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449

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By Representative Jim Kolbe



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NAFTA and the Side Agreements: Risks in Turning NAFTA Into a Labor/Environmental Pact

By Representative Jim Kolbe

Today's topic, the North American Free Trade Agreement and the proposed side agreements, comes at a most appropriate time. Canada, Mexico, and the United States are in the midst of important negotiations on supplemental or side agreements on labor, the environment, and import surges. We anxiously await the U.S. position on these issues, which will provide a clue to the new Administration's strategy to implement the NAFTA.

Even while this is going on, many people are digging the NAFTA's grave—some with alarm or sadness, but more with a sense of delight, I suspect. Not long ago, Leon Panetta, the director of the Office of Management and Budget, pronounced the trade agreement “dead.” Ironically, his comments probably did more to galvanize the Clinton Administration to publicly support NAFTA than did the negative comments of Ross Perot.

But a closer reading of Panetta's statement suggests less than the media fanfare it received. The NAFTA, he said, does not have sufficient votes today to be approved in Congress, especially without the accompanying side agreements on the environment, labor, and import surges. Well, Leon Panetta is right. The votes aren't there today for the NAFTA. But that doesn't mean they won't be when NAFTA implementation legislation is considered later this year, if—and admittedly this is a big “if”—the supplemental agreements are good and the President's support is strong.

Mr. Panetta's remarks underscore the NAFTA's current difficulties and the need for greater Administration attention and commitment to the commercial agreement, and less emphasis on the side agreements.

“NAFTA Redux.” The dilemma for President Clinton is simple: while the side agreements may be critical for obtaining Democrat support, they are exactly the opposite for Republicans. As the President attempts to transform the NAFTA, with these negotiations, into something more palatable to Democrats, he runs a significant risk of losing the NAFTA's core support among House free traders. Many Republicans are conditioning their NAFTA support on whether or not the President goes “too far” in the side agreements. “Too far” is defined by these Republicans as fundamentally altering a good trade agreement into a social or environmental charter for North America. The President and U.S. Trade Representative Mickey Kantor must understand that Republicans will scrutinize “NAFTA redux” as closely as Democrats promised to examine Bush's trade provisions. In the end, the commercial agreement and the side agreements will constitute one package, with one single up or down congressional vote.

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President Clinton outlined his concerns about the trade agreement in a speech last October in North Carolina. Then he said that he would not send to Congress an agreement that did not adequately protect the environment and U.S. jobs.

Those who say the NAFTA is not sufficiently environmentally or socially sensitive argue that the agreement is vague; that trade liberalization without environmental and labor side agreements will lead to environmental degradation and declining wage rates; and that poorly designed or enforced environmental and labor laws drive production decisions in a way that is inherently unfavorable to the country that has strong legislation in these areas. The premises of their arguments are dubious at best.

A closer examination of the NAFTA shows that the agreement is environmentally sensitive. It is not by accident that the NAFTA is called the greenest trade agreement ever.

Three reasons can be cited for this. **First**, the NAFTA includes a commitment to sustainable development and an agreement to harmonize upward each country's sanitary, phyto-sanitary, and environmental standards. In other words, a lowest common denominator will not be used for environmental standards; the highest standard will apply.

Second, it preserves the right of NAFTA countries and their respective sub-national governments to maintain their own sanitary and phyto-sanitary measures, even if they are higher than international norms. The only requirement is that they have a scientific basis and are applied in a nondiscriminatory fashion.

And third, the NAFTA will give precedence to international environmental agreements over inconsistent provisions of the NAFTA.

The idea that trade liberalization will lead to additional environmental degradation is a red herring. For proof, one need look no further than Eastern Europe to know the horrific consequences of non-market-driven environmental decisions.

Some in the environmental community have argued that cross-border environmental problems must be remedied by embracing an agreement that creates a trinational commission with strong investigatory powers and the ability to impose trade sanctions for non-compliance. It's a solution with which I fundamentally disagree.

