

Who's Afraid of National Laws?

Pesticide Corporations Use Trade Negotiations to Avoid Bans and Undercut Public Health Protections in Central America

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The agrochemical industry is using trade agreements to block proposed bans on pesticides identified as the worst occupational health hazards by a multi-country illness surveillance program in Central America. Through privileged access to closed-door negotiations, industry inserted deregulatory mechanisms, including a regional pesticide registry that invalidates national laws, investors' rights protection, and increased intellectual property protections, into the draft Central American Customs Union and the Central American Free Trade Agreement. These agreements undermine health-based national pesticide registration requirements; weaken health ministries' role in pesticide control; block marketing of cheaper, less toxic pesticides; and have a chilling effect on future pesticide regulatory activity. So long as corporations have privileged access to the trade negotiations and civil society is excluded, the resulting agreements will benefit special interests at the expense of public health. *Key words:* agrochemical industry; industry influence; trade agreements; CAFTA; Central America.

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Central America has been a world leader in pesticide imports and use per capita, as well as in consequent pesticide-related problems. Between 1992 and 2000, pesticide imports in Central America more than doubled, from 18,000 to 45,000 tons.¹

Data from a long-term illness surveillance program, PLAGSALUD, carried out by the Pan-American Health Organization and the seven Central American ministries of health, documented over 7,000 pesticide poisonings in 2000, along with an average 98% underreporting rate of pesticide poisonings in the region. Factoring in the underreporting, the program estimates that almost 400,000 pesticide poisoning incidents occur in the region each year.² PLAGSALUD generated a short list of the 12 worst-actor pesticides responsible for the significant majority of poisonings,³ eight of which are classified as Ia/Ib, the most highly toxic category, according to the World Health Organi-

zation.⁴ These pesticides are marketed in the region by major transnational agrochemical corporations such as Aventis, BASF AG, Bayer, Dow Agrosciences, and Sygenta, as well as other international and national companies.⁵

Banning these 12 extremely toxic pesticides would go a long way to address occupational and environmental health problems associated with pesticides in the region. In fact, in Nicaragua, it is estimated that banning just a few of the 12 pesticides—including methamidophos, methomyl, and clorpirifos—could reduce occupational pesticide poisonings by over 50%.⁶ The data are so persuasive that the annual meeting of health ministers in Central America and the Dominican Republic, known by the Spanish acronym RESSCAD, issued a resolution calling for controls on the 12 worst-actor pesticides the Subregion.⁷ This marked the first time the ministers had addressed the occupation and environmental health risks of chemicals, and points to the potential for an effective public-health-based solution to the pesticide problem.

Epidemiological Surveillance and Democratic Reform: Advancing a Public Health Agenda

The PLAGSALUD data, in combination with adoption of more progressive pesticide and toxic-substances laws in several Central American countries, put the need for stricter controls to address health problems associated with pesticides squarely on the regional agenda. For example, in Nicaragua, the country with the strongest pesticide law in the region, a unique coalition of public health agencies and civil society used a new national law to trigger formal reviews of the registration of these worst-actor pesticides, with an eye toward their prohibition.

Collaboration between the health and environment sector and civil society organizations (CSOs) led to the adoption of the Pesticide and Toxic Substances Law (Law 274⁸) in 1998. The law gives the health ministry legally binding authority to issue a toxicological evaluation of pesticides proposed for registration. Using this authority, the Nicaraguan ministry has blocked registration of numerous pesticides that it judged to present unacceptable risks to public health. Moreover, the law gives public agencies as well as CSOs and individual citizens the right to require that the agriculture

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ministry conduct a formal reevaluation of the registration of any pesticide where there is evidence of significant adverse effects to agriculture, public health, or the environment.⁹

In 2001, the Nicaraguan ministry of health submitted the PLAGSALUD pesticide poisoning data to the Minister of Agriculture under the relevant provision of Law 274. The Minister was then legally bound to convene a multisectoral Technical Reevaluation Commission,¹⁰ including the ministries of agriculture, health, and environment, along with CSO and industry representatives, which spent almost two years taking technical testimony on the 12 pesticides. In recognition of this precedent-setting use of a national pesticide law, the pesticide industry flew in scientists from their headquarters around the world to argue for the safety of their products.

