

The Proposed Canada-Central America Free Trade Agreement

A Statement by the Americas Policy Group (APG)
Canadian Council for International Co-operation (CCIC)
May 2003

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Summary of Recommendations

(1) The Government of Canada should demonstrate its commitment to transparency and civil society participation by releasing the full text of the CA4FTA for public consultation, public input, and parliamentary debate prior to its signing. In all instances of Canadian trade and investment negotiations, civil society and parliamentarians should have access to negotiators, draft texts, and the negotiating process.⁽¹⁾

(2) The Government of Canada should make certain that the CA4FTA, as well as other trade and investment agreements, includes mechanisms to ensure that the agreement does not restrict the ability of national governments to make policy for paramount public interests, and in particular, in the interests of the poor. Northern governments must act to support the strengthening of the capacities of governments in Central America, with all the policy flexibility required, to achieve a significant reduction in poverty and inequality as well as the Millennium Development Goals in each country context.

(3) The 1993 Vienna Declaration states that "the promotion and protection of human rights is the first responsibility of governments." The Government of Canada should respect and promote the primacy of UN obligations for economic, social and cultural rights, as well as the importance of measures to advance equity and sustainability, over trade law. This commitment should be demonstrated in the CA4FTA and all other trade and investment agreements by ensuring that they are consistent with UN charters and conventions. Countries must also be allowed to invoke obligations to the UN charter and conventions as a shield in a trade challenge against a domestic

measure that is intended to safeguard human development, human rights or environmental obligations.

(4) The Government of Canada should ensure that a social and environmental impact analysis of the CA4FTA and its likely implications is carried out prior to the signing of the agreement; this analysis should include a specific, gender-differentiated and detailed analysis of its impact on women and men. The same should be done for all other Canadian trade and investment agreements.

(5) The Government of Canada must recognize the limitations of current TRTA and TRCB programs in addressing the development challenges facing Central America and strengthen efforts to address asymmetries by allowing for effective and flexible Special and Differential Treatment within the CA4FTA, where trade rules are measured against the overarching priority to realize development goals for the majority of Central American populations living in poverty.

(6) The Government of Canada should demonstrate flexible S&D within a CA4FTA as one avenue for advocating for effective S&D within other trade and investment agreements bilaterally, regionally, and globally. The goal is S&D rules that are effective and real instruments for measures supporting sustainable human development. The nature of the S&D measures would vary across agreements but characteristics would include:

- non-reciprocal concessions or asymmetrical reciprocity that favours developing countries;
- enforceable commitments from developed countries;
- measures that not only do not undermine, but proactively support, the obligations of governments to pursue anti-poverty and developmental objectives;
- a more flexible approach to implementation based on developmental milestones rather than absolute timelines; and,
- openness to new eligibility / country classification criteria to allow consideration of more diversified country constraints.

(7) The Government of Canada must negotiate provisions in the proposed CA4FTA as well as in all other Canadian free trade agreements with developing countries that allow for:

- the articulation of sovereign long-term development strategies that recognize the role of sustainable agriculture for rural development and the livelihoods of the rural poor;
- special and differential treatment for agriculture, including exemptions for key food security crops and allowance for internal support to promote food security goals;
- equity in the marketplace for Central America, enhanced by providing Central American governments the flexibility to support small farmers; and,
- the promotion of farmer-controlled marketing options.

(8) The Government of Canada should not reproduce NAFTA Chapter 11 – or any aspect thereof – in the CA4FTA or in any other international trade agreement in which it is involved. Rather, mechanisms that clearly prioritize economic, social and cultural rights and that allow governments to legislate in favour of public health and environmental protection, without fear of

reprisal, must be promoted. This includes allowing performance requirements on foreign investment such as local-content regulations, or export-import balancing and prohibiting national treatment obligations.

(9) Taking into account significant evidence that relying on the private market in the delivery of public services often penalizes the most vulnerable, the Government of Canada must work to improve the capacity for effective and efficient non-market delivery of public services, including through public monopolies or crown corporations, and that universal access to essential services is privileged and protected in investment and competition policy agreements.

