



## WASHINGTON OFFICE ON LATIN AMERICA

*Celebrating 30 years of promoting democracy, human rights and social justice in Latin America.*

### **Testimony of the Washington Office on Latin America Regarding the DR-CAFTA**

(submitted for the Ways and Means Subcommittee Hearing 4/21/05)

On May 28, 2004, the United States and the Central American countries (Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica) signed the U.S.-Central America Free Trade Agreement (CAFTA) in the Hall of Americas in the Organization of American States. Upon signing the agreement, U.S. Trade Representative Robert Zoellick suggested that “CAFTA will put the U.S. relationship with Central America on a more solid, mutual foundation, firmly grounded in our shared commitment to democracy, free markets, free people, and hope.” The Washington Office on Latin America (WOLA), however, is deeply concerned that DR-CAFTA will only result in free markets without the anticipated freedom and hope for the millions of people in the region. In particular, WOLA believes that DR-CAFTA’s provisions on agriculture, labor and intellectual property will frustrate, rather than promote development in the region. WOLA therefore urges all members of congress to reject DR-CAFTA.

#### **1. DR-CAFTA Will Increase Rural Unemployment and Jeopardize Food Security**

DR-CAFTA's likely impact on the Central American rural sector is a cause for concern. Under the agreement, the Central American countries will eliminate over time tariffs on basic grains, such as rice, beans and corn, products on which the lives of millions of people now depend. With ever-greater access to the Central American market, U.S. agro-export corporations, which produce and export grains at artificially low prices due to government supports, will undercut their Central American counterparts, mostly small and family farmers. Dumping cheaper, subsidized grains into the Central American market could lead to a significant loss of agricultural jobs, creating greater poverty, hunger and rural emigration. Indeed, a 2004 U.S. International Trade Commission report on DR-CAFTA projects that Central America will significantly increase imports of basic grains upon implementation of the agreement.<sup>1</sup> In a region where roughly half of all employment is in agriculture, this will have devastating long-term effects.

##### *a. The Face of the Central America Rural Sector*

Agriculture still remains the largest source of employment in many Central American countries. In Guatemala, Honduras and Nicaragua, agriculture still remains the largest source of employment, engaging 52.5, 43.9 and 43.2% of the economically active population respectively. In the U.S., by comparison, only 2% of the labor force is employed in the rural sector. In addition, the region is dependent on a few, key export crops, which are highly vulnerable to the volatility of international markets. In Central America, poverty is concentrated in the rural sector. According to the International Fund for Agricultural Development, 64% of Latin America’s rural population lives in poverty, compared to 59.9% in 1980. Official support for the rural sector has also declined significantly over the last two decades, and structural adjustment

programs in the 1980s and ‘90s have resulted in minimal investment in rural infrastructure, financial services and human capital in the region. Not only has productivity of Central American farms suffered as a result, but lack of overall employment opportunities has been the impetus of outward migration to the U.S.

##### *b. Potential Impacts and Lessons Learned*

The U.S. steadfastly refused to discuss the issue of subsidies to its own agricultural producers, preferring to discuss this issue at the level of the WTO. In response, the Central American negotiators and producer federations demanded that sensitive agricultural crops such as basic grains, dairy and pork be exempt from the negotiations until the U.S. eliminates its unfair agricultural subsidies. Again, the U.S. refused any exemptions for these products. This forced the Central American governments to offer a weaker proposal for special and differential treatment; they called for increased market access for some products and the maintenance of high tariffs and longer liberalization periods for sensitive agricultural products. Once again, the U.S. refused.

According to the Mesoamerican Initiative for Trade Integration, Central Americans conceded much more than they received in agriculture. By the end of the negotiations, the four remaining Central American countries received a small amount of new market access for certain products such as sugar, and a 15 to 20 year liberalization period for several sensitive crops. Farmers, analysts and government negotiators alike recognize that these are very small gains, compared to the blows the agricultural sector will sustain under CAFTA. On December 31, 2003 the lead Guatemalan Negotiator Guido Rodas, stated, “Rice, pork, corn, beer, telecommunications and generic medicines are among the losers who will pick up the tab of the CAFTA negotiation.”

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<sup>1</sup> U.S. International Trade Commission, *U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economy-Wide and Selected Sectoral Effects*, August 2004 at pp. 59-72.

