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"FREE TRADE" AGREEMENTS AND THE PANDEMIC

PSI REPORT SERIES - SPECIAL REPORT ON THE COVID-19 PANDEMIC



"FREE TRADE" AGREEMENTS AND THE PANDEMIC

**Center for Labor Studies
(CEDETRABAJO Colombia)**



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INTRODUCTION



Especially since they started proliferating in the 1990s, Free Trade Agreements (FTAs) have met with strong opposition from social movements, labor, and civil society organizations because of the threat they represent to workers around the globe. Their neoliberal-leaning precepts usually favor big corporations while undermining the decision-making sovereignty of States, as well as human rights, for the benefit of transnational corporate interests. Moreover, the so-called new trade agreements in reality supersede trade interests and seek to deregulate broad sectors of the economies, as for example the public services sector, to facilitate foreign investment flows.

Thus, critics of FTAs consider these to bring very harmful consequences for workers and development around the world, especially in the countries of the South, such as de-industrialization, unemployment, privatizations of strategic State-controlled

companies and public services, together with a loss of State capacity to adopt national public policies for the benefit of their populations – the power of national institutions ends up in the hands of the corporations.

In this sense, FTAs restrict State action in situations of crisis, as is happening this moment in the fight against the pandemic, in that they:

- Impose limitations on import restrictions and on local production of industrial inputs needed to produce the basic elements required to address the crisis.
- Generate food dependency by eliminating import tariffs and prioritizing food imports while preventing local agrarian production from growing.
- Generate dependency by purchasing imported medicines, which has eroded the capacity of national laboratories to produce basic medicines.

- Cause cost overruns of imported medicines subject to supply shortages and which are sold on the international market at speculative prices.
- Allow little room for the State to control its finances for fear of being accused of protectionism, thus violating agreement rules.
- Developed countries pressure their partner countries to keep purchasing goods included in agreements.
- Bring about the privatization of public services – that often end up in the hands of multinational corporations – making it difficult for the State to deliver these services to the population in exceptional conditions. The quality and reach of the provision of these services, health included, is not assured by the private sector.
- Impose conditionalities that prevent diversification of trade relations.
- Prohibit governments from purchasing national products faster and directly in moments of crisis, forcing governments to procure them through international competitive bids.
- Their provisions on intellectual property hamper the production of generic medicines.

As mentioned earlier, all these factors have weakened the capacity of States parties to FTAs over the last decades to meet the needs of the population. But this weakening is further intensified the moment a health crisis is coupled with a world economic depression caused by a slump in oil prices, in addition to fiscal balance policies, central bank autonomy, and flexible labor laws imposed by multilateral lending institutions that are an integral part of the world's architecture of FTAs and Bilateral Investment Treaties (BITs).

Moreover, the signing of such agreements played a key role in the disruption of regional integration mechanisms, making it harder to adopt a subregional and continental approach to the crisis. This way, FTAs have contributed to the weakening of the Andean Community of Nations (CAN) and the Common Market of the South (Mercosur) and have become an insurmountable hurdle for such processes as the Community of Latin American and Caribbean Countries (Celac) and the Union of South American Nations (Unasur). That is so because FTAs derive geopolitical alignments, in that they create dependence on the developed countries' markets and investments, and on their financial system, thus constraining market diversification.

1 Background

Especially from 2002 to 2010 many countries of Latin America signed, ratified, and began to implement free trade agreements with the U.S., the European Union (EU), and Canada. The highlights are the agreements signed by Mexico (1994) and Chile (2004), later on by Peru and Colombia, with the U.S. (2007-2009), and the United States-Dominican Republic-Central America Free Trade Agreement (US-DR-CAFTA) (2006-2007). Later on, agreements were signed by Peru and Colombia with the EU (2013 and 2014), with Northern European countries – EFTA (2011-2014), and with Canada (2011). The key Latin American actors in those agreements were Chile, Peru, Colombia, Costa Rica, and Mexico, but over that same period a number of agreements, e.g. the Pacific Alliance (2011), and bilateral agreements were signed between several countries on the continent, with some of these agreements being gradually expanded.

