

**AGRICULTURAL AND LIVESTOCK 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

This document is the **Third Progress Report of regional proposals** prepared by the Meso-American Initiative for Trade, Integration and Development (CID Initiative), related to the negotiations of the Central American Free Trade Agreement with the United States (CAFTA). These proposals are the result of intensive work in the Central American area, with participation of diverse organizations of small and mid-size farmers, peasant farmers and agricultural cooperatives forming the Working Group on Agriculture of the CID Initiative (Mesa Campesina).

In this document we are presenting to the Negotiating Teams of the Free Trade Agreement proposals **on some agricultural and livestock products considered sensitive to the region**, and that from CID's standpoint, should have special treatment in the negotiations. We are referring to **basic grains: white and yellow corn, sorghum, beans and rice; livestock: porcine, poultry and dairy products, as well as other sub-sectors: vegetables, coffee and fishery**. At the end of the document, we present positions and statements on **Patents and Sanitary and Phytosanitary Measures** that should be considered within the context of negotiations. It is important to note that some of the negotiating positions have been originally accredited by the Central American Federation of Agricultural and Agribusiness Chambers, FECAGRO<sup>3</sup>, with whom we have initiated a process of exchanging proposals and whose objective is to facilitate regional negotiations. That is why, after a thorough analysis, some of their proposals having partial or total support from the CID Initiative<sup>4</sup>. This document states some justifications to back such proposals.

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<sup>3</sup> See Document: "FECAGRO Statement on CAFTA with the USA and statement on Central American Customs Harmonization." Central American Federation of Agricultural and Agribusiness Chambers (*Federación Centroamericana de Cámaras Agropecuarias y Agroindustriales*), FECAGRO. San Salvador, El Salvador, April 2003.

<sup>4</sup> Agreement by the Working Group on Agriculture of the Mesoamerican Initiative CID, at meeting held in Cartago, Costa Rica, May 29, 2003.

## **I. PERSPECTIVE REGARDING THE NEGOTIATIONS BETWEEN THE UNITED STATES AND CENTRAL AMERICA**

In former documents, the CID Mesoamerican Initiative stated its position on some conditions to rule the negotiation process.<sup>5</sup> Given the importance of the CAFTA in the economic, political and social context of the region, it was emphasized that full and genuine participation of all productive sectors and civil society should be ensured. Moreover, considering the different sizes and levels of development of agricultural structures in the United States and in Central American countries, negotiations must acknowledge this fact and provide a special and differentiated treatment to favor Central America to integrate such disparities.

After the V Round of negotiations out of nine that were programmed, it is our perception that such conditions are not being addressed properly, particularly on issues related to agriculture. Negotiations have entered into a complex stage threatening to break the little progress made on Central American Customs Union. The position that the United States has taken at this point is far from acknowledging the vulnerability and low levels of competitive development of Central American productive structures, and ignores unilateral concessions and other commercial benefits that have been given to the region for years. On top of that, the United States did not accept a working group on agriculture in the CAFTA negotiations, thus favoring the multilateral role, impeding a thorough discussion of subsidies structures and internal support for their agricultural production. Additionally, they have requested not to exclude agricultural products from the tariff schedules to be negotiated, ignoring regional sensitivities on assets and sectors.

It is clear that the strategic objective of the United States is to consolidate their dominant position in the agrifood market of Central America, with reciprocity in tariff preferences, keeping their subventions structure intact and breaking the traditional system of giving unilateral concessions without expecting anything in return. Due to these reasons, some important segments of Central American agricultural producers are becoming concerned in relation to the need to compete with assets produced under the umbrella of a subsidies structure. Therefore, for the participants at the CID Initiative's Working Group on Agriculture, the negotiating positions, especially those on agriculture and livestock products, must guarantee an asymmetric treatment to favor countries in the region to create equal and fair conditions. Opening competition to the agricultural production of the United States whose productive structure is more integrated and who not only has technological resources but also strong federal and State support may eventually cause the disappearance of complete agricultural areas in the region.

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<sup>5</sup> CID Initiative, Second Progress Report, Regional Proposal on the negotiation of a Free Trade Agreement between the United States and Central America. Central America, February 2003.

## II. PROPOSAL OF NEGOTIATIONS ON AGRICULTURAL AND LIVESTOCK PRODUCTS THAT ARE SENSITIVE TO CENTRAL AMERICA

### A. PROPOSAL OF THE PRODUCE-VEGETABLE SECTOR

#### **Background support to the proposal**

1. Vegetables are an important part of the dietary intake of the Central American population. For instance, it is estimated that in El Salvador, vegetable consumption is 10.49 per cent of family expenses, equivalent to an estimated consumption of US \$47.48 million.<sup>6</sup> In the regional area, in Guatemala and Costa Rica vegetables are an important propeller of socio economic activity, particularly when considering its growing exports, **but most of all, because of its huge contribution to regional food security.**
2. Particularly sensitive is the situation of beans, given the conditions of poverty that most Central American families live in. Beans are the sole protein source in a basic diet. It is estimated that in countries with very low incomes, vegetables contribute 10% of daily protein and 5% of energy intake in the population's diet. Protecting and fostering the production of beans is fundamental for Central American food security.
3. The vegetable sub-sector is also an important employment source. Official sources state that only El Salvador contributes annually with some 90 thousand jobs; but the potential is significant given that more working days per hectare are required than with any other traditional product.
4. Different from Central America, **the United States vegetable industry is highly subsidized, and the technical barriers applied restrict access to their market for Central American vegetable products.** This is translated into an important asymmetry in production costs. In consequence, in face of a FTA with the United States that will open competition amongst such unequal sectors, the future for the vegetable sector in Central America is turning highly vulnerable, putting at risk not only the survival of such an important productive sector, but also an important part of regional food security.

#### **Proposal on the FTA with the United States**

5. That is why **in face of the FTA with the United States it becomes indispensable to exclude from the tariff reduction schedule at least the following tariff items, including fresh potatoes, yellow, white and red onions, carrots and fresh turnips, small red beans and small black beans,** detailed as follows.

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<sup>6</sup> Ministry of Agriculture of El Salvador, CAFTA Reports, in [www.mag.gob.sv/html/publicacionesCAFTA.htm](http://www.mag.gob.sv/html/publicacionesCAFTA.htm).

## CHAPTER 07 VEGETABLES

| TARIFF ITEMS  | Tariff<br>NMF CR | Tariff<br>NMF NIC/ CA | Exclusion<br>Clause |
|---|------------------|-----------------------|---------------------|
| 0701.90.00 The others, fresh potatoes                 | 47               | 15                    | X                   |
| 0703.10.11 Yellow Onions                              | 47               | 15                    | X                   |
| 0703.10.12 White Onions                               | 47               | 15                    | X                   |
| 0703.10.13 Red Onions                                 | 47               | 15                    | X                   |
| 0703.10.19 Onions, the others                         | 47               | 15                    | X                   |
| 0706.10.00 Carrots and fresh turnips                  | 15               | 15                    | X                   |
| 0710.10.00 Boiled potatoes or frozen steamed potatoes | 47               | 15                    | X                   |
| 0713.32.00 Small red beans                            | 46               | 30/20                 | X                   |
| 0713.33.10 Small black beans                          | 46               | 30/20                 | X                   |

1. For the item 0706.10.00 we request opening a tariff clause to separate table carrots from mini vegetables because the item 0706.10.00 is considered highly sensitive, whereas the mini-vegetable carrot should have a different clause whose opening pace must be close to **A X A**.
  
