U.S. Senate
Republican Policy
Committee

Legislative Notice

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S. 1307 – Dominican Republic-Central America-United States Free Trade Implementation Act

Calendar No. 149

On June 29, S. 1307 was favorably reported without amendment by the Committee on Finance by voice vote; no written report available.

Noteworthy

- S. 1307 (known as DR-CAFTA) would implement the Free Trade Agreement between the United States and the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, as well as the Dominican Republic.

- The Agreement will be considered under expedited procedures known as "fast track" trade authority, which was granted by the Trade Act of 2002 (P.L. 107-210). Under this law, neither the reporting committee nor the Senate (nor the House) may amend the bill. Debate time in the Senate is limited to 20 hours, equally divided.

- On May 28, 2004, the Bush Administration signed the Central America Free Trade Agreement. On August 5, 2004, the Dominican Republic became a party to CAFTA.

- On June 23, 2005, the Bush Administration submitted the draft implementing legislation to Congress.

- H.R. 3045, the House's implementing legislation, has yet to be reported by the House Ways and Means Committee.

- Upon enactment, 80 percent of U.S. consumer and industrial goods exports become duty-free, with the remaining 20 percent becoming duty-free over 10 years.

- Concern remains among U.S. sugar producers that the Agreement does not adequately protect their industry. The Administration is working to address this issue.

Highlights

- President Bush has stated that "[DR-]CAFTA is a practical, pro-jobs piece of legislation."[1]

- On May 28, 2004, U.S. Trade Representative Robert Zoellick signed the U.S.-Central America Free Trade Agreement, and, on August 5, 2004, the Dominican Republic became a party to CAFTA.

- The White House sent the draft implementing legislation and supporting documents to Congress on June 23, 2005.

- Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic will become the latest countries to have a bilateral free trade agreement with the United States, joining Canada, Mexico, Israel, Jordan, Chile, Singapore, Australia, and Morocco.

- This marks the first free trade agreement with a Latin American country since the U.S.-Chile Agreement passed Congress in 2003.

- DR-CAFTA countries constitute the 12th largest market for U.S. exports. As an integrated market, Central America and the Dominican Republic purchased more than $15.1 billion in U.S. exports in 2003.[2]

- Upon enactment, 80 percent of U.S. consumer and industrial goods exports are immediately duty-free, with the remaining 20 percent becoming duty-free over 10 years.

- Commonly heard arguments against DR-CAFTA include concern that U.S. sugar producers will be adversely affected, American textile jobs will be lost, and Central American workers' rights and the environment will be harmed.

- The Bush Administration counters that passage of this agreement is a win-win for all parties and that it will preserve the U.S. sugar program, level the playing field for U.S. workers, strengthen freedom and democracy in the region, enable U.S. textile suppliers to compete with Asia, and enhance the enforcement of labor and environmental laws in the region.

- While U.S. sugar producers have expressed concerns regarding DR-CAFTA, U.S. negotiators were successful in seeing that the Agreement addressed concerns of the sugar industry. For example, U.S. tariffs will not go to zero on just one product, sugar. The Agreement also includes a compensation mechanism that will permit the United States, at its option, to restrict CAFTA sugar imports.

- In its analysis of DR-CAFTA implementation, the U.S. International Trade Commission (ITC) found the effect of trade facilitation would likely "benefit U.S. producers, exports, service

[1] Remarks by President George W. Bush during his Weekly Radio Address, June 4, 2005.
[2] U.S. Trade Representative, "Trade Facts: Free Trade with Central America, Summary of the U.S.-Central America Free Trade Agreement," December 17, 2003.

providers, and investors."[3] The ITC noted, "After tariff liberalization has been fully implemented and all economic adjustments have occurred under the FTA, overall U.S. welfare is likely to increase in the range of $135.31 million to $248.17 million."[4]

Background

DR-CAFTA countries constitute the 12th largest market for U.S. exports. As an integrated market, Central America and the Dominican Republic purchased more than $15.1 billion in U.S. exports in 2003.[5] By tearing down tariff barriers, American workers will be better able to gain access to the 44 million consumers living in the Dominican Republic and Central America. Moreover, the population in this region is expected to grow by almost 20 percent by 2015, thus adding nearly 10 million new consumers to the marketplace.[6]

As President Bush said, "CAFTA is a practical, pro-jobs piece of legislation."[7] Reflective of this is the fact that 13,557 (or 87 percent) of current U.S. exporters to the DR-CAFTA countries are small- and medium-sized firms (with fewer than 500 employees) and account for some 37 percent of total U.S. exports to the DR-CAFTA countries.[8] DR-CAFTA will also open the Central American economies to the export of U.S. services. The services sector accounts for 8 of 10 of all newly created jobs within the United States.