Environmental critics argue that the NAFTA is without teeth. They say it will encourage countries to deviate from basic standards of environmental protection. But the facts speak otherwise. NAFTA negotiators directly confronted the issue of pollution havens, or places with lax environmental standards. The NAFTA declares it inappropriate to encourage or seek to retain investment through relaxed environmental standards. It provides that if one country believes that another has induced investment by relaxing its environmental enforcement, then the first country can demand government-to-government consultations and apply public pressure to improve environmental protection.

Inherent to making this provision work is a recognition of the value of "sunshine laws" and the public pressure that can be generated by highlighting a lapse in a country's environmental performance.

With those thoughts in mind, we should ask ourselves, what is the real problem for Mexico and how best can the U.S. help our neighbor to the south improve its environment? Those of us who live along the border feel acutely the need to improve environmental protection there. But we know the problem stems from a combination of rapid population and economic growth and a corresponding lack of technical expertise, technology, and financial resources. With the NAFTA, and with a sound environmental agreement based on trinational cooperation, the U.S. can have some confidence that all these shortcomings will be overcome. The additional economic develop-

ment the NAFTA will encourage in Mexico, along with a commitment by the U.S. to share our environmental expertise and technologies, will help citizens of Mexico clean up their environment and embrace policies of sustainable development.

On labor issues, the President was swayed by arguments that the NAFTA will not protect U.S. workers, and that lax enforcement of Mexican labor standards would encourage manufacturing companies to move to Mexico. According to this argument, workers of both countries are thus left worse off.

But I disagree with this line of reasoning, too. The NAFTA, as currently drafted without side agreements, contains extensive protection for both U.S. and Mexican workers in vulnerable industries. Long transition periods of up to fifteen years are included for the elimination of tariffs on the most sensitive sectors, including household glass, footwear, and some fruits and vegetables. Indeed, some free traders would argue they are too long. The NAFTA also includes tough rules of origin safeguards to protect against unexpected surges of imports.

In the past six years alone, over 400,000 jobs have been created in this country because of our growing trade with Mexico. Over 700,000 U.S. jobs are linked directly to our exports with Mexico. The NAFTA will lead to greater exports, and projections are that an additional 200,000 jobs will be created as a result of implementing the agreement. The NAFTA will not only lead to greater job increases but it also preserves the higher paying, export-oriented jobs that are tied to our current Mexico exports of nearly \$41 billion.

Just as the Administration has seen the need to abandon its earlier pronouncements on Haitian refugees, on Bosnia, and on China MFN, it now must get beyond its campaign rhetoric on NAFTA and come to grips with the very real and tough policy questions it poses. If the White House is going to build a coalition that will approve the NAFTA, the speeches of the campaign must be reconciled with the need for a responsible approach to the side agreements and a strategy that can attract enough Democrat support in Congress while not alienating Republican votes. It's a delicate balance at best, but whoever said trade policy was going to be easy?

Trade Foremost. We should keep in mind that the NAFTA is first and foremost a trade agreement. It is not a labor or environmental pact. The Administration must understand that if it goes too far in courting labor and environmental groups, it runs the risk of transforming the NAFTA into an unrecognizable package that no longer attracts its key congressional supporters.

But the issue is more than just a political argument of holding on to votes in Congress. A fundamental issue of national policy is at stake in these negotiations. They must be concluded so as not to threaten U.S. sovereignty or undermine the trade benefits of the NAFTA.

Empowering the NACE, the North American Commission on the Environment, with authority to impose trade sanctions, or giving it broad investigatory powers, raises several questions. They concern U.S. sovereignty and prosecutorial discretion, state/federal relationships, and U.S. constitutional guarantees of due process.

The concept of using trade sanctions to force compliance with a country's own environmental or labor laws probably requires a country to surrender some discretion in enforcement of its laws. That in turn means abandoning some national sovereignty.

Prosecutorial discretion is at the heart of any enforcement program. It is not possible to prosecute every violator, idealistic as that may seem. Beyond that, there are often practical and legal reasons for declining to prosecute a particular offense, including the seriousness of the offense, the amount of the fine, the timetable of compliance, and the required level of protection. If NAFTA trade sanctions were to follow such a pattern, then you would be overlaying domestic

law with a supernational system that second guesses a country's application of its own environmental law.