Additionally, the 34 countries of America had formed a bloc during the negotiations over the Free Trade Area of the Americas, the FTAA (1998-2005); yet, in face of such a colonialist and inequitable proposal, and also because during that period there was a turn to the left in the national governments of some South American countries who

opposed the terms of the agreement, the bloc did not prosper.

Some countries joined these agreements later, while others are still seeking to start negotiations, as is the case of the Mercosur countries and the European Union.

2 The contents of the FTAs

These agreements contain numerous clauses that deepen, radicalize, and boost the trade and investment liberalization policies being set in place since the 1990s, when certain national-production and State-strengthening policies were replaced by Washington Consensus policy recommendations. This way, trade liberalization became irreversible, was deepened and consolidated, and deadlines were set for liberalization to be fully implemented. For the vast majority of products, a ten-year limit was established – even though most signatory countries were granted exceptions regarding more sensitive products, with longer liberalization time frames.

But, as mentioned earlier, these agreements supersede the strictly trade-related realm and impose deep restrictions on the action of national States' institutions. An example thereof are the so-called Investor-State Dispute Settlement (ISDS) clauses, a theme that is further investigated in another PSI publication focused on the Covid-19 pandemic. Given

its ‘supra-constitutional’ nature, FTAs were incorporated into national legislations, with disagreements regarding their implementation generally arbitrated by their signatories in private international courts, not in national courts. This way future governments are obliged to comply with their guidelines.

Also, FTAs set rules for the liberalization of public services provision, preventing the establishment of a single national primary care policy for the population, a restriction that ultimately proves to be a disaster in moments of crisis. They also contain rules on intellectual property that constrain the production of generic medicines and national technological innovation. They subject government procurement of critical goods and services to international competitive biddings, suppressing ‘buy national’ policies or policies in support of national enterprises. Finally, FTA clauses prohibit performance requirements as concerns, among other issues, employment, reinvesting profits, and environmental protection, and restrict State capacity to intervene in the economy, diminishing its scope of action and helping privatization.

3 Impacts on farm and livestock production and its effects on the fight against the pandemic

FTAs have been implemented for quite some time now, and their results can, therefore, be assessed. It can be stated that, in general, FTAs are extremely negative for developing countries. The impact FTAs have had and will have on the Latin American States’ capacity to face the Covid-19 pandemic in different sectors is more thoroughly examined below.

In the farm sector, clauses agreed upon include the elimination of tariffs, subsidies, and all forms of government support to farming and cattle ranching, ultimately leading to a loss of national capacity to feed the population and to economic dependency on the exports of a few “tropical” products like coffee, flowers, sugar, grapes, asparagus, apart from raw materials such as oil, copper, coal, and gas. In Chile, for example, food and live animal exports account for 28.6% of total exports; The most exported food products are vegetables and fruit, and fish, crustaceans, and mollusks; yet over the first months of this year, those products’ total exports fell by 10.3% and 11.6%, respectively.

This can be explained by the fact that, when the coronavirus pandemic broke out, speeding the

crisis that had been looming, the central countries reduced their purchases of those food products. That was compounded by a drop in commodities prices, causing a decline in Latin American FTA-signatory countries' hard currency revenues, thus worsening the trade deficit and hindering acquisition of food on whose import dependence is increasingly growing. One example is Peru, which over the last years has seen a sharp increase in its imports of wheat, rice, beef, corn, soybean and sunflower oil, seriously affecting food sovereignty. Or Chile, which is importing 70% of its food consumption yet whose sale of other foodstuffs and raw materials is insufficient to provide the funds the country needs for its imports; an especially critical situation regards lentils, since 90% of their consumption depends on imports from Canada (Egaña, Rodríguez, & Baginsky, 2020).

This situation has been particularly serious because governments dismantled the institutional framework that supported peasant production such as subsidized credit, storage facilities, farming research, price floors for some agricultural products, and input price controls. During the pandemic, input prices have risen and demand for crop and livestock commodities has fallen, a situation that mostly affects small farmers and women peasants, who hardly have any access to subsidized credit, and

has found governments lacking the tools to address it. In Colombia, for example, this has affected fruit and potato producers, among others.

