

PROCESS OF NEGOTIATIONS TO ESTABLISH THE FREE TRADE AGREEMENT BETWEEN CENTRAL AMERICA AND THE UNITED STATES OF AMERICA (CAFTA)

Chronicle of important events

- 1992 The Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua indicated to Bill Clinton their interest in negotiating an agreement of this nature, shortly before the United States was to sign its FTA with Canada and Mexico.
- May 8, 1997 The signing of a free trade agreement was proposed during the discussions held prior to the Central America, Dominican Republic – United States Summit held in San José, Costa Rica. However, the final declaration only indicates "...the commitment to sign reciprocal trade agreements in the future".
- January 22, 2001 Hopes for the FTA are shattered when US President, George W. Bush announces at the start of his term of office, that before the Free Trade Area of the Americas comes into force in 2005, the United States will only negotiate one agreement with Chile.
- September 6, 2001 During a visit to Costa Rica, the US Assistant Secretary of Commerce, Walter Bastian, indicates that the FTA with Central America is not a priority for the United States.
- September 24, 2001 Central American and US foreign trade officials issue a joint declaration in which they pledge to explore the possibilities of deepening and strengthening trade among these countries.
- November 27, 2001 Officials of the six countries hold the first workshop for technical discussion, the foundation for subsequent negotiations.
- January 16, 2002 President George W. Bush mentions in his speech on the state of the nation, that one of the priorities of his administration's foreign trade policy is the possibility of signing a free trade agreement with Central American countries.
- February 25, 2002 The second technical workshop begins. A total of six workshops were held throughout the course of 2002.
- March 24, 2002 The intentions of the United States are confirmed during the Meeting between the Central American Presidents and President Bush in El Salvador.

- July 27, 2002 The United States House of Representatives approves the law on "Authorisation to Promote Trade" or "fast track". The Senate vetoed it five days later.
- August 6, 2002 President Bush signs the so-called "trade promotion authority" or "fast track", as part of the 2002 Trade Act.
- October 1, 2002 Through the Office of the Trade Representative, the Executive Power of the United States notified the two chambers of the US Congress, of the intention to commence negotiations for a free trade agreement to be signed with the member countries of the Central American Economic Integration System.
- January 8, 2003 Formal announcement of the commencement of negotiations between the Central American Ministers responsible for foreign trade and the United States Trade Representative. The negotiations would begin on January 27, 2003, concluding at the end of that year. The structure and schedule of the negotiations are presented in the following:

Structure of the negotiations

- 1) Group of Negotiating Heads
- 2) Group on Market Access
 - a) Goods
 - b) Sanitary and phytosanitary measures
 - c) Technical barriers to trade
 - d) Rules of origin
 - e) Customs procedures
 - f) Trade Facilitation
 - g) Safeguards
- 3) Group on Services and Investment
 - a) Investment
 - b) Services
 - c) Temporary Entry
 - d) E-commerce
- 4) Group on Dispute Settlement and Aspects
 - a) Institutional aspects
 - b) Dispute settlement and transparency
 - c) Institutional provisions
- 5) Group on Intellectual Property and Government Procurement
 - a) Government Procurement
 - b) Intellectual Property
- 6) Group on Environmental and Labour Aspects
 - a) Environment
 - b) Labour
- 7) Co-operation Committee

8) Working Group on Sanitary and Phytosanitary Measures associated with Agricultural Trade

Co-operation package

The package for co-operation and the strengthening of institutional capabilities consists of at least 50 projects, including financing for computers, travel, public participation. For these purposes, the US Government has allocated a US\$47 million budget, 74% more than that for 2002.

Calendar of rounds of negotiations

Rounds of Negotiations	Scheduled dates	Venue
1 st Round of Negotiations	January 27 - 31, 2003	Costa Rica
2 nd Round of Negotiations	February 24 - 28, 2003	Cincinnati
3 rd Round of Negotiations	March 31 – April 4, 2003	El Salvador
4 th Round of Negotiations	May 12 – 16, 2003	Guatemala
5 th Round of Negotiations	June 16 – 20, 2003	Honduras
6 th Round of Negotiations	July 28 – August 1, 2003	USA
7 th Round of Negotiations	September 15-19, 2003 8-12	Nicaragua
8 th Round of Negotiation	October 20 – 24, 2003	Costa Rica
9 th Round of Negotiations	December 8 – 12, 2003	USA

