❑ THE FTAA: A CHANCE TO SHAPE THE RULES OF INTERNATIONAL TRADE

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A successful Free Trade Area of the Americas (FTAA) should shape the rules of international trade and globalization by addressing labor standards, environmental protection, and other key issues, says Sander Levin, the ranking Democrat on the Ways and Means Trade Subcommittee of the U.S. House of Representatives.

In this article, Levin outlines some of the competing views that came into play during congressional debate over granting trade promotion authority (TPA) to President George Bush in August 2002. Levin says that the controversy over the ultimately successful TPA bill sponsored by Representative Bill Thomas and Senator Max Baucus resulted from differences in view over how to shape the rules of globalization. He says that trade talks should seek to maximize the benefits of globalization to the greatest number of people and to minimize its downsides.

Elsewhere in this journal, Congressman Philip Crane, Republican Chairman of the Ways and Means Trade Subcommittee, offers his perspective on the FTAA.

With the enactment of fast track/TPA, it is important to understand its implications for pending trade negotiations. This is especially true of bilateral and regional negotiations, including the FTAA, because the authority under fast track/TPA is likely to be tested more quickly in those arenas than in the Doha Round. As a result, bilateral and FTAA trade negotiations present both an opportunity and a necessity to confront the burgeoning issues of international trade.

THE NEED TO SHAPE TRADE AND GLOBALIZATION

Indeed, it is in the context of the burgeoning, sometimes explosive issues of international trade and globalization that the contentious and close votes within the U.S. Congress on fast track/TPA must be glimpsed.

The fast track/TPA debate was not primarily between "free traders" and "protectionists," but instead among groups that support more open and expanded trade. The Democrats who led the opposition to the Thomas/Baucus fast track bill were the same Democrats who had been pivotal in shaping major trade-expanding programs over the past few years, particularly as they relate to the needs of developing economies — the expanded Caribbean Basin Initiative (CBI), the expanded Andean Trade Preferences Act (ATPA), the African Growth and Opportunity Act (AGOA), the U.S.-Jordan free trade agreement, and permanent normal trade relations for China. Moreover, a strong majority of Democrats in the House of Representatives signaled their support for a fast track that addressed the issues in a responsible framework, as evidenced by the 161 Democrats who supported the alternative Rangel-Levin-Matsui-McDermott fast track bill.

Strong bipartisan majorities support expanded trade, including through the Free Trade Area of the Americas effort. The debate increasingly is about whether and how to shape the rules of international trade and globalization.

There has been a dramatic increase both in the volume and value of trade. The number of countries participating meaningfully in the world trading system has mushroomed, going from 23 in 1947 to 145 today. And many of the most significant players are developing countries that now trade in automobiles, electronics, and information technologies, and increasingly in service industries.

Very significantly, trade is also different in its policy dimensions. Trade negotiations are not only about tariffs; we are now in an era in which "trade policy" affects the full range of policies, laws, and regulations that used to be considered primarily "domestic policy" — including antitrust law, intellectual property rights, telecommunications and environmental regulation, labor standards, insurance regulation, and food safety laws.

Indeed, the FTAA negotiations — covering countries as different as the United States, Brazil, Honduras, and Antigua and Barbuda, and with negotiating groups touching on issues as diverse as competition, intellectual

property, and regulation of services — provide a perfect illustration of the above-noted phenomena.

The fast track/TPA debate centered on competing visions of how to respond to these new phenomena, not on whether we can or should turn back the clock on globalization. On the one hand, some in Congress believe that expanded international trade will guarantee economic and social development and that the theoretical efficient market will resolve any problems that emerge. Therefore, in their view, there is little need to shape the rules of trade and globalization.

On the other hand, many of us in Congress believe that globalization — here to stay — needs to be shaped to maximize its benefits and minimize its downsides. For these members of Congress, the fast track/TPA bill that became law in August is deficient in a number of fundamental ways. Some of the key issues elaborated upon below must be addressed in trade negotiations if future agreements are to enjoy broad congressional support.

LABOR MARKET STANDARDS

History is replete with examples demonstrating that as economic integration accelerates, it requires basic floors for competition — including intellectual property rights, product regulations, investment rules, and labor market standards.

International trade rules already have absorbed the first three of these areas — for example, the World Trade Organization's (WTO) Agreements on Trade-Related Aspects of Intellectual Property Rights, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, Trade in Services, and Trade-Related Investment Measures. And the FTAA envisions rules in these areas, as well. The treatment of the labor standards issue, to date, in international trade agreements stands in sharp contrast, however. There is no sound basis for this difference. As with the other issues, labor market standards are directly relevant to international trade and investment. In fact, there are numerous examples — including many in and between Latin American countries, for instance, in the banana and textiles industries — that demonstrate the important impact that labor market standards have on trade and investment flows.

Since the labor market issue has received so much attention, it is important to understand very clearly what many in the House and Senate have been seeking. Despite misstatements in the media and by opponents, the Rangel-Levin bill did not seek to have other countries adopt U.S. labor standards or a minimum wage. Rather, the Rangel-Levin bill called for provisions in free trade agreements — consistent with the high level of economic integration inherent in such agreements — requiring countries to adopt and enforce the five core, internationally recognized labor standards: the rights to associate and to bargain collectively, and prohibitions on child labor, discrimination, and forced labor. These standards have been accepted by most countries in the world as part of their membership in the International Labor Organization (ILO).

