

## CAFTA WEAKENS EXISTING LABOR RIGHTS PROTECTIONS FOR CENTRAL AMERICAN WORKERS

While USTR claims that CAFTA is groundbreaking, it actually backtracks from the labor protections already available under the unilateral trade preference programs that apply to the region – the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI).

If CAFTA passes, producers in the region will enjoy all of the access currently granted under GSP and CBI through the FTA. Governments in clear violation of GSP and CBI workers' rights conditions will be able to maintain full preferential access under the weakened terms of the FTA, and workers will lose one of the only effective tools they currently have for improving workers' rights in the region. In fact, the Bush administration is already refusing to fully implement the GSP workers' rights conditions against CAFTA countries, fearing full enforcement of the law will only further highlight the comparative weakness of CAFTA's labor rules.

### **Weaker Standards, Weaker Enforcement**

CAFTA's labor chapter backtracks from the labor standards in GSP and CBI, and the agreement eliminates enforcement tools currently available in the unilateral programs.

- The GSP requires countries to have taken or be "taking steps to afford internationally recognized worker rights," while the CBI instructs the president to consider "the extent to which the country provides internationally recognized worker rights" when granting preferential market access under the program. These rules enable workers to complain about the inadequacy of national labor laws, not just about the government's failure to enforce the law. CAFTA, on the other hand, only requires countries to enforce the labor laws they happen to have, no matter how weak those laws are now or become in the future.
- The GSP includes a public petition process for the removal of trade benefits. The AFL-CIO and other labor rights advocates have used the process, in conjunction with unions in Central America, to bring public pressure on Central American governments to improve labor rights. Even when the U.S. government exercises its discretion to reject meritorious GSP petitions, the public forum provided by the petition process can help focus public attention on workers' rights abuses and pressure governments to reform. CAFTA contains no direct petition process for workers – enforcement can only happen through government-to-government disputes.
- The GSP and CBI directly condition market access on respect for international labor rights. While preferential benefits are rarely withdrawn under the programs, the credible threat of reduced trade benefits has successfully changed government behavior. In addition, petitioners have been able to tailor request for withdrawal to specific sectors and producers responsible for workers' rights violations, helping to create a specific incentive for employers to respect workers' rights. CAFTA, on the other hand, makes it extremely difficult to withdraw trade benefits for workers' right violations. Even if a government has been found in violation of

CAFTA's labor provisions, it can continue to enjoy full market access under the agreement as long as it pays a small fine for labor enforcement activities. The fine in no way penalizes producers for violations of workers' rights, and exerts little pressure on governments, who can reduce their labor budgets by an amount equal to the fine and avoid spending the fine on projects with political sensitivity such as labor law reform.

Under CAFTA, governments in Central America will be free to maintain their labor laws far below ILO standards, while employers will enjoy even more freedom to harass, intimidate, fire, and even physically threaten those workers who dare to form independent unions. Unions and workers in the region will lose one of the few tools they have been able to use to force reluctant governments and employers to take steps on workers' rights.

### **Labor Rights Improvements in Central America Largely Due to GSP**

The only tool that has helped create the political will to reform labor laws in Central America in the past is our unilateral system of trade preferences. While the labor rights provisions of these programs are not perfect, they have led to some improvements in labor rights in the region. In fact, nearly every labor law reform that has taken place in Central America over the past fifteen years has been the direct result of a threat to withdraw trade benefits under our preference programs.

In fact, USTR itself touts the reforms that have been made to Central American labor laws as a result of GSP petitions. USTR argues that the reforms demonstrate Central American governments' commitment to workers' rights, and thus argue for approval of CAFTA. Quite to the contrary, the reforms demonstrate that governments in the region rarely undertake labor law improvements without outside pressure – pressure that will no longer be applied if CAFTA is ratified.

- The U.S. government accepted a GSP workers' rights petition against Costa Rica for review in 1993, and Costa Rica reformed its labor laws later that year.
- El Salvador was put on continuing GSP review for workers' rights violations in 1992, and the government reformed its labor laws in 1994.
- Guatemala reformed its labor laws in response to the acceptance of a 1992 GSP petition, and when their case was reopened for review in response to a 2000 petition they again reformed their labor laws in 2001.
- Nicaragua's GSP benefits were suspended in 1987 for workers' rights violations, and it reformed its labor laws in 1996.

