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U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
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April 4, 2005

The Honorable Peter Allgeier
Acting U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Allgeier:

In recent weeks, advocates for the Central American Free Trade Agreement (CAFTA) have made assertions that the CAFTA countries' laws comply with basic, internationally-recognized rules that ensure common decency and fairness to working people. These advocates argue that the only outstanding issue concerning the rights of workers in the CAFTA countries is a lack of adequate enforcement of existing labor laws.

Unfortunately, CAFTA advocates' rhetoric is not supported by the facts. There are still no fewer than 20 areas in which the CAFTA countries' labor laws fail to comply with even the most basic international norms, as documented by the International Labor Organization (ILO), the U.S. Department of State and multiple non-governmental organizations.

More than a year ago, in November 2003, a number of us wrote to you outlining these problems in detail. We had hoped that doing so might lead to actions to remedy those problems, or at least to a constructive dialogue about them. However, the Members who signed that letter have yet to receive any response to the list of problems documented in that letter — either from your office or from the countries concerned. In fact, the labor laws in at least one of the CAFTA countries have been weakened in recent months.

In light of the fact that Congress may soon be considering the CAFTA, it is important to move beyond rhetoric to the facts. We urge you to provide documented information concerning any amendments CAFTA countries have made to their laws to address the shortcomings noted in the attached list. Those shortcomings cannot be overcome with better enforcement efforts. Even the best enforcement of inadequate laws — whether relating to intellectual property, services regulation or technical standards for manufactured products — cannot yield acceptable results.

We support the right CAFTA for the Central American countries and the Dominican Republic, just as we have strongly supported the Caribbean Basin Initiative (CBI) programs.

These programs have done much to strengthen economic ties with our friends and neighbors in Central America and the Caribbean in ways that benefit both the United States and the region. However, the CBI programs were built on the dual pillars of expanded economic opportunity and a strong framework for trade. In particular, the programs were expressly conditioned on the countries making progress in achieving basic labor standards. By contrast, the CAFTA moves backward by not including even these minimum standards, and using instead a standard for each country of "enforce your own laws." Ensuring that the CAFTA countries both adopt and effectively maintain in their laws the most basic standards of decency and fairness to working people is important to their workers, their societies, and to U.S. workers. It also is critical to ensuring strong and sustainable economic growth and promoting increased standards of living.

We welcome and support all efforts to improve the capacity of Central American countries to improve the enforcement of their labor laws. In fact, for the last four years, we have fought for better funding of such programs and against massive Administration budget cuts for labor technical assistance programs — many of these programs zeroed-out or slashed by up to 90 percent in budgets submitted by the Administration. The Administration's track record gives us little confidence that the one-time grant of $20 million included in the FY05 Foreign Operations Appropriations Act for labor and environmental technical assistance in the CAFTA countries represents the kind of real and sustained commitment needed in these areas. Moreover, such efforts on enforcement are no substitute for getting it right on basic laws.

Sincerely,

Benjamin L. Cardin
Ranking Member
Subcommittee on Trade

Charles B. Rangel
Ranking Member

Xavier Becerra
Member

Sander M. Levin
Ranking Member
Subcommittee on Social Security

U.S. State Department and International Labor Organization Reports Confirm Deficiencies in CAFTA Labor Laws

The 2004 U.S. State Department *Country Reports on Human Rights Practices*, the October 2003 ILO *Fundamental Principles and Rights at Work: A Labor Law Study* ("the Report"), and other ILO reports released in recent years confirm the existence of at least 20 areas in which the labor laws in the CAFTA countries fail to comply with two of the most basic international norms of common decency and fairness to working people – the rights of association (ILO Convention 87) and to organize and bargain collectively (ILO Convention 98).

Each of these deficiencies, discussed in detail below, was identified in a letter sent in November 2003, from Reps. Rangel, Levin and Becerra to then U.S. Trade Representative Zoellick. Neither USTR nor the governments of the Central American countries have provided information responding to these inconsistencies.

COSTA RICA

(1) **Use of Solidarity Associations to Bypass Unions**. Costa Rican law allows employers to establish "solidarity associations" and to bargain directly with such associations, even where a union has been established. The failure to explicitly prohibit employers from bypassing unions in favor of employer-based groups violates ILO Convention 98.[1]

- **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he report of the technical assistance mission...drew attention to the great imbalance in the private sector between the number of collective agreements and the number of direct pacts...the CEACR recalled that direct negotiation between employers and workers' representatives was envisaged 'only in the absence of trade union organizations.'"*[2]

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[1]Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers...shall...constitute acts of interference."