In January 2004, the Commission submitted its report to the Minister of Agriculture, recommending that three of the 12 pesticides be banned and restricting the sale of the other nine, and waited for him to take action. It is proving to be a long wait. The pesticide industry had already incorporated several provisions into draft regional trade agreements that would effectively circumvent any national legislation that was proving troublesome for them; therefore any delay in national action until the agreements are adopted would clearly be in their interest. So the Minister delayed, citing the need to wait and see whether the trade agreements would be adopted before taking any action.

The Winds of Deregulation Blow across the Isthmus

Agrochemical corporations have considerable political influence in Central America, where they have unparalleled access to and influence on national pesticide commissions and agricultural ministries. Pesticide industry representatives¹¹ were invited to participate as official members of government delegations to the Central American Customs Union negotiations as early as 1997, years before the general public, or even the health ministries, knew that the trade agreement was being proposed, and have been well represented on the national CAFTA negotiating teams. There is also a quickly rotating door between industry and government; for example, the current Nicaraguan Minister of Agriculture, who is the authority of record for pesticides, is a former president of the Nicaraguan agrochemical industry association, ANIFODA, the local Crop Life group.¹²

Free-trade agreements have become the key forums in which industry pursues global deregulation. Under the guise of eliminating “non-tariff barriers to trade,” free-trade accords such as the WTO, CAFTA,¹³ and the proposed Central American Customs Union¹⁴ are imposing on countries international standards that have been “harmonized” to the lowest common denominator, capricious “equivalency” standards; investors’ rights that

can be used to protect the right to profit over the right to health and environment; and patent and data protections that benefit transnational corporate interests. This combined package of deregulation on the one hand, and protection from competition on the other, is being used effectively in Central America to undercut national regulations and health standards, especially pesticide bans and stronger registration procedures, and to prevent the development of a local generic market for newer, and often less toxic, pesticides.

The Unified Pesticide Registry of the Central American Customs Union

The agrochemical industry inserted the creation of a regionally Unified Pesticide Registry into Central American Customs Union early in the negotiations. The Unified Registry would arbitrarily declare the various Central American national pesticide registration laws and regulations to be equivalent—even though they provide widely varying levels of health protection—so that once registered in one country a pesticide can circulate freely in all the countries that are members of the Union.¹⁵

The proposed registry is a very effective way for the pesticide industry to circumvent, for example, the stronger pesticide law in Nicaragua that gives the health ministry and civil society a legally binding role in pesticide registration. Once the Unified Registry is in place, companies will be able to select a country with a lax pesticide registration law, such as Guatemala, the regional center for pesticide formulation, and register their product for the whole region. Once the pro-forma registration process in Guatemala is completed (little more than a rubber stamp on an application), the pesticide will be registered for sale all member countries of the Customs Union.¹⁶

In theory, national bans in Nicaragua, El Salvador, or any other country still apply under such a system. But because the Customs Union does away with border inspections, in reality once a pesticide enters the stream of commerce in any Central American country it will be able to circulate freely throughout the entire Union. Central American budgets and staffs for rural inspection and monitoring of pesticide sales in the field are virtually nonexistent. In this way, the registry also seriously undermines the possibility and impact of adopting new national bans in the future.

The Unified Registry: A Life Preserver for Pesticides Facing Bans

The Unified Registry effectively removes control over pesticide registration—the fundamental regulatory mechanism in most countries—from the national level where democratic mechanisms are at play, to the supranational level, where neither civil society nor,

often, the ministries of environment and health are invited to the table.

The Technical Review Commission convened under the Nicaraguan pesticide law issued its resolution in early 2004 based on the two-year review process of the 12 worst-actor pesticides identified by PLAGSALUD. Based on its review, the commission, a consensus body with full participation of the ministry of agriculture, recommended a complete ban on monocrotophos, methamidophos, and methyl parathion, and restrictions on the sale of the other nine products.¹⁷

Faced with the Commission's recommendations, in 2004 the Minister of Agriculture used his ultimate weapon. He stated in a letter to an environmental organization that was a member of the Commission that he needed to wait until the Customs Union was in place before taking any action on the recommendations, reasoning that the adoption of the Unified Registry would mean that regulatory action could only be taken regionally,¹⁸ although there is no mechanism contemplated for regional action.

