

IN HONOR OF ROLAND G.
DOWNING, PH.D.

HON. MICHAEL N. CASTLE

OF DELAWARE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 2005

Mr. CASTLE. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to the newly elected President General of the National Society of the Sons of the American Revolution (SAR), Roland G. Downing, Ph.D. Following in the footsteps of Howard F. Horne, Dr. Downing is the second Delawarean to lead the SAR in the past 5 years.

While growing up in Nashville, Tennessee, Roland was active inside and outside of the classroom, attaining the rank of Eagle Scout, playing for his high school football team, and serving as the President of the student body. This commitment to excellence would continue at Vanderbilt University, where Roland earned a degree in organic chemistry.

After graduation, Roland would embark on a successful career with the Delaware-based DuPont Company, culminating in a 38-year tenure as Research Manager, Product Manager and Market Development Manager. During this time, Roland would take a brief hiatus to further his education, earning a PhD in organic chemistry. In addition to being a successful scientist, Dr. Downing served in the United States Naval Reserve for over 20 years, including a 3-year deployment at sea during the Korean War.

Prior to his election as President General, Dr. Downing held numerous other positions within the SAR, including: Secretary General, Treasurer General, Historian General, Regional Vice-President, and membership on the Executive Committee. Joining him in celebrating this new position are his lovely wife Norma, a son, two daughters, and eight grandchildren.

Mr. Speaker, in closing, I congratulate the SAR on their exceptional choice of Dr. Roland G. Downing as President General. He is an exemplary citizen, devoted family man, and most of all, a proud American.

STATEMENT OF HARLEY SHAIKEN
BEFORE THE HOUSE COMMITTEE
ON WAYS AND MEANS ON THE
DOMINICAN REPUBLIC—CENTRAL
AMERICA FREE TRADE AGREEMENT
(EXCERPTED)

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 2005

Mr. LEVIN. Mr. Speaker, I submit into the RECORD the following statement of Professor Harley Shaiken, excerpted from the statement submitted in connection with the House Committee on Ways and Means hearing of April 21, 2005 on the Dominican Republic—Central America Free Trade Agreement.

THE DOMINICAN REPUBLIC—CENTRAL AMERICA
FREE TRADE AGREEMENT

(By Harley Shaiken)

STATEMENT FOR THE HOUSE COMMITTEE ON
WAYS AND MEANS, APRIL 2005

The standard by which to judge this agreement is straightforward: does the Dominican

Republic—Central America Free Trade Agreement (DR-CAFTA) promote development and democracy, or does it create a small circle of wealthy winners and a far larger group of impoverished losers? Expanded trade has the potential to propel the former, but this agreement delivers the later. The result threatens rather than benefits U.S. workers. It's not that the train is moving too slowly, it's that DR-CAFTA is running in the wrong direction.

Plaguing the agreement is an unnecessary tradeoff: DR-CAFTA opens trade while locking in the labor status quo or worse. For citizens of Central America and the Dominican Republic, the tradeoff represents a squandered opportunity; for U.S. workers and their communities, it means an assault on wages and working conditions; for firms it may mean easier access to markets tomorrow but diminished markets in the coming years. DR-CAFTA provides strong language and tough penalties in all areas related to investment—at times riding roughshod over the six countries—but abandons labor rights largely to rhetoric and good intentions.

In some areas tough provisions favor special interests at the expense of the Central American countries and the Dominican Republic. Consider agriculture. The rural population ranges from 34 percent in the Dominican Republic to 60 percent in Guatemala. See Ferranti, D., G. Perry, W. Foster, D. Lederman, A. Valdez, "Beyond the City: The Rural Contribution to Development," (Washington D.C.: World Bank, 2005). How are small farmers supposed to compete with heavily subsidized U.S. exports? Due to subsidies for rice production, the U.S. exported paddy rice to Central America at a price that was 18–20 percent lower than its cost of production. See Oxfarm International, "A raw deal for rice under DR-CAFTA," November 2003, (5), http://www.oxfam.org.uk/what_we_do/issues/trade/downloads/bp68_Price.pdf. In pharmaceuticals, Professor Angelina Godoy has found that "the intellectual-property provisions in CAFTA actually extend the length of time during which the major pharmaceutical companies' products are guaranteed sole access to markets" which, in her view as well as that of many other observers such as Amnesty International, "just may be a death sentence for many in the Dominican Republic and Central America." See Angelina Godoy, "What makes free trade free?" Seattle Times, April 14, 2005, http://seattletimes.nwsour.com/html/opinion/2002240604_nocafta14.html; and Amnesty International, "Guatemala, Memorandum to the Government of Guatemala: Amnesty International's concerns regarding the current human rights situation," (Washington D.C.: Amnesty International, April 20, 2005) <http://web.amnesty.org/library/Index/ENGAMR340142005>. Many Latin Americans are likely to view provisions such as these as indicating that the U.S. is more serious about strong-arming weaker neighbors than sustainable economic integration.

