

## **Domestic “Winners & Losers” of US Free Trade Agreements & Provisions: Implications for CARICOM in the FTAA Negotiations**

Even in the country that champions free trade, the recent spate of US Free Trade Agreements (FTAs) has generated varied responses from various domestic sectors. Entire industry sectors perceive of themselves as either “winners” or “losers” of the various free trade agreements concluded by the United States. The complaints and concerns of these sectors get reflected in the package of issues that US negotiators must keep in mind as they attempt to negotiate an FTAA that can win domestic support and the approval of the U.S. Congress. These issues also place limitations and provide opportunities for CARICOM as it negotiates a meaningful place for the small-island states in regional and global trade.

### US FTAs with Countries of the Americas

In the past year, the United States has concluded the US-Chile FTA; the Central American Free Trade Agreement, (CAFTA) with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic; has committed to begin negotiations for an Andean FTA with Columbia, Peru, Ecuador, and Bolivia; and has begun negotiations for a US-Panama FTA.<sup>1</sup> Of course, there is also the North American Free Trade Agreement (NAFTA) with long-standing partners of Canada and Mexico.

In the course of these negotiations, the primary focus of US negotiators is increased market access for US exports in key areas, and what the U.S. calls “WTO-plus” commitments in some service sectors.<sup>2</sup> The benefits won as a result of the CAFTA negotiations are illustrative. Eighty percent (80%) of US manufacturing exports and fifty percent (50%) of US farm exports will immediately get duty free access into the CAFTA market. US export sectors that will immediately benefit include information technology; pharmaceutical; manufacturers of agricultural, construction medical and scientific equipment; and producers of many grain, fruit, vegetable, and processed foods. The U.S. also won market access for a wide range of services, including telecommunications, financial, insurance, express delivery, and professionals.<sup>3</sup> An examination of the benefits negotiated under the Chilean FTA, and the US goals for the Andean negotiations reveal a very similar pattern.<sup>4</sup>

---

<sup>1</sup> USTR Press Release, March 26, 2004, available at <http://www.ustr.gov/releases/2004/03/04-26.pdf> (last viewed on May 4, 2004); and USTR Press Release, May 3, 2004, available at <http://www.ustr.gov/releases/2004/05/04-35.pdf> (last viewed on May 4, 2004).

<sup>2</sup> See, for example, the Report of the Industry Advisory Sector Committee on Services for Trade Policy Matters to the US Trade Representative on the CAFTA agreement, pp. 15-16. Available at <http://www.ustr.gov/new/fta/Cafta/advisor/isac13.pdf> (last viewed on May 4, 2004).

<sup>3</sup> USTR Press Release, December 17, 2003, available at <http://www.ustr.gov/releases/2003/12/03-82.pdf> (last viewed on May 4, 2004); and USTR Fact Sheet on CAFTA, available at <http://www.ustr.gov/new/fta/Cafta/2003-12-17-factsheet.pdf> (last viewed on May 4, 2004).

<sup>4</sup> See USTR Press Release, March 26, 2004, available at <http://www.ustr.gov/releases/2004/03/04-26.pdf> (last viewed on May 4, 2004); and USTR Press Release, May 3, 2004, available at <http://www.ustr.gov/releases/2004/05/04-35.pdf> (last viewed on May 4, 2004).

Not surprisingly, manufacturing and food producers associations whose members are competitive exporters have welcomed the US-Chile FTA, and are urging that the US Congress pass CAFTA.<sup>5</sup> Consumer associations that see benefits to consumers in the arrival of cheaper products and services are also supportive. Stridently opposing CAFTA and other FTAs are those sectors with non-existent or weak export capacity and that fear competition from imports. Noticeable among them are: 1) the US sugar industry because of the miniscule increase in tariff quota rates for sugar from the region<sup>6</sup>; and 2) textile producers because of the CAFTA provisions that will allow for use of Mexican and Canadian-made textiles to gain duty-free access for garments into the US market.<sup>7</sup> Also lined up against CAFTA are labor unions that fear the loss of US jobs, and environmentalists who want stronger protections for the environment.<sup>8</sup> Most importantly, a number of congressional representatives whose votes are essential for passage of the FTAs, are giving voice to the concerns of these groups and threatening to oppose the FTAs.<sup>9</sup> A similar line-up of forces is likely to exist in response to agreements concluded as a result of the Andean and FTAA negotiations.