[2]The ILO Report on the five Central American countries is largely based on existing reviews by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR has a very limited scope of review, as it only

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(2) **Onerous Strike Requirements.** Costa Rican law includes a number of onerous procedural requirements for a strike to be called. These requirements contravene ILO guidelines for regulation of strikes, and taken as a whole, make it nearly impossible for a strike to be called. For example, Costa Rica requires that 60% of all workers in a facility vote in favor of a strike in order for it to be legal. These requirements violate ILO Convention 87.[3]

- **This deficiency was confirmed in the October 2003 ILO Report:** *"The general requirements set out by the legislator [sic] for a strike to be legal...include the requirement that at least 60 per cent of the workers in the enterprise support strike action. The CEACR has stated that if a member State deems it appropriate to establish in its legislation provisions for the requirement of a vote by workers before a strike can be held, 'it should ensure that account is taken only of the votes cast, and that the required quorum and majority are fixed at a reasonable level.'"*

(3) **Inadequate Protection Against Anti-Union Discrimination.** Costa Rica's laws do not provide for swift action against anti-union discrimination. For example, there is no accelerated judicial review for dismissal of union leaders.

- **This deficiency was confirmed in the October 2003 ILO Report:** *"[A]s the CEACR has indicated, legislation needs to be amended 'to expedite judicial proceedings concerning anti-union discrimination and to ensure that the decisions thereby are implemented by effective means.'"*

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[2](...continued)
reviews laws in light of ratified conventions. Therefore, if a country has not ratified one of the core conventions (*e.g.*, El Salvador has not ratified the ILO conventions on the right to associate or bargain collectively), the CEACR will not review the country's implementation of that convention.

[3]ILO convention 87, on freedom of association and the right to organize, covers the right to strike. Specifically, strikes are considered part of the trade union "activities...and programs" protected under Article 3 of that Convention.

The ILO has consistently maintained that if a vote is required for a strike by a union, then: (1) only union votes should be counted in determining whether there is sufficient support for the strike; (2) only a simple majority of workers present and voting should be required for approval; and (3) if a quorum is required for a vote to be called, the quorum should be set at a "reasonable level."

EL SALVADOR

(1) **Inadequate Protection Against Anti-Union Discrimination.** El Salvador fails to provide adequate protection against anti-union discrimination. In particular, El Salvador fails to provide for reinstatement of workers fired because of anti-union discrimination, which violates ILO Convention 98.[4] There also are widespread reports of blacklisting in export processing zones of workers who join unions. Salvadoran law does not prohibit blacklisting, as it bars only anti-union discrimination against employees, not job applicants.

- **The 2004 U.S. State Department Report on Human Rights Practices confirms this deficiency:** "*The Labor Code does not require that employers reinstate illegally dismissed workers. . . . Workers and the ILO reported instances of employers using illegal pressure to discourage organizing, including the dismissal of labor activists and the circulation of lists of workers who would not be hired because they had belonged to Unions.*"

(2) **Restrictive Requirements for Formation of Industrial Unions.** El Salvador has repeatedly been cited by the U.S. State Department and the ILO for using union registration requirements to impede the formation of unions. These formalities violate ILO Convention 87.[5]

- **The 2004 U.S. State Department Report on Human Rights Practices confirms this deficiency:** "*[I]n some cases supported by the ILO Committee on Freedom of Association . . . the Government impeded workers from exercising their right of association . . . . [T]he government and judges*

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[4]Convention 98 on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR, in a 1994 General Survey, elaborated on this principle, stating that "legislation which allows the employer in practice to terminate the employee on the condition that he pay compensation . . . is inadequate under . . . the Convention."

[5]Convention 87 guarantees the right of workers to establish worker organizations without prior authorization, and states that requirements for union registration should "not be of such a character to restrict the right to organize." The ILO Committee of Experts has elaborated on this principle, stating that "administrative requirements which are preconditions for the free functioning of an organization should be of a purely formal nature" and not be used to restrict the right to associate or to organize.

continued to use excessive formalities as a justification to deny applications for legal standing to unions and federations."

