# OAS TRADE, GROWTH AND COMPETITIVENESS STUDIES

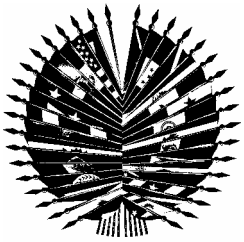
**Analyses on trade and integration in the Americas**

# The Application of the Dominican Republic-Central America-United States Free Trade Agreement

Anabel González

A Publication of the
Organization of American States
**Office of Trade, Growth and Competitiveness**

March 2005



## OAS TRADE, GROWTH AND COMPETITIVENESS STUDIES

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# The Application of the Dominican Republic – Central America – United States Free Trade Agreement

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Washington, D.C. 20006
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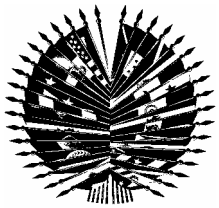

* Anabel González was Costa Rica's Special Ambassador for U.S. Trade Affairs, and in this capacity led the Costa Rican team in negotiating the Free Trade Agreement among the Dominican Republic, Central America and the United States. The opinions expressed in this article are strictly of a personal nature. The author is grateful to Francisco Chacón, Roberto Echandi, Fernando Ocampo, Mariel Picado, Rosine Plank-Brumback, Carolyn Robert, Regina Vargo and Juan Luis Zúñiga, for reading and commenting on a previous draft, and she accepts full responsibility for any remaining errors. She is also grateful to Vivian Campos and to Viviana Santamaria for their help in preparing the graphs. Special thanks to Maryse Robert for the revision of the English version of this paper.

## *PREFACE*

*How will the Dominican Republic-Central America-United States Free Trade Agreement (DR-CAFTA) apply among the Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua)? What impacts will the DR-CAFTA have on their own integration regime, the Central American Common Market? How will the regional integration agreement coexist with the new agreement with a major trading partner?*

*These were key issues confronting negotiators from these countries, and are the focus of this study by Ambassador Anabel González, who led the Costa Rican team in negotiating the agreement. These are key issues confronting today not only the Andean Community countries but indeed any group of countries that have a regional integration agreement and that enters into a negotiation of a comprehensive and ambitious free trade agreement, with a third party, particularly if that party is a major trading partner. Given the relevance and immediate interest of these questions, and the fact that there is practically no literature covering these issues, the Office of Trade, Growth and Competitiveness is pleased to publish this study in both English and Spanish and give it wide circulation.*

*Earlier free trade agreements (FTAs) that the five Central American countries signed jointly with Chile and with the Dominican Republic, as well as the agreement signed jointly by El Salvador, Guatemala and Honduras with Mexico, had reversed the usual convention under international law by providing that the respective agreement applied bilaterally between the non-Central American party and each individual Central American party, but not between or among the Central American parties themselves. As Ambassador González explains, there was little real discussion in the negotiations of these FTAs on--or incentive for--changing the rules governing internal Central American trade to conform to the respective FTA rules, given the relatively low levels of trade and investment with their non-regional partners at the time. The situation was quite different with DR-CAFTA, where the benefits of its application inter se could be very significant in the light of the large US commercial and investment presence in the region. The issue was ultimately resolved in favor of the application of the agreement among all parties, meaning also among the Central American countries themselves, as embodied in Articles 1.1 and 2.1 of the DR-CAFTA.*

*There are, however, certain rights and obligations under the agreement which apply only as between some of the Parties and not among all of them, most notably agricultural tariff rate quotas that apply bilaterally to some of the parties, and provisions relating to textile origin verification that do not apply between and among the Central American parties nor between them and the Dominican Republic. Specific non-identical but reciprocal commitments were made by the parties on investment, cross-border supply of services, financial services, and telecommunications, which differ in content due to different internal legal frameworks. Additionally, the author points out, the United States assumed specific commitments in favor of other parties regarding textile quotas and cumulation rules to determine injury in anti-dumping investigations.*

*As to the relationship between the agreement and the Central American integration instruments in force or that may be adopted in the future, the solution adopted in Article 1.3.2 of the agreement permits their coexistence. The only limitation is that the Central American countries may not diminish the disciplines agreed in DR-CAFTA by recourse to existing instruments or by adopting instruments or measures inconsistent with the agreement. Ambassador González explains that DR-CAFTA constitutes a floor of disciplines that countries of the region are committed to respecting in their reciprocal trade.*

*The bulk of the study analyzes the potential impact of the DR-CAFTA rules against the backdrop of the existing Central American rules in the various subject areas of the agreement: trade in goods (tariff elimination schedules and rules of origin, national treatment and market access for goods, origin procedures, customs administration, trade facilitation, sanitary and phytosanitary measures, technical barriers, trade remedies, government procurement), investment and trade in services (investment, cross-border trade in services, financial services, telecommunications, electronic commerce), intellectual property, labor, environment, exceptions, dispute settlement, and administration and institutional provisions. Ambassador González notes that the Central American regime was focused primarily on trade in goods and that in other areas these countries had advanced in negotiating disciplines similar to those that the DR-CAFTA would establish. She also considers that the Central American integration scheme had succeeded in opening the region to the world economy and international competition, thus making it easier to "include" the United States in the scheme.*

*The author also examines a very important aspect that increases the value of DR-CAFTA as a case study and the possible lessons for other negotiations: the application of the DR-CAFTA between each Central American party and the Dominican Republic. As noted already, the five Central American countries and the D.R. have an existing free trade agreement, which applies bilaterally between each Central American party and the Dominican Republic. Rather than opting for co-existence with the DR-CAFTA, as had been done with the Central American integration instruments, the parties concerned decided that upon entry into force of the DR-CAFTA, it would replace the earlier agreement and become the only instrument governing the preferential trading relationship between each Central American party and the D.R.*

*Ambassador González states that the door is open for the eventual incorporation into the DR-CAFTA of other parties, such as Panama and the Andean Community countries, and that the agreement could become the nucleus or provide the model for trade integration of the entire hemisphere.*

*The publication of this analytical study is indeed timely as the DR-CAFTA agreement awaits ratification in the signatory parties, including the passage by the U.S. Congress of implementing legislation. Few people are as well-placed as Ambassador Anabel González to provide knowledgeable commentary, given her key position and hands-on participation in the negotiations. Her thoughtful and practical insights are an invaluable contribution to the continuing analysis of the implications of the negotiating outcome for the countries concerned, the hemisphere at large and beyond. Similar challenges on how to deal with existing bilateral and sub-regional trade and integration agreements will confront negotiators of the Free Trade Area of the Americas (FTAA) whenever these negotiations are re-initiated. The FTAA negotiating process thus far has produced a Ministerial statement of general principles on the matter dating from 1998.* The experience of the DR-CAFTA negotiators in this area can provide important lessons on possible approaches and modalities for translating such a principle operationally into an FTAA Agreement.*

*The OAS Trade Unit was established on April 3, 1995 under the Office of the Secretary General to support OAS Member States in carrying out the trade and integration-related mandates of the Summit of the Americas and Trade Ministerial Meetings. On September 15, 2004, the Trade Unit became the Office of Trade, Growth, and Competitiveness (OTGC). The mission of the OTGC is to support OAS Member States in their efforts to promote prosperity and growth in the Hemisphere in the related areas of trade and integration, transparency and competitiveness, including in specific sectors such as tourism and other services sectors. The Office is organized in four divisions: Trade and Information; Growth and Competitiveness; Tourism and Small Enterprise; and Inter-American Ports.*

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* "The FTAA can co-exist with bilateral and sub-regional agreements, to the extent that the rights and obligations under these agreements are not covered by or go beyond the rights and obligations of the FTAA." General Principles para. f, Annex I, FTAA San José Ministerial Declaration, March 19, 1998.

*At the OTGC, we believe firmly in the vision of the Summit of the Americas process. We are committed to strengthening democracy, economic integration, investment and free trade with a view to guaranteeing sustainable development and improving the standards of living of the peoples of the Americas. The key objective of the OTGC is to support the integration process in the Hemisphere and provide assistance to OAS Member States in their efforts toward this goal. In doing so, we continue to provide analytical and technical support to countries, particularly smaller economies, for the conclusion and the establishment of the FTAA process. We also continue to respond to the trade-capacity building needs of OAS Members States through the FTAA Hemispheric Cooperation Program and other cooperation mechanisms under free trade agreements and integration processes in the Americas with a view to assisting countries in participating effectively in the negotiations, implementing their trade commitments, and adjusting to free trade and integration. Most importantly, we are committed to assisting countries with different levels of development and size of the economies in the design, formulation and implementation of policies aimed at strengthening their productive capacity and competitiveness so as to enable them to reap the benefits of free trade through economic growth and poverty alleviation.*

*The OTGC is also promoting hemispheric and regional dialogue between OAS Member States and their civil society through the dissemination of information on trade-related issues. It is producing analyses on trade and growth-related issues at the micro and macroeconomic levels with a view to understanding the economic trends in Latin America and the Caribbean, and to identifying the key issues having an impact on the economic performance of these countries.*

*The OTGC welcomes comments from readers on this and other studies, and hopes to contribute to fostering the dialogue on trade, economic integration and competitiveness-related issues in the Hemisphere. The views expressed in the OAS Trade, Growth and Competitiveness Studies series are the authors' own and should not be attributed to the General Secretariat of the OAS or any OAS Member State.*

*José Manuel Salazar-Xirinachs*

*Director*
*Office of Trade, Growth and Competitiveness*

*March 2005*

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## INTRODUCTION

This paper aims at analyzing the application of the Free Trade Agreement between the Dominican Republic (DR), Central America, and the United States (DR-CAFTA),[1] and the implications that will stem from such application, with special emphasis on the application of the agreement among the countries of Central America.[2]

The issue is very relevant in light of the impact that it may have on trade and investment in Central America, and because of its potential to serve as a precedent for further integration in the Hemisphere.

The paper is divided into six sections. The first section discusses the issue from a conceptual viewpoint, examining and reviewing the Central American precedents. The second section looks at the approach that the DR-CAFTA has adopted in terms of its application, and the nature of its obligations. The third section analyzes the relationship between the DR-CAFTA and Central American integration instruments, with reference to their general rules and to the concrete implications of those rules in each of the thematic areas of the agreement. The fourth section reviews the application of the agreement between each Central American country and the DR. The fifth section discusses some considerations with respect to the opportunities and challenges of the multilateral application of the agreement. The sixth section offers some final comments.

[1] The Dominican Republic – Central America – United States Free Trade Agreement, final version, is available at <**http://www.ustr.gov/Trade_Agreements/Bilateral/CAFTA-DR/CAFTA-DR_Final_Texts/Section_Index.html**.>

[2] This analysis is based on another paper by the author, see González (2004).

# I. INITIAL CONSIDERATIONS

## A. Statement of the Issue

When several countries are engaged in negotiating a free trade agreement, they must decide whether the resulting agreement will be applicable among all Parties to the agreement, i.e. whether they will all have the same rights and obligations with respect to each other. The first question to be considered is whether the agreement will apply among all the countries, or only among some of them. If the agreement is to apply to all, the Parties will have to determine whether they are to assume the same obligations to each other, or whether there will be differentiated obligations.

