What is CAFTA, and why is it important?
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The proposed U.S.-Central America Free Trade Agreement (CAFTA) promotes trade liberalization between the United States and five Central American countries: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. Modeled after the ten-year old North American Free Trade Agreement (NAFTA), CAFTA is widely considered to be a stepping stone to the larger Free Trade Area of the Americas (FTAA) that would encompass 34 economies. CAFTA must be approved by the U.S. Congress and by National Assemblies in the Central American countries before it becomes law.

Rushed and Closed Negotiations
The Bush Administration aggressively pursued the CAFTA negotiations on a very short timeline; whereas NAFTA took more than seven years to negotiate and the FTAA has been negotiated for almost a decade, CAFTA was completed in one calendar year, with limited civil society or Congressional participation. Negotiations for CAFTA began in January 2003, shortly after the U.S. Congress approved a bill to confer Trade Promotion Authority to the White House.

An Asymmetric Agreement:
CAFTA is the first “sub-regional” agreement to be negotiated between such unequal trading partners, where the combined GDP of Central America is equal to 0.5 percent of U.S. GDP. CAFTA would require market liberalization for the majority of goods and services in Central America—including agriculture, manufacturing, public services and government procurement. In return, the U.S. has promised increased market access for certain sectors in Central America, including textiles and a limited increase in sugar quotas. Rigorous impact assessments of CAFTA have not been conducted in Central America. Rather, Central Americans are forced to judge the potential impact based upon the ten-year record of NAFTA. Analysts expect that—as occurred in Mexico—CAFTA will attract foreign direct investment and boost Central American exports in certain sectors, but will provide little benefit to the rural and urban poor of the region.

Opposition to CAFTA grows
While there are many reasons for concern within CAFTA, workers’ rights, agriculture, and worries over U.S. job loss have galvanized opposition to the agreement. Labor unions, development organizations, religious groups, and private sector lobbies have spoken out against the agreement, both in the U.S. and Central America. Legislators in the U.S. Congress and Central American assemblies have also voiced their concern.

LABOR: CAFTA is a step backward for organized labor in Central America as, unlike earlier trade agreements, it does not require compliance with international labor standards. CAFTA only requires that participating countries enforce their domestic labor laws, which are grossly inadequate in Central America.

AGRICULTURE: Central American farmers are concerned that they will be unable to compete in the face of an influx of highly subsidized U.S. exports under CAFTA. Two-thirds of Central America’s poor live in rural areas, and rely on agriculture for employment and food security.

U.S. JOBS: Free trade policies have become a topic of renewed debate in the U.S., as the country experiences jobless growth and the outsourcing of manufacturing jobs. Textile manufacturers and the sugar industry are actively lobbying Congress against CAFTA. Other industries and states that lost jobs or suffered under NAFTA have also expressed their skepticism about the agreement.
Trade Liberalization has already occurred in Central America. Tariff levels have dropped and imports have surged dramatically in the 1990s. In the region’s poorest country, Nicaragua, the average tariff has dropped from 43.2% to 5% in less than a decade. But has development followed?

Export Growth – Exports more than doubled in the 1990s (from $5 to $15 billion), but imports rose even faster and the hoped for diversification has not happened. Over 45% of uncompetitive primary products. An increased reliance on remittances and ‘replacement migration’ is now required to finance the $10 billion Central American trade deficit.

Economic Growth – Growth has been relatively stagnant, compared to the 1970’s growth rate of 6% (2.7% per capita). In the “lost decade” of the 1980’s growth averaged only 1%; in the 1990s growth rose to 4.1% (1.8 % per capita), but has been flat since 1997 and well below the East Asian average of 7% for last three decades (IDB 2002). In 1975, Central American GDP per capita was about 22% of U.S. GDPpc, but has since fallen to about 13%.

