

## **CAFTA's Inadequate Labor Provisions**

**CAFTA does not require countries' labor laws to comply with International Labor Organization core standards**, which include the right to freely organize unions and to bargain collectively. CAFTA only calls on CAFTA countries to “strive to ensure”<sup>i</sup> such standards. Human Rights Watch, the ILO, and even the U.S. State Department have recognized labor law in various CAFTA nations as being inadequate.

**CAFTA only requires that countries enforce their existing labor laws, but even this requirement is severely compromised:**

**CAFTA allows countries to decide not to enforce any portion of their existing labor law** by deciding to allocate resources elsewhere<sup>ii</sup>. Such decisions cannot become the subject of an arbitral (dispute resolution) panel<sup>iii</sup>.

**CAFTA allows countries to weaken their existing labor law in order to attract investment**<sup>iv</sup>. Countries “shall strive to ensure” that they do not do so, but there is no possible enforcement of this provision since weakening labor laws in order to attract investment cannot become the subject of an arbitral panel<sup>v</sup>.

**CAFTA limits penalties for failure to enforce labor laws to \$15 million**<sup>vi</sup> – **while sanctions for breaches of commercial provisions are unlimited**<sup>vii</sup>. **Fines will be given back to the country that fails to enforce its own labor laws.** Fines for failure to enforce a nation's labor laws are to be spent in (i.e., given back to) the violating country, supposedly to enhance labor law enforcement. However CAFTA does not prohibit a violating country from redirecting existing funds away from the area into which the fines are being directed, thus potentially resulting in no net increase in enforcement funding<sup>viii</sup>.

**CAFTA is a giant step backward from existing trade-related labor protections in the region.** Currently, the General System of Preferences and the Caribbean Basin Initiative directly condition market access on respect for ILO core standards. Their credible threat of reduced benefits is responsible for most significant labor reforms in Central America over the last two decades. CAFTA would destroy the only proven effective means to raising the bar for workers in the Americas.

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<sup>i</sup> Article 16.1. “Strive to ensure” is non-binding language

<sup>ii</sup> Article 16.2.1(b) gives each country “the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labor matters determined to have higher priorities. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources.”

<sup>iii</sup> Article 16.6.7

<sup>iv</sup> Article 16.2.2

<sup>v</sup> Article 16.6.7

<sup>vi</sup> Article 20.17.2

<sup>vii</sup> Article 20.16

<sup>viii</sup> Article 20.17.4