In addition, when some countries that are Party to this new agreement have already signed another regional trading agreement that regulates trade with those other countries, either wholly or in part, it is essential to determine what is to be the relationship between the rules of the new agreement and those of the existing trade agreement.

The first aspect to be addressed has to do with the legal nature of the new agreement: Will it be bilateral or multilateral in character?[3,4] This question arises when two or more countries (A, B and C, for example) decide to negotiate a free trade agreement with another country (D). If it is to be a bilateral agreement, its rules will govern the relationship of A with D, of B with D, and of C with D, but they will not apply among A, B and C. If the agreement is of a multilateral nature, its rules will govern trading relations among all the countries that are Party to it, i.e. among A, B, C and D.[5]

In light of the foregoing, the underlying question is whether the "hub and spokes" approach is appropriate in the negotiation of trade agreements. If one country is Party to two or more agreements, it will be the "hub," while the "spokes" will be its partners in each of those agreements.

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[3] It is perhaps more appropriate to the use the term "plurilateral" than "multilateral," since the latter term is usually reserved in the trade arena to agreements signed within the framework of the World Trade Organization (WTO). Nevertheless, in the context of the FTA negotiations, this discussion was posed in terms of "multilateral" (as opposed to "bilateral") application, and for that reason this paper will use that term. The term refers to the application of an agreement between all signatory countries.

[4] The bilateral or multilateral nature of an agreement has nothing to do with its negotiating process. A group of countries may negotiate together with another country, without necessarily implying whether the resulting agreement is to be applied bilaterally or multilaterally.

[5] It must be noted that some obligations of the agreement may have a "general vocation," in the sense that, because of the way they are written and the material they cover, they are intended to be applicable generally and not only in relation to the agreement's signatories. In that regard, it does not matter whether the agreement is of a bilateral or multilateral nature, since the obligations will have to be applied generally. It is clear, however, that even if the obligation is of a general nature, compliance by a Party to the agreement can only be demanded in the context of the agreement, using the dispute settlement mechanisms provided therein.

This issue was thoroughly debated during the negotiation of the North American Free Trade Agreement (NAFTA) among Canada, the United States and Mexico. The discussion focused on defining the advantages and disadvantages of negotiating a "hub and spokes" agreement in which the United States would be the hub and Canada and Mexico the spokes, or whether a single agreement applicable among the three participating countries would be preferable. At that time, a consensus emerged in the literature rejecting the hub-and-spokes approach in favor of negotiating a single trade agreement among all the Parties.[6] This approach, which Lipsey called "plurilateral regionalism,"[7] was considered preferable to the hub and spokes system, which would tend to divert trade and investment in favor of the country that occupied the hub position.[8] The issue was also debated in the context of negotiating trade agreements in Asia, and in those cases a similar conclusion emerged from the literature.[9]

Once the decision has been made that a free trade agreement will be applicable among all Parties, it must still be clarified whether the obligations that the Parties assume will be identical, or whether there may be differentiated obligations within the same agreement. For example, in the case of NAFTA, its provisions apply as a general rule to Canada, the United States and Mexico. There are, however, exceptions of two types to this rule. First, there are some bilateral agreements that are applicable to two countries. This is the case, for example, in agriculture, where there are three independent bilateral agreements applicable between Canada and the United States, between Canada and Mexico, and between the United States and Mexico. Second, in some respects, it can be said that we are faced with three comprehensive agreements that are independent of each other. For example, Canada can apply an exception for cultural industries, while Mexico does not have the right to a similar exemption; Mexico on the other hand maintains significant protection for its petroleum industry, and has accepted commitments that are very different in that sector from those applicable between the United States and Canada.[10]

The issue becomes even more complex when some countries that are Parties to the free trade agreement already have a previous agreement governing their trade, therefore making it necessary to define the relationship between that trade agreement and the new pact. In the case of NAFTA, Canada and United States already had a trade agreement in force since 1989;[11] nevertheless, it did not give rise to much debate, once Canada proposed to the United States,

[6] See Kowalczyk and Wonnacott (1992).

[7] Lipsey (1995), p. 27.

[8] Lipsey (1991), p. 105.

[9] See, for example, Baldwin (2003). Available at <**heiwww.unige.ch/~baldwin/PapersBooks/SpokeTrapTalk8Dec03.pdf**>.

[10] See Wonnacott (1996), pp. 88-89.

[11] Lipsey and York (1988).

and to Mexico, that NAFTA should have a trilateral character[12] -- the two partners essentially agreed to let NAFTA prevail over their previous agreement.[13]

In other contexts, however, the issue has been heavily debated. This has been the case, for example, in the Free Trade Area of the Americas (FTAA) negotiations, given the number and variety of existing agreements among countries of the Hemisphere. For the time being, the issue has been resolved by noting that "the FTAA can co-exist with bilateral and subregional agreements, to the extent that the rights and obligations under these agreements are not covered or go beyond the rights and obligations of the FTAA."[14] To put this definition into concrete terms, however, will be one of the major challenges that this negotiation process will have to address. The challenge is indeed very similar to what the DR-CAFTA negotiation process faced.

### B. Central American Precedents

Trade among Central American countries has been subject to preferential rules for more than 40 years. Thanks to a series of integration instruments,[15] Central American countries already have a free trade area in place, where goods move across countries with almost complete freedom. Most of these instruments relate to trade in goods, albeit recent years have seen some progress in other trade-related areas. The region's ambition is to turn this integration scheme into a full customs union.

With these regional rules in place, Central American countries have had to make it explicit, when negotiating free trade agreements with other countries, whether those agreements will apply among Central American countries as well, or will be confined to governing the relationship between each country and the non-regional partner. In the case of the agreements signed with Chile and the Dominican Republic, Central American countries opted to apply these agreements bilaterally in each case.[16] Article 1-01.2 of the agreement with Chile, for example, provides that:

[12] Lipsey (1995), p. 27. For another interesting discussion on the implications for Canada of being Party to a trade agreement between the United States and Mexico, see Hart (1990).

[13] NAFTA was to a great extent based on the FTA. See Wonnacott (1996), pp. 79 and ff.

[14] See Summit of the Americas, Fourth Trade Ministerial Meeting (1998), *Joint Declaration*, paragraph 9. Available at <**www.ftaa-alca.org/Ministerials/SanJose/SanJose_e.asp**>.

[15] For details on the legal framework governing Central American economic integration, see <**www.sieca.org.gt/SIECA.htm**>.

[16] The bilateral application of these agreements generally allows for a type of joint action by Central American countries under three circumstances: one Central American country may incorporate inputs from another into a good for export to the non-regional partner (regional accumulation of originating goods); Central American countries may participate as third-Party complainants in proceedings initiated by another country of the region, in order to support the Central American country's position; and the administration body of the FTA may participate in decisions on matters of common interest to all Parties. None of this implies, however, that the rules of the agreement are applicable between Central American countries.

"Except where provided to the contrary, the agreement shall apply bilaterally between Chile and each Central America country considered individually."[17]

The agreement with the Dominican Republic contains an identical provision.[18] The same is true of the agreement signed jointly by El Salvador, Guatemala and Honduras with Mexico.[19] In all these cases, trade within Central America continues to be governed by the instruments of Central American integration.

Except in very specific aspects, in none of these cases did the negotiations involve any real discussion as to whether the resulting agreement would be applicable among countries of the Central American region. This can be explained by two factors. First, as shown in Graph 1, Central American countries trade much more with each other than they do with any of their non-regional partners, and so they had no incentive to adopt a new set of rules governing that trade. Second, given the low levels of trade and investment by those non-regional partners with Central America (with the possible exception of Mexico), the potential economic benefits from the multilateral application of the agreement were probably not of such great interest to Central American countries themselves or to the non-regional partner in question.

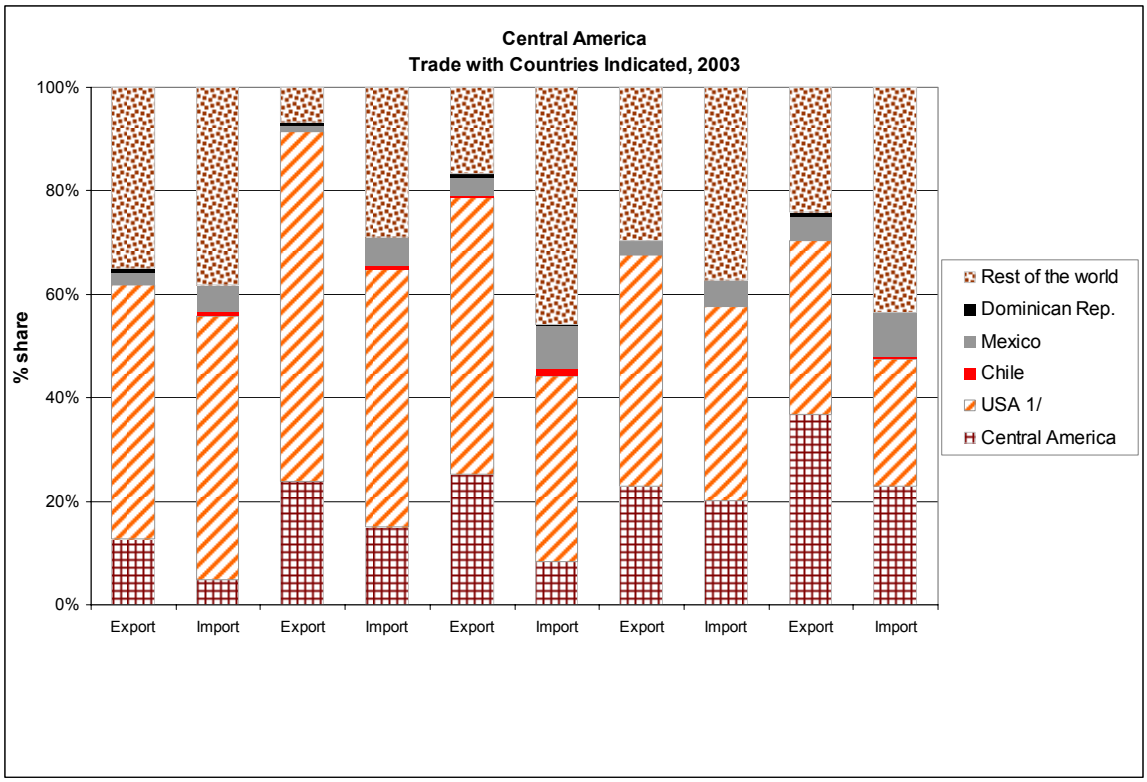
The situation when it comes to the DR-CAFTA is quite different. As can be seen from Graph 1, trade between each Central American country and the United States is very significant and, given the large US trade and investment presence in the region, the benefits of the multilateral application of the agreement could be very significant. It is not surprising therefore that this issue was discussed during the DR-CAFTA negotiation, and that a decision in favor of the multilateral application of the agreement among all Parties was ultimately made.

[17] *Free Trade Agreement between Central America and Chile*, Law 8055 of January 4, 2001, published in the Official Gazette No. 42 of February 28, 2001, and valid as of February 15, 2002.

[18] *Free Trade Agreement between Central America and the Dominican Republic*, Law 7882 of June 9, 1999, published in the Official Gazette No. 132 of July 8, 1999, and valid as of March 7, 2002.

