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Opportunities and Challenges to Advance Environmental Protection in the U.S.— Central American Free Trade Negotiations

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Trade negotiations between the United States and Costa Rica, Guatemala, El Salvador, Honduras, and Nicaragua hold the potential to forge a new U.S.–Central American framework for trade that strengthens democracies; promotes respect for workers' rights; establishes sound, properly enforced environmental laws; and creates economic opportunities through trade for people living in developing nations. Accomplishing this challenging agenda will take bold leadership from all six countries.

Central American governments have for some time recognized the importance of conserving natural resources and protecting their environment.

Unfortunately, existing environmental infrastructures are inadequate to mitigate environmental damage stemming from urban, rural, and industrial activities. The Inter-American Development Bank has found that deteriorating investment in

natural resources and environmental protection has put Central America's natural resources, as well as community health, at risk. Nearly 75 percent of Central America's population lives in conditions where vehicular congestion, industrial and vehicular emissions, depleted water sources, water pollution, and land and housing scarcities reduce productivity, increase violence, and diminish public health.¹

Recent reports by researchers from the United Nations Development Program and Oxfam also show that trade-led growth alone does not build healthy dynamic economies.² In addition to trade, societies need infrastructure, education, and basic public health services before communities can begin to benefit from expanded economic activity. As the Oxfam report shows, without programs to promote access to better health care and education for children, trade liberalization

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in such key sectors as Central American coffee has resulted in plummeting commodity prices, thereby contributing to an increase in pressure on rural families to rely on their children's labor to earn a living wage.

Relatively weak governing systems in most Central American nations raise doubts that increased trade and investment liberalization will lead to the necessary conditions for sustainable growth unless the United States makes achieving this objective a primary goal in negotiations for a U.S.–Central American Free Trade Agreement (CAFTA). Fortunately, the U.S. Congress and George W. Bush's administration recognize the important relationship between U.S. trade policy, environmental protection, and more equitable growth. In *The National Security Strategy of the United States of America*, the administration argues:

A strong world economy enhances our national security by advancing prosperity and freedom in the rest of the world. Economic growth supported by free trade and free markets creates new jobs and higher incomes. It allows people to lift their lives out of poverty, spurs economic and legal reform, and the fight against corruption, and it reinforces the habits of liberty. . . . We will incorporate labor and environmental concerns into U.S. trade negotiations.³

Congress makes the link between trade and environmental policy as well. U.S. Trade Promotion Authority (TPA) instructs U.S. negotiators to foster a healthy national economy, freer markets, and improvements in labor conditions and environmental protection.

To fulfill both Congress's and the administration's commitments to environmentally responsible trade agreements, the Office of the U.S. Trade Representative (USTR) must accomplish three goals in the CAFTA negotiations. First, it should integrate future technical

assistance and capacity-building efforts into the existing framework of assistance offered to Central American nations to enhance their national, regional, and international levels of environmental protection. Second, in a manner consistent with TPA instructions, the U.S. negotiating positions should build upon existing trade and environment linkages to encourage its Central American trading partners to implement and strengthen environmental laws. Third, CAFTA should be negotiated and implemented in a manner that fosters good governance and reinforces democracy in Central America.

BUILDING ON EXISTING ENVIRONMENTAL PROTECTION EFFORTS

In passing Trade Promotion Authority, Congress emphasized for the first time the important role negotiations must play to “strengthen the capacity of United States trading partners to protect the environment through the promotion of sustainable development.”⁴ This objective should be achieved through the existing framework of technical cooperation to avoid redundancy and to facilitate the coordination of technical assistance efforts already under way.

The existing framework for environmental cooperation is based upon the work of the Comisión Centroamericana de Ambiente y Desarrollo (CCAD), established by the Central American governments in 1988 to create and strengthen national organizations dedicated to environmental protection and development. Work orchestrated by CCAD is assisted by foreign governments and intergovernmental organizations, including the United States. Their combined contributions help provide technical expertise and capacity building in important areas such as climate change,

endangered species protection, responsible forestry, and environmental protection.⁵

To ensure that the framework for existing technical support is incorporated into negotiations, ***federal agencies, Congress, and interested citizens should be made fully aware of the technical assistance and capacity-building work already under way in Central America.*** In TPA, Congress created a special oversight group to monitor the trade negotiations on a day-to-day basis; this Congressional Oversight Group should seek summary reports from federal agencies involved in ongoing technical support projects.⁶

Central American governments should be encouraged to consult with CCAD, PROARCA, and CONCAUSA as they develop their hemispheric cooperation programs. On the basis of a review of the national action plans for trade capacity building recently released by the Central American governments, such interaction has not yet occurred; as a result, these draft national action plans fail to fully incorporate environmental infrastructure and capacity-building needs.⁷ Costa Rica is an exception; in its draft plan of action, it emphasized the need to develop and strengthen solid waste disposal, wastewater treatment, and hazardous waste management throughout the country.

