

Labor Education Service

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CAFTA: Paving the way for the FTAA

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The last two years have revealed serious rifts in talks to expand the web of global corporate trade agreements. In September 2003, the Cancún WTO Ministerial met with the hope of greatly expanding the reach of WTO rules. Instead the Ministerial ended in deadlock. Major developed nations like the U.S. and Canada and those of the European Union demanded expansion of WTO rules, while many developing nations, led by Brazil, Venezuela and others, joined with labor, environmental and many other civil society groups in questioning the underlying trade model itself.

A month later these divisions erupted in Miami during the FTAA (Free Trade Area of the Americas) talks. Tens of thousands of protestors met a police state in the streets outside the talks. Inside, Southern hemisphere nations like Brazil, Venezuela and Paraguay refused to acquiesce to their northern neighbors. Desperate for *any* sort of agreement, the Miami FTAA talks abruptly ended early with an “agreement” in name only. This agreement essentially put off into an undefined future any further chances for disagreement, and the goal of ratifying the FTAA in 2005 appeared doomed.

Enter CAFTA, or the Central American Free Trade Agreement. Failure to reach agreement in Cancún and Miami sparked a new strategy from the Bush Administration and U.S. Trade Representative. Rather than risking almost certain failure by continuing to publicly push for FTAA and WTO expansion, the U.S. would instead vigorously pursue bilateral and smaller regional trade agreements as a way of isolating recalcitrant nations like Brazil and Venezuela. Through these agreements the U.S. hopes to get the corporate trade agenda talks back on track and jump start a new round of FTAA talks.

What CAFTA is and who and what it covers

CAFTA covers five Central American countries – Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica. In March 2004 the Dominican Republic (technically a “Caribbean nation”) was docked onto CAFTA making it officially DR-CAFTA. (For brevity I will call it by its short-hand – CAFTA.)

CAFTA’s importance is not in its size – combined these six countries have annual budgets equal to one-half of San Diego’s -- but the point of CAFTA is to pave the way for the FTAA. CAFTA was negotiated in a staggeringly quick year and is scheduled

for a vote in Congress under the president's fast track authority sometime during 2005. Committee hearings will likely begin as early as April 2005.

Put simply, CAFTA is the NAFTA model writ onto Central America and the stalking horse for the FTAA. It replicates NAFTA's undemocratic Chapter 11 "investment protection" provisions – which allow corporations to sue foreign governments over regulatory measures that cut into their potential profits – and it continues NAFTA's secret dispute resolution procedure held before unelected and secret trade tribunals. And like NAFTA, CAFTA rules apply to virtually all agricultural commodities and manufactured goods.

CAFTA adds a few new twists in anticipation of the FTAA: new rules covering services, intellectual property, and government procurement of goods and services. Each of these pose grave threats to U.S. and Central American workers, farmers, rural communities, environment and civil society.

CAFTA expands a failed trade model

CAFTA is the expansion of the NAFTA model, and we now have ten years of data to demonstrate the failings this corporate free trade model. Since its inauguration in 1995, NAFTA has lived up to virtually none of its promises.

- Workers hurt under NAFTA. Three million U.S. jobs have been lost as a result of unfettered free trade since NAFTA's passage; 750,000 jobs have been lost directly as a result of NAFTA. Many of these jobs – 1.5 million -- have been manufacturing jobs, especially in the automobile, textile and apparel, electronics equipment, and lumber industries. By 1999, more than 68% of employers used the threat of plant closure or relocation to chill wage demands or exact worker concessions during bargaining.¹

Mexican workers have also been hurt. *Maquiladora* plants continue to expand as U.S. corporations relocate to Mexico, import raw materials, and export finished products back to the U.S. This *maquiladora* growth has eliminated thousands of Mexican jobs in factories that had previously supplied manufacturers and are now replaced by foreign suppliers. The net result has been a 9.4% drop in Mexico's manufacturing employment, and a 20% drop in the minimum wage. Even manufacturing wages have fallen 10%.²