- **A 1999 Report by the ILO Committee on Freedom of Association confirms this deficiency:** *The Committee observes that "legislation imposes a series of excessive formalities for the recognition of a trade union and the acquisition of legal personality that are contrary to the principle of the free establishment of trade union organizations ... ."*

GUATEMALA

(1) **Inadequate Protection Against Anti-Union Discrimination.** Guatemala's laws do not adequately deter anti-union discrimination. The failure to provide adequate protection from anti-union discrimination violates Convention 98.[6]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"An ineffective legal system and inadequate penalties for violations hindered enforcement of the right to form unions and participate in trade union activities...."*

- **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he CEACR hopes that ... 'measures will soon be adopted to ensure rapid and effective compliance with judicial decisions ordering the reinstatement in their jobs of workers dismissed for trade union activities and that effective penalties will be established for failure to comply with such decisions.'"*

- *Note: In August 2004, the Constitutional Court of Guatemala issued a ruling rescinding the authority of the Ministry of Labor to impose fines for labor rights violations. Following this decision, it is not clear whether Guatemala's law permits any fines to be assessed for labor law violations.*

(2) **Restrictive Requirements for Formation of Industrial Unions.** Guatemala requires a majority of workers in an industry to vote in support of the formation of

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[6]Convention 98, on the right to organize and bargain collectively, requires governments to protect workers from anti-union discrimination. The CEACR has stated that "the existence of general legal provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice."

an industry-wide union for the union to be recognized. This requirement violates Convention 87.[7]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *The high, industry-wide threshold creates "a nearly insurmountable barrier to the formation of new industry-wide unions."*

(3) **Onerous Requirements to Strike.** Guatemalan law includes a number of provisions that interfere with the right to strike. The Guatemalan Labor Code mandates that unions obtain permission from a labor court to strike, even where workers have voted in favor of striking. In addition, the Labor Code requires a majority of a firm's workers to vote in favor of the strike. These laws violate Convention 87.[8]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *Noting that "procedural hurdles" helped to make legal strikes rare, the Report states, "The Labor Code requires approval by simple majority of a firm's workers to call a legal strike. The Labor Code requires that a labor court consider whether workers are conducting themselves peacefully and have exhausted available mediation before ruling on the legality of a strike."*

- **This deficiency was confirmed in the October 2003 ILO Report:** *"[O]ne of the general requirements laid down in the legislation ... is still under criticism by the CEACR: 'only the votes cast should be counted in calculating the majority and ... the quorum should be set at a reasonable level.'"*

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[7]Convention 87 states that "workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing." The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, "the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered."

[8]As discussed in note 3, strikes are considered part of the trade union "activities... and programs" protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

(4) **Ambiguity in Certain Criminal Penalties.** Guatemala's Penal Code provides for criminal penalties against anyone who disrupts the operation of enterprises that contribute to the economic development of the country. Whether and how these penalties apply to workers engaged in a lawful strike is unclear, and this ambiguity has deterred workers from exercising their right to strike. The CEACR has stated that application of these penalties to a worker who engaged in a lawful strike would violate ILO Conventions 87 and 98.[9]

- **This deficiency was confirmed in the October 2003 ILO Report:** *"The CEACR has drawn the attention of the Government to the fact that certain provisions of the Penal Code are not compatible with ILO Conventions ...noting that ... sentences of imprisonment ... can be imposed as a punishment ... for participation in a strike."*

(5) **Restrictions on Union Leadership.** Guatemala maintains a number of restrictions with respect to union leadership including: (1) restricting leadership positions to Guatemalan nationals; and (2) requiring that union leaders be currently employed in the occupation represented by the union. These restrictions violate Convention 87.[10]

- **This deficiency was confirmed in the October 2003 ILO Report:** *"Both the Constitution and the Labour Code prohibit foreign nationals from holding office in a trade union.... The Labour Code requires officials to be*

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[9]Convention 87 establishes the right to strike as a key element of the right to freedom of association and the right to organize. The CEACR has cautioned that penalties against workers for strikes should not be used to deter lawful union activities.

The CEACR has elaborated on the problems that arise when penalties are imposed on workers for strikes, stating that, '[t]he Committee considers that sanctions for strike action should be possible only where the prohibitions in question are in conformity with the principles of freedom of association. Even in such cases, both excessive recourse to the courts in labor relations and the existence of heavy sanctions for strike action may well create more problems than they resolve."

