

Free Trade with Central America: Summary of the U.S.-Central America Free Trade Agreement – Long Summary

12/17/2003

New Market Access for U.S. Consumer and Industrial Products

- More than 80 percent of U.S. exports of consumer and industrial products to Central America will be duty-free immediately upon entry into force of the Agreement, and 85 percent will be duty free within five years. All remaining tariffs will be eliminated within 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.
- Guatemala, Honduras and Nicaragua will soon join the WTO's Information Technology Agreement (ITA), which removes tariff and non-tariff barriers to IT products. Costa Rica and El Salvador are already participants.
- Under the U.S. Caribbean Basin Trade Partnership Act, many products from Central America already enter the United States duty-free. The CAFTA will consolidate those benefits and make them permanent, so that nearly all consumer and industrial products made in Central America will enter the U.S. duty free immediately on effectiveness of the agreement.

Central America is a large market for U.S. products. Current U.S. exports are more than \$9 billion per year.

New Opportunities for U.S. Farmers and Ranchers

- More than half of current U.S. farm exports to Central America will become duty-free immediately, including high quality cuts of beef, cotton, wheat, soybeans, key fruits and vegetables, processed food products, and wine, among others.
- Tariffs on most U.S. farm products will be phased out within 15 years. U.S. farm products that will benefit from improved market access include pork, beef, poultry, rice, fruits and vegetables, corn, processed products and dairy products.
- U.S. farmers and ranchers will have access to Central American countries that is generally better than suppliers in Canada, Europe and South America.
- The U.S. and Central America will work to resolve sanitary and phytosanitary barriers to agricultural trade, in particular problems and delays in food inspection procedures for meat and poultry. Central America will move toward recognizing export eligibility for all plants inspected under the U.S. food safety and inspection system.

Textiles and Apparel

- Textiles and apparel will be duty-free and quota-free immediately if they meet the

Agreement's rule of origin, promoting new opportunities for U.S. and Central American fiber, yarn, fabric and apparel manufacturing. The agreement's benefits for textiles and apparel will be retroactive to January 1, 2004.

- An unprecedented provision will give duty-free benefits to some apparel made in Central America that contains certain fabrics from NAFTA partners Mexico and Canada. This new provision encourages integration of the North and Central American textile industries, and is a step to prepare for an increasingly competitive global market.
- Apparel containing certain fabrics and materials in "short supply" in the U.S. and Central America may also qualify for duty-free treatment. An expanded list of such "short supply" materials was developed in consultation with industry in the U.S. and Central America. U.S. yarn and fabric will receive reciprocal treatment in Central American apparel entering Mexico and Canada.
- A "de minimis" provision will allow limited amounts of third-country content to go into CAFTA apparel, giving producers in both the US and Central America needed flexibility.

Open Services Markets Across the Region

- The Central American countries will accord substantial market access across their entire services regime, subject to very few exceptions, using the so-called "negative list" approach.
- Central American countries have agreed to dismantle significant distribution barriers. Changes in the "dealer protection regimes" will loosen restrictions that lock U.S. firms into exclusive or inefficient distributor arrangements. Such laws have been used to ban imports of U.S. products when a dispute arose with a local distributor.
- Market access commitments apply across all sectors, including but not limited to:
 - Telecommunications services
 - Financial services, including banking, insurance and securities
 - Distribution services, such as wholesaling, retailing and franchising
 - Express delivery services
 - Computer and related services
 - Audiovisual and entertainment services
 - Energy services
 - Transport services
 - Construction and engineering services

- Tourism
- Advertising services
- Professional services (architects, engineers, accountants, etc.)
- Environmental services
- U.S. financial service suppliers have full rights to establish subsidiaries, joint ventures or branches for banks and insurance companies.
- Removes most local residency requirements, which had imposed significant barriers to U.S. professionals.
- Central America will allow U.S.-based firms to supply insurance on a cross-border basis, including reinsurance; reinsurance brokerage; marine, aviation and transport (MAT) insurance; and other insurance services.
- Central America will allow U.S.-based firms to offer services cross-border to Central Americans in areas such as financial information and data processing, and financial advisory services. In addition, Central American mutual funds will be able to use foreign-based portfolio managers.
- 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 invest and establish a local services presence.
- Market access to services is supplemented by requirements for regulatory transparency. Regulatory authorities must use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.
- The financial services chapter includes core obligations of non-discrimination, most favored nation treatment, and additional market access obligations. It also includes additional provisions on transparency of domestic regulatory regimes.

CAFTA will build momentum toward hemispheric free trade. The U.S. will begin work in January 2004 to integrate the Dominican Republic into CAFTA.

E-Commerce: Free Trade in the Digital Age

- Central America and the United States agreed to provisions on e-commerce that reflect the issue's importance in global trade and the importance of supplying services by electronic means as a key part of a vibrant e-commerce environment.
- All Parties committed to non-discriminatory treatment of digital products; agreed not to impose customs duties on such products and to cooperate in numerous policy areas related to e-commerce.