(10) The Government of Canada should seek to identify and establish a mechanism, independent from government, to adjudicate violations of fundamental labour rights in the countries party to the agreement and these violations must ultimately be sanctionable. In view of the extreme lack of capacity for fair labour administration which we know exists in some of the countries of Central America, the Government of Canada must also complement any agreement on labour "cooperation" with real resources for technical cooperation in the enforcement of labour standards, as well as concrete support for local groups working for the respect of human and labour rights.

1. Introduction

In a few months time, it is anticipated that Canada will sign a Free Trade Agreement with the governments of Guatemala, Nicaragua, Honduras, and El Salvador (the CA4 countries). The Government of Canada has stated that through this agreement, "Canada is seeking to secure preferential access for Canadian goods and services to the CA-4 markets and the elimination of tariffs on key Canadian exports such as telecommunications goods and services, environmental equipment and services, value-added processed foods, automotive parts, and construction equipment and services. Canada is also seeking a chapter on investment and financial services. Parallel cooperation agreements to address labour and environmental issues are also being pursued."

We are concerned about the impact that the proposed Canada-Central America Free Trade Agreement (CA4FTA) will have on the people of Central America. This agreement and other bilateral agreements serve as gateways to the continental Free Trade Area of the Americas (FTAA). The experience is that existing trade agreements place the economic interests of foreign investors and large transnational corporations (TNCs) ahead of sustainable development and the protection of human rights.

This brief draws on the extensive experience and analysis of the CCIC's APG and its member organizations, developed through our history of active collaboration with Central American civil society organizations and our collective policy work in Canada. It also builds on the work of Common Frontiers Canada and the Hemispheric Social Alliance (HSA).

2. The Central American Reality

As small Central American neighbours, Guatemala, El Salvador, Honduras, and Nicaragua share a number of significant characteristics. They are among the poorest countries in the Western hemisphere, with extremely low per capita GNP: US\$420 in Nicaragua, US\$850 in Honduras, US\$1,640 in Guatemala, and US\$2,000 in El Salvador.⁽²⁾ Regional poverty is further marked by severe income and land inequality, most notably in Guatemala where the poorest fifth of the population receive only 1.9 percent of the total national income.⁽³⁾ Nicaragua and Honduras, with international debt burdens of US\$6.1 billion and US\$4.1 billion respectively, are forced to spend up to half of government revenue on debt servicing – that is, more than double what goes to health and education expenditures combined.⁽⁴⁾ Consequently, low social expenditures have resulted in up to 50 per cent of the population lacking access to education, health care, and safe drinking water. The trend within the region towards increasing export-oriented production and limiting the capacity and role of the state (which began with the implementation of Structural Adjustment Policies – SAPs) has put great strain on social sectors. As small economies, Guatemala, El Salvador, Honduras, and Nicaragua have limited domestic labour and capital markets. They are more "open" than many of the larger countries in the hemisphere and their economies rely upon a small number of export commodities. They are therefore more susceptible to global economic shocks. All of this is compounded by the region's vulnerability to natural disasters, as demonstrated by the severe impacts of Hurricane Mitch in 1998, the Salvadoran earthquakes in 2001, and regional drought in 2002.

Due to long-standing gender inequalities and asymmetrical power relations between men and women, a disproportionate number of women are poor. Women continue to have primary responsibility for domestic duties, such as maintaining a household and providing child and elder care. Because of the roles they play in their families and their communities, women are often relied upon to cushion the negative impacts of adjustment and globalization. Despite the growing reliance of Central American families on women's incomes, women's labour continues to be treated as "flexible", or largely dispensable. Their access to the labour force is largely restricted to low levels of the service sector, the Export Processing Zones (EPZs) or maquilas, or marginal informal jobs, all of which are characterized by low wages and precariousness. Their wages are also markedly lower than those of men.⁽⁵⁾