Foreign Direct Investment (FDI) – On average, Central America has seen an increase in FDI of $1,400 million per year (1996-2001). However, with the exception of Costa Rica, this investment was driven largely by privatization and is now declining, biased toward construction rather than productive fixed investment and domestic savings – which remain far below levels necessary for sustainable development. El Salvador, the star neoliberal student has seen its FDI collapse from $1.1 billion in 1998, to less than $100 million in 2003. Few forward and backward linkages were created. Export oriented investment (ie. Maquilas) use of local inputs remains minimal.

Productivity – Total factor productivity rates have actually fallen in Central America over the past decade, especially in the agricultural sector (IDB Research Dept, 2002). Total Factor Productivity Growth 1991-2000 has been disappointing, for Costa Rica (+0.2%), Guatemala (- 0.5%), El Salvador (-0.85%), Nicaragua (-1.6%) and Honduras (-1.95%)

Competitiveness – Central American countries rank close to last on the World Economic Forum’s Growth Competitiveness Index (El Salvador ranks 48 & Costa Rica ranks 51, and Guatemala, Nicaragua and Honduras rank 89,90 and 94 out of 102 countries.)

Poverty – Trade liberalization has failed to lower poverty - the principal Millennium Development Goal. Relative poverty in the region is 55%, and 2 or every 3 Central Americans in rural areas are poor.

Inequality – Trade liberalization has increased income inequality in the region, even in Costa Rica. Central America has sustained one of the highest levels of income inequality in the world, with a Gini coefficient of 0.55. A recent agrarian census in Guatemala shows that the distribution of land is essentially unchanged since 1979. Trade has also failed to diminish the gap between Central America and the North, or between rural and urban areas. Central America, in terms of GDP per capita, lost ground relative to the U.S. over the past 25 years.

Jobs – 600,000 Central American permanent and temporary jobs have been permanently lost to the coffee crisis out of a rural labor force of 6 million. In 15 years, the maquila sector has leveled off at only 400,000 jobs, about the same number of entrants into the labor market each year out of a total labor force of 13 million. The quality of employment has deteriorated significantly over the past decade as increases in urban employment have been in sectors of low productivity without social protection. In urban areas, these jobs (micro-enterprise, domestic, and unskilled laborer) have increased to 50% of the urban labor force. The informal sector now represents 60% of the region’s workforce.
Hunger – In Central America, indices of malnutrition, measured by average weight and height, have increased in Nicaragua, Honduras and Costa Rica. The World Food Program 2002 Report states that 8.6 million Central Americans (1 in 4) continue to suffer from hunger or food insecurity.

The downsizing of the Central American state – In the view of the IDB (2002), the shrinking state has crippled its capacity to carry out its basic functions, such as enforcing the rule of law, collecting taxes and promoting the health and education of people entering the work force.

Weak State Fiscal Authority – Central American capacity to collect taxes remains far below expected levels relative to similarly developed countries. The IDB shows that Central Americans should be collecting about 15% of their GDP in taxes, while the actual level is about 10% of GDP. Despite a decade of reforms, the 1990s have seen public investment levels remain well below (-25 to –60%) expected levels.

Corruption - The most recent Corruptions Perception Index (CPI) released by Transparency International show that the corruption remains very high, and in the cases of Costa Rica, Guatemala and Honduras – is worsening. Of 133 countries ranked, Costa Rica occupies position 46, El Salvador 59, Panama 66, Nicaragua 88, Guatemala 100 and Honduras 106. (www.transparency.org)

Debt – Massive bailouts of a failing financial sector and rising internal and external debt have wiped out the HIPC debt forgiveness gains of Nicaragua and Honduras. After a decade of capital accounts liberalization, Central America has accumulated nearly $10 billion in unsustainable, additional debt. Since 1980, regional debt has quadrupled to about $32 billion.

Education is not growing fast enough – Central America continues to underinvest in education, spending about 2.4% of its GDP on education, while the IDB estimates that the region should be spending at least 4%. As a result, the education gap between Central America and the world is growing. Most of Central America is not on track to meet the MDG in Education, and even in Costa Rica students are dropping out of secondary school in record numbers.

