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On the Proposed
Central American Free Trade Agreement NAFTA Expansion

For the House Ways and Means Committee
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On behalf of Public Citizen's 200,000 members, I thank the Committee for the opportunity to share my organization's views on the proposed Central America Free Trade Agreement (CAFTA) NAFTA expansion. Public Citizen is a nonprofit citizen research, lobbying and litigation group based in Washington, D.C. with offices Austin, TX and Oakland, CA. Public Citizen, founded in 1971, accepts no government nor corporate funds. Global Trade Watch is the division of Public Citizen founded in 1995 that focuses on government and corporate accountability in the globalization and trade arena.

CAFTA, signed in May 2004, would expand the economic model established in the North American Free Trade Agreement (NAFTA) to five Central American countries and the Dominican Republic. If approved, CAFTA, like NAFTA, would require its signatory countries to conform their domestic policies and practices to a broad array of non-trade dictates, for example regarding the regulation of service sector companies and foreign investors' operations in other economic sectors operating within a signatory nation's territory. It would require signatories to provide certain patent medicine and seed protections that have been criticized by health and consumer groups worldwide as undermining consumers' access to these essential 'goods.' It even sets constraints on how countries and other political entities may spend their own tax revenues. In addition, CAFTA contains the same model of interconnected trade rules and foreign investor protections that together create incentives that motivate business operations seek out the most profitable sites and processes for production, even if these are often contrary to the public interest.

An analysis of CAFTA's provisions reveals that it replicated NAFTA's provisions to a high degree – often with identical language. Thus, there is much that we can learn from the 11-year record of NAFTA, which CAFTA would expand to additional nations.

1. CAFTA NAFTA Expansion is an Outsourcing Agreement: Eleven-Year Record Demonstrates that the NAFTA Model Lowered Living Standards on Both Sides of the Border

Since 1994, the United States has lost nearly 1 million jobs on net due to NAFTA trade,[1] with one in six U.S. manufacturing jobs being eliminated during the NAFTA decade.[2] U.S. income and wage inequality have gone up markedly, with the ratio of both income and wages of the top five percent of the income and wage distribution growing nearly 10 percent since NAFTA alone as compared with the bottom 20 percent.[3] The U.S. real median wage has scarcely risen above its 1970 level, resulting in declining or stagnant standards of living for the nearly 70 percent of the U.S. population that does not have a college degree.[4] During the NAFTA era, the U.S. trade deficit has risen to historic levels, and approaches six percent of national income – a figure widely agreed to be unsustainable, putting the U.S. economy at risk of lowered income growth.[5] The U.S. trade balance with NAFTA countries alone went from a mild surplus with Mexico and mild deficit with Canada to a ballooning deficit with the two countries exceeding $110 billion in 2004.[6]

For our neighbors in Mexico, the economic outcomes of eleven years of NAFTA are not brighter. Over 1.5 million Mexican *campesino* farmers lost their livelihoods to the dumping of commodities such as corn as a result of NAFTA's agricultural rules,[7] while the Mexican minimum wage has lost 20 percent of its value in real terms, and the median industrial wage 10 percent of its value[8]. The jobs that were temporarily created in the country's *maquiladora* sector in NAFTA's initial years, as plants relocated from the United States, are increasingly relocating and losing market share to lower wage countries such as China.[9]

In both countries, the increased ability of companies to nearly effortlessly relocate production to lower wage countries -- (as NAFTA's investor protections forbid the policies a country like Mexico might otherwise use to root foreign direct investment for development) -- has tilted the playing field against the majority of the working population who are finding it ever more difficult to obtain and maintain quality employment. Meanwhile, studies commissioned by the U.S. government show that as many as 62 percent of U.S. union drives face employer threats to relocate, with over 10 percent of such threats specifically referring to a relocation to Mexico. The actual factory shut-down rate following successful union certifications tripled in the years after NAFTA relative to the years before.[10]