The minister's position is not supported by either the Nicaraguan pesticide law or the letter and spirit of the Custom's Union. The Central American economic integration agency, SIECA, and the governments themselves consistently reaffirm that a guiding principle of the Customs Union is the strict adherence to the constitution of each of the member nations.¹⁹ The majority of the Central American constitutions, including Nicaragua's, declare that the government has the duty to safeguard the health and environment of its citizens.²⁰ No constitution says that this duty may be delegated to another sovereign nation whose government is completely unresponsive to the first country's citizens.

The ministry of health, together with Nicaraguan environmental groups, is planning to petition the Minister of Agriculture to convene another meeting of the Technical Reevaluation Committee to address the lack of action on the committee's recommendations,²¹ but since the minister himself must convene the meeting it is by no means certain to happen. Additionally, an environmental organization, Centro Humboldt (the national representative of the Pesticide Action Network—Central America) is considering petitioning the Environmental Prosecutor's office to force the agriculture minister to carry out his duties under the pesticide law and implement the Commission's recommendations. Unfortunately, in Nicaragua, as in many developing southern countries, there are limited avenues of legal recourse available. The only other option open to the Centro Humboldt is an action at the Supreme Court, which is both costly and slow.²² Nonetheless, many who have been involved in the PLAGSALUD program and the Technical Reevaluation Committee fear that without legal action the Minister of Agriculture will abdicate his legal duty, legitimizing his inaction with the possibility that the Unified Pesticide Registry

will be adopted, and let the Commission's recommendations, whose implementation could appreciably reduce a significant occupational health hazard in the country, languish indefinitely.

Tools of the Trade

In addition to the Unified Pesticide Registry, the proposed Central American trade agreements make use of deregulatory mechanisms found in other trade accords around the world from the WTO to bilateral investment treaties, all of which have clear benefits for transnational corporations and equally clear risks for public health and the environment. These mechanisms include equivalence agreements (such as the Unified Pesticide Registry), harmonization agreements, and aggressive investors' rights protections. CAFTA also adds a new intellectual property rights (IPR) protection mechanism known as "data exclusivity" to this lineup. Data protection is a clear boon for transnational agrochemical companies' bottom lines, but is detrimental to public health and the poor economies in Central America.

Harmonization refers to the process of replacing democratically adopted national-level food safety, pesticide, or other standards with uniform international standards generated by supranational forums that are usually closed to the public, but quite open to corporate interests. These standards then become the only trade-legal standard, i.e., the only standard a country can enforce without risking trade sanctions for erecting "technical barriers to trade."²³

Since the late 1990s, the Central American countries have moved to harmonize pesticide toxicity labeling across the seven countries through a regional phytosanitary organization known by its Spanish acronym as OIRSA that works closely with the agrochemical industry.²⁴ The resulting harmonization required some countries to downgrade the toxicity labels on certain pesticides. For example, Guatemala had adopted health-based pesticide labeling regulations, which led the government to classify paraquat as a red-label, or extremely toxic, pesticide, based on the high national poisoning rate. The regionally harmonized toxicity labeling requirements, which were negotiated without health sector participation, required Guatemala to downgrade paraquat to a moderately toxic, blue-label pesticide, over the ministry of health's objection. In a country like Guatemala with a high illiteracy rate, the red label is the only effective tool to warn users of the product's risk.

CAFTA's *investors' rights* provisions allow private corporations to sue governments for practices—including enforcing environmental and health regulations—that can be interpreted as a regulatory appropriation that diminishes the corporation's expected future profits. Similarly, Chapter 11 of the North American Free

Trade Agreement (NAFTA) CAFTA will give foreign corporations broad rights that do not exist under U.S. law, allowing them to challenge health and environmental laws and regulations in international trade tribunals that operate outside the country's legal system.

Bans or phase-outs of toxic substances ranging from gasoline additives to asbestos to pesticides have been challenged under NAFTA.²⁶ For example, the U.S. manufacturer of the pesticide lindane, Crompton Corporation, is challenging Canada's ban on that pesticide (even though its use is already prohibited in the United States).²⁷ And Dow Agrosiences together with a consortium of U.S. pesticide companies has threatened to challenge a ban on non-agricultural use of 20 pesticides, including 2,4-D, adopted by the Province of Quebec.²⁸ For the small economies of Central America, the mere threat of such costly suits will exert a significant chilling effect on the adoption of new, stricter regulations, including pesticide regulations, to protect public health and the environment.