Years of civil strife in each of the CA4 countries have contributed to largely fragmented societies and inhibited the development and consolidation of democracy. Despite the signing of substantive Peace Accords in both El Salvador and Guatemala, very few of the composite agreements, particularly those addressing the root causes of economic disparity and unequal distribution of wealth, have been implemented. Government institutions remain weak, are highly susceptible to corruption, and often lack popular legitimacy. Throughout the region there is a significant level of political marginalization of many sectors, such as indigenous peoples and peasants, who are often on the edge of the formal political processes and unrepresented by their governments. The resulting voicelessness is accentuated by the relative weakness of the Central American governments on the international stage, for example in negotiations with more developed countries such as Canada. These are all factors that must be carefully considered when pursuing a closer trade relationship with the region.

3. Transparency and Democratic Process

It was at the 2001 Trade Ministerial, under Canadian leadership, that governments party to the negotiations of the FTAA responded to significant pressure from civil society organizations and networks throughout the Americas and agreed to reaffirm a commitment to "the principle of transparency in the FTAA process and [to] recognize the need for increasing participation of the different sectors of civil society in the hemispheric initiative."⁽⁶⁾ They subsequently agreed to release the draft texts of the agreement – first following the 2001 Québec City Summit of the Americas, and again following the 2002 Quito Trade Ministerial. We would expect no less for the CA4FTA negotiations.

Despite this laudable exception, free trade negotiations are still notoriously nontransparent. Governments engage in negotiations and commit to agreements without public or parliamentary discussion of the substance of negotiations. It has been clearly stated that the text of the CA4FTA is not available for public consideration.⁽⁷⁾ The rationale is that greater openness about negotiating positions would undermine negotiating strength. The reality is that the lack of transparency is undermining democracy. The absence of information severely limits the scope for citizen participation in policy making as well as the role of national parliaments. Even in cases where consultation processes exist, they are generally devoid of information on the government's intentions or objectives. Most importantly, we are concerned that consultations have not yet demonstrated that Canada's negotiating position has taken into consideration civil society inputs on matters of substance.

Closely linked to transparency is the issue of democracy. Free trade agreements such as NAFTA have proven to be supranational economic constitutions that are reducing the power of governments at all levels, while strengthening the hand of multinational corporations. This directly compromises a government's obligations and capacity to meet its citizens social and economic needs (notably in areas such as healthcare, education, and environmental protection), since once agreements are signed they effectively become binding over and above national law and international standards. Rather than weakening government and its capacity to act on behalf of its citizens, particularly the poor and vulnerable, Canada must recognize that government capacities need to be strengthened if even the minimal Millennium Development Goals are to be realized.

Recommendations

(1) The Government of Canada should demonstrate its commitment to transparency and civil society participation by releasing the full text of the CA4FTA for public consultation, public input, and parliamentary debate prior to its signing. In all instances of Canadian trade and investment negotiations, civil society and parliamentarians should have access to negotiators, draft texts, and the negotiating process.

(2) The Government of Canada should make certain that the CA4FTA, as well as other trade and investment agreements, includes mechanisms to ensure that the agreement does not restrict the ability of national governments to make policy for paramount public interests, and in particular, in the interests of the poor. Northern governments must act to support the strengthening of the capacities of governments in Central America, with all the policy flexibility required, to achieve a significant reduction in poverty and inequality as well as the Millennium Development Goals in each country context.

4. Trade and Development

Under certain conditions, trade and investment can propel broad-based development, contributing to economic growth and employment, as well as providing access to more varied goods and services. It can also, however, be a destructive force contributing to impoverishment, inequality, and preventing respect for human rights. The rules, institutions, and policies that regulate international trade, and their interface with local economic and social realities, make all the difference.⁽⁸⁾ In order to respond to the needs of the majority of the world's population who live in poverty, trade strategies should systematically address key issues of concern to developing countries. This requires a strengthening of the effective role of the state and the promotion of democratic space that allows people to influence the course of development in their community and their country. Negotiations must also recognize that gender inequalities and the gendered division of labour affect the social and economic outcomes of trade policy measures. Gender analysis of trade and its likely implications is critical for effective human development strategies.⁽⁹⁾