2. Contradicting Congress' Demand that Trade Pacts Give Foreign Investors "No Greater Rights" within the U.S. than Available to U.S. Citizens, CAFTA Extends NAFTA's Special Protections for Foreign Investors that Expose U.S. Taxpayer Funds to Claims in Closed Trade Tribunals

The changes described above in the NAFTA country labor markets are supported by the granting in NAFTA and CAFTA of special rights and privileges to foreign investors from one signatory country operating in another. In NAFTA, these rights are contained in Chapter 11, which also provides for foreign investors' private enforcement of these new privileges through so-called investor-state dispute resolution, a controversial mechanism also included in CAFTA. The investor-state system allows corporations to sue governments for cash compensation before closed trade tribunals for claims based on signatory countries' policies that may or may not have a demonstrable economic impact on their expected future earnings. The provisions afford foreign investors operating in the United States greater rights than those available to U.S. citizens and businesses under the U.S. Constitution as interpreted by the U.S. Supreme Court. Thus far, 42 cases have been brought before the NAFTA investor-state tribunals, 11 have been finalized, and some $35 million in taxpayer funds have been granted to five corporations that have succeeded with their claims. An additional $28 billion has been claimed from investors in all three NAFTA nations in cases attacking the most basic functions of government. The U.S. government's legal costs for the defense of just such recent case topped $3 million, and seven cases against the United States are currently in active arbitration.

While ostensibly, NAFTA's investor protections were designed to ensure compensation if property is nationalized by a NAFTA government, only one of the 42 known NAFTA "Chapter 11" cases filed to date involve expropriation. Instead, investors have challenged domestic court rulings, water rights, local and state environmental policies, municipal contracts, tax policy, controlled substances rules, anti-gambling policies, emergency efforts to halt the spread of mad cow disease, and even provision of public postal services.

Given that these extraordinary investor rights and their private enforcement had not been part of any previous U.S. trade agreement, and that many Members of Congress did not understand these implications at the time when NAFTA was enacted in 1993, the record of NAFTA's Chapter 11 has generated enormous controversy. Thus in order to obtain a congressional delegation of Fast Track Trade Authority in 2002, the administration offered to address Congress' concerns. Fast Track thus specified that in future U.S. trade agreements, foreign investors should not have "greater substantive rights with respect to investment protections than United States investors in the United States."[11]

Unfortunately, the Executive Branch negotiators failed to meet Congress' requirements. In CAFTA's Chapter 10 foreign investor protections and investor-state mechanism actually amplify many of the problems Congress identified with NAFTA.

- **<u>CAFTA Would Allow Compensation to Foreign Investors in "Regulatory Takings" and "Minimum Standard of Treatment" Cases not Permitted by U.S. Law:</u>** CAFTA includes the NAFTA language that requires foreign investors be compensated for "indirect expropriation." This provision has been the basis for an array of cases that would not be permitted under U.S. law, including regulatory takings cases. In one such case, Metalclad Corporation obtained $16 million from the Mexican Treasury after being denied a permit to expand a toxic waste facility until it cleaned up existing contamination.[12] Several additional CAFTA provisions promote regulatory takings cases not allowed under U.S. law. For instance, the Supreme Court has ruled that "mere diminution in the value of property, however serious, is insufficient to demonstrate a taking"[13] and that the entire property must be affected permanently. In contrast, NAFTA Chapter 11 tribunals have found that a government action need only cause "significant" or "substantial" impairment of an investment's value to qualify as a taking.[14] For instance, the Metalclad tribunal held that "expropriation under NAFTA includes not only open, deliberate and acknowledged takings of property… but also covert or incidental interference with the use of property which has the effect of depriving the owners in whole or significant part, of the use or reasonably-to-be-expected economic benefit of property."[15] USTR failed to remedy this problem in CAFTA.