Given the large loads and small staffs of these negotiating teams, this is not surprising. U.S. embassies should be instructed by the Department of State to contact Central American environment and development agencies and promote interaction between Central American trade policy makers and these programs. Along with the long-term benefits of better coordination between international trade and domestic policy, State Department Foreign Service offices can also explain that including environment

and development concerns in their plans of action will actually help U.S. negotiators achieve the broader goals for trade liberalization outlined by Congress in TPA.

Finally, relationships between Central American officials and the staffs of relevant U.S. federal technical support agencies (e.g., USAID, the Environmental Protection Agency, and the Department of Agriculture) are critical to the long-term success of technical assistance projects. Such direct working relationships between donor and client help tailor U.S. assistance to meet the needs of countries receiving assistance. Because long-term technical assistance and capacity building will not be the USTR's responsibility, ***to help foster appropriate intergovernmental relationships, the USTR should assign officials from such agencies as USAID and the Department of State to negotiate technical assistance agreements.*** The U.S. Departments of State, Commerce, and the Treasury historically have taken the lead in negotiating areas of trade agreements in which they have particular expertise. Reallocating USTR officials to assist negotiations in other areas would also help to lessen the burden shouldered by USTR staff to engage in a growing number of trade negotiations.

TRADE-RELATED INCENTIVES FOR ENVIRONMENTAL PROTECTION

Under work orchestrated nationally and in such regional efforts as CONCAUSA, Central American governments have taken important steps toward establishing an effective environmental protection regime. That said, many important challenges remain. In addition to supporting ongoing capacity-building efforts, the United States should negotiate a free trade agreement

that creates direct, trade-related incentives for environmental protection.

Promoting Green Product Exports

There is a growing demand for goods produced in an environmentally sustainable fashion. The European Union estimates that its environmental “industry” generates 54 billion euro a year, and employs more than 2 million people, or 1.3 percent of its total paid labor force. Roughly 1.5 million people are employed in pollution management activities, and another 650,000 in resource management. Investors in industrial countries have also begun to tailor their own investments to promote environmentally sustainable production. The value of managed investment funds that now use one or more social-screening criteria—of which environmental criteria are among the most prominent—increased from \$1.49 trillion in 1999 to more than \$2 trillion in 2001. Today, nearly one in every eight dollars under professional management in the United States is invested in socially responsible firms.

In its Doha Declaration, the World Trade Organization’s (WTO) reflected this shift in interest in environmental goods by instructing its members to reduce or eliminate tariff and nontariff barriers to environmental goods and services.⁸ Congress supports this initiative in its trade instructions to the USTR.⁹ Unfortunately, the current focus in WTO negotiations is on high-technology environmental goods, such as pollution scrubbers and wastewater treatment equipment.

Although the high-technology environmental goods sector is important for promoting sustainability, these products are produced and traded by industrial countries, so there is little incentive for such developing countries as Honduras, Guatemala, El Salvador, or Nicaragua to support the negotiations.

Conversely, along with Costa Rica, these countries enjoy a competitive advantage in environmentally sensitive agricultural products. *The United States and Central American countries must take the innovative step of proposing favorable trade terms for Central American agricultural products that are produced in sustainable ways.*

Along with technical assistance programs to help Central Americans resolve nontariff issues related to food safety or technical barriers, facilitating trade in “green” agricultural products by eliminating all tariffs and tariff-rate quotas on these products would help the U.S. government achieve a number of objectives. Industrial countries resist expanding the definition of an environmental good, fearing that the temptation is too great to exploit this language to protect domestic industries. Both industrial and developing countries also fear the use of product labels necessary to distinguish green products.

Though conscious of these constraints, negotiating a solution to both the problem of how to define a green good and the use of product labels among a smaller number of countries first would enable the United States and its neighbors to propose unified solutions in multilateral negotiations. Preferential or accelerated trade liberalization in organic products also demonstrates to the public that trade rules can encourage trade in products that make sense economically and socially. Finally, due to its more labor-intensive nature, sustainable agriculture will help keep farmers working, and thereby promote healthy rural communities. And given the growing number of consumers willing to pay a premium for organic products, trade liberalization in green agricultural products would pose minimum competition for U.S. farmers.