### FTAA Negotiations

The U.S. brings to the FTAA negotiating table the concerns of these winners and losers

---

<sup>5</sup> The USTR website contains quotes in support of CAFTA, available at <http://www.ustr.gov/new/fta/Cafta/quotes.htm> (last viewed on May 4, 2004). *See also*, for example, "Report of the Industry Sector Advisory Committee for Chemicals and Allied Products," available at <http://www.ustr.gov/new/fta/Cafta/advisor/isac03.pdf>, (last viewed on May 4, 2004); "Report of the Industry Sector Advisory Committee on Electronics and Instrumentation for Trade Policy Matters," available at <http://www.ustr.gov/new/fta/Cafta/advisor/isac05.pdf> (last viewed on May 4, 2004); and "Report of the Industry Functional Advisory Committee on Standards," available at <http://www.ustr.gov/new/fta/Cafta/advisor/ifac02.pdf> (last viewed on May 4, 2004). *See also* Jane Bussey, "Dominican Deal Closes," in *The Miami Herald*, March 16, 2004, page 3C.

<sup>6</sup> *See* US TRQ Annex to the CAFTA Agreement, pp. 3-4, available at <http://www.ustr.gov/new/fta/Cafta/text/03-ma-us-schedule-trq.pdf> (last viewed on May 4, 2004) for the CAFTA tariff rate quotas for sugar.

<sup>7</sup> *See* the statement of the American Manufacturing Trade Action Coalition in opposition to CAFTA, available at [http://www.citizenstrade.org/pdf/amtac\\_cafta.pdf](http://www.citizenstrade.org/pdf/amtac_cafta.pdf) (last viewed on May 4, 2004); and the statement of the US Sugar Industry vowing to fight against approval of CAFTA, available at [http://www.crystalsugar.com/media/news\\_archives/i.cafta.asp](http://www.crystalsugar.com/media/news_archives/i.cafta.asp) (last viewed on May 4, 2004). *See also* Jane Bussey, "Dominican Deal Closes," in *The Miami Herald*, March 16, 2004, page 3C.

<sup>8</sup> The list of domestic industry, labor, and NGO groups that presented written or oral testimony at the congressional hearing on the Chile and Singapore FTAs indicates the range of groups lined up in support of and against the FTAs. *See* the transcript at <http://waysandmeans.house.gov/hearings.asp?formmode=detail&hearing=70&comm=5> (last viewed on May 4, 2004). *See also* Jane Bussey, "Dominican Deal Closes," in *The Miami Herald*, March 16, 2004, page 3C.

<sup>9</sup> In her Testimony Before the Subcommittee on Trade of the House Committee on Ways and Means at the June 10, 2003 hearing on the Chile and Singapore FTAs, The Honorable Judy Biggert, (R-Ill) refers to the comments of her colleagues in the House who question whether the labor provisions in the agreement are strong enough, whether it preserves environmental protections, and whether Chile should be "rewarded" for voting against the US-sponsored United Nations Security Council resolutions regarding Iraq. Available at <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=449> (last viewed on May 4, 2004).

of existing FTAs. The US mandate is to bring home an agreement that generates **significant gains** for US export sectors, and to which the Administration can point to offset the naysayers. US negotiators also focus on winning benefits for the most competitive export sectors and for those domestic constituencies that support the FTAs – including the IT, manufacturing, services, and food processing and exporting sectors. In the absence of US leadership prepared to educate Americans about the uneven playing field from which the country has benefited, an agreement that grants meaningful access to US markets without such gains is “dead on arrival” before Congress.

The FTAA’s Eighth Ministerial meeting held in Miami, Florida in mid-November, 2003, adopted a two-tiered approach to the FTAA process: 1) negotiation of a core set of rights and obligations which all 34 countries will accept; and 2) negotiation of plurilateral agreements among those countries that want additional liberalization, including the “WTO-plus” commitments the U.S. wants.<sup>10</sup> At the February, 2004 Trade Negotiating Committee (TNC) meeting in Mexico, a “G-14” group emerged that consisted of the United States, Canada, Mexico, Chile, Guatemala, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, the Dominican Republic, Columbia, Ecuador, and Peru. The “G-14” group has committed to negotiate a WTO-plus agreement that grants a higher level of market access in such areas as services and investment. Meanwhile, no progress was made on negotiation of the common set of obligations.<sup>11</sup>

