

OBSERVACIÓN 4

*Iniciativa  
Mesoamericana*  
**CID**

*Iniciativa Mesoamericana de Comercio, Integración y  
Desarrollo Sostenible*

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**LABOR PROPOSAL**

**OF THE MESO-AMERICAN INITIATIVE FOR TRADE, INTEGRATION AND DEVELOPMENT -  
CID –  
FOR THE NEGOTIATION PROCESS OF THE FREE TRADE AGREEMENT BETWEEN THE  
UNITED STATES AND CENTRAL AMERICA (CAFTA)**

Central America, July 2003

## INTRODUCTION

**One of the main objectives of the current regional campaign that the Meso-American CID Initiative is promoting to influence the negotiating process** of the Free Trade Agreement between the United States and Central America. Our regional citizen interest aims to influence this process in order to achieve a FTA that creates benefits for the majorities currently excluded and marginalized in the region.

Given this, we are conscious that citizen advocacy in such a negotiation process will not be an easy task and that it implies different forms of action. One of these forms is the elaboration and presentation of proposals. Without these proposals, the possibilities of influencing the process would be seriously decreased. We are conscious that we will not be able to have influence if the proposals do not have social backing, however, we are also convinced that it is fundamental that these proposals also have a solid technical basis and consistency.

This is the importance that the elaboration of proposals has for the regional campaign of the CID Initiative. For this reason, as part of the campaign, for some months the CID Initiative has been advancing in the elaboration of proposals related to the negotiating process for the FTA between the United States (USA) and Central America (CA), among these the proposal for the labor working group.

It is fundamental to indicate that this effort to put forward proposals is conceived as a gradual, permanent and participative REGIONAL PROCESS. A first advance of this proposal was presented in October 2002, in the context of the Regional Forum organized by the CID Initiative in San Salvador. Afterwards, in the context of the I Round of negotiations in San José, Costa Rica (January 2003 27-31), the Meso-American CID Initiative presented a Second Advance of the Regional Proposals. With the support of the investigative capacities existing in several of the organizational members of the CID Initiative, as well as with the support of Central American professionals, experts in the complexities of this type of commercial agreements, these proposals have been developed and enriched. This process was also evident during the Regional Labor Forum of the CID Initiative carried out May 12-13 in Guatemala City, in the context of the IV Round of negotiations, where the labor proposal was made substantially more concrete.

The document presented here corresponds to the **THIRD ADVANCE OF THE REGIONAL LABOR PROPOSAL**. This process will continue developing and improving the proposal, through citizen participation in the diverse national workshops; also, the technical contribution will continue in combination with the citizen participation on the regional level.

From a methodological standpoint, this third advance of proposals, of a more specific character related to labor issues, as with previous ones, is structured on three levels: first, with regards to the procedures that the negotiation process should follow (type of participants, actors that should participate in the negotiation, modes of negotiation, etc.); second, concerning the contents of the texts that will be negotiated in the agreement; and third, with respect to the country contexts that will have to adapt to or absorb the Agreement and related impacts (types of markets, competition levels, asymmetries and internal inequalities, levels of concentration of wealth and opportunities, institutional and legal contexts, etc.).

## LABOR ISSUES

The commercial policies of the Central American countries concentrated on the negotiations of Free Trade Agreements (FTA), have systematically excluded the labor dimension that accompanies these processes. In this way, while employment could be generated mainly by export growth and foreign investment, the quality of employment and the compliance with labor rights in the processes of exportable production on behalf of the investors, have not been made transparent in the agreements.

Although the FTA's negotiated by the different countries of the region, integrate in their preambles dispositions oriented towards the creation of employment opportunities, as well as the improvement in the living conditions of the population, these agreements lack concrete mechanisms that would make it possible to guarantee the quality and quantity of the employment generated and the compliance with labor rights. If we continue negotiating FTA's that do not contemplate the labor dimension, it is probable that there will be no

real guarantees that in the export sector activities, there will be any effective compliance with labor rights, as has been observed in some current activities in this sector.

One of the sectors linked to the international trade, and that will probably be promoted by the FTA, is the *maquila* assembly industry. In most Central American countries, the *maquila* assembly industry has been harshly criticized, especially for the precarious labor conditions that workers face, especially women, as it is estimated that more than 80 percent of the labor force in these operations is feminine. These are the women that recurrently are exposed to salary discrimination, to the increase in the intensity of the labor day, to the lack of labor benefits and to sexual harassment.