6. Mandatory application of Rules of Origin and Certification of Origin at the border is considered indispensable. Due to the high rate of tariff dispersion in the region, it is important to work on controlling commercial fraud or triangulation of vegetable products as well as proper application of sanitary rules.

### Proposal on the Central American Customs Union

7. It is necessary to **establish a Common External Tariff (CET or CXT) based on the Central American countries' highest consolidated tariff for each product before the WTO** to harmonize and procure a better order of the intra-regional market for sensitive agricultural and livestock products such as vegetables. Central America must work to consolidate tariffs from the bottom up.
  
8. Finally, the CID Initiative's Working Group on Agriculture requests exclusion from the tariff reduction schedule to negotiate with the United States the following tariff clauses: 2002.10.00, 2004.10.00 and 2005.20.00, corresponding to whole tomatoes or in chunks, frozen refried potatoes, and toasted potatoes or "chips".

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### CHAPTER 20: PREPARATION OF VEGETABLES, FRUITS OR PARTS OF PLANTS

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<sup>8</sup> World Food Program, WFP, "Food and Nutritional insecurity in El Salvador in groups at risk", San Salvador, 2001

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| CHAPTER 20: PREPARATION OF VEGETABLES, FRUITS OR PARTS OF PLANTS | Tariff NMF CR | Tariff NMF CA | Clause exclusion |
|--|---------------|---------------|------------------|
| 2002.10.00 Whole Tomatoes or in chunks                           | 15            | 15            | X                |
| 2004.10.00 Frozen refried potatoes                               | 40            | 15            | X                |
| 2005.20.00 Toasted potatoes, "Chips"                             | 40            | 15            | X                |

Pending definition from Costa Rica on the situation of carrot juice.

**A. PROPOSAL OF NEGOTIATION FOR WHITE AND YELLOW CORN AND SORGHUM**

**Background on support to the Proposal**

1. The basic grains sector in Central America has a population of 5.5 million of farmers, mainly midsize and small farmers, who grow corn, rice, beans, and soybeans in less proportion. **Their production is deeply rooted in the social and cultural organization of the region.** Besides its economic relevance, **these products are highly sensitive because of their strategic role to ensure the basic dietary intake of urban and rural families in Central America.** In the year 2000, consumption of regional white corn surpassed 2.5 million of metric tons. Corn, beans, and rice are food with a high value for Central American people’s diet; according to research by the World Food Program, more than 50% of daily energy is provided by these foods.<sup>8</sup>
2. Central America produces more than two million 350 thousand metric tons mainly of white corn, essentially used for human consumption; however, countries like Guatemala and Costa Rica, have an important production of yellow corn, used to manufacture balanced food for animal consumption. It is estimated that the *process of corn production generates more than 460 thousand permanent jobs in the region*, and Guatemala and Honduras are the most dynamic countries generating 172 thousand and 130 thousand permanent jobs, respectively. Its contribution to the total GDP varies ranging from 3.8% in Guatemala, 6.3% in Nicaragua and 7.6% in Honduras<sup>9</sup>.
3. The United States is the world’s major producer and exporter of corn. In fact, from a world production of 593 million metric tones in, 40.6 per cent is from the United States. And from 78.11 million metric tons traded in the world, 64.2 per cent was from the

<sup>9</sup> Ministry of Agriculture of El Salvador, Strategies and Policies Office, Reports on CAFTA, Yellow Corn, White Corn and Sorghum.

United States. In relation to sorghum, the United States is the world's major producer with 9.8 million metric tons in 2002, monopolizing more than 90% of the world's trade.

4. The world's market of corn and sorghum works distortedly. In fact, *the programs and the level of subsidies and subventions for corn production in the United States guarantees their producers approximately one third of costs per metric ton.* Such level of subsidies makes room for profit that is placed on the world's markets at lower costs than the production cost. Under the Agreement on Agriculture and Rural Investment 2002, corn and sorghum have support for farmers' income, channeled through different programs: direct payments, advance payments due to falling prices in the international market <sup>10</sup> and loan programs for marketing. Moreover, they benefit with guarantees of export credits and food aid programs, besides other assistance programs.
5. On the contrary, Central American corn and sorghum producers do not have any support programs or price stabilization, putting them in a disadvantaged position in a trade opening with the United States.

**Proposal of this sector in relation to the FTA with the United States**

6. Given the characteristics mentioned above and particularly, **an indiscriminate opening of the corn and sorghum market are a threat to Central American food security, it is indispensable to exclude from the tariff reduction schedule of the Free Trade Agreement with the United States, corn and sorghum, as well as middle or final products derived, as detailed in the following tariff items.**

Chapter 10: Cereals

| Tariff Items SAC                      | Tariff NMF CR | Tariff NMF CA | Clause exclusion |
|---------------------------------------|---------------|---------------|------------------|
| 1005.90.20 Yellow corn                |               |               | X                |
| 1005.90.30 White corn                 | 40            | 15            | X                |
| 1007.00.90 Sorghum in grain           | 40            | 15            | X                |
| 11022000 Corn flour                   | 10            | 15/10/5       | X                |
| 110812000 Corn starch                 |               |               | X                |
| 11042300 Other corn products          | 5             | 5             | X                |
| 11031300 Semolina and pellets of corn | 0             | 15            | X                |

**B. PROPOSAL OF NEGOTIATION POSITION FOR THE RICE SUBSECTOR<sup>11</sup>**

**Support to the negotiation proposal for the FTA with the United States**

<sup>10</sup> Pagos anticíclicos.

<sup>11</sup> Summary of Central American Position, accredited by FECAGRO, as of April 27, 2003; submitted by the Board of the Central American Rice Federation (FECARROZ)

1. The CID's Working Group on Agriculture agreed that to guarantee transparency and trust among all the actors involved in this activity in the region, but, above all, to prevent distortions and disloyal practices on rice trade, we will request implementation of **a net export clause** in the regional area, following the procedures established by the World's Trade Organization, WTO.
2. **Central America is a rice-producing region, and is the livelihood of more than 1,250,000 people.** According to FECARROZ the population who cultivates rice is very difficult to become subject of retraining programs towards other products or other productive activities. Rice cultivation in Central America uses approximately 254 thousand manzanas<sup>12</sup>, with a potential to grow that may well cover the regional demand on chaff rice within 10 years. The cost of the operation (production and importing) costs US \$220 million.
3. **Programs and subvention levels to rice production in the United States guarantees their producers approximately US \$232.00 per metric ton.** Such level of subsidy makes it possible to keep the FOB product price in the New Orleans Port at US \$108.00. This generates profit that must be placed in the world's markets at lower prices than the production cost.
4. The United States lack of will to negotiate their agricultural policy within the CAFTA framework, makes it impossible to negotiate reduction of subsidies and domestic assistance, thus **they cannot commit to a tariff reduction program to consolidate the region in relation to rice.**

### **Proposal of the rice sector in relation to the FTA with the United States**

1. **Request the exclusion of rice from the tariff reduction program in all items** until tariff union is renegotiated at the WTO as established in the Central American rice producers' proposal for renegotiation of consolidated tariffs.
2. Once rice tariffs are renegotiated before the WTO, there will be a negotiation to access Central America as a contingent. Three positions were agreed to facilitate the negotiation, setting a ceiling and a bottom for it.

|  | <b>Position 1</b> | <b>Position 2</b> | <b>Position 3</b> |
|--|-------------------|-------------------|-------------------|
| Tariff Contingent (percentage of regional deficit) | 55%               | 60%               | 70%               |
| Tariff within Contingent                           | 0% (zero tariff)  |                   |                   |
| Tariff out of Contingent                           | 90%               | 90%               | 90%               |

3. The contingent will only apply to non-industrialized chaff rice (not submitted to any industrial treatment other than grain cleaning and drying) from tariff item 1006.10.90

<sup>12</sup> Manzanas, land measure in Central America =1.75 acres.

and exclusion will apply to the other tariff fractions including rice from item 19.04 and sub-products of item 11.03

4. To access the United States market the agreement is to request consolidation of preferences established in GSP/CBI<sup>13</sup>, that is immediate access with 0 % tariff.