According to the U.S. Trade Representative (USTR), DR-CAFTA levels the playing field with our southern neighbors by providing reciprocal access for U.S. businesses to the markets of Central America and the Dominican Republic. Due to trade preference programs currently in place, 80 percent of all Central American goods currently enter the United States duty-free, while the average tariff imposed on U.S. exports to Central America is between 7 and 9 percent.[9] Some tariffs on farm goods are as high as 16 percent.[10] These high tariffs hurt America's ability to export to and compete in the growing markets of the Dominican Republic and Central America. Upon enactment of DR-CAFTA, 80 percent of U.S. consumer and industrial goods exports are immediately duty-free, with the remaining 20 percent becoming duty-free over 10 years.

Some argue that the benefits of DR-CAFTA will be numerous. A recent study by the University of Michigan estimates that U.S. income would rise by about $17 billion and Central American income by about $5 billion. World Bank economists have also analyzed the deal and

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[3] ITC, 2004.
[4] ITC, 2004.
[5] USTR, "Trade Facts: Free Trade with Central America, Summary of the U.S.-Central America Free Trade Agreement," December 17, 2003.
[6] Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2004 Revision* and *World Urbanization Prospects: The 2003 Revision*, http://esa.un.org/unpp.
[7] Remarks by President George W. Bush during his Weekly Radio Address, June 4, 2005.
[8] Business Coalition for U.S.-Central America Trade, "There Are 15,625 Excellent Reasons Why Congress Should Support DR-CAFTA," June 1, 2005.
[9] Chris Padilla, "DR-CAFTA: A Vote for Freedom, Democracy, Reform," *Textile News*, February 28, 2005.
[10] Office of the U.S. Trade Representative (USTR), "DR-CAFTA Facts: CAFTA Levels the Playing Field," February 2005.

come up with positive conclusions.[11] In its analysis of DR-CAFTA implementation, the U.S. International Trade Commission (ITC) found that the effect of the agreement would be to reduce the overall U.S. trade deficit by $756 million.[12] The American Farm Bureau Federation (AFBF), a national organization representing U.S. farmers and ranchers across the country, has stated that the "U.S.-Central American Free Trade Agreement will provide a substantial competitive advantage to U.S. agriculture," and that the Bush Administration has "opened up promising trade potential for the whole of U.S. agriculture."[13] It estimates that U.S. agricultural producers will increase their exports by $900 million as a result of the DR-CAFTA agreement.

As President Bush recently stated, by passing DR-CAFTA, "we would create incentives for factories to stay in Central America and use American materials rather than relocate to Asia where they are more likely to use Asian materials."[14] The Agreement will provide a chance to unite with customers in the region to better compete against China, especially in apparel and textiles. A senior former Clinton Administration official also agrees that the Agreement would "solidify the United States as the leading supplier of goods and services to Central American and the Dominican Republic at a time when China is making serious inroads as an investor and exporter in the Western Hemisphere."[15]

In the 1970s, every Central American country except Costa Rica and Belize was ruled by military dictators. Lack of democracy and lack of economic opportunity led to communist insurgencies in many parts of the region that were only defeated with the support of the United States.[16] Today, people can freely choose their elected leaders. The DR-CAFTA agreement will serve to consolidate democracy, nurture respect for the rule of law, reduce poverty, and provide incentives for social mobility and fighting crime. DR-CAFTA will reinforce democratic and free-market principles through the Agreement's transparency and anti-corruption provisions.