Precisely due to the dismantling of the institutional mechanisms that supported small farmers, including some basic products for whom extraordinary tariff-elimination schedules were adopted to protect domestic producers, e.g. rice, chicken, and corn, local production has declined over the last years and many businesses have become intermediaries in their import. Therefore, the pandemic is evidence that the need to foster local production had been neglected and that the States lacked the muscle to do so, bringing about food supply shortages for consumers and poverty for peasants. Chilean exports in the first quarter of 2020 fell by 7.5% as compared with last year's first quarter, with the agricultural sector posting the greatest decline at -11.8%, followed by the manufacturing industry at -11.3%. The main products contributing to the decline were copper and lithium carbonate. Total imports fell by 13.3% in relation to 2019 (Banco Central de Chile, 2020).

As for the case of Costa Rica we can say, as an example of the food dependency that was on the making, that from 2015 to 2019 the volume of food purchases abroad grew by more than 200%, from 4,100 tons to almost 12,500 tons (Barquero, 2020).

News agency Inter Press Service (2020) presented the most relevant data of a recent report released by the Food and Agriculture Organization of the United Nations (FAO) on hunger and poverty in Latin America and the Caribbean in the context of Covid-19. The report shows that food insecurity is bound to rise in the regions analyzed because of the economic and social effects of the pandemic, adding to the already existing challenges faced by food and agriculture in Latin America and the Caribbean .

The data supporting the statement above are alarming: it is estimated that in 2018 half of the people who were starving or were undernourished in the region were concentrated in five countries: Venezuela (6.8 million), Haiti (5.4 million), Mexico (4.7 million), Peru (3.1 million), and Guatemala (2.6 million). Moreover, a warning is also made regarding countries whose child malnutrition is above average: Belize, Colombia, Guyana, Honduras, Mexico, Panama, and Peru. All these findings prompted the FAO to strongly recommend that governments assimilate food and agriculture as strategic activities in the public interest, recognizing that international trade dynamics have created highly-dependent countries on revenues from food exports, while others cannot meet their food supply needs if not by importing food.

ECLAC and FAO (2020), in turn, released a document in which

they propose several measures to be applied by the governments of Latin America and the Caribbean to prevent the Covid-19 crisis from becoming a food crisis. One of the conclusions presented by the document shows the enormous responsibility the States and public institutions have in the process of overcoming the crisis, at lower costs, through the provision of public goods. The situation of food insecurity in Latin America and the Caribbean is well illustrated in the document when it states that,

During the pandemic, trucks have carried food produced by millions of artisanal farmers and small-scale fishers to every city in the region, ultimately reaching the tables of 650 million Latin American and Caribbean people. These farmers and fishers could have taken refuge in their homes to avoid infection, but they chose to keep working. It is paradoxical that food insecurity and poverty can be found in the vast majority of these households, which do not have the right to social security, holidays or access to well-equipped health services. In the region, 84% of work in agriculture is informal, with a high incidence of child labour. An agriculture that has the social standards of centuries past cannot be called modern. (p.29)

In fact, Ortega (2017) did calculations to determine Colombia's level of food dependency on cereals (corn, wheat, barley, rice,

sorghum) by dividing total food imports by available food volumes in different years (1970,1980, 1990, 2000, 2010, and 2015):

“From the point of view of foreign dependency, the finding is that on the five most important cereals (including rice), Colombia has a 75% dependency. And excluding rice that increases to 90%.” (p.304)

In spite of this reality, on April 7, 2020 – that is, amid the pandemic – the president of Colombia issued decree 523, which eliminates import tariffs on yellow corn, sorghum, soybeans and their by-products, rather than replacing imports and fostering local production. Credit extended to the countryside was monopolized by the big farmers, while actions like fostering national consumption and adopting a public procurement policy were implemented only partially and too late, with the inclusion of 10% of the products on the menu of the Colombian Family Welfare Institute (ICBF) and in Food Programs (PAE), although the latter cannot ensure, in a quarantine, enough distribution channels for the products listed.