Let's be clear from the start. This is not a debate about "free trade" versus "protectionism." Instead, the challenge is defining free trade for the twenty-first century. The right trade agreement could both encourage growth and move towards a more broadly shared prosperity, defining what one might call "smart trade." To do this, comparative advantage must be defined by innovation rather than repression. Labor standards are vital for protecting workers, but they also can help expand purchasing power, build healthier markets, and lay the basis for more robust trade.

What then is wrong with the labor provisions in DR-CAFTA? They send a clear message to the governments involved: the cur-

rent situation on labor rights is acceptable and even fewer rights for workers will do. The agreement lays out lofty labor rights goals and then backs them up with weak, convoluted language and meager resources. Moreover, these inadequate provisions replace language that has had a modest positive impact. Consequently, firms willing to travel the low road will define competitiveness, cutting off those who want to do the right thing.

In this testimony, I plan to explore three themes: labor laws and their enforcement, the promotion of reform, and finally "smart trade."

LABOR LAWS AND THEIR ENFORCEMENT

For millions throughout Central America and the Dominican Republic, the issue of labor rights is not an abstraction but an urgent need. Although labor laws differ among these six countries, there is little serious debate among scholars as to the situation on the ground. The issue is not simply selective abuses but a systematic denial of the right to freely join a union or the right to bargain collectively. Numerous reports from the ILO, Human Rights Watch, the United Nations, and the United States Department of State confirm the seriousness of the problems. See U.S. State Department Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices 2004," for Costa Rica, Dominican Republic, El Salvador, Guatemala and Nicaragua, February 29, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/c14138.htm>; Human Rights Watch, "Deliberate Indifference: El Salvador's Failure to Protect Workers' Rights," vol. 15, no. 5, December 2003, <http://www.hrw.org/reports/2003/elsalvador1203/>; Human Rights Watch, "CAFTA's Weak Labor Rights Protections: Why the Present Accord Should be Opposed," March 2004, <http://hrw.org/english/docs/2004/03/09/cafta90days.pdf>; ILO, "Fundamental Principles and Rights at Work: A Labour Law Study," (Geneva, International Labour Office, 2003), <http://www.ilo.org/public/english/dialogue/download/cafta.pdf>.

When it comes to making the choice on whether or not to join a union, workers currently risk dismissal, blacklist, violence, and even death. The results are readily apparent in the low union density. In Guatemala less than 3 percent of the workforce belongs to a union. See U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Guatemala Country Report on Human Rights Practices 2004," February 29, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41762.htm>. In El Salvador, no independent trade unions have been formed in the last four years.

The low trade union density is only the tip of the iceberg. The unions that do exist tend to be fragmented, weak, and isolated. Effective collective bargaining has become a rarity rather than the norm. The percentage of workers covered by collective bargaining agreements in three of the six DR-CAFTA countries based on 2003 data ranges from a low end of 1.4 and 1.5 percent in Honduras and Nicaragua, respectively, to 4.3 percent in El Salvador—not exactly a critical mass for effective collective bargaining. See International Labour Organization Decent Work Indicators Database <http://www.oit.or.cr/estad/td/indexe.php>

A trade agreement should stimulate positive change, not ratify the status quo or worse. What type of labor standards might be rigorous enough to improve the conditions of work yet flexible enough to recognize different levels of development? One model is the five core labor standards developed by the International Labor Organization (ILO). See International Labor Organization, "Fundamental ILO Conventions,"

<http://www.ilo.org/public/english/standards/norm/whatare/fundam/index.htm>, particularly the right of association (Convention 87) and the right to organize and bargain collectively (Convention 98).