As the president of the Inter-American Development Bank recently noted, DR-CAFTA will be a commitment of "historic proportions" both by the United States and the Central American countries. "Better access for goods and services from the U.S., implementation of an open, rules-based framework for U.S. investment and technology, and strengthened intellectual property rights protection will all serve to enhance these countries' productivity, international competitiveness, and ability to generate growth and employment, the two most important factors for poverty reduction." [17] Moreover, as the Democratic Leadership Council has recently noted in its advocacy of the Agreement, Central American clothing factories now employ about half a million people.[18] "With the recent elimination of global textile trade quotas, large Asian countries — not just China, but Vietnam, India, Indonesia, and others — can easily eclipse the smaller industries of Central America. By broadening the region's duty-free privileges, making them permanent, and providing

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[11] *Washington Post* Editorial, "The Center Abandoned," June 6, 2005.
[12] U.S. International Trade Commission (ITC), "U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects," August 2004.
[13] Statement by Bob Stallman, President of the American Farm Bureau Federation on the signing of the Central American Free Trade Agreement, May 28, 2004, http://www.fb.org/news/nr/nr2004/nr0528.html.
[14] Remarks by President George W. Bush during a Rose Garden Speech on May 12, 2005.
[15] Eizenstat.
[16] Ed Greser, Progressive Policy Institute Policy Report, "DR-CAFTA: The United States and Central America 10 Years After the Wars," October 2003.
[17] Enrique Iglesias, President, Inter-American Development Bank, Letter to U.S. Representative Kevin Brady, May 26, 2005.
[18] The Democratic Leadership Council, "Four Reasons to Support CAFTA," *New Dem Dispatch*, June 7, 2005.

more help to rural exporters, DR-CAFTA will help keep the six partners competitive, and help them speed up market opening, reform, and diversification into higher-value industries."[19]

Finally, contrary to the charges of some, the DR-CAFTA will not lead to major changes in U.S. policies concerning imports of sugar from the DR-CAFTA region. At the present time, imports of sugar from the DR-CAFTA countries are limited due to tariff rate quotas (TRQs) currently imposed by the United States on each DR-CAFTA country. Under the TRQs, sugar from the DR-CAFTA countries enters duty-free if it is within quota. Sugar imported over-quota is assessed high tariffs, which are in effect prohibitive tariffs (over 100 percent). It is important to note that TRQs on sugar imports from the DR-CAFTA countries will remain in place under the Agreement. Likewise, prohibitive tariffs on over-quota imports will remain intact under the DR-CAFTA. What the DR-CAFTA does do is increase the TRQs for the DR-CAFTA countries, albeit not by great amounts.

In the unlikely event that U.S. domestic sugar policies are threatened by imports from the DR-CAFTA countries, the Agreement includes a mechanism that will permit the United States to restrict sugar imports from these countries and provide them with equivalent benefits to compensate for lost access. This compensation mechanism could be used to limit the quantity of imports from the DR-CAFTA countries, thus alleviating possible pressures that might threaten U.S. sugar policies.

In summary, DR-CAFTA builds on other recent trade agreements by substantially expanding market access for U.S. exporters of manufactured goods, agriculture products, and services. The Agreement provides new economic opportunities for American investors and will secure American jobs. Moreover the Agreement serves to nurture democracy, transparency, and respect for the rule of law, in a region which only decades ago was marked by internal strife.

Bill Provisions

TITLE I – General Provisions Relating to the Agreement

This title approves the Agreement and establishes the regulatory authority for the President to implement the Agreement. The six sections of Title I clarify the relationship between the Agreement and federal and state law, authorize the President to establish an office to provide administrative assistance to dispute settlement panels, set forth consultation and layover requirements that must precede the President's implementation of any tariff modifications by Proclamation, and cover various other provisions relating to the approval of the Agreement.

TITLE II – Customs Provisions

Sec. 201: Tariff Modifications

This section authorizes the President to implement by proclamation the continuation, modification or elimination of tariffs as the President determines to be necessary or appropriate to carry out the

[19] The Democratic Leadership Council, June 7, 2005.

terms of the Agreement. Pursuant to Section 201, each DR-CAFTA country's designation as a beneficiary developing country under the Generalized System of Preferences program and the Caribbean Basin Economic Recovery Act (CBERA) shall be terminated (with a few exceptions under CBERA) once the Agreement enters into force.

Sec. 202: Additional Duties on Certain Agricultural Goods

Section 202 implements the agricultural safeguard provisions of the Agreement, under which additional duties will be assessed on imports of certain agricultural goods if the unit import price is less than the specified trigger price for that good set forth in Annex 3-A of the Agreement. Section 202 also requires the Secretary of the Treasury 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.

