7. Rethinking Labor Rights

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The promotion of greater labor rights by the United States can create a more level playing field and boost incomes while taking pressure off U.S. trade deficits. The United States for decades now has racked up large and growing trade deficits with the rest of the world, including Mexico, especially after passage of the North American Free Trade Agreement (NAFTA) in 1994. These total U.S. deficits—at or above 5 percent of gross domestic product since the middle of 2004—could contribute to much lower U.S. living standards in the future since the United States will eventually have to repay the debt it incurred to repay those deficits.

Trade between the United States and Mexico swelled under NAFTA, but contradictory to the predictions by NAFTA's proponents and standard trade theory, NAFTA did not produce remarkable wage gains in Mexico.[2]

The agreement also created imbalances among its parties. Before NAFTA went into effect, the United States enjoyed a small trade surplus with Mexico. In 1993, this trade surplus amounted to $1.7 billion. In 1994, the first year of NAFTA, the United States showed a smaller surplus of $1.3 billion, which quickly gave way to massive deficits. By 2007, the U.S. trade deficit with Mexico had soared to $75 billion. This is an erosion of 4,386.4 percent in nominal terms. In comparison, the U.S. trade deficit with China only deteriorated by 1,024.8 percent during the same period. The U.S. competitive position with Mexico clearly took a beating in the years since the NAFTA went into effect.

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Repaying the total accumulated debt for all the U.S. deficits—at the end of 2007, the United States owed $2.4 trillion more to foreigners than it held in foreign assets abroad—will become increasingly costly to U.S. living standards. Defaulting on this debt through higher inflation, which reduces the value of assets in the United States, or a rapidly falling currency, which debases the currency value of U.S. assets held by foreign investors, is unpalatable and would have serious adverse consequences for future U.S. economic growth. Because of these threats to future living standards, new public policy solutions are necessary to address these unsustainable deficits.

Labor rights were addressed in the agreement, but such rights were fairly weak, lacked strong enforcement mechanisms, and were not met with collateral efforts to address labor rights in North America. Repairing these weaknesses in NAFTA and other U.S. trade agreements would be good for our trading partners' income profile and help repair U.S. deficits.

I. THE OVERARCHING GOALS OF REFORM

An alternative approach to NAFTA's ineffective labor provisions is to promote the creation of a global middle class. Such a strategy is not simply for the benefit of our trading partners, but such a middle class can buy more high-end U.S. goods and services. An integral part of this virtuous circle strategy is the promotion of enforceable labor rights, including, but not limited to, negotiating them as part of trade agreements, such as NAFTA.

Better labor standards in Mexico can positively affect U.S. exports and U.S. imports. Better labor rights could increase demand for U.S. exports by boosting the incomes of Mexican workers. And, better labor standards reduce the cost advantage of production in Mexico since workers could no longer be paid so poorly. This effect should contribute to fewer U.S. imports from Mexico, assuming nothing else changes.

Labor reform in Mexico through the international relations between the United States and Mexico thus has three distinctive goals. First, public policy needs to improve the institutions that make up enforceable labor rights, such as labor law, courts, and independent trade unions, but also institutions that are more indirectly connected to labor rights, such as education. Second, policy makers should focus on raising the living standards of workers in Mexico relative to those in the United States. Third, to achieve increased economic stability in both countries, public policy needs to ensure that better worker rights in Mexico translate into more balanced U.S. trade.

II. LABOR RIGHTS IN U.S. FREE TRADE AGREEMENTS: THE NEED TO UPDATE NAFTA

Beginning with NAFTA, labor rights have since become an integral part of U.S. trade policy. NAFTA needs to be updated to include many of the improvements in more recent treaties, and expand upon those advances to fulfill the promise of higher living standards in all partner countries and to achieve more balanced trade between the trading partners, especially Mexico and the United States.

The integration of labor rights into trade agreements centers on the so-called core labor standards of the International Labor Organization (ILO) as a possible benchmark for labor protections. In June 1998, the ILO's members adopted the Declaration on Fundamental Principles and Rights at Work. The generally recognized core labor standards that appear in trade agreements of varying forms are derived from this declaration. Box 1 outlines the major labor rights that are found in various U.S. trade treaties that should be included in NAFTA and future trade agreements.

Box 1. Expansive Labor Rights for U.S. Trade Agreements

- Freedom of association and protection of the right to organize.
- The right to bargain collectively.
- The right to strike.
- Prohibition of forced labor.
- Labor protections for children and young persons.
- Minimum employment standards.
- Elimination of employment discrimination.
- Equal pay for women and men.
- Prevention of occupational injuries and illnesses.
- Compensation in cases of occupational injuries and illnesses.
- Protection of migrant workers.