Unfortunately, growing evidence indicates that current patterns of trade liberalization have generally been associated with growing inequality and deteriorating social conditions. Over the past 15 years, as the governments of Central America have prepared their economies for greater international integration with the introduction of SAPs and entered into FTAs with other countries of Latin America,⁽¹⁰⁾ their people have faced a growing number of challenges. Labour laws – which historically had been known to be relatively progressive – have been deregulated and made more flexible as a result of pressure from SAPs and FTA investment policies, which has led to declining job security and benefits, as well as a lack of respect for labour rights (collective bargaining, minimum wages, hours of work). Privatization of public services has inhibited access for the poor. Increased competition with TNCs, declining world prices for commodities such as coffee and bananas, and recurrent natural and man-made disasters have combined to contribute to a loss of livelihoods and declining food security.⁽¹¹⁾ A process of remilitarization is taking place in many parts of the region as part of the Plan Puebla Panama⁽¹³⁾ and has contributed to the perpetuation of insecurity and a restriction of freedom of movement.

It must also be noted that the current free trade integration model has been gender blind and silent about gender specific and differentiated impact. Women and men experience poverty differently, women do not have equal access to and control over resources, do not experience equal protection of human rights and have distinct roles in production and reproduction. Men and

women have been affected differently by trade policies, and not all women are affected the same way.

In order to meet the needs and respect the rights of the people of Central America, and in particular the poorest, the CA4FTA and other Canadian trade and investment strategies must go beyond measures aimed at promoting economic growth and a narrow approach to strengthening the private sector. They must also address the *quality* of growth, and, even more importantly, respond to other (non-income) dimensions of poverty, such as exposure to negative economic shocks, access to public services, voicelessness and powerlessness. They must include specific and deliberate instruments to ensure development outcomes for majority populations who continue to live in poverty.⁽¹⁴⁾ They must also recognize the gender specific impacts of trade policies as a guiding principle in trade negotiations.

Canada should respect and promote the primacy of UN obligations for human rights, equity, and sustainability over trade law. The Canadian government must strive for policy coherence in its economic and social policies, and environmental treaty obligations. Achieving better policy coherence in favour of such values requires ongoing engagement, since conflicting interests must be continually addressed in economic policy choices.

Recommendations:

(3) The 1993 Vienna Declaration states that "the promotion and protection of human rights is the first responsibility of governments."⁽¹⁵⁾ The Government of Canada should respect and promote the primacy of UN obligations for economic, social and cultural rights, as well as the importance of measures to advance equity and sustainability, over trade law. This commitment should be demonstrated in the CA4FTA and all other trade and investment agreements by ensuring that they are consistent with UN charters and conventions. Countries must also be allowed to invoke obligations to the UN charter and conventions as a shield in a trade challenge against a domestic measure that is intended to safeguard human development, human rights or environmental obligations.

(4) The Government of Canada should ensure that a social and environmental impact analysis of the CA4FTA and its likely implications is carried out prior to the signing of the agreement; this analysis should include a specific, gender-differentiated and detailed analysis of its impact on women and men. The same should be done for all other Canadian trade and investment agreements.

4a. Special Needs of Small Economies

The assumption of Central American governments is that increased international free trade will provide increased market access that in turn will allow them to diversify their exports away from the small number of commodities they currently depend upon. The reality is likely to be quite different. FTAs (globally, regionally, and bilaterally), including the CA4FTA, seek to develop a single set of trade rules for all countries party to the agreement, based on the theory that common

trade rules will level the playing field. In fact, a single set of rules serves to entrench and deepen the disequilibrium between the large and small economies.

