

# The Central America Free Trade Agreement: Three Reasons for Congress to Vote No

*Comments to a Congressional Briefing on CAFTA  
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Oxfam America is an international development and relief agency committed to developing lasting solutions to poverty, hunger and social injustice. We are part of a confederation of 12 Oxfam organizations working together in over 120 countries around the globe, including Central America, with an annual budget over \$400 million dollars.

Oxfam believes that trade can be an important engine for development and poverty reduction. Well-managed trade has the potential to lift millions of people out of poverty. We believe it is important that trade agreements, which set the rules for ongoing trade relations, work to improve livelihoods and reduce poverty in developing countries.

Congress needs to understand the implications of trade agreements for our trading partners in the developing world. The Central America Free Trade Agreement (CAFTA) is the first such agreement the United States has negotiated with less-developed countries, including some of the poorest in the hemisphere. These countries depend heavily on agriculture for the livelihood of significant portions of their populations, are ravaged by curable diseases due to poverty and inadequate health-care coverage, are sorely lacking in public infrastructure and in several cases are highly indebted. Yet CAFTA does not take as a starting point the disparities in development and resources between the US and the region; instead, it is modeled on the US bilateral free trade agreements with Chile and Singapore and the North American Free Trade Agreement (NAFTA).

CAFTA negotiations between the United States and El Salvador, Guatemala, Honduras and Nicaragua concluded on December 17. Costa Rica, which rejected US pressure to agree under that deadline on greater concessions in agriculture and services, is still engaged in negotiations with the USTR. Yet we still do not know exactly what has been agreed to because the CAFTA text has not been made public. We strongly urge Congress to insist that the USTR release the full text to the public at the same time it is sent to Congress for review.

Based on our knowledge of NAFTA and the US agreements with Chile and Singapore, as well as news reports, USTR briefings and information from our partners in the region, Oxfam believes the double standards and rigged rules of US trade policy set forth in CAFTA will be a setback for development and poverty reduction in Central America. Oxfam has identified three reasons why we believe Congress should vote no on CAFTA: agriculture, intellectual property and investment. I will briefly explain each of these.

## **Agriculture**

Oxfam is particularly concerned about two essential issues that arise from the liberalization of trade in agriculture as will occur under CAFTA: the dumping of US exports and the erosion of food security in a region where more than 19 million people (three out of every five inhabitants)

are poor. The highest incidence of poverty is in the rural sector, where agriculture is an important source of livelihoods.

Under CAFTA, Central American countries must eliminate import tariffs on virtually all agricultural goods that are most important for small farmers in the region -- including rice, beans, yellow corn and dairy products. Tariff elimination on these products will result in dumping of subsidized US farm products into Central America, undermining the livelihood of some 5.5 million small producers in the region who make their living from traditional agriculture.

Extended phase-out periods for tariffs granted for some of the region's most sensitive agricultural products will not serve to mitigate this impact. The region's small farmers lack access to credit, new technologies and adequate public infrastructure to improve their production and lower their costs, while their competitors in the US benefit from generous farm support programs. As a result, CAFTA will force farmers in the region to compete not against US farmers but against US taxpayers and the world's most powerful treasury.

The fate of these producers contrasts with that of the US sugar industry, whose essential interests were aggressively defended by the US refusal to negotiate import tariff elimination.

With CAFTA, Central America will be obligated to fully open its agricultural sector to US exports, meaning that a region in which an average of 30 percent of the workforce is employed in agriculture will likely be converted into an agricultural importer. In the case of Guatemala, for example, agricultural exports to the rest of the region (46 percent of its total exports) will likely be displaced by US exports. This would mean the immediate loss of 22,000 jobs and the loss of another 80,000 over the next five years. In the region as a whole, job loss in agriculture will be devastating for the rural poor, whose only option may be to migrate to seek work. It is estimated that the Mexican countryside has lost 1.7 millions jobs, while nearly 15 million small farmers have lost significant income under NAFTA.

CAFTA will replace the market access that Congress had granted Central American countries for the past 20 years on a preferential basis through the Caribbean Basin Initiative (CBI) as a means of fostering the development of our neighbors' economies, with the principle of market access through trade reciprocity. However, such large disparities create an unequal playing field, meaning that Central America has little to gain and much to lose in the agricultural sector. Many producer associations in the region have expressed dismay at the outcome of negotiations, having believed that their sensitive products would remain protected and their competitive exports would receive greater access to the US market. This will not be the case under CAFTA.

