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State Purchasing Policy Under Attack

New Trade Agreements Handcuff State Governments, Undermine State Authority

Your state has no time to lose to say no to the purchasing provisions of the Central American Free Trade Agreement (CAFTA). CAFTA's provisions would undermine many common state purchasing laws and preferences, handcuffing state governments with restrictive "trade" rules that limit legislators' policy options to promote good jobs and a healthy environment.

In September 2003, the Office of the United States Trade Representative (USTR) bypassed state legislative officials and sent a letter to all 50 governors, asking states to sign on to the government purchasing provisions of CAFTA, an expansion of NAFTA to five Central American countries and the Dominican Republic.

Almost 30 governors initially had committed to sign on, but recently a bipartisan group of governors from seven states (Pennsylvania, Iowa, Missouri, Maine, Oregon, Minnesota, and Kansas) reconsidered and took their states off the agreement. Legislators in more than ten other states are currently weighing-in with their governors regarding CAFTA's threat to state law and local democracy. Only 21 states remain on the CAFTA list (see back).

Why such opposition? Common state economic development and environmental policies are prohibited by the terms of the agreement. Such policies include:

- Bills to prevent offshoring of state jobs;
- "Buy Local" or "Buy America" policies;
- Preferences for recycled content, renewable energy, and fuel-efficient vehicles, and more.

Although setting state purchasing policy is generally the job of legislatures, state legislators were not consulted by the U.S. Trade Representative, only governors. CAFTA's provisions are an unwarranted usurpation of state sovereignty. States have much to lose, but little to gain by signing up to CAFTA's purchasing rules.

The Bush administration signed CAFTA in May. Act now to preserve democratic control of your state's tax dollars before CAFTA is sent to Congress for a vote!

State Officials Say "NO" to CAFTA Purchasing Rules

"We must retain the ability to use every policy tool available to help out our state's workers in this time of crisis. Procurement policy is just such a tool, and I believe that Iowa must have maximum flexibility to use our state tax dollars to create good jobs and meet other important social needs in our state."
Iowa Governor Tom Vilsack to USTR Robert Zoellick, May 3, 2004

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"I was elected by the residents of this Commonwealth to ensure the prosperity and stability of Pennsylvania. I cannot live up to this promise without taking action to ensure that Pennsylvanians have a fair shot at remaining employed… I am rescinding my commitment."
Pennsylvania Governor Ed Rendell to USTR Robert Zoellick, May 11, 2004

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"By excluding the Legislature from this process, the federal government has effectively eliminated future opportunities to comment as to how their state tax dollars are spent. Good government demands more." *State Senator Chris Beutler of Nebraska to Gov. Mike Johanns*

States Currently Bound by CAFTA's Purchasing Provisions:

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.

Common State Purchasing Policies at Risk

If a state signs up and agrees to comply with the purchasing provisions of CAFTA, the following policies are prohibited:

Anti-offshoring policies. The "anti-offshoring" legislation now proposed by more than 30 states, and an array of other local development policies aimed at keeping state dollars paying in-state wages and giving preference to locally-produced goods and services (so-called "Buy America" policies) are forbidden under CAFTA rules.

"Green" procurement policies. Requirements for recycled content in goods or a percentage of energy from renewable sources are at risk, as are preferences for certain environmental or consumer safety labels and eco-friendly packaging requirements.

Policies targeting companies' human rights, environmental, labor conduct. Under CAFTA, suppliers cannot be disqualified because of the companies' labor, human rights or environmental records or practices. "Sweat free" rules that ban purchase of goods from companies using sweatshop labor or child labor are prohibited.

Prevailing and living wages and project-labor agreements. CAFTA's limits on the requirements that can be imposed on contractors also forbid conditions such as prevailing wage and living wage requirements. Project labor agreements that require fair treatment of workers and their unions in order to avoid labor disputes in public works projects also cannot be required for a bidder to qualify for state business.

Pro-union or pro-public bidding assistance. CAFTA rules prohibit policies that provide aid to employees and unions in bidding for public contracts, and laws that require favorable consideration of such in-house bids. Also in conflict with CAFTA rules are costing requirements that require private bidders to provide substantial savings over public providers in order to get a public contract, but do not allow savings due to lower wages or benefits to be factored in.

Policies targeting countries' human rights, labor rights, other conduct. Under CAFTA, governments cannot treat foreign companies differently based on the human rights, labor rights or environmental records of the countries in which they are based or in which they operate. This removes tools used by states in the past to demand corporate responsibility in the face of human rights abuses.

What happens if my State is bound to CAFTA and our purchasing laws are in conflict with the agreement's rules?

- Other nations that are party to the agreement are empowered to challenge a nonconforming State policy as a violation of the agreement in a binding dispute resolution system established in the text.
- State government officials have no standing before these tribunals and thus must rely on the federal government to defend a challenged policy.
- The tribunals are staffed by trade officials who are empowered to judge if State policy has resulted in a violation.
- Policies judged to violate the rules must be changed, or trade sanctions can be imposed.
- The federal government is obliged to use all constitutionally-available powers – for instance preemptive legislation, lawsuits and cutting off funding – to force State and local government compliance with trade tribunal rulings.

For more information see www.tradewatch.org or contact Sara Johnson 202-454-5193 sjohnson@citizen.org or Mary Bottari, 608-255-4566, mbottari@citizen.org at Public Citizen's Global Trade Watch.