Finally, CAFTA adds new intellectual property (IP) protection called *data exclusivity*,²⁹ which provides special monopoly protections for regulatory data, such as efficacy and environmental fate data, that have traditionally been relied upon by generic pesticide and drug manufacturers to register their products.

CAFTA provides five additional years of market protection, or exclusivity, over and above the WTO-imposed 20-year patent protection, ensuring that generic producers cannot prove the efficacy and safety of their products by citing the patent-holder's data to demonstrate equivalency with a brand-name product.

While data exclusivity for pesticides will not cause the same enormous health impacts as with pharmaceuticals—it is estimated that prices for medicines may go up 800% in Costa Rica without generic competition³⁰—it will nonetheless have negative consequences. By stifling lower-cost generic production of newer, less toxic pesticides, data exclusivity will work to increase farmers' reliance on older, usually more toxic, broad-spectrum pesticides.

If the generic company can't rely on regulatory approvals granted on brand name data, in most cases—especially in smaller markets—it simply won't enter the market. Without generic competition, the price of the newer, less toxic pesticides will remain high and out of reach of many farmers, who will continue to rely on highly toxic, older and cheaper pesticides, with the consequent health impacts that PLAGSALUD documented in Central America.

Trade and Integration in Central America: On a Collision Course with Democracy and Public Health?

The U.S. Trade Representative asserts that “[t]rade agreements like CAFTA strengthen transparency and the rule of law . . .”³¹ but the experience in Central

America belies such claims. To the contrary, a striking lack of transparency and respect for domestic law in the negotiating process gives powerful players such as agrochemical corporations privileged access to the negotiating process to advance their agendas, while the weak and vulnerable, including farmers, workers, and the fragile Central American democratic institutions themselves, come out clear losers.³²

A few Central American authorities have spoken out against the effects of trade agreements on pesticide controls, joining with civil society organizations to argue that trade and integration should benefit public health, not undermine it. For example, the Costa Rican Commerce Minister Alberto Trejos stated that his country would accept the Customs Union only if it would maintain or improve national standards.³³ And the President of Panama signed an Executive Decree in 2002 reaffirming the right of that country to maintain its own pesticide-registration authority, even if a unified regional registry were to be adopted via the Customs Union.³⁴

But those in the region who would renegotiate parts of these trade agreements face powerful resistance from transnational chemical companies and increasing pressure from the United States to ratify the trade agreements quickly.³⁵ The agreements are seen as cornerstones to free trade in the hemisphere; the Customs Union is considered essential so that a truck with merchandise can traverse the “bottleneck” of the Central American isthmus in one business day or less, a practical prerequisite to the Free Trade Agreement of the Americas.

Trade agreements should follow the model of other international conventions, setting out a minimum standard, or floor, for all parties without limiting the member states' ability to enact legislation that provides greater protection to public health and the environment. Instead, trade agreements impose a restrictive ceiling on environment, consumer, and worker protections. If international standards are weaker than its own, a country must harmonize its standards down to the lowest common denominator. But as long as corporations are invited to negotiating tables, while the health and environment sector, labor, NGOs, and consumers are left out in the cold, the agreements, not surprisingly, reflect these narrow special interests, not those of the poor-country trading partners. Nowhere, for example, does CAFTA (or the WTO, or the draft FTAA) require member countries to apply their environmental or labor laws diligently, or prohibit them from lowering environmental standards to attract foreign investment.

If the Unified Pesticide Registry and other deregulatory trade measures to protect pesticide markets are adopted as currently written, the region will have lost a unique opportunity to use economic integration to help bring health and environmental standards of all member nations up to a common, union-wide level, following the European Union integration model. For example, the Unified Pesticide Registry could be

crafted to bring the pesticide-registration standards of all Central American member countries up to the best in the region, in this case that of Nicaragua, thereby establishing better health protections throughout the isthmus, instead of allowing them to fall to the least common denominator.

