U.S.- CAFTA-DR Free Trade Agreement

Services

The CAFTA-DR countries have made very substantial commitments to liberalization in cross-border services trade, telecommunications, and financial services. These commitments significantly improve upon their WTO commitments in terms of sectors covered and elimination of restrictions. The CAFTA-DR establishes a solid framework for trade in services by providing for the elimination of obstacles in most service sectors and regulatory transparency.

Why do services commitments matter?

The service sector accounts for the majority of jobs - and most job growth - both in the U.S. economy and elsewhere. In the United States, private services industries accounted for almost 93.2 million U.S. jobs in 2005, or roughly eighty percent of private non-farm employment. U.S. services exports are a vital part of this picture and they continue to grow. In 2006, services exports of $414 billion accounted for 29 percent of total U.S. exports, generating a services trade surplus of $72 billion, which helped to offset nearly nine percent of the U.S. merchandise trade deficit.

U.S. services firms are well positioned relative to their competitors abroad to take advantage of free trade agreements. The intensity and vigor of the U.S. market give rise to high-quality companies prepared to meet stringent services demands at home and enables them to compete abroad. Consumers in the CAFTA-DR countries value services that help boost their own productivity and enhance their lives, and look to the United States as a model in terms of providing high-quality and cutting-edge services and technologies.

CAFTA-DR Opens Services Markets Across the Region

Substantial Market Access provided:
The Central American countries accord substantial market access across their entire services regime, subject to very few exceptions, using the so-called "negative list" approach.

Key sectors benefit, including:
Computer and related services, tourism, telecommunications services, financial services, audiovisual services, advertising, construction and engineering, express delivery, professional services (architects, engineers, accountants, legal services), distribution services (wholesaling, retailing, franchising), adult education and training services and environmental services, with very few limitations or restrictions.

Most residency requirements eliminated:
CAFTA-DR removes most local residency requirements, which had imposed significant barriers to US professionals.

Regulatory Transparency required:
Transparency in regulatory processes is absolutely essential for services industries because they generally are the most highly regulated. CAFTA-DR requires regulatory authorities to use open and transparent administrative procedures, consult with interested parties before issuing regulations, provide advance notice and comment periods for proposed rules, and publish all regulations.

CAFTA-DR Allows Service Providers to Choose Mode of Delivery - a Key Provision for SME's

The commitments in services cover both cross-border supply of services (such as services supplied through electronic means, or through the travel of nationals) as well as the right to establish a company in another CAFTA-DR country in order to supply services. The ability of service providers to choose their mode of providing a service becomes increasingly important as technology makes distance less of a service barrier. Distance learning, for example, has undergone a dramatic transformation due to technology. Satellites and the Internet are transforming the world into a borderless educational arena, benefiting both previously under-served citizenries and education entrepreneurs. Although many developing countries still have limited access to these new technologies, major new investments in telecommunications and information systems are going to dramatically improve their access, benefiting all "e-service" providers.

The CAFTA-DR governments are prohibited from requiring a U.S. company to incorporate or make any form of local investment when supplying their services on a cross-border basis. In other words, a U.S. company wishing to provide its service in a CAFTA-DR country is not required to have any formal presence there. This is a benefit to all U.S. service providers, especially SMEs, who may neither have the resources to maintain a presence outside of the United States nor conduct enough business to even need that kind of presence.

The CAFTA-DR Eliminates an Onerous Distribution Limitation - the Dealers Act

The CAFTA-DR eliminates "dealer act" restrictions in Central America and the Dominican Republic. "Dealer acts" were designed to protect citizens who work as agents or distributors for foreign companies. In practice, these laws tend to be very complicated and potentially very costly to foreign suppliers and have at times resulted in costly and inefficient distribution arrangements. Foreign companies have, in many cases, been forced to pay large fees or penalties to end distribution contracts, even if the action was justified (e.g. the contract had reached its termination date).

The Agreement eliminates or greatly modifies the application of these laws for U.S. companies who wish to enter the CAFTA-DR marketplace. Therefore, a U.S. company can feel secure that it is concluding a contract that can be terminated according to its terms, without facing a penalty for such action. For many existing contracts with dealers in Central America, the "dealers' acts" will apply only if the contracts specifically refer to such laws.

Sector-Specific Benefits

Generally speaking, sectoral coverage of the six CAFTA-DR countries is significantly broader than are the commitments these countries undertook in the WTO General Agreement on Trade in Services (GATS). One reason is that the CAFTA-DR uses a more inclusive method of sectoral coverage - the "negative list" approach. This means that every sector is covered unless an exception is listed and that trade disciplines are automatically extended to services that have yet to be created or brought to market. Such automatic coverage of new services is especially important to industries where market development, technological advances and innovation continuously result in new service offerings and means of delivery. This is particularly important in sectors such as communications, express delivery, financial and computer related services. GATS uses a "positive list," which means that only those sectors that a country expressly lists are covered by the Agreement's national treatment and market access obligations. The CAFTA-DR countries listed relatively few of the possible 150 different sectors and subsectors in their GATS commitments, meaning that their GATS commitments were fairly limited.

U.S. service providers should immediately benefit from CAFTA-DR commitments in a number of key areas. Some examples are provided below.

- ***Advertising:*** Nicaragua, Honduras, and Guatemala have committed to completely opening their market for this important sector. Although El Salvador maintains a local content quota for commercials, it does not apply this requirement to foreign-made commercials for imported U.S. goods and services, which substantially reduces the negative trade effect of this measure. In the GATS, the Dominican Republic made a partial commitment in advertising, and the remaining five CAFTA-DR countries made no commitments.