Some have argued that labor market provisions in trade agreements would be used for protectionist purposes, but this argument is contradicted by more than two decades of experience. The U.S. trade preferences programs like the Generalized System of Preferences (GSP), the ATPA, the CBI, and AGOA, as well as U.S. trade agreements with Cambodia and Jordan, include provisions dealing with labor market issues. Experience under these provisions demonstrates that they have not been used to shut down trade, but instead have been developed in the context of expanding trade with these countries and have been used to help the countries implement and improve their respect for core labor standards.

Some have also argued that developing countries would be hurt by trade rules relating to core labor standards. But it is difficult to understand how the abuse of core, internationally recognized labor standards could be viewed as a legitimate source of comparative advantage. In fact, developing countries have the most to gain from establishing a basic floor in this area. An article in the *New York Times* in April of 2001 discussing the state of labor standards in Central America quoted the president of a Central American country regarding the difficulty of enforcing labor standards in his country: "The difficulty in this region is that there is labor that is more competitively priced" nearby. In other words, if one country in a region enforces core labor standards, trade and investment will flow to neighboring countries that do not. If there were a common, enforceable floor of core labor standards, however, then workers in all countries could benefit.

Addressing the labor market standards issue in international trade agreements will help countries develop. When workers can organize and bargain

collectively, they will be able to press for decent working conditions and for better wages; they will be able to garner a larger share of the fruits of globalization. This will give incentives for workers to invest more in their own skills and in the success of the companies for which they work. It will help build a middle class and will help the process of development.

The importance of addressing the impact of core labor standards on trade and competition is critical, and Congress should not and, I believe, will not allow it to be finessed.

ENVIRONMENTAL REGULATION

The trade and environment issue is both similar to and different from the trade and labor market standards issue. It is similar in that, to date, trade agreements have largely ignored the undeniable impact that environmental regulations may have on trade and investment, and vice versa. It is different, however, in that there is not a discrete, clearly defined set of core, internationally recognized environmental standards (like the five core ILO labor standards) that can be universally applied. Instead, there are evolving norms, often specific to a given environmental threat and sometimes reflected in multilateral environmental agreements.

For now, two basic principles are central: whether trade agreements should allow countries to gain trade or investment advantages by failing to enforce their own environmental laws, and whether we should ensure that international trade and investment obligations do not undermine a country's legitimate efforts to protect the domestic or global environment, including by enforcing multilateral environmental agreements. It is clear to many in Congress that the answer to the first question is "no," and the answer to the second question is "yes." And any future trade agreement will need to reflect these answers in a meaningful way.

INVESTMENT AGREEMENTS

Many of those in Congress who ultimately voted against the enacted fast track/TPA proposal did so at least in part because of concerns related to investment agreements like that found in Chapter 11 of the North American Free Trade Agreement (NAFTA), which sets out the NAFTA countries' obligations to each other's investors and allows investors who feel a NAFTA country has violated one of those obligations to bring a dispute directly against the country in binding arbitration. Most of those concerned about NAFTA's Chapter 11 and other investment agreements still believe strongly that the existing protections for investors included in these agreements are vitally important, and in fact benefit developing countries by helping them attract investment. Many believe, however, that the investment standards have been interpreted in overly broad ways by arbitration panels. If not corrected through careful clarifications, these overly broad interpretations could threaten legitimate domestic regulatory efforts. Additionally, many in Congress believe that investor-state arbitration must be opened to greater transparency.

This is an area where collaboration between FTAA countries and interested members of Congress throughout the negotiations could lead to lasting solutions.

TRADE REMEDY LAWS

The antidumping, countervailing duty, and safeguards rules (collectively, the "trade remedies") are fundamental pillars of the international trading system. They have been included in the GATT/WTO since the very inception of the system in 1947 and are available to all members of the WTO.

Strong majorities in Congress — bicameral and bipartisan — are not willing to accept a trade agreement that would weaken the trade remedies. The U.S. fair trade (antidumping and countervailing duty) laws ensure that U.S. firms, farmers, and workers are not injured by unfair government action and market situations abroad such as subsidies, closed markets, or toleration of anticompetitive activities. The safeguard law provides a temporary respite so that U.S. industries seriously injured by imports can restructure. These rules are necessary to ensure continued U.S. support for trade-liberalizing efforts.

It is important that U.S. negotiation partners understand this fact. Congress will not approve a trade agreement that weakens the U.S. trade remedy laws.

AN IMPORTANT OPPORTUNITY

Members of Congress look forward to working with the FTAA countries to address each of these issues. Realistically, an active role flows for those of us who believe in the necessity of shaping the rules of trade and confronting the tough issues. As in the investment area,

there are many areas in which members of Congress and FTAA countries could work together to improve the ultimate agreement.

It is vital to remember that in many areas not discussed earlier — such as agriculture and textiles — major steps forward will need a broader coalition in Congress than the one that passed the fast track/TPA bill, and will particularly need active support from internationalist Democrats, many of whom opposed the shortcomings in the enacted bill.

In the end, we would hope the FTAA could be an important opportunity to restore a strong bipartisan coalition essential for sound trade policy, bringing about a mutually beneficial hemispheric free trade agreement that promotes stability and development and brings long-term benefits to the largest possible group of people in the hemisphere. ❑

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