Declining consumption by restaurants and hotels, often the destination of agricultural products, in addition to the population’s loss of income and a fear of shopping in food supply centers, have narrowed the market, with prices no longer covering harvesting

costs. Moreover, a demand-side crisis intensifies the impact of such natural phenomena as frosts or droughts. In this context the pandemic found the Colombian State without the resources to protect agricultural production and just issuing piecemeal, palliative measures.

It thus becomes evident that countries that have signed FTAs have become more vulnerable to variations in the world economy and more so in a situation as catastrophic as the one we are going through. In a majority of countries of the region, good part of the resources made available to address the crisis have remained with banking intermediaries who demand collaterals impossible of being placed, a situation further compounded by the high cost of imported agricultural inputs as local currencies depreciate.

4 The FTAs have caused industrial output to fall

In the manufacturing industry the situation is similar, because trade liberalization has brought about the phenomenon of deindustrialization in the textile/garment and the metalworking sectors, as well as by replacing consumer goods with imports from Asia.

In many countries the incipient industrialization that began in the 1960s never actually took off, while in others the level of

industrialization achieved in earlier decades was thwarted or deteriorated. At any rate, the idea was imposed that the best industrial policy was no industrial policy at all, and the State lost its capacity to promote industrialization because that is deemed “anticompetitive by the FTAs”. The few manufacturing industries that managed to stay afloat became heavily dependent on global production chains, while a heavy machinery industry was never established, much less robotics, renewable energies, computing and other industries setting the agenda of future industrial development.

Thus, the countries of Latin America and the Caribbean are facing the Covid-19 pandemic at a moment when their manufacturing industry’s competitiveness is quite limited, as it relies heavily on foreign supplies and global value chains and lacks its own scientific and technological base. This has caused enormous deficiencies in the production of basic materials required to meet the health demands of this public health crisis, such as ventilators, intensive care unit equipment, masks, medicine ingredients, etc., forcing governments to source these products in the international marketplace, with demand exceeding supply and therefore elevating prices.

Examples of deindustrialization and rising industrial imports from long before the pandemic can be found everywhere in Latin

America. In Peru, imports that grew the most from 2010 to 2018 were wood and cork manufactures, furniture and parts, travel goods, gifts and clothing, footwear, transport equipment, and prefabricated buildings, while imported goods with greatest share in the Peruvian economy are vehicles, general industrial equipment, and iron and steel. In contrast, in this year’s first quarter (January-April), imports that grew the most were protection masks, machines or mechanical devices, vehicles, diesel oil, and medicines (INEI, 2020).

But even a country like Mexico, whose industrial sector is relatively developed thanks to its proximity to the U.S. market, was affected when the supply chains broke down. Sales of automotive products were the most affected, dropping by 5%, followed by textiles, clothing, and leather goods (- 4%). Total intermediate goods fell by 4.6%, and non-oil intermediate goods contracted by 2.9%. Capital goods sales decreased by 18.1%. Automobile exports to the United States fell by more than 7% in March (INEGI, 2020).

Overall, investment provisions included in FTAs have not increased the quantity, variety, and sophistication of the manufacturing industry. Sánchez and Martínez (2014), analyzing foreign investing by transnational companies in Central America from the 1990s up to more recent years, point out that, instead of

productive investment, public assets were transferred to the private sector through acquisitions and mergers of already existing assets. The document states that,

“foreign direct investment in Central America was largely [undertaken] by means of purchases of existing assets by transnational companies, mostly over the 1990-2010 period, with occasional decreases in 1999 and 2003 as well as in the years of the 2008-2009 economic crisis (...). Mergers and acquisitions have come to represent 83% of total FDI [foreign direct investment] in the Central American region in 2010.” (p. 18)

For the specific case of Costa Rica, the authors detail more than 15 bilateral investment agreements, together with more than 30 acquisitions with foreign money of national companies belonging to such sectors as banking and air transport.