Also, with regards to security and occupational hygiene, irregularities have been observed in this type of assembly operations. Many of these work facilities present deficiencies (inadequate design, insufficient ventilation, unhealthiness or contamination from toxins, among others), which represent a risk for the workers' health, or in the worst of the cases, put their physical integrity in jeopardy.

It is well known that each of the Central American countries has labor legislation, but that in many cases the weakness of the institutions in charge of promoting compliance is reflected in the discretionary application of this legislation by the productive sector in detriment to the rights of the labor sector. In this way, for example, one of the rights that is frequently not respected in the *maquila* assembly industry is right to establish labor unions. According to ILO studies of the labor situation in the *Zonas Francas* (tax exempt zones) in Central America and the Dominican Republic, it is common for companies to violate this right and many workers are fired for being unionized, or they are not hired if they have belonged to any union.<sup>1</sup>

With respect to employment, there has been a marked reduction observed in the unemployment rates in most of the Central American countries and, parallel to this, an increase in the underemployment rates, related to the growth of the informal sectors of the economies in the region. According to data from the ECLAC, the average open unemployment rate for the region that was 7.8 percent in the decade 1980-90, went down to 6.1 percent in the period 1999-2000. This decrease in the unemployment rate is due partly to a greater participation of women in the labor market, especially in Guatemala, Honduras and El Salvador, as well as to the growth of employment in the informal sector and in labor intensive export industries.<sup>2</sup>

However, the peak of the employment in the informal sector, where women represent more than 70 percent of the labor force, has been accompanied by a deterioration of the conditions of social security and, in particular, in working conditions.<sup>3</sup> This is due to the fact that the population occupied in this sector, is not subject to a contractual relationship, which implies that they do not enjoy the benefits established in the national labor legislation.

In this context of a worsening labor situation, if an important purpose of the Free Trade Agreement is the creation of more and better employment, this instrument should contemplate mechanisms that contribute not only to employment creation, but also to the improvement of working conditions. This, in order to avoid the use of the low salary levels and of working conditions, as comparative advantages for the insertion in the external markets. It is in this perspective that the following proposals have been developed:

## 1. PROCEDURAL PROPOSALS

1.1. In the measure that they know the potential impacts of the FTA on the employment levels related to each one of the products and/or sectors, **the negotiating teams in Central America should manage the relevant information in order to achieve an advantageous position that will allow them to avoid situations where the opening to some products would be accompanied by employment losses.**

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<sup>1</sup> International Labor Organization (ILO), "*La situación sociolaboral en las zonas francas y empresas maquiladoras del istmo centroamericano y República Dominicana*," Costa Rica, 1996.

<sup>2</sup> ECLAC, *Anuario Estadístico de América Latina y el Caribe 2001*, Chile, 2002

<sup>3</sup> ECLAC, *Equidad, Desarrollo y Ciudadanía*, p. 124

**1.2. A working group (*mesa*) on labor issues should be installed within the working groups of the FTA negotiations. The labor issues should be approached as an integral part of one of the chapters of the FTA or as a separate chapter in and of itself,** so that the agreement integrates a mechanism that makes effective the aspirations on labor issues outlined in the preambles of the agreements. Furthermore, the labor chapter should not obstruct that labor dispositions be negotiated in any of the other chapters of the agreement.

**1.3. The process of negotiation of labor issues should be made transparent,** through mechanisms that open access for the labor sector and related organizations to the information or results of the negotiation rounds. The proposals made concerning the agreement by civil society organizations, should also be take into account in this negotiation process.

**1.4. Employment should be used as a criteria for the definition of sensitive products and for the negotiations concerning the opening or exclusion of the products described in the program of tariff reduction.** The direct and indirect employment levels that related to each one of the products, should constitute the criteria to define the category of tariff openness in the process of defining the tariff reduction programs.

**1.5 A labor safeguard clause should be adopted during the negotiation of the agreement** that avoids that the parties involved reduce their current labor standards by means of reforms in their labor legislation.

## **2. PROPOSALS CONCERNING CONTENT**

### **2.1. GENERAL CONTENT PROPOSALS**

**2.1.1. Guarantee the application of rules with local content in Central America.** Apart from demanding rules of origin with regional content, it is important that the FTA guarantee the application of rules with Central American local content, in order to maintain and promote the generation of national productive chains and employment creation in the input supply sectors in the Central American region. If this is not considered, the introduction of the FTA with regional content (CA and USA) will be accompanied by employment losses in those national sectors that are not competitive, as a result of the differences in costs that could exist between the Central American inputs and those of the other parties, for which the impacts in net employment would not be very significant.

