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CAFTA Deals Watchdog Report

A decade of revealing meaningless, worthless and stupid deals-for-trade-votes
WEDNESDAY, JULY 6, 2005

July 4th fireworks over fake CAFTA "sugar deal"

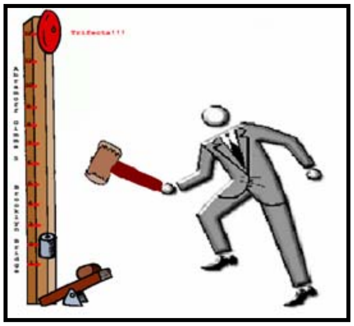
Why recycling the same offer over and over only counts as a CAFTA "sugar deal" to those who already support CAFTA…

Washington, D.C. – How many times must a deal be recycled before members of Congress can call it a deal? After several weeks of being presented the exact same non-deal on sugar by a Bush administration unwilling to consider substantive proposals on CAFTA's sugar provisions, Senators Norm Coleman (R-Minn.) and Saxby Chambliss (R-Ga.)[1] declared they would support CAFTA because of the administration's "new" sugar proposal. Senator Ben Nelson (D-Neb.) also used the deal as political cover,[2] while Senators Mel Martinez (R-Fla.) and Bill Nelson (D-Fla.) are also reported to have voted for CAFTA based on the deal.[3] The industry and many other Senators and House members representing beet or cane constituencies rejected the "offer" as a meaningless recycling of a nothingburger – the so-called offer comprised only what the administration can do under the existing farm bill and does not go beyond that bill's 2007 expiration. As for the senators – apparently they intended to support CAFTA no matter what.

Late in the night on June 29, Coleman announced his support for CAFTA based on regurgitated "assurances" received in a letter from Secretary of Agriculture Mike Johanns.[4] The terms of the "deal" include:

- having the U.S. Department of Agriculture (USDA)'s Commodity Credit Corporation (CCC) compensate sugar producers in CAFTA target countries and/or Mexico rather than accept their sugar imports through 2007 (i.e. to subsidize foreign producers not to sell into the United States) if imports from these countries would bring the U.S. over a ceiling of 1.532 million short tons – which is the trigger level set by the 2002 Farm Bill. (If imports rise above that level it would unravel the U.S. sugar program);
- to, instead of cash payment and at the discretion of the Bush administration, purchase U.S. non-sugar agricultural commodities to give to a CAFTA target country and/or Mexican sugar producers in exchange for their commitment not to export sugar into the U.S. market at levels exceeding the 2002 Farm Bill trigger level;
- to, at the discretion of the Bush administration, divert the CCC- purchased Central American and/or Mexican sugar imports from the domestic U.S. food market to ethanol conversion processes;
- to, at the discretion of the Bush administration, allow Central American and/or Mexican sugar imports *above the trigger level* if the administration determines that domestic sugar production plus the minimum import requirement under WTO, NAFTA and CAFTA obligations is insufficient to meet domestic U.S. sugar demand – *even if this exceeds the trigger level and unravels the U.S. sugar program*; and
- to conduct a USDA study to be delivered to Congress no later than July 1, 2006 on the feasibility of converting U.S.-produced sugar into ethanol, *a program already authorized as a USDA pilot program in the recent Energy Bill*; and to commit the USDA to review all U.S. Customs, Bureau of the Census, and other import data throughout the year – both provisions that are *meaningless* in terms of achieving the ostensible purpose of the deal, which is to protect the U.S. sugar industry from CAFTA.[5]

