

CAFTA Analysis

Labor:

- CAFTA has no meaningful, enforceable labor rights provisions. CAFTA does not require that countries meet core labor standards as established by the International Labor Organization.
- CAFTA only allows recourse over *repeated failures* of signatory nations to enforce their *existing* domestic labor laws. This is regardless of the fact that the labor laws of many of the Central American countries are far below international standards and have repeatedly been criticized by human rights organizations and the U.S. State Dept.
- This provision is so full of loopholes that it would be very difficult to take action when countries fail to enforce their laws in an effort to attract investment, since countries can claim non-enforcement is a matter of funding priority discretion.
- Even if you could make a claim under this provision, the enforcement mechanism for the labor provision is less than the enforcement for commercial provisions. Penalties for labor violations under CAFTA would affect the governments of the countries where the violations occur – not the companies that may share in responsibility for the violations. The fines that the countries would pay would actually be paid back to themselves, the violators, in order to “improve their labor situations.”
- Penalties for countries running afoul of the labor provisions consist of a limited fines regime, versus the sanctions and cash damages provided for violations of commercial provisions.
- The CAFTA would encourage the proliferation of sweatshops in “free trade zones” where investors are able to import goods to assemble for export, skirting tariffs and quotas while exploiting workers and not contributing to the local economy leading to increasing loss of quality jobs and a race to the bottom in working conditions.
- See Procurement, Services, and Investment sections

Environment:

- CAFTA would allow foreign investors to challenge environmental laws and regulations before international tribunals. In addition, CAFTA includes language that would explicitly allow foreign investors to challenge government decisions about natural resource contracts, including federal oil, gas, and mineral leases.
- Even though environmental standards in the respective Central American countries vary widely, with some at extremely low levels, CAFTA does not require any country to adopt basic environmental laws and regulations, and fails to include measures to ensure that environmental standards are raised to an adequate level.
- CAFTA does not include an enforceable set of standards for corporate responsibility on environmental (or any other) issues. CAFTA’s vague environmental provisions, which theoretically allow challenges of some repeated failures to enforce whatever existing laws a country has, can result only in weaker enforcement penalties than those provided for CAFTA’s commercial provisions.
- CAFTA supporters tout “citizen submission rules” and enforcement penalties which would allow citizens to ask for a study of an environmental problem to be done under a vague CAFTA commission not yet formed. But there are no clear outcomes or action at the end of the process to fix a country’s failure to enforce its environmental laws.
- See Procurement, Investment, and Services sections

Agriculture:

- CAFTA could devastate small farmers in both the U.S. and Central America. The elimination of an effective price floor would force down market prices, allowing corporate agribusiness to sell their products at far below cost. Under NAFTA, huge multinational agribusinesses all but wiped out Mexican corn farmers – forcing many of them to seek jobs in maquiladoras or to emigrate to the U.S.
- Central American farmers depend on a few key crops. CAFTA would force small farmers and rural populations to “compete” in a volatile international agricultural market, causing increased farm failure, poverty, and malnutrition.
- Under CAFTA, Central American countries would be required to reduce tariffs, subsidies, and other supports that protect their vulnerable agricultural sectors while competing with low priced imports from the U.S.
- CAFTA would limit the ability of governments in Central America and the U.S. to implement measures to ensure that food traveling across barriers is safe and meets domestic food safety and other “sanitary and phytosanitary” standards.
- CAFTA could put in place intellectual property and other rules that would make current farming practices such as saving seeds illegal.

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- CAFTA would significantly increase imports into the U.S. of sensitive crops like sugar, threatening to wipe out thousands of small sugar beet farmers and devastate rural communities in the U.S. Sugar beet farmers would especially be affected in the Plains states, the Midwest, California, Idaho, and Washington.

Access to Medicines:

- Patent rules included in CAFTA's Intellectual Property Rights provisions require signatory countries to give pharmaceutical corporations greater rights than even those provided in the WTO. These "TRIPS-plus" rules would severely restrict countries' ability to produce generic, affordable medicines for the seriously ill – including AIDS patients, undermining a dynamic that is currently keeping thousands of patients alive, and halting future expansion of affordable medicine programs.
- CAFTA rules would effectively extend pharmaceutical patents, giving corporations monopoly control of a medicine for more than the 20 years provided under the WTO. This means it would take longer to get affordable medicines on the market in both the US and in Central America.
- CAFTA would grant exclusivity on medical test data to pharmaceutical companies for 5 years. This would have the affect of establishing a 5-year ban on generic production of certain medicines, since test data is needed to prove a drug's safety and effectiveness. This would function like a 5-year patent monopoly - even where patents do not exist.

Services:

- The CAFTA agreement is "top-down," meaning it would cover all services unless a country explicitly excludes a service. The services rules in CAFTA would apply to federal, state, and local regulation of services.
- CAFTA requires that service sector regulations be "no more burdensome than necessary," again going beyond WTO requirements, thus limiting efforts to protect public health and safety, and the environment.
- CAFTA would prohibit numerical limits on harmful service activities, potentially including zoning restrictions based on size or density, or other restrictions on the harmful services in sectors such as waste incineration, energy extraction, or tourism in sensitive areas.

Investment:

- CAFTA would replicate the notorious "Chapter 11" provisions of NAFTA that allow corporations to circumvent domestic courts and directly sue governments over environmental, public health, or public safety protections in trade tribunals. In fact, CAFTA is even worse than NAFTA's Chapter 11 because the definition of what counts as an "investment" over which a corporation can sue is broader in CAFTA.
- In bringing these cases, foreign investors could demand monetary compensation for the implementation of legitimate environmental protections. For developing Central American countries, the simple threat of costly investor challenges could freeze adoption of environmental standards.
- CAFTA would ban capital controls (mechanisms that have been successful in preventing capital flight) – opening signatory countries' economies to the same economic crises that devastated Southeast Asian countries in the late '90's.
- CAFTA could limit governments' ability to set certain conditions on companies investing in their country. This would apply to certain kinds of environmental and local development policies such as requiring companies to use a percentage of local content in their production.

Procurement

- CAFTA's government procurement rules could prohibit many federal and state policies regarding how our tax dollars are spent on goods and services including:
 - bans on doing business with companies operating in Burma and other procurement preference programs targeting human rights abuses, many based on those used to help bring an end to apartheid in South Africa;
 - prevailing wage or living wage laws;
 - "anti-offshoring," "buy local laws," and other local development policies;
 - "green procurement" policies requiring recycled content, fuel efficient vehicles, or renewable energy.
- CAFTA's procurement rules cover all elements of federal procurement except certain military purchases. The U.S. Trade Representative is trying to obtain "sign-off" from state governors to also comply with these rules. There are currently 23 states signed onto CAFTA's procurement rules.