**2.1.2. The FTA will contain clear mechanisms for the temporality of business people's permanency in the territories,** so that there is no discretionary use of this regulation. If the time is not clearly defined that business people will remain in the territories (according to the activities that they will conduct), it could give rise to underemployment and the displacement of the qualified labor force from one country to another.

**2.1.3. The levels of employment in the service sector, should be used as a criteria to define the treatment to be applied to the trans-border service trade.** The normative concerning the trans-border service trade constitutes a threat to the workers occupied in the companies supplying or providing services, since the State cannot discriminate among national and foreign suppliers, as a consequence of the principles of National Treatment and Most Favored Nation. In this way, the differences in terms of competitiveness in the service supplying sectors can result in employment losses in the less developed countries. On the other hand, the opening of services should be related to the improvement of the societal living conditions. Also, the negotiations concerning professional services should be based on the principle of reciprocity and opt for a gradual opening of the professional services, in order to promote their competitiveness in the short term.

**2.1.4. The chapter concerning investments should be constituted as a strategic area for employment generation.** In this sense, in the FTA the governments should demand performance requirements for investors with regards to employment generation, labor force training and compliance with labor rights. Therefore, foreign investment should adhere to the regulations that guarantee economic and social rights. Furthermore, in the conflicts between investors and the State, the labor rights recognized in the national laws as well as in international agreements should have priority.

### **2.2. PROPOSALS CONCERNING THE LABOR CHAPTER**

### **2.2.1. About the chapter and its objectives**

A Labor Chapter should be incorporated and negotiated as an integral part of the text and the normative concerning trade and investment should be articulated to it. In this sense, a labor chapter should be included that integrates dispositions on labor matters, with the purpose of creating the necessary conditions for effective compliance with worker's rights in the activities related to international trade. We consider that the chapter should integrate the following aspects:

Its purpose should be to promote the labor rights stipulated in national laws and in international agreements, as well as the compliance and observance of said dispositions in exportable production or any other activities related with international trade and foreign investment.

It should establish the regulation and mechanisms that will assure the responsibility and transparency of the States in the enforcement of labor legislation and administration in their respective territories and the public reporting of compliance within this legal and institutional framework.

### **2.2.2 Labor Rights**

In order to promote labor rights the labor chapter should include dispositions that:

- a) Incorporate the fundamental labor rights derived from the instruments concerning human rights and the specialized agreements ratified by the subscribing countries.
- b) Incorporate in a specific way the rights derived from the fundamental Agreements of the ILO.
- c) Incorporate in a general way, the rights derived from the other agreements of the ILO ratified by the subscribing countries, with emphasis on employment policies, maternity protection, professional education and tri-party consultations.
- d) Maintain respect for the national regulatory framework, with emphasis on the constitutional principles and national sovereignty in the improvement of labor relationships.
- e) The rights referred to in the previous points can be individualize principally, although not in an exclusionary way, in the following manner:
  - freedom of association and collective negotiation;
  - abolition of child labor;
  - elimination of mandatory or obligatory work;
  - elimination of all forms of discrimination;
  - equality of remuneration;
  - guarantees for working conditions such as: work day, weekly rest, removal or accent, norms concerning women that work and minors than do so with authorization, guarantees for remuneration, work stability, vacations and holidays, security and hygiene, work environment and regulation of work intensity;
  - work for people with disabilities;
  - equality in access to and permanency in employment;
  - promotion of decent employment;
  - protection for migratory workers;
  - professional training and vocational orientation;
  - social security that includes: subsidies for accidents, medical attention, funeral support, protection against unemployment, protection during old age and survivors' pensions;
  - maternity leave.

### **2.2.3 Labor Institutions**

The chapter should establish control mechanisms for the administration of the labor chapter in the regional context and in each one of the party countries in order to:

- a) Make efficient the role of verification, control and promotion of respect for the rights, on behalf of the Labor Inspections and the General Labor Offices;
- b) Make efficient and sensitize the administration of labor justice, guaranteeing the principles of officiousness, immediateness, concentration and the oral nature of the procedures.

For these reasons it should:

- a) Establish a Labor Prosecutor in each country and in the regional context,
- b) Establish National Offices for Labor Concerns,
- c) To establish the Council on Labor Concerns for the solution of conflicts, that includes mechanisms for the effective participation of civil society.

