

The Problem(s) with Cafta

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Posted: 27th July 2005



Some would say that our trade agreements are both the operating systems of our global economy and the fertilizer, reflecting not only what can be agreed upon between the elites of the nation states, but also the dominant intellectual trade regime paradigm, known for years by the cognoscenti and now the rest of us as the so-called “Washington consensus.” The basic metaphor for this paradigm is that ‘a rising tide will lift all boats’ which means, for those who believe that this naval truism applies to the world economy, that as long as the global economy is growing, whatever problems anyone encounters along the way will be ameliorated by an overall increase in wealth and particularly in corporate profits which will be used to generate new productive enterprises and thus more wealth.

Cafta, like Nafta before it, creates a set of trading rules that co-exist alongside global rules of the road set by the World Trade Organization. Why there has been a veritable explosion of regional trade agreements at the same time that the WTO is supposed to be emerging as the global arbiter of trade disagreements is a subject for another day, but suffice to say that nations that are already trading partners are busily crafting a variety of agreements that will structure – at least in part – their economic relationships for years if not decades to come. Cafta is part of a deliberate US scheme to strengthen hemispheric ties - to secure our own backyard, as it were, in the face of an increasingly chaotic and hostile global economy.

Agreement on the economic effects of these regional trade agreements is hard to find. Why? Well, one reason is that there is a growing rejection of the dominant paradigm in the face of empirical data that demonstrates that the current globalization forces are not lifting all boats and in fact may be causing a significant number of boats to sink, in both the richer and the poorer countries. Critics point to the increasing disparities in wealth both between trading partners and within the trading nations themselves. They cite the increase in the share of wealth held by the richest tier of our societies, and assert that it is at the expense not only of our trading partners but of our hardest working citizens as well, who have seen their wages – in real terms – stagnate or even drop over the last decades. It is bad enough to beggar our neighbors, these critics say, but these policies are bankrupting our own folks as well.

Supporters argue that the critics can’t see the forest for the trees, and while they acknowledge that there are “winners and losers” in the globalization game, they assert that the policies of so-called ‘free trade’ (which is of course really the latest form of trade managed by the governing elites) have been proven over the past fifty years to increase human wealth and welfare. They cite statistics on life expectancy, increases in trade volumes, and other indicators to argue that trade agreements like Nafta and Cafta are not

only good for us but necessary if we are going to succeed in the new world order of global private enterprise.

Well, which is it? Does increased integration into the global economic stream help or hurt the people in the US? Will it help or hurt our trading partners – some of whom are our biggest competitors while others are small to medium sized markets with more or less democratic governance regimes? For the mainstream Bush administration take on the Cafta situation, look at the USTR site, http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/Briefing_Book/Section_Index.html, and for the opposing summary of the ‘facts’ go to <http://www.citizen.org/trade/cafta/>

After a quick review of these webpages, you will no doubt be concerned that the opposing sides are not even looking at the same economies, much less the same statistics! How can we make sense of what is happening when the authorities present such different pictures? Is it possible that economic globalization per the Washington consensus is both hurting us in possibly devastating ways *and* helping us to compete in a brave new world of global enterprise and intensified national rivalries?

One area of concern for legal scholars is the use of trade agreements to ‘evolve’ the international legal status of corporations and to establish for these increasingly empowered global players a dispute resolution regime that is not embedded in any particular social polity. What this means in practice is that there is a mechanism created through these agreements for corporations and other investors to unilaterally challenge the policies of the governments where they operate. This new dispute resolution scheme actually draws on a long existing system for arbitrating disputes between nations, but the language of Nafta and now Cafta dramatically expands the reach of these ad hoc arbitration tribunals and permits corporations to ‘sue’ nations for, among other things, claims of indirect expropriation when government policies interfere with the companies’ expectations of profits.

Why should we care if global corporations are ‘quasi-legal equals’ to nation states? After all, many global corporations are much stronger economically than a majority of the nations on earth already, and wouldn’t things be better if these huge entities were treated as global citizens, with their economic, social and political rights and duties defined and suitably disciplined? That may indeed be a desirable scenario, but we are surely a long way from governing such global citizens – after all, what do we really have in terms of global governance anyway? We certainly don’t have a global legal order, though some analysts point hopefully to elements of the emerging international economic legal regime, as defined by the WTO and the proliferation of regional and bilateral investment treaties, as evidence of evolving customary international law.

Since global corporations are helping to draft the terms of these trade agreements, particularly the investment and dispute resolution provisions, a cynic would say that our new global legal order is in fact happily now being negotiated and drafted by its future subjects – nations and corporations. The problem with this picture is that the people negotiating for the US and most of our trading partners are true believers in the

Washington consensus, as are the corporate elites with whom they are supposedly sparring. And as has been pointed out by many others, when true believers close ranks, alternative perspectives tend not to be heard. The challenge for those who believe that too many ships are sinking these days is to use globalised media and information networks to overturn the dominant trade paradigm and present credible alternatives that address the needs not only of corporations to make profits but of people to make a decent living.

- Lydia Lazar