EXECUTIVE COMMITTEE MEETING TO CONSIDER S. 1307, THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT; AND S.J. RES. 18, A JOINT RESOLUTION APPROVING THE RENEWAL OF IMPORT RESTRICTIONS CONTAINED IN THE BURMESE FREEDOM AND DEMOCRACY ACT OF 2003

WEDNESDAY, JUNE 29, 2005

U.S. Senate,

Committee on Finance,

Washington, DC.

The meeting was convened, pursuant to recess, at 9:08 a.m., in room SH-216, Hart Senate Office building, Hon. Charles E. Grassley (chairman of the committee) presiding.

Also present: Senators Hatch, Lott, Snowe, Kyl, Thomas, Frist, Smith, Bunning, Crapo, Baucus, Bingaman, Lincoln, Wyden, and Schumer.

Also present: Kolan Davis, Republican Staff Director and Chief Counsel; Russ Sullivan, Democratic Staff Director; Dean Zerbe, Tax Counsel and Senior Counsel to the Chairman; and Everett Eissenstat, Chief Trade Counsel.

Also present: Ambassador Allen Johnson, Chief Agriculture Negotiator, USTR; Regina Vargo, Assistant USTR for the Americas; James Gagnon, Director, Office of

Burma, Highland Laos, Cambodia, and Vietnam, Department of State; James Mendenhall, General Counsel, USTR; Stephen Schaefer and Anya Landau, Trade Counsel.

Also present: Carla Martin, Chief Clerk; and Amber Williams, Assistant Clerk.

The Chairman. We are reconvening the committee action to consider CAFTA and the Burmese Senate Joint Resolution 18. Since I made an opening statement on both subjects last time, I am not going to make an opening statement.

Senator Hatch spoke yesterday. Did you have anything that you wanted to say in addition to your speech yesterday?

Senator Hatch. Not for me, Mr. Chairman. I am fine.

The Chairman. All right.

Then Senator Bingaman, I think if you would like to speak, we would turn the floor over to you at this point.

OPENING STATEMENT OF HON. JEFF BINGAMAN, A U.S. SENATOR FROM NEW MEXICO

Senator Bingaman. All right. Thank you very much, Mr. Chairman. I appreciate the courtesy. I intend to vote for the CAFTA agreement today and I wanted to give a few minutes' explanation of my thinking.

I have long believed that increased trade with the international community can advantage us and our economy. It can also advantage those with whom we trade. Most of the trade of the countries that are covered by the CAFTA agreement--over 70 percent of that trade currently--is with the United States. I believe it is very much in our interest that that remain the case in the future.

Obviously, this trade agreement comes up at a time when our trade imbalance with the world is enormous, also a time when our trade imbalance with the world is growing every day.

As far as I can tell, our government currently has no strategy to deal with that unfortunate reality and I hope the committee can play a role in developing such a strategy over the next few months.

I have just spoken to you, and also spoke to Senator Baucus earlier, about the possibility of having hearings on steps that we could be taking as a country to confront

this larger issue in a more tangible way.

That being said, when I look at the provisions of the DR-CAFTA agreement, I do not see it as contributing significantly to the trade imbalance. These are countries that have exported over 85 percent of what they send to the United States duty-free since the implementation of the Caribbean Basin Trade Partnership Act in 2000, and before that under the Caribbean Basin Initiative.

The main effect of this agreement on tariffs will be to phase out and eliminate tariffs that they currently impose on our exports to them.

Also, I do not see the basis for the claim that this agreement will result in further export of jobs from the United States to Central America. U.S. companies today have had many options, and have had many options, about where to build their next plant. Central America has been one of those options for a very long time, and that will not change under the agreement.

I would hope and expect that the agreement would encourage more investment in productive capacity in Central America, but at the same time, as our exports to that region increase, I would hope it would promote more investment in productive capacity here in the United States as well.

There are, clearly, problems with the agreement. Those have been pointed out by many here, and some by myself. I do not suggest that all of those problems have been resolved.

There are two of them that have been of particular concern to me, and let me just mention those. First, is a serious lack of attention to the enforcement of worker rights in these countries.

Second, the inadequate provision of assistance with the negative impacts of increased U.S. exports on the agricultural sectors in Central America.

Let me talk about the workers' rights issue a minute. First, on the enforcement of workers' rights, I have urged the administration to commit resources to this priority. It is not reasonable to require U.S. producers to compete with foreign producers who do not afford their workers certain basic rights.

Ambassador Portman has assured me that, to begin addressing this issue, the administration will propose and support funding for worker rights enforcement, to the extent of $40 million per year for fiscal years 2006 through 2009. I think that is a step in the right direction.

Second, on monitoring, there is a need for independent, transparent monitoring of the treatment of

workers in these countries. Here, I have urged the administration to fund the International Labor Organization, ILO, to conduct ongoing monitoring on workers' rights in Central America.

This will include reports that would be published every six months beginning when the agreement goes into effect, continuing until the end of fiscal year 2009. The administration has agreed to commit $3 million per year out of the $40 million to accomplish this objective as well.

So, I believe both of these commitments, the commitment to worker rights enforcement and the commitment to ILO monitoring, should be part of all trade agreements that we have with developing countries.

In addition, of course, I hope that the actual commitment to worker rights standards will be stronger in future agreements than we have seen in this agreement. It will be incumbent upon those of us in the Congress here at that time to urge the next administration, after President Bush leaves office, to continue with these commitments that Ambassador Portman has made on worker rights enforcement and monitoring.

On agricultural assistance, for those working in the agricultural sector in these countries, I have urged the administration to commit resources to allow subsistence

level farmers to make a transition without severe dislocation.

This could help reduce the problem of these workers leaving agriculture, and hopefully this would help reduce the problem of additional illegal immigration to the United States in future years.

Again, the administration has committed to provide some increased support to address this issue. The level of funding is not what it should be, but if these countries do receive funding from the Millennium Challenge Corporation, which I am assured that Ambassador Portman and Secretary of State Rice believe they should in coming years, those funding levels should increase substantially.

Each of these commitments that I have just described are set out in more detail in a letter that Ambassador Portman has given to me, which I have distributed to the committee.

I would ask that we include that in the record of this meeting. With these additional commitments, I have concluded, as I said, that I can support the implementation of this trade agreement.

[The letter appears in the appendix.]

The Chairman. Thank you very much. I think your support will go a long ways towards not only helping us

get a favorable report from this committee, but also, in order to get the bill through the Senate, and maybe sooner than later. So, I appreciate it very much.

I compliment the administration for working with you to satisfy your concerns, and I think not only your concerns, but even though other people on your side of the aisle may not vote for it, they have raised a lot of these issues about labor rights, about unemployment in agriculture going up as a result of the CAFTA agreement in these countries, and I would hope that they would be satisfied that some of their concerns are being addressed because of your leadership in this area, bringing the administration to the point of view that these are legitimate concerns that need to be addressed.

You brought up about the trade imbalance. I would not only respond to what you brought up about the trade imbalance, but I would use it as an opportunity to respond to some of the things that other members, yesterday, raised about process.

I want this process of trade promotion authority to work. Maybe my philosophy of how it ought to work might differ a little bit with other members of this committee, but I see very much the need for involvement, and want to have the involvement of our committee, and all the dialogue that goes on prior to an agreement being signed.

So, if, under my leadership, or even the tradition of the committee over a long period of time, our involvement in dialogue with the negotiators on various agreements has not been enough, I would be very much willing to enhance that to meet the concerns of members of the committee that say that there is not enough input, or respect for the input, on the part of any administration, not just this one, but previous ones that have been negotiated.

I would very much like to emphasize any sort of dialogue that can go on prior to the signing of an agreement, because I think we have not only a responsibility under the constitution, since we have the power of regulating interstate and foreign commerce--it is our power--we have to protect that constitutionally, and we should want that input, whatever can be done prior to that agreement being signed.

I see it is somewhat limited, what we can do once an agreement is signed, except where we can offer amendments that are necessary to the carrying out of the agreement, which we discussed yesterday.

I said some of those amendments that may have been offered, if they had been applicable just to the Central American countries, would have been necessary and appropriate.

As an example that was used, we have trade adjustment assistance just for NAFTA. If we had had a trade adjustment assistance amendment just applicable to the Central America Free Trade Agreement, then I think that that would have been necessary and appropriate. But an all-encompassing one probably went further than the process of trade promotion authority allows.

So, getting back to my main point, the extent to which members of this committee want me to activate this committee to be more involved with the administration negotiators on any of those agreements that are being negotiated right now, I am very happy to do it.

Once you get beyond that point, though, I think some of the criticism that was leveled yesterday may be legitimate criticism, but that we do not have a standard pattern of what we have done in this committee.

For instance, the issue of having a conference committee or not is not settled, and I could point out the consideration of Congress of the NAFTA agreement, as an example. But there is no reason that we cannot do more along that area and get some settling.

Now, that is process. Now in regard to your concern about the trade imbalance and what we maybe need to be doing in this committee in regard to the trade balance, I am willing to consider members' concerns about that, and

we ought to be concerned about it, and look at hearings at the full committee level.

If we cannot do it at the full committee level, since you and Senator Craig Thomas lead the subcommittee, I would be glad, if you were willing to do hearings in those areas, work with you to accomplish that. Now, that is on process.

Maybe what I am going to say next does not address just the things you brought up, Senator Bingaman, but I thought I ought to address the issue of trade imbalance. There is nothing wrong with anything that any member said about concern in that area and what we ought to be doing in that area.

But I think one thing that was left out of previous discussions we had with the administration or criticism of this committee towards the administration, is that we have not looked at the consumers' role in the trade imbalance.

From that standpoint, we have an economy-base two-thirds on consumer spending, one-third on everything else. Obviously, some of the trade imbalance is because we have a policy in this country--and I hope I am not too sweeping when I say what our country's policy is--that except for pharmaceuticals, that we have got a trade policy in this country that we are going to let anything

into this country that people want to buy, because our policy is that we ought to give the consumers maximum access to anything they want to buy, to have the best price, and the best quality.

Now, the extent to which that is the policy of our country, that the consumers ought to be able to buy anything they want and we do not want to limit what consumers can buy--and I have never heard anybody suggest we do--the extent to which consumer purchasing is a big part of our trade deficit, and nobody is willing to address that, then I do not know what we do, unless we obviously can have more incentives to save.

I think, in America, consumer is king. When the consumer decides that they want to buy America and not buy Chinese, Japanese, or any other country, and they do not buy, and instead of not buying they buy Treasury bonds instead of the Japanese and the Chinese buying our Treasury bonds, then until we reach that point, I do not know what you do about a trade deficit, unless you just want to shut off the American consumer from all the consumer goods that they want to buy.

Now, we have heard a lot about China financing our debt. Yes, they have 3 percent of our debt; Japan has 8 percent of our debt. It would be very easy for the Americans, if they want to be pro-American, to pick up

what the Chinese are investing in American bonds and solve some of our problems.

But until the freedom of Americans to do whatever they want to do is somehow subverted by the government--and I do not think we are going to do that--I think that we are beating a dead horse, to the extent to which we blame the administration or the extent to which we blame American corporations, and all these things where we are in a global economy. I just do not think we have been complete in our approach to this.

Now, none of this is said to denigrate anything that anybody has said on this committee, because we have problems in these areas, but we have not brought the consumer into the discussion.

We were supposed to have a dialogue, and you had your statement and I had mine. Now, where can we go back to satisfy the Senator from New Mexico of the concerns he had about our committee doing more in this area? Because I want to do more in this area, if we can.

Senator Bingaman. Yes. Mr. Chairman, I do not disagree with your point, that we do have a general policy of trying to allow access by American consumers to whatever they want to buy, and I am not trying to change that.

What I am trying to say is, there are a whole range

of policies that other countries have put in place to promote exports that we have not put in place to the same extent or to the same effect.

There are a lot of things we could be doing to export more and to provide goods and services to others in the world that would help reduce the size of this trade imbalance.

I think that many of the countries that we trade with have a clear and well-defined policy of export promotion, and maintaining a trade surplus, and that is the basis of their economic growth. We never had that. I am not really advocating that.

I am saying, though, that getting closer to balance is very much in our interests and would help strengthen our economy, promoting more direct foreign investment in this country. Providing ways to incentivize investment in this country by U.S. firms rather than investment overseas by U.S. firms is clearly something we could look at.

All of those things, I believe, come under the jurisdiction of the committee. So I think there is a range of issues that we could have some very useful hearings on, and I hope that you and Senator Baucus are able to find time on the schedule for those. If not, perhaps Senator Thomas and I can do that at the

subcommittee level, if he is willing to do that.

The Chairman. Some of the frustration is, and Senator Baucus was working hand-in-glove with me, on just getting a FSC/ETI bill passed--it took us about two years--and that was supposed to address some of this through the cost of capital and things of that nature.

In the final analysis, let me just say that there is nothing you have said, or anybody else has said, that does not frustrate me, and I would like to be able to do something about it, and feel a responsibility to do something about it.

But I particularly want to engage members to the extent to which there are negotiations going on on other bilateral agreements right now in the Doha Round, the extent to which this committee should be involved to a greater extent, and members want to participate in dialogue with the administration on every one of those agreements so that we meet our constitutional responsibility of regulating and being involved in foreign trade issues, international trade issues, and to meet our responsibilities on the trade promotion authority. I would just make clear that I am ready to move forward on those things.

Senator Baucus?

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator Baucus. Mr. Chairman, ironically, this subject is, if you will pardon my saying so, much more important than the subject of this hearing. CAFTA is important, but it does not begin to compare with the importance of the subject that we are now discussing.

We have an obligation, Mr. Chairman, in this committee to hold hearings on this subject because we are now, in world history, at a time when we are under increasing pressures.

It is true that China is going to be a major power, and its economy will be larger than that of the United States and some years down the road. We do not know when, but it is going to happen.

We also must address the root causes of the trade deficit. Hearings on the trade deficit are really a proxy for a much deeper problem and a deeper opportunity for this country that we must address.

For example, it is clear, we have a trade deficit, in part, because, as you say, Mr. Chairman, Americans like to consume. They like to buy products. They can buy American products, they can buy Japanese, buy Chinese products. Why? Because is cheaper.

We are also at a time when inflation is low, so it is easy to buy. Inflation is low, in part, because the Japanese and Chinese are heavily investing in the United States. They are financing our consumer binge. Foreigners are financing our consumer binge, and that cannot continue forever. At some point, that is going to have to be addressed.

So what can we do? One thing, and that is certainly within the jurisdiction of this committee, is enforce our trade laws. We all know that we tend to pass trade laws--CAFTA is going to be another example--and the real question is, to what degree is it enforced?

We have IPR agreements that are not enforced. The Chinese do not enforce them, the Indians do not enforce theirs. If we really do enforce our trade laws, we could put a dent, at least, into the trade deficit.

We also have to address the more fundamental problem in this country that addresses competitiveness and make it difficult for United States companies to manufacture products to ship overseas, and that is our health care costs.

Health care costs is a big competitive disadvantage to American companies. We in America spend twice as much per capita on health care than do people in other countries. Twice as much.

You talk to any American businessman--clearly, we all know this--he will tell you that cost of health care puts that company at a major, major competitive disadvantage compared with other companies. It is major. It has a lot to do with the decisions companies make. Companies will move offshore because of health care costs. That is a factor, a reason, because American health care costs are just so high.

For example, I do not know if you saw in this morning's paper, the miracle of Ireland. Ireland has done a lot. Did you know, the per capita income in Ireland is higher than any other European country? Ireland is the wealthiest country in Europe today.

Why? Because Ireland has done a lot of things that we should be doing in America. Education is free in Ireland. College education is free in Ireland. Health care is free in Ireland. It is not entirely free, of course, because it has got to be paid for by their national health insurance program.

All the tax incentives they put into place. Corporate tax rates are low in Ireland and attracts investment in Ireland. Ireland, about 10, 20 years ago, decided Ireland was not going to be a basket case any more, they were going to do something about it, and they did. It is the wealthiest country today in Europe, on a

per capita basis, and it is because Ireland got competitive. We have to get competitive, too.

Education. We all know the major investment we must undertake in America to be competitive in the world's education. Educate our kids and educate all of us with continuing education.

What comparative advantage do we have compared with people in other countries? The only potential comparative advantage we have today is creative value added. Other people around the world have brains; we have got brains. They are no dumber or smarter than we are. We are all people.

To compete, it is value added up here. The more there is value added up here, the more we are going to be able to produce in America, have better products, and be more creative. That is education. That is, down the road, one way to address the trade deficit, is to have a lot smarter people now, and creative people, and educate our people even better.

There is no magic to this. I do mean it when I say, and I do not mean to be disrespectful, this subject is much more important than CAFTA. CAFTA is a blip. We spend so much time in this country on blips. Why? Because they are a little bit easier to understand, they are easier to deal with, they are small. We do not spend

near enough time on the big issues. Why? Because they are complex. It takes time to develop. They do not get a lot of headlines. It does not get us reelected, in the short term.

We have an obligation, Mr. Chairman, to start addressing the long term. We have a real opportunity here in this committee, and I very much appreciate the comments that our colleague from New Mexico made.

I would just urge all of us to do what we know we should be doing, and start addressing this subject in a very solid, meaningful way. It is going to mean stepping on some toes. It is going to mean shaking things up a little bit. But we have to do it.

The Chairman. If it is all right with members, what I will do is call on people that have not spoken yet, yesterday or today, because I think we want to make sure that everybody has an opportunity.

Senator Lott has not spoken yet, and I do not think Senator Smith has.

Senator Lott. Could I ask a question, Mr. Chairman? Do we anticipate a vote here in the next few minutes?

The Chairman. I was told that both sides would try to make sure that we had a quorum here at 9:40.

Senator Lott. All right, sir. I would like to urge that members also follow your five-minute example,

otherwise we will never get through.

The Chairman. All right.

Senator Kyl, then Senator Smith. You have not spoken yet.

Senator Lincoln. Yes, sir. Thank you.

OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM ARIZONA

Senator Kyl. Thank you, Mr. Chairman. I ask unanimous consent to just insert my statement in the record, and I will make just a few quick comments here.

The Chairman. All right. Your statement will be inserted.

[The prepared statement of Senator Kyl appears in the appendix.]

Senator Kyl. Thank you, Mr. Chairman.

I think what Senator Baucus just said has a lot of truth to it. By the way, I would note, the corporate rate in Ireland is 12 percent, and it certainly compares favorably with our rate here in this country, 20 points lower, which suggests that we could do a lot to improve our economy by reducing that corporate rate.

But on the matter of CAFTA, I think one reason why there has been some attention paid to it is not only because of the economic benefits to the people in the United States and in Central America and the Dominican Republic, but as the President frequently reminds us, there is a geopolitical component to CAFTA.

If is impossible for us in this country to appreciate the degree to which the people in Central America want

this agreement, are looking to the United States to approve the agreement. They desire to have this strong trade relationship and a strong political relationship with the United States. There is a lot of turmoil in Central and South America right now.

In some respects, some of the countries are literally teetering on the edge of continuing to be supportive of the United States and our policies, or perhaps going in a different direction. We do not pay sufficient attention to that. I think that is one reason why the administration has been focusing so much on CAFTA.

The President appreciates what would happen to our relationship with these countries if we were turn our back on them and deny CAFTA and to turn it down. I have spent a lot of time in Central America. I have spent a lot of time, for example, in El Salvador, and I know what this agreement means to the people of El Salvador. It is just unthinkable that we would turn our backs on them.

The key thing for us to remember, is that what is a very, very minor thing for the United States, literally a minuscule portion of our economy, is huge to the people of Central America. We talk about improving their conditions. They do not want our aid, they just want to be able to trade with us. CAFTA enables them to do that in a robust way.

So, I urge my colleagues, when they are thinking about this, not only to look at the economic consequences, and certainly not narrowly to some particular interest here in the United States, but to balance that against the geopolitical component here, what the President likes to talk about.

I hope that my colleagues will conclude that it makes not only economic sense, but important geopolitical sense, to approve this agreement to continue the great relationship that we have with our friends in Central America.

I thank you, Mr. Chairman, for all the work that you have put in to get this agreement approved.

The Chairman. Thank you.

Now, Senator Lincoln?

OPENING STATEMENT OF HON. BLANCHE LINCOLN, A U.S. SENATOR FROM ARKANSAS

Senator Lincoln. Thank you, Mr. Chairman. Again, thank you for your leadership. I appreciate hearing your passion about meeting our responsibilities under TPA, because I do think that is a critical part of what has slowed us down, quite frankly, in this debate.

I am pleased to hear Senator Kyl's comments on balance and how important balance is, to look at all the components of what we are dealing with in these trade agreements. No doubt that it is important to the Central American countries.

But it is also important to balance that out between American workers and the opportunities that we have in this committee and in the negotiations that we take upon ourselves in these agreements to make sure that there is a balance.

Mr. Chairman, I think no trade matter since NAFTA has posed as much of a challenge to congressional support for expanded trade as the agreement that we are addressing this morning.

I, for one, have an unblemished voting record in support of a pro-trade agenda. As a newly-elected Congresswoman from the First District of Arkansas, one of

my very first votes was NAFTA. I voted for NAFTA, and I have heard about it ever since.

Once again, I am here this morning with some mixed emotions. On the one hand, we have an agreement that creates greater opportunities for our U.S. exports and U.S. investments in a region that is very important to our national interest: the efforts that we have made in Central and South America, the growth of democracy in those areas are incredibly important to the well-being of our hemisphere.

The benefits of the agreement are mostly in one direction, since most goods from Central America already come into the U.S. at little to no duty as a result of the existing trade preferences that we give our Central American neighbors.

But is inaccurate to say that the benefits flow entirely in one direction. You look around the room at many of our friends here from sugar-producing States and it reminds us that there are some strong anxieties in some of our States over some of these issues.

Others here, including myself, are wondering what this agreement does for the direction of labor and environmental standards in the U.S. trade policy agenda. These are some legitimate concerns that I think many of us have tried to express through the normal processes

that exist through TPA.

I guess, frankly, I am somewhat disappointed with the way that CAFTA has been handled, the missed opportunity that we had to really be able to present a unified team on behalf of our Nation on the issues of trade.

I am disappointed that the administration sent this legislation to Congress without taking the two different bills between the House and the Senate to conference. I guess I am also disappointed that no consideration whatsoever was given to the Wyden TAA amendment that passed in this committee after we had great discussion over that.

Senators raised several concerns during the mock mark-up, but rather than taking the meaningful steps towards addressing these concerns, the administration has chosen, really, to ignore those concerns and try to force the legislation through Congress.

Far worse, I think, is the apparent desire to want to pass this agreement by the slimmest of margins, or at least waiting until the last minute to try to get a more unified support, when we could have had a unified voice, when we could have had a really strong bipartisan effort. I believe that the broad support for CAFTA was possible, and is possible, on both sides of the aisle.

Mr. Chairman, my unblemished record on trade also

includes support for trade promotion authority. I did so in good faith, and with the understanding that the administration--any administration, this administration and others--and Congress would work closely to forge a trade agenda that works for all of America. I do not believe that that has occurred with regard to CAFTA. We have taken it in jumpy steps, at best.

As Senator Baucus noted yesterday, President Bush likes to say that trade is for everyone. He likes to say that we all share the benefits, including workers, and he claims to care a lot about having a skilled workforce that can keep American businesses competitive in a global marketplace.

The Wyden amendment that we dealt with here in this committee in the mock mark-up presented the opportunity to accomplish exactly that. TPA was intended to be teamwork.

TPA was passed with the idea that Congress would work in consultation with the administration, because many of us knew that striking a deal with 535 different interests was virtually impossible, but that the administration would consult us, they would work with us, for a job that we could all consider to be well done.

Mr. Chairman, when I first ran for Congress, absolutely no one thought I would win. No one. The day

of the election, I rode down to the polls with my parents, and my mother had planned a big, festive party.

I looked at her and said, no one thinks I am going to win. I cannot believe you are planning a big party. And she looked at me and she said, "You know, regardless, win, lose or draw, you always celebrate a job well done. When you put everything into something and you give it your best, you celebrate that."

That is what we should be working towards in this Congress, is a job well done. Not that everybody is going to get everything that they want, but the fact that, as we work together as a team, we can report to the American people that we have done the best job we could possibly do.

That means working in consultation with the administration, and it means the administration working with us. That is what I believe, more than anything, the people of this great country want to see us do. Not that any one side is going to get all of what they want, Mr. Chairman.

You have done a tremendous job in working in a bipartisan way, I think, to take home to the American people that everybody has tried to do their best job. No agreement is perfect, but some are better than others, if for no other reason than that they offer great

opportunities for significant growth.

That is what the American people want to see. They want to see our country growing. They do not want to see it stagnant, and they certainly do not want to see us bickering over the things that we could come together and work through.

The whole premise behind trade promotion authority is that the administration would lead us and consult us, and take seriously that consultation that we provide, not ignore it, not say that it does not matter or that the people we all represent in our different constituencies do not have a purpose or do not have a concern.

Mr. Chairman, broadly speaking, I do believe that more trade is better than less. A simple cost/benefit analysis of this agreement suggests to me that this agreement is a net positive for my State of Arkansas.

I want to say how grateful I am to Mr. Allen Johnson for his attention to some very sensitive issues on behalf of much of what my State depends on in terms of the economy, and he did so with, as I said, great sensitivity, but a tremendous amount of attention, and I am grateful. I am very grateful.

On that basis, I certainly have decided to support CAFTA. I did previously in the committee, and will so again. I believe, however, that it is that great

attention to detail and the sensitivity of those issues that makes these kind of agreements successful, and we can do that in this committee and in this Congress. The administration can do that, in working with us, being sensitive and paying greater attention to what we need to pay attention to.

In the meantime, Mr. Chairman, I do encourage Ambassador Portman to lift U.S. trade policy out of these divisive debates and to craft an agenda that can best unite our common interests. I cannot think of anyone better to work with him than you and Senator Baucus, who have been an exemplary example of bipartisanship in this committee.

I think our challenge is not simply to expand commerce, but to maximize our opportunities. The world is a growing place, and we all know that. We know we cannot circle our wagons, sell our widgets, gadgets, hamburgers, and everything else here that we produce in this country to one another. We have got to reach beyond our borders and we have got to be a part of this global economy, but we have to do so in a way that is fair to the American people.

There is a difference. If we manage the expansion of our commerce, we will begin to renew confidence, I think, in our trade agenda and with the American people.

Mr. Chairman, I will end by saying that an indication that this administration has a modicum of respect for this committee and the members of Congress would really be a tremendous start in taking seriously the role that we play in TPA, particularly those of us that have supported it time and time again.

I look forward to us in this committee, and particularly you, Mr. Chairman and Senator Baucus, in helping us lead that way.

Thank you.

The Chairman. Yes. Thank you very much.

Could I ask other members who wanted to speak if they could speak if they could speak after we have our vote? If anybody does not object, I would like to go then to the vote, because we do have a quorum and Senator Schumer has to leave right away.

[No response]

The Chairman. At this point then, there is a quorum present. I move the committee favorably report S. 1307, the Dominican Republic-Central American-United States Free Trade Agreement Implementation Act. Those in favor, say aye.

[A chorus of ayes]

The Chairman. Those opposed, say no.

[A chorus of nays]

The Chairman. The ayes seem to have it. The ayes do have it. So, the bill is favorably reported.

Senator Baucus. I do not know if anybody wants a recorded vote. I am not pushing for one, but if anybody does, fine.

The Chairman. All right.

Now we would go to Burma. We will take up S.J. Resolution 18, a Joint Resolution approving the renewal of the import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

I move the committee favorably report S.J. Res. 18. I now ask all those in favor, say aye.

[A chorus of ayes]

The Chairman. Those opposed, say no.

[No response]

The Chairman. That is unanimously reported. So, S.J. Res. 18 is favorably reported.

Are there any other members that want to speak on the agreement at this point?

Senator Smith. Mr. Chairman?

The Chairman. Yes, Senator Smith?

Senator Smith. I am for CAFTA. I have a lengthy statement I would like to include in the record.

The Chairman. It will be included in the record.

[The prepared statement of Senator Smith appears in

the appendix.]

The Chairman. Does anybody else want to speak?

[No response]

The Chairman. All right. The meeting is adjourned.

[Whereupon, at 9:51 a.m. the meeting was concluded.]

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UNITED STATES SENATE
COMMITTEE ON FINANCE

Charles E. Grassley, Chairman

Wednesday, June 29, 2005

216 Hart Senate Office Building

9:00 a.m.

Agenda for Business Meeting

1. **S. 1307, the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act**

2. **S. J. Res. 18, a joint resolution approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.**

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

JUN 2 8 2005

The Honorable Jeff Bingaman
U.S. Senate
Washington DC 20510

Dear Jeff,

As the Congress considers the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), you have raised concerns about ongoing efforts to improve enforcement of labor laws and to monitor progress in this regard in the CAFTA-DR signatory countries. As you know, Congress appropriated $20 million in FY05 specifically for projects to improve labor and environmental law enforcement in these countries.

The recent House Appropriations Committee mark-up of the FY06 Foreign Operations appropriations bill increases this commitment for the next fiscal year, with $40 million earmarked for labor and environmental enforcement capacity-building in the CAFTA-DR signatory countries. The Administration is willing to support this level of funding in the FY06 Senate appropriations bill.

Furthermore, because we are willing to make a longer-term commitment to improve labor and environmental law enforcement in the CAFTA-DR countries, the Administration is willing to propose and support this same level of labor/environment capacity-building assistance for the next three fiscal years, FY07 through FY09.

More specifically, you have suggested the assistance of the International Labor Organization (ILO) in monitoring and verifying progress in the Central American and Dominican governments' efforts to improve labor law enforcement and working conditions.

We are willing to implement your idea. Your proposal, as I understand it, is that the ILO would make a transparent public report of its findings every six months. The Administration has now consulted with the ILO and determined that this function would require additional funding to the ILO of approximately $3 million annually. The Administration is willing to devote approximately $3 million of the $20 million in FY05 labor enforcement assistance monies to support and fund this ILO monitoring initiative. To ensure that this monitoring continues, the Administration is willing to continue a funding commitment to ILO monitoring for the next three fiscal years, FY07 through FY09.

The Administration also shares your goal of ensuring that we pair expanded trade opportunities with economic development assistance designed to ease the transition to free trade, especially for rural farmers in our CAFTA-DR partners. On June 13, 2005, the U.S. Millennium Challenge Corporation (MCC) signed a $215 million compact with

Honduras targeted specifically at rural development and infrastructure, and on the same day the MCC announced a $175 million compact with Nicaragua that will be signed shortly.

As Secretary Rice and I have already communicated to you, we are willing to give high priority to negotiating compacts with El Salvador, Guatemala, and the Dominican Republic when those countries become eligible for MCC assistance under higher per capita income caps next year. I anticipate that such compacts would provide substantial U.S. economic assistance for rural development in these countries.

In addition, the Administration has worked with the Inter-American Development Bank (IDB) to provide new assistance, including $10 million in new grants announced by the IDB earlier this month for rural development and institution building. I hope you will join me and officials from the IDB, World Bank, and other institutions next month for an international donors conference to discuss other ways we can direct development assistance toward meeting the needs of rural populations.

To address your specific concern about the period before MCC compacts might be negotiated with El Salvador, Guatemala, and the Dominican Republic, the Administration is willing to support additional spending for rural development assistance of $10 million per year for each of those countries starting in FY07 for a total of five years, or until the signing of an MCC compact with such country, whichever comes first. This amounts to a $150 million commitment in transitional rural assistance for these countries over five years.

These monies will provide transition assistance to rural farmers in these three countries for a defined period, while preserving a very strong incentive for candidate countries to meet the statutory criteria to receive what would likely be much higher levels of economic assistance under an MCC compact. Since the implementation of CAFTA-DR requires steps which reinforce the statutory criteria for funding under the MCC law, I believe that implementation of the agreement will assist these three countries to move quickly toward qualifying for a successful MCC compact with the United States.

Furthermore, because many of the agreement's requirements for agriculture liberalization in the CAFTA-DR countries for sensitive commodities -- such as dairy, poultry, and rice -- will not fully occur until ten, fifteen, or even twenty years after CAFTA's implementation date, I am confident that this transitional mechanism provides ample time for adjustment in the rural economies of these nations.

Sincerely,

Rob Portman

Rob Portman

THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT IMPLEMENTING LEGISLATION AND SUPPORTING DOCUMENTATION

Consistent with the provisions of section 2105(a)(1)(A) and (B) of the Trade Act of 2002 (19 U.S.C. § 3805(a)(1)(A) and (B)) ("the Act"):

- On February 20, 2004, the President notified the House of Representatives and the Senate of the President's intention to enter into a free trade agreement with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua ("Central America")(40 Wkly. Comp. of Pres. Docs. 263 (2004)). On March 24, 2004, the President notified the House of Representatives and the Senate of the President's intention to enter into a free trade agreement with the Dominican Republic (40 Wkly. Comp. of Pres. Docs. 462 (2004)).

- On February 24, 2004, the President published in the *Federal Register* a notice of the President's intention to enter into a free trade agreement with Central America (69 Fed. Reg. 8543 (2004)). On March 26, 2004, the President published in the *Federal Register* a notice of the President's intention to enter into a free trade agreement with the Dominican Republic (69 Fed. Reg. 16161 (2004)).

- On August 5, 2004, the United States Trade Representative entered into a free trade agreement with Central America and the Dominican Republic ("Agreement").

- On October 4, 2004, the United States Trade Representative transmitted to the Congress a description of changes to existing U.S. laws required to comply with the Agreement.

The following documents are submitted to the Congress under section 2105 of the Act. Submitted herewith or within these documents are:

- a copy of the final legal text of the Agreement (Tab 1);

- a draft of an implementing bill described in section 2103(b)(3) of the Act (Tab 2);

- a statement of any administrative action proposed to implement the Agreement, which includes an explanation as to how the implementing bill and proposed administrative action will change or affect existing law, whether and how the Agreement changes provisions of an agreement previously negotiated, and how the implementing bill meets the standards set forth in section 2103(b)(3) of the Act (Tab 3);

- a statement setting forth the reasons of the President regarding how and to what extent the Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Act (Tab 4); and

- a statement setting forth the reasons of the President regarding how the Agreement serves the interest of U.S. commerce (Tab 5).

Additionally, a summary of the Agreement (Tab 6), as required by section 162 of the Trade Act of 1974 (19 U.S.C. § 2212), and 30 letters and three Understandings related to the Agreement are submitted herewith to the Congress.

109TH CONGRESS
1ST SESSION

S. J. RES. 18

Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2005

Mr. MCCONNELL (for himself, Mrs. FEINSTEIN, Mr. MCCAIN, Mr. LEAHY, Mr. BROWNBACK, Mr. OBAMA, Ms. MURKOWSKI, and Mr. ALEXANDER) introduced the following joint resolution; which was read twice and referred to the Committee on Finance

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JOINT RESOLUTION

Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress approves the renewal of the import restrictions contained in section 3(a)(1) of the Burmese Freedom and Democracy Act of 2003.

O

109TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. _____ (for himself and Mr. _____) (by request) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To implement the Dominican Republic-Central America-United States Free Trade Agreement.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Dominican Republic-Central America-United States Free Trade Agreement Implementation Act".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

TITLE II—CUSTOMS PROVISIONS

TITLE III—RELIEF FROM IMPORTS

Subtitle A—Relief From Imports Benefiting From the Agreement

Subtitle B—Textile and Apparel Safeguard Measures

Subtitle C—Cases Under Title II of the Trade Act of 1974

TITLE IV—MISCELLANEOUS

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to approve and implement the Free Trade Agreement between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua entered into under the authority of section 2103(b) of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803(b));

(2) to strengthen and develop economic relations between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua for their mutual benefit;

(3) to establish free trade between the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua through the reduction and elimination of barriers to trade in goods and services and to investment; and

(4) to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement.

SEC. 3. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the Dominican Republic-Central America-United States Free Trade Agreement approved by the Congress under section 101(a)(1).

(2) CAFTA–DR COUNTRY.—Except as provided in section 203, the term "CAFTA–DR country" means—

(A) Costa Rica, for such time as the Agreement is in force between the United States and Costa Rica;

(B) the Dominican Republic, for such time as the Agreement is in force between the United States and the Dominican Republic;

(C) El Salvador, for such time as the Agreement is in force between the United States and El Salvador;

(D) Guatemala, for such time as the Agreement is in force between the United States and Guatemala;

(E) Honduras, for such time as the Agreement is in force between the United States and Honduras; and

(F) Nicaragua, for such time as the Agreement is in force between the United States and Nicaragua.

(3) COMMISSION.—The term "Commission" means the United States International Trade Commission.

(4) HTS.—The term "HTS" means the Harmonized Tariff Schedule of the United States.

(5) TEXTILE OR APPAREL GOOD.—The term "textile or apparel good" means a good listed in the Annex to the Agreement on Textiles and Clothing referred to in section 101(d)(4) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(4)), other than a good listed in Annex 3.29 of the Agreement.

TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT

SEC. 101. APPROVAL AND ENTRY INTO FORCE OF THE AGREEMENT.

(a) APPROVAL OF AGREEMENT AND STATEMENT OF ADMINISTRATIVE ACTION.—Pursuant to section 2105 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3805) and section 151 of the Trade Act of 1974 (19 U.S.C. 2191), the Congress approves—

(1) the Dominican Republic-Central America-United States Free Trade Agreement entered into on August 5, 2004, with the Governments of Costa

Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua, and submitted to the Congress on [____, 2005]; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on [____, 2005].

(b) CONDITIONS FOR ENTRY INTO FORCE OF THE AGREEMENT.—At such time as the President determines that countries listed in subsection (a)(1) have taken measures necessary to comply with the provisions of the Agreement that are to take effect on the date on which the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

SEC. 102. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF AGREEMENT TO UNITED STATES LAW.—

(1) UNITED STATES LAW TO PREVAIL IN CONFLICT.—No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) CONSTRUCTION.—Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, or

(B) to limit any authority conferred under any law of the United States,

unless specifically provided for in this Act.

(b) RELATIONSHIP OF AGREEMENT TO STATE LAW.—

(1) LEGAL CHALLENGE.—No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(2) DEFINITION OF STATE LAW.—For purposes of this subsection, the term "State law" includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) EFFECT OF AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State, on the ground that such action or inaction is inconsistent with the Agreement.

SEC. 103. IMPLEMENTING ACTIONS IN ANTICIPATION OF ENTRY INTO FORCE AND INITIAL REGULATIONS.

(a) IMPLEMENTING ACTIONS.—

(1) PROCLAMATION AUTHORITY.—After the date of the enactment of this Act—

(A) the President may proclaim such actions, and

(B) other appropriate officers of the United States Government may issue such regulations,

as may be necessary to ensure that any provision of this Act, or amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date, but no such proclamation or regulation may have an effec-

tive date earlier than the date the Agreement enters into force.

(2) EFFECTIVE DATE OF CERTAIN PROCLAIMED ACTIONS.—Any action proclaimed by the President under the authority of this Act that is not subject to the consultation and layover provisions under section 104 may not take effect before the 15th day after the date on which the text of the proclamation is published in the Federal Register.

(3) WAIVER OF 15-DAY RESTRICTION.—The 15-day restriction contained in paragraph (2) on the taking effect of proclaimed actions is waived to the extent that the application of such restriction would prevent the taking effect on the date the Agreement enters into force of any action proclaimed under this section.

(b) INITIAL REGULATIONS.—Initial regulations necessary or appropriate to carry out the actions required by or authorized under this Act or proposed in the statement of administrative action submitted under section 101(a)(2) to implement the Agreement shall, to the maximum extent feasible, be issued within 1 year after the date on which the Agreement enters into force. In the case of any implementing action that takes effect on a date after the date on which the Agreement enters into force,

initial regulations to carry out that action shall, to the maximum extent feasible, be issued within 1 year after such effective date.

SEC. 104. CONSULTATION AND LAYOVER PROVISIONS FOR, AND EFFECTIVE DATE OF, PROCLAIMED ACTIONS.

If a provision of this Act provides that the implementation of an action by the President by proclamation is subject to the consultation and layover requirements of this section, such action may be proclaimed only if—

(1) the President has obtained advice regarding the proposed action from—

(A) the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155); and

(B) the Commission;

(2) the President has submitted to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that sets forth—

(A) the action proposed to be proclaimed and the reasons therefor; and

(B) the advice obtained under paragraph (1);

(3) a period of 60 calendar days, beginning on the first day on which the requirements set forth in paragraphs (1) and (2) have been met has expired; and

(4) the President has consulted with such Committees regarding the proposed action during the period referred to in paragraph (3).

SEC. 105. ADMINISTRATION OF DISPUTE SETTLEMENT PROCEEDINGS.

(a) ESTABLISHMENT OR DESIGNATION OF OFFICE.—The President is authorized to establish or designate within the Department of Commerce an office that shall be responsible for providing administrative assistance to panels established under chapter 20 of the Agreement. The office may not be considered to be an agency for purposes of section 552 of title 5, United States Code.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year after fiscal year 2005 to the Department of Commerce such sums as may be necessary for the establishment and operations of the office established or designated under subsection (a) and for the payment of the United States share of the expenses of panels established under chapter 20 of the Agreement.

SEC. 106. ARBITRATION OF CLAIMS.

The United States is authorized to resolve any claim against the United States covered by article 10.16.1(a)(i)(C) or article 10.16.1(b)(i)(C) of the Agreement, pursuant to the Investor-State Dispute Settlement procedures set forth in section B of chapter 10 of the Agreement.

SEC. 107. EFFECTIVE DATES; EFFECT OF TERMINATION.

(a) EFFECTIVE DATES.—Except as provided in subsection (b), the provisions of this Act and the amendments made by this Act take effect on the date the Agreement enters into force.

(b) EXCEPTIONS.—Sections 1 through 3 and this title take effect on the date of the enactment of this Act.

(c) TERMINATION OF CAFTA–DR STATUS.—During any period in which a country ceases to be a CAFTA–DR country, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect with respect to that country.

(d) TERMINATION OF THE AGREEMENT.—On the date on which the Agreement ceases to be in force with respect to the United States, the provisions of this Act (other than this subsection) and the amendments made by this Act shall cease to have effect.

TITLE II—CUSTOMS PROVISIONS

SEC. 201. TARIFF MODIFICATIONS.

(a) TARIFF MODIFICATIONS PROVIDED FOR IN THE AGREEMENT.—

(1) PROCLAMATION AUTHORITY.—The President may proclaim—

(A) such modifications or continuation of any duty,

(B) such continuation of duty-free or excise treatment, or

(C) such additional duties,

as the President determines to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

(2) EFFECT ON GSP STATUS.—Notwithstanding section 502(a)(1) of the Trade Act of 1974 (19 U.S.C. 2462(a)(1)), the President shall terminate the designation of each CAFTA–DR country as a beneficiary developing country for purposes of title V of the Trade Act of 1974 on the date the Agreement enters into force with respect to that country.

(3) EFFECT ON CBERA STATUS.—

(A) IN GENERAL.—Notwithstanding section 212(a) of the Caribbean Basin Economic

Recovery Act (19 U.S.C. 2702(a)), the President shall terminate the designation of each CAFTA–DR country as a beneficiary country for purposes of that Act on the date the Agreement enters into force with respect to that country.

(B) EXCEPTION.—Notwithstanding subparagraph (A), each such country shall be considered a beneficiary country under section 212(a) of the Caribbean Basin Economic Recovery Act, for purposes of—

(i) sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H));

(ii) the duty-free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement; and

(iii) section 274(h)(6)(B) of the Internal Revenue Code of 1986.

(b) OTHER TARIFF MODIFICATIONS.—Subject to the consultation and layover provisions of section 104, the President may proclaim—

(1) such modifications or continuation of any duty,

(2) such modifications as the United States may agree to with a CAFTA–DR country regarding the staging of any duty treatment set forth in Annex 3.3 of the Agreement,

(3) such continuation of duty-free or excise treatment, or

(4) such additional duties,

as the President determines to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions provided for by the Agreement.

(c) CONVERSION TO AD VALOREM RATES.—For purposes of subsections (a) and (b), with respect to any good for which the base rate in the Schedule of the United States to Annex 3.3 of the Agreement is a specific or compound rate of duty, the President may substitute for the base rate an ad valorem rate that the President determines to be equivalent to the base rate.

SEC. 202. ADDITIONAL DUTIES ON CERTAIN AGRICULTURAL GOODS.

(a) GENERAL PROVISIONS.—

(1) APPLICABILITY OF SUBSECTION.—This subsection applies to additional duties assessed under subsection (b).

(2) APPLICABLE NTR (MFN) RATE OF DUTY.—For purposes of subsection (b), the term "applicable NTR (MFN) rate of duty" means, with respect to a safeguard good, a rate of duty that is the lesser of—

(A) the column 1 general rate of duty that would, at the time the additional duty is imposed under subsection (b), apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good; or

(B) the column 1 general rate of duty that would, on the day before the date on which the Agreement enters into force, apply to a good classifiable in the same 8-digit subheading of the HTS as the safeguard good.

(3) SCHEDULE RATE OF DUTY.—For purposes of subsection (b), the term "schedule rate of duty" means, with respect to a safeguard good, the rate of duty for that good that is set out in the Schedule of the United States to Annex 3.3 of the Agreement.

(4) SAFEGUARD GOOD.—In this section, the term "safeguard good" means a good—

(A) that is included in the Schedule of the United States to Annex 3.15 of the Agreement;

(B) that qualifies as an originating good under section 203, except that operations performed in or material obtained from the United States shall be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement; and

(C) for which a claim for preferential tariff treatment under the Agreement has been made.

(5) EXCEPTIONS.—No additional duty shall be assessed on a good under subsection (b) if, at the time of entry, the good is subject to import relief under—

(A) subtitle A of title III of this Act; or

(B) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.).

(6) TERMINATION.—The assessment of an additional duty on a good under subsection (b) shall cease to apply to that good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

(7) NOTICE.—Not later than 60 days after the Secretary of the Treasury first assesses an additional duty in a calendar year on a good under sub-

section (b), the Secretary shall notify the country whose good is subject to the additional duty in writing of such action and shall provide to that country data supporting the assessment of the additional duty.

(b) ADDITIONAL DUTIES ON SAFEGUARD GOODS.—

(1) IN GENERAL.—In addition to any duty proclaimed under subsection (a) or (b) of section 201, and subject to subsection (a), the Secretary of the Treasury shall assess a duty, in the amount determined under paragraph (2), on a safeguard good of a CAFTA–DR country imported into the United States in a calendar year if the Secretary determines that, prior to such importation, the total volume of that safeguard good of such country that is imported into the United States in that calendar year exceeds 130 percent of the volume that is set out for that safeguard good in the corresponding year in the table for that country contained in Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement. For purposes of this subsection, year 1 in that table corresponds to the calendar year in which the Agreement enters into force.

(2) CALCULATION OF ADDITIONAL DUTY.—The additional duty on a safeguard good under this subsection shall be—

(A) in the case of a good classified under subheading 1202.10.80, 1202.20.80, 2008.11.15, 2008.11.35, or 2008.11.60 of the HTS—

(i) in years 1 through 5, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty;

(ii) in years 6 through 10, an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(iii) in years 11 through 14, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(B) in the case of any other safeguard good—

(i) in years 1 through 14, an amount equal to 100 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty;

(ii) in years 15 through 17, an amount equal to 75 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty; and

(iii) in years 18 and 19, an amount equal to 50 percent of the excess of the applicable NTR (MFN) rate of duty over the schedule rate of duty.

SEC. 203. RULES OF ORIGIN.

(a) APPLICATION AND INTERPRETATION.—In this section:

(1) TARIFF CLASSIFICATION.—The basis for any tariff classification is the HTS.

(2) REFERENCE TO HTS.—Whenever in this section there is a reference to a chapter, heading, or subheading, such reference shall be a reference to a chapter, heading, or subheading of the HTS.

(3) COST OR VALUE.—Any cost or value referred to in this section shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the country in which the good is produced (whether the United States or another CAFTA–DR country).

(b) ORIGINATING GOODS.—For purposes of this Act and for purposes of implementing the preferential tariff

treatment provided for under the Agreement, except as otherwise provided in this section, a good is an originating good if—

(1) the good is a good wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries;

(2) the good—

(A) is produced entirely in the territory of one or more of the CAFTA–DR countries, and—

(i) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in Annex 4.1 of the Agreement; or

(ii) the good otherwise satisfies any applicable regional value-content or other requirements specified in Annex 4.1 of the Agreement; and

(B) satisfies all other applicable requirements of this section; or

(3) the good is produced entirely in the territory of one or more of the CAFTA–DR countries, exclusively from materials described in paragraph (1) or (2).

(c) REGIONAL VALUE-CONTENT.—

(1) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of a good referred to in Annex 4.1 of the Agreement, except for goods to which paragraph (4) applies, shall be calculated by the importer, exporter, or producer of the good, on the basis of the build-down method described in paragraph (2) or the build-up method described in paragraph (3).

(2) BUILD-DOWN METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-down method:

$$\text{RVC} = \frac{\text{AV}-\text{VNM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term "AV" means the adjusted value of the good.

(iii) VNM.—The term "VNM" means the value of nonoriginating materials that are acquired and used by the producer in the production of the good, but does not

include the value of a material that is self-produced.

(3) BUILD-UP METHOD.—

(A) IN GENERAL.—The regional value-content of a good may be calculated on the basis of the following build-up method:

$$\text{RVC} = \frac{\text{VOM}}{\text{AV}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) RVC.—The term "RVC" means the regional value-content of the good, expressed as a percentage.

(ii) AV.—The term "AV" means the adjusted value of the good.

(iii) VOM.—The term "VOM" means the value of originating materials that are acquired or self-produced, and used by the producer in the production of the good.

(4) SPECIAL RULE FOR CERTAIN AUTOMOTIVE GOODS.—

(A) IN GENERAL.—For purposes of subsection (b)(2), the regional value-content of an automotive good referred to in Annex 4.1 of the Agreement may be calculated by the importer, exporter, or producer of the good, on the basis of the following net cost method:

$$\text{RVC} = \frac{\text{NC}-\text{VNM}}{\text{NC}} \times 100$$

(B) DEFINITIONS.—In subparagraph (A):

(i) AUTOMOTIVE GOOD.—The term "automotive good" means a good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or in any of headings 8701 through 8708.

(ii) RVC.—The term "RVC" means the regional value-content of the automotive good, expressed as a percentage.

(iii) NC.—The term "NC" means the net cost of the automotive good.

(iv) VNM.—The term "VNM" means the value of nonoriginating materials that are acquired and used by the producer in the production of the automotive good, but does not include the value of a material that is self-produced.