  To make matters worse, CAFTA allows such claims regarding types of property not subject to takings action under U.S. law. U.S. law deems public interest policies governing personal property (property other than land) to be legitimate exercises of police powers and exempt from takings claims. In contrast, CAFTA's broad definition of what categories of property are subject to compensation claims includes an array of non-real estate property such as assumption of risk and also bonds, loans, stocks, and intellectual property rights.

  In response to criticism that investment rules in CAFTA allow for broad regulatory takings claims, the USTR will likely point to CAFTA, Annex 10-C, which reads: "Except in rare circumstances, nondiscriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, and the environment, do not constitute indirect expropriations."[16] Unfortunately, this language has precisely the opposite effect claimed. This language *enshrines* the right of foreign investors to challenge a wide array of public health and safety regulations not be subject to U.S. taking claims. U.S. law safeguards all public interest regulations governing personal property, yet this language reiterates that such policies are subject to CAFTA challenge. Moreover, the U.S. government would have no capacity to affect whether such cases are brought only in "rare" circumstances. Foreign investors decide whether to file these cases. (And, the U.S. legal defense cost for just one such case, Methenex's attack on California's ban on the gasoline additive MTBE, has already cost $3 million in U.S. taxpayer funds.) Further, the ultimate decision whether or not to grant compensation in such challenges remains with investor-state tribunals on a case-by-case basis. Moreover, when deciding such cases, tribunals will reference other specific provisions of CAFTA that directly conflicts with the Annex's general language. There have been numerous NAFTA cases involving toxic substances, including Phillip Morris' threat against a proposed Canadian tobacco control law, and Canadian cattlemen's NAFTA challenge of U.S. actions to prevent entry into the U.S. of mad cow disease. To avoid future such cases and to bring CAFTA into conformity with U.S. takings law, the scope of property subject to such claims in CAFTA needed to have been limited to real estate and the "indirect expropriation" language needed to have been eliminated, or at least defined in the context of U.S. takings standards that require that virtually all of a property's value must be taken permanently to obtain compensation.

- **<u>CAFTA Would Allow Compensation to Foreign Investors in Cases in which U.S. Law Only Permits Injunctive Relief:</u>** Under U.S. law, both foreign and domestic firms can sue under the Due Process or Equal Protection Clauses of the Constitution for injunctive relief, but they are not allowed to sue for monetary relief. Under NAFTA's investment rules – and under CAFTA were it to be approved – foreign investors are empowered to sue for monetary relief on similar grounds. CAFTA extends this NAFTA problem by allowing foreign investors to obtain taxpayer compensation not only for claims of expropriation, but also based on national treatment (non-discrimination) and "fair and equitable treatment" claims – which are the trade agreement equivalent to Due Process or Equal Protection Clauses claims in U.S. law.

- **<u>CAFTA Would Eviscerate the Long-established Principle that Governments Can Remedy a "Nuisance" without Compensating Polluters:</u>** The expansive definition in CAFTA of what sorts of foreign investments are subject to compensation covers government actions to prevent a public nuisance. Given the record of the related NAFTA provisions, this element of CAFTA is likely to generate further claims by chemical companies attempting to combat environmental regulation. Under NAFTA, foreign investors are demanding compensation for California's ban of the gasoline additive MTBE which has been found to be polluting scarce water resources in the state and for California's open pit mining reclamation law. Yet, under the U.S. Supreme Court holding in *Lucas v. South Carolina Coastal Council*, pollution that harms public or other properties is a nuisance that can be regulated by states without compensation.[17] USTR failed to remedy this problem in CAFTA.