Emerging from the FTAA negotiations then, is a G-14 group that stands in stark contrast to the rest of the FTAA negotiating countries. The G-14 consists entirely of a group of countries with which the US has already negotiated or is about to negotiate FTAs – the NAFTA, CAFTA, and Andean countries, and Chile and Panama. Having already committed to, or about to commit to, WTO-plus agreements among themselves, it is not at all surprising therefore, that the G-14 group was able to reach some agreement at the Ministerial. Meanwhile, on the other side of the divide are -- Mercosur and CARICOM. This scenario suggests that a strong focus of the ongoing FTAA negotiations will be about putting pressure on Mercosur and CARICOM to sign an FTAA with WTO-plus commitments that, at the very least, mirror those in the existing FTAs with CAFTA and Chile.

CARICOM has some serious decisions to make. Can the region benefit from a WTO-plus agreement either under the FTAA or, if those negotiations fail, in the form of a US-

---

<sup>10</sup> See the Ministerial Declaration of the Miami Ministerial, available at [http://www.ftaa-alca.org/Ministerials/Miami/Miami\\_e.asp](http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp) (last viewed on May 4, 2004). The Ministerial, consisting of Ministers responsible for Trade in the negotiating countries, is the primary decision-making body of the FTAA negotiation process and meets every 18 months in the country holding the rotating Chairmanship. The Trade Negotiations Committee (TNC), consisting of the Vice Ministers responsible for Trade, decides on the overall framework of the agreement and manages the negotiating process, meeting at least twice a year, at rotating sites.

<sup>11</sup> “Western Hemisphere Trade Talks Recess in Mexico,” February 9 transcript of conversation with US official, available at [http://64.0.91.34/scripts/cqcgi.exe/@pdqtest1.env?CQ\\_SESSION\\_KEY=TGSBHXALTJFD&CQ\\_QUERY\\_HANDLE=124086&CQ\\_CUR\\_DOCUMENT=1&CQ\\_PDQ\\_DOCUMENT\\_VIEW=1&CQSUBMIT=View&CORETURN=&COPAGE=1](http://64.0.91.34/scripts/cqcgi.exe/@pdqtest1.env?CQ_SESSION_KEY=TGSBHXALTJFD&CQ_QUERY_HANDLE=124086&CQ_CUR_DOCUMENT=1&CQ_PDQ_DOCUMENT_VIEW=1&CQSUBMIT=View&CORETURN=&COPAGE=1) (last visited on May 4, 2004).

CARICOM FTA? If so, what essentials must such an agreement contain and how can those be best achieved? Can the region afford not to negotiate such an agreement?

To assist in an initial analysis, let us examine the position of the non-US partners under the CAFTA agreement. First, there is the essential question of how effective is a WTO-plus agreement to countries that admit to having problems absorbing their current WTO obligations. Trade capacity efforts are underway to address this issue<sup>12</sup>, but will inevitably require some time to take effect. For CARICOM, this reality argues for targeted trade capacity assistance aimed at building both the effective negotiating skills and the institutions to provide the knowledge base so essential for effective negotiating. Meanwhile, a slow and timely approach to the negotiations would allow the efforts to take root in time to reflect on the negotiating process. Without the sufficient knowledge base and skills sets at the table, the region will be signing an agreement with not much more than blind hope that it is doing the right thing.

Secondly, even prior to the agreement CAFTA partners already had duty-free access to the US market for their major products under the Generalized System of Preferences (GSP) or the Caribbean Basin preferential programs. Consequently, the immediate benefits to the CAFTA partners consist of duty-free access into each others' markets. However, while this access is potentially of long-term benefit, access to the US market is the immediate prize that everyone seeks. Meanwhile, the existing preferential programs have been notoriously underutilized because of their complex Rules of Origin (used to ensure that only products from the intended country get preferential access) and the bureaucratic burdens of complying with those rules.<sup>13</sup> The countries could derive real benefit from a simplification and revision of the US rules of origin, which are always very skillfully crafted to provide maximum protection to those domestic sectors most sensitive to imports. However, a look at the Rules of Origin for the Chile Agreement (the only one to have achieved passage by Congress to date) reveals an equally complex set of rules laid out over eight pages and complete with formulas for some imports!<sup>14</sup> The draft text on Rules of Origin for CAFTA is also complex and laid out over 20 pages.<sup>15</sup> If similar rules are adopted for the FTAA, a country can benefit under those rules only if it has a developed agricultural export sector (and is prepared to compete with the US farm subsidies), a manufacturing sector that uses predominantly local raw materials, and/or a manufacturing sector so advanced that it takes raw materials from other countries and first transforms them into another component before making a finished product.