Making Binding Commitments to Protect the Environment

Congress also instructed U.S. negotiators to ensure that the country's trading partners do not fail to effectively enforce their labor and environmental laws to gain a competitive advantage. Unfortunately, to date this approach has achieved little in the environmental sphere. Parties have never implemented Part V of the North American Agreement on Environmental Cooperation (NAAEC), making it virtually impossible for one party to file a complaint against another. U.S. trade agreements with Jordan, Chile, and Singapore mark an important shift in U.S. trade policy because they move the commitment to enforce environmental laws into the body of the trade agreement. Yet even this kind of "enforceable" environmental language is unlikely to be applied effectively without public involvement in its implementation.

To strengthen the linkages between trade commitments and environmental policy goals, the United States should negotiate several additional provisions for CAFTA. First, besides insisting that Central American governments enforce their national environmental laws, *the United States and Central American countries should agree to two things. First, they should agree that all trade measures found in multilateral environmental agreements are consistent with international trade obligations, and therefore immune from WTO challenges from CAFTA parties. Second, the United States and Central American nations should make a commitment to implement the multilateral environmental agreements (MEAs) containing trade measures to which they are a signatory.*

Although the World Trade Organization has not yet finalized a list of MEAs containing trade measures, the United Nations Environment Program (UNEP)

and the International Institute for Sustainable Development (IISD) identify only about twenty MEAs that contain trade provisions, of which even fewer are significant for the environment–trade interface.¹⁰ The United States argues that there are no inconsistencies between WTO rules and MEAs; one way to support this position is to encourage the CAFTA parties to work with UNEP to determine and implement all trade measures found in MEAs to which they are a party.¹¹

U.S. technical assistance also should be directed to assisting Central American governments to fully implement their MEA obligations, whether or not the United States has signed or ratified the same treaty. For example, the Montreal Protocol, which all CAFTA parties have ratified, has successfully controlled trade in ozone-depleting substances and trade in products containing these substances; to help accomplish this goal, it established a fund to assist developing countries in their transition away from controlled substances. The United States should likewise assist its Central American trading partners to build the capacity necessary to comply with their MEA obligations, even if—as in the case of the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal—the United States itself has not yet ratified a particular agreement.

Second, *the United States and Central American countries should make a commitment to take the necessary legislative, regulatory, and other measures to collect and publicly disseminate environmental information.* For the Central American countries, this provision should include taking steps to establish progressively—with U.S. technical assistance—a coherent, nationwide pollutant release and transfer register, which is similar to the U.S.

Environmental Protection Agency's Toxic Release Inventory.

International demand is growing for pollution "right to know" legislation similar to that applied in the United States. Other governments are responding to public demand as well. The government of Mexico recently modified its General Law of Ecological Balance and Environmental Protection to require states, the Federal District, and municipalities to keep a release and transfer register for air, water, soil and subsoil pollutants, materials, and wastes under their jurisdictions, as well as those substances determined by the corresponding authority. Changes in Mexican law are directly the result of technical assistance provided by the North American Agreement on Environmental Cooperation, to which the U.S. is a party. Other examples of the move to public disclosure can be found in the Aarhus Convention, which to date has been signed by 40 European governments.¹² Accessible and transparent information will provide moral suasion incentives for CAFTA trading partners and investors to uphold national environmental laws, as well as permit stronger analyses of trade-related environmental impacts.

Third, ***CAFTA parties should negotiate language encouraging private industry to follow voluntary guidelines for environmental management and reporting, including Responsible Care, the International Standards Organization's ISO-14000, and the disclosure guidelines found in the Organization for Economic Cooperation and Development's Guidelines for Multinational Corporations.*** As important as negotiated text is, perhaps the most effective way for private firms to influence environmental protection is to demonstrate that businesses can and will be responsible

members of both international and local communities.

In this regard, many U.S. and Canadian firms have records to be proud of, because they are leaders in the use of green technology to lower costs and increase productivity while improving the environment. These companies also have adopted responsible policies for releasing public information regarding chemical use, emergency response programs, and other environmental management practices. With proper encouragement from governments, disclosing information regarding environmental practices should be a small step for business to take—with tremendous potential for positive gain.

Finally, the policy steps recommended here must be supported by the creation of an objective reporting mechanism to ensure that new laws are effective and enforced. The United States and its Central American trading partners can break new ground in this area by instructing UNEP to conduct independent reviews of U.S. and Central American trade-related environmental laws and their implementation. In the short term, information of this kind would be useful to focus U.S. technical assistance and capacity building in preparation for CAFTA's implementation. More generally, environmental protection performance reports would provide information useful for the Bush administration's efforts to promote good governance, and perhaps help in determining whether a particular Central American country is eligible for additional U.S. development assistance.

