

CAFTA WON'T REMEDY LABOR LAW ENFORCEMENT FAILURES IN CENTRAL AMERICA

The labor chapter of the U.S. – Central America Free Trade Agreement (CAFTA) is virtually identical to the labor chapters of the Chile and Singapore agreements. The Chile/Singapore model was inadequate even for Chile and Singapore. In the context of Central America – where laws fall far below international standards and governments and employers are actively hostile towards unions – this labor chapter model will encourage rampant workers' rights violations to continue.

Central American Governments Lack the Political Will to Enforce Labor Laws

The International Labor Organization (ILO) and the U.S. State Department have repeatedly criticized the CAFTA countries not only for failing to bring their labor laws into compliance with ILO standards, but also for failing to enforce those laws they already have on the books. ***Labor ministries and judicial systems in the region are unable and unwilling to effectively enforce their own laws in defense of workers' rights – there is no respect for the basic rule of law, and delays, obstruction, and corruption are the norm.*** As a result, employers are free to retaliate against workers seeking to form unions, and workers are subjected to harassment, dismissal, physical threats and even murder.

The ILO, State Department, and independent human rights observers have documented the following examples of the systematic failure to enforce labor laws throughout the region:

- ***Delays and obstruction are common in Central American labor ministries.*** In El Salvador, labor inspectors do not follow proper procedures and erect obstacles to union registration. Costa Rican labor inspectors, required to complete their investigations within two months, simply certify violations by the deadline but fail to file charges. In Nicaragua, the process for calling a legal strike is so drawn-out and complicated that there have been only three legal strikes since 1996. The State Department has called Guatemala's labor inspection system "ineffective, inadequate, and corrupt."
- In some cases, ***labor ministries not only ignore violations but are themselves complicit in violations of the law.*** Salvadoran officials participate in violating the law by ceding to illegal employer requests. The Costa Rican Labor Ministry has provided information about newly formed unions to employers who then used the information to fire and blacklist union members. In Honduras, labor inspectors have in some cases sold the names of workers seeking to form a union to employers who then target the workers for retaliation.
- ***Collusion between Labor Ministry officials and employers to deny workers' their right to organize is also a problem*** in Nicaragua. In one case, the Ministry granted an employer's request to fire most of the workers seeking to form a union when the employer cited "economic" reasons, and then the Ministry denied the union's request for certification because they lacked the minimum number of workers required by law. Workers charged that the Ministry improperly backdated the employer's dismissal request just so it could deny union recognition.
- ***The judicial branch is also guilty of systematic enforcement failures*** in Central America. The State Department reports that collective bargaining has diminished in Costa Rica as a result of workers' inability to get efficient judicial relief when they are fired for union organizing. Even if workers are able to overcome burdensome procedures in the labor courts to win cases against abusive employers, enforcing judgments against these employers in El Salvador and other countries is often difficult, if

not impossible. In Honduras, labor and civil courts rarely require employers to reinstate employees fired for union activity, though they have the legal right to do so.

- Guatemala's court system is particularly dysfunctional. ***Guatemalan courts fail to apply the law and allow employers to delay proceedings, mount frivolous appeals, and defy legally binding court orders.*** In a case involving anti-union violence and assassination of workers, the ILO expressed its concern that such problems amounted to a denial of justice. The State Department noted that in Guatemala, "The prevailing business culture ignores labor contracts because, in practice, they are largely unenforceable due to the weak, cumbersome and corrupt legal system [the system] perpetuates the violence that workers face if they attempt to exercise their rights."

Even basic efforts to improve enforcement have too often failed because of the lack of political will in the region. A 1995 agreement between the Honduran Ministry of Labor and the U.S. Trade Representative called for better Labor Code enforcement, but the Ministry has fallen short of its commitments, particularly in labor inspector training and maquiladora inspections. In El Salvador, an internal Labor Ministry report on systematic violations of workers' rights in export processing zones and weaknesses in the Ministry itself was leaked in 2000, and the Ministry reacted by retracting and discrediting the report and failing to address the problems it identified.

CAFTA Would Not Fix Enforcement Problems

CAFTA requires countries to effectively enforce their laws, but the penalties for non-enforcement are very weak. A country that fails to enforce its own labor laws is required to pay a fine to improve labor rights enforcement, and the fine ends up back in its own budget. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine to itself. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. ***If a country pays the fine to itself, but uses the money on unrelated or ineffective programs so that enforcement problems continue unaddressed, no trade action can be taken.*** Under these rules, enforcement failures, collusion and corruption in the region are bound to persist.

Technical Cooperation Proposals Are Not Sufficient

The U.S. Trade Representative claims that a technical cooperation program will help improve labor law enforcement in the region, making up for any weaknesses in CAFTA's rules on workers' rights. While a strong technical cooperation program is essential, ***the current track record gives no hope that increased cooperation alone will change deep-seated indifference and hostility towards workers' rights.*** The U.S. has devoted millions of dollars to labor programs in Central America over recent years, with few real improvements for workers because of limited ambition in, and government resistance to, the programs. Each year the Bush administration proposes slashing overall labor rights assistance by up to 90 percent, meaning even less help may be available to Central American governments in the future. Assistance programs must be strengthened, but they must also be accompanied by effective trade rules. No amount of assistance will create the political will to improve workers' rights in Central America if trade benefits cannot be withdrawn from countries that violate these rights.

A Better Way

The Chile/Singapore labor provisions will not work in CAFTA. Central American unions, international human rights and development groups, and other experts on the region have called for a different kind of trade model that will truly protect workers' rights. The Administration should work with Congress to develop rules for the region that require governments to respect the rule of law, root out corruption, and fully and effectively enforce workers' rights in order to receive trade benefits. CAFTA falls short of this standard, and it must be rejected.