- **<u>CAFTA Would Empower Foreign Investors to Overcome the Long-established Sovereign Immunity Shield to Pursue U.S. Taxpayer Compensation In Property Claims from which U.S. Residents and Companies Are Barred:</u>** NAFTA panels have explicitly refused to dismiss investor challenges when governments have raised sovereign immunity as a defense in investor-state challenges – apparently allowing firms to sue governments at any level regarding any issue for any amount of money. Indeed, in these cases, investor-state tribunals have accepted the argument raised by some foreign investors that Congress *waived* federal sovereign immunity when it passed NAFTA. USTR failed to remedy this problem in CAFTA with explicit language clarifying that sovereign immunity was not waived, thus providing an open door for future such challenges.

3. CAFTA Would Forbid Congressional, States' Anti-Offshoring Policies that Require Government Contract Work be Done by U.S. Workers; Forbids Environmental, Other Procurement Rules

CAFTA's rules on government procurement apply to an array of federal government agencies as well as the states that are listed as "covered entities" in Chapter 9, Annex 9.12 (b) (i). In September 2003, the United States Trade Representative sent a letter to all 50 governors, requesting that they commit their states to be bound by the procurement provisions in all bilateral and regional trade pacts under negotiation, including CAFTA. The letter touted the potential for U.S. suppliers to bid on foreign government contracts, but failed to mention the requirements the procurement chapters CAFTA and other agreements imposed on states. Initially, twenty eight states were listed as bound in the CAFTA text. However, since then, state officials have become much more aware of the implications that binding state procurement policy to CAFTA's rules would have on their ability to determine what procurement policies are in the best interests of the state, including policies that use state purchasing power to further social, environmental, and economic development goals.

As a result, a majority of U.S. states (30) have rejected CAFTA's government procurement rules and decided it is not in their best interest to be bound. In 2004, seven governors (from Iowa, Kansas, Maine, Minnesota, Missouri, Oregon, and Pennsylvania) rescinded their previous commitments on behalf of their states to be bound to CAFTA's procurement rules. Other states (Montana, Nevada, Wisconsin, and Virginia) declined the USTR's request outright. Governors of states that remain bound by CAFTA, including Texas and Washington, have requested that additional reservations be taken. (Only some of those requests have been incorporated into the CAFTA text. Washington's request was rejected in an August 13, 2004 letter from Ambassador Zoellick to Washington Governor Gary Locke.) In early 2005, the National Conference of State Legislatures wrote to the USTR, requesting that the USTR respond to the myriad concerns of state legislators. The Intergovernmental Policy Advisory Committee (IGPAC) issued recommendations in August 2004 that state legislative leaders be carbon copied on all requests sent to governors, as state legislators to date have been cut out of the consultation process, despite the fact that in most states, the Legislative Branch has the authority to set state procurement policy. The USTR explicitly denied that request, and sent another letter to governors requesting that they sign on to the procurement provisions of free trade agreements with Panama and Andean countries. Most recently, in April 2005, the Maryland General Assembly passed legislation over Governor Ehrlich's veto which stipulated that it was the authority of the legislature, not the Governor, to sign on to the government procurement rules in trade pacts. The bill also declared invalid previous expressions of consent made by governors, including Governor Ehrlich's letter offering to bind Maryland to CAFTA's procurement provisions.

State officials' concerns stem from the restrictions that CAFTA's rules impose on their ability to maintain existing and adopt new procurement policies in the public interest. CAFTA's procurement chapter prohibits many common purchasing policies, seriously weakening governments' flexibility to use procurement as policy tool to promote economic development, environmental sustainability, and human rights. These rules also apply to federal government procurement policies:

- **<u>Requirements that Government Work Be Performed in the United States by U.S. Workers Are Prohibited</u>:** If CAFTA were approved, federal and state governments would be required to treat companies located in the six CAFTA countries identically to U.S. domestic companies when governments seek to procure goods and services. This means neither Congress nor state governments could give preference to domestic or local firms or require that to obtain government contracts, firms must employ U.S. workers (CAFTA Article 9.2).