5 Reduced State capacity to provide services

Definitions regarding competition policies included in FTAs, in turn, have fostered privatization of public services, among them health care and education services, but also essential public services like water, electricity, and cooking gas. This undermined State capacity to provide massive

care for the population in a centralized fashion in different services sectors, while making it clear that their management by a profit-driven private sector meets the needs, at best, of a part of the population that can afford them. By contrast, coverage does not include the millions of people working in the informal sector or who are unemployed, with women, original peoples, and African descendants occupying a prominent position, and are precisely the most vulnerable in general, but even more so during a pandemic. A weaker State, without rules and financial resources enabling it to subsidize disadvantaged or strategic production sectors, had to improvise.

Moreover, the tax structure designed to benefit big foreign investors has weakened the State's tax collection capacity. The belief that a tax reduction for the super-rich would facilitate investments and, subsequently, job generation, with wealth trickling down to the whole of society, has not delivered the results promised. This approach is established in the FTAs, especially in investment chapters, which grant foreign investment all sorts of guarantees not granted to national investment, in addition to overlooking the fact that, in face of the limitations of the domestic markets, the rationale behind these investments is linked to variations in the international market and not to the needs of the population. In these conditions,

the States face budgetary deficits, rising indebtedness, and little room for maneuver to sharply increase public spending.

In this sense, the main source of tax revenue – indirect consumption taxes – will be sharply weakened by unemployment-related consumption restrictions. It is also likely that, amid the crisis, environmental and labor controls will be relaxed and made flexible for the benefit of foreign investment. Instead of that, in the new circumstances, investment flows, not only foreign ones, should meet additional criteria as regards profits including location, domestic needs, and others deemed against the rights of the investors.

FTAs impede this kind of policies and, in practice, the crisis has shown that these policies have lost all effectiveness and applicability, for governments have been forced to inject funds into the companies – by bailing some of them out – and to provide public services, measures that, if maintained after the pandemic, could be classified as violations against free competition according to the terms established in the agreements.

However, due to the fact that these agreements lack balance of payments clauses allowing the adoption of extraordinary measures in case of huge imbalances, the countries have adopted extraordinary measures in a context of strong legal and institutional constraints, to the point that gov-

ernment spokespeople who have always fought tooth and nail to defend FTAs and trade liberalization have been forced to call for prioritizing national purchases, defend local production, restore subsidy and price control systems, and introduce progressive tax reforms, measures that go against the provisions of the FTAs in effect.

Franco-Giraldo (2014) reviews health care system reforms in Latin America, having found an orientation towards privatization. The author gathers several cases, including that of the Colombian health system, indicating that its cornerstone is the structural adjustment; the Chilean, to which is awarded the condition of dichotomic rich/poor market; the Mexican, highlighting its condition of a quasi-market-based model, among others, to provide evidence of the privatizing trend that flourished in recent years in the health care sector in the region. One of the most serious consequences of these processes is that,

“(...) The State turns into the great defender of the market in a corporatist symbiosis with the market’s main agents. This is not State regulation, or State orientation. The user behaves as a consumer, as a market-rational agent, and refuses to acknowledge any priority to and solidarity with the poorest. (...) The right to health care is not ensured either by subsidizing demand or by market-guided payment mecha-

nisms and competitive prices or rates” (p.104).

Laurell (2016) also studies health care reforms in Latin America, and one of her most striking findings is that,

“Countries that have implemented the commercial health insurance model, as exemplified by Chile, Colombia, and Mexico, have not fulfilled its purposes of [providing] universal coverage, equitable access to required health care services, and improved health conditions. Instead, they have opened health care to profit-making insurers and private health care providers.” (p.311).

Due to Colombia’s health care system structuring and conditions, big capital and investment funds keep flowing into the country to acquire clinics and hospitals. Dinero (2019) documents the most recent and eye-catching acquisitions in the sector, beginning with hospital Clínica de Las Américas, which was sold to Peruvian group Aunsa and is controlled by Canadian equity fund Enfoca. U.S. company United Healthcare took control of hospital Clínica del Country, which had been acquired by the Banmedia Chile group. Spanish hospital group Quirón, Europe’s largest, has also landed in the country to purchase hospital Clínica Medellín.