(C) MOTOR VEHICLES.—

(i) BASIS OF CALCULATION.—For purposes of determining the regional value-content under subparagraph (A) for an automotive good that is a motor vehicle provided for in any of headings 8701

through 8705, an importer, exporter, or producer may average the amounts calculated under the formula contained in subparagraph (A), over the producer's fiscal year—

(I) with respect to all motor vehicles in any 1 of the categories described in clause (ii); or

(II) with respect to all motor vehicles in any such category that are exported to the territory of one or more of the CAFTA–DR countries.

(ii) CATEGORIES.—A category is described in this clause if it—

(I) is the same model line of motor vehicles, is in the same class of vehicles, and is produced in the same plant in the territory of a CAFTA–DR country, as the good described in clause (i) for which regional value-content is being calculated;

(II) is the same class of motor vehicles, and is produced in the same plant in the territory of a CAFTA–DR country, as the good described in

clause (i) for which regional value-content is being calculated; or

(III) is the same model line of motor vehicles produced in the territory of a CAFTA–DR country as the good described in clause (i) for which regional value-content is being calculated.

(D) OTHER AUTOMOTIVE GOODS.—For purposes of determining the regional value-content under subparagraph (A) for automotive goods provided for in any of subheadings 8407.31 through 8407.34, in subheading 8408.20, or in heading 8409, 8706, 8707, or 8708, that are produced in the same plant, an importer, exporter, or producer may—

(i) average the amounts calculated under the formula contained in subparagraph (A) over—

(I) the fiscal year of the motor vehicle producer to whom the automotive goods are sold,

(II) any quarter or month, or

(III) its own fiscal year,

if the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(ii) determine the average referred to in clause (i) separately for such goods sold to 1 or more motor vehicle producers; or

(iii) make a separate determination under clause (i) or (ii) for automotive goods that are exported to the territory of one or more of the CAFTA–DR countries.

(E) CALCULATING NET COST.—The importer, exporter, or producer shall, consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, determine the net cost of an automotive good under subparagraph (B) by—

(i) calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the total cost of all such goods, and then rea-

sonably allocating the resulting net cost of those goods to the automotive good;

(ii) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and nonallowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) reasonably allocating each cost that forms part of the total cost incurred with respect to the automotive good so that the aggregate of all such costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or nonallowable interest costs.

(d) VALUE OF MATERIALS.—

(1) IN GENERAL.—For the purpose of calculating the regional value-content of a good under subsection (c), and for purposes of applying the de

minimis rules under subsection (f), the value of a material is—

(A) in the case of a material that is imported by the producer of the good, the adjusted value of the material;

(B) in the case of a material acquired in the territory in which the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, as set forth in regulations promulgated by the Secretary of the Treasury providing for the application of such Articles in the absence of an importation; or

(C) in the case of a material that is self-produced, the sum of—

(i) all expenses incurred in the production of the material, including general expenses; and

(ii) an amount for profit equivalent to the profit added in the normal course of trade.

(2) FURTHER ADJUSTMENTS TO THE VALUE OF MATERIALS.—

(A) ORIGINATING MATERIAL.—The following expenses, if not included in the value of an originating material calculated under paragraph (1), may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the CAFTA–DR countries to the location of the producer.

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the CAFTA–DR countries, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

nating material in the territory of one or more of the CAFTA–DR countries.

(e) ACCUMULATION.—

(1) ORIGINATING MATERIALS USED IN PRODUCTION OF GOODS OF ANOTHER COUNTRY.—Originating materials from the territory of one or more of the CAFTA–DR countries that are used in the production of a good in the territory of another CAFTA–DR country shall be considered to originate in the territory of that other country.

(2) MULTIPLE PROCEDURES.—A good that is produced in the territory of one or more of the CAFTA–DR countries by 1 or more producers is an originating good if the good satisfies the requirements of subsection (b) and all other applicable requirements of this section.

(f) DE MINIMIS AMOUNTS OF NONORIGINATING MATERIALS.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), a good that does not undergo a change in tariff classification pursuant to Annex 4.1 of the Agreement is an originating good if—

(A) the value of all nonoriginating materials that—

(i) are used in the production of the good, and

(ii) do not undergo the applicable change in tariff classification (set out in Annex 4.1 of the Agreement),

does not exceed 10 percent of the adjusted value of the good;

(B) the good meets all other applicable requirements of this section; and

(C) the value of such nonoriginating materials is included in the value of nonoriginating materials for any applicable regional value-content requirement for the good.

(2) EXCEPTIONS.—Paragraph (1) does not apply to the following:

(A) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, that is used in the production of a good provided for in chapter 4.

(B) A nonoriginating material provided for in chapter 4, or a nonoriginating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90,

that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10.

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20.

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90.

(iv) Goods provided for in heading 2105.

(v) Beverages containing milk provided for in subheading 2202.90.

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90.

(C) A nonoriginating material provided for in heading 0805, or any of subheadings 2009.11 through 2009.39, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, or in fruit

or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90.

(D) A nonoriginating material provided for in heading 0901 or 2101 that is used in the production of a good provided for in heading 0901 or 2101.

(E) A nonoriginating material provided for in heading 1006 that is used in the production of a good provided for in heading 1102 or 1103 or subheading 1904.90.

(F) A nonoriginating material provided for in chapter 15 that is used in the production of a good provided for in chapter 15.

(G) A nonoriginating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703.

(H) A nonoriginating material provided for in chapter 17 that is used in the production of a good provided for in subheading 1806.10.

(I) Except as provided in subparagraphs (A) through (H) and Annex 4.1 of the Agreement, a nonoriginating material used in the

production of a good provided for in any of chapters 1 through 24, unless the nonoriginating material is provided for in a different subheading than the good for which origin is being determined under this section.

(3) TEXTILE OR APPAREL GOODS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification, set out in Annex 4.1 of the Agreement, shall be considered to be an originating good if—

(i) the total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) the yarns are those described in section 204(b)(3)(B)(vi)(IV) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(vi)(IV))(as in effect on the date of the enactment of this Act).

(B) CERTAIN TEXTILE OR APPAREL GOODS.—A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a CAFTA–DR country.

(C) YARN, FABRIC, OR FIBER.—For purposes of this paragraph, in the case of a good that is a yarn, fabric, or fiber, the term "component of the good that determines the tariff classification of the good" means all of the fibers in the good.

(g) FUNGIBLE GOODS AND MATERIALS.—

(1) IN GENERAL.—

(A) CLAIM FOR PREFERENTIAL TARIFF TREATMENT.—A person claiming that a fungible good or fungible material is an originating good may base the claim either on the physical segregation of the fungible good or fungible material or by using an inventory management method with respect to the fungible good or fungible material.

(B) INVENTORY MANAGEMENT METHOD.—In this subsection, the term "inventory management method" means—

(i) averaging;

(ii) "last-in, first-out";

(iii) "first-in, first-out"; or

(iv) any other method—

(I) recognized in the generally accepted accounting principles of the CAFTA–DR country in which the production is performed; or

(II) otherwise accepted by that country.

(2) ELECTION OF INVENTORY METHOD.—A person selecting an inventory management method under paragraph (1) for a particular fungible good or fungible material shall continue to use that method for that fungible good or fungible material throughout the fiscal year of that person.

(h) ACCESSORIES, SPARE PARTS, OR TOOLS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools shall—

(A) be treated as originating goods if the good is an originating good; and

(B) be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement.

(2) CONDITIONS.—Paragraph (1) shall apply only if—

(A) the accessories, spare parts, or tools are classified with and not invoiced separately from the good, regardless of whether they appear specified or separately identified in the invoice for the good; and

(B) the quantities and value of the accessories, spare parts, or tools are customary for the good.

(3) REGIONAL VALUE-CONTENT.—If the good is subject to a regional value-content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(i) PACKAGING MATERIALS AND CONTAINERS FOR RETAIL SALE.—Packaging materials and containers in

which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the nonoriginating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.1 of the Agreement, and, if the good is subject to a regional value-content requirement, the value of such packaging materials and containers shall be taken into account as originating or nonoriginating materials, as the case may be, in calculating the regional value-content of the good.

(j) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—Packing materials and containers for shipment shall be disregarded in determining whether a good is an originating good.

(k) INDIRECT MATERIALS.—An indirect material shall be treated as an originating material without regard to where it is produced.

(l) TRANSIT AND TRANSHIPMENT.—A good that has undergone production necessary to qualify as an originating good under subsection (b) shall not be considered to be an originating good if, subsequent to that production, the good—

(1) undergoes further production or any other operation outside the territories of the CAFTA–DR countries, other than unloading, reloading, or any

other operation necessary to preserve the good in good condition or to transport the good to the territory of a CAFTA–DR country; or

(2) does not remain under the control of customs authorities in the territory of a country other than a CAFTA–DR country.

(m) GOODS CLASSIFIABLE AS GOODS PUT UP IN SETS.—Notwithstanding the rules set forth in Annex 4.1 of the Agreement, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3 of the HTS shall not be considered to be originating goods unless—

(1) each of the goods in the set is an originating good; or

(2) the total value of the nonoriginating goods in the set does not exceed—

(A) in the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(B) in the case of a good, other than a textile or apparel good, 15 percent of the adjusted value of the set.

(n) DEFINITIONS.—In this section:

(1) ADJUSTED VALUE.—The term "adjusted value" means the value determined in accordance with Articles 1 through 8, Article 15, and the cor-

responding interpretive notes of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 referred to in section 101(d)(8) of the Uruguay Round Agreements Act, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation.

(2) CAFTA–DR COUNTRY.—The term "CAFTA–DR country" means—

(A) the United States; and

(B) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the Agreement is in force between the United States and that country.

(3) CLASS OF MOTOR VEHICLES.—The term "class of motor vehicles" means any one of the following categories of motor vehicles:

(A) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, or motor vehicles for the transport of 16 or

more persons provided for in subheading 8702.10 or 8702.90.

(B) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90.

(C) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, or motor vehicles provided for in subheading 8704.21 or 8704.31.

(D) Motor vehicles provided for in any of subheadings 8703.21 through 8703.90.

(4) FUNGIBLE GOOD OR FUNGIBLE MATERIAL.—The term "fungible good" or "fungible material" means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material.

(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.—The term "generally accepted accounting principles" means the recognized consensus or substantial authoritative support in the territory of a CAFTA–DR country with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of

financial statements. The principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures.

(6) GOODS WHOLLY OBTAINED OR PRODUCED ENTIRELY IN THE TERRITORY OF ONE OR MORE OF THE CAFTA–DR COUNTRIES.—The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA–DR countries" means—

(A) plants and plant products harvested or gathered in the territory of one or more of the CAFTA–DR countries;

(B) live animals born and raised in the territory of one or more of the CAFTA–DR countries;

(C) goods obtained in the territory of one or more of the CAFTA–DR countries from live animals;

(D) goods obtained from hunting, trapping, fishing or aquaculture conducted in the territory of one or more of the CAFTA–DR countries;

(E) minerals and other natural resources not included in subparagraphs (A) through (D)

that are extracted or taken in the territory of one or more of the CAFTA–DR countries;

(F) fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the CAFTA–DR countries by vessels registered or recorded with a CAFTA–DR country and flying the flag of that country;

(G) goods produced on board factory ships from the goods referred to in subparagraph (F), if such factory ships are registered or recorded with that CAFTA–DR country and fly the flag of that country;

(H) goods taken by a CAFTA–DR country or a person of a CAFTA–DR country from the seabed or subsoil outside territorial waters, if a CAFTA–DR country has rights to exploit such seabed or subsoil;

(I) goods taken from outer space, if the goods are obtained by a CAFTA–DR country or a person of a CAFTA–DR country and not processed in the territory of a country other than a CAFTA–DR country;

(J) waste and scrap derived from—

(i) manufacturing or processing operations in the territory of one or more of the CAFTA–DR countries; or

(ii) used goods collected in the territory of one or more of the CAFTA–DR countries, if such goods are fit only for the recovery of raw materials;

(K) recovered goods derived in the territory of one or more of the CAFTA–DR countries from used goods, and used in the territory of a CAFTA–DR country in the production of remanufactured goods; and

(L) goods produced in the territory of one or more of the CAFTA–DR countries exclusively from—

(i) goods referred to in any of subparagraphs (A) through (J), or

(ii) the derivatives of goods referred to in clause (i),

at any stage of production.

(7) IDENTICAL GOODS.—The term "identical goods" means identical goods as defined in the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 re-

ferred to in section 101(d)(8) of the Uruguay Round Agreements Act;

(8) INDIRECT MATERIAL.—The term "indirect material" means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including—

(A) fuel and energy;

(B) tools, dies, and molds;

(C) spare parts and materials used in the maintenance of equipment or buildings;

(D) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(E) gloves, glasses, footwear, clothing, safety equipment, and supplies;

(F) equipment, devices, and supplies used for testing or inspecting the good;

(G) catalysts and solvents; and

(H) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production.

(9) MATERIAL.—The term "material" means a good that is used in the production of another good, including a part or an ingredient.

(10) MATERIAL THAT IS SELF-PRODUCED.—The term "material that is self-produced" means an originating material that is produced by a producer of a good and used in the production of that good.

(11) MODEL LINE.—The term "model line" means a group of motor vehicles having the same platform or model name.

(12) NET COST.—The term "net cost" means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost.

(13) NONALLOWABLE INTEREST COSTS.—The term "nonallowable interest costs" means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the CAFTA–DR country in which the producer is located.

(14) NONORIGINATING GOOD OR NONORIGINATING MATERIAL.—The terms "nonoriginating good" and "nonoriginating material" mean a good

or material, as the case may be, that does not qualify as originating under this section.

(15) PACKING MATERIALS AND CONTAINERS FOR SHIPMENT.—The term "packing materials and containers for shipment" means the goods used to protect a good during its transportation and does not include the packaging materials and containers in which a good is packaged for retail sale.

(16) PREFERENTIAL TARIFF TREATMENT.—The term "preferential tariff treatment" means the customs duty rate, and the treatment under article 3.10.4 of the Agreement, that are applicable to an originating good pursuant to the Agreement.

(17) PRODUCER.—The term "producer" means a person who engages in the production of a good in the territory of a CAFTA–DR country.

(18) PRODUCTION.—The term "production" means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good.

(19) REASONABLY ALLOCATE.—The term "reasonably allocate" means to apportion in a manner that would be appropriate under generally accepted accounting principles.

(20) RECOVERED GOODS.—The term "recovered goods" means materials in the form of individual parts that are the result of—

(A) the disassembly of used goods into individual parts; and

(B) the cleaning, inspecting, testing, or other processing that is necessary for improvement to sound working condition of such individual parts.

(21) REMANUFACTURED GOOD.—The term "remanufactured good" means a good that is classified under chapter 84, 85, or 87, or heading 9026, 9031, or 9032, other than a good classified under heading 8418 or 8516, and that—

(A) is entirely or partially comprised of recovered goods; and

(B) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

(22) TOTAL COST.—The term "total cost" means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the CAFTA–DR countries.

(23) USED.—The term "used" means used or consumed in the production of goods.

(o) PRESIDENTIAL PROCLAMATION AUTHORITY.—

(1) IN GENERAL.—The President is authorized to proclaim, as part of the HTS—

(A) the provisions set out in Annex 4.1 of the Agreement; and

(B) any additional subordinate category necessary to carry out this title consistent with the Agreement.

(2) FABRICS AND YARNS NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE UNITED STATES.—The President is authorized to proclaim that a fabric or yarn is added to the list in Annex 3.25 of the Agreement in an unrestricted quantity, as provided in article 3.25.4(e) of the Agreement.

(3) MODIFICATIONS.—

(A) IN GENERAL.—Subject to the consultation and layover provisions of section 104, the President may proclaim modifications to the provisions proclaimed under the authority of paragraph (1)(A), other than provisions of chapters 50 through 63, as included in Annex 4.1 of the Agreement.

(B) ADDITIONAL PROCLAMATIONS.—Notwithstanding subparagraph (A), and subject to the consultation and layover provisions of sec-

tion 104, the President may proclaim before the end of the 1-year period beginning on the date of the enactment of this Act, modifications to correct any typographical, clerical, or other non-substantive technical error regarding the provisions of chapters 50 through 63, as included in Annex 4.1 of the Agreement.

(4) FABRICS, YARNS, OR FIBERS NOT AVAILABLE IN COMMERCIAL QUANTITIES IN THE CAFTA–DR COUNTRIES.—

(A) IN GENERAL.—Notwithstanding paragraph 3(A), the list of fabrics, yarns, and fibers set out in Annex 3.25 of the Agreement may be modified as provided for in this paragraph.

(B) DEFINITIONS.—In this paragraph:

(i) The term "interested entity" means the government of a CAFTA–DR country other than the United States, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good.

(ii) All references to "day" and "days" exclude Saturdays, Sundays, and legal holidays.

(C) REQUESTS TO ADD FABRICS, YARNS, OR FIBERS.—(i) An interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries and to add that fabric, yarn, or fiber to the list in Annex 3.25 of the Agreement in a restricted or unrestricted quantity.

(ii) After receiving a request under clause (i), the President may determine whether—

(I) the fabric, yarn, or fiber is available in commercial quantities in a timely manner in the CAFTA–DR countries; or

(II) any interested entity objects to the request.

(iii) The President may, within the time periods specified in clause (iv), proclaim that a fabric, yarn, or fiber that is the subject of a request submitted under clause (i) is added to the list in Annex 3.25 of the Agreement in an unrestricted quantity, or in any restricted quantity that the President may establish, if the President determines under clause (ii) that—

(I) the fabric, yarn, or fiber is not available in commercial quantities in a

timely manner in the CAFTA–DR countries; or

(II) no interested entity has objected to the request.

(iv) The time periods within which the President may issue a proclamation under clause (iii) are—

(I) not later than 30 days after the date on which the request is submitted under clause (i); or

(II) not later than 44 days after the request is submitted, if the President determines, within 30 days after the date on which the request is submitted, that the President does not have sufficient information to make a determination under clause (ii).

(v) Notwithstanding section 103(a)(2), a proclamation made under clause (iii) shall take effect on the date on which the text of the proclamation is published in the Federal Register.

(vi) Not later than 6 months after proclaiming under clause (iii) that a fabric, yarn, or fiber is added to the list in Annex 3.25 of the Agreement in a restricted quantity, the

President may eliminate the restriction if the President determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA–DR countries.

(D) DEEMED APPROVAL OF REQUEST.—If, after an interested entity submits a request under subparagraph (C)(i), the President does not, within the applicable time period specified in subparagraph (C)(iv), make a determination under subparagraph (C)(ii) regarding the request, the fabric, yarn, or fiber that is the subject of the request shall be considered to be added, in an unrestricted quantity, to the list in Annex 3.25 of the Agreement beginning—

(i) 45 days after the date on which the request was submitted; or

(ii) 60 days after the date on which the request was submitted, if the President made a determination under subparagraph (C)(iv)(II).

(E) REQUESTS TO RESTRICT OR REMOVE FABRICS, YARNS, OR FIBERS.—(i) Subject to clause (ii), an interested entity may request the President to restrict the quantity of, or remove

from the list in Annex 3.25 of the Agreement, any fabric, yarn, or fiber—

(I) that has been added to that list in an unrestricted quantity pursuant to paragraph (2) or subparagraph (C)(iii) or (D); or

(II) with respect to which the President has eliminated a restriction under subparagraph (C)(vi).

(ii) An interested entity may submit a request under clause (i) at any time beginning 6 months after the date of the action described in subclause (I) or (II) of that clause.

(iii) Not later than 30 days after the date on which a request under clause (i) is submitted, the President may proclaim an action provided for under clause (i) if the President determines that the fabric, yarn, or fiber that is the subject of the request is available in commercial quantities in a timely manner in the CAFTA–DR countries.

(iv) A proclamation declared under clause (iii) shall take effect no earlier than the date that is 6 months after the date on which the

text of the proclamation is published in the Federal Register.

(F) PROCEDURES.—The President shall establish procedures—

(i) governing the submission of a request under subparagraphs (C) and (E); and

(ii) providing an opportunity for interested entities to submit comments and supporting evidence before the President makes a determination under subparagraph (C) (ii) or (vi) or (E)(iii).

SEC. 204. CUSTOMS USER FEES.

Section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)) is amended by adding after paragraph (14), the following:

"(15) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.".

SEC. 205. RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS OF TEXTILE OR APPAREL GOODS.

(a) IN GENERAL.—Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, and subject to subsection (c), an entry—

(1) of a textile or apparel good—

(A) of a CAFTA–DR country that the United States Trade Representative has designated as an eligible country under subsection (b), and

(B) that would have qualified as an originating good under section 203 if the good had been entered after the date of entry into force of the Agreement for that country,

(2) that was made on or after January 1, 2004, and before the date of the entry into force of the Agreement with respect to that country, and

(3) for which customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid,

shall be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary

of the Treasury shall refund any excess customs duties paid with respect to such entry.

(b) ELIGIBLE COUNTRY.—The United States Trade Representative shall determine, in accordance with article 3.20 of the Agreement, which CAFTA–DR countries are eligible countries for purposes of this section, and shall publish a list of all such countries in the Federal Register.

(c) REQUESTS.—Liquidation or reliquidation may be made under subsection (a) with respect to an entry of a textile or apparel good only if a request therefor is filed with the Bureau of Customs and Border Protection, within such period as the Bureau of Customs and Border Protection shall establish by regulation in consultation with the Secretary of the Treasury, that contains sufficient information to enable the Bureau of Customs and Border Protection—

(1)(A) to locate the entry; or

(B) to reconstruct the entry if it cannot be located; and

(2) to determine that the good satisfies the conditions set out in subsection (a).

(d) DEFINITION.—As used in this section, the term "entry" includes a withdrawal from warehouse for consumption.

SEC. 206. DISCLOSURE OF INCORRECT INFORMATION; FALSE CERTIFICATIONS OF ORIGIN; DENIAL OF PREFERENTIAL TARIFF TREATMENT.

(a) DISCLOSURE OF INCORRECT INFORMATION.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in subsection (c)—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

"(9) PRIOR DISCLOSURE REGARDING CLAIMS UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing."; and

(2) by adding at the end the following new subsection:

"(h) FALSE CERTIFICATIONS OF ORIGIN UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

"(1) IN GENERAL.—Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA–DR certification of origin (as defined in section 508(g)(1)(B) of this Act) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

"(2) PROMPT AND VOLUNTARY DISCLOSURE OF INCORRECT INFORMATION.—No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

"(3) EXCEPTION.—A person may not be considered to have violated paragraph (1) if—

"(A) the information was correct at the time it was provided in a CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and

"(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.".

(b) DENIAL OF PREFERENTIAL TARIFF TREATMENT.—Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended by adding at the end the following new subsection:

"(h) DENIAL OF PREFERENTIAL TARIFF TREATMENT UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—If the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement finds indications of a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the rules of origin set out in section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, the Bureau of Customs and Border Protection, in ac-

cordance with regulations issued by the Secretary of the Treasury, may suspend preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until the Bureau of Customs and Border Protection determines that representations of that person are in conformity with such section 203.".

SEC. 207. RELIQUIDATION OF ENTRIES.

Subsection (d) of section 520 of the Tariff Act of 1930 (19 U.S.C. 1520(d)) is amended—

(1) in the matter preceding paragraph (1), by striking "or section 202 of the United States-Chile Free Trade Agreement Implementation Act" and inserting ", section 202 of the United States-Chile Free Trade Agreement Implementation Act, or section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act"; and

(2) in paragraph (2), by inserting "or certifications" after "other certificates".

SEC. 208. RECORDKEEPING REQUIREMENTS.

Section 508 of the Tariff Act of 1930 (19 U.S.C. 1508) is amended—

(1) by redesignating subsection (g) as subsection (h);

(2) by inserting after subsection (f) the following new subsection:

"(g) CERTIFICATIONS OF ORIGIN FOR GOODS EXPORTED UNDER THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT.—

"(1) DEFINITIONS.—In this subsection:

"(A) RECORDS AND SUPPORTING DOCUMENTS.—The term 'records and supporting documents' means, with respect to an exported good under paragraph (2), records and documents related to the origin of the good, including—

"(i) the purchase, cost, and value of, and payment for, the good;

"(ii) the purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

"(iii) the production of the good in the form in which it was exported.

"(B) CAFTA–DR CERTIFICATION OF ORIGIN.—The term 'CAFTA–DR certification of origin' means the certification established under

article 4.16 of the Dominican Republic-Central America-United States Free Trade Agreement that a good qualifies as an originating good under such Agreement.

"(2) EXPORTS TO CAFTA–DR COUNTRIES.—Any person who completes and issues a CAFTA–DR certification of origin for a good exported from the United States shall make, keep, and, pursuant to rules and regulations promulgated by the Secretary of the Treasury, render for examination and inspection all records and supporting documents related to the origin of the good (including the certification or copies thereof).

"(3) RETENTION PERIOD.—Records and supporting documents shall be kept by the person who issued a CAFTA–DR certification of origin for at least 5 years after the date on which the certification was issued."; and

(3) in subsection (h), as so redesignated—

(A) by inserting "or (g)" after "(f)"; and

(B) by striking "that subsection" and inserting "either such subsection".

SEC. 209. ENFORCEMENT RELATING TO TRADE IN TEXTILE OR APPAREL GOODS.

(a) ACTION DURING VERIFICATION.—

(1) IN GENERAL.—If the Secretary of the Treasury requests the government of a CAFTA–DR country to conduct a verification pursuant to article 3.24 of the Agreement for purposes of making a determination under paragraph (2), the President may direct the Secretary to take appropriate action described in subsection (b) while the verification is being conducted.

(2) DETERMINATION.—A determination under this paragraph is a determination—

(A) that an exporter or producer in that country is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, or

(B) that a claim that a textile or apparel good exported or produced by such exporter or producer—

(i) qualifies as an originating good under section 203 of this Act, or

(ii) is a good of a CAFTA–DR country,

is accurate.

(b) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (a)(1) includes—

(1) suspension of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines there is insufficient information to support any claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to support that claim;

(2) denial of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines that the person has provided incorrect information to support any

claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary determines that a person has provided incorrect information to support that claim;

(3) detention of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to determine the country of origin of any such good; and

(4) denial of entry into the United States of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines that the person has provided incorrect information as to the country of origin of any such good.

(c) ACTION ON COMPLETION OF A VERIFICATION.—On completion of a verification under subsection (a), the President may direct the Secretary to take appropriate action described in subsection (d) until such time as the Secretary receives information sufficient to make the determination under subsection (a)(2) or until such earlier date as the President may direct.

(d) APPROPRIATE ACTION DESCRIBED.—Appropriate action under subsection (c) includes—

(1) denial of preferential tariff treatment under the Agreement with respect to—

(A) any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A), if the Secretary determines there is insufficient information to support, or that the person has provided incorrect information to support, any claim for preferential tariff treatment that has been made with respect to any such good; or

(B) the textile or apparel good for which a claim of preferential tariff treatment has been made that is the subject of a verification under subsection (a)(1) regarding a claim described in subsection (a)(2)(B), if the Secretary deter-

mines there is insufficient information to support, or that a person has provided incorrect information to support, that claim; and

(2) denial of entry into the United States of any textile or apparel good exported or produced by the person that is the subject of a verification under subsection (a)(1) regarding compliance described in subsection (a)(2)(A) or a claim described in subsection (a)(2)(B), if the Secretary determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(e) PUBLICATION OF NAME OF PERSON.—The Secretary may publish the name of any person that the Secretary has determined—

(1) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or

(2) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

SEC. 210. REGULATIONS.

The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out—

(1) subsections (a) through (n) of section 203;

(2) the amendment made by section 204; and

(3) any proclamation issued under section 203(o).

TITLE III—RELIEF FROM IMPORTS

SEC. 301. DEFINITIONS.

In this title:

(1) CAFTA–DR ARTICLE.—The term "CAFTA–DR article" means an article that qualifies as an originating good under section 203(b).

(2) CAFTA–DR TEXTILE OR APPAREL ARTICLE.—The term "CAFTA–DR textile or apparel article" means a textile or apparel good (as defined in section 3(5)) that is a CAFTA–DR article.

(3) DE MINIMIS SUPPLYING COUNTRY.—

(A) Subject to subparagraph (B), the term "de minimis supplying country" means a CAFTA–DR country whose share of imports of the relevant CAFTA–DR article into the United States does not exceed 3 percent of the aggregate volume of imports of the relevant CAFTA–DR article in the most recent 12-month period for which data are available that precedes the filing of the petition under section 311(a).

(B) A CAFTA–DR country shall not be considered to be a de minimis supplying country

if the aggregate share of imports of the relevant CAFTA–DR article into the United States of all CAFTA–DR countries that satisfy the conditions of subparagraph (A) exceeds 9 percent of the aggregate volume of imports of the relevant CAFTA–DR article during the applicable 12-month period.

(4) RELEVANT CAFTA–DR ARTICLE.—The term "relevant CAFTA–DR article" means the CAFTA–DR article with respect to which a petition has been filed under section 311(a).

Subtitle A—Relief From Imports Benefiting From the Agreement

SEC. 311. COMMENCING OF ACTION FOR RELIEF.

(a) FILING OF PETITION.—A petition requesting action under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the Commission by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of an industry. The Commission shall transmit a copy of any petition filed under this subsection to the United States Trade Representative.

(b) INVESTIGATION AND DETERMINATION.—Upon the filing of a petition under subsection (a), the Commis-

sion, unless subsection (d) applies, shall promptly initiate an investigation to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a CAFTA–DR article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the CAFTA–DR article constitute a substantial cause of serious injury or threat thereof to the domestic industry producing an article that is like, or directly competitive with, the imported article.

(c) APPLICABLE PROVISIONS.—The following provisions of section 202 of the Trade Act of 1974 (19 U.S.C. 2252) apply with respect to any investigation initiated under subsection (b):

(1) Paragraphs (1)(B) and (3) of subsection (b).

(2) Subsection (c).

(3) Subsection (i).

(d) ARTICLES EXEMPT FROM INVESTIGATION.—No investigation may be initiated under this section with respect to any CAFTA–DR article if, after the date that the Agreement enters into force, import relief has been provided with respect to that CAFTA–DR article under this subtitle.

SEC. 312. COMMISSION ACTION ON PETITION.

(a) DETERMINATION.—Not later than 120 days after the date on which an investigation is initiated under section 311(b) with respect to a petition, the Commission shall make the determination required under that section. At that time, the Commission shall also determine whether any CAFTA–DR country is a de minimis supplying country.

(b) APPLICABLE PROVISIONS.—For purposes of this subtitle, the provisions of paragraphs (1), (2), and (3) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d) (1), (2), and (3)) shall be applied with respect to determinations and findings made under this section as if such determinations and findings were made under section 202 of the Trade Act of 1974 (19 U.S.C. 2252).

(c) ADDITIONAL FINDING AND RECOMMENDATION IF DETERMINATION AFFIRMATIVE.—If the determination made by the Commission under subsection (a) with respect to imports of an article is affirmative, or if the President may consider a determination of the Commission to be an affirmative determination as provided for under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)), the Commission shall find, and recommend to the President in the report required under subsection (d), the amount of import relief that is necessary to remedy or prevent the injury found by the Commission in the de-

termination and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The import relief recommended by the Commission under this subsection shall be limited to the relief described in section 313(c). Only those members of the Commission who voted in the affirmative under subsection (a) are eligible to vote on the proposed action to remedy or prevent the injury found by the Commission. Members of the Commission who did not vote in the affirmative may submit, in the report required under subsection (d), separate views regarding what action, if any, should be taken to remedy or prevent the injury.

(d) REPORT TO PRESIDENT.—Not later than the date that is 30 days after the date on which a determination is made under subsection (a) with respect to an investigation, the Commission shall submit to the President a report that includes—

(1) the determination made under subsection (a) and an explanation of the basis for the determination;

(2) if the determination under subsection (a) is affirmative, any findings and recommendations for import relief made under subsection (c) and an explanation of the basis for each recommendation; and

(3) any dissenting or separate views by members of the Commission regarding the determination and recommendation referred to in paragraphs (1) and (2).

(e) PUBLIC NOTICE.—Upon submitting a report to the President under subsection (d), the Commission shall promptly make public such report (with the exception of information which the Commission determines to be confidential) and shall cause a summary thereof to be published in the Federal Register.

SEC. 313. PROVISION OF RELIEF.

(a) IN GENERAL.—Not later than the date that is 30 days after the date on which the President receives the report of the Commission in which the Commission's determination under section 312(a) is affirmative, or which contains a determination under section 312(a) that the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), the President, subject to subsection (b), shall provide relief from imports of the article that is the subject of such determination to the extent that the President determines necessary to remedy or prevent the injury found by the Commission and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition.

(b) EXCEPTION.—The President is not required to provide import relief under this section if the President determines that the provision of the import relief will not provide greater economic and social benefits than costs.

(c) NATURE OF RELIEF.—

(1) IN GENERAL.—The import relief that the President is authorized to provide under this section with respect to imports of an article is as follows:

(A) The suspension of any further reduction provided for under Annex 3.3 of the Agreement in the duty imposed on such article.

(B) An increase in the rate of duty imposed on such article to a level that does not exceed the lesser of—

(i) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(ii) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

(2) PROGRESSIVE LIBERALIZATION.—If the period for which import relief is provided under this section is greater than 1 year, the President shall provide for the progressive liberalization (described

in article 8.2.3 of the Agreement) of such relief at regular intervals during the period of its application.

(d) PERIOD OF RELIEF.—

(1) IN GENERAL.—Subject to paragraph (2), any import relief that the President is authorized to provide under this section may not, in the aggregate, be in effect for more than 4 years.

(2) EXTENSION.—

(A) IN GENERAL.—If the initial period for any import relief provided under this section is less than 4 years, the President, after receiving a determination from the Commission under subparagraph (B) that is affirmative, or which the President considers to be affirmative under paragraph (1) of section 330(d) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(1)), may extend the effective period of any import relief provided under this section, subject to the limitation under paragraph (1), if the President determines that—

(i) the import relief continues to be necessary to remedy or prevent serious injury and to facilitate adjustment by the domestic industry to import competition; and

(ii) there is evidence that the industry is making a positive adjustment to import competition.

(B) ACTION BY COMMISSION.—(i) Upon a petition on behalf of the industry concerned that is filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date on which any action taken under subsection (a) is to terminate, the Commission shall conduct an investigation to determine whether action under this section continues to be necessary to remedy or prevent serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(ii) The Commission shall publish notice of the commencement of any proceeding under this subparagraph in the Federal Register and shall, within a reasonable time thereafter, hold a public hearing at which the Commission shall afford interested parties and consumers an opportunity to be present, to present evidence, and to respond to the presentations of other

parties and consumers, and otherwise to be heard.

(iii) The Commission shall transmit to the President a report on its investigation and determination under this subparagraph not later than 60 days before the action under subsection (a) is to terminate, unless the President specifies a different date.

(e) RATE AFTER TERMINATION OF IMPORT RELIEF.—When import relief under this section is terminated with respect to an article—

(1) the rate of duty on that article after such termination and on or before December 31 of the year in which such termination occurs shall be the rate that, according to the Schedule of the United States to Annex 3.3 of the Agreement would have been in effect 1 year after the provision of relief under subsection (a); and

(2) the rate of duty for that article after December 31 of the year in which termination occurs shall be, at the discretion of the President, either—

(A) the applicable rate of duty for that article set out in the Schedule of the United States to Annex 3.3 of the Agreement; or

(B) the rate of duty resulting from the elimination of the tariff in equal annual stages ending on the date set out in the Schedule of the United States to Annex 3.3 of the Agreement for the elimination of the tariff.

(f) ARTICLES EXEMPT FROM RELIEF.—No import relief may be provided under this section on—

(1) any article subject to import relief under chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.); or

(2) imports of a CAFTA–DR article of a CAFTA–DR country that is a de minimis supplying country with respect to that article.

SEC. 314. TERMINATION OF RELIEF AUTHORITY.

(a) GENERAL RULE.—Subject to subsection (b), no import relief may be provided under this subtitle after the date that is 10 years after the date on which the Agreement enters into force.

(b) EXCEPTION.—If an article for which relief is provided under this subtitle is an article for which the period for tariff elimination, set out in the Schedule of the United States to Annex 3.3 of the Agreement, is greater than 10 years, no relief under this subtitle may be provided for that article after the date on which that period ends.

SEC. 315. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the President under section 313 shall be treated as action taken under chapter 1 of title II of such Act.

SEC. 316. CONFIDENTIAL BUSINESS INFORMATION.

Section 202(a)(8) of the Trade Act of 1974 (19 U.S.C. 2252(a)(8)) is amended in the first sentence—

(1) by striking "and"; and

(2) by inserting before the period at the end ", and title III of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act".

Subtitle B—Textile and Apparel Safeguard Measures

SEC. 321. COMMENCEMENT OF ACTION FOR RELIEF.

(a) IN GENERAL.—A request under this subtitle for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the President by an interested party. Upon the filing of a request, the President shall review the request to determine, from information presented in the request, whether to commence consideration of the request.

(b) PUBLICATION OF REQUEST.—If the President determines that the request under subsection (a) provides the information necessary for the request to be considered,

the President shall cause to be published in the Federal Register a notice of commencement of consideration of the request, and notice seeking public comments regarding the request. The notice shall include a summary of the request and the dates by which comments and rebuttals must be received.

SEC. 322. DETERMINATION AND PROVISION OF RELIEF.

(a) DETERMINATION.—

(1) IN GENERAL.—If a positive determination is made under section 321(b), the President shall determine whether, as a result of the elimination of a duty under the Agreement, a CAFTA–DR textile or apparel article of a specified CAFTA–DR country is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article.

(2) SERIOUS DAMAGE.—In making a determination under paragraph (1), the President—

(A) shall examine the effect of increased imports on the domestic industry, as reflected in changes in such relevant economic factors as

output, productivity, utilization of capacity, inventories, market share, exports, wages, employment, domestic prices, profits, and investment, none of which is necessarily decisive; and

(B) shall not consider changes in technology or consumer preference as factors supporting a determination of serious damage or actual threat thereof.

(3) DEADLINE FOR DETERMINATION.—The President shall make the determination under paragraph (1) no later than 30 days after the completion of any consultations held pursuant to article 3.23.4 of the Agreement.

(b) PROVISION OF RELIEF.—

(1) IN GENERAL.—If a determination under subsection (a) is affirmative, the President may provide relief from imports of the article that is the subject of such determination, as provided in paragraph (2), to the extent that the President determines necessary to remedy or prevent the serious damage and to facilitate adjustment by the domestic industry.

(2) NATURE OF RELIEF.—The relief that the President is authorized to provide under this subsection with respect to imports of an article is an in-

crease in the rate of duty imposed on the article to a level that does not exceed the lesser of—

(A) the column 1 general rate of duty imposed under the HTS on like articles at the time the import relief is provided; or

(B) the column 1 general rate of duty imposed under the HTS on like articles on the day before the date on which the Agreement enters into force.

SEC. 323. PERIOD OF RELIEF.

(a) IN GENERAL.—Subject to subsection (b), any import relief that the President provides under subsection (b) of section 322 may not, in the aggregate, be in effect for more than 3 years.

(b) EXTENSION.—If the initial period for any import relief provided under section 322 is less than 3 years, the President may extend the effective period of any import relief provided under that section, subject to the limitation set forth in subsection (a), if the President determines that—

(1) the import relief continues to be necessary to remedy or prevent serious damage and to facilitate adjustment by the domestic industry to import competition; and

(2) there is evidence that the industry is making a positive adjustment to import competition.

SEC. 324. ARTICLES EXEMPT FROM RELIEF.

The President may not provide import relief under this subtitle with respect to any article if—

(1) import relief previously has been provided under this subtitle with respect to that article; or

(2) the article is subject to import relief under—

(A) subtitle A; or

(B) chapter 1 of title II of the Trade Act of 1974.

SEC. 325. RATE AFTER TERMINATION OF IMPORT RELIEF.

When import relief under this subtitle is terminated with respect to an article, the rate of duty on that article shall be the rate that would have been in effect, but for the provision of such relief.

SEC. 326. TERMINATION OF RELIEF AUTHORITY.

No import relief may be provided under this subtitle with respect to any article after the date that is 5 years after the date on which the Agreement enters into force.

SEC. 327. COMPENSATION AUTHORITY.

For purposes of section 123 of the Trade Act of 1974 (19 U.S.C. 2133), any import relief provided by the Presi-

dent under this subtitle shall be treated as action taken under chapter 1 of title II of that Act.

SEC. 328. CONFIDENTIAL BUSINESS INFORMATION.

The President may not release information received in connection with a review under this subtitle which the President considers to be confidential business information unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the President, or such party subsequently consents to the release of the information. To the extent a party submits confidential business information, it shall also provide a nonconfidential version of the information in which the confidential business information is summarized or, if necessary, deleted.

Subtitle C—Cases Under Title II of the Trade Act of 1974

SEC. 331. FINDINGS AND ACTION ON GOODS OF CAFTA-DR COUNTRIES.

(a) EFFECT OF IMPORTS.—If, in any investigation initiated under chapter 1 of title II of the Trade Act of 1974, the Commission makes an affirmative determination (or a determination which the President may treat as an affirmative determination under such chapter by reason of section 330(d) of the Tariff Act of 1930), the Commission shall also find (and report to the President at the

time such injury determination is submitted to the President) whether imports of the article of each CAFTA–DR country that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof.

(b) PRESIDENTIAL DETERMINATION REGARDING IMPORTS OF CAFTA–DR COUNTRIES.—In determining the nature and extent of action to be taken under chapter 1 of title II of the Trade Act of 1974, the President may exclude from the action goods of a CAFTA–DR country with respect to which the Commission has made a negative finding under subsection (a).

TITLE IV—MISCELLANEOUS

SEC. 401. ELIGIBLE PRODUCTS.

Section 308(4)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2518(4)(A)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or"; and

(3) by adding at the end the following new clause:

"(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is

covered under that Agreement for procurement by the United States.".

SEC. 402. MODIFICATIONS TO THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT.

(a) FORMER BENEFICIARY COUNTRIES.—Section 212(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)) is amended by adding at the end the following new subparagraph:

"(F) The term 'former beneficiary country' means a country that ceases to be designated as a beneficiary country under this title because the country has become a party to a free trade agreement with the United States.".

(b) COUNTRIES ELIGIBLE FOR DESIGNATION AS BENEFICIARY COUNTRIES.—Section 212(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(b)) is amended by striking from the list of countries eligible for designation as beneficiary countries—

(1) "Costa Rica", effective on the date the President terminates the designation of Costa Rica as a beneficiary country pursuant to section 201(a)(3);

(2) "Dominican Republic", effective on the date the President terminates the designation of the Do-

minican Republic as a beneficiary country pursuant to section 201(a)(3);

(3) "El Salvador", effective on the date the President terminates the designation of El Salvador as a beneficiary country pursuant to section 201(a)(3);

(4) "Guatemala", effective on the date the President terminates the designation of Guatemala as a beneficiary country pursuant to section 201(a)(3);

(5) "Honduras", effective on the date the President terminates the designation of Honduras as a beneficiary country pursuant to section 201(a)(3); and

(6) "Nicaragua", effective on the date the President terminates the designation of Nicaragua as a beneficiary country pursuant to section 201(a)(3).

(c) MATERIALS OF, OR PROCESSING IN, FORMER BENEFICIARY COUNTRIES.—Section 213(a)(1) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(1)) is amended by striking "the Commonwealth of Puerto Rico and the United States Virgin Islands" and inserting "the Commonwealth of Puerto Rico, the United

States Virgin Islands, and any former beneficiary country".

(d) DEFINITIONS AND SPECIAL RULES.—Section 213(b)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)(5)) is amended by adding at the end the following new subparagraphs:

"(G) FORMER CBTPA BENEFICIARY COUNTRY.—The term 'former CBTPA beneficiary country' means a country that ceases to be designated as a CBTPA beneficiary country under this title because the country has become a party to a free trade agreement with the United States.

"(H) ARTICLES THAT UNDERGO PRODUCTION IN A CBTPA BENEFICIARY COUNTRY AND A FORMER CBTPA BENEFICIARY COUNTRY.—(i) For purposes of determining the eligibility of an article for preferential treatment under paragraph (2) or (3), references in either such paragraph, and in subparagraph (C) of this paragraph to—

"(I) a 'CBTPA beneficiary country' shall be considered to include any former CPTPA beneficiary country, and

"(II) 'CBTPA beneficiary countries' shall be considered to include former CBTPA beneficiary countries,

if the article, or a good used in the production of the article, undergoes production in a CBTPA beneficiary country.

"(ii) An article that is eligible for preferential treatment under clause (i) shall not be ineligible for such treatment because the article is imported directly from a former CBTPA beneficiary country.

"(iii) Notwithstanding clauses (i) and (ii), an article that is a good of a former CBTPA beneficiary country for purposes of section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) or section 334 of the Uruguay Round Agreements Act (19 U.S.C. 3592), as the case may be, shall not be eligible for preferential treatment under paragraph (2) or (3), unless—

"(I) it is an article that is a good of the Dominican Republic under either such section 304 or 334; and

"(II) the article, or a good used in the production of the article, undergoes production in Haiti.".

SEC. 403. PERIODIC REPORTS AND MEETINGS ON LABOR OBLIGATIONS AND LABOR CAPACITY-BUILDING PROVISIONS.

(a) REPORTS TO CONGRESS.—

(1) IN GENERAL.—Not later than the end of the 2-year period beginning on the date the Agreement enters into force, and not later than the end of each 2-year period thereafter during the succeeding 14-year period, the President shall report to the Congress on the progress made by the CAFTA-DR countries in—

(A) implementing Chapter Sixteen and Annex 16.5 of the Agreement; and

(B) implementing the White Paper.

(2) WHITE PAPER.—In this section, the term "White Paper" means the report of April 2005 of the Working Group of the Vice Ministers Responsible for Trade and Labor in the Countries of Central America and the Dominican Republic entitled "The Labor Dimension in Central America and the Dominican Republic - Building on Progress: Strengthening Compliance and Enhancing Capacity".

(3) CONTENTS OF REPORTS.—Each report under paragraph (1) shall include the following:

(A) A description of the progress made by the Labor Cooperation and Capacity Building Mechanism established by article 16.5 and Annex 16.5 of the Agreement, and the Labor Affairs Council established by article 16.4 of the Agreement, in achieving their stated goals, including a description of the capacity-building projects undertaken, funds received, and results achieved, in each CAFTA-DR country.

(B) Recommendations on how the United States can facilitate full implementation of the recommendations contained in the White Paper.

(C) A description of the work done by the CAFTA-DR countries with the International Labor Organization to implement the recommendations contained in the White Paper, and the efforts of the CAFTA-DR countries with international organizations, through the Labor Cooperation and Capacity Building Mechanism referred to in subparagraph (A), to advance common commitments regarding labor matters.

(D) A summary of public comments received on—

(i) capacity-building efforts by the United States envisaged by article 16.5 and Annex 16.5 of the Agreement;

(ii) efforts by the United States to facilitate full implementation of the White Paper recommendations; and

(iii) the efforts made by the CAFTA-DR countries to comply with article 16.5 and Annex 16.5 of the Agreement and to fully implement the White Paper recommendations, including the progress made by the CAFTA-DR countries in affording to workers internationally-recognized worker rights through improved capacity.

(4) SOLICITATION OF PUBLIC COMMENTS.—The President shall establish a mechanism to solicit public comments for purposes of paragraph (3)(D).

(b) PERIODIC MEETINGS OF SECRETARY OF LABOR WITH LABOR MINISTERS OF CAFTA-DR COUNTRIES.—

(1) PERIODIC MEETINGS.—The Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the CAFTA-DR countries to discuss—

(A) the operation of the labor provisions of the Agreement;

(B) progress on the commitments made by the CAFTA-DR countries to implement the recommendations contained in the White Paper;

(C) the work of the International Labor Organization in the CAFTA-DR countries, and other cooperative efforts, to afford to workers internationally-recognized worker rights; and

(D) such other matters as the Secretary of Labor and the labor ministers consider appropriate.

(2) INCLUSION IN BIENNIAL REPORTS.—The President shall include in each report under subsection (a), as the President deems appropriate, summaries of the meetings held pursuant to paragraph (1).

THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT IMPLEMENTATION ACT

STATEMENT OF ADMINISTRATIVE ACTION

This Statement of Administrative Action ("Statement") is submitted to the Congress in compliance with section 2105(a)(1)(C)(ii) of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act") and accompanies the implementing bill for the free trade agreement that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively "Central America" or "Central American countries") and the Dominican Republic ("Agreement" or "CAFTA-DR"). The bill approves and makes statutory changes necessary or appropriate to implement the Agreement, which the United States Trade Representative signed on August 5, 2004.

This Statement describes significant administrative actions proposed to implement U.S. obligations under the Agreement.

In addition, incorporated into this Statement are two other statements required under section 2105(a) of the TPA Act: (1) an explanation of how the implementing bill and proposed administrative action will change or affect existing law; and (2) a statement setting forth the reasons why the implementing bill and proposed administrative action are necessary or appropriate to carry out the Agreement. The Agreement does not change the provisions of any agreement the United States has previously negotiated with the other parties to the Agreement.

For ease of reference, this Statement generally follows the organization of the Agreement, with the exception of grouping the general provisions of the Agreement (Chapters One, Two, and Eighteen through Twenty-Two) at the beginning of the discussion.

For each chapter of the Agreement, the Statement describes the pertinent provisions of the implementing bill, explaining how the bill changes or affects existing law, and stating why those provisions are necessary or appropriate to implement the Agreement. The Statement then describes the administrative action proposed to implement the particular chapter of the Agreement, explaining how the proposed action changes existing administrative practice or authorizes further action and stating why such actions are necessary or appropriate to implement the Agreement.

It should be noted that this Statement does not, for the most part, discuss those many instances in which U.S. law or administrative practice will remain unchanged under the Agreement. In many cases, U.S. laws and regulations are already in conformity with the obligations assumed under the Agreement.

Finally, references in this Statement to particular sections of U.S. statutes are based on those statutes in effect as of the date this Statement was submitted to the Congress.

Chapters:
One (Initial Provisions)
Two (General Definitions)
Eighteen (Transparency)
Nineteen (Administration of the Agreement and Trade Capacity Building)
Twenty (Dispute Settlement)
Twenty-One (Exceptions)
Twenty-Two (Final Provisions)

1. Implementing Bill

a. Congressional Approval

Section 101(a) of the implementing bill provides Congressional approval for the Agreement and this Statement, as required by sections 2103(b)(3) and 2105(a)(1) of the TPA Act.

b. Entry into Force

Under Article 22.5, the Agreement will enter into force once the United States and at least one other country that has signed the Agreement notify the General Secretariat of the Organization of American States ("OAS"), which serves as the depositary for the Agreement, that they have fulfilled their internal procedures needed to implement the Agreement. Thereafter, the Agreement will enter into force between the United States and any remaining countries 90 days after they provide their notifications to the OAS.