Rule of Law/Crime/Violence – Social Violence has reached epidemic proportions, now approximating the worst political violence of the civil war years in several countries.

Hollowing out of Democracy: The fragile process of democratization is threatened by the non-democratic formulation of development policies (like trade) and the lack of any perceived economic payoff after nearly a decade of reforms. Latinobarometer surveys of Central America report an alarming deterioration in support for recent political and economic reforms that trend in the wrong direction.

- 58% are unsatisfied with the performance of their respective market economies
- 68% say that privatization has been a bad idea.
- 80% believe that corruption has increased.
- 50% say that democracy does not function in the region
- 85% of Central Americans have little or no confidence in their political parties

Migration & Remittances: Recent studies have shown that increased labor mobility would generate greater financial benefits for poor countries than free trade. Four of the five countries increasingly rely on migration and remittances as a de facto social policy and to cover an expanding trade deficit with the U.S. The primary export for Central America has become labor. Some 200,000 – 300,000 Central Americans attempt to migrate to the U.S. through legal and illegal means every year. Macroeconomic stability is now and will continue to be dependent upon the $5.5 billion sent home annually from the U.S., more than foreign direct investment, official development assistance and external lending combined.

Agriculture continues to be central to the well-being of significant portions of the population in Central America. In Guatemala and Nicaragua, agriculture employs 60% and 44% percent of the economically active population, respectively. In Costa Rica, the only middle-income country in Central America, 21 percent of the population is employed in agriculture. By comparison, only 2 percent of the U.S. workforce is engaged in the rural sector.

Poverty is concentrated in rural areas.

- Despite economic growth in Latin America, rural poverty has increased during two decades of trade liberalization. Sixty percent of Central America’s poor live in rural areas.
- The two poorest groups in Central America consist of indigenous people and women, many of whom reside in rural areas. One third of the rural poor in Latin America are indigenous, and eight to ten million rural households are headed by women.
- Official support for the rural sector has declined significantly over the last two decades. International development assistance to rural areas has dwindled, and structural adjustment programs in the 1980s and 90s have also resulted in reduced investment in rural infrastructure, technology, financial services, and human capital in Central America. The productivity of Central American farms has suffered as a result.

What will CAFTA mean for Central American farmers?

- CAFTA will require Central America to open its agricultural markets to competition from the U.S., even as the U.S. maintains its own farm and export subsidies. Subsidies and other internal supports encourage overproduction in the U.S., and have helped to drive down the price of farm commodities worldwide. Proponents of U.S. farm policy have argued that lower prices are good for U.S. exports. However, only a small number of agro-export corporations have increased their profits, while small, family farms in the U.S. struggle to survive. The impact on developing world farmers has been devastating: large corporations “dump” commodities at well below the costs of production, undercutting producers in the less developed world.

- Under CAFTA, More than half of U.S. farm exports to Central America will become duty-free immediately. This means, without tariffs to inhibit their entry, cheaper (subsidized) U.S. products will quickly flood the Central American market, displacing Central American farmers. Tariffs on almost all other U.S. farm products will be phased out within 15 years. The biggest losses of income and employment in Central America are predicted among producers of basic grains, such as yellow corn, rice and beans, as well as among producers of poultry, pork and dairy products.

- In Mexico, under the North American Free Trade Agreement, the real price paid to farmers of corn fell by 45.2 percent between 1993 and 1999. This drop is attributed in large part to the opening of Mexican grain markets to U.S. and Canadian corn, which is subsidized and sold at low cost. 1.5 million Mexican farmers and farm workers have been forced off their land under NAFTA. Small and medium producers in Central America fear the same fate under CAFTA.
Three reasons why CAFTA will fail Central American farmers:

1) **CAFTA does not represent fair trade,** the agreement does not take into account large asymmetries between the U.S. and Central American countries in terms of development and size of the economy.