Sec. 203: Rules of Origin

This section provides the extensive details on the rules of origin for goods under the Agreement and authorizes the President to modify some of the Agreement's rules of origin by proclamation, subject to the consultation and layover provisions of Section 104 of the Act. This section also includes definitions for terms used in determining the origin of goods under the Agreement.

Sec. 204: Customs User Fees

This section implements U.S. commitments regarding customs user fees on originating goods and provides for the immediate elimination of the merchandise processing fee for goods qualifying as originating goods under Chapter Four of the Agreement.

Sec 205: Retroactive Application for Certain Liquidations and Reliquidations of Textile or Apparel Goods

This section requires that 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. This section also 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*. Finally, this section 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.

Sec. 206. Disclosure of Incorrect Information; False Certifications of Origin; Denial of Preferential Tariff Treatment

This section provides that a Party to the Agreement 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. This section also provides that, 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.

Sec. 207: Reliquidation of Entries

This section modifies existing law to allow an importer to claim preferential tariff treatment for originating goods within one year of their importation.

Sec. 208: Recordkeeping Requirements

This section establishes recordkeeping requirements that each government must apply to its importers and also sets forth recordkeeping requirements that each government must apply to exporters and producers issuing certifications of origin for goods exported under the Agreement.

Sec. 209: Enforcement Relating to Trade in Textile and Apparel Goods

This section authorizes the President to suspend preferential tariff treatment on textile or apparel goods produced or exported by a person based upon a reasonable suspicion of unlawful activity, pending verification that the person is complying with all applicable customs rules and regulations. The President may also direct the Secretary to take "appropriate action" after a verification has been completed. Under this section, 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.

Sec. 210: Regulations

This section requires the Secretary of the Treasury to prescribe regulations necessary to implement the rules-of-origin provisions of the Agreement.

TITLE III – Relief from Exports

Sec. 301: Definitions

This section contains definitions for this title.

Subtitle A – Relief from Imports Benefiting from the Agreement

Sec. 311: Commencing of Action for Relief

This section sets forth provisions regarding the commencement of bilateral safeguard investigations. Pursuant to the Agreement, Section 311 exempts from investigation under this section DR-CAFTA country articles that previously have been subject to safeguard relief under this subtitle.

Sec. 312: Commission Action on Petition

This section establishes deadlines for U.S. International Trade Commission (ITC) determinations following the initiation of a bilateral safeguard investigation. Section 312 also provides that, if the ITC makes an affirmative determination or a determination that the President may consider to be an affirmative determination, the ITC 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.

Sec. 313: Provision of Relief

This section authorizes the President to provide relief under the bilateral safeguard provisions of the Act. The total period of relief, including any extension of relief, may not exceed four years in the aggregate. This section also specifies the rules for determining the applicable rate of duty after such relief terminates.

Sec. 314: Termination of Relief Authority

This section provides that the President's authority to take action under the bilateral safeguard provision 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.

Sec. 315: Compensation Authority

This section authorizes the President to provide trade compensation to a DR-CAFTA country when the United States imposes relief through a bilateral safeguard action.

Sec. 316: Confidential Business Information

This section incorporates existing procedures regarding the release of confidential business information to apply in bilateral safeguard investigations under the Agreement.

Subtitle B – Textile and Apparel Safeguard Measures

Sec. 321: Commencement of Action for Relief

This section sets forth procedures regarding the commencement of actions under the Agreement's safeguard mechanism available to domestic textile and apparel industries.

Sec. 322: Determination and Provision of Relief

This section sets forth procedures regarding the President's determination as to whether a domestic industry is eligible for relief under the textile and apparel safeguard mechanism.

Sec. 323: Period of Relief

This section provides that the initial period of relief under the textile and apparel safeguard shall be no longer than three years. That period may be extended by no more than one year (so that the aggregate total is four years) if the President determines that: "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 there is evidence that the industry is making a positive adjustment to import competition."

Sec. 324: Articles Exempt from Relief

This section exempts textile and apparel articles from relief under the textile and apparel safeguard if relief previously has been granted to such articles under this safeguard or such articles are currently subject to import relief under the global safeguard provisions of Section 201 of the Trade Act of 1974.