The imposition of trade sanctions against individual companies and their employees would almost certainly violate their "due process" rights under the U.S. Constitution. Due process requires at a minimum that individuals be given the right to a hearing before a fair and impartial decision maker, and the opportunity to be heard in a reasonable time and in a meaningful way.

If the Administration tries to finesse the environmental lobby by including provisions that allow multinational panels to impose trade sanctions for some ill-defined standard of non-compliance, they will be allowing these panels to pass judgment on environmental complaints but not allowing accused companies and employees the chance to defend themselves.

Needless Duplication. Many of our environmental and labor laws are enacted and enforced by state and local governments. The creation of multinational commissions and secretariats may needlessly duplicate federal, state, or even local investigatory authority. It adds another layer of regulation that burdens the U.S. economy and impinges on the state-federal relationship. Such commissions created by the supplemental accords would at best confuse, and at worst supersede, the decisions of our national and subnational authorities, possibly stunting with additional regulation the very job growth the agreement is designed to create.

The side agreements should not create a forum for legal redress. Such provisions would add an additional complication and duplication to our court system.

As negotiations get into the details of the structure of commissions and secretariats, they should take care not to create a trinational secretariat that is unaccountable to their national governments. Environmental groups have been quick to label multilateral trading organizations created by the General Agreement on Tariffs and Trade (GATT) as groups of "faceless bureaucracies." It would be ironic if similar organizations were created by the side agreements as a result of environmental pressures.

Furthermore, those who advocate the activist approach must understand the harvest they could reap. Trade sanctions and broad investigatory powers run on a two-way street. Instead of being used to enforce environmental protection elsewhere, American industries and their employees could find themselves on the receiving end of such treatment as much as, perhaps more than, our trading partners. Remedies we insist on to combat what we perceive as lax enforcement of environmental and labor standards can be turned on us in ways we might not anticipate.

Our record of enforcement of environmental standards, while good and improving, has not been perfect. A National Wildlife Federation report identified over 100,000 violations of EPA safe drinking water standards each year in 1987 and 1988; enforcement actions—not surprisingly—were brought in less than 3 percent of those cases. Similarly, witnesses testified before the House Judiciary Committee last summer that there are close to 17,000 violations of health standards in the Clean Water Act each year but only 104 enforcement actions. One could easily expand this list by including labor violations.

I cite these statistics not to suggest that it is wise to ignore environmental or labor standards, or to endorse lackadaisical enforcement of standards. I raise them to emphasize that common sense must prevail. We must consider civil law enforcement in the context of other domestic priorities—allocating the required resources where and when we can, subject to the budgetary constraints confronting government at every level. At the same time, agencies responsible for enforcement must be given broad latitude to decide when enforcement action is warranted and when costs of enforcement outweigh the possible benefits. A system that paralyzes or removes that discretion is a recipe for disaster.

Similar caution must be exercised in negotiating the labor side agreement. Some congressional leaders have drawn an erroneous comparison between the NAFTA and the European Economic Community. They seek a side agreement on worker standards that incorporates a social charter along the European lines. But the this comparison is inaccurate.

The NAFTA is a trade agreement, not an economic union. It does not create a customs union with common external barriers to non-NAFTA countries, nor does it lead to a monetary union. Furthermore, the European social charter establishes a blueprint for EC-wide employment regulation to be developed by the European Commission. A similar provision in the NAFTA would do violence to state labor regulations. If theoretical considerations of a federal system don't alarm you, consider this chilling possibility: with a social charter Canadian labor unions could call for the repeal of our state right to work statutes, arguing that the NAFTA principle of upward harmonization of labor laws requires it.

Unlike Europe—where basic labor and employment laws in each of the EC countries are similar—there are fundamental differences between U.S. and Mexican labor and employment law. Surprisingly, it isn't our laws that are tougher when considering group rights. Mexico has adopted a European approach to labor and employment law. Its underlying premise is that group rights, union rights, supersede individual rights, which are paramount in U.S. law. Harmonizing or consolidating our two disparate labor philosophies would be difficult, if not impossible. At the very least, it would provide the basis for endless litigation.