The GSP process has also been helpful in addressing enforcement and rule-of-law problems in the region. Too often, these patterns of violation are the result not just of limited resources, but of insufficient political will on the part of Central American governments. GSP cases have helped create that political will. As the result of a 2004 petition on El Salvador, for example, the Salvadoran government finally enforced a reinstatement order for union activists that had been locked out for three years. All appeals to national mechanisms in the case had been fruitless, and the employer was in outright defiance of a reinstatement order from the nation's Supreme Court.

## LABOR RIGHTS PROTECTIONS IN TRADE PREFERENCE PROGRAMS vs. CAFTA

	GSP and CBERA	CBTPA	CAFTA
<b>What is the Enforceable Labor Rights Obligation?</b>	The President, “shall not designate any country a beneficiary” if “such country has not taken or is not taking steps to afford internationally recognized worker rights”	The President designates beneficiary countries, “taking into account ... the extent to which the country provides internationally recognized worker rights”	“A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties.”
<b>What Actions Would Violate the Enforceable Obligation?</b>	<p>A country failing to bring its labor laws or regulations into compliance with international standards</p> <p>A country lowering its labor laws or regulations to a level below international standards</p> <p>A country waiving its labor laws for a specific company, sector, or region</p> <p>A country failing to enforce its labor laws, whether or not it affects trade</p> <p>A country directly violating workers’ rights through government action</p>		A country repeatedly failing to enforce its own labor laws, in a manner affecting trade
<b>Who Can File a Complaint?</b>	Interested individuals, including trade unions, can submit petitions annually to remove a country from eligibility based on that country’s failure to afford workers their internationally recognized rights.		Governments must initiate complaints. There is no formal petition procedure for workers or unions.
<b>How Is the Complaint Reviewed?</b>	The U.S. government reviews the petitions it receives. The government can also start its own review process absent a petition. The government collects information through public hearings and through discussions with the country involved.		Disputes go before a dispute settlement panel made up of labor experts placed on a roster by the parties to the agreement. The proceedings of the panel are public, but do not directly involve workers or unions.
<b>What Penalties Are Available?</b>	If the U.S. government finds a country is not affording internationally recognized worker rights, it can suspend the trade benefits granted by the preference program, and can continue to deny benefits until the country comes into compliance with the workers’ rights conditions of the program.		If a panel finds that a country has repeatedly failed to enforce its labor laws in a manner affecting trade, the country can be required to pay a fine of up to \$15 million. The fine will be used to improve labor administration within the violating country. There are no controls to ensure that the labor administration budget is not reduced in other ways as the proceeds from the fine are spent. If a country fails to pay the fine, the complaining country can withdraw trade benefits equal to the value of the fine.
<b>Are There Other Provisions That Cannot Be Taken to Dispute Settlement?</b>	No.		Yes. Government-to-government consultations can be initiated regarding the other, non-binding commitments in the agreement. These include commitments to meet the ILO core labor standards, to meet internationally recognized worker rights, and not to reduce labor standards. These consultations do not include penalties for violators. Violations of these commitments cannot be brought to dispute settlement, and they cannot be remedied through fines or sanctions.

**LABOR RIGHTS PROTECTIONS IN TRADE PREFERENCE PROGRAMS vs. CAFTA**

	<b>Trade Preference Programs</b>	<b>CAFTA</b>
Trade benefits can be withdrawn if a country repeatedly fails to enforce its own labor laws, in a manner affecting trade	Yes	Yes, but only if the violating country fails to pay a fine to itself to improve labor law administration
Trade benefits can be withdrawn if a country fails to enforce its labor laws in a way that does not affect trade	Yes	No
Trade benefits can be withdrawn if a country passes a law waiving its labor protections for a specific company, sector, or region, like an export processing zone	Yes	No
Trade benefits can be withdrawn if a country refuses to bring its labor laws into compliance with international standards	Yes	No
Trade benefits can be withdrawn if a country lowers its labor laws below international standards	Yes	No
Trade benefits can be withdrawn if a government violates workers' rights directly, though the government action is not illegal under the country's own laws	Yes	No
Workers and unions can petition directly for a review of a country's compliance with its labor obligations	Yes	No
The penalties are the same for a country that has violated its labor obligations as they are for a country that has violated its commercial obligations under the program or agreement	Yes	No