Sugar producers have excoriated the non-deal. "There is no deal, and it's obvious that there will be no deal," said Terry Jones, a Wyoming sugarbeet farmer and president of the American Sugarbeet Growers Association. "We have said all along that we need a longterm solution to our problems with CAFTA and other trade agreements. What we were presented yesterday was virtually the same short-term proposal we'd already rejected." [6] Representative Mark Foley, a Florida Republican who represents one of the major sugar-growing areas but who is being pressured to betray his constituents and instead go with other GOP Ways and Means members, noted at the Ways and Means mark up that the Coleman CAFTA deal is "not a good deal" for sugar. He added, "I have heard some of my colleagues say we can't turn our backs on people in Guatemala. Well, I can't turn my back on people in South Bay and Canal Point, Lewiston, and LaBelle, whose lives are closely linked to this industry. Not the big growers, not the thousand-acre plantations, but the mom and pop [growers] who have 50 acres, 100 acres in production. That is all they have."[7] However, with CAFTA in such trouble that even its Senate passage was not certain, this eleventh hour *non*-deal allowed the Bush administration to narrowly pass CAFTA through the Senate.



Coleman's Bitter Sugar non-Deal, Transparent Fig Leaf Gets only 1 of 50 Points on Public Citizen's Deal-O-Meter

The Coleman "deal" gets a 1 out of a possible 50 points on Public Citizen's Global Trade Watch's Deal-O-Meter. This puts it in the **"Brooklyn Bridge"** category of deals – our lowest ranking – because if Sen. Coleman or any other members of Congress thinks that this deal offers him any political cover, we have a bridge in Brooklyn we'd like to sell him. (Please see our description of our methodology at the end of this text.)

- **Money for taxpayer-funded boondoggle is not appropriated before vote, or even authorized, or in implementing legislation or CAFTA text.** Money spent by the CCC is borrowed from the U.S. Treasury Department and must be repaid at the end of each fiscal year. The terms of Coleman's sugar deal mean that U.S. taxpayers – rather than private U.S. sugar importers – could be compelled to buy massive amounts of CAFTA target country and/or Mexican sugar if USDA determines that the Farm Bill trigger level might be reached. If USDA is not able or willing to obtain agreement from CAFTA target country and/or Mexican sugar growers to accept U.S. commodities in exchange for a commitment *not to* export their sugar to the U.S. market, estimates of what it would cost the CCC to run a buy-out program of Central American and Mexican sugar producers run as much as $200 million.[8] The Bush administration has not even conceded that it might cost taxpayer money to run a program that buys out foreign sugar producers, much less specified what pot of gold such money will come from. It seems improbable that even if the administration sought to follow through on this one, that a proposal to add to the U.S. budget deficit by spending money to pay foreign producers not to sell sugar to the United States would get past the foreseeable pile-on from consumer, tax, environmental and other watchdog groups – and the press. (0 points)
- **No indication that Bush administration has the political will or administrative power to defend sugar commodity programs.** The notion that Congress would appropriate *any* funds – much less hundreds of millions of dollars – in order to buy other countries' sugar, especially given Bush administration and congressionally proposed cuts in U.S. farm spending programs,[9] is ridiculous on its face. Moreover, use of this buy-out mechanism is discretionary, meaning that there is no meaningful way of ensuring its application by the Bush administration even if funding were available. If, for whatever reason, the Bush administration decided not to use the buy-out mechanism to enforce the trigger level of imports, U.S. producers would have no legal recourse. The money for this non-deal is not even in the CAFTA implementing legislation, much less included as a provision in the agreement. Moreover, under this non-deal, the Bush administration is given absolute discretion to determine whether U.S. sugar demand is not being met. If they decide it is not being met, the trigger level would simply not be observed. Finally, the administration has not spelled out in its non-deal letter how it would convert the purchased foreign sugar into ethanol, if it opted to divert the sugar rather that merely burn it or hold it in government silos. Few U.S. ethanol plants currently use sugar to produce ethanol, nor has the ethanol industry indicated that they would be willing to purchase foreign sugar stocks from the CCC even if they did have the capacity to do so.[10] Also unclear is the actual mechanism whereby the CCC could make such a transfer, which would surely be opposed by U.S. corn growers that currently provide feedstock to U.S. ethanol plants. (0 points)
- **Coleman non-deal does nothing to resolve longer-term problems of sugar industry and has no value even as political cover, given the sugar industry scoffs at the non-deal and continues its opposition to CAFTA.** There is not much in Coleman's non-deal that is not already provided for, to some degree, in the 2002 Farm Bill and the current Energy Bill. For U.S. sugar producers, the real concern is 2007, when the Farm Bill expires, and in 2008, when Mexico will be allowed to export unlimited quantities of sugar into the U.S. market duty-free. The U.S. sugar industry is also looking ahead to ongoing negotiations on a Free Trade Area of the America (FTAA), under which a key demand of several South American sugar-producing nations, such as Brazil, is to obtain new quotas to export large amounts of sugar into the U.S. market. The Bush administration has indicated that "nothing is off the table" – including sugar – in these negotiations. As such, this means that the long-term problems for the U.S. sugar industry are not resolved by the Coleman deal, and might even be amplified by its terms if the trigger level is not enforced for whatever reason. Furthermore, by establishing a massively expensive, taxpayer-funded buyout of foreign sugar producers, the Bush administration is essentially postponing a political battle over the U.S. sugar program until 2007, when the Farm Bill expires. If the record of the last 20 years of cuts in commodity programs is