- Farmers and rural communities hurt under NAFTA. U.S. small and medium sized farmers have lost under NAFTA, while large U.S. corporate farmers and agribusinesses have won big. U.S. farm commodity exports rose under NAFTA but not nearly at the rate of imports. In the decade prior to NAFTA, exports grew 41% while imports grew 35%; in the decade after NAFTA, U.S. farm exports grew at a slower rate of 35% while imports soared with a 86% increase.³ And most of the benefits of increased trade have gone to huge multi-national agribusinesses. During the first seven years of NAFTA, Archer Daniels Midland's (ADM) profits nearly tripled to \$301 million, and Cargill's net

earnings nearly doubled between 1998 to 2002 from \$468 to \$827 million. Meanwhile, small and medium sized U.S. farmers have seen stagnant to dropping commodity prices and an ever-shrinking portion of each food product dollar.⁴

Likewise, NAFTA has destroyed much of the Mexican farm economy. Mexico's small scale, low tech farmers cannot compete with the dumping of below-cost-of-production commodities by large U.S. agribusiness. Cheap U.S. agricultural imports have displaced over 1.3 million Mexican farmers.⁵ The real price for corn in Mexico fell by 45.2% after NAFTA, in large part due to the dumping of subsidized U.S. and Canadian corn.⁶

- Environment and civil society hurt by NAFTA. NAFTA protects investor rights at the expense of public health, the environment, and democratic transparency. Under NAFTA's Chapter 11, corporations can sue foreign governments for damages if they believe that the government's regulations have or will cut into their profits. Since NAFTA passed, corporations from Canada, Mexico and the U.S. have filed 42 cases for \$28 billion in damages under Chapter 11 (although two of the cases cover a disproportionate share with \$23 billion combined). Corporations have won five suits with over \$35 million in damages paid out. They have lost six and the rest are pending or are in active arbitration.⁷ Most of these cases have attacked national regulations and domestic policies designed to protect the public's health or the environment.

With CAFTA, corporations and their government supporters now intend to extend NAFTA's failed trade model to Central America and the Dominican Republic.

Who wins under CAFTA? Who loses?

Large corporations and their government allies wrote the rules of CAFTA – just like they wrote the rules for NAFTA, the FTAA and the WTO. Not surprisingly, large corporations will once again come out the winners.

The rest of us will lose.

We have seen the negative effects of NAFTA and corporate free trade on the United States. Trade liberalization has also failed to lift the boats of Central American countries. Central America has already implemented many forms of trade liberalization.⁸ In the 1990s, tariffs dropped from an average of 43.2% on imported goods and commodities to 5%. Most Central American goods and agricultural commodities now enter the United States tariff free.

The result of Central America's trade liberalization is dramatic.⁹

- Foreign direct investment is falling after a burst of construction and privatization investment in the 1990s.

- Total factor productivity (the total growth in output value not related to the growth in input value) has dropped in the past decade;
- Poverty is increasing – relative poverty is 55% and two out of every three rural Central Americans live in poverty;
- Incoming disparity is rising;
- Foreign debt is growing and regional debt has quadrupled to \$32 billion since 1980;
- Malnutrition is increasing;
- Investment in education and public services is falling.

For Central America, CAFTA represents more – and a nastier taste – of the same bad medicine.

What is at stake with CAFTA?

We will now turn to look more specifically at CAFTA's impact in several key areas:

- Farmers and rural communities
- Labor rights under new government procurement rules
- Environmental protection and investor rights
- Privatizing public services
- Access to affordable medicines and intellectual property protections

Farmers and rural communities

Free trade, changes in U.S. farm policy, and the consolidation of the commodity market into a few huge, vertically integrated multi-national agribusinesses have all contributed to a devastating effect on U.S. small and medium sized farmers. The past decades have seen an enormous consolidation of the agricultural economy in the U.S. Today, 73% of farms share only 6.8% of the market value of agricultural products, while 7.2% of the largest farms and feedlots receive 72.1% of the market value of products sold.¹⁰

In 1996, agribusiness lobbyists and free-trade advocates convinced Congress to pass the "Freedom to Farm Act." This 1996 farm bill eliminated set-floor prices that commodity buyers had to pay farmers along with virtually all supply management programs that balanced the supply of commodities with their demand. These two programs, imperfect as they were, at least guaranteed farmers a price above their production costs.

Liberalized Trade Lessons

Farmers in Florida

NAFTA's benefits for the U.S. agricultural sector have gone mostly to large-scale producers and agribusiness. According to a 2001 Public Citizen report, farm income for non-corporate Florida farmers fell 74.4% from 1995-2001, while Florida's total farm income *grew* 13.4% (Public Citizen, "Down on the Farm").