Some proponents of CAFTA have argued that small-scale farming in Central America is a dying industry, and that subsistence farmers are becoming obsolete in the global economy. However, far from obsolescence, small and medium-scale agriculture plays multiple, important roles in Central America. Small and medium farms create significant rural employment, with backward and forward linkages in the rural economy. Local food production is also important for food security and nutrition. Small farmers play an important role as environmental stewards, caring for the land, just as agriculture plays an important cultural and historical role in the social fabric of Central America. Finally, rural development and opportunities in agriculture help to decrease migratory pressure on cities and the U.S.

It has been said that trade agreements create winners and losers; there are people who benefit from trade liberalization, and those who do not. NAFTA has demonstrated, as will DR-CAFTA if it passes, that the biggest losers in these trade deals are in the agricultural sector, especially small and medium farmers and day laborers. The experience of NAFTA in the Mexican agricultural sector is illustrative. At least 1.5 million Mexican farmers lost their livelihoods to NAFTA. According to a Carnegie Endowment for International Peace report published in 2004, approximately 8 million of Mexico's active labor force worked in the agriculture sector in 1993; by 2003, it was roughly 6.5 million. The report states, "Agricultural trade liberalization linked to NAFTA is the signal most significant factor in the loss of agricultural jobs in Mexico." Similarly, a recent report by Oxfam International, entitled "A Raw Deal for Rice," predicts that 1.5 million jobs directly and indirectly related to the rice sector could be lost upon full implementation of DR-CAFTA.

As proponents of NAFTA then argued, displaced farmers will simply move to new industries, but job creation—particularly in the export processing sector—is being eroded as jobs move to new markets in Asia. The situation is even worse now with the expiation of the Multi-Fiber Agreement. Without quotas, many small and medium sized producers are likely to close. A 2004 report issued by U.S. AID on the garment industry in the Dominican Republic, for example, projects that the garment exports to the U.S. will decrease by 25% even after DR-CAFTA is implemented. Although the impact of the phase-out is expected to be softened slightly by CAFTA, the agreement is by no means a salvation.

Congress must view trade agreements and the impact of trade through the lens of poverty reduction, and measure the agreements by the extent to which people are able to exercise their economic and social rights. Trade is an important factor in any economy, but, as studies such as the Carnegie report demonstrate, agricultural liberalization is not good for developing countries that have huge trade asymmetries vis-à-vis their trading partners. Like their Mexican counterparts, Central American farmers will be unable to compete against highly subsidized production in the U.S. and elsewhere in the developed world. This will result in increased poverty, greater levels of rural unemployment and more migration – further violating Central Americans economic and social rights. Simply put, CAFTA is not the development strategy that the region needs.

## **2. The CAFTA Labor Chapter Is Insufficient to Address Systematic Labor Violations**

The labor laws of the Central American countries fail in many respects to meet the minimum standards set forth in international instruments such as the ILO's Fundamental Declaration of Rights at Work. Moreover, enforcement of labor rights is seriously deficient. In some cases, for example, labor ministry personnel encourage or participate in employer abuses of workers' rights by acting upon illegal requests that harm workers. In other cases, labor ministry officials use obstructionist tactics to avoid granting recognition to unions. The action or inaction of labor courts also deny workers their rights, as long delays in court proceedings, at times due to judicial collusion with employers or simple incompetence, and non-enforcement of court orders result in the effective denial of justice to workers.

The situation of impunity with regard to workers' exercise of freedom of association and collective bargaining is a serious problem that undermines the rule of law and the prospects for social and economic justice throughout Central America. This situation can only be addressed by policies that promote democratic, equitable, and sustainable development, based on respect for fundamental labor and human rights. As explained below, the CAFTA does not contain adequate mechanisms that encourage positive labor law reform or, indeed, discourage retrenchments in existing laws. Indeed, the labor chapter does little to even ensure that existing laws are adequately enforced. Because the CAFTA will not encourage social and economic development, as it does not adequately promote respect for the fundamental human rights of the people of Central America, CAFTA must be opposed.