[19] Article 1-04 of this agreement provides that: "The provisions of this agreement apply between Mexico and El Salvador, Guatemala and Honduras. This agreement does not apply between El Salvador, Guatemala and Honduras." Free Trade Agreement between the United Mexican States, El Salvador, Guatemala and Honduras, Legislative Decree No. 214 of December 7, 2000, published in the Official Gazette of El Salvador No. 240, Volume 349 of December 21, 2000, and valid as of March 15, 2001.

## Graph 1




**In Millions of US$**

| Trade Partner | Costa Rica | | El Salvador | | Guatemala | | Honduras | | Nicaragua | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Export | Import | Export | Import | Export | Import | Export | Import | Export | Import |
| Central America | 770.6 | 363.1 | 746.0 | 868.0 | 1,122.4 | 669.6 | 304.4 | 662.8 | 223.0 | 430.5 |
| USA [1/] | 2,996.0 | 3,899.0 | 2,121.0 | 2,869.0 | 2,392.5 | 2,929.3 | 595.3 | 1,227.3 | 202.0 | 466.9 |
| Chile | 7.3 | 80.5 | 0.6 | 43.8 | 4.6 | 107.6 | -- | -- | - | 8.4 |
| Mexico | 132.3 | 379.2 | 37.4 | 315.6 | 156.4 | 678.9 | 36.4 | 162.1 | 27.9 | 159.3 |
| Dominican Republic | 67.9 | 5.6 | 22.1 | 4.2 | 40.5 | 10.2 | 2.9 | 4.8 | 5.8 | 1.5 |
| Rest of the world | 2,126.1 | 2,915.7 | 208.9 | 1,662.4 | 743.0 | 3,731.2 | 393.3 | 1,218.0 | 145.8 | 820.3 |
| **TOTALS** | **6,100.2** | **7,643.1** | **3,136.0** | **5,763.0** | **4,459.4** | **8,126.9** | **1,332.3** | **3,275.0** | **604.5** | **1,886.9** |

Source: Central Bank of each country.
1/ It is important to note that the U.S. International Trade Commission reports trade flows between Central American countries and the USA greater than those reported by the respective Central Banks.
NOTE: The information on Honduras has no breakdown for trade with Chile.

## II. THE APPLICATION OF THE DOMINICAN REPUBLIC-CAFTA

### A. Bilateral or Multilateral?

The general rules for the application of the DR-CAFTA are contained in Article 1.1, which provides specifically that:

"The Parties to this Agreement, consistent with Article XXIV of the General Agreement on Tariffs and Trade 1994 and Article V of the General Agreement on Trade in Services, hereby establish a free trade area."

Article 2.1 defines "Party" as follows:

"Party means any State for which this Agreement is in force."

Under these provisions, the DR-CAFTA is to cover trading relations between each Central American country and the United States, among Central American countries themselves, between the DR and the United States, and between each Central American country and the DR. In other words, the agreement will, as a general rule, be applied multilaterally.[20]

### B. Are Obligations Identical or Differentiated?

In the DR-CAFTA, the majority of the obligations that the Parties have assumed vis-à-vis each other are identical: there is a single set of rules that applies to all Parties. Nevertheless, there are some exceptions where the obligations are different, either because there are agreements that are applicable only between the United States and each Central American country or the DR, or because each country assumes obligations that, while consistent and applicable to all the others, are mutually independent and differentiated. Moreover, in a few cases, there are obligations that are applicable only to one Party, without implying a reciprocal, or even a different, obligation for another Party.

Examples of agreements negotiated within the DR-CAFTA framework that are to be applied on a bilateral basis include that regarding tariff-rate quotas between the United States and each Central American country, or between the United States and the DR and between the DR and Costa Rica, on the one hand, and Nicaragua on the other. By virtue of these, the United States and each country of the region will allow a specified volume of certain agricultural goods to be imported from the other Party without immediate payment of customs duties, while imports in excess of those volumes will still be subject to each country's tariff elimination schedule. Paragraph 4 of the General Notes to the Tariffs Schedule of each country indicates that these

[20] Some obligations of the DR-CAFTA, as indicated in section III.B, are general in nature, in which case the comment in footnote 5 is relevant.

tariff-rate quotas are granted bilaterally, i.e. by the United States to each country of the area and by each of those countries to the United States. No Central American country has accepted any tariff-rate quota obligation with regards to other countries of the region.

The most significant case of non-identical obligations that are assumed consistently by one Party with respect to the others are those resulting from the application of the chapters on Investment, Cross-border Trade in Services, Financial Services and Telecommunications, in relation to the Annexes of Specific Commitments and Nonconforming Measures of each Party. The resulting obligations for each Party are not the same, for they depend on the content of the specific commitments negotiated, as well as the legal regime in force, which each country has included in its annex. For example, Costa Rica's obligations in telecommunications are not the same as those assumed by other countries, but they have their counterpart in the obligations that other countries have accepted in this area and, in any case, they are applicable for all those countries.

Finally, the DR-CAFTA contains certain obligations that do not apply among all Parties. Some of these are applicable only to the United States, and constitute a specific commitment of that country to the Central American countries and the DR, without any quid pro quo obligation by those countries. This is the case, for example, with Article 3.22, which provides that the United States will eliminate the existing quantitative restrictions that it maintains under the WTO Agreement on Textiles and Clothing on certain textile products of Central American countries; or Article 8.8.1, according to which the United States will provide Central American countries with more favorable treatment in the determination of injury to its domestic industry during antidumping investigations. In both cases, the obligation binds only the United States and a Central American country does not have to assume that obligation with respect to any other country in the region, or with the United States.

In one very specific case, all Central American countries assume an obligation with respect to the United States that is not applicable among them. This involves the note to Article 3.24, whereby Central American countries agree not to apply among themselves any of the paragraphs concerning the obligation regarding verification of origin for textiles.

## III. THE RELATIONSHIP BETWEEN THE DOMINICAN REPUBLIC-CAFTA AND THE CENTRAL AMERICAN INTEGRATION INSTRUMENTS

### A. General Rule

Because the DR-CAFTA was to be applicable among Central American countries, and at the same time those countries had a set of instruments governing their reciprocal trade that were in force prior to the negotiation of the DR-CAFTA, the relationship between those two sets of rules had to be examined. The solution adopted permits the coexistence of the DR-CAFTA and of any Central American integration instruments that are in force or that may be adopted in the future. This is specifically confirmed in Article 1.3.2, which provides that:

"For greater certainty, nothing in this Agreement shall prevent the Central American Parties from maintaining their existing legal instruments for Central American integration, adopting new legal instruments of integration, or adopting measures to strengthen and deepen these instruments, provided that such instruments and measures are not inconsistent with this Agreement."

As is clear from that provision, the only limitation is that Central American countries cannot erode the disciplines agreed in the DR-CAFTA via existing instruments or by adopting instruments or measures inconsistent with the agreement. Therefore, the DR-CAFTA constitutes a "floor" of disciplines that countries of the region are committed to respect in their reciprocal trade.

### B. Implications by Issue Area

The multilateral application of the DR-CAFTA has particular implications in each issue area of the agreement. These relate, on the one hand, to the very nature of the obligations established in each chapter and, on the other hand, to whether or not there are Central American rules governing the relationship among countries of the region. Hence the importance of analyzing how the general rule applies in each of these issue areas.

#### 1. Trade in Goods

##### *a. Tariff Elimination Schedules and Rules of Origin*

With a view to creating a free trade area among the Parties, Article 3.3.2 of the DR-CAFTA provides that:

"Except as otherwise provided in this Agreement, each Party shall progressively eliminate its customs duties on originating goods, in accordance with Annex 3.3."[21]

[21] Annex 3.3 contains the tariff elimination schedule for each of the Parties to the DR-CAFTA. In its schedule, each country assigns every tariff item to a staging category that identifies the schedule for eliminating tariffs on that item.

Under this provision, each Party assumes the obligation of eliminating its tariffs, immediately or gradually, on goods originating from other countries that are Parties to the agreement, within the time limits and in the manner established in its own tariff elimination schedule. It is important to note that tariffs are eliminated for goods that meet the provisions of Chapter 4 (Rules of Origin and Origin Procedures) and the product- specific rule of origin established in Annex 4.1 of the DR-CAFTA.

To determine how this obligation relates to situations covered by the Central American integration's legal instruments, it must be noted that, while there is free trade within the region for virtually all goods, this applies only to goods originating in Central American countries, according to the provisions of the Central American rules of origin.[22] To reflect these circumstances adequately, and avoid any disruption of current trade flows, Article 3.3.3 of the DR-CAFTA provides that:

"For greater certainty, paragraph 2 shall not prevent a Central American country from providing identical or more favorable tariff treatment to a good as provided for under the legal instruments of Central American integration, provided that the good meets the rules of origin under those instruments."

Accordingly, a good produced in one Central American country may continue to benefit from free trade under the legal instruments of Central American integration, provided it meets the rules of origin established therein, or it may benefit from preferential tariff treatment under the DR-CAFTA, provided that it meets the rules of origin included in that agreement. It is in fact possible for a good produced in any country of the region to qualify as "originating" under both systems of origin determination. In this case, it will be up to the commercial operator to decide which of the two systems to use.

In principle, of course, the DR-CAFTA rules of origin hold out a greater possibility of using non-regional imports in goods for export from one Central American country to another. This is so, to begin with, because of the US participation in this agreement, and the insertion in the DR-CAFTA of a provision for cumulation of originating goods.[23] In fact, Article 4.5 provides that:

"1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, shall be considered to originate in the territory of that other Party."

[22] *Central American Rules on the Origin of Goods and Amendments Thereto* (Central American Rules of Origin), Decree 26833-MEIC of March 20, 1998, published in the Official Gazette No. 77 of April 22, 1998, and their amendments.

[23] The accumulation established here is a kind of "full cumulation:" even though Article 4.5 does not say that the preferential trading area created by the FTA is a "single territory," as is usually done in cases of full cumulation: it is clear that any working or processing operations done within the zone will count towards the determination of origin, except in those cases covered by Notes 4 and 5 of the General Notes to the Tariff Schedule of each Central American country. On this point, see World Trade Organization (2002).

By virtue of this provision, each Central American country may use goods or materials originating in the United States for incorporation into a good produced within its own territory, and may export that good under the DR-CAFTA to another Central American country. Accordingly, even in cases where the DR-CAFTA contains a specific rule of origin that at first glance is as restrictive as the Central American system, the cumulation rule means that the DR-CAFTA is more flexible, because it allows the incorporation of US-sourced materials.[24]

What the foregoing means is that it does not matter whether a good is produced in the territory of a Central American country or of the United States, using materials from any of the six countries, as long as the rules of origin are met. This is why note 1 to Article 3.3.2 provides that:

"For greater certainty, except as otherwise provided in this Agreement, each Central American country shall provide that any originating good is entitled to the tariff treatment for the good set out in its Schedule to Annex 3.3, regardless of whether the good is imported into its territory from the territory of the United States or any other Central American Party. An originating good may include a good produced in a Central American Party with materials from the United States."