- ***Construction and engineering services:*** Improved regulatory regimes and strong investment environments will stimulate growth opportunities for construction consultants and engineers. U.S. companies should benefit from a reduction in the percentage of

Salvadorian ownership required for a construction project and the removal of a number of Guatemalan restrictions on U.S. suppliers of construction and engineering services.

- ***Distribution Services, including retail and wholesale services, direct marketing, and direct selling:*** Retailers will benefit from the removal of barriers that inhibit the movement of industrial and consumer goods and agriculture products between manufacturers, wholesalers, retailers, and consumers. Intellectual property rights provisions will ensure the concept brands of franchise companies are protected. Retailers working with transportation, telecommunications, financial, computer and other service providers may be able to improve and streamline the supply chain to better serve consumers in the United States and throughout the hemisphere. Direct marketers should have increased opportunities as a result of improved wireless telecommunication services, Internet service, and commitments in specific sectors such as travel and tourism.

- ***Franchising:*** The CAFTA-DR countries have not scheduled restrictions on market access for franchising. Furthermore, commitments in other areas of CAFTA-DR will benefit U.S. franchisers. Trademark provisions will protect the franchiser name, tariff liberalization will allow the lower-cost export of key equipment needed to supply the franchisee, and the elimination of the "dealer acts" will allow U.S. companies to terminate a contract with a franchisee for just cause. The franchising market in the CAFTA-DR countries is very strong. It is particularly appealing to an emerging group of investors that includes young professionals who are familiar with U.S. business practices and who seek to break away from their family businesses and start new undertakings of their own.

- ***Entertainment, including audiovisual and broadcasting:*** CAFTA-DR provides improved market access for U.S. films and television programs over a variety of media including cable, satellite, and the Internet. This market opening is in contrast with these countries' commitments under the GATS, where Costa Rica, El Salvador, Guatemala and Honduras made no commitments in this area. CAFTA-DR countries maintained some non-conforming measures in this sector (for example Costa Rica, El Salvador, Nicaragua and the United States have local equity requirements for broadcast licenses). A number of other CAFTA-DR provisions will be beneficial to this sector. The CAFTA-DR provides state-of-the-art intellectual property protections and prohibits the unauthorized receipt or distribution of encrypted satellite signals, thus preventing piracy of satellite television programming. The CAFTA-DR also provides for non-discriminatory treatment for digital products such as U.S. software, music, text, and videos.

- ***Environmental Services:*** CAFTA-DR countries did not include any restrictions on market access or national treatment in this area in contrast with the GATS where the six countries made no commitments in environmental services. CAFTA-DR countries have been putting a growing emphasis on environmental protection. U.S. environmental services providers should benefit from increased opportunities in this sector. For example, El Salvador requires environmental impact studies for major new investment, including public sector projects, and the Ministry of Environmental and Natural Resources as well as private industries are starting projects to recycle and treat solid waste material. Other countries in the region are also addressing this and other environmental issues.

- ***Express delivery services:*** The CAFTA-DR services chapter includes an expansive definition reflecting the integrated nature of express services. The Agreement also affirms existing competitive opportunities in the CAFTA-DR region and prevents cross-subsidization from a postal monopoly. This is in contrast with the GATS, where no CAFTA-DR country made a commitment in either postal/courier services or in express delivery. Improved customs trade facilitation will help express delivery service companies provide better services to customers who are seeking to enhance their competitiveness in the hemisphere and global market place. Express delivery services are in demand from a wide range of companies--from high-tech to agriculture, and autos to retail services. Speed-to-market, just-in-time inventory processes and total quality management are critical to success in today's economy.

- ***Energy Services:*** Energy demand in Central America is increasing. The Central American countries are just beginning to establish a system for interregional energy trading and the CAFTA-DR countries are upgrading their systems. The initial connection between Central America's northern and southern energy grids was established in 2002. Over the coming years, energy trade will increase as upgrades to the regional transmission line are completed. New adjustments and reforms to regulations for the electric power sector are being prepared to assure fair competition and to enable participation in the new Central American Energy Integration System. Increasing energy demand as well as investment in rural electrification will also provide opportunities for U.S. energy companies. Provisions of CAFTA-DR related to regulatory transparency and investment will also help enhance opportunities for U.S. energy services firms to provide energy services to Central America. In the GATS, CAFTA-DR countries made no commitments in energy services.

- ***Information Services, including computer related services:*** The CAFTA-DR, which provides for full market access with no exceptions in this important sector, is an improvement over the GATS where only Honduras made such commitments. The CAFTA-DR covers all modes of delivery, including electronic delivery, such as via the Internet. The "negative" list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without such an approach, computer and related services definitions and commitments could quickly become obsolete as new services are introduced. CAFTA-DR's protections for "digital products" and other e-commerce commitments will also benefit U.S. technology service providers. In addition, as technology users are increasingly purchasing information technology solutions as a combination of goods and services, the CAFTA-DR duty-free treatment of technology products will also benefit service providers in this sector. New access in such sectors as banking, financial services, and telecommunications as a result of the CAFTA-DR will increase demand for strong software development, data processing, and other information services.

- ***Professional Services, including accounting, legal services, and management consulting:*** Liberalization in such sectors as banking, investment, and financial services will offer increased opportunities for professional service providers. However, licenses will continue to be required. The provisions in the cross border services chapter provide further assurance that administrative decisions related to licensing are prompt and fair. This chapter also provides for the Parties to support agreements mutually recognizing their qualifications and standards for professional practice. As a result of the Agreement, there are no significant restrictions imposed in the CAFTA-DR countries on the ability of U.S. lawyers to serve as foreign legal consultants or otherwise to provide advice and assistance respecting the law they are authorized to practice in the United States.