Sec. 325: Rate after Termination of Import Relief

This section provides that the duty rate applicable to a textile or apparel article after import relief expires will be the duty rate that would have been in effect on that date but for such import relief.

Sec. 326: Termination of Relief Authority

This section provides that authority to provide relief under the textile and apparel safeguard will expire five years after the date on which duties on the relevant article are eliminated under the Agreement.

Sec. 327: Compensation Authority

This section authorizes the President to provide trade compensation when the United States imposes relief pursuant to the Agreement's textile and apparel safeguard provisions.

Sec. 328: Business Confidential Information

This section sets forth provisions concerning the release of business confidential information submitted to the President in connection with a request for action pursuant to the textile and apparel safeguard provisions of the Agreement.

TITLE IV – Miscellaneous

This title modifies existing U.S. law (specifically the Caribbean Basin Economic Recovery Act) to recognize the CAFTA countries as "party to a free trade agreement with the United States" as well as clarifying that products and services from CAFTA countries are eligible for "procurement" by the United States (Secs. 401 and 402).

Sec. 403: Periodic Reports and Meetings on Labor Obligations and Labor Capacity-Building Provisions

This section requires that, "not later than the end of the two-year period beginning on the date the Agreement enters into force," and every two years for 14 years, the President shall report to the Congress on the progress made by the DR-CAFTA countries in implementing the labor provisions found in Chapter Sixteen and Annex 16.5 of the Agreement as well as a "White Paper" or report of the April 2005 of the "Working Group of the Vice Ministers Responsible for Trade and Labor" of the DR-CAFTA countries. This section also details what specifically must be included in the Administration's reports to Congress. Finally, this section calls on the Secretary of Labor to take the necessary steps to meet periodically with the labor ministers of the DR-CAFTA countries to discuss: the operation of the labor provisions of the Agreement, among other topics.

Administration Position

On June 29, the White House released its Statement of Adminstration Position (SAP) strongly supporting DR-CAFTA's passage. In the SAP, the Administration stated the following:

> "The Administration strongly supports S. 1307, which will approve and implement the Dominican Republic-Central America-United States Free Trade Agreement (Agreement), signed by the United States and Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (Central America) and the Dominican Republic on August 5, 2004.
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> "The Agreement advances U.S. national economic and security interests and is fully compatible with the requirements of the Trade Act of 2002. The Agreement will strengthen our economic ties with our democratic neighbors, promote opportunity and prosperity in the United States and the region, and strengthen our security at home by promoting democracy and prosperity in our hemisphere.
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> "The Agreement will further open a market of 44-million consumers for U.S. manufactured goods, agricultural products, and services. Today, most imports from Central America and the Dominican Republic enter the United States duty-free, but U.S. exports to the region face substantial tariffs. The Agreement will help level the playing field for our farmers,

businesses, and entrepreneurs. And by lowering barriers in key sectors like textiles and apparel, the Agreement will put our region in a better position to compete with low-cost producers in Asia.

"The Agreement provides a unique opportunity to promote democracy, security, and prosperity in a part of the world once characterized by oppression and military dictatorship. The agreement is critical to the economic and political stability of these young democracies, and is a signal of our Nation's commitment to democracy and prosperity in the hemisphere. We urge Congress to act expeditiously to approve S. 1307."

Cost

In its analysis of DR-CAFTA implementation, the U.S. International Trade Commission (ITC) found the effect of trade facilitation would likely "benefit U.S. producers, exports, service providers, and investors."[20] The ITC noted that, "after tariff liberalization has been fully implemented and all economic adjustments have occurred under the FTA, overall U.S. welfare is likely to increase in the range of $135.31 million to $248.17 million."[21] The ITC also found that the effect of the Agreement would be to reduce the overall U.S. trade deficit by $756 million.[22]

The Congressional Budget Office has not released a cost estimate of implementing DR-CAFTA.

Possible Amendments

Under trade promotion authority provided by the Trade Act of 2002, no amendments to this bill are permitted.

[20] ITC, 2004.
[21] ITC, 2004.
[22] U.S. International Trade Commission (ITC), "U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economy-wide and Selected Sectoral Effects," August 2004.