Thus, even in cases where the DR-CAFTA establishes a very restrictive rule of origin that does not allow use of materials from third countries, producers in a Central American country or the United States can use materials from any of the DR-CAFTA countries to produce an originating good and export it to the territory of another Party, under the tariff elimination schedule of Annex 3.3.[25]

There are two specific exceptions to the foregoing. On the one hand, Note 4 in the General Notes to the Tariff Schedule of each Central American country provides that, in the case of the tariff-rate quotas that each country agrees to grant the United States, operations performed in or material obtained from a Central American Party will be considered as if the operations were performed in a non-Party and the material was obtained from a non-Party. The purpose of this rule is to ensure that tariff-rate quotas are filled by US goods, produced in that country with materials obtained from that country. On the other hand, Note 6 makes a similar provision with respect to sugar and coffee, products that are currently excluded from intra-Central American free trade under the so-called "Annex A."[26] In this case, the multilateral approach does not apply for as long as those goods remain excluded. Nevertheless, a Central American country may produce coffee or sugar under the cumulation provision on the condition that the product is exported to the United States. When such products are incorporated into free trade under the

[24] The only exception to the foregoing is when the DR-CAFTA rule of origin is more restrictive than the Central American integration rule. What happens then is that, under the DR-CAFTA, only materials from Central America or the United States may be used, while under the Central American rules, those materials could come from third countries, including the United States, but also any other non-Central American country.

[25] Clearly, if the product-specific rule of origin allows use of goods from third countries, those goods may also be incorporated into the good without impairing its originating character.

[26] Agreement on the *Central American Tariffs and Customs System*, Law 6986 of May 2, 1985, published in the Official Gazette Winter-Spring 1985, Volume 1, page 110, and its amendments.

Central American integration rules, they will be fully covered by the multilateral rule established in Article 3.3.2.

As indicated, Central American trade may be conducted under the DR-CAFTA rules of origin or under the Central American rules of origin. Naturally, if the first is invoked, the good will be subject to each country's tariff elimination schedule established in Annex 3.3. This means that an originating good under DR-CAFTA rules exported by one country of the region to another will be given the tariff treatment that the importing country has granted the United States, under its own tariff elimination schedule established in Annex 3.3. If the transaction is conducted under the Central American rules of origin, it will be exempt from customs tariff, except in the case of sugar and coffee.

The impact of the multilateral application of the DR-CAFTA in this issue area includes: (i) a broader range of supply sources available to firms, (ii) greater integration of those firms in the trading region, including new opportunities for investment and productive linkages, and (iii) the potential for improving their competitiveness. This in turn encourages greater trade liberalization within Central America, which will occur only gradually, since the elimination of tariffs for most goods that are produced in the region will take place over 10 years for industrial goods and 15 years for agriculture.

### *b. Other Aspects Relating to Trade in Goods*

#### i. National Treatment and Market Access for Goods

Chapter III of the DR-CAFTA establishes disciplines relating to national treatment and market access for goods, designed as a general rule to secure the immediate or progressive elimination of import tariffs on trade in goods among the Parties, and to prevent other, nontariff measures (for example, import and export restrictions, export taxes etc.) from reversing the trade-liberalizing effect of tariff elimination.[27]

In terms of rules, the disciplines relating to national treatment and market access for goods contained in the Central American instruments are more limited in scope than those of Chapter III of the DR-CAFTA. This reflects the fact that they were for the most part negotiated more than 40 years ago, in the context of the Central American Economic Integration Treaty, i.e. even before Central American countries joined the GATT. In this respect, then, the multilateral application of the DR-CAFTA will serve to strengthen and modernize the disciplines pertaining to regional trade, particularly in such areas as import and export restrictions and export taxes.

The only significant difference between the DR-CAFTA and the Central American rules as they have been interpreted in this area have to do with according duty free treatment to goods produced in a free trade zone.

[27] Chapter III also contains specific sections dealing with trade in agricultural goods and in textiles and clothing. The Central American integration instruments do not contain any specific provisions applicable to these products, which instead are subject to the general rules governing trade in goods.

Before turning to this issue, it is important to note that Article 3.4 of the DR-CAFTA places two important limits on countries' ability to use special tariff-exempt systems such as free zones. Thus, the first paragraph of that Article provides that:

"No Party may adopt any new waiver of customs duties, or expand with respect to existing recipients or extend to any new recipient the application of an existing waiver of customs duties, where the waiver is conditioned, explicitly or implicitly, on the fulfillment of a performance requirement."

In other words, countries may not establish new tariff exemption systems, nor may they grant tariff exemptions under existing systems to new beneficiaries. Paragraphs 3 and 4 of that article authorize Costa Rica, El Salvador and Guatemala to maintain their free zones for the period allowed by the WTO rules, i.e. until December 31, 2009.[28] In the case of Honduras and Nicaragua, the WTO rules allow them to continue those regimes until they achieve a per capita GNP of $1000.[29]

In light of the foregoing, and consistent with Article 3.3.2 of the DR-CAFTA, goods that meet the rules of origin established in Annex 4.1 may enter a Central American country under the tariff elimination program established in Annex 3.3, regardless of whether the goods were produced in a free zone.

In the Central American integration framework, the legal instruments do not contain any specific rule on this point, essentially because they date from a time before free zones were established in the region. Nevertheless, the interpretation that has prevailed to date is that if the good was produced in a free zone, it will not benefit from duty free treatment but will be subject to payment of the MFN (most-favored-nation) tariff rate.[30]

Consistent with the foregoing, the treatment of goods produced in a free zone will differ, depending on whether the good meets the rules of origin under the Central American or the DR-CAFTA system. In the first case, the good may enter another Central American country, but it will not enjoy tariff preference, instead paying the MFN tariff. In the second case, the good may enter any Central American country, or the United States, at the preferential tariff rate available under that country's tariff elimination schedule. This will be the case until 2009 for Costa Rica, El Salvador and Guatemala, and for Honduras and Nicaragua until they reach $1000 per capita GNP: until that time these countries can maintain their free zones, in accordance with DR-CAFTA Article 3.4 (3 and 4).

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[28] World Trade Organization, Agreement on Subsidies and Countervailing Measures, text available at <**http://www.wto.org/english/docs_e/legal_e/24-scm.pdf**>.

[29] Ibid, Annex VII.

[30] Article XI of the Central American Economic Integration Treaty is in a sense the basis of this interpretation, which in any case has not been accepted by Costa Rica. See Ministerio de Comercio Exterior, *Tratamiento arancelario a las empresas de zona franca en Centroamérica* at <**www.comex.go.cr/acuerdos/comerciales/centroamerica**>. There is in fact some debate over the practical application of this provision.

ii. Origin Procedures, Customs Administration and Trade Facilitation

The DR-CAFTA contains two chapters dealing with customs: Section B of Chapter 4 refers to origin procedures and Chapter 5, which establishes provisions on customs administration and trade facilitation. Section B of Chapter 4 deals with the procedures for obtaining preferential tariff treatment under the DR-CAFTA, and the responsibilities of importers and exporters, as well as rules for verifying origin and interpreting the Chapter. Chapter 5 deals with provisions for customs modernization and trade facilitation: these are quite innovative, placing great stress on transparency, exchange of information, and cooperation.

The rule governing origin procedures applies to all Parties on an equal basis, since the intent is to make operational the preferential treatment that countries grant each other under the DR-CAFTA. When it comes to customs administration and trade facilitation, the nature of the obligations is such that most of them are of a general nature, dealing with such issues as publication, automation, or review and appeal.

In the Central American integration system, regulations governing the origin of goods contain provisions on the procedures to be followed in granting tariff preferences, on the responsibilities of importers and exporters, and on other related aspects.[31] In this area, however, there are some differences with the DR-CAFTA rules: in particular, DR-CAFTA Articles 4.15 and 4.16 provide that the importer may "claim" the origin of the goods, something that is not contemplated in the Central American rules. For customs administration and trade facilitation, there are regional provisions similar to those of the DR-CAFTA in some cases, such as the duty of publication, although the DR-CAFTA is more innovative in this area.

The rules governing origin procedures, whether those of DR-CAFTA or those of the Central American integration instruments, will apply to trade in goods originating under their respective regime. From this viewpoint, there is no real relationship between one set of rules and the other. Yet it is important not to let procedural differences become a factor in deciding which regime to use, and not to let this issue become a burden for trade administration. In this area, the multilateral provisions of the DR-CAFTA pose, not for legal but rather for efficiency reasons, a challenge to revise the Central American rules and bring them as close as possible to those of the DR-CAFTA.

With respect to customs administration and trade facilitation, since most of the DR-CAFTA provisions are general in nature, the Parties will have to apply them horizontally, and problems of the type indicated above should not arise.

iii. Sanitary and Phytosanitary Measures and Technical Barriers

Chapter 6 of the DR-CAFTA deals with sanitary and phytosanitary measures, whereas Chapter 7 covers technical barriers to trade. Both chapters affirm the rights and obligations of the Parties

[31] Central American Rules of Origin.

under the respective WTO Agreement, and call for cooperation as a means of improving their application. The provisions involved are those applicable to trade in goods originating from the Parties, in accordance with Annex 4.1.

In these areas, the legal instruments of Central American integration are based on WTO provisions, which they seek to apply through additional or more stringent disciplines in some areas, such as in procedures for claiming the conformity of domestic measures with Central American rules.[32] A number of difficulties have arisen, however, in applying these disciplines in practice.[33] Moreover, these instruments are designed to harmonize measures and procedures in these areas, an issue not covered by chapters 6 and 7 of the DR-CAFTA.

As with customs procedures, the DR-CAFTA or the Central American rule will apply to trade in goods originating under the respective regime. In this case, however, the difference between the instruments is not so important, because both of them point in the same direction, by basing their provisions on the WTO Agreements. Moreover, while the DR-CAFTA will improve the application of these agreements, it will also help to strengthen these aspects in the Central American integration context.

iv. Trade Remedies

Chapter 8 of the DR-CAFTA contains two sections. The first section establishes bilateral safeguard rules, whereas the second section deals with antidumping and countervailing duties.

With respect to safeguards, under DR-CAFTA Article 8.1.1, a Party may apply a bilateral safeguard measure if imports of an originating good, resulting from the reduction or elimination of tariffs pursuant to the DR-CAFTA, are causing or threatening serious injury to the domestic industry. It should be noted that, as with the tariff elimination schedule of Annex 3.3, the provisions of Chapter 8 are applicable to trade in originating goods, pursuant to Annex 4.1.

Under Central American integration rules, there is no provision for applying measures of this type to originating goods.[34] One reason for this is that tariffs were eliminated many years ago, and thus the underlying assumption for the application of such measures - i.e., damage from increased

[32] *Central American Regulations on Sanitary and Phytosanitary Measures and Procedures*, Decree 28222-MEIC-COMEX of September 30, 1999, published in the Official Gazette No. 223 of November 17, 1999, and *Central American Regulations on Standardization, Metrology and Authorization Procedures*, Decree 28222-MEIC-COMEX of September 30, 1999, published in the Official Gazette No. 223 of November 17, 1999.

[33] According to the "Table of Measures Contrary to Intra-Regional Free Trade," maintained by the General Secretariat for Central American Economic Integration for recording complaints against breaches of Central American integration disciplines, five of the 13 complaints recorded related to the application of sanitary and phytosanitary measures to poultry, pork, potatoes and dairy products. See General Secretariat for Central American Economic Integration (2004), available at <www.comex.go.cr/acuerdos/comerciales/centraoamerica/obstaculos>.