As of mid-2005, the Nicaraguan Minister of Agriculture still refused to fulfill his legal duty to act on the commission's resolution and implement the ban on the three worst-actor pesticides; the Central American governments have yet to ratify the Customs Union, and they are divided on CAFTA. An alternative approach—creating a union-wide pesticide-registration process that gives the ministries of health the legally binding authority to review regional pesticide registration applications, bringing the whole region up to the standard of the Nicaraguan law—has been proposed by that country's health ministry and is supported by civil society. To date, though, the proposal has been ignored by the Customs Union negotiators, made up of representatives from the commerce and agriculture ministries, who graciously offer a seat at the table to their colleagues from the agrochemical industry on a routine basis.

The proposed trade agreements in Central America and throughout the hemisphere³⁶ show an unambiguous bias toward corporate profit over public health. The agreements have strayed far from the subject of non-discrimination in trade, and become key vehicles through which industry promotes a deregulatory agenda around the world, usurping the rights and responsibilities of sovereign nations to protect the health and environmental of their citizens and undermining national laws achieved through democratic processes. The principle guiding the approach advocated by CSOs and the ministry of health in Nicaragua—retooling integration and trade agreements to strengthen public health and environmental protection in all the trading-partner nations—is one cornerstone of an alternative strategy. But time is of the essence. Deep concerns over CAFTA's impacts on labor rights, farmers, and vulnerable economic sectors in the United States as well as Central American have stalled the ratification process, offering a critical opportunity for collaborations between the health sector and CSOs, such as the one in Nicaragua, to put public health protection back on the trade and integration agenda.

End Notes

1. OPS/PLAGSALUD. Plaguicidas y salud en el Istmo Centroamericano [Pesticides and health in the Central American Isthmus]. San José, Costa Rica: OPS, 2000. In 2000, pesticide use was approximately 45,000 tons in the seven Central American countries. Central America has a per-capita pesticide use of 2.1 kg, making it the region with the highest per-capita use of pesticides in the world. The WHO average annual estimate is 0.6 kg/person/year. Also: Wesseling C, Aragón A, Castillo L, et al. Hazardous pesticides in Central America. *Int J Occup Environ Health*. 2001;7:287-94.
2. Murray D, Wesseling C, Keifer M, Corriols M, Henao S. Surveillance of pesticide-related illness in the developing world: putting the data to work. *Int J Occup Environ Health* 2002; 8:243-248. See also: Wesseling C, Aragón A, Castillo L, et al. *ibid*.
3. The 12 pesticides are: aldicarb, aluminum phosphide, carbofuran, chlorpyrifos, endosulfan, etoprophos, methamidophos, methomyl, methylparathion, monocrotophos, paraquat, and terbufos. For more information see: Epidemiological situation of acute pesticide poisoning in the Central American isthmus, 1992-2000, *Epidemiol Bull*. 2002;23:No. 3, September, available on the Pan American Health Organization Web site at: <http://www.paho.org/English/SHA/be_y23n3-plaguicidas.htm>.
4. WHO/ILO/UNED. The WHO Recommended Classification of Pesticides by Hazard and Guidelines to Classification 1998-1999. Geneva, Switzerland: IPCS, 1998.
5. Pesticide Registration Division (DRENCIAP) of the Nicaraguan Ministry of Agriculture (MAGFOR). Pesticide registry, October 2002. National companies also market these products.
6. Personal communication, Dr. Marianela Corriols, PLAGSALUD, OPS/PAHO. May 2004.
7. The RESSCAD resolution requests the appropriate ministries in each country to "... restrict the use of the 12 pesticides . . . recognized as responsible for the largest number of poisonings and deaths [in] the Subregion . . . and to realize the administrative measures necessary to prohibit the 107 listed pesticides" which correspond to those that are prohibited in one or more of the 8 countries of the Subregion." OPS PLAGSALUD, Fichas técnicas de plaguicidas a prohibir o restringir incluidos en el Acuerdo No. 9 de la XVI Reunión del Sector Salud de Centroamérica y República Dominicana (RESSCAD). OPS/OMS. Proyecto PLAGSALUD Costa Rica, 2001. [PAHO PLAGSALUD. Technical information cards for the pesticides listed as ones that should be banned or restricted in Agreement No. 9 of the XVI Meeting of the Health Sector of Central America and the Dominican Republic (RESSCAD).
8. Ley No. 274 de Nicaragua, Ley Básica para la Regulación y Control de Plaguicidas, Sustancias Tóxicas, Peligrosas y Otras Similares (1998) [Law No. 274, Nicaragua. Basic Law for the Regulation and Control of Pesticides, Toxic and Dangerous Substances and other Similar Substances (1998)].
9. Arto. 60, Ley 274. "La Autoridad de Aplicación someterá a reevaluación técnica las sustancias químicas . . . y productos formulados registrados cuando existan indicadores de efectos adversos a la actividad agropecuaria sostenida, la salud humana y el ambiente en general. . ." [Article 60, Law 274. "The implementing authority will submit for technical reevaluation those chemical substances... and registered formulated products when indicators of adverse effects on agricultural activity, human health and the environment in general exist..."]
10. Both the Technical Reevaluation Committee and the PLAGSALUD program received major funding from DANIDA (the Danish Agency for International Development) through its Program of Support to the Agriculture Sector (PASA DANIDA) and support for the Pan American Health Organization, respectively.
11. The industry participated through the Central American Crop Life associations, ANIFODA, APA, and AGRQUIMA.
12. It is fairly common knowledge in Nicaragua that the Minister of Agriculture also has a significant ownership interest in one of the national pesticide companies that sells methamidophos on the national market. Similarly, the former president of El Salvador, Alfredo Cristiani, has major interests in pesticide formulating and sales businesses in that country.
13. For the full text of CAFTA please see the U.S. Trade Representative's CAFTA briefing book at <http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA/Briefing_Book/Section_Index.html?ht=>>.
14. Although the final draft text of the proposed Customs Union still has not been made public, more information about its contents and the work plan of the negotiating countries can be found on the Web site of the Central American Secretariat for Economic Integration (SIECA), <www.sieca.org.gt> and at the Web site of the Costa Rican Ministry of Commerce (COMEX, Ministerio de Comercio Exterior de Costa Rica), <www.comex.go.cr>.
15. The Unified Pesticide Registry is known in trade terminology as an equivalence agreement, whereby a trade agreement declares