2) **CAFTA does not represent free trade,** while Central America will be required to open the majority of its markets to competition from the U.S., the U.S. continues to maintain farm and export subsidies at home, and to protect sensitive sectors such as sugar.

3) **CAFTA does not represent--nor is it linked to--a commitment to sustainable, human development in Central America.** Commitment to--and funding for--development in Central America has declined drastically over the last two decades. The ‘Commitment to Development Index,’ which ranks 21 of the world’s richest countries based on their dedication to policies that benefit people living in poorer nations, places the U.S. last (along with Japan) in the ranking of the effectiveness and amount (as a percentage of GDP) of development aid given.⁹

**Toward a Fair Trade Agreement.**

Trade can be an important poverty reduction tool, but only when the rules of trade protect vulnerable sectors of the population, and when trade is linked to commitments to equitable, sustainable development.

- **Even the playing field.** The U.S. should cease to push a “do as we say, not as we do” approach in Central America. As U.S. farmers and exporters continue to receive high levels of subsidies and internal support, Central American governments should not be required to eliminate mechanisms that protect their farmers and key agricultural sectors.

- **Protect Food Sovereignty.** Trade agreements should recognize the need for policy flexibility, particularly with regard to food production and public health. Central American governments should have the right to employ measures to protect local agriculture, such as excluding key crops from trade negotiations, applying import controls, and providing internal support to small and medium producers. Trade agreements should exclude sensitive, staple crops, such as corn, rice and beans. These products are essential to nutrition in the region and provide the lion’s share of rural employment.

- **Promote rural development.** A trade agreement should contain mechanisms to support equitable development within a trading block, including policies and funds to promote rural development (including rural infrastructure, technology, financial services, land distribution, health and education). The European Union, for example, provided support and allowed special and differential treatment for the less developed countries of Spain, Portugal and Ireland--allowing them to develop to a level where they were able to compete within the European market. The U.S. ought to take a similar approach to trade relationships in the Western Hemisphere.

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² Centro Internacional de Agricultura Tropical, “Rural Sustainability Indicators: Outlook for Central America,” August 2002.
³ World Bank, op cit.
⁵ Centro Internacional de Agricultura Tropical, op cit.
⁶ International Fund for Agricultural Development, op cit.
⁷ Public Citizen, “Down on the Farm: NAFTA’s Seven Year War on Farmers and Ranchers in the U.S., Canada, and Mexico,” June 2001.
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.
Chapter 10, the investment chapter of the Central America Free Trade Agreement (CAFTA), poses a significant threat to efforts to safeguard the public interest – including environmental, natural resource, public health and safety and consumer standards – in Central America.

Like Chapter 11 of the NAFTA, the CAFTA’s investment rules grant broad rights to multinational investors, which are made enforceable by the ability to bring lawsuits before ad-hoc international tribunals. As such, foreign companies could demand compensation for the impact on their investments from a variety of governmental actions. By allowing foreign companies to bypass domestic courts and challenge legitimate public interest safeguards, the CAFTA investment provisions will pose a threat to democratic governance in Central America.

Corporations could use the mere threat of international suits to intimidate small developing countries in Central America into settling for large sums of money or halting the adoption of public interest laws and regulations -- placing a substantial chilling effect on Central American countries that wish to raise living standards.

Moreover, the investment rules place no responsibilities on multinational investors, while putting substantial restrictions of governments to legislate in the common interest of their citizens.

The Experience with the NAFTA’s Chapter 11 and similar Investment Agreements

Chapter 11 and similar investment agreements have demonstrated the potential for harm in Central America if CAFTA’s investment rules are to become law. Both Mexico and Canada have already lost NAFTA suits concerning public health and safety and environmental protections, and the U.S. faces suits under those rules totaling more than $1 billion.