### **Intellectual Property**

Intellectual property rules in CAFTA are another serious concern for Oxfam and should be for Congress. Access to knowledge, research, science and technology are essential for development and poverty reduction. Yet CAFTA would increase their cost substantially. Ordinary people will feel the effect through paying more for medicines, and farmers will pay more for agricultural inputs such as seeds and agrochemicals.

All of the Central American countries are WTO members and are therefore bound to implement the intellectual property provisions in the Agreement on Trade-Related Intellectual Property

Rights, known as “TRIPS”. The TRIPS Agreement requires member countries to provide a high standard of protection for patents, copyrights and trademarks under their national laws. TRIPS patent provisions have come under considerable scrutiny in recent years, as developing countries have noted the linkage between extended patent protection and higher prices for technology and new products, notably medicines. The AIDS epidemic has highlighted the dramatic situation faced by poor patients in developing countries, where new patented medicines that could save or prolong their lives are priced out of reach – a situation that will worsen when TRIPS is fully implemented.

In recognition of the increase in medicine prices that can result from the patent protection required under TRIPS, WTO members unanimously adopted the “Doha Declaration on TRIPS and Public Health” in 2001. The Declaration confirms the primacy of public health over the protection of patent rights, and states that the provisions of the TRIPS Agreement should be interpreted in a pro-health way. The TRIPS Agreement contains some safeguards to protect public health; the Declaration encourages countries to use these to promote “access to medicines for all.” The Declaration – signed by the United States and all other WTO members – was understood to be a political commitment to promote public health over intellectual property rights.

But rather than support the aims and spirit of the Doha Declaration, in CAFTA the United States pushed for the extension of patent protections beyond what is required under TRIPS, and for limiting or weakening the public-health safeguards contained in TRIPS. It pursued these protections on behalf of its powerful pharmaceutical lobby, which has a strong interest in limiting generic competition.

Although we have not seen the final text, we believe “TRIPS plus” provisions in CAFTA will restrict patients’ access to affordable medicines and farmers’ access to inputs such as agrochemicals by delaying or preventing the introduction of generic competition. Generic competition is crucial to bringing down prices of these products; without it, medicines and other necessities will be priced out of reach of Central Americans, especially the poor.

Central America has the second highest death rate from communicable diseases in Latin America. Nearly 165,000 people are living with HIV / AIDS and 30,000 cases of full-blown AIDS have been reported in the region. Resources for public health in Central America are extremely limited. Patented medicines sold at monopoly prices are too expensive for these countries to provide through their public health systems and too expensive for poor people to pay for out-of-pocket.

In Costa Rica, for example, strong competition from generic drugs allows the Social Security system to offer universal health-care coverage, spending approximately \$70 million dollars per year or 8 percent of the total budget on pharmaceuticals. Without generic options, the Social Security system estimates it would have to increase its annual pharmaceutical budget nearly six-fold to \$390 million in order to offer the same coverage, according to an analysis by the National Chamber of Generic Products in Costa Rica.

The Doha Declaration affirmed the importance of the TRIPS public-health safeguards and countries’ right to use them to the fullest in order to protect public health. Oxfam believes that

efforts to roll back the Doha Declaration, such as the intellectual property provisions in CAFTA, should be rejected by Congress.

Generic competition is also very important in keeping down the costs of agrochemicals, which are one of the most significant costs in agricultural production, surpassing even labor costs in many instances. TRIPS-plus provisions that delay or restrict generic competition can indirectly increase agricultural production costs. This, combined with depressed commodity prices resulting from subsidized agricultural imports, threatens the livelihoods of small farmers. In Costa Rica, for example, generic competition in the agrochemical market has kept the end-user price of one herbicide to \$16 dollars per gallon, while the lack of such competition in the United States raises the end-user price to \$90 dollars per gallon. Small farmers in Central America would be devastated by such increases in their production costs.

## **Investment**

Investment rules in CAFTA, which are modeled on those of NAFTA and the bilateral agreements with Chile and Singapore, are another important reason to oppose this trade agreement. Oxfam is particularly concerned that restrictions on Central American governments' ability to regulate foreign investment through the use of measures such as performance requirements and capital controls, together with provisions that protect investor rights over human welfare and the public interest, will further exacerbate inequality rather than foster sustainable development in the region.

