

**Center for International Environmental Law · Defenders of Wildlife
Earthjustice · Friends of the Earth · League of Conservation Voters
National Environmental Trust · Natural Resources Defense Council
National Wildlife Federation · Sierra Club · U.S. PIRG**

February 18, 2004

**RE: Oppose the Central American Free Trade Agreement (CAFTA) –
Recently Released Text Falls Short on Environment**

Dear Member of Congress:

On behalf of our millions of members, we are writing to express our opposition to the recently released text of the U.S.-Central American Free Trade Agreement (CAFTA). The agreement would allow foreign investors to challenge hard-won environmental laws and regulations, and fails to include adequate measures to ensure environmental improvement throughout Central America and the United States.

Harmful Anti-Environmental Suits. CAFTA's investor rules would undermine U.S. and Central American environmental standards by allowing foreign investors to challenge legitimate laws and regulations before international tribunals, bypassing domestic courts. In bringing these cases, foreign investors could demand monetary compensation for the implementation of legitimate environmental protections. For developing Central American countries, the simple threat of costly investor challenges could freeze adoption of environmental standards.

Despite some incremental changes, CAFTA's investment rules are similar to NAFTA's Chapter 11, which has given foreign investors broad rights that do not exist under U.S. law. Both Mexico and Canada have lost Chapter 11 challenges to environmental protections, and the U.S. faces suits totaling more than \$1 billion.

The Trade Act of 2002 requires that foreign investors receive "no greater substantive rights" than U.S. citizens have under U.S. law. CAFTA's investment rules fail to meet this congressional mandate: the agreement provides foreign investors with rights and privileges that go significantly beyond U.S. law, and the few U.S. standards the agreement purports to incorporate are left vague and unclear. Further, CAFTA includes language that would allow foreign investors to challenge government decisions about natural resource agreements, such as federal oil, gas, and mineral leases. As a result, foreign companies could challenge royalty payments and other requirements before international tribunals, not U.S. or Central American courts.

In addition, CAFTA language with respect to creating an appeals process for investor suits is wholly inadequate without substantial modification to the underlying investor rights and privileges. Moreover, the agreement does not provide specific rules for an appellate mechanism and would allow foreign investor suits against environmental laws to proceed before the appeals process is established or its basic parameters known.

Inadequate Environmental Safeguards. Central America faces daunting environmental challenges that jeopardize the region's capacity for sustainable development. Unfortunately, CAFTA's environmental rules are inadequate and would not ensure that environmental protection in Central America is improved in a meaningful way.

Although environmental standards in Central America vary widely, CAFTA does not clearly require any country to maintain and effectively enforce a set of basic environmental laws and regulations. The agreement also does not include an enforceable set of standards for corporate responsibility on

environmental (or any other) issues. Further, there is not even parity between enforcement of the existing environmental provisions and CAFTA's commercial provisions.

While the CAFTA text appears to make modest progress in some procedural areas regarding the environment, including the establishment of a citizen submission process to allege failures to effectively enforce environmental laws, the proposed process does not provide for any clear outcomes or actions to ensure environmental enforcement. In particular, the lack of enforcement tools in the citizen submission process stands in stark contrast to the monetary compensation that private investors can demand of governments under CAFTA's investment rules.

Given the numerous environmental challenges facing Central America, we believe that CAFTA should include a comprehensive program for environmental cooperation, capacity building, clear goals and benchmarks, and objective monitoring of environmental progress that is backed up by a dedicated source of grant funding and loans. Unfortunately, the agreement includes no such funding even though CAFTA would significantly reduce the resources Central American countries have for environmental protection by diminishing their tariff revenue. Finally, the CAFTA text fails to include any independent environmental cooperation institution such as that established under the NAFTA environmental side agreement.

Threats to food safety and other standards. CAFTA does not ensure that food safety and other "sanitary and phytosanitary" standards would be adequate to protect public health and safety and the environment in the U.S. and Central America. These are critical issues to address in an agreement that will increase the volume of trade, particularly in produce and other agricultural goods, between the countries. In addition, the agreement's rules on services could undermine environmental safeguards in such critical sectors as water, forestry, waste transport, mining, and offshore oil development.

Trade agreements should support, not undermine, environmental protection, human rights and labor standards. Regrettably, CAFTA could seriously undermine efforts to strengthen environmental protections in the U.S. and Central America. We urge you to oppose this agreement if it comes before Congress for approval.

Sincerely,

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