Calendar of Central American coordination meetings

Coordination Meeting	Scheduled Rates	Venue
1 st Coordination Meeting	January 15 – 16, 2003	El Salvador
2 nd Coordination Meeting	February 18 – 19, 2003	Costa Rica
3 rd Coordination Meeting	March 18 – 19, 2003	Guatemala
4 th Coordination Meeting	April 19 – 30, 2003	Honduras
5 th Coordination Meeting	June 3 – 4, 2003	Nicaragua
6 th Coordination Meeting	July 15 – 16, 2003	Costa Rica
7 th Coordination Meeting	August 26 – 27, 2003	El Salvador
8 th Coordination Meeting	October 7 – 8, 2003	Guatemala
9 th Coordination Meeting	November 25 – 26, 2003	Honduras

Results of the Rounds of Negotiations

1st Round of Negotiations, January 27-31, 2003, San José, Costa Rica

- Relevant trade information was exchanged, including legislation and statistics.
- The scope of the agreements entered into by the parties with third parties was discussed, especially MCCA agreements with Mexico and Chile, as well as that between the United States and Chile.
- Additional information on relevant matters was requested.

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- First meeting of the negotiating groups.
 - The possibility of providing Central America with technical assistance in food safety and animal health was discussed.
 - Initiatives to improve the environment in the countries of the region were discussed.
 - Improved conditions for workers were discussed.

The US State Department reported on the possibility of excluding Guatemala from the FTA since it has failed to certify its efforts in the fight against drug trafficking.

2nd Round of Negotiations, February 24-28, 2003, Cincinnati

The United States did not present proposals on agriculture, labour rights and telecommunications during this round.

- 1) Negotiating Group on Market Access
 - a) Tariff and non-tariff measures (USA).
 - i) Preferential treatment for products coming from companies established under some special export regime. Five year (5) transition period after the entry into force of the Agreement so as to continue receiving the benefits of such regimes and to grant preferential trade.
 - b) Textiles (USA). Includes provisions on textile safeguards; rules of origin, including their revision in the future, de minimis provisions and treatment of sets; as well as customs co-operation to control triangulation.
 - i) *Textile safeguards*: Bilateral emergency action when an increase in textile and clothing imports affects or poses a severe threat to the domestic industry.
 - ii) *Customs co-operation*:
 - iii) *Rules of origin*: Specific rules of origin for textiles and clothing. **Part of the concept of originating thread¹**. In order to enjoy the tariff preference, companies must use originating thread and fabric, and carry out the cutting, sewing and assembly in the territory of the Parties of the Agreement. **Provisions to avoid triangulation²**.
 - b) Technical barriers to trade (USA):
 - i) The rights and obligations established in the framework of the WTO Agreement on Technical Barriers to Trade and its improved implementation are confirmed.
 - ii) Bilateral co-operation.
 - iii) Accreditation to qualify the evaluating bodies, as the case may be.
 - iv) Transparency: Reaffirms the obligation to ensure extensive participation and consultation in the creation process of rules, technical regulations or evaluation procedures, as the case may be.
 - v) **Establishment of a Committee on Technical Barriers to Trade** to monitor the implementation and management of the chapter, as well as coordinate co-operation projects and perform consultations among the Parties with respect to the application of the chapter..

¹ The initial North American proposal establishes that only garments manufactured with thread originating in the United States will enjoy free trade in the FTA.

² Preferential access could be denied if there is "suspicion" of triangulation

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- c) Sanitary and Phytosanitary Measures (USA):
 - i) The rights and obligations established in the framework of the WTO's ASPM are confirmed.
 - ii) **Establishment of the Committee on Sanitary and Phytosanitary Measures**, comprising the representatives of the agencies responsible for the application of SPM, with the mandate to improve the implementation of the WTO's ASPM among the Parties.
 - iii) Direct relations among the technical agencies responsible for applying SPM.
 - d) Customs management (USA):
 - i) Transition periods, in the event that a country encounters difficulties in implementing a measure immediately.
 - ii) Mechanisms for consultation among countries in order to monitor the implementation status of the provisions of the Agreement and to strengthen co-operation programmes in this field.
 - iii) Allows customs administrations to negotiate a Mutual Customs Assistance Agreement.
 - b) Rules of origin (USA): Contains provisions on: general criteria for determining origin; method to calculate the regional value content and its adjustments; accumulation of origin; de minimis rule; fungible goods and materials; accessories, spare parts and tools; indirect materials; packages and packing materials for retail sale; indirect materials; operations that do not confer origin; criterion for direct shipment and definitions.
- 2) Negotiating Group on Services and Investment:
- a) Services (USA): Covers the following aspects: definitions, scope of application, domestic control, national treatment, most favoured nation treatment, market access, local presence, non-conforming measures, recognition, transfers, denial of benefits, transparency in the development and application of controls and professional services. Services provided exclusively by the State in exercising its governmental duties are not included.
 - i) Financial services
 - (1) Scope of application: Broad scope of application for investments and cross-border trade. Will apply solely to the sectors and modes of supply included by each Party on a list prepared for this purpose. Excludes public pension plans or social security, as well as financial services provided exclusively by the State.
 - ii) Investment
 - (1) Mechanism for settling disputes between an investor and the Party where the investment is made.
 - (2) Exclusion of the existing non-conforming measures that are not compatible with the obligations of national treatment, most favoured nation treatment, market access and local presence. The non-conforming measures would be listed in two annexes, one for existing measures and another for future measures.
 - b) E-commerce: Covers aspects such as: providing services by electronic means, digital products, transparency and definitions.
 - i) Digital products: Tariffs or other customs charges do not apply to products transmitted electronically.