- **<u>Sweat-Free, Recycled Content, Renewable Source and Other Labor and Environmental Criteria Banned</u>:** CAFTA requires that "a procuring entity shall not prepare, adopt or apply any technical specification describing a good or service with the purpose or the effect of creating unnecessary obstacles to trade" and that technical specifications are limited to "performance requirements rather than design or descriptive characteristics." These constraints mean that procurement policies that set criteria for *how* a good is made or *how* a service is provided are prohibited – putting preferences for recycled content or renewable energy, "green" building requirements, and bans on goods made with the worst forms of child or slave labor at risk as "barriers to trade" (CAFTA Article 9.7).

- **<u>Consideration of Bidding Firms' Labor, Tax, Environmental, Human Rights Records Forbidden:</u>** CAFTA limits what sorts of qualifications may be required of companies seeking to supply a good or service to a government. Conditions for participation in bidding are limited 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." CAFTA's limits on the requirements that can be imposed on contractors prohibit conditions such as prevailing wage and living wage requirements, as well as consideration of suppliers' environmental or labor track records (CAFTA Article 9.8).

4. Opposition to CAFTA NAFTA Expansion Wide and Varied, Having Grown Since NAFTA

As successive administrations have failed to reverse the damage and demonstrated, significant problems of NAFTA's foreign investor protection model, opposition has grown in all quarters. The Association of State Supreme Court Justices, U.S. League of Cities, National Conference of State Legislatures, National Association of Counties, and National Association of Towns and Townships all have expressed concerns about the investment provisions of CAFTA.

Concerns about CAFTA's foreign investor protection by these typically pro 'free trade' associations of state and local officials, groups that are concerned about our nation's system of federalism and the integrity of our domestic courts, has been joined by outright opposition to CAFTA from other unexpected quarters, suggesting the degree to which this agreement signed a year ago is seen not to serve the U.S. national interest. The National Association of State Departments of Agriculture, for one, concerned about CAFTA's agricultural provisions called on Congress to oppose CAFTA.[18] These and other agricultural groups are concerned about declining farm revenue even as volumes of food trade increased under NAFTA, and that the United States is about to become a net food importer. Furthermore, these groups take to heart the claims of pro-CAFTA forces, who continually repeat that CAFTA is a stepping stone to a proposed broader Free Trade Area of the Americas (FTAA).[19] Many U.S. economic sectors views of CAFTA are tied to their analysis of how competition with Brazil in a NAFTA expansion from Alaska to Tierra del Fuego would affect their export capacity in beef, soy, citrus, sugar and ethanol.

Many other groups have also expressed opposition to CAFTA NAFTA expansion. Human Rights Watch has produced analyses of the failure of Central American labor law and enforcement practices to meet the minimal International Labor Organization core labor standards,[20] an analysis that has been confirmed by the U.S. Department of State's annual human rights reports.[21]

And U.S. Latino organizations who supported NAFTA, from the nation's largest and oldest Hispanic civil rights organization the League of United Latin American Citizens to an array of immigrant rights groups representing Central Americans in the United States, have also indicated their opposition the current terms of the agreement, concerned that trade-related job loss disproportionately affects U.S. Latinos and that CAFTA's negative repercussions for Central America are foretold by NAFTA's negative results in Mexico.[22]

5. Central American Public Opposition to CAFTA NAFTA Expansion Is Based on NAFTA's Record of Destroying the livelihoods of 1.5 Million Mexican Small Farmers and U.S. Heavy-Handed Tactics Forcing Price-Raising Medicine Policies, Essential Service Privatizations

Lawmakers concerned about the implications of the so-called "Arab Street" in the Middle East should also pay attention to the passionate CAFTA opposition on the "Latin Street" of Central America. Nearly one out of every 25 El Salvadorans have publicly rallied against CAFTA in the past several years, and polls indicate that a majority of citizens in Guatemala and elsewhere oppose the terms of CAFTA.[23] In Honduras, Guatemala and Nicaragua, massive protests have also occurred against CAFTA, while it is unclear if Costa Rica's congress will approve the deal.[24]