Honduras rice farmers

In the early 1990s, Honduras was self-sufficient in rice production. Then it sharply slashed its tariffs on rice. The result was massive rice dumping, mostly from the U.S., which heavily subsidizes domestic rice production. Honduras farmers could not compete. Honduras farmers now supply only 20% of the domestic market (Oxfam, "A Raw Deal for Rice Under CAFTA, 11-2004).

The elimination of these programs sent agricultural prices into a freefall.¹¹ Large multi-national agribusinesses and commodity buyers like ADM and Cargill were able to drive commodity prices down below the cost of production with devastating effects for farmers. In response, Congress passed the 2002 farm bill that provided subsidies, but larger corporate farms receive by far the bulk of these subsidies. In the five years between 1997 and 2002, the U.S. lost over 90,000 small farms under 2,000 acres.

These changes in U.S. agricultural policy also negatively impacted global agricultural markets. Large, subsidized U.S. agribusinesses dumped their excess commodities into foreign markets at below production prices. These foreign nations, stripped of their tariff protections under free trade agreements, had few ways of fighting back. Small farmers in these countries could not compete with dumped commodity prices and hundreds of thousands left farming or switched to raising export commodities.¹²

CAFTA intends to extend this corporate agricultural model into Central America, and without anti-dumping protections, it threatens to destroy the livelihood of millions of small farmers for the benefit of U.S. corporate agribusiness. Likewise, CAFTA opens up U.S. agricultural markets with potentially catastrophic results, especially for states like Minnesota.

- **Case Study: Potential impact on Minnesota sugar beet industry.** The U.S. sugar industry supports nearly 11,000 sugar farmers with 146,000 direct and indirect jobs. Minnesota is one of the largest producers of sugar beets in the country. Minnesota's sugar industry support nearly 2,500 farmers and processing plant workers and tens of thousands of indirect jobs. The industry contributes nearly \$2 billion dollars into the Minnesota economy (double that of taconite). The U.S. sugar industry is one of the few major agricultural sectors that is not subsidized by the federal government, nor does it have a history of commodity dumping. Prices are controlled through supply management programs, strict import quotas, and steep tariffs for imports over the quota amount. Domestic producers provide the vast bulk of 8.5 million ton sugar demand.

CAFTA will erode current sugar policy and supply management programs by allowing additional "low cost" sugar imports. It also opens the door for a possible additional 2 million tons of dumped sugar – nearly 25% of the market – if FTAA ends up passing. This would drive prices from their current .23 a pound to the world "dump price" of .08 - .10 a pound, effectively destroying the domestic sugar industry and all of the Red River valley farmers, processors and towns that depend on it.

Furthermore, an influx of cheap sugar would significantly reduce corn prices (by substituting cheap sugar for corn fructose sweetener). This represents a potential \$1.5 billion lost to the corn industry.

Labor rights and new government procurement rules

CAFTA does not require the five Central American countries to revise their labor laws to meet international ILO standards, nor does it contain any meaningful protections of worker rights. Rather, it eliminates the already tenuous leverage for enforcement available through existing unilateral trade preference programs.¹³

CAFTA only requires countries to enforce their existing laws. And labor laws in CAFTA countries are poor at best and their enforcement even worse. The only penalty CAFTA has for violating its labor provisions is a fine to be paid by the violating country to itself, presumably to be used for better labor law enforcement!¹⁴

CAFTA also introduces new procurement rules that apply to the purchase of goods and services by all “covered entities.” Covered entities include federal government agencies and all state agencies from states that agree to be bound by the rules. As of January 1, 2005, twenty-one states had agreed to be covered by CAFTA’s procurement rules; Minnesota is no longer on the list after activists pressured the Pawlenty administration to remove the state.¹⁵

CAFTA procurement rules are the same being pushed for the FTAA and have similarly far-reaching consequences. They would prohibit covered governmental agencies from giving preference to local firms or firms employing local workers (under National Treatment requirements), and they would prohibit covered agencies from setting policies regarding purchasing from foreign producers or nations with human and labor rights abuses, or destructive environmental records (under Most Favored Nation requirements).