Section 101(b) of the implementing bill provides that when the President determines that other countries that have signed the Agreement have taken measures necessary to comply with those obligations that are to take effect at the time the Agreement enters into force, the President is authorized to provide for the Agreement to enter into force with respect to those countries that provide for the Agreement to enter into force for them.

Certain provisions of the agreement become effective after the Agreement enters into force. For example, certain provisions relating to customs administration become effective with respect to the Central American countries and the Dominican Republic no later than three years after the Agreement enters into force. Certain procedural obligations relating to government procurement become effective with respect to the Central American countries and the Dominican Republic two years after the Agreement enters into force. For Costa Rica, certain commitments on insurance and telecommunications become effective at specified times after the Agreement enters into force. Certain provisions relating to intellectual property rights become effective with respect to the Central American countries and the Dominican Republic following transition periods ranging from six months to four years after the Agreement enters into force. In addition, obligations regarding the ratification of certain international agreements governing intellectual property rights take effect at prescribed times after the Agreement enters into force.

c. Relationship to Federal Law

Section 102(a) of the bill establishes the relationship between the Agreement and U.S. law. The implementing bill, including the authority granted to federal agencies to promulgate implementing regulations, is intended to bring U.S. law fully into compliance with U.S. obligations under the Agreement. The bill accomplishes that objective with respect to federal legislation by amending existing federal statutes that would otherwise be inconsistent with the Agreement and, in certain instances, by creating entirely new provisions of law.

Section 102(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with federal law, including provisions of federal law enacted or amended by the bill. Section 102(a) will not prevent implementation of federal statutes consistent with the Agreement, where permissible under the terms of such statutes. Rather, the section reflects the Congressional view that necessary changes in federal statutes should be specifically enacted rather than provided for in a blanket preemption of federal statutes by the Agreement.

The Administration has made every effort to include all laws in the implementing bill and to identify all administrative actions in this Statement that must be changed in order to conform with the new U.S. rights and obligations arising from the Agreement. Those include both regulations resulting from statutory changes in the bill itself and changes in laws, regulations, rules, and orders that can be implemented without a change in the underlying U.S. statute.

Accordingly, at this time it is the expectation of the Administration that no changes in existing federal law, rules, regulations, or orders other than those specifically indicated in the implementing bill and this Statement will be required to implement the new international obligations that the United States will assume under the Agreement. This is without prejudice to the President's continuing responsibility and authority to carry out U.S. law and agreements. As experience under the Agreement is gained over time, other or different administrative actions may be taken in accordance with applicable law to implement the Agreement. If additional action is called for, the Administration will seek legislation from Congress or, if a change in regulation is required, follow normal agency procedures for amending regulations.

d. Relationship to State Law

The Agreement's rules generally cover state and local laws and regulations, as well as those at the federal level. There are a number of exceptions to, or limitations on, this general rule, however, particularly in the areas of government procurement, labor and environment, investment, and cross-border trade in services and financial services.

The Agreement does not automatically "preempt" or invalidate state laws that do not conform to the Agreement's rules, even if a dispute settlement panel were to find a state measure inconsistent with the Agreement. The United States is free under the Agreement to determine how it will conform with the Agreement's rules at the federal and non-federal level. The Administration is committed to carrying out U.S. obligations under the Agreement, as they apply

to the states, through the greatest possible degree of state-federal consultation and cooperation.

Section 102(b)(1) of the bill makes clear that only the United States is entitled to bring an action in court in the event that there is an unresolved conflict between a state law, or the application of a state law, and the Agreement. The authority conferred on the United States under this paragraph is intended to be used only as a "last resort," in the unlikely event that efforts to achieve consistency through consultations have not succeeded.

The reference in section 102(b)(2) of the bill to the business of insurance is required by virtue of section 2 of the McCarran-Ferguson Act (15 U.S.C. 1012). That section states that no federal statute shall be construed to supersede any state law regulating or taxing the business of insurance unless the federal statute "specifically relates to the business of insurance." Certain provisions of the Agreement (for example, Chapter Twelve, relating to financial services) do apply to state measures regulating the insurance business, although "grandfathering" provisions in Chapter Twelve exempt existing inconsistent (*i.e.*, "non-conforming") measures.

Given the provision of the McCarran-Ferguson Act, the implementing act must make specific reference to the business of insurance in order for the Agreement's provisions covering the insurance business to be given effect with respect to state insurance law. Insurance is otherwise treated in the same manner under the Agreement and the implementing bill as other financial services under the Agreement.

e. Private Lawsuits

Section 102(c) of the implementing bill precludes any private right of action or remedy against a federal, state, or local government, or against a private party, based on the provisions of the Agreement. A private party thus could not sue (or defend a suit against) the United States, a state, or a private party on grounds of consistency (or inconsistency) with the Agreement. The provision also precludes a private right of action attempting to require, preclude, or modify federal or state action on grounds such as an allegation that the government is required to exercise discretionary authority or general "public interest" authority under other provisions of law in conformity with the Agreement.

With respect to the states, section 102(c) represents a determination by the Congress and the Administration that private lawsuits are not an appropriate means for ensuring state compliance with the Agreement. Suits of this nature may interfere with the Administration's conduct of trade and foreign relations and with suitable resolution of disagreements or disputes under the Agreement.

Section 102(c) does not preclude a private party from submitting a claim against the United States to arbitration under Chapter Ten (Investment) of the Agreement or seeking to enforce an award against the United States issued pursuant to such arbitration. The provision also would not preclude any agency of government from considering, or entertaining argument on, whether its action or proposed action is consistent with the Agreement, although any change in agency action would have to be consistent with domestic law.

f. Implementing Regulations

Section 103(a) of the bill provides the authority for new or amended regulations to be issued, and for the President to proclaim actions implementing the provisions of the Agreement, as of the date the Agreement enters into force. Section 103(b) of the bill requires that, whenever possible, all federal regulations required or authorized under the bill and those proposed in this Statement as necessary or appropriate to implement immediately applicable U.S. obligations under the Agreement are to be developed and promulgated within one year of the Agreement's entry into force. In practice, the Administration intends, wherever possible, to amend or issue the other regulations required to implement U.S. obligations under the Agreement at the time the Agreement enters into force. The process for issuing regulations pursuant to this authority will comply with the requirements of the Administrative Procedures Act, including requirements to provide notice of and an opportunity for public comment on such regulations. If issuance of any regulation will occur more than one year after the date provided in section 103(b), the officer responsible for issuing such regulation will notify the relevant committees of both Houses of Congress of the delay, the reasons for such delay, and the expected date for issuance of the regulation. Such notice will be provided at least 30 days prior to the end of the one-year period.

g. Dispute Settlement

Section 105(a) of the bill authorizes the President to establish within the Department of Commerce an office responsible for providing administrative assistance to dispute settlement panels established under Chapter Twenty of the Agreement. This provision enables the United States to implement its obligations under Article 19.3.1 of the Agreement. This office will not be an "agency" within the meaning of 5 U.S.C. 552, consistent with treatment provided under other U.S. free trade agreements, including the North American Free Trade Agreement ("NAFTA") and free trade agreements with Australia, Chile, and Singapore. Thus, for example, the office will not be subject to the Freedom of Information Act or the Government in the Sunshine Act. Since they are international bodies, panels established under Chapter Twenty are not subject to those acts.

Section 105(b) of the bill authorizes the appropriation of funds to support the office established pursuant to section 105(a).

h. Effective Dates

Section 107(b) of the bill provides that the first three sections of the bill as well as Title I of the bill go into effect when the bill is enacted into law.

Section 107(a) provides that the other provisions of the bill and the amendments to other statutes made by the bill take effect on the date on which the Agreement enters into force. Section 107(c) provides that the provisions of the bill (other than section 107(c) itself) and the amendments to other statutes made by the bill will cease to have effect with respect to a country during any period in which it ceases to be an Agreement country. (Note: for purposes of this

statement, the term "Agreement country" refers to a Party to the Agreement other than the United States.) Section 107(d) provides that the provisions of the bill (other than section 107(d) itself) and the amendments to other statutes made by the bill will cease to be effective if the United States withdraws from the Agreement or it terminates.

2. Administrative Action

No administrative changes will be necessary to implement Chapters One, Two, Nineteen, Twenty-One, and Twenty-Two.

Article 18.1.1 of the Agreement requires each government to designate a contact point to facilitate communications regarding the Agreement. The Office of the United States Trade Representative ("USTR") will serve as the U.S. contact point for this purpose.

The Agreement calls for the United States and the other Agreement countries to develop rosters of independent experts willing to serve as panelists to settle disputes between the parties that may arise under the Agreement. One roster will be available for most types of disputes, while specialized rosters will be established to address disputes regarding the Agreement's financial services, labor, and environmental provisions. USTR will consult with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate ("Trade Committees") as it develops rosters of panelists.

Chapter Three (National Treatment and Market Access for Goods)

1. Implementing Bill

a. Proclamation Authority

Section 201(a)(1) of the bill grants the President authority to implement by proclamation U.S. rights and obligations under Chapter Three of the Agreement through the application or elimination of customs duties and tariff-rate quotas ("TRQs"). Section 201(a)(1) authorizes the President to:

- modify or continue any duty;
- keep in place duty-free or excise treatment; or
- impose any duty

that the President determines to be necessary or appropriate to carry out or apply Articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3, 3.27, and 3.28 of the Agreement.

The proclamation authority with respect to Article 3.3 authorizes the President to provide for the continuation, phase-out, and elimination, according to the Schedule of the United States

to Annex 3.3 of the Agreement, of customs duties on imports from the other Agreement countries that meet the Agreement's rules of origin.

The proclamation authority with respect to Articles 3.5 and 3.6 authorizes the President to provide for the elimination of duties on particular categories of imports from the other Agreement countries. Article 3.5 pertains to the temporary admission of certain goods, such as commercial samples, goods intended for display at an exhibition, and goods necessary for carrying out the business activity of a person who qualifies for temporary entry into the United States. Article 3.6 pertains to the importation of goods: (i) returned to the United States after undergoing repair or alteration in another Agreement country; or (ii) sent from another Agreement country for repair or alteration in the United States.

The proclamation authority with respect to Article 3.21 authorizes the President to provide duty-free treatment for textile or apparel articles that the United States and another Agreement country agree are handloomed, handmade, or folklore articles, and are certified as such by that country's competent authority.

The proclamation authority with respect to Article 3.26 of the Agreement authorizes the President to reduce the amount of duty imposed on certain textile or apparel goods that are not "originating goods" for purposes of the Agreement, but that contain U.S.-origin components. The President is authorized to proclaim a duty rate equal to the applicable normal trade relations (most-favored-nation) ("NTR (MFN)") rate of duty applied to the value of the good minus the value of U.S. components (*e.g.*, fabric). To qualify for this duty treatment the good must be made with U.S. fabric or knit-to-shape components and assembled in an Agreement country with U.S. thread. The U.S. fabric may be cut in one or more Agreement countries.

The proclamation authority with respect to Articles 3.27 and 3.28 and Annexes 3.27 and 3.28 of the Agreement authorizes the President to provide preferential tariff treatment to certain apparel goods of Costa Rica and Nicaragua, respectively, that do not satisfy the Agreement's rules of origin. This treatment is limited to annual quantities specified in the annexes.

Sections 201(a)(2) and (3) of the bill address the status of Agreement countries as designated beneficiary countries under the following U.S. trade preference programs: (i) the Generalized System of Preferences; (ii) the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 *et seq.*) ("CBERA"); and (iii) the United States – Caribbean Basin Trade Partnership Act, Pub. Law 106-200 ("CBTPA"), which amended the CBERA to provide additional tariff preferences to beneficiary countries for certain goods, including certain textile and apparel goods.

Section 201(a)(2) of the bill requires the President to withdraw beneficiary country status under the Generalized System of Preferences from Agreement countries once the Agreement takes effect for them.

Section 201(a)(3) of the bill requires the President to withdraw beneficiary country status under the CBERA from Agreement countries once the Agreement takes effect for them. The

requirement to terminate CBERA beneficiary status is subject to three exceptions, however, which are set out in section 201(a)(3)(B).

The first exception implements Article 8.8.1 of the Agreement, which provides that the United States will continue to treat Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)). Those provisions preclude the U.S. International Trade Commission ("ITC") from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether a U.S. industry is materially injured or threatened with material injury by reason of dumped or subsidized imports of a particular product from such beneficiary countries.

The second exception will permit the President to implement the duty free treatment provided under paragraph 12 of Appendix I of the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement.

The third exception provides that the Agreement countries will continue to be considered CBERA beneficiary countries for purposes of section 274(h)(6)(B) of the Internal Revenue Code (26 U.S.C. 274(h)(6)(B)). Section 274(h) limits taxpayer deductions for expenses incurred in attending conventions, seminars, or similar meetings abroad. The rule does not apply with respect to conventions, seminars, or similar meetings held in CBERA beneficiary countries if the countries meet certain tests. This third exception would maintain the status quo with respect to this tax provision, thereby preserving an existing benefit for the Agreement countries.

Section 213(b)(5)(D) of the CBERA, as amended by the CBTPA, provides that CBTPA benefits terminate with respect to any CBTPA beneficiary country on entry into force of a free trade agreement between that country and the United States. The President's proclamation implementing the Agreement will reflect the termination of CBTPA benefits for Agreement countries.

Section 402 of the bill makes several amendments to the CBERA in light of the fact that the Agreement countries will no longer be beneficiary countries for purposes of the CBERA or the CBTPA once the Agreement takes effect for them. Consistent with the commitment that the United States made during the course of the Agreement negotiations, the purpose of the amendments is to ensure, to the extent possible, that the remaining beneficiary countries under these preference programs are not adversely impacted as a consequence of the removal of the Agreement countries from the CBERA and CBTPA programs. To this end, the amendments generally will ensure that goods produced through a combination of operations in a beneficiary country and an Agreement country that would have qualified for preferential treatment under the CBERA or CBTPA before the Agreement took effect will continue to qualify for this treatment after the Agreement takes effect. The amendments do not provide new benefits for the remaining beneficiary countries or the Agreement countries; rather the amendments preserve benefits the remaining beneficiary countries already have under the CBERA and CBTPA.

CBERA Program: Subsection 402(b) of the bill amends section 212(b) of the CBERA to delete the Agreement countries from the list of countries that the President may designate as beneficiary countries. The amendment takes effect with respect to each country on the date on which the President terminates the country's designation as a beneficiary country pursuant to section 201(a)(3) of the bill. Section 402(a) of the bill amends section 212(a)(1) of the CBERA to define the term "former beneficiary country" to mean a country that ceases to be designated as a beneficiary country because the country has become a party to a free trade agreement with the United States.

Section 213(a)(1) of the CBERA provides that for a good to qualify for duty-free treatment, the sum of the cost or value of materials produced in one or more beneficiary countries and the direct costs of processing operations performed in one or more beneficiary countries must be at least 35 percent of the appraised value of the good at the time of entry into the United States. Puerto Rico and the U.S. Virgin Islands are included within the term "beneficiary country" for purposes of satisfying the 35 percent valued added requirement. Section 402(c) of the bill amends section 213(a)(1) of the CBERA to provide that the term "beneficiary country" also includes "any former beneficiary country" for purposes of determining whether the 35 percent value added test has been satisfied. This amendment will ensure that producers and exporters in the remaining CBERA beneficiary countries will be able to continue to use materials of, or processing performed in, the Agreement countries to satisfy the 35 percent value added test for establishing the eligibility of their goods for duty-free treatment under the CBERA.

CBTPA Program: Section 402(d) of the bill adds subparagraphs (G) and (H) to 213(b)(5) of the CBERA. Subparagraph (G) defines the term "former CBTPA beneficiary country" to mean a country that ceases to be designated as a CBTPA beneficiary country because the country has become a party to a free trade agreement with the United States. Subparagraph (H) provides that any reference to a CBTPA beneficiary country shall be considered to include a former CBTPA beneficiary country for purposes of determining the eligibility of a good for preferential treatment under section 213(b)(2) of the CBERA (for certain textile and apparel articles) and section 213(b)(3) of the CBERA (for certain other goods, including footwear, tuna, petroleum, watches and watch parts, and certain leather goods), provided that the good undergoes some production in one of the remaining beneficiary countries. This amendment ensures that the remaining CBTPA beneficiary countries may continue to obtain preferential treatment for their goods even if the goods contain inputs of an Agreement country or the goods undergo processing in an Agreement country. Subparagraph (H) also provides that a good that meets the requirements of the subparagraph will not be ineligible for preferential treatment under section 213(b)(2) or (3) because the good was imported directly from a former CBTPA beneficiary country. However, in light of the fact that the Agreement countries will no longer be CBTPA beneficiary countries, subparagraph (H) provides that a good that is a good of an Agreement country under U.S. non-preferential rules of origin is not eligible for preferential treatment pursuant to subparagraph (H). (This limitation does not apply to goods of the Dominican Republic that undergo production in Haiti, in order to maintain the status quo with respect to integrated production operations between those two countries.) See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

Section 201(b) of the bill authorizes the President, subject to the consultation and layover provisions of section 104 of the bill, to:

- modify or continue any duty;
- modify the staging of any duty elimination under the Agreement pursuant to an agreement under Annex 3.3 with one or more Agreement countries;
- keep in place duty-free or excise treatment; or
- impose any duty

by proclamation whenever the President determines it to be necessary or appropriate to maintain the general level of reciprocal and mutually advantageous concessions with respect to other Agreement countries provided by the Agreement.

Section 104 of the bill sets forth consultation and layover steps that must precede the President's implementation of any duty modification by proclamation. This would include, for example, modifications of duties under section 201(b) of the bill. Under the consultation and layover provisions, the President must obtain the advice of the appropriate private sector advisory committees (pursuant to section 135 of the Trade Act of 1974) and the ITC on the proposed action. The President must submit a report to the Trade Committees setting forth the action proposed, the reasons for the proposed action, and the advice of the private sector and the ITC. The bill sets aside a 60-day period following the date of transmittal of the report for the President to consult with the Trade Committees on the action. Following the expiration of the 60-day period, the President may proclaim the action.

The President may initiate the consultation and layover process under section 104 of the bill on enactment of the bill. However, under section 103(a), any modifying proclamation cannot take effect until the Agreement enters into force. In addition to modifications of customs duties, these provisions apply to other Presidential proclamation authority provided in the bill that is subject to consultation and layover, such as authority to implement a proposal to modify the Agreement's specific rules of origin pursuant to an agreement with the other Agreement countries under Article 4.14 of the Agreement.

Section 201(c) of the bill provides for the conversion of existing specific or compound rates of duty for various goods to *ad valorem* rates for purposes of implementing the Agreement's customs duty reductions. (A compound rate of duty for a good would be a rate of duty stated, for example, as the sum of X dollars per kilogram plus Y percent of the value of the good.)

b. Agricultural Safeguard

Section 202 of the bill implements the agricultural safeguard provisions of Article 3.15 and Annex 3.15 of the Agreement. Article 3.15 permits the United States to impose an "agricultural safeguard measure," in the form of additional duties, on imports of certain goods of Agreement countries specified in the Schedule of the United States to Annex 3.15 of the Agreement that exceed the volume thresholds set out in that annex.

Section 202(a) of the bill provides the overall contour of the agricultural safeguard rules, including definitions of terms used in the agricultural safeguard provisions. Section 202(a)(2) defines the applicable NTR (MFN) rate of duty for purposes of the agricultural safeguard. Under the Agreement, the sum of the duties assessed under an agricultural safeguard and the applicable rate of duty in the Schedule of the United States to Annex 3.3 of the Agreement may not exceed the general NTR (MFN) rate of duty.

Section 202(a)(3) of the bill defines the "schedule rate of duty" for purposes of the agricultural safeguard as the rate of duty for a good set out in the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(4) of the bill specifies the products that may be subject to an agricultural safeguard measure. These goods must qualify as originating goods under section 203, except that operations performed in or material obtained from the United States will be considered as if the operations were performed in, and the material was obtained from, a country that is not a party to the Agreement.

Section 202(a)(5) of the bill implements Article 3.15.4 of the Agreement by establishing that no additional duty may be applied on a good if, at the time of entry, the good is subject to a safeguard measure under the procedures set out in Subtitle A of Title III of the bill or under the safeguard procedures set out in chapter 1 of Title II of the Trade Act of 1974.

Section 202(a)(6) of the bill provides that the agricultural safeguard provision ceases to apply with respect to a good on the date on which duty-free treatment must be provided to that good under the Schedule of the United States to Annex 3.3 of the Agreement.

Section 202(a)(7) of the bill implements Article 3.15.6 of the Agreement by directing the Secretary of the Treasury (the "Secretary") within 60 days of the date on which the Secretary first assesses an agricultural safeguard duty on a good to notify the country whose good is subject to the measure and provide that country with supporting data.

Section 202(b) of the bill provides for the Secretary to impose agricultural safeguard duties and explains how the additional duties are to be calculated. The additional duties are triggered in any year when the volume of imports of the good from an Agreement country exceeds 130 percent of the in-quota quantity allocated to that country for the good in that calendar year in the Schedule of the United States to Annex 3.3 of the Agreement. (The in-quota quantities for goods are set out in the Schedule of the United States to Annex 3.3 of the

Agreement on a calendar-year basis beginning with "year one." Year one refers to the calendar year in which the Agreement enters into force, even with respect to any country that has signed the Agreement that becomes a Party in a subsequent calendar year.) The additional duties remain in effect only until the end of the calendar year in which they are imposed.

c. Customs User Fees

Section 204 of the bill implements U.S. commitments under Article 3.10.4 of the Agreement, regarding customs user fees on originating goods, by amending section 13031(b) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)). The amendment provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Four of the Agreement. Processing of goods qualifying as originating goods under the Agreement will be financed by money from the General Fund of the Treasury. This is necessary to ensure that the United States complies with obligations under the General Agreement on Tariffs and Trade 1994 by limiting fees charged for the processing of non-originating imports to amounts commensurate with the processing services provided. That is, fees charged on such non-originating imports will not be used to finance the processing of originating imports.

d. Refund of Duties on Textile or Apparel Goods

Article 3.20.1 of the Agreement establishes rules requiring each government to refund customs duties paid on textile or apparel goods imported prior to the entry into force of the Agreement. Specifically, Article 3.20.1 requires each government to refund customs duties paid on textile or apparel goods of an Agreement country that were imported between January 1, 2004 and the date of entry into force of the Agreement for that country, provided that the goods would have been considered originating goods if the Agreement had been in force when the goods were imported. The refund applies to the extent that the duties paid on the good exceed the applicable duty set out in that country's Schedule to Annex 3.3 of the Agreement. Article 3.20.4 clarifies that the obligation to refund customs duties does not apply with respect to goods that qualify for preferential tariff treatment under Article 3.21, Article 3.27, or Article 3.28 of the Agreement.

Some Agreement countries may not have legal authority to refund duties retroactively. Hence, this obligation does not apply to any Agreement country, or to goods of any Agreement country, that notifies the other governments 90 days before the Agreement enters into force for that country that it will not refund duties under Article 3.20.1. However, Article 3.20.3 establishes an exception if the country agrees to provide benefits to imported textile or apparel goods that the exporting country agrees are equivalent to a refund of excess customs duties.

Section 205 of the bill implements Article 3.20 for the United States. Section 205(a) provides that, notwithstanding section 514 of the Tariff Act of 1930, the Secretary must liquidate or reliquidate entries of textile or apparel goods of an eligible Agreement country made between January 1, 2004, and the date the Agreement enters into force with respect to that country, provided that the goods would have been considered originating goods if the Agreement had been in force at that time. Such liquidations or reliquidations must be at the applicable rate of

duty under the Schedule of the United States to Annex 3.3 of the Agreement, and the Secretary will refund any excess customs duties paid on such entries. Section 205(b) provides that the United States Trade Representative will determine, in accordance with Article 3.20, which Agreement countries' goods are eligible for retroactive tariff treatment and will publish a list of such countries in the *Federal Register*. Section 205(c) provides that requests for liquidation or reliquidation under subsection (a) must be filed with the Bureau of Customs and Border Protection ("CBP") and must provide information sufficient for CBP to locate or reconstruct the entry and determine whether the goods in question are eligible for a duty refund.

e. Textile or Apparel Safeguard

Article 3.23 of the Agreement makes remedies available to domestic textile and apparel industries that have sustained or are threatened by serious damage from imports of textile or apparel goods for which duties have been reduced or eliminated under the Agreement. It also sets forth procedures for obtaining such remedies. The Administration does not anticipate that the Agreement will result in injurious increases in textile or apparel imports from the other Agreement countries. Nevertheless, the Agreement's textile or apparel safeguard procedure will ensure that relief is available if needed.

The safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, textile or apparel goods of an Agreement country are being imported into the United States in such increased quantities, in absolute or relative terms, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing like or directly competitive goods. In these circumstances, Article 3.23 permits the United States to increase duties on the imported goods to a level that does not exceed the lesser of the prevailing U.S. NTR (MFN) duty rate for the good or the U.S. NTR (MFN) duty rate in effect at the time the Agreement entered into force.

Subtitle B of Title III of the bill (sections 321 through 328) implements the Agreement's textile or apparel safeguard.

Section 321(a) establishes that an interested party may file a request for a textile or apparel safeguard measure with the President, who must review the request to determine whether to commence consideration of the request on its merits. Under section 321(b), if the President determines that the request contains information necessary to warrant consideration on the merits, the President must provide notice in the *Federal Register* stating that the request will be considered and seeking public comments on the request. The notice will contain a summary of the request itself and the dates by which comments and rebuttals must be received. Subject to protection of confidential business information, if any, the full text of the request will be made available on the Department of Commerce, International Trade Administration's website.

Section 322 sets out the procedures to be followed in considering the request. Section 322(a)(1) of the bill provides for the President to determine whether, as a result of the reduction or elimination of a duty provided for under the Agreement, a "CAFTA-DR textile or apparel article" of an Agreement country is being imported into the United States in such increased

quantities, in absolute terms or relative to the domestic market for that article, and under such conditions that imports of the article cause serious damage, or actual threat thereof, to a domestic industry producing an article that is like, or directly competitive with, the imported article. Section 301(2) of the bill defines "CAFTA-DR textile or apparel article" to mean an article listed in the Annex to the World Trade Organization ("WTO") Agreement on Textiles and Clothing (other than a good listed in Annex 3.29 of the Agreement) that qualifies as an originating good under section 203(b) of the bill. The President's determination corresponds to the determination required under Article 3.23.1 of the Agreement. Section 322(a)(2) of the bill includes criteria for determining serious damage or actual threat thereof, consistent with Article 3.23.2 of the Agreement. Section 322(a)(3) provides that the President must make his determination no later than 30 days after the conclusion of any consultations with the country that may be subject to the measure.

Section 322(b) of the bill identifies the relief that the President may provide to a U.S. industry that the President determines is facing serious damage or actual threat thereof. Such relief may consist of an increase in tariffs to the lesser of: (i) the NTR (MFN) duty rate in place for the textile or apparel article at the time the relief is granted; or (ii) the NTR (MFN) duty rate for that article on the day before the Agreement entered into force.

Section 323 of the bill provides that the maximum period of relief under the textile or apparel safeguard shall be three years. However, if the initial period of import relief is less than three years, the President may extend the relief (to a maximum of three years) if the President determines that continuation is necessary to remedy or prevent serious damage and to facilitate adjustment, and that the domestic industry is, in fact, adjusting to import competition.

Section 324 of the bill provides that relief may not be granted to an article under the textile or apparel safeguard if: (i) relief previously has been granted to that article under the textile or apparel safeguard; or (ii) the article is subject, or becomes subject, to a safeguard measure under (a) Chapter Eight of the Agreement (corresponding to Subtitle A of Title III of the bill), or (b) chapter 1 of Title II of the Trade Act of 1974.

Section 325 of the bill provides that on the date import relief terminates, imports of the textile or apparel article that was subject to the safeguard action will be subject to the rate of duty that would have been in effect on that date in the absence of the relief.

Section 326 of the bill provides that authority to provide relief under the textile or apparel safeguard will expire five years after the date on which the Agreement enters into force.

Under Article 3.23.6 of the Agreement, if the United States provides relief to a domestic industry under the textile or apparel safeguard, it must provide the country whose good is subject to the measure "mutually agreed trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the [safeguard]." If the United States and the pertinent country are unable to agree on trade liberalizing compensation, that country may increase tariffs equivalently

on U.S. goods. The obligation to provide compensation (and the right to increase tariffs absent agreement on compensation) terminates when the safeguard relief ends.

Section 123 of the Trade Act of 1974 (19 U.S.C. 2133), as amended, authorizes the President to provide trade compensation for global safeguard measures taken pursuant to chapter 1 of title II of the Trade Act of 1974. Section 327 of the implementing bill extends that authority to measures taken pursuant to the Agreement's textile or apparel safeguard provisions.

Finally, section 328 of the bill provides that confidential business information submitted in the course of consideration of a request for a textile or apparel safeguard may not be released absent the consent of the party providing the information. It also provides that a party submitting confidential business information in a textile or apparel safeguard proceeding must submit a non-confidential version of the information or a summary of the information.

f. Enforcement of Textile and Apparel Rules of Origin

In addition to lowering barriers to trade in textile and apparel goods, the Agreement includes anti-circumvention provisions designed to ensure the accuracy of claims of origin and to prevent circumvention of laws, regulations, and procedures affecting such trade. Article 3.24 of the Agreement provides for verifications to determine the accuracy of claims of origin for textile or apparel goods, and to determine that exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods.

Under Articles 3.24.2 and 3.24.3 of the Agreement, at the request of the United States, the government of an Agreement country must conduct a verification. The object of a verification under Article 3.24.2(a)(i) is to determine whether a claim of origin for a textile or apparel good is accurate. The object of a verification under Article 3.24.2(a)(ii) is to determine whether an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile or apparel goods, including those implementing international agreements. The United States may assist in the verification or, at the request of the other government, conduct the verification itself. A verification may entail visits by officials of the other government and the United States to the premises of a textile or apparel exporter or producer in that country.

Pursuant to Article 3.24.6 of the Agreement, the United States may take appropriate action during and after a verification, including, depending on the nature of the verification, by suspending or denying preferential tariff treatment for textile or apparel goods exported or produced by the person subject to the verification, detaining the goods, or denying them entry into the United States.

Section 209 of the bill implements Article 3.24 of the Agreement. Under section 209(a), the President may direct the Secretary to take "appropriate action" while a verification that the Secretary has requested is being conducted. Section 209(b) provides that, depending on the nature of the verification, the action may include: (i) suspending preferential tariff treatment for textile or apparel goods that the person subject to the verification has produced or exported if the

Secretary believes there is insufficient information to sustain a claim for such treatment; (ii) denying preferential tariff treatment to such goods if the Secretary decides that a person has provided incorrect information to support a claim for such treatment; (iii) detaining such goods if the Secretary considers there is not enough information to determine their country of origin; and (iv) denying entry to such goods if the Secretary determines that a person has provided erroneous information on their origin.

Under section 209(c), the President may also direct the Secretary to take "appropriate action" after a verification has been completed. Under section 209(d), depending on the nature of the verification, the action may include: (i) denying preferential tariff treatment under the Agreement to textile or apparel goods that the person subject to the verification has exported or produced if the Secretary considers there is insufficient information to support a claim for such treatment or determines that a person has provided incorrect information to support a claim for such treatment; and (ii) denying entry to such goods if the Secretary decides that a person has provided erroneous information regarding their origin or that there is insufficient information to determine their origin. Unless the President sets an earlier date, any such action may remain in place until the Secretary obtains enough information to decide whether the exporter or producer that was subject to the verification is complying with applicable customs rules or whether a claim that the goods qualify for preferential tariff treatment or originate in an Agreement country is accurate.

Under section 209(e), the Secretary may publish the name of person that the Secretary has determined: (i) is engaged in intentional circumvention of applicable laws, regulations, or procedures affecting trade in textile or apparel goods; or (ii) has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

g. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

Under the specific rules of origin for textile and apparel goods set out in Annex 4.1 of the Agreement, fabrics, yarns, or fibers that are not available in commercial quantities in a timely manner in the United States, Central America, and the Dominican Republic are treated as if they originate in an Agreement country, regardless of their actual origin, when used as inputs in the production of textile or apparel goods. Annex 3.25 lists certain fabrics, yarns, and fibers that the CAFTA-DR governments have collectively agreed are unavailable in the region.

In addition, Article 3.25.4 of the Agreement provides that the United States will add fabrics, yarns, or fibers to the list in certain circumstances. First, Article 3.25.4(e) of the Agreement provides that the United States will add any fabrics or yarns that it has determined under its regional trade preference programs prior to the Agreement's entry into force are unavailable in the United States in commercial quantities in a timely manner. These regional trade preference program provisions are set out in: section 112(b)(5)(B) of the African Growth and Opportunity Act (19 U.S.C. § 3721(b)), section 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. § 3203(b)(3)(B)(ii)), and section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (19 U.S.C. § 2703(b)(2)(A)(v)(II)).

Second, if the United States determines, at the request of an "interested entity" (a potential or actual purchaser or seller, or another CAFTA-DR government), that a fabric, yarn, or fiber is unavailable in commercial quantities in a timely manner in the CAFTA-DR region (i.e., in the territories of the Parties to the Agreement, collectively), or if it determines that no interested entity objects to the request, the United States will add the material to the list – in a restricted or unrestricted quantity. In addition, within six months of adding a material to the list in Annex 3.25, the United States may remove any restriction it has imposed on the product.

Article 3.25.5 authorizes the United States, in response to a request from an interested entity, either to remove a material from the list or impose a restriction on any material it has added to the list in an unrestricted quantity. The United States may take this action beginning six months after it determines, in response to a request, that the material has become commercially available in the CAFTA-DR region.

Section 203(o)(2) of the bill provides authority for the President to carry out the provision in Article 3.25.4(e) of the Agreement pursuant to which the United States will add materials to the list that it has determined are unavailable in commercial quantities in a timely manner in the United States under its regional trade preference programs (the African Growth and Opportunity Act, the Andean Trade Preference Act, and the Caribbean Basin Economic Recovery Act) before the Agreement enters into force.

Section 203(o)(4) of the bill implements those provisions of Article 3.25 that provide for the United States to modify the list of materials in Annex 3.25 after the Agreement enters into force.

Specifically, subparagraph (C) provides that an interested entity may request the President to determine that a fabric, yarn, or fiber is not available in commercial quantities in the CAFTA-DR region and to proclaim that the material is included in the list in Annex 3.25.

Subparagraph (C)(ii) authorizes the President to determine whether the material is commercially available in a timely manner in the CAFTA-DR region. Subparagraph (C)(iii) provides that if the President determines that the material is not commercially available in a timely manner in the region, or if no interested entity has objected, he may issue a proclamation adding the fabric, yarn, or fiber to the Annex 3.25 list in a restricted or unrestricted quantity. The President normally must issue the proclamation within 30 business days of receiving a request. However, subparagraph (C)(iv) provides that the President may take up to 44 business days if the President decides he lacks sufficient information to make the determination within 30 business days. Subparagraph (C)(v) provides for proclamations to take effect when published in the *Federal Register*.

Subparagraph (C)(vi) provides that within six months after adding a fabric, yarn, or fiber to the list in Annex 3.25 in a restricted quantity, the President may eliminate the restriction if he determines that the fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the CAFTA-DR region.

Subparagraph (D) implements Article 3.25.4(c) of the Agreement. It provides that in the unlikely event that the President takes no action in response to a request to add a material to the list, the material is automatically added in an unrestricted quantity beginning 45 business days after the request was submitted, or 60 days after the request was submitted if the President has determined under subparagraph (C)(iv) that he lacks sufficient information to make the determination within 30 business days.

Under subparagraph (E)(i), an interested entity may request the President to limit the amount of any fabric, yarn, or fiber that the United States has included on the list in Annex 3.25 in an unrestricted quantity, or to remove such a material from the list entirely. Under subparagraph (E)(ii), an interested entity may submit such a request beginning six months after the product was placed on the list in an unrestricted amount. Subparagraph (E)(iii) provides for the President to issue a proclamation carrying out a request if he determines within 30 business days after the request is submitted that the material is available in commercial quantities in a timely manner in the CAFTA-DR region. Subparagraph (E)(iv) provides that this type of proclamation may take effect no earlier than six months after it is published in the *Federal Register.*

Subparagraph (F) calls for the President to establish procedures for interested entities to submit requests for changes in the Annex 3.25 list and to submit comments and supporting evidence before the President determines whether to change the list.

2. Administrative Action

a. Temporary Admission of Goods and Goods Entered After Repair or Alteration

As discussed above, section 201(a)(1) of the bill authorizes the President to proclaim duty-free treatment for certain goods to carry out Article 3.5 (temporary admission of certain goods) and Article 3.6 (repair or alteration of certain goods) of the Agreement. The Secretary will issue regulations to carry out this portion of the proclamation.

b. Handloomed, Handmade, or Folklore Articles

The President will authorize the Committee for the Implementation of Textile Agreements ("CITA"), to consult with Agreement countries to determine which, if any, textile or apparel goods from Agreement countries will be treated as handloomed, handmade, or folklore articles. CITA is an interagency entity created by Executive Order 11651 that carries out U.S. textile trade policies, as directed by the President. The President will delegate to CITA his authority under the bill to provide duty-free treatment for these articles.

c. Agricultural Safeguard

The Secretary will issue regulations implementing the agricultural safeguard provisions of section 202. It is the Administration's intent that agricultural safeguard measures will be

applied whenever the volume thresholds specified in the Agreement have been met. As discussed below, the Administration expects that in determining the country of origin of goods for purposes of applying agricultural safeguard measures under the bill, CBP will apply the rules of origin that the United States applies in the normal course of trade. (See item 2 of Chapter Four, below.)

d. Textile or Apparel Safeguard

CITA will perform the function of receiving requests for textile or apparel safeguard measures under section 321 of the bill, making determinations of serious damage or actual threat thereof under section 322(a), and providing relief under section 322(b). CITA will issue procedures for requesting such safeguard measures, for making its determinations under section 322(a), and for providing relief under section 322(b). CITA will perform these functions pursuant to a delegation of the President's authority under the bill.

e. Enforcement of Textile and Apparel Rules of Origin

Section 209 of the bill provides that the Secretary may request Agreement countries to initiate verifications in order to determine whether claims of origin for textile or apparel goods are accurate or whether exporters and producers are complying with applicable laws, regulations, and procedures regarding trade in textile or apparel goods. The President will delegate to CITA his authority under the bill to direct appropriate U.S. officials to take an action described in section 209(b) of the bill while such a verification is being conducted. The President will also authorize CITA to direct pertinent U.S. officials to take an action described in section 209(d) after a verification is completed. If CITA decides that is appropriate to deny preferential tariff treatment or deny entry to particular goods, CITA will issue an appropriate directive to CBP.

Section 209 of the bill provides the exclusive basis in U.S. law for CITA to direct appropriate action implementing Article 3.24 of the Agreement.

f. Fabrics, Yarns, or Fibers Not Available in Commercial Quantities

The President will delegate to CITA his authority under section 203(o)(4) of the bill, which establishes procedures for changing the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in Agreement countries set out in Annex 3.25 of the Agreement.

CITA will publish procedures under which interested entities may request that CITA: (i) add a fabric, yarn, or fiber to the list in Annex 3.25; (ii) eliminate a restriction on a fabric, yarn, or fiber within six months after the item was added to the list in a restricted quantity; (iii) remove a fabric, yarn, or fiber from the list; or (iv) restrict the quantity of a fabric, yarn, or fiber that was added to the list in an unrestricted quantity or with respect to which CITA previously eliminated a restriction. These procedures will set out the information required to be submitted with a request. CITA will publish notice of requests that meet these requirements. CITA will provide an opportunity for interested entities to submit comments and evidence regarding a request, and

to rebut evidence that other interested entities have submitted, before CITA makes a determination.

CITA will make determinations under section 203(o)(4) on a case-by-case basis taking into account factors relevant to the request. Such factors ordinarily would include the physical and technical specifications of the fabric, yarn, or fiber that is the subject of the request, as well as evidence demonstrating the extent to which regional manufacturers are able to supply the item in commercial quantities in a timely manner. CITA will provide public notice of its determinations.

Chapter Four (Rules of Origin)

1. Implementing Bill

a. General

Section 203 of the implementing bill codifies the general rules of origin set forth in Chapter Four of the Agreement. These rules apply only for the purposes of this bill and for the purposes of implementing the customs duty treatment provided under the Agreement. An originating good for the purposes of this bill would not necessarily be a good of or import from an Agreement country for the purposes of other U.S. laws or regulations.

Under the general rules, there are three basic ways for a good of an Agreement country to qualify as an "originating" good, and therefore be eligible for preferential treatment when it is imported into the United States. First, a good is originating if it is "wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries." The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries" is defined in section 203(n)(6) of the bill and includes, for example, minerals extracted in one or more of the CAFTA-DR countries, animals born and raised in one or more of the CAFTA-DR countries, and waste and scrap derived from production of goods that takes place in the territory of one or more of the CAFTA-DR countries. For purposes of section 203, the United States is defined (in section 203(n)(2) of the bill) as a "CAFTA-DR country."

The term "goods wholly obtained or produced entirely in the territory of one or more of the CAFTA-DR countries" includes "recovered goods." These are parts resulting from the disassembly of used goods that are brought into good working condition in order to be combined with other recovered goods and other materials to form a "remanufactured good." The term "remanufactured good" is separately defined in section 203(n)(21) to mean an industrial good assembled in the territory of one or more of the CAFTA-DR countries and falling within Chapter 84, 85, or 87 of the HTS or heading 9026, 9031, or 9032 (with the exception of goods under heading 8418 or 8516) that: (i) is entirely or partially comprised of recovered goods; and (ii) has a similar life expectancy and enjoys a factory warranty similar to such a new good.

Second, the general rules of origin provide that a good is "originating" if the good is

produced in one or more of the CAFTA-DR countries, and the materials used to produce the good that are not themselves originating goods are transformed in such a way as to cause their tariff classification to change and to meet other requirements, as specified in Annex 4.1 of the Agreement. Such additional requirements include, for example, performing certain processes or operations related to textile or apparel goods in one or more of the CAFTA-DR countries or meeting regional value content requirements, sometimes in conjunction with changes in tariff classification.

Third, the general rules of origin provide that a good is "originating" if the good is produced entirely in the territory of one or more of the CAFTA-DR countries exclusively from materials that themselves qualify as originating goods.

The remainder of section 203 of the implementing bill sets forth specific rules related to determining whether a good meets the Agreement's specific requirements to qualify as an originating good. For example, section 203(c) implements provisions in Annex 4.1 of the Agreement that require certain goods to have at least a specified percentage of "regional value content" to qualify as originating goods. It prescribes alternative methods for calculating regional value content, as well as a specific method that may be used in the case of certain automotive goods. Section 203(f) provides that a good is not disqualified as an originating good if it contains *de minimis* quantities of non-originating materials that do not undergo a change in tariff classification. Other provisions in section 203 address how materials are to be valued, how to determine whether fungible goods and materials qualify as originating or non-originating, as well as a variety of other matters.

b. Proclamation Authority

Section 203(o)(1) of the bill authorizes the President to proclaim the specific rules of origin in Annex 4.1 of the Agreement, as well as any additional subordinate rules necessary to carry out the customs duty provisions of the bill consistent with the Agreement. In addition, section 203(o)(3) gives authority to the President to modify certain of the Agreement's specific origin rules by proclamation, subject to the consultation and layover provisions of section 104 of the bill. (See item 1.a of Chapter Three, above.)

Various provisions of the Agreement expressly contemplate that the CAFTA-DR governments may agree to modify the Agreement's rules of origin. Article 4.14 calls for the CAFTA-DR governments to consult regularly after the Agreement's entry into force to discuss proposed modifications to Annex 4.1. Article 19.1.3(b)(ii) of the Agreement authorizes the Free Trade Commission to approve proposed modifications to any of the Agreement's origin rules. Such modifications are to be implemented in accordance with each country's applicable legal procedures. In addition, Article 3.25.1 of the Agreement calls for the Parties to consult at the request of any Party to consider whether rules of origin for particular textile or apparel goods should be modified.

Section 203(o)(3) of the bill expressly limits the President's authority to modify by proclamation specific rules of origin pertaining to textile or apparel goods (listed in Chapters 50

through 63 of the HTS and identified in Annex 4.1 of the Agreement). Those rules of origin may be modified by proclamation within one year of enactment of the implementing bill, to correct typographical, clerical, or other non-substantive technical errors.

c. Disclosure of Incorrect Information and Denial of Preferential Treatment

Article 4.15.3 of the Agreement provides that a Party may not impose a penalty on an importer who makes an invalid claim for preferential tariff treatment under the Agreement if the importer did not engage in negligence, gross negligence, or fraud in making the claim and, after discovering that the claim is invalid, promptly and voluntarily corrects the claim and pays any customs duty owing. Article 4.20.5 of the Agreement provides if an importing country determines through verification that an importer, exporter, or producer has provided false or unsupported certifications or other representations that a good qualifies as originating, it may suspend preferential tariff treatment under the Agreement for identical goods covered by any subsequent certifications or other representations that that person may make. The suspension may continue until the importing country determines that the importer, exporter, or producer is in compliance with applicable laws and regulations governing claims for preferential tariff treatment under the Agreement.

Section 206(a) of the bill implements Article 4.15.3 for the United States by amending section 592(c) of the Tariff Act of 1930 (19 U.S.C. 1592(c)). Section 206(b) of the bill implements Article 4.20.5 for the United States by amending section 514 of the Tariff Act of 1930 (19 U.S.C. 1514).

d. Claims for Preferential Tariff Treatment

Article 4.15.5 of the Agreement provides that an importer may claim preferential tariff treatment for an originating good within one year of importation, even if no such claim was made at the time of importation. In seeking a refund for excess duties paid, the importer must provide to the customs authorities information substantiating that the good was in fact an originating good at the time of importation.

Section 207 of the bill implements U.S. obligations under Article 4.15.5 of the Agreement by amending section 520(d) of the Tariff Act of 1930 (19 U.S.C. 1520(d)) to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

e. Exporter and Producer Certifications

Article 4.16 of the Agreement provides that an importer may base a claim for preferential tariff treatment on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge that the good is an originating good, including through reasonable reliance on information in the importer's possession that the good is an originating good. (The Agreement allows certain exceptions, for example, for goods with a customs value less than or equal to $1,500.) If an exporter issues a certification, it must either be based on the

person's knowledge that the good is originating or supported by a separate certification issued by the producer.

Article 4.18 of the Agreement sets out rules governing incorrect certifications of origin issued by exporters or producers. Where an exporter or producer becomes aware that a certification of origin contains or is based on incorrect information, it must promptly and voluntarily notify in writing every person to whom the exporter or producer issued the certification of any change that could affect the accuracy or validity of the certification. If it does so, no Agreement country may impose a penalty.

Section 206(a) of the bill implements U.S. obligations under Article 4.18 by amending section 592 of the Tariff Act of 1930 (19 U.S.C. 1592). New subsection (h) of section 592, as added by section 206(a), imposes penalties on exporters and producers that issue false CAFTA-DR certifications of origin through fraud, gross negligence, or negligence. These penalties do not apply where an exporter or producer corrects an error in the manner described above.

f. Recordkeeping Requirements

Article 4.19 of the Agreement sets forth record keeping requirements that each government must apply to its importers. U.S. obligations under Article 4.19 regarding importers are satisfied by current law, including the record keeping provisions in section 508 of the Tariff Act of 1930 (19 U.S.C. 1508).

Article 4.19 also sets forth record keeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement. Section 208 of the bill implements Article 4.19 for the United States by amending the customs record keeping statute (section 508 of the Tariff Act of 1930).

As added by section 208 of the bill, subsection (g) of section 508 of the Tariff Act of 1930 defines the terms "CAFTA-DR certification of origin" and "records and supporting documents." It then provides that a U.S. exporter or producer that issues a CAFTA-DR certification of origin must make, keep, and, if requested pursuant to rules and regulations promulgated by the Secretary, render for examination and inspection a copy of the certification and such records and supporting documents. The exporter or producer must keep these records and supporting documents for five years from the date it issues the certification. New subsection (h) of section 508 of the Tariff Act of 1930 sets forth penalties for violations of this record keeping requirement.

2. Administrative Action

The rules of origin in Chapter Four of the Agreement are intended to direct the benefits of customs duty elimination under the Agreement principally to firms producing or manufacturing goods in CAFTA-DR countries. For this reason, the rules ensure that, in general, a good is eligible for benefits under the Agreement only if it is: (i) wholly produced or obtained in one or more of the CAFTA-DR countries; or (ii) undergoes substantial processing in one or more of

the CAFTA-DR countries.

The Agreement's rules of origin do not establish (or require identification of) the specific country of origin of originating goods or goods that otherwise qualify for preferential treatment. However, various provisions of the Agreement may require U.S. authorities to determine the specific country of origin of such goods. These provisions include, for example, those relating to: (i) the application of TRQs on agricultural goods; (ii) the application of agricultural safeguard measures; (iii) the retroactive refund of customs duties on textile or apparel goods pursuant to Article 3.20 of the Agreement; and (iv) the application of textile or apparel safeguard measures. The Administration intends that, where necessary, U.S. authorities will rely on the rules of origin that the United States applies in the normal course of trade to determine the country of origin identity of originating goods. See 19 U.S.C. 1304; 19 U.S.C. 3592; 19 C.F.R. 102.21; 19 C.F.R. 134.

a. Claims for Preferential Treatment

Section 210 of the bill authorizes the Secretary to prescribe regulations necessary to carry out the tariff-related provisions of the bill, including the rules of origin and customs user fee provisions. The Secretary will use this authority in part to promulgate any regulations necessary to implement the Agreement's provisions governing claims for preferential treatment. Under Article 4.16 of the Agreement, an importer may claim preferential treatment for a good based on either (i) a written or electronic certification by the importer, exporter, or producer, or (ii) the importer's knowledge, including through reasonable reliance on information in the importer's possession, that the good is originating. A certification need not be in a prescribed format, but must include the elements set out in Article 4.16.2 of the Agreement. Under Article 4.15 of the Agreement, an importing Party must grant a claim for preferential tariff treatment unless its customs officials issue a written determination that the claim is invalid as a matter of law or fact.

b. Verification

Under Article 4.20 of the Agreement, customs officials may use a variety of methods to verify claims that goods imported from other Agreement countries satisfy the Agreement's rules of origin. Article 3.24 sets out special procedures for verifying claims that textile or apparel goods imported from Agreement countries meet the Agreement's origin rules. (See item 1.f of Chapter Three, above.) U.S. officials will carry out verifications under Articles 4.20 and 3.24 of the Agreement pursuant to authorities under current law. For example, section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides authority to examine records and issue summonses to determine liability for duty and ensure compliance with U.S. customs laws.