[34] *Central American Regulations on Safeguard Measures*, Decree 25,242-MEIC-COMEX of May 30, 1996, Published in the Official Gazette 122 of June 27, 1996. What the Central American Agreement on the Tariff and Custom System calls a safeguard is in fact an authorization to amend unilaterally the MFN tariff: it is not a safeguard in the sense of DR-CAFTA Chapter VIII. See the *Agreement on the Central American Tariffs and Customs System*.

imports resulting directly from tariff elimination - does not hold. The important point is that this applies to originating goods under the Central American system.

In light of the foregoing, Central American countries can apply DR-CAFTA safeguards to trade in originating goods under that agreement, regardless of whether those goods are imported directly from the United States or from a Central American country. The key element is that this applies to originating goods under the DR-CAFTA.[35]

Yet DR-CAFTA Article 8.1.3 (b) provides that, even when the requirements of Article 8.1.1 are fulfilled, a Party may exclude imports of another Party's products from application of a safeguard measure if it accorded duty free treatment to that other Party's goods pursuant to an agreement among them for the three-year period preceding the effective date of the DR-CAFTA. In a sense, this article seems to provide a bridge between the DR-CAFTA and Central American integration. It recognizes that, although the DR-CAFTA and Central American origin provisions are legally distinct, the rules of origin may be the same, in which case it would make no sense to apply a safeguard measure to a good that had been accorded duty-free treatment more than three years previously, even if that was done under a formally separate legal instrument.

The second section of DR-CAFTA Chapter 8 on antidumping and countervailing duties contains two basic provisions. Article 8.8.1 provides that the United States will give more favorable treatment to Central American countries in an antidumping investigation, something that constitutes an obligation that is binding exclusively on the United States vis-à-vis other countries of the region.[36] On the other hand, Article 8.8.3 declares that the Parties retain their rights and obligations under the respective WTO Agreements, which means that there is no question of multilateral application of the DR-CAFTA in this area.

### 2. Government Procurement

DR-CAFTA Chapter 9 establishes a series of principles and rules of procedure covering government procurement of goods and services, as defined in Article 9.1 and its annexes.

The great majority of these provisions are of a general character. This is because of the nature of these obligations, for example, the duty to publish any law or regulation concerning procurement, or because it is impossible to apply distinct procedural rules, for example, deadlines for the submission of bids, to different participants in the same bidding procedure, simply on the basis of their nationality. Thus, in principle, the Parties must incorporate these rules into their domestic legislation and must enforce them to the benefit of all countries and their nationals. This is true whether the DR-CAFTA is deemed to be applied bilaterally or multilaterally.

[35] The same happens with safeguards on agricultural products and on textiles, pursuant to Articles 3.15 and 3.23, respectively.

[36] See Section II.B of this paper.

There is, however, an important exception to the above, to be found in the national treatment rule established in Article 9.2.1. Under that provision, a Party must accord treatment to the goods and services of another Party, and their providers that is no less favorable than the treatment accorded to its own goods, services and suppliers. This is not a general rule, but one that seeks to confer preferential treatment on the goods, services and suppliers of a Party over those of third countries.

In this case, multilateral application of the DR-CAFTA means that this rule is also applicable by a Central American country to the goods, services and suppliers of other Central American countries in the same way that it is applicable to the goods, services and suppliers of the United States.[37] There is however an important variant in this area. As noted earlier, the chapter applies to government procurement of goods and services covered by the agreement. Under Article 9.1.2 (b) and the annexes, the scope of the coverage for Central American countries is different in their relations with the United States from that applicable among them. In the first case, the DR-CAFTA coverage is restricted by the exclusion of certain procuring entities and classes of goods and services, and by the application of thresholds; in the second case, the coverage is much broader, because there are no exclusions of government entities nor are any minimum amounts established as thresholds. There are only a few exceptions to coverage that are common to both cases.[38] In fact, what is important is that Central American countries provide greater access to their market for the goods and services of other Central American countries than they do to those from the United States.

While there were no Central American instruments in force at the time the DR-CAFTA was negotiated, there was an agreement that had been negotiated within the region, known as the Central American Treaty on Government Procurement, which explains the decision by countries of the region. The scope of that agreement was very broad, in that it did not exclude any public entity nor did it establish any exception to its application, or any volume thresholds, which meant that it covered all procurement by those countries' public entities, regardless of their amount. The Central American countries were determined then to have the DR-CAFTA reflect the provisions already agreed in that instrument, despite the fact that it had not entered into force.

In light of the foregoing, Central American countries have agreed that the DR-CAFTA should govern their relations in this matter, which means that it will not be necessary to submit the draft Central American Agreement to legislative approval.

### 3. Investment and Trade in Services

#### *a. Investment*

[37] The determination of the origin of goods for this purpose is done in accordance with DR-CAFTA Chapter 4.

[38] In the case of Costa Rica, these relate to contracts between Costa Rican entities and to government procurement programs on behalf of micro, small and medium-sized enterprises, both of which categories are excluded from DR-CAFTA coverage with respect both to the United States and to other Central American countries.

DR-CAFTA Chapter 10 establishes some basic rules that Parties are to apply to investors and covered investments from another Party.[39] Under these rules, each Party grants access to its market under certain conditions, subject to the exceptions established in the chapter itself and in its annexes of nonconforming measures. The chapter also provides for an investor-State dispute settlement mechanism.

As explained in the definitions in Article 10.28, these rules apply to any asset owned or controlled by an investor. "Investor" means a Party or a state enterprise of a Party; a national of a Party; or an enterprise constituted or organized under the laws of a Party, or a branch located in the territory of that Party and carrying on business there.

In light of these definitions, the rules of Chapter 10 are applicable not only to the United States but also to investments in the territory of one Central American country by any other Central American state or enterprise of that state, by nationals of other Central American countries and enterprises constituted under their laws. In contrast to the situation with government procurement, the coverage here is exactly the same for US investors in a Central American country as it is for investors of other countries of the region in that same country. Consequently, the Parties have a single set of annexes of nonconforming measures, instead of separate lists, depending on the nationality of the investor.

However, the obligations that each Party assumes in this area are not the same, because they are defined not only by the provisions of the chapter itself, which are identical, but also by the annexes of nonconforming measures of each country, which are not the same for each country since they reflect the specific nature of their legal regime. These are independent obligations, then, but they are mutually coherent.

There is no Central American investment instrument in force. When the DR-CAFTA was negotiated, Central American countries had already agreed on the disciplines for a "Central American Treaty on Investment and Services," but had not yet completed work on its annexes. Because the DR-CAFTA will also govern relations among Central American countries, they have considered it unnecessary to pursue negotiation of this other instrument.

[39] The only obligations that are expressly stipulated as applicable in general to all investments in a Party's territory, regardless of the investor's nationality, are those in Articles 10.9 and 10.11, relating to performance requirements and environmental concerns.

### *b. Cross-border Trade in Services*

DR-CAFTA Chapter 11 establishes a set of rules applicable to cross-border trade in services among the Parties, the most important of which are those granting access for service providers to each others' markets.[40]

According to Article 11.14 (Definitions), the rules cover the supply of a service from the territory of one Party to that of another Party; within the territory of one Party by a person of that Party to a person of another Party; or by a national of a Party in the territory of another Party.[41] The definition of "national"" includes a natural person who has the nationality of a Party, as well as entities constituted or organized under a Party's laws.

Consistent with the foregoing, Chapter 11 is applicable by Central American countries not only vis-à-vis the United States but also when it comes to the provision of a service in the territory of one Central American country from another country of the region, in a Central American country to a person of that country by a person of another Central American country, or by a national of the country of the isthmus in the territory of another country of the region. As in the case of investment rules, it makes no difference in terms of this chapter's coverage whether the service provider is a citizen of the United States or that of a Central American country. As with investment, the Parties have a single set of annexes of nonconforming measures, rather than separate lists, depending on the nationality of the service provider.

As with investment, the obligations that each Party assumes to the other Parties in this area are not the same, because they are defined not only by the provisions of the chapter itself, which are identical, but also by the specific commitments and by the annexes of nonconforming measures for each country. In the case of commitments, these are specific commitments that each country acquired as a result of the negotiations; as to the annexes, these may not be the same for each country because they reflect the specific provisions of each country's legal system. These are independent obligations, then, but they are mutually coherent.

As noted earlier, in the Central American integration context there is no instrument in force covering trade in services. When the DR-CAFTA was negotiated, Central American countries had already agreed on the disciplines for a "Central American Treaty on Investment and Services," but had not yet completed work on its annexes. Because the DR-CAFTA will also govern relations among Central American countries, they have considered it unnecessary to pursue negotiation of this other instrument.

[40] The only obligations of general application are those in Articles 11.7 and 11.8, relating to transparency and domestic regulation.

[41] Unless the service in question is not covered under Article 11.1 or the annexes of non-conforming measures of the Parties.

### *c. Financial Services, Telecommunications and Electronic Commerce*

When it comes to trade in financial services, the scope of Chapter 12 covers investors of one Party, and their investments, in financial institutions in the territory of another Party, and certain cross-border services. Consequently, the above comments on the chapters on investment and trade in services apply in this area as well. Thus, the obligations relating to financial services are applicable to all DR-CAFTA Parties and those obligations are not identical, since their content is defined by the relationship among the rules of the chapter, the specific commitments, and the annexes of nonconforming measures of each Party.

In telecommunications, some key elements are worth noting. First, each DR-CAFTA Party must apply the telecommunications chapter to the other Parties. The only country that has not assumed this obligation is Costa Rica, which is bound by the provisions of Annex 13 establishing specific commitments in this field (although some of those commitments are similar to the obligations set out in the chapter).

Second, this chapter and its annex contain some obligations that apply only to suppliers of the Parties (essentially relating to market access), but there are also some general conditions that must be applied without distinction as to nationality. This is the case, for example, with Article 13.7 (Independent Regulatory Bodies and Government-Owned Telecommunications Suppliers), Article 13.8 (Universal Service), Article 13.10 (Allocation and Use of Scarce Resources), and Article 13.13 (Transparency), as well as certain other provisions of the chapter. Something analogous occurs with the annex applicable to Costa Rica. Action to enforce these general obligations through the DR-CAFTA dispute settlement mechanisms can be taken only by countries that are Parties.

Finally, in the area of electronic commerce, Chapter 14 seeks to establish rules that are applicable generally to this field. In this case, the duty of the Parties is to apply the rules without distinction as to the nationality. Once again, only the Parties can enforce them through the DR-CAFTA dispute settlement mechanisms.

In none of these three areas were there any legal instruments in force under the Central American integration system when the DR-CAFTA negotiations began. As was the case with investment and services, rules had been agreed for financial services and telecommunications, but negotiation of the annexes had not yet been completed. As in the other areas, because the DR-CAFTA will govern the relationship among Central American countries in this area, negotiations on those annexes and the instrument itself will not be pursued.

## 4. Intellectual Property

The DR-CAFTA provisions relating to intellectual property are essentially of three types: (i) the obligation to ratify or accede to certain international agreements on intellectual property; (ii) the establishment of minimum standards for the protection of trademarks, geographical indications, domain names on the Internet, copyright and related rights, encrypted program-carrying satellite

signals, patents, and measures relating to certain regulated products; and (iii) procedures and remedies for the enforcement of intellectual property rights. Under Article 15.1, each Party is obliged, as a minimum, to give effect to this chapter.

