

# Fair Trade or Free Trade? Understanding CAFTA

## Labor Rights Provisions in CAFTA are Inadequate

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CAFTA's labor chapter is virtually identical to the labor chapters of the Chile and Singapore trade agreements--a model that was inadequate even for Chile and Singapore. In the context of Central America – where laws fall far below international standards and governments and employers are actively hostile towards unions – this model will encourage rampant workers' rights violations to continue.

### 1. CAFTA WON'T FIX CENTRAL AMERICA'S FLAWED LABOR LAWS:

The labor laws of the CAFTA countries do not come close to meeting international standards, and have been repeatedly criticized by the UN's International Labor Organization (ILO) and the U.S. State Department. Employers in Central America intimidate, fire and blacklist workers for attempting to exercise their right to join an independent union, and they do so with impunity under Central American laws. The ILO has found time and again that these laws fail to meet international standards on the right to organize.

- In **El Salvador and Nicaragua**, workers fired for union organizing have no right to be reinstated, and the only remedy available is a minor fine – a small price to pay to keep factories union-free.
- In **Guatemala and Honduras**, the laws' fines for anti-union discrimination are so low that they do not effectively deter the practice, and courts hardly bother to enforce the fines anyway.
- In **Costa Rica**, a proposal to strengthen remedies for anti-union discrimination as recommended by the ILO is still not law, and the government has repeatedly backtracked on tripartite agreements for labor reforms.
- **El Salvador's** officials take advantage of the law's overly formal union registration requirements to deny legal recognition to legitimate trade unions.
- **Costa Rican** law allows "solidarity associations" to represent workers in the place of unions. In practice, employers establish solidarity associations to avoid recognizing and bargaining with legitimate independent unions that have been organized by their workers.

### CAFTA Would Not Require Labor Law Reform

CAFTA's labor provisions do not require Central American countries to revise their labor laws to meet international standards. Instead, the labor chapter would only require governments to enforce the flawed set of laws they already have. Last year, the administration claimed that Central American countries would be required to improve their labor laws before CAFTA came into effect, but now they are moving forward despite the fact that no reforms have taken place.

### CAFTA Would Weaken Existing Workers' Rights

Not only will CAFTA fail to improve workers' rights, but the agreement will be a step backward for organized labor in Central America. The only tool that has helped to reform labor laws in Central America in the past is our unilateral system of trade preferences – a system that will no longer apply to the region if CAFTA goes into effect. Our unilateral trade preference programs provide for the withdrawal of trade benefits if steps are not taken to meet international standards, including steps to reform weak domestic laws. While the labor rights provisions of these programs are not perfect, they have led to some improvements in labor rights; nearly every labor law reform in Central America over the past fifteen years has been the direct result of a threat to withdraw trade benefits under our preference programs. Under CAFTA, employers and governments will actually enjoy more freedom to deny workers their fundamental human rights than they currently have under our trade preference programs.

## **2. CAFTA WON'T REMEDY LABOR LAW ENFORCEMENT FAILURES:**

The ILO and the U.S. State Department have repeatedly criticized the CAFTA countries not only for failing to bring their labor laws into compliance with ILO standards, but also for failing to enforce those laws they already have on the books. Labor ministries and judicial systems are unable and unwilling to effectively enforce their own laws in defense of workers' rights – there is no respect for the basic rule of law, and delays, obstruction, and corruption are the norm. Employers are free to retaliate against workers seeking to form unions, and workers are subjected to harassment, dismissal, physical threats and even murder.

- ***Delays and obstruction are common in Central American labor ministries.*** In El Salvador, labor inspectors do not follow proper procedures and erect obstacles to union registration. In Nicaragua, the process for calling a legal strike is so complicated that there have been only three legal strikes since 1996. The State Department has called Guatemala's labor inspection system "ineffective, inadequate, and corrupt."
- In some cases, ***labor ministries not only ignore violations but are themselves complicit in violations of the law.*** The Costa Rican Labor Ministry has provided information about newly formed unions to employers who then used the information to fire and blacklist union members. In Honduras, labor inspectors have sold the names of workers seeking to form a union to employers, who then retaliate against the workers.
- ***The judicial branch is also guilty of systematic enforcement failures*** in Central America. Even if workers are able to overcome burdensome procedures in the labor courts to win cases against abusive employers, enforcing judgments against employers in Central America is often difficult, if not impossible.

### **CAFTA Would Not Fix Enforcement Problems**

CAFTA requires countries to effectively enforce their laws, but the penalties for non-enforcement are very weak. A country that fails to enforce its own labor laws is required to pay a fine to improve labor rights enforcement, and the fine ends up back in its own budget. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine to itself. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. If a country pays the fine to itself, but uses the money on unrelated or ineffective programs so that enforcement problems continue unaddressed, no trade action can be taken. Under these rules, enforcement failures and corruption are bound to persist.

### **Technical Cooperation Proposals Are Not Sufficient**

The U.S. Trade Representative claims that a technical cooperation program will help improve labor law enforcement in the region, making up for any weaknesses in CAFTA's rules on workers' rights. While a strong technical cooperation program is essential, the current track record gives no hope that increased cooperation alone will change deep-seated indifference and hostility towards workers' rights. The U.S. has devoted millions of dollars to labor programs in Central America over recent years, with few real improvements for workers because of limited ambition in, and government resistance to, the programs. No amount of assistance will create the political will to improve workers' rights in Central America if trade benefits cannot be withdrawn from countries that violate these rights.

### **A Better Way**

The Chile/Singapore labor provisions will not work in CAFTA. Central American unions, international human rights and development groups, and other experts on the region have called for a different kind of trade model that will truly protect workers' rights. The Administration should work with Congress to develop rules for the region that require governments to respect the rule of law, root out corruption, and fully and effectively enforce workers' rights in order to receive trade benefits. CAFTA falls short of this standard, and it must be rejected.