#### ***a. Labor Courts***

The Agreement should include new possibilities for the solution of conflicts. One of them is the creation of the figure of the Labor Prosecutor that should be institutionalized in each of the countries and at a regional level. This figure should have as functions the vigilance in each country context -in first instance - and in the region as a whole, in the second, with respect to the way in which the labor institutions are reacting to the conflicts that are submitted under their jurisdiction. These prosecutors would be the in situ monitors of the State's own labor institutions and those derived from the Agreement. They would have two main faculties: a) to elevate the deficiencies found to the knowledge and decision of the Council on Labor Issues and b) to bring them to the knowledge of public opinion as a form of social moral sanction for the deficiencies of the institutions in charge of enforcing compliance with labor rights, independent of the result that it is derived from the Council.

The Regional Labor Prosecutor would coordinate the work of the national prosecutors and would maintain connections with the Council on Labor Concerns.

#### ***b. National Offices of Labor Concerns***

Offices to be established in each of the party countries, integrated by a delegate of the Labor Ministry, another from the business sector, one in representation of the workers' organizations and another from the non-governmental organizations with experience in the labor field. This office would have faculties to receive complaints in each country and to transfer them to the Council on Labor Concerns, to verify in situ the compliance with the labor norms contained in the Agreement and to inform of the results to the Council, recommending the corrective or punitive measures as the case may be, coordinating their work with the Labor Inspectors, but not necessarily depending on them.

#### ***c. Council on Labor Concerns***

To be integrated by a delegate of the Labor Ministries of each of the party countries, another from the business sector from the United States of America, another from the business sector of Central America, another from the labor organizations from the United States of America, another for the labor organizations from Central America and finally one from the civil society organizations from the United States of America and another from the civil society organizations from the Central America countries. Each one will have a substitute that will participate actively in the proceedings, with the right to voice but not to vote, except for when he or she acts as title the representative.

For the election of the union and civil society representatives that will integrated in this Council, the Labor Ministries should make a broad based invitation to the relevant social organizations (in each country) and these will be the ones that will choose by simple majority their representatives (two per country), who later, will meet in one of the countries in the case of the region, or in one of the States in the United States of America, to choose their representatives to the Council. Also, these representatives will provide public accountings of their work every 6 months, sending reports to the organizations that participated in the selection process. These organizations will have a veto power and will be able to convene an extraordinary meeting to deal with serious matters or for the removal of delegates.

This Council would be responsible for the revision and resolution of the complaints and the cases presented by the Labor Prosecutors and the National Offices for Labor Concerns and in a general way, the administration of the implementation of the Agreement. This is to say, to monitor the compliance, receive complaints, carry out the investigations corresponding to the complaints received and pass sentence as to their foundation, establishing the preventative and punitive sanctions, in correlation to the seriousness of the non-compliance or the possibility of non-compliance.

The administrative bodies of the Agreement (the National Offices and Council) should establish procedures for the reception of complaints that will facilitate their effective and expedite processing.

Once a complaint is received, the Council will have 15 days to dictate if an investigation should be carried out or not. In the case of an investigation, this should be carried out in a maximum of 30 days, starting from the admission date, and the verdict must be emitted no later than 60 days afterwards.

We also propose that the activities of the National Offices and the Council, be technically supported by Multidisciplinary Technical Teams from the Regional Office corresponding to the International Labor Organization. This will require a special and permanent relationship with the ILO, as the maximum world authority on labor concerns.

#### **2.2.4 Civil society participation**

The incorporation of the workers' and civil society organizations in the institutional framework derived from the Agreement, opens possibilities for the effective participation of civil society. However, it doesn't exclude that in certain aspects, the governments carry out direct consultations in equality of conditions, with civil society organizations related to labor issues. For this reason, there should be an open registration process with the Labor Ministries for the organizations that are interested in being invited for consultation.