Chapter Five (Customs Administration and Trade Facilitation)

1. Implementing Bill

No statutory changes will be required to implement Chapter Five.

2. Administrative Action

a. Inquiry Point

Article 5.1.2 of the Agreement requires each government to designate an inquiry point for inquiries from interested persons on customs matters. CBP will serve as the U.S. inquiry point for this purpose. Consistent with Article 5.1.2, CBP will post information on the Internet at "www.cbp.gov" on how interested persons can make customs-related inquiries.

b. Advance Rulings

Treasury regulations for advance rulings under Article 5.10 of the Agreement (including on classification, valuation, origin, and qualification as an originating good) will parallel in most respects existing regulations in Part 177 of the Customs Regulations for obtaining advance rulings. For example, a ruling may be relied on provided that the facts and circumstances represented in the ruling are complete and do not change. The regulations will make provision for modifications and revocations as well as for delaying the effective date of a modification where the firm in question has relied on an existing ruling. Advance rulings under the Agreement will be issued within 150 days of receipt of all information reasonably required to process the application for the ruling.

Chapter Six (Sanitary and Phytosanitary Measures)

No statutory or administrative changes will be required to implement Chapter Six.

Chapter Seven (Technical Barriers to Trade)

1. Implementing Bill

No statutory changes will be required to implement Chapter Seven.

2. Administrative Action

Article 7.8 of the Agreement establishes an inter-governmental Committee on Technical Barriers to Trade ("TBT"). A USTR official responsible for TBT matters or trade relations with the Agreement countries will serve as the U.S. coordinator for the committee.

Chapter Eight (Trade Remedies)

1. Implementing Bill

Subtitle A of Title III of the bill implements in U.S. law the safeguard provisions set out in Chapter Eight of the Agreement. Subtitle C of Title III of the bill implements the global safeguard provisions set out in Chapter Eight of the Agreement. (As discussed under Chapter Three, above, Subtitle B of Title III of the bill implements the textile or apparel safeguard provisions of the Agreement.)

a. Safeguard Measures

Subtitle A of Title III of the bill, Sections 311 through 316, authorizes the President, after an investigation and affirmative determination by the ITC (or a determination that the President may consider to be an affirmative determination), to suspend duty reductions or impose duties temporarily up to NTR (MFN) rates on a "CAFTA-DR article" when, as a result of the reduction or elimination of a duty under the Agreement, the article is being imported into the United States in such increased quantities and under such conditions as to be a substantial cause of serious injury or threat of serious injury to a domestic industry that produces a like or directly competitive good. The standards and procedures set out in these provisions closely parallel the procedures set forth in sections 201 through 204 of the Trade Act of 1974 (19 U.S.C. 2251 – 2254).

Section 301(1) defines the term "CAFTA-DR article" to mean a good that qualifies as an originating good under section 203(b) of the bill, and section 301(4) defines the term "relevant CAFTA-DR article" to mean the CAFTA-DR article with respect to which a petition has been filed under section 311(a).

Section 301(3) defines the term "de minimis supplying country" as an Agreement country whose share of imports of a CAFTA-DR article into the United States does not exceed three percent of the aggregate volume of imports of the CAFTA-DR article in the most recent 12-month period for which data are available. However, the definition makes an exception in cases where the aggregate import share of all such Agreement countries exceeds nine percent of U.S. imports of the CAFTA-DR article during the applicable 12-month period. Unlike agricultural and textile or apparel safeguard measures, which will apply on a country-specific basis, general safeguard measures under Chapter Eight of the Agreement will apply with respect to all imports of an originating CAFTA-DR article, other than imports from de minimis supplying countries.

Section 311 of the bill provides for the filing of petitions with the ITC and for the ITC to conduct safeguard investigations initiated under Subtitle A. Section 311(a) provides that a petition requesting a safeguard action may be filed with the ITC by an entity that is "representative of an industry." As under section 202(a)(1) of the Trade Act of 1974, the term "entity" is defined to include a trade association, firm, certified or recognized union, or a group of workers.

Section 311(b) sets out the standard to be used by the ITC in undertaking an investigation and making a determination in Subtitle A safeguard proceedings.

Section 311(c) makes applicable by reference several provisions of the Trade Act of 1974. These are the definition of "substantial cause" in section 202(b)(1)(B), the factors listed in section 202(c) applied in making determinations, the hearing requirement of section 202(b)(3), and the provisions of section 202(i) permitting confidential business information to be made available under protective order to authorized representatives of parties to a safeguard investigation.

Section 311(d) exempts from investigation under this section CAFTA-DR articles that have previously been the basis for according relief under Subtitle A to a domestic industry.

Section 312(a) establishes deadlines for ITC determinations following an investigation under section 311(b). The ITC must make its injury determination within 120 days of the date on which it initiates an investigation. If the ITC makes an affirmative injury determination it will determine at the same time whether any Agreement country is a de minimis supplying country.

Section 312(b) makes applicable the provisions of section 330(d) of the Tariff Act of 1930, which will apply when the ITC Commissioners are equally divided on the question of injury or remedy.

Under section 312(c), if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, under section 312(a), it must find and recommend to the President the amount of import relief that is necessary to remedy or prevent the serious injury and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. The relief that the ITC may recommend is limited to that authorized in section 313(c). Similar to procedures under the global safeguards provisions in current law, section 312(c) of the bill provides that only those members of the ITC who agreed to the affirmative determination under section 312(a) may vote on the recommendation of relief under section 312(c).

Under section 312(d), the ITC is required to transmit a report to the President not later than 30 days after making its injury determination. The ITC's report must include: (i) the ITC's determination(s) under section 312(a) and the reasons supporting the determination(s); (ii) if the determination under section 312(a) is affirmative or may be considered to be affirmative by the President, any findings and recommendations for import relief and an explanation of the basis for each recommendation; and (iii) any dissenting or separate views of ITC Commissioners. Section 312(e) requires the ITC to publish its report promptly and to publish a summary of the report in the *Federal Register*.

Section 313(a) of the bill directs the President, subject to section 313(b), to take action not later than 30 days after receiving a report from the ITC containing an affirmative

determination or a determination that the President may consider to be an affirmative determination. The President must provide import relief to the extent that the President determines is necessary to remedy or prevent the injury the ITC has found and to facilitate the efforts of the domestic industry to make a positive adjustment to import competition. Under section 313(b), the President is not required to provide import relief if the President determines that the relief will not provide greater economic and social benefits than costs.

Section 313(c)(1) sets forth the nature of the relief that the President may provide. In general, the President may take action in the form of:

- a suspension of further reductions in the rate of duty to be applied to the articles in question; or

- an increase in the rate of duty on the articles in question to a level that does not exceed the lesser of the existing NTR (MFN) rate or the NTR (MFN) rate of duty imposed on the day before the Agreement entered into force.

Under section 313(c)(2), if the relief the President provides has a duration greater than one year, the relief must be subject to progressive liberalization at regular intervals over the course of its application.

Section 313(d) provides that the period for import relief under a Subtitle A safeguard may not exceed four years. However, if the initial period of import relief is less than four years, the President may extend the period of import relief (to a maximum aggregate period of four years) if the President determines that continuation of relief is necessary to remedy or prevent serious injury and to facilitate adjustment to import competition, and that there is evidence that the industry is making a positive adjustment to import competition. That determination must follow an affirmative determination (or a determination that the President may consider to be an affirmative determination) by the ITC to the same effect.

Section 313(e) specifies the duty rate to be applied to CAFTA-DR articles after termination of a safeguard action. On the termination of relief, the rate of duty for the remainder of the calendar year is to be the rate that was scheduled to have been in effect one year after the initial provision of import relief. For the rest of the duty phase-out period, the President may set the duty:

- at the rate called for under the Schedule of the United States to Annex 3.3 of the Agreement; or

- in a manner that eliminates the duty in equal annual stages ending on the date set out in that Schedule.

Section 313(f) exempts from relief any article that is: (i) subject to import relief under the global safeguard provisions in U.S. law (chapter 1 of Title II of the Trade Act of 1974); or (ii) the product of a de minimis supplying country.

Section 314 provides that the President's authority to take action under Subtitle A expires ten years after the date on which the Agreement enters into force, unless the period for elimination of duties on a good exceeds ten years. In such case, relief may be provided until the expiration of the period for elimination of duties.

Section 315 allows the President to provide trade compensation to Agreement countries, as required under Article 8.5 of the Agreement, when the United States imposes relief through a Subtitle A safeguard action. Section 315 provides that for purposes of section 123 of the Trade Act of 1974, which allows the President to provide compensation for global safeguards, any relief provided under section 313 will be treated as an action taken under the global safeguard provisions of U.S. law (sections 201 through 204 of the Trade Act of 1974).

Section 316 amends section 202(a) of the Trade Act of 1974 to provide that the procedures in section 332(g) of the Tariff Act of 1930 with respect to the release of confidential business information are to apply to Subtitle A safeguard investigations.

The Administration has not provided classified information to the ITC in past safeguard proceedings and does not expect to provide such information in future proceedings. In the unlikely event that the Administration provides classified information to the ITC in such proceedings, that information would be protected from publication in accordance with Executive Order 12958.

b. Global Safeguard Measures

Section 331 of the bill implements the global safeguard provisions of Article 8.6.2 of the Agreement. It authorizes the President, in granting global import relief under sections 201 through 204 of the Trade Act of 1974, to exclude imports of originating articles from the relief when certain conditions are present.

Specifically, section 331(a) provides that if the ITC makes an affirmative determination, or a determination that the President may consider to be an affirmative determination, in a global safeguard investigation under section 202(b) of the Trade Act of 1974, the ITC must find and report to the President whether imports of the article of each Agreement country considered individually that qualify as originating goods under section 203(b) are a substantial cause of serious injury or threat thereof. Under section 331(b), if the ITC makes a negative finding under section 331(a) the President may exclude any imports that are covered by the ITC's finding from the global safeguard action.

2. Administrative Action

No administrative changes will be required to implement Chapter Eight.

Chapter Nine (Government Procurement)

1. Implementing Bill

Chapter Nine of the Agreement establishes rules that certain government entities, listed in Annex 9.1.2(b)(i) of the Agreement, must follow in procuring goods and services. The Chapter's rules will apply whenever these entities undertake procurements valued above thresholds specified in Annex 9.1.2(b)(i).

In order to comply with its obligations under Chapter Nine, the United States must waive the application of certain federal laws, regulations, procedures and practices that ordinarily treat foreign goods and services and suppliers of such goods and services less favorably than U.S. goods, services, and suppliers. Section 301(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2511(a)) authorizes the President to waive the application of such laws, regulations, procedures, and practices with respect to "eligible products" of a foreign country designated under section 301(b) of that Act. By virtue of taking on the procurement-related obligations in Chapter Nine, Agreement countries are eligible to be designated under section 301(b) of the Trade Agreements Act and will be so designated.

The term "eligible product" in section 301(a) of the Trade Agreements Act is defined in section 308(4)(A) of that Act for goods and services of countries and instrumentalities that are parties to the WTO Agreement on Government Procurement and countries that are parties to the NAFTA and other recent free trade agreements. Section 401 of the bill amends the definition of "eligible product" in section 308(4)(A) of the Trade Agreements Act. As amended, section 308(4)(A) will provide that, for an Agreement country, an "eligible product" means a product or service of that country that is covered under the Agreement for procurement by the United States. This amended definition, coupled with the President's exercise of his authority under section 301(a) of the Trade Agreements Act, will allow U.S. government entities covered by the Agreement to purchase products and services from other Agreement countries.

2. Administrative Action

As noted above, Annex 9.1.2(b)(i) of the Agreement provides that U.S. government entities subject to Chapter Nine must apply the Chapter's rules to goods and services from other Agreement countries when they make purchases valued above certain dollar thresholds. USTR will notify the Federal Acquisition Regulatory Council ("FAR Council") of the thresholds that pertain to Agreement countries under the Agreement. The FAR Council will then incorporate those thresholds into the Federal Acquisition Regulation in accordance with applicable procedures under the Office of Federal Procurement Policy Act.

Chapter Ten (Investment)

1. Implementing Bill

Section 106 of the bill authorizes the United States to use binding arbitration to resolve claims by investors of Agreement countries under Article 10.16.1(a)(i)(C) or Article 10.16.1(b)(i)(C) of the Agreement. Those articles concern disputes over certain types of government contracts, and section 106 of the bill clarifies that the United States consents to the arbitration of such disputes. No statutory authorization is required for the United States to engage in binding arbitration for other claims covered by Article 10.16. Provisions allowing arbitration of contract claims have regularly been included in U.S. bilateral investment treaties over recent decades, and were included in the free trade agreements with Chile, Singapore, and Morocco.

2. Administrative Action

No administrative changes will be required to implement Chapter Ten.

Chapter Eleven (Cross-Border Trade in Services)

No statutory or administrative changes will be required to implement Chapter Eleven.

Chapter Twelve (Financial Services)

No statutory or administrative changes will be required to implement Chapter Twelve.

Chapter Thirteen (Telecommunications)

No statutory or administrative changes will be required to implement Chapter Thirteen.

Chapter Fourteen (Electronic Commerce)

No statutory or administrative changes will be required to implement Chapter Fourteen.

Chapter Fifteen (Intellectual Property Rights)

No statutory or administrative changes will be required to implement Chapter Fifteen.

Chapter Sixteen (Labor)

1. Implementing Bill

Section 403 of the bill establishes periodic reporting and meeting requirements on labor matters.

Section 403(a) provides that not later than two years after the Agreement enters into force, and not later than the end of each two-year period thereafter during the succeeding 14 years, the President shall report to the Congress on the progress made by the Agreement countries in implementing (i) Chapter Sixteen of the Agreement; and (ii) the April 2005 "White Paper" report prepared by the trade and labor Vice Ministers of the Agreement countries on labor matters in Central America and the Dominican Republic. The subsection specifies the contents that each report must include and requires the President to establish a mechanism to solicit public comments relating to the subject matter of the reports.

Section 403(b) provides that the Secretary of Labor should take the necessary steps to meet periodically with the labor ministers of the Agreement countries to discuss (i) the operation of the labor provisions of the Agreement; (ii) progress on commitments the Agreement countries made to implement the White Paper; (iii) the work of the International Labor Organization in the Agreement countries and other cooperative efforts to afford to workers internationally-recognized worker rights; and (iv) any other appropriate matters. Subsection (b)(2) provides that the biennial reports prepared under subsection (a) will, as the President deems appropriate, include summaries of those meetings.

2. Administrative Action

To carry out section 403(b), the Secretary of Labor will take the necessary steps to meet periodically with the labor ministers of the Agreement countries.

Article 16.4.3 of the Agreement calls for each government to designate an office to serve as the contact point for implementing the Agreement's labor provisions. The Department of Labor's Office of Trade Agreement Implementation will serve as the U.S. contact point for this purpose.

Chapter Seventeen (Environment)

1. Implementing Bill

No statutory or administrative changes will be required to implement Chapter Seventeen.

2. Administrative Action

Article 17.5.1 of the Agreement establishes an Environmental Affairs Council, comprising cabinet-level officials from each country, and provides that each government will designate a contact point for carrying out the Council's work. USTR's Office of Environment and Natural Resources will serve as the U.S. contact point for this purpose.

STATEMENT ON HOW THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT MAKES PROGRESS IN ACHIEVING U.S. PURPOSES, POLICIES, OBJECTIVES, AND PRIORITIES

A. INTRODUCTION

The Dominican Republic – Central America – United States Free Trade Agreement ("Agreement") makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 ("TPA Act"). This Statement describes how and to what extent the applicable purposes, policies, objectives, and priorities are achieved through the Agreement.

The Agreement represents an historic development in our relations with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua ("Central America") and the Dominican Republic. The Agreement reflects a commitment on the part of the United States to sustained engagement in support of democracy, peaceful regional integration, and economic growth and opportunity in a region where several countries only recently transitioned from civil war to peaceful, democratic societies.

The Agreement will create significant new opportunities for American workers, farmers, ranchers, businesses, and consumers by eliminating barriers to trade with Central America and the Dominican Republic. As detailed below, approximately 80 percent of U.S. exports of consumer and industrial goods will become duty-free immediately upon entry into force of the Agreement, with duties on other industrial and consumer goods eliminated over ten years. In particular, trade in nearly all textile and apparel goods meeting the Agreement's origin requirements will become duty-free immediately, providing new opportunities for U.S. fiber, yarn, fabric, and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment.

Furthermore, Central America and the Dominican Republic will provide immediate duty-free access to more than half of all U.S. agricultural exports to the region. Certain agricultural goods will have longer periods for duty elimination (up to 20 years), or will be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas ("TRQs") during the transition period. The Agreement addresses duty treatment for imports of sensitive agricultural products into the United States through transition periods (up to 20 years) and the use of TRQs.

The Central American countries and the Dominican Republic will substantially reduce barriers to trade in services, including financial services. The Agreement also includes state-of-

the-art provisions in such key areas as intellectual property rights, electronic commerce, telecommunications, customs and trade facilitation, dispute settlement, and labor and environmental protection.

The Agreement responds to Congress' direction, as expressed in the Caribbean Basin Trade Partnership Act, to conclude comprehensive, mutually advantageous trade agreements with beneficiary countries of the Caribbean Basin Initiative ("CBI") trade preference program. Since 1985, our trade relationship with Central America and the Dominican Republic has been driven by the unilateral trade preferences that the United States provides through the CBI program. This program has contributed to economic development and helped to alleviate poverty in the region. By moving from unilateral trade preferences to a reciprocal free trade agreement, we will build on the success of the CBI program by advancing economic development in the region through trade, as well as expanding U.S. access to markets in Central America and the Dominican Republic.

The Agreement forms an integral part of the Administration's larger strategy of opening markets around the world through negotiating and concluding global, regional, and bilateral trade initiatives. The Agreement provides the opportunity to strengthen our economic and political ties with the region, and underpins U.S. support for democracy and fundamental values, such as respect for internationally recognized worker rights and the elimination of the worst forms of child labor. The Agreement will also contribute to hemispheric integration and provide an impetus toward establishing the *Free Trade Area of the Americas*.

The Agreement meets or exceeds the applicable purposes, policies, objectives, and priorities that the Congress spelled out in the TPA Act. Accordingly, the President strongly believes that the Congress should approve the Agreement and enact the legislation needed to implement the Agreement.

B. OVERALL TRADE NEGOTIATING OBJECTIVES

The TPA Act sets out a variety of "overall trade negotiating objectives" that call for future U.S. trade agreements to: (1) open markets by eliminating or reducing barriers to and distortions of trade and creating market opportunities, in particular for small businesses; (2) further strengthen international trading disciplines; (3) foster economic growth in the United States and globally; and (4) promote environmental and worker rights policies in the context of trade. The Agreement builds on the foundation of existing trade agreements to make substantial progress in achieving each of these objectives.

1. Market Opening

The Agreement is comprehensive in scope. Each Party has agreed to liberalize trade in all goods, and to make significant market openings in services and government procurement.

Consumer/Industrial Goods. More than 80 percent of U.S. exports of consumer and industrial goods will enter Central America and the Dominican Republic duty-free when the Agreement enters into force, with remaining tariffs phased out over ten years. Average tariffs on these items in Central America and the Dominican Republic currently range from 4.1 percent to 7.8 percent, and tariffs on some products of export interest to U.S. firms are as high as 25 percent.

Textiles and Apparel. Nearly all trade in textile and apparel goods that satisfy the Agreement's rules of origin will be duty-free immediately. Moreover, duty elimination for textile and apparel goods may, on a reciprocal basis, be made retroactive to January 1, 2004. The Agreement also allows, if certain conditions are met, for the use of Canadian and Mexican materials as inputs in the production of textile or apparel goods, thereby contributing to the development of stronger, more integrated regional industries.

Agriculture. The Central American countries and the Dominican Republic currently maintain high tariffs on U.S. agricultural goods. The simple average tariff that these countries apply to imports of agricultural products from the United States exceeds 11 percent, and, on certain import-sensitive products, can exceed 150 percent. The average bound tariffs on agricultural products for these countries under their World Trade Organization ("WTO") commitments range from 35 percent in Honduras to 60 percent in Nicaragua. In contrast, the U.S. market is already largely open (through our unilateral preference programs) to agricultural imports from Central America and the Dominican Republic. Under the Agreement, over half of all U.S. agricultural exports to the region will be duty-free when the Agreement enters into force, including on important export interests such as prime and choice cuts of beef, soybeans, wheat, cotton, apples, peaches, pears, grapes, cherries, almonds, walnuts, pistachios, raisins, canned peaches and pears, frozen concentrated grapefruit juice, and frozen concentrated orange juice (except to the Dominican Republic). Tariffs on most other U.S. goods will be phased out within 15 years. For the most sensitive agricultural goods, tariffs will be eliminated over periods ranging from 15 to 20 years. For these goods, liberalization will be achieved through TRQs that will increase over time. Over-quota tariffs will be eliminated during the 15-20-year transition period on all such import-sensitive products with the exception of white corn (El Salvador, Guatemala, Honduras, and Nicaragua) and onions and potatoes (Costa Rica). (The United States will maintain its over-quota tariffs on sugar.)

Services/Financial Services/Telecommunications. The Agreement provides additional market opening in a broad range of service sectors, including express mail delivery, construction and engineering, computer and related services, advertising, professional services, distribution services, insurance, banking, and other financial services, and telecommunications.

Government Procurement. The Agreement opens the Central American and Dominican Republic government procurement markets to U.S. suppliers for the first time on transparent and non-discriminatory terms. As the Central American countries and the Dominican Republic are

not signatories to the WTO Agreement on Government Procurement, this constitutes a major benefit of the Agreement.

2. Stronger International Trade Disciplines

The Agreement includes innovative commitments to promote trade in digital products such as software, music, images, videos, and text. It draws from traditional trade principles to fashion customized nondiscrimination rules that will apply specifically to electronic commerce. The Parties will not impose tariffs on digital products that are delivered over the Internet.

The Parties recognize that workers and firms can fully realize the Agreement's market-opening potential only if the Agreement builds on the disciplines that proceed from those currently in place through other agreements. Thus, the Agreement sets out rules on intellectual property rights ("IPR") that clarify and build on those in the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs Agreement) and provide for implementation of more recent World Intellectual Property Organization ("WIPO") treaties on protection of copyright and rights of performers and producers to strengthen enforcement and enhance rules protecting IPR.

The Agreement also includes detailed rules governing telecommunications services, under which the Parties will apply market-opening disciplines that extend beyond those in effect under the WTO. In addition, the Agreement contains innovative procedures for settling disputes that may arise under the Agreement, including provisions for monetary assessments to back up dispute panel decisions.

3. Foster Economic Growth

According to an independent study using the Michigan Model of World Production and Trade (Michigan model) to estimate certain economic effects of various free trade agreements, the Agreement will boost annual net global welfare by $15.7 billion when fully implemented. In absolute terms, a positive welfare effect will be enjoyed by the United States ($17.3 billion, or 0.17 percent of GNP) and by Central America and the Dominican Republic collectively ($5.3 billion, or 4.4 percent of GNP). Formal models, such as the Michigan model, however, tend to underestimate the benefits of free trade agreements because their scope is limited (*e.g.*, they fail to assess the impact of rules changes such as improved IPR protection and group many industries and products into a limited number of categories for analysis) and because not all the expected effects of the Agreement are necessarily measured (*e.g.*, they fail to estimate or fully estimate dynamic or intermediate growth gains from trade liberalization). It is clear, however, that the Agreement will make a positive contribution to U.S. economic welfare and the expansion of global trade.

4. Labor Rights and Environmental Protection

Trade agreements can, and should, complement efforts to protect worker rights and enhance environmental protection. Accordingly, the Agreement includes meaningful commitments by each country on labor and environmental protection.

Each of the Parties reaffirms through the Agreement its obligations as a member of the International Labor Organization ("ILO") and commitments under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work.* The Agreement contains a binding commitment that each Party not fail to effectively enforce domestic labor laws, while recognizing each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources. The Agreement also commits each Party to strive to ensure it does not waive or derogate from its domestic labor laws in a manner that weakens or reduces its adherence to internationally recognized labor rights as an encouragement for trade or investment with another Party. The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter.

Similarly, the Agreement commits each country to ensure that its laws and policies provide for and encourage high levels of environmental protection and to strive to improve those laws and policies. As is the case for labor law enforcement, the Agreement contains a binding commitment that each Party not fail to effectively enforce its domestic environmental laws, while recognizing each Party's right to establish its own environmental laws and exercise discretion in regulatory, prosecutorial, and compliance matters. The Agreement also includes language similar to that on labor rights that requires each country to strive to ensure it does not waive or derogate from its environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. Finally, the countries agree to cooperate on an ongoing basis regarding environment matters and have entered into a related Environmental Cooperation Agreement to facilitate such cooperation.

C. PRINCIPAL TRADE NEGOTIATING OBJECTIVES

The TPA Act establishes a variety of "principal trade negotiating objectives." The Agreement makes substantial progress toward each of the applicable goals set out in the act.

1. Opening Markets for U.S. Goods

Under the Agreement, U.S. exporters will enjoy increased market opportunities and greater certainty regarding the terms for access to markets in Central America and the Dominican Republic. For example, in addition to cutting tariffs on agricultural goods, the United States and the other Parties will work together on sanitary and phytosanitary ("SPS") matters, with a view to facilitating trade between the Parties, while appropriately protecting human, animal, and plant life and health. In addition, the Central American countries and the Dominican Republic are

working toward the recognition of the U.S. meat inspection and certification systems in order to facilitate U.S. exports. The Parties will also enhance cooperation on technical regulations, standards, and conformity assessment procedures to prevent unnecessary technical barriers to trade ("TBT") that hinder U.S. companies from taking advantage of open markets.

2. Opening Markets for U.S. Services

The Agreement will create new market opportunities in Central America and the Dominican Republic for a range of key U.S. services suppliers and will lock in access in sectors where their services markets are already open. The Agreement includes a market-opening services framework based in substantial part on a trade-liberalizing "negative list" approach. This means that all services sectors are subject to the Agreement's rules unless a country has negotiated a specific exemption in that sector.

The Agreement will either open or lock in existing significant access to services markets in Central America and the Dominican Republic in such priority U.S. services export sectors as financial services, telecommunications, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by state-of-the-art rules governing regulatory transparency – rules that are especially important given the highly regulated nature of many services industries.

Under the Agreement, the Central American countries and the Dominican Republic will improve or lock in existing levels of access for U.S. suppliers in another key services market – express delivery. The Agreement includes an innovative, comprehensive definition of express delivery services that requires each Party to provide national treatment, most-favored-nation ("MFN") treatment, and additional market access benefits to express delivery services of the other Parties. The Agreement also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services.

Several of the Central American countries and the Dominican Republic also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

3. Opening Markets for U.S. Investment

The Agreement commits the Central American countries and the Dominican Republic to provide a strong and predictable legal framework for U.S. investors, including direct ownership by U.S. firms of companies, real estate, intellectual property rights, concessions, permits, and debt instruments in those countries. Except for certain specified exceptions, the Agreement will

give U.S. investors the opportunity to establish, acquire, and operate investments in the Central American countries and the Dominican Republic on the same basis as those countries' own investors or other foreign investors – across the full spectrum of economic activity.

Under the Agreement, the Central American countries and the Dominican Republic will provide U.S. investors due process rights, and recourse in the event of expropriations, that are consistent with U.S. legal principles and practice. For example, the Agreement includes protection against denials of justice in accordance with the principle of due process embodied in the principal legal systems of the world. The Agreement thus makes explicit that the treatment required by this obligation is grounded in, and does not extend beyond, the due process standards embraced by the United States and other major legal systems of the world.

With regard to recourse in the event of expropriations, the Agreement draws heavily from principles developed in U.S. takings law under the Fifth Amendment of the Constitution. The Agreement clarifies, for example, that takings are limited to property rights and property interests, not other types of interests, and incorporates tests used by the U.S. Supreme Court to determine whether a regulatory taking has occurred. The expropriation provisions also recognize that, as is the case in U.S. practice, nondiscriminatory regulatory actions designed and applied to protect legitimate public welfare objectives only rarely result in expropriation. While the Agreement commits the United States to continue to provide Central American and Dominican Republic investors a high level of protection and due process, it gives Central American and Dominican Republic firms no greater substantive rights than U.S. companies already enjoy in the United States.

The Agreement also commits the Central American countries and the Dominican Republic not to burden U.S. investors with protectionist "performance requirements" – such as rules requiring investors to buy local products – and ensures that the Central American countries and the Dominican Republic will allow U.S. investors to transfer funds related to their investments into and out of Central America and the Dominican Republic.

The Agreement provides a mechanism for an investor of a Party to pursue a claim against another Party. The investor may assert that the Party has breached a substantive obligation under the Investment Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor or its investment. Innovative provisions afford public access to information on investor-State proceedings and ensure proper application of dispute settlement rules. For example, the Agreement requires the countries to make public key documents and hearings, with limited exceptions for business and other legally confidential information, and authorizes tribunals to accept *amicus* submissions from the public. The Agreement also includes provisions based on those used in U.S. courts to quickly dispose of frivolous claims.

Finally, the Agreement calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Investment Chapter.

4. Intellectual Property Rights

The Agreement clarifies and builds on existing international standards for the protection and enforcement of intellectual property rights, with an emphasis on new and emerging technologies. The Agreement ensures that the Central American countries and the Dominican Republic will provide a high level of IPR protection, similar to that provided under U.S. law. Key provisions of the Agreement, such as those on preventing circumvention of anti-piracy devices and establishing the scope of liability for copying works on the Internet, are modeled on U.S. statutes.

The Agreement includes state-of-the-art protection for trademarks and copyrights as well as expanded protection for patents and undisclosed information.

The Agreement requires each Central American country and the Dominican Republic to accede to certain international Internet treaties and to extend its term of protection for copyrighted works. Under the Agreement, these countries will ensure that copyright owners maintain rights to temporary copies of their works, which is vital for protecting copyrighted music, videos, software, and text from widespread unauthorized sharing over the Internet. The Agreement requires each government to direct its agencies to use only legitimate computer software, thus setting a positive example for private users. To prevent piracy of satellite television broadcasts, the Agreement will also require the Central American countries and the Dominican Republic to protect encrypted satellite signals as well as the programming those signals carry.

The Agreement commits the Central American countries and the Dominican Republic to make patent rights available, with certain exceptions, for inventions and provides for the extension of patent terms in the event of unreasonable delays in issuing patents or granting regulatory approval for marketing patented products. The Agreement will also require these countries to protect test data and other information that pharmaceutical and agricultural chemical companies submit to government regulators in order to secure regulatory approval for their patented products. Under the Agreement, these countries will protect information generated in connection with pharmaceutical and agricultural chemical product approvals for 5 and 10 years, respectively.

These standards are made more meaningful through requirements for tough enforcement measures and remedies to combat piracy and counterfeiting, including procedures in civil cases for seizure and destruction of pirated and counterfeit products, and the equipment used to produce these products. The Agreement also commits each Central American country and the Dominican Republic to ensure that its criminal law enforcement authorities are empowered to

seize, forfeit, and destroy counterfeit and pirated goods and, at least with respect to pirated goods, the equipment used to produce them. Each country must also authorize its enforcement officials to act on their own against counterfeit and pirated goods, either by stopping them at the border or initiating criminal cases, without receiving a formal complaint, thus providing more effective enforcement against these products.

5. Transparency

The Parties recognize that without a high standard of regulatory transparency, the benefits of market-opening trade commitments can be lost through arbitrary or unfair government regulations. Accordingly, the Agreement includes provisions that will ensure that each Party observes fundamental transparency principles. Those provisions are set out in a specific Chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing customs administration, TBT, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, each country must adopt or maintain prohibitions on bribery in matters affecting international trade and investment, including bribery of foreign officials, and establish criminal penalties for such offenses. In addition, each country will strive to adopt appropriate measures to protect those who, in good faith, report acts of bribery. The Parties also will work jointly to encourage and support appropriate regional and multilateral initiatives to combat bribery and corruption.

6. Regulatory Practices

The Agreement addresses regulatory issues directly linked to the Agreement's market-opening provisions. This includes specific provisions in almost all Chapters, including those on customs administration, SPS, TBT, government procurement, cross-border trade in services, and telecommunications. In addition, the Agreement includes commitments on transparency, rights of appeal of administrative decisions, and access to information.

7. Electronic Commerce

Under the Agreement, the Parties must apply the principles of national treatment and MFN treatment to trade in electronically transmitted digital products (*e.g.*, computer programs, video, images, and sound recordings). The Agreement includes rules prohibiting duties on electronically transmitted digital products and limiting duties on digital products stored on a carrier medium to a duty based on the value of the carrier medium alone. In so doing, the

Agreement creates a strong foundation for wider efforts to bar duties and discriminatory treatment of digital products.

8. Trade in Agricultural Products

The Agreement includes several provisions designed to eliminate barriers to trade in agricultural products, while providing reasonable adjustment periods, TRQs, and other mechanisms for producers of import-sensitive agricultural goods. In addition, the United States and the other Parties have agreed to work together toward a multilateral agreement in the WTO to eliminate export subsidies and prevent their reintroduction in any form.

Under the Agreement, each Party will eliminate export subsidies on agricultural goods destined for another Party. If a third country subsidizes exports to a Party, an exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party. If the importing Party does not agree to such measures, the exporting Party may provide an export subsidy on its exports of the good to the importing Party, but only to the extent necessary to counteract the trade-distorting effect of the subsidized imports from the third country.

The Agreement also includes a safeguard procedure for certain agricultural goods to aid domestic industries that face imports above a specified quantitative threshold for such goods.

9. Labor Rights and Environmental Protection

Under the Agreement, the Central American countries, the Dominican Republic, and the United States reaffirm their obligations as members of the ILO and will strive to ensure that their laws provide for labor standards that are consistent with internationally recognized labor rights, as set forth in the Agreement. The Agreement makes clear that it is inappropriate for a Party to waive or derogate from domestic labor laws in a manner that weakens or reduces adherence to internationally recognized labor rights as an encouragement for trade with another Party or investment in its territory by investors of another Party. A key element of the Agreement's labor provisions, which is enforceable through the Agreement's dispute settlement procedures, is a commitment by each country not to fail to effectively enforce its labor laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. The Agreement defines labor laws specifically to include those related to the prohibition and elimination of the worst forms of child labor. The Agreement also commits the Agreement countries to cooperate on labor issues, in part through the Labor Cooperation and Capacity Building Mechanism described in an annex to the Labor Chapter.

Environmental commitments are also included in the core text of the Agreement. As is the case for labor rights, a key component of the Agreement's environmental provisions is an

enforceable commitment by each country that it will not fail to effectively enforce its domestic environmental laws through a sustained or recurring course of action or inaction in a manner affecting trade between the Parties. Under the Agreement, each Party also commits to ensure that its domestic laws and policies provide for and encourage high levels of environmental protection and to strive to continue to improve those laws and policies. Through the Agreement, the Parties expressly recognize that it is inappropriate to waive or derogate from their environmental laws in a manner that weakens or reduces protections under those laws in order to seek investment or encourage trade with another Party. In addition, the Agreement includes a public submissions mechanism that allows members of the public to raise concerns with an independent secretariat about a Party's enforcement of its environmental laws. In appropriate cases, the secretariat will develop a factual record related to the submission for consideration by the Agreement's Environmental Affairs Council. The Agreement also recognizes that the Parties negotiated an Environmental Cooperation Agreement under which they have identified certain priority areas of environmental cooperation.

10. Dispute Settlement

The Agreement includes innovative procedures for settling disputes that may arise between the Parties over its implementation. The Agreement's dispute settlement procedures rely principally on consultations and compliance rather than on imposition of trade sanctions or penalties. The procedures set high standards of openness and transparency. The Agreement calls for dispute settlement proceedings to be open to the public, for the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and for dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

The Agreement's dispute settlement rules also provide that where a Party is found to be in violation of an obligation under the Agreement, the remedies available to the complaining Party will be equivalent for disputes involving commercial matters, on the one hand, and disputes involving labor or environmental matters, on the other. The FTA achieves this result through an enforcement mechanism that provides for the use of monetary assessments. That mechanism allows a prevailing country to suspend tariff benefits under the Agreement if the losing country fails to pay such an assessment, while bearing in mind the Agreement's objective of eliminating barriers to bilateral trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Dispute settlement is available under the Agreement for labor or environmental disputes relating to each Party's obligation not to fail to effectively enforce its labor or environmental laws. If a panel determines that a Party has failed to effectively enforce its labor or environmental laws and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the

assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund for appropriate labor or environmental initiatives in the territory of the defending Party. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary, to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

11. Trade Remedies

The Agreement includes a safeguard procedure, similar to the procedures in other U.S. free trade agreements, which will be available to aid domestic industries, in the unlikely event that an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or elimination of U.S. import duties under the Agreement. The Agreement also includes a special safeguard to address the possibility that duty reduction or elimination under the Agreement could result in damaging levels of textile or apparel imports.

The Agreement does not affect U.S. rights to take safeguard actions under section 201 of the Trade Act of 1974, which implements the WTO Safeguards Agreement and the General Agreement on Tariffs and Trade ("GATT") 1994. Under the Agreement, the President may, but is not required to, exempt imports of goods from Agreement countries from a WTO safeguard measure, if the goods are not a substantial cause of serious injury or threat thereof.

The Agreement provides that each country retains its rights and obligations under the WTO agreements relating to antidumping or countervailing duties. Thus, the Agreement does not affect U.S. rights and obligations regarding these trade remedies as they currently exist under the WTO. The United States agreed to maintain an advantage currently afforded to imports from the Central American countries and the Dominican Republic as a result of their status as beneficiary countries under the Caribbean Basin Economic Recovery Act ("CBERA"). Specifically, the United States agreed to continue to treat the other Agreement countries as CBERA beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBERA beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

D. PRIORITIES FOR MAINTAINING GLOBAL COMPETITIVENESS

The TPA Act also calls for the President to promote certain priorities to address and maintain U.S. competitiveness in the global economy. The Agreement makes progress in promoting each of these priorities.

1. Labor Cooperation

The United States, the Central American countries, and the Dominican Republic are members of the ILO. The United States has a longstanding cooperative relationship with each of these countries on labor issues. During the negotiations, government labor experts from the Agreement countries consulted on their labor laws and how their respective systems operate. The Agreement includes a labor cooperation and capacity building mechanism to promote respect for the principles embodied in the ILO *Declaration on Fundamental Principles and Rights at Work and its Follow-up* and compliance with ILO *Convention 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*. The Agreement establishes a framework for the labor cooperation and capacity building mechanism and lists a range of labor activities on which the Parties will cooperate. Officials of the U.S. Department of Labor and the labor ministries of the other Parties and other appropriate agencies will participate in this mechanism.

2. Domestic Policy Objectives

The Agreement fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The Agreement includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and protection of confidential information. The Agreement also avoids disturbing existing state and local governmental measures that might run counter to the Agreement's services rules by including "grandfather" clauses that exempt those measures from challenge under the Agreement.

3. Multilateral Environmental Agreements and GATT Article XX

As noted in the Administration's environmental review of the Agreement, the environment and sustainable development are important concerns for both the United States and the other Agreement countries. The Agreement expressly recognizes the importance of multilateral environmental agreements ("MEAs"), including appropriate use of trade measures in such agreements to achieve specific environmental goals. The Agreement commits the Parties to consult regularly with respect to the ongoing negotiations in the WTO concerning the relationship between MEAs and WTO rules. In addition, the Environmental Cooperation Agreement negotiated in parallel with the Agreement will provide further opportunities for the seven governments to cooperate in promoting effective implementation of MEAs to which they are all party.

4. Currency and Exchange Rate Manipulation

Section 2102(c)(12) of the TPA Act states that "[i]n order to address and maintain United

States competitiveness in the global economy, the President shall ... seek to establish consultative mechanisms among parties to trade agreements to examine the trade consequences of significant and unanticipated currency movements and to scrutinize whether a foreign government engaged in a pattern of manipulating its currency to promote a competitive advantage in international trade."

The Cross-Border Trade in Services and Financial Services Chapters of the Agreement promote and protect the freer international movement of capital and consequently make it more difficult to manipulate exchange rates to achieve levels inconsistent with levels set by market forces.

The currency movements mentioned in section 2102(c)(12) can arise from many conditions, particularly from macroeconomic developments, macroeconomic policy changes or the appearance of new information on fundamental economic conditions. The determination of whether any such movement reflects currency manipulation to promote a competitive advantage in international trade must therefore take into account a broad range of issues, institutions and market developments which will require a review mechanism with a larger scope than any specific trade agreement.

The Secretary of the Treasury is required, under the Omnibus Trade and Competitiveness Act of 1988, to analyze on an annual basis the exchange rate policies of foreign countries, in consultation with the International Monetary Fund ("IMF"), and to consider whether countries manipulate the rate of exchange between their currency and the United States dollar for purposes of preventing effective balance of payments adjustments or gaining an unfair competitive advantage in international trade. Each member of the IMF is obligated, under Article IV of the IMF Articles of Agreement, to avoid manipulation of exchange rates for such purposes.

The Department of the Treasury will ensure that currency movements mentioned in Section 2102(c)(12) are examined in its analysis of exchange rate policies of foreign countries and in consultations with the IMF concerning these policies. The Department of the Treasury will seek to resolve problems of currencies that are considered to be manipulated in the sense of 2102(c)(12) through discussions with the foreign authorities responsible for foreign exchange rate policies.

5. Reporting Requirements

As required under the TPA Act, the Administration has provided a report to the Congress describing the laws of the Central American countries and the Dominican Republic governing exploitative child labor. In addition, the Administration has reported to the appropriate Congressional committees as required under the TPA Act on: (1) the Administration's environmental review of the Agreement; and (2) its review of the Agreement's impact on U.S. employment. The Administration has also provided a meaningful labor rights report on the Central American countries and the Dominican Republic, which will be made available to the

public. Finally, the Administration has reported, as specified in the TPA Act, on U.S. efforts to establish consultative mechanisms to strengthen the Central American countries' and the Dominican Republic's capacity to promote respect for core labor standards and to develop and implement standards for the protection of human health based on sound science.

STATEMENT OF WHY THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT IS IN THE INTERESTS OF U.S. COMMERCE

INTRODUCTION

The Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR" or "Agreement") provides for equitable and reciprocal trade liberalization among the United States, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua. The CAFTA-DR is a comprehensive free trade agreement that will strip away barriers to trade, eliminate tariffs, open markets, and promote investment in the Parties. By promoting economic growth in Central America and the Dominican Republic, this cutting edge pact will expand U.S. opportunities in important regional markets and further U.S. commercial interests.

Negotiations with the five Central American countries of Costa Rica, El Salvador, Honduras, Guatemala and Nicaragua began in January 2003 and were completed one year later. The negotiations with the Dominican Republic were launched in January 2004 and concluded in March 2004. The CAFTA-DR is a regional trade agreement among all seven signatories, and will contribute to the transformation of a region that was consumed in internal strife and border disputes just two decades ago.

WHY CENTRAL AMERICA AND THE DOMINICAN REPUBLIC?

The CAFTA-DR countries are among the developing nations that already enjoy duty free access to the U.S. market for the majority of their exports through trade preference programs. These developing countries often have high tariff and non-tariff barriers to U.S. exports and impose restrictions on U.S. businesses. State-of-the-art free trade agreements like the CAFTA-DR not only reduce barriers to U.S. trade, but also require important reforms of the domestic legal and business environment that are key to encouraging business development and investment. Such reforms include providing greater transparency for government actions such as rule making and other steps to strengthen the rule of law, improving the protection and enforcement of intellectual property rights, and providing clear guidance on customs matters.

Moving from One-way Preferences to Reciprocity

For twenty years, most Central American and Dominican Republic exports to the United States benefited from duty-free treatment, primarily as a result of the Caribbean Basin Initiative (CBI). With the expansion of the CBI program in 2000 (under the Caribbean Basin Trade Partnership Act - CBTPA), about eighty percent of the region's exports enter the United States duty-free.

The CAFTA-DR moves beyond one-way preferences to full partnership and reciprocal commitments, under which U.S. exports also benefit from duty-free access.

Expanding Economic Opportunities for U.S. Manufacturers, Workers, and Farmers

Trade between the United States and the CAFTA-DR countries is significant for all the Parties. In 2004, such trade totaled over $33 billion.[1] The United States exported almost $16 billion in goods to the five Central American countries and the Dominican Republic in 2004, more than all exports to Russia, India, and Saudi Arabia combined. A free trade agreement with Central America and the Dominican Republic would effectively create the second-largest U.S. export market in Latin America ($16 billion), behind only Mexico, and the 14th largest U.S. export market in the world. The market access and trade disciplines provided by the CAFTA-DR offer an opportunity to expand U.S. exports to a region that is already seeing high export growth rates. U.S. export growth to the CAFTA-DR region has outperformed overall U.S. exports. From 2000 to 2004, export shipments to CAFTA-DR destinations grew by almost 16 percent, compared with less than 5 percent for overall U.S. exports.

The Central American countries, as well as the Dominican Republic, are natural trading partners of the United States; U.S. firms already enjoy about a forty percent share of the Central American and Dominican import markets.[2] Geographic proximity and close cultural and family ties strengthen the economic relationship. The region, with a population of about 44 million,[3] is only a 2 - 2 ½ hour flight from either Miami or Houston.

Remittances from relatives in the United States to our CAFTA-DR partners are an important and rapidly growing source of foreign exchange throughout the region and help to fund imports of U.S. goods and services. Most U.S. firms that do business in the Caribbean Basin already operate on a regional basis. The CAFTA-DR would bring about additional opportunities to harmonize and integrate this market and allow U.S. businesses to better serve the region.

Leveling the Playing Field

The CAFTA-DR will level the playing field for U.S. businesses that sell to Central America and the Dominican Republic. In 2004, over 80 percent of the CAFTA-DR countries' goods exports to the United States came in duty-free under unilateral U.S. trade preference programs, such as the Caribbean Basin Initiative (CBI) and the Generalized System of Preferences (GSP), or under zero MFN tariffs. The CAFTA-DR will open reciprocal trade benefits, eliminating tariffs and reducing barriers, also, to U.S. exports to the region. In addition, U.S. products currently face a competitive disadvantage because Central American countries, as well as the Dominican Republic, have been active in negotiating free trade agreements with other countries. Central America grants preferences to products from Mexico, Canada, Chile, and other South American nations under more than twenty trade agreements. The Dominican Republic has signed free trade agreements with the Central American Common Market countries as well as the Caribbean Community countries. The CAFTA-DR would ensure that U.S. companies are no longer disadvantaged as a result of these trade agreements.

Advancing the U.S. Trade Agenda

The CAFTA-DR is a key part of America's regional and global efforts to open markets and enable U.S. businesses to sell goods and services around the world. The CAFTA-DR will lend momentum to the completion of complete the Free Trade Area of the Americas (FTAA) and signals that Central America and the Dominican Republic are ready to join the United States, Mexico, Canada, and Chile as free trade leaders in the hemisphere. As these countries' stake in the trading system expands, we will look for new opportunities to work together in other multilateral negotiations such as the World Trade Organization (WTO). The common disciplines

and trade objectives developed through the CAFTA-DR will enhance the ability of all parties to forge consensus in the WTO.

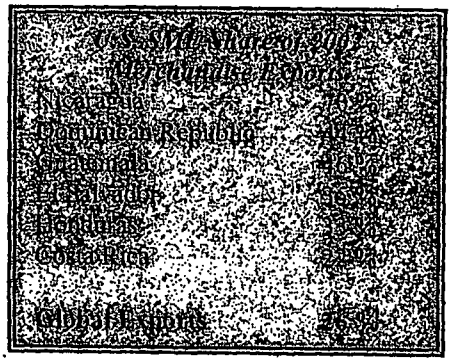
Supporting Democracy, Economic Reform, and Regional Integration

The CAFTA-DR promotes close cooperation among the Central American countries and with the Dominican Republic, thereby advancing regional integration and contributing to greater peace, economic cooperation, and stability in the region. During the past two decades, the Central American countries and the Dominican Republic have established democratic systems of government and have implemented economic reforms to promote privatization, competition, and open markets. The United States has supported this transition to democratic institutions, enhanced economic growth, and security for human rights through a number of programs, including the Caribbean Basin Initiative.

The CAFTA-DR commits the Central American countries and the Dominican Republic to adopt more open and transparent procedures, which should deepen the roots of democracy, civil society, and the rule of law in the region, as well as reinforce market reforms. These reforms, coupled with increased trade and investment flows, should promote expanded growth and openness in the region, as well as support common efforts to achieve stronger labor and environmental protection. The United States and the other CAFTA-DR Parties take an aggressive and cooperative approach to ongoing efforts to improve labor protections through 1) requiring effective enforcement of existing labor laws and 2) building local capacity to improve worker rights.

SMALL AND MEDIUM-SIZED ENTERPRISES: KEY EXPORTERS TO CENTRAL AMERICA AND THE DOMINICAN REPUBLIC

The CAFTA-DR will be of particular benefit to small and medium-sized enterprises (SME's). In 2002 small and medium-sized enterprises (enterprises with 500 or fewer employees) were responsible for an estimated thirty-seven percent of the value of U.S. merchandise exports to the Dominican Republic and Central America. This was considerably greater than the twenty-six percent SME share of global U.S. merchandise exports.[4]



Small and medium-sized enterprises particularly benefit from the tariff-eliminating provisions of free trade agreements, and should benefit from the significant tariff cuts required under the CAFTA-DR. The transparency obligations, particularly those contained in the customs chapters, are also very important to SME's, which may not have the resources to navigate customs and regulatory red tape.

Small businesses have taken advantage of previous trade agreements designed to eliminate trade barriers. In 1992, SME's accounted for only twenty-four percent of exports to our NAFTA partners, Canada and Mexico. In 2002, the SME share of this growing export market rose to thirty percent.

ENHANCED MARKET ACCESS TO THE DOMINICAN REPUBLIC AND CENTRAL AMERICA: LATIN AMERICA'S NEWEST EMERGING MARKETPLACE

More than eighty percent of U.S. exports of consumer and industrial products to Central America and the Dominican Republic will be duty-free immediately upon entry into force of the Agreement, with remaining tariffs phased out over ten years. Key U.S. exports, such as information technology products, agricultural and construction equipment, paper products, chemicals, and medical and scientific equipment will gain immediate duty-free access to Central America and the Dominican Republic.[5]

Best Prospects For Increased Market Growth For Non-Textile Industrial Goods

Information Technology Products

All U.S. Information Technology Agreement (ITA) product exports to Central America and the Dominican Republic will be duty-free immediately upon implementation of the Agreement. U.S. exporters of information technology (best prospects include circuit switching equipment, computers and peripherals, cables, routers, and cellular services equipment, including base stations, radio trunking equipment, handsets) will all benefit from the Agreement. The CAFTA-DR countries are forging ahead into the digital age. In Guatemala, for instance, demand for telecommunications equipment is expected to grow at an annual rate of ten to fifteen percent over the next 2 to 3 years. U.S. exports of ITA products to the CAFTA-DR region in 2004 were $1.8 billion.