#### **Proposal of the Central American rice sector for renegotiation of consolidated tariffs before the WTO.**

1. Request will be made to the Ministers of Economy of the region to renegotiate rice tariffs before the WTO, under articles XXIV, XXVIII of the 1994 GATT.
2. Renegotiation of rice of item 10.06 will be oriented to establish a common external tariff of 90%.
3. Renegotiate before the WTO a consolidated tariff of 90% as common external tariff for rice that classify in item 19.04 (instant rice).
4. Negotiate a special agricultural safeguard for the five countries using volume mechanisms and reference prices, according to the Central American proposals before the WTO.

#### **D. PROPOSAL OF NEGOTIATION FOR THE CENTRAL AMERICAN DAIRY SECTOR**<sup>14</sup>

##### **Supporting arguments for the proposal**

1. The United States has increased the level of export subsidies, domestic assistance and protection measures at the border for agricultural products. According to estimates by the OECD, **state transferences for the US dairy sector in 2000 represented 50 per cent of production value**. This situation, besides distorting world markets for dairy products, turns regional producers more vulnerable.
2. Unilateral opening of the region to import dairy products has not implied benefits for the consumer because the drop of prices in the world's market does not mean a price reduction for the consumer. Low tariffs in some countries have permitted that imports displace the sector's productive capacity and potential, thus weakening rural economies development in the region.

##### **Summary of partial proposal for common external tariff for Central America**

Feasibility of harmonization within the Customs Union framework must follow this process:

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<sup>13</sup> General System of Preferences /Initiative of the Caribbean Basin

<sup>14</sup> Summary of Central American Position accredited by FECAGRO, as of April 27, 2003; submitted by the Central American Federation of Dairy Sector (FECALAC).

1. Tariff harmonization applied to dairy products must be at the highest tariff applied in the region.
2. Since there are countries with consolidated tariff levels lower than the highest tariff applied by a country, tariff harmonization requires that the WTO be notified the intention to modify the list of concessions, under GATT's article XXVIII.
3. FECALAC considers that harmonization must take place in two phases. The first is a partial harmonization in the short term to reach the highest tariff applied only for those countries that are able to do it, and the other countries shall increase their tariff to a consolidated level. In the second phase when the countries have concluded their negotiation at the WTO, harmonize at the highest tariff applied as of January 1, 2003.
4. It is requested to establish a Tariff Base from the CAFTA tariff reduction schedule until the Customs Union Common External Tariff is in place; in case of the WTO extending the period, tariff proposed as follows should be taken as a base.

### **Proposal in relation to the FTA with the United States**

Advancing in the tariff harmonization process in the Central American region does not imply including these products in the Tariff Reduction Schedule of the Free Trade Agreement with the United States.

**Partial Proposal of Common External Tariff for Central America  
Dairy Products**

| Item      | Descripción   | CR  | ES  | GU  | HO  | NI  |
|-----------|---|-----|-----|-----|-----|-----|
| 0401      | Milk and cream, non concentrated, no sugar or sweetener added                           |     |     |     |     |     |
| 0401.1000 | Containing fat that is less or same as 1% in weight                                     | 65% | 45% | 65% | 35% | 65% |
| 0401.2000 | Containing fat over 1% but less or same as 6% in weight                                 | 65% | 45% | 65% | 35% | 65% |
| 0401.3000 | Containing fat over 6% in weight  | 65% | 45% | 65% | 35% | 65% |
| 0402      | Milk and cream, concentrated or with sugar or sweetener added                           |     |     |     |     |     |
| 0402.1000 | Powder, granules, or solid presentations, containing fat less or same as 1.5% in weight | 65% | 45% | 20% | 15% | 65% |
| 0402.2    | Powder, granules, or solid presentations containing fat over 1.5% in weight             |     |     |     |     |     |
| 0402.21   | No sugar or sweetener added   |     |     |     |     |     |
| 0402.21.1 | Partially skimmed milk (containing fat less than 26% in weight):                        |     |     |     |     |     |
| 0402.2111 | In packages of net content lower than 3 Kg.   | 65% | 45% | 20% | 20% | 65% |
| 0402.2112 | In packages of net content over or same as 3 Kg.  | 65% | 45% | 20% | 20% | 65% |
| 0402.21.2 | Whole Milk (containing fat over or same as 26% in weight):                              |     |     |     |     |     |
| 0402.212  | In packages of net content lower  | 65% | 20% | 20% | 15% | 65% |

|               |   |     |     |     |     |     |
|---------------|---|-----|-----|-----|-----|-----|
| 1             | than<br>5 Kg.                                       |     |     |     |     |     |
| 0402.212<br>2 | In packages of net content over or<br>same as 5 Kg. | 65% | 20% | 20% | 15% | 65% |
| 0402.290<br>0 | The others  | 65% | 45% | 20% | 25% | 65% |
| 0402.91       | No sugar or sweetener added                         |     |     |     |     |     |
| 0402.911<br>0 | Evaporated milk                                     | 20% | 20% | 20% | 20% | 20% |
| 0402.912<br>0 | Cream   | 65% | 45% | 65% | 20% | 65% |
| 0402.919<br>0 | Others  | 65% | 45% | 65% | 20% | 65% |

| Item          | Description  | CR  | ES  | GU  | HO  | NI  |
|---------------|--|-----|-----|-----|-----|-----|
| 0402.99       | The others   |     |     |     |     |     |
| 0402.991<br>0 | Condensed Milk   | 20% | 20% | 20% | 20% | 20% |
| 0402.999<br>0 | Others   | 65% | 45% | 65% | 20% | 65% |
| 0403          | Butter whey, milk and cream, curd cheese, yogurt, kefir and the other milk and cream<br>fermented or acidified, including concentrates, with sugar or other sweetener added,<br>aromatized or with fruits or cocoa |     |     |     |     |     |
| 0403.100<br>0 | Yogurt   | 65% | 40% | 65% | 35% | 65% |
| 0403.90       | The others   |     |     |     |     |     |
| 0403.901<br>0 | Butter Whey  | 65% | 45% | 65% | 35% | 65% |
| 0403.909<br>0 | Others   | 65% | 45% | 65% | 35% | 65% |
| 0404          | Lacto whey, including concentrate or with sugar or sweetener added; products made with<br>milk's natural ingredients, including those with sugar or sweetener added, not described or<br>stated in any other place |     |     |     |     |     |
| 0404.100<br>0 | Lacto whey, even if not modified,<br>including concentrate or with sugar or<br>other sweetener added.  | 15% | 15% | 15% | 15% | 15% |
| 0404.900<br>0 | The others   | 30% | 30% | 30% | 30% | 30% |
| 0405          | Butter and other milk fat; milk spreads  |     |     |     |     |     |
| 0405.100<br>0 | Butter   | 65% | 30% | 65% | 20% | 65% |
| 0405.200<br>0 | Milk spreads   | 65% | 30% | 65% | 20% | 65% |
| 0405.90       | The others   |     |     |     |     |     |
| 0405.901<br>0 | "Butter oil"   | 5%  | 5%  | 5%  | 5%  | 5%  |

