



June 9, 2005

Dear Member of Congress,

As Western Hemisphere Regional Director of the International Planned Parenthood Federation I am writing to ask you to oppose the Central American Free Trade Agreement (CAFTA) when it comes up for a vote. While not opposed to trade agreements, my colleagues and I are deeply concerned about the disastrous effects the intellectual property provisions in CAFTA would have on public health in the countries we serve.

In particular, we are concerned about the effects CAFTA will have on the lives of the thousands of Central Americans living with HIV/AIDS whose survival depends on the availability of affordable antiretroviral drugs.

Currently, very few people in Central America have access to medications for financial reasons – both because they themselves are poor and because their governments are too poor to provide medications for them. In all the CAFTA countries except Costa Rica, less than 5% of HIV patients currently receive antiretroviral treatment through their governments' public health systems. Under CAFTA, governments and individuals will be forced to buy higher priced medicines for longer periods of time – thus increasing the overall cost burden on public health systems for poor nations. This is a particular concern for diseases like HIV/AIDS that require sustained treatment over the lifetime of a patient. Ironically, as the infected population grows, governments' ability to treat these patients is shrinking.

Under CAFTA, Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua will be obliged to extend pharmaceutical patent terms beyond the 20 years required in World Trade Organization (WTO) rules; prevent the marketing approval of generic medicines if a patented version of the product is registered; and grant additional exclusive marketing rights by prohibiting drug regulatory agencies from using original pharmaceutical test data for the registration of generic medicines, a restriction referred to as "data exclusivity."

These provisions will severely restrict or block generic competition, the only proven mechanism for reducing the prices of medicines. Provisions related to marketing authorization are particularly worrisome. For instance, if an existing AIDS drug is not registered in one of the five CAFTA countries because the manufacturer has no interest in the market, under CAFTA, registration of generics would be prevented for five years, even if the drug is not patented, and until the end of the patent term if it is. Unlike with

patents, which authorities can redress through compulsory licensing, there is no recourse to provisions restricting marketing authorization.

It doesn't matter what country they live in, people suffering from HIV/AIDS simply do not have 5 years to wait around for antiretroviral drugs to become available. They are literally dying.

The inevitable result of the intellectual property provisions in CAFTA is that some of the lucky few currently on these life-saving medications will be cut off, while an increasing percentage of the infected population will be left without access to life-sustaining drugs.

It is not acceptable to address the public health failures of CAFTA in a sideletter to the agreement on public health. Side letters to trade agreements have traditionally been unenforceable. Furthermore, the side letter now attached to CAFTA, the "Understanding Regarding Certain Public Health Measures," requires countries first prove that a public health measure is "necessary," a test that appears reasonable but that in practice would be an extremely difficult legal standard to satisfy. The side letter also omits language that would allow compulsory licensing, which is a key component of public health safeguards reaffirmed in the WTO Ministerial Declaration on the TRIPS Agreement and Public Health. Thus, questions of enforcement and implementation aside, the side letter—like the agreement as a whole—is a step backwards from existing international trade rules.

For these above reasons, I urge you to oppose CAFTA in its current incarnation. From both a moral and a public health standpoint, the choice is clear. It is simply unacceptable to place the commercial interests of pharmaceutical companies ahead of the lives of thousands of people.

Sincerely,



Dr. Carmen Barroso

Western Hemisphere Regional Director
International Planned Parenthood Federation