

Date: September 8, 2004  
From: Larry Weiss  
To: CTC State Coalition Coordinators  
Re: Building Trades and CAFTA

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The Building and Construction Trades have good reason to oppose the Central American Free Trade Agreement. The trades may already object to CAFTA due to its failure to protect core labor standards, its provisions that could require the privatization of public services, and its provisions allowing foreign investors to sue our government in secret tribunals to attack health and safety and environmental standards. However, CAFTA also has specific provisions that could very directly and negatively impact building and construction trades workers.

CAFTA's Chapter Nine on Government Procurement covers the procurement of construction services worth \$6,725,000 or more on the part of virtually all U.S. government agencies (the Federal Aviation Administration being a notable exception) and state government agencies in Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New York, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, and Wyoming.

CAFTA's Article 9.8, "Requirements and Conditions for Participating in Procurement", Paragraph 2(a), limits "any conditions for participation in a procurement to those that are essential to ensure that the supplier has the legal, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement..." Should CAFTA come into effect, both prevailing wage laws and the practice of government entities engaging in project labor agreements could both be ruled to be violations of U.S. obligations under Article 9.8, since both set conditions – the paying of a prevailing wage or the use of union workers – for participation in the procurement of construction services that go beyond those permitted.

Prevailing wage laws and PLAs with government entities at the federal level and in the 21 states listed above would be covered by this provision. State prevailing wage laws and PLAs with government entities in other states could also be covered if the governors of those states respond affirmatively to a request by the U.S. Trade Representative to sign their states on to CAFTA's procurement rules.

In any challenge to covered prevailing wage laws or the practice of governments engaging in PLAs by any of our CAFTA trading partners, the decision as to whether these measures are indeed forbidden by CAFTA would be solely in the hands of an arbitral panel. Should the panel

decide that covered prevailing wage laws or the practice of governments engaging in PLAs were indeed inconsistent with CAFTA, the United States would be obligated under CAFTA Article 1.4 to “ensure” that it would take “all necessary measures” to bring law and practice into conformity with CAFTA’s provisions. Such measures by the federal government could include enacting preemptive legislation, suing state or local governments, or withholding federal funding until the state changes or eliminates the covered prevailing wage laws and the practice of engaging in PLAs.

Worse yet, an arbitral panel could be convened under CAFTA’s Annex 20.2 even if the covered prevailing wage laws or the practice of governments engaging in PLAs were **not** considered to be violations of U.S. obligations under CAFTA, but solely because one of our CAFTA partner nations “considers” that a “benefit it could reasonably have expected to accrue to it” under the Government Procurement chapter “is being nullified or impaired as a result of the application of any measure that is not inconsistent with” CAFTA’s provisions.

These provisions of CAFTA are an extremely serious threat to the livelihoods and occupational health and safety of building and construction trades workers; to the interests of federal and state government agencies in seeing construction projects completed in a timely and high-quality manner; and to the economic health of communities that depend on the good wages of construction workers.

It is alarming that the rules of international trade deals that have previously done such damage to manufacturing workers in this country are now being turned against construction workers as well. Because CAFTA poses this level of threat to construction workers, the Building and Construction Trades has good reason to actively urge members of Congress to oppose CAFTA.