

A New Beginning on Trade?

By Katherine Hoyt

Senator Sherrod Brown (D-OH) and Michael Michaud (D-ME) have written a trade bill that, if passed, could begin the massive overhaul needed in our trade model. It was introduced on June 25 in the House of Representatives by Rep. Michaud. Many articles in the bill answer our concerns about the impact of DR-CAFTA on the poor majorities in Central America. There would still remain work to be done to tear down the current model and build a better one, but it's a serious beginning! The TRADE Act would apply to all future agreements but would also mandate a reopening of NAFTA, CAFTA and other trade agreements to put them into compliance with the act.

The Nicaragua Network recommends that you urge your Representative to support it!

Here's how the TRADE Act measures up to the Pledge for Trade Justice put out by the Stop CAFTA Coalition, of which the Nicaragua Network is a member:

The Pledge says: I will only support trade agreements that include:

1.) Democratic participation, accountability and transparency during trade negotiations;

Under the TRADE Act there would be no Fast Track procedures (up-down vote with no amendments) in the Congress. The Congress would have to be consulted before and during the negotiations of an agreement. Any trade agreement would have to be approved by a majority in both Houses of Congress before the President signs it, rather than after as presently.

2.) Provisions that work to protect the dignified lives of small farmers, indigenous communities, women and otherwise vulnerable populations;

With relation to farmers, the new bill says that any trade agreement must "protect the right of each country that is a party to the trade agreement to prevent dumping of agricultural commodities at below the cost of production." This gives countries the power to counteract the unfair competition of U.S.-subsidized agricultural products. U.S. corn sold below cost of production in Mexico led to the loss of one million or more small farms in that country. Pig farmers in Nicaragua say cheap, subsidized U.S. pork coming in under CAFTA is going to wipe them out.



Trade justice activists led by the Stop CAFTA Coalition protest in front of the Mayflower Hotel in Washington, DC, during the final negotiating session of DR-CAFTA in December 2003.

The TRADE Act says that any agreement must "protect the right of each country ... to encourage conservation through the use of best practices with respect to the management and production of crops [and] ensure fair treatment of agricultural workers in each country." This means that countries would be able to make their own decisions about sustainable agriculture and food sovereignty and not be forced to accept the entry of U.S. agribusinesses with their genetically modified seeds that require excessive use of water, fertilizer, herbicides and pesticides.

With relation to indigenous communities and their concerns about expropriation of their traditional knowledge, the bill would require that "any provisions relating to the patenting of traditional knowledge be consistent with the Convention on Biological Diversity, concluded at Rio de Janeiro June 5, 1992." This convention regulates access to genetic resources and traditional knowledge, including mandating prior informed consent of those holding the

resources or knowledge before they can be used by others and mandating the sharing of benefits of any use of traditional knowledge or biodiversity resources.

3.) Text in the body of the agreements guaranteeing that core labor and environmental standards are strengthened, as defined by international law;

The TRADE Act mandates that labor provisions be included in the core text of any trade agreement rather than in so-called “side agreements.” Each country party to an agreement would have to adopt, maintain and enforce as part of its domestic law the core labor standards included in the conventions of the International Labor Organization (ILO). This would mean that laws in most countries, including the U.S., would have to be strengthened in their protection of workers. Enforcement mechanisms for labor standards and penalties for violations of labor laws would have to be at least as effective as those that apply to the commercial provisions of the trade agreement.

Environmental provisions would also be required to be included in the core text of any trade agreement. Countries are prohibited from weakening or failing to enforce their domestic environmental protection measures to attract investment. The TRADE Act would allow each country to adopt and implement environmental measures to protect its environment and public health.

4.) Space for national governments to pursue development strategies that support sustainable, locally-determined economic, social and environmental priorities; and

5.) Provisions permitting debt cancellation and aid to be used in direct service to the poor to help close the gaps between and within rich and poor countries;

The TRADE Act would have each country establish a list of industry sectors, goods, or services that would come under government procurement provisions of a trade agreement. Only in those sectors would a country be required to give equal access to transnational corporations from the United States. The technical specifications or requirements for receiving a government contract could not undermine prevailing wage policies, sustainable harvest policies, renewable energy policies, human rights or labor rights.

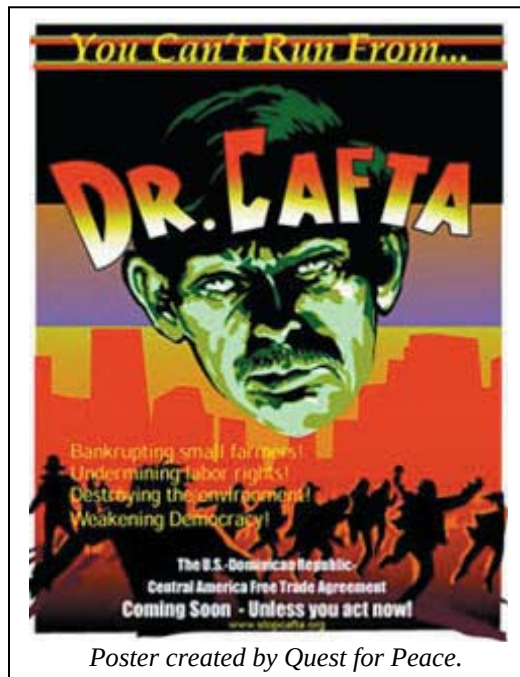
Any future trade agreement would have to ensure that access of the public to essential medicines and to technologies necessary to preventing climate change is not obstructed by any provision relating to the protection of intellectual property rights. Dispute resolutions will have to include the right to appeal, and procedures must be open to the public. Disputes related to environmental and labor rights, health and safety are required to be resolved in a timely manner.