### **a. DR-CAFTA Does Little to Protect Worker Rights**

**At a February 9, 2005 conference hosted by the Center for Strategic and International Studies (CSIS), former U.S. Trade Representative Mickey Kantor rejected the DR-CAFTA for its lack of an adequate, enforceable labor clause. "I think it should go back to negotiating table," said Kantor, who found several shortcomings with the labor clauses negotiated in various free trade agreements by the current USTR. Upon reading Chapter 16, the labor chapter, and with an understanding of the labor laws of the region, it is obvious why Mr. Kantor concluded that the DR-CAFTA as "a major step backwards on this issue."**

Under Chapter 16, member states are under absolutely no obligation to meet the core labor standards articulated by the International Labor Organization (ILO), or the international worker rights standards incorporated into previous, unilateral U.S. trade laws. Rather, member states have committed only to "strive to ensure" that these principles are protected by local law. Incredibly, member states do not have to strive to eliminate discrimination in employment, as that right is explicitly beyond the scope of the agreement. Thus, only a "fail[ure] to effectively enforce [] labor laws, through a sustained or recurring course of action or inaction, in a manner effecting trade between the Parties" could ever subject a country to a fine. Even then, Article 16.2(a) excuses the action or inaction of member state if it is deemed "a reasonable exercise of discretion" or a "bona fide decision regarding the allocation of resources." Thus, the negative "failure to enforce" standard may be denied any force of law if a member state can satisfy the ambiguous test of "reasonableness" or show that their under-funded Ministries of Labor allocated resources toward some other reasonable objective.

Because local labor laws in many respects fall short of international minimum standards, the CAFTA language does nothing more than requires that existing, inadequate practices be continued. Moreover, a member state is under no enforceable obligation to maintain those

inadequate laws and could weaken those laws further to gain an unfair trade advantage. As such, a country may violate international labor law and continue to enjoy all of the market access benefits of the trade agreement. The procedures and remedies for addressing violations that do exist under CAFTA are completely also inadequate. The labor enforcement procedures cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines to themselves with little oversight. These provisions not only make the labor chapter's one limited obligation virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes.

b. DR-CAFTA is Weaker Than Previous Agreements

The texts of previous free trade agreements demonstrate that the USTR is capable of negotiating a more rigorous labor clause when it so decides. The labor clause negotiated in the U.S.-Jordan Free Trade Agreement is one such example. The USTR's "fact sheets" aside, the U.S.-Jordan Agreement is far superior to DR-CAFTA on the issue of labor rights. Under U.S.-Jordan, all labor right obligations, not simply the obligation to enforce domestic laws, may be brought under the dispute resolution and enforcement mechanisms. For example, a claim that a state party relaxed its laws to attract trade or that it failed to ensure that its domestic laws provided protections consistent with international labor standards could be brought under Jordan, but not DR-CAFTA. This is a critical distinction. Moreover, the dispute resolution mechanism in U.S.-Jordan is the same as the commercial mechanism; the same is not true of DR-CAFTA. .

The CAFTA labor chapter is also a step backwards from the Generalized System of Preferences (GSP), the only tool that has generated the political leverage to demand the reform of labor laws in Central America. U.S. unilateral trade preference programs provide for the withdrawal of trade benefits if steps are not taken to meet international labor standards, including steps to reform weak domestic laws. Almost every labor law reform that has taken place in Central America over the past fifteen years has been the result of the threat to withdraw trade benefits under our preference programs. Indeed, on the merits of petitions submitted by the AFL-CIO and the International Labor Rights Fund, Guatemala was put under GSP review in 2002 for its failure to amend its labor code consistent with international standards, its failure to effectively enforce its existing labor code and its failure to investigate the murder of numerous trade unionists. This important tool will be lost once the CAFTA is enacted.

c. **The White Book Should Not Assuage Concerns**

**The much anticipated "white book," entitled "The Labor Dimension in Central America and the Dominican Republic," does little to assuage WOLA's well founded fear that the governments of Central America and the Dominican Republic will fail to adopt, implement and/or enforce internationally recognized worker rights. Indeed, the book demonstrates that the Labor Ministers are in denial about their labor laws. The white book repeats the often stated myth that the reports authored by the International Labor Organization (ILO) in 2003 and 2004 held that the constitutions and labor codes of Central America incorporate ILO fundamental rights and principles. This is simply not true. For example, a letter from the House Committee of Ways and Means to the U.S. Trade Representative, dated April 5, 2005 identifies over twenty instances where, according to reports from the ILO and the State Department, Central American labor laws still fail to comply with international norms relating to freedom of association and collective bargaining. Far from being technical violations, these substandard laws prevent workers from exercising their basic rights.**

Also, while the white book acknowledges some of the most serious problems on the issue of enforcement and makes several recommendations to correct them, it is worth noting that a number of those reforms have been promised for years and have yet to materialize. In other cases, Legislation to reform some of these laws has been languishing in the legislature for years for lack of political will. Moreover, it does not appear that there are any new funds currently allocated to act upon the report's recommendations. The authors call for a conference of donors to be held within 30 days to obtain commitments on funding the recommendations and further funding for management of the technical assistance. Given the deep cuts in the U.S. international labor affairs budget, it is unlikely that sufficient funds will be allocated.