The lesson for CARICOM is that the region needs to bring to the FTAA negotiating table an assessment of its competitive export sectors, and information about how those sectors need to be supported and bolstered in order to gain competitive access to the US market.

---

<sup>12</sup> See USTR Fact Sheet on CAFTA, available at <http://www.ustr.gov/new/fta/Cafta/2003-12-17-factsheet.pdf> (last viewed on May 4, 2004).

<sup>13</sup> See Andrea Ewart, "CARICOM Participation in Caribbean Basin Initiative: Lessons for FTAA," *Currents*, Winter, 2003. Available at <http://www.developtradelaw.com/research/caricom.pdf> (last viewed on May 4, 2004).

<sup>14</sup> United States-Chile Free Trade Agreement Implementation Act, Pub. L No. 108-77, § 202.

<sup>15</sup> "Rules of Origin and Origin Procedures," Chapter 4, CAFTA Agreement, available at <http://www.ustr.gov/new/fta/Cafta/text/04-roo.pdf> (last viewed on May 4, 2004).

These realities will need to be reflected in the Rules of Origin, which ought to be kept as simple as possible for products from the region. This negotiating position is a reasonable request to make within the context of guidelines being developed to protect the position of smaller economies within the FTAA. To the extent that the region needs this knowledge to negotiate effectively, trade-capacity efforts need to focus on this area, and the talks placed in holding pattern while this capacity is developed.

Finally, the region needs a clear understanding of what it is prepared to give the U.S. in return. This climate and arena are not conducive to unilateral concessions. Leverage exists only within the context of the WTO-plus negotiations as the U.S. badly wants the FTAA to be concluded at this higher level with as many countries as possible. To the extent this does not already exist then, the region needs to be prepared to negotiate terms of U.S. access to its service, investment and information technology markets. There may be other areas of interest to the U.S. as well. It is also clear that the U.S.-Brazil divide on agriculture means that improved market access for this sector is not likely within the FTAA.<sup>16</sup> Besides, it is the European Union market that matters to the U.S. Thus, this issue is best left for the WTO negotiations, and a concession in this regard may give the region some additional leverage in the FTAA negotiations.

### Conclusion

For CARICOM, no agreement is better than a bad agreement. At the same time, the region's prospects are closely tied to those of the U.S., suggesting that the region will need to participate in the FTAA so as not to be left behind. Consequently, the best approach for the region may be to adapt an approach that: 1) commits it to the WTO-plus agreement that the U.S. wants; and 2) insists on a slower timeframe that allows the region to develop the skills and institutions it needs to participate effectively and to win real benefits for CARICOM nationals.

The region should keep in mind that it has friends among US domestic constituencies that can assist in making these positions heard within the US Congress and Administration. Strategic alliances need to be built with the region's growing and increasingly visible expatriate community in the U.S, and with sympathetic US "winners" and "losers" of free trade.

---

<sup>16</sup> See "Western Hemisphere Trade Talks Recess in Mexico," [http://64.0.91.34/scripts/cqcgi.exe/@pdqtest1.env?CQ\\_SESSION\\_KEY=TGSBHXALTJFD&CQ\\_QUERY\\_HANDLE=124086&CQ\\_CUR\\_DOCUMENT=1&CQ\\_PDQ\\_DOCUMENT\\_VIEW=1&CQSUBMIT=View&CQRETURN=&COPAGE=1](http://64.0.91.34/scripts/cqcgi.exe/@pdqtest1.env?CQ_SESSION_KEY=TGSBHXALTJFD&CQ_QUERY_HANDLE=124086&CQ_CUR_DOCUMENT=1&CQ_PDQ_DOCUMENT_VIEW=1&CQSUBMIT=View&CQRETURN=&COPAGE=1) (last viewed on May 4, 2004).