Central Americans have advocated for Special and Differential Treatment (S&D) in trade negotiations in recognition of the unequal development levels and needs of the countries involved. The concept of different treatment for countries of differing levels of power and development is fundamentally important if developing countries are to choose appropriate paths for their development, as the currently industrialized countries did over the past two centuries. At the core of effective S&D is flexibility, not simply in terms of implementing trade agreement timeframes, but in protecting sectors critical to the country's development.⁽¹⁶⁾ Without S&D, small economies often find that vital economic sectors risk devastation as a result of open competition. The implications in terms of livelihoods, food security, and broader development goals are severe. Effective S&D would allow for the protection of particularly critical and/or vulnerable sectors, such as subsistence agriculture. Measures that specifically address food security could, for example, provide government domestic support programs to boost capacity for production for local or national markets, or facilitate mechanisms that support small farmers in marketing their produce.

When called to address the concerns of small economies about the current asymmetry in international trade for the Canadian government has done so, not by supporting requests for S&D, but by providing capacity building and technical training for negotiators from Central America. Canada provides "trade-related technical assistance (TRTA) and [trade-related] capacity-building [(TRCB)] assistance to enable the smaller economies of the Americas to access the benefits of the future [FTAA]" as "part of a broader coordinated program of trade and development..."⁽¹⁷⁾ As part of this approach, CIDA is supporting a course on Trade Policy and Law in which 54 Central Americans have been trained.⁽¹⁸⁾ The underlying assumption is that training trade negotiators will address the developmental asymmetries between Canada and the countries of Central America. Technical assistance that responds to a diversity of needs of Central American governments and citizens' organizations may be an important contribution to a broader strategy for equitable and sustainable development in the region. But we disagree with the current assumption that such assistance alone is sufficient, primarily because of the significantly lower level of development in Central America when compared to Canada, but also because of the limitations of TRTA and TRCB.

The reliance on TRTA and TRCB as the primary mechanisms to support developing countries with the new rules and processes arising from free trade agreements have been challenged by several researchers, NGOs, and international bodies. In their recent book, *Making Global Trade Work for People*, the UNDP highlighted four main shortcomings of TRTA and TRCB programs. First, they are largely compliance focused, emphasizing assistance for developing countries to comply with the conditions set out in the agreements. Second, these programs are primarily donor-driven, developed from the top-down, implemented by donors from countries such as Canada, and tend to reflect donor priorities rather than those of the recipients of the assistance. Third, offers of technical assistance are often "open ended" and used as political tools to promote negotiations. Finally, the UNDP study states that current TRTA and TRCB programs are inadequate and inappropriate, advancing a one-size-fits all approach that does not reflect the

diversity of experiences and needs between different countries.⁽¹⁹⁾ Clearly, not the panacea one might be led to believe.

Recommendations:

(5) The Government of Canada must recognize the limitations of current TRTA and TRCB programs in addressing the development challenges facing Central America and strengthen efforts to address asymmetries by allowing for effective and flexible Special and Differential Treatment within the CA4FTA, where trade rules are measured against the overarching priority to realize development goals for the majority of Central American populations living in poverty.

(6) The Government of Canada should demonstrate flexible S&D within a CA4FTA as one avenue for advocating for effective S&D within other trade and investment agreements bilaterally, regionally, and globally. The goal is S&D rules that are effective and real instruments for measures supporting sustainable human development. The nature of the S&D measures would vary across agreements but characteristics would include:

- *non-reciprocal concessions or asymmetrical reciprocity that favours developing countries;*
- *enforceable commitments from developed countries;*
- *measures that not only do not undermine, but proactively support, the obligations of governments to pursue anti-poverty and developmental objectives;*
- *a more flexible approach to implementation based on developmental milestones rather than absolute timelines; and,*
- *openness to new eligibility / country classification criteria to allow consideration of more diversified country constraints.*⁽²⁰⁾

4b. Agriculture and Food Security

Small-scale agriculture continues to be a significant element of Central American economies. It is also a major source of livelihoods and is a defining part of indigenous and rural culture. As stated in the 2002 edition of the Hemispheric Social Alliance's *Alternatives for the Americas*, "[a]griculture and traditional fishing are activities which fulfill a series of essential functions for the stability and security of nations: the preservation of the cultural riches and multi-ethnicity of societies; the preservation of biodiversity; the creation of dignified employment and self-sustainable communities; the maintenance of rural populations; guarantees for basic food security; and contributions to sustainable development with economic, social and political stability."⁽²¹⁾ As the primary providers of household food, women play a significant role in domestic agriculture and as small-scale producers, despite their limited access to land and credit.