- that different countries' regulations or standards—even with distinctly different levels of public health protection—are legally equivalent. Another example of an equivalency agreement is found in the bilateral trade agreement between the United States and Australia, which allowed the U.S. Department of Agriculture (USDA) to grant equivalency status to the Australian Meat Safety Enhancement Program, even though in the United States independent government agents inspect meat, while in Australia the meat industry itself carries out the inspections. See text of the agreement at: <http://www.ustr.gov/Trade_Agreements/Bilateral/Australia_FTA/Final_Text/Section_Index.html>.
16. See <<http://www.sieca.org.gt/>> for a list of framework treaties and regulations, including the Reglamento Centroamericano sobre Medidas y Procedimientos Sanitarios y Fitosanitarios. Aprobado mediante Resolución No. 37-99 (COMIECO-XIII), del 17 de septiembre de 1999 Modificado mediante Resolución No. 87-2002 (COMIECO-XXIII) del 23 de Agosto de 2002. [Central American Regulation on Sanitary and Phytosanitary Measure and Procedures. Approved as Resolution No. 37-99 (COMIECO-XIII) of September 17, 1999, modified as Resolution No. 87-2002 (COMIECO-XXIII) of August 23, 2002]. See also: Boletín Extraordinaria SIECA, 13 marzo 2003, at <www.sieca.org.gt/Publico/Cotos_y_Publicaciones/Boletin_Informativo?Boletin_Extraordinario/No_68/BOLETIN_EXTRAORDINARIO_%20No.68.htm>.
 17. Comité Técnico de Re-Evaluación (CTR) Nicaragua. Evaluaciones Técnicas: Metamidofos, Monocrotophos y Paration Metil—Recomendaciones Finales. Componente Apoyo a la Regulación de Plaguicidas, Programa de Apoyo al Sector Agrícola; Agencia Danesa para el Desarrollo Internacional (PASADANIDA). Septiembre 2003. [Technical Reevaluation Committee of Nicaragua. Technical Evaluations: Methamidophos, Monocrotophos and Methyl Parathion—Final Recommendations. Support to Pesticide Regulation Component, Program of Support to the Agriculture Sector; Danish Agency for International Development (PASA-DANIDA). September 2003.]
 18. Personal communication, Julio Sanchez, coordinator of the Pesticide Action Network—Central America program at the Centro Humboldt, a Nicaraguan nonprofit environmental organization.
 19. SIECA. Estado de Avance de la Unión Aduanera Centroamericana (agosto 2004). “Los países centroamericanos tienen como objetivo . . . [el] estricto apego a las Constituciones de los Estados Parte. . .” <www.sieca.org.gt/publico/IntegracionEcoCA/UnionAduanera/SITUACIONUACAactual.htm>. [SIECA, State of Advance of the Central American Customs Union (August 2004). “The Central American countries have as their objective . . . strict adherence to the constitutions of the State parties. . .”]
 20. See Articles 59 and 60, respectively, of the Constitution of the Republic of Nicaragua (1987 with the reforms of 1995 and 2000), guaranteeing all Nicaraguans the right to health and the right to live in a healthy environment. Article 59 also states that: “The State will establish basic conditions for health promotion, protection, recuperation and rehabilitation. It is the responsibility of the State to direct and organize programs, services and health actions and to promote popular participation in the defense of health.” República de Nicaragua, Constitución de 1987, con las reformas de 1995 y 2000. Artículo 59—Los nicaragüenses tienen derecho, por igual, a la salud. El Estado establecerá las condiciones básicas para su promoción, protección, recuperación y rehabilitación. Corresponde al Estado dirigir y organizar los programas, servicios y acciones de salud y promover la participación popular en defensa de la misma. Los ciudadanos tienen la obligación de acatar las medidas sanitarias que se determinen. Artículo 60—Los nicaragüenses tienen derecho de habitar en un ambiente saludable; es obligación del Estado la preservación, conservación y rescate del medio ambiente y de los recursos naturales. <www.georgetown.edu/LatAmerPolitical/Constitutions/Nica/nica.html>.
 21. The committee chair position rotates between the three ministries, health, environment, and agriculture, with the current chair being the ministry of agriculture.
 22. Because Nicaragua never developed a system of administrative law courts that would facilitate actions against government agencies when they fail to carry out legal duties, even though it received significant multilateral funding to do so, there are limited legal avenues available when government agencies fail to carry out their legal responsibilities.