GOVERNANCE AND TRADE

The Bush administration rightly emphasizes the link between good governance and healthy societies. In his

speech announcing the Millennium Challenge Account, the president said:

Countries that live by these three broad standards—ruling justly, investing in their people, and encouraging economic freedom—will receive more aid from America. And, more importantly, over time, they will really no longer need it, because nations with sound laws and policies will attract more foreign investment. They will earn more trade revenues. And they will find that all these sources of capital will be invested more effectively and productively to create more jobs for their people.¹³

Trade agreements can contribute to achieving the goal of good governance if they involve the public in their negotiation and administration. The United States should negotiate CAFTA to include three good governance provisions: dispute settlement proceedings, environmental reviews of trade agreements, and participation and transparency measures.

Dispute Settlement Proceedings

The record of international trade dispute settlements underscores the impact that these decisions can have on domestic policies. In some instances, public health or food safety regulations developed through public notice and comment are being challenged as inconsistent with trade disciplines. Just as in cases where the government considers amending a U.S. law in response to litigation, the public has standing in such cases. Citizens should be able to

- a) offer their opinion on the case through *amicus curiae* submissions;
- b) have access to all nonproprietary documents related to the dispute;
- c) observe the presentations before the dispute settlement panel;
- d) have immediate access to the findings; and

- e) be eligible for an appeal process that enables governments to correct for improperly decided cases.

These recommendations are consistent with congressional instructions to promote openness at the WTO and other international institutions, and they currently make up the USTR's formal position offered in WTO Geneva discussions.¹⁴

Environmental Reviews of Trade Agreements

The United States should actively encourage its trading partners to conduct environmental assessments of trade liberalization. A 1999 report commissioned by the environmental ministry in Brazil underscores the level of interest among Latin American governments in this kind of analysis.¹⁵ Efforts by the Organization of American States and such private organizations as the World Wildlife Fund and World Resources Institute have shown that conducting environmental assessments builds long-term capacity to enact and enforce national environmental laws.

Participation and Transparency

In her work on behalf of the Inter-American Development Bank, recognized trade scholar Sylvia Ostry has shown that few countries in the Western Hemisphere have a trade policy-making process that adequately and fairly consults with ministries, parliaments, or affected constituencies.¹⁶ Simultaneously, citizens' groups around the world are asking their governments to develop and implement trade policy in a more open and transparent fashion.

The United States has an opportunity to increase good governance by incorporating certain transparency and public participation provisions into the CAFTA agreement. In particular, the United States should insist that CAFTA

- a) ***Grants citizens a right of petition:*** The United States has been severely criticized for using trade agreements to grant industries the right to seek compensation for actions resulting in property expropriation by parties to a trade agreement. Although I do not believe that this approach to ensuring property rights protection is unnecessary, citizens should be given the same opportunity to petition for their rights. Such a right of action should lead either to a formal case brought against a government—for example, for failure to enforce its own national and international commitments to protect the environment—or to an independent study similar to that provided in NAAEC Article 14 for enforcing laws affecting trade policy.
- b) ***Includes a public advisory body:*** One of the most effective models for including citizens in the administration of a trade and environment agreement is the Joint Public Advisory Committee (JPAC), part of the governing council of the North American Commission for Environmental Cooperation. JPAC has played a constructive role in the side agreement's implementation, serving to guide both government officials and interested citizens toward responsible balances between trade and environmental policy priorities. The administrative body to the CAFTA agreement should include a private advisory body similar to JPAC, with two individuals from each CAFTA country selected to serve on its board.
- c) ***Provides for data collection and dissemination:*** Data on the implications of economic integration for the environment and health should be gathered and widely disseminated. As was discussed above, UNEP is a good candidate to aggregate, evaluate, and distribute this kind of information, provided it receives adequate support to

do so from the CAFTA parties. The cooperative work plan and information gathering projects under way at the North American Commission for Environmental Cooperation also provide a good model to follow.

PROGRESS TOWARD RESPONSIBLE TRADE

Designing trade regimes that promote environmental protection, strengthen the rule of law, and encourage good governance is not an easy challenge to meet. That said, the CAFTA negotiations present a timely opportunity to accomplish these objectives and to help put the U.S. and Central American governments on a path toward ecologically sustainable trade and investment liberalization.

The proposals offered here present negotiators, interested citizens, and national and subnational legislators with a roadmap to navigate these challenges and deliver a trade agreement that will win the support of people throughout Central America and the United States. The repercussions of these negotiations for the six countries is great; the example they can set for other negotiations may be even greater.