Food security has repeatedly been threatened in recent years as the region is hit by one natural disaster (hurricane, earthquake, flood) after another, the most recent being the drought of 2002. The vulnerability of the region's peasant and indigenous populations, and in particular women, is

exacerbated by the fact that they often occupy marginal tracts of land in areas known to be ecologically unstable.

Unfortunately, the challenges faced by poor subsistence farmers in Central America are not likely to be addressed by the dominant free trade economic integration model. Rather the intensification of export-oriented agriculture favours large-scale agri-business. In addition to entrenching inequalities, these strategies have often exacerbated gender inequalities, since governments' almost exclusive promotion of the export sector has often meant male-controlled export crop production has been boosted, with resulting negative impacts for female-controlled food crops, and for household food security.⁽²²⁾ Further, Central American markets have increasingly been opened to foreign TNCs that flood local markets with cheap imported (and often subsidized) produce, making it difficult for local farmers to compete. Guatemala, once known as "the cradle where the grain began", now imports 50 percent of its corn, resulting in a significant decline in both local production levels and crop diversity.⁽²³⁾ Those small-scale farmers that produce for export have also suffered as a result of low and often volatile commodity prices, making it difficult to earn a living wage. The comparatively little political clout of these small economies means that they are unable to challenge the export policies of larger competitors. All of this combined has meant that the largely rural populations of Central America have faced a growing food crisis, with increasing vulnerability to external forces beyond their control, as well as growing poverty.⁽²⁴⁾

Agricultural policy, and by extension agricultural trade policy, needs to start from an analysis of the livelihood and food security needs of rural producers and the urban poor in ways that contribute to meeting basic human needs and ensuring respect for economic and social rights, including the right to food.⁽²⁵⁾

Recommendation:

(7) The Government of Canada must negotiate provisions in the proposed CA4FTA as well as in all other Canadian free trade agreements with developing countries that allow for:

- *the articulation of sovereign long-term development strategies that recognize the role of sustainable agriculture for rural development and the livelihoods of the rural poor;*
- *special and differential treatment for agriculture, including exemptions for key food security crops and allowance for internal support to promote food security goals;*
- *equity in the marketplace for Central America, enhanced by providing Central American governments the flexibility to support small farmers; and,*
- *the promotion of farmer-controlled marketing options.*

4c. Investment and Services

The investor-state provisions included in NAFTA Chapter 11 effectively place the rights of private investors ahead of public well-being by allowing a company to challenge government bans, laws, or regulations that could potentially result in lost profits. The broad interpretation of

the term "tantamount to expropriation" allowed under Chapter 11 has led to numerous challenges that ultimately threaten the well-being of Canadian, Mexican, and American citizens. Twenty-four investor-state cases have been launched to date, generally following the introduction of public health or environmental regulations that restrict, for example, the use or transportation of particular chemicals. One of the most well-known cases is Metalclad vs. Mexico. A municipality in the state of San Luis Potosi refused to allow the US corporation Metalclad to operate a toxic-waste dump on a site that was already leaking toxic residues into the local water supply. Metalclad refused to clean the site or provide safeguards to the local population. A NAFTA investor-state panel ordered Mexico to pay US\$15.6 million in damages.⁽²⁶⁾ Currently, there are three cases pending against Canada which threaten public services (UPS vs. Canada Post), natural resources (Sunbelt vs. B.C. ban on freshwater exports) and human and/or environmental health (Crompton vs. Canadian ban on the pesticide Lindane).⁽²⁷⁾ These cases indicate a disturbing trend in which the ability to govern is severely hindered by the growing power of corporations.