Chemicals

U.S. exporters of chemical and related products will benefit from the CAFTA-DR tariff reductions, particularly with regard to exports of plastics and cosmetics, where tariffs range up to fifteen percent. Tariffs on nearly three-quarters of U.S. chemical exports will be eliminated immediately upon entry into force of the Agreement. For fertilizer and agro-chemical products, the news is even better. Ninety-one percent of U.S. fertilizers and agro-chemicals exports will be duty-free immediately upon entry into force of the Agreement, an important boost to a sub-sector that has seen declining exports to the region. U.S. chemical exports to Central America and the Dominican Republic reached $1.4 billion in 2004.

Eighty percent of U.S. imports from Central America and the Dominican Republic now enter the United States duty-free, while U.S. exporters to Central America and the Dominican Republic currently face significant tariffs.

Benchmark Central American/DR tariffs on imports of industrial goods from the United States

Motor Vehicles and Parts	11 %
Wood Products	10 %
Textile, Apparel & Leather Products	10 %
Chemicals, Petroleum, Coal, Rubber	5 %
Ferrous Metals	6.3 %
Other Metals and Metal Products	3.5 %
Transport Equipment	3.5 %
Electronic Equipment	1.4 %
Other Machinery and Equipment	4 %
Other Manufactures	7.1 %

The CAFTA-DR Eliminates Tariff Spikes, including

- El Salvador's 30 % autos tariff.
- Guatemala's 23 % tariff on certain footwear.
- Plastics and cosmetics tariffs up to 15 %.
- Air conditioning and refrigeration equipment facing tariffs up to 15 %.
- 15 % percent tariffs on some building products such as valves and home construction accessories including fixtures, sinks and doors.

Source – Benchmark tariffs: USITC Publication 3717 *U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economywide and Selected Sectoral Effects,* Table 4.2

Industrial Machinery

Ninety-two percent of U.S. capital goods exports to Central America and the Dominican Republic will be duty-free immediately upon implementation of the CAFTA-DR. U.S. exporters of food processing, storage and packaging equipment, agricultural machinery (including irrigation equipment) and heating and cooling equipment will benefit significantly from the Agreement. The construction and tourism boom, coupled with an increase in non-traditional agricultural production in Guatemala and Honduras and the increase in the processed food market, will continue to fuel demand for specialized machinery. The CAFTA-DR better positions U.S. exporters to take advantage of this expanding market, particularly in the heating and cooling equipment sub sectors where tariffs currently range up to fifteen percent. In 2004, U.S. exports of machinery to the CAFTA-DR region were $935 million.

Electrical Power Generation and Distribution Equipment

Electrical power generation and distribution equipment, including transmission and distribution-related equipment, meters, regulators, boxes, switchers, converters, pumps, etc., are best prospects for export to Central America and the Dominican Republic. Tariffs in the energy sector range up to twenty percent. Overall, ninety-six percent of U.S. exports of energy product exports to Central America and the Dominican Republic will receive duty-free treatment upon implimentation of the CAFTA-DR. The Agreement will improve U.S. competitiveness in this sector at a key point in time. The Central American countries have launched an inter-regional energy trading system, which will present an opportunity for sales of energy equipment as the countries upgrade their systems. Increasing energy demand as well as investment in rural electrification projects will provide opportunities for increased export sales. Major projects, such as the Government of El Salvador's plans for a 100 MW thermal generation plant in the near future, a project estimated to cost $100 million, as well as two major hydroelectric projects, will keep demand for energy-related products high. In 2004, U.S. exports of energy products to Central America and the Dominican Republic were approximately $726 million.

Environmental Technologies

Virtually all U.S. environmental technology product exports to Central America and the Dominican Republic, with the exception of miscellaneous plastic items, will receive immediate duty-free treatment. The Agreement includes environmental obligations as part of the core text of the Agreement and provides a cooperative framework for environmental capacity building. This should help spur demand for environmental technologies. The elimination of tariffs is an important competitive boost to a sector where ninety-nine percent of companies in the United States are small enterprises.

Central American and Dominican Republic tariffs on some environmental goods are as high as twenty percent. The Salvadoran Ministry of Environmental and Natural Resources, as well as private industries, are starting projects to recycle and treat solid waste material – other countries in the region need to address this and other environmental issues. U.S. exports of environmental technologies to Central America and the Dominican Republic were valued at $307 million in 2004.

Medical Equipment

Ninety-eight percent of U.S. medical equipment exports to Central America and the Dominican Republic will receive duty-free treatment immediately upon entry into force of the Agreement. Tariffs on medical equipment range up to twenty percent on some medical and dental furniture. U.S. suppliers will be well positioned to take advantage of growing demand for medical equipment and supplies. In Costa Rica, for example, demand for medical equipment is expected to increase dramatically, as most hospitals need to replace obsolete equipment. The Costa Rican government has already approved several programs for large-scale purchases of modern medical equipment as part of an effort to upgrade the public and private health sectors. U.S. exports of medical equipment and supplies to the CAFTA-DR region in 2004 were $213 million.

Construction Equipment and Building Supplies

Ninety-nine percent of U.S. construction equipment exports and over fifty-five percent of building supply exports will be duty-free immediately upon entry into force of the Agreement. Current tariffs on construction equipment range from zero to fifteen percent. Central American tariffs on building supplies are higher on average than for other products in the region, with the highest tariffs ranging up to fifteen percent for products such as valves and home construction accessories including fixtures, sinks and doors. Tractors, road building/paving equipment, items required for heavy infrastructure (hotels, roads, bridges), and residential housing (low, medium and high-end) are all best prospects for export under the CAFTA-DR. Construction is booming in both the Dominican Republic and Central America. In the Dominican Republic tourism-related construction is leading the boom. In Costa Rica, where the construction sector has been identified as one of the most dynamic sectors of the economy for the past three years, private sector construction (building of residences, warehouses, industrial plants, offices, shopping malls, supermarkets, schools and hospitals) is taking the lead. In 2004, U.S. exports of construction equipment to the CAFTA-DR region were approximately $85 million, and building products exports were over $136 million.

Automotive Parts and Services Equipment

The CAFTA-DR will eliminate Central American and Dominican tariffs on autos and parts that average from about four to nine percent and range as high as thirty percent for certain products. Automotive parts, accessories and service equipment are the best prospects for U.S. exports to the region.

U.S. exporters will also benefit from CAFTA-DR provisions that will allow remanufactured auto parts to receive benefits under the Agreement.

AGRICULTURAL PRODUCTS

Although the United States exported $1.8 billion in farm products in 2004, CAFTA-DR countries continue to impose high tariffs and other barriers on most agricultural products. Removing existing trade barriers between the United States, the five Central American countries and the Dominican Republic will create important new export opportunities for U.S. farmers, ranchers and processors. Moreover, because the U.S. market is already largely open to agricultural imports from these countries, the CAFTA-DR will result in only limited increases in imports. With consumption stagnant for many agriculture products in the United States, access to growth

markets such as those in Central America and the Dominican Republic is critical for the expansion and profitability of U.S. agriculture.

The average WTO bound tariff on agricultural products is forty-two percent in Costa Rica, forty percent in the Dominican Republic, forty-one percent in El Salvador, forty-nine percent in Guatemala, thirty-five percent in Honduras, and sixty percent in Nicaragua. Applied tariffs may be lower on specific products, but in many cases these tariffs constrain U.S. exports. Moreover, without the CAFTA-DR, there is no assurance that the Dominican Republic and Central American countries will not raise these tariffs to their WTO bound rate. In contrast, under the Caribbean Basin Initiative, the United States allows over ninety-nine percent (trade weighted basis) of Central American and Dominican Republic exports to enter duty-free, effectively preserving tariff protection only for out-of-quota imports of products under U.S. tariff-rate quota ("TRQ") programs.

Best Prospects For Market Growth For Agricultural Goods

Beef, Pork and Poultry

U.S. poultry and livestock producers are among the most efficient in the world, producing high quality product at competitive prices. Under the Agreement, duties on all poultry and livestock products will be eliminated, either immediately or through tariff phase-outs. As a result, U.S. exports will benefit from access to the vibrant tourist industry in the region, where there is strong demand for high quality product, as well as the ability to sell into the growing domestic market in these countries.

Current import duties on U.S. beef exports are as high as thirty percent, and under WTO rules CAFTA-DR countries may charge duties as high as seventy-nine percent. From 2001 through 2003, U.S. suppliers annually shipped on average $10.6 million worth of beef to all six countries combined. U.S. beef exports worldwide, including to CAFTA-DR countries, were severely impacted in 2004 by BSE-related bans. Under the Agreement, duties on the products most important to the U.S. beef industry – prime and choice cuts – will be eliminated immediately in the Central American countries, while the Dominican Republic will establish a zero duty TRQ on these products which expands annually as tariffs are eliminated. Duties currently applied to certain other beef products and beef offals will be phased-out in 5 to 10 years by the CAFTA-DR countries. In addition, some immediate duty-free access will be provided on other beef cuts through other TRQs, which will expand annually as tariffs are eliminated. The CAFTA-DR countries will eliminate all tariffs on beef and beef products within 15 years.

U.S. pork exports currently face duties as high as forty-seven percent, and the WTO permits duties as high as sixty percent. From 2002 through 2004, U.S. suppliers annually shipped on average $20.5 million of pork to all six countries combined. Each CAFTA-DR country will provide immediate duty-free access on pork cuts through TRQs amounting to 13,613 metric tons which expand annually as tariffs are eliminated. Most countries will immediately eliminate tariffs on bacon and certain offal products. All CAFTA-DR tariffs on pork will be eliminated within 15 years.

Current import duties on U.S. poultry exports are as high as one hundred sixty-four percent, and WTO rules permit duties as high as two hundred fifty percent. From 2002 through 2004, U.S. poultry meat suppliers annually shipped on average $51.4 million to all six countries combined, and chicken leg quarters accounted for approximately fifty-five percent (in value terms) of this total. Under the Agreement, each CAFTA-DR country will provide immediate duty-free access

on chicken leg quarters, a product where the United States is the world's most competitive exporter, through TRQs that expand annually as tariffs are eliminated. For example, El Salvador, Guatemala, Honduras and Nicaragua will establish a total initial regional duty-free TRQ of 21,810 metric tons, with individual country minimum TRQ levels, for the first 12 years of the Agreement. For years 13 through 17 of the Agreement, the level of the TRQ will be established through negotiations, but will not be less than the amount equal to five percent of regional chicken production. Costa Rica will establish a 300 metric ton duty-free TRQ for chicken leg quarters and the Dominican Republic one of 500 metric tons, each expanding by ten percent annually until duties are eliminated. In addition, many duties on other poultry products, such as wings, breast meat and mechanically de-boned poultry meat will be eliminated immediately or within 5 to 10 years in some countries. Full liberalization of all poultry and poultry products will occur within 17 to 20 years, depending on the country.

The Central American countries and the Dominican Republic are working toward the recognition of the U.S. meat and poultry inspection systems, and it is expected that this process will be brought to a favorable conclusion in the near future.

Dairy Products

U.S. dairy producers are very competitive with producers in the region and will benefit from opportunities to access a growing market. U.S. exports to the CAFTA-DR countries currently face duties as high as sixty-five percent, and the WTO permits duties as high as one hundred percent. From 2002 through 2004, U.S. suppliers annually shipped on average $52.4 million of dairy products to all six countries combined, and the U.S. share of the import market was 10-15 percent.

The CAFTA-DR countries combined will permit immediate access to over 10,000 metric tons of U.S. dairy products through TRQs that expand annually as dairy tariffs are phased-out. Under the Agreement, all tariffs on dairy products will be eliminated, within 20 years for all countries, and sooner for some.

Soybeans and Soybean Products

From 2002 through 2004, U.S. suppliers annually shipped on average 203,359 metric tons of soybeans, 640,770 metric tons of soybean meal, and 76,286 metric tons of soybean oil, valued at $50 million, $140 million and $38 million, respectively, to the CAFTA-DR countries. Current import duties on these products range from zero to twenty percent, but under WTO rules the Central American countries and the Dominican Republic could impose much higher duties. Under the Agreement, the CAFTA-DR countries will provide immediate duty-free access on soybeans. U.S. suppliers will face zero duties on soybean meal, soybean flour, and crude soybean oil in most CAFTA-DR countries. Improved access to these markets, which are expected to grow with rising incomes and population spurring expanded food consumption, will further expand export opportunities for competitive U.S. producers.

Fruits, Tree Nuts and Vegetables

Fruit and vegetable production in Central America and the Dominican Republic largely complements production in the United States -- climatic, seasonal and geographic differences serves to limit the direct competition between the regions and encourage trade in both directions. Removing tariffs on U.S. products will facilitate expanded sales in the region.

U.S. fruit and tree nuts face import tariffs ranging from fifteen to thirty percent in the six countries, while WTO bindings generally range from twenty to sixty percent, with some approaching one hundred fifty percent. From 2002 through 2004, U.S. suppliers annually shipped on average 43,540 metric tons of fruits and nuts valued at $55.5 million to all six countries, and the U.S. share of their import market was approximately forty percent in 2002. Apples and grapes, which face tariffs ranging from fifteen to twenty percent, accounted for nearly half of these U.S. exports. Nearly seventy percent of U.S. fruit and nuts are eligible for immediate duty-free access under the Agreement, including apples, grapes, pears, cherries, raisins, peaches, almonds, walnuts, and pistachios. Processed horticultural products, such as wine, canned peaches and pears, mixed canned fruit, grapefruit and cranberry juice will receive duty-free treatment immediately in all six countries. Central American countries also will immediately eliminate tariffs on frozen concentrated orange juice. The CAFTA-DR countries will phase-out import tariffs on another twenty-six percent of all fruit and nut products over the first five to ten years of the Agreement.

WTO bound tariffs in the Central American countries and the Dominican Republic on vegetables range from thirty to eighty-nine percent, with applied rates generally fifteen to twenty-five percent. From 2002 through 2004, U.S suppliers to the six countries annually shipped on average nearly $11 million worth of pulses, and $40.9 million worth of fresh and prepared vegetables, including $4.4 million worth of frozen fries. The six countries will open their markets for pulses through a combination of tariff cuts (including immediate duty elimination on peas and lentils in certain countries and five-year phase-outs on lentils, peas and white beans in other countries) and zero duty TRQs which expand annually as tariffs are phased-out over 15 years. Import duties on frozen french fries will be immediately eliminated in four countries and phased-out over five or six years in the other two countries. U.S. suppliers obtain immediate duty-free access on fresh and canned sweet corn, lettuce, mushroom, tomato paste, mushrooms and canned asparagus in some countries, while tariffs on other vegetables, such as cauliflower, broccoli, and lettuce are phased-out in five to ten years in most countries.

Grains

U.S. suppliers of grains (wheat, rice, corn and other feed grains) currently face applied tariffs as high as sixty percent in the CAFTA-DR countries. U.S. farmers and processors of grains are well positioned to compete in the CAFTA-DR countries, and the Agreement will open an already large and growing market to increased U.S. exports. As populations increase and diets adapt to reflect higher levels of economic development, demand for these products in the region will expand.

From 2002 through 2004, U.S. wheat suppliers annually shipped on average over 1.2 million metric tons of common wheat, valued at over $204 million to the six CAFTA-DR countries. During the same period, U.S. suppliers shipped on average $117 million worth of rice, $303 million worth of corn, and $7 million worth of other grains. U.S. grain suppliers will benefit from zero tariffs immediately on wheat, barley, barley malt in all six countries, as well as on some processed grain products. Costa Rica and the Dominican Republic will immediately eliminate the tariff on yellow corn, while the other four countries will provide access through zero-duty TRQs on yellow corn that total 1,151,259 metric tons initially and grow by five percent annually as tariffs are phased out. Zero duty TRQs will be established for milled rice by all countries, and rough rice in all countries except the Dominican Republic, which will have a TRQ for brown rice. The TRQ access totals over 400,000 metric tons immediately and grows through the tariff phase-out period.

Cotton

From 2002 through 2004, U.S. suppliers annually shipped on average $73.1 million worth of cotton to all six countries combined, both to meet domestic demand and as inputs to further processing. Tariffs will be eliminated immediately for cotton, contributing to the integration of regional production to the benefit of U.S. cotton farmers and manufacturers.

Processed Products

Demand in Central America and the Dominican Republic for imported processed products has been expanding substantially in recent years, despite tariffs that can range as high as sixty-six percent. U.S. food manufacturers, benefiting from dependable commodity suppliers at home and production and marketing efficiencies, already compete well in the region. From 2002 through 2004, U.S. suppliers annually shipped on average $180 million worth of candies, distilled spirits, breakfast cereals, soups, pet food, cookies and other prepared foods to the six CAFTA-DR countries. All CAFTA-DR countries will immediately eliminate tariffs on certain cookies and breakfast cereals. Most countries will immediately provide duty-free access on whisky and other distilled spirits. U.S. suppliers of pet food, other cereals, cookies and food preparations will benefit from immediate duty elimination in some countries, and tariff phase-outs, generally over five to ten years, in other countries.

TEXTILES AND APPAREL

The CAFTA-DR region is an important market for U.S. yarn and fabric manufacturers. In 2004, the United States sold $4.15 billion worth of yarns and fabrics to CAFTA-DR countries and sixty-one percent of apparel shipped from Central America and the Dominican Republic qualified under the Caribbean Basin Trade Partnership Act (CBTPA) provision requiring the use of U.S. yarns and fabrics. In contrast, Asian apparel producers use very little U.S. yarn or fabric. The CAFTA-DR will help retain and promote textiles trade with Central America and the Dominican Republic, a benefit to U.S. exporters.

The following identifies the key textile and apparel features and benefits contained in the CAFTA-DR:

- Regional yarn forward rule of origin – over ninety percent of apparel must be made of regional yarns and fabrics in order to qualify for duty-free treatment. The vast majority of these yarns and fabrics are made in the United States.

- Immediate duty and quota-free trade for qualifying goods, retroactive to January 1, 2004, has helped induce apparel manufacturers in the region to place orders in 2004 prior to the implementation of the Agreement, and has helped maintain and strengthen regional business partnerships. Keeping assembly in Central America and the Dominican Republic, as quotas under the WTO ended on December 31, 2004, should continue to strengthen sales of U.S. yarns and fabrics to the region.

- Customs cooperation provisions will help prevent trans-shipment and circumvention of non-qualifying goods entering the United States.

- Streamlined commercial availability (short supply) process will allow use of other yarns or fabrics if yarns or fabrics are not commercially available in the region to be used in the production of apparel.

- Central America, the Dominican Republic and the United States will be able to source non-elastomeric nylon yarns from Israel, Mexico and Canada, retaining the current CBTPA provision.

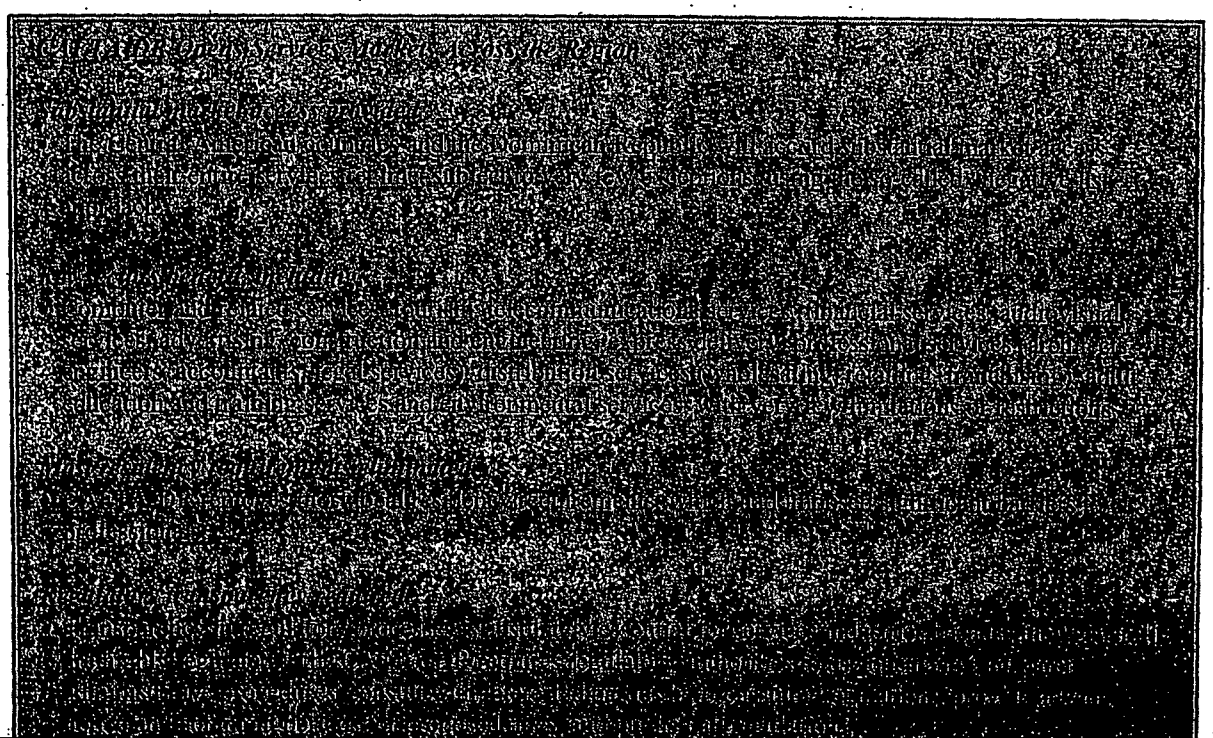
SERVICES SECTORS

The CAFTA-DR countries have made very substantial commitments to liberalization in cross-border services trade, telecommunications, and financial services. These commitments significantly improve upon their WTO commitments in terms of sectors covered and elimination of restrictions. The CAFTA-DR establishes a solid framework for trade in services by providing for the elimination of obstacles in most service sectors and regulatory transparency.

Why do services commitments matter?

The service sector accounts for the majority of jobs – and most job growth – in the U.S. economy. In the United States, private services industries added almost 17 million new jobs to U.S. payrolls between 1993 and 2003, when they accounted for almost 86.5 million U.S. jobs, or eighty percent of private non-farm employment. U.S. service exports are a vital part of this picture. For example, commercial services exports of $294 billion accounted for twenty-nine percent of total 2003 U.S. exports, generating a 2003 commercial services trade surplus of $66 billion which helped to offset part of the U.S. merchandise trade deficit.[6]

U.S. services firms are well positioned relative to their competitors abroad to take advantage of free trade agreements. The intensity and vigor of the U.S. market give rise to high-quality companies prepared to meet stringent services demands at home and enables them to compete abroad. Consumers in the CAFTA-DR countries value services that help boost their own productivity and enhance their lives, and look to the United States as a model in terms of providing high-quality and cutting-edge services and technologies.



The CAFTA-DR Allows Service Providers to Choose Mode of Delivery - a Key Provision for SME's

The commitments in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to establish a company in another CAFTA-DR country in order to supply services. The ability of service providers to choose their mode of providing a service becomes increasingly important as technology makes distance less of a service barrier. Distance learning, for example, has undergone a dramatic transformation due to technology. Satellites and the Internet are transforming the world into a borderless educational arena, benefiting both previously under-served citizenries and education entrepreneurs. Although many developing countries still have limited access to these new technologies, major new investments in telecommunications and information systems are going to dramatically improve their access, benefiting all "e-service" providers.

The CAFTA-DR governments are prohibited from requiring a U.S. company to incorporate or make any form of local investment when supplying their services on a cross-border basis. In other words, a U.S. company wishing to provide its service in a CAFTA-DR country is not required to have any formal presence there. This is a benefit to all U.S. service providers, especially SMEs, who may neither have the resources to maintain a presence outside of the United States nor conduct enough business to even need that kind of presence.

The CAFTA-DR Liberalizes an Onerous Distribution Restriction: Agent-Distributor Laws

The CAFTA-DR liberalizes restrictive agent-distributor regimes, eliminating laws in several Central American countries and the Dominican Republic that restrict U.S. companies' ability to choose distributors for their products. These laws, often called "dealer protection" laws were designed to protect citizens who work as agents or distributors for foreign companies. In practice, the rules are often very complicated and potentially costly to foreign suppliers, locking them into inefficient and exclusive distributor arrangements and making it difficult or impossible for them to modernize their distribution systems. Foreign companies have, in many cases, been forced to pay large fees or penalties to end distribution contracts, even if the contract had already reached its termination date or the distributor was not doing its job.

The Agreement will liberalize and modify the application of these laws for U.S. companies that wish to enter the CAFTA-DR marketplace, allowing U.S. businesses the freedom to contract the terms of new distributor relationships. It creates greater certainty that U.S. companies can enter into distribution arrangements without facing exorbitant penalties if it becomes necessary to modify or terminate the arrangement. The Agreement also recognizes international arbitration as an option for resolution of disputes relating to distributor relationships.

Sector-specific Benefits for the Service Sector

Generally speaking, sectoral coverage of the six CAFTA-DR countries is significantly broader than are the commitments these countries undertook in the WTO General Agreement on Trade in Services (GATS). One reason is that the CAFTA-DR uses a more inclusive method of sectoral coverage - the "negative list" approach. This means that every sector is covered unless an exception is listed and that trade disciplines are automatically extended to services that have yet

to be created or brought to market. Such automatic coverage of new services is especially important to industries where market development, technological advances and innovation continuously result in new service offerings and means of delivery. This is particularly important in sectors such as communications, express delivery, financial and computer related services. GATS uses a "positive list," which means that only those sectors that a country expressly lists are covered by the Agreement's national treatment and market access obligations. The CAFTA-DR countries listed relatively few of the possible 150 different sectors and subsectors in their GATS commitments, meaning that their GATS commitments are fairly limited.

U.S. service providers should immediately benefit from CAFTA-DR commitments in a number of key areas. Some examples are provided below.

Advertising

Nicaragua, Honduras, and Guatemala have committed to completely opening their market for this important sector. Although El Salvador maintains a local content quota for commercials, it does not apply this requirement to foreign-made commercials for imported U.S. goods and services, which substantially reduces the negative trade effect of this measure. In the GATS, the Dominican Republic made a partial commitment in advertising, and the remaining five CAFTA-DR countries made no commitments.

Construction and engineering services

Improved regulatory regimes and strong investment environments will stimulate growth opportunities for construction consultants and engineers. U.S. companies should benefit from a reduction in the percentage of Salvadorian ownership required for a construction project and the removal of a number of Guatemalan restrictions on U.S. suppliers of construction and engineering services.

Distribution Services, including retail and wholesale services, direct marketing, and direct selling

Retailers will benefit from the removal of barriers that inhibit the movement of industrial and consumer goods and agriculture products between manufacturers, wholesalers, retailers, and consumers. Intellectual property rights provisions will ensure the concept brands of franchise companies are protected. Retailers working with transportation, telecommunications, financial, computer and other service providers may be able to improve and streamline the supply chain to better serve consumers in the United States and throughout the hemisphere. Direct marketers should have increased opportunities as a result of improved wireless telecommunication services, Internet service, and commitments in specific sectors such as travel and tourism.

Franchising

The CAFTA-DR countries have not scheduled restrictions on market access for franchising. Furthermore, other CAFTA-DR commitments will benefit U.S. franchisers. Trademark provisions will protect the franchiser name, tariff liberalization will allow the lower-cost export of key equipment needed to supply the franchisee, and the elimination or modification of onerous "dealer act" provisions will allow U.S. companies to terminate a contract with a franchisee for just cause. The franchising market in the CAFTA-DR countries is very strong. It is particularly appealing to an emerging group of investors that includes young professionals who are familiar

with U.S. business practices and who seek to break away from their family businesses and start new undertakings of their own.

Entertainment, including audiovisual and broadcasting

The CAFTA-DR provides improved market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. This market opening is in contrast with these countries' commitments under the GATS, where Costa Rica, El Salvador, Guatemala and Honduras made no commitments in this area. CAFTA-DR countries maintained some non-conforming measures in this sector (for example Costa Rica, El Salvador, and Nicaragua have local equity requirements for broadcast licenses). A number of other CAFTA-DR provisions will be beneficial to this sector. The CAFTA-DR provides state-of-the-art intellectual property protections and prohibits the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming. The CAFTA-DR also provides for non-discriminatory treatment for digital products such as U.S. software, music, text, and videos.

Environmental Services

CAFTA-DR countries did not include any restrictions on market access or national treatment in this area in contrast with the GATS where the six countries made no commitments in environmental services. CAFTA-DR countries have been putting a growing emphasis on environmental protection. U.S. environmental services providers should benefit from increased opportunities in this sector. Environmental technologies, for example, are a U.S. Commercial Service best prospect for export in El Salvador. El Salvador's 1998 Environmental Law requires environmental impact studies for major new investment, including public sector projects, and the Ministry of Environmental and Natural Resources as well as private industries are starting projects to recycle and treat solid waste material. Other countries in the region need to address this and other environmental issues.

Express delivery services

The CAFTA-DR services chapter includes an expansive definition reflecting the integrated nature of express services. The Agreement also affirms existing competitive opportunities in the CAFTA-DR region and prevents cross-subsidization from a postal monopoly. This is in contrast with the GATS, where no CAFTA-DR country made a commitment in either postal/courier services or in express delivery. Improved customs trade facilitation will help express delivery service companies provide better services to customers who are seeking to enhance their competitiveness in the hemisphere and global market place. Express delivery services are in demand from a wide range of companies--from high-tech to agriculture, and autos to retail services. Speed-to-market, just-in-time inventory processes and total quality management are critical to success in today's economy.

Energy Services

Energy demand in Central America and the Dominican Republic is increasing. The Central American countries are just beginning to establish a system for interregional energy trading and the CAFTA-DR countries are upgrading their systems. The initial connection between Central America's northern and southern energy grids was completed in May 2002. Over the next two years, energy trade will increase as upgrades to the regional transmission line are completed. New adjustments and reforms to regulations for the electric power sector are being prepared to

assure fair competition and to enable participation in the new Central American Energy Integration System. Increasing energy demand as well as investment in rural electrification will also provide opportunities for U.S. energy companies. CAFTA-DR provisions related to regulatory transparency and investment will also help enhance opportunities for U.S. energy services firms to provide energy services to Central America and the Dominican Republic. In the GATS, the CAFTA-DR countries made no commitments in energy services.

Information Services, including computer related services

The CAFTA-DR, which provides for full market access with no exceptions in this important sector, is an improvement over the GATS where only Honduras made such commitments. The CAFTA-DR covers all modes of delivery, including electronic delivery, such as via the Internet. The "negative" list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. The CAFTA-DR's protections for "digital products" and other e-commerce commitments will also benefit U.S. technology service providers. In addition, as technology users are increasingly purchasing information technology solutions as a combination of goods and services, duty-free treatment of technology products under the CAFTA-DR will also benefit service providers in this sector. New access in such sectors as banking, financial services, and telecommunications as a result of the CAFTA-DR will increase demand for strong software development, data processing, and other information services.

Legal Services

As a result of the Agreement, there are no significant restrictions imposed in the CAFTA-DR countries on the ability of U.S. lawyers to serve as foreign legal consultants or otherwise to provide advice and assistance respecting the law they are authorized to practice in the United States.

Professional Services, including accounting, legal services, and management consulting

Liberalization in such sectors as banking, investment, and financial services will offer increased opportunities for professional service providers. However, licenses will continue to be required. The provisions in the cross-border services chapter provide further assurance that administrative decisions related to licensing are prompt and fair. This chapter also provides for the Parties to support agreements mutually recognizing their qualifications and standards for professional practice.

FINANCIAL SERVICES

Improving the conditions for financial institutions to provide services is a key component of the U.S. trade liberalization agenda. The financial sector is a critical component of a nation's economy: it not only contributes directly to output and employment but also provides an essential infrastructure for the functioning of the entire economy.

The CAFTA-DR countries' commitments in the financial services sector include core obligations of national treatment, most-favored nation treatment, and additional market access obligations for investment. The Agreement also includes provisions on cross-border trade in financial services,

new financial services, regulatory transparency, and objective and impartial administration of domestic regulation. In addition, the Agreement includes important commitments relating to branching, asset management and use of foreign-based portfolio managers by mutual funds.

Banking and Securities

The financial sectors of Central America and the Dominican Republic are generally quite open to foreign investment. The Agreement will lock in rights for U.S. financial service suppliers to establish wholly-owned subsidiaries or joint ventures. Also, banks will be ensured the ability to establish a direct branch from abroad in most countries. The Central American countries and the Dominican Republic have committed without reservation to allow their citizens to utilize banking and securities services abroad and will also allow U.S.-based firms to offer cross-border services in Central America and the Dominican Republic in areas such as financial information and data processing and financial advisory services.

Asset Management Services

Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic made no commitments in asset management in the 1997 GATS Financial Services Agreement. The CAFTA-DR provides legal certainty that U.S. asset management firms will be afforded national treatment, non-discrimination and the right of establishment in these countries. In addition, the Agreement includes a specific commitment to permit the cross-border provision of portfolio management services by asset managers located abroad to collective investment schemes located in the Central American countries and the Dominican Republic. This important commitment allows a U.S. firm to achieve economies of scale and use its global expertise in serving its clients in those countries. El Salvador and the Dominican Republic have agreed to adopt necessary laws and regulations within four years to implement this commitment, and Guatemala and Nicaragua will implement commitments as soon as the appropriate laws are passed and regulations established. The financial services transparency commitments in the Agreement also will benefit the asset management industry.

Insurance

The insurance commitments contained in the financial services chapter of the Agreement are comprehensive and generally provide good treatment for insurance providers. Commitments are similar among Nicaragua, Guatemala, El Salvador, Honduras, and the Dominican Republic with slight differences in terms of timing of implementation of commitments. Significant liberalization was achieved with the removal of economic needs tests and foreign equity limitations. These insurance commitments are significant improvements over current WTO obligations. For example, branching restrictions in El Salvador are to be lifted within three years; those in Guatemala, Nicaragua and the Dominican Republic will be eliminated within four years. Commitments on expedited availability of new products are also included.

Perhaps most significantly, Costa Rica's insurance sector, which is currently dominated by a monopoly, will be opened for the first time under this Agreement. This will occur in four phases. The first phase of liberalization begins on the date of entry into force of the Agreement. At that time, insurance may be provided on a cross-border basis. Costa Rica will permit the establishment of representative offices as of July 1, 2007. Full establishment will be permitted January 1, 2008, with choice of juridical form (branching, subsidiary, joint-venture). All lines of

insurance may be sold as of that date, except third-party auto liability and workman's compensation, which will be liberalized January 1, 2011.

All major aspects of insurance are covered, including life, non-life, reinsurance, intermediation and services auxiliary to insurance. Key cross-border insurance products and services are covered (marine, aviation and transport, reinsurance and intermediation), similar to those in the Chile and Singapore free trade agreements, with additional commitments to allow services necessary to support global accounts and surplus lines.

INVESTMENT

The CAFTA-DR establishes a secure, predictable legal framework for U.S. investors in Central America and the Dominican Republic. Foreign direct investment can contribute significantly to the economic development and stability of this region. The Governments of Central America and the Dominican Republic have undertaken significant liberalization to their investment regimes over the past decade. U.S. investors, however, continue to cite complex and confusing laws and regulations, market restrictions, and red tape as disincentive to investment. The CAFTA-DR commitments improve transparency and remove barriers to investment. Previously, governments in the region have backed away from commitments to investors. For example, U.S. companies that have entered into contracts with the Costa Rican government have faced constitutional and legal challenges to the execution of their contracts.

Key Investment Provisions

The agreement will establish a secure, predictable legal framework for U.S. investors operating in the Central American countries and the Dominican Republic.

All forms of investment are protected under the Agreement, including real property, enterprises, debt, concessions, and other similar contracts and intellectual property.

U.S. investors enjoy in most circumstances the right to establish, acquire and operate investments in the Central American countries and the Dominican Republic on an equal footing with local investors, and with investors of other countries.

The agreement draws from U.S. legal principles and practices to provide U.S. investors in the Central American countries and the Dominican Republic a basic set of substantive protections that Central American and Dominican Republic investors currently enjoy under the U.S. legal system. Among the rights afforded to U.S. investors (consistent with those found in U.S. law) are due process protections and the right to receive the fair market value for property that has been expropriated.

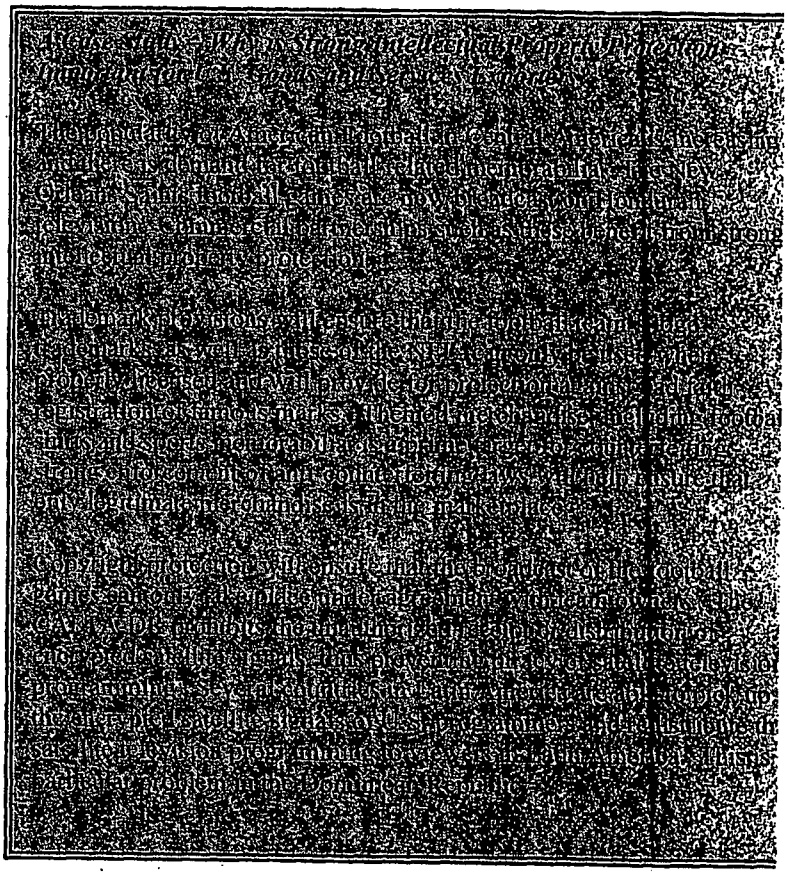
Investor rights are backed by an effective, impartial procedure for dispute settlement that provides for transparent panel hearings and allows interested parties to submit their views.

Central America and the Dominican Republic have major infrastructure needs. Increased foreign direct investment in the CAFTA-DR region would greatly improve the development of efficient, reliable systems for power generation, water, sewage, transportation, and telecommunications.
Across the CAFTA-DR countries, energy demand is increasing. In Guatemala, for example, the government has stated that it is looking to the private sector to take the lead in expanding service capacity. Costa Rica has placed a priority on infrastructure development (roads, bridges, airport modernization, port improvements, and rehabilitation of the railroad), which has been offered to private companies and private consortiums under concession. In addition, the Government of El Salvador, as well as private industry, is starting projects to recycle and treat solid waste material and to develop water treatment facilities. These are just some examples of how the governments of Central America and the Dominican Republic can benefit from foreign investment.

The CAFTA-DR includes an effective, impartial, and transparent investor-state dispute settlement procedure, which provides investors recourse outside of Central American and Dominican Republic courts. This is particularly important in a region where the slow pace and uncertainty of legal systems has been an impediment to investment (a commercial dispute within the Costa Rican legal system can take up to 10 years to be resolved). In addition, under the CAFTA-DR, investors will also have recourse to arbitration to enforce certain contractual rights, including any concessions that governments in Central America and the Dominican Republic may grant to U.S. investors.

INTELLECTUAL PROPERTY RIGHTS

With the implementation of the CAFTA-DR, the level of intellectual property protection in Central America and the Dominican Republic is expected to improve. Although CAFTA-DR countries have already made improvements with regard to the modernization of their intellectual property laws, there are still shortcomings in the laws, and enforcement continues to be a challenge. Implementation of the significant new commitments made under the CAFTA-DR will reinforce national efforts to strengthen IP laws and enforcement. The CAFTA-DR, once fully implemented, will establish the highest level of intellectual property protection in the Latin American region and will support the growth of trade in valuable digital and other intellectual property-based products.



- All CAFTA-DR countries will improve their data protection regimes, provide for protection of plant varieties and institute stronger penalties for infringement. Honduras, for example, has already introduced laws that would provide patent protection for plant varieties and the design of integrated circuits before its National Congress.[7]

- Under the CAFTA-DR, governments must use only legitimate computer software, thus setting a positive example for private users. In El Salvador, for example, the government has taken significant steps to legitimize and modernize its software systems.[8] In Guatemala, while there is still pirated software in many offices, the Minister of Economy, who oversees the national IPR registry, has already committed to catalogue and properly license software in his ministry and will promote similar action by his cabinet colleagues.[9]

- The CAFTA-DR provides for tough penalties for piracy and counterfeiting. In Guatemala, the government has taken steps to root out the organized contraband and smuggling rings that have infiltrated the tax and customs administrations and that control much of the traffic in pirated goods.[10]

Enforcement remains a concern in the CAFTA-DR countries. As the economies of Central America and Dominican Republic strengthen, governments will have additional resources to face the challenges due to the lack of personnel and expertise necessary to wage amore effective campaign against copyright and other IP violations. In addition, the regional integration that the CAFTA-DR promotes and CAFTA-DR provisions on customs administration should help CAFTA-DR customs authorities to operate more efficiently and transparently. This will decrease opportunities for corruption and free up resources that could be used to improve border measures to keep pirated materials out of the CAFTA-DR region.

Key Intellectual Property Provisions

State of the art protection for U.S. trademarks

- Procedures for registering and maintaining trademarks as well as resolving disputes should become more efficient and transparent and less subject to abuse. This will make trademark protection more accessible to small businesses interested in the CAFTA-DR marketplace.

Protection for copyrighted works

- Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to $90 billion to the U.S. economy through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property rights.

Stronger protections for patents & trade secrets

- Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

Tough penalties for piracy and counterfeiting

- The high level of enforcement required by the Agreement will benefit industry and set a precedent throughout the region.

GOVERNMENT PROCUREMENT

Governments are typically the single largest purchasing entity in any market. Government procurement is generally ten to fifteen percent of a country's GDP. Total GDP of our six CAFTA-DR trading partners is over $83 billion, thus total procurement for these countries is estimated to be between $8 billion and $12 billion.

The Agreement's government procurement provisions provide for non-discriminatory access to the procurements of the largest purchasing entities in the CAFTA-DR region. These procurements include sectors where U.S. goods and services companies are very competitive, including aerospace, energy, health care, construction, environmental technology, and information communication technology (ICT).

The Agreement covers the purchases of most Central American and Dominican Republic central government entities, including key ministries and state-owned enterprises. Central America and the Dominican Republic also agreed to include a vast majority of their provinces and municipalities. U.S. companies will immediately benefit as CAFTA-DR governments implement the Agreement's procurement obligations. Some of these benefits are highlighted below.

- Under the CAFTA-DR, Honduras will eliminate the requirement that foreign firms act through a local agent in order to participate in public tenders.

- The CAFTA-DR requires Parties to apply fair and transparent procurement procedures, and just as importantly, provide timely and effective bid review procedures, should there be concerns about award of the bids.

- The CAFTA-DR addresses current inadequate notification procedures and prescribes that bids be open for a minimum of forty days.

- The CAFTA-DR clarifies that build-operate-transfer contracts (BOTs) are within the scope of government procurement. BOTs act as financing vehicles for large-scale construction projects and the building or rehabilitation of public work facilities and figure prominently in CAFTA-DR governments' infrastructure financing plans. The Chile Free Trade Agreement was the first free trade agreement to contain this provision and it is significant that the CAFTA-DR also contains the guarantee that U.S. suppliers receive non-discriminatory and transparent treatment when competing for BOT contracts.

Key CAFTA-DR Procurement Provisions

- Central American governments, ministries and departments cannot apply "buy local" provisions that discriminate against U.S. suppliers and the Dominican Republic is phasing out such provisions. Low-value contracts are excluded and the U.S. small business set-asides program remains unchanged

- The CAFTA-DR imposes strong disciplines on government procurement procedures, such as requiring advance public notice of purchases, provision of information to all interested suppliers regarding covered procurement opportunities, as well as timely and effective bid review procedures.

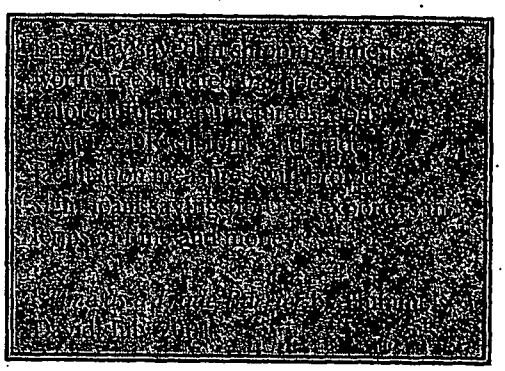
- The Agreement contains strong provisions to ensure integrity in government procurement. CAFTA-DR governments must also institute debarment procedures to weed out suppliers that engage in fraudulent or illegal actions related to procurement. This is a groundbreaking provision.

- The Dominican Republic will phase out association and participation requirements placed on foreign companies that want to do business with the government.

Governments are particularly important customers in a number of sectors. For example, the Costa Rican Social Security System buys approximately eighty-five percent of the medical equipment in Costa Rica. El Salvador's 1998 Environmental Law requires environmental impact studies for major new investments, including public sector projects. Its Ministry of Environmental and Natural Resources as well as private industries are starting projects to recycle and treat solid waste material.

CUSTOMS ADMINISTRATION AND TRADE FACILITATION

The CAFTA-DR requires transparency and efficiency in administering customs procedures. U.S. exporters to Central America and the Dominican Republic should realize significant gains once the Agreement's custom administration and trade facilitation provisions are fully implemented.



Businesspersons frequently face unclear rules, inconsistent interpretation of customs regulations and directives, and arbitrary clearance procedures that often delay the importation of merchandise for lengthy

periods. Furthermore, exporters to the Dominican Republic must obtain from a Dominican Republic consulate in the United States a "consular invoice" for their goods, and get related documents "legalized." This involves paying a fee and can result in exporting delays.

The Agreement's chapter on customs administration and trade facilitation address these and other customs-related exporter concerns.

- *Enhanced Transparency* - The CAFTA-DR governments must publish their customs laws, regulations and administrative procedures on the Internet, thereby greatly increasing transparency.

- *Elimination of the Consular Transaction* - The consular transaction requirement is eliminated for U.S. exports.

- *Heightened Predictability* - Currently U.S. exporters do not have the ability to interact with Central American Customs authorities prior to exporting goods. Under the CAFTA-DR, exporters may obtain binding advance rulings on tariff classification, origin determinations and other areas. This important provision will provide exporters predictability through eliminating varying interpretations of product classification and minimize related delays at the port of entry.

- *Greater Accountability* - Under the CAFTA-DR's customs administration provisions, U.S. companies have rights to a level of administrative review independent of the employee or office that made the decision, and they also have recourse to use judicial review as an alternative.

- *Improved Express Delivery Service* - The demand for express-delivery services is increasing rapidly as a result of the growth of electronic commerce, the internationalization of business, and rising demand by manufacturers for outsourced logistic services. The CAFTA-DR responds to that demand by requiring that, within one year after the date the Agreement takes effect, governments must provide a separate, expedited customs procedure for express shipments. They must also change their regulations to allow the processing of customs information related to the express shipment prior to the arrival of the shipment itself. Most importantly, the CAFTA-DR obligates the Agreement countries for the first time to clear express shipments from the port within six hours of submission of all necessary documents.

- *Greater Customs Efficiency Through Technology* - Responding to U.S. exporters' requests, the CAFTA-DR promotes the use of technology, including the electronic submission of information. This will help expedite procedures for the release of goods, thereby saving companies time and money.

The Agreement's customs-related obligations will phase in over three years. In anticipation of the entry into force of the Agreement, the Central American countries have already made progress on customs and trade facilitation. The countries are working together with the goal of harmonizing documentation and procedures, allowing electronic transmission of customs information, and permitting electronic prepayment of charges, tariffs and taxes.

CONCLUSION

Approving and implementing the Dominican Republic-Central America-United States Free Trade Agreement is in the best interest of United States commerce. The comprehensive Agreement not only slashes tariffs, but also reduces barriers for services, provides for leading-edge protection and enforcement of intellectual property, keeps pace with new technologies, ensures regulatory transparency, and requires enforcement of domestic labor and environmental laws. With the Agreement in place, doing business in Central America and the Dominican Republic will be easier, faster, and more transparent.

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[1] Global Trade Atlas.
[2] IMF Direction of Trade.
[3] Population data – World Bank, 2003 *World Development Indicators Database.*
[4] USDOC/Office of Trade and Industry Information, Derived from Exporter Data Base, International Trade Administration and Bureau of the Census.
[5] Industry sector summaries drafted by USDOC, Office of Latin America and the Caribbean, with significant contribution by USDOC's Office of Trade Policy Analysis and Commercial Service.
[6] Services Trade Statistics provided by USDOC, ITA/Office of Service Industries, based on Bureau of Economic Analysis and Bureau of Labor Statistics data.
[7] U.S. Embassy reporting cable.
[8] U.S. Embassy reporting cable.
[9] U.S. Embassy reporting cable.
[10] U.S. Embassy reporting cable.

THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT

Summary of the Agreement

This summary briefly describes key provisions of the Dominican Republic – Central America – United States Free Trade Agreement ("Agreement" or "CAFTA-DR") that the United States has concluded with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (collectively "Central America) and the Dominican Republic.

Preamble

The Preamble to the Agreement provides the Parties' underlying objectives in entering into the Agreement and provides context for the provisions that follow.

Chapter One: Initial Provisions

Chapter One sets out provisions establishing a free trade area, describing the objectives of the Agreement, and providing that the Parties will interpret and apply the Agreement in light of these objectives. The Parties affirm their existing rights and obligations with respect to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and other agreements to which they are all party. The Parties also agree that they will give effect to the Agreement, including, in the case of the United States, by taking steps necessary to ensure observance of provisions applicable to state governments.