Important New Protections for U.S. Investors in the Region

- The agreement will establish a secure, predictable legal framework for U.S. investors operating in the Central American countries.
- All forms of investment are protected under the Agreement, including enterprises, debt, concessions, contracts and intellectual property.
- U.S. investors enjoy in almost all circumstances the right to establish, acquire and operate investments in the Central American countries on an equal footing with local investors, and with investors of other countries, unless specifically stated otherwise.
- Pursuant to U.S. Trade Promotion Authority, the agreement draws from U.S. legal principles and practices to provide U.S. investors in the Central American countries a basic set of substantive protections that Central American 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 a fair market value for property in the event of an expropriation.
- Investor rights are backed by an effective, impartial procedure for dispute settlement that is fully transparent. Submissions to dispute panels and panel hearings will be open to the public, and interested parties will have the opportunity to submit their views.

State-of-the-Art Protection for U.S. Trademarks

- Requires a system to resolve disputes about trademarks used in Internet domain names, which is important to prevent "cyber-squatting" with respect to high-value domain names.
- Applies principle of "first-in-time, first-in-right" to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it.
- Encourages the development of an on-line system for the registration and maintenance of trademarks, as well as a searchable database.
- Requires transparent procedures for the registration of trademarks, including geographical indications.

In all categories of intellectual property rights (IPR), U.S. companies will be treated at least as well as Central American companies, and the agreement makes a number of important improvements to IPR protections.

Protection for Copyrighted Works in a Digital Economy

- Copyright owners maintain rights over temporary copies of their works on computers, which is important in protecting music, videos, software and text from widespread

unauthorized sharing via the Internet.

- Establishes that only authors, composers and other copyright owners have the right to make their work available on-line.
- Ensures extended terms of protection for copyrighted works, including phonograms, consistent with emerging international trends.
- Establishes strong anti-circumvention provisions to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and unauthorized distribution over the Internet.
- Ensures that governments use only legitimate computer software, thus setting a positive example for private users.
- Requires rules to prohibit the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming.
- Provides rules for the liability of Internet Service Providers (ISPs) for copyright infringement, reflecting the balance struck in the U.S. Millennium Copyright Act between legitimate ISP activity and the infringement of copyrights.

Patents & Trade Secrets: Stronger Protections

- Provides for the extension of patent terms to compensate for delays in granting the original patent, consistent with U.S. practice.
- Limits the grounds for revoking a patent, thus protecting against arbitrary revocation.
- Clarifies that test data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. Closes potential loopholes to these provisions.
- Requires a system to prevent the marketing of pharmaceutical products that infringe patents.
- Provides protection for newly developed plant varieties.

Tough Penalties for Piracy and Counterfeiting

- Criminalizes end-user piracy, providing strong deterrence against piracy and counterfeiting.
- Requires all Parties to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. Also provides for enforcement against goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products. Ex officio action may be taken in border and criminal cases, thus providing more effective enforcement.

- Mandates both statutory and actual damages for copyright infringement and trademark piracy. This serves as a deterrent against piracy, and ensures that monetary damages can be awarded even when it is difficult to assign a monetary value to the violation.

CAFTA will lock in economic reforms, strengthen the rule of law, promote good governance and strengthen democratic institutions in Central America.

New Access to Government Procurement Contracts

- U.S. suppliers are granted non-discriminatory rights to bid on contracts from Central American government ministries, agencies and departments. Low-value contracts are excluded.
- Covers the purchases of most Central American central government entities, including key ministries and state-owned enterprises.
- Requires fair and transparent procurement procedures, such as advance notice of purchases and timely and effective bid review procedures.
- Ensures that bribery in government procurement is specified as a criminal offense under Central America and U.S. laws.

Groundbreaking Customs Procedures and Rules of Origin

- Comprehensive rules of origin will ensure that only U.S. and Central American goods benefit from the Agreement. Rules are designed to be easier to administer.
- Agreement requires transparency and efficiency in administering customs procedures, including the CAFTA rules of origin. Central American countries commit to publish laws and regulations on the Internet, and will ensure procedural certainty and fairness.
- Both parties agree to share information to combat illegal trans-shipment of goods. In addition, the Agreement contains language designed to facilitate the rapid clearance through customs of express delivery shipments.