Consequently, the DR-CAFTA provisions in this area establish general obligations that are incorporated or must be incorporated into each Party's domestic legislation and that must be observed, as a general rule, to the benefit of all countries and their nationals, regardless of whether they are Parties to the DR-CAFTA.

The main implication of the multilateral application of the DR-CAFTA in this area is that a Central American country can use the DR-CAFTA dispute settlement mechanism to require another country of the region to comply with DR-CAFTA provisions. Currently, there are no Central American rules governing intellectual property, which means that the Central American dispute settlement system cannot be used here.

### 5. Labor and Environment

The key obligations that the DR-CAFTA establishes in terms of labor and environmental considerations are found in Articles 16.2.1 (a) and 17.2.1 (a), which provide, respectively, as follows:

"A Party shall not fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction, in a manner affecting trade among the Parties, after the date of entry into force of this Agreement."

"A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement."

With these articles, each DR-CAFTA Party assumes the obligation of giving effective application to its own legislation in each of these fields, as defined in the DR-CAFTA. This is, then, a general obligation, and one that adds nothing in substantive terms to the generic obligation of each Party, inherent in any legal system, to enforce the law.

Its impact will be seen, instead, in the ability of a Party to use the DR-CAFTA dispute settlement mechanism to demand effective enforcement of domestic legislation by another Party, in the case of a sustained or recurring course of action or inaction that affects trade among the Parties.

This introduces something new into the relationship among Central American countries. In effect, the Central American integration instruments contain no labor or environmental obligations, which means that, although each country is obliged by its own legislation to apply its laws in these or any other areas, there is no possibility to demand fulfillment of this obligation through a dispute settlement mechanism between states, as the DR-CAFTA now allows.

### 6. Exceptions

Chapter 21 of the DR-CAFTA establishes the grounds upon which a Party is authorized not to apply the agreement's provisions, in whole or in part. These include the general exceptions of the GATT and the General Agreement on Trade in Services (GATS), as applicable, as well as exceptions relating to national security, taxation, balance of payments measures on trade in goods, and disclosure of information.

The scope of application of these exceptions relates to certain chapters or to the DR-CAFTA as a whole, depending on the particular exception. These exceptions operate as a justification for not applying DR-CAFTA provisions, which can be invoked as a defense in any dispute settlement procedure initiated by another Party seeking to demand compliance with the agreement.

The approach taken in the Central American integration instruments differs from that of the DR-CAFTA, in that it does not establish an exhaustive list of exceptions (balance of payments issues aside[42]), but instead allows any Party to request the integration bodies to suspend some provision of those instruments when it poses a serious threat to some sector of that Party's economy.[43]

Since the scope of application of the DR-CAFTA exceptions and that of the exception in the Central American integration system are different, there is no further relationship between them.

### 7. Dispute Settlement

Under Article 20.2, the dispute settlement mechanism of the DR-CAFTA applies: (i) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of the agreement; (ii) whenever a Party considers that a measure of another Party is or would be inconsistent with the obligations of the agreement, or that another Party has failed to carry out its obligations; and (iii) whenever a Party considers that an actual or proposed measure of another Party would cause nullification or impairment of benefits. In other words, application of this mechanism is limited in all cases to matters covered by the disciplines of the DR-CAFTA, and not those of other agreements.

A Party is not necessarily obliged to invoke the rules of Chapter 20 to resolve a dispute with another Party relating to the disciplines of the DR-CAFTA. Article 20.3 allows a Complaining Party to resort to another free trade agreement to which it is a Party, or to the WTO, but provides that, once a panel has been requested under that other agreement, that forum will be used to the exclusion of the others.

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[42] *Central American Economic Integration Treaty*, Law 3150 of September 13, 1963, published in the Official Gazette No. 207 of September 13, 1963, Article 10.

[43] *Protocol to the Central American Economic Integration Treaty* (Guatemala Protocol), Law 7629 of September 16, 1966, published in the Official Gazette No. 199 of October 17, 1996, Article 57.

In the Central American integration system, disputes between countries of the region can be resolved through the Central American Commercial Dispute Settlement Instrument[44] or under the relevant WTO Agreement, at the choice of the Complaining Party. Since this instrument predates the DR-CAFTA, it makes no reference to the alternative of using the DR-CAFTA alternative, although of course this can be done by virtue of the DR-CAFTA itself.

Accordingly, with entry into force of the DR-CAFTA, countries of the region have three options to complain of noncompliance by another Central American country: (i) the DR-CAFTA, (ii) the Central American instrument, or (iii) the WTO, under the assumption, of course, that the dispute in question affects a substantive provision covered by one of those three agreements.

The DR-CAFTA and the Central American instrument have some obvious similarities, in particular with respect to procedures. There are, however, some significant differences between them,[45] and with respect to the WTO Agreement. The choice of mechanism will generally be determined by the Complaining Party's view of which is the most effective route for resolving the dispute, in light of the rules it contains, the countries that can participate as co-complainants or third Parties, and any previous experience it may have had in its use.[46]

### 8. Administration of the Dominican Republic-CAFTA and Other Institutional Provisions

Under Article 19.1, the Free Trade Commission is responsible for the proper functioning of the agreement, for which purpose it is assigned a series of functions. The Commission is not a supranational body, with its own legal personality and budget and with the power to issue new rules. Rather, it consists of cabinet-level representatives of the Parties meeting for a specific purpose. To prepare the meetings of the Commission and to follow up on the Commission's decisions, the DR-CAFTA provides that each Party shall appoint a Free Trade Agreement Coordinator. In addition, various chapters establish specific committees to supervise implementation of the DR-CAFTA in its various areas, and these are composed of representatives of the Parties. It also holds open the possibility of creating further committees in the future.

The Central American integration system has a great number of institutions. Within the Central American Economic Integration Subsystem (which in turn relates to other subsystems) there is the Council of Economic Integration Ministers, as the senior political organ of the subsystem, and

[44] *Central American Commercial Dispute Settlement Instrument*, COMIECO resolution no. 106-2003 (COMIECO XXVI) of February 17, 2001, decree 31049 of March 5, 2003, published in the Official Gazette 60 of March 26, 2003.

[45] The most important are the nature of the final report and the possibility of imposing fines in lieu of compliance with that report.

[46] It is too soon to assess the true effectiveness of the recently instituted Central American dispute settlement mechanism, because no case has yet been resolved using it.

other councils of subsidiary rank. There is also a series of technical and administrative bodies, including the Secretariat for Central American Economic Integration.[47]

The DR-CAFTA rules in this area have no direct impact on the institutional structure for Central American integration: the DR-CAFTA's scope of application is different, and it regulates the relationship of Central American countries in a different context, that of the DR-CAFTA.

On the other hand, the DR-CAFTA contains its own institutional provisions, including those set forth in the chapter on Transparency. There are two types of obligations. Those of the first kind govern the communication and publication of information, and establish guarantees relating to administrative, review and appeal procedures, designed to ensure effective application of the agreement. These provisions are applicable among all Parties. The second type of obligations are aimed at combating corruption and bribery in international trade and investment and are of a general nature, which means that they must be applied without distinction as to nationality.

There are no equivalent provisions in the context of Central American integration

[47] Guatemala Protocol.

## IV. THE APPLICATION OF THE DOMINICAN REPUBLIC-CAFTA BETWEEN EACH CENTRAL AMERICAN COUNTRY AND THE DOMINICAN REPUBLIC

### A. General Rule

As indicated in section II.A, under Articles 1.1 and 2.1 of the DR-CAFTA, this instrument will be applicable multilaterally among all Parties. Therefore it will also govern the relations between each Central American country and the Dominican Republic.

As was the case among the Central American countries, those countries and the Dominican Republic had between them another legal instrument that predated the DR-CAFTA negotiations and that governed the relations between each Central American country and the Dominican Republic: the Free Trade Agreement between Central America and the Dominican Republic (hereafter the CA-DR FTA).[48] In contrast to the legal instruments of Central American integration, however, that instrument is a recent one, and came into effect for each Central American country and the Dominican Republic only a few years before the DR-CAFTA negotiations began.

Given the existence of these two legal instruments for governing the relationship between each Central American country and the Dominican Republic, it was necessary to decide what the relationship between those two instruments should be. In this case, the general rule adopted is not that the two agreements should coexist, as is the case with the DR-CAFTA and the instruments of Central American integration, as examined in the previous chapter. The Parties opted instead for a different general rule: the DR-CAFTA would replace the CA-DR FTA, and upon entry into force it would become the only instrument governing the preferential trading relationship between each country of the region and the Dominican Republic.

In order to reflect certain specific features of the relationship of Central American countries and the DR, as well as to facilitate adoption of the DR-CAFTA as the sole instrument governing that relationship, the six countries agreed to introduce some special provisions into the DR-CAFTA that would be applicable only among themselves. This point is particularly important in the area of trade in goods, where the Parties allow the two preferential access regimes to coexist. It also includes some specific provisions on government procurement and on financial services. Except in these cases, the DR-CAFTA will apply between each Central American country and the DR in exactly the same way as it applies between the United States and the countries of the region or the DR.

[48] As noted in Section I.B, the CA-DR FTA is applicable bilaterally between each Central American country and the Dominican Republic.

## B. Special Provisions Applicable between Central American Countries and the Dominican Republic

### 1. Trade in Goods

As indicated in Section III.B.1.a, with the objective of creating a free trade area among the Parties, each Party agrees progressively to eliminate its customs duties on originating goods, in accordance with the schedule in Annex 3.3. This tariff elimination will apply to all goods that meet the specific rule of origin established in Annex 4.1 of the DR-CAFTA. This is the general rule of the DR-CAFTA, applicable to trade among all Parties.

This general rule, that all goods are subject to the tariff elimination program established in Annex 3.3, has three exceptions that are applicable solely between each Central American country and the Dominican Republic, as specified in the General Notes to the Tariff Schedule for each of these countries. First, some products are excluded from the tariff elimination program: these include beer, alcohol and tobacco traded directly between any Central American country and the Dominican Republic, and other products defined by each Central American country and the DR. For example, in the relationship between Costa Rica and the Dominican Republic, onions, beans and rice are also excluded. Second, for certain products, again defined between each Central American country and the DR, negotiations will continue on market access conditions for a period of no more than one year after the DR-CAFTA comes into force, and if an agreement is not reached the stipulated tariff elimination program will apply, leading basically to free trade in year 20. Products subject to this treatment vary for each Central American country. For example, between Costa Rica and the DR they include chicken breasts, powdered milk, garlic, wheat flour, and petroleum derivatives. For some of these products, Costa Rica and Nicaragua each agreed with the Dominican Republic to allow free import of a specific volume of these products under tariff-quota provisions. Thirdly, in the case of vegetable oils, those countries agreed to subject their imports to a special tariff elimination program that will lead to free trade by year 15 after the entry into force of the DR-CAFTA.

These exceptions to the Annex 3.3 tariff elimination schedule are in turn exceptions to the multilateral application of the DR-CAFTA, because in these cases goods or materials from the United States cannot be used to confer origin upon the goods that are subject to any of the exceptions.