Chapter Two: General Definitions

Chapter Two defines certain terms that recur in various chapters of the Agreement.

Chapter Three: National Treatment and Market Access for Goods

Chapter Three and its relevant annexes and appendices set out the Agreement's principal rules governing trade in goods. It requires each Party to treat products from another Party in a non-discriminatory manner, provides for the phase-out and elimination of tariffs on "originating" goods (as defined in Chapter Four) traded between the Parties, and requires the elimination of a wide variety of non-tariff trade barriers that restrict or distort trade flows.

Tariff Elimination. Chapter Three provides for the elimination of customs duties on originating goods traded between the Parties. Duties on most tariff lines covering industrial and consumer goods will be eliminated as soon as the Agreement enters into force. Duties on other goods will be phased out over periods of up to 10 years. Some agricultural goods will have longer periods for elimination of duties or be subject to other provisions, including, in some cases, the application of preferential tariff-rate quotas (TRQs). The General Notes to the U.S. Schedule to Annex 3.3 include detailed provisions on staging of tariff reductions and application of TRQs for certain agricultural goods. The Chapter provides that the Parties may agree to speed up tariff

phase-outs on a product-by-product basis after the Agreement takes effect. Annex 3.3.6 of the Agreement establishes additional tariff commitments that apply between the Central American Parties and the Dominican Republic. These commitments largely reflect tariff commitments these Parties have under an earlier free trade agreement between them.

Waiver of Customs Duties. Chapter Three provides that Parties may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement. However, Costa Rica, the Dominican Republic, El Salvador, and Guatemala are permitted to maintain such measures through 2009, provided they do so in accordance with the WTO Subsidies and Countervailing Measures (SCM) Agreement. Honduras and Nicaragua are permitted to maintain such measures indefinitely, provided they do so in accordance with the SCM Agreement. Chapter Three defines the term "performance requirements" so as not to restrict a Party's ability to provide duty drawback on goods imported from the other Parties.

Temporary Admission. Chapter Three requires the Parties to provide duty-free temporary admission for certain products. Such items include professional equipment, goods for display or demonstration, and commercial samples. The Chapter also includes specific provisions on transit of vehicles and containers used in international traffic.

Import/Export Restrictions, Fees, and Formalities. The Agreement clarifies that restrictions prohibited under the General Agreement on Tariffs and Trade (GATT) 1994 and this Agreement include export and import price requirements (except under antidumping and countervailing duty orders) and import licensing conditioned on the fulfillment of a performance requirement. In addition, a Party must limit all fees and charges imposed on or in connection with importation or exportation to the approximate cost of services rendered. The United States agreed not to apply its merchandise processing fee on imports of originating goods. The Central American Parties and the Dominican Republic agreed not to require a person of another Party to have or maintain a relationship with a "dealer" as a condition for allowing the importation of a good. These Parties also agreed not to prohibit or restrict the importation of any good of another Party as a remedy for a violation or alleged violation of any law, regulation, or other measure relating to the relationship between a "dealer" in its territory and a person of another Party.

Distinctive Products. The Central American Parties and the Dominican Republic agreed to recognize Bourbon Whiskey and Tennessee Whiskey as "distinctive products" of the United States, meaning these Parties will not permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it was manufactured in the United States in accordance with applicable laws and regulations.

Committee on Trade in Goods. Chapter Three also establishes a Committee on the Trade in Goods to consider matters arising under Chapters Three, Four, and Five. The functions of the Committee are to promote and address barriers to trade in goods and to provide advice and recommendations on trade capacity building with respect to matters covered by Chapters Three, Four, and Five.

Agriculture

TRQs. Chapter Three requires that TRQs be administered in a manner that is transparent, non-discriminatory, responsive to market conditions and minimally burdensome on trade and allows importers to fully utilize import quotas. In addition, the Chapter provides that Parties may not condition application for, or utilization of, import licenses or quota allocations on the re-export of an agricultural good.

Export Subsidies. Each Party will eliminate export subsidies on agricultural goods destined for another CAFTA-DR country. Under Article 3.14, no Party may introduce or maintain a subsidy on agricultural goods destined for another Party unless the exporting Party believes that a third country is subsidizing its exports to that other Party. In such a case, the exporting Party may initiate consultations with the importing Party to develop measures the importing Party may adopt to counteract such subsidies. If the importing Party agrees to such measures, the exporting Party must refrain from applying export subsidies to its exports of the good to the importing Party.

Safeguards. Chapter Three sets out a transitional agricultural safeguard mechanism that allows a Party to impose a temporary additional duty on specified agricultural products if imports exceed an established volume "trigger". The safeguard measure will remain in force until the end of the calendar year in which the measure applies. A Party may not apply an agricultural safeguard on a good after the date that the good is subject to duty-free treatment under the Party's Schedule to Annex 3.3 of the Agreement.

A Party may not apply a safeguard measure to a good that is already the subject of a safeguard measure under either Chapter Eight (Trade Remedies) of the Agreement or Article XIX of GATT 1994 and the WTO Safeguards Agreement. All agricultural safeguard measures must be applied and maintained in a transparent manner and the Party applying such a measure must, upon request, consult with the other Party concerning the application of the measure.

No Party may impose safeguard duties pursuant to the WTO Agreement on Agriculture on originating goods.

Sugar. The Agreement contains several unique features applicable to imports of sugar into the United States. First, imports under the TRQs created in the Agreement will be limited to the lesser of (i) the quantity established in the TRQ, or (ii) the exporting Party's trade surplus in specific sugar goods. (A Party's "trade surplus" is the amount by which its exports to all destinations exceed its imports from all sources in specified sugar and sweetener goods, except that a Party's exports of sugar to the United States and its imports of high fructose corn syrup from the United States are not included in the calculation of its trade surplus.) The aggregate quantities established in the TRQs are modest – 107,000 metric tons in the first year. The maximum quantities increase to approximately 151,000 metric tons in year 15 of the Agreement. The United States will also establish a quota for specialty sugar goods of Costa Rica in the amount of 2,000 metric tons annually. Second, unlike other commodities, the United States will not eliminate its over-quota duty on sugar imports under the Agreement. Lastly, the Agreement

includes a mechanism that allows the United States, at its option, to provide some form of alternative compensation to CAFTA-DR country exporters in place of imports of sugar.

Ethanol. In the General Notes to the Schedule of the United States to Annex 3.3 of the Agreement, the United States agreed to continue to treat the Central American countries and the Dominican Republic as beneficiary countries under the Caribbean Basin Initiative (CBI) preference program with respect to ethanol imports. Accordingly, the Central American countries and the Dominican Republic will continue to share in the duty-free quota that the United States makes available to CBI beneficiary countries. The United States also agreed to establish country-specific allocations for Costa Rica and El Salvador, but did not increase the total quantity allowed under the CBI quota.

Additional Provisions. Chapter Three provides for the creation of a Committee on Agricultural Trade. The Committee will be established within 90 days of entry into force of the Agreement and will provide a forum for promoting cooperation in the implementation and administration of the Agreement, as well as for consultations on matters related to the agricultural provisions of the Agreement. The Chapter also provides for the establishment of an Agriculture Review Commission. The Commission will be established 14 years after entry into force of the Agreement and will review the implementation and operation of the Agreement as it relates to trade in agricultural goods, including whether to extend the agricultural safeguard mechanism. Further, the Chapter provides that the Parties will consult on and review the operation of the Agreement as it relates to trade in chicken nine years after entry into force of the Agreement.

Textiles and Apparel

Chapter Three also sets out various provisions specifically addressing trade in textile and apparel goods.

Tariff Elimination. Duties on nearly all originating textile or apparel goods will be eliminated when the Agreement enters into force. Moreover, the preferential duty treatment under the Agreement may, on a reciprocal basis, be made retroactive to January 1, 2004.

Safeguards. The Chapter establishes a transitional safeguard procedure for textile and apparel goods, under which an importing Party may temporarily impose additional duties up to the level of the normal trade relations/most-favored-nation (NTR/MFN) duty rates on imports of textile or apparel goods that cause, or threaten to cause, serious damage to a domestic industry as a result of the elimination or reduction of duties under the Agreement. An importing Party may impose a textile safeguard measure only once on the same textile or apparel good. The measure may not be in place for more than three years. The ability to impose textile safeguards lapses five years after the entry into force of the Agreement. A Party may not apply a textile safeguard measure to a good while the good is subject to a safeguard measure under (i) Chapter Eight (Trade Remedies), or (ii) Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

A Party imposing a safeguard measure must provide the exporting Party with mutually agreed-upon compensation in the form of trade concessions for textile or apparel goods that have

substantially equivalent value to the increased duties resulting from application of the safeguard measure. If the Parties cannot agree on compensation, the exporting Party may raise duties on any goods from the importing Party in an amount that has substantially equivalent value to the increased duties resulting from application of the safeguard measure.

Rules of Origin and Related Matters. Under the Agreement, a textile or apparel good will generally qualify as an "originating good" only if all processing after fiber formation (*e.g.*, yarn-spinning, fabric production, cutting, and assembly) takes place in the territory of the United States or another CAFTA-DR Party, or if there is an applicable change in tariff classification under the specific rules of origin contained in Annex 4.1 of the Agreement.

Chapter Three sets out special rules for determining whether a textile or apparel good is an "originating good," including a *de minimis* exception for non-originating yarns or fibers, a process for designating inputs not available in commercial quantities, a rule for treatment of sets, an exception for use of certain nylon filament yarn, and consultation provisions.

The *de minimis* rule applies to goods that ordinarily would not be considered originating goods because certain of their fibers or yarns do not undergo an applicable change in tariff classification. Under the rule, the Parties will consider a good to be originating if such fibers or yarns constitute ten percent or less of the total weight of the component of the good that determines origin. This special rule does not apply to elastomeric yarns.

Annex 3.25 of the Agreement sets out a list of fabrics, yarns, and fibers that the Parties have determined are not available in commercial quantities in a timely manner from producers in the United States or the other CAFTA-DR countries. A textile or apparel good that includes the fabrics, yarns, or fibers included in this list will be treated as if it is originating for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs. Chapter Three establishes procedures under which the United States will determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in the United States or the other CAFTA-DR countries. The United States may also remove a fabric, yarn, or fiber from the list if it determines that the fabric, yarn, or fiber has become available in commercial quantities.

Appendix 4.1-B of the Agreement provides that for purposes of determining whether woven apparel (of chapter 62 of the HTS) is originating, materials used in the production of the article that are produced in Canada or Mexico will be treated as if the materials were produced in a CAFTA-DR country, provided that Canada and Mexico, respectively: (i) provide reciprocal treatment for U.S.-produced inputs under their free trade agreements with the other CAFTA-DR countries; and (ii) agree with the United States to textile verification procedures that are substantially similar to the procedures under the CAFTA-DR.

This treatment of woven apparel made with Canadian or Mexican materials is subject to an overall quantitative limit, which is set initially at 100 million square meter equivalents, and to sublimits for trousers and skirts, jeans, and tailored wool apparel. The overall limit may increase to a maximum of 200 square meter equivalents, with corresponding increases in the sublimits,

based on the percentage increase in U.S. imports of originating woven apparel from the other CAFTA-DR countries. The overall limit may also increase as a result of negotiations between the Parties following entry into force of the Agreement.

Customs Cooperation. Chapter Three commits each Party to cooperate to enforce or assist in enforcing laws related to trade in textile and apparel goods, to ensure the accuracy of claims of origin, and to prevent circumvention of laws of the Parties or agreements affecting trade in textile and apparel goods. The Parties also agreed that, under certain circumstances, the exporting Party must conduct a verification to determine that a claim of origin is accurate, or to determine compliance with relevant laws. Such a verification may include site visits to the premises of the exporter or producer of the goods in question. If there is insufficient information to make the relevant determination, or if an enterprise provides incorrect information, the importing Party may take appropriate action, which may include denying application of preferential tariff treatment or denying entry to the goods in question. Further, any Party may convene consultations to resolve technical or interpretive issues arising with respect to customs cooperation or may request technical assistance from another Party in implementing the customs cooperation provisions.

Additional Provisions. Chapter Three provides for duty-free treatment for goods that an importing Party and exporting Party agree qualify as handmade, hand-loomed, or traditional folklore goods. Separately, the Chapter establishes that, for the first two years of the Agreement, the United States will charge duties that are half the NTR/MFN rate for a limited quantity of tailored wool apparel goods assembled in Costa Rica regardless of the origin of the fabric used to make the goods. Moreover, for the first ten years of the Agreement, the United States shall provide preferential tariff treatment to cotton and man-made fiber apparel goods assembled in Nicaragua that do not qualify as "originating" goods. The United States also agreed that goods assembled in CAFTA-DR countries from U.S. components with U.S. thread that do not qualify as "originating" goods will be subject to NTR/MFN duties on only the value of the assembled good minus the value of U.S. components used in the good.

Chapter Four: Rules of Origin and Origin Procedures

To benefit from various trade preferences provided under the Agreement, including reduced duties, a good must qualify as an "originating good" under the rules of origin set out in Chapter Four and Annex 4.1. These rules ensure that the special tariff and other benefits of the Agreement accrue primarily to firms or individuals that produce or manufacture goods in the Parties' territories.

Key Concepts. Chapter Four provides general criteria under which a good may qualify as an "originating good:"

- When the good is wholly obtained or produced in the territory of one or more of the Parties (*e.g.*, crops grown or minerals extracted in the United States); or

- When the good: (1) is manufactured or assembled from non-originating materials that undergo a specified change in tariff classification in one or more of the Parties; or (2) meets any applicable "regional value content" requirement (see below); and (3) satisfies all other requirements of Chapter Four, including Annex 4.1; or

- When the good is produced in one or more Parties entirely from "originating" materials.

De Minimis. Even if a good does not undergo a specified change in tariff classification, it will be treated as an originating good if the value of non-originating materials that do not undergo the required tariff shift does not exceed 10 percent of the adjusted value of the good, and the good otherwise meets the criteria of the Chapter. This *de minimis* requirement does not apply to certain agricultural and textile goods.

Regional Value Content. Some origin rules under the Agreement require that certain goods meet a regional value content test in order to qualify as "originating," meaning that a specified percentage of the value of the good must be attributable to originating materials. In general, the Agreement provides two methods for calculating that percentage: (1) the "build-down method" (based on the value of non-originating materials used); and (2) the "build-up method" (based on the value of originating materials used). The regional value content of certain automotive goods, however, may be calculated on the basis of the net cost of the good. Finally, accessories, spare parts, and tools delivered with a good are considered part of the material making up the good so long as these items are not separately classified or invoiced and their quantities and values are customary. The *de minimis* rule does not apply in calculating regional value content.

Claims for Preferential Treatment. Under the Chapter, importers who wish to claim preferential tariff treatment for particular goods must be prepared to submit, on the request of the importing Party's customs authority, a statement explaining why the good qualifies as an originating good. A Party may only deny preferential treatment in writing, and must provide legal and factual findings. The Chapter establishes a procedure for filing post-importation claims for preferential treatment up to one year from importation and for seeking a refund of any excess duties paid. Chapter Four also provides that a Party will not penalize an importer if the importer promptly and voluntarily corrects an incorrect claim and pays any duties owed within one year of submission of the claim.

Verification. For purposes of determining whether a good is an originating good, each Party must ensure that its customs authority may conduct verifications. Where an importing Party determines through verification that an importer, exporter, or producer has engaged in a pattern of conduct in providing false or unsupported statements, declarations, or certifications that a good is an originating good, the Party may suspend preferential tariff treatment to identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until the importing Party determines that the importer, exporter, or producer is in compliance with the Chapter.

Additional Rules. Chapter Four further delineates specific rules with respect to the treatment of (1) packing materials and containers; (2) indirect materials; (3) fungible goods; and (4) sets of

goods. The Chapter provides that Parties may not treat a good as originating if the good undergoes production outside the territories of the Parties or does not remain under the control of customs authorities in the territory of a non-Party. Chapter Four also calls for the Parties to publish guidelines for interpreting, applying, and administering Chapter Four and the relevant provisions of Chapter Three.

Chapter Five: Customs Administration and Trade Facilitation

Chapter Five establishes rules designed to encourage transparency, predictability, and efficiency in the operation of each Party's customs procedures and to provide for cooperation between the Parties on customs matters.

General Principles. Chapter Five commits each Party to observe certain transparency obligations. Each Party must promptly publish its customs measures, including on the Internet, and, where possible, solicit public comments before amending its customs regulations. Each Party must also provide written advance rulings, on request, to its importers and to exporters and producers of another Party, regarding whether a product qualifies as an "originating" good under the Agreement, as well as on other customs matters. In addition, each Party must guarantee importers access to both administrative and judicial review of customs decisions. The Parties must release goods from customs promptly and expeditiously clear express shipments. The Chapter provides a transition period of between one and three years to comply with several of these obligations in the case of the Central American Parties and the Dominican Republic.

Cooperation. Chapter Five also is designed to enhance customs cooperation. It encourages the Parties to give each other advance notice of customs developments likely to affect the Agreement. The Chapter calls for the Parties to cooperate in securing compliance with each other's customs measures related to the implementation and operation of the provisions of the Agreement governing importations and exportations. It includes specific provisions requiring the Parties to share customs information where a Party has a reasonable suspicion of unlawful activity relating to its laws and regulations governing the importation of goods.

Chapter Six: Sanitary and Phytosanitary Measures

Chapter Six defines the Parties' obligations to each other regarding sanitary and phytosanitary (SPS) matters. It reflects the Parties' understanding that implementation of existing obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is a shared objective.

Key Concepts. SPS measures are laws or regulations that protect human, animal, or plant life or health from certain risks, including plant- and animal-borne pests and diseases, additives, contaminants, toxins, or disease-causing organisms in food and beverages.

Cooperation. Under Chapter Six, the Parties will establish an SPS Committee consisting of relevant trade and regulatory officials. The objectives of the Committee are to (i) help each Party to implement the WTO SPS Agreement; (ii) assist each Party to protect human, animal, or plant

life or health; (iii) enhance consultation and cooperation between the Parties on SPS matters; and (iv) facilitate trade between the Parties. The Committee will also provide a forum for enhancing mutual understanding of each Party's SPS measures and the regulatory processes that relate to those measures; consulting on SPS matters that may affect trade between the Parties; and consulting on issues, agendas, and positions for meetings of certain international organizations.

Dispute Settlement. No Party may invoke the Agreement's dispute settlement procedures for a matter arising under Chapter Six. Instead, any SPS dispute between the Parties must be resolved under the applicable agreement(s) and rules of the WTO.

Chapter Seven: Technical Barriers to Trade

Under Chapter Seven, the Parties will build on WTO rules related to technical barriers to trade to promote transparency, accountability, and cooperation between the Parties on regulatory issues.

Key Concepts. The term "technical barriers to trade" (TBT) refers to barriers that may arise in preparing, adopting, or applying voluntary product standards, mandatory product standards ("technical regulations"), and procedures used to determine whether a particular good meets such standards, *i.e.*, "conformity assessment" procedures.

International Standards. The principles articulated in the WTO TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations emphasize the need for openness and consensus in the development of international standards. Under Chapter Seven, the Parties will apply these principles and consult on pertinent matters under consideration by international or regional bodies.

Cooperation. Chapter Seven sets out multiple means for cooperation between the Parties to reduce barriers and improve market access, and provides for a Committee on Technical Barriers to Trade to oversee implementation of the Chapter and facilitate cooperation. The Committee's specific functions include: (i) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; (ii) facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies; (iii) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures; and (iv) consulting, at a Party's request, on any matter arising under the Chapter.

Conformity Assessment. Chapter Seven provides for a dialogue between the Parties on ways to facilitate the acceptance of conformity assessment results. Chapter Seven further provides that Parties shall recognize conformity assessment bodies in the territories of the other Parties on no less favorable terms than it accords conformity assessment bodies in its own territory.

Transparency. Chapter Seven contains various transparency obligations, including obligations on each Party to: (i) allow persons of the other Parties to participate in the development of technical regulations, standards, and conformity assessment procedures on a non-discriminatory basis; (ii) transmit regulatory proposals notified under the TBT Agreement directly to the other

Parties; (iii) describe in writing the objectives of and reasons for regulatory proposals; and (iv) consider comments on regulatory proposals and respond in writing to significant comments it receives.

Chapter Eight: Trade Remedies

Safeguards. Chapter Eight establishes a safeguard procedure that will be available to aid domestic industries that sustain or are threatened with serious injury due to increased imports resulting from tariff reductions or elimination under the Agreement. The Chapter does not affect the Parties' rights or obligations under the WTO's safeguard provisions (global safeguards) or under other WTO trade remedy rules.

Chapter Eight authorizes each Party to impose temporary duties on an imported originating good if, as a result of the reduction or elimination of a duty under the Agreement, the good is being imported in such increased quantities and under such conditions as to constitute a substantial cause of serious injury, or threat of serious injury, to a domestic industry producing a "like" or "directly competitive" good. Unlike agricultural and textile or apparel safeguard measures, which will apply bilaterally, safeguard measures under Chapter Eight will apply with respect to all imports of an originating good, other than imports from a Party whose import market share is de minimis (*i.e.*, a market share of less than three percent of total imports of the originating good, unless the import market share of all such Parties exceeds nine percent).

A safeguard measure may be applied on a good only during the Agreement's "transition period" for phasing out duties on the good. A safeguard measure may take one of two forms – a temporary increase in duties to NTR/MFN levels or a temporary suspension of duty reductions called for under the Agreement. A Party may not impose a safeguard measure under Chapter Eight more than once on any good. A safeguard measure may be in place for a total of four years, including any extensions of the measure. A Party may extend a measure if it determines that the industry is adjusting and the measure remains necessary to facilitate adjustment and prevent or remedy serious injury. If a measure lasts more than one year, the Party must scale it back at regular intervals. Annex 8.3 sets out the procedural and substantive investigation requirements that Parties must follow in conducting safeguard investigations.

If a Party imposes a safeguard measure, Chapter Eight requires it to provide offsetting trade compensation to the other Parties whose goods are subject to the measure. If the Parties cannot agree on the amount or nature of the compensation, a Party entitled to compensation may unilaterally suspend "substantially equivalent" trade concessions that it has made to the importing Party.

Global Safeguards. Chapter Eight maintains each Party's right to take action against imports from all sources under Article XIX of GATT 1994 and the WTO Agreement on Safeguards. A Party may exclude imports of an originating good from another Party from a global safeguard measure if such imports are not a substantial cause of serious injury or threat thereof. A Party may not apply a safeguard measure under Chapter Eight at the same time that it applies a safeguard measure on the same good under the WTO Agreement on Safeguards.

Antidumping and Countervailing Duties. Chapter Eight confirms that the Parties retain their rights and obligations under the WTO agreements relating to the application of antidumping and countervailing duties. Antidumping and countervailing duty measures may not be challenged under the Agreement's dispute settlement procedures. The Chapter provides that the United States will continue to treat the other CAFTA-DR countries as CBI beneficiary countries for purposes of Sections 771(7)(G)(ii)(III) and 771(7)(H) of the Tariff Act of 1930 (19 U.S.C. 1677(7)(G)(ii)(III) and 1677(7)(H)), which preclude the U.S. International Trade Commission from aggregating (or "cumulating") imports from CBI beneficiary countries with imports from non-beneficiary countries in determining in antidumping and countervailing duty investigations whether imports of a particular product from such beneficiary countries are injuring or threaten to injure a U.S. industry.

Chapter Nine: Government Procurement

Chapter Nine provides comprehensive obligations requiring each Party to apply fair and transparent procurement procedures and rules and prohibiting each government and its procuring entities from discriminating in purchasing practices against goods, services, and suppliers from the other Parties. The rules of Chapter Nine are broadly based on the rules of the WTO Agreement on Government Procurement.

General Principles. Chapter Nine establishes a basic rule of "national treatment," meaning that each Party's procurement rules and the entities applying those rules must treat goods, services, and suppliers of such goods and services from the other Parties in a manner that is "no less favorable" than the domestic counterparts. The Chapter also bars discrimination against locally established suppliers on the basis of foreign affiliation or ownership. Chapter Nine also provides rules aimed at ensuring a fair and transparent procurement process.

Coverage and Thresholds. Chapter Nine applies to purchases and other means of obtaining goods and services valued above certain dollar thresholds by those government departments, agencies, and enterprises listed in each Party's schedule. Specifically, the Chapter applies to procurements by listed "central" (*i.e.*, national or U.S. Federal) government agencies of goods and services valued at $58,550 or more and construction services valued at $6,725,000 or more. The equivalent thresholds for purchases by listed "sub-central" government entities (*i.e.*, Central American and Dominican Republic municipalities and U.S. state government agencies) are $477,000 and $6,725,000, for goods and services and construction services, respectively. For the three-year period following entry into force of the Agreement, the Chapter applies, in the case of the Central American Parties and the Dominican Republic, to purchases of goods and services by central government agencies valued at $117,100 or more and by sub-central government agencies valued at $650,000 or more and purchases of construction services by either central or sub-central government agencies valued at $8,000,000 or more. The Chapter's thresholds for listed "government enterprises" are either $250,000 or $538,000 for goods and services, and $6,725,000 for construction services, except that for the three-year period following entry into force of the Agreement, the threshold for construction services in the Central American Parties and the Dominican Republic is $8,000,000. All thresholds are subject to adjustment every two years for inflation. (Separate annexes to Chapter Nine establish special coverage rules with

respect to procurement between (i) the Central American Parties, and (ii) each Central American Party and the Dominican Republic.)

Transparency. Chapter Nine establishes rules designed to ensure transparency in procurement procedures. Each Party must publish its laws, regulations, and other measures governing procurement, along with any changes to those measures. Procuring entities must publish notices of procurement opportunities in advance. The Chapter also lists minimum information that such notices must include.

Tendering Rules. Chapter Nine provides rules for setting deadlines on "tendering" (bidding on government contracts). It requires procuring entities to give suppliers all the information they need to prepare tenders, including the criteria that procuring entities will use to evaluate tenders. Entities must also, where appropriate, base their technical specifications (*i.e.*, detailed descriptions of the goods or services to be procured) on performance-oriented criteria and international standards. Chapter Nine provides that procuring entities may not write technical specifications to favor a particular supplier, good, or service. It also sets out the circumstances under which procuring entities are allowed to use limited tendering, *i.e.*, award a contract to a supplier without opening the procurement to all interested suppliers.

Award Rules. Chapter Nine requires that to be considered for an award, a tender must be submitted by a qualified supplier. The tender must meet the criteria set out in the tender documentation, and procuring entities must base their award of contracts on those criteria. Procuring entities must publish information on awards, including the name of the supplier, a description of the goods or services procured, and the value of the contract. Chapter Nine also calls for each Party to ensure that suppliers may bring challenges against procurement decisions before independent reviewers.

Additional Provisions. Chapter Nine builds on the anti-corruption provisions of Chapter Eighteen, including by requiring each Party to maintain procedures to declare suppliers that have engaged in fraudulent or other illegal procurement actions ineligible for participation in the Party's procurement. It establishes procedures under which a Party may modify its coverage under the Chapter, such as when a Party privatizes an entity whose purchases are covered under the Chapter. It also provides that Parties may adopt or maintain measures necessary to protect: (1) public morals, order, or safety; (2) human, animal, or plant life or health, including environmental measures necessary to protect human, animal, or plant life or health; or (3) intellectual property. Parties may also adopt measures relating to goods or services of handicapped persons, philanthropic institutions, or prison labor.

Chapter Ten: Investment

Chapter Ten establishes rules to protect investors from one Party against unfair or discriminatory government actions when they make or attempt to make investments in another Party's territory. Its provisions reflect traditional standards incorporated in earlier U.S. investment agreements (including those in the North American Free Trade Agreement and U.S. bilateral investment

treaties) and in customary international law, and contain several innovations that were incorporated in the free trade agreements with Chile and Singapore as well as others.

Key Concepts. Under Chapter Ten, the term "investment" covers all forms of investment, including enterprises, securities, debt, intellectual property rights, licenses, and contracts. It includes both investments existing when the Agreement enters into force and future investments. The term "investor of a Party" encompasses U.S., Central American, and Dominican Republic nationals as well as firms (including branches) established in one of the Parties.

General Principles. Investors enjoy six basic protections: (1) non-discriminatory treatment relative to domestic investors as well as investors of non-Parties; (2) limits on "performance requirements"; (3) free transfer of funds related to an investment; (4) protection from expropriation other than in conformity with customary international law; (5) a "minimum standard of treatment" in conformity with customary international law; (6) and the ability to hire key managerial personnel without regard to nationality. (As to this last protection, a Party may require that a majority of the board of directors be of a particular nationality, as long as this does not prevent the investor from controlling its investment.)

Sectoral Coverage and Non-Conforming Measures. With the exception of investments in or by regulated financial institutions (which are treated in Chapter Twelve), Chapter Ten generally applies to all sectors, including service sectors. However, each Party has listed in annexes to the Chapter particular sectors or measures for which it negotiated an exemption from the Chapter's rules relating to national treatment, most favored nation treatment, performance requirements, or senior management and boards of directors. All current state and local laws and regulations are exempted from these rules. A Party may liberalize a measure that it has exempted, but it may not make such measures more restrictive.

Investor-State Disputes. Chapter Ten provides a mechanism for an investor of a Party to submit to binding international arbitration a claim for damages against another Party. The investor may assert that the Party has breached a substantive obligation under the Chapter or that the Party has breached an investment agreement with, or an investment authorization granted to, the investor. "Investment agreements" and "investment authorizations" are particular types of arrangements between an investor and a host government based on contracts and authorizations, respectively. These terms are defined in Chapter 10.

Chapter Ten affords public access to information on the Chapter's investor-State proceedings. For example, Chapter Ten requires that hearings will generally be open to the public and that key documents will be publicly available, with exceptions for confidential business information. The Chapter also authorizes tribunals to accept amicus submissions from the public. In addition, the Chapter includes provisions similar to those used in U.S. courts to dispose quickly of frivolous claims. Finally, an annex to Chapter Ten calls on the Parties, within three months of the date of entry into force of the Agreement, to initiate negotiations to develop an appellate body to review arbitral awards rendered by tribunals under the Chapter.

Chapter Ten also provides that, "except in rare circumstances," nondiscriminatory regulatory actions designed and applied to meet legitimate public welfare objectives, such as public health and the environment, are not expropriatory.

Chapter Eleven: Cross-Border Trade in Services

Chapter Eleven governs measures affecting cross-border trade in services between the Parties. Certain provisions also apply to measures affecting investments to supply services. Chapter provisions are drawn in part from the services provisions of the NAFTA and the WTO General Agreement on Trade in Services (GATS), as well as priorities that have emerged since those agreements.

Key Concepts. Under the Agreement, cross-border trade in services covers supply of a service:

- $ from the territory of one Party into the territory of another Party (*e.g.*, electronic delivery of services from the United States to Costa Rica);
- $ in the territory of a Party by a person of that Party to a person of another Party (*e.g.*, a Guatemalan company provides services to U.S. visitors in Guatemala); and
- $ by a national of a Party in the territory of another Party (*e.g.*, a U.S. lawyer provides legal services in El Salvador).

Chapter Eleven should be read together with Chapter Ten (Investment), which establishes rules pertaining to the treatment of service firms that choose to provide their services through a local presence, rather than cross-border. Chapter Eleven applies where, for example, a service supplier is temporarily present in a territory of a Party and does not operate through a local investment.

General Principles. Among Chapter Eleven's core obligations are requirements to provide national treatment and MFN treatment to service suppliers of the other Parties. Thus, each Party must treat service suppliers of another Party no less favorably than its own suppliers or those of any other country. This commitment applies to state and local governments as well as the federal government. Chapter provisions relate to the rights of existing service suppliers as well as those who seek to supply services, subject to any reservations by a Party. The Chapter also includes a provision prohibiting the Parties from requiring firms to establish a local presence as a condition for supplying a service on a cross-border basis. In addition, certain types of market access restrictions to the supply of services (*e.g.*, that limit the number of firms that may offer a particular service or that restrict or require specific types of legal structures or joint ventures with local companies in order to supply a service) are also barred. The Chapter's market access rules apply both to services supplied on a cross-border basis and through a local investment.

Sectoral Coverage and Non-Conforming Measures. Chapter Eleven applies across virtually all services sectors. The chapter excludes financial services (which are addressed in Chapter Twelve), except that certain provisions of Chapter Eleven apply to investments in unregulated

financial services that are covered by Chapter Ten (Investment). In addition, Chapter Eleven does not cover air transportation, although it does apply to specialty air services and aircraft repair and maintenance.

Each Party has listed in annexes measures in particular sectors for which it negotiated exemptions from the chapter's core obligations. All existing state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes a measure that it has exempted, however, it must, in most cases, thereafter maintain the measure at least at that level of openness.

Specific Commitments. Chapter Eleven includes a comprehensive definition of express delivery services that requires each Party to provide national treatment, MFN treatment, and additional benefits to express delivery services of the other Parties. The Chapter provides that the Central American Parties and the Dominican Republic may not adopt or maintain any restriction on express delivery services that was not in place on the date the Agreement was signed. The Chapter also addresses the issue of postal monopolies directing revenues derived from monopoly postal services to confer an advantage on express delivery services. Costa Rica, the Dominican Republic, El Salvador, Guatemala, and Honduras also made commitments regarding their "dealer protection" regimes. Under existing "dealer protection" regimes, U.S. firms may be tied to exclusive or inefficient distributor arrangements. The commitments under the Agreement give U.S. firms and their Central American and Dominican Republic partners more freedom to contract the terms of their commercial relations and encourage the use of arbitration to resolve disputes between parties to dealer contracts.

Transparency and Domestic Regulation. Provisions on transparency and domestic regulation complement the core rules of Chapter Eleven. The transparency rules apply to the development and application of regulations governing services. The Chapter's rules on domestic regulation govern the operation of approval and licensing systems for service suppliers. Like the Chapter's market access rules, its provisions on transparency and domestic regulation cover services supplied both on a cross-border basis and through a local investment. An annex to Chapter Eleven sets out specific commitments that individual Parties have agreed to undertake.

Exclusions. Chapter Eleven excludes any service supplied "in the exercise of governmental authority" – that is, a service that is provided on a non-commercial and non-competitive basis. Chapter Eleven also does not generally apply to government subsidies, although the Parties have undertaken a commitment relating to cross-subsidization of express delivery services.

Chapter Twelve: Financial Services

Chapter Twelve provides rules governing each Party's treatment of: (1) financial institutions of another Party; (2) investors of another Party, and their investments, in financial institutions; and (3) cross-border trade in financial services.

Key Concepts. The Chapter defines a "financial institution" as any financial intermediary or other institution authorized to do business and regulated or supervised as a financial institution

under the law of the Party where it is located. A "financial service" is any service of a financial nature, including, for example, insurance, banking, securities, asset management, financial information and data processing services, and financial advisory services.

General Principles. Chapter Twelve's core obligations parallel those in Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services). Specifically, Chapter Twelve imposes rules requiring national treatment and MFN treatment, prohibits certain quantitative restrictions on market access of financial institutions, and bars restrictions on the nationality of senior management. As appropriate, these rules apply to measures affecting financial institutions, investors and investments in financial institutions of another Party, and services companies that are currently supplying and that seek to supply financial services on a cross-border basis. As between the Central American Parties and the Dominican Republic, obligations pertaining to banking services, or as between Guatemala and the Dominican Republic, financial services generally, do not apply until two years after entry into force of the Agreement.

Non-Conforming Measures. Similar to Chapters Ten and Eleven, each Party has listed in an annex to Chapter Twelve particular financial services measures for which it negotiated exemptions from the Chapter's core obligations. Existing non-conforming U.S. state and local laws and regulations are exempted from these obligations. Once a Party, including a state or local government, liberalizes one of these non-conforming measures, however, it must, in most cases, maintain the measure at least at that new level of openness.

Other Provisions. Chapter Twelve also includes provisions on regulatory transparency, "new" financial services, self-regulatory organizations, and the expedited availability of insurance products.

Relationship to Other Chapters. Measures that a Party applies to financial services suppliers of another Party, other than regulated financial institutions, that make or operate investments in the Party's territory are covered principally by Chapter Ten (Investment) and certain provisions of Chapter Eleven (Cross-Border Trade in Services). In particular, the core obligations of Chapter Ten apply to such measures, as do the market access, transparency, and domestic regulation provisions of Chapter Eleven. Chapter Twelve incorporates by reference certain provisions of Chapter Ten, such as those relating to transfers and expropriation.

Chapter Thirteen: Telecommunications

Chapter Thirteen creates disciplines beyond those imposed under Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) on regulatory measures affecting telecommunications trade and investment between the Parties. It is designed to ensure that service suppliers of each Party have non-discriminatory access to public telecommunications networks in the territories of the other Parties. In addition, the Chapter requires each Party to regulate its dominant telecommunications suppliers in ways that will ensure a level playing field for new entrants. Chapter Thirteen also seeks to ensure that telecommunications regulations are set by independent regulators applying transparent procedures, and is designed to encourage adherence to principles of deregulation and technological neutrality.

Key Concepts. Under Chapter Thirteen, a "public telecommunications service" is any telecommunications service that a Party requires to be offered to the public generally. The term includes voice and data transmission services. It does not include the offering of "information services" (*e.g.*, services that enable users to create, store, or process information over a network). A "major supplier" is a company that, by virtue of its market position or control over certain facilities, can materially affect the terms of participation in the market.

Competition. Chapter Thirteen establishes rules promoting competition in telecommunications services. It also provides flexibility to account for changes that may occur through new legislation or regulatory decisions. The Chapter includes commitments by each Party to:

- ensure that all service suppliers of another Party that seek to access or use a public telecommunications network in the Party's territory can do so on reasonable and non-discriminatory terms (*e.g.*, El Salvador must ensure that its public phone companies do not provide preferential access to Salvadoran banks or Internet service providers, to the detriment of U.S. competitors);

- give another Party's telecommunications suppliers, in particular, the right to interconnect their networks with public networks in the Party's territory;

- ensure that telecommunications suppliers of another Party that seek to build physical networks in the Party's territory have access to key physical facilities where they can install equipment, thus facilitating cost-effective investment;

- ensure that telecommunications suppliers of another Party enjoy the right to lease lines to supplement their own networks or, alternatively, purchase telecommunications services from domestic suppliers and resell them in order to build a customer base; and

- impose disciplines on the behavior of "major suppliers."

Regulation. The Chapter addresses key regulatory concerns that may create barriers to trade and investment in telecommunications services. In particular, the Parties:

- will adopt procedures that will help ensure that they maintain open and transparent telecommunications regulatory regimes, including requirements to publish interconnection agreements and service tariffs;

- will require their telecommunications regulators to explain their rule-making decisions and provide foreign suppliers the right to challenge those decisions;

- may elect to deregulate telecommunications services when competition emerges and certain standards are met; and

- will avoid impeding telecommunications suppliers from choosing technologies they consider appropriate for supplying their services.

Costa Rica. Costa Rica's obligations with respect to telecommunications are contained in a separate annex to Chapter 13. The annex recognizes the unique nature of Costa Rica's social policy on telecommunications and commits Costa Rica to undertake certain obligations as of January 1, 2006. These obligations include ensuring that enterprises have access to, and use of, public telecommunications services, and that suppliers of public communications services are provided interconnection with major suppliers.

Chapter Fourteen: Electronic Commerce

Chapter Fourteen establishes rules designed to prohibit discriminatory regulation of electronic trade in digitally encoded products such as computer programs, video, images, and sound recordings. The Chapter represents a major advance over previous international understandings on this subject.

Customs Duties. Chapter Fourteen provides that a Party may not impose customs duties on digital products of another Party transmitted electronically and will determine the customs value of an imported carrier medium bearing a digital product based on the value of the carrier medium alone, without regard to the value of the digital product stored on the carrier medium.

Non-Discrimination. Chapter Fourteen requires the Parties to apply the principles of national treatment and MFN treatment to trade in electronically-transmitted digital products. Thus, a Party may not discriminate against electronically-transmitted digital products on the grounds that they have a nexus to another country, either because they have undergone certain specific activities (*e.g.*, creation, production, first sale) there or are associated with certain categories of persons of another Party or a non-Party (*e.g.*, authors, performers, producers). Nor may a Party provide less favorable treatment to digital products that have a nexus to another Party than it gives to like products that have a nexus to a third country. The non-discrimination rules do not apply to non-conforming measures adopted under Chapters Ten (Investment), Eleven (Cross-Border Trade in Services), or Twelve (Financial Services).

Cooperation. Chapter Fourteen provides for future cooperation between the Parties, including exchanging information in areas such as data privacy and cyber-security.

Chapter Fifteen: Intellectual Property Rights

Chapter Fifteen complements and enhances existing international standards for the protection of intellectual property and the enforcement of intellectual property rights, consistent with U.S. law.

General Provisions. Under Chapter Fifteen the Parties are obligated to ratify or accede to several agreements on intellectual property rights, including, by the date of entry into force of the Agreement, the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and, within specified time frames, the International Convention for the Protection of New Varieties of

Plants, the Trademark Law Treaty, the Brussels Convention Relating to the Distribution of Programme-Carrying Satellite Signals, and the Patent Cooperation Treaty. The United States is already a Party to these Agreements. National treatment requirements apply broadly.

Trademarks and Geographical Indications. Chapter Fifteen establishes that marks include marks in respect of goods and services, collective marks, and certification marks, and that geographical indications are eligible for protection as marks. It sets out rules with respect to the registration of marks and geographical indications. Each Party must provide protection for marks and geographical indications, including protecting preexisting trademarks against infringement by later geographical indications. Furthermore, the Parties must provide efficient and transparent procedures governing the application for protection of marks and geographical indications. The Chapter also provides for rules on domain name management that require a dispute resolution procedure to prevent trademark cyber-piracy.

Copyright and Related Rights. Chapter Fifteen provides broad protection of copyright and related rights, affirming and building on rights set out in several international agreements. For instance, each Party must provide copyright protection for the life of the author plus 70 years (for works measured by a person's life), or 70 years (for corporate works). The Chapter clarifies that the right to reproduce literary and artistic works, recordings, and performances encompasses temporary copies, an important principle in the digital realm. It also calls for each Party to provide a right of communication to the public, which will further ensure that right holders have the exclusive right to make their works available online. The Chapter specifically protects the rights of performers and producers of phonograms.

To curb copyright piracy, government agencies of the Parties must use only legitimate computer software, setting an example for the private sector. The Chapter also includes provisions on anti-circumvention, under which the Parties commit to prohibit tampering with technology used to protect copyrighted works. In addition, Chapter Fifteen sets out obligations with respect to the liability of Internet service providers in connection with copyright infringements that take place over their networks. Finally, recognizing the importance of satellite broadcasts, Chapter Fifteen ensures that each Party will protect encrypted program-carrying satellite signals. It obligates the Parties to extend protection to the signals themselves, as well as to the content contained in the signals.

Patents. Chapter Fifteen also includes a variety of provisions for the protection of patents. The Parties agree to make patents available for any invention, subject to limited exclusions, and confirm the availability of patents for new uses or methods of using a known product. The Chapter provides for protection to stop imports of patented products when the patent owner has placed restrictions on import by contract or other means. To guard against arbitrary revocation of patents, each Party must limit the grounds for revoking a patent to the grounds that would have justified a refusal to grant the patent. Under Chapter Fifteen, Parties must provide adjustments to the patent term to compensate for unreasonable delays that occur while granting the patent, as well as unreasonable curtailment of the effective patent term as a result of the marketing approval process for pharmaceutical products.

Certain Regulated Products. Chapter Fifteen includes specific measures relating to certain regulated products, including pharmaceuticals and agricultural chemicals. Among other things, it protects test data that a company submits in seeking marketing approval for such products by precluding other firms from relying on the data. It provides specific periods for such protection – five years for pharmaceuticals and ten years for agricultural chemicals. This means, for example, that during the period of protection, test data that a company submits for approval of a new agricultural chemical product could not be used without that company's consent in granting approval to market a combination product. The Chapter also requires Parties to implement measures to prevent the marketing of pharmaceutical products that infringe patents.

Enforcement Provisions. Chapter Fifteen also creates obligations with respect to the enforcement of intellectual property rights. Among these, the Parties, in determining damages, must take into account the value of the legitimate goods as well as the infringer's profits. The Chapter also provides for damages based on a fixed range (*i.e.*, "statutory damages"), at the option of the right holder or alternatively additional damages in cases involving copyright infringement

Chapter Fifteen provides that the Parties' law enforcement agencies must have authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence. Each Party must give its courts authority to order the forfeiture and/or destruction of such items. Chapter Fifteen also requires each Party to empower its law enforcement agencies to take enforcement action at the border against pirated or counterfeit goods without waiting for a formal complaint. Chapter Fifteen provides that each Party must apply criminal penalties against counterfeiting and piracy, including end-user piracy.

Transition Periods. Most obligations in the Chapter take effect upon the Agreement's entry into force. However, the Central American Parties and the Dominican Republic may delay giving effect to certain specified obligations for periods ranging from six months to four years from the date of entry into force of the Agreement.

Chapter Sixteen: Labor

Chapter Sixteen sets out the Parties' commitments and undertakings regarding trade-related labor rights. Chapter Sixteen draws on the North American Agreement on Labor Cooperation (the supplemental NAFTA labor agreement) and the labor provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however, in that it contains the most comprehensive set of commitments and undertakings regarding trade-related labor rights. As described below, the Chapter (i) includes detailed provisions to ensure that labor law enforcement is fair, equitable, and transparent; (ii) requires Parties to provide for public input on labor matters; and (iii) establishes a detailed framework that will assist Parties to develop the institutional capacity to fulfill the goals of the Chapter.

General Principles. Under Chapter Sixteen, the Parties reaffirm their obligations as members of the International Labor Organization (ILO) and under the 1998 ILO *Declaration on Fundamental Principles and Rights at Work*. Each Party must strive to ensure that its law recognizes and

protects the fundamental labor principles spelled out in the ILO Declaration as listed in the Chapter. Each Party also must strive to ensure that it does not derogate from or waive the protections of its labor laws to encourage trade with or investment from another Party. The Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. While committing each Party to effective enforcement of its labor laws, the Chapter also recognizes each Party's right to establish its own labor laws, exercise discretion in investigatory, regulatory, prosecutorial, and compliance matters, and allocate enforcement resources.

Effective Enforcement. In Chapter Sixteen each Party commits not to fail to effectively enforce its labor laws on a sustained or recurring basis in a manner affecting trade between the Parties. The Chapter defines labor laws to include those related to: (1) the right of association; (2) the right to organize and bargain collectively; (3) a prohibition of forced or compulsory labor; (4) a minimum age for the employment of children and elimination of the worst forms of child labor; and (5) acceptable conditions of work with respect to wages, hours, and occupational safety and health. For the United States, "labor laws" includes federal statutes and regulations addressing these areas, but it does not cover state or local labor laws.

Procedural Guarantees. In Chapter Sixteen, the Parties also commit to afford procedural guarantees that ensure workers and employers have access to fair, equitable, and transparent procedures in the enforcement of labor laws. To this end, each Party must ensure that workers and employers have access to tribunals for the enforcement of its labor laws and that decisions of such tribunals are in writing, made publicly available, and based on information or evidence in respect of which the parties were offered the opportunity to be heard. In addition, hearings in such proceedings must be open to the public, except where the administration of justice otherwise requires. Chapter Sixteen also commits each Party to make remedies available to ensure the enforcement of its labor laws. Such remedies might include orders, fines, penalties, or temporary workplace closures.

Dispute Settlement. Chapter Sixteen provides for cooperative consultations if a Party believes that another Party is not complying with the obligations in this Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its labor law, the complaining Party may, after an initial 60-day consultation period under Chapter Sixteen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement's cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its labor laws.

Cooperation and Capacity Building. Chapter Sixteen establishes a cabinet-level Labor Affairs Council to oversee the Chapter's implementation and to provide a forum for consultations and cooperation on labor matters. The Chapter requires each Party to designate a contact point for communications with the other Parties and the public regarding the Chapter. Each Party's contact point must provide transparent procedures for the submission, receipt, and consideration of any communications from the public relating to the provisions of the Chapter.

The Chapter also creates a labor cooperation and capacity building mechanism through which the Parties will work together to strengthen each Party's institutional capacity to fulfill the goals of the Labor Chapter. In particular, the mechanism will assist the Parties to establish priorities for, and carry out, bilateral and regional cooperation and capacity building activities relating to such topics as: the effective application of fundamental labor rights; legislation and practice relating to compliance with ILO Convention 182 on the worst forms of child labor; strengthening labor inspection systems and the institutional capacity of labor administrations and tribunals; mechanisms for supervising compliance with laws and regulations pertaining to working conditions; and the elimination of gender discrimination in employment.

Chapter Seventeen: Environment

Chapter Seventeen sets out the Parties' commitments and undertakings regarding environmental protection. Chapter Seventeen draws on the North American Agreement on Environmental Cooperation and the environmental provisions of other recent U.S. FTAs, including those with Jordan, Chile, Singapore, Australia, and Morocco. The Chapter goes further than these prior FTAs, however. In particular, the CAFTA-DR is the first U.S. FTA that includes a process for public submissions on environmental enforcement matters in the body of the FTA.

General Principles. Under Chapter Seventeen, the Parties must ensure that their laws provide for high levels of environmental protection. Each Party also must strive not to weaken or reduce its environmental laws to encourage trade with or investment from another Party. Chapter Seventeen further includes commitments to enhance cooperation between the Parties in environmental matters and encourages the Parties to develop voluntary, market-based mechanisms as one means for achieving and sustaining high levels of environmental protection.

Effective Enforcement. In Chapter Seventeen each Party commits not to fail to effectively enforce its environmental laws on a sustained or recurring basis in a manner affecting trade between the Parties. At the same time, the Chapter recognizes the right of each Party to: (1) establish its own environmental laws; (2) exercise discretion in regulatory, prosecutorial, and compliance matters; and (3) allocate enforcement resources in a bona fide manner. For the United States, "environmental laws" includes federal environmental statutes and regulations enforceable by the federal government.

Procedural Matters. Chapter Seventeen commits each Party to make judicial, quasi-judicial, or administrative proceedings available to sanction or remedy violations of its environmental laws. Each Party must ensure that such proceedings are fair, equitable, and transparent, and, to this end, comply with due process of law and are open to the public, except where the administration of justice otherwise requires. The Chapter requires each Party to ensure that interested persons may request the Party's competent authorities to investigate alleged violations of its environmental laws and that each Party's competent authorities give such requests due consideration. Chapter Seventeen also commits each Party to make appropriate and effective remedies available for violations of its environmental laws. Such remedies may include, for example, fines, injunctions, or requirements to take remedial action or pay for damage to the environment.

