

USTR Misleads Congress on CAFTA Labor Provisions

In its December 17, 2003 “Trade Facts” sheet on CAFTA, the U.S. Trade Representative (USTR) makes a number of misleading claims about the labor provisions of the Central American agreement. Ambassador Zoellick repeated these assertions in a letter to the Congressional Hispanic Caucus sent in early January. Below, excerpts from these USTR materials are contrasted with the actual text of the agreement, information from the International Labor Organization (ILO), the U.S. State Department, and even prior USTR statements.

1) USTR Claim: “CAFTA fully meets the labor objectives set out by Congress in the Trade Promotion Act of 2002”

The Facts:

CAFTA does not “fully meet” the negotiating objectives laid to by Congress in the Trade Act of 2002. In the Trade Act, Congress instructs USTR to “treat United States principal negotiating objectives equally” with respect to dispute settlement and remedies. ***But CAFTA does not treat labor provisions and commercial provisions equally, as Congress requires.*** It provides much weaker enforcement procedures for the agreement’s labor obligations than for commercial rules. Whereas sanctions can be imposed quickly on a country violating its commercial obligations, it is very difficult to withdraw trade benefits for violations of workers’ rights. A country that violates workers’ rights to gain a trade advantage can avoid sanctions altogether by simply paying a small fine to itself to fund domestic labor initiatives. There is no way to prevent a violating country from also transferring money out of its labor budget so the fine adds no new net resources for enforcement. And nothing prevents a country from wasting the fine money on unrelated or ineffective labor ministry initiatives. ***As long as the violating country continues to pay itself a fine, even if the fine does nothing to remedy workers’ rights abuses, its trading partners are barred from withdrawing trade benefits under CAFTA.***

2) USTR Claim: CAFTA “includes unprecedented provisions that commit CAFTA countries to provide workers with improved access to procedures that protect their rights.”

The Facts:

CAFTA’s labor chapter does expand upon a provision in the Chile and Singapore FTAs regarding procedural guarantees, but ***the CAFTA language is not “unprecedented,” as USTR claims.*** In fact, the new CAFTA language on procedural guarantees is drawn directly from Articles 5 and 7 of NAFTA’s labor side agreement, the North American Agreement on Labor Cooperation (NAALC). Most importantly, ***the new language that USTR included is completely unenforceable.*** The provisions are excluded from dispute

resolution, allowing a country to refuse to provide even the most basic procedural guarantees in the new provisions with impunity.

While USTR selected some pieces of the NAALC to include in CAFTA, they left out other important NAALC obligations on labor law enforcement. Specific NAALC obligations – to give due consideration to requests for investigations of alleged labor law violations; to ensure that people have access to administrative, quasi-judicial, judicial or labor tribunals to enforce labor laws; and to ensure that people have recourse to procedures for enforcing their rights under collective bargaining agreements – are missing from CAFTA. USTR’s decision to copy some pieces of the NAALC’s obligations on procedural guarantees but not others, especially given the serious problems with rule of law and labor law enforcement in Central America, raises more concerns than it resolves.

3) USTR Claim: Under CAFTA, “all parties reaffirm their obligations as members of the ILO, and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles. [The] Agreement clearly states that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.”

The Facts:

Each of the provisions that USTR cites is purely hortatory. ***None of these rules can be enforced through binding dispute settlement, fines or trade sanctions.*** Therefore a government can maintain its labor laws far below ILO standards, and even weaken those laws further in order to gain an unfair trade advantage, and still enjoy all of the market access benefits of the trade agreement. While USTR claims that CAFTA is groundbreaking, it actually backtracks from the Jordan FTA and from our unilateral trade preference programs by only requiring countries to enforce the labor laws they happen to have, no matter how weak those laws are now or become in the future.

4) USTR Claim: The “International Labor Organization (ILO) found that Central American nations have laws on the books that are largely consistent with ILO core labor standards.” “The ILO study finds that each of the governments gives effect through its laws to the core [labor] rights.”

The Facts:

The ILO study referred to does not, as USTR claims, find Central American labor laws to be in compliance with ILO standards. The study itself gives only a partial overview of Central American labor laws, leaving important ILO decisions outside of its scope and even mistakenly omitting ILO criticisms that were within the report’s scope. The report was thrown together in only a few weeks, based on terms of reference identified by Central American governments but not subjected to consultations with Central American unions or other regional labor rights experts. ***Despite the various omissions and limited scope of the ILO report, it confirms the existence of serious deficiencies in Central Americas’ labor laws.*** Other ILO decisions and U.S. State Department assessments not considered in the report point to additional fundamental flaws in Central America’s labor laws.