In addition to these exceptions, these countries have decided that, as was agreed among the Central American countries, sugar and coffee products, which are excluded from intra-Central American free-trade, will not be granted multilateral treatment as long as that condition applies to them.[49]

To summarize, then, the tariff elimination program of Annex 3.3 of the DR-CAFTA applies between each Central American country and the Dominican Republic, except for certain goods

[49] See Section III.B.1.a.

which, even if they classify as originating goods, will not receive the treatment stipulated in the annex but will be subject to the agreed special treatment (exclusion, tariff elimination over 20 years or over 15 years). In the case of these exceptions, the DR-CAFTA will not be applied multilaterally.

Beyond this general tariff elimination scheme, Article 3.6 of the DR-CAFTA establishes a special regime deriving originally from the CA-DR FTA, whereby these countries agreed to grant preferential tariff treatment, under the conditions stipulated in Annex 3.3.6 (referred to hereafter as the "CA-DR preferential regime"). Paragraph 1 of that Annex provides specifically that:

> "1. Except as otherwise provided in this Annex:
>
> (a) Each Central American Party shall grant duty-free treatment to any good imported directly from the territory of the Dominican Republic that meets the rules of origin established in Chapter 4 (Rules of Origin and Origin Procedures); and
>
> (b) The Dominican Republic shall grant duty-free treatment to any good imported directly from the territory of any Central American Party that meets the rules of origin established in Chapter 4 (Rules of Origin and Origin Procedures)."

What this Annex does essentially is to reflect the existing situation under the CA-DR FTA, whereby most originating goods benefited from free trade, with certain exceptions that are also "translated" into this Annex. This treatment does not apply to vegetable oils, which remain subject to duty of up to 15 percent; to certain petroleum derivatives that are subject to a tariff elimination schedule; and to a list of products excluded from free trade, which includes chicken, milk powder, onions, garlic, beans, coffee, rice, wheat flour, sugar, beer, alcohol and tobacco.

In addition, paragraph 5 of Annex 3.3.6 allows a Party to refuse preferential tariff treatment to a good, even if it qualifies as originating, if that good is produced in a free zone or under another special tax or customs regime of one of the Parties. That provision states that:

> "An importing Party may refuse the preferential customs treatment stipulated in paragraphs 1 to 3 of this Annex if the good is produced in a free zone or under another special tax or customs regime in the territory of any Central American Party or of the Dominican Republic, provided the importing Party grants that good customs treatment no less favorable than the treatment applied to the good when it is produced in its own free zones or under other special tax or customs regimes, and entered into its territory."

This rule reiterates the treatment granted to products of this type, which are traded between each Central American country and the Dominican Republic pursuant to Article 4.1 of the Protocol to the CA-DR FTA.

Accordingly, an importer may claim preferential treatment under two options: under Annex 3.3.6 (which reflects the access conditions negotiated in the context of the CA-DR FTA), or

under the tariff elimination schedule of a Party established in Annex 3.3. In each case, the good in question must comply with the applicable rule of origin: that established in Appendix 3.3.6, in the case of the Annex 3.3.6 regime, and that established in Annex 4.1 in the case of the Annex 3.3 regime. In the case where a good qualifies as originating pursuant to Appendix 3.3.6 and Annex 4.1, it will be up to the importer to decide which regime to select, as indicated in the note to Annex 3.3.6.

The main consequence of the multilateral application of the DR-CAFTA in this field, as it was negotiated, is to generate greater trade liberalization between the Central American countries and the Dominican Republic. This is achieved, on the one hand, by incorporating into the tariff elimination schedule certain agricultural products that were excluded from free trade under the CA-DR FTA and, on the other hand, by allowing goods produced in free zones to benefit from the DR-CAFTA tariff elimination program, which did not occur under the CA-DR FTA. Despite this measure, trade liberalization between these countries will be less in agriculture than that agreed between the Dominican Republic and the United States, precisely because of the exceptions to Annex 3.3, which were agreed between the Central American countries and the DR.

### 2. Government Procurement

As indicated above, the procedural rules and principles of Chapter 9 of the DR-CAFTA are applicable to government procurement of goods and services, in accordance with the coverage established in Article 9.1 and its annexes. The great majority of these provisions are of a general character, for which reason they apply equally to all Parties and to third countries as well. This is true except for the national treatment rule stipulated in Article 9.2.1, which is not a general provision but seeks, instead, to grant preferential treatment to the goods, services and suppliers of a Party over those of third countries.

In principle, the multilateral application of the DR-CAFTA means that this treatment must be applied in the same way among all Parties to the agreement. However, under Article 9.2.b the scope and coverage is different for relations between the United States and each of the other Parties, for those among the Central American countries,[50] and for those between each Central American country and the Dominican Republic. In the latter case, the scope of the coverage agreed between the Dominican Republic and Costa Rica, Guatemala and Nicaragua is practically the same as that already established between those countries in Chapter 12 of the CA-DR FTA, in particular Annexes I, II and III to Article 12.02. The scope of the coverage between the Dominican Republic and El Salvador and Honduras was left pending from the CA-DR FTA negotiations, and the countries had to decide it in the context of the DR-CAFTA.

In general terms, Chapter 9's scope and coverage between each Central American country and the Dominican Republic falls somewhere midway between that applicable between each Central American country and the United States and that applicable among the Central American

[50] See Section III.B.2.

countries themselves, in that it excludes fewer government entities than those excluded between the United States and the other Parties, but it does not come as close to total coverage as that established among the Central American countries (in which there are very few exceptions).

### 3. Financial Services

When it comes to trade in financial services, the DR-CAFTA obligations are applicable to all Parties, even if they are not identical in their content, in that this is defined by the relationship among the rules of the chapter, the specific commitments, and the annexes of nonconforming measures of each Party.[51]

Nevertheless, each Central American country and the Dominican Republic agreed to a temporary exception to the chapter's scope and coverage, contained in Article 12.1.4. Under that provision, for two years after the DR-CAFTA's entry into force the chapter on financial services will not apply to measures taken by the Dominican Republic concerning financial institutions of a Central American country to the extent these financial institutions supply banking services; Central American investors and their investments in those financial institutions in the Dominican Republic; and cross-border trade in banking services between the Dominican Republic and each Central American country. This same provision applies between each Central American country and the Dominican Republic.

The intent of suspending application of this chapter during those two years is to allow the countries to agree during that time on the measures that will be deemed nonconforming pursuant to Article 12.9. If those Parties fail to reach such agreement, the chapter will be applicable in the same way, and with the same nonconforming measures, as it is between the United States and the Dominican Republic.

It is highly unlikely that this exception will have any practical implications, for it would make no sense to agree on nonconforming measures that differ from one trading partner to another: in fact, this is not possible by virtue of the most-favored-nation clause of the WTO General Agreement on Trade in Services. In any case, if the countries do not reach an agreement, the chapter will become automatically applicable among all Parties.

[51] See Section III.B.3.c.

## V. THE POTENTIAL IMPACT OF THE MULTILATERAL APPLICATION OF THE DOMINICAN REPUBLIC-CAFTA: OPPORTUNITIES AND CHALLENGES

The application of the DR-CAFTA not only between the United States and countries of Central America but also among the latter is of great relevance.

It will help strengthen and improve, almost immediately, the rules governing trade among countries of the region. This will be felt, first, in areas where there are no existing Central American rules, such as investment, services and government procurement. It will also be felt in other areas in which the DR-CAFTA disciplines are of general application but where, because Central American countries can now use the DR-CAFTA dispute settlement mechanism to demand compliance, there will now be a new dimension to integration among countries of the region. This is the case of intellectual property, as well as labor and environment.

As well, the relationship between the DR-CAFTA provisions on market access, the tariff elimination schedule and the rules of origin will have the effect of deepening the liberalization process in Central America. While this will happen gradually, in light of the tariff elimination schedules, it will have a significant impact on the competitiveness of enterprises. They will be able to broaden their sources of supply to include the United States; they will have new opportunities for investment and productive linkages; and they will be able to reduce their production and transaction costs by maintaining for example a single, integrated product line that they can offer for sale in both the Central American and the US markets. This positive impact will be felt not only in production but also in opportunities to improve distribution chains within Central America.

Together with the greater transparency that the DR-CAFTA brings (and the effect this will have in strengthening the rule of law in each country of the region), the foregoing will have a major impact in terms of promoting new productive investment originating in Central America, the United States and other countries, and in terms of production patterns and trade flows within the region.

From another viewpoint, the multilateral application of the DR-CAFTA lays the basis for a broader regional integration system extending beyond Central America, for the rules established apply not only to the relationship between each Central American country and the United States but also to their relationship with each other. The first example of this is the participation of the Dominican Republic in the DR-CAFTA, although the door remains open for the eventual inclusion of other countries, such as Panama and the members of the Andean Community. In time, the DR-CAFTA could become the nucleus or provide the model for trade integration of the entire Hemisphere.

Similar effects will flow, although to a lesser degree, from the application of the DR-CAFTA between each Central American country and the DR, particularly in the sense of strengthening the disciplines governing their relations and liberalizing trade between them even further.

The multilateral application, with all its positive effects, still poses some challenges, particularly when it comes to administering the two preferential regimes that can be applied to trade in goods among Central American countries. The first of these concerns the advisability of amending the regional rules so as to bring them more closely into line with those of the DR-CAFTA, not only because its rules are more advanced, but also to facilitate the administration of such rules. This is particularly the case with origin procedures. The second challenge has to do with strengthening the institutions responsible for applying the DR-CAFTA in each country, and ensuring that it is implemented in the manner and within the time limits stipulated in the agreement itself. Similar challenges arise from applying the DR-CAFTA between each Central American country and the DR, although the impact is lesser because trade between them is less important.

Finally, it would be important to adopt a complementary agenda to the DR-CAFTA, for the design and implementation of policies in other areas that will reinforce the positive effects of its multilateral application and address the challenges facing sectors that will have the greatest difficulty competing in the new environment.

## VI. FINAL COMMENTS

It is not an easy task to integrate a regional trade agreement, involving several countries, with a new trade agreement to which those same countries and one or several others are Parties to, and it is particularly difficult for the countries that are members of both systems. Apart from the initial political decision that must be taken, an approach must be designed to make this "integration" technically sound and operational. The DR-CAFTA offers a way of doing this by offering not just a general framework but specific provisions in each area of the agreement.

We must recognize that, despite the difficulties inherent in an effort of this kind, there are three very specific elements present in Central America that made this possible.

First, the level of economic integration, via trade and investment, between Central American countries and the United States was very high, even before the DR-CAFTA negotiations began. Thus the six countries could readily see the benefits of applying this agreement multilaterally, from the outset.

Second, while an entire system of Central American rules existed before the DR-CAFTA negotiations were launched, they were focused primarily on trade in goods. In other areas, the Central American countries had begun their own negotiation process to develop disciplines similar to those that the DR-CAFTA would adopt, although that process was not concluded despite the advanced stage it had reached. These two aspects helped to ensure that multilateral application of the DR-CAFTA in such important areas as services and investment would not be too complicated.

Third, the Central American integration scheme, despite its very distinct origins, had succeeded through various mechanisms in integrating the region and opening it to the world economy. Far from being a closed system, it was already quite exposed to international competition, which made it easier to "include" the United States in the scheme.