- Mexico was forced to pay $16 million to a foreign investor for establishing an ecologically sensitive zone that prevented the operation of the investor’s hazardous waste treatment facility.

- California enacted cleanup and remediation requirements on highly controversial mining operations that would harm the environment and destroy sacred Native American sites. The U.S. was sued by Glamis, a Canadian gold mining company, claiming that the California laws and regulations will make its mining claims “uneconomic” and has demanded $50 million from the U.S. government.

- Mexico was forced to pay $5.5 million in compensation to an investor under a similar investment agreement with Spain after a local community opposed a hazardous waste facility.

A number of the problematic provisions in the CAFTA investment chapter are similar to those in NAFTA Chapter 11:

- Expropriation: A foreign company can demand compensation if a government action is considered to “indirectly” expropriate the value of a multinational business’ investment, or if it has an effect “equivalent” to expropriation. Government laws, regulations and even court decisions that indirectly affect the value of an investment can be considered a violation of the CAFTA rules.
Minimum Treatment: Under the vague standard of “fair and equitable treatment” at Article 10.5, corporations could demand compensation if they believe they have not been treated fairly by a government. Although the term incorporates a body of customary international law, it is subject to considerable interpretation that may conflict with the laws or understandings of one or more of the parties to the agreement.

National treatment: If a public interest law or regulation places a foreign company at a competitive disadvantage, it could demand compensation. This is true even if the public interest standard was in no way intended to harm foreign businesses.

The CAFTA explicitly prohibits governments from regulating the flow of financial capital. Without the ability to exercise controls on speculative capital, a government may be unable to respond to financial crises.

The CAFTA is a step backward from the NAFTA. Unlike NAFTA, CAFTA includes explicit language that would allow foreign investors to challenge decisions by Central American governments about natural resource agreements, such as oil extraction and mining contracts with a government. In addition, the definition of “investment” has been expanded in CAFTA to explicitly include intellectual property. This means that a pharmaceutical company, if it believes that its intellectual property rights are affected, could use the investment rules to sue Central American governments over efforts to ensure that drugs are publicly available and affordable.

The potential harm from these rules was recently demonstrated by a $57 billion suit that Harken Energy, a U.S. based company, attempted to bring against Costa Rica when the government invoked environmental provisions in an oil extraction contract. While that contract allowed Costa Rica to insist that the environmental issues at stake not be taken to an international tribunal, the government would have no such right under CAFTA.

Is the Investment Problem Fixed in CAFTA?

The Trade Act of 2002 required that investor suit rules should give investors “no greater substantive rights” than the rights that are available under U.S. law. This provision was intended to appropriately limit the extensive rights that allow foreign companies to demand compensation for “indirect expropriation” and other overly broad, undefined standards.

Despite some limited changes, including transparency requirements for proceedings, **CAFTA’s investment rules clearly fail to meet this Congressional mandate.** The agreement provides investors rights that are in no way limited by U.S. legal standards. For example:

- CAFTA does not ensure the right of the government to regulate a public nuisance – such as pollution released from a property – without compensating the property owner.

- CAFTA does not protect the government’s ability to take actions that affect personal property – such as banning the sale of a hazardous chemical – without paying any compensation.

- Finally, CAFTA’s language about the creation of an appeals process for investor suits is wholly inadequate. Because CAFTA fails to fix the underlying problems with investor suits, any appeals process would simply reinforce problematic legal principles.
Central America is considered one of the most biodiversity rich regions on the planet. Four of the five countries included in CAFTA have tropical areas identified as “critical regions” that require the protection of biodiversity.\textsuperscript{1} Costa Rica alone has an estimated 4% of all living species in a country that comprises only 0.01% of global territory.\textsuperscript{2} In the midst of already fragile ecological zones, Central America is battling with a wide range of environmental problems such as deforestation, urban pollution, and coastal contamination.