Officials from the U.S. Trade Representative's office have taken to threatening Costa Rica that if the democratically-elected Congress there determines the pact is not in their nation's interest and rejects it, the United States will remove that nation's existing terms of access to the U.S. market provided under the Caribbean Basin Initiative (CBI). These threats continue today despite the March 2005 letter by Ways and Means Committee Ranking Member Charles Rangel (D-NY) calling upon the administration to desist these misleading pronouncements. As Rep. Rangel's letter pointed out, CBI is a "congressionally mandated program [whose] benefits are guaranteed on a permanent basis, unless the Congress amends current U.S. law." The representative said he would oppose such an amendment of U.S. law, characterizing the administration's remarks as "thinly veiled blackmail."[25]

Regardless of the Administration's bullying and disrespectful treatment of some CAFTA countries, certainly Congress would be concerned with the underlying cause of such passionate opposition to CAFTA in Central America -- opposition whose protests have been met with increasing violence by governments. This includes the murder by military troops in Guatemala of two Mayan protestors -- an act of military violence by the army explicitly forbidden in the 1996 peace accords.[26]

The causes of opposition include CAFTA's service sector rules, which would require these nations to privatize and deregulate numerous essential services such as energy and other utilities, health care and more, as well as foreign investor protections, which would create a new set of rights for foreign investors to acquire ownership over natural resources and land and pharmaceutical patent requirements, including extended data exclusion terms, which would hurt poor people's access to medicines and take Central American governments' abilities to respond to public health crises such as HIV-AIDS. Fury about these severe threats has been exacerbated by the administration's heavy handed tactics, for instance in pressuring Guatemala to rescind a law that would have improved access to generic, life-saving medicines or in threatening Costa Rica with removal of CBI benefits.[27]

Now major Central American political parties, Catholic bishops, the Central American Council of Churches and other mainstream, important Central American interests have come out against CAFTA as a threat to the region. In addition, eighteen of the most democratic, independent and representative union federations throughout Central America representing workers in the private and public sector, including in export-oriented manufacturing and agriculture, have demanded stronger workers rights than those provided under CAFTA.[28] They have noted that the existing CBI arrangement affords concerned citizens with the International Labor Organization core rights and with the greater ability to improve Central American labor law than the proposed CAFTA's roll-back CBI labor provisions.

6. Given the NAFTA Record and Growing Central American Public Opposition, CAFTA Supporters Resort to Increasingly Dubious Arguments…

Given this broadscale U.S. and Central American opposition to a NAFTA expansion, pro-CAFTA forces have increasingly resorted to disconnected arguments and exaggerated and misrepresentative claims about the agreement. For instance, the U.S. Chamber of Commerce has produced a flawed study projecting U.S. economic gains from a Central America agreement. But to obtain that conclusion, the Chamber had to assume that – contrary to the history of every trade agreement the United States has signed – the United States would receive no new imports from the CAFTA countries if the pact went into effect.[29] The study's methodology additionally implies that over 80 percent of the Honduran economy would have to absorbed by U.S. exports by 2013, a potentially socially and economically destabilizing outcome if true.[30]

Despite this projection that Central American countries would not gain from a CAFTA, pro-CAFTA forces have simultaneously asserted that CAFTA would save the U.S. and Central American textile industries from the end of the global textile and apparel quota system.[31] Here too, their claims are wildly misleading, since experts from the U.S. International Trade Commission to the Organization for Economic Cooperation and Development (OECD) have demonstrated that China enjoys a significant technological, wage and input cost advantage over the Central American countries. This means that, with or without a CAFTA, the expiration of the Multi Fiber Arrangement quota system will result in Central America losing a great deal of its current production and employment in the textile and apparel industry.

