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Statement of Maureen Drouin, Northeast Regional Representative, Sierra Club to the Maine Citizen Trade Policy Commission

First, I'd like to thank the Maine Citizen Trade Policy Commissioners for giving Maine people a unique opportunity to address our concerns about CAFTA and other international trade agreements.

My name is Maureen Drouin, and I am here representing the Maine Sierra Club. The Sierra Club is America's oldest and largest grassroots environmental organization representing 700,000 members across the country, including nearly 5,000 in Maine.

Maine people have shown that they want a healthy, safe and clean environment. We have enacted laws at the state level to protect our air and water, to reduce toxic pollution, and to encourage clean energy production. Maine people have elected environmental champions to Congress too, like Ed Muskie, who helped write the federal Clean Air and Clean Water Acts, a tradition of environmental stewardship that is carried on today by our U.S. Senators and Representatives.

Unfortunately, current trade agreements do little to protect the environment. At the core of World Trade Organization's (WTO's) rules is a push to increase market opportunities and profits for multinational corporations with as little interference as possible. As a consequence, these trade agreements have undermined environmental and public health protections. I have limited my testimony to three major concerns we have with CAFTA: Investment Rules which are undemocratic, dangerous and potentially costly to taxpayers (Chapter 10); Environmental Provisions which are toothless (Chapter 17); and Procurement Policies that trample on our value system.

1. Investment Rules (Chapter 10)

Multinational corporations could sue taxpayers for cash damages if they feel that environmental or public health laws, which are democratically enacted, interfere with their profits. NAFTA allows corporations to equate state and local environmental policies as an "expropriation" or "takings" of their assets. The principle of "Takings" has been rejected by Congress and the Maine legislature and does not exist in U.S. law, yet corporations have managed to slip it into trade agreements. Under NAFTA's similar provisions, several cases have already been brought by corporations challenging environmental protections. These include *Methanex v. U.S.*, *Metalclad v. Municipality of Guadalcazar, Mexico* and *Glamis Gold v. U.S.*

The investment provisions grant corporations private enforcement rights by special trade tribunals that are closed to the public. CAFTA's new investment provisions give even more rights than does NAFTA to foreign corporations to challenge laws that protect our health and environment. These provisions broaden the definition of what constitutes a protected investment, and provide foreign corporations greater property rights than domestic companies are granted by the U.S. Constitution.

What might this mean in Maine? The U.S. could be sued for enforcing laws that ensure a clean, healthy and safe environment. As a state that values clean air, clean water and clean energy, Maine often leads the country in enacting progressive environmental laws.

For example, during the last session, the Maine legislature passed “An Act to Protect Human Health by Reducing Exposure to Arsenic.” This law speeds the phase-out of arsenic treated lumber. Arsenic is known to cause cancer, and children are exposed to it when they play on jungle gyms and decks built with arsenic-treated lumber. The Maine Bureau of Health found health risks from arsenic in pressure-treated lumber were just as high as the risks from exposure to arsenic in drinking water.

Under NAFTA, it’s possible that a Canadian corporation that produces arsenic-treated lumber could sue the U.S. over the Maine ban because of lost market share, costing taxpayers millions of dollars.

Protecting the health of Maine families could take a back seat to corporate profits.

2. Environmental Provisions (Chapter 17)

In NAFTA and WTO, you will find nice-sounding but nonbinding language about protecting the environment. CAFTA’s Chapter 17 is no exception. The provisions unfortunately do not have much teeth compared to other chapters of CAFTA. While there is some environmentally-friendly language in the chapter, it is mostly unenforceable.

However, even if there was strong enforcement language in CAFTA, the more fundamental question is about what exactly is to be enforced. Even the U.S. Trade Representative (USTR) acknowledges that the CAFTA countries’ environmental laws are weak and even in countries with relatively good laws on the books, like Costa Rica, they often do not fully implement or enforce these laws. So far, there is almost no funding set aside to assist CAFTA countries in helping to develop and strengthen their environmental programs.

3. Procurement Rules

The procurement rules in CAFTA undermine a state’s ability to exercise purchasing preferences to promote local economic development or the conservation of natural resources. This could include preferences for buying recycled materials, locally grown foods, clean cars or using alternative energy.

In Governor Baldacci’s State of the State address, he talked about how The State of Maine now purchases 40% of its electricity from Maine’s own renewable power resources; that they heat state office buildings with biodiesel, and that they are improving the fuel economy of the State fleet by purchasing more hybrids and smaller vehicles.