In fact, covered entities would be limited to bidding specifications that *only* guaranteed that suppliers had the technical and financial capability to provide the good or service and the technical performance of the good or service; specifications based on *how* a good is made (e.g. with prison or child labor) or *how* a service provided (e.g. for profit health care services) would be prohibited under CAFTA. CAFTA has a limited number of exceptions for distressed areas, small businesses and businesses owned by minorities, women the disabled and veterans.

- **Case Study: Purchasing policies affected by CAFTA procurement rules.**

If passed, CAFTA will impact all federal agency procurement policies, and those states agreeing to be bound to the rules. Although this will not affect Minnesota state agencies, it is the first big step toward the FTAA and other trade agreement rules that would apply to Minnesota. Some of the bidding preferences that could be challenged under CAFTA include:¹⁶

- preferences for local workers;
- prevailing wage and project labor requirements;
- labor peace and other labor behavior requirements;
- “No Sweat” and other human rights based purchasing agreements;
- living wage requirements;

- requirements for green purchasing, renewable energy or recycled content;
- numerous other bidding requirements targeted at nations with records of human rights, labor rights, or environmental abuse.

Environmental protection and investor rights

CAFTA protects investors rights above all others, including human rights, public health and environmental protection. CAFTA governments will no longer be able to determine how they wish to regulate foreign investments – whether to limit certain types of investments or regulate them for the public good. Rather, foreign investment decisions will be made solely upon market principles of maximizing profit.¹⁷ CAFTA's investment rules in Chapter 10 are similar to NAFTA's Chapter 11, which allows foreign corporations to challenge the environmental or other regulations of a country if they believe the measure negatively impacts their ability to do business and make a profit in that country. This could have a chilling effect on environmental protection, especially in the much more economically vulnerable Central American countries where 75% of the population already lives with polluted air and water and poor public health conditions.

Trade Liberalization Lessons

NAFTA Chapter 11 in practice.

NAFTA's Chapter 11 allows corporations to sue governments and seek damages for lost profits.

- Metalclad successfully argued that a Mexican community that rejected its application for a hazardous waste facility permit and the Mexican government's decree establishing a ecological reserve where it wished to build its waste facility illegally restricted its right to make a profit under NAFTA's investment provisions.
- Ethyl Corporation successfully argued that a ban on MMT, a Canadian gasoline additive, violated NAFTA's free trade principles.
- A NAFTA trade tribunal found a temporary Canadian ban on the export of PCBs violated NAFTA.
- Restrictions by California on MTBE, a Canadian cancer causing gasoline additive, and Canada's phase-out of an agricultural pesticide are both under challenge.

- **Case Study: Harken Costa Rica Holdings and Costa Rica.** In response to its growing environmental movement, Costa Rica announced a moratorium on oil exploration and open pit mining. In 2002, Harken Costa Rica Holdings obtains a concession agreement to drill offshore the Talamanca Coast, one of the richest marine ecosystems in the world and a UNESCO World Heritage Site, contingent on passing an environmental impact assessment. Harken Costa Rica Holdings has close ties with Harken Energy in Texas, made famous as the oil giant that bought President Bush's failing Texas oil company and provided him with a lucrative board position and half a million dollars in stock options. When Harken fails the environmental assessment in February 2002, Costa Rica denies it a permit to drill. In September 2003, Harken sues Costa Rica for \$57 billion – eleven times Costa Rica's annual national budget – the World Bank's International Convention for the Settlement of Disputes (ICSID). Because Costa Rica is not a party to the

ICSID, they avoid the arbitration procedure and the suit is now being heard in local Costa Rican courts. Under CAFTA's investor suit rules, Harken could have sued for damages claiming that the environmental review requirement made it impossible for it to do business in Costa Rica (the way they wanted to do business) and was therefore paramount to Costa Rica "expropriating" its business. The suit would be heard not in public court, but before a secret trade tribunal without input from those most directly affected.¹⁸

Privatizing public services

CAFTA continues to push one of the key aims of the WTO and FTAA: the privatization of public services. Corporate free-traders are doing in Central America what they cannot yet do in the United States – open up virtually all public services to private corporate competition and control.

