAFTA mold. The Colombia agreement is, of course, the most controversial given the country's abysmal track record in guaranteeing basic labor rights. The Obama Administration negotiated a "Labor Action Plan" with Colombian officials, with the intention of ensuring progress. The plan has been widely rejected as too weak by critics, who point to Colombia's continued high murder rate for trade unionists. According to international organizations, there were 49 union member deaths in 2010, nearly 3,000 since 1986[4], and several union activists have been assassinated since the Labor Action Plan was announced.

The Panama agreement went beyond the May 10 agreement in trying to address fears that Panama's longstanding role as a tax haven for foreign companies and individuals. The Obama Administration signed a long-sought "tax information exchange agreement (TIEA)" with Panama, which is considered an important first step in overcoming the country's banking secrecy laws. Critics claim this does not go far enough. In any case, it hardly addresses the underlying issues with the liberalization of foreign investment under the agreement.

The Korea agreement goes the furthest in adding provisions to address specific concerns, but these do not reform the NAFTA template. U.S. negotiators granted more flexibility to Korea on the prudential use of capital regulations, though some potentially useful measures would still be banned. And the administration won changes to the original schedule and terms for liberalization in the auto and beef sectors, though this in no way changes the basic framework of liberalization. One notable change from the NAFTA template, which has gone largely unremarked in the United States, is Korea's exclusion of rice from the agreement based on the crop's key role in domestic food security and rural livelihoods. Mexico did not exclude maize from NAFTA. Providing greater allowance for such exclusions, based on legitimate development or food security concerns, would be consistent with the recommendations of the Task Force, but there is no indication U.S. negotiators are prepared to offer such allowances unless pressed by a strong trading partner such as Korea.

On balance, it is difficult to argue that these modifications to the three pending FTAs substantially changed the NAFTA-based framework for U.S. trade agreements. The Obama Administration has claimed that there was only so much it could do with these already-negotiated Bush-era agreements, and that the TPP would be his signature trade agreement for the twenty-first century. There is little indication that U.S. proposals for the TPP offer significant advances over the NAFTA model, and there are areas in which U.S. proposals are weaker.

Back to the Future: The TransPacific Partnership

From an economic perspective, the TPP would be the largest U.S. trade agreement since NAFTA, since it involves not only small or developing countries – Chile, Peru, Vietnam, Malaysia, Brunei, Singapore – but also three industrialized countries – United States, Australia, and New Zealand. But while some argue that this makes the TPP "the single most important U.S. trade initiative,"[5] others point out that the economic impact of the TPP, based on its current participants, will be quite limited because many of the participating countries already have bilateral trade agreements with TPP counterparts.

This is particularly the case for the two current Latin American participants, Peru and Chile. In fact, as a recent CEPAL paper argued, not only is there little to gain, there may be much to lose if the United States insists on reforming existing bilateral trade agreements to make them consistent with current U.S. negotiating positions, which include May 10 issues not included in the U.S.-Chile agreement.[6] In fact, the TPP gains in economic significance only if new and important regional economies –Japan, Korea, Indonesia, and most notably China – join later, a prospect that is by no means likely.

4 International Trade Union Confederation, "Worldwide Survey: Repression of union rights and economic freedoms across the globe", June 2011: http://www.ituc-csi.org/worldwide-survey-repression-of.html.

5 See Barfield, Claude, "The Trans-Pacific Partnership: A Model for Twenty-First-Century Trade Agreements?" *International Economic Outlook No. 2, American Enterprise Institute, June 2011:* http://www.aei.org/docLib/IEO-2011-02-g.pdf for a detailed analysis of the progress in negotiations.

6 See Herreros, Sebastián, "The Trans-Pacific Strategic Economic Partnership Agreement: A Latin American Perspective," ECLAC Serie Comercio Internacional No. 106, United Nations, March 2011: http://www.eclac.cl/comercio/publicaciones/xml/6/42966/Transpacific_strategic_economic_partnership_Latin_American_serie_106.pdf.

Is the United States pushing a more progressive, development-friendly agenda in TPP negotiations? U.S. Secretary of State Hilary Clinton recently cited the U.S.-Korea FTA as "a model agreement," and touted the TPP as setting "a new high standard for multilateral free trade," one that could achieve "sustainable, inclusive growth." Clinton alluded to the May 10 protections on labor rights, the environment, and intellectual property. But the "twenty-first-century" U.S. proposals actually relate to supply chain management (customs reforms, trade facilitation, etc.) and so-called regulatory coherence. Presented under the framework of measures to encourage export activities by small and medium-sized businesses, these proposals aim not only to reduce conflicting regulatory measures but also to ensure "competitive neutrality" for private sector corporations with state-owned enterprises.[7] For countries like Vietnam and Malaysia (not to mention China), which maintain strong – and successful – developmental states, such measures would hardly be a step forward.

In fact, the U.S. position in TPP negotiations seems to reflect as many steps backward as forward. For example:

- U.S. proposals seem to backtrack from the May 10 commitment to relaxed IP measures to allow broader access to generic medicines, just as the U.S.-Korea agreement removed this provision. (In fact, *Inside U.S. Trade quoted one unnamed U.S. trade official saying that "2007 was 2007" and "2011 is 2011."*[8])

- Even though the U.S.-Australia FTA does not include the investor-state investment provision, and the Australian government has indicated strongly that it will not consider such a provision for the TPP, the United States is still pushing for the controversial measure.

- U.S. trade negotiators have largely rejected recommendations on investment from some of the members of President Obama's own State Department panel named to review the U.S. language. This leaves the investment proposal at odds with the emerging international consensus on the prudential use of capital regulations to reduce the risks from capital flows in a financial crisis.[9]

At this point, U.S. proposals for the TPP hardly break from the NAFTA mold, and many weaken or eliminate the few important advances we've seen since NAFTA in U.S. trade proposals. Latin American participants stand to gain very little in the way of market access, and they stand to lose some policy space if the U.S. succeeds in its proposals to reform existing bilateral agreements. The Task Force on North American Trade Policy offers useful yardsticks to gauge the extent to which a trade agreement will promote sustainable and equitable development for all trading partners. The current U.S. approach does not measure up.

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7 Clinton, Hilary, "Remarks on Principles for Prosperity in the Asia-Pacific," Hong Kong, July 25, 2011: http://www.state.gov/secretary/rm/2011/07/169012.htm
8 *Inside U.S. Trade, May 27.*
9 See "Reforming U.S. Investment Policy", Global Development and Environment Institute, http://www.ase.tufts.edu/gdae/policy_research/ReformingUSInvestmentPolicy.html for more details, as well a sign-on letter from economists on eliminating such restrictions from U.S. trade proposals: http://www.ase.tufts.edu/gdae/policy_research/CapCtrlsLetter.html

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