

# A tepid partnership: Free trade and labour rights in Central America

## SIGNING UP CENTRAL AMERICA FOR FREE TRADE

The enactment by Costa Rica in January 2009 of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA-DR) concluded the process of ratification by its members and coincided with President Barack Obama's assuming office. The agreement was first signed in 2004. It came into force in El Salvador in March 2006, then in Nicaragua, Honduras, and Guatemala in the same year, and in the Dominican Republic in 2007.

As a senator, President Obama voted against CAFTA-DR because of his concern about the protection of labour rights and the enforcement of basic environmental standards in Central America and the Dominican Republic. However, a review of some of his statements reveals that President Obama generally supports free trade policies despite these concerns. His administration is cautiously trying to revive its trade agenda, fuelled by the objective to double US exports by 2015; at the same time, it does not want to lose the support of the labour unions. In that sense, the announcement on July 30, 2010 that the United States requested consultations with Guatemala under article 16.6.1 of CAFTA-DR, for apparent violations of obligations on labour rights, could be interpreted as a victory for the labour unions. It is the first time that the United States has pursued such a case against a free trade partner.

## THE GUATEMALAN LABOUR CASE

Since 2008, the US government has been conducting an extensive examination of Guatemala's compliance with its obligations under Chapter 16 (Labour) of CAFTA-DR, based on a petition filed by the AFL–CIO together with six other Guatemalan labour groups. The Office of the United States Trade Representative (USTR) reports that the examination has included a careful review of Guatemala's

BY DORIS OSTERLOF

Doris Osterlof is former Vice-Minister of Trade, Costa Rica, professor at the University of Costa Rica, program director of the International Center for Human Development (IChD), and a member of the Latin American Trade Network (LATN).

The recovery of the US economy . . . is crucial for Central American countries.

labour laws, an extensive collection of factual evidence, and an analysis of Guatemala's obligations under CAFTA-DR. The US government determined that Guatemala is failing to meet its obligations with respect to effective enforcement of labour laws related to the right of association, the right to organize and bargain collectively, and acceptable working conditions. In addition, it expressed concerns about the problem of labour-related violence in Guatemala.

Under CAFTA-DR, a party may request consultations with another party regarding any matter arising under Chapter 16. If the matter involves the effective enforcement of domestic labour law and the consultations do not resolve the matter within 60 days, the complaining party may then request a meeting of the Free Trade Commission. If no agreement is reached, the United States may request the establishment of a panel. If the panel finds that Guatemala has failed to enforce its labour law effectively, it may impose an annual monetary assessment of up to US\$15 million.

On the other hand, average growth of Guatemala's exports to the United States has been around 3.4 percent, which is less than expected and is strongly related to the impact of the global economic

crisis. Despite this, Guatemalan exporters are focusing on increasing trade with the United States, its largest trading partner. Agriculture exporters, in particular, are seeking to take advantage of CAFTA-DR, and agriculture exports grew 28.3 percent in 2009, compared with 2008.

The labour claim referred to, above, puts Guatemala's government in a complex position vis-à-vis the business community, which supported CAFTA-DR against the opposition of the unions, based on an expectation of increasing sales in the US market. Although the government of Guatemala accepted the consultation process, it officially recognizes the legal and institutional difficulties that still exist to provide labour full protection. A Republican administration probably would not have taken this step.

The recognized labour laws in CAFTA-DR are those directly related to the right of association, the right to organize and bargain collectively, a prohibition on the use of any form of force or compulsory labour, a minimum age for the employment of children, the prohibition and elimination of the worst forms of child labour, and acceptable working conditions with respect to minimum wage, hours of work, and occupational safety and health. Part of the criticism in relation to Chapter 16 is that it does not encourage the parties to establish more advanced labour standards.

## THE CAFTA-DR ENVIRONMENT AND OBAMA'S ADMINISTRATION

The impact of the global economic crisis on Central American exports to the United States, its main market, affected the evolution of CAFTA-DR. Exports grew during the first three years of the agreement but decreased during 2009. The recovery of the US economy, based on the measures taken by the Obama administration, is crucial for Central American countries and their exports, investments, tourism, and remittances.

## IMMIGRATION AND SECURITY BIGGER CHALLENGES THAN TRADE

The regional economy is vulnerable to changing conditions in consumption and immigration in the United States, which is the largest recipient of immigrants, also called “economic exiles.” For countries like Honduras, El Salvador, and Guatemala, a decrease in remittances represents a major economic collapse because they receive a sum of more than US\$10 trillion annually. Several reports indicate that 10 percent of the Central American population, about four million, are immigrants, and their dollar remittances represented 10 percent of regional GDP.

Immigration and security are central issues in relations between the United States and Central America. For example, during his meeting with President Mauricio Funes of El Salvador in May 2010, President Obama pointed out that the relationship between the two countries has to consider the two million Salvadorians who live in the United States and who send remittances back to El Salvador. This consideration provides an outstanding foundation for continuing

## Immigration and security are central issues in the relations between the United States and Central America.

cooperation between the two countries. In that sense, the July 2010 decision by the Obama administration to extend the temporary protected status (TPS) for immigrants an additional 18 months was a positive signal for the Central American region.

On security issues, the Obama administration announced in May 2010 the donation of US\$130 million, to be received in 2011 in support of programs in Central America to combat gangs, organized crime, and drug trafficking. The administration also modified the Merida Initiative for security cooperation, approved during the Bush administration, by increasing the contribution for

Central America and changing the focus to a major emphasis on preventing youth violence and strengthening the judicial and prison systems.

### WASHINGTON: A TEPID PARTNER AT BEST

Although CAFTA-DR covers only trade in goods and services, the reality is that without an adequate environment it will not be feasible to achieve the development goals of the free trade agreement. Therefore, the agenda between the Obama administration and the Central American governments must go beyond trade issues.

The US government continues to implement day-to-day issues under the CAFTA-DR. For example, in June 2010 it signed an amendment to allow sugar imports from Costa Rica once that country complied with the intellectual property rights reforms on its legislation. The biggest challenge for the United States and Central America is how to translate into reality Obama’s idea that the United States should become a strategic partner for development in Central America in a relationship based on mutual interest and mutual respect. 

## Latin American Trade Network

The Latin American Trade Network (LATN) is an independent, interdisciplinary research network founded in 1998 with the support of Canada’s International Development Research Center. The Department of International Relations of the Latin American Faculty of Social Sciences is responsible for LATN administration.

LATN, which currently has more than 180 members and 70 linked institutions, helps countries explore the cost and benefits of trade policy alternatives. LATN is a leading knowledge network with a political economy perspective, analyzing themes such as trade, development, and inclusive growth. LATN aims:

- to bridge the gap between research, decision making, and inclusive policy processes;
- to facilitate debate among senior practitioners, academics, and civil society in order to generate viable policy options;
- to undertake and disseminate high-quality, policy-relevant research in order to support development and inclusive growth;
- to stimulate links with key international policy-relevant institutions in order to support capacity-building activities, improving networking practices; and
- to be a source of LATN-related information for the local policy environment.

 **LATN** | Red latinoamericana | Rede latino-americana | Latin American  
de política comercial | de política comercial | Trade Network

[www.latn.org.ar](http://www.latn.org.ar)