Under NAFTA most of these rights cannot be enforced under the agreement since they are part of a separate side agreement on labor. The wording of the labor provisions in the U.S.-Jordan FTA was not significantly different from the labor standards included in NAFTA, but the inclusion of the labor provisions in the body of the U.S.-Jordan FTA left some of these provisions subject to dispute settlement procedures—an added enforcement layer to the labor standards in trade agreements.[3] As set forth in the FTA, dispute settlement procedures lead the parties involved to a Dispute Settlement Panel, which produces a non-binding report of its determinations. If the dispute remains unresolved 30 days after this report is presented, the affected party can take "any appropriate and commensurate measure," ostensibly including sanctions.[4]

Now that we have 15 years of perspective on NAFTA, the United States, Mexico, and Canada should reengage in dialogue about their experiences with the FTA, keeping a strong eye to addressing unresolved and new labor issues that could benefit all three countries. In particular, this conversation should include "strengthening the labor secretariats' capacity to monitor, adjudicate, and provide technical assistance in respect of labor standards enforcement."[5] Ideally, this dialogue could ultimately lead the countries to strengthen the Labor Commission that was created as part of a side agreement to NAFTA. The labor side agreement should be renegotiated to increase funding levels, strengthen its mandate, and increase the authority of the Labor Commission so that it can better resolve labor rights cases.[6]

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III. BEYOND NAFTA

In rethinking NAFTA, though, it is important to keep in mind a few additional issues. Rather than impose equivalence to U.S. law, which creates a number of practical problems, the United States "should support local, country-driven approaches" to developing institutions abroad that promote labor rights."[7] And, for real progress to be made, international agreements must contain concrete labor standards and a set of benchmarks to map progression over time. Past and current signatories of trade agreements with the United States are subject to a "soft obligation" to the "principles" underlying the internationally recognized core labor standards.[8] In this regard, international agreements must provide signatories with the tools to provide positive incentives for moving toward better labor standards, and negative incentives, including sanctions, when benchmarks are not met.[9]

This is a tall order for international engagement and unlikely to be accomplished with a single trade agreement, never mind a renegotiation of an existing one. Instead, the United States needs to broaden its engagement with Mexico and

Canada to invest in improved labor standards in Mexico through additional channels. Of particular relevance can be the training and skill development of those involved in the actual realization of labor rights on the ground: labor negotiators, labor-management mediators, and labor law judges. Much of this is already occurring through the cooperation of U.S. labor unions and parts of the U.S. government, such as the Federal Mediation and Conciliation Service (FMCS). Public policy thus should support ongoing efforts and help to increase such activities, where they have proven to be effective.

In a similar vein, the United States should help strengthen Mexico's social insurance programs and promote institution building within the country. Such actions would help protect and promote the livelihood of Mexican workers and their families and enable a more attractive environment for private investment.[10] This would also be a productive use of U.S. resources in that it would increase the potential for gain from a trade relationship with Mexico.

IV. THE IMPACT OF BETTER LABOR RIGHTS ON U.S. TRADE

The reforms discussed above would boost Mexican incomes and trim the U.S. trade deficit. The combination of all factors that result from better labor standards point toward lower U.S. trade deficits. Exports should increase because of higher standards of living abroad and imports should decline as overseas producers have to bear more of their production costs, even if part of the additional cost is offset by higher productivity levels. Economic theory and evidence suggest that labor standards can play a role in creating more balanced international trade and thus should be taken seriously as part of the overall international economic policy agenda.

But do these hypotheses hold in reality? An investigation of data on U.S. trade with a range of countries shows that U.S. trade would indeed become more balanced if the United States traded more with countries with strong labor rights and less with countries with poor worker rights.[11]

For one, the U.S. trade deficit has grown more slowly with countries that have stronger labor standards. Between 2000 and 2007,[12] the gap between U.S. exports and U.S. imports widened faster for countries with limited or no labor rights than for countries with some or strong labor rights.

The United States has also held smaller trade deficits with countries that have better labor rights. Specifically, on average U.S. exports amounted to 74.5

percent of U.S. imports in countries with strong or some labor rights in 2000—indicating a trade deficit—compared to an average ratio of 36.0 percent—and thus a larger trade deficit—for countries with limited or no labor protections.

Moreover, trade with less industrialized countries with weak or no worker protections has contributed substantially to the increase in the U.S. trade deficit from 2000 to 2007. If the United States had just traded with less industrialized economies that had some or strong worker rights during those years, the trade deficit in 2007 would have been $123 billion smaller than it actually was.

