

May 11, 2005

Dear Members of Congress:

The undersigned organizations, after conducting a detailed analysis of the Free Trade Agreement with Central America and the Dominican Republic (CAFTA-DR), with special attention given to the environmental provisions that it contains, have concluded that this trade agreement will have a negative impact on the environment in our region. It will weaken environmental legislation and existing state institutions and will erode our right to full and effective citizen participation. As such, it is against the principles of sustainability and should be rejected.

The limited circles that promote and support this trade agreement have tried to portray it as advanced in light of the inclusion of an environmental chapter, Chapter 17. Our interpretation is that the inclusion of this chapter responds to growing pressure from an increasingly active civil society demanding better living conditions and we conclude that the chapter on environment falls far short of proposing an efficient mechanism for environmental protection. This analysis is sustained by a careful review of Chapter 17, especially the articles below, and the stipulations of the Agreement on Environmental Cooperation (AEC-ACA in Spanish).

Article 17.1: Levels of Protection

From the text of article 17.1, we conclude that the rights of each Party to establish internally their own policies and priorities related to environmental protection are recognized, but nothing more than that.

- There is no obligation to increase environmental protection standards
- There is no obligation to improve existing laws
- There is no follow-up of commitments made, as ambiguous as they are;
- There are no sanctions for failing to comply with commitments.

This vacuum renders it impossible to guarantee high levels of environmental protection if the Parties do not commit to diminish and eventually eliminate the existing asymmetries in the legislation of each signing country at the time of signing. To the contrary, the most probable effect will be the consolidation, or even growth, of these asymmetries.

Art. 17.5. Council of Environmental Affairs

Article 17.5 creates a Council comprised of representatives of the signing Parties. Included among its functions are the supervision of Chapter 17's implementation and a review of the progress and the status of implementation of the Agreement of Environmental Cooperation (Article and Annex 17.9). However, this Council is not assigned the crucial responsibility of studying the impact that an increase in commerce

will have on the environment, nor is it tasked with introducing changes in the orientation of regional trade in cases of extreme environmental exploitation. An Environmental Council with limited powers and weak environmental management capabilities at the local level will result in the prevalence of the logic of profit and will permit the commercialization of our natural resources and social patrimony. The decisions of the Council will be made by consensus knowing that, in trade matters, the strongest prevails, the same logic that guides the WTO.

Art. 17.6 Opportunities for Public Participation:

Despite the title of article 17.6, it is, in the end, an assault on the human right to citizen participation with regards to environmental oversight. In accordance with the stipulations of this chapter, to denounce environmental violations one must consider a variety of mandatory requirements, including government approval (Art. 17.7) and the prohibition on “harassing a business”. Related to the latter, no clear definition of “harassment” has been provided to date. Within the logic of so-called “free trade”, however, harass could mean any thing that might generate a negative impact on the privileges of foreign investment.

Art. 17.12: Relationship with Environmental Agreements:

Article 17.12 does not explicitly protect the observance of and support for multilateral agreements such as the Covenant on Biological Diversity and the Kyoto and Cartagena Protocols. The United States has preferred to place a priority on commercial interests and the positions of big businesses as opposed to ratifying these agreements. This substantially weakens existing environmental agreements which, history shows, are generally overshadowed and undermined by free trade agreements.

Art. 17.13: Definitions:

The text of article 17.13 derives from a traditional and relatively broad (though ambiguous) definition of environmental legislation, but eventually focuses on the following three arenas:

- a) environmental contaminants (control, prevention, reduction);
- b) chemical products and toxic waste; and
- c) protection or conservation of wildlife (flora and fauna) .

This focus severely restricts that which is referred to as “environmental legislation” if we compare it, for example with Costa Rica’s Organic Environmental Law (No. 7554). In this law, a broad array of crucial issues are included, such as water usage and conservation, the sovereign management of biological diversity, soil protection and the administration of energy resources. These issues are based on the principal of natural resource sovereignty established by the United Nations, ratified by the General Assembly on the 14th of December, 1962 in Resolution 1803 on the “Permanent Sovereignty of Peoples and Nations over their environmental wealth and their resources” and confirmed in Article 3 of the Covenant on Biological Diversity of 1992.

To ignore these principles in CAFTA-DR is to exclude the commercial exploitation of natural resources, leaving out sectors covered under the laws related to the management of forests, hydrocarbons, energy use, biodiversity, water and soil conservation. Under this premise, the road is paved for, among other things, the introduction of bioprospecting as a

“transboundary research service” and, as such, applicable under Chapter 10 on “Transboundary services” and Chapter 11 on “Investment.” Equally excluded are the environmental regulations directly related to workers’ health and security (not considered in Chapter 16). It needs to be made clear that socio-environmental problems are not part of this treaty, nor are the use and form of the exploitation of natural resources!

In addition, the effect of this severe restriction of the reach of environmental legislation has other consequences: only an infraction or violation which fits within this definition would eventually be subjected to a process of “consultations” and “resolution of controversies” according to Chapter 20 for environmental and labor affairs (Art. 20.17). Thus, in the framework of the agreement, the range of possible infractions or violations of environmental law (especially by businesses) is substantially less than that provided by internal legislation.

Art. 17.9 Environmental Cooperation:

Even though article 17.9 places an emphasis on cooperation in resolving environmental problems, it does not address these problems in an integral manner. They are remitted to the Agreement of Environmental Cooperation (ACA) which will be signed between the Parties as a parallel program. In article II of this agreement the distinction between the environment and natural resources is upheld, facilitating the exploitation of the latter through activities which would not be subject to environmental law, considered mere commercial activities.

The 5th article of ACA enumerates the priority areas for aid and establishes an initial work program. This “cooperation” opens the possibility for the signatory Parties of US-DR-CAFTA, in the management of marine parks and other protected areas, coinciding with the tendency to see in them available genetic banks to be privatized through bio prospecting and mechanisms such as patents.

For these and many other reasons that go much beyond environmental concerns, we reaffirm that CAFTA-DR should be rejected.

Sincerely,

Network of Environmentalists in Action (El Salvador)

CESTA/Friends of the Earth-El Salvador (El Salvador)

Salvadoran Ecological Union-UNES (El Salvador)

Centro Humboldt/Friends of the Earth-Nicaragua (Nicaragua)

Environmental Movement of Olancho (Honduras)

MMT/Friends of the Earth-Honduras (Honduras)

Foundation for the Platano River (Honduras)

Coordinating Council of the Campesino Organizations of Honduras/COCOCH (Honduras)

Civic Council of the Popular and Indigenous Organizations of Honduras COPINH (Honduras)

COECOCEIBA/Friends of the Earth-Costa Rica (Costa Rica)

Costa Rican Federation for the Conservation of the Environment (Costa Rica)

Association of Social Ecology (Costa Rica)

National Indigenous Organization (Costa Rica)

Network for the Coordination of Biological Diversity (Costa Rica)

National Farmers Organization (Costa Rica)

Organization of Women Farmers (Costa Rica)

Womens' Way to Development, Cerbatana de Puriscal (Costa Rica)

Association of Women Farmers of Louisiana del Cairo, Siquirres (Costa Rica)

Womens' Association for Agricultural Production of Coquital-Los Chiles (Costa Rica)

Womens' Association of las Lomas-Siquirres (Costa Rica)

Womens' Association of Platanar-San Carlos-Alajuela (Costa Rica)