#### **2.2.5 Communication of complaints<sup>4</sup>**

- a) The complaints can be made by non-governmental organizations or unions, related to a problem with the violation of guaranteed rights by American or Central American companies located in their own country, or negligence on behalf of their own governments in the investigation and correction of labor violations made inside their territory or by companies from their country that are operating directly or indirectly (through subsidiaries, intermediaries, contractors, subcontractors or suppliers) outside of their borders.
- b) The complaints should be made before the Council on Labor Concerns or the corresponding National Offices for Labor Concerns.
- c) Non-governmental organizations or unions from other countries will be able to accompany the complaint, but this is not indispensable.
- d) The complaints can be concerning the actions of a company or of a State. In any event, the defendant will be the State, with the shared in common responsibility of the company or companies that are in violation of labor rights.
- e) Each complaint will be submitted for study to determine if it is to be admitted. This investigation should not be longer than 45 days, at the end of which the Council on Labor Concerns should emit a sentence regarding if the complaint is to be accepted or not.
- f) If the complaint is admitted, the Council will request, if necessary, complementary information from the plaintiff and the defendant. This information should be requested the same day on which the complaint is admitted and a period of at most 15 days should be allowed for the return of said information. The Council will then have other 15 days to study this new evidence.
- g) After these 15 days, the Council should elaborate a remedial plan for the demanded company or government. This plan should be presented to the demanded party and the plaintiff in no more than 15 days after the complaint has been ruled upon.

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<sup>4</sup> Some ideas for this section have been taken from, Pharis, Collingsworth and Athreya, Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy". <http://www.laborrights.org/>

- h) The remedial plan must be implemented according to the times established and to satisfaction of the Council.
- i) The Council will designate unanimously the entity in charge of monitoring the implementation of the remedial plan. However, these monitors should be independent of the plaintiff and defendant parties, as well as of the governmental entities.
- j) If the remedial plan is not implemented to the satisfaction of the Council, said body will proceed to establish commercial sanctions for the company or the State that has been found in violation of the basic labor rights established in the agreement. These sanctions can range from the payment of fines, to the temporary suspension of the tariff benefits established by the commercial agreement. The fines should be established as a rule, at double the cost of the violation, for each one of the victims involved.
- k) The plaintiff and defendant will be informed at all times of the advance of the process and they will be provided with additional information in the moment that they make such a request.

### **2.2.6 Requirements for the admission of a complaint**

- a) The complaints should be presented in writing and properly signed by the representatives of the union organization or remittent NGO; in urgent cases they can be remitted by fax or e-mail but, in such cases, they should communicate that the original will be remitted later.
- b) The simple copy of a communication sent to a third party is not considered as a formal correspondence and, in consequence, will not be considered for further proceedings.
- c) The complaints coming from instances that do not constitute organizations with a permanent existence are not acceptable, and neither are those from undefined organizations with which it is impossible to maintain correspondence; be this because they only have a temporary existence or because the remitter's address is unknown. The permanency of the organization is derived from the public knowledge of its activities sustained over time and it is not necessarily that it have legal recognition in the country of reference.
- d) After having admitted a complaint the will of the plaintiff is not enough to cause the withdrawal of the same. It is the Council itself that is the only competent entity to judge, with complete freedom, if the causes invoked to justify the withdrawal are acceptable and to investigate if these are sufficiently plausible to consider that the withdrawal has been requested with full independence. In the event of judging the opposite it will continue with the examination of the complaint.
- e) All complaints should be presented supported by evidence directly linked to the alleged facts. They can be of documentary character, legislative texts, administrative norms, journalistic cuttings, reports, pictures, videos, tape recordings and in general, all means that demonstrate the truthfulness of the statements sustained with said evidence.
- f) The evidence must be remitted together with the complaint, however, the Council will decide if complementary evidence is necessary and if so, said evidence will be requested of the plaintiff.

In the same fashion as the procedures for the presentation of complaints before the ILO Committee on Union Freedoms, the following should be reasons for the presentation of complaints regarding union freedom:

- g) Attacks on the physical integrity of workers or leaders (arrest, detention, exile and disappearances).
- h) Restrictions to the liberty of opinion and expression.
- i) Infringement on the right to unionization (negation of union registration, lack of recognition for a category of workers, demand for previous authorization and/or of a high number of members to constitute a union, among others).
- j) Undue influence in the operations of the union organization (prohibition of union meetings, the use of union offices, public protests, among others).
- k) Infringement on the right of the organizations to elaborate their own Statutes and to choose their representatives freely.
- l) Undue influence or infringement of the right to organize their administration, activities and action program.
- m) Restrictions to the freedom to define the structure and composition of the union organization by, for example, imposing a union monopoly, legally preventing workers from different categories to constitute a single organization, etc.