|               |  |     |     |     |     |     |
|---------------|--|-----|-----|-----|-----|-----|
| 0405.909<br>0 | The others   | 65% | 30% | 65% | 20% | 65% |
| 0406          | Cheese and cottage cheese  |     |     |     |     |     |
| 0406.100<br>0 | Fresh cheese (without maturing), including lacto whey and cottage cheese | 65% | 45% | 65% | 20% | 65% |

**E. PROPOSAL OF NEGOTIATION POSITION OF THE PORCINE SECTOR RELATED TO THE FREE TRADE AGREEMENT WITH THE UNITED STATES.**<sup>15</sup>

**Background**

1. The porcine herd in Central America is estimated to be 3.2 million pigs. Farms with technology have some 60.0 thousands of pregnant pigs with an average of 2.2 births per year, with 9 piglets; making this Sector an important income generator in the region. For instance, in El Salvador this sector opens 3500 permanent jobs, contributing 2% of livestock GDP. It is equally important for the other Central American countries.
2. Notwithstanding that tariffs applied by the United States for the Central American region is 0%, sanitary requirements to export to the United States is strict; therefore, **none of the countries in the region has accessed the US market.**
3. The porcine sector in the United States has domestic assistance and it is estimated hat it is no less than 4% of their porcine production value. **This sector is widely protected through subsidies and non-tariff barriers of all kind.**
4. This situation has caused major distortions in international trade and the pig market is manipulated by few and very powerful companies<sup>16</sup>. This was evidenced during the crisis at the end of the nineties (1998-99), when 7 major companies increased their domestic production by 10%, eliminating 74.000 small producers.<sup>17</sup> Additionally, the United States is the world's major producer of corn and soybeans, products that are highly subsidized and that are raw material for pig food. Subsidies for products serving as raw material for agro-industry are disloyal competition for Central Americans exports of processed agricultural products.

**Negotiation Position of the Porcine Sector**

<sup>15</sup> Summary of Salvadoran position accredited by FECAGRO, as of April 27, 2003, submitted by the Salvadoran Porcine Sector.

<sup>16</sup> Some of the main agro-industries controlling the market are: Smithfiels/Carrols Foods, Murphy Family Farms, Continental Grain Co., Seaboard Corporation, Prestage Farms, Tyson Foods and Cargill.

<sup>17</sup> Document of analysis "Pig breeding" Costa Rican Chamber of Pig Breeders, Heredia, Costa Rica, no date.

5. Given the above mentioned situation, Working Group on Agriculture of the CID Initiative, backs the position accredited by the presidents of the Associations of Pig breeders of Central America, stating that the **Central American porcine sector is not in conditions to benefit from trade reciprocity with the United States and therefore should be excluded from the Tariff Reduction Schedule of the free trade agreement between the United States and Central America**, at least for the following tariff items:

**CHAPTER 02. PORCINE ANIMAL MEAT**

| TARIFF ITEMS   | Tariff NMF CR | Tariff NMF CA | Clause Exclusion |
|--|---------------|---------------|------------------|
| 0203.11.00 Fresh or refrigerated meat in channels or semi channels | 45            | 15            | X                |
| 0203.12.00 Fresh or refrigerated meat, hams, trowels, and chunks   | 47            | 15            | X                |
| 0203.19.00 Fresh or refrigerated meat, the rest                    | 47            | 15            | X                |
| 0203.21.00 Frozen meat in channels or semi channels                | 45            | 15            | X                |
| 0203.22.00 Frozen meat, hams, trowels and chunks                   | 47            | 15            | X                |
| 0203.29.00 Frozen meat, the rest                                   | 47            | 15            | X                |

6. Additionally, implementation of a Technical Rule for Central America is requested, with definition of quality standards for importing frozen meat outside the region.

**F. PROPOSAL OF THE CENTRAL AMERICAN POULTRY SECTOR RELATED TO THE CUSTOMS UNION PROCESS AND THE FREE TRADE AGREEMENT WITH THE UNITED STATES.**<sup>20</sup>

**Summary of the Proposal of the Central American Poultry Sector.**

1. Central American poultry production contributes to food security in Central America. Consumption per capita is 36.87 pounds of chicken y 129.56 of eggs, adding up to consumption per capita of 53.99 pounds of meat and eggs.
2. Poultry production is part of a wide agro-industrial chain that includes consumption of agricultural and agro-industrial products such as corn, sorghum, soybeans, salt, among others.

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<sup>20</sup> Summary of the Central American position, accredited by FECAGRO on April 27, 2003 on poultry matters, submitted by the Central American and the Caribbean Federation of Poultry Producers (FEDAVICAC)

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3. The agro industrial poultry chain has a high social value as it generates 82,500 permanent jobs and 516, 280 indirect jobs. Central American poultry production contributes 2.12 % of total GDP and 11.02 per cent of agricultural GDP in Central America, as a result of at least six leaps of added value throughout the productive chain.
4. The United States is the world’s major producer and exporter of poultry products. However, there are serious distortions resulting from the high subsidies given to poultry production and exporting.
5. **Access to the US market for the poultry sector is none** because poultry trade is subject to a series of non-tariff measures that restrict the entrance of poultry products into the United States.<sup>21</sup>

**Proposal in relation to the Customs Union**

1. Regional agricultural and livestock policy must be harmonized to prevent market distortions from the Union’s signatory countries.
2. A Common External Tariff must be consolidated, applicable to poultry products: chicken meat, eggs and derived products, coming from third countries, taking into consideration the highest consolidated tariff in Central America, as stated in the rights acquired before the WTO.

**Position in relation to the FTA with the United States**

Regarding the Free Trade Agreement with the United States the Central American poultry sector requests **EXCLUSION FROM THE FTA WITH THE UNITED STATES**, of all poultry products such as chicken meat, eggs and derived products, until distortions on poultry trade are removed.