 23. See CAFTA, Chapter 6, Sanitary and Phytosanitary Measures, for other examples of harmonization. <www.ustr.org>.
 24. For more information about OIRSA, the Organización Internacional Regional de Sanidad Agropecuaria, please see their Web site at <<http://ns1.oirsa.org.sv/>>. See the harmonized regional regulation at: <<http://www.oirsa.org/Publicaciones/RC/ReglamentoCentroamericano.htm>>.
 25. A recent WTO dispute-panel resolution, forcing Japan to weaken its standard on the amount of methyl bromide pesticide residue permitted to conform to WTO-legal CODEX levels, provides another example of harmonization's downward pressure on pesticide and health standards. For more information see Japan—Measures Affecting Agricultural Products—Communication from Japan and the United States [WT/DS76/12, 30 August 2001], <<http://docsonline.wto.org/DDFDocuments/t/WT/DS/76-12.doc>>.
 26. For more information about investors' disputes generally, see Public Citizen's Global Trade Watch Web site at <www.publiccitizen.org>.
 27. See Health Canada's Pest Management Regulatory Agency (PMRA) administers the Pest Control Products Act (PCPA), <<http://www.pmra-arla.gc.ca/english/highlights/in20050125-e.html>> for more information. Also see: *Crompton Co. v. Canada (Minister of Health)* at the Canadian Office of the Commissioner for Federal Judicial Affairs Web site, <<http://recueil.cmf.gc.ca/fc/2001/fic/v3/2001fc28706.html>>.
 28. Pesticide Action Network Updates Service. Canada's First Province-Wide Ban of Cosmetic Pesticides Threatened under NAFTA. November 15, 2002. <www.panna.org>.
 29. See CAFTA Chapter 10, Investment, at <www.ustr.org>.
 30. Bird S, Quniteros C, Ticehurst S. Oxfam America Briefing Note, Make Trade Fair for Central America—Agriculture, Investment and Intellectual Property: Three Reasons to Say No to CAFTA. September 2003. <www.oxfamamerica.org/pdfs/cafta_090303.pdf>.
 31. USTR CAFTA Policy Brief. February 2005. <www.ustr.gov>.
 32. Although beyond the scope of this paper, the economic realities of trade and integration in Central America will of course also have significant impacts on the agriculture sector, increasing acreage dedicated to nontraditional export crops, which tend to be more pesticide-intensive, while exposing the small-farm sector to fierce international competition. Mexico's experience, where real wages declined in the decade after NAFTA, and the country now has to import 40% of its food needs, is not encouraging. See, for example: Stiglitz J. New trade pacts betray the poorest partners. Initiative for Policy Dialogue. July 10, 2004. <www.gsb.columbia.edu/ipd/programs/item.cfm?prid_24&iyid+21&itid+544>. Competition from low-priced U.S. grains dumped on the Mexican market at prices below the cost of production (made possible by enormous agricultural subsidies in the United States) forced more than a million small farmers off their land, and a recent World Bank report that Central America will suffer a similar fate under CAFTA. See: Daniel Lederman, Guillermo Perry, Rodrigo Suescun. Trade Structure, Trade policy and Economic Policy Options in Central America 13. The World Bank, 2002. For information about dumping of agricultural products in Latin America at below the cost of production, see generally: the Institute for Agriculture and Trade Policy, <www.foodfirst.org>.
 33. Costa Rica aceptará la Unión Aduanera “. . . solo en el sentido de que signifique igualar o mejorar los estándares nacionales en las distintas áreas.” Posición de Costa Rica Frente al Proceso de Integración Económica Centroamericana y la Unión Aduanera. Junio de 2002., Ministro Trejas, Ministerio de Comercio Exterior, Costa Rica. DM-0437-2. [Costa Rica will accept the Customs Union “. . . only if it means equalling or improving national standards in the distinct areas.” Postion of Costa Rica on the Central American Integration Process and the Customs Union. June 2002. Ministry of Commerce. Costa Rica. DM-0437-2.]
 34. República de Panamá, Decreto Ejecutivo N° 305 (De 9 de septiembre de 2002). Considerando que es deber del Estado garantizar la salud de la población y prevenir la contaminación del ambiente, como derecho humano para el desarrollo sostenible, en todo el territorio nacional.