d. The Case of Guatemala

As firmly established by the International Labor Organization, Guatemalan labor law simply fails to meet international labor standards. These shortcomings have been elaborated numerous times by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), by local and international trade unions, and by GSP petitioners. Although Guatemala did approve labor reforms in April 2001 (Decree 18-2001), these reforms did not take into account many of the ILO's observations. Moreover, key aspects of those reforms were recently challenged and deemed unconstitutional by the Constitutional Court of Guatemala in August 2004. The much-needed additional reforms to the Labor Code, promised by the Berger Administration, have still not been enacted.

Most troubling is that the Constitutional Court divested the General Inspector of Labor of its authority to levy administrative fines against labor-law violators in August 2004. Until the labor code is reformed, labor inspectors will be essentially powerless to punish violations of labor rights in Guatemala. Given that the only enforceable clause in the DR-CAFTA is that a country enforced its own laws, Guatemala is simply unable to comply with this basic requirement.

These and other concerns, including continuing violence against trade unionists, were raised in a recent GSP petition, filed with the USTR on December 13, 2004. The USTR has yet to determine whether to accept the petition. The full petition is available at: [http://www.wola.org/economic/cafta\\_gsp\\_petition\\_press\\_release.htm](http://www.wola.org/economic/cafta_gsp_petition_press_release.htm). A letter from over 30 members of congress to the U.S. Trade Representative, in support of the GSP petition, is available at: [http://www.wola.org/guatemala/gsp\\_dear\\_colleague\\_letter.pdf](http://www.wola.org/guatemala/gsp_dear_colleague_letter.pdf).

3. **The Intellectual Property Chapter Goes Beyond TRIPS, Threatening Access to Affordable, Generic Medicines**

International conventions, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), recognize that access to health care is a fundamental human right. For example, Article 12 of the ICESCR obliges states to "recognize the right of everyone

to the enjoyment of the highest attainable standard of physical and mental health.” Of course, access to affordable medicine is an integral part of the right to health care. In the trade context, the TRIPS Agreement, together with the Doha Declaration, requires that intellectual property rules will not interfere with promoting access to medicines. DR-CAFTA does not embody the letter or the spirit of these international obligations, frustrating access to affordable medicines to millions of people in Central America.

For example, Chapter 15 of DR-CAFTA appears to set up barriers to compulsory licenses, which allow governments to obtain cheaper generic drugs by temporarily overriding a pharmaceutical patent. The agreement does so by prohibiting generic suppliers of patented drugs from obtaining marketing approval during the lifetime of the patent. Thus, governments would be unable to make affordable generic equivalents of patented medicines available to its citizens. Also troubling is the requirement that governments recognize exclusivity on test data, which is used by drug companies to demonstrate the safety and efficacy of drugs, for five years on new pharmaceuticals. This would deny the manufacturers of generic drugs of the information necessary to prove the safety or efficacy of their products.

The USTR’s insistence that Guatemala revoke legislation that sought to ensure access to generic medicines – and which was TRIPS consistent – is just one more example where the development needs of Central America were frustrated by overreaching by the USTR. In December 2004, Guatemala had passed a law to increase access to affordable, generic medicines. Under that law, local manufacturers of generic medicines could obtain market registration by relying on the tests conducted by brand-name manufacturers if they could demonstrate that their drug was equivalent to the brand-name product. The U.S. insisted, however, that the law was inconsistent with DR-CAFTA and demanded that Guatemala revoke the law if it wished to remain a party to the agreement. After intense U.S pressure, Guatemala repealed the law just days before ratifying DR-CAFTA, effectively putting new, affordable generic drugs out of reach.

#### **4. Conclusion**

The Washington Office on Latin America recognizes that trade can be mutually beneficial for the nations, communities and individuals involved by creating new economic opportunities. However, we are concerned that, on balance, this agreement does not promote the best interests of Central America, the Dominican Republic or, in the long run, the United States. We believe that a bilateral trade relationship that promotes economic opportunity and respects fundamental human rights is possible. WOLA therefore urges the U.S. Congress to reject the DR-CAFTA and instead to work to support fair trade and development initiatives that will stimulate sustainable, equitable economic growth in the region.

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