- n) Impediments to the right to constitute Federations, Confederations and to affiliate internationally.
- o) Acts of anti-union discrimination and reprisals (infringement of the union jurisdiction, firing of leaders).
- p) Administrative liquidation or suspension of unions.
- q) Prohibition or excessive limitations to the exercise of the right to strike.
- r) Restrictions to the exercise of the right to collective negotiation.
- s) Restrictions to the content of the collective negotiation.
- t) Nonexistence of dialogue and regular consultation with workers and employers organizations in questions of common interest.

These causes are not restrictive, and any behavior that is oriented in a direct or indirect way, to cause a prohibition, limitation or restriction of the exercise of union freedoms should be assimilated.

### 2.2.7 Preventive measures

The Agreement should consider the necessary measures to prevent labor conflicts and in this sense, the development of constitutional and or legal in the countries party to it should contain the necessary regulation for the existence and operability of the following measures:

- a) **Guarantee of compliance with labor rights.** In the generality of the commercial legislation of the countries involved, it is required that all companies have sufficient reserves to guarantee compliance with their labor obligations. The supervision of these dispositions is under the responsibility of the Superintendence of Mercantile Societies, however, in the practice many companies do not fulfill said disposition. The underlying interest of this proposal is to avoid labor fraud, consistent in that companies withdraw their investments leaving behind debts derived from contributions for social security or retirement funds, wages, compensations for time worked and labor benefits.
- b) **Establishment of cessation funds.** The underlying interest is to achieve the existence of universal compensations, which means that before the termination of individual labor contracts, for whatever reason, including resignation or cessation by mutual consent, there should exist an economic compensation related to the wage and the time of service. In the case of El Salvador, this is established in Article 37 ordinal 12º. of the Constitution.
- c) **Non-access to the benefits of the FTA, for those companies with a history of non-compliance.** It is obvious that the companies with this type of history assume the practice of not guaranteeing the labor rights of their employees and finally they withdraw their investments, generating behaviors of unfair competition and social dumping in detriment to those companies that are in compliance.

### 2.2.8 Corrective measures

In the case that the Council on Labor Concerns has ruled that a certain country or company is in non-compliance with labor rights, it should recommend the adoption of a corrective plan for the compliance with said rights. The labor prosecutor will be responsible for monitoring the implementation of the plan. If the country or the company continues violating the labor rights (failing to comply with the plan or hindering the work of the inspectors), it will be obliged to pay a monetary contribution in an established period. Ultimately it will have the benefits granted by the Agreement suspended.

### 2.2.9 Labor cooperation

The Agreement will include mechanisms for cooperation on labor matters. Part of the cooperation should be used to support the interpretation of the chapter and compliance with its objectives; another part should allow the countries to develop cooperation activities with regards to the strengthening of the institutional capacity in the areas of labor inspections, security and occupational hygiene, technical and professional training, and others that are of mutual interest for the involved parties, as well as for the strengthening of the capacity of the social organizations as regards social monitoring and supervision of compliance with the relevant stipulations of the Agreement.

The monetary result of the application of corrective measures will be destined to support the labor cooperation plan.

### **2.3. PROPOSALS WITH RESPECT TO COUNTRY CONTEXT**

The external insertion by means of the FTA and the improvement of living conditions for the labor sector will be feasible and compatible in the measure that the agreements incorporate a focus on labor rights, and the countries of the region have Employment Policies that generate a favorable climate for the development and competitiveness of the productive sectors faced with the opening of their economies. In this perspective, the formulation of Employment Policies will contemplate the following orientations for action:

2.3.1. **Investment for the qualification of the labor sector** is one of the strategic orientations for the achievement of more competitive economies. Therefore, plans for the training of the labor force in accordance with the needs of development and technological changes, should be formulated.

2.3.2. **Establishment of unemployment insurance.** This type of insurance already exists in the United States of America, but is lacking in the labor agenda of the countries of the region. In the case of El Salvador, it is already incorporated in the Social Security legislation, and only requires the approval of a Special Regulation that will determine the integration of the system and its contributions. For all the other countries of the region, the obligation of the existence of unemployment insurance is derived from the Inter-American Agreement on Social Rights of 1948, known as the *Carta de Bogotá*.

2.3.3. **Institutions related to labor concerns:** given the weaknesses of the institutional framework related to labor concerns in some countries in the region as regards to union organization, among other aspects, it is necessary to redefine the functions of the Labor Ministries and of the legal frameworks in relation to the necessities of the labor sector; as well as to guarantee an appropriate operation of the labor market in the new scenarios of commercial opening.