According to the Governor, these energy savings steps have saved the State \$776,000 in transportation fuel costs and reduced state government greenhouse gas emissions by 8% just in the past two years

Under CAFTA, these preferences could be considered inappropriate trade barriers and challenged.

We applaud Governor Baldacci for saying that the State would study trade agreements on a case-by-case basis before committing Maine's government purchasing market.

Conclusion

WTO and NAFTA have undermined environmental and public health protections. CAFTA is no exception and could have serious consequences for Maine's environmental laws and quality of life.

The Sierra Club supports trade, but we want trade agreements that promote a higher quality of life for all, not trade that simply serves as a vehicle to increase corporate profits. It is time to change the course of our trade policies and make sure that we have trade that is safe, fair and clean.



CAFTA's impact on Central America's environment

Background

The Central America Free Trade Agreement (CAFTA) is an expansion of the North American Free Trade Agreement (NAFTA) to Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. The agreement was signed in May of 2004 and is now awaiting approval in the national legislatures.

The biodiversity of the Central American countries is critically important. While these countries account for less than one percent of the earth's land area, 8% of all the planet's biodiversity is found in this region¹, including some 24 000 plant species, over 1000 bird species, over 600 species of reptiles and several hundred types of mammals². Three out of four migratory bird routes in the Western Hemisphere pass through the CAFTA countries³. Of the 836 migratory bird species that are listed in the U.S. Migratory Bird Treaty Act, some 350 neo-tropical migratory species (mainly songbirds) migrate through or are winter residents of the CAFTA countries⁴. Even the U.S. trade negotiators admit that CAFTA could contribute to the "loss of migratory bird habitat" through investments in the agricultural sector⁵.

Today, the region is facing critical environmental problems. Deforestation is a primary concern. **Between 1950 and 1990 the region lost more than 70% of its forest cover⁶**, and between 1980 and 1990, deforestation averaged 1.4% annually. El Salvador has less than 5% of its original forest cover remaining⁷. Deforestation is caused both by the expansion of agricultural policies as well as an increase in logging and mining (partly thanks to new techniques and advancements that have opened up previously inaccessible areas for exploitation).

The Inter-American Development Bank found that **nearly 75% of the people in Central America** live in conditions where vehicular congestion, industrial and vehicular emissions, depleted water sources, water pollution, and land and housing scarcities reduce productivity, increase violence and diminish public health⁸.

If we look back at the environmental impact of NAFTA, one of the most detrimental effects was caused by the restructuring of the agricultural sector (with U.S. corn being dumped on the market), driving 1.5 million small-scale farmers off their land. Peasant farmers who were driven off their lands were forced to clear trees for farming and for fuel. Since the implementation of NAFTA, the annual rate of deforestation in Mexico rose to 1.1 million hectares. The previous rate of 600 thousand hectares per year was practically doubled, and Mexico has one of the highest deforestation rates in the Western Hemisphere⁹.

A report recently published by OXFAM International documents that CAFTA could threaten the livelihood of thousands of small rice producing farmers, most of whom already live in poverty. The rice sector provides for approximately 1.5 million jobs in the Central American countries¹⁰, yet the small farmers of Central America might find themselves in a similar situation as their Mexican counterparts 10 years ago.

What is the level of environmental protection in the CAFTA countries?

In its Interim Environmental Review of CAFTA, USTR found that Guatemala and Honduras lack even basic environmental laws¹¹. In the other countries, while there are basic environmental laws in place, studies show that these laws have not been properly implemented or enforced. Often, there is also little incentive to be good

stewards of the land, for example with corporations – in many places the fine placed on companies for clean-up is less than the cost of installing new and more environmentally sound equipment. Costa Rica is often hailed as an example of a country with strong environmental laws, but even here their environmental laws are either conflicting with one another, or there is no financial support for new agencies or cooperative measures¹².

CAFTA's environmental chapter

CAFTA's Chapter 17 deals with the environment, but the provisions unfortunately do not have much teeth compared to other chapters of CAFTA. While there is some environmentally-friendly language in the chapter, it is mostly unenforceable. Even the minimal progress that has been made in other trade agreements such as the Jordan – U.S. Free Trade Agreement, where the environmental provisions would have the same enforcement mechanism available as the commercial provisions of the agreement, is missing in CAFTA.