In fact, *USTR admitted the serious problems with Central American labor laws when CAFTA negotiations began*, and pledged to take action to address those problems before duplicating the labor rules of the Chile and Singapore FTAs in CAFTA. When Deputy USTR Peter Allgeier, testifying before Congress on June 10, 2003, was asked whether the Chile and Singapore agreements' labor provisions were sufficient for Central America, he responded:

... it depends in part on what changes in their laws they make during the negotiating process We certainly are aware of the importance of this issue in the Central American countries and, frankly, the different circumstances that exist in those countries and among those countries compared to, for example, Chile and Singapore And so part of our negotiation is not simply negotiating the obligations, for example, that we have in Singapore and Chile but having a very detailed and concrete dialogue with these countries about the kinds of changes that they would need to make in their labor laws, either in association with this agreement or prior to it So we need to get those, the labor standards and the enforcement of labor rights up to a certain level before we would find acceptable a commitment to enforce those laws.

Despite this pledge from USTR, Central American countries have done nothing to bring their labor laws closer to international standards during the CAFTA negotiations. Labor law reform proposals introduced in response to ILO recommendations and U.S. pressure have been languishing in Central American parliaments for years, and still have not moved forward. *Even though Central American labor laws are at the same unacceptable level they were a year ago, USTR hopes that more promises, and no action, will be sufficient to get CAFTA passed.*

5) USTR Claim: "Costa Rica, El Salvador, Guatemala and Nicaragua have each carried out major revisions of their labor codes over the last decade, with ILO advice and assistance."

The Facts:

The Central American governments did not undertake labor law reform out of their own recognition of the importance of workers' rights or fear of ILO disapproval. *Most of the reforms cited by USTR were the direct result of pressure from the U.S. government tied to the threat of trade sanctions.* Each of the countries that reformed their laws was the subject of workers' rights petitions under the Generalized System of Preferences (GSP):

- 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.

Despite these successes, the U.S. will permanently give up its ability to tie labor law improvements to trade benefits in CAFTA. The GSP workers' rights clause – one of the

few tools that has created the political will to upgrade labor laws in the region – will become obsolete once CAFTA goes into effect.

Though the link between trade benefits and adequacy of labor laws has been instrumental in securing reforms, even these reforms have been insufficient. ***The ILO and the State Department have recognized that serious deficiencies remain in each country's labor laws:*** failures to protect against anti-union discrimination; obstacles to union registration; permission for employer domination and interference; prohibitions on the right to organize above the enterprise level; restrictions on union leadership and on federations and confederations; and curbs on the right to strike. Subsequent promises for further reform have gone unfulfilled. ***Once CAFTA becomes permanent, the likelihood of future reform will be even more remote.***

6) USTR Claim: “CAFTA includes a groundbreaking cooperation mechanism to promote labor rights through specialized consultations and targeted training programs in the areas of child labor, public awareness of worker rights, and labor inspection systems As part of the CAFTA process, the U.S. Department of Labor has allocated \$6.7 million to educate Central Americans on core labor standards and to improve the administrative capacity of the CAFTA countries in labor matters. The U.S. Department of Labor will also support efforts aimed at reducing exploitative child labor.”

The Facts:

The labor cooperation mechanism created by CAFTA is nearly identical to the NAALC's Commission for Labor Cooperation. ***Far from being “groundbreaking,” as USTR claims, the CAFTA mechanism may be even weaker than the NAALC mechanism it is modeled after.*** The CAFTA mechanism specifically excludes the possibility of using cooperative programs to reform labor laws. CAFTA requires that all cooperative initiatives operate with “respect for national sovereignty and the domestic requirements” of each country, and thus it ***bars labor law reform as a topic for cooperation in the future.*** In fact, the CAFTA mechanism sets no substantive goals for labor cooperation – all that labor officials are required to do under the mechanism is meet once after the agreement is signed.

USTR is also misleading in its portrayal of the financial assistance that will be made available for labor rights activities in Central America. The administration highlights its \$6.7 million program to educate workers about core labor standards, but ***neglects to mention the programs it is eliminating in the region.*** RELACENTRO, an ILO program to promote collective bargaining and build labor law systems, is being eliminated, along with a program to build trade union capacity. The PROALCA program, which focused partly on labor law harmonization, is actually getting less money from DOL than in previous years. Finally, a multi-million dollar program in El Salvador to end child labor is being replaced by a less well-financed child labor program that is supposed to cover the entire region. ***While cutting money from labor law improvements and trade union capacity, more assistance is being channeled to programs on worker training, productivity, and support for corporate codes of conduct – programs that are not designed to improve labor standards.***