



# CAFTA Facts

Office of the United States Trade Representative  
CAFTA Policy Brief – April 2005

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## **CAFTA Labor- Building a Culture of Compliance!** *If you think the CAFTA countries can do more...they agree.*

### ***Building on Improvements...What have they done?***

- The CAFTA countries have seized labor challenges and created opportunities for achievements and success. Labor issues have been at the forefront of the U.S.-CAFTA dialogue since well before the start of negotiations. As a result, the Central American countries and the Dominican Republic have made marked improvements.
  - Nicaragua passed a law—in January 2005—to ensure that none of the rights enjoyed by Nicaraguan workers will be diminished under CAFTA, and set sanctions to prevent employers from reducing or ignoring the rights of workers for reasons of competitiveness. The government reformed administrative procedures and regulations to address gaps noted in the ILO labor law study, created a special labor prosecutor, and issued an important court ruling to protect union leaders from dismissal.
  - Costa Rica instructed labor inspectors to handle with priority any situation involving pregnancy testing as a condition to obtain or maintain a job. The government also instructed labor inspectors to monitor compliance with regard to reinstatement orders, and is working with the ILO on the issue of direct arrangements.
  - El Salvador published a circular clarifying its policy on illegal dismissals of union leaders and on reinstatement. This made it clear that it is a violation subject to hefty fines for an employer to dismiss union leaders either directly or indirectly, by refusing them entry to the workplace even while paying them their salary. In the case of Lido, S. A. the Labor Ministry issued the highest possible fine (\$77,000 USD) for refusing to reinstate 10 union leaders. The government raised the budget for its Labor Ministry by 20%, raised the number of labor inspectors by 55%, and cut the average time to hear a labor complaint in half.
  - Guatemala threatened to revoke the export licenses of companies in export processing zones that weren't complying with labor laws, resulting in the first-ever collective bargaining agreement with trade unions in an export processing zone. The government is also working on several legal options to allow and improve on its ability to impose sanctions quickly and effectively. In the interim, labor courts continue to handle complaints and impose fines according to existing provisions of the Labor Code. The government is initiating an advocacy campaign to protect the rights of women and is issuing guidance to inspectors so that violations involving pregnancy testing are punished to the highest extent of the law.
  - Honduras is working on a package of labor code reforms to strengthen prohibitions on anti-union discrimination and blacklisting. The Labor Ministry issued instructions to assure that labor inspectors have the authority to access workplaces for inspections, and established the sanctions that will be imposed on employers who deny entry to inspectors. The Ministry cut the time for processing labor cases in half, and increased the number of labor inspectors.

- D.R. passed the Law Against Trafficking in Persons and Alien Smuggling, with penalties of 15-20 years' imprisonment and fines of 175 the minimum wage, increased access to labor tribunals by expanding courts, issued a joint declaration with the Haitian government to prevent discrimination in the recruitment of workers, and implemented a Joint Protocol in Free Trade Zones to improve compliance with labor laws.

### ***What is the forward agenda?***

- The CAFTA countries have been busy perfecting implementation of labor laws and of the International Labor Organization (ILO) conventions that protect the fundamental rights of workers.
- Going forward, they—in partnership with the Inter-American Development Bank (IDB)—will implement the recommendations they jointly identified in a White Paper for additional specific improvements in labor law administration and enforcement. The paper identifies the resources required to make this happen—including international organizations and bilateral agencies—as well as the State Department's Economic Support Funds and the \$20 million that will be programmed through this effort.
- In order to assure progress, as stated in the paper, the Trade and Labor Ministers will meet at least every six months to benchmark and address any relevant issues going forward. In order to assure that the timetable and funding commitments are implemented, the ILO is being asked to prepare an assessment every six months verifying progress on a national and regional basis.<sup>1</sup>
- The forward agenda for improvements will modernize the *Labor Justice System, Enforcement and Inspections, and the performance of the Labor Ministries*.

### ***What are the CAFTA countries' forward commitments to do more?***

The modernization agenda will address serious resource limitations that hamper implementation of labor laws. The inescapable reality is that the region needs assistance and additional resources to improve enforcement; and the White Paper sets out country-specific and regional forward commitments to provide assistance and build capacity in several areas:

- **Administration of labor justice**
  - Recommendations- Increase the technical capacity to manage resources strategically; reduce labor court case backlogs and channel certain cases through special tribunals. Increase consistent application of labor laws by training judges, lawyers, and clerks on national labor laws, fundamental labor rights, and international jurisprudence. Institute expedited proceedings to speed the resolution of workers' cases and provide judicial access to poor people who lack education and mobility. ***Marginalized people will have better access to labor justice and mainstream legal services.***
- **Labor ministries**
  - Recommendations- Increased resources such as vehicles for inspectors, computers, case management capabilities, and the capacity to manage resources strategically can improve the inspection of workplaces. Professionalize the labor inspectorates, re-classify positions, hire and promote through transparent mechanisms, develop credible procedures for dismissals and performance appraisals--and where possible facilitate career civil service. ***Workers will benefit from a professional corps of labor***

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<sup>1</sup> Building on Progress: Strengthening Compliance and Enhancing Capacity, *A Report of the Vice Ministers Responsible for Trade and Labor in Central American Countries and the Dominican Republic*, April 2005, pg. 71

***inspectors that is consistent, transparent, and capable of enforcing labor laws with expertise.***

- **Gender and discrimination issues**

- Recommendations- Develop additional policies and enforcement initiatives to address pregnancy testing as a condition of employment; conduct outreach campaigns to protect women's rights in the workplace; where needed create special offices within the labor ministries to target discrimination and gender issues effectively.

***Women—heads of households—who comprise the largest portion of the workforce in factories and maquilas will be treated with dignity and respect for their legal rights.***

- **Worst forms of child labor**

- Recommendations- Build on improvements already achieved in the area of child labor. Assess needs and allocate additional resources to effectively implement National ILO-IPEC Time Bound programs—which will eradicate the worst forms of child labor within specific deadlines and timeframes. Train and specialize labor inspectors to enforce child labor laws effectively and strategically according to country programs and objectives. Coordinate among the country ministries to carry out programs at local and national levels effectively. ***Specific timelines and deadlines will expedite the removal of children from the scourge of the worst forms of child labor!***

- **Promoting a culture of compliance**

- Recommendations- In addition to enforcement initiatives, make labor ministries more accessible and *approachable* to workers and employers. Increase voluntary compliance—create a culture of compliance through private sector partnerships, public awareness campaigns on national labor laws and fundamental labor rights, as well as compliance assistance programs. ***Employers and workers will benefit from partnerships that prepare parties to comply with obligations in a climate free of retribution.***

The White Paper recommends that timetables and funding levels be part of an *integrated strategic framework* with strict *benchmarking* and *verification* of implementation. It also proposes that an independent institution, the ILO, prepare a semiannual assessment of the *implementation of the strategic framework*. ***The countries' strategic framework, forward agenda and commitments will build on achievements and improve the application of worker rights in the region.***