CAFTA covers every public services that has some private sector provider unless that service is specifically excluded from coverage by the country.¹⁹ Countries have a one time only shot at excluding services. The United States excluded all services that are not already covered by similar rules under GATS (General Agreement on Trade in Services) and the WTO. However, they put enormous pressure on Central American countries to open up virtually all of their key public services – health care, communications, water, education, transportation, among others.²⁰ In doing so, U.S. corporate service providers laid bare Central America for privatization, despite fierce resistance from citizens. They also cemented the privatization of public services into trade law. This sets the stage for the FTAA, which has a one of its main goals the privatization of public services.

- **Case Study: Going after Costa Rica's telecommunications system.** Costa Rica has a high functioning and efficient state-run telecommunications system that provides 97% of its citizens with cheap telephone service. The state uses its profits from internet and cellular phone services to subsidize rural telephone service and internet service for public schools. There is extensive public opposition to privatizing the system. Yet, CAFTA obligations specifically include opening Costa Rica's cellular phone and internet services – the two profit making components of its system – to privatization by U.S. cellular phone, internet and telecommunication corporations.²¹

Access to affordable medicines and intellectual property protections

CAFTA includes intellectual property protections that explicitly protect large pharmaceutical corporations while making it increasingly difficult for poorer Central American countries to provide low cost generic drugs for their citizens. Already very few people in Central America have access to medicine due to its high cost. Under CAFTA it will be even more difficult for them to receive these medications.

CAFTA extends the market monopoly of patented name-brand drugs even beyond the 20-year patent protection enacted under the WTO TRIPS agreement (Trade-Related aspects of Intellectual Property rights). TRIPS guarantees pharmaceutical

corporations a generous 20-year period of patent protection to recoup development costs and stimulate innovation.²²

CAFTA extends this 20-year protection in two ways. First, it does not count the time consumed in patent and procedural delays toward the 20-year period. Second, it creates a new category of intellectual property rights -- the protection of pharmaceutical test data that is used to prove a drug's safety and efficacy. Under CAFTA, this test data can not be used by another drug company to create and test cheaper generic versions of the drug for five years. This essentially creates a market monopoly for brand-name drugs, which are oftentimes prohibitively expensive for many poorer nations (especially for drug regimens like HIV/AIDS).

CAFTA further undermines the WTO's 2001 Doha Declaration that allows countries the right of compulsory licensing to circumvent drug patent protections when they determine it is necessary for public health in times of extreme urgency. CAFTA's test data protections present one more hurdle for countries.²³ Furthermore, CAFTA sets a higher threshold by making exceptions allowable *only* "where necessary to protect the public" and then subject to challenge under CAFTA's Chapter 10 investor protection article. Necessity in trade agreements is a high standard and places the burden of proof on the party making the exception. This is a significantly higher burden than Doha's agreement that countries can grant compulsory licenses and determine the grounds upon which such licenses will be granted.²⁴

- **Case Study: Guatemala tries to allow generic drugs.** Guatemala faces, like most Central American countries, a crisis in providing affordable drugs to its citizens. Under pressure from health care activists and other civic society groups, Guatemala eliminated its previous 5-year ban on test data in December 2004. The previous ban required that generic drug producers had to conduct their own tests and clinical trials for safety before releasing the drug. This made it virtually impossible for competing drug companies to produce generic equivalents to name brand drugs in a timely fashion. CAFTA would reinstate the 5-year test data ban, stripping the Guatemalan Congress of its right to legislate and regulate for its own sovereign purposes. Furthermore, the U.S. Trade Representative has threatened to remove Guatemala from CAFTA unless they reinstate the 5-year test data ban.

Stopping CAFTA

CAFTA can be stopped. Many legislators have learned the lessons of ten years of unfettered free trade – it is bad for workers, bad for the environment, and bad for democracy.

CAFTA will come up for a vote in 2005. In the next few months, we need to educate our congress people and members of our own constituent groups about the threats posed by this trade agreement. We must demand fair and democratic trade rules that benefit all countries and peoples, not corporate trade rules benefit the few.

To learn more visit www.citizenstrade.org or call Octavio Ruiz at the Minnesota Fair Trade Coalition at 612-276-0788 ext 19.

Endnotes

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- ²⁴ Center for Policy Analysis on Trade and Health (CPATH), "CAFTA Side Letter does not Protect Access to Medicines," September 30, 2004.