Public Submissions. Chapter Seventeen commits each Party to provide for the receipt and consideration of public submissions on matters related to the Chapter. In addition, the Chapter provides that any person of a Party may file a submission with a secretariat asserting that a Party has failed to effectively enforce its environmental laws. The secretariat will review the submission according to specified criteria and in appropriate cases recommend to the Environmental Affairs Council that a factual record concerning the matter be developed. The secretariat will prepare a factual record if one member of the Environmental Affairs Council instructs it to do so. The Council will consider the record and, where appropriate, provide recommendations to an environmental cooperation commission that will be created under a related environmental cooperation agreement. U.S. persons who consider that the United States is failing to effectively enforce its environmental laws may invoke the comparable public submissions process under the North American Agreement on Environmental Cooperation. Pursuant to a separate understanding between the Parties, a new environmental unit within the Secretariat for Central American Economic Integration (SIECA) will serve as the secretariat for the receipt of public submissions.

Dispute Settlement. Chapter Seventeen provides for cooperative consultations if a Party believes that another Party is not complying with its obligations under the Chapter. If the matter concerns a Party's compliance with its obligation not to fail to effectively enforce its environmental law, the complaining Party may, after an initial 60-day consultation period under Chapter Seventeen, invoke the provisions of Chapter Twenty (Dispute Settlement) by requesting additional consultations or a meeting of the Agreement=s cabinet-level Free Trade Commission under that Chapter. If the Commission is unable to resolve the dispute, the matter may be referred to a dispute settlement panel. The Parties will maintain a roster of experts to serve on any dispute settlement panel convened to hear disputes regarding a Party's obligation to effectively enforce its environmental laws.

Institutional Arrangements and Cooperation. Chapter Seventeen establishes a cabinet-level Environment Affairs Council to oversee the implementation and operation of the Chapter. Opportunities will be provided at Council meetings for the public to express views on the implementation of Chapter Seventeen and cooperative work between the Parties. The Parties also agree under Chapter Seventeen to continue to seek ways to enhance the mutual supportiveness of multilateral agreements and trade agreements to which they are all party, and to consult as appropriate on negotiations in the WTO regarding multilateral environmental agreements. In addition, to facilitate cooperation efforts, the Parties will enter into a separate environmental cooperation agreement.

Chapter Eighteen: Transparency

Chapter Eighteen sets out requirements designed to foster openness, transparency, and fairness in the adoption and application of administrative measures covered by the Agreement. For example, it requires that, to the extent possible, each Party must promptly publish all laws, regulations, procedures, and administrative rulings of general application concerning subjects covered by the Agreement, and give interested persons a reasonable opportunity to comment.

Wherever possible, each Party must provide reasonable notice to the other Parties' nationals and enterprises that are directly affected by an agency process, including an adjudication, rulemaking, licensing, determination, and approval process. A Party is to afford such persons a reasonable opportunity to present facts and arguments prior to any final administrative action, when time, the nature of the process, and the public interest permit.

Chapter Eighteen also provides for independent review and appeal of final administrative actions. Appeal rights must include a reasonable opportunity to present arguments and to obtain a decision based on evidence in the administrative record.

Chapter Eighteen also affirms the Parties' resolve to eliminate bribery and corruption in international trade and investment. To this end, Parties are obligated to make it a criminal offense to offer or accept a bribe in exchange for favorable government action in matters affecting international trade or investment. Parties must also endeavor to protect persons who, in good faith, report acts of bribery or corruption and to work together to encourage and support initiatives in relevant international fora to prevent bribery and corruption.

Chapter Nineteen: Administration of the Agreement and Trade Capacity Building

Chapter Nineteen creates a Free Trade Commission to supervise the implementation and overall operation of the Agreement. The Commission will be comprised of the Parties' trade ministers. It will meet annually and make decisions by consensus. The Commission will assist in the resolution of any disputes that may arise under the Agreement. The Commission may issue interpretations of the Agreement and agree to accelerate duty elimination on particular products and adjust the Agreement's product-specific rules of origin.

Chapter Nineteen requires each Party to designate an office to provide administrative assistance to dispute settlement panels and perform such other functions as the Commission may direct.

Chapter Nineteen also establishes a Committee on Trade Capacity Building, comprised of representatives of each Party. The overall objective of the Committee is to assist the Central American Parties and the Dominican Republic to implement the Agreement and adjust to liberalized trade. Particular functions of the Committee include: seeking the prioritization of trade capacity building projects at the national and regional level within Central America and the Dominican Republic; inviting international donor institutions, private sector entities, and non-governmental organizations to assist in the development and implementation of trade capacity building projects in accordance with each country's national trade capacity building strategy; and monitoring and assessing progress in implementing trade capacity building projects.

Chapter Twenty: Dispute Settlement

Chapter Twenty sets out detailed procedures for the resolution of disputes between the Parties over compliance with the Agreement. Those procedures emphasize amicable settlements, relying wherever possible on bilateral cooperation and consultations. When disputes arise under provisions common to the Agreement and other agreements (*e.g.*, the WTO agreements), the

complaining government may choose a forum for resolving the matter that is set forth in any valid agreement between the Parties. The selected forum is the exclusive venue for resolving that dispute.

Consultations. A Party may request consultations with another Party on any actual or proposed measure that it believes might affect the operation of the Agreement. Any other Party having a substantial trade interest in the matter may participate in the consultations. If the Parties cannot resolve the matter through consultations within a specified period (normally 60 days), any consulting Party may refer the matter to the Free Trade Commission, which will attempt to resolve the dispute.

Panel Procedures. If the Commission cannot resolve the dispute within a specified period (normally 30 days), any consulting Party may refer the matter, if it involves an actual measure, to a panel comprising independent experts that the Parties select. Any party that participated in the consultations may participate in the panel proceedings as a complaining Party. Any other Party may participate in the panel proceedings as a third party.

The Parties will set rules to protect confidential information, provide for open hearings and public release of submissions, and allow an opportunity for the panel to accept submissions from non-governmental entities in the Parties' territories.

Unless the disputing Parties agree otherwise, a panel is to present its initial report within 120 days after the last panelist is selected. This period can be extended to 180 days in certain circumstances. Once the panel presents its initial report containing findings of fact and a determination on whether a Party has met its obligations, the Parties will have the opportunity to provide written comments to the panel. When the panel receives these comments, it may reconsider its report and make any further examination that it considers appropriate. Within 30 days after it presents its initial report, the panel will submit its final report. The Parties will then seek to agree on how to resolve the dispute, normally in a way that conforms to the panel's determinations and recommendations. Subject to protection of confidential information, the panel's final report will be made available to the public 15 days after the Parties receive it.

Suspension of Benefits. In disputes involving the Agreement's "commercial" obligations (*i.e.*, obligations other than enforcement of labor and environmental laws), if the disputing Parties cannot resolve the dispute after they receive the panel's final report, the disputing Parties will seek to agree on acceptable trade compensation. If they cannot agree on compensation, or if the complaining Party believes the defending Party has failed to implement an agreed resolution, the complaining Party may provide notice that it intends to suspend trade benefits equivalent in effect to those it considers were impaired, or may be impaired, as a result of the disputed measure.

If the defending Party considers that the proposed level of benefits to be suspended is "manifestly excessive," or believes that it has modified the disputed measure to make it conform to the Agreement, it may request the panel to reconvene and decide the matter. The panel must issue its

determination no later than 90 days after the request is made (or 120 days if the panel is reviewing both the level of the proposed suspension and a modification of the measure).

The complaining Party may suspend trade benefits up to the level that the panel sets or, if the panel has not been asked to determine the level, up to the amount that the complaining Party has proposed. The complaining Party cannot suspend benefits, however, if the defending Party provides notice that it will pay an annual monetary assessment to the other Party. The amount of the assessment will be established by agreement of the disputing Parties or, failing that, will be set at 50 percent of the level of trade concessions the complaining Party was authorized to suspend.

Labor and Environment Disputes. Equivalent compliance procedures apply to disputes over a Party's conformity with the labor and environmental law enforcement provisions of the Agreement. If a panel determines that a Party has not met its enforcement obligations and the disputing Parties cannot agree on how to resolve the dispute, or the complaining Party believes that the defending Party has failed to implement an agreed resolution, the complaining Party may ask the panel to determine the amount of an annual monetary assessment to be imposed on the defending Party. The Panel will establish the amount of the assessment, subject to a $15 million annual cap, taking into account relevant trade- and non-trade-related factors. The assessment will be paid into a fund established by the Commission for appropriate labor and environmental initiatives. If the defending Party fails to pay an assessment, the complaining Party may take other appropriate steps, which may include suspending tariff benefits, as necessary to collect the assessment, while bearing in mind the Agreement's objective of eliminating barriers to trade and while seeking to avoid unduly affecting parties or interests not party to the dispute.

Compliance Review Mechanism. If, at any time, the defending Party believes it has made changes in its laws or regulations sufficient to comply with its obligations under the Agreement, it may refer the matter to the panel. If the panel agrees, the dispute ends and the complaining Party must withdraw any offsetting measures it has put in place. Concurrently, the defending government will be relieved of any obligation to pay a monetary assessment.

The Parties will review the operation of the compliance procedures for both commercial and labor and environment disputes either five years after the entry into force of the Agreement or within six months after benefits have been suspended or assessments paid in five proceedings initiated under this Agreement, which ever occurs first.

Settlement of Private Disputes. The Parties will encourage the use of arbitration and other alternative dispute resolution mechanisms to settle international commercial disputes between private parties. Each Party must provide appropriate procedures for the recognition and enforcement of arbitral awards, for example by complying with the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards or the 1975 Inter-American Convention on International Commercial Arbitration.

Chapter Twenty-One: Exceptions

Chapter Twenty-One sets out general provisions that apply to the entire Agreement with the following exception. Article XX of the GATT 1994 and its interpretive notes are incorporated into and made part of the Agreement, *mutatis mutandis,* and apply to those Chapters related to treatment of goods. Likewise, for the purposes of Chapters Eleven (Cross-Border Trade in Services), Thirteen (Telecommunications), and Fourteen (Electronic Commerce), GATS Article XIV (including its footnotes) is incorporated into and made part of the Agreement. For both goods and services, the Parties understand that these exceptions include certain environmental measures.

Essential Security. Chapter Twenty-One allows each Party to take actions it considers necessary to protect its essential security interests.

Taxation. An exception for taxation limits the field of tax measures subject to the Agreement. For example, the exception generally provides that the Agreement does not affect a Party's rights or obligations under any tax convention. The exception sets out certain circumstances under which tax measures are subject to the Agreement's: (1) national treatment obligation for goods; (2) national treatment and MFN obligations for services; (3) prohibitions on performance requirements; and (4) expropriation rules.

Balance of Payments. Chapter Twenty-One establishes criteria that a Party must follow if it applies a balance-of-payments measure on trade in goods.

Disclosure of Information. The Chapter also provides that a Party may withhold information from another Party where such disclosure would impede domestic law enforcement, otherwise be contrary to the public interest, or prejudice the legitimate commercial interests of particular enterprises.

Chapter Twenty-Two: Final Provisions

Chapter Twenty-Two provides that (i) the annexes, appendices, and footnotes are part of the Agreement, (ii) the Parties may amend the Agreement subject to applicable domestic procedures, and (iii) the English and Spanish texts are both authentic. It also provides for consultations if any provision of the WTO Agreement that the Parties have incorporated into the Agreement is amended.

Chapter Twenty-Two provides for the entry into force of the Agreement, and establishes procedures under which a Party may withdraw from the Agreement. The Chapter provides that any other country or group of countries may accede to this agreement on terms and conditions that are agreed with the Parties and approved according to each Party's domestic procedures. Finally, the Chapter provides that the original texts of the Agreement shall be deposited with the Organization of American States.

UNDERSTANDING REGARDING
CERTAIN PUBLIC HEALTH MEASURES

August 5, 2004

The Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America have reached the following understandings regarding Chapter Fifteen (Intellectual Property Rights) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

The obligations of Chapter Fifteen do not affect a Party's ability to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency.

In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and public health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively the "TRIPS/health solution"), Chapter Fifteen does not prevent the effective utilization of the TRIPS/health solution.

With respect to the aforementioned matters, if an amendment of a pertinent provision of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) enters into force with respect to the Parties and that amendment is incompatible with Chapter Fifteen, our Governments shall immediately consult in order to adapt Chapter Fifteen as appropriate in the light of the amendment.

FOR THE GOVERNMENT OF COSTA RICA:

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC

FOR THE GOVERNMENT OF EL SALVADOR:

FOR THE GOVERNMENT OF GUATEMALA:

FOR THE GOVERNMENT OF HONDURAS:

FOR THE GOVERNMENT OF NICARAGUA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Robert B. Zoellick

UNDERSTANDING REGARDING IMMIGRATION MEASURES

August 5, 2004

The representatives of the Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America confirm the following understanding reached by our Governments in the course of negotiations regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

> No provision of the Agreement shall be construed to impose any obligation on a Party regarding its immigration measures.

FOR THE GOVERNMENT OF COSTA RICA:

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC

FOR THE GOVERNMENT OF EL SALVADOR:

FOR THE GOVERNMENT OF GUATEMALA:

FOR THE GOVERNMENT OF HONDURAS:

FOR THE GOVERNMENT OF NICARAGUA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Robert B. Zoellick

UNDERSTANDING REGARDING THE ESTABLISHMENT OF A SECRETARIAT FOR ENVIRONMENTAL MATTERS UNDER THE DOMINICAN REPUBLIC – CENTRAL AMERICA – UNITED STATES FREE TRADE AGREEMENT

February 18, 2005

The Governments of the Republic of Costa Rica, the Dominican Republic, the Republic of El Salvador, the Republic of Guatemala, the Republic of Honduras, the Republic of Nicaragua, and the United States of America ("FTA Governments") have reached the following understandings regarding the implementation of Articles 17.7 (Submissions on Enforcement Matters) and 17.8 (Factual Records and Related Cooperation) of Chapter Seventeen (Environment) of the Dominican Republic – Central America – United States Free Trade Agreement signed on August 5, 2004 ("the Agreement"):

1. The FTA Governments shall request the Secretariat for Central American Economic Integration ("SIECA") to establish a new unit within SIECA to serve as the "secretariat or other appropriate body" referred to in Article 17.7.1 of the Agreement and to undertake the functions set out in Articles 17.7 and 17.8 of the Agreement.[1]

2. On consent of SIECA to such a request, the FTA Governments, through an appropriate arrangement or agreement with SIECA, shall establish working arrangements, including, as appropriate, procedures and guidelines, under which the unit shall operate,[2] which shall provide, among other things, that:

(a) The Environmental Affairs Council ("the Council") established under Article 17.5 of the Agreement shall appoint a General Coordinator and permanent professional staff of the unit. The unit shall be of appropriate size and comprise persons with relevant expertise in environmental law and its enforcement, including regional expertise, and having a demonstrated record of good judgment and objectivity;

(b) The unit shall function as an independent entity within SIECA and shall have appropriate environmental and regional expertise;

(c) The unit shall be under the sole direction and supervision of the Council, and shall perform only those functions set out in Articles 17.7 and 17.8 of the Agreement;

(d) The Council shall establish a roster of environmental experts, comprising persons with a demonstrated record of good judgment, objectivity, and environmental expertise, including regional expertise, from which the unit shall select, as appropriate, according to procedures established by the Council, individuals to assist the unit, under its direction, with the preparation of factual records pursuant to Article 17.8 of the Agreement;

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1 The FTA Governments shall also ensure that any recommendations by the Council under Article 17.8.8 of the Agreement shall be limited to matters in the context of potential environmental cooperation.

2 Through a decision of the Council, based upon a specific request, governments and/or relevant organizations may share relevant experiences and expertise concerning the administration of procedures as set forth in Articles 17.7 and 17.8 of the Agreement.

(e) The General Coordinator and unit staff members shall not receive instructions from any government, or from any authority other than the Council, and will report solely to the Council; and

(f) The Council shall establish appropriate provisions for the protection and non-disclosure of confidential information received from submitters and governments.

3. Each FTA Government shall make every reasonable effort to provide information in a timely manner to the unit sufficient to enable it to perform its functions under Articles 17.7 and 17.8 of the Agreement, subject to the provisions established pursuant to paragraph 2(f) above.

This understanding shall enter into force on the date of entry into force of the Agreement.

FOR THE GOVERNMENT OF COSTA RICA:

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC:

FOR THE GOVERNMENT OF EL SALVADOR:

FOR THE GOVERNMENT OF GUATEMALA:

FOR THE GOVERNMENT OF HONDURAS:

FOR THE GOVERNMENT OF NICARAGUA:

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Regina K. Vargo

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on poultry trade
2. Letter on bank sales representatives
3. Letter on foreign bank branches and additional reserve requirements
4. Letter on contracts of representation, distribution, or fabrication
5. Letter on extraction, generation, and refining
6. Letter on gambling
7. Letter on mining activities
8. Letter on wildlife, forestry, and zoning
9. Letter on Costa Rica's radio-electric spectrum
10. Letter on continuation of "807" program

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Enclosures

Ministerio de Comercio Exterior

Despacho del Ministro

5 de Agosto, 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "En relación con la firma del Tratado de Libre Comercio República Dominicana – Centroamérica – Estados Unidos (el "Tratado"), tengo el honor de proponer que las cartas fechadas 28 de mayo de 2004, que firmaron nuestros Gobiernos en conexión con la firma del Tratado de Libre Comercio Centroamérica – Estados Unidos en esa misma fecha, son igualmente válidas y aplicables con respecto al Tratado. Estas cartas son:
>
> 1. Carta sobre carne de ave
> 2. Carta sobre representantes de ventas bancarias
> 3. Carta sobre sucursales de bancos extranjeros
> 4. Carta sobre contratos de representación, distribución, o fabricación
> 5. Carta sobre extracción de recursos naturales, generación de energía y refinería
> 6. Carta sobre apuestas
> 7. Carta sobre actividades de minería
> 8. Carta sobre vida silvestre, recursos forestales y planificación urbana
> 9. Carta sobre espectro radioeléctrico de Costa Rica
> 10. Carta sobre continuación del programa 807
>
> Se adjunta una copia de cada una de las cartas.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y de confirmar que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSÉ - COSTA RICA

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:
>
> 1. Letter on poultry trade
> 2. Letter on bank sales representatives
> 3. Letter on foreign bank branches and additional reserve requirements
> 4. Letter on contracts of representation, distribution, or fabrication
> 5. Letter on extraction, generation, and refining
> 6. Letter on gambling
> 7. Letter on mining activities
> 8. Letter on wildlife, forestry, and zoning
> 9. Letter on Costa Rica's radio-electric spectrum
> 10. Letter on continuation of "807" program
>
> A copy of each letter is enclosed.
>
> I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> The United States and Costa Rica pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el "Tratado").
>
> > Estados Unidos y Costa Rica se comprometen a instar a sus agencias especializadas para que implementen un trabajo técnico y científico dedicado a lograr acceso a mercados para que el comercio de productos de carne de ave dentro del Tratado sea de mutuo beneficio.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > The United States and Costa Rica pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Specific Commitments of Costa Rica on Insurance in Annex 12.9.2 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> An insurance company may supply insurance services in Costa Rica, subject to regulatory standards consistent with the Agreement, through a commercial relationship with banks provided that the insurance company is the underwriter of the insurance policy.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

El Honorable Robert B. Zoellick
Representante de Comercio de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace acusar recibo de su carta con fecha de hoy, en la que se consigna lo siguiente:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Costa Rica en el curso de las negociaciones relativas a los Compromisos Específicos de Costa Rica en materia de servicios de seguros en el Anexo 12.9.2 (Compromisos Específicos) del Tratado de Libre Comercio firmado entre nuestros gobiernos este día (el "Tratado"):
>
> > Una empresa de seguros podrá suministrar servicios de seguros en Costa Rica, sujeto a estándares regulatorios consistentes con el Tratado, a través de una relación comercial con los bancos, sujeto a que la empresa de seguros sea la suscriptora de la póliza de seguros.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar que el entendimiento referido en su carta es compartido por mi Gobierno y que su carta y esta carta de respuesta constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding the Specific Commitments of Costa Rica on Insurance in Annex 12.9.2 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > An insurance company may supply insurance services in Costa Rica, subject to regulatory standards consistent with the Agreement, through a commercial relationship with banks provided that the insurance company is the underwriter of the insurance policy.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

Honorable Randal K. Quarles
Assistant Secretary for International Affairs
Departamento del Tesoro de Estados Unidos
Washington, D.C.

Estimado Sr. Quarles:

En conexión con el Tratado de Libre Comercio entre nuestros gobiernos firmado este día (el "Tratado"), tengo el honor de confirmar que:

> El Gobierno de Costa Rica ha estado discutiendo y apoya la idea de modificar su legislación bancaria actual con el fin de permitir a bancos extranjeros realizar actividades bancarias en Costa Rica por medio de sucursales locales, con sujeción a los mismos estándares regulatorios, de capital y de supervisión aplicables a los bancos locales, y hará esfuerzos razonables para promover esa modificación.
>
> El Gobierno de Costa Rica ha estado discutiendo y apoya la idea de modificar su requisito para los bancos privados de mantener reservas adicionales en los bancos estatales al amparo del Artículo 59 de la Ley No. 1644 y hará esfuerzos razonables para promover esa modificación.

Confío en que esta carta provee la información que Estados Unidos ha buscado con respecto a la posibilidad de sucursales de bancos extranjeros en Costa Rica, así como con respecto a la posible modificación del requisito de reservas adicionales.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

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San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Randal K. Quarles
Assistant Secretary for International Affairs
U.S. Department of the Treasury
Washington, D.C.

Dear Mr. Quarles:

In connection with the Free Trade Agreement between our Governments signed this day (the "Agreement"), I have the honor to confirm that:

The Government of Costa Rica has been discussing and supports the idea of modifying its current banking law to allow foreign banks to carry out banking activities in Costa Rica through local branches, subject to the same regulatory, capital, and supervisory standards applicable to local banks, and will make reasonable efforts to promote such modification.

The Government of Costa Rica has been discussing and supports the idea of modifying its requirement for private banks to hold additional reserves with state banks under Article 59 of Law No. 1644, and will make reasonable efforts to promote such modification.

I trust that this letter provides the information the United States has sought with regard to the possibility of foreign bank branching in Costa Rica, as well as with regard to the possible modification of the additional reserve requirement.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to refer to discussions between the delegations of the United States and Costa Rica in the course of negotiations regarding Annex 11.13 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:

In paragraph 2 of Section A: Costa Rica of Annex 11.13, Costa Rica has committed to develop a new legal regime applicable to contracts of representation, distribution, or production. In the development of that legal regime Costa Rica shall provide transparency in accordance with or equivalent to that required under Article 11.7 (Transparency in Developing and Applying Regulations) and Chapter Eighteen (Transparency) of the Agreement.

Paragraph 2(a) of Section A: Costa Rica of Annex 11.13 provides that the new legal regime shall apply principles of general contract law and of civil procedure, including the *Código Procesal Civil, Libro I, Título IV, Capítulo V*, to such contracts. The United States and Costa Rica understand that such principles include that, in a dispute, a court may attach the assets of, or require the posting of a guarantee (in the form of a bond or cash deposit) by, the representative, distributor, producer, or principal, as appropriate, in a reasonable amount based on evidence presented by both parties as to actual damages that are likely to be awarded in the final judgment. A representative, distributor, producer, or principal with sufficient assets in Costa Rica to cover all or part of such judgment may choose attachment, a guarantee, or both, if required.

In the case of arbitration, the United States and Costa Rica reaffirm that, consistent with the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* of June 10, 1958, U.S. and Costa Rican courts shall recognize and enforce arbitral awards, except in certain limited circumstances specified in the Convention.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior
Despacho del Ministro

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante de Comercio de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace acusar recibo de su carta con fecha de hoy, en la que se consigna lo siguiente:

> "Tengo el honor de referirme a las discusiones entre las delegaciones de los Estados Unidos y Costa Rica en el curso de las negociaciones relativas al Anexo 11.13 (Compromisos Específicos) del Tratado de Libre Comercio entre nuestros gobiernos firmado esta día (el "Tratado") y proponer lo siguiente:
>
> > En el párrafo 2 de la Sección A: Costa Rica del Anexo 11.13, Costa Rica ha asumido el compromiso de desarrollar un nuevo régimen legal aplicable a los contratos de representación, distribución o fabricación. En el desarrollo de ese régimen legal, Costa Rica proveerá transparencia de conformidad con o de forma equivalente con ese requisito bajo el Artículo 11.7 (Transparencia en el Desarrollo y Aplicación de Regulaciones) y el Capítulo Dieciocho (Transparencia) del Tratado.
> >
> > El párrafo 2(a) de la Sección A: Costa Rica del Anexo 11.13, dispone que el nuevo régimen legal aplicará a dichos contratos los principios generales del derecho contractual y de procedimientos civiles, incluyendo el *Código Procesal Civil, Libro I, Título IV, Capítulo V.* Los Estados Unidos y Costa Rica entienden que tales principios incluyen que, en caso de una disputa, una Corte podrá embargar bienes o requerir el depósito de una garantía (en forma de un título valor o un depósito en efectivo) al representante, distribuidor, fabricante o el principal, según corresponda, de una cantidad razonable fundamentada en la prueba presentada por ambas partes, sobre los daños efectivos que probablemente sean

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

reconocidos en la resolución final. Un representante, distribuidor, fabricante o el principal que tenga suficientes bienes en Costa Rica que cubran todo o parte de dicha resolución, podrá escoger entre un embargo o una garantía, o ambos, si es requerido.

En caso de arbitraje, Estados Unidos y Costa Rica reafirman que, de conformidad con la *Convención sobre el Reconocimiento y Ejecución de Sentencias Arbitrales Extranjeras* del 10 de Junio de 1958, las Cortes de Estados Unidos y de Costa Rica reconocerán y harán cumplir las sentencias arbitrales, excepto en ciertas circunstancias limitadas, especificadas en dicha Convención.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de aceptar sus propuestas en nombre de mi Gobierno y de confirmar que su carta y esta carta de respuesta constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

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San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to refer to discussions between the delegations of the United States and Costa Rica in the course of negotiations regarding Annex 11.13 (Specific Commitments) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:
>
> > In paragraph 2 of Section A: Costa Rica of Annex 11.13, Costa Rica has committed to develop a new legal regime applicable to contracts of representation, distribution, or production. In the development of that legal regime Costa Rica shall provide transparency in accordance with or equivalent to that required under Article 11.7 (Transparency in Developing and Applying Regulations) and Chapter Eighteen (Transparency) of the Agreement.
> >
> > Paragraph 2(a) of Section A: Costa Rica of Annex 11.13 provides that the new legal regime shall apply principles of general contract law and of civil procedure, including the *Código Procesal Civil, Libro I, Título IV, Capítulo V*, to such contracts. The United States and Costa Rica understand that such principles include that, in a dispute, a court may attach the assets of, or require the posting of a guarantee (in the form of a bond or cash deposit) by, the representative, distributor, producer, or principal, as appropriate, in a reasonable amount based on evidence presented by both parties as to actual damages that are likely to be awarded in the final judgment. A representative, distributor, producer, or principal with sufficient assets in Costa Rica to cover all or part of such judgment may choose attachment, a guarantee, or both, if required.
> >
> > In the case of arbitration, the United States and Costa Rica reaffirm that, consistent with the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* of June 10, 1958, U.S. and Costa Rican courts

shall recognize and enforce arbitral awards, except in certain limited circumstances specified in the Convention.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposals on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> The extraction of natural resources (mining), electricity generation, refining of crude oil and its derivatives, hunting, and fishing shall not be considered as services for purposes of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre el Capítulo Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el "Tratado"):
>
> > La extracción de recursos naturales (extracción de minerales e hidrocarburos), la generación de electricidad, el refinamiento de petróleo crudo y sus derivados, caza y pesca no se considerarán servicios para los propósitos de este Tratado.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

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San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > The extraction of natural resources (mining), electricity generation, refining of crude oil and its derivatives, hunting, and fishing shall not be considered as services for purposes of the Agreement.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to sportsbooks or other gambling activities within their respective national territories.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre los Capítulos Diez (Inversión) y Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el "Tratado"):
>
> > Nada en los Capítulos Diez (Inversión) u Once (Comercio Transfronterizo de Servicios) impide que Estados Unidos o Costa Rica adopten, mantengan o apliquen cualquier medida que sea consistente con el Tratado, relacionada con apuestas electrónicas u otras actividades de juegos de azar dentro de sus respectivos territorios nacionales.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to sportsbooks or other gambling activities within their respective national territories.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> A nondiscriminatory indefinite moratorium on strip or open pit mining activities declared in the territory of Costa Rica shall not be deemed to be a non-conforming measure subject to the disciplines of Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services).

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre los Capítulos Diez (Inversión) y Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos, firmado en este día (el "Tratado"):
>
> > Una moratoria indefinida no discriminatoria para las actividades de minería a cielo abierto declarada en el territorio de Costa Rica no se considerará una medida disconforme sujeta a las disciplinas de los Capítulos Diez (Inversión) u Once (Comercio Transfronterizo de Servicios).
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

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San José, Costa Rica

COURTESY TRANSLATION

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > A nondiscriminatory indefinite moratorium on strip or open pit mining activities declared in the territory of Costa Rica shall not be deemed to be a non-conforming measure subject to the disciplines of Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services).
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to the following activities:
>
> - the use of genetic material of wildlife (flora and fauna), wildlife products, and wildlife by-products;
> - the exploration or use of forestry, hydrological, edaphological, archaeological, or zoological resources; and
> - zoning and land use.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

"Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de Estados Unidos y Costa Rica en el curso de las negociaciones sobre los Capítulos Diez (Inversión) y Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros gobiernos,, firmado en este día (el "Tratado"):

Nada en los Capítulos Diez (Inversión) u Once (Comercio Transfronterizo de Servicios) impide que Estados Unidos o Costa Rica adopten, mantengan o apliquen cualquier medida que sea consistente con el Tratado, relacionada con las siguientes actividades:

- el uso de material genético de vida silvestre (flora y fauna), productos de vida silvestre y subproductos de vida silvestre;
- la exploración o el uso de recursos forestales, hidrológicos, edafológicos, arqueológicos o zoológicos; y
- planificación urbana y uso de la tierra.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

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San José, Costa Rica

Ministerio de Comercio Exterior

Despacho del Ministro

Tengo el honor de confirmar que el entendimiento consignado en su carta es compartido por mi Gobierno y que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

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San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapters Ten (Investment) and Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > Nothing in Chapter Ten (Investment) or Eleven (Cross-Border Trade in Services) prevents the United States or Costa Rica from adopting, maintaining, or enforcing any measure consistent with the Agreement relating to the following activities:
> >
> > - the use of genetic material of wildlife (flora and fauna), wildlife products, and wildlife by-products;
> > - the exploration or use of forestry, hydrological, edaphological, archaeological, or zoological resources; and
> > - zoning and land use.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante de Comercio de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el honor de referirme al Anexo 13 (Compromisos Específicos de Costa Rica en Materia de Servicios de Telecomunicaciones) del Tratado de Libre Comercio entre nuestros gobiernos firmado este día (el "Tratado") y proponer lo siguiente:

> Costa Rica ha asumido una obligación en el Tratado de abrir su mercado para el suministro de servicios inalámbricos de telecomunicaciones. Una vez abierto el mercado, los proveedores competitivos de servicios inalámbricos necesitarán ser asignados con bloques del espectro para que puedan suministrar los servicios. La República de Costa Rica deberá, como mínimo, en cumplimiento con su política de asignación de espectro radioeléctrico para promover su uso más eficiente y de conformidad con las normas internacionales y regionales, asegurar que habrá suficientes frecuencias comercialmente relevantes disponibles en el espectro nacional para satisfacer los compromisos de acceso a mercado incluidos en la sección III.2 del Anexo 13. De acuerdo con las normas recomendadas por CITEL y UIT, las frecuencias comercialmente relevantes para el suministro de servicios inalámbricos móviles comerciales se entiende que incluyen los siguientes rangos: 800 – 900 MHz y 1700 – 1999 MHz.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituirán un acuerdo entre nuestros Gobiernos.

Sinceramente;

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I have the honor to refer to Annex 13 (Specific Commitments of Costa Rica on Telecommunications Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:

> Costa Rica has undertaken an obligation in the Agreement to open its market for the supply of wireless telecommunications services. Once the market is open, competitive wireless service suppliers will need to be assigned blocks of spectrum in order to supply services. The Republic of Costa Rica shall, at a minimum, in compliance with its policy to allocate radio-electric spectrum in a manner to promote its most efficient use, and in keeping with international and regional norms, ensure that there will be sufficient, commercially relevant frequencies available in the national spectrum in order to satisfy the market access commitments included in section III.2 of Annex 13. According to CITEL and ITU recommended norms, commercially relevant frequencies for the provision of commercial mobile wireless services are understood to include the following ranges: 800 – 900 MHz, and 1700 – 1999 MHz.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our Governments.

Sincerely,

Alberto Trejos

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to refer to Annex 13 (Specific Commitments of Costa Rica on Telecommunications Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement") and to propose the following:
>
> > Costa Rica has undertaken an obligation in the Agreement to open its market for the supply of wireless telecommunications services. Once the market is open, competitive wireless service suppliers will need to be assigned blocks of spectrum in order to supply services. The Republic of Costa Rica shall, at a minimum, in compliance with its policy to allocate radio-electric spectrum in a manner to promote its most efficient use, and in keeping with international and regional norms, ensure that there will be sufficient, commercially relevant frequencies available in the national spectrum in order to satisfy the market access commitments included in section III.2 of Annex 13. According to CITEL and ITU recommended norms, commercially relevant frequencies for the provision of commercial mobile wireless services are understood to include the following ranges: 800 – 900 MHz, and 1700 – 1999 MHz.
>
> I have the honor to propose that this letter and your letters of confirmation in reply shall constitute an agreement between our Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Robert B. Zoellick

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Alberto Trejos
Minister of Foreign Trade
San Jose, Costa Rica

Dear Minister Trejos:

I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> Under tariff item 9802.00.80 of the Harmonized Tariff Schedule of the United States (commonly referred to as the "807 program"), the United States assesses its most-favored-nation duties on imports of apparel goods assembled abroad from U.S.-formed and cut components only on the difference between the full value of the imported goods and the value of the U.S. components. Nothing in the Agreement modifies the availability of this program.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Ministerio de Comercio Exterior

Despacho del Ministro

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante Comercial de los Estados Unidos
Washigton, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de tener conocimiento de su carta con fecha de hoy, que dice lo siguiente:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Costa Rica en el curso de las negociaciones sobre el Capítulo Tres, Sección G (Textiles y Vestido) del Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el "Tratado") .
>
> > Bajo la fracción arancelaria 9802.00.80 del Sistema Armonizado (HTS) de los Estados Unidos (comúnmente llamado el "programa 807"), los Estados Unidos estiman sus aranceles NMF sobre las importaciones de prendas de vestir confeccionadas en el exterior a partir de componentes formados y cortados en los Estados Unidos únicamente sobre la diferencia entre el valor total de la mercancía importada y el valor del componente estadounidense. Nada en este Tratado modifica la disponibilidad de este programa.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituyan un acuerdo entre nuestros dos Gobiernos. "

Tengo el honor de confirmar que el entendimiento al que se hace referencia es su carta es compartido por mi Gobierno y que su carta y esta respuesta constituyan un acuerdo entre nuestros Gobiernos respectivos.

Atentamente,

Alberto Trejos

MINISTERIO DE COMERCIO EXTERIOR
MINISTRO
SAN JOSE - COSTA RICA

Tel.: (506) 257-0705 / Fax: (506) 233-9176 / e-mail: atrejos@comex.go.cr
San José, Costa Rica

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Costa Rica in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > Under tariff item 9802.00.80 of the Harmonized Tariff Schedule of the United States (commonly referred to as the "807 program"), the United States assesses its most-favored-nation duties on imports of apparel goods assembled abroad from U.S.-formed and cut components only on the difference between the full value of the imported goods and the value of the U.S. components. Nothing in the Agreement modifies the availability of this program.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our respective Governments.

Sincerely,

Alberto Trejos

Secretaría de Estado de Industria y Comercio
Santo Domingo
REPUBLICA DOMINICANA

05 de agosto del 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos,
Washington, D.C.

Estimado Embajador Zoellick:

Por medio de la presente tengo el honor de confirmar el siguiente entendimiento logrado entre las delegaciones de la República Dominicana y los Estados Unidos en el curso de las negociaciones del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos que se suscribe en el día de hoy (el "Tratado"):

> La República Dominicana deberá asegurar que, para la fecha de entrada en vigor del Tratado, su sistema de licencias de importación para los productos agrícolas de los Estados Unidos sea transparente y que las licencias de importación sean emitidas de manera no discriminatoria y en tiempo oportuno. En particular, la República Dominicana no deberá otorgar o denegar licencias de importación basadas en preocupaciones sanitarias o fitosanitarias, requisitos de compras domesticas o criterios discrecionales. La República Dominicana deberá aplicar cualquier medida sanitaria y fitosanitaria que imponga de manera separada a su sistema de licencias de importación.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Sonia Guzmán de Hernández

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

> The Dominican Republic shall ensure that, by the date of entry into force of the Agreement, its import licensing system for U.S. agricultural goods is transparent and that import licenses are issued in a timely and nondiscriminatory manner. In particular, the Dominican Republic shall not grant or deny import licenses based on sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. The Dominican Republic shall enforce any sanitary or phytosanitary measures that it imposes separately from its import-licensing system.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Sonia Guzmán de Hernández

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández
Secretary of State of Industry and Commerce
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):
>
> > The Dominican Republic shall ensure that, by the date of entry into force of the Agreement, its import licensing system for U.S. agricultural goods is transparent and that import licenses are issued in a timely and nondiscriminatory manner. In particular, the Dominican Republic shall not grant or deny import licenses based on sanitary or phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. The Dominican Republic shall enforce any sanitary or phytosanitary measures that it imposes separately from its import-licensing system.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández
Secretary of State of Industry and Commerce
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding Article 11.2 (National Treatment) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

Articles 135, 137, and 141 of the Labor Code of the Dominican Republic:

- treat as employees only natural persons under the dependency and immediate or delegated direction of the employer;
- do not apply to enterprises organized under the laws of a foreign country or their employees;
- do not apply to services supplied from the territory of a foreign country into the territory of the Dominican Republic;
- do not govern services provided by a liberal professional who practices independently; and
- do not apply to services supplied on a temporary basis.

I have the further honor to confirm, for greater certainty, our shared understanding that nothing in the preceding statements regarding the cited articles of the Labor Code is inconsistent with application of these articles to natural persons under the dependency and immediate or delegated direction of enterprises established in the Dominican Republic.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute and agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

Secretaría de Estado de Industria y Comercio
Santo Domingo
REPUBLICA DOMINICANA

05 de agosto del 2004

Honorable Robert B. Zoellick
Representante Comercial de
los Estados Unidos de América
Washington, D.C.

Estimado Embajador Zoellick:

Me complace reconocer su carta fechada en el día de hoy, que lee de la siguiente manera:

"Tengo el honor de confirmar el entendimiento alcanzado entre las delegaciones de los Estados Unidos y de la República Dominicana en el curso de las negociaciones acerca del Artículo 11.2 (Trato Nacional) del Tratado de Libre Comercio República Dominicana-Centroamérica- Estados Unidos firmado el día de hoy (el "Tratado").

Los Artículos 135, 137 y 141 del Código Laboral de la República Dominicana:

- tratan como empleados solo a las personas naturales bajo dependencia o dirección inmediata o delegada del empleador;
- no aplican a las empresas organizadas bajo leyes extranjeras o a sus empleados;
- no aplican a los servicios suministrados desde el territorio de un país extranjero al territorio de la Republica Dominicana;
- no rigen para los servicios suministrados por un profesional liberal que ejerce de manera independiente; y
- no aplican a los servicios suministrados de forma temporal.

Tengo además el honor de confirmar, para mayor certeza, nuestro entendimiento común de que nada en las declaraciones anteriores relativas a los artículos citados del Código Laboral es inconsistente con la aplicación de esos artículos a las personas naturales bajo la dependencia o dirección inmediata o delegada de empresas establecidas en la República Dominicana.

Secretaría de Estado de Industria y Comercio
Santo Domingo
REPUBLICA DOMINICANA

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta constituyan un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar que el entendimiento a que se refiere en su carta es compartido por mi Gobierno, y que su carta y esta respuesta constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Sonia Guzmán de Hernández

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and the Dominican Republic in the course of negotiations regarding Article 11.2 (National Treatment) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):
>
> Articles 135, 137, and 141 of the Labor Code of the Dominican Republic:
>
> - treat as employees only natural persons under the dependency and immediate or delegated direction of the employer;
> - do not apply to enterprises organized under the laws of a foreign country or their employees;
> - do not apply to services supplied from the territory of a foreign country into the territory of the Dominican Republic;
> - do not govern services provided by a liberal professional who practices independently; and
> - do not apply to services supplied on a temporary basis.
>
> I have the further honor to confirm, for greater certainty, our shared understanding that nothing in the preceding statements regarding the cited articles of the Labor Code is inconsistent with application of these articles to natural persons under the dependency and immediate or delegated direction of enterprises established in the Dominican Republic.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute and agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Sonia Guzmán de Hernández

Secretaría de Estado de Industria y Comercio
Santo Domingo
REPUBLICA DOMINICANA

05 de agosto del 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos,
Washington, D.C.

Estimado Embajador Zoellick:

Por medio de la presente tengo el honor de confirmar los siguientes entendimientos logrados entre las delegaciones de la República Dominicana y los Estados Unidos en el curso de las negociaciones sobre el Capítulo Quince (Derechos de Propiedad Intelectual) del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos que se suscribe en el día de hoy (el "Tratado"):

> En el cumplimiento de las obligaciones incurridas por virtud del Artículo 15.11.26 (Ejecución del Cumplimiento de los Derechos de Propiedad Intelectual), la República Dominicana tomará todas las medidas necesarias para frenar la piratería de transmisión televisiva (la transmisión no autorizada de materiales protegidos por el derecho de autor) por parte de estaciones de transmisión propietarias de licencias, y de garantizar un impedimento a incumplimientos en el futuro, según lo requiera el Capítulo Quince. Dentro de los próximos 60 días a partir del día de hoy, y finalizando en el momento que nuestros Gobiernos posteriormente puedan convenir, la República Dominicana presentará un informe trimestral por escrito a los Estados Unidos que describa los avances logrados por la República Dominicana en la persecución de la piratería de la transmisión televisiva, incluyendo investigaciones y acciones criminales, administrativas y civiles específicas. Dichos informes servirán para complementar el cumplimiento del Artículo 15.11.3, que dispone que las Partes pongan a disposición del público información sobre la ejecución de los derechos de propiedad intelectual.

Al implementar el Artículo 15.11.26 y el Artículo 15.11.6 al 15.11.16, la República Dominicana hará todo esfuerzo por lograr inmediatamente la resolución expedita de casos criminales pendientes de violación al derecho de autor, incluyendo aquellos casos que están pendientes en el tribunal de primera instancia además de los que se encuentren en apelación a la fecha de hoy. A pesar de que la República Dominicana respeta la independencia de la judicatura, el Gobierno reconoce el hecho de que existe una necesidad significativa de mejorar la agilidad de la acción judicial para cumplir todas las obligaciones del Capítulo Quince.

Secretaría de Estado de Industria y Comercio
Santo Domingo
REPUBLICA DOMINICANA

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos.

Muy atentamente,

Sonia Guzmán de Hernández

COURTESY TRANSLATION

August 5, 2004

The HonorableRobert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I have the honor to confirm the following understandings reached between the delegations of the Dominican Republic and the United States in the course of negotiations regarding Chapter Fifteen (Intellectual Property Rights) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):

> In fulfilling its obligations under Article 15.11.26 (Enforcement of Intellectual Property Rights), the Dominican Republic will take all necessary steps to halt television broadcasting piracy (the unauthorized broadcasting of copyrighted materials) by licensed broadcasting stations and to provide a deterrent to future infringements, as required by Chapter Fifteen. Beginning within 60 days from today and ending at such time as our Governments may later agree, the Dominican Republic shall provide a written quarterly report to the United States describing progress that the Dominican Republic has made in pursuing television broadcasting piracy, including specific criminal, administrative, and civil investigations and actions. These reports will serve to complement compliance with Article 15.11.3, which calls on the Parties to make information on intellectual property rights enforcement publicly available.

In implementing Article 15.11.26 and Article 15.11.6 through 15.11.16 , the Dominican Republic shall make every effort to immediately achieve the expeditious resolution of pending criminal copyright infringement cases, including those pending in the court of first instance as well as those on appeal as of today's date. While the Dominican Republic respects the independence of the judiciary, the Government acknowledges that there is a significant need for improvement in the promptness of judicial action in order to meet all the obligations of Chapter Fifteen.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Sonia Guzmán de Hernández

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández
Secretary of State of Industry and Commerce
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understandings reached between the delegations of the Dominican Republic and the United States in the course of negotiations regarding Chapter Fifteen (Intellectual Property Rights) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"):
>
> > In fulfilling its obligations under Article 15.11.26 (Enforcement of Intellectual Property Rights), the Dominican Republic will take all necessary steps to halt television broadcasting piracy (the unauthorized broadcasting of copyrighted materials) by licensed broadcasting stations and to provide a deterrent to future infringements, as required by Chapter Fifteen. Beginning within 60 days from today and ending at such time as our Governments may later agree, the Dominican Republic shall provide a written quarterly report to the United States describing progress that the Dominican Republic has made in pursuing television broadcasting piracy, including specific criminal, administrative, and civil investigations and actions. These reports will serve to complement compliance with Article 15.11.3, which calls on the Parties to make information on intellectual property rights enforcement publicly available.
>
> In implementing Article 15.11.26 and Article 15.11.6 through 15.11.16 , the Dominican Republic shall make every effort to immediately achieve the expeditious resolution of pending criminal copyright infringement cases, including those pending in the court of first instance as well as those on appeal as of today's date. While the Dominican Republic respects the independence of the judiciary, the Government acknowledges that there is a significant need for improvement in the promptness of judicial action in order to meet all the obligations of Chapter Fifteen.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understandings referred to in your letter are shared by my Government, and that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Sonia Guzmán de Hernández
Secretary of State of Industry and Commerce
Santo Domingo, Dominican Republic

Dear Secretary Guzmán:

In the course of negotiations between the United States and the Dominican Republic regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"), representatives of the Dominican Republic noted that, under the Caribbean Basin Trade Partnership Act (CBTPA), articles produced in the Dominican Republic that are currently eligible for CBTPA benefits will no longer be eligible for these benefits once the Agreement enters into force. The Dominican representatives expressed concern that, as a result, articles that are co-produced by enterprises in the Dominican Republic and the Republic of Haiti will also become ineligible for CBTPA benefits.

I am pleased to confirm that the Administration intends to work with the Congress to amend the CBTPA to allow articles currently eligible for CBTPA benefits that are co-produced by enterprises located in the territory of a Party to the Agreement and in a CBTPA beneficiary country to continue to be eligible for such benefits after the Agreement enters into force.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

indotel
Instituto Dominicano de las Telecomunicaciones

05 de agosto del 2004

Señora
Regina K. Vargo
Representante Comercial Adjunto
de Estados Unidos,
Washington, D.C.

Estimada Señora Vargo:

En el curso de las negociaciones entre los Estados Unidos y la República Dominicana con respecto al Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos que se suscribe en el día de hoy (el "Tratado"), las delegaciones de la República Dominicana y los Estados Unidos discutieron la manera en que la República Dominicana regula su industria de las telecomunicaciones, y cómo el enfoque de la República Dominicana en cuanto a la regulación del sector cumple con las obligaciones establecidas en el Capítulo Trece (Telecomunicaciones) del Tratado.

Ambas delegaciones reconocieron el hecho de que la República Dominicana otorga mucha importancia al desarrollo y a la modernización de su infraestructura de telecomunicaciones. La delegación de la República Dominicana indicó lo siguiente:

- La Ley General de Telecomunicaciones No. 153-98 dispone que la industria de las telecomunicaciones de la República Dominicana opere en base a los principios de servicio universal, del ingreso al mercado sin restricciones, de la libertad de negociación tarifaria, la libertad de contratación, la mínima regulación, y a un ente regulador fuerte y autónomo.

- La Ley No. 153-98 está concebida para promover la competencia abierta, leal y sostenible, con el objetivo de aumentar la teledensidad, mejorar el servicio, y promover la innovación.

- Las políticas regulatorias del Gobierno han beneficiado el crecimiento del sector de las telecomunicaciones de la República Dominicana; han logrado atraer a nuevas operadoras, han aumentado la inversión por parte de las operadoras establecidas, han promovido el impresionante crecimiento de la teledensidad inalámbrica, y han elevado tanto el volumen como la variedad de los servicios de telecomunicaciones.

Av. Abraham Lincoln, No. 962, Edificio Osir
Santo Domingo, República Dominicana
Tel.: (809) 732-5555 • Fax: (809) 732-39(
E-mail: indotel@indotel.org.do
Web: www.indotel.org.do

- El enfoque de la República Dominicana de promover la competencia y limitar la regulación innecesaria ha dado como resultado que el sector se convirtiera en la segunda fuente más importante de inversión extranjera.

La República Dominicana planea continuar aplicando una estrategia de desarrollo para su sector de telecomunicaciones que promueva el servicio universal, mejore la teledensidad, y promueva la competencia – objetivos plenamente compatibles con los del Capítulo Trece del Tratado. El capítulo no establece un solo enfoque a la regulación, sino que permite que cada una de las Partes disponga de un elevado nivel de flexibilidad para determinar cómo cumplir los requerimientos del capítulo. La República Dominicana se propone cumplir varias obligaciones claves establecidas por el capítulo a través de la competencia en base al mercado, negociaciones entre suplidores y otras empresas, y negociaciones entre los suplidores mismos. En ese sentido, las negociaciones comerciales constituyen una valiosa herramienta en la formulación de un mercado competitivo de comunicaciones. La República Dominicana, tal como lo dispone su legislación nacional, se propone utilizar medidas regulatorias cuando la competencia y otras fuerzas del mercado y las negociaciones comerciales no logren cumplir con sus obligaciones bajo el capítulo.

La presente carta de ninguna manera modifica los derechos y las obligaciones de la República Dominicana y de los Estados Unidos bajo el Tratado.

Mucho le agradeceré su confirmación de que su Gobierne comparta las opiniones con respecto a los objetivos y las obligaciones establecidas en el Capítulo Trece según se indica en la presente carta.