Although DR-CAFTA pays rhetorical homage to these standards, in practice it throws them overboard. The agreement calls for each country to enforce its existing labor codes, no matter how inadequate or distant from the ILO standards. The agreement recognizes "the right of each Party to establish its own domestic labor standards, and to adopt or modify accordingly its labor laws." It then goes on to state that "each Party shall strive to ensure that its laws provide for labor standards consistent with the internationally recognized labor rights. . . . and shall strive to improve those standards in that light." See United States Trade Representative, "The Dominican Republic-Central America Free Trade Agreement," August, 5, 2004, http://www.ustr.gov/Trade_Agreements/Bilateral/DR-CAFTA/DRCAFTA_Final_Texts/Section_Index.html. "Strive to ensure" and "strive to improve"? This is the kind of language many would like to see on April 15 when they have to pay their taxes since it is virtually unenforceable. A standard based on effort is hardly a serious standard. Instead of "striving to ensure" international standards are met, the agreement could commit to upholding them and provide clear penalties if they are not upheld.

The domestic laws often read as if they are designed to thwart the formation of unions, and slipshod enforcement hardly improves the situation. Companies wanting to avoid unions can do just about anything; workers seeking to join unions face threats and intimidation. Protection against anti-union bias is akin to snow in San Francisco; it happens but not frequently. "In practice, labor laws on the books in Central America are not sufficient to deter employers from violations," an International Labor Rights Fund (ILRF) study found. See International Labor Rights Fund, "An Examination of Six Basic Labor Rights—Executive Summary of Reports on Honduras, Costa Rica, Nicaragua, El Salvador and Guatemala," based on a study by Asociación Servicios de Promoción Laboral (ASEPROLA), April 5, 2005, <http://www.laborrights.org/>. Byzantine regulations tend to tie unions into knots, laying out registration procedures that are more maze than procedure. In Honduras, for example, the ILRF found "obstacles and delays in union registration constitute a violation of ILO Convention 87 on the right to associate." Ibid. Weak as labor rights are, the track record hardly inspires confidence that they won't be ratcheted downwards in response to globalization.

Enforcement is squeezed by impunity and corruption, ineptitude and fear. In Guatemala, the U.S. State Department concluded in its 2005 human rights report that "Workers had little confidence that the responsible executive and judicial institutions would effectively protect or defend their rights if violated." The report stated that "the weakness of labor inspectors, the failures of the judicial system, poverty, the legacy of violent repression of labor activists during the internal conflict, the climate of impunity, and the long-standing hostility between the business establishment and independent and self-governing labor associations all constrained the exercise of worker rights." See U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Guatemala Country Report on Human Rights Practices 2004," February 29, 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41762.htm>.

THE PROMOTION OF REFORM

There is little dispute that labor conditions are bad today; the real question is will

DR-CAFTA make them better? In fact, it will make them worse. What makes the DR-CAFTA approach particularly problematic is that it replaces the modest existing protections for labor rights embedded in two unilateral trade preference programs: the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI). Much of the halting, modest reform that has taken place in the region over the last 15 years stems from the pressure brought through these programs. For example, EI Salvador was put on GSP review for abusing worker rights in 1992 and labor law reform followed within two years. See AFL-CIO, "The Real Record on Workers' Rights in Central America," (Washington D.C.: AFL-CIO, April 2005), <http://www.aflcio.org/issuespolitics/global/economy/upload/CAFTABook.pdf>.

What impetus is supposed to change destructive practices this deeply rooted? The core problem is one of political will, not lack of technical resources. The most powerful incentive for change is conditioning U.S. ratification on domestic labor law reform. Unfortunately, that horse has already left the barn. Some proponents argue expanded trade will result in more democratic rights. Burgeoning trade does not seem to have done much in Mexico—especially in the export sector—in the first decade of NAFTA. Cross border trade between the U.S. and Mexico has tripled yet the number of independent unions remains in single digits.

