The Metropolitan
Corporate Counsel®

National Edition www.metrocorpcounsel.com

Volume 22, No. 7 July/August 2014

Business Opportunities Abound Under Dominican-Central America-U.S. Free Trade Agreement

Luis Rafael Pellerano

Almost exactly a decade ago, on August 5, 2004, the United States signed the Dominican Republic-Central America-United States Free Trade Agreement ("DR-CAFTA") with the Dominican Republic and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua). The DR-CAFTA, which was the very first free trade agreement between the United States and a group of smaller developing economies, entered into force for the United States, El Salvador, Guatemala, Honduras, and Nicaragua in 2006, for the Dominican Republic in 2007 (after the Dominican Congress ratified it on September 9, 2005), and for Costa Rica in 2009.[1]

The DR-CAFTA region was the 14th largest U.S. export market in the world in 2013, and the third largest in Latin America (behind Mexico and Brazil). The United States exported $29.5 billion in goods to the Dominican Republic and the five Central American countries in 2013, over 74 percent higher than in 2005, the year before the agreement first entered into force.[2]

As those statistics suggest, the DR-CAFTA has led to significant opportunities for American companies and for businesses in the Dominican Republic, as well as in Central America. The agreement has been creating new economic opportunities by eliminating tariffs, opening markets, reducing barriers to services, and promoting transparency. Simply put, it is facilitating trade and investment among the seven countries and furthering regional integration.

The primary objective of the DR-CAFTA is the reduction, and eventual elimination, of all tariffs levied on imports among the signatory countries. Key U.S. exports that have experienced significant growth to the DR-CAFTA countries since the implementation of the agreement include:

- petroleum products;
- machinery;
- electrical/electronic products;
- textile fabrics;
- cotton yarns;
- cereals (wheat, corn, rice);
- plastics;
- motor vehicles;
- paper products; and
- medical instruments.

The agreement contains a wide range of incentives intended to foster regulatory development in the Dominican Republic and the other Caribbean signatories to unify trade rules and procedures with the United States. Under the DR-CAFTA, the signatory countries are significantly liberalizing trade in goods and services. Thus, the DR-CAFTA includes important provisions relating to:

- customs administration and trade facilitation;
- technical barriers to trade;
- government procurement;
- investment;
- telecommunications;
- electronic commerce;
- intellectual property rights;
- transparency; and
- labor and environmental protection.

The DR-CAFTA continues to create new commercial opportunities for the United States while promoting regional stability, economic integration, and economic development for an important group of U.S. neighbors.

From the moment the DR-CAFTA went into effect, a schedule provided for the eventual lifting of all tariffs on 12 classes of goods. Under the DR-CAFTA, more than 1,000 products are about to reach tariff elimination; when that occurs, by 2015, that will mean that 100 percent of U.S. consumer and industrial goods exports to the DR-CAFTA countries will no longer be subject to tariffs.[3]

Given that development, it seems timely to revisit the DR-CAFTA and explore its revolutionary impact on the Dominican economy. This article provides a brief description of all the DR-CAFTA chapters and then highlights the most attractive opportunities for American companies.

Treaty Content

The DR-CAFTA is divided into 22 chapters. The chapters' highlights include:

Chapter I: Establishes a free trade area among the signatory countries that is subject to the rules and principles of the World Trade Organization ("WTO"). The predominant principle is the principle of non-discrimination contemplated by both "most favored nation" and "national treatment" clauses.

Chapter II: Contains the definition of the most relevant terms of the agreement.

Chapter III: Contains the tariff-lifting schedule, as discussed more fully below.

Chapter IV: Sets the rules of origin and origin procedures in order for goods to benefit from the agreement.

Chapter V: Promotes the transparency of customs procedures among the parties and establishes the commitment for each signatory country to develop a simplified customs procedure benefiting other signatories.

Chapter VI: The signatories adopt the WTO's "Sanitary and Phitosanitary Agreement."

Chapter VII: The signatory countries adopt the WTO's "Technical Barriers to Trade Agreement."

Chapter VIII: Establishes the legal framework for certain trade remedies.

Chapter IX: Establishes the framework for government procurement, allowing the signatory countries to participate on equal terms for government purchases, as discussed more fully below.

Chapter X: Establishes the framework for investment protection, especially with respect to expropriation risk.

Chapter XI: Establishes the framework for trade in services. Accordingly, companies in the signatory countries are not required to incorporate a local office or to appoint a local representative in order to supply services in the Dominican Republic or the other Caribbean nations that have signed the agreement.

Chapter XII: Establishes the framework for trade in financial services. Here, the DR-CAFTA deals with measures adopted by a

Please email the author at l.pellerano@phlaw.com with questions about this article.

signatory country regarding the financial institutions of other signatories, their participation in the financial market of the free trade area, and the transborder trade in financial services, completely opening up this area.

Chapter XIII: Establishes the framework for trade in telecommunication services. In this chapter, the DR-CAFTA contains provisions governing the measures adopted by a signatory country with respect to telecommunications companies of other signatories and transborder trade in telecommunications services, completely opening up this area.

Chapter XIV: Establishes the framework for electronic commerce. As provided in this chapter, no signatory country can levy a tariff on the electronic transmission of products and, likewise, no signatory country can charge different tariffs on physical goods containing electronic products from those that did not carry electronic content.

Chapter XV: The signatory countries adopt the WTO's "Trade Related Aspects of Intellectual Property Rights Agreement" for the purposes of the DR-CAFTA and commit to ratifying other relevant agreements.

Chapter XVI: The signatory countries reaffirm their commitment as International Labor Organization members to safeguard the rights of workers. Among other things, the DR-CAFTA emphasizes that lax labor regulations should not become an undue advantage for trade.

Chapter XVII: The signatory countries affirm their commitment to enforce environmental laws so that weak environmental regulations do not become an undue advantage for trade.

Chapter XVIII: Reinforces transparency commitments by the signatory countries. In particular, this chapter of the DR-CAFTA contains provisions relating to the rules and procedures affecting economic activities and requires prior notice of proposed regulatory changes to affected parties so that they may provide input to the appropriate regulatory authorities.

Chapter XIX: Establishes the framework for the administration of the treaty: a commission composed of the most senior trade official of each signatory country.

Chapter XX: Establishes the framework for dispute settlement, including procedures for reclamation and the use of arbitration to resolve disputes under the DR-CAFTA.

Chapter XXI: Contains exceptions to the application of the treaty, including for national security and taxation.

Chapter XXII: Establishes the framework for the entry into force, amendment, accession, withdrawal, and more, of the treaty.

U.S. Business Opportunities

The DR-CAFTA is essential for U.S. companies that intend to enter the Dominican market. Some of the most important provisions are specifically discussed below.

Tariff Lifting Schedule. Of the 12 classes of goods for tariff purposes, five already have reached tariff elimination and three more will reach it by 2015. These are:

- Flours, pasta, cheese, and final products without local competitors;
- Final industrial products with local competitors; and
- Dairy products.

The Dominican market has approximately 10 million consumers, and U.S. companies are likely to benefit greatly from the new tariff reduction.

Absence of Limitations for Incorporating Local Companies. Foreign companies often have been forced to set up local companies with a local capital majority in order to do business with developing countries. In many cases, a local representative was required. As a consequence of the DR-CAFTA, companies in the signatory countries may freely:

- Incorporate wholly owned subsidiaries in the Dominican Republic and participate in the Dominican market;
- Incorporate wholly owned subsidiaries in the Dominican Republic and export goods to other signatory countries, benefiting from tariff reduction; and
- Appoint a local representative in the Dominican Republic and *opt out* of the application of Dominican law protecting local concessionaries.

Government Procurement. The public sector is by far the largest participant in the Dominican economy. Due to the DR-CAFTA and resulting legislation, companies from the signatory countries can participate on equal terms with local companies on government projects that by law require tender bidding. These projects are, by law, those that surpass the threshold of US$117,500 for the procurement of goods and services and US$8 million for construction projects, with these amounts revised every two years.

Sensitive products and projects such as weapons, tax stamps, and passports, among others, are not subject to mandatory procurement, but companies from signatory countries would be allowed to participate, should the government decide to contract these through tender bidding methods.

Financial Services and Telecommunications. Special attention should be given by U.S. corporations to the financial services and telecommunications industries, which traditionally have been reserved to local companies or to state-owned monopolies. As a consequence of the DR-CAFTA, these industries are open for the completely free participation of foreign companies, without the need to incorporate a local entity.

Conclusion

Although the DR-CAFTA has been in force for a number of years, its potential advantages remain far from exhausted. The Dominican Republic is, by far, the largest economy in the Caribbean Basin and the treaty's wide range of subjects ensures that U.S. companies will be able to benefit from at least one – and undoubtedly more – of its key provisions.

Additionally, these past 10 years of DR-CAFTA experience have made the Dominican market more transparent and Dominican authorities have gained experience in applying the text of the agreement. Considering this, it certainly is an appropriate time for more U.S. companies to consider investing in the Dominican Republic.

1. *See*, http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta.
2. *See*, http://export.gov/%5C/FTA/cafta-dr/index.asp.
3. Tariffs on nearly all U.S. agricultural products will be phased out under the DR-CAFTA by 2020.