Sinceramente,

Orlando Jorge Mera

Av. Abraham Lincoln, No. 962, Edificio Osiris
Santo Domingo, República Dominicana
Tel.: (809) 732-5555 • Fax: (809) 732-390
E-mail: indotel@indotel.org.do
Web: www.indotel.org.do

COURTESY TRANSLATION

August 5, 2004

Ms. Regina K. Vargo
Assistant U.S. Trade Representative
Washington, D.C.

Dear Ms. Vargo:

In the course of negotiations between the United States and the Dominican Republic regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"), the delegations of the Dominican Republic and the United States discussed the manner in which the Dominican Republic regulates its telecommunications industry and how the Dominican Republic's approach to regulation in the sector comports with the obligations set out in Chapter Thirteen (Telecommunications) of the Agreement.

Both delegations recognized that the Dominican Republic attaches great importance to the development and modernization of its telecommunications infrastructure. The delegation of the Dominican Republic noted that:

- General Telecommunication Law No. 153-98 provides for the Dominican Republic's telecommunications industry to operate based on principles of universal service, unrestricted market entrance, freely negotiated tariffs, freedom of contract, minimum regulation, and a strong and autonomous regulatory body.

- Law No. 153-98 is designed to promote open, fair, and sustainable competition, with the objective of increasing teledensity, improving service, and spurring innovation.

- The Government's regulatory policies have helped the Dominican Republic's telecommunications sector grow, attract new operators, increase investment by established operators, promote impressive growth in wireless teledensity, and boost both the volume and variety of telecommunications services.

- The Dominican Republic's approach of encouraging competition and limiting unnecessary regulation has resulted in the sector becoming the country's second most important source of foreign investment.

The Dominican Republic plans to continue to apply a development strategy for its telecommunications sector that fosters universal service, improves teledensity, and promotes competition – objectives that are fully compatible with those of Chapter Thirteen of the Agreement. The chapter does not prescribe a single approach to regulation, but rather allows each Party a substantial degree of flexibility in determining how to meet the chapter's

requirements. The Dominican Republic intends to satisfy several key obligations established by the chapter through market-based competition, negotiations between suppliers and other enterprises, and negotiations between suppliers themselves. Thus, commercial negotiations constitute a valuable tool in shaping a competitive communications marketplace. The Dominican Republic, as provided under its domestic law, intends to use regulatory measures when competition and other market forces and commercial negotiations cannot satisfy its obligations under the chapter.

This letter in no way modifies the rights and obligations of the Dominican Republic and the United States under the Agreement.

I would be grateful if you could confirm that your Government shares the views regarding the objectives and obligations of Chapter Thirteen set out in this letter.

Sincerely,

Orlando Jorge Mera

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

Lic. Orlando Jorge Mera
Secretary of State
President of the Council of Directors
INDOTEL
Santo Domingo, Dominican Republic

Dear Mr. Mera:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "In the course of negotiations between the United States and the Dominican Republic regarding the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement"), the delegations of the Dominican Republic and the United States discussed the manner in which the Dominican Republic regulates its telecommunications industry and how the Dominican Republic's approach to regulation in the sector comports with the obligations set out in Chapter Thirteen (Telecommunications) of the Agreement.
>
> Both delegations recognized that the Dominican Republic attaches great importance to the development and modernization of its telecommunications infrastructure. The delegation of the Dominican Republic noted that:
>
> - General Telecommunication Law No. 153-98 provides for the Dominican Republic's telecommunications industry to operate based on principles of universal service, unrestricted market entrance, freely negotiated tariffs, freedom of contract, minimum regulation, and a strong and autonomous regulatory body.
>
> - Law No. 153-98 is designed to promote open, fair, and sustainable competition, with the objective of increasing teledensity, improving service, and spurring innovation.
>
> - The Government's regulatory policies have helped the Dominican Republic's telecommunications sector grow, attract new operators, increase investment by established operators, promote impressive growth in wireless teledensity, and boost both the volume and variety of telecommunications services.
>
> - The Dominican Republic's approach of encouraging competition and limiting unnecessary regulation has resulted in the sector becoming the country's second most important source of foreign investment.

The Dominican Republic plans to continue to apply a development strategy for its telecommunications sector that fosters universal service, improves teledensity, and promotes competition – objectives that are fully compatible with those of Chapter Thirteen of the Agreement. The chapter does not prescribe a single approach to regulation, but rather allows each Party a substantial degree of flexibility in determining how to meet the chapter's requirements. The Dominican Republic intends to satisfy several key obligations established by the chapter through market-based competition, negotiations between suppliers and other enterprises, and negotiations between suppliers themselves. Thus, commercial negotiations constitute a valuable tool in shaping a competitive communications marketplace. The Dominican Republic, as provided under its domestic law, intends to use regulatory measures when competition and other market forces and commercial negotiations cannot satisfy its obligations under the chapter.

This letter in no way modifies the rights and obligations of the Dominican Republic and the United States under the Agreement.

I would be grateful if you could confirm that your Government shares the views regarding the objectives and obligations of Chapter Thirteen set out in this letter."

I have the honor to confirm that my Government shares the views regarding the objectives and obligations of Chapter Thirteen set out in your letter.

Sincerely,

Regina K. Vargo

Regina K. Vargo

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Eduardo Ayala Grimaldi
Vice Minister of Economy
San Salvador, El Salvador

Dear Vice Minister Ayala Grimaldi:

In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on poultry trade
2. Letter on Labor Code
3. Letter on public utility services

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

Enclosures

Secretaría de Estado
Despacho Señor Ministro

Ministerio de Economía

05 de agosto de 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "En relación con la firma del Tratado de Libre Comercio Republica Dominicana – Centro América – Estados Unidos (el "Tratado"), tengo el honor de proponer que las cartas fechadas 28 de mayo de 2004, que firmaron nuestros gobiernos en conexión con la firma del Tratado de Libre Comercio Centroamérica – Estados Unidos en esa misma fecha, son igualmente válidas y aplicables con respecto al Tratado. Estas cartas son:
>
> 1. Carta sobre productos avícolas
> 2. Carta sobre el Código de Trabajo
> 3. Carta sobre Servicios Públicos
>
> Se adjunta una copia de cada una de las cartas.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y de confirmar que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente

Eduardo Ayala Grimaldi

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:
>
> 1. Letter on poultry trade
> 2. Letter on Labor Code
> 3. Letter on public utility services
>
> A copy of each letter is enclosed.
>
> I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Eduardo Ayala Grimaldi

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D C. 20508

May 28, 2004

The Honorable Miguel Lacayo
Minister of Economy
San Salvador, El Salvador

Dear Minister Lacayo:

I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> The United States and El Salvador pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Secretaría de Estado
Despacho Señor Ministro

Ministerio de Economía

28 de Mayo de 2004

Honorable Robert B. Zoellick
Representante de Comercio de los Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de fecha de hoy, la cual se lee como sigue:

"Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y El Salvador en el curso de las negociaciones relativas al Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el "Tratado"):

> "Los Estados Unidos y El Salvador se comprometen a instar a sus agencias especializadas a implementar el trabajo técnico y científico orientado a lograr un acceso a mercados para que el comercio de productos avícolas bajo este Tratado, sea de beneficio mutuo."

Tengo el honor de proponer que esta carta y vuestra carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en vuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

Miguel Lacayo

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > The United States and El Salvador pledge to urge their specialized agencies to implement technical and scientific work dedicated to achieving market access to make trade in poultry products under the Agreement of mutual benefit.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Miguel Lacayo

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Miguel Lacayo
Minister of Economy
San Salvador, El Salvador

Dear Minister Lacayo:

I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) and Annex I of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> Articles 7 and 10 of the *Código de Trabajo* are not inconsistent with Chapter Eleven (Cross-Border Trade in Services) of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Secretaría de Estado
Despacho Señor Ministro

Ministerio de Economía

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante de Comercio de los Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de fecha de hoy, la cual se lee como sigue:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y El Salvador en el curso de las negociaciones relativas al Capítulo Once (Comercio Transfronterizo de Servicios) y el Anexo I del Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el "Tratado"):
>
> Los Artículos 7 y 10 del Código de Trabajo no son inconsistentes con el Capítulo Once (Comercio Transfronterizo de Servicios) del Tratado.
>
> Tengo el honor de proponer que esta carta y vuestra carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en vuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

Miguel Lacayo

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) and Annex I of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > Articles 7 and 10 of the *Código de Trabajo* are not inconsistent with Chapter Eleven (Cross-Border Trade in Services) of the Agreement.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Miguel Lacayo

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Miguel Lacayo
Minister of Economy
San Salvador, El Salvador

Dear Minister Lacayo:

I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Ten of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> For greater certainty, nothing in the Agreement shall be construed to require a Party to privatize public utility services supplied in the exercise of governmental authority.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Secretaría de Estado
Despacho Señor Ministro

Ministerio de Economía

28 de Mayo de 2004

Honorable Robert B. Zoellick
Representante de Comercio de los Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de fecha de hoy, la cual se lee como sigue:

> "Tengo el honor de confirmar el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y El Salvador en el curso de las negociaciones relativas al Capítulo Diez del Tratado de Libre Comercio entre nuestros Gobiernos firmado este día (el "Tratado"):
>
> Para mayor certeza, nada en este Tratado se interpretará en el sentido de requerir a una Parte privatizar los servicios públicos suministrados en el ejercicio de facultades gubernamentales.
>
> Tengo el honor de proponer esta carta y vuestra carta de confirmación en respuesta, constituirán un acuerdo entre nuestros Gobiernos."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en vuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

Miguel Lacayo

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and El Salvador in the course of negotiations regarding Chapter Ten of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > For greater certainty, nothing in the Agreement shall be construed to require a Party to privatize public utility services supplied in the exercise of governmental authority.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Miguel Lacayo

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Eduardo Ayala Grimaldi
Vice Minister of Economy
San Salvador, El Salvador

Dear Vice Minister Ayala Grimaldi:

This letter describes the tariff treatment to be applied by the United States to certain finished confectionery products under the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement").

Finished confectionary products classified in headings 1704 and 1806 of the Harmonized Tariff Schedule of the United States ("HTSUS") that are excluded from Additional U.S. Note 2 to chapter 17 of the HTSUS, Additional U.S. Note 3 to chapter 17 of the HTSUS, and Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS are not subject to the tariff-rate quota on sugar goods established in subparagraph 3 of Appendix I to the Schedule of the United States to Annex 3.3. Instead, such goods will be treated in accordance with the provisions of staging category A of Annex 3.3.

Additional U.S. Note 2 to chapter 17 of the HTSUS, which covers articles containing over 65 percent sugar, excludes products "prepared for marketing to the ultimate consumer in the identical form and package in which imported."

Additional U.S. Note 3 to chapter 17 of the HTSUS, which covers articles containing over 10 percent sugar, excludes articles that are prepared for marketing to the ultimate consumer in the identical form and package in which imported provided they are "not principally of crystalline structure or not in dry amorphous form."

Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS, which cover chocolate preparations, exclude "articles for consumption at retail as candy or confection."

I trust that this explanation clarifies the tariff treatment to be applied by the United States to these confectionery goods under the Agreement.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Eduardo Ayala Grimaldi
Vice Minister of Economy
San Salvador, El Salvador

Dear Vice Minister Ayala Grimaldi:

I have the honor to refer to discussions between the delegations of the United States and El Salvador in the course of negotiations regarding Article 13.4.5(a)(iv) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:

> Provided that any major supplier of public telecommunications services in the territory of El Salvador does not charge rates above the rates it charged to suppliers of public telecommunications services of the United States as of December 31, 2003 for interconnection of cross-border services, the United States will forego, until the earlier of (a) the date that is two years after the date of entry into force of the Agreement, or (b) January 1, 2007, use of the dispute settlement procedures of the Agreement with respect to El Salvador's obligation to ensure the provision of cost-oriented rates.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

Secretaría de Estado
Despacho Señor Ministro

Ministerio de Economía

05 de agosto de 2004

El Honorable Robert B. Zoellick
Representante de Comercio de los Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de reconocer vuestra carta de hoy, la cual se lee como sigue:

> "Tengo el honor de referirme a las discusiones entre las delegaciones de los Estados Unidos y El Salvador, en el curso de las negociaciones relativas al Artículo 13.4.5.(a) (iv) del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos firmado este día (el "Tratado") y proponemos lo siguiente:
>
> Siempre que cualquier proveedor dominante de servicios públicos de telecomunicaciones en el territorio de El Salvador no cobre las tarifas por encima de las tarifas cobradas a los proveedores de servicios públicos de telecomunicaciones de los Estados Unidos al 31 de diciembre de 2003, por servicios de interconexión transfronteriza, los Estados Unidos renunciará, hasta que ocurra el primero de (a) dos años posteriores a la fecha de entrada en vigor del Tratado, o (b) el 1 de enero de 2007, a utilizar los procedimientos de solución de controversias del Tratado con respecto a la obligación de El Salvador de asegurar la provisión de tarifas basadas en costos.
>
> Tengo el honor de proponer que esta carta y vuestra carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos, las cuales entrarán en vigor en la fecha de entrada en vigor este Tratado."

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituyen un acuerdo entre nuestros Gobiernos, las cuales entrarán en vigor en la fecha de entrada en vigor este Tratado.

Sinceramente,

Eduardo Ayala Grimaldi

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to refer to discussions between the delegations of the United States and El Salvador in the course of negotiations regarding Article 13.4.5(a)(iv) of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:
>
> > Provided that any major supplier of public telecommunications services in the territory of El Salvador does not charge rates above the rates it charged to suppliers of public telecommunications services of the United States as of December 31, 2003 for interconnection of cross-border services, the United States will forego, until the earlier of (a) the date that is two years after the date of entry into force of the Agreement, or (b) January 1, 2007, use of the dispute settlement procedures of the Agreement with respect to El Salvador's obligation to ensure the provision of cost-oriented rates.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Eduardo Ayala Grimaldi

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Eduardo Sperisen Yurt
Vice Minister of Integration and Foreign Trade
Guatemala City, Guatemala

Dear Vice Minister Sperisen:

In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on tariff treatment of certain confectionery products
2. Letter on insurance branching commitments
3. Letter on establishment of foreign financial institutions in the United States

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

Enclosures

República de Guatemala
Ministerio de Economía

5 de agosto de 2004

Honorable Robert B. Zoellick
Representante de Comercio de los Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Estoy complacido de acusar recibo de su carta del día de hoy, que dice lo siguiente:

"Con relación a la suscripción del Tratado de Libre Comercio República Dominicana – Centroamérica-Estados Unidos (el "Tratado"), tengo el honor de proponer que las cartas, con fecha de 28 de mayo, que nuestros Gobiernos suscribieron en conexión con la firma del Tratado de Libre Comercio Estados Unidos – Centroamérica en la misma fecha, sean igualmente válidas y aplicables con respecto al Acuerdo. Estas cartas son:

1. Carta sobre el tratamiento arancelario para algunos productos de confitería
2. Carta sobre compromisos de sucursales de aseguradores
3. Carta sobre el establecimiento de instituciones financieras extranjeras en los Estados Unidos.

Se adjunta una copia de cada carta.

Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta, constituirá un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituirán un acuerdo entre nuestros dos Gobiernos.

Atentamente,

Eduardo Sperisen Yurt

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:
>
> 1. Letter on tariff treatment of certain confectionery products
> 2. Letter on insurance branching commitments
> 3. Letter on establishment of foreign financial institutions in the United States
>
> A copy of each letter is enclosed.
>
> I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Eduardo Sperisen Yurt

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Marcio Cuevas
Minister of Economy
Guatemala City, Guatemala

Dear Minister Cuevas:

This letter describes the tariff treatment to be applied by the United States to certain finished confectionery products under the Free Trade Agreement between our Governments signed this day (the "Agreement").

Finished confectionary products classified in headings 1704 and 1806 of the Harmonized Tariff Schedule of the United States ("HTSUS") that are excluded from Additional U.S. Note 2 to chapter 17 of the HTSUS, Additional U.S. Note 3 to chapter 17 of the HTSUS, and Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS are not subject to the tariff-rate quota on sugar goods established in subparagraph 3 of Appendix I to the Schedule of the United States to Annex 3.3. Instead, such goods will be treated in accordance with the provisions of staging category A of Annex 3.3.

Additional U.S. Note 2 to chapter 17 of the HTSUS, which covers articles containing over 65 percent sugar, excludes products "prepared for marketing to the ultimate consumer in the identical form and package in which imported."

Additional U.S. Note 3 to chapter 17 of the HTSUS, which covers articles containing over 10 percent sugar, excludes articles that are prepared for marketing to the ultimate consumer in the identical form and package in which imported provided they are "not principally of crystalline structure or not in dry amorphous form."

Additional U.S. Notes 2 and 3 to chapter 18 of the HTSUS, which cover chocolate preparations, exclude "articles for consumption at retail as candy or confection."

I trust that this explanation clarifies the tariff treatment to be applied by the United States to these confectionery goods under the Agreement.

Sincerely,

Robert B. Zoellick

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Marcio Cuevas
Minister of Economy
Guatemala City, Guatemala

Dear Minister Cuevas:

I have the honor to confirm the following understanding reached between the delegations of the United States and Guatemala in the course of negotiations regarding the Insurance entry in Section A of Guatemala's Schedule to Annex III (Financial Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> Insurance branches, when permitted, shall be subject to the requirements established in Guatemala's insurance legislation.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

República de Guatemala
Ministerio de Economía

28 de mayo 2004

Honorable Robert B. Zoellick
Representante de Comercio de Estados Unidos
Washington, D.C.

Estimado Embajador Zoellick:

Estoy complacido de acusar recibo de su nota del día de hoy, que dice lo siguiente:

"Tengo el honor de confirmar el siguiente entendimiento entre las delegaciones de Estados Unidos y Guatemala, en el curso de las negociaciones acerca del tema de Seguros en la Sección A de la lista de Guatemala al anexo III (Servicios Financieros) del Tratado de Libre Comercio entre nuestros Gobiernos, firmado éste día (El "Tratado").

Cuando se permita el establecimiento de sucursales de Aseguradoras extranjeras en Guatemala, éstas deberán sujetarse a los requisitos establecidos en la legislación guatemalteca.

Tengo el honor de proponer que esta nota y su carta de respuesta en confirmación deberá constituir un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de confirmar el entendimiento referido en su nota que es compartida por mi Gobierno, y que la misma y su respuesta deberán constituir un acuerdo entre nuestros Gobiernos.

Atentamente,

Marcio Cuevas
Ministro de Economía

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Guatemala in the course of negotiations regarding the Insurance entry in Section A of Guatemala's Schedule to Annex III (Financial Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > Insurance branches, when permitted, shall be subject to the requirements established in Guatemala's insurance legislation.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Marcio Cuevas

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Marcio Cuevas
Minister of Economy
Guatemala City, Guatemala

Dear Minister Cuevas:

During the course of negotiations regarding Chapter Twelve (Financial Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"), the delegation of Guatemala expressed interest in the ability of Guatemalan financial institutions to establish operations in the United States.

The United States takes note of Guatemala's interest and affirms its policy of maintaining open markets in financial services. A large number of foreign financial institutions have established operations in the United States. In particular, a large number of foreign banks and insurance companies have offices in the United States and foreign banks and insurance companies, including Guatemalan banks and insurance companies, have the opportunity to establish operations in every state, provided that such entities meet the relevant prudential criteria.

Along with open markets, strong regulatory and supervisory standards promote a robust financial system. In this regard, the Agreement does not restrict the ability of the United States to apply prudential measures governing the supply of financial services in the United States, including with respect to the establishment of financial institutions in the United States. The United States remains ready to help Guatemalan financial institutions to continue making progress toward meeting federal and state prudential requirements through technical assistance to Guatemala concerning the regulation and supervision of financial institutions.

I trust that this letter provides further evidence of the importance the United States attaches to open markets and its commitment to maintaining an open environment for foreign financial institutions.

Sincerely,

Robert B. Zoellick
United States Trade Representative

Randal K. Quarles
Assistant Secretary for International Affairs
U.S. Department of the Treasury

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Norman Garcia
Minister of Industry and Trade
Tegucigalpa, Honduras

Dear Minister Garcia:

In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:

1. Letter on nurses
2. Letter on textile fabrics study

A copy of each letter is enclosed.

I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

Enclosures

República de Honduras
Secretaría de Industria y Comercio

5 de agosto de 2004

El Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington, DC

Estimado Embajador Zoellick:

Me complace recibir su carta con fecha del día de hoy, que lee de la siguiente manera:

> "En relación con la firma del Tratado de Libre Comercio República Dominicana-Centroamérica-Estados Unidos (el "Tratado"), tengo el honor de proponer que las cartas fechadas 28 de mayo de 2004, que firmaron nuestros gobiernos en conexión con la firma del Tratado de Libre Comercio Centroamérica-Estados Unidos en esa misma fecha, son igualmente válidas y aplicables con respecto al Tratado. Estas cartas son:
>
> 1. Carta sobre las enfermeras
> 2. Carta sobre el estudio de ciertas telas textiles
>
> Se adjunta una copia de cada una de las cartas.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en repuesta a ella constituirán un acuerdo entre nuestros dos Gobiernos."

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y de confirmar que su carta y esta respuesta a la misma constituirán un acuerdo entre nuestros dos Gobiernos.

Sinceramente,

Norman García

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "In connection with the signing of the Dominican Republic – Central America – United States Free Trade Agreement (the "Agreement"), I have the honor to propose that the letters dated May 28, 2004 that our Governments signed in connection with the signing of the United States – Central America Free Trade Agreement on that date are equally valid and applicable with respect to the Agreement. These letters are:
>
> 1. Letter on nurses
> 2. Letter on textile fabrics study
>
> A copy of each letter is enclosed.
>
> I have the further honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments.

Sincerely,

Norman Garcia

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Norman Garcia
Minister of Industry and Trade
Tegucigalpa, Honduras

Dear Minister Garcia:

I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> The requirement under Honduran law that no more than five percent of the nurses employed at a given medical facility may be foreign nationals is not inconsistent with the Market Access obligation (Article 11.4) of Chapter Eleven (Cross-Border Trade in Services).

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

República de Honduras

Secretaría de Industria y Comercio

28 de mayo 2004

Honorable Robert B. Zoellick
Representante Comercial de los Estados Unidos
Washigton, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de tener conocimiento de su carta con fecha de hoy, que dice lo siguiente:

> "Tengo el honor de confirmarle el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Honduras en el curso de las negociaciones en relación al Capitulo Once (Comercio Transfronterizo de Servicios) del Tratado de Libre Comercio entre nuestros Gobiernos, firmado este día (el "Acuerdo"):
>
> > El requisito bajo la ley de Honduras de que no más del cinco por ciento de las enfermeras empleadas en un centro hospitalario pueden ser nacionales extranjeros no es inconsistente con la obligación de Acceso a Mercado (Artículo 11.4) del Capítulo Once (Comercio Transfronterizo en Servicios).
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos."

Tengo el honor de confirmar que mi Gobierno comparte el entendimiento referido en nuestra carta, y que dicha carta y esta carta de respuesta constituyen un acuerdo entre nuestros Gobiernos.

Sinceramente,

Norman García

COURTESY TRANSLATION

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Eleven (Cross-Border Trade in Services) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > The requirement under Honduran law that no more than five percent of the nurses employed at a given medical facility may be foreign nationals is not inconsistent with the Market Access obligation (Article 11.4) of Chapter Eleven (Cross-Border Trade in Services).
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Norman Garcia

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

May 28, 2004

The Honorable Norman Garcia
Minister of Industry and Trade
Tegucigalpa, Honduras

Dear Minister Garcia:

I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):

> The United States will conduct an investigation to determine whether certain shirting fabrics are available in commercial quantities in a timely matter in the territory of any of the Parties to the Agreement, and will make the results of the investigation available to the Parties before the date of entry into force of the Agreement.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments.

Sincerely,

Robert B. Zoellick

República de Honduras
Secretaría de Estado en los Despachos de Industria y Comercio

28 de mayo de 2004

Honorable Robert B. Zoellick
Representante Comercial de los Estados Unidos
Washigton, D.C.

Estimado Embajador Zoellick:

Tengo el agrado de tener conocimiento de su carta con fecha de hoy, que dice lo siguiente:

> "Tengo el honor de confirmarle el siguiente entendimiento alcanzado entre las delegaciones de los Estados Unidos y Honduras en el curso de las negociaciones en relación al Capitulo Tres, Sección G (Textiles y Vestido) del Tratado de Libre Comercio entre nuestros Gobiernos, firmado este día (el "Acuerdo"):
>
> > Los Estados Unidos realizarán una investigación para determinar si ciertos tejidos para camisería están disponibles en cantidades comerciales de manera oportuna en el territorio de cualquiera de las Partes de este Tratado y harán disponibles a las Partes los resultados de la investigación antes de la fecha de entrada en vigor del Acuerdo.
>
> Tengo el honor de proponer que esta carta y su carta de confirmación en respuesta, constituyan un acuerdo entre nuestros Gobiernos."

Tengo el honor de confirmar que el entendimiento al que se hace referencia es su carta es compartido por mi Gobierno y que su carta y esta respuesta constituyan un acuerdo entre nuestros Gobiernos.

Sinceramente,

Norman García

COURTESY TRANSLATION

May 28, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to confirm the following understanding reached between the delegations of the United States and Honduras in the course of negotiations regarding Chapter Three, Section G (Textiles and Apparel) of the Free Trade Agreement between our Governments signed this day (the "Agreement"):
>
> > The United States will conduct an investigation to determine whether certain shirting fabrics are available in commercial quantities in a timely matter in the territory of any of the Parties to the Agreement, and will make the results of the investigation available to the Parties before the date of entry into force of the Agreement.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments."

I have the honor to confirm that the understanding referred to in your letter is shared by my Government, and that your letter and this reply shall constitute an agreement between our Governments.

Sincerely,

Norman Garcia

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Mario Arana Sevilla
Minister of Development, Industry and Commerce
Managua, Nicaragua

Dear Minister Arana:

I have the honor to refer to discussions between the delegations of the United States and Nicaragua in the course of negotiations regarding paragraph 7 of Section F: Nicaragua of Annex 12.9.2 of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:

Nicaragua may establish the following requirements, among others:

(a) that capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Nicaraguan law;

(b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;

(c) that in the transactions between a branch and its parent or other related companies, each shall be considered as independent entities;

(d) that the branch owners or shareholders meet the solvency and integrity requirements established in Nicaragua's insurance legislation; and

(e) that branches of foreign insurance companies that operate in Nicaragua may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

MINISTERIO DE FOMENTO, INDUSTRIA Y COMERCIO

MARIO ARANA SEVILLA
MINISTRO

5 de Agosto de 2004

Estimado Embajador Zoellick:

Me complace acusar recibo de su carta del día de hoy, la cual se lee de la siguiente manera:

Tengo el agrado de referirme a las discusiones entre la delegación de los Estados Unidos y Nicaragua en el curso de las negociaciones relacionadas al párrafo 7 de la Sección F: Nicaragua del Anexo 12.9.2 del Tratado de Libre Comercio entre República Dominicana-Centroamérica-Estados Unidos, firmado este día (el "Tratado") y para proponer lo siguiente:

a.) *Que el capital y las reservas que compañías aseguradoras extranjeras asignen a sus sucursales deben de ser efectivamente transferidas y convertidas a moneda nacional de conformidad con la Ley Nicaragüense;*

b.) *Que el incremento de capital y reservas que no provengan de la capitalización de otras reservas tendrán el mismo tratamiento como si fueran capitales y reservas iniciales;*

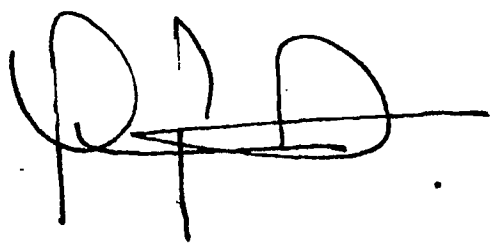
c.) *Que en las transacciones entre una sucursal y su casa matriz u otras compañías relacionadas, cada una deberá considerarse como una entidad o compañía independiente;*

d.) *Que los dueños de las sucursales o accionistas cumplan con los requisitos de integridad y solvencia que las legislación nicaragüense establece en materia de seguros; y*

e.) *Que las sucursales de compañías aseguradoras extranjeras que operen en Nicaragua pueden transferir sus márgenes de ganancias solamente si las mismas no tienen un déficit de inversión en sus reservas técnicas y patrimonio riesgo, no cuando tengan un déficit de patrimonio riesgo.*

MINISTERIO DE FOMENTO, INDUSTRIA Y COMERCIO

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituirán un acuerdo entre nuestros Gobiernos, el cual entrará en vigencia en la fecha de entrada de vigor del Tratado.



Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington D.C.

cc.: Archivo

MAS/

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

I am pleased to acknowledge your letter of today's date, which reads as follows:

> "I have the honor to refer to discussions between the delegations of the United States and Nicaragua in the course of negotiations regarding paragraph 7 of Section F: Nicaragua of Annex 12.9.2 of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:
>
> Nicaragua may establish the following requirements, among others:
>
> (a) that capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Nicaraguan law;
>
> (b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;
>
> (c) that in the transactions between a branch and its parent or other related companies, each shall be considered as independent entities;
>
> (d) that the branch owners or shareholders meet the solvency and integrity requirements established in Nicaragua's insurance legislation; and
>
> (e) that branches of foreign insurance companies that operate in Nicaragua may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Mario Arana Sevilla

EXECUTIVE OFFICE OF THE PRESIDENT
THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 5, 2004

The Honorable Mario Arana Sevilla
Minister of Development, Industry and Commerce
Managua, Nicaragua

Dear Minister Arana:

I have the honor to refer to discussions between the delegations of the United States and Nicaragua in the course of negotiations regarding paragraph 7 of Section F: Nicaragua of Annex 12.9.2 of the Dominican Republic – Central America – United States Free Trade Agreement signed this day (the "Agreement") and to propose the following:

Nicaragua may establish the following requirements, among others:

(a) that capital and reserves that foreign insurance companies assign to their branches must be effectively transferred and converted into domestic currency in conformity with Nicaraguan law;

(b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;

(c) that in the transactions between a branch and its parent or other related companies, each shall be considered as independent entities;

(d) that the branch owners or shareholders meet the solvency and integrity requirements established in Nicaragua's insurance legislation; and

(e) that branches of foreign insurance companies that operate in Nicaragua may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.

I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Robert B. Zoellick

Robert B. Zoellick

MINISTERIO DE FOMENTO, INDUSTRIA Y COMERCIO

MARIO ARANA SEVILLA
MINISTRO

5 de Agosto de 2004

Estimado Embajador Zoellick:

Me complace acusar recibo de su carta del día de hoy, la cual se lee de la siguiente manera:

Tengo el agrado de referirme a las discusiones entre la delegación de los Estados Unidos y Nicaragua en el curso de las negociaciones relacionadas al párrafo 7 de la Sección F: Nicaragua del Anexo 12.9.2 del Tratado de Libre Comercio entre República Dominicana-Centroamérica-Estados Unidos, firmado este día (el "Tratado") y para proponer lo siguiente:

a.) Que el capital y las reservas que compañías aseguradoras extranjeras asignen a sus sucursales deben de ser efectivamente transferidas y convertidas a moneda nacional de conformidad con la Ley Nicaragüense;

b.) Que el incremento de capital y reservas que no provengan de la capitalización de otras reservas tendrán el mismo tratamiento como si fueran capitales y reservas iniciales;

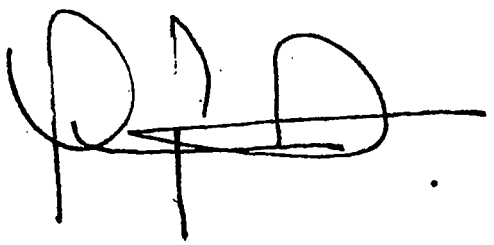
c.) Que en las transacciones entre una sucursal y su casa matriz u otras compañías relacionadas, cada una deberá considerarse como una entidad o compañía independiente;

d.) Que los dueños de las sucursales o accionistas cumplan con los requisitos de integridad y solvencia que las legislación nicaragüense establece en materia de seguros; y

e.) Que las sucursales de compañías aseguradoras extranjeras que operen en Nicaragua pueden transferir sus márgenes de ganancias solamente si las mismas no tienen un déficit de inversión en sus reservas técnicas y patrimonio riesgo, no cuando tengan un déficit de patrimonio riesgo.

MINISTERIO DE FOMENTO, INDUSTRIA Y COMERCIO

Tengo el honor de aceptar su propuesta en nombre de mi Gobierno y confirmar que su carta y esta respuesta constituirán un acuerdo entre nuestros Gobiernos, el cual entrará en vigencia en la fecha de entrada de vigor del Tratado.



Honorable Robert B. Zoellick
Representante Comercial de Estados Unidos
Washington D.C.

cc.: Archivo

MAS/

COURTESY TRANSLATION

August 5, 2004

The Honorable Robert B. Zoellick
United States Trade Representative
Washington, D.C.

Dear Ambassador Zoellick:

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> (b) that the increases of capital and reserves that do not come from capitalization of other reserves will have the same treatment as initial capital and reserves;
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>
> (d) that the branch owners or shareholders meet the solvency and integrity requirements established in Nicaragua's insurance legislation; and
>
> (e) that branches of foreign insurance companies that operate in Nicaragua may transfer liquid profits only if they do not have an investment deficit in their technical reserves and risk patrimony, nor a deficit of risk patrimony.
>
> I have the honor to propose that this letter and your letter of confirmation in reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement."

I have the honor to accept your proposal on behalf of my Government and to confirm that your letter and this reply shall constitute an agreement between our two Governments, which shall enter into force on the date of entry into force of the Agreement.

Sincerely,

Mario Arana Sevilla

United States Department of State
Washington, D.C. 20520
www.state.gov

MAY 23 2005

Dear Mr. Chairman:

Please find attached information regarding U.S. trade sanctions against Burma.

We hope you find this information useful. Please do not hesitate to contact us if we can be of further assistance.

Sincerely,

Matthew A. Reynolds
Acting Assistant Secretary
Legislative Affairs

Enclosure:

As stated.

The Honorable
Charles E. Grassley, Chairman,
Committee on Finance,
United States Senate.

Information on U.S. Trade Sanctions Against Burma

I. Introduction and Summary

Pursuant to section 8(b)(3) of P.L. 108-61 (the Burmese Freedom and Democracy Act of 2003), this report reviews bilateral and multilateral measures to promote human rights and democracy in Burma and assesses the effectiveness of the Act's trade-provisions relative to the improvement of conditions in Burma and the furtherance of United States policy objectives.

Continued pressure by the U.S. Government sends a clear signal that the United States expects Burma's junta to take meaningful steps toward genuine national reconciliation and the establishment of democracy. Such pressure also serves as a strong symbol of support for the members of the democratic opposition, as they continue their struggle inside the country. Many of those who have fled from the oppression inside Burma have supported the U.S. position and have called for other countries to follow the U.S. lead.

The Administration continues diplomatic efforts, at all levels, to encourage other nations to sustain pressure on the Burmese junta. Some governments are able to offer little more than public support for a democratic transition, but it is through such sustained public messages that an atmosphere of change can come to Burma. U.S. punitive measures and calls for others to follow suit have not damaged U.S. relations with countries other than Burma. To date no other country has implemented U.S.-style economic sanctions. Cooperation on Burma issues with other members of the international community continues at the UN and in other multilateral fora, such as the International Labor Organization (ILO), and the Financial Action Task Force.

II. Bilateral and Multilateral Measures

USG efforts

The United States has a broad range of sanctions in place including those enacted in 2003 and renewed in 2004: a ban on all imports from Burma; a ban on the export of financial services from the United States or by U.S. persons to Burma; and, an asset freeze on certain named Burmese institutions. The United States also expanded existing visa restrictions to include the managers of state-owned enterprises and their immediate family

members. The Treasury Department reports that it blocked over $900,000 worth of transactions between October 2004 and March 2005. Over the same period, the Treasury Department issued 42 licenses authorizing the release of blocked funds or otherwise prohibited transactions. By July 30, 2003, U.S. banks maintaining correspondent accounts with Burmese banks had blocked the balances in those accounts, an amount that exceeds $320,000. Other measures put in place against the Burmese junta before 2003 include a ban on new investment in Burma, a ban on arms sales to Burma, limits on humanitarian assistance to Burma, and a provision directing relevant U.S. officials to vote "no" on loans or assistance to Burma by international financial institutions.

Inside Burma, U.S. Embassy officials maintain frequent and active contacts with representatives of the democratic opposition and major ethnic groups to learn their views of the situation. Meetings with members of multilateral organizations and other diplomatic missions likewise help focus the international community's efforts in support of national reconciliation. Although Embassy officials have limited contact with Burmese Government officials due to the poor state of bilateral relations, even limited contact is important to urging reform and facilitating communication by all parties. The continued detention of senior officials of the NLD as well as over 1,300 political prisoners by the military junta blocks progress toward national reconciliation. The United States continues to call for the immediate and unconditional release of all political prisoners.

The United States coordinates with other members of the international community in support of democratic change in Burma. The United States has consistently co-sponsored resolutions at the UN General Assembly and the UN Commission on Human Rights that condemn the human rights situation in Burma and call for national reconciliation. Such resolutions support the efforts of UN Secretary General Special Envoy Razali Ismail and UN Special Rapporteur for Human Rights Paulo Sergio Pinheiro. U.S. representatives participate in other UN discussions on Burma. Then-Ambassador Danforth sent a letter to UN Secretary General Annan in November 2004 urging action on Burma. Similarly, U.S. participants in meetings of the ILO have been supportive of ILO efforts to eliminate the use of forced labor in Burma and to respect fundamental workers' rights.

Efforts by other governments

No other nation has imposed economic sanctions as severe as those imposed by the United States. Nonetheless, during 2003 and 2004, many states indicated concern for the situation in Burma and instituted new or expanded measures to promote democracy and human rights. In 2003, the European Union (EU) expanded its existing visa and travel restrictions and its asset freeze list to include a broader set of Burmese who benefit from the oppressive policies of the junta. The EU also has in place a ban on arms sales and limits on assistance to the government. In April, the EU renewed measures announced in 2004, including a ban on extending credit to a list of Burmese-state run enterprises, and an even more restrictive visa ban. The EU also calls on its members to vote against assistance to Burma by international financial institutions, though they are not required to do so. The EU has traditionally drafted the annual General Assembly and Commission on Human Rights resolutions on Burma.

The United Kingdom has called on its companies to review their investments in Burma. Canada has also expressed concern for the lack of progress in Burma and imposed visa and travel restrictions on Burmese officials following the May 30, 2003 attack on Aung San Suu Kyi and her supporters.

Norway has sanctions similar to the EU, banning arms sales and enforcing a broad visa ban and asset freeze. In addition, Norway has been a supporter of the Burmese exile movement and hosts a radio service dedicated to providing uncensored information to those inside Burma.

Japan has frozen all new development assistance to the government in response to the May 30 attacks. However, Japan does continue funding, on a case-by-case basis, certain humanitarian programs, democracy capacity-building projects, and those projects supporting economic structural reform. Senior Japanese officials, including Prime Minister Koizumi, have called for the release of Aung San Suu Kyi and progress toward democratization.

Since May 30, 2003 Australia has deferred its recurring human rights training program and put certain agricultural assistance programs on hold. Australian officials have also called publicly for Aung San Suu Kyi's release.

The majority of ASEAN members continue to consider events in Burma to be an internal matter, although there are indications some ASEAN governments are pressing Burmese leaders on democracy behind the scenes. The United States continues its dialogue with countries in the region and has made clear the important role that ASEAN has to play in encouraging reform. Administration officials have noted to ASEAN counterparts that the United States will not send senior representatives to ASEAN meetings hosted by Burma absent significant political reform.

While we share with Thailand the goal of advancing democracy in Burma, our approaches differ. Thailand is unlikely to change its national policy of engagement or adopt sanctions against Rangoon. Thailand, however, has played a critical role for many years as a refuge to Burmese fleeing their country, and we have stressed to the Thai the importance of continuing to fulfill this role and supporting UNHCR in its work with Burmese refugees. The "Bangkok Process," organized by Thailand in 2003, was a planned series of meetings of interested governments discussing the political situation in Burma with the Burmese Government. It is now moribund due to Burma's refusal to attend the meeting scheduled for April 2004.

China continues to be Burma's primary financial, and one of its primary military, supporters. Chinese officials participated in the Bangkok Process, though they did not make any public statements critical of the government's presentation. China has, however, expressed support for national reconciliation. We have raised our concerns about Burma in discussions with China.

India has neither provided strong public support for the democratic opposition nor called for an improvement in the human rights situation. Since the 1990s, India has vied with China for influence in Burma, sending high-level delegations, including a July 2003 visit by the Commerce Minister and a November 2003 visit by the Vice President, and offering significant financial and diplomatic support. Senior General Than Shwe paid a state visit to India in October 2004, during which several economic agreements and a Memorandum of Understanding on Non-Traditional Security were signed. Burma has also cooperated with India on the question of Indian insurgent groups operating out of Burmese territory.

United Nations efforts

The United States supports the work of UN Special Envoy Razali Ismail and UN Special Rapporteur Paulo Sergio Pinheiro. However, neither has been allowed to visit Burma in well over a year. Secretary General Kofi Annan hosted a meeting with interested governments in September 2004 to discuss the situation on the ground in Burma. The Secretary General has also issued a number of statements calling upon the Burmese authorities to include the democratic opposition in the National Convention and to release all political prisoners.

The UN country team inside Burma has focused its efforts on a range of humanitarian issues. The United States backs UN initiatives to address the HIV/AIDS epidemic, support returned refugees, and fight narcotics. The UN High Commissioner for Refugees (UNHCR) provides protection and humanitarian assistance for the communities of Muslim Burmese in Northern Rakhine State [Rohingya] who have returned to Burma after fleeing to Bangladesh in 1991. UNHCR representatives continued efforts in eastern Burma to assess conditions for the large-scale return of refugees from Thailand. U.S. officials in Rangoon maintain close communication with UN counterparts.

III. Effects of Trade-Related Measures

Political and economic situation

The junta continues to follow its seven-point "roadmap to democracy," which it announced following international pressure, including new U.S. trade and financial sanctions, in 2003. A key component of the roadmap is the National Convention to draft a new constitution. The junta handpicked pro-regime delegates to attend the Convention, refused to include the NLD or pro-democracy groups, and prohibited free and open debate. The Convention's most recent session adjourned on March 31, 2005. Absent the participation of the democratic opposition and ethnic minority political groups, the National Convention does not reflect the true political aspirations of the Burmese people, nor does it serve as a real forum for the meaningful dialogue that is needed to achieve genuine national reconciliation. Given these deep flaws, any constitution that emerges from the National Convention, and any subsequent referendum or general election

would by extension lack legitimacy, and would not constitute meaningful steps toward the establishment of democracy in Burma. The junta has not announced a timetable for a transition to democracy.

In December 2004, the junta extended the detention of Aung San Suu Kyi for an additional year, and restricted her access to medical care and contacts with the outside world, leaving her virtually incommunicado. In February 2005, authorities also extended the detention of National League for Democracy Vice Chairman U Tin Oo, and arrested Hkun Htun Oo, head of the Shan Nationalities League for Democracy - Burma's second largest political party.

In recent months, there have been limited contacts between the military junta and Burma's largest remaining ethnic insurgent group, the Karen National Union (KNU). If a final agreement between the parties is reached, it could end over five decades of conflict, and could open up Karen and Mon States for badly needed international economic and humanitarian assistance and the eventual voluntary repatriation of thousands of refugees from Thailand with UNHCR involvement and the return home of thousands of internally displaced persons. Over twenty groups have concluded cease-fire agreements with the junta.

The Burmese junta's dismal economic policies have led to widespread poverty and the flight of most foreign investors from the country. Likewise, Burma's dreadful employment situation reflects decades of economic mismanagement by the Burmese Government. However, the 2003 U.S. ban on Burmese imports had an impact on at least one sector of the economy: the garment industry. The result was the closure of more than 100 garment factories, which had already been in dire economic straits before losing the U.S. market. There was an initial estimated loss of around 50,000 to 60,000 jobs. However, new orders from importers in EU member countries, Canada and Latin America helped remaining factories continue production and factories that had previously closed to re-hire some workers.

Human rights

Despite the Burmese Government's purported desire to make progress toward democracy, its extremely poor human rights record has worsened over the past year, and it has continued to commit serious abuses. The State Department produces an annual report on the human rights situation in

Burma. In 2004, the report noted that the Burmese Government's extremely poor human rights record continued to deteriorate. The junta extended for at least another year the unjustified detentions of Nobel Peace Prize Laureate and leader of the National League for Democracy (NLD) Aung San Suu Kyi and NLD Vice Chair U Tin Oo. The report also noted that citizens of Burma still do not have the right to change their government, and that security forces have continued to commit extrajudicial killings and rape, forcibly relocate persons, use forced labor, and reestablish forced conscription of the civilian population into militia units. The military junta continues to be hostile to all forms of political opposition. With the exception of its Rangoon headquarters, all of the NLD's offices remain closed. Arrests and disappearances of political activists continue, and members of the security forces torture, beat, and otherwise abuse prisoners and detainees. The government has allowed two visits by Amnesty International (the latest in 2003) and maintained cooperation with the International Committee of the Red Cross.

Our expanded sanctions represent a clear and powerful expression of American opposition to the developments in Burma over the past two years and signal strong support for the pro-democracy movement. Sanctions are a key component of our policy in bringing democracy to Burma and have been a key source of support for the morale of many democracy activists.

IV. Effects of Sanctions Policy on Broader Policy Interests and Relations

U.S. steadfastness sends a clear signal to the junta of U.S. support for change. The measures in place have the broad backing of Burmese democracy activists.

Although the EU and others have taken some steps, no other country has taken measures as strong as those of the United States. We continue diplomatic efforts at all levels to urge other countries to adopt broad sanctions similar to ours or other targeted approaches to dealing with Burma. We have found that many in the international community have a different view on how best to achieve our shared goals in Burma.

The trade-related sanctions implemented pursuant to the Burmese Freedom and Democracy Act of 2003 have had a limited impact on U.S.

relations with other nations. Although some foreign businesses and their representative embassies have complained about the impact on their operations, all who have invested in Burma have done so recognizing the difficult operating environment and overall poor economic climate fostered by the junta. Furthermore, many U.S. and other companies had already pulled out of Burma prior to the passage of the Burmese Freedom and Democracy Act of 2003.

The NLD remains very supportive of U.S. sanctions and urges additional steps to pressure the government. However, some other opposition politicians have questioned whether the sanctions have any chance of success without the participation of ASEAN and other regional countries and, if not, whether they are worth the pain caused to Burmese workers.

Conclusion

International pressure and support for the Burmese democracy movement continues to be essential for promoting change in Burma. However, the import ban implemented in 2003 would be far more effective if countries importing Burma's high-value exports (such as natural gas and timber), which also tend to have closer economic links with the SPDC, would join us in our actions. Other U.S. measures, such as the ban on new investment in Burma and the ban on the export of financial services to Burma, would also be more effective were the EU and others to take similar steps. The Administration remains unwavering in its support for the establishment of democracy and a greatly improved human rights situation in Burma.

Statement of Chairman Grassley

Finance Committee Executive Session to Consider S.1307:

The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act

June 29, 2005

I am submitting these additional remarks for the record of the committee's formal mark-up of implementing legislation for the Central America Free Trade Agreement. I want to respond to some of the criticisms that have been raised about this bill and the need for a "mock conference" to reconcile any differences the between informal House and Senate recommendations.

First, I reiterate that no recommendation by the Committee is required by trade promotion authority procedures before the bill is formally submitted for an up or down vote.

However, as Chairman of the Finance Committee, I've chosen to conduct the informal committee process in a manner similar to the usual legislative process.

That means I've preserved the opportunity for Committee Members to review and recommend changes that they feel are necessary or appropriate to implement a trade agreement into U.S. law.

But any such recommendations are not legally binding.

Further, they certainly should not be included in an implementing bill if there is strong disagreement about whether they are necessary or appropriate to implement the agreement.

Now, we have heard some criticism that, because our recommendations were slightly different than the recommendations of the House Ways and Means Committee that a mock conference was required.

That is not the case.

Just like the informal committee consideration itself, a mock conference is not legally required to

take place before recommendations are made to the administration.

Some point to the Uruguay Round Trade Agreement and the North American Free Trade Agreement processes as binding precedent on the Finance Committee's utilization of trade promotion authority procedures.

I don't see those examples as proving the point that a mock conference is required.

First, my staff has carefully reviewed the Finance Committee records related to NAFTA. In doing so, we consulted with the Committee records clerk, the Senate archivist and secondary sources such as the Legislative Information System.

Nowhere does any record appear of a NAFTA mock conference between the House and Senate.

Now, I understand from informal sources that there were meetings between the House and Senate staffs to discuss different House and Senate provisions of the NAFTA implementing legislation which were added during the mock mark-ups.

The staffs exchanged ideas about differing recommendations but did not agree on reconciled language to send to the Clinton Administration.

Afterwards, the Administration reviewed the differences in the House and Senate versions of the NAFTA implementing legislation and sent to Congress final legislation that included select Senate and House amendments, and excluded recommended provisions that the Administration determined were not necessary or appropriate.

But the point is, there's no record of a mock conference or reconciled bills.

So, the record indicates that prior Committee members did not follow regular order and conduct a formal conference or reconcile all the differences between the House and Senate bill with respect to NAFTA.

Otherwise we would expect to see Committee transcripts and a record of the proceedings.

As far as I can see, none exist.

Now, I will note there is a transcript of a conference meeting on the Uruguay Round Agreements Act.

So in that case, Committee Members did follow regular process.
But the fact that different procedures were followed with respect to NAFTA and the URAA just proves the point - the Committee deals with differences between House and Senate informal recommendations for implementing trade agreements on a case by case basis.

I think we need to follow common sense in how we deal with such differences.

During the NAFTA process there were at least 12 amendments adopted in committee.

Here, we adopted one over-broad amendment on trade adjustment assistance that on its face was not necessary or appropriate to implement CAFTA.

Ways and Means had two amendments which were essentially reporting requirements, and only one of those made it into the formal implementing bill.

There were no meaningful differences to be conferenced in this case.

However, after consultation with the Ranking Member's committee staff, an opportunity was afforded through an informal conference call to make our positions on the recommendations explicitly known to the administration.

On top of that, 10 Members of this committee wrote Ambassador Portman, asking that the Wyden amendment not be omitted from the implementing bill.

They didn't ask for a conference.

They expressed their views directly to the Administration.

We have worked hard to accommodate Committee Members throughout this process.

The fact is, we've pursued an open, transparent process that invited constructive changes intended to improve the implementation of CAFTA.

The record clearly shows that the criticism about the way this bill has been managed by the Committee is not fair or justified.