

LABOR STANDARDS AND THE CENTRAL AMERICAN FREE TRADE AGREEMENT

NOVEMBER 19, 2002



LAWYERS COMMITTEE
FOR HUMAN RIGHTS

For further information please contact the Workers Rights Program at:
workersrights@lchr.org

ABOUT US

Lawyers Committee for Human Rights

Since 1978, the Lawyers Committee for Human Rights has worked in the U.S. and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; promote fair economic practices by creating safeguards for workers' rights; and help build a strong international system of justice and accountability for the worst human rights crimes.

William D. Zabel is Chair of the Board of the Lawyers Committee, Tom Bernstein is the President of the Board, Michael Posner is the Executive Director, Michael McClintock is the Director of Program, and Elisa Massimino is the Director of the Washington, D.C. Office.

Copies of this report are available by contacting:

Communications Department
Lawyers Committee for Human Rights
333 Seventh Avenue, 13th Floor
New York, NY 10001-5004 USA
tel: (212) 845-5200

Washington, D.C. Office
Lawyers Committee for Human Rights
100 Maryland Avenue, NE, Suite 502
Washington, D.C. 20002 USA
tel: (202) 547-5692
<http://www.lchr.org>

© 2002 by the Lawyers Committee for Human Rights
All Rights Reserved

The Lawyers Committee for Human Rights advances fair economic practices by promoting global safeguards for workers' rights. In the last decade the global expansion of the market economy has produced what some call a “world without walls”. In the rush to find cheaper and quicker ways to produce shoes, apparel, and other labor-intensive goods for the global marketplace, multinational corporations continue to move much of their manufacturing to countries without basic legal protections for workers and where union organizing is prohibited or discouraged. Factory workers drive the new international economy, yet millions of them daily endure substandard conditions of work ranging from inadequate wages to long hours to life-threatening hazards in the workplace. The export of agricultural products has also significantly increased over the last years. In many of the countries that export agricultural products, basic workers rights are not respected and child labor is a serious problem. The Lawyers Committee for Human Rights believes that increased trade liberalization must be accompanied by measures to protect basic labor rights. The express protection of labor rights in the letter and the spirit of trade agreements is a first step in this direction.

The Lawyers Committee for Human Rights expects that free trade agreements must meet the following minimum requirements:

- Negotiations must be conducted in a transparent way.
- Only governments that comply with core labor standards should be invited to sign.

- Basic labor rights must be an integral part of the agreement.
- Enforcement mechanisms for labor rights must be equal to enforcement mechanisms for any other rights and obligations embodied in the agreement.
- Trade remedies should be applicable to labor standards.
- Labor rights must be enforceable in the entire territories of the signatory parties.
- A permanent labor standards monitoring body must be part of the agreement.

With the objective of increasing trade integration in the Western Hemisphere, the President of the United States, George W. Bush, announced on January 16, 2002 that the United States would explore a free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. This agreement would be called the Central American Free Trade Agreement (“CAFTA”). Formal discussions to negotiate this agreement are not expected to start until the beginning of 2003. Informal discussions are already taking place and shaping the content of the negotiations, however, and the parties involved in the negotiations should now be considering both the context of the proposed agreement and the process by which it is to be negotiated.

Labor rights must not only be covered by the CAFTA, but be at its core in a form subject to monitoring and enforcement. The United States has dealt with labor rights both directly and through side agreements in trade agreements in the past. The North American Agreement on Labor Cooperation (NAALC), attached to the North American Free Trade Agreement, was the first “labor side agreement” to accompany a trade agreement.¹ To date, the NAALC has

¹ Signed in December 1992 <http://www.naalc.org/english/infocentre/NAALC.htm> (accessed November, 2002).

produced mixed results, partly due to the fact that it is a side agreement and not subject to the same enforcement mechanisms as the NAFTA.

