

Letter to TEPAC Members Regarding NAFTA

Fran Smith

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To TEPAC members:

As I briefly indicated, I would appreciate it if the TEPAC letter reflects the fact that it is a majority view of the members. My views here reflect the views expressed in CEI's dissent on the TEPAC report on the Trans-Pacific Partnership Agreement.

My dissent from the TEPAC majority letter on NAFTA stems from the excessive reliance on environmental mandates as a direct means to advance various environmental objectives. As noted below, trade can create wealth, and, in that sense, the most effective means of advancing environmental objectives around the world is to move toward free trade. Trade agreements should focus on this positive impact, not seek to use trade policy as a tool to force changes that might – or might not – actually advance some environmental objective (and might threaten other development/poverty reduction goals). Environmental goals should be pursued directly – not via restrictions to trade expansion.

In relation to NAFTA and environmental goals, CEI would emphasize the importance of recognizing that higher environmental standards are best achieved through better economic and institutional conditions, and that trade and open economic systems can lead to improved economic performance, help to reduce poverty, and increase living standards for all participants. As people achieve greater wealth and more economic independence, more resources can be – and usually are -- freed up to protect the environment. This is called the environmental Kuznets curve, based after Noble laureate Simon Kuznets. When incomes are low, there can be deterioration in environmental amenities, as people may not focus on environmental quality but concentrate on economic growth. However, as people see their incomes rise, the demand for enhanced environmental quality generally increases.^[1] (See Yandle, Vijayaraghavan, and Bhattarai 2002). - See more at: <http://www.perc.org/articles/property-rights-path-sustainable-development#sthash.rev5AMOG.dpuf>

Besides the exchange of products and services, economic and social ideas can also flourish through increased trade.

To facilitate these critical goals, trade agreements should focus on their main purpose and not be overloaded with a range of issues that cannot (and should not) be solved by trade negotiators. Many of those issues might have an economic background, such as investment rules and intellectual property rights, while others might relate to other concerns.

Those issues should be discussed and negotiated in their appropriate venues, and international and bilateral agreements relating to those issues are better forged through expert negotiations focusing on those issues.

Legal ownership rights and legal barriers to establishing businesses should be a focus of environmental cooperation and capacity-building to reach environmental goals. Institutions--especially property rights and the rule of law--are key foundations for environmental improvements. In helping to build the Parties' capacity to improve the environment, strengthening these fundamentals should be encouraged.

Thus, CEI does not concur with the majority's view that increased trade requires greater regulatory oversight of environmental issues. Trade may indeed increase the use of natural resources, such as wild fish and trees for lumber, but, in many cases, degradation of those resources is not caused by greater trade but by the lack of institutional arrangements, such as property rights, that would deal with those resources in a more sustainable way.

Environmental objectives

In contrast to the majority view and its endorsement of the need for more regulatory oversight, CEI would point to the role of institutions--especially property rights and the rule of law—that are key foundations for environmental improvements. In helping to build countries' capacity to improve the environment, strengthening these fundamentals should be encouraged. Environmental goals should not be pursued via restrictions to trade expansion.

As Peruvian development economist Hernando De Soto has pointed out and demonstrated over the past decade, the rule of law and clearly defined private property rights offer the greatest hope for improving the lot of the world's poor by empowering them to use the capital already available to them to generate wealth and prosperity. These institutions also are essential for sustainable environmental improvements. Once a resource becomes a legally recognized asset, people will tap into its value to both protect and enhance that resource, whether a farm or a forest.

Numerous other studies have made similar findings. In a direct relationship to the environment, Madhusudan Bhattarai (2000) found that civil and political liberties, the rule of law, the quality and corruption levels of government, and the security of property rights were important in explaining deforestation rates in sixty-six countries across Latin America, Asia, and Africa. We should build on those findings, which have the potential to significantly improve the policy recommendations of our committees.