**PROPOSAL OF TARIFF HARMONIZATION FOR ITEM 0207 OF SAC**

| SAC        | DESCRIPTION                                       | PROPOSED TARIFF |
|------------|---|-----------------|
| 0207.11.00 | Without chopping (cutting), fresh or refrigerated | 35%             |

<sup>21</sup> Some of the Non-tariff measures are: Regulations on Animal Health, Food Hygiene and several Technical Norms that restrict market access.

|            |   |                             |
|------------|---|-----------------------------|
| 0207.12.00 | Without chopping, frozen                  | 35%                         |
| 0207.13    | Chunks and remains, fresh or refrigerated |                             |
| 0207.13.10 | As a paste, boned mechanically            | 40%                         |
| 0207.13.91 | Breasts                                   | 40%                         |
| 0207.13.99 | The others                                | 40% /<br>150% <sup>22</sup> |
| 0207.14    | Chunks and remains, frozen                |                             |
| 0207.14.10 | As a paste, boned mechanically            | 50%                         |
| 0207.14.91 | Breast                                    | 50%                         |
| 0207.14.99 | The others                                | 50% /<br>160% <sup>23</sup> |
| 0207.20    | Turkey derived (chicken-turkey)           |                             |
| 0207.24.00 | Without chopping, fresh or refrigerated   | 35%                         |
| 0207.25.00 | Without chopping, frozen                  | 35%                         |
| 0207.26    | Chunks and remains, fresh or refrigerated |                             |
| 0207.26.10 | As a paste, boned mechanically            | 40%                         |
| 0207.26.90 | Others                                    | 40%                         |
| 0207.27    | Chunks and remains, frozen                |                             |
| 0207.27.10 | As a paste, boned mechanically            | 40%                         |
| 0207.27.90 | Others                                    | 40%                         |
| 0207.30    | From duck, geese or pintada               |                             |
| 0207.32.00 | Without chopping, fresh or refrigerated   | 35%                         |
| 0207.33.00 | Without chopping, frozen                  | 35%                         |
| 0207.34.00 | Liver, fresh or refrigerated              | 35%                         |
| 0207.35.00 | The rest, fresh or refrigerated           | 40%                         |
| 0207.36.00 | The rest, frozen                          | 40%                         |
| 0407.00.90 | Others (Eggs)                             | 35%                         |
| 04.08      | Eggs without the shell                    | 35%                         |

## **G. SUMMARY OF THE NEGOTIATION PROPOSAL OF THE COFFEE SECTOR**<sup>24</sup>

Coffee is one of the most important products, socially and economically, for Central America. In fact, its contribution to the GDP ranges from 1.3 % in Costa Rica, to 8.3% in Guatemala. Its contribution to the GDP is high, over 18% in Guatemala, El Salvador, Nicaragua and Honduras.<sup>25</sup>

<sup>22</sup> El Salvador, Guatemala, Honduras and Nicaragua will apply a 40% tariff and Costa Rica, 150% tariff.

<sup>23</sup> Costa Rica, El Salvador, Guatemala and Nicaragua will apply a 160% tariff and Honduras, a 50% tariff.

<sup>24</sup> Summary of Central American Position accredited by FECAGRO on April 27, 2003, submitted by the Central American Coffee Sector.

<sup>25</sup> Ministry of Agriculture of El Salvador, website quoted in footnote page # 4.

Besides being a fundamental source of export income, coffee activity is an important net source of employment. It is estimated that it generates one million 400 thousand jobs in Central America.

Currently, coffee exports to the United States are tariff-free through the CBI. This implies that the expected bottom for negotiations with this is the consolidation of unilateral concessions that Central America already has.

## 1. Proposal in relation to access to the United States

Central America exports coffee to the United States in different presentations: unprocessed coffee bean<sup>27</sup> pergamin, gold, roasted gold, roasted and ground, peel or pulp, among others. The Central American position must seek **to consolidate free access tariff conditions already established in the CBI**, to allow imports from the United States without a tariff for the following items.

| 0901 COFFEE  | NMF      | SGP/ CBI | POSITION |
|--|----------|----------|----------|
| Coffee, including roasted or decaf; coffee peel and husk; substitutes containing coffee in any proportion. |          |          |          |
| 0901.11.00 non roasted coffee, non decaf   | Free     |          | Free     |
| 0901.12.00 decaf non roasted coffee  | Free     |          | Free     |
| 0901.21.00 roasted coffee non decaf  | Free     |          | Free     |
| 0901.21.01 ground roasted coffee, non decaf, medium roast and grind  | Free     |          | Free     |
| 0901.22.00 Decaf roasted coffee  | Free     |          | Free     |
| 0901.90.10 Coffee peel and husk  | Free     |          | Free     |
| 0901.90.20 substitutes containing coffee   | 1.5 c/Kg | Free     | Free     |

## 2. Proposal for access to Central America

Central America applies within the Common External Tariff, a 15% tariff for introducing coffee in any presentation: pergamin, gold, roasted gold, roasted and ground, thus the Central American states one **sole position on tariff reduction for 15 years. Taking a short-term tariff reduction position immediately or in the short term would affect the industry of roasted coffee.** Access to Central America may be negotiated in the following terms.

| 0901 COFFEE  | NMF | TARIFF REDUCTION POSITION |
|--|-----|---------------------------|
| Coffee, including roasted and decaf; coffee peel and husk; substitutes containing coffee in any proportion |     |                           |
| 0901.11.10 unprocessed coffee bean (cereza)  | 10% | 15 years                  |
| 0901.11.20 coffee pergamin   | 15% | 15 years                  |
| 0901.11.30 coffee gold   | 15% | 15 years                  |
| 0901.11.90 others  | 15% | 15 years                  |
| 0901.12.00 decaf unroasted coffee  | 15% | 15 years                  |
| 0901.21.00 roasted coffee non decaf  | 15% | 15 years                  |

<sup>27</sup> Cereza

|   |     |          |
|---|-----|----------|
| 0901.21.01 roasted ground coffee, non decaf, medium roast and grind | 15% | 15 years |
| 0901.22.00 decaf roasted coffee                                     | 15% | 15 years |
| 0901.90.00 the rest   | 15% | 15 years |

**3. Central American Proposal for access to the United States (coffee extracts, Essences and concentrates)**

It is requested to keep access for Central American exports of coffee extracts, essences and concentrates, including coffee, to the United States (tariff free). Also, immediate opening is requested for other extracts and preparations for syrups and preparations with sugar varying in dry weight.

**Coffee extracts, essences and concentrates**

|  | NMF              | GPS/<br>CBI | POSITION |
|--|------------------|-------------|----------|
| Tariff contingent (percentage of regional deficit)                             |                  |             |          |
| Tariff within Contingent   | 0% (zero tariff) |             |          |
| <b>2101.11.29 -Others</b>  | 90%              |             | 90%      |
| 2101.12.32 –preparations based on extract, essences or concentrates, or coffee | 10%              | Free        | Free     |
| 2101.12.34 –mixtures for syrups  | 10%              |             | Free     |
| 2101.12.38 –others   | 30.5 c/Kg + 8.5% |             | Free     |
| 2101.12.44 –preparations with more than 65% of sugar in dry weight             | 10%              |             | Free     |
| 2101.12.48 -others   | 30.5c/kg+ 8.5%   |             | Free     |
| 2101.12.54 preparations with more than 10% of sugar in dry weight              | 10%              | Free        | Free     |
| 2101.12.58 -others   | 30.5c/kg+ 8.5%   |             | Free     |
| 2101.12.90 -others   | 8.5%             | Free        | Free     |

**4. Proposal on access to the Central American market for coffee extracts, essences and concentrates**

Central America applies a 15% tariff within the Common External Tariff to introduce coffee as extracts, essences and concentrates. Only for tariff items 2101.11.00 and 2101.12.00 there is a sole position of exclusion from the FTA's tariff reduction schedule that would leave tariffs as they presently are (Free to enter the US and 15% to enter Central America.)