U.S. trade representative Robert Zoellick has demonstrated that he understands the importance of factoring environmental issues into trade agreements. Looking forward, the United States must now negotiate and implement the proposed CAFTA in a manner that integrates future technical assistance and capacity-building efforts into the existing framework of environmental cooperation, creates trade-related incentives for sound environmental protection, and fosters good governance. ■

¹Inter-American Development Bank, *Facing the Challenges of Sustainable Development: The IDB and the Environment: 1992–2002*. (Washington, D.C.: Inter-American Development Bank, 2002).

² See Kamal Malhotra, *Making Trade Work for People*. (London: Earthscan Publications Ltd, 2003); “Rigged Rules and Double Standards” (Oxford: Oxfam International, 2002).

³*The National Security Strategy of the United States of America* (Washington, D.C.: White House, 2002), pp. 17, 19.

⁴ U.S. Trade Promotion Authority, Article 2102(b)(11)(D).

⁵ Since 1995, under the auspices of the U.S. Agency for International Development’s (USAID’s) Ambient Regional para Centroamerica (PROARCA) project, U.S. federal agencies have assisted Central American nations to increase the effectiveness of regional stewardship of the environment and key natural resources in target areas. In particular, U.S. support has emphasized coastal water protection and maintaining the biodiversity of the region’s key forest systems. PROARCA’s contribution to the enhancement of Central American environmental protection efforts is consistent with the goals of the Central American–United States of America Joint Accord (CONCAUSA), which was signed on the margins of the 1994 Miami Summit of the Americas and renewed in 2001. This accord made the United States the first extraregional partner in the already existing Central American Alliance for Sustainable Development (ALIDES). For detailed information on targeted CCAD areas and sources of support, see <http://ccad.sgsica.org>. See <http://www.ard-biofor.com/proarca.html> for additional information regarding the PROARCA project. See the Department of State fact sheet at <http://www.state.gov/r/pa/prs/ps/2001/3325.htm>

⁶ The U.S. Agency for International Development is responsible for the administration of Central American technical assistance under PROARCA. The U.S. Environmental Protection Agency has implemented many PROARCA technical assistance projects, e.g., to develop integrated solid waste management and wastewater treatment infrastructure, to reduce the inventory of obsolete pesticides stockpiled throughout the region, and to improve food quality for fresh produce exported from Central America.

⁷ National action plans (as of February 2003) for El Salvador, Guatemala, Honduras, and Nicaragua can be viewed at www.ustr.gov.

⁸ World Trade Organization, Fourth Session of the World Trade Organization Ministerial Declaration, adopted in Doha, Qatar, on November 14, 2001.

⁹ U.S. Trade Promotion Authority, Article 2102(b)(11)(F).

¹⁰ The United Nations Environment Program (UNEP) Division of Technology, Industry and Economics, Economics and Trade Unit, and the International Institute for Sustainable Development (IISD), *Environment and Trade: A Handbook* (Winnipeg: ISSD and UNEP, 2000).

¹¹ MEAs relevant to trade regimes include the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Convention on Biological Diversity; the Montreal Protocol; the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal; the Framework Convention on Climate Change; the Convention on Persistent Organic Pollutants; the Rotterdam PIC Convention (not yet in force); and the Cartagena Protocol on Biosafety (not yet in force).

¹² Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters, signed June 25, 1998, at Aarhus, Denmark. Though the U.S. government has raised concerns about the compliance regime of the Aarhus Convention, the spirit of the convention is in line with U.S. domestic policy and international priorities, and as such it should be recognized as a basis for negotiations.

¹³ “President Proposes \$5 Billion Plan to Help Developing Nations,” remarks by the U.S. president on global development, Inter-American Development Bank, Washington, D.C., March 14, 2002.

¹⁴U.S. Trade Promotion Authority, Article (2102)(b)(5); “Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO Related to Transparency” (Washington,

DC: Office of the U.S. Trade Representative, August 9, 2002; available at:
<http://www.ustr.gov/enforcement/2002-08-09-transparency.pdf>).

¹⁵ Luciano Togiero de Almeida, ed., *Trade and Environment: A Positive Agenda for Sustainable Development*, Preliminary Document for the XIII Meeting with the Latin American and Caribbean Environment Ministers (Brasilia: Brazilian Ministry of Environment, Secretariat of Policies for Sustainable Development, 2001).

¹⁶ In a project funded by the Inter-American Development Bank, Ostry researched and wrote reports on Argentina, Brazil, Columbia, Mexico, Costa Rica, and Uruguay. Interested parties may request drafts of these reports by contacting John Audley.

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