

## **US-Central America Free Trade Agreement Concluded – Costa Rica Still Outside, Dominicans Are “Docking”**

### **Introduction**

To the surprise of many observers, the United States and five Central American nations concluded their negotiation of a free trade agreement before the year-end 2003 deadline, announcing the completion of a basic framework in mid December. According to the US Trade Representative (USTR), the goal was to notify Congress in January that the new FTA will be signed in April and submitted for the legislature's formal approval over the summer. (The Trade Act of 2002 requires that Congress be given 90 days notice before new trade agreements are signed).

Almost immediately there were warning signs that the Central American Free Trade Agreement (CAFTA) might not be a done deal. Costa Rican negotiators withdrew from the talks, arguing that their government would have to consider a last minute requirement by the US that Costa Rica open its insurance and telecommunications sectors to foreign investment. And US Senator Max D. Baucus, a qualified CAFTA supporter, cautioned that too many issues were left unfinished to predict that the FTA could be signed and sent to Congress as the USTR projected.

### **CAFTA Summary Highlights**

*Market access* will be increased for all parties. For example, more than 80% of US industrial and consumer exports will be made duty free when CAFTA enters into force, with the remainder phased out over 10 years. Industrial goods from Central American countries will have 99.1% duty free access into the US market upon enactment. About half of US exports of *agricultural products* will be duty free and the remaining duties will be phased out over 15 years. *Textiles and apparel* will enter duty and quota free if rules of origin are met. The rules are stretched to include fabric from Mexico and Canada.

The *services sector* will be opened and access created in telecommunications, express delivery, computer services, tourism, energy, transport, engineering, financial and insurance services, entertainment, audio/visual and others. The Central American countries will liberalize dealer protection and distributor arrangements.

*Intellectual property* rights will be protected. This category includes digital products such as software, music and videos. Traditional areas—trademarks, patents and trade secrets—will enjoy a strengthening of protection. Counterfeiting and piracy by end users will be criminalized.

A secure and effective legal framework will be created to protect *investments* of all kinds, including debt, concessions, contracts, etc. US investors will enjoy the same treatment as local investors, including due process and fair market value for expropriations. Investors will have access to an open and impartial dispute settlement process.

Central American *government procurement* will be open to competition from US firms and the procurement process will be transparent, with advance notice and bid review

procedures. Anti-corruption measures will be adopted, making bribery a criminal offense.

The *environmental* chapter allows for civil society to benefit from a public submissions process. The chapter also provides for benchmarking environmental cooperation and for input from international organizations.

*Workers' rights* are furthered by ensuring effective enforcement of domestic labor laws, as well as a cooperative program to improve these laws and build capacity to monitor performance in Central America.

CAFTA has a *dispute settlement* process covering all aspects of the agreement, including environmental and labor issues. Dispute panels will be open to the public and third party input and include the participation of experts.

A Committee on Trade Capacity Building will be formed to work with international organizations and NGOs. The US provided \$61 million in trade capacity building projects in 2003 and will continue its assistance in 2004 and beyond. The IDB has approved \$320 million in CAFTA-related operations and has a new lending program for trade, integration and competitiveness providing both policy-based and investment loans.

### **Costa Rica**

According to private sector sources, the Costa Rican negotiating team withdrew from the final negotiating session to consult with the government because of the tabling by the US late in the process of a call for opening the insurance sector, a longstanding state monopoly. Washington sources deny this, saying that the position had been on the table since the Houston negotiation.

The day after its negotiators withdrew, the Costa Rican government issued a statement expressing optimism that the difficulties would be overcome and Costa Rica would be able to join the other countries in signing the agreement. One week later, however, Foreign Trade Minister Alberto Trejos stated that in exchange for opening the telecommunications and insurance sectors Costa Rica would demand improved market access for textiles and agricultural goods.

In early January, Costa Rica tabled a proposal asking the US for two tariff preference levels (TPL) for wool and cotton in addition to those already negotiated. These would allow Costa Rican manufacturers to incorporate fabric from third countries into apparel to be exported to the US. On January 9, both sides discussed a proposal tabled by the Costa Ricans to open the insurance sector. Reportedly, one major difference is the speed of opening, with Costa Rica favoring a more gradual approach. The week of January 19, Trejos and Deputy USTR Peter Allgeier met informally in Washington to explore solutions to the impasse.

Costa Rica is willing to allow cross-border supply of insurance and to permit US companies to establish in Costa Rica. In telecommunications, although specifics need to be negotiated, Costa Rica is willing to liberalize services of cellular phone

transmission, Internet service and private data networks. In the agricultural sector, the two sides are divided over market access for sugar, poultry, beef, pork, onions and potatoes.

### **Adding the Dominican Republic to CAFTA**

The USTR and Dominican negotiations held talks on January 12-16 to discuss bringing the Caribbean country into CAFTA. The Dominican Republic has only about 90 days to complete the negotiation for it to be included in the submission to the US Congress. USTR Zoellick met with President Hipólito Mejía and members of the Dominican legislature, civil society and business community to discuss the FTA on January 14. A second round of negotiations will be held in Puerto Rico on February 9 and a third in Washington at a later date. The timetable would be difficult to meet, but in the first round the Dominican government accepted the basic CAFTA text while leaving market access to the last two negotiating sessions. The remaining talks will focus on goods to receive instant duty free status and those phased in over five or 10 years.

The US established a trade capacity working group for the negotiations with the participation of IFI, NGO and private sector representatives. The US funded \$5.3 million in trade capacity building activities in the Dominican Republic in 2003.

### *Observations*

Costa Rica is traditionally more difficult to negotiate with than the other Central American countries, accustomed as it is to playing on its reputation as the longest-standing democracy in the region. Informed sources say that the Costa Rican delegation tried to get the other Central American negotiators to stall the negotiations so Costa Rica could press its demands. When this strategy failed, the Costa Ricans withdrew from the negotiations. Their attempt to use the media to favor their cause may have backfired as well.

The US is unlikely to give Costa Rica much beyond some minor face-saving concessions, for the agreement is already negotiated and important changes could upset the agreed-upon text. Another issue is acceptance by the US Congress. Having Costa Rica in CAFTA would be an advantage, but not enough of one to give up on important concessions that have already been negotiated. From the beginning, the goal of CAFTA has been to turn temporary one-way concessions into a permanent, two-way international agreement. The attitude of the US Congress will be swayed by opportunities for US businesses. As the agreement now stands it should enjoy enough congressional support to pass, even in the pre-election political atmosphere in Washington.