Central America explains exclusion from the FTA's tariff reduction schedule for these sub items based on technical arguments on quality and variety of coffee used to prepare instant coffee. As we know they are the lowest and cheapest in the market. Moreover, with these products it is technically difficult to prove certificate of origin because these industrial processes modify important aroma and flavor characteristics of the product, and therefore, there is a risk of triangulation of coffee that does not come from Central America.

| 2101 Extracts, essences and concentrates (including instant coffee)   | NMF | POSITION  |
|---|-----|-----------|
| Extracts, essences and concentrates of coffee, tea, herb mate and preparations based on these products, or based on coffee, tea, or herb mate; roasted chicory and other substitutes of roasted coffee, extracts, essences and concentrates |     |           |
| 2101.11.00 Extracts, essences and concentrates. Instant coffee  | 15% | Exclusion |
| 2101.12.00 Preparations based on coffee-based extracts, essences or concentrates  | 15% | Exclusion |

## 5. Certificate of Origin

It is imperative that the origin of coffee be provided based on the place where the grain is grown and picked. Developed countries intend to introduce a concept of certificate of origin to identify coffee from any part of the world as theirs simply because of the industrial transformation process. Some consequences for the region would be the loss of identity of the coffee from the producer country. Industrialized countries will have more power to manipulate coffee prices. **Central American countries must state a non-negotiable position in the CAFTA with the United States, where the country where coffee is grown defines the origin.**

### III. PROPOSAL OF CID'S WORKING GROUP ON AGRICULTURE IN MATTERS OF INTELLECTUAL PROPERTY, PATENT PROTECTION AND RESTRICTED INFORMATION.<sup>28</sup>

1. In some Central American countries the existence of generic agro chemicals is fully legitimate and is an important factor for competitiveness in agriculture.
2. Therefore, it must be ensured that Central American countries keep an open domestic market with options for producers to purchase different agrochemicals and not to be restricted to the existence of one high-cost product from a monopoly market.
3. The proposal within the CAFTA negotiations with the United States and the Central American Customs Union regulations, **is to ensure approval of procedures for an expedite and transparent registry of generic agrochemicals at the expiry of patents, including** elimination of imposed barriers for introduction of generics into the market.
4. It must be demanded that generic agrochemicals base their registry on the information already given by the product originally patented, at the expiry of patent.
5. Regarding protection of privileged information **it is not possible to apply it retroactively to seek extension of expired patents**, so it should only be applied to new molecules with valid patents. Agrochemicals registries should not have an expiry date to guarantee non-retroactivity of new regulations.

<sup>28</sup> Agreement at the Working Group on Agriculture's meeting held in Cartago, Costa Rica on May 29, 2003

6. Likewise, **it is not acceptable to establish additional protection periods for providing privileged information**, leading to the extension of deadlines to protect information. Under no circumstances, the information protection period should go beyond the expiry of patents. Information protection must expire with the expiry of patent.
7. Regarding ratification of international agreements such as the International Union for the Protection of New Varieties of Plants (UPOV), the CID Initiative's Working Group on Agriculture opposes ratification of this initiative in those countries that have not yet ratified it and for those countries who have, the proposal is to revoke adhesion, so that within the commitments made in the multilateral context, projects for national legislation agreed with the agricultural sector, are promoted.

#### **IV. PROPOSAL OF THE FISHERY AND SUSTAINABLE AQUACULTURE SECTOR RELATED TO THE NEGOTIATION PROCESS OF THE CENTRAL AMERICAN FREE TRADE AGREEMENT WITH THE UNITED STATES**

##### **1. PROPOSAL FOR PROCEDURE**

1.1. **Central American governments must keep a PROACTIVE attitude** in the negotiation with the United States, and must emphasize on aspects of cooperation and technical assistance to open up possibilities to progress towards environmental sustainability in general, and in fishery and aqua-culture (extraction, processing, trade, reproduction, and cultivation) in particular; also, in aspects of strengthening public institutions involved in fishery and aqua-culture: Ministry of Agriculture and Livestock (MAG), Center for the Development of Fishery and Aquaculture (CENDEPESCA), National Council on Fishery and Aqua-culture (CONAPESCA) and Consultative Scientific Committee on Fishery and Aquaculture (CCCNPESCA).

##### **2. PROPOSALS ON CONTENT**

2.1. Proposal to the chapter content

2.1.1. On matters of access to markets:

2.1.1.1. **Negotiators must negotiate special and differentiated treatment for fishery and water products that have been consistently managed to protect the water environment** from the extraction phase to the trade phase and in the case of aquaculture, from the reproduction phase. This will facilitate access to new markets for this type of products and will also promote retraining of fishery and aquaculture activities ensuring conservation and sustainable development of hydro biological resources.

It is worth mentioning that the national and international context is favorable for this type of proposals. On one hand, the Trade Promotion Authority (known as TPA, approved by the US Congress in August 2002) says that the United States will seek market access for

their environmental technologies, assets and services through the elimination of tariff and non-tariff barriers.

Also, the issue of environmental assets and services is discussed within the framework of the WTO. On the other hand, some national legislation such as the recently approved Law on Order and Promotion of Fishery and Aquaculture in El Salvador, seeks to profit from hydro biological resources in an orderly and sustainable manner.

Central American countries could take advantage of such favorable context to promote production and trade of “ecological” fish products (products from fishery and aqua-culture handled in an environmentally friendly manner throughout all stages). However, even though some rules stated in the Salvadoran fishery law favor sustainable fishery, it is important to enforce them, therefore, **there must be a certification system (a specific eco labeling for fish and water products) to ensure that fish products have access to the green markets in the United States** (it is recommended to have a regional certification system). On the other hand, it is urgent<sup>29</sup> to design a strategy to promote the process of productive re conversion (mainly in commercial and industrial extraction), processing and trading fish and aquaculture water products (an incentive program may be the step in the right direction).

2.1.1.2. Fishing technologies and items (**fishing arts, etc.**) with harmful effects on the water environment (implying a high mortality rate of sea fauna, for instance) must be excluded from the tariff reduction lists of the parties involved.

2.1.1.3. **Imports of proper technology for catching (for instance, fishing arts equipped with devices to protect dolphins and turtles) shall be introduced free of tariff once the free trade agreement is in place.**

2.1.2. On Investment Matters:

2.1.2.1. **The Central American countries and the United States must commit not to lower their environmental standards to attract direct foreign investment (IED).** This disposition is stated in some FTAs already in place and it is important to include them in the CAFTA with the United States to promote environmentally friendly investment. In a country receiving IED, where environmental standards tend to be high investment may contribute to attract companies with good environmental performance.

The Fishery and Aquaculture sector could take advantage of investment to increase its technical and technological capacity, particularly to generate added value; while increasing its capacity to reduce or minimize environmental impact resulting from the various stages of fishery and aquaculture. From this perspective, the commitments made by governments participating in the recent Summit in Johannesburg (including Central American countries) are particularly important, as they **commit to promote corporate responsibility and to promote continuous improvement practices by national and international corporations.**

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<sup>29</sup> Preliminary proposal is in process of discussion and consultation.

