

# Friends of the Earth Oxfam America Natural Resources Defense Council

March 31, 2004

**RE: Harken Costa Rica example demonstrates the risks posed by Central American Free Trade Agreement for environment and development**

Dear Member of Congress:

As you prepare to consider the Central American Free Trade Agreement (CAFTA), we are writing to draw your attention to a case that illustrates the environmental and local development concerns that the agreement raises. The case is a dispute between Harken Costa Rica Holdings and the Costa Rican government that illustrates how CAFTA would exacerbate the intense pressure that developing countries face to compromise laws protecting the environment, health and livelihoods.

Harken Costa Rica Holdings – a U.S. based corporation with close ties to the Texas company Harken Energy – sought permits to drill for oil off the Costa Rican coast. Under the terms of the company’s concession contract, the government of Costa Rica denied the drilling application for environmental reasons; the project could harm critical nesting areas for endangered turtles and coral reefs that are central to the country’s tourism economy.

Rather than pursue the matter through Costa Rican courts or appeals, Harken brought an international claim against Costa Rica, attempting to sue the country before an international tribunal for the outrageous sum of \$57.5 billion, more than three times Costa Rica’s annual GDP. Costa Rica insisted that the company bring the case in national courts, and Harken was forced to drop the suit.

Under CAFTA, however, Harken and investors like it would be able to bring such claims without restraint. CAFTA includes investor rules similar to NAFTA’s Chapter 11, which has undermined public interest laws by allowing foreign companies to bring “compensation” claims challenging these laws before international tribunals. In addition, CAFTA includes specific language that would allow foreign investors to challenge government decisions about natural resource agreements, such as oil, gas, and mineral leases. While Costa Rica insisted that the Harken case be settled in the country’s court system, CAFTA would force the government to defend itself against the company’s outrageous claim before a foreign tribunal.

Under the guise of protecting investors’ legitimate interests, CAFTA would create a separate and privileged judicial system for multinational investors that grants them greater rights abroad than at home. As such, CAFTA fails to meet the requirement of the Trade Act of 2002 that foreign investors receive “no greater substantive rights” than U.S. citizens have under U.S. law.

Trade agreements with developing countries should enhance, rather than undermine measures to promote sustainable development, and should provide support for national courts and legal systems, instead of creating a privileged system for multinational investors.

We urge you to oppose this and any agreements that come before Congress for approval without a thorough re-examination of investor suit rules and the development of a new approach that would not undermine environmental protections and sustainable development practices.

Sincerely,

Ari Hershowitz  
Director, BioGems, Latin America  
Natural Resources Defense Council

David Waskow  
Trade Policy Coordinator  
Friends of the Earth

Gawain Kripke  
Senior Policy Advisor  
Oxfam America