Protection and Promotion of Worker Rights

- CAFTA fully meets the labor objectives set out by Congress in the Trade Promotion Act of 2002 and makes labor obligations a part of the core text of the trade agreement.
- Includes unprecedented provisions that commit CAFTA countries to provide workers with improved access to procedures that protect their rights.
- CAFTA goes beyond Chile and Singapore FTAs through a 3-part cooperative approach to improve working conditions by:

1. Ensuring effective enforcement of existing labor laws.

- Agreement requires that all parties shall effectively enforce their own domestic labor

laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

2. Working with ILO to improve existing labor laws and enforcement.

- International Labor Organization (ILO) found that Central American nations have laws on the books that are largely consistent with ILO core labor standards. Central American governments are now working to address gaps between existing laws and ILO recommendations.
- For example, in response to the recent ILO report, several Central American countries have already drafted new legislation and regulations, dramatically increased funding for their Labor Ministries, expanded the number of labor inspectors, and streamlined procedures for creating unions.
- Costa Rica, El Salvador, Guatemala and Nicaragua have each carried out major revisions of their labor codes over the last decade.
- All parties reaffirm their obligations as members of the ILO, and shall strive to ensure that their domestic laws provide for labor standards consistent with internationally recognized labor principles.
- Agreement clearly states that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment.

A comprehensive 3-part strategy to improve worker rights in Central America.

3. Building local capacity to improve worker rights.

- CAFTA includes a groundbreaking cooperation mechanism to promote labor rights through specialized consultations and targeted training programs in the areas of child labor, public awareness of worker rights, and labor inspection systems.
- Public participation, including the input of worker and employer organizations, is called for in the design and implementation of technical cooperation activities.
- As part of the CAFTA process, the U.S. Department of Labor has allocated \$6.7 million to educate Central Americans on core labor standards and to improve the administrative capacity of the CAFTA countries in labor matters.
- The U.S. Department of Labor will also support efforts aimed at reducing exploitative child labor. Through the International Labor Organization's program to eliminate the worst forms of child labor, U.S.-funded projects will remove children from hazardous and exploitative work and provide them with educational opportunities.

Commitments and Cooperation to Protect the Environment

- Agreement fully meets the environmental objectives set out by Congress in TPA.

Environmental obligations are part of the core text of the trade agreement.

- CAFTA goes beyond Chile and Singapore FTAs in seeking to develop groundbreaking new provisions that would:

- o Develop a robust public submissions process to ensure that views of civil society are appropriately considered.

- o Envision benchmarking of environmental cooperation activities and input from international organizations in evaluating progress.

- o Enhance the mutual supportiveness of multilateral environmental agreements (MEAs) and the free trade agreement.

- Agreement commits parties to effectively enforce their own domestic environmental laws, and this obligation is enforceable through the Agreement's dispute settlement procedures.

- There is also an environmental cooperation agreement that provides a framework for undertaking environmental capacity building in the CAFTA countries and establishes an Environmental Cooperation Commission.

- This is the first time that the cooperation agreement has been concluded at the time of the FTA—the Chile and Singapore cooperation packages were negotiated after those FTAs were concluded. The Parties will now work on developing a work plan for cooperative activities.

- The environmental cooperation agreement identifies a number of priorities:

- o Strengthening the capacity to develop, implement and enforce environmental laws;

- o Promoting incentives to encourage environmental protection;

- o Protection of endangered species;

- o Promotion of clean production technologies;

- o Building capacity to promote public participation in the environmental decisionmaking process.

- Both parties commit to establish high levels of environmental protection, and to not weaken or reduce environmental laws to attract trade and investment.

- Agreement also promotes a comprehensive approach to environmental protection. Procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws are married for the first time with provisions that promote voluntary, market-based mechanisms to protect the environment.

Dispute Settlement: Tools to Enforce the CAFTA

- Core obligations of the Agreement, including labor and environment provisions, are subject to the dispute settlement provisions of the Agreement.
- Dispute panel procedures set high standards of openness and transparency:
 - o Open public hearings;
 - o Public release of legal submissions by parties;
 - o Special labor or environment expertise for disputes in these areas;
 - o Opportunities for interested third parties to submit views.
- Emphasis is on promoting compliance through consultation, joint action plans and tradeenhancing remedies.
- An innovative enforcement mechanism includes monetary penalties to enforce commercial, labor and environmental obligations of the trade agreement.

Trade Capacity-Building: Development and Trade Together

- In a first for any free trade agreement, CAFTA will include a Committee on Trade Capacity Building, in recognition of the importance of such assistance in promoting economic growth, reducing poverty, and adjusting to liberalized trade.
- The trade capacity building committee will build on work done during the negotiations to enhance partnerships with international institutions (Inter-American Development Bank, World Bank, Organization of American States, ECLAC, and the Central American Bank for Economic Integration), non-governmental organizations, and the private sector.
- This year, in response to the needs identified by the Central American countries, the U.S. Government provided more than \$61 million in trade capacity building (TCB) assistance. Since the launch of negotiations, the Inter-American Development Bank has approved more than \$320 million in CAFTA-related operations.
- Private and non-government organizations joined in the effort on trade capacity building. The Humane Society of the United States (HSUS) developed "The CAFTA Alliance" partnership to promote environmentally sustainable and humane agricultural programs, as well as the protection of wildlife and habitat. The City of New Orleans and the State of Louisiana worked with local universities and entrepreneurs to establish "Idea Village International," an institute to train entrepreneurs in Central America.

The U.S. government provided more than \$61 million in trade capacity building assistance in 2003.