

# PUBLIC HEALTH STATEMENT ON THE U.S.-CENTRAL AMERICAN FREE TRADE AGREEMENT (CAFTA)

To: U.S. Congress, U.S. Trade Representative

July, 2004

We are writing to express our grave concerns regarding the US-Central American Free Trade Agreement (CAFTA) and similar pending trade agreements. CAFTA proposes to establish rules for trade among seven nations (United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic).

A number of provisions would lock in threats to public health and health care. Provisions of the services chapter could reduce affordable access to vital human services including health care, water supply, education and energy; and preempt the authority of public officials to protect health standards for professional licensing, environmental and occupational health, alcohol and tobacco protections, privacy rules, and patients' rights. Other CAFTA chapters directly related to health cover intellectual property, which could reduce access to affordable medicines; standards for the safety of plants and food; and rules on how governments procure goods and services, and allocate subsidies. Many of these areas are already matters of controversy within the World Trade Organization (WTO). These provisions should not be approved in CAFTA, and should not stand as precedents for future trade agreements. Further, public health must have a voice in trade negotiations, which increasingly affect health and health care.

## Public Health Concerns

**1. There is no formal representation for health care and public health in US trade negotiations,** and little if any representation within other countries. While many industries sit on Advisory Committees to the U.S. Trade Representative, there are no representatives from public health. No impact assessments are conducted on trade in health services.

*Despite an Executive Order requiring the US Department of Health and Human Services to provide advice to the US Trade Representative regarding the potential health impact of any tobacco trade-related policy decisions, it is not clear whether HHS has been provided with a meaningful opportunity to do so. Costa Rica specifically assigns its Ministry of Health to CAFTA's Committee on Technical Barriers to Trade. The US appoints only the USTR.*

**2. CAFTA should not pit health and human rights against the rights of private foreign corporations.**

Measures that protect health have been successfully challenged under the investors' rights provisions of similar trade agreements. For example, the US Metalclad Company successfully sued Mexico for \$16 million under the North American Free Trade Agreement (NAFTA), when Mexico refused to reopen a toxic waste dump that would contaminate people and the environment.

CAFTA Article 21.1.2 (Exceptions) grants nations the right to exempt measures that are necessary to protect human, animal or plant life. However, this exception applies only if it is "not applied in a manner which would constitute arbitrary or unjustifiable discrimination between countries, or a disguised restriction on trade in services." In comparison, Article 21.2, Essential Security, gives nations the right to exempt any measures they consider necessary for peace and security. There are no qualifications to this right.

**3. CAFTA rules preempt the authority of public officials to protect health standards: professional licensing, environmental and occupational health, alcohol and tobacco protections, privacy rules, and patients' rights.**

Under NAFTA, a private Canadian corporation is challenging an executive order by the State of California to remove the additive MTBE from gasoline. MTBE is known to leak into ground water, and acts as a carcinogen.

Tobacco companies would be granted the ability to directly challenge national and state tobacco control laws under CAFTA's investment provisions.

**4. CAFTA can reduce access to vital services including health care, water supply and sanitation, education, and energy.** By covering health care and other services under trade rules, CAFTA would facilitate privatization of these services, making them less affordable, especially for vulnerable populations, and less

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accountable. While health is universally recognized as a human right, it may become a market commodity if trade agreements don't protect affordable universal access to health care.

*Doctors in El Salvador have gone on strike twice in the last three years to prevent privatization of their public health care system, in order to assure access and affordability of health services. Under CAFTA, government spending at scores of Salvadoran hospitals would be open to private companies.*

**5. CAFTA and similar trade agreements preempt the production and humanitarian distribution of affordable lifesaving medicines.** They grant multinational corporations the intellectual property rights to plants and seeds that the majority of the world's poor depend on, undermining sustainable, biologically diverse agriculture.

*Millions with HIV/AIDS cannot get affordable, life-saving medications due to the WTO's TRIPS agreement, which props up prices for drug companies. At the same time, many US residents can't afford needed drugs. Both CAFTA and the Australia Free Trade Agreement present further barriers to affordable drugs.*

*Guatemalan farmers who depend on their knowledge of and access to medicinal and nutritional plants could be required to pay transnational corporations that patent seeds, undermining their ability to survive.*

## 6. CAFTA Undermines Public Health Objectives of Government Procurement

Local, state and national governments' procurement contracts can specify standards for medical and financial privacy, quality and performance, local sustainable economic development, environmental protection, public health and safety, gender and racial equity, labor practices, and human rights.

CAFTA rules on government procurement undermine these important capabilities. Under CAFTA, government actions to favor local companies or service suppliers, or to impose technical specifications, can be challenged as barriers to trade. The U.S. has agreed to include health care services in this chapter.

### Public Health and Health Care Community: Reframing the Trade Debate to Prioritize Health

The Call for Public Health Accountability in International Trade Agreements asks Congress and the USTR to take the following steps to prioritize health in international trade negotiations:

1. Assure that health is not pitted against commercial interests.
2. Include public health representatives in the negotiating advisory process, and promote transparency and democratic accountability at all levels of trade negotiations.
3. Call for an assessment of the impact of trade agreements on population health, and assure based on such assessment that these agreements do not have an adverse impact on health.
4. Exclude vital human services such as health care and water, and intellectual property rules that affect affordable medications, from trade negotiations and challenge under trade agreements.
5. Support enforceable commitments to advancing population health, and to achieving universal access to health care, affordable medications, and safe, affordable water in the U.S. and internationally.

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