Realistically, powerful elites retain a strong hold on the DR-CAFTA economies. If expanded trade simply translates to expanded income for these elites, a small number of wealthy families may become wealthier and happier, but little will be passed along to the majority of the people of these countries. The growth of the middle class will be thwarted and, ironically, the potential market for U.S. goods dampened. By the same token, the pressure will correspondingly increase on the wages and working conditions for U.S. workers. The goal should be to harmonize standards upwards not the other way around.

SMART TRADE

The entire ratification process has caused severe strains and protests in civil society throughout Central America. Reflecting the gap between the ratification process for DRCAFTA and popular sentiment is the fact that legislatures often had to pass the agreement in the dead of night. The Honduran Congress ratified CAFTA in an early morning surprise vote specifically because protests were expected. The Guatemala Congress approved CAFTA in emergency session and under exceptional circumstances also because of anticipated protests. It passed by a lopsided vote of 126-12 on March 10; a Gallup poll carried out two weeks later (March 14-23) found that 65 percent of those polled felt that the agreement would harm the country. See Matthew Kennis, "Despite Ratification Anti-CAFTA protests Continue in Guatemala," IRC Americas Program, (Silver City, NM: International Relations Center, April 13, 2005), <http://www.americaspolicy.org/pdf/commentary/0504guatcafta.pdf>.

When it came to the issue of labor rights, tough negotiating dissolved into acceptance of the status quo. The danger, according to former President of Costa Rica Rodrigo Carazo Odio, is that "corporations take advantage of cheap labor, operating in enclaves with limited links to the national economy, trapping the region in a spiral of low salaries, low aggregate value and lack of compliance with basic labor standards, such as the freedom of association and the right to collective negotiation." See Rodrigo Carazo Odio, letter to the Members of the United States Congress Washington, DC, May 27, 2004.

We need to reframe the debate on the issues of labor rights and development. It is not a question of free trade versus protectionism, but rather "smart trade" versus "polarizing trade." Smart trade recognizes rights, spurs economic growth with equity, and promotes democracy; polarizing trade might spur trade in the short run but the benefits go to the winners' circle while the number of losers grows far larger. Democracy itself could be a casualty.

Smart trade requires four provisions:

1. Upward harmonization of domestic labor law to match the core ILO conventions as the goal of a three-year phase-in period. The granting of trade and investment benefits would follow agreed upon reform in a country's labor law. See Carol Pier, "The Right Way to Trade," Washington Post, August 1, 2003.

2. The ILO five core labor rights embedded in the core agreement, subject to strong enforcement provisions and penalties.

3. A development fund targeted for infrastructure and education. This fund would reinforce competitiveness in the six countries and place them on the "high road."

4. Expanded adjustment assistance for U.S. workers negatively impacted by trade. This assistance should also be proactive in industries threatened by trade.

No trade agreement can solve all the problems of development and globalization, but it should point in the right direction. A trade agreement that fosters prosperity and promotes democracy is possible and essential for the region and for the United States. Smart trade lays the basis for growing incomes and markets in Central America and the Dominican Republic and expanded U.S. exports and jobs. It begins to define a better model for integrating into the global economy. Unfortunately, that model is not this DRCAFTA.

PROPERTY RIGHTS AND EMINENT DOMAIN

HON. CLIFF STEARNS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, June 28, 2005

Mr. STEARNS. Mr. Speaker, last week, on this Floor I saluted the Supreme Court for a ruling that made citizens more free. Also, yesterday we passed H. Res. 312, Recognizing National Homeownership.

However, the Supreme Court I lauded was not ours, but the Canadian Supreme Court, for freeing the sale of health insurance. And in fact, USA homeownership may not be so liberating. Last Thursday, our Supreme Court backed that local governments can co-opt private property, and give it to another private entity, for economic development. This is under the power of eminent domain, and is an expansive setback to property rights advocates and all homedwellers.

The Fifth Amendment to our Constitution allows the government to take private property with "just compensation". Historically, it's been interpreted only for "public use": a highway, military base or other such infrastructure. Increasingly, and confirmed by *Kelo v. New London*, the Federal courts have said that private property could be taken for "public benefit," including tax revenues and job creation. Revitalization for the neighborhood trumps individual "homeownership".

Former bustling, now depressed New London, CT seeks to develop a private, commercial enterprise. They must compensate, but