**Limited Laws and Weak Enforcement**

In some Central American countries, most notably Guatemala and Honduras, even the most basic environmental laws are still lacking in many instances.\textsuperscript{3}

- Guatemala lacks essential laws to address water, forests, solid wastes, and biodiversity, and its disjointed policies have led to severe environmental degradation.\textsuperscript{4}
- The majority of Central American environmental laws contain no implementation language, making them virtually impossible to apply.
- The environmental ministries of Central America are chronically underfunded by governments.

CAFTA would open Central America to substantial changes in industrial and agricultural development, many of which would exacerbate the existing problems in the region if left unregulated. Meanwhile, the loss of tariff revenue that the already cash-strapped Central American governments will face due to CAFTA could substantially deepen the resource gap for environmental protection in the region.

**CAFTA’s Inadequate Environmental Rules**

Unfortunately, CAFTA’s Environment chapter (Chapter 17 of the agreement) provides no real expansion or improvement of environmental protection. The basic requirement of the Environment chapter is Article 2, which simply requires that countries enforce their existing environmental laws. The agreement does not clearly require any country to adopt a set of basic environmental laws and regulations.

- John Audley, fellow at the Carnegie Endowment for International Peace, has written, "Although the Central Americans are making progress toward designing and implementing effective environmental laws, the United States is already aware these laws may not yet be adequate and certainly not well enforced. Asking a country with weak enforcement capability to enforce (perhaps) insufficient laws means little in terms of real environmental protection." (full text of Audley’s article, http://www.ceip.org/files/pdf/wp40.pdf.

- Article 2 of the Environment chapter creates what is a very large loophole: countries are free to apply discretion in enforcement of laws, meaning they can prioritize which laws or areas of enforcement are most important. Allowing for some degree of discretion is not itself a problem - and no doubt necessary to reach an agreement. However, the text is so broadly worded that it would be difficult to force a decision on non-compliance, should a conflict ever reach dispute settlement.
Capacity Building Assistance

The U.S. should place more emphasis on providing resources through technical assistance and capacity building grants to begin to offset that lack of enforcement in Central America – particularly given the substantial loss of revenue the region’s governments will experience due to CAFTA tariff reductions. However, CAFTA fails to include a dedicated source funding for environmental cooperation, capacity building, and objective monitoring of environmental progress.

- The agreement includes a proposed framework to establish a parallel agreement establishing an Environmental Cooperation and Capacity Building Mechanism. The proposed mechanism establishes a Working Group to oversee the implementation of a very broad set of goals. But again, a lack of specificity weakens this provision. This mechanism also provides little opportunities for participation by non-governmental sectors in the Working Group. The only provision for public participation in this side agreement is very weak: "The parties shall take into account public comments and recommendations regarding the cooperative activities."

Dispute Settlement:

Article 8 of the Environment chapter establishes a framework for "Environmental Consultations." There are some differences between the positions of the U.S. and Central American negotiators on mechanisms for dispute settlement. Consultations, if stalemated, may have access to dispute settlement – but only as they relate to the Article 2 described above. The Central American provisions, on the other hand, establish a consultative process involving the construction of a review panel and lengthy period of reports, discussions and oversight.

- Neither provision lays the groundwork for strict penalties or meaningful enforcement, and as noted, Article 2 is already so vague, that it is difficult to see this being a terribly effective mechanism. Thus, this provision fails the "parity" standard - a standard whereby environmental concerns are given the same weight as commercial provisions.

- While CAFTA includes a process that allows citizens to make submissions alleging government failures to effectively enforce environmental laws, the process does not provide for any clear outcomes or actions to ensure environmental enforcement. As ten major environmental groups wrote to Congress recently: “[T]he lack of enforcement tools in the citizen submission process stands in stark contrast to the monetary compensation that private investors can demand of governments under CAFTA’s investor suit rules.”

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\(^3\) United States Trade Representative. Interim Environmental Review of the U.S.-Central America Free Trade Agreement (CAFTA), August 2003.