Trade and Biodiversity

The majority seems confident that more forceful pressures (via trade sanctions) are suitable means of increasing the effectiveness of species protection. As I've noted on many occasions, trade policy can increase the wealth of developing nations which tends to increase *national* support for such protection. To encourage dominant partners to exert their greater economic power to impose such restraints on such nations may well threaten – not protect – species.

The recommendations also fail to recognize that property rights and technological advances to produce higher yields and greater resource efficiency in agriculture are critical components in

building a more sustainable future. Low economic growth and subsistence agriculture in developing countries is the greatest threat to fragile ecosystems. Stagnant economic growth and fiscal problems can exacerbate environmental problems.

While current policy does indeed view trade restrictions as critical to ensuring the survival of an array of flora and fauna around the world, some nations have experimented with expanding private ownership (to give local value to such species) which relies on foreign purchases. I do not believe we should foreclose such opportunities and, thus, do not support the prohibition recommendation.

Rather than seeking to block trade in all endangered flora and fauna, we should promote meaningful property rights in the developing world and encourage sustainable trade in these resources.

Transition to low emission economy/Climate change

CEI dissents from the majority view that climate change should be addressed in NAFTA. The issue of climate change is extremely complex and not easily dealt with through policies that may have unintended consequences on those countries least able to deal with those.

Given the disparate consequences of climate change – and the policies proposed to address it – and the great differences in Congress on this topic, CEI cannot concur with the recommendations. CEI is also concerned that the TEPAC majority's view that more resources be devoted to such areas as development of renewable energy sources, sustainable urban infrastructure, and emissions monitoring among others could be counter-productive and mirror some of the problems arising from programs such as ethanol.

Fisheries

CEI agrees with the TEPAC majority report that subsidies to fishing fleets and their infrastructure has contributed significantly to over-fishing the oceans. However, CEI is disappointed that the majority report, in its discussion of the depletion of marine resources, recommends “command and control” approaches to fisheries management, rather than the exploration of property rights in fisheries, which approach has already shown its value. Again, economic aid is less important than the steps that only the partner nations can take – specifically extending to fisheries the property rights protections that have done so much to protect fisheries in New Zealand and elsewhere. Moreover, the majority view that tightening import restrictions on imports of species viewed as threatened contradicts the whole goal of trade treaties. As researcher Donald Leal has noted:

A growing body of research reveals that fisheries that have adopted rights-based management strategies achieve sustainable catches and profits. As with other natural resources, the ideal approach is to establish well-defined, enforceable, and transferable property rights in the resource itself. But this approach has been slow to develop because, unlike land, most marine species are mobile and access is difficult to monitor. For now, specifying rights in either the harvest of fish or in the area of harvest has proven more feasible. . . . Economists have documented the economic benefits from implementing these approaches, such as higher fishing incomes, better product quality, and lower fishing costs. Using a global data base, scientists reported in *Science* in 2008 that such approaches have the wherewithal to halt and even reverse the global trend in stock depletion. Once these approaches are

adopted, the next phase of property rights evolution in fisheries may well entail the assumption of management rights and duties by fishers themselves. This has been a historical feature of some community-oriented coastal fisheries, and it has now emerged in New Zealand in some ITQ fisheries. (PERC Report: Volume 28, No. 2, Summer 2010, Author: Donald Leal).

Investment Provisions

CEI would like to address a broader issue. We would point out that concerns about investments are better dealt with in a separate investment agreement--if countries wish to do so--but should not necessarily be part of a trade agreement.

Investment rules and challenges to domestic regulations should be considered, as far as possible, in the domestic legal systems of those countries. Countries that fail to adequately address the concerns of investors will likely face economic consequences in lower levels of foreign investments. While closer cooperation and facilitation between the Parties might help to bridge different concepts of investment and its protection, enforcement outside of the domestic legal system can pose significant problems and concerns relating to public acceptance, the rule of law, and national sovereignty.

Sincerely,
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