A provision relating to health, safety, the environment, labor rights, worker or consumer health and safety, economic equity, or other issues would not be able to be challenged under the dispute resolution mechanism of a trade agreement “unless its primary purpose is to discriminate with respect to market access.” This provision restricts the ability of a corporation to sue a government when a law to protect, for example, the environment limits its access a nation’s natural resources.

6.) A framework that focuses finance and investment on productive, long-term development that ensures economic security and sustainable use of resources;

The TRADE Act states that any investment provisions in a trade agreement “must preserve the ability of each country ... to regulate foreign investment in a manner consistent with the needs and priorities of the country.” It also allows each country to “restrict speculative capital to reduce global financial instability.” This means that countries would be able to regulate the entrance and withdrawal of foreign funds in order to preserve national stability. It also means that countries could determine what areas of their economy should be prioritized for possible development and investment by foreign firms and which should be restricted to domestic investors.

The Act says that investment provisions should not be subject to investor-state dispute settlement provisions but rather government to government resolution. Under current trade agreements, individual corporations can sue governments when a permit is denied for mining based on environmental concerns, for example. Government to government dispute resolution would only allow governments to sue other governments on the behalf of corporations, thus drastically reducing the number of lawsuits. Governments would only be able to sue another when actions by that government destroys all value of a property, not when the value is merely diminished, as for



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example, by a new labor law. According to the TRADE Act, the term “investment” does not include the expectation of profit and therefore a company cannot sue because its expectations were not met, as is currently common.

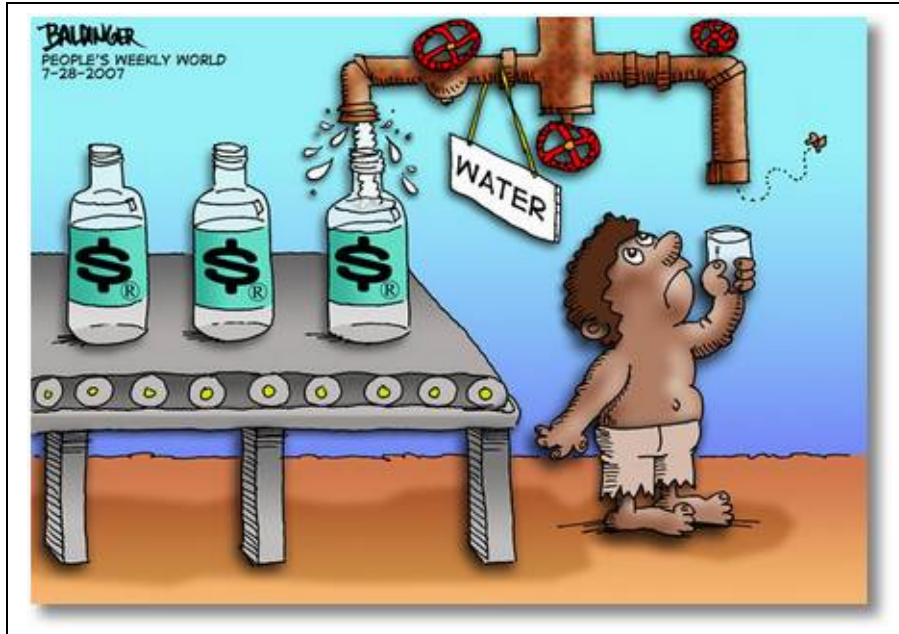
The TRADE Act provides that if a trade agreement contains technical assistance provisions, those provisions should “be designed to raise standards in developing countries by providing assistance that ensures respect for diversity of development paths.” All existing trade agreements have presumed that the only path to development is the neo-liberal path—privatizing public utilities, eliminating all trade barriers, prohibiting any measure that favors national production in agriculture or industry over foreign investment, etc.

The Act mandates that technical assistance measures “be designed to empower civil society and democratic governments to create sustainable, vibrant economies and respect basic rights.” While the Act does not say so in so many words, societies with empowered civil societies, democratic governments and vibrant, sustainable economies will be ones where transnational corporations are limited in their scope of action and local development solutions are

put in place that produce a good life for local people rather than profit for international stock holders.

7.) A guarantee that public services like health care, education and potable water will remain public and accessible to poor communities;

The TRADE Act preserves the right of governments to maintain essential public services and states that trade agreements cannot “require the privatization of public services in any country ... or the deregulation of a service” including social security, health, education, water, and others. It would require each country that is party to a



trade agreement to establish a list of services sectors to which they will apply the agreement. In services not on the list, governments would be able to regulate as they wish with no danger of retaliation by corporations. The TRADE Act would also mandate that trade agreements not limit programs that control costs of medicines and medical devices.

8.) International trade and investment systems that emphasize fundamental human rights, in order to eclipse violence and oppression.

The act establishes that human rights provisions should be included in the core text of any trade agreement and that each country party to an agreement “recognize the United Nations Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations.”

Article 25 of the UN Declaration says: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services....”

Article 26 states: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.”

In sum, the TRADE Act could result in significant changes to the current trade model, turning it away from a vehicle designed to benefit the elites in participating countries and toward a model that could, if governments negotiated in their citizens’ interests, bring wider benefits for whole societies.