The multilateral application of the DR-CAFTA between Central American countries and the DR raises in a somewhat different form the issue of articulating an existing agreement with a new one. In this case, the elements favoring this solution were primarily the interest of Central American countries in extending the application of the free trade agreement to their relations with the DR, and the DR's interest in signing an agreement with the United States.

To determine whether the DR-CAFTA approach is feasible in other cases, it will be important first to analyze whether the underlying circumstances are similar. To the extent that they are, the DR-CAFTA is an interesting option that deserves consideration.

## BIBLIOGRAPHY

*Agreement on the Central American Tariffs and Customs System*. 1985. Law 6986 of May 2, 1985, published in the Official Gazette Winter-Spring 1985, Volume 1, Page 110, and its amendments.

Baldwin, Richard. 2003. "The Spoke Trap: Hub and Spoke Bilateralism in East Asia." Power Point Presentation, Seoul, Korea; available at <**heiwww.unige.ch/~baldwin/PapersBooks/SpokeTrapTalk8Dec03.pdf**>.

*Central American Commercial Dispute Settlement Instrument*. 2003. COMIECO Resolution no. 106-2003 (COMIECO XXVI) of February 17, 2001, Decree 31049 of March 5, 2003, published in the Official Gazette 60 of March 26, 2003.

*Central American Economic Integration Treaty*. 1963. Law 3150 of September 13, 1963, published in the Official Gazette No. 207 of September 13, 1963, Article 10.

*Central American Regulations on Standardization, Metrology and Authorization Procedures*. 1999. Decree 28222-MEIC-COMEX of September 30, 1999, published in the Official Gazette No. 223 of November 17, 1999.

*Central American Regulations on Safeguard Measures*. 1996. Decree No. 25242-MEIC-COMEX of May 30, 1996, published in the Official Gazette No. 122 of June 27, 1996.

*Central American Regulations on Sanitary and Phytosanitary Measures and Procedures*. 1999. Decree 28222-MEIC-COMEX of September 30, 1999, published in the Official Gazette No. 223 of November 17, 1999.

*Central American Rules on the Origin of Goods and Amendments Thereto*. 1998. Decree 26833-MEIC of March 20, 1998, published in the Official Gazette No. 77 of April 22, 1998, and their amendments.

*Free Trade Agreement between Central America and Chile*. 2001. Law 8055 of January 4, 2001, published in the Official Gazette No. 42 of February 28, 2001, and in force as of February 15, 2002.

*Free Trade Agreement between Central America and United States*. 2004. Draft Text of July 2004, available in Spanish at <**http://www.comex.go.cr/acuerdos/comerciales/CAFTA/texto/default.htm.**>

*Free Trade Agreement between Central America and the Dominican Republic*. 1999. Law 7882 of June 9, 1999, published in the Official Gazette No. 132 of July 8, 1999, and valid as of March 7, 2002.

*Free Trade Agreement among the United Mexican States, El Salvador, Guatemala and Honduras.* 2000. Legislative Decree No. 214 of December 7, 2000, published in the Official Gazette of El Salvador No. 240, Volume 349 of December 21, 2000, and valid as of March 15, 2001.

General Secretariat for Central American Economic Integration. 2004. *Table of Measures Contrary to Intra-Regional Free Trade.* April 2004, available at <**www.comex.go.cr/acuerdos/comerciales/centraoamerica/obstaculos**>.

González, Anabel. 2004. "La Aplicación del Tratado de Libre Comercio entre Centroamérica y Estados Unidos." In *Ensayos en honor a Eduardo Lizano Fait*, edited by Grettel López and Reinaldo Herrera. San José, Costa Rica: Academia de Centroamérica, pp. 387-ff.

Hart, Michael. 1990. *A North American Free Trade Agreement: The Strategic Implications for Canada*. Ottawa: The Institute for Research on Public Policy.

Kowalczyk, Carsten, and Ronald J. Wonnacott. 1992. "Hubs and Spokes, and Free Trade in the Americas," *NBER Working Paper Series*, Working Paper No. 4198, Cambridge, MA.

Lipsey, Richard G. 1995. "The Case for the FTA and NAFTA," *Canadian Business Economics* 3 (2): 23-39.

_____. 1991. "The Case for Trilateralism." In *Continental Accord: North American Economic Integration*, edited by Steve Globerman. Vancouver, B.C.: The Fraser Institute, 89-123.

Lipsey, Richard G. and Robert C. York. 1988. *Evaluating the Free Trade Deal: A Guided Tour Through the Canada-US Agreement*. Toronto: C.D. Howe Institute.

Lizano, Eduardo. 2001. *La Política de Comercio Exterior de Costa Rica.* San José, Costa Rica: Academia de Centroamérica.

Ministerio de Comercio Exterior. *Tratamiento arancelario a las empresas de zona franca en Centroamérica*, available at <**www.comex.go.cr/acuerdos/comerciales/centroamerica**>.

*Protocol to the Central American Economic Integration Treaty (Guatemala Protocol)*. 1966. Law 7629 of September 16, 1966, published in the Official Gazette No. 199 of October 17, 1996, Article 57.

Summit of the Americas, Fourth Trade Ministerial Meeting. 1998. *Joint Declaration*, paragraph 9, San Jose, Costa Rica, available at <**www.ftaa-alca.org/Ministerials/SanJose/SanJose_e.asp**>.

Wonnacott, Paul. 1996. "Beyond NAFTA – The Design of a Free Trade Agreement of the Americas." In *The Economics of Preferential Trade Agreements*, edited by Jagdish Bhagwati and Arvind Panagariya. Washington, DC: AEI Press.

World Trade Organization. *Agreement on Subsidies and Countervailing Duties*, available at <**http://www.wto.org/english/docs_e/legal_e/24-scm.pdf**>.

World Trade Organization, Committee on Regional Trade Agreements. 2002. *Rules of Origin Regimes in Regional Trade Agreements, Background Survey by the Secretariat*, WT/REG/W/45, April 5.

## OAS TRADE, GROWTH AND COMPETITIVENESS STUDIES *

1. *Small and Relatively Less Developed Economies and Western Hemisphere Integration*. April 1997.

2. *Harmonization and Competition Policies Among Mercosur Countries*. José Tavares de Araujo Jr. and Luis Tineo. November 1997

3. *Standards and the Regional Integration Process in the Western Hemisphere.* Sherry M. Stephenson. November 1997.

4. *Mechanisms and Measures to Facilitate the Participation of Smaller Economies in the Free Trade Area of the Americas: An Update*. March 1998.

5. *Constructing an Effective Dispute Settlement System: Relevant Experiences in the GATT and WTO.* Rosine M. Plank-Brumback. March 1998.

6. *Approaches to Services Liberalization by Developing Countries*. Sherry M. Stephenson. February 1999. OEA/Ser.D/XXII, SG/TU/TUS-6; ISBN: 0-8270-3991-3

7. *Towards Financial Integration in the Hemisphere.* Sylvia Saborío. September 1999. OEA/ Ser.D/XXII, SG/TU/TUS-7. ISBN 0-8270-3990-5.

8. *Multilateral and Regional Investment Rules: What Comes Next?* Maryse Robert. March 2001. OEA/Ser.D/XXII, SG/TU/TUS-8.

9. *Multilateral and Regional Services Liberalization by Latin America and the Caribbean.* Sherry M. Stephenson. March 2001. OEA/Ser.D/XXII, SG/TU/TUS-9.

10. *Antidumping in the Americas*. José Tavares de Araujo Jr., Carla Macario, and Karsten Steinfatt. March 2001. OEA/SER.D/XXII, SG/TU/TUS-10.

11. *Deepening Disciplines for Trade in Services*. Sherry M. Stephenson. March 2001. OEA/SER. D/XXII, SG/TU/TUS-11.

12. *Business Facilitation: Concrete Progress in the FTAA Process*. Jane Thery. March 2001. OEA/SER.D/XXII, SG/TU/TUS-12.

13. *Trade and Competition in B2B Markets*. José Tavares de Araujo Jr. May 2001. OEA/SER.D/XXII, SG/TU/TUS-13.

14. *Proliferation of Sub-Regional Trade Agreements in the Americas: An Assessment of Key Analytical and Policy Issues*. José M. Salazar-Xirinachs. October 2002. OEA/SER.D/XXII, SG/TU/TUS-14.

---

* These publications may be found on the Office of Trade, Growth and Competitiveness web page **http://www.sice.oas.org/Tunit/tunite.asp**.

15. *Can Regional Liberalization of Services go further than Multilateral Liberalization under the GATS?* Sherry M. Stephenson. October 2002. OEA/SER.D/XXII, SG/TU/TUS-15.

16. *The FTAA and Development Strategies in Latin America and the Caribbean*. José M. Salazar-Xirinachs. November 2003. OEA/SER.D/XXII, SG/TU/TUS-16.

17. *Cost-Benefit Analysis of the Free Trade Zone System: The Impact of Foreign Direct Investment in Costa Rica*. Ricardo Monge-González, Julio Rosales Tijerino, and Gilberto Arce Alpízar. January 2005. OEA/SER.D/XXII, SG/TU/TUS-17.

18. *The Application of the Dominican Republic-Central America-United States Free Trade Agreement*. Anabel González. March 2005. OEA/SER.D/XXII, SG/TU/TUS-18.

## The Organization of American States

The Organization of American States (OAS) is the world's oldest regional organization, dating back to the First International Conference of American States, held in Washington, D.C., from October 1889 to April 1890. The establishment of the International Union of American Republics was approved at that meeting on April 14, 1890. The OAS Charter was signed in Bogotá in 1948 and entered into force in December 1951. Subsequently, the Charter was amended by the Protocol of Buenos Aires, signed in 1967, which entered into force in February 1970; by the Protocol of Cartagena de Indias, signed in 1985, which entered into force in November 1988; by the Protocol of Managua, signed in 1993, which entered into force in January 29, 1996; and by the Protocol of Washington, signed in 1992, which entered into force on September 25, 1997. The OAS currently has 35 Member States. In addition, the Organization has granted Permanent Observer status to 57 States, as well as to the Holy See and the European Union.

The basic purposes of the OAS are as follows: to strengthen peace and security in the Hemisphere; to promote and consolidate representative democracy, with due respect for the principle of non-intervention; to prevent possible causes of difficulties and to ensure the pacific settlement of disputes that may arise among the Member States; to provide for common action on the part of those States in the event of aggression; to seek the solution of political, juridical and economic problems that may arise among them; to promote, by cooperative action, their economic, social and cultural development, and to achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States.

**MEMBER STATES:** Antigua and Barbuda, Argentina, The Bahamas *(Commonwealth of)*, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Cuba, Dominica *(Commonwealth of)*, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay and Venezuela.

**PERMANENT OBSERVERS**: Algeria, Angola, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Equatorial Guinea, Estonia, European Union, Finland, France, Georgia, Germany, Ghana, Greece, Holy See, Hungary, India, Ireland, Israel, Italy, Japan, Kazakhstan, Korea, Latvia, Lebanon, Luxembourg, Morocco, Netherlands, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Serbia and Montenegro, Slovakia, Slovenia, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Tunisia, Turkey, Ukraine, The United Kingdom of Great Britain and Northern Ireland, and Yemen.

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