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- ii) The customs valuation of the mode by which the digital product is transmitted will be performed on the basis of the value of the physical support and not considering the value of the digital product contained therein.
 - iii) Guarantee national treatment and most favoured nation treatment to all digital products regardless of their creator, place of creation, production, publication, storage, transmission, contracting and order.
 - 2) Negotiating Group on Intellectual Property and Government Procurement.
 - a) Intellectual Property (USA): Strengthens observance procedures, complementing and expanding the obligations assumed by countries through the TRIPS, adjusting these rights to the digital era and to technological changes.
 - i) Application of the principle of national treatment and provisions on transparency.
 - ii) Trademarks:
 - (1) Principle of first come, first served
 - (2) Geographical indications and clarification of the relation with domain names
 - (3) Cybernetic pirating of trademarks
 - (4) Author rights and related rights, are clarified and developed in the provisions established in the WCT and the WPPT, for the purpose of ensuring the protection of these rights in the digital era
 - (5) Patents, to clarify and expand the scope of protection and the rights conferred by the patent, in addition to compensate for protection periods in specific cases
 - (6) Undisclosed information, to clarify the type of protection that should be provided for such information, establishing a 5 year protection period for pharmaceuticals and 10 years for agrochemical products
 - (7) Observance of intellectual property rights, to guarantee that the Parties provide administrative, civil and penal resources to ensure that these rights are adequately and effectively protected
 - b) Government procurement (USA)
 - i) Scope and coverage: any measure adopted or maintained by a Party, or a contracting entity of this Party, with respect to the contracting of the entities covered, by any contractual means and within the thresholds and conditions specified in the respective annexes
 - ii) Justified exceptions to the coverage
 - iii) Tendering procedures and bases: allow participation by all interested parties, establish timeframes and provisions that would allow adequate participation and preparation on the part of suppliers, in addition to the use of administrative or judicial resources by an independent and impartial authority
 - 2) Negotiating Group on Dispute Settlement and Institutional Aspects
 - a) Dispute settlement (USA)
 - i) Create a mechanism for dispute settlement (State- State)
 - ii) Promote and strengthen alternative means of resolving conflicts in disputes among parties
 - iii) Institutional provisions
 - (1) Creation of a **Free Trade Commission** comprising the representatives of each Party at the Ministerial level, to supervise the proper application of the Agreement

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- 3) Negotiating Group on Environmental and Labour Aspects
- a) Environment (USA)
 - i) The right of each Party to establish their own levels of protection and environmental development priorities, modifying them according to their own environmental laws and policies. These Parties must establish high levels of environmental protection and pledge to improve them.
 - ii) Environmental legislation must not affect trade among parties.
 - iii) It has been recognised that it is inappropriate to promote trade or investment that weakens the protection provided by national environmental legislation.
 - iv) Strengthen the Parties' ability to protect the environment and promote sustainable development. In that respect, the Parties will consider public comments and recommendations on the co-operation activities carried out.
 - v) Establishment of the **Environmental Affairs Council**

3rd Round of Negotiations, March 31 – April 4, 2003, El Salvador

Central America presented proposals and counter proposals on substantive disciplines in the various negotiating areas.

The United States has offered to consider the consolidation of the benefits to be derived by the region through the Caribbean Basin Initiative (CBI) and the Generalised System of Preferences (GSP).