any indication, once a commodity program starts costing tax dollars to maintain, it will be quickly put to sleep, which is likely the reason why the sugar industry as well as many environmental and consumer groups oppose the buy-out measure.[11] (0 points)

- **The non-deal cannot be delivered upon by the Bush administration alone and the other parties who would have to get involved – i.e. the CAFTA target governments and/or sugar producers – have not agreed to the Bush administration's interpretation of the sugar agreement, which is not spelled out in CAFTA text.** It is unclear what mechanism the CCC will use to pay foreign sugar producers for their exports to the United States above the trigger level if they do not accept U.S. non-sugar agricultural commodities as a "form of payment" (after all, what would a Guatemalan sugar producer do with a hill of soybeans?). Would these producers be paid in cash? If so, would they receive the full market value of their sugar exports, and how would this value be determined? Such ambiguities create a ripe environment for disagreements with CAFTA target country governments and sugar producers over implementation of this side deal, given none of these issues are resolved in the CAFTA text.
- **Coleman deal opens door to WTO/NAFTA/CAFTA challenge.** The terms of Coleman's CAFTA sugar deal allow the CCC to buy non-sugar U.S. agricultural commodities to give CAFTA target country and Mexican sugar producers in exchange for their agreeing not to export their sugar to the U.S. market if the Farm Bill trigger level were reached – a measure that almost certainly could violate U.S. WTO obligations, since it would use taxpayer money to purchase non-sugar commodities – a subsidy to growers of those commodities. Moreover, the record of NAFTA's side letter on sugar offers an instructive lesson on the peril of relying on this type of side agreement that is not legally binding and that may not be interpreted in the same way by all parties. The NAFTA sugar side letter supposedly modified the formula that would be used to calculate how much duty-free sugar Mexico would be allowed to export to the United States. However, the sugar side letter was included as an attachment to the legal text in the version of NAFTA that passed the U.S. Congress in 1993, but reportedly was not included in the version that passed Mexico's Congress. Mexico subsequently rejected the side letter's validity, while the United States maintains it is valid.[12] When the United States applied its interpretation of the formula in the side letter and denied duty-free access to Mexican sugar imports, Mexico retaliated with a series of measures that targeted U.S. exports of high fructose corn syrup to the Mexican market. As a consequence, the United States and Mexico have spent the better part of a decade trapped in litigation at WTO and NAFTA panels related to this dispute. The U.S. Trade Representative's office has indicated that it may be abandoning the original U.S. interpretation of the side letter, putting further uncertainty on whether this NAFTA promise will stand the test of time.[13] NAFTA offers a cautionary tale to members of Congress who might be contemplating using a side letter as a form of political cover for a "yes" vote on CAFTA: different interpretations abound between parties to the agreement, which are only compounded when either party interprets their rights and responsibilities in a highly discretionary fashion. Such high levels of discretion – exemplified in the Coleman deal since the Bush administration has discretion in enforcing the trigger level for sugar imports – are exactly the breeding grounds for NAFTA sugar deal-style differences of interpretation to emerge. (0 points)