Article 17.1 of CAFTA states that each country has the right “to establish its own levels of domestic environmental protection...encourage high levels of environmental protection, and ...strive to continue to improve those laws and policies.” While a country “shall not fail to effectively enforce its environmental laws” this only applies if the lack of enforcement has been a “sustained or recurring course of action or inaction,” i.e. a one-time violation may not be enough¹³. CAFTA also allows countries “the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters,”¹⁴ contradicting the previous article and telling the countries that ‘you are supposed to enforce your environmental laws, but only if you want to.’

Countries are asked to “strive to ensure”¹⁵ that they don't lower or weaken their environmental laws in order to attract investment, but again, there is nothing here clearly making this a requirement, and if a country violates even this loosely worded article, there is no way to take advantage of even the limited options provided through the Dispute Settlement chapter¹⁶.

However, even if there was strong enforcement language in CAFTA, the more fundamental question is about what exactly is to be enforced. Even the USTR acknowledges that the CAFTA countries' environmental laws are weak (and even in countries with relatively good laws on the books often do not fully implement or enforce these laws). So far, there is almost no funding set aside to assist the CAFTA countries in helping to develop and strengthen their environmental programs.

Enforcing CAFTA's environmental provisions

If a CAFTA country fails to enforce its environmental laws and regulations, a long and cumbersome process would have to be launched -- with no clear enforceable outcome should the country be found guilty. CAFTA limits any fines for failures to enforce environmental laws to a max \$15 million annually¹⁷, while sanctions for breaches of commercial provisions are unlimited¹⁸. Fines for failure to enforce a nation's environmental laws are supposed to be spent in the violating country towards “appropriate environmental initiatives, including efforts to improve or enhance...environmental law enforcement.”¹⁹ Yet CAFTA does not prohibit a violating country from redirecting its existing funds away from the area where funds are being directed, thus potentially resulting in no net increase in enforcement funding.

While corporations can use CAFTA's investment chapter (Chapter 10) to sue governments directly for cash compensation if their profits have been undermined²⁰, no such avenue is open to citizens of CAFTA countries. CAFTA's “citizen submission” process does not provide for clear, enforceable outcomes if a country is violating the environmental rules in CAFTA.

Conclusion

The Central American countries face tremendous environmental challenges, which CAFTA's environmental provisions do little to address; even the most minimal progress made in past trade agreements aimed at strengthening the provisions have been ignored in CAFTA. CAFTA is a step in the wrong direction and a different course must be staked out to ensure that our trade agreements protect and respect the environment.

¹ Mauri, Carolina: *Environmental Law Enforcement and Compliance in Central America*, page 1, April 2002

² Conservation International, Mesoamerica Biodiversity Hotspots. Available at www.biodiversityhotspots.org/xp/Hotspots/mesoamerica

³ Conservation International, Mesoamerica Biodiversity Hotspots. Available at www.biodiversityhotspots.org/xp/Hotspots/mesoamerica/?showpage=Biodiversity

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- ⁴ Office of the U.S. Trade Representative, *Interim Environmental Review, U.S. Central America Free Trade Agreement*, August 2003
- ⁵ U.S. Trade Representative *Interim Environmental Review of U.S. – Central America Free Trade Agreement* , August 2003, page 17
- ⁶ Mauri, Carolina: *Environmental Law Enforcement and Compliance in Central America*, page 1, April 2002
- ⁷ Conservation International, Mesoamerica Biodiversity Hotspots. Available at www.biodiversityhotspots.org/xp/Hotspots/mesoamerica/?showpage=HumanImpacts
- ⁸ Inter-American Development Bank, *Facing the Challenges of Sustainable Development: The IDB and the Environment, 1992-2002*, Washington DC: Inter-American Development Bank, 2002
- ⁹ Carnegie Endowment for International Peace, *NAFTA's Promise and Reality*, November 2003
- ¹⁰ OXFAM International, Oxfam Briefing Paper 68, "A raw deal for rice under DR-CAFTA: How the Free Trade Agreement threatens the livelihoods of Central American Farmers", November 2004
- ¹¹ U.S. Trade Representative *Interim Environmental Review of U.S. – Central America Free Trade Agreement* , August 2003.
- ¹² Mauri, Carolina: *Environmental Law Enforcement and Compliance in Central America*, April 2002
- ¹³ CAFTA Article 17.2.1 a)
- ¹⁴ CAFTA Article 17.2.1 b)
- ¹⁵ CAFTA Article 17.2
- ¹⁶ CAFTA Article 17.10.7
- ¹⁷ CAFTA Article 20.17.2
- ¹⁸ CAFTA Article 20.16
- ¹⁹ CAFTA Article 20.17.4
- ²⁰ CAFTA Article 10.16