- 1) Negotiating Group on Market Access
 - a) Aspects of convergence: national treatment, treatment of goods originating in duty free zones, elimination of non-tariff measures and import duties, elimination of export subsidies, rules of origin, customs procedures and trade facilitation, technical barriers to trade and sanitary and phytosanitary measures.
 - b) Aspects of divergence: textiles³, the treatment of internal agricultural support measures⁴, treatment of sensitive goods and negotiation methods and categories. Periods for tariff reduction⁵.
- 2) Negotiating Group on Services and Investment
 - a) Cross-border trade in services
 - i) Aspects of convergence: definitions, scope of application of the chapter, management of domestic regulations, transparency, national treatment and most favoured nation treatment.

³ The USA made the situation more flexible by offering the possibility of including clothing produced with fabric imported from third parties.

⁴ Central America requested the selective removal of subsidies for agricultural products exported to the isthmus. The reduction of duties on sensitive products like milk, fish and chicken can be linked to the dismantling of the internal assistance scheme for those sectors in the USA.

⁵ The USA proposes maximum periods of 10 years. CA recommends using as a reference, the periods indicated in the framework of the FTAA, that is to say, a group of zero rated goods with immediate access, another with five, one with ten and a final group of sensitive goods, whose access would be negotiated product by product.

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- ii) Aspects of divergence: approach in order to regulate non-discriminatory quantitative restrictions on cross-border trade in services, payment transfers related to the provision of services.
 - b) Telecommunications services
 - i) USA: proposal on telecommunications services. Liberalisation by means of connecting private companies to national networks. Presupposes the existence of conditions of competence within this sector in the Parties⁶.
 - c) Financial services
 - i) Aspects of convergence: definitions, scope of application of the chapter, management of domestic controls, transparency, national treatment, most favoured nation treatment, senior management, treatment of confidential information and exceptions.
 - ii) Aspects of divergence: approach in order to regulate non-discriminatory quantitative restrictions on trade in financial services, specific provisions on dispute settlement to ensure adequate participation by the competent supervisory authorities and discussion of the annexes on measures not consistent with the obligations of the chapter.
 - d) E-commerce
 - i) Aspects of convergence: consolidate the moratorium on customs duties already existing on electronic transactions and grant guarantees of national treatment and most favoured nation treatment to this type of commerce, as well as encourage the transparency of the new regulatory framework in each country.
 - ii) Aspects of divergence: scope of the definition of the digital product and the determination of origin.
 - e) Temporary entry of business persons. The USA presented a proposal that will serve as the motivation of the negotiations in the 4th Round.
 - f) Investment
 - i) Convergences: award productive investment with guarantees of national treatment, most favoured nation treatment and a minimum level of treatment in accordance with international law, transfers of investment related payments, senior management, investment and environment and the settlement of disputes between the investor and the State receiving the investment.
 - ii) Divergences: scope of the definition of investment, details on expropriation processes, performance requirements and discussion of the measures that are not consistent with the obligations.
 - 3) Negotiating Group on Intellectual Property and Government Procurement
 - a) Intellectual property. This round discussed matters related solely to Author Rights and Related Rights.
 - i) Convergence: the right to authorise or prohibit any reproduction in any manner or form; the right to authorise the original work being made available to the public, as well as copies of same; non-establishment of hierarchy between the rights of authors and the rights of artists, performers and

⁶ The Costa Rican delegation indicated that the liberalisation of the telecommunications sector in Costa Rica will not be the object of negotiations in the framework of the FTA. Costa Rica is the only country in the region in which a constitutional monopoly is operating in this sector.