2.1.2.2. Negotiations on investment must result in establishing **clear limits between foreign investors' rights and States' rights to improve their environmental regulations, and in particular, to approve laws in favor of the orderly and rational use of coastal and sea resources** (see number 3). In any case, in conflict resolution it must be stated that the collective interest is above individual interest and that the rights of the State to protect health and environment is above the rights of corporations to gain profits.

#### 2.1.3. On the issue of services

The issue of services must be addressed carefully by Central American negotiators as they include a variety of sub sectors such as sea transportation, tourism (cruises, hotels and restaurants) and services related with electricity that generates discharges and emissions that pollute the coastal and sea environment. For example, sea transportation is a direct source of pollution for the Pacific Ocean and the Caribbean Sea, given the accidents of boats transporting hydrocarbons and also discharging waste and other pollutants during routine operations (cleaning oil ships and eliminating waste from the machinery), which is more than waste spilled in accidents. Another important source of sea pollution is the waste coming from earthbound activities (including industry, tourism, agriculture, chemical substances).

Therefore, it is relevant **to negotiate a disposition so that service providers (tourism, sea transportation, restaurants and hotels) willing to provide services in other territory, must do it according to environmental norms and related regulations (for example, in bidding matters).**

2.1.4. **There must be an action plan identifying specific programs of technical cooperation and assistance on the environment field.** Since there are multiple areas on common interest for technical cooperation and assistance in this matter, it is important that civil society organizations with expertise on environmental issues give their input to identify them in coordination with the Ministries of the Environment. It would also be convenient to determine these areas of cooperation on the basis of what is already done in terms of environmental cooperation between the Central American region and the United States (e.g. Central American-United States of America Joint Accord, CONCAUSA) to avoid duplication of efforts.

Regarding the fishery sector some technical cooperation and assistance to negotiate with the governments of the region may be the following:

- Creation and or strengthening of capacities in the countries of the region to improve environmental legislation related to water resources, better capacity to enforce it, and institutions to supervise and lobby on environmental issues. In particular, we insist in the need to approve laws and special regulations referring to the sustainable use of sea and coastal resources, and to implement the commitments stated in the multilateral agreements on the environment (including CITES, the Basel Convention, Convention on Biological Diversity) and to adopt institutional norms related to the pollution of the ocean.

- Transfer of clean technologies to implement them throughout the stages of (extraction, processing, and trade) and aquaculture (reproduction, cultivation, extraction, processing and trade).
- Provision of special credits for agro industrial companies (processing fish products) that acquire clean technologies and waste recycling.
- Transfer of environmentally friendly technology in the field of public services (waste management/recycling and residual waters) to reduce pollution of sea and continental water coming from earthbound activities.
- Technical and financial support to strengthen artisan fishery within the framework of environmental sustainability: this entails provision of equipment and tools, training, access to credits (special credits for artisan projects on fishery and aquaculture), support infrastructure and assistance on processing and trade.
- Investment on support infrastructure for the development of sustainable aquaculture in the coastal zone: this includes water reservoirs, piping, drain systems, refrigerating rooms, (without harmful substances for the ozone layer), processing and packaging plants, and waste management plants.
- Strengthening of the National Civil Police and the Marine to provide better safety to fishers in the high sea and to enforce laws on the environment and fishery (including prohibitions, use of nets, limits for industrial fishery).
- Creation and strengthening of a special research center on sea and aquaculture organized to promote participation of other sectors and universities. This Center shall include a data base (biological, technical, socio-economic) on fishery and aquaculture accessible to other productive sectors (artisan fishers, etc.) and the general public.

### **3. PROPOSALS ON NATIONAL CONTEXT TO PROMOTE AND ENHANCE SUSTAINABLE FISHERY AND AQUACULTURE**

3.1. The Law on Order and Promotion of Aquaculture must be complemented with legal instruments (rules, decrees, Conduct Codes, etc.) to ensure orderly and sustainable protection, restoration and profit of hydro biological resources. In particular, to ensure a sustainable pace of exploitation of fishery resources, it is necessary to:

3.1.1. Reaffirm that the Exclusive Economic Zone (ZEE) of Central America is the area located from 12 nautical miles to 200 nautical miles from their shore.

3.1.2. Define reserve zones where the use of hauling nets by industrial fisheries is prohibited.

3.1.3. The activity zone for industrial fleets will be limited to deep ocean waters and deep waters from the Gulf of Fonseca: industrial fishers may fish from 3 nautical miles extending from the shore.

3.1.4. The national and Central American mangrove forest must be divided in zones establishing bio aquatic zones, zones for reproduction and zones of prohibition to protect and to promote rational use of resources.

3.1.5. For every species of trade value, particularly the over exploited endangered species, the fishing zones, and the number and size of authorized ships must be determined. The shrimp fleet will be reduced and reconverted so that they can profit from other under-exploited species of trade value.

3.1.6. There will be protection measures to recover over exploited species. For example, mollusks (oysters, “curil” shells, and “casco de barro” shells curiles) must benefit from prohibitions or protection zones during their reproductive season based on evaluation of the stocks by species and zones. For sharks, use of boulders, and shark fishing nets with lights must be authorized. The tuna fishing zone will be determined from 80 nautical miles, extending from the lowest tide line, and authorization will be given only for fencing nets equipped with devices to keep dolphins and turtles out, and boulders.

3.1.7. Fishing techniques will be regulated (fishery arts and methods): harmful fishing techniques will be prohibited and replaced with proper technologies for catching through incentives (soft credit lines). Industrial and artisan fishing boats must be registered, as well as their equipment, and fishing with nets at the entrance and inside mouths of rivers will be prohibited (excepting net atarrayas). It will be prohibited to issue licenses for shrimp fishing boats equipped with hauling nets with net holes less than 2.5 inches. During the hauling process it will be prohibited to use the tricoché to protect the marine layer that is the habitat where marine resources live.

3.2. The Salvadoran government must speed up the implementation of international conventions ratified and related to coast and marine resources, especially the following regulations:

- Chapter 17 of Agenda 21 (approved by the United Nations Conference on the Environment and Development in 1992) related to the protection of marine resources and rational use of live resources;
- The UN Convention on the Law of the Sea (UNCLOS);
- The Code of Conduct for responsible fisheries that sets international norms and principles of behavior to practice responsible fishery for the conservation, lobby and effective development of marine live resources, respecting the ecosystem and biodiversity.
- The Convention on Biological Diversity, especially the Jakarta Mandate (1995) on Marine and Coastal Biodiversity<sup>30</sup>.

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<sup>30</sup> The Jakarta Mandate on Marine and Coastal Biological Diversity was adopted in 1995. The Convention focuses on integrated marine and coastal area management, the sustainable use of living resources, protected areas, mariculture and alien species.

- The Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat
- The Mesoamerican Biological Corridor Initiative (in relation to coastal and marine aspects).
- The United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol<sup>31</sup>.

3.3. It is recommended that El Salvador adopts two legal instruments to enforce regional and sub regional measures for the conservation and orderly use of fishing resources in the high sea. These instruments are:

- The Agreement to promote compliance with international measures on conservation and management of aquatic resources by fishing boats in the high sea (Binding Agreement). This agreement is part of the FAO Code of Conduct for Responsible Fisheries, says: States authorizing fishing and fishing support vessels to fly their flags should exercise effective control over those vessels so as to ensure the proper application of this Code.<sup>32</sup> States should also ensure that vessels flying their flags fulfill their obligations concerning the collection and provision of data relating to their fishing activities.