[10]Under Convention 87, on the right to associate and organize, governments are supposed to ensure the free functioning of workers' organizations, including by ensuring that workers have the right to elect their representatives in "full freedom." The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

workers in the enterprise.... These restrictions have given rise to observations by the CEACR."

HONDURAS

(1) **Burdensome Requirements for Union Recognition.** Honduran law requires more than 30 workers to form a trade union. This numerical requirement acts as a bar to the establishment of unions in small firms, and violates ILO Convention 87.[11]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The [ILO] has noted that various provisions in the labor law restrict freedom of association, including ... the requirement of more than 30 workers to constitute a trade union...."*

- **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he requirement to have more than 30 workers to constitute a trade union ... has prompted the CEACR to comment that this number is 'not conducive to the formation of trade unions in small, and medium size enterprises.'"*

(2) **Limitations on the Number of Unions.** Honduran law prohibits the formation of more than one trade union in a single enterprise. This restriction violates ILO Convention 87 on the right of workers to join or establish organizations of their own choosing, and fosters the creation of monopoly unions.[12]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The [ILO] has noted that various provisions in the labor law restrict freedom of association, including the prohibition of more than 1 trade union in a single enterprise...."*

- **This deficiency was confirmed in the October 2003 ILO Report:** *"Such a provision, in the view of the CEACR, is contrary to Article 2 of*

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[11]Convention 87 states that "workers ... without distinction whatsoever, shall have the right to establish and ... to join organizations of their own choosing." The CEACR has determined that while numerical thresholds for establishment of a union are not *per se* incompatible with Convention 87, "the numbers should be fixed in a reasonable manner so that the establishment of organizations is not hindered."

[12]Convention 87 protects the right of workers to establish and join "organizations of their own choosing." Restricting the number of unions to one per enterprise interferes with that right.

Convention No. 87, since the law should not institutionalize a de facto monopoly ... ."

(3) **Restrictions on Union Leadership.** Honduras requires that union leaders be Honduran nationals, and be employed in the occupation that the union represents. These restrictions violate ILO Convention 87.[13]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The [ILO] has noted that various provisions in the labor law restrict freedom of association, including ...the prohibition on foreign nationals holding union office, the requirement that union officials must be employed in the economic activity of the business the union represents... ."*

- **This deficiency was confirmed in the October 2003 ILO Report:** *"The Labour Code prohibits foreign nationals from holding trade union offices and requires officials to be engaged in the activity, profession or trade characteristic of the trade union ... . The CEACR has objected to these provisions, which it deems incompatible with Article 3 of Convention No. 87 ... ."*

(4) **Inadequate Protection Against Anti-Union Discrimination.** The ILO CEACR has faulted Honduras for a number of years for not providing adequate sanctions for anti-union discrimination. For example, under the law, only a very small fine equivalent to approximately US$12-$600 can be assessed against employers for interfering with the right of association. This Honduran law violates ILO Convention 98.[14]

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[13]Under Convention 87, governments are supposed to ensure the free functioning of workers' organizations, including by ensuring that workers have the right to elect their representatives in "full freedom." The CEACR has criticized both nationality and employment requirements as impediments to the ability of workers to elect representatives of their own choosing. (Nationality requirements preclude the formation of unions in sectors dominated by migrant labor; employment requirements create incentives for employers to fire union leaders.)

[14]Article 1 of Convention 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." The CEACR has stated that the test of whether or not the legal procedures meet the requirements of the Convention is that the "procedures prevent or effectively redress anti-union discrimination, and allow union representatives to be reinstated in their posts and continue to hold their trade union office

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- **This deficiency was confirmed by a 2004 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR):** *"The penalties envisaged ... against persons impairing the right to freedom of association (from 200 to 2,000 lempiras, with 200 lempiras being equivalent to around $12) had been deemed inadequate by one worker's confederation. ... The Committee once again hopes that [legislation will be prepared] providing for sufficiently effective and dissuasive sanctions against all acts of anti-union discrimination."*

(5) **Few Protections Against Employer Interference in Union Activities.** Honduras prohibits employers or employees with ties to management from joining a union; it does not, however, prohibit employers from interfering in union activities through financial or other means. The failure to preclude employer involvement violates ILO Convention 98 on the right to organize and bargain collectively.[15]