The one thing the deal does have "going for it" is the following:

- **Promise in Writing in a Publicly Available Document.** (1 point)

How the Deal-O-Meter Works:

Public Citizen's Global Trade Watch Deal-O-Meter will rate each rumored deal on a scale of 0 to 50, with 50 being a smart deal and 0 being a dumb deal. Rumored deals will get points for each of the following:

1. **Is design of deal sufficient to scope of problem? 3 points** Outcome of deal, if promise is kept, is likely to significantly ameliorate negative impact of the trade agreement. In other words, a promise for a possible commission to consider the possibility of studying and perhaps releasing a report on possible environmental damage under CAFTA is not likely to have a direct impact.
2. **Is proposed funding at a level sufficient to scope of problem? 4 points** The funding level is likely to be sufficient to the task of ameliorating damage from the trade agreement. In other words, if independent estimates put the cost of environmental clean-up at $20 billion, the promised funding level cannot be $2 billion.
3. **Has the funding been appropriated before the vote? 5 points** Necessary funding obtained ahead of the vote on the trade agreement.
4. **Is the funding appropriated for multiple years? 5 points**
5. **Will the promised funding last as long as the problem the deal supposedly targets? 5 points** The promised ameliorative policy fix will last as long as the possible damage from the trade agreement. In other words, if a proposed

policy fix can only be guaranteed for two years, but possible economic devastation wrought by the trade agreement is likely to last eight years, then the rumored deal does not get these points.

6. **Is the deal in writing? 1 point** Promise is in writing in a public document, i.e. no spoken word of honor or blood oaths.
7. **Is it in the implementing legislation? 2 points**
8. **Is the deal in the CAFTA text? 5 points** Promise amends the actual text of the agreement, i.e. not a side letter, which tends to be heavily disputed, as was the U.S.-Mexico side letter on sugar in NAFTA.
9. **Is the deal beyond WTO/CAFTA/NAFTA challenge? 3 points** Policy tools that will be used to deliver on promised deal are beyond WTO or other international trade tribunal challenge. Many Bush and Clinton administration promises to safeguard agricultural or industrial sectors from the fallout of a trade agreement were never pursued, but among the few that were, WTO panels predictably ruled against the U.S. safeguard measure. Since the United States has only a ten percent success ratio in defending its safeguard policies, most safeguard policies are doomed to fail.
10. **Is the deal supported by the industry or sector likely to be affected by CAFTA? 4 points** Industry or sector affected supports the deal that the member(s) of Congress made. For the "political cover" potentially bought by a deal to be politically meaningful, the industry or sector likely affected by the terms of the deal needs to also feel that the deal was worthwhile. If not, the member of Congress stands the possibility of being "primaried."
11. **Is the deal safe from being undone in ongoing FTAA or WTO negotiations? 4 points** The promised deal is not likely to be jeopardized by ongoing negotiations for a Free Trade Area of the Americas, at the WTO, or in the context of other anticipated trade deals. Bush and Clinton administration promises to protect the U.S. citrus industry, for example, are already jeopardized by the FTAA negotiations. Also, if the Bush administration commits to fund one kind of agricultural, labor or environmental deal on CAFTA – on the basis of the argument that these are necessary if the United States is to expand trade with a less developed country – will the Bush administration commit to funding similar programs in the context of an FTAA?
12. **Is the deal something that can be delivered upon by the Bush administration, or will another party have to get involved? 4 points** The promised deal is one that the Bush administration, rather than a future administration, Congress or a foreign government, will be able to deliver upon.
13. **Is the Executive Branch politically and technically up to the task of delivering on the deal? 5 points** The proposed ameliorative policy fix is one that past experience indicates the Executive Branch will be able to deliver on administratively, technically, and politically. In other words, a promise to deliver massive amounts of trade adjustment assistance (TAA) to workers never before covered by the program are likely to meet administrative difficulties at a Department of Labor already resistant to administering the existing TAA program.