- The agreement on the application of rules established in the United Nations Convention on The Law of the Sea related to the conservation and management of trans- zonal fish populations and highly migratory species. This agreement states that State parties should adopt all necessary measures for fishing support vessels to fly their flags vessels should comply with regional and sub regional measures on conservation and management; and also it yields power to regional fishery organizations, particularly on aspects related to control and surveillance of vessels in high seas.

- The International Action Plan on Illegal Fishery, non -regulated and regulated (IRD): this aspect is pending to elaborate.

3.4. In order to reduce, control or eliminate pollution of the marine environment coming from vessels and caused by activities on coastal territory, El Salvador must:

- include in their juridical structures international norms on marine pollution matters and also establish mechanisms to enforce them gradually or immediately. Detailed as follows, there are several conventions established by the International Maritime Organization (IMO), responsible for taking actions against marine pollution caused by vessels: a) International Convention for the Prevention of Pollution from Ships and its Protocol of 1978 (MARPOL 73/78); b) International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969); c) the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LDC), 1972; and d) the International Convention on the Control of Harmful Anti-fouling systems on Ships (2001).

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<sup>31</sup> The United Nations Framework Convention on Climate Change and its protocol seek to reduce greenhouse gases as they are the main cause of global climatic change resulting in warming of marine waters. This effect and the El Niño Phenomenon have a negative impact on marine ecosystems because they decrease placton and algae feeding marine fauna, thus provoking fish migration and consequently, a drop in catching levels and a high mortality of aquatic fauna whose food depends on fish.

<sup>32</sup> Letter a, section 1 of Article III, Binding Agreement.

- speed up mechanisms to comply with the norms of the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990 Protocol on Preparedness, Response and Co-operation to pollution Incidents by Hazardous and Noxious Substances (2000).

- speed up implementation of the Regional Seas Program, promoted by the United Nations Environment Program, UNEP, through the Action Plan for the Protection and Sustainable Development of the Marine and Coastal Environment <sup>33</sup> of the Northeast Pacific; as well as the Global Action Program (PAM) for the Protection of the Marine Environment from Territorial Activities (1995)<sup>34</sup>.

3.5. The countries sharing the area of the Gulf of Fonseca (El Salvador, Nicaragua and Honduras) must subscribe to an international agreement for the joint and sustainable recovery, protection and management of natural resources and the coastal zone of the Gulf as well as the shared Basins draining into it.

3.6. There will be a surveillance and inspection system for activities related to fishery (industrial and artisan) and aquaculture for effective implementation of norms for fishery resources management through coordination with Naval Forces, the National Civil Police and other institutions. Also, there will be fishery inspection offices.

3.7. Aquaculture activity must be regulated and controlled to be environmentally non degradable and technically appropriate, in terms of ordering zones, harvest models, introduction of exotic species, amount of organic matter in pours, etc.) Sustainable aquaculture will be developed in marsh areas without mangroves, abandoned salt pools, unrecoverable swamps and other places where abandoned farms may be rehabilitated.

3.8. Marine coastal municipalities will adequate their laws to support sustainable planning and development of their coastal areas and specific ecosystems of interest.

3.9. The administrative political institutions (City Councils), productive groups (fishermen cooperatives, etc.) and citizen and community organizations (Local development boards, etc.) will be strengthened through the provision of financial resources, management and administrative capacity, competences and responsibilities to improve their participation in sustainable planning and lobbying for their coastal areas and their marine and coastal ecosystems.

3.10. There must be awareness raising campaigns and training programs for fishers (artisan and industrial fishery) on aspects such as fishing resources management norms (including

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<sup>33</sup> Preliminary proposal in process of discussion and consultation

<sup>34</sup> The UNEP is the main UN organization responsible for environmental issues.

The Action Plan for the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific is a regional cooperation framework to promote sustainable management of marine and coastal resources in Central America under the coordination of COCATRAM (Central American Commission on Marine Transportation). The Global Action Plan (GAP) for the Protection of Marine Environment from territorial activities seeks to prevent degradation of the environment due to activities offshore.

international conventions related to marine-coastal resources, and the use of proper technology for catching and sustainable aquaculture techniques.

## **V. CONSIDERATIONS BY THE WORKING GROUP ON AGRICULTURE RELATED TO SANITARY AND PHYOSANITARY MEASURES (SPS)**

1. Access to the United States market requires complying with strict sanitary measures (labeling, additives, pesticide residues, control of processes, among others) mainly in products for human consumption. In practice, the United States has turned SPS into barriers to restrict introduction of Central American products into their market.<sup>35</sup> On the contrary, US products access the Central American market without restraints, which is an asymmetric situation in detriment of exportable agricultural products from Central America.
2. The United States requires the sanitary status of countries for authentication of equivalence<sup>36</sup>, the compliance of strict rules that they create and enforce, giving them a wide margin of decision in terms of deadlines, inspections and finally, authorizations. Often these rules are technical barriers for trade.
3. Central American countries must have certainty that SPS will not be applied discretionally, that food exports will not be subject of discriminatory treatment by US authorities and that within the framework of discussion of access to markets, it must be ensured that agricultural inspection systems of the Central American region be equivalent to that of the United States.
6. Likewise, attention must be paid to the new normative on bioterrorism passed by the United States, to prevent this legislation to turn into a technical barrier for trade that would introduce new and unjustified requirements raising costs or complicating export processes. Central America should not permit new technical barriers for free access to the US market.

## **VI. COOPERATION AND COMPLEMENTARY MEASURES FOR THE CENTRAL AMERICAN AGRICULTURE AND LIVESTOCK SECTOR**

1. Considering the fragility of the Central American agriculture and livestock sector, the opportunities of the Free Trade with the United States seem very limited for this

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<sup>35</sup>Some sub sectors facing non-tariff barriers to introduce Central American products into the US market are: fruits, vegetables and legumes, flowers and leaves, dairy products, fresh refrigerated fish, meat and poultry remains, dry or refrigerated, and bovine and porcine meats.

<sup>36</sup> According to the AMSF of the WTO, “sanitary measures from the export member will be accepted as equivalent as long as such measures provide same sanitary and phytosanitary protection”

sector because it will hardly comply, by itself and without complementary measures and agreements of cooperation, the purpose of getting better conditions of access to the US market for Central American agricultural production.

2. In the agricultural productive structure in the region, two types of agriculture co-exist: One of subsistence or “self-consumption”, mainly for the poorest rural population in Central America. We propose for this agriculture and for these farmers, a **food security fund**, that would include programs and projects aimed to support improvement of seeds, promotion of proper technology, diversified production, pre and post-harvest management, farm administration, organizational training, support and promotion of guild organizations and basic services providers, and support to processing and trade.
3. The other one is traditional agriculture with small, midsized, and big farmers who produce profit for the international, regional and domestic market. We propose for this agriculture and these farmers to establish a **green fund or a development fund** that would have programs and measures such as: channeling financial resources to reorganize and modernize the agri-food sector, substantial improvement of labor training, the development of financial banking, strengthening public and private institutional capacity linked to the sector, substantial improvements on productive and social infrastructure, and decentralization.

**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>37</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.**

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.**

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<sup>37</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

**1.3. 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 individualized 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 be 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.

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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/>

- 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.
- 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 12°. 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.