The United States went one step further in linking labor rights and trade in the United States–Jordan Free Trade Agreement.² The U.S.-Jordan FTA was the first in U.S. history to include enforceable labor and environmental standards in the body of a trade treaty. This agreement included commitments by both countries to abide by their own laws guaranteeing workers' rights and confirmed that free trade and workers rights must go hand in hand. By reconciling labor standards with free trade – concepts that traditionally have been viewed as mutually exclusive – the U.S.–Jordan agreement offered a new model for free-trade pacts. While an important stride forward, however, the agreement was merely the first step to raising the bar on acceptable labor conditions. The pact only required the United States and Jordan to apply their existing national laws and used as its base the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work (“the ILO Declaration”)³ and its Follow Up.

The CAFTA represents a new opportunity for the United States and the Central American region to raise labor standards and provide effective protection to labor rights. Moreover, such an agreement would create a precedent among the countries of the Western hemisphere for the

² Signed on October 24, 2000 <http://www.ustr.gov/regions/eu-med/middleeast/textagr.pdf> (accessed November, 2002).

³ Adopted on the 86th Session, Geneva, June 1998.
<http://www.ilo.org/public/english/standards/decl/declaration/index.htm> (accessed November, 2002).
<http://www.ilo.org/public/english/standards/decl/declaration/followup/index.htm> (accessed November, 2002).

drafting of enforceable regional labor standards in the context of the on-going negotiations of the Free Trade Agreement of the Americas (FTAA).

The Lawyers Committee believes that more needs to be done both in law and practice to ensure that core labor rights are respected. The Lawyers Committee urges the United States, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua to take into account the following recommendations when drafting the text of the agreement:

- ***Negotiations must be conducted in a transparent way.*** All trade agreements must be negotiated in a transparent way. In the case of CAFTA, the need for transparency is even greater due to the tight timeline for negotiations. The outcome of the informal discussions suggests that the objective is to have the CAFTA negotiated by the end of 2003. This is a very ambitious timetable for a regional free trade agreement of this magnitude. The negotiating parties, therefore, should pay particular attention to negotiating in absolute transparency in order to allow the informed participation of civil society and taking into account the proposals that sectors of civil society may have. Transparency can be facilitated by making available to the general public all negotiating proposals and draft texts upon presentation to the parties.

- ***Only governments that comply with core labor standards should be invited to sign the CAFTA.***⁴ The United States has the obligation to promote respect for workers rights and the rights of children consistent with core labor standards of the ILO in its trade agreements.⁵ Parties to the negotiations that do not comply with these core labor standards should be invited to sign the CAFTA only if and when they show a genuine commitment and capacity in law and practice to ensure that labor rights are respected. Thus, labor standards compliance with the ILO Declaration must be assessed in each of the negotiating countries prior to signing the agreement. The United States government must ensure compliance in order to honor its negotiating mandate under the Trade Promotion Authority.
- ***Basic labor rights should be an integral part of the CAFTA.*** Freedom of association, the right to bargain collectively, the right to strike, prohibition of forced labor, labor protections for children and young persons, elimination of employment discrimination, equal pay for women and men, prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses, as well as protection of migrant workers must be part of the agreement.
- ***The CAFTA should include enforcement mechanisms to respect labor rights.*** Since the failure to enforce labor rights is a major problem, the CAFTA should ensure that

⁴ Core labor standards include freedom of association, the right to organize and bargain collectively, a prohibition on the use of any form of forced or compulsory labor, a minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

⁵ Trade Act 2002, Section 2, Division B “Bipartisan Trade Promotion Authority”, Section 2102 (c).

effective enforcement mechanisms are in place. Labor rights violations go unpunished where effective enforcement mechanisms are absent despite rights guarantees in international treaties or national legal systems. The Lawyers Committee believes that labor rights should be a part of the core agreement and subject to the same dispute settlement mechanisms and enforcement provisions as other rights and obligations embodied in the agreement.