Also, production and trade in medicines is governed by what has been established in FTAs, whose

clauses make production of generic medicines more difficult due to the extension of patent terms, contribute to monopoly, increase health care system cost overruns, and make medicines and basic inputs dependent on the corporate strategies of big pharma. The pandemic has demanded, on the contrary, that investment in equipment and medicines should not rely exclusively on the private sector, and has compelled the State to centralize funds, operational capacity, imports, and the manufacturing of components. Yet government purchases are constrained and regulated in such a way that purchases involving big volumes are subject to ostentatious international bidding mechanisms that discourage local producers.

6 Inability to coordinate a response

Coordination between countries of the region, so necessary in cases of emergency, was destroyed by the disintegration of Latin American unity caused mainly by the FTAs. The first blow dealt on this integration was the near destruction of CAN, when on account of the FTA negotiation with the U.S., Venezuela withdrew from the group in 2006. Even though CAN’s initial goals were ambitious and included many more themes besides those related to free trade, trade ties in

the region started to weaken because the FTAs signed by some countries channel the main trade and investment flows to the developed countries. As for the pandemic, CAN has just made a single statement yet no mention to any specific plans and/or resources to jointly address Covid-19 as it spreads along border areas, particularly affected as is the case of the Colombia-Ecuador border, Colombia's Amazonas department bordering Brazil, and the border between Colombia and Venezuela, as the Colombian government refuses to coordinate with the government of Venezuela.

CAN's prevailing concern is the post-pandemic period, and strengthening electronic trade and the region's value chains – a goal that had been abandoned since “open regionalism” was promoted. It is a concern about a future in which no changes are predicted in terms of economic model, but lacks any coordination presently as regards the fiscal, budgetary, and health situation during the outbreak.

Unasur (2008- 2018) disappeared to all practical effects, for of the 12 members countries that made it up only Bolivia, Guyana, Suriname, and Venezuela have remained. The entire institutional framework has collapsed, and the breakthroughs made in terms of technology, defense, health, etc. were abandoned. The other eight countries created the Forum for the Progress and

Development of South America (Prosur) in March 2019 with a primarily political agenda centered on accepting those countries in which human rights and the rule of law are respected, yet with no real developments in terms of regional integration.

In April, Mercosur allocated 16 million dollars to the coordinated fight against the pandemic, amount to be funded by the Mercosur Structural Convergence Fund and to be used to strengthen diagnostic capacity and input purchases. At any rate, that regional integration entity is facing up one of its worst crises over disagreements between its two main partners, Brazil and Argentina.

The Organization of American States (OAS) limits itself to general statements, while at its meetings its secretary general, Luis Almagro, who has turned into a spokesperson for Washington, has limited himself to emphasizing that controlling the pandemic is in the hands of the citizens.

As can be see, Latin America is essentially uncoordinated, without sound integration mechanisms, with divisions that obey ideological or trade differences, without a strong institutional framework allowing it to approach, in coordinated fashion, present and future challenges, while worldwide the opinion is strengthening about the need to strengthen regional integration as globalization reaches its end.

7 Final considerations

Throughout the text we were able to verify how, after decades of FTAs being in force in the region, the loss of food sovereignty, the strong dismantling of industrial complexes, the defunding of universal public services, and the absence of a coordinated political forum have left Latin America in a much weaker position to establish, both emergency and long-term, public policies to mitigate the effects of the coronavirus. The Covid-19 outbreak is evidence of the exhaustion and insufficiency of the neoliberal trade globalization model to face a health and socioeconomic crisis. In this cross-sectional study I have not exhausted all the facets through which the FTAs undermine public policy making and the State's autonomy to make decisions in face of an unprecedented crisis in recent history. All I did was to point out some of the most important issues for the trade union and social movement in Latin America with the aim of contributing to an increasingly more urgent debate that will continue in the region.

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