In a recent meeting with NGO and private sector representatives, Minister Pettigrew indicated that investors should not be given so much protection that investor rights trump a government's ability to regulate in the public interest. Yet during the same meeting, he stated that overall, Chapter 11 is considered to work quite well.⁽²⁸⁾ Strong evidence, in the form of existing Foreign Investment Promotion Agreements (FIPAs) and FTAs, recent Cabinet memos, and other government statements, suggests that the investment chapter of the CA4FTA will be modeled after NAFTA Chapter 11.⁽²⁹⁾ Clearly, investors need basic guarantees of predictability and transparency in government policy objectives with respect to their direct investment, but not to the detriment of the public good. In the interest of sovereignty and respect for democracy, it is critical that any challenges be handled through state and national legislations rather than by unelected and unaccountable trade dispute panels.

Intricately linked to the free trade integration model in Central America, and to the issue of investment, is the privatization of public services. Significant citizen opposition in Central America to the privatization of services like healthcare, electricity, and telecommunications has occurred. If these initiatives are successful, they may be interpreted as contravening investor-rights provisions in trade and investment treaties. Given the disastrous consequences of privatization under SAPs, which resulted in reduced services, price hikes, and public sector layoffs, all indications are that these rules will be detrimental to the majority of the region's population. In El Salvador, massive mobilization in opposition to the privatization of the national health care system is seen as part of broader citizen opposition to the free trade integration model. The resulting strike, initiated in September 2002, has brought together the social security workers' union (STISSS), the doctor's union (SIMETRISSS), other health care workers, as well as members of the general public and opposition parties in defense of public health care.

Recommendations:

(8) The Government of Canada should not reproduce NAFTA Chapter 11 – or any aspect thereof – in the CA4FTA or in any other international trade agreement in which it is involved. Rather, mechanisms that clearly prioritize economic, social and cultural rights and that allow governments to legislate in favour of public health and environmental protection, without fear of

reprisal, must be promoted. This includes allowing performance requirements on foreign investment such as local-content regulations, or export-import balancing and prohibiting national treatment obligations.

(9) Taking into account significant evidence that relying on the private market in the delivery of public services often penalizes the most vulnerable, the Government of Canada must work to improve the capacity for effective and efficient non-market delivery of public services, including through public monopolies or crown corporations, and that universal access to essential services is privileged and protected in investment and competition policy agreements.

4d. Workers' Rights

Respect for and enforcement of fundamental labour rights⁽³⁰⁾ in Central America have been under serious attack in recent years. Rights are routinely violated, labour law is routinely not enforced and labour institutions face extreme difficulty in the administration of labour justice, since they are under-funded and governments and employers lack the will to improve them. Impunity in labour rights violations is rampant. Fundamental labour rights are continually abused especially by the suppression of the right to organize in export-processing zones (EPZs) where the majority of workers are women. Workers in the EPZs, and also throughout the region, are exposed to physical threats, beatings, kidnappings and even assassinations of labour leaders when they try to organize unions or carry out union functions such as collective bargaining. After 10 years under NAFTA, no independent, democratic union has been successfully established in a maquila factory along the U.S.-Mexico border. Child labour and employment discrimination against women and indigenous workers is widespread.

Canada has chosen to address workers' rights in relation to its trade agreements through parallel deals, such as the North American Agreement on Labour Cooperation (NAALC), NAFTA's "labour side deal". Chile and Costa Rica have also signed parallel labour agreements with Canada modelled on the NAALC. There have been indications that a similar agreement is being negotiated alongside the CA4FTA. Volumes have been written on the failure of the NAALC to address the downward pressure placed on workers by free trade agreements.⁽³¹⁾ In brief, these side agreements lack enforcement mechanisms, rendering them ineffective to end abuses, leading some critics to refer to them as being little more than a public relations exercises. Indeed, one of the Costa Rican central labour bodies, the Labour Confederation Rerum Novarum (CTRN), has stated that the Canada-Costa Rica labour side agreement is ineffective due to its lack of credible sanction mechanisms.