Trade Deal-O-Meter:

0-24 points: Brooklyn Bridge. As in, if you bought that deal, I've got a bridge in Brooklyn I'd like to sell you.
25-49 points: Abramoff Gimme Five. Named after a famous lobbyist who reportedly instructed subordinates to shift money from clients' billable hours to side projects by speaking the code phrase "Gimme 5." Like clients' dealings with this lobbyist, trade deals of the Gimme Five caliber may work out some of the time, but are also likely to backfire in the long term.
50 points: The Trifecta. Any Member of Congress that wins a deal of this caliber gets to join Public Citizen on our next trip to the Kentucky Derby, where we'll place a Win-Place-and Show bet on the horses of that Members' choice in their honor.

Background:
Public Citizen's Global Trade Watch has studied over 90 deals taken by Members of Congress for trade votes during the period 1992-2004, and found that nearly over 80 percent of promises on such deals were not kept or reversed by subsequent events. We divided these deals into pure pork barrel promises, of which 70 percent were broken; and ameliorative policy fix promises, of which 90 percent were broken. For our full report, "Trade Wars – Revenge of the Myth: Deals for Trade Votes Gone Bad," please visit http://www.citizen.org/hot_issues/issue.cfm?ID=1113.

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[1] "Coleman, Agriculture Committee Chairman Chambliss Secure White House Commitment to Protect U.S. Sugar Policy From CAFTA," Press Release by Sen. Coleman's Office, June 29, 2005.
[2] "I have tried to balance the benefits the United States can derive from CAFTA while protecting our domestic sugar producers. I have received assurances from Secretary Gutierrez, Secretary Johanns and Ambassador Portman that they will ensure that our domestic sugar interests are protected." Quote from Sen. Ben Nelson (D-Neb.), "Nelson Statement On CAFTA," Press Release, June 30, 2005.
[3] "Senate Approves DR-CAFTA By Narrow Margin After Sugar Assurances," *Inside U.S. Trade*, July 1, 2005.
[4] Letter from Secretary Mike Johanns to Sens. Saxby Chambliss and Rep. Bob Goodlatte, June 29, 2005; "Administration Proposal Regarding U.S. Sugar Program," *Inside U.S. Trade*, posted June 30, 2005.
[5] Ibid.
[6] American Sugar Alliance, "Last Ditch Efforts for Sugar Deal Fail," Press Release, June 29, 2005.
[7] Public Citizen notes from House Ways and Means Committee Mark-Up of H.R. 3045, June 30, 2005.
[8] American Sugar Alliance, "U.S. Sugar Industry Finds No Comfort in the So-Called 'Sugar Fix,'" Press Release, June 27, 2005.
[9] Robert Pear, "Bush is Said to Seek Sharp Cuts in Subsidy Payments to Farmers," *New York Times,* Feb. 6, 2005.
[10] "Administration Isolates Sugar Industry on CAFTA, Sets Stage for Vote," *Inside U.S. Trade,* June 24, 2005.
[11] Letter from Friends of the Earth, Oxfam America and Washington Office on Latin America to Members of Congress, June 28, 2005.
[12] S*ee* R. Dennis Olson, "Sweet or Sour?: The U.S. Sugar Program and the Threats Posed by the Dominican Republic-Central America Free Trade Agreement," Institute for Agriculture and Trade Policy Report, April 2005, at 13.
[13] Martin Vaughan, "U.S. Abandons Side Letter As It Forges Ahead With Sugar Talks," *Inside U.S. Trade*, Aug. 16, 2002.