2.3.4. **The labor legislation should establish appropriate mechanisms to facilitate the effective compliance with labor rights.** Therefore, it is necessary to avoid the proposals of labor flexibilization oriented to reducing labor rights.

2.3.5. **Labor relations:** all employment policies will contemplate mechanisms of social dialogue that propitiate harmonious labor relationships between workers and employers and mechanisms for the effective solution of conflicts. Also, they should stimulate the organization of men and women workers in their search for benefits in favor of the sector.

2.3.6. **Active measures for employment generation:** sectors that are labor intensive or that have significant chains of productive articulation with potentialities for employment creation should be promoted.

## **THE CID INICIATIVE'S PROPOSALS FOR THE NEGOTIATION PROCESS OF THE CAFTA**

### **AGRICULTURAL PROPOSAL**

The negotiations concerning agriculture in the FTA USA/CA should recognize and grant special and differential treatment in favor of Central America, as well as fully integrate the asymmetries that exist, in order to create fair and equal conditions in the context of the commercial agreement between the region and the United States of America.

To integrate the asymmetries in the agricultural theme, will imply redefining the process and the current rules with which the FTA is being negotiated. It will demand the recognition on the part of the United States of the

vulnerability and the incipient development of Central American agriculture, of the necessity to expand and consolidate the benefits granted through the Caribbean Basin Initiative and the General Preference System, to eliminate the tariff and non-tariff barriers, to link to the agreement a wide ranging cooperation program, to recognize the sensibilities in certain products and sectors, and above all, to exclude from the calendar of tariff reduction being negotiated the agricultural products that are strategic for food security in Central America, including basic grains, white and yellow corn, sorghum, beans and rice and animal products such as pork, poultry and milk products, as well as the sub sectors of vegetables and small scale fishing.

## **ENVIRONMENTAL PROPOSAL**

The environmental chapter of the FTA should be an integral part of the Agreement, guaranteeing the generation of a joint work agenda over time between the parties, supported through cooperation resources and technical assistance. This with the purpose of contributing to the strengthening of the institutional framework related to the environment, as well as to the improvement of environmental performance by the productive sectors. The Agreement should also establish the preeminence of the international environmental that have commercial measures, over this commercial agreement, in the event of incompatibility between these two normative structures.

Also, the content of the other chapters of the Agreement should incorporate further dispositions in favor of the environment. Specifically, with regards to market access, special and differentiated treatment should be negotiated for products that are environmentally friendly or reflect good environmental performance (organic products and those favorable to biodiversity, for example). Also, with regards to Investments (conflict resolution), it should be clearly established that the rights of the States party to the agreement, to protect the health of their population and the environment, are above the rights of companies to obtain profits.

## **LABOR PROPOSAL**

Labor concerns should be approached in a traversal way in the content of the FTA, especially in the chapters on: Rules of Origin, Temporary Entrance of Business People, Trans-border Services Trade, Market Access and Investments, since the content of these chapters will have repercussions on the generation or loss of employment. Also a labor safeguard should be established during the negotiation of the agreement in order to guarantee that the labor laws will not suffer changes that threaten the levels of promotion and respect for labor rights in the regulatory framework currently in place in the region.

Also, a Labor Chapter should be negotiated and incorporated as an integral part of the text of the FTA and not as an annexed clause. This will establish the regulation and mechanisms needed to enforce effective compliance with labor rights and the development of the labor force. For this reason, the chapter should integrate measures related to: labor legislation, the necessary institutional framework for their application, conflict resolution, preventative measures, corrective measures and labor cooperation. In this sense, we propose the creation of the figure of the Labor Prosecutors who will have as their primary function the vigilance of the application of the stipulations of the respective Chapter and the appropriate reactions on behalf of each country's own labor institutions.

Also, measures should be established to prevent labor conflicts: guarantee compliance with labor rights, establishment of guarantee funds and the non access to the benefits of the FTA for those companies with a history of non-compliance with labor rights. Also, corrective measures should be applied to the companies that do not comply with the Labor Chapter such as: monetary contributions and commercial sanctions.

The proposal integrates a third group of measures related to the country contexts, necessary for the formulation of National Employment Policies in the region and the generation of a favorable climate for the development and competitiveness of the productive sectors as well as the work force.

## **MICRO, SMALL AND MEDIUM ENTERPRISE PROPOSAL**

Due to the importance and the characteristics of the Central American Micro, Small and Medium Enterprises (MSMEs), the FTA should have as an objective to contribute to the integral development of this sector. In this

sense, we propose giving Special, Differentiated and Preferable Treatment (SDPT) for products and producers from the MSME sector, based on the principle of non-reciprocity that will act as a counterbalance and contribute to rectifying the unequal opportunities and capacities to take advantage of the agreement and to compensate for the negative effects that this agreement may cause in the sector.