The inability of Central American workers to exercise their fundamental rights is unacceptable in and of itself, puts downward pressure on workers rights in Canada and the region, and also deprives those workers and communities of the possibility to capture the benefits of expanded trade. Without respect for basic workers' rights, the free trade exercise will be of limited value for all involved.

When it comes to the CA4FTA what does the Canadian government intend to do to ensure that the negotiations will lead to improvements in labour law and enforcement of fundamental labour rights in the workplace?

Recommendation:

(10) The Government of Canada should seek to identify and establish a mechanism, independent from government, to adjudicate violations of fundamental labour rights in the countries party to the agreement and these violations must ultimately be sanctionable. In view of the extreme lack of capacity for fair labour administration which we know exists in some of the countries of Central America, the Government of Canada must also complement any agreement on labour "cooperation" with real resources for technical cooperation in the enforcement of labour standards, as well as concrete support for local groups working for the respect of human and labour rights.

Endnotes:

1. Government of Canada 2003b.
2. World Development Indicators 2000; 2001 for El Salvador.
3. World Bank Group 2003.
4. Oxfam Community Aid Abroad 1998.
5. Hemispheric Social Alliance 2002.
6. Free Trade Area of the Americas 2002.
7. For example, at a DFAIT/CIDA meeting with the Americas Policy Group in September 2002 and at the DFAIT Human Rights Consultations on Guatemala in May 2003.
8. CCIC 2002a.
9. Ibid; Hemispheric Social Alliance 2002.
10. Nicaragua-Mexico 1992; Central America-Dominican Republic 1998; Central America-Chile 1999; Mexico-Northern Triangle (Honduras, Guatemala, El Salvador) 2000; and, Central America-Panama 2002. (Foreign Trade Information Service – SICE 2003).
11. Hemispheric Social Alliance 2002; Foro Managua 2002.
12. Announced by Mexican President-elect Vicente Fox to the Central American heads of states in November 2001, the Plan Puebla Panama (PPP) is a regional economic development program stretching from Puebla to Panama, encompassing the seven Central American countries as well as the southern Mexican states of Campeche, Chiapas, Guerrero, Oaxaca, Puebla, Quintana Roo, Tabasco, Veracruz and Yucatan. The \$10 billion project, supported primarily by the Inter-American Development Bank (IDB), includes numerous infrastructure projects ranging from the expansion of roads, rails, and ports, to the installation of maquilas. A number of NGOs and social movements in Mexico and Central America have raised concerns about the PPP as an expression of the larger economic integration agenda in the region.

13. For example, in border regions and also in areas like the Petén, where hydro-electric projects have been proposed on the Usumacinta river.
14. Helleiner 2001.
15. United Nations General Assembly, 1993.
16. Caribbean Reference Group 2001.
17. Government of Canada 2002.
18. Reported at the DFAIT/CIDA meeting with the Americas Policy Group in September 2002.
19. UNDP 2003.
20. CCIC 2003.
21. Hemispheric Social Alliance 2002.
22. CCIC 2002c; Women's Edge 2002.
23. Central America Report, 2002.
24. OXFAM International 2002.
25. Ibid.
26. Public Citizen 2002.
27. Trade and Investment Research Group 2003.
28. Government of Canada 2003a.
29. Panama FIPA (1998); Costa Rica FIPA (1999); El Salvador FIPA (1999); The North American Free Trade Agreement (1994); the Canada-Costa Rica Free Trade Agreement (2002); the second draft text of the Free Trade Area of the Americas (2002); Government of Canada 2002; Memorandum to Cabinet 2002. Since 1994, all FIPAs have been modeled after NAFTA's Chapter 11, granting foreign investors the right to not only challenge government regulations, but also to insist upon national treatment.
30. The 1998 International Labour Organization Declaration on Fundamental Principles and Rights at Work defines fundamental labour rights as: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.
31. For example: Anderson 2001; Canadian Labour Congress 2001; Human Rights Watch 2001; Maquila Solidarity Network 2001.

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