- ***Trade remedies should be applicable to labor standards.*** Noncompliance with labor standards should carry the same consequences as any other violation of the agreement. Once enforcement mechanisms have concluded that a country has not complied with labor standards, appropriate remedies should be imposed. It has been a common pattern in most trade agreements concluded in recent years to include trade remedies (different mechanisms to limit imports) as a useful tool to deter countries from violating trade provisions. The gravity of labor standards violations demand the application of the same remedies to other breaches of the agreement. Labor standards should not be an exception.
- ***Labor rights should be enforceable throughout the entire territories of the signatory parties.*** The five Central American countries negotiating the CAFTA have special economic zones created to attract foreign investment and promote industrialization aimed at the export market (“zonas francas de exportación”). These free trade zones are managed by private enterprises and are subject to special legal frameworks.

Unfortunately, this has led to serious labor rights abuses in these zones. The CAFTA needs to ensure that the jurisdiction of the agreement reaches the entire territories of the signing parties despite the special legal status or tariff arrangement in specific zones.

- ***A permanent monitoring body should be part of the Agreement.*** Once the Agreement enters into force, a permanent independent monitoring system should be foreseen as an integral part of the agreement to ensure that labor standards are not relaxed and to periodically recommend measures to improve compliance. Negotiating parties could consult recent ILO experiences in order to establish an efficient monitoring mechanism.

In all of the countries covered by CAFTA, there is ample evidence of labor rights abuses suffered by workers who are working in export-oriented economic production, both industrial and agricultural, in sectors expected to benefit from increased liberalization in the region. In El Salvador, Guatemala, Honduras and Nicaragua, especially in the *maquilas*, there are severe restrictions on freedom of association, and abuses including child labor, unpaid and excessive overtime work, wages below minimum legal requirements, and woefully inadequate safety and hygiene standards. An estimated eighty percent or more of the workers in this sector are women, and many of them suffer sexual discrimination, including pregnancy testing and firing of pregnant workers.⁶ In most of the factories in the *maquilas* there are no unions as a direct result of anti-union policies and practices within the enterprises, including threatening workers with

⁶ See, US-Leap, <http://www.usleap.org> and the Maquila Solidarity Network, <http://www.maquilasolidarity.org> (accessed November, 2002). Centro de Estudios del Trabajo (CENTRA), El Salvador. Information provided by FUNDE, Area Macroeconomía y Desarrollo, November 2002.

dismissal and the use of blacklists.⁷ In Costa Rica, there is among other problems the persistence of child labor in banana plantations.⁸

The Lawyers Committee for Human Rights is particularly concerned about very serious abuses of workers' rights in Guatemala, where we have been closely monitoring human rights violations for many years.⁹ In Guatemala, anti-union violence was so pervasive that in 2000, the United States Trade Representative initiated a review of Guatemala's trade benefits granted through the Generalized System of Preferences (GSP) after members of a banana workers union were violently attacked. Guatemala retained its benefits under the GSP due to a resolution of the labor conflict and labor code reform.¹⁰

We urge the United States to carefully assess the labor rights situation in the region on a country-by-country basis before signing the CAFTA.

⁷ El Informe del Monitoreo de las Maquilas y Resintos Fiscales (IMRF) of the El Salvadoran Ministry of Labor.

⁸ United State Department of State Country Reports on Human Rights Practices, 1998.

⁹ See also, Lawyers Committee for Human Rights report, "Beyond the Mack verdict: human rights cases in Guatemala remain stalled," October 29, 2002. http://www.lchr.org/defenders/hrd_guatemala/hrd_guatemala.htm (accessed November, 2002).

¹⁰ Main sources for the case: United State Department of State Country Reports 1999 to 2001; MINUGUA, El caso de los trabajadores de BANDEGUA "Graves violaciones de los derechos humanos en Morales, Izabal", October 28, 1999; AFL-CIO Petition to the USTR Regarding Guatemala Trade Benefits, August 2000; US Leap, <http://www.usleap.org> (accessed November, 2002).

CONCLUSION

Legal and practical protection for workers rights in Central America must be strengthened. The Lawyers Committee for Human Rights believes that increased international trade should not come at the expense of the rights of workers. Countries should not lower their labor standards to attract increased foreign investment and trade, and protection for workers should be in the core of all trade agreements. Negotiations on the CAFTA provide an opportunity for the United States to express its clear support for international labor standards and human rights.