In Central America, increased capital investment is critically needed to further national development goals. Yet according to the World Bank's 2003 Global Economic Prospects report, there is no evidence that investment agreements lead to increased flows of investment to developing countries. Oxfam believes that the quality of investment matters much more than the quantity. Quality investment can help distribute wealth and promote economic growth, which can result in improved livelihoods. By setting performance requirements, governments can ensure that local materials are used in production, creating backwards linkages to the domestic economy. Through technology transfers, governments can help establish valuable linkages between foreign and domestic producers.

However, similar to the US agreements with Chile and Singapore, CAFTA will likely forbid governments' use of both local content rules and technology transfers. Without such requirements, investment remains isolated from the rest of the domestic economy, and certain firms can prosper without ever contributing to sustainable growth domestically, while serving to exacerbate inequality.

The majority of foreign direct investment currently flowing into Central America has been directed towards assembly plants, or *maquiladoras*, mostly in the manufacturing of garments. These factories contribute very little value-added in the host country because they are not linked to other local industries. Moreover, the cases of labor rights violations that occur in *maquiladoras* are well documented. The *maquiladora* owners take advantage of low wages, generous tax breaks, and lack of enforcement of the existing, inadequate labor regulations in Central America. The country with the cheapest labor force and the lowest level of worker rights' protections wins in this perverse competition, often referred to as "the race to the bottom". CAFTA's lack of strong protections for workers' rights as defined by the core labor standards of

the International Labor Organization, will mean that foreign investment may serve to worsen labor conditions and threaten sustainable livelihoods.

Oxfam is also concerned that CAFTA provisions (from the Chile and Singapore model) will forbid restrictions on the repatriation of profits and limit governments' ability to impose controls on highly speculative investments. This means that foreign investors in Central America will have unrestricted ability to bring capital into and out of countries, while governments will have little recourse to deal with economic instability caused by investors suddenly pulling their money out of the country. While fostering a stable business climate is important, so too is ensuring that investment contributes to domestic growth and broad-based sustainable development. Unregulated corporate behavior could have devastating consequences in case of a financial meltdown, such as occurred in Argentina in 2001.

Also of serious concern is the investor-state dispute settlement mechanism in CAFTA, which, similar to NAFTA, will enable foreign investors to bring suits before international arbitral tribunals when they believe their business interests have been impaired by government regulatory actions. These special tribunals lack the transparency generally afforded by normal judicial proceedings and are empowered to order governments to directly compensate investors for regulations that hurt them, regardless of the public good that the regulations might serve.

This dispute settlement mechanism has been used to challenge important regulations that are expressly designed to protect public health, safety, the environment, and other public interest objectives that enhance social welfare. To date, nearly 20 suits have been filed by corporations under these NAFTA special tribunals, seeking over \$13 billion in claims from governments. This represents a serious threat to governments' ability to provide for the basic human rights of their citizens.

A federal court in Canada recently threw out a Canadian government appeal of a multi-million dollar judgment against it by a NAFTA tribunal acting on a claim by a US company (S.D. Myers Inc.). Currently, a \$50-million suit by a Canadian gold mining corporation (Glamis Gold Ltd.) is pending against the US government for violation of investment rules in NAFTA's chapter 11. The suit alleges that a California law to protect the environment and preserve sacred and ancestral sites of the Quechan Indian Nation violates the corporation's right to earn a profit from lands it has acquired in California's Imperial Valley. A subsidiary of this same corporation operates the San Martin mine in Honduras, which residents claim is causing serious damage to the environment, the physical well-being of local residents and the local economy. Under CAFTA, the Honduran government would be strongly deterred from trying to further regulate these mining operations out of fear of being hit with a suit similar to the one Glamis has filed against the United States.

## **Conclusion**

CAFTA is likely to increase inequality and exacerbate poverty in a region that is still struggling to recover from the devastation of wars, hurricanes and droughts. Under CBI, Congress established trade preferences to facilitate the economic development and export diversification of the Caribbean Basin economies. In 2000, these benefits were expanded in part in response to the devastation wrought by Hurricane Mitch. The problems of poverty and inequality in the region continue unabated. Congress should not replace its system of trade preferences for Central

America that sought to promote economic development by expanding the region's exports, with CAFTA, a free trade agreement that demands full liberalization in the region in exchange for access to US markets. CAFTA is a bad deal for the majority of the population in Central America, particularly small farmers and the poor. Oxfam urges Congress to vote no on CAFTA.