The notion that CAFTA would affect this situation is beyond bizarre. Already under CBI, CAFTA countries' textile and apparel exports enter the United States duty free. CAFTA provides no additional benefit for entry. Indeed, CAFTA loosens the CBI rules of origin, meaning more Chinese goods could enter through CAFTA countries if CAFTA were implemented than are now permitted.

Already, apparel imports from China jumped amount in the first quarter, and by as much as 1,521 percent in some customs categories.[32] While Congress may seek to address this flood of cheap Chinese imports, this is a separate problem than CAFTA and would require a separate solution. The debate around CAFTA is not a question of "whether U.S. workers would rather lose their jobs to China or to Central America," as Carlos Sequeira, Nicaragua's chief CAFTA negotiator put it.[33] Congress should instead focus on the flaws of CAFTA, which would loosen CBI's requirement that U.S. inputs be used to enjoy duty-free access to the U.S. market and undermine CBI's labor rights protections, while still not proffering to the dying Central American industry any access benefits that they do not already enjoy through CBI.

Conclusion

The bottomline in Congress' consideration of CAFTA should be whether extending the NAFTA model will help us create a brighter future for our children and grandchildren. Even considering only the well-documented NAFTA record of undermining the livelihoods of 1.5 million Mexican farmers, suppressing real median wages in the United States and Mexico, gutting the U.S. manufacturing base, coinciding with record-low prices paid farmers for the food they produce in all three countries even while consumer prices increased, and exposing some 42 domestic environmental, health, zoning and laws and regulations to attack in closed investor-state tribunals and the payment of some $35 million in taxpayer funds to foreign investors for the lost NAFTA-guaranteed profits they lost, it seems quite clear the answer is no. If one adds to the NAFTA evidence the problems caused by the CAFTA provisions that go *beyond* even what NAFTA requires – for instance in the foreign investor protections chapter or regarding drug patents – the answer becomes only clearer.

As a group that works with consumer organizations around the world, we would urge Congress to oppose this agreement simply on the basis of its intellectual property rules which are certain to undermine affordable access to essential medicines for poor consumers in the Central America. Many other organizations are submitted testimony about these scandalous provisions of CAFTA NAFTA expansion. At issue are life or death matters: generic versions of the cocktail of anti-retroviral drugs essential to extending the lives of those infected with HIV cost several hundred dollars for a yearlong course while the brand name patented version of the same drugs cost $5,000 per year. If the CAFTA drug patent rules would go into effect in the Central American countries and the Dominican Republic, many people now able to have access to these life saving HIV-AIDS medicines and also drugs vital to fighting tuberculosis and other deseases will not have access to these medicines – either because they cannot afford to purchase them or because their government health agencies cannot afford them to provide to their public.

Thus given CAFTA NAFTA expansion's potential extension of the failures of NAFTA to people in six additional nations and the damage to U.S. residents that further extension of this model would pose, we urge Congress to oppose NAFTA's expansion to Central America and beyond.

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[14] Interim Award by Arbitral Tribunal, In the Matter of an Arbitration Under Chapter 11 of the North American Free Trade Agreement between Pope & Talbot Inc. and the Government of Canada, United Nations Commission on International Trade Law, Jun. 26, 2000, at 37; Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, *Metalclad Corporation v. the United Mexican States*, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000, at 28. The Metalclad panel stated that expropriation under NAFTA "includes not only open, deliberate and acknowledged takings of property such as outright seizure or formal or obligatory transfer of title in favor of the host state, but also covert or incidental interference with the use of property which has the effect of depriving the owner in whole or in significant part of the reasonably-to-be-expected economic benefit of the property."

[15] Award, Before the Arbitral Tribunal constituted Under Chapter 11 of the North American Free Trade Agreement, *Metalclad Corporation v. the United Mexican States*, International Centre for Settlement of Investment Disputes (Additional Facility), Aug. 25, 2000, at 33.

[16] Central America Free Trade Agreement, Final Version, Aug. 5, 2004, Annex 10-C, at 4(b).

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