Furthermore, U.S. exports have tended to be greater when worker rights are stronger. In 2000, U.S. exports to countries with strong or some worker rights were 182.3 percent larger than U.S. exports to countries with limited or no worker rights. In 2007, the difference was 93.5 percent. The link between labor rights and U.S. exports remains robust in a multivariate analysis.[13]

Stronger labor rights have also been associated with fewer U.S. imports. U.S. imports grew faster from 2000 to 2007 for countries with limited or no labor rights than for countries with some or strong labor rights. The link between worker rights and U.S. imports, though, disappears in a multivariate analysis, suggesting that the descriptive analyses picked up a spurious correlation with another determining variable. Put differently, the primary benefit from the promotion of labor rights around the world, including Mexico, would arise from higher living standards abroad, including Mexico, and thus the potential for more U.S. exports.

Are these trends large enough to matter? A simple calculation shows that the U.S. trade deficit would have been $123 billion smaller than it was if the United States had traded only with countries with some or strong worker rights. Another way to answer this question is to estimate a regression-based simulation. This analysis shows that on average, real U.S. exports would have been roughly three times as large if incomes and relative export prices in countries with weak or no worker rights had been similar to incomes and relative export prices in countries with some or strong worker rights. At the same time, U.S. imports would have largely remained unchanged if incomes and relative import prices in countries with weak or no worker rights had become similar to incomes and relative import prices in countries with some or strong worker rights. No matter how the data are cut, the results are robust and indicate that U.S. trade deficits would have been smaller if the United States had engaged more in promoting worker rights. This follows primarily from higher living standards abroad that can contribute to more U.S. exports, while U.S. imports seem to be less impacted by better labor standards abroad.

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1 This paper draws heavily from Weller, C. and S. Zucconi (2008). *Labor Rights Can Be Good Trade Policy.* Washington, D.C.: Center for American Progress. It also draws on results published in Weller, C. (2009a). Could International Labor Rights Play a Role In U.S. Trade? *PERI Working Paper.* Amherst, MA: Political Economy Research Institute (PERI) at the University of Massachusetts, Amherst.

2 The discussion only focuses on the relation between the United States and Mexico since the primary concern arises over the U.S. trade deficit. The same arguments, though, should hold in the bilateral relationship between Canada and Mexico. On the other hand, it is unlikely that labor reform will change the trade relationship between the United States and Canada since both countries have relatively strong labor institutions, at least in the international context.

3 Office of the United States Trade Representative (USTR) (2000). Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area. Retrieved August 6, 2009 from USTR website: www.ustr.gov/webfm_send/1041.

4 This is informally known as the 'Jordan standard.' Under the Bush Administration, though, a side letter was signed by the U.S. and Jordan in 2001 that essentially ruled out sanctions as recourse for dispute settlements. Subsequent reforms were made on May 10, 2007 that appeared in the U.S.-Peru agreement, leaving the first nine of the rights in the box enforceable. Bolle, M. J. (2003). Jordan-U.S. Free Trade Agreement: Labor Issues. In *Congressional Research Service Report RL30652.* Washington, D.C.: Library of Congress; Elliot, K.A. (2003). Labor Standards and the Free Trade Area of the Americas. *Institute for International Economics (IIE) Working Paper No. WP 03-7.* Washington, D.C.: Peterson Institute for International Economics.

5 Center for American Progress Mexico-U.S. Working Group (2009). *Transcending the Rio Grande: U.S.-Mexico Relations Need to Reach Beyond the Border.* Washington, D.C.: Center for American Progress.

6 Ibid.

7 Samans, R. and J. Jacoby (2007). *Virtuous Circle: Strengthening Broad-Based Global Progress in Living Standards.* Washington, D.C.: Center for American Progress; Tarullo, D. (2007). *A Sensible Approach to Labor Standards.* Washington, D.C.: Center for American Progress; Barenberg, M. (2007). Labor Rights in the U.S.-Peru Agreement: One Step Forward, Two Steps Back? (unpublished manuscript). New York, NY: Columbia Law School; USTR (2006). United States – Peru Trade Promotion Agreement. Retrieved August 6, 2009 from USTR website: www.ustr.gov/trade-agreements/free-trade-agreements/peru-tpa/final-text.

8 Tarullo (2007).

9 Barenberg (2007).

10 Samans and Jacoby (2007).

11 All descriptive data summaries refer to the calculations presented in Weller and Zucconi (2008) and Weller, C. (2009b). You Can Have Your Cake and Eat It, Too: Good Worker Rights Abroad Go Hand-in-Hand with More Balanced U.S. Trade. *Challenge* (January/February).

12 All descriptive data reference the period from 2000 to 2007 since it is a complete U.S. business cycle and since data for earlier business cycles are incomplete.

13 Weller (2009a).

This chapter is part of a Boston University Pardee Center Task Force report on reforming NAFTA and U.S. trade agreements. For more information on the project, and to find links to the full report and to Spanish language content, visit:
http://www.ase.tufts.edu/gdae/policy_research/pardee.html

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