- Que establece el licenciamiento previo no automático, para reglamentar la importación de algunas sustancias químicas potencialmente peligrosas, como sustancias o materiales peligrosos controlados. . . . Mireya Moscoso, Presidenta de la República

[Republic of Panama, Executive Decree No. 305 (9 September 2002). Considering that it is the duty of the State to guarantee the health of the population and prevent environmental contamination, as a human right for sustainable development, throughout the national territory.

- That non-automatic licensing prior to import be established, to regulate the importation of chemical substances that are potentially dangerous, such as dangerous controlled substances or materials. . . . Mireya Moscoso, President of the Republic]

35. Key elements of CAFTA include rules on market access, tariff elimination, export subsidies, and sanitary and phytosanitary (SPS) measures. The parties agree once again to apply the science-based rules of the WTO Agreement on SPS Measures, and

a technical committee and dispute-resolution process are established. For more information see the U.S. Trade Representative's CAFTA Policy Brief—Feb 2005, <www.ustr.gov>. See also USDA fact sheet: Central American–Dominican Republic–United States Free Trade Agreement. March 2005. <www.fas.usda.gov/info/factsheets/CAFTA/overall021105a.html>.

36. Regional trade and integration agreements similar to the Central American Customs Union and CAFTA exist or are being negotiated throughout the Americas. In addition to the North American Free Trade Agreement (NAFTA), the southern countries have negotiated the MERCOSUR accord, which has some similar regional pesticide-registration articles; the Andean Pact countries have negotiated an integration agreement and are currently negotiating a free-trade agreement with the United States. For the text of regional and bilateral agreements in Latin America see generally the Web sites of the Inter-American Development Bank, <www.iadb.org>, and the Organization of American States, <www.oas.org>, and their specific trade related pages, <<http://www.iadb.org/intal/ingles/i-default.htm>> and <www.sice.oas.org/cp_bits/english99/main.asp>.