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- producers of phonograms; guarantee for holders to transfer, freely and independently, their patrimonial rights; the establishment of civil and penal resources and sanctions against the evasion of technological measures that control access to work, performance or phonograms that are protected, and the violation of information on the management of rights; prohibition of the transmission of television signals via the Internet without the authorisation of the holder; the exclusive right of authors to authorise or prohibit the communication of their work to the public; guarantee of the right to authorise or prohibit the broadcast or any communication of unfixed performances; and the guarantee of minimum requirements.
- ii) Divergence: Temporary electronic copies; parallel imports; protection periods; classification of several offences; exceptions to protection against the evasion of technological measures; legitimate software by the Government; and the protection of codified satellite signals
- b) Government procurement⁷
- i) Convergences: definitions (contracting entity, offsets, contracting, provider, technical specification); scope of application and coverage of the Chapter; non-application or non-imposition of offsets; the need to publish laws, regulations and acts related to contracting; the need to publish an invitation to participate; determine the minimum information that should be contained in said notice; the need to communicate to participants regarding any change in the notice; the use of technical specifications; conditions for requirements established for participation as a supplier; the obligation to utilise open tendering procedures; award based on the criteria established in the notice, and opportune information on the tender awarded; the application of exceptions; establishment of mechanisms for modifications and rectifications to the coverage.
 - ii) Divergences: definitions (BOT, Open Tendering Procedure, international regulation); thresholds; application of rules of origin; establishment of minimum periods; integrity in contracting practices, national review of bid challenges.
- 4) Negotiating Group on Dispute Settlement and Institutional Aspects
- a) Dispute Settlement
 - i) Convergence a) In the (State-State) dispute settlement mechanism: aspects related to co-operation, scope of application (application and interpretation of the agreement, cases of inconsistency or nullification or impairment), election of the forum, stages of the procedure (consultation and establishment of the panel), lists of panellists and aspects related to the initial and final reports of the panel. b) In the (party-party) dispute settlement mechanism: in the obligation of the Parties to promote and facilitate alternative dispute resolutions; to ensure the observance of international agreements signed in this area; aspects pertaining to the interpretation of the agreement with domestic judicial and administrative bodies and on private rights when a measure is imposed by another Party.

⁷ The USA left on the table, the possibility of allowing state governments to make purchases from the party countries.

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- ii) Divergences: a) **In the (State-State) dispute settlement mechanism:** scope of application (mainly on the possibility of applying the mechanism to measures being planned; nullification or impairment), stages and periods of the procedure, participation by Parties interested in the procedure (Consulting Party, Complaining Party, Third Party, etc.), model rules of procedure, completion of the final report and suspension of benefits and compensation. With respect to the last point, it should be noted that the USA is yet to present a draft text. b) **In the (Party-Party) dispute settlement mechanism:** the possibility of giving the Advisory Committee on Private Commercial Disputes a more active role, so as to strengthen the dissemination and promotion of alternative dispute resolutions⁸.
- b) Institutional provisions
- i) Convergences: a) Initial Provisions: the establishment of a free trade zone and in the objectives of the Agreement; b) Transparency: contact points; the right to publication; the right to provide information; administrative proceedings; review and appeal and definitions; c) Management of the Agreement: **creation of a Free Trade Commission and committees;** also concerning the obligation of the Parties to provide the panels with administrative assistance.
- ii) Divergences: (1) Initial Provisions, the aspects of the observance of obligations and the association with other agreements; (2) Transparency, aspects related to notification (especially that pertaining to Central America) and the exchange of information on internal procedures for the publication of laws, regulations, procedures, general administrative settlement, among others; (3) Management of the Agreement, aspects related to the creation of a **Free Trade Sub-Commission to facilitate the work of the Commission;** as well as aspects pertaining to the duties entrusted to the different bodies responsible for managing the agreement.
- c) Negotiating Group on Environmental and Labour Aspects I
- i) Environment
- (1) MCCA Proposal: co-operation approach, address environmental co-operation within the same FTA; provisions that indicate that each country has the right to establish its own levels of environmental protection, as a sovereign right; with respect to procedural guarantees, it has been defined that their compliance will be established in the domestic regulations of each country.
- (2) Divergences: **possible consequences in the event of non-fulfilment of the obligations of the Parties**⁹.
- d) Labour
- i) Convergence: the co-operation mechanism proposed by the United States is a sound basis for the discussion of this topic.
- ii) Divergences: The need to adjust co-operation mechanisms to the priorities defined by each country.

⁸ This is a proposal that Central America will be taking to the negotiating table.

⁹ The United States may, although it has not yet done so, present a proposal on a framework of controls, finds and sanctions for non-compliance with the laws in this field and if it is believed that laws are not being observed, investigations would be launched in this respect.

- iii) Central America will present proposals for co-operation projects (bilateral and regional) before April 24, 2003 in order to receive funding from the US Labour Department.
- iv) The United States reported that a similar text to that included in the FTA with Singapore and/or Chile is being sought.
- e) Working Group on Co-operation. The following developments were achieved:
 - i) The Federal Agency for United States Trade Development (USTD) has defined projects in the area of business information technology. A reconnaissance mission will visit the country to evaluate the types of projects that should be promoted in this sector.
 - ii) The United States Agency for International Development (USAID) agreed to finance a project focussing on science and technology for rural areas in Costa Rica.
 - iii) The Humane Society commenced the coordination of a support programme for organic agricultural production and marketing in Costa Rica.