One high-ranking Administration official recently testified before a Senate committee that the labor side agreement will have the effect of raising Mexico's wages by imposing new regulations. The intent — yes, the intent — would be to raise the costs of doing business in Mexico. Aside from the admission about the negative costs of regulation for domestic production, this statement is breathtaking in its economic misconceptions. Free trade agreements are about mutual advantages—not about advantaging one side at the expense of the other. Trade is not a zero-sum game. Both sides benefit as we improve our competitive position in the global economy.

While I have just outlined some of my reservations about the side agreement negotiations, I believe these agreements can be constructive. They can improve the North American environment and enhance North American working conditions, wages, and productivity. Indeed, I believe they can be very beneficial if they are well-structured, based on trilateral cooperation, and designed to address the real policy challenges the NAFTA nations face, but without infringing on U.S. sovereignty.

There's another issue that must be confronted; proponents and opponents of the NAFTA alike acknowledge the costs of implementing the agreement and cleaning up the border environment.

Cross Border Transaction Tax. Yesterday, House Majority Leader Gephardt said he would not support the NAFTA unless it had a steady source of revenue to fund environmental projects. At a time when the national economic debate is focused on tax fairness, I can think of no proposal more perverse than a cross border transaction tax or fee to pay for environmental infrastructure or worker retraining. The concept turns on its head the very concept of the NAFTA, namely, a North American free trade region where tariffs are removed.

This proposal would distort competition and deny national treatment to a country's trading partners, and that is one of the main objectives of the NAFTA.

A tax imposed on exports is clearly contrary to the U.S. Constitution. On imports, its just another tariff. Such a tax collection by Mexico would reduce U.S. export opportunities and unfairly penalize our most competitive and efficient producing industries. These industries are the heart

of our industrial base and represent our nation's starting industrial line-up in today's global market place. Because wages in export-oriented industries are on average 12.2 percent higher than all non-agricultural U.S. jobs, the border transaction tax would depress worker incomes. Politically, the tax would be fatal to the NAFTA. Free trade congressmen would back away—as they should—at the astonishing notion that trade and economic growth are promoted by adding a tax, not removing one.

Governor Clinton understood the importance of trade for his state. Candidate Clinton reaffirmed this view with his commitment to both the NAFTA and the successful completion of the Uruguay round of GATT talks. Now, Little Rock is left behind. The campaign is over. What remains is for President Clinton to transform his philosophy, his campaign promises, into action that offers the promise of enriching the lives of Americans from Alaska to Argentina.

The North American Free Trade Agreement is not about economic theories. It's about business opportunities; it's about expanded markets; it's about jobs for the American worker. In four short years, from 1988 to 1992, our manufactured good exports to Mexico alone more than doubled, to \$31 billion.

But numbers don't tell the real story of trade, and the opportunities for more trade that the NAFTA holds. The real story is in Peoria and Decatur, Illinois, where hundreds, even thousands of Caterpillar workers owe all or part of their paychecks to the \$360 million of sales their company made in Mexico last year. The real story is in Tucson, Arizona, where forty people work to overhaul and rehabilitate second hand ambulances, all of which go into the Mexican market. The real story is in a Houston environmental engineering firm that has brought on half a dozen new engineers and opened an office in Mexico City to keep up with the almost insatiable demand for environmental technology.

The North American Free Trade Agreement is about our economic future—America's future, Mexico's future, Venezuela's and Chile's future. It is about staying competitive in the globalized marketplace. It is about expanding markets for U.S. exports of manufactured goods and services. It is about choices and lower prices for consumers.

The NAFTA—free trade—is our future. But making the future a reality requires vision and commitment. It requires Members of Congress not succumb to the simple and dangerous rhetoric of a Ross Perot, whose thoughts on budget and tax issues are well-received but whose ignorance of economics is breathtaking. It requires a President who will lead the American people toward an understanding of how trade can improve our lives.

Now is the time to lead. Not next year, not even next month. With other campaign pledges cast aside, it is time to lay aside last year's rhetoric of the campaign trail. Mr. President, acknowledge that the trade agreement negotiated last year is a good agreement, that it deserves to be implemented quickly.

Our economic future and, yes, Mr. President, your political future, may depend on it.