- **This deficiency was confirmed in a 2004 Report of the ILO CEACR:** *"[T]he Convention provides for broader protection for workers' ... organizations against any acts of interference ... in particular, acts which are designed to promote the establishment of workers' organizations under the domination of employers or employers' organizations, or to support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers or employers' organizations. In this respect, the Committee once again hopes that [labor law reform will include provisions] designed to ... afford full and adequate protection against any acts of interference, as well as sufficiently effective and dissuasive sanctions against such acts."*

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[14](...continued)
according to their constituents' wishes."

[15]Convention 98 states that "workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other." In particular, Convention 98 prohibits employers' acts to "support workers' organizations by financial or other means, with the object of placing such organizations under the control of employers ... ."

(6) **Restrictions on Federations.** Honduras prohibits federations from calling strikes. The CEACR has criticized this prohibition, which contravenes the right to organize.[16]

- **This deficiency was confirmed in the October 2003 ILO Report:** *"Federations and confederations do not have a recognized right to strike ... which has prompted the CEACR to recall that such provisions are contrary to Articles 3, 5 and 6 of Convention No. 87...."*

(7) **Onerous Strike Requirements.** Honduras requires that two-thirds of union members must support a strike for it to be legal. This requirement violates ILO Convention 87.[17]

- **This deficiency was confirmed in the October 2003 ILO Report:** *"[T]he CEACR has recalled that restrictions on the right to strike should not be such as to make it impossible to call a strike in practice, and that a simple majority of voters calculated on the basis of the workers present at the assembly should be sufficient to be able to call a strike."*

NICARAGUA

(1) **Inadequate Protection Against Anti-Union Discrimination.** Nicaragua's laws permit employers to fire employees who are attempting to organize a union as long as they provide double the normal severance pay. This allowance violates ILO Convention 98.[18]

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[16]Convention 87 gives federations and confederations the same rights to "organize their activities, and to formulate programs" as unions. The right to strike is considered a worker organization "activity;" therefore, federations should have this right.

[17]As discussed in note 3, strikes are considered part of the trade union "activities... and programs" protected under Article 3 of Convention 87. The CEACR has consistently maintained that if a vote is required for a union-called strike, that the support of a simple majority of union members present should suffice.

[18]Article 1 of Convention 98 states that "Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment." The CEACR has stated that legislation which allows the employer to terminate the employment of a worker on condition that he pays compensation is inadequate under the terms of the Convention.

- **This deficiency was confirmed in the October 2003 ILO Report:** *The Annex to the Report states that the Labor Code provides that "if the employer does not carry out reinstatement, he/she shall pay double the compensation according to the length of service."*

(2) **Use of Solidarity Associations to Bypass Unions.** Nicaragua allows employers to create "solidarity associations" but does not specify how those associations relate to unions. The failure to include protections against employers using solidarity associations to interfere with union activities violates ILO Convention 98.[19]

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"The Labor Code recognizes cooperatives into which many transportation and agricultural workers are organized. Representatives of most organized labor groups criticized these cooperatives and assert that they do not permit strikes, have inadequate grievance procedures, are meant to displace genuine, independent trade unions and are dominated by employers."*

(3) **Procedural Impediments to Calling a Strike.** Nicaragua maintains a number of restrictive procedural requirements for calling strikes. (According to the 2002 U.S. State Department Human Rights Report, the Nicaraguan Labor Ministry asserts that it would take approximately 6 months for a union to go through the entire process to be permitted to have a legal strike.) Since all legal protections may be withdrawn in the case of an illegal strike, the practical outcome is that workers who strike often lose their jobs, thus undermining the right to strike protected by Convention 87.

- **This deficiency was confirmed in the 2004 U.S. State Department Report on Human Rights Practices:** *"Observers contend that the [process for calling a strike] is inappropriately lengthy and so complex that there have been few legal strikes since the 1996 Labor Code came into effect. . . ."*

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[19]Convention 98 covers the right to organize and bargain collectively. Convention 98 states that unions shall enjoy adequate protection against employer interference, and specifies that "acts which are designed to promote the establishment of workers' organizations under the domination of employers . . . shall . . . constitute acts of interference."