



CAFTA's Environmental Provisions: Weak, unenforceable, and full of loopholes

CAFTA's Environment Chapter does not meet the test of effectively protecting the environment and fails to include even the key progress made in the Jordan Free Trade Agreement. Rather than including a robust set of binding and enforceable provisions for improvement in environmental laws, it relies on an inadequate and seriously underfunded cooperation agreement.

- CAFTA **does not require any country to adopt or maintain** a clear set of basic environmental laws and regulations. And the agreement's language concerning levels of environmental protection and improvement of standards is **explicitly excluded from dispute settlement** under the agreement. (*Articles 17.1 and 17.10.7*)
- The agreement **lacks parity of enforcement** between environmental and commercial provisions – a step backward from the U.S.-Jordan FTA. (*Article 20.17*)
- The **only provision** in CAFTA's Environment Chapter that is subject to dispute settlement requires countries to enforce environmental laws already on their books and only applies if there has been a "sustained or recurring course of action or inaction." This sole provision compares to **more than 100 mandatory provisions in CAFTA's Intellectual Property Chapter** that are subject to dispute settlement. (*Article 17.2 and 17.10.7*)
- Fines for violations of CAFTA's single environmental requirement are limited to \$15 million, compared to unlimited trade sanctions that can be levied for violations of commercial provisions. (*Article 20.17.2*)
- Countries can evade the requirement to enforce their environmental laws through a gaping loophole that allows them to use enforcement resources as they see fit. (*Article 17.2.1b*)
- None of the agreement's provisions apply to repeated failures by a country's court system to enforce environmental laws, and the requirement that countries enforce their own laws does not apply to any laws whose "primary purpose" is natural resource management, such as a forestry management plan. (*Articles 17.3.6 and 17.13*)

Public participation and transparency provisions are not backed up with enforceable provisions to protect the environment.

- CAFTA's public submission process does not provide for any clear outcomes or actions to actually ensure enforcement of environmental laws. This contrasts starkly with the unlimited monetary compensation that private foreign corporations can sue for under CAFTA's Investment Chapter.
- Unlike NAFTA, CAFTA's public submission process about the environment will be overseen by an economic institution with no expertise in environmental policy.

CAFTA's Environmental Cooperation Agreement (ECA) has no required outcomes and fails to ensure any permanent, dedicated and adequate funding for environmental capacity building.

- The ECA essentially does nothing except to establish a Commission composed of government officials from each country. The ECA does not require any cooperative work program among the countries, but rather simply lists possible activities that the Commission "may" pursue if it chooses.
- The ECA fails to provide for a permanent, dedicated, and clearly adequate source of new grant funding for environmental capacity building that will be not taken from already existing government budgets.