The SDPT should be based on the recognition of the asymmetries that exist in the level of development between the Central American countries and United States of America, and also the asymmetries that exist in the interior of the Central American countries, in particular, among different business segments, which should imply the establishment of measures for economic complementation and cooperation coherent with this agreement.

### **REGIONAL INTEGRATION AND THE TIME TABLE: THE CROSSROAD IN THE CAFTA NEGOTIATION PROCESS TOWARDS THE VI ROUND**

The V Round of negotiations of the Free Trade Agreement between the USA and CA (CAFTA) took place in Tegucigalpa, Honduras June 16 - 20. During this round, it could be observed that the Agreement is being questioned in terms of its process and content, no longer only by different sectors of civil society, but also by different regional business sectors. It is important to note, that some business sectors were even proposing a temporary suspension in the negotiations. In this sense, the CID Initiative, in a press conference in the headquarters of the negotiations, requested a MORATORIUM in the negotiations.

On the other hand, the polemic dismembering of the Central American position, has made clear the lack of integration and negotiating power that the region has with regards to the United States of America. In fact, the tariff reduction lists, to which so much importance was given at this time, are no longer so important, as the USA has stated that it will not accept any offer less than that which Guatemala has presented in terms of the range of products to be discussed by the market access working group. Starting now, or these dynamics are changed (for the costs that they may represent for agricultural production and the micro and small enterprises in the region) or the negotiations concerning market access will be fictitious. With this there is the risk that Central America at most will be able to consolidate the achievements and trade opportunities that they already possess within the context of the Caribbean Basis Initiative (CBI) and the General Preference System (GPS).

This point has become so evident that even the business sectors, especially the agricultural and textile ones, have been questioning the necessity of signing a FTA to endorse what they already possess, at least until 2008.

It is troubling that while the discussions and the public attention is centered on the proceedings of the market access working group, the agreements in the other working groups are advancing without any real process of debate or participation. There exists a troubling possibility that in the last stages of the negotiations, in order to consolidate the unilateral agreements, the region could sacrifice positions in other working groups, such as investments, public services, government procurement, intellectual property rights, etc..

One of the sectors that could be harmed by this treaty is the textile sector that began the negotiations with high hopes, but now it seems that the USA is not willing make concessions with respect to the protection of its own textile industries. It also remains to be considered the threat for this sector represented by China's entrance into the WTO.

Ever since Round IV which took place in Guatemala, there have begun to appear and to play an important role sensitive topics that are being identified and prepared as negotiation weapons towards the end of the process. In this sense, in Round VI to be held in New Orleans, Central America should make a serious analysis as to what they are willing to concede and what not. Up until now, all evidence points to the fact that only the Americans are selecting their topics and making their bets.

The environmental and labor topics continue without any significant advances, and why not say it, with a non-transparent treatment of the relevant information regarding Central America's position on the North American proposal that was presented in its entirety in the last round (that it has been argued is in 90% similar to that included in the FTA agreement signed between Chile and the USA). Seemingly the cooperation theme is the only interest that Central America has with regard to these two topics, and this continues without any real definition beyond a list of projects that have been elaborated by the governments.

The sanctions and the linkages of these topics to other parts of the agreement will be a serious problem due to the interest that USA has in this respect, outlined under the American Economic Authority Law. The flat out refusal of Central America to consider these dispositions has been expressed at different times, mainly by representatives of large Central American companies but also by the governments of the region that argue that it would suppose a financial responsibility that they could not assume.

In short, faced with the official Central American positions that appear fragmented and non-transparent, it has become necessary to make a pause in this process in order to review the dynamics and mechanisms of the negotiations, in such a way that these can be revised taking into account, not only political / electoral calendars, which are locked in to the fatal signing date at the end of 2003. The schemes and calendars of the negotiations should respond to the necessities and interests of the different sectors that will be seriously affected by the decisions that are already being made at the negotiation tables.

The negotiations at the crossroads in this process that will be made during the next three negotiation rounds, not only concern the future of a list of products but that of important productive and social sectors in the region. They are also linked to the incipient process of Central American integration that